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सं. 40]	नई दिल्ली, अक्टूबर 24—अक्टूबर 30, 2021 शनिवार/ कार्तिक 2— कार्तिक 8, 1943
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इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह पृथक संकलन के रूप में रखा जा सके
Separate Paging is given to this Part in order that it may be filed as a separate compilation

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

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

वित्त मंत्रालय
(वित्तीय सेवाएं विभाग)

नई दिल्ली, 21 अक्टूबर, 2021

का.आ. 735.—बैंककारी कंपनी (उपक्रमों का अर्जन और अंतरण) अधिनियम, 1970 की धारा 9 की उप-धारा (3) के खंड (क) के परंतुक द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार, एतद्वारा, बैंक आफ बड़ौदा के मुख्य महाप्रबंधक श्री जयदीप दत्त राय (जन्म तिथि 1.7.1972) को कार्यभार ग्रहण करने की तारीख से तीन वर्ष की अवधि के लिए अथवा अगले आदेशों तक, जो भी पहले हो, बैंक आफ बड़ौदा में कार्यपालक निदेशक के पद पर नियुक्त करती है।

[ई फा. सं. 4/2/2021-बीओ-1]

संजय कुमार मिश्र, अवर सचिव

MINISTRY OF FINANCE
(Department of Financial Services)

New Delhi, the 21st October, 2021

S.O. 735.—In exercise of powers conferred by the proviso to clause (a) of sub-section (3) of section 9 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970, the Central Government hereby appoints Shri Joydeep Dutta Roy (date of birth: 1.7.1972), Chief General Manager, Bank of Baroda as Executive Director, Bank of Baroda for a period of three years with effect from the date of assumption of office, or until further orders, whichever is earlier.

[e F. No. 4/2/2021-BO.I]

SANJAY KUMAR MISHRA, Under Secy.

नई दिल्ली, 21 अक्टूबर, 2021

का.आ. 736.—बैंककारी कंपनी (उपक्रमों का अर्जन और अंतरण) अधिनियम, 1970 की धारा 9 की उप-धारा (3) के खंड (क) के परंतुक द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार, एतद्वारा, यूनियन बैंक आफ इंडिया के मुख्य महाप्रबंधक श्री आशीष पाण्डेय (जन्म तिथि 24.6.1971) को दिनांक 31.12.2021 को या उसके बाद कार्यभार ग्रहण करने की तारीख से तीन वर्ष की अवधि के लिए अथवा अगले आदेशों तक, जो भी पहले हो, बैंक आफ महाराष्ट्र में कार्यपालक निदेशक के पद पर नियुक्त करती है।

[ई फा. सं. 4/2/2021-बीओ-1]

संजय कुमार मिश्र, अवर सचिव

New Delhi, the 21st October, 2021

S.O. 736.—In exercise of powers conferred by the proviso to clause (a) of sub-section (3) of section 9 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970, the Central Government hereby appoints Shri Asheesh Pandey (date of birth: 24.6.1971), Chief General Manager, Union Bank of India as Executive Director, Bank of Maharashtra for a period of three years with effect from the date of assumption of office on or after 31.12.2021, or until further orders, whichever is earlier.

[e F. No. 4/2/2021-BO.I]

SANJAY KUMAR MISHRA, Under Secy.

नई दिल्ली, 21 अक्टूबर, 2021

का.आ. 737.—बैंककारी कंपनी (उपक्रमों का अर्जन और अंतरण) अधिनियम, 1970 की धारा 9 की उप-धारा (3) के खंड (क) के परंतुक द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार, एतद्वारा, पंजाब नेशनल बैंक के मुख्य महाप्रबंधक श्री अश्विनी कुमार (जन्म तिथि 2.9.1969) को कार्यभार ग्रहण करने की तारीख से तीन वर्ष की अवधि के लिए अथवा अगले आदेशों तक, जो भी पहले हो, इंडियन बैंक में कार्यपालक निदेशक के पद पर नियुक्त करती है।

[ई फा. सं. 4/2/2021-बीओ-1]

संजय कुमार मिश्र, अवर सचिव

New Delhi, the 21st October, 2021

S.O. 737—In exercise of powers conferred by the proviso to clause (a) of sub-section (3) of section 9 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970, the Central Government hereby appoints Shri Ashwani Kumar (date of birth: 2.9.1969), Chief General Manager, Punjab National Bank as Executive Director, Indian Bank for a period of three years with effect from the date of assumption of office, or until further orders, whichever is earlier.

[e F. No. 4/2/2021-BO.I]

SANJAY KUMAR MISHRA, Under Secy.

नई दिल्ली, 21 अक्टूबर, 2021

का.आ. 738—बैंककारी कंपनी (उपक्रमों का अर्जन और अंतरण) अधिनियम, 1970 की धारा 9 की उप-धारा (3) के खंड (क) के परंतुक द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार, एतद्वारा, यूनियन बैंक आफ इंडिया के मुख्य महाप्रबंधक श्री कल्याण कुमार (जन्म तिथि 10.1.1969) को कार्यभार ग्रहण करने की तारीख से तीन वर्ष की अवधि के लिए अथवा अगले आदेशों तक, जो भी पहले हो, पंजाब नैशनल बैंक में कार्यपालक निदेशक के पद पर नियुक्त करती है।

[ई फा. सं. 4/2/2021-बीओ -I]

संजय कुमार मिश्र, अवर सचिव

New Delhi, the 21st October, 2021

S.O. 738—In exercise of powers conferred by the proviso to clause (a) of sub-section (3) of section 9 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970, the Central Government hereby appoints Shri Kalyan Kumar (date of birth: 10.1.1969), Chief General Manager, Union Bank of India as Executive Director, Punjab National Bank for a period of three years with effect from the date of assumption of office, or until further orders, whichever is earlier.

[e F. No. 4/2/2021-BO.I]

SANJAY KUMAR MISHRA, Under Secy.

नई दिल्ली, 21 अक्टूबर, 2021

का.आ. 739—बैंककारी कंपनी (उपक्रमों का अर्जन और अंतरण) अधिनियम, 1970 की धारा 9 की उप-धारा (3) के खंड (क) के परंतुक द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार, एतद्वारा, यूको बैंक के महाप्रबंधक श्री निधु सक्सेना (जन्म तिथि 10.6.1968) को श्री गोपाल सिंह गोसाई के स्थान पर दिनांक 1.2.2022 को या उसके बाद कार्यभार ग्रहण करने की तारीख से तीन वर्ष की अवधि के लिए अथवा अगले आदेशों तक, जो भी पहले हो, यूनियन बैंक आफ इंडिया में कार्यपालक निदेशक के पद पर नियुक्त करती है।

[ई फा. सं. 4/2/2021-बीओ-I]

संजय कुमार मिश्र, अवर सचिव

New Delhi, the 21st October, 2021

S.O. 739—In exercise of powers conferred by the proviso to clause (a) of sub-section (3) of section 9 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970, the Central Government hereby appoints Shri Nidhu Saxena (date of birth: 10.6.1968), General Manager, UCO Bank as Executive Director, Union Bank of India for a period of three years with effect from the date of assumption of office on or after 1.2.2022, or until further orders, whichever is earlier, vice Shri Gopal Singh Gusain.

[e F. No. 4/2/2021-BO.I]

SANJAY KUMAR MISHRA, Under Secy.

नई दिल्ली, 21 अक्टूबर, 2021

का.आ. 740.—बैंककारी कंपनी (उपक्रमों का अर्जन और अंतरण) अधिनियम, 1980 की धारा 9 की उप-धारा (3) के खंड (क) के परंतुक द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार, एतद्वारा, बैंक आफ बड़ौदा के मुख्य महाप्रबंधक डॉ. रामजस यादव (जन्म तिथि 18.4.1964) को कार्यभार ग्रहण करने की तारीख से उनकी अधिवर्षिता की आयु (अर्थात् 30.4.2024) तक अथवा अगले आदेशों तक, जो भी पहले हो, पंजाब एंड सिंध बैंक में कार्यपालक निदेशक के पद पर नियुक्त करती है।

[ई फा. सं. 4/2/2021-बीओ-I]

संजय कुमार मिश्र, अवर सचिव

New Delhi, the 21st October, 2021

S.O. 740.—In exercise of powers conferred by the proviso to clause (a) of sub-section (3) of section 9 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980, the Central Government hereby appoints Dr Ramjass Yadav (date of birth: 18.4.1964), Chief General Manager, Bank of Baroda as Executive Director, Punjab & Sind Bank with effect from the date of assumption of office and up to the date of his attaining the age of superannuation (i.e., 30.4.2024), or until further orders, whichever is earlier.

[e F. No. 4/2/2021-BO.I]

SANJAY KUMAR MISHRA, Under Secy.

नई दिल्ली, 21 अक्टूबर, 2021

का.आ. 741.—बैंककारी कंपनी (उपक्रमों का अर्जन और अंतरण) अधिनियम, 1970 की धारा 9 की उप-धारा (3) के खंड (क) के परंतुक द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार, एतद्वारा, पंजाब नैशनल बैंक के मुख्य महाप्रबंधक श्री रजनीश कर्नाटक (जन्म तिथि 14.7.1970) को श्री दिनेश कुमार पूनम चंद गर्ग के स्थान पर कार्यभार ग्रहण करने की तारीख से तीन वर्ष की अवधि के लिए अथवा अगले आदेशों तक, जो भी पहले हो, यूनियन बैंक आफ इंडिया में कार्यपालक निदेशक के पद पर नियुक्त करती है।

[ई फा. सं. 4/2/2021-बीओ-I]

संजय कुमार मिश्र, अवर सचिव

New Delhi, the 21st October, 2021

S.O. 741.—In exercise of powers conferred by the proviso to clause (a) of sub-section (3) of section 9 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970, the Central Government hereby appoints Shri Rajneesh Karnatak (date of birth: 14.7.1970), Chief General Manager, Punjab National Bank as Executive Director, Union Bank of India for a period of three years with effect from the date of assumption of office, or until further orders, whichever is earlier, vice Shri Dinesh Kumar Poonam Chand Garg.

[e F. No. 4/2/2021-BO.I]

SANJAY KUMAR MISHRA, Under Secy.

**पेट्रोलियम और प्राकृतिक गैस मंत्रालय
(रिफाइनरी विभाग)**

नई दिल्ली, 14 अक्टूबर, 2021

का.आ. 742.—केन्द्रीय सरकार, पेट्रोलियम और खनिज पाइपलाइन (भूमि में उपयोग के अधिकार का अर्जन) अधिनियम, 1962 (1962 का 50) की धारा 2 के खंड (क) के अनुसरण में, भारत सरकार पेट्रोलियम और प्राकृतिक गैस मंत्रालय, की अधिसूचना का.आ. 240 दिनांक 10 फरवरी 2018 के द्वारा सुश्री अवंतिका एच. दर्जी, उप कलेक्टर, भूमि सुधार, कार्यालय/कलेक्टर खेड़ा, को भारत ओमान रिफाइनरीज लिमिटेड (बीओआरएल) गुजरात क्षेत्र में सक्षम प्राधिकारी के पद के दिए गए प्राधिकार के अधिपत्य का अधिकांश करते हुये, प्रांत अधिकारी आणंद जिला आणंद जो उनके अपने कार्यभार के साथ भारत ओमान रिफाइनरीज लिमिटेड से संबंधित वाडिनार (गुजरात) से बीना (मध्य प्रदेश) तक की देशव्यापी कूड पाइपलाइन के लिए सक्षम प्राधिकारी के कृत्यों का निर्वहन करने के लिए उक्त अधिनियम, के अधीन गुजरात राज्य के राज्य क्षेत्र के भीतर, प्राधिकृत्य करती हैं।

यह अधिसूचना उस के जारी होने की तारीख से प्रभावी होगी।

[फा. सं. आर-12031/197/2017-ओआर- आई/ई-21538]

पी. सोमाकुमार, उप सचिव

**MINISTRY OF PETROLEUM AND NATURAL GAS
(REFINERY DIVISION)**

New Delhi, the 14th October, 2021

S.O. 742.—In pursuance of Clause (a) of Section 2 of the Petroleum and Minerals Pipelines (Acquisition of Right of user in Land) Act, 1962 (50 of 1962) and in supersession of authorization given to Ms. Avantika H. Darji, Deputy Collector, Land Reforms O/o Collector Kheda as a Competent Authority of Bharat Oman Refineries Limited (BORL) for Gujarat region through Ministry of Petroleum and Natural Gas, Government of India vide. S.O. 240 dated the 10th February 2018 and the Central Government hereby authorizes, Prant Officer, Anand, Dist. Anand (Gujarat), to perform the functions of the Competent Authority, in addition to his own duties, under said Act, within the territory of State of Gujarat for the cross country crude pipeline from Vadinar (Gujarat) to Bina (Madhya Pradesh) of Bharat Oman Refineries Limited (BORL).

This notification will be effective from the date of its issue.

[F. No. R-12031/197/2017-OR-I/E-21538]

P. SOMAKUMAR, Under Secy.

श्रम और रोजगार मंत्रालय

नई दिल्ली, 27 अक्टूबर, 2021

का.आ. 743.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स भारत पेट्रोलियम कॉर्पोरेशन लिमिटेड, मुंबई के प्रबंधन के संबद्ध नियोजकों और श्री पी.एन. सुरेंद्रन नायर, एर्नाकुलम के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, कोचीन के पंचाट (संदर्भ संख्या 02/2019) को प्रकाशित करती है।

[सं. जेड-16025/4/2021-आईआर(एम)]

डी. गुहा, अवर सचिव

MINISTRY OF LABOUR AND EMPLOYMENT

New Delhi, the 27th October, 2021

S.O. 743.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 02/2019) of the Central Government Industrial Tribunal/Labour Court, Cochin now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. Bharat Petroleum Corporation Ltd., Mumbai and Shri P. N. Surendran Nair, Ernakulam.

[No. Z-16025/4/2021-IR(M)]

D. GUHA, Under Secy.

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
ERNAKULAM****Present:** Shri. V .Vijaya Kumar, B. Sc, LL.M, Presiding Officer(Wednesday the 1st day of September 2021, 10 Bhadra 1943)**ID No.02/2019**

Workman : P.N.Surendran Nair
“Anizham”, H.No.33/238-B1
Puzhakkarapadam
Vennala
Ernakulam – 682028
By M/s. A & S Associates

Managements : 1. The Chairman/Managing Director
Bharat Petroleum Corporation Ltd
Bharat Bhavan 4 & 6, Currimbhoy Road
Ballard Estate, P.B.No.688
Mumbai, Maharashtra – 400001
2. The Chief General Manager Operations (I/C)
Bharat Petroleum Corporation Ltd
Kochi Refinery, Ambalamugal
Ernakulam – 682302

By Adv. Benny P. Thomas

This case coming up for final hearing on 03.08.2021 and this Tribunal-cum-Labour Court on 01.09.2021 passed the following:

AWARD

1. This is a claim filed by the workman U/s 2A(2) of Industrial Disputes Act, 1947. The workman is aggrieved by his dismissal by the management company consequent on a disciplinary action initiated on an alleged quarrel between himself and two fellow employees which culminated in the dismissal of the workman by the management. The workman raised a dispute before the Deputy Labour Commissioner (Central) U/s 2A(2) of the Industrial Disputes Act. The conciliation proceedings ended in failure because of the adamant stand taken by the management. The workman was imposed with a punishment of dismissal without following the procedure provided under Certified Standing Orders. As per Clause 33(3) of the Standing Orders, a workman against whom an enquiry is to be conducted shall be given a written notice of the alleged misconduct and will be given an opportunity to explain the circumstances. In the present case the management issued the charge sheet and notice of enquiry without any statement of imputation or documents. Hence there is a violation of principles of natural justice. The alleged incident occurred in the dress changing room. There is a clear finding by the criminal Court that the workman, the complainant and Sri.Sasikumar M.R. were only present at the location when the incident happened. However the management introduced few witnesses in the enquiry against the workman alleging that they were also present at the place of occurrence. Hence the CCTV footage from the camera installed near dress changing room is a relevant evidence in the enquiry. In spite of specific request by the workman, the management failed to provide the CCTV footage of the camera installed in front of dress changing room which would prove clearly that there was nobody other than the workman, Sri.Sajeevakumar J. and Sri.Sasikumar M.R. at the place of occurrence. This is further a clear violation of the

principles of natural justice. It can also be seen that an Enquiry Officer was appointed along with the charge sheet which would clearly show that the management had violated the procedures contemplated under Clause 33 of the Standing Orders and also acted in a prejudicial manner. The validity of the enquiry therefore is required to be examined as a preliminary issue.

2. The workman started his career as Grade 1 workman in Cochin Refineries in the year 1983. Kochi Refineries merged with Bharat Petroleum Corporation Ltd (BPCL) in the year 2006. At the time of dismissal, the workman was working in the VIth Grade. The workman completed 34 years of service and has got only 4 years remaining for attaining superannuation. The workman was associated with Cochin Refineries Employees Association (CREA) from the beginning of his career. Later he became General Secretary of CREA. The workman was in the forefront of getting service benefits for the employees of the management and was therefore a thorn in the flesh of the management. The management started harassing the workman by issuing show cause notices for small and silly issues. In recognition of his service to the workers community, the workman was repeatedly elected as General Secretary of the union for the last 23 years.

3. The workman was on duty in general shift on 16.10.2015. When the workman entered the dress changing room, two colleague employees, Sri.M.R.Sasikumar and Sri.Sajeevakumar J. working in the equipment section were leaving the dress changing room. They abused the workman using filthy language. The workman reported the incident to his superior officer on the same day by filing a written complaint. Sri.Sajeevakumar J also filed a complaint against the workman with the controlling authority. The workman also filed a complaint with the Police against Sri.Sajeevakumar J and Sri.Sasikumar. Sri.Sajeevakumar also launched a police complaint alleging that the workman used caste name to abuse Sri.Sajeevakumar J. The Police registered an FIR U/s 294(B), 506(1) and Section 3(1) (X) of SC & ST (Prevention of Atrocities) Act, 1989. Though anticipatory bail is not given in such cases the Hon'ble Court granted anticipatory bail vide order dt.15.07.2015 stating that Section 3(1) (X) of SC & ST (Prevention of Atrocities) Act, 1989 is not prima facie attracted in this case. The workman also challenged the FIR and the final report filed against the workman. When a criminal case is pending the management in the normal course will not initiate domestic enquiry. However in this case the management issued a show cause notice dt.26.11.2015. In spite of specific request by the workman, the management continued with the enquiry proceedings by issuing a charge sheet and notice of enquiry dt.23.12.2015. The management originally cited only two witness Sri.Sajeevakumar J. and Sri.Sasikumar M.R. The management filed an additional list of witness on 01.03.2016. Though it was alleged that the additional witness were present at the time of occurrence of the alleged incident, there is no mention of the presence of any other witness even in the complaint filed by Sri.Sajeevakumar before the DGM. All the additional witness cited by the management are workers who resigned from CREA union and joined the rival union. The Enquiry Officer submitted a report finding the workman guilty of the offences charged against him. The enquiry was conducted in clear violation of the principles of natural justice and will not pass the test of perversity. The crime no.852/2015 registered by the Police on the complaint of the workman against Mr.Sajeevakumar J. and Sasikumar is converted as C.C. 509/2015. In the judgment dt.31.07.2017 the Hon'ble Chief Judicial First Class Magistrate observed that there is no evidence to suggest that there were persons other than the complainant and the accused in the alleged place of incident. It is therefore clear that the additional witnesses are planted by the management to victimize the workman. A copy of the enquiry report was forwarded to the workman on 27.04.2017 and the workman submitted his reply on 11.05.2017. The management did not take any action on the report till the Criminal MC No. 1321/2016 was disposed of by the Hon'ble Court vide order dt.06.02.2018. On 12.02.2018 the management issued a show cause notice cum suspension order to the workman. The workman filed a reply to the show cause notice. In the reply the workman relying on the decision in **Paul Antony's** case, 1999(3) SCC 679 requested the management to keep the disciplinary action pending a final decision by the penal Court. Ignoring the reply, the management issued the order dt.06.03.2018 dismissing the workman from the service of the company. Being the General Secretary of the recognized trade union, the workman is entitled to the protection U/s 33(3) of Industrial Disputes Act. Any punishment therefore imposed on the workman by the management without seeking permission of the Industrial Tribunal is invalid. Immediately after the termination order the workman was served with a show cause notice intimating forfeiture of gratuity. No charges against the workman is proved warranting withholding of gratuity. It is clear from the documents adduced in the enquiry that the workman is victimized for his trade union activities in the management company. In the impugned order there is a reference about previous disciplinary actions initiated against the workman. All those actions by the management were targeting the workman for his trade union activities and for exposing the illegal activities of the management before various forums. The workman on behalf of the union raised dispute against the outsourcing of manpower for operational job in BPCL. The matter was also raised before the Conciliation Officer who reported failure of the conciliation proceedings. The union has also taken up the dispute regarding privilege leave rules. The said matter is also pending conciliation before the conciliation officer. The workman also raised a dispute of unfair labour practice for inviting minority union. The workman also submitted a representation to the Govt regarding

non implementation of DPE guidelines by the management. The punishment of dismissal from service is imposed on the workman based on 3 misconducts. The first one is riotous or disorderly behavior or any act subversive to good discipline. The meaning of riot is an unlawful disturbance of peace by an assembly of persons, acting with a common purpose in a violent manner that threatens or terrorize the public. None of the elements of riot as defined above is available in the alleged incident. Similarly the allegation of intimidation also cannot be substantiated in the alleged incident. Another charge is disorderly behavior which is defined as a behavior that tends to disturb the public peace or offend the public morale or undermine the public safety. It is clear that the alleged incident will not attract the disorderly behavior as defined above. The alleged incident occurred in the dress changing room and the same is will not in any way affect the functional operation of the management company. At the best it can be treated only as a verbal exchange between two colleague employees of the management. From the sequence of events starting with the commencement of domestic enquiry on 26.11.2015 till the Criminal MC is disposed of by the Hon'ble Court on 06.02.2018, it can be seen that the management was waiting for an appropriate opportunity to punish the workman. As already pointed out, the management is maintaining a permanent animosity against the workman for raising the common cause of workers before various authorities. The workman also raised certain complaints before the Parliament Committee on Petitions and the Committee in their turn issued directions to the management which infuriated the management to take action against the workman. The victimization of the workman is clear from the fact that the workman was suspended from service after the departmental enquiry is over which is an unusual procedure followed by the management. The management has not considered it necessary to suspend the employee immediate after the incident or during the course of the departmental enquiry. It is further evident from the fact that the management has taken a decision to forfeit the gratuity of the workman immediately after his dismissal from service. The enquiry conducted against the workman is in complete violation of the principles of natural justice. The report submitted by the Enquiry Officer is totally perverse. The workman pointed out to the Enquiry Officer that there was no person other than the workman, the complainant Mr.Sajeevakumar J. and Mr.Sasikumar at the time of occurrence of the alleged incident. However the Enquiry Officer ignored the evidence adduced by the workman and considered the evidence adduced by the additional witness to conclude that the charge against the workman is proved. The workman also proved before the Enquiry Officer that Sri.Sajeevakumar J. had a personal grudge against the workman which was also proved before the Enquiry Officer. However the Enquiry Officer did not consider the same relevant for the enquiry. It was also pointed out to the Enquiry Officer that the complainant Sri.Sajeevakurmar J. and all other witness belongs to the same union and therefore the evidence adduced by those witness against the workman is fabricated. The management initiated disciplinary action against the workman as well as the complainant Sri.Sajeevakurmar J. In the enquiry against the workman the management produced additional witnesses. The enquiry against Sri.Sajeevakurmar J. and Sri.Sasikumar M.R. were closed abruptly without examining any witnesses and exonerating Sri.Sajeevakurmar J and Sri.Sasikumar M.R.

4. The management filed written statement denying the above allegations in the claim statement.

5. According to the management, the documents produced by the workman in this application which does not form part of the enquiry proceedings cannot be considered while deciding the dispute unless the enquiry proceedings are held to be invalid. The management company is owned and controlled by Govt of India and is engaged in the business of refining and marketing petroleum products. The management owns a refinery at Ambalamugal in Kochi wherein around 1400 workmen and 800 officers are engaged. The workman joined the service of the management company on 01.12.1983 as Grade 1 Craftsman and was promoted and was employed as General Craftsman Grade 6 at the time of dismissal. On 16.10.2015 the management received a complaint from Sri.Sajeevakurmar J., Maintenance Department stating that at around 8.15 am on 16.10.2015 while he was coming out of the dress changing room with Sri.Sasikumar M.R., the workman abused Sri.Sajeevakumar J. using filthy language and pulled out his belt with an intention to beat Sri.Sajeevakumar J. who belongs to Scheduled Caste. On the basis of the complaint a disciplinary action was initiated against the workman by issuing a show cause notice. Since the explanation submitted by the workman was not satisfactory, a domestic enquiry was ordered by issuing charge sheet and notice of enquiry. The following charges were levelled against the workman.

1. Riotous or disorderly behaviour or any act subversive to good discipline (Clause 29.14 of Standing Orders)
2. Threatening, intimidating or coercing any other employee (Clause 29.15 of Standing Orders)
3. Assault, either provoked or otherwise, making false accusation, use of impolite or insulting language against any other employee (Clause 29.16 of the Standing Orders)

An independent Enquiry Officer was appointed. The Enquiry Officer conducted the enquiry in compliance with the principles of natural justice and as per provisions of Certified Standing Orders. The

workman was given full and fair opportunity to defend the charges. The workman participated in the enquiry with the assistance of a co-employee. He also produced 13 documents in support of his defence. He cross examined all the management witness. The workman also examined himself and two other witness on his side. The workman never raised any objection during the course of enquiry against the proceedings. He signed every page of the proceedings. The Enquiry Officer after analyzing the evidence reported that the charges levelled against the workman were true and the workman was found guilty of the misconducts alleged against him. A copy of the enquiry report was furnished to the workman along with a show cause notice. The workman filed his reply. The Disciplinary Authority examined all the documents and accepted the findings of the Enquiry Officer. The Disciplinary Authority also considered the history of similar misconducts and the punishment awarded to the workman in the past. Disciplinary action was taken against the workman for abusing Sri.P. Arumugham which culminated in a punishment of 3 days suspension vide order dt.30.06.1994. The workman was awarded a punishment of withholding one annual increment with cumulative effect for absence from duty during the period 01.12.1995 to 19.03.1996 vide order dt.31.08.1999. Disciplinary enquiry was initiated against the workman for leaving the work spot without permission and for abusing Senior Executive of Kochi Refinery Ltd. Though the charges were proved, no punishment was awarded to the workman. The workman was also awarded a punishment of withholding of two annual increments with cumulative effect vide order dt.29.06.2009 for blocking two lady nurses in the company premises on 06.06.2005. Since the misconducts alleged and proved against the workman in the present case is of serious nature, another show cause notice was issued to the workman on the proposed punishment of dismissal from service of the company. Considering the seriousness of the charges proved against the workman, the workman was awarded a punishment of dismissal from service of the company.

6. Without prejudice to the above contentions the management prayed that if the Court finds that the enquiry proceedings or the findings thereunder entered against the workman are not proper or legal, the management may be permitted to adduce fresh evidence before this Tribunal to prove the allegations against the workman.

7. The management also sought approval of this Tribunal under Clause (b) of subsection 2 of Sec 33 of ID Act, 1947 in view of the fact that an industrial dispute was pending before this Tribunal seeking approval of the dismissal of the workman from service. The workman was also paid Rs.1,21,714/- being one month wages. The workman thereafter submitted an application for settling the provident fund amount and the same was also released to him on 06.06.2018. The management also issued a show cause notice to the workman as to why the gratuity payable to him should not forfeited. The workman filed his explanation. Since the explanation submitted by the workman was not satisfactory, the management decided to forfeit the gratuity of the workman in view of Sec 4(6) of the Payment of Gratuity Act. On the basis of a complaint received from the workman disciplinary action initiated against Sri.Sajeevakumar J and Sri.Sasikumar M.R. An impartial enquiry was conducted against the workers wherein the workman and two of his witness gave evidence. The Enquiry Officer found that the charges against Sri. Sajeevakumar J and Sri.Sasikumar M.R. are not proved. The Disciplinary Authority accepted the finding and the disciplinary proceedings were closed. The management has no direct knowledge about the alleged criminal proceedings initiated against Sri.Sajeevakumar J and Sri.Sasikumar M.R. based on the complaint filed by the workman or regarding criminal proceedings allegedly filed against the workman based on the complaint filed by Sri.Sajeevakumar J. Before issuing charge sheet to the workman a detailed show cause notice was issued to him specifying the allegations and the workman submitted his detailed explanation denying the allegations in the show cause notice. The charge sheet was issued only thereafter. There is no requirement under the Standing Orders that separate statement of allegation is to be given along with the charge sheet. There is no illegality or procedural impropriety in not supplying statement of allegations along with the charge sheet. On the first day of enquiry the Presenting Officer furnished the list of documents and witnesses with a request to permit him to produce additional documents and witness, if required. The management denied the claim of the workman that CCTV camera is installed in front of the dress changing room of the company. In the cross examination on 15.02.2016 Sri.Sajeevakumar J submitted that there were few more witnesses to the incident and also requested to include them as witness in the enquiry. The claim of the workman that all the witnesses in the enquiry were persons who resigned from CREA and joined REU is not correct. Sri.Noufal K. deposed in the enquiry that he is not a member of REU. The domestic enquiry conducted against the workman is legal and valid and in accordance with the principles of natural justice and the findings of the Enquiry Officer are based on evidence on record. The claim of the workman that he was victimized for his trade union activities is totally incorrect. The enquiry was initiated on a complaint filed by a co-worker and the charges were proved in the domestic enquiry conducted against the workman.

8. The workman was not a protected workman at the time of his dismissal. The union vide its letter dt.22.12.2016 submitted a list of 5 office bearers with a request to approve the same as protected workmen.

The management did not approve the list and the union has not raised any dispute on the matter. Even if the list submitted by the union is approved the validity of the said list would have expired on 06.01.2018 and the punishment was awarded on the workman on 06.03.2018. Therefore no permission is required U/s 33(3) of ID Acts, 1947 before imposing punishment on the workman. The misconducts alleged against the workman are proved in a properly conducted enquiry and the dismissal being proportionate to the misconducts proved against the workman. The allegation of conspiracy and victimization has no basis in fact and law. The forfeiture of gratuity of the workman was in accordance with the provisions of the Payment of Gratuity Act and after following the procedure prescribed therein. The misconducts alleged against the workman were proved in a domestic enquiry. Proved misconduct is antithesis of victimization and unfair labour practice. On the face of proved charges the allegation of victimization and unfair labour practice fails. Pendency of criminal case is not a ground for keeping the enquiry in abeyance and further the workman never brought this to the notice of the Enquiry Officer nor before the management at any point of time during the pendency of enquiry or thereafter. The claim of the workman that the CCTV footage was not provided to him deliberately is denied by the management. The workman made the request after 6 months and therefore the CCTV footage was over written and was not available. The averment of the workman that the management was keeping grudge against the workman because of his trade union activities is denied by the management. The claim of the workman that the finding of the Enquiry Officer is perverse is also denied by the management. The punishment imposed by the management is legal and justifiable.

9. The workman filed a rejoinder denying the allegations filed in the written statement. There is no express bar U/s 2A(2) of ID Act in producing additional documents in industrial dispute. The additional documents are produced to substantiate the case of victimization and unfair labour practice adopted by the management by utilizing the union rivalry. The complainant Sri.Sajeevakumar J. has no case that the workman used criminal force against him. Hence the finding of assault by the Enquiry Officer is perverse. The words alleged, disorderly behaviour, threatening, intimidating, coercing or assault has a definite legal meaning. No such things happened on the alleged day to attribute such an accusation of misconduct against the workman. The Enquiry Officer failed to conduct the enquiry in tune with the principles of natural justice. The Enquiry Officer did not comment on the evidence adduced by the workman and why the same is not acceptable to him. The claim of the management that the case against the workman warrants extreme punishment of dismissal is a punishment totally disproportionate to the offence alleged to have been committed by the workman. The contention of the Disciplinary Authority that he examined the report of the Enquiry Officer in detail is not correct. The finding with regard to CCTV footage itself is insufficient to show the contradicting stand taken by the Disciplinary Authority. The Disciplinary Authority vide their letter dt.03.05.2016 informed that CCTV footage is not available as it was overwritten whereas the present claim of the management is that there is no camera in front of the workmen's dress changing room. Similarly the punching details of Sri.S.K. Nazimudeen was denied to the workman on the ground that he was not cited as a witness and therefore are extraneous to the present disciplinary action. Since the case of the workman is that the complaint originated after a conspiracy hatched at the instance of Sri.S.K.Nazimudeen who is the leader of a splinter group trade union, REU with the management. He was also a witness in Crime no.853/2015 which is a connected criminal case. The denial of the punching details of Sri.S.K.Nazimudeen and Sajeevakumar is yet another example of violation of principles of natural justice. A plain reading of the enquiry report would show that the Enquiry Officer did not discuss or analyze the evidence adduced and no reasoning is discernable from the enquiry report as to how he arrived at a conclusion of guilt. The workman never submitted any voluntary application for settlement of provident fund. The management compelled the workman to do so. The provident fund amount offered by the management is accepted by the workman without prejudice to his right to challenge the proceedings which ended in his dismissal. The management was compelling the workman to accept all the dues so as to make it appear that he accepted the punishment without any further grievance. The workman never caused any damage and loss to the company and therefore the forfeiture of his gratuity by the management is illegal. The bias at the part of the Enquiry Officer is visible from his approach in two enquiries against the workman and the complainant. The Enquiry Officer found that there was wordy quarrel between two employees. The Enquiry Officer found the workman guilty whereas the enquiry against Mr.Sajeevakumar and Sri.Sasikumar were closed holding that the charges against them were not true. In the original complaint filed by Sri.Sajeevakumar it was mentioned that the alleged incident was witnessed only by Sri.Sasikumar. Additional witness were later introduced into the enquiry only to show that the enquiry was conducted in an impartial manner. All the additional witness produced in the enquiry except Mr.Noufal are persons expelled from CREA union. Considering the sensitive nature of work being done in the management company it cannot be believed that the camera footage will be overwritten within such short duration. The claim of the management that they were not aware of the criminal case pending against the complainant is not correct. The management imposed the maximum penalty of dismissal from service of the management on the workman immediately after disposal of criminal M.C. by the Hon'ble High Court of Kerala. The workman as the General Secretary of the trade union has filed many

complaints against the management in the interest of the employees in general which provoked the management to take action against the workman with the support of the rival union. The past record of disciplinary cases alleged by the management against the workman is not fully correct. One of the cases is closed by the management itself and another case is pending adjudication before the Tribunal. Even taking into account the alleged past record the present punishment is not warranted in the facts and circumstances of this case.

10. When this industrial dispute was pending, the management filed M.P.No.01/2018 U/s 33(2)(b) of Industrial Disputes Act, 1947 seeking approval of this Tribunal for the punishment of dismissal from the service of the company awarded to workman. The management also produced the enquiry file in the said M.P. This Tribunal after elaborately considering the evidence on record vide order dt.23.09.2019 held that approval cannot be granted for the punishment of dismissal from the service of the company awarded to the workman in view of the fact that it is a clear case of victimization and unfair labour practice by the management against the workman and the punishment awarded is disproportionate to the charges alleged and proved against the workman. The management challenged the order before the Hon'ble High Court of Kerala in W.P.(C) no.29406/2019. The Hon'ble High Court vide order dt.28.02.2020 held that due to the denial of opportunity to the management to give evidence to substantiate their case in view of the specific request, the order of this Tribunal cannot be sustained and the matter is remitted back to this Tribunal. The workman preferred appeal as W.A. no.757/2020 and the Division Bench of the Hon'ble High Court of Kerala vide its order dt.12.08.2020 held that when the Tribunal found that the domestic enquiry suffered from one or the other ailments it shall permit the parties to adduce their respective evidence and on appraisal thereof the Tribunal shall conclude its enquiry whether they discharge or any other punishment including dismissal was justified. The Division Bench of the Hon'ble High Court of Kerala therefore approved the decision of the Single Bench holding that "the Tribunal shall decide the matter untrammelled by any observation in this judgment or in the judgment of the learned Single Judge as they have been made only for the purpose of deciding the issue raised for consideration".

11. After the M.P. 01/2018 is remanded to this Tribunal, the learned Counsels appearing on either side agreed that since the matter related to a common incident and evidence to be adduced in both the cases are same, M.P.01/2018 and the present industrial dispute can be adjudicated together by adducing common evidence. Hence common evidence was taken in M.P.01/2018 and ID.02/2019. The evidence of MW1, the Enquiry Officer taken in M.P.01/2018 is also adopted in this industrial dispute.

12. The workman produced Exbt.W1 to W65 and examined himself as WW1. The management produced Exbt.M1 to M35 and examined witness MW1 to MW7. On completion of the pleadings and evidence the following issues were framed for adjudication.

13. On the basis of the pleadings, evidence, both oral as well as documentary, the following issues are framed for final decision.

14. Issues

1. Whether the workman is a protected employee and if so, prior permission U/s 33(3)(b) of ID Act is required before the dismissal of the workman ?
2. Whether the disciplinary enquiry against the workman is conducted in a fair and proper manner following the principles of natural justice and also as per the provisions of Certified Standing Orders ?
3. Whether the findings of the Enquiry Officer and Disciplinary Authority are supported by legal evidence?
4. Whether there is any case of victimization or unfair labour practice against the workman by the management ?
5. Whether the punishment imposed on the workman by the management is proportionate to the charges proved against the workman?
6. Relief and cost ?

15. Issue No.1

The Counsel for the workman argued that the workman is a protected workman and hence the management should have taken prior approval under Section 33(3)(b) of the ID Act. Explanation to Section 33(3) defines a protected workman as a member of the executive or other office bearers of a registered Trade Union connected with the establishment and recognized as such in accordance with the rules made in this behalf. According to

Rule 61 of Industrial Dispute (Central) Rules 1957, every registered Trade Union connected with an industrial establishment to which the Act applies shall communicate to the employer before the 30th of April every year, the names and address of such officers of the Union who are employed in that establishment and who in the opinion of the Union should be recognized as protected workman. The employer shall recognize such workman to be protected workman for the purpose of sub section 3 of the said Section and communicate to the Union in writing within 15 days of the receipt of the names and address. The list of employee is recognized as protected workman for the period of 12 months from the date of such communication. According to the Counsel for the management, the Union headed by the workman has given a list of 5 employees to be treated as protected workman. However the management did not accept the same and communicate the approved list to the Union as required under Para 61(2) of the Industrial Dispute (Central) Rules 1957. The learned Counsel for the management also submitted that since the Union has not taken up the matter with the Regional Labour Commissioner, the dispute regarding non-recognition as required under para 61(4) of ID(Central) Rules 1957, the workman cannot claim the status of a protected workman and no prior approval is required for dismissing or discharging the workman.

16. The workman did not produce any document to the effect that recognition was granted to the list forwarded by the Union to the Management. The workman has no case that they look up the matter with Regional Labour Commissioner as required under the Rules. Hence the workman cannot claim that he is a protected employee.

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

17. Issue No. 2

It is seen that the Enquiry Officer read over charges to the workman during the course of the proceedings. The workman was allowed to be represented with a person of his choice in the enquiry and the workman cross-examined all the management witnesses and the workman was allowed to introduce all his witnesses in the enquiry and mark the documents. Generally it can be seen that the requirements of natural justice are met in the conduct of the enquiry by the Enquiry Officer. One serious allegation made against the Enquiry Officer by the workman is that the management was allowed to introduce additional witnesses during the enquiry who were not part of the original witness schedule. The workman cannot find fault with the Enquiry Officer or the enquiry procedure for accepting additional witness schedule because it is a normal practice which is being followed in all such enquiries. The crucial question in this case is whether there was any denial of opportunity to the workman to cross examine those witnesses. It is seen from the proceedings that the Enquiry Officer allowed the workman to cross examine all the management witnesses. The Enquiry Officer did not object the introduction of any witness on the side of the workman or any document in the enquiry. The learned Counsel for the workman argued that denial of CCTV footage is a clear violation of principles of natural justice. The CCTV footage is denied by the management and not the Enquiry Officer and the workman failed to take any further action to disprove the management. It is also argued by the learned Counsel for the workman that denial of punching details of Sri.S.K.Nazimudeen also amounts to violation of principles of natural justice. There is nothing on record in the enquiry to show any connection with the issues raised therein. Hence denial of punching details of Sri.S.K.Nazimudeen without in any way affect the finding of the Enquiry Officer.

Considering all the above facts, circumstances and evidence on record, I am inclined to hold that the enquiry is conducted in a fair and proper manner.

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

18. Issue No.3

The workman joined the service of the management company on 01.12.1983 in Grade 1 and he was promoted periodically and was working as Craftsman in Grade 6 in power and utility department. On 16.10.2015 the management received Exbt.W2 complaint from one Sri.Sajeevakumar J of maintenance department alleging that on 16.10.2015 when he was coming out of the dress changing room along with another employee Sri.Sasikumar, the workman who was coming in the opposite direction abused Sri.Sasikumar using the cast name of Sri.Sajeevakumar. It is also alleged in Exbt.W2 that Sri.Sajeevakumar responded saying that the workman himself is cheating the public, employees and also Sri.Sajeevakumar. At that time the workman removed his belt and adopted a threatening posture using abusive language. Sri.Sajeevakumar also responded using abusive language. Hearing the noise, some people took the workman inside the dress changing room. It is also alleged in the complaint that when Sri.Sajeevakumar was a member of CREA, it was decided to compensate him for his loss because of the punishment imposed by the management. It is further alleged that the workman took Rs.20,000/- out of the above compensation of Rs.50,000/- and the workman used to abuse him when ever he demanded the balance amount. It is also stated in the complaint that Sri.Sasikumar M.R. was a witness to the proceedings. On the basis of the above complaint, the management

issued M3 show cause notice dt.26.11.2015. The workman filed his reply dt.12.12.2015, in the reply the workman denied that the workman abused Sri.Sasikumar and Sri.Sajeevakumar and stated that infact Sri.Sajeevakumar and Sasikumar abused him on 16.10.2015 at 8.15 am when he was entering the dress changing room. It is also stated that he has made a complaint against Sri.Sajeevakumar and Sri.Sasikumar on the same day. It is also stated that he has filed a complaint with the Police against Sri.Sasikumar and Sajeevakumar on 17.10.2015. The workman also pointed out in his reply that if he abused Sri.Sasikumar, why he has not filed any complaint with the management or with the Police. The workman also alleged in the filing of the complaint against him was a conspiracy between Sri.Sajeevakumar and Sri.Nazimudeen S.K., General Secretary of REU the rival union. The workman also stated in his reply that there was no witness to the incident and only Sri.P.U.Vinodkumar of Finance department came to the spot hearing the shouting of Sri.Sajeevakumar and this can be checked from the CCTV camera installed in front of the canteen building/changing room entrance to verify whether any of the witness mentioned by Sri.Sajeevakumar in his Police complaint were present at the time of the incident. The management found that the explanation offered by the workman is not satisfactory and therefore issued a charge sheet and notice of enquiry dt.23.12.2015 which is marked as Exbt.M5. According to the charge sheet, the following misconducts under the Certified Standing Orders of Bharat Petroleum Corporation Ltd-Kochi Refinery were raised against the workman.

1. Riotous or disorderly behaviour or any act subversive to good discipline (Clause 29.14 of Standing Orders)
2. Threatening, intimidating or coercing any other employee (Clause 29.15 of Standing Orders)
3. Assault, either provoked or otherwise, making false acquisition, use of impolite or insulting language against any other employee (Clause 29.16 of Standing Orders)

Sri. A. Sreekumar was appointed as the Enquiry Officer and Sri.Prathapan C.K. was appointed as the Presenting Officer. The Enquiry Officer after conducting the enquiry submitted his report dt.12.04.2017 holding that the act of the workman amounts to riotous or disorderly behaviour and an act subversive to the discipline, threatening and intimidating another employee and use of impolite and insulting language against another employee. It was also held that the workman is guilty of misconduct under Clause 29.14, 29.15 & 29.16 of the Certified Standing Orders of Bharat Petroleum Corporation Ltd- Kochi Refinery. A copy of the report of enquiry was forwarded to the workman vide Exbt.M6 dt.27.04.2017. The workman submitted his reply vide Exbt.M7 letter dt.16.05.2017. The management issued a second show cause notice vide Exbt.M8 dt.12.02.2018 proposing to impose a punishment of dismissal from service of the company against the workman. The workman vide Exbt.M9 dt.28.02.2018 replied to the show cause notice and the management vide Exbt.M10 order dt.06.03.2018 awarded the punishment of dismissal from the service of the company with immediate effect. The workman was also paid Rs.1,21,714/- being the wages for one month.

19. Now, what are the charges levelled against the workman by the management. According to the charge sheet dated 23.12.2015, the following three charges were leveled against the workman -

- (i) Riotous or disorderly behaviour or act subversive to good discipline
- (ii) Threatening, intimidating or coercing any other employee
- (iii) Assault, either provoked or otherwise, making false acquisition, use of impolite or insulting language against any other employee.

Clause 29(14) of the certified standing orders reads as follows-

“Surrounding, blocking or detailing the company officers, supervisors, workmen or any other workmen either inside or outside the premises. This includes riotous or disorderly behavior or any act subversive to good discipline.”

Clause 29(15 & 16) of the Certified Standing Orders are reproduced in the charge memo as such. The details of the charge sheet are available in the show cause notice dated 26-11-2015 issued to the workman. According to the show cause notice, on 16-10-2015, morning around 8.15 AM, the workman while entering the change room of the management, abused Sri. Sasikumar M.R using filthy language. Subsequently he pulled out his belt with an intention to beat Sri.Sajeevakumar another employee and abused him calling him by his caste name. It is also alleged in the show cause notice that the workman was in the habit of continuously abusing and teasing Sri. Sajeevakumar. In the reply given by the workman on 12-12-2015, the workman denied the above allegations. According to the workman, Sri. Sasikumar M.R. and Sajeevakumar J abused him when he was entering the dressing room on 16-10-2015. The incident was orally reported to DGM (Maintenance) and DGM (HR & IR) on the same morning. A written complaint was also submitted to the DGM through proper channel. The abusive language reproduced in the show cause notice was a deliberate attempt to tarnish the

image of the workman. It is also pointed out in the reply that the workman is the General secretary of a major recognized Trade Union in the management organization and he continues to be the General secretary for the last 22 years. The workman has also filed a complaint against Sri.Sajeevakumar J and Sri.Sasikumar M.R. at Ambalamugal Police Station. Sri.Sajeevakumar J also filed a complaint with Circle Inspector, Thripunithara Police Station. Sri.Sajeevakumar is expelled from the Union headed by the workman and is at present a member of the rival Union. He has also put the members of his Union i.e. REU as witness in the police complaint. Sri.Sajeevakumar J is the main complainant against the workman. He is examined as MW1 in the departmental enquiry. In his evidence before the Enquiry Officer, Sri.Sajeevakumar J stated that at present he is a member of Refinery Employees Union (REU). It is also stated by him that he was earlier the member of CREA Union which is headed by the workman. It has also come out in evidence that he is dismissed from the CREA Union for anti union activities. It has also come out in evidence that there is some rivalry between him and the workman regarding payment of Rs.20,000/- being compensation for participating in some agitation called by CREA Union headed by the workman. Sri.Sasikumar M.R is examined as MW2 in the departmental enquiry. According to his deposition, the workman used abusive language against him and he came shouting with his belt as if to beat him. It has also come out that Sri.Sasikumar M.R was a member of CREA Union and later left the Union and joined REU. He continues to be a member of RE Union. According to him, the workman used abusive language against him and not against Sri. Sajeevakumar. According to his evidence, the workman was only indirectly abusing Sri.Sajeevakumar by shouting at him. It has also come out in evidence that though the workman abused Sri.M.R.Sasikumar directly, he did not file any complaint to the management or with the Police. Sri.Salim Raj P.R. is examined as MW3 in the enquiry. He also admitted that he was a member of CREA Union but he was expelled from the Union for some anti union activity and at present he is a member of RE Union. Sri. Noufal K was examined as MW4 in the enquiry and according to him, he was a member of CREA Union and later resigned because of some difference of opinion with the workman regarding the expenditure of the Union. Sri. Aby Thomson Kuruvila was examined as MW5 in the enquiry and he was also a member of CREA Union and later joined RE Union and at present, he continues to be a member of RE Union. All these witnesses gave evidence in the enquiry on the request of Sri. Sajeevakumar J. Similarly if we examine the evidence on the side of defence, in the enquiry, it can be seen that all the witnesses belong to CREA Union headed by the workman. From the evidence of Sri. M.R.Sasikumar MW6 in the enquiry, it is very clear that the workman was shouting at him using abusive language but the case of the management is that the workman abused MW2, Sri.Sajeevakumar J. The Enquiry Officer in his report failed to notice these differences in the charge sheet and also the evidence available on record. Further it can be seen that there is absolutely no evidence in the enquiry regarding the 3rd allegation in the show cause notice that the workman habitually abused and teased Sri. Sajeevakumar J.

20. It may be relevant to point out in this context that the workman as well as Sri.Sajeevakumar J filed complaint about the incident with the management. They also filed complaint with the Police regarding the incident. The management took action against both the employees and Sri. Sajeevakumar was exonerated of the charges on the basis of the complaint filed by the workman. Similarly the complaint filed by the workman with the Police against Sri.Sajeevakumar and Sri.Sasikumar M.R. also ended up in acquittal. The complaint filed by the workman against Sri.Sajeevakumar was numbered as CC 509/2015 and one of the grounds on which Sri. Sajeevakumar was acquitted is that “there is no evidence to suggest that there were persons other than the complainant and both accused in the alleged place of incident when the accused are alleged to have uttered obscene words”. It is clear from the above finding by the Court of Judicial Magistrate, Chottanikara that other than the workman and Sri. Sajeevakumar J and Sasikumar M.R, no other witness was available when the incident took place. Hence it is very clear that the witnesses introduced in the enquiry by the management other than Sri.Sajeevakumar J and Sri.Sasikumar M.R. were arrayed as witness only because of the Union rivalry and personal animosity between the workman and Sri. Sajeevakumar J. All the additional witnesses on the management side has clearly stated that they are deposing in the enquiry on the request of Sri. Sajeevakumar J. The Enquiry Officer however ignored all these facts to hold that all the charges against the workman are proved.

21. On a perusal of the enquiry report, Exbt.M6 it can be seen that the Enquiry Officer re-produce the english translation of the evidence given by the witnesses in the enquiry. The analysis of the evidence is confined to para 5.1.20 of the enquiry report which is re-produced hereunder. “MW1 Complainant and MW2 who was accompanying him at the time of alleged incident stated that the contents of Exbt.M1 complaint were true facts. MW2, MW3, MW4 and MW5 corroborated the deposition of MW1. Even the depositions of defence witnesses support the management contention that a wordy quarrel took place at the change room entrance on 16.10.2015 morning. None of the defence witnesses other than CSE witnessed the alleged incident. DW1 being the charge sheeted employee is an interested witness and there is no corroboration for his oral evidence. The defence contention is based on trade union rivalry and personal enmity. Both parties have quoted several earlier

instances in support of their contentions of previous enmity. It is to be taken into consideration that defence of previous enmity is a double edged weapon ”.

22. The Enquiry Officer further concluded at para 5.2.1 that “ the acts on the part of CSE as proved under issue ‘A’ above amounts to riotous or disorderly behavior, an act subversive to discipline, threatening, intimidating another employee and use of impolite and insulting language against another employee. Therefore Sri.Surendran Nair, Staff No.81205 is guilty of misconduct under Clause 29.14, 29.15 and 29.16 of the Certified Standing Orders of Bharat Petroleum Corporation Limited-Kochi Refinery ”. It is interesting to observe that the same Enquiry Officer conducted the enquiry against Sri.Sajeevakumar J and Sri.Sasikumar M.R. and held that the charges against them were not proved as the witnesses who gave evidence in that enquiry were all interested witness as they were members of CREA and the complainant Sri.P.N.Surendran Nair was the Secretary of the said Union. In this case, as already pointed out, all the witness examined in the enquiry except one were members of the rival union. The only other witness also resigned from CREA in view of some difference of opinion with the workman. Effectively there was no independent witness. However the Enquiry Officer felt that the evidence given by the witnesses are reliable against the workman. The Court of Session, Ernakulam Division in Criminal M.C. no.157/2019 in SC no.866/2018 filed by the workman to discharge him from the offence U/s 3(I)(X) of the SC & ST Act and Sec 294 (B) of IPC found that “ the persons allegedly available at the place of incident where the petitioner, defacto complainant and CW only (Exbt.47) ”. In Exbt.W50, the judgment of the Judicial First Class Magistrate, Chottanikkara in calendar case no.509/2015, in the complaint filed by the workman against Sri.Sajeevakumar J and Sasikumar M.R. also the Court found that

“ there is no evidence to suggest that there were persons other than the defacto complainant and both accused in the alleged place of incident when the accused are alleged to have uttered abusive words. ”

It can be seen from the above findings that other than the workman, Sri.Sajeevakumar J and Sri.Sasikumar M.R., no other witnesses were present at the spot of the incident. Further it can also be seen that the Exbt.W2 is the original complaint filed by Sri.Sajeevakumar J before the DGM maintenance on 16.10.2015. In this complaint the allegation of the defacto complainant MW1 Sri. Sajeevakumar J is that the workman abused Sri.Sasikumar M.R. It is also stated in the complaint that Sri. Sajeevakumar also responded stating that the workman is a cheat, cheating the general public, the employees and also the complainant. It further stated that at this stage the workman threatened the defacto complainant with his belt, for which Sri. Sajeevakumar J also responded in the same way. At this point of time hearing the noise somebody came and took the workman to the changing room. The complaint further proceeds to explain the animosity between Sri. Sajeevakumar and the workman. According to the complaint, the union headed by the workman decided to give Rs.50,000/- from the union fund to Sri. Sajeevakumar. The workman gave Sri. Sajeevakumar only Rs.30,000/-. The balance of Rs.20,000/- was taken by the workman. On the other hand a perusal of Exbt.W1, which is the complaint filed by the workman against Sri. Sasikumar and Sajeevakumar J, it is seen that those two employees abused the workman. It is also proved in this proceedings that the allegation of the complainant that the workman took Rs.20,000/- is not correct. In this context other than the interested witnesses there is no other evidence in the enquiry to hold that the charges against the workman are proved. As already pointed out there is no discussion in the enquiry report as to how the Enquiry Officer arrived at the conclusion that the charges levelled against the workman are proved. The evidence available in the enquiry would only prove that there was a wordy quarrel between the workman, MW1 and MW2. The finding otherwise that the charges of riotous behavior are proved is without any substantial legal evidence. The Enquiry Officer failed to take note of the relevant facts, evidence and circumstances before arriving at his findings.

Hence I hold that the finding of the Enquiry Officer is not based on legal evidence and findings are therefore perverse to that extend.

23. A copy of the enquiry report was forwarded to the workman vide Exbt.M6 letter dt.27.04.2017. The workman filed Exbt.M7 reply. The management issued the second show cause notice cum suspension order from service vide Exbt.M8 dt.12.02.2018. In Exbt.M8, the management also included the past records of misconduct of the workman. In Exbt.M8 the management accepted the finding of the Enquiry Officer that the charges were proved. As already pointed out, the finding of the Enquiry Officer that the charges levelled against the workman are proved is without any legal evidence. For having accepted the above finding of the Enquiry Officer without properly appreciating the evidence available on record, it can be safely concluded that the finding of the Disciplinary Authority in Exbt.M10 that the charges levelled against the workman are proved is also without any legal evidence.

Hence the issue is decided in favour of the workman and against the management holding that the finding of the Enquiry Officer and therefore that of the Disciplinary Authority are without any legal evidence.

24. As already pointed out, the management in this case filed M.P. no.01/2018 seeking approval of this Tribunal for the punishment of dismissal from the service of the company awarded to the workman under Clause (b) of sub clause (2) of Sec 33 of Industrial Disputes Act, 1947. This Tribunal vide its order dt.23.09.2019 held that approval cannot be granted. This Tribunal found that the disciplinary enquiry is conducted in a fair and proper manner. However the finding of the enquiry is not based on any substantial legal evidence as the Enquiry Officer failed to take note of the relevant facts, evidence and circumstances before arriving at his findings. Hence it is found that the finding of the Enquiry Officer is perverse to that extend. The said order was challenged before the Hon'ble High Court of Kerala in W.P.(C) no.29406/2019. The Single Bench of the Hon'ble High Court vide its order dt.28.02.2020 held that this Tribunal ought to have given a further opportunity to the parties before finding that domestic enquiry is vitiated by perversity or any other incurable defects. The workman challenged the above said order in W.A.no.757/2020 and the Division Bench of the Hon'ble High Court of Kerala dismissed the appeal vide its order dt.12.08.2020. The Division Bench of the Hon'ble High Court of Kerala held that when the Labour Court/Tribunal finds that the domestic enquiry suffers from one or the other legal ailment, the Labour Court/Tribunal shall permit the parties to adduce their respective evidence and on appraisal thereof, the Labour Court/Tribunal shall conclude its enquiry whether the discharge or any other punishment including dismissal was justified. The Division Bench of the Hon'ble High Court also held that the Tribunal shall decide the matter untrammelled by any observation in the judgment or in the judgment of the learned Single Judge as they have been made only for the purpose of deciding the issue raised for consideration. When the matter was taken up for further evidence of the respective parties, the Counsels agreed that the evidence can be taken jointly in M.P.01/2018 and this industrial dispute and the matter can be heard together. Since this Tribunal has already found that the finding of the Enquiry Officer is not based on legal evidence and the findings are to that extend perverse the management was allowed to adduce evidence to substantiate the charges against the workman. On conclusion of the evidence of the management, the workman was also allowed to adduce his evidence.

25. The management examined all the witnesses who were examined in the domestic enquiry as MW2 to MW6. Further the management also examined MW7 to substantiate their case. The management also produced Exbts.M1 to M35 to substantiate the charges against the workman. Exbt.M1 to M15 are documents which form part of the enquiry file. Exbts.M16 to M30 are documents to support the case of the management regarding the earlier misconducts alleged against the workman and the punishment imposed on him and Exbt.M31 to M35 are documents to prove that the retirement benefits such as provident fund are settled to the workman.

26. The workman also filed Exbt. W1 to W65 to prove his innocence in the case and examined himself as WW1.

27. Now the question is whether the management succeeded to prove the charges against the workman. As already stated the Enquiry Officer failed to examine the evidence on either side in the right perspective. The fact remains that the defacto complainant MW2 and the workman are part of rival unions. The defacto complainant was expelled from the union headed by the workman. According to the first complaint filed by the defacto complainant MW2 it is very clear that the workman was addressing the MW6 Sri. Sasikumar M.R. when the incident took place. Sri.Sasikumar did not file any complaint with the management or with the Police. It is also clear from the original complaint Exbt.W2 filed by MW2 that he shouted at the workman using abusing language. Exbt.W2 also narrates the reason why MW2 is antagonized against the workman. According to W2 complaint, the union headed by the workman decided to compensate MW2 for some punishment imposed by the management by paying a lumpsum amount of Rs.50,000/-. However the workman took Rs.20,000/- out of the said amount which was not returned to him. The workman produced Exbt.W20, the minutes of the general body meeting wherein it was decided to give Rs.50,000/- to MW2 in two instalments. First instalment of Rs.30,000/- immediately and balance Rs.20,000/- after the company introduces check of facility for deducting subscription through Bank. Further it is seen that in the general body meeting on 27.07.2004 MW2 demanded Rs.50,000/- in one instalment and when the union refused to consider his request he started abusing the General Secretary ie., the workman and the other union representatives. Accordingly, the general body ratified the decision of the executive committee to expel MW2 from the primary membership of CREA. Hence it is very clear that the reason given by the MW2 alleging that the workman has taken the money Rs.20,000/- out of the Rs.50,000/- approved by the union is not correct. Further from Exbt.W1 dt.16.10.2015 it is seen that the workman filed a complaint against MW2 and MW6 stating that both MW2 and MW6 used abusive and rude language against him. On a perusal of the evidence of MW2 and MW6 given in this proceedings it is seen that they have given the evidence almost same as that given during the enquiry. MW2 stated in the present proceedings that on 16.10.2015 at 8 am after punching, Sri.Surendran Nair talked to Sri.M.R.Sasikumar (MW6) in the first instance. He also stated that Sri. M.R. Sasikumar (MW6) never filed any complaint regarding this incident with the management or with the Police.

MW2 also stated that since he gave evidence in the domestic enquiry, if he fail to give evidence before this Tribunal the management threatened to throw him out of employment. According to MW6 Sri. Sasikumar M.R. the workman addressed him and abused MW2. He also admitted that he has not filed any complaint with the management. Both the witnesses agreed that they were members of Cochin Refineries Employees Association (CREA). He also stated that Sri. Sajeevakumar resigned on his own from Cochin Refineries Employees Association (CREA) which is contrary to the evidence available on record. Sri. Salimraj P. R. was examined as MW3. He also agreed in his evidence that he was a member of CREA and later he was expelled from the primary membership of the association by the workman. He also stated that he heard the workman using abusive language against Sri. Sajeevakumar and Sasikumar. Sri. Noufal K. was examined as MW4 in this proceedings. He also admitted that he was a member of CREA and later resigned from the association and joined the union. According to him he heard Sri. Surendran Nair talking loudly to Sri. Sasikumar and Sajeevakumar. Sri. Aby Thomas Kuruvila was examined as MW5. He heard the workman shouting at Sri. Sajeevakumar and Sri. Sasikumar. He also resigned from CREA and joined REU along with Sri. Sajeevakumar. Sri. Shibu Mani Dy. General Manager (ER) was examined as MW7. He is not an eye witness to the incident and he only deposed regarding the previous incidents involving the workman. He also admitted that he was a witness against the workman in ID.27/2011 before this Tribunal.

28. On a perusal of the above evidences it can be seen that all the witness produced by the management before this Tribunal except MW1 and MW7 were members of CREA in which the workman was the General Secretary. For some reason or other, all these witness were expelled from the association and they later joined the rival union. Hence the evidence given by these witnesses will have to be weighed in the context appropriately. As already pointed out the two witnesses who were available at the time of the incident was MW2 and MW6. The Court of Session, Ernakulam in SC No.866/2018 (Exbt.W47) and Judicial 1st Class Magistrate Court in CC 509/2015 (Exbt.W24) in related but separate criminal cases found that there were no other persons other than the workman, MW2 and MW6 at the alleged place of incident when the workman uttered abusive language against MW2 and MW6. The learned Counsel for the management relied on the decision of the Hon'ble Supreme Court of India in **Union of India Vs Bihari Lal Sidhana**, AIR 1997 SC 3659 and the decision of the Hon'ble High Court Jharkhand in **Management of Amlabad Colliery Vs Their Workman**, 2010 (4) SLR 653 to argue that acquittal in a criminal case does not tantamount to automatic setting aside of order of dismissal from service. In this case though the workman is acquitted in the related criminal case, the same is not at all considered as a ground while deciding this case as standard of proof in criminal cases and departmental enquiries are different. It is only pointed out that two Criminal Courts which handled the related issues also found that the presence of other witnesses other than the workman, MW2 and MW6 at the place of incident is doubtful. The only fact that can be seen to be proved through these evidences is that there was some altercation between the workman and MW2 and MW6 in front of the dress changing room on 16.10.2015, both workman and MW2 using abusive language. In view of the above, the finding of the Disciplinary Authority that the charges against the workman are true is without any legal evidence and to that extend it is perverse.

29. The learned Counsel for the management relied on the decision in **Mahendra and Mahendra Ltd Vs N. B. Naravade and others**, Civil Appeal nos.1507 and 1508/2003 to argue that using abusing language by the workman will amount to a serious misconduct and punishment of dismissal is not disproportionate to the proved misconduct. In the above case, the charge against the workman was that he used abusive and filthy language against his supervisor twice. The enquiry conducted against him reported that the charges levelled against the workman are true. Though the Labour Court found that the charges levelled against the workman are true, the Court held that the dismissal imposed on the workman was harsh and improper and therefore substituted with a punishment by directing the management to reinstate the workman with continuity of service but with 2/3rd of back wages. The appeal before the Single Judge of the Hon'ble High Court was dismissed. The Division Bench of the Hon'ble High Court in appeal also upheld the finding of the Single Bench that the dismissal of the workman is too harsh but reduced the back wages to 60%. The Hon'ble Supreme Court of India after considering the facts and circumstances of this case held that use of abusive language against a superior officer that too not once but twice in the presence of his subordinates cannot be termed to be an indiscipline calling for a lesser punishment in the absence of any extenuating factor. The learned Counsel for the workman, on the other hand, relied on the decision of the Hon'ble Supreme Court in **Ved Prakash Gupta Vs Delton Cable India Pvt Ltd**, 1984 KHC 645 wherein the Hon'ble Supreme Court held that awarding extreme punishment of dismissal for abusing a co-worker or an officer of the management itself will amount to victimization and unfair labour practice. In the above case one of the charges against the workman was that he abused one of his colleague and an officer in a filthy language.

30. On an overall analysis of the evidence available on record it is clear that the only charge that is proved against the workman is that of a wordy quarrel between the workman and MW2 and MW6 in front of

the dress changing room entrance on 16.10.2015. At the best, it can amount to “using insulting language against any other employee” under Clause 29.16 of the Standing Orders. The evidence as discussed above will not support the other charges levelled against the workman.

Hence the finding of the Enquiry Officer is without any legal evidence. The finding of the Disciplinary Authority even after adducing fresh evidence by the management is not having the support of any legal evidence.

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

31. Issue No.4

The line of demarcation between the case of unfair labour practice and victimization is very slender and quite often indistinct. The two concepts if not synonymous, atleast considerably overlapped. The concept of victimization has acquired considerable significance in the area of disciplinary action in the context of industrial law. Victimization means that the workman concerned is innocent and yet he is being punished because he has in some way displeased the management. Another incident of victimization is when an employee has committed an offence but he is given a punishment quiet out of proportion to the gravity of offence simply because he has incurred the displeasure of the management or as held by the Hon'ble Supreme Court in **Management of FICCI Vs R. K. Mital**, 1971 1 LLJ 630, 647(SC) the punishment is such as no reasonable employer could impose under such circumstances. Inflicting grossly monstrous punishment for a trifle or venial breach of duty will also amount to victimization. The mere fact that the domestic enquiry was held after due observance of rules of natural justice will not show that there could be no victimization. The Hon'ble High Court of Calcutta in **National Tobacco Company of India Ltd Vs Fouthe IT**, 1960 2 LLJ 175 (Cal) held that even after finding in favour of the management that the enquiry was in compliance of rules of justice it is open to the Tribunal to examine the question whether there was victimization or unfair labour practice.

32. Admittedly the workman is the General Secretary of one of the recognized major trade unions in the management. The workman produced various documents to establish that he was in the forefront of many disputes raised by the trade union against the management. Exbts.W39-W44, 45, 50, 51, 52, 53, 54 and 55 are all evidence regarding the actions taken by the workman against management, pointing out various anomalies and irregularities in the management. According to the learned Counsel for the workman, the management is antagonized against the workman being the General Secretary of the association and was trying to terminate the service of the workman which is a clear case of victimization. The learned Counsel for the workman further submitted that the attitude of the management towards the workman is very clear from the fact that he was suspended from the service of the management after completion of the enquiry which is not the regular practice and the very purpose of suspension is defeated by the same. He also pointed out that the management is supposed to follow a screening procedure before filing appeals from awards passed by the CGIT which is not followed in the award in the ID no.27/2011 which was in favour of the workman. OM dt.08.11.2019 which is the standing instruction on the screening procedure is produced and marked as Exbt.W57. Exbts.W58 to W65 are correspondence and circulars which clearly shows that the management is required to follow the screening procedure before approaching the higher Courts in industrial dispute cases. Though the management pleaded that they were not aware of the instruction they committed that the procedure will be followed in future.

33. Even if it is accepted that the charge of verbal abuse by the workman is proved, the punishment of dismissal from service can in no way be justified. In **M/s.Bharat Iron Works Vs Babubhai Balubhai Patel**, AIR 1976 SC 98, the Hon'ble Court held that “inflicting a monstrous punishment which no rational person would impose will amount to victimization. However a proved misconduct is anti-thesis of victimization”. In **Hill Construction and Engineering Company Vs Workman**, 1965-I-LLJ 462 SC, the Hon'ble Supreme Court held that the order of punishment itself may be a measure of victimization if the punishment is shockingly disproportionate to the act of misconduct. In **Ved Prakash Gupta Vs Delton Cable India(P) Ltd**, AIR 1984 SC 914, where the facts of the case are similar to that of the present case, the Hon'ble Supreme Court held that,

“We are also of the opinion that no responsible employer would ever impose in like circumstances the punishment of dismissal to the employee and that victimization or unfair labour practice could well be inferred from the conduct of the management in awarding the extreme punishment of dismissal for a flimsy charge of abuse of some worker or officer of the management by the appellant within the premises of the factory ”

It may be relevant to point out that in the present case, the only charge that is proved against the workman is that there was some altercation between him and two other employees outside the dressing room of the Management. As rightly pointed out by the learned Counsel for the workman the first show cause notice was issued to the workman on 26.11.2015, the Enquiry Officer submitted his report on 12.04.2017. However

the workman was suspended from service vide Exbt.M8 order dt.12.02.2018 defeating the very purpose of suspension. Further Exbt.W57 clearly elaborates the screening procedure to be followed in industrial dispute cases. Those instructions were violated by the management in the case of workman on the ground that copy of the instructions were not marked to the management. These instances are few examples to establish the attitude of the management towards workman.

34. Considering the facts and circumstances as explained above, I am of the considered view that awarding a punishment of dismissal from the service of the company for the misconduct alleged to have been proved against the workman is a clear case of victimization. According to Section 2(ra), unfair labour practice means any of the practices specified in the Vth Schedule. Para 5 of Vth Schedule specifies that the discharge or dismissal of a workman by way of victimization is an unfair labour practice. Further it is also established beyond reasonable doubt that the management has not imposed the maximum penalty of dismissal in good faith and is colorable exercise of the employer's rights which amounts to unfair labour practice.

In view of the above, I am inclined to hold that the dismissal of the workman by the management is a clear case of victimization and unfair labour practice.

Hence the Issue is decided against the management and in favour of the workman.

35. Issue No.5

The charges levelled against the workman are that of riotous or disorderly behavior or any act subversive to good discipline, threatening intimidating or coercing any other employee and assault, either provoked or other wise making false accusation, use of impolite or insulting language against any other employee. As discussed in the earlier paras, the charge that can be held to be proved on the basis of the available evidence is that of verbal abuse between two employees outside the dress changing room of the management company. The punishment imposed by the management for the above misconduct was dismissal from the service of the management company with immediate effect. After the matter is remitted back by the Hon'ble High Court, the management introduced MW7 as an additional witness to prove the antecedents of the workman on previous occasions. The management through MW7 marked Exbt.M11 to M30 to show that the workman was in the habit of indulging in similar activities and he was also awarded punishment on previous occasions. The first instance is alleged to have occurred in 1994 wherein 3 day suspension of the workman was ordered by the management. Exbt.M11 is the corresponding charge sheet wherein it is alleged that the workman abused another employee. The 2nd incident narrated is with regard to unauthorized absence from 01-12-1995 to 19-03-1996 which culminated in a punishment of withholding of one annual increment with cumulative effect. The 3rd incident cited is leaving the work spot without permission or authorization and abusing the senior executives of erstwhile KRL. According to the management, though the charges were proved, no punishment was imposed on the workman. The 4th incident alleged against the workman was for blocking two lady nurses in the company premises on 06-06-2005 which culminated in a penalty of withholding two increments with cumulative effect. The learned Counsel for the workman pointed out that this punishment awarded to the workman is set-aside by this Tribunal vide order dated 7th day of May 2019 in ID No.27/2011. However the learned Counsel for the management submitted that the award passed by this Tribunal in ID.no.27/2011 is stayed by the Hon'ble High Court of Kerala in W.P.(C) no.27781/2019(W) by its order dt.18.10.2019. Now the question is even after taking into account all the above incidents narrated above whether the allegation proved against the workman will warrant an extreme punishment of dismissal from service. The Hon'ble Supreme Court of India in **Ramakant Misra Vs State of UP**, 1982 LAB IC 1790-91 held that an act of adopting threatening poster though would amount to riotous or disorderly behaviour it would not amount to an act subversive of discipline. Indiscipline, improper and abusive language may show lack of culture but mere use of such language unconnected with any subsequent positive action will not warrant the extreme penalty of dismissal from service. In **Ramkishan Vs UOI**, AIR 1996 SC 225 the Hon'ble Supreme Court held that when abusive language is used by anybody against a superior it must be understood in the environment in which that person is situated and the circumstances surrounding the event that led to the use of the abusive language. No straight jacket formula could be evolved in adjudicating whether the abusive language in the given circumstances could warrant dismissal from service. In this case as already pointed out the verbal abuse between two or three employees took place outside the dress changing room of the management and by applying any test evolved by the Hon'ble Courts would not warrant an extreme punishment of dismissal from service. In **Saidu Khader Mohiuddin Vs Tamilnadu Public Service Commission**, 1997 2 LLJ 111(SC) the Hon'ble Supreme Court held that the use of temperate language used by the delinquent in his explanation to the charge sheet would amount to misconduct but the extreme penalty to the misconduct was quite unwarranted. When the punishment imposed by the management on the workman is shockingly disproportionate to the charges proved against the workman the Tribunal is entitled to invoke the powers U/s 11A to examine in totality whether the severity of the charges proved will attract the extreme punishment of dismissal from

service. In **Hindustan Machine Tools Ltd Vs Mohamed Usman**, 1983 2 LLJ 386 SC the Hon'ble Supreme Court held that

“Sec 11 confers power on the Labour Court to evaluate the severity of misconduct and to assess whether the punishment imposed by the employer is commensurate with gravity of the misconduct. The power is specifically confirmed on the Labour Court U/s 11A. If the Labour Court after calculating the gravity of misconduct held that punishment of termination of service is disproportionately heavy in relation to misconduct and exercise its discretion, this Court, in the absence of any important legal principles would not undertake to re-examine the question of adequacy or in-adequacy of material for interference by the Labour Court ”.

In the above case, the Hon'ble Supreme Court refused to entertain the appeal from the Award of the Labour Court reducing the punishment by setting aside the order of termination of service and substituted it with the punishment of stoppage of increment for two years. It is a fundamental principle of justice and jurisprudence that penalty to be imposed for misconduct must be commensurate with the gravity of offence charged. In this case as already discussed elaborately in the above paras, that even after the additional evidence adduced by the management the extreme penalty of dismissal from service of management is shockingly disproportionate and no reasonable person would have imposed such a punishment in the facts and circumstances of this case.

In view of the above, issue is decided in favour of the workman and against the management.

36. Issue No.5

It has already been found that the finding of the Enquiry Officer and that of the Disciplinary Authority is not supported by substantial legal evidence. The workman also succeeded in proving that there was victimization and unfair labour practice by the management. The Hon'ble Supreme Court in **Hind Construction & Engineering Company Ltd. Vs Workman**, AIR 1965 SC 917 held that where the punishment is shockingly disproportionate having regard to the particular conduct and the past records, or is such that no reasonable employer would ever impose in like circumstances, the tribunal may treat the imposition of such punishment as itself showing victimization or unfair labour practice.

37. The learned Counsel for the management argued that the workman was paid all the terminal benefits including notice pay and provident fund benefits. The management also produced Exbt.M31 to M35 to substantiate their claim. However he was not paid any gratuity as the workman was dismissed for a misconduct involving moral turpitude. The learned Counsel for the workman on the other hand argued that the terminal benefits were thrust upon the workman and the acceptance of the terminal benefits will not amount to acceptance of the dismissal of the workman from the service of the management. Considering the unequal position between an employer and a needy employee, the acceptance of notice wages and the terminal benefits cannot be a bar to relief or reinstatement. It would be wrong to draw the inference from the mere fact of receipt of wages for the notice period or the terminal benefits, that the workman voluntarily gave up his service and was estopped from claiming reinstatement. In the present case it can be seen that the workman was continuously fighting the management on the question of his dismissal both before this Tribunal as well as before the Hon'ble High Court of Kerala regarding the legality of his dismissal and therefore it is not possible to accept the claim of the learned Counsel for the management that the receipt of the notice wages and also the terminal benefits will operate as voluntary acceptance of the dismissal by the workman. The learned Counsel for the management also pleaded that the management lost confidence in the workman. The Hon'ble Supreme Court of India in **Workman of Assam Matches Company Ltd Vs Labour Court**, 1973 2 LLJ 279 held that the mere fact that the relations between the employer and the concerned workman were not cordial or were strained, would not by itself establish the case of loss of confidence and defeat the relief of reinstatement.

38. As already pointed out in the previous paras, the only charge that is proved on the basis of legal evidence is that there was some altercation by using abusive language between two or three employees near the dress changing room of the management company. The punishment of dismissal awarded by the management on the workman for the above misconduct is shockingly disproportionate to the charges proved against him. Hence the workman is entitled to be reinstated into the service of the management company. The management has no case that the workman was profitably employed during the period of dismissal. Hence the workman is entitled for reinstatement with back wages. However as already pointed out, a part of the charge regarding using abusive language against a co-worker is proved during these proceedings against the workman. Since the workman is retiring shortly interest of justice will be met if he is awarded a punishment of 25% cut in his back wages for the charges proved against the workman and also taking into account the antecedents elaborated by the management in this proceedings.

Hence an Award is passed directing the management to reinstate the workman in service with 75% back wages with immediate effect.

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 1st day of September, 2021.

V. VIJAYA KUMAR, Presiding Officer

APPENDIX

Witness for the Workman:-

WW1 - Sri. P.N. Surendran Nair, workman dt.21.06.2021

Witness for the Management:-

- MW1 - Sri.Sreekumar A. dt.09.07.2019
- MW2 - Sri.Sajeevakumar J. dt.02.02.2021
- MW3 - Sri.Salimraj P.R. dt.02.02.2021
- MW4 - Sri.Noufal K. dt.11.02.2021
- MW5 - Sri.Aby Thomas Kuruvila dt.11.02.2021
- MW6 - Sri.Sasikumar M.R. dt.01.03.2021
- MW7 - Sri.Shibu Mani dt.07.04.2021

Exhibits for the Workman:-

- W1 - Complaint letter dt.16.10.2015 submitted to DGM (P&U) against Sri.Sajeevakumar J and Sasikumar M.R. by workman
- W2 - Complaint letter of Sri.Sajeevakumar J, dt.16.10.2015 submitted to DGM (Maintenance) against workman
- W3 - Copy of the police complaint dt.17.10.2015 given by workman to Ambalamedu Police Station
- W4 - Certified copy of the FIR no.0852 dt.20.10.2015 submitted at Hon'ble Judicial First Class Magistrate Court, Chottanikkara
- W5 - copy of the police complaint dt.17.10.2015 given by Sri.Sajeevakumar against workman to Thrupunithura Police Station
- W6 - Copy of the police complaint dt.20.10.2015 given by Sri.Sajeevakumar against workman to Ambalamedu Police Station
- W7 - Certified copy of the FIR no.0853 dt.20.10.2015 submitted at Hon'ble Judicial First Class Magistrate Court, Chottanikkara
- W8 - Copy of the Anticipatory bail Appl no.7794/2015 dt.15.12.2015 from Hon'ble High Court of Kerala against the case filed by Sri.Sajeevakumar J.
- W9 - The certified copy of the judgment in Cri.MC.No.220/2016 dt.18.02.2016 of Hon'ble High Court of Kerala
- W10 - Certified copy of the final report in FIR no.853 of Ambalamedu Police Station submitted at Hon'ble Judicial First Class Magistrate Court, Chottanikkara
- W11 - Copy of the High Court order dt.04.03.2016 staying further proceedings of the case filed against workman by Sri. Sajeevakumar J in the Hon'ble Judicial First Class Magistrate Court, Chottanikkara
- W12 - True copy of show cause notice dt.26.11.2015 issued to workman
- W13 - Reply to show cause notice dt.26.11.2015 submitted by workman
- W14 - True copy of Charge Sheet and Notice of Enquiry dt.23.12.2015 issued to the workman
- W15 - True copy of the additional list of Management witness dt.01.03.2016 submitted to Enquiry Officer

- W16 - Workman's request letter dt.15.02.2016 for time punching details on 17.10.2015 of Sri.Sajeevakumar J and Nazeemudeen S.K.
- W17 - Reply letter dt.23.02.2016 by the management against workman's request dt.15.02.2016
- W18 - Workman's request letter dt.28.04.2016 for punching and camera details on 16.10.2015 of Sri.Salim Raj P.R.
- W19 - Reply letter dt.03.05.2016 from company on workman's request letter dt.28.04.2016
- W20 - True copy of General Body Meeting minutes dt.18.11.2003 of CREA
- W21 - True copy of General Body Meeting minutes dt.27.07.2004 of CREA
- W22 - True copy of Standing Orders of BPCL Kochi Refinery
- W23 - True copy of Enquiry Report dt.27.04.2017
- W24 - Certified copy of the judgment in Calender Case No.CC 509/2015 dt.31.07.2017 of Hon'ble Judicial First Class Magistrate Court, Chottanikkara
- W25 - True copy of the reply dt.11.05.2017 submitted by the workman against Enquiry Report
- W26 - True copy of order in Crl MC No.1321/2016 dt.06.02.2018 of Hon'ble High Court of Kerala
- W27 - True copy of Show Cause Notice dt.12.02.2018 issued to workman
- W28 - True copy of the reply dt.28.02.2018 by the workman against show cause notice dt.12.02.2018
- W29 - True copy of the dismissal order dt.06.03.2018 issued to workman
- W30 - True copy of the request letter dt.04.08.2015 for considering **Protected Workmen** submitted by CREA
- W31 - True copy of letter dt.21.09.2011 issued by Govt. of India, M/o Labour and Employment
- W32 - True copy of letter dt.22.12.2016 for considering **Protected Workmen** submitted by CREA
- W33 - True copy of Show-Cause Notice dt.23.03.2018 issued by management
- W34 - True copy of reply dt.23.04.2018 submitted by the workman
- W35 - True copy of letter dt.10.05.2018 regarding forfeiture of gratuity issued to workman
- W36 - True copy of letter dt.23.05.2018 regarding PF & Pension claim issued to workman
- W37 - True copy of reply dt.29.05.2018 submitted by the workman
- W38 - True copy of withdrawal request dt.19.11.2005 submitted by two nurses working at KRL Occupational Health Centre
- W39 - True copy of letter dt.17.03.2015 regarding **Outsourcing of Operational Jobs in BPCL KR** submitted by CREA
- W40 - True copy of Conciliation Failure report issued by Dy. Chief Labour Commissioner (Central), Cochin
- W41 - True copy of complaint dt.19.01.2015 to Dy. Chief Labour Commissioner (Central), Cochin by CREA
- W42 - True copy of adjournment letter dt.04.09.2015 issued by Dy. Chief Labour Commissioner (Central), Cochin to management and CREA
- W43 - True copy of letter regarding raising industrial dispute against BPCL Management dt.30.01.2017 submitted to Dy.Chief Labour Commissioner (Central), Cochin by CREA
- W44 - True copy of adjournment letter dt.12.07.2017 issued by Dy. Chief Labour Commissioner (Central), Cochin to management
- W45 - True copy of the complaint dt.09.04.2015 to The Secretary, Dept. of Public Enterprises, New Delhi by CREA
- W46 - True copy of the complaint dt.14.11.2011 to General Manager(HR), BPCL Kochi Refinery by CREA
- W47 - Certified copy of order dt.22.08.2019 in Cri.M.P. No.1579/2019 in S.C.No.866/2018 of Hon'ble Sessions Court, Ernakulam

- W48 - Certified copy of judgment in Cri.Rev.Pet No.1092/2019 dt.13.02.2020 of Hon'ble High Court of Kerala
- W49 - Certified copy of order dt.13.02.2020 of Hon'ble CJM Court, Ernakulam showing the closure of proceedings in CC 189/2019
- W50 - Same as W24
- W51 - True copy of complaint dt.06.03.2017 submitted by CREA to NABL Secretariat
- W52 - True copy of reply dt.10.08.2016 from Committee on Petitions Branch, Lok Sabha Secretariat to the representation submitted by workman
- W53 - True copy of letter dt.10.11.2017 from CREA to the National Commission for Scheduled Castes
- W54 - True copy of reply dt.28.11.2017 from Ministry of Social Justice Empowerment addressed to Ministry of Petroleum & Natural Gas
- W55 - True copy of reply dt.04.12.2017 issued by Ministry of Petroleum & Natural Gas
- W56 - True copy of letter dt.09.07.2019 issued by Secretary of this Hon'ble Tribunal forwarding the copy of Award in ID 27/2011
- W57 - True copy of letter dt.08.11.2019 issued by Govt. of India, M/o Labour & Employment
- W58 - True copy of letter dt.04.02.2020 issued by Govt. of India, M/o Labour & Employment
- W59 - True copy of letter dt.24.02.2020 issued by Govt. of India, M/o Labour & Employment
- W60 - True copy of letter dt.08.09.2020 issued by Govt. of India, M/o Labour & Employment
- W61 - True copy of reply letter dt.12.10.2020 issued by the management
- W62 - True copy of reply letter dt.27.01.2021 issued by the management
- W63 - True copy of letter dt.11.02.2021 issued by Govt. of India, M/o Petroleum and Natural Gas
- W64 - True copy of letter dt.15.02.2021 issued by Govt. of India, M/o Labour & Employment
- W65 - True copy of letter dt.08.10.2020 issued by Govt. of India, M/o Petroleum and Natural Gas

Exhibits for Management:-

- M1 - Domestic enquiry file
- M2 - Complaint dt.16.10.2015 submitted by Sri.Sajeevakumar J to the management
- M3 - Show Cause notice dt.26.11.2015 issued by the management to workman
- M4 - Reply dt.12.12.2015 submitted by workman against show cause notice dt.26.10.2015
- M5 - Memo of Charges & Enquiry Notice dt.23.12.2015 issued by the management to workman
- M6 - Enquiry Report dt.27.04.2017 issued by the management to workman
- M7 - True copy of reply dt.16.05.2017 by workman against Enquiry Report dt.27.04.2017
- M8 - Show Cause Notice dt.12.02.2018 issued by the management to workman
- M9 - True copy of the reply dt.28.02.2018 by the workman against show cause notice dt.12.02.2018
- M10 - True copy of the dismissal order dt.06.03.2018 issued to workman
- M11 - Show Cause Notice dt.17.05.1994 issued by the management to workman
- M12 - Copy of the reply dt.27.05.1994 by the workman against show cause notice dt.17.05.1994
- M13 - Show Cause Notice dt.10.06.1994 issued by the management to workman
- M14 - Copy of the reply dt.20.06.1994 by the workman against show cause notice dt.10.06.1994
- M15 - Copy of reply letter dt.30.06.1994 issued by the management to workman against his letter dt.20.06.1994
- M16 - Copy of Show Cause Notice dt.16.10.1995 issued by the management to workman
- M17 - Copy of reply dt.19.10.1995 submitted by workman against the show cause notice dt.16.10.1995

- M18 - Copy of Charge Sheet and Enquiry Notice dt.25.10.1995 issued by the management to workman
- M19 - Copy of Show Cause Notice dt.07.07.2000 issued by the management to Workman
- M20 - Copy of reply dt.21.07.2000 submitted by workman against the show cause notice dt.07.07.2000
- M21 - Copy of Show Cause Notice dt.27.03.1996 issued by the management to workman
- M22 - Copy of reply dt.22.04.1996 submitted by workman against the show cause notice dt.27.03.1996
- M23 - Copy of Charge Sheet and Enquiry Notice dt.02.05.1996 issued by the management to workman
- M24 - Copy of Show Cause Notice dt.04.06.1997 issued by the management to workman
- M25 - Certified copy of order dt.07.04.1999 in M.P. 83/1996 of Hon'ble Labour Court, Ernakulam
- M26 - Copy of order dt.31.08.1999 2005 issued by the management
- M27 - Copy of Show-Cause Notice dt.08.06.2005 issued by the management
- M28 - Copy of Charge Sheet and Enquiry Notice dt.11.07.2005 issued by the management
- M29 - True copy of order dt.15.05.2009 in M.P.01/2007 of this Tribunal
- M30 - Copy of Disciplinary Order dt.29.06.2009 issued by the management
- M31 - True copy of the notice dt.23.05.2018 issued by the management
- M32 - True copy of the reply dt.29.05.2010 submitted by the workman
- M33 - True copy of the settlement dt.18.07.2018 issued by the management
- M34 - True copy of the covering letter dt.07.06.2018 issued by the management
- M35 - True copy of the letter dt.12.06.2018 issued by the management

नई दिल्ली, 27 अक्टूबर, 2021

का.आ. 744.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स श्री सीमेंट लिमिटेड, अजमेर, राजस्थान के प्रबंधन के संबद्ध नियोजकों और श्री सीमेंट कामगार संघ अजमेर, राजस्थान के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जयपुर के पंचाट (संदर्भ संख्या 65/2012) को प्रकाशित करती है।

[सं. एल-29011/29/2011-आईआर(एम)]

डी. गुहा, अवर सचिव

New Delhi, the 27th October, 2021

S.O. 744.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 65/2012) of the Central Government Industrial Tribunal/Labour Court, Jaipur now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. Shree Cement Limited, Ajmer, Rajasthan and Shree Cement Kamgar Sangh, Ajmer, Rajasthan.

[No. L-29011/29/2011-IR(M)]

D. GUHA, Under Secy.

अनुबंध**केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जयपुर****सी.जी.आई.टी. प्रकरण सं. 65/2012****रेफरेन्स नं. L-29011/29/2011-IR(M) दिनांक 10/05/2012**

राधामोहन चतुर्वेदी, पीठासीन अधिकारी

श्री सीमेन्ट कामगार संघ, नगर परिषद मार्ग,
ब्यावर जिला — अजमेर, राजस्थान

... अध्यक्ष

बनामवाइस प्रेसीडेंट,
श्री सीमेन्ट लिमि.,
अंधेरी देवरी, ब्यावर,
जिला— अजमेर, राजस्थान

उपस्थित :-

प्रार्थी की तरफ से : श्री नरेश गुप्ता एडवोकेट, (प्रार्थी प्रतिनिधि द्वारा प्राधिकृत)

अप्रार्थी की तरफ से : श्री पी.के. पाण्डेय — एडवोकेट

: अधिनिर्णय :

दिनांक : 03. 09. 2021

1. श्रम मंत्रालय भारत सरकार, नई दिल्ली द्वारा दिनांक 10/05/2012 को निम्नांकित औद्योगिक विवाद, औद्योगिक विवाद अधिनियम 1947 (जिसे मात्र अधिनियम कहा जावेगा) की धारा 10 (1) (डी) एवं 2 ए के प्रावधानों के अन्तर्गत प्रदत्त शक्तियों के अनुसरण में इस अधिकरण को न्यायनिर्णयन हेतु संदर्भित किया गया : —

“Whether the demand of Shree Cement Kamgar Sangh, Beawar from the management of Shree Cement Limited, Beawar for payment of Bonus to 35 Contract Workkrs (as per list) for the years 2007-08 and 2008-09, is legal and justified? What relief the workmen are entitled to?”

2. दिनांक 6.8.2012 को प्रार्थी पक्ष ने दावे का अभिकथन प्रस्तुत किया। प्रार्थी के अनुसार वह विपक्षी संस्थान में कार्यरत श्रमिकों का संगठन है। विवाद से संबंधित 35 श्रमिक गणेशराम व अन्य (सूची विवाद से संलग्न है) विपक्षी के नियंत्रण में कार्य करते थे। इन श्रमिकों को विपक्षी ने अवैध रूप से सेवापृथक कर दिया। श्रमिकों को मिलने वाले लाभों से वंचित करने के लिये उन्हें छद्मरूप से ठेकेदार के नियोजन में बताया। प्रार्थी संघ के ज्ञापनों के आधार पर क्षेत्रीय श्रम आयुक्त केन्द्रीय, अजमेर ने उभयपक्ष के बीच समझौता वार्ता प्रारंभ करवायी, जो सफल नहीं रही। विवाद से संबंधित श्रमिक, अधिनियम की धारा 2 (जी) व 2 (एस) के अन्तर्गत विपक्षी के ही श्रमिक हैं। श्रमिकों को मिलने वाले बोनस का भुगतान यदि ठेकेदार द्वारा न किया जावे तो प्रधान नियोजक ही भुगतान के लिये उत्तरदायी होता है। अतः वाद स्वीकार कर यह घोषित किया जावे कि विवाद से संबंधित श्रमिकों को वर्ष 2007—08 व 2008—09 के बोनस का भुगतान किया जाना उचित है और श्रमिक उसे प्राप्त किये जाने के अधिकारी है।

3. विपक्षी ने अपने प्रतिउत्तर में प्रार्थी श्रमिक संघ का विपक्षी संस्थान में कोई अस्तित्व न होना कहते हुये उसे विवाद प्रस्तुत करने का अधिकार ना होना कहा। विवाद से संबंधित श्रमिक विपक्षी के नियोजन में नहीं है। बल्कि विभिन्न ठेकेदारों द्वारा नियोजित किये गये थे। बकाया बोनस का मामला औद्योगिक विवाद की परिधि में नहीं आता है। इसलिये इस अधिकरण को विवाद को सुनने व निर्णीत करने का क्षेत्राधिकार नहीं है। अतः वाद निरस्त किया जावे।

4. इस विवाद में 11.6.19 से प्रार्थी पक्ष को साक्ष्य प्रस्तुत करने के अवसर प्रदान किये गये। दिनांक 7.10.2019 को अंतिम अवसर और 22.1.2020 को परित्यक्त आरोपित करते हुये अवसर दिये गये। दि. 31.8.21 को प्रार्थी पक्ष ने सूचित किया की वह प्रार्थी की ओर से पर्याप्त प्रयास करने पर भी साक्ष्य प्रस्तुत नहीं कर सके हैं, और प्रस्तुत करने में असमर्थता है। इस स्थिति में प्रार्थी के साक्ष्य का अवसर समाप्त कर दिया गया। विपक्षी के अभिभाषक ने इस स्थिति में कोई साक्ष्य प्रस्तुत नहीं करना चाहा। अतः विपक्षी की साक्ष्य भी समाप्त कर दी गई।

5. चूंकि प्रार्थी पक्ष ने अपने दावे के अभिकथन में वर्णित तथ्यों को सिद्ध करने हेतु कोई साक्ष्य प्रस्तुत नहीं की है इसलिये इस अधिकरण के सुविचारित अभिमत से प्रार्थी पक्ष यह प्रमाणित नहीं कर सका है कि विवाद से संलग्न अनुलग्नक में वर्णित 35 श्रमिक (गणेशराम व अन्य) वर्ष 2007—08 व 2008—09 के बोनस का भुगतान विपक्षी से पाने के

अधिकारी है। प्रार्थी की साक्ष्य के अभाव में प्रार्थी— पक्ष की मांग निराधार प्रमाणित होती है और प्रार्थीगण विपक्षी से कोई अनुतोष पाने के प्रमाणित नहीं हुये हैं।

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

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

राधा मोहन चतुर्वेदी, पीठासीन अधिकारी

नई दिल्ली, 27 अक्टूबर, 2021

का. आ. 745.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार कमांडेंट, क्यूए और सबूत, वरिष्ठ गुणवत्ता आश्वासन प्रतिष्ठान, जबलपुर (म.प्र.) के प्रबंधन के संबद्ध नियोजकों और श्री विजय शंकर रायकवार, कामगार के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण औद्योगिक विवाद में औद्योगिक अधिकरण एवं श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या CGIT/LC/R/23-2004) को जैसा कि अनुलग्नक में दिखाया गया है, प्रकाशित करती है।

[सं. एल-14012/29/2003-आईआर-(डीयू)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 27th October, 2021

S.O. 745.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. CGIT/LC/R/23-2004) of the Central Government Industrial Tribunal-cum-Labour-Jabalpur, as shown in the Annexure, in the Industrial dispute between the employers in relation to The Commandant, QA & Proof, Senior Quality Assurance Estt., Jabalpur and Shri Vijay Shankar Raikwar, Worker.

[No. L-14012/29/2003-IR (DU)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

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

NO. CGIT/LC/R/23-2004

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

Shri Vijay Shankar Raikwar,
S/o Shri Damrilal Raikwar,
C/o Shri M.L. Raikwar,
H. No. 264, Chhoti Omti,
Jabalpur (M.P.)

...Workman

Versus

The Commandant,
QA & Proof,
Senior Quality Assurance Estt.
(Armaments), Khamaria,
Jabalpur-482005.

...Management

AWARD

(Passed on this 21st Day of September-2021)

As per letter dated 13/2/2004 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No.L-14012/29/2003-IR(DU). The dispute under reference relates to:

“Whether the action of the management of Sr. Quality Assurance Establishment (Armament), Kharmaria, Jabalpur in terminating the services of Shri Vijay Shanker Raikwar w.e.f. 19/5/95 is justified?if not, what relief the workman is entitled to? .”

1. After registering the case on the basis of reference, notices were sent to the parties.
2. The case of the workman as stated in his statement of claim is that he was appointed on 29-10-1990 as TM Mate (S.S.) in Ordinance Factory Khamariya, Jabalpur and had been working with utmost sincerity and satisfaction to his superior. He was arrested by police of Lordgang Police Station Jabalpur for offences punishable under Section 302, 149, 148 of Indian Penal Code and Section 25 of Arms Act. He was kept under detention with effect from 2-3-1990 to 30-9-1990. Thereafter he was released on bail. He was acquitted of the charges by Additional Sessions Judge, Jabalpur on 17-6-1994. He was served a charge sheet vide order dated 5-2-1993 wherein it was alleged that the applicant has had furnished incorrect information in column No.12 of attestation form regarding the pendency of criminal cases at the time of getting employment thus managed to get the employment through fraudulent means. Another charge against the workman was that he submitted a sick certificate for the period from 17-7-1991 to 15-2-1992 when he was in jail with respect to the charge. It is the case of the workman that the Inquiry Office Lt. Col.Shri Sapatneker was biased against the workman and on his request, the Inquiry Officer was changed. One prosecution witness was produced during the inquiry. The workman had denied the charge of prosecution that he ever produced a wrong attestation form, rather pleaded categorically that prosecution had produced wrong attestation form during the Inquiry. It is the case of the workman that his defence was not considered and he was wrongly held guilty for the charge of misconduct. It is further the case of the workman that the Disciplinary Authority after passing the impugned order dated 11-5-1995, without considering the material on record which did not prove him guilty, the sentence was dis-proportionate, his appeal was also wrongly dismissed. According to the workman, the Inquiry was not conducted as per settled Rules and procedures of natural justice. Charges were not proved and the sentence was dis-proportionate, accordingly the workman prayed that the reference be answered in his favour.
3. The case of Management is that it came to notice of the Management that the workman was detained in jail from 2-3-1990 to 30-9-1990 and 6-10-1990 to 8-10-1990. He entered in service on 29-10-1990 by suppressing this factual information in his attestation form submitted by him at the time of getting appointment. There was clear instructions on the attestation form in the form of warning that furnishing of fake information or suppressing of factual information in the attestation form will be a clear dis-qualification and will render the candidate unfit for employment. Also that if there has been suppression of any factual information in the attestation form, coming to the notice of Management, at any time during the employment, the services of such workman would be liable to be terminated. According to the Management, the workman had willfully concealed this fact from Management and got employment. Again he was detained in jail from 15-7-1991 to 30-1-1992 for which he submitted a leave application with medical certificate to cover his period of absence, which again was a mis-conduct in service rules. He was charged for these two charges which were misconduct attracting major punishment, A departmental inquiry was conducted in which the workman was given opportunity to participate. He participated in the inquiry, the inquiry was conducted according to Rules and settled principles of natural justice. The workman was rightly held guilty for the mis-conduct with respect to the charges by the Inquiry Officer. The punishment of dismissal was not disproportionate to the charge. Accordingly, the Management has prayed that the reference be answered against the workman.
4. Following preliminary issue was framed by my learned Predecessor on the basis of pleadings.
“Whether the Departmental Inquiry conducted against the workman was legal and proper?”
5. Parties adduced their respective oral and documentary evidence on preliminary issue.
6. This preliminary issue was first decided by my learned Predecessor vide his order dated 10-12-2012 holding the inquiry legal and proper.
7. This order on preliminary issue was recalled by my learned Predecessor vide his order dated 8-2-2006. This preliminary issue was finally decided by my learned Predecessor vide his order dated 20-2-2017, holding the departmental inquiry conducted not legal and proper and the Management was given an opportunity to lead evidence with respect to the charge.

8. The Management did not produce any oral or documentary evidence thereafter with respect to the charge. The workman also did not produce any evidence, hence closing the evidence of parties, arguments of learned Counsel for both the parties were heard by me. I have also gone through the record.

9. After the departmental inquiry conducted was held not legal and proper, the Management miserably failed to adduce any evidence in support of the charge. In such circumstances, I am constrained to hold the charge against the workman not proved. Consequently the order of dismissal of the workman on the basis of charge is also held liable to be set aside and workman is held entitled to reinstatement without back wages, applying the principle of “*no work no pay*”.

10. In the case of Deepali Gundu Suwase Vs. Kranti Junior Adhyapad Mahavidyalaya(2013) 10 SCC 324(2013(6) SLR 642(SC) broad principles in this respect were laid down by the Hon’ble Apex Court which are as follows:-

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

- 38.1. In cases of wrongful termination of service, reinstatement with continuity of service and back wages is the normal rule.**
- 38.2. The aforesaid rule is subject to the rider that while deciding the issue of back wages, the adjudicating authority or the Court may take into consideration the length of service of the employee/workman, the nature of misconduct, if any, found proved against the employee/workman, the financial condition of the employer and similar other factors.**
- 38.3. Ordinarily, an employee or workman whose services are terminated and who is desirous of getting back wages is required to either plead or at least make a statement before the adjudicating authority or the Court of first instance that he/she was not gainfully employed or was employed on lesser wages. If the employer wants to avoid payment of full back wages, then it has to plead and also lead cogent evidence to prove that the employee/workman was gainfully employed and was getting wages equal to the wages he/she was drawing prior to the termination of service. This is so because it is settled law that the burden of proof of the existence of a particular fact lies on the person who makes a positive averments about its existence. It is always easier to prove a positive fact than to prove a negative fact. Therefore, once the employee shows that he was not employed, the onus lies on the employer to specifically plead and prove that the employee was gainfully employed and was getting the same or substantially similar emoluments.**
- 38.4. The cases in which the Labour Court/Industrial Tribunal exercises power under Section 11- A of the Industrial Disputes Act, 1947 and finds that even though the enquiry held against the employee/ workman is consistent with the rules of natural justice and/or certified standing orders, if any, but holds that the punishment was disproportionate to the misconduct found proved then it will have the discretion not to award fullback wages. However, if the Labour Court/Industrial Tribunal finds that the employee or workman is not at all guilty of any misconduct or that the employer had foisted a false charges then there will be ample justification for award of full back wages.**
- 38.5. The cases in which the competent Court or Tribunal finds that the employer has acted in gross violation of the statutory provisions and/or the principles of natural justice or is guilty of victimizing the employee or workman, then the concerned Court or Tribunal will be fully justified in directing payment of full back wages. In such cases, the superior Court should not exercise power under Article 226 or 136 of the Constitution and interfere with the award passed by the Labour Court, etc., merely because there is a possibility of forming a different opinion on the entitlement of the employee/workman to get full back wages or the employer’s obligation to pay the same. The Courts must always be kept in view that in the cases of wrongful/illegal termination of service, the wrong doer is the employer and sufferer is the employee/workman and there is justification to give premium to the employer of his wrong doings by relieving him of the burden to pay to the employee/workman his dues in the form of full back wages.**
- 38.6 In a number of cases, the superior Courts have interfered with the award of the primary adjudicatory authority on the premise that finalization of litigation has taken long time ignoring that in majority of cases the parties are not responsible for such delays. Lack of infrastructure and manpower is the principal cause for delay in the disposal of cases. For this the litigants cannot be blamed or penalised. It would amount to grave injustice to an employee or workman if he is denied back wages simply because there is long lapse of time between the termination of his service and finality given to the order of reinstatement. The**

Courts should bear in mind that in most of these cases, the employer is in an advantageous position vis-à-vis the employee or workman. He can avail the services of best legal brain for prolonging the agony of the sufferer, i.e., the employee or workman, who can ill afford the luxury of spending money on a lawyer with certain amount of fame. Therefore, in such cases, it would be prudent to adopt the course suggested in *Hindustan Tin works Private Limited V. Employees of Hindustan Tin Works Private Limited* (supra).

38.7 The observation made in *J.K. Synthetics Ltd. V. K.P. Agrawal* (supra) that on reinstatement the employee/workman cannot claim continuity of service as of right is contrary to the ratio of the judgments of three Judge Benches referred to here-in-above and cannot be treated as good law. This part of the judgment is also against the very concept of reinstatement of an employee/workman.

Furthermore, in *Tapash Kumar Paul V. BSNL* (2014) 4 SCR 875 :[2014(6) SLR 538 (SC)], it is held :-

“Therefore, in the light of the decision of this Court in *Deepali Gundu’s* case (supra) which has correctly relied upon higher bench decisions of this Court in *Surendra Kumar Verma’s* case (supra) and *Hindustan Tin Works Pvt. Ltd.* (supra), I am of the opinion that the appellant herein is entitled to reinstatement with full back wages since in the absence of full back wages, the employee will be distressed and will suffer punishment for no fault of his own.”

11. In the light of the aforesaid principles, keeping in view the length of engagement of workman, ends of justice will be served if the workman is reinstated but without back wages. Hence he is held entitled to be reinstated without back wages.

12. On the basis of the above discussion, following award is passed:-

- A. The action of the management of *Sr. Quality Assurance Establishment (Armament), Kharmaria, Jabalpur* in terminating the services of *Shri Vijay Shanker Raikwar w.e.f. 19/5/95* is not justified.
- B. The workman is held entitled to be reinstated but without back wages. However, he shall be entitled to other service benefits, holding him to be in continuous service of the Management.
- C. No order as to costs.

13. Let the copies of the award be sent to the Government of India, Ministry of Labour & Employment as per rules.

P. K. SRIVASTAVA, Presiding Officer

नई दिल्ली, 27 अक्तूबर, 2021

का. आ. 746.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार प्राचार्य, सैनिक स्कूल, रीवा (म.प्र.) के प्रबंधन के संबद्ध नियोजकों और श्री राम प्रताप यादव, कामगार के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण औद्योगिक विवाद में औद्योगिक अधिकरण एवं श्रम न्यायालय जबलपुर के पंचाट (संदर्भ संख्या CGIT/LC/R/96/2011.) को जैसा कि अनुलग्नक में दिखाया गया है, प्रकाशित करती है।

[सं. एल-14012/04/2011-आईआर-(डीयू)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 27th October, 2021

S.O. 746.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. CGIT/LC/R/96/2011.) of the Central Government Industrial Tribunal cum Labour-Jabalpur, as shown in the Annexure, in the Industrial dispute between the employers in relation to The Principal Sainik School, Rewa (M.P.) and Shri Ram Pratap Yadav, Worker.

[No. L-14012/04/2011-IR (DU)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
JABALPURNO. CGIT/LC/R/96/2011Merged with RC-1-2011**Present:** P. K. Srivastava, H.J.S..(Retd)

Shri Ram Pratap Yadav,
S/o S/o Chotelal Yadav
Behind SDM Bungalow
E-1, Civil Lines,
Rewa (M.P.)-486001

...Workman

Versus

The Principal
Sainik School,
Rewa (M.P.)

...Management

AWARD**(Passed on this 8th day of April-2021)**

As per letter dated 12-10-2011 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No.L-14012/4/2011-IR(DU). The dispute under reference relates to:

“Whether the action of the management of the Sainik School, Rewa in terminating Shri Ram Pratap Yadav (Daily Wage Worker) w.e.f. 5/9/2007 is legal and justified? What relief the claimant is entitled for and from which date .”

1. After registering the case on the basis of reference, notices were sent to the parties. Both the sides have filed their respective claim/defence.
2. The case of the workman as stated in his statement of claim is that he was appointed as daily wager Gardener/cook/watchman by Management on 15-5-1996 and was in continuous employment with the Management with all integrity and honesty. He was issued an appreciation certificate for this. He is a member of backward community and has passed intermediate exam of Madhya Pradesh Board in the year 1995. His permanent resident is in District Rewa. He has been enrolled with the Employment Exchange when he was engaged by Management. His services were terminated by the then Principal on 5-9-2007 without any notice or compensation, under the oral orders, when he refused to comply with the direction of the Principal to beat a teacher. He made representation to the then Collector and Superintendent in this respect. He also raised a dispute with the Assistant Labour Commissioner, Shahdol which was settled before the Assistant Labour Commissioner on 29-9-2008. He was taken on duty by Management in the light of the settlement on 1-10-2008 but again he was dis-engaged on 10-10-2008 without issuing notice or compensation by the same Principal. He preferred a Writ Petition No.17670/2010 before Hon'ble High Court which was decided against him. Then he filed a Writ Appeal No.60/2011 which was decided by Hon'ble Division Bench of Hon'ble High Court vide order dated 25-1-2011 whereby the Labour Conciliation Commissioner was directed to proceed for conciliation. The conciliation proceeded but could not succeed, hence failure report was sent to the appropriate Government who made the said reference to this Tribunal for adjudication. According to the workman his services were terminated without notice or compensation or any inquiry, which is against law, in the light of fact that he has been in continuous engagement since 15-5-1996 till the date of his termination. Hence, violative of Section 25F of Industrial Disputes Act, 1947 herein after referred to as the word "Act". His dis-engagement is further violative of Section 25G and Section 25N of the "Act because persons who were engaged as daily wager after him were regularized and he was left for regularization. Accordingly, it has been prayed that his termination be set aside and he be reinstated and considered for regularization with all benefits and back wages. The workman has filed his appointment letter, certificate issued by the Management, copy of his marksheet, caste certificate, residence certificate, employment exchange registration, his representation to the Collector filed on 19-9-2007, copy of settlement arrived at between the parties before the Assistant Labour Commissioner, certified copy of order of Writ Appeal dated 25-1-2011, photocopy of Attendance Register 210 pages. Copy of summoning order regarding summoning of Principal on the criminal complaint filed by the workman. Copy of wages register-333pages and has proved them.

3. The case of the Management in their written statement of defence is that they admit the appointment of the workman on 15-5-1996 as daily wager . They also admit that he continued in appointment till 5-9-2007. The Management also admitted that settlement was reached at wherein Management agreed to take the workman back in employment of Management but without wages but the case of the Management is that after he was taken back in employment by Management in the light of the settlement, he remained on duty from 1-10-2008 to 14-10-2008 and thereafter abandoned his job. Hence no question of notice or compensation. Management further submitted that whenever regular vacancy for the post of general employees arises, the daily wagers are given opportunity to participate in the selection process and deserving candidates are selected from them after observing the selection process. The Regular employment is based on candidates merits by a Recruitment Board duly constituted for the selection process. According to the Management, since the work of the applicant/workman was not satisfactory, he could not be considered for regularization. Thus according to the management, there is no illegality done in the case in hand. Accordingly the Management has requested that the reference be answered against the workman.

4. The Management has not filed any document whereas the workman has filed affidavit of his witness Ramsiya Verma and he has been cross-examined by Management. Workman Ram Pratap Yadav has also been examined on oath and also has been cross-examined. Management has examined it witness Raghuvansh Kumar Tiwari, Office superintendent. He has been cross-examined by workman.

5. I have heard arguments of learned counsel for both the sides and have gone through the record.

6. The Management has preferred written argument also. I have gone through it . Management has relied on following case laws:-

7. **Hindustan Steel Ltd. Vs. Presiding Officer, Labour Court, Jabalpur** 1971 Lab.I.C.Labour Industrial Cases 241 MP held ; **that the Tribunal could not go beyond the reference.**

8. **Mahendra L.Jain & Ors. Vs/ Indore Development Authority & Ors.** Civil Appeal No.337 of 2002 **and Mohd. Ali Vs. State of H.P.& Others** Civil Appeal No.3803 of 2018 SC.

9. The remaining two cases are of no help to the Management because they do not lay down any principle of law, rather the observations made in these cases, are in the light of facts peculiar to these cases.

10. Before entering into discussion on merits, it is necessary to reproduce some legal provisions Section 25B, 25G and 25F and 25H of the Industrial Disputes Act, 1947 which are as follows:-

Section 25 B:-Definition of continuous service.-

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

- 25F. Conditions precedent to retrenchment of workmen.- No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until- (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice: 1[***] (b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay 2[for every completed year of continuous service] or any part thereof in excess of six months; and (c) notice in the prescribed manner is served on the appropriate Government 3[or such authority as may be specified by the appropriate Government by notification in the Official Gazette.]

- 25G. Procedure for retrenchment.-** Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman.
- 25H. Re-employment of retrenched workmen.-** Where any workmen are retrenched and the employer proposes to take into his employ any persons, he shall, in such manner as may be prescribed, give an opportunity 2[to the retrenched workmen who are citizens of India to offer themselves for re-employment, and such retrenched workmen] who offer themselves for re-employment shall have preference over other persons.

11. The main contention of Management in the case in hand is that the reference is that whether the dis-engagement of the workman on 5-9-2007 is justified in law or not whereas the workman has himself accepted that after his dis-engagement on 5-9-2007 he was called for work on 1-10-2008 and remained on work for 14-10-2008. According to the workman himself, he was disengaged on 14-10-2008, so the reference itself is pre-mature and it can be discarded as pre-mature.

12. Learned Counsel for workman has submitted on this point that the workman was dis-engaged on 5-9-2007. He raised a dispute before Assistant Labour Commissioner, Jabalpur. The parties entered into compromise wherein the Management agreed to engage the workman again. The workman was engaged by Management just for a period of 14 days and was dis-engaged in violation of the settlement. Learned counsel has referred to the copy of settlement filed and proved which is Exhibit W-19. Perusal of this document shows that there were two conditions in the settlement, first was that the workman was to be reinstated since 1-10-2008 and his services shall deem to be continued since the date of his dis-engagement. The second condition was that the workman will not be entitled to back wages after reinstatement. In my view when the Authorities agreed to before the Assistant Labour Commissioner that the services of the workman will be deemed to continue, hence he shall be deemed to be under the employment of Management since the date of his dis-engagement which is 5-9-2007 to the date of his reinstatement which is 1-10-2008 and he shall be deemed to be in continuous service for this period. The evidence on record goes to show that there is a substance in the argument of learned counsel for the workman that this reinstatement by Management was a simple ploy to deceive the workman and under this plan he was engaged for a period of 14 days and disengaged thereon in violation of the settlement, hence in the light of these facts the date of his effective dis-engagement will be 5-9-2007 and not be 1-10-2008. Arguments of learned counsel for management on this point cannot be accepted accordingly and the reference cannot be held to be premature.

13. The engagement of the workman is not denied by Management. Nature of engagement is also almost admitted between the parties, according to which the workman was first engaged as daily wage casual labour. The Management has denied continuous engagement for 240 days in the year preceding the date of his dis-engagement. The workman has stated on oath that he was in continuous engagement from the date of his engagement and has completed 240 days in every year including the year preceding the date of his disengagement. There is nothing in his cross-examination to dis-credit him on this point. His statement is supported by Exhibit W-8 which is a certificate issued by the management. Copy of payment of daily wage register for the period of 1996 to 30-8-2007 Exhibit W-6(330 pages) which is filed by the workman and not admitted by the Management goes to show that the workman had completed 240 days in employment of Management as daily wagger in the year preceding the date of his dis-engagement. There is on record Exhibit W-2 which is (210 pages) proved by workman which is copy of attendance register for the said period. This also goes to establish that employment of the workman for a period of 240 days in the year preceding the date of his dis-engagement. As against this, there is statement of Management witness not supported by any evidence in rebuttal, hence the case of the workman that he was in continuous engagement of Management since 1996 and had completed 240 days in continuous engagement in the year preceding the date of his dis-engagement is held proved. It is not disputed that no notice or compensation was given to the workman, hence his dis-engagement is violative of Section 25G of the Industrial Disputes Act, 1947 and is held against law, which requires to be set aside.

14. As the dis-engagement of the workman has been against law, the question arises as to what relief the workman is entitled to. Learned Counsel has relied on the case of **Deepali Gundu Suwase Vs. Kranti Junior Adhyapad Mahavidyalaya**(2013) 10 SCC 324(2013(6) SLR 642(SC) broad principles in this respect were laid down by the Hon'ble Apex Court which are as follows:-

- “38. The propositions which can be culled out from the aforementioned judgments are :**
- 38.1. In cases of wrongful termination of service, reinstatement with continuity of service and back wages is the normal rule.**

- 38.2. The aforesaid rule is subject to the rider that while deciding the issue of back wages, the adjudicating authority or the Court may take into consideration the length of service of the employee/workman, the nature of misconduct, if any, found proved against the employee/ workman, the financial condition of the employer and similar other factors.
- 38.3. Ordinarily, an employee or workman whose services are terminated and who is desirous of getting back wages is required to either plead or at least make a statement before the adjudicating authority or the Court of first instance that he/she was not gainfully employed or was employed on lesser wages. If the employer wants to avoid payment of full back wages, then it has to plead and also lead cogent evidence to prove that the employee/ workman was gainfully employed and was getting wages equal to the wages he/she was drawing prior to the termination of service. This is so because it is settled law that the burden of proof of the existence of a particular fact lies on the person who makes a positive averments about its existence. It is always easier to prove a positive fact than to prove a negative fact. Therefore, once the employee shows that he was not employed, the onus lies on the employer to specifically plead and prove that the employee was gainfully employed and was getting the same or substantially similar emoluments.
- 38.4. The cases in which the Labour Court/Industrial Tribunal exercises power under Section 11- A of the Industrial Disputes Act, 1947 and finds that even though the enquiry held against the employee/ workman is consistent with the rules of natural justice and/or certified standing orders, if any, but holds that the punishment was disproportionate to the misconduct found proved then it will have the discretion not to award fullback wages. However, if the Labour Court/Industrial Tribunal finds that the employee or workman is not at all guilty of any misconduct or that the employer had foisted a false charges then there will be ample justification for award of full back wages.
- 38.5. The cases in which the competent Court or Tribunal finds that the employer has acted in gross violation of the statutory provisions and/or the principles of natural justice or is guilty of victimizing the employee or workman, then the concerned Court or Tribunal will be fully justified in directing payment of full back wages. In such cases, the superior Court should not exercise power under Article 226 or 136 of the Constitution and interfere with the award passed by the Labour Court, etc., merely because there is a possibility of forming a different opinion on the entitlement of the employee/workman to get full back wages or the employer's obligation to pay the same. The Courts must always be kept in view that in the cases of wrongful/illegal termination of service, the wrong doer is the employer and sufferer is the employee/workman and there is justification to give premium to, the employer of his wrong doings by relieving him of the burden to pay to the employee/workman his dues in the form of full back wages.
- 38.6. In a number of cases, the superior Courts have interfered with the award of the primary adjudicatory authority on the premise that finalization of litigation has taken long time ignoring that in majority of cases the parties are not responsible for such delays. Lack of infrastructure and manpower is the principal cause for delay in the disposal of cases. For this the litigants cannot be blamed or penalised. It would amount to grave injustice to an employee or workman if he is denied back wages simply because there is long lapse of time between the termination of his service and finality given to the order of reinstatement. The Courts should bear in mind that in most of these cases, the employer is in an advantageous position vis-à-vis the employee or workman. He can avail the services of best legal brain for prolonging the agony of the sufferer, i.e., the employee or workman, who can ill afford the luxury of spending money on a lawyer with certain amount of fame. Therefore, in such cases, it would be prudent to adopt the course suggested in *Hindustan Tin works Private Limited V. Employees of Hindustan TinWorks Private Limited* (supra).
- 38.7. The observation made in *J.K. Synthetics Ltd. V. K.P. Agrawal* (supra) that on reinstatement the employee/workman cannot claim continuity of service as of right is contrary to the ratio of the judgments of three Judge Benches referred to here-in-above and cannot be treated as good law. This part of the judgment is also against the very concept of reinstatement of an employee/workman.

Furthermore, in *Tapash Kumar Paul V. BSNL* (2014) 4 SCR 875 :[2014(6) SLR 538 (SC)], it is held :-

“Therefore, in the light of the decision of this Court in Deepali Gundu’s case (supra) which has correctly relied upon higher bench decisions of this Court in Surendra Kumar Verma’s case (supra) and Hindustan Tin Works Pvt. Ltd. (supra), I am of the opinion that the appellant herein is entitled to reinstatement with full back wages since in the absence of full back wages, the employee will be distressed and will suffer punishment for no fault of his own.”

15. There is evidence on record, which goes to show that there is a practice of regularization of daily wagers by the management. The workman has filed copies of regularization letters of as many as more than 20 daily wagers who were engaged with him or even after his engagement. He has filed a list also which goes to show that daily wagers who were engaged later on than the present workman were regularized. Keeping these factors in view, compensation only will not be justified remedy for the workman in the present case. Accordingly he is held entitled to be reinstated but without back wages and also entitled to be considered for regularization as per rules. He is also held entitled to litigation cost Rs.10,000/-.

16. On the basis of the above discussion, following award is passed:-

- A. The action of the management of the Sainik School, Rewa in terminating Shri Ram Pratap Yadav (Daily Wage Worker) w.e.f. 5/9/2007 is not justified in law.**
- B. The workman is held entitled to be reinstated without back wages and also entitled to be considered for regularization as per rules. He shall be deemed to be in continuous employment for all purposes except back wages.**
- C. He is also entitled to litigation cost of Rs.10,000/- to be payable by the Management.**

17. Let the copies of the award be sent to the Government of India, Ministry of Labour & Employment as per rules.

P. K. SRIVASTAVA, Presiding Officer

नई दिल्ली, 27 अक्टूबर, 2021

का. आ. 747.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार प्राचार्य, सैनिक स्कूल, रीवा (म.प्र.) के प्रबंधन के संबद्ध नियोजकों और श्री सुभाष चंद्र, कामगार के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण औद्योगिक विवाद में औद्योगिक अधिकरण एवं श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या CGIT/LC/R/34/2012) को जैसा कि अनुलग्नक में दिखाया गया है, प्रकाशित करती है।

[सं. एल-14012/14/2011-आईआर-(डीयू)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 27th October, 2021

S.O. 747.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. CGIT/LC/R/34/2012) of the Central Government Industrial Tribunal-cum-Labour-Jabalpur, as shown in the Annexure, in the Industrial dispute between the employers in relation to The Principal Sainik School, Rewa (M.P.) and Shri Subhash Chandra, Worker.

[No. L-14012/14/2011-IR (DU)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
JABALPUR**NO. CGIT/LC/R/34/2012****Present:** P. K. Srivastava, H.J.S..(Retd)Shri Subhash Chandra
C/o Shri Mangal Sen,
Shivlok, Kanker Kheda,
Meerut (U.P.)

...Workman

VersusThe Principal
Sainik School Rewa
Rewa (M.P.)

...Management

AWARD**(Passed on this 28th day of September-2021)**

As per letter dated 6/2/2012 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No. L-14012/14/2011-IR(DU). The dispute under reference relates to:

“Whether the action of the management of the Sainik School, Rewa in terminating the services of Shri Subhash Chandra w.e.f. 7/4/2008 is legal and justified? What relief the workman is entitled to?”

1. After registering the case on the basis of reference, notices were sent to the parties.
2. The case of the workman as stated in his statement of claim is that he was first engaged as a daily wages casual labour with the Management in the year 1997 and remained in engagement till 7-4-2008 when he was dis-engaged without any reason and notice by the Management. He had been in continuous engagement of the Management since last 11 years. Many other workman namely Shivpal Yadav, Raju Singh, Diwakar Tiwari, Himanshu Pandey, Jagat, Rajendra Verma who were engaged with him, are still in the engagement of the management. The workman has not been gainfully employed after his disengagement. Accordingly he has prayed that setting aside his dis-engagement, he be reinstated with back wages and all consequential benefits.
3. The case of Management in brief is that firstly Sainik School is a Registered Society under the Societies Registration Act over which the provisions of Industrial Disputes Act, 1947 (hereafter referred to as the word ‘Act’) do not apply. Secondly the workman did not continuously work for a period of 240 days or more in the year preceding the date of his dis-engagement. He was a daily wage casual labour who was engaged according to the need. He left his job on his own accordingly the Management has prayed that the reference be answered against the workman.
4. The workman has examined himself on oath. He has been cross-examined by Management. The workman has further filed and proved copy of reference, attendance sheet, total 8 pages, termination notice dated 7-4-2008, application under RTI, second attendance sheet, 58 pages, first page of passbook, copy of certificate issued by Principal of Management which are Exhibit W-1 to W-8 respectively. The Management has examined its witness Raghuvansh Kumar Tiwari, Office Superintendent.
5. I have heard arguments of learned counsel from both the sides who have filed written arguments also. I have perused the record, as well as the written argument.
6. Perusal of the record in the light of rival arguments reveals that following issues come up for determination, in the case in hand:-

- (1) **Whether provisions of Industrial Disputes Act, 1947 apply to the Establishment or not.**
- (2) **Whether the dis-engagement of the workman is lawful.**
- (3) **Relief to which the workman is entitled.**

7. ISSUE NO.1:-

It has been submitted from the side of the Management that since the Management/establishment is established under Societies Registration Act, provisions of Industrial Disputes Act, 1947 do not apply. The Management has referred to case law **Arvind Kumar Agarwal vs. State of U.P. and Another** (1998) 78 FLR 440 but the facts of the referred case are different because the referred case relates to Cooperative Societies Act and not to societies registered under Societies Registration Act. The Management could not show any other

provisions to support their argument that provisions of Industrial Disputes Act, 1947, do not apply to the case in hand. Admittedly the workman was under the engagement of the Management, the dispute relates to non-engagement of the workman, hence it is an Industrial Dispute as defined under Section 2K of the Industrial Disputes Act, 1947 that there is relationship of employer and workman between the parties which is not disputed, hence the present dispute is cognizable by this Tribunal under the Act and **issue No.1 is answered accordingly.**

8. **ISSUE NO.2:-**

The fact that the workman was engaged as a daily wage casual labour and that he worked till 7-4-2008 in this capacity is not disputed by the parties. The statement of the workman on oath and the attendance sheets filed and proved as mentioned above, corroborating the statement of the workman that he was in continuous engagement as defined under Section 25 B of the Act which reads as follows:-

Section 25 B:-

Definition of continuous service.-

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

9. The workman himself has filed termination notice(copy) which is exhibit W-3. According to which his services were terminated with immediate effect that is from 8-4-2008(contract period ending) and in view of one month notice, one month salary was paid to the workman as it is mentioned in this notice itself. Hence it cannot be said that the dis-engagement of the workman was without notice or notice period as mentioned under Section 25F of the Act which is being reproduced as follows:-

- 25F. Conditions precedent to retrenchment of workmen.-** No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until- (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice: 1[***] (b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay 2[for every completed year of continuous service] or any part thereof in excess of six months; and (c) notice in the prescribed manner is served on the appropriate Government 3[or such authority as may be specified by the appropriate Government by notification in the Official Gazette.]

10. Section 25F of the Act provides that at the time of retrenchment compensation to be given shall be equivalent to 15 days of average period for every completed year of continuous service or any part thereof in excess of six months. There is nothing on record produced by Management to show that this provision was complied with. It is also to be mentioned here that according to the termination notice, the engagement was terminated after the lapse of contract period but no such contract has been produced by the Management to corroborate this fact.

11. Hence in the light of above discussion, the dis-engagement of the workman is held not justified in law. **Issue No.2 is answered accordingly.**

12. **ISSUE NO.3:-**

In the light of the findings recorded in Issue No.1 and Issue No.2 the question arises as to which relief the workman is entitled. The workman was appointed as a daily wager which is not disputed. Learned counsel for workman has referred to case law **Surendra Kumar Verma and Others Vs. Central Government Industrial Tribunal cum Labour Court, New Delhi and Another**, AIR(1981) SCC 422, **East Cost Railway**

and others Vs. Mahadev Appa Raon and Others, AIR (2010) 7 SCC 678 and **Smt. Manorama Verma Vs. State of Bihar** (AIR) 1993 SCW 2598 and has submitted that the workman should be reinstated with wages and benefits whereas the Management side has submitted that since the appointment was not against vacant post, the workman was a daily wager, hence sum lump sum compensation would meet the ends of justice.

As the dis-engagement of the workman has been against law, the question arises as to what relief the workman is entitled to. Learned Counsel has relied on the case of **Deepali Gundu Suwase Vs. Kranti Junior Adhyapad Mahavidyalaya** (2013) 10 SCC 324(2013)(6) SLR 642(SC) broad principles in this respect were laid down by the Hon'ble Apex Court which are as follows:-

- “38. The propositions which can be culled out from the aforementioned judgments are :
- 38.1. In cases of wrongful termination of service, reinstatement with continuity of service and back wages is the normal rule.
 - 38.2. The aforesaid rule is subject to the rider that while deciding the issue of back wages, the adjudicating authority or the Court may take into consideration the length of service of the employee/workman, the nature of misconduct, if any, found proved against the employee/ workman, the financial condition of the employer and similar other factors.
 - 38.3. Ordinarily, an employee or workman whose services are terminated and who is desirous of getting back wages is required to either plead or at least make a statement before the adjudicating authority or the Court of first instance that he/she was not gainfully employed or was employed on lesser wages. If the employer wants to avoid payment of full back wages, then it has to plead and also lead cogent evidence to prove that the employee/ workman was gainfully employed and was getting wages equal to the wages he/she was drawing prior to the termination of service. This is so because it is settled law that the burden of proof of the existence of a particular fact lies on the person who makes a positive averments about its existence. It is always easier to prove a positive fact than to prove a negative fact. Therefore, once the employee shows that he was not employed, the onus lies on the employer to specifically plead and prove that the employee was gainfully employed and was getting the same or substantially similar emoluments.
 - 38.4. The cases in which the Labour Court/Industrial Tribunal exercises power under Section 11- A of the Industrial Disputes Act, 1947 and finds that even though the enquiry held against the employee/ workman is consistent with the rules of natural justice and/or certified standing orders, if any, but holds that the punishment was disproportionate to the misconduct found proved then it will have the discretion not to award fullback wages. However, if the Labour Court/Industrial Tribunal finds that the employee or workman is not at all guilty of any misconduct or that the employer had foisted a false charges then there will be ample justification for award of full back wages.
 - 38.5. The cases in which the competent Court or Tribunal finds that the employer has acted in gross violation of the statutory provisions and/or the principles of natural justice or is guilty of victimizing the employee or workman, then the concerned Court or Tribunal will be fully justified in directing payment of full back wages. In such cases, the superior Court should not exercise power under Article 226 or 136 of the Constitution and interfere with the award passed by the Labour Court, etc., merely because there is a possibility of forming a different opinion on the entitlement of the employee/workman to get full back wages or the employer's obligation to pay the same. The Courts must always be kept in view that in the cases of wrongful/illegal termination of service, the wrong doer is the employer and sufferer is the employee/workman and there is justification to give premium to, the employer of his wrong doings by relieving him of the burden to pay to the employee/workman his dues in the form of full back wages.
 - 38.6 In a number of cases, the superior Courts have interfered with the award of the primary adjudicatory authority on the premise that finalization of litigation has taken long time ignoring that in majority of cases the parties are not responsible for such delays. Lack of infrastructure and manpower is the principal cause for delay in the disposal of cases. For this the litigants cannot be blamed or penalised. It would amount to grave injustice to an employee or workman if he is denied back wages simply because there is long lapse of time between the termination of his service and finality given to the order of reinstatement. The Courts should bear in mind that in most of these cases, the employer is in an advantageous position vis-à-vis the employee or workman. He can avail the services of best legal brain for prolonging the agony of the sufferer, i.e., the employee or

workman, who can ill afford the luxury of spending money on a lawyer with certain amount of fame. Therefore, in such cases, it would be prudent to adopt the course suggested in *Hindustan Tin works Private Limited V. Employees of Hindustan Tin Works Private Limited* (supra).

- 38.7 The observation made in *J.K. Synthetics Ltd. V. K.P. Agrawal* (supra) that on reinstatement the employee/workman cannot claim continuity of service as of right is contrary to the ratio of the judgments of three Judge Benches referred to here-in-above and cannot be treated as good law. This part of the judgment is also against the very concept of reinstatement of an employee/workman.

Furthermore, in *Tapash Kumar Paul V. BSNL* (2014) 4 SCR 875 :[2014(6) SLR 538 (SC)], it is held :-

“Therefore, in the light of the decision of this Court in Deepali Gundu’s case (supra) which has correctly relied upon higher bench decisions of this Court in Surendra Kumar Verma’s case (supra) and Hindustan Tin Works Pvt. Ltd. (supra), I am of the opinion that the appellant herein is entitled to reinstatement with full back wages since in the absence of full back wages, the employee will be distressed and will suffer punishment for no fault of his own.”

13. As it is not disputed between the parties, that there is practice of regularization of daily wagers by Management, keeping this factor in view, compensation will not be fully justified remedy to the workman in the present case. Accordingly he is held entitled to be reinstated but without back wages and also entitled to be considered for regularization as per rules. He is further held entitled to litigation cost of Rs.10,000/-. **Issue No.3 is answered accordingly.**

14. On the basis of the above discussion, following award is passed:-

- A. The action of the management of the Sainik School, Rewa in terminating the services of Shri Subhash Chandra w.e.f. 7/4/2008 is not justified in law.
- B. The workman is held entitled to be reinstated without back wages and benefits. He is entitled to be considered for regularization as per Rules. He shall be deemed to be in continuous employment for all purposes except back wages.
- C. He is also entitled to litigation cost of Rs.10,000/- to be paid by the Management..

15. Let the copies of the award be sent to the Government of India, Ministry of Labour & Employment as per rules.

P. K. SRIVASTAVA, Presiding Officer

नई दिल्ली, 27 अक्टूबर, 2021

का. आ. 748.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स हिंदुस्तान कॉपर लिमिटेड, झुंझुनू, राजस्थान के प्रबंधन के संबद्ध नियोजकों और राष्ट्रीय कॉपर मजदूर कांग्रेस (इंटक), झुंझुनू, राजस्थान के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जयपुर के पंचाट (संदर्भ संख्या 12/2012) को प्रकाशित करती है।

[सं. एल-43011/4/2010-आईआर (एम)]

डी. गुहा, अवर सचिव

New Delhi, the 27th October, 2021

S.O. 748.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 12/2012) of the Central Government Industrial Tribunal/Labour Court, Jaipur now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s Hindustan Copper Limited, Jhunjhunu, Rajasthan and Rastriya Copper Mazdoor Congress (INTUC), Jhunjhunu, Rajasthan.

[No. L-43011/4/2010-IR(M)]

D. GUHA, Under Secy.

अनुबंध**कन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जयपुर सी.जी.आई.टी. प्रकरण सं. 12/2012****रेफरेन्स नं. L-43011/4/2010-IR(M) दिनांक 2/12/2011****पीठासीन अधिकारी :** राधामोहन चतुर्वेदी

श्री विकास कुमार शर्मा

जरिये— महामन्त्री राष्ट्रीय कॉपर मजदूर कांग्रेस (इन्टक), खेतड़ी नगर, जिला — झुंझुनू राजस्थान

बनाममहाप्रबंधक,
हिन्दुस्तान कॉपर लिमिटेड
खेतड़ी कॉपर कॉम्प्लेक्स,
जिला—झुंझुनू व अन्य

प्रार्थी की ओर से : श्री सुरेन्द्र सिंह नालोट —अधिवक्ता

अप्रार्थी की ओर से : श्री अशोक वर्मा —अधिवक्ता

: अधिनिर्णय :

दिनांक : 30/09/2021

1. श्रम मंत्रालय भारत सरकार, नई दिल्ली द्वारा दिनांक 2/12/2011 को निम्नांकित औद्योगिक विवाद, औद्योगिक विवाद अधिनियम 1947 (जिसे मात्र अधिनियम कहा जावेगा) की धारा 10 (1) (डी) एवं 2 ए के प्रावधानों के अन्तर्गत प्रदत्त शक्तियों के अनुसरण में इस अधिकरण को न्यायनिर्णयन हेतु संदर्भित किया गया :—

“Whether the action of the management of Hindustan copper Ltd., Khetri Copper Ltd., Kherti Nagar in terminating the services of Shri Vikas Kumar Sharma, casual Worker on 05-06-2009 is legal and Justified? To what relief is the workman entitled ?”

2. उपर्युक्त विवाद इस अधिकरण में प्राप्त होने पर उभयपक्ष को आहूत किया गया और प्रार्थी को निर्देश दिया गया कि वह अपने दावे का अभिकथन प्रस्तुत करें।

3. दि. 18.5.2012 को प्रार्थी ने दावे का अभिकथन प्रस्तुत किया। जिसके संक्षिप्त तथ्य इस प्रकार हैं। प्रार्थी को विपक्षी द्वारा दि. 27.04.07 से दिनांक 29.5.07 तक 32 दिन हेतु मैसर्स शिवा ट्रेडर्स के माध्यम से कार्य पर रखा गया। दिनांक 29.5.07 को विपक्षी द्वारा आदेश जारी कर प्रार्थी को 30.5.2007 से 15.6.2007 तक नैमित्तिक मजदूर के रूप में 50 रुपये प्रतिदिन पारिश्रमिक पर गैस्ट हाउस पर रखा गया। विपक्षी संस्था द्वारा प्रार्थी की सेवाअवधि में समय—2 पर वृद्धि की जाती रही तथा 5.6.2009 तक प्रार्थी की सेवा निरंतर लिये जाने के पश्चात 6.6.2009 को बिना कोई पूर्व सूचना या क्षतिपूर्ति दिये विपक्षी ने प्रार्थी को अवैध रूप से कार्य से निकाल दिया। प्रार्थी के पारिश्रमिक की दर विपक्षी द्वारा 50 रुपये प्रतिदिन से बढ़ाकर 73 रुपये प्रतिदिन कर दी गई थी। विपक्षी का यह कृत्य अधिनियम की धारा 25 (एफ) के प्रावधानों का उल्लंघन हैं। प्रार्थी ने इस अवैध सेवामुक्ति से पूर्व 1 वर्ष की अवधि में विपक्षी के अधीन 240 दिन से अधिक लगातार कार्य किया है। प्रार्थी से कनिष्ठ श्रमिकों का नाम केजूअल लेबर सूची में शामिल है। जिन्हें विपक्षी ने कार्य पर रखा हुआ है। इस प्रकार विपक्षी ने अधिनियम की धारा 25 (जी) व (एच) के प्रावधानों का उल्लंघन किया हैं। प्रार्थी जो कार्य करता था वह आज भी उपलब्ध है और भविष्य में भी आवश्यकता रहेगी। प्रार्थी सेवामुक्ति के पश्चात बेरोजगार बैठा है अतः सेवामुक्ति दि. 5.6.2009 को अवैध घोषित कर विगत वेतन एवं निरंतरता सहित प्रार्थी को विपक्षी की सेवा में बहाल किया जावें।

4. विपक्षी ने वादोत्तर में वाद के तथ्यों को अस्वीकार करते हुये यह कहा है कि प्रार्थी को अस्थायी तौर पर ठेकेदार के श्रमिक के रूप में गैस्ट हाउस में सफाई कार्य हेतु दिनांक 30.5.07 से 2 माह के लिये कार्य पर रखा था।

तत्पश्चात् दैनिक मजदूरी पर नैमेत्तिक मजदूर के रूप में प्रार्थी को सफाई कार्य हेतु लिया गया तथा काम पूरा होने पर हटा दिया गया। किसी अन्य कार्य के लिये प्रार्थी को कोई आदेश नहीं दिया गया। नैमेत्तिक मजदूरी में वृद्धि हेतु सरकार द्वारा समय-2 पर गजट नोटिफिकेशन किया जाता है जिसके अनुसार बढ़ा हुआ वेतन दिया जाता है। विपक्षी संस्था में स्थायी भर्ती पर पूर्णतः रोक लगी हुई है। प्रार्थी आकस्मिक श्रमिक था जिसे बिना विधिक प्रक्रिया का पालन किये सेवा में बने रहने का अधिकार नहीं है। प्रार्थी को कोई अनुतोष नहीं दिया जा सकता। अतः वाद निरस्त किया जावे।

5. प्रार्थी ने वादोत्तर के प्रतिउत्तर में अतिरिक्त कथन भी प्रस्तुत किये हैं और यह कहा है कि प्रार्थी पूरे दिन गैस्ट हाउस में बुकिंग, बिलिंग और हिसाब किताब के लिये कार्यरत था। विपक्षी के सहायक महाप्रबंधक ने अपने प्रमाण पत्र द्वारा प्रार्थी का लिपिक और स्टोर-कीपर के रूप में संतोषजनक कार्य करना प्रमाणित किया है। वर्तमान में भी गैस्ट हाउस में कर्मचारी कार्य कर रहे हैं और प्रार्थी से कनिष्ठ है।

6. प्रार्थी ने अपनी साक्ष्य में ए.डब्ल्यू-1 में विकास कुमार शर्मा (स्वयं प्रार्थी) व ए.डब्ल्यू-2 कैप्टन तमस भौमिक को परीक्षित किया है। प्रलेखिय साक्ष्य में प्रदर्श डब्ल्यू-1 से 8 तक प्रलेख प्रदर्शित किये हैं।

7. विपक्षी ने अपनी साक्ष्य में एन.ए.डब्ल्यू-1 अश्वनी गुरावडिया सहायक प्रबंधक (मानव संसाधन) को परीक्षित किया है। कोई प्रलेख प्रदर्शित नहीं किया गया।

8. दि. 16.9.2021 व 20.9.2021 को मैंने उभयपक्ष के परस्पर विरोधी तर्क सुने और साक्ष्य तथा प्रस्तुत किये गये न्यायाधिक दृष्टान्तों में पारित विधि पर मनन किया।

9. अभिभाषक प्रार्थी का यह तर्क है कि प्रार्थी को यद्यपि प्रथम बार में 32 दिन के लिये ठेकेदार के माध्यम से रखा गया था। किंतु उक्त अवधि के पश्चात् प्रार्थी को 30.5.2007 से 5.6.2009 तक नैमेत्तिक आधार पर दैनिक वेतन भोगी के रूप में विपक्षी के गैस्ट हाउस में सफाई, देखभाल, लेखा संधारण और व्यवस्था के लिये लगातार रखा गया। प्रार्थी को श्रमिक नियमों के अंतर्गत देय संरक्षण को निवारित करने के लिये दिखावे के तौर पर प्रार्थी की सेवा अवधि में समय समय पर बढ़ोतरी की जाती रहीं। प्रार्थी और विपक्षी के मध्य न तो कोई अनुबंध हुआ और ना ही उसे सफाई कार्य हेतु रखा गया। इस तथ्य की स्वीकृति प्रार्थी के साक्षी कैप्टन तमस भौमिक ने अपने कथन में भलीभाँति की है और कहा है कि प्रार्थी ने 30.5.2007 से 5.6.2009 तक गैस्ट हाउस में कमरा बुकिंग, खाते तैयार करना सामान लाना व भुगतान करना आदि कार्य संपन्न किये हैं। यह कार्य अभी भी विपक्षी के गैस्ट हाउस में हो रहा है। विपक्षी के साक्षी अश्वनी गुराडिया ने यह स्वीकार किया है कि प्रार्थी को 30.5.2007 से 5.6.2009 तक नैमेत्तिक आधार पर नियुक्ति दी थी और इस अवधि में कार्य की आवश्यकतानुरूप अनुमति जारी की गई थी। प्रार्थी ने एक केलेडर वर्ष में 240 दिन से अधिक काम किया लेकिन बीच बीच में अवरोध आये हैं। साक्षी ने प्रदर्श डब्ल्यू-1/1 से 1/24 तक उपस्थिति पंजिका को प्रार्थी से संबंधित होना स्वीकार किया है। इसलिये प्रार्थी की सेवा अधिनियम की धारा 2 (ओ.ओ) (बी.बी) के अंतर्गत संविदाजन्य और एक सीमित अवधि तक ही होना नहीं माना जा सकता है। इसलिये प्रार्थी को अधिनियम की धारा 25 (एफ), (जी) व (एच) के प्रावधानों का संरक्षण देते हुये बहाल किया जावे। प्रार्थी ने अपने तर्क के समर्थन में निम्नांकित न्यायिक दृष्टान्त प्रस्तुत किये हैं : —

- (1) देवेन्द्र सिंह बनाम म्यूनसिपल कार्पोरेशन सानौर (2011) 6 एस.सी.सी. 584
- (2) जनरल मैनेजर एस.बी.आई. बनाम पी.ओ. सीजीआईटी चेन्नई (मद्रास) 2015 एस.सी.सी. ऑनलाईन मद्रास 2976
- (3) डिविजनल मैनेजर न्यू इंडिया एश्योरेंस कं. लि. बनाम ए. शंकरलिंगम सिविल अपील सं. 4445/2006 निर्णय तिथि 3.10.2008 (सुप्रीम कोर्ट)

10. अभिभाषक विपक्षी ने इस तथ्य को तो स्वीकार किया कि प्रार्थी को 30.5.2007 से 5.6.2009 तक नैमेत्तिक आधार पर कार्य की आवश्यकता के अनुरूप अंतराल सहित सफाई कार्य हेतु लगाया गया था। प्रार्थी की सेवायें अनुबंध के आधार पर सीमित समय के कार्य सम्पादन के लिये ली गई थी। यह सेवा समाप्ति अधिनियम की धारा 2 (ओ.ओ) के अंतर्गत छंटनी नहीं है वरन अधिनियम की धारा 2 (ओ.ओ) (बी.बी) के अंतर्गत अपवादात्मक है और प्रार्थी को अधिनियम की धारा 25 एफ का कोई संरक्षण प्राप्त नहीं होता।

11. उन्होंने अपने तर्क के समर्थन में निम्नांकित न्यायिक दृष्टान्त प्रस्तुत किये हैं :-

- (1) 1996 ए.आई.आर. (सुप्रीम कोर्ट) 1001 स्टेट ऑफ राजस्थान बनाम रामेश्वर लाल गहलोत
- (2) 1994 (2) एल.एल.जे. 1136 (इलाहाबाद) एल.आई.सी. बनाम राजीव कुमार श्रीवास्तव
- (3) 2017 (4) एस.एल.आर. 72 (हिमाचल प्रदेश) पवन कुमार व अन्य बनाम यूनियन ऑफ इंडिया व अन्य
- (4) 2005 (106) एफ.एल.आर. (इलाहाबाद) 502 नरेन्द्र कुमार व अन्य बनाम स्टेट ऑफ यू.पी.
- (5) 1999 एल.आई.सी. 1948 (हिमाचल प्रदेश) बलविंदर सिंह बनाम स्टेट ऑफ हिमाचल प्रदेश

12. उभयपक्ष के तर्कों, प्रस्तुत किये गये न्यायिक दृष्टान्तों में पारित विधि पर उभयपक्ष की साक्ष्य के संदर्भ में मनन के उपरांत इस विवाद में निम्नांकित विचारणीय बिंदु उत्पन्न हुए हैं :-

विचारणीय बिंदु सं. 1 :- क्या प्रार्थी को दिनांक 27.4.2007 से 29.5.07 तक 32 दिन के लिए तदुपरांत दिनांक 30.5.2007 से 05.6.2009 तक नैमेत्तिक (आकस्मिक) श्रमिक के रूप में विपक्षी द्वारा कार्य पर रखा गया तथा विपक्षी द्वारा समय-समय पर प्रार्थी की सेवाअवधि में निरंतर विस्तार किया गया। किंतु दिनांक 6.6.2009 को विपक्षी ने प्रार्थी को कार्य पर लेने से इंकार कर अवैध रूप से सेवा समाप्त कर दी? ...प्रार्थी

विचारणीय बिंदु सं. 2 :- क्या प्रार्थी ने दिनांक 30.5.2007 से 5.6.2009 तक लगातार विपक्षी के अधीन कार्य किया तथा सेवासमाप्ति के पूर्ववर्ती एक केलेण्डर वर्ष की अवधि में 240 दिन से अधिक सेवा पूर्ण की तथा विपक्षी द्वारा सेवासमाप्ति के पूर्व प्रार्थी को एक माह का नोटिस अथवा नोटिस वेतन एवं छंटनी प्रतिकर न देते हुये अधिनियम की धारा 25 (एफ) के प्रावधानों का उल्लंघन किया? ...प्रार्थी

विचारणीय बिंदु सं. 3 :- क्या विपक्षी द्वारा दिनांक 5.6.2009 के उपरांत प्रार्थी से कनिष्ठतर श्रमिकों को कार्य पर रखा गया और प्रार्थी को कोई वरीयता नहीं दी गई? ...प्रार्थी

विचारणीय बिंदु सं. 4 अनुतोष ?

प्रत्येक विचारणीय बिंदु पर विवेचित निष्कर्ष इस प्रकार है :-

विचारणीय बिंदु सं. 1 व 2 :- विचारणीय बिन्दु सं.1 व 2 के अंतर्गत उभयपक्ष के तर्क व प्रस्तुत की गई साक्ष्य परस्पर अर्न्तवर्तित हैं— इसलिए सुविधा की दृष्टि से इन दोनों बिंदुओं पर साक्ष्य व विधि का विवेचन एक साथ करते हुए विनिश्चित किया जा रहा है। विचारणीय बिन्दु सं. 1 के संबंध में प्रार्थी ने अपने शपथपत्र में यह कहा है कि उसे दिनांक 27.4.2007 से 29.5.07 तक 32 दिन के लिये मैसर्स शिवा टेडर्स के माध्यम से कार्य पर रखा था। परंतु दिनांक 29.5.07 को विपक्षी ने आदेश जारी कर प्रार्थी को दिनांक 30.5.2007 से 5.6.2009 तक नैमेत्तिक मजदूर के रूप में गैस्ट हाउस में 73 रुपये प्रतिदिन पारिश्रमिक पर कार्य पर रखा। विपक्षी द्वारा सेवा अवधि में समय समय पर निरंतर वृद्धि की जाती रही। प्रार्थी से की गई प्रतिपरीक्षा में विपक्षी द्वारा ऐसा कोई प्रतिकूल सुझाव नहीं दिया गया है जिससे प्रार्थी के उपर्युक्त कथनों का कोई खंडन होता हो। इसलिये प्रतिपरीक्षण के अभाव में प्रार्थी के कथन प्रमाणित होते हैं जिन्हें प्रार्थी के साक्षी कैप्टन तमस भौमिक के कथनों से भी पुष्टि मिलती है। कैप्टन तमस भौमिक से भी की गई प्रतिपरीक्षा में विपक्षी ने इस तथ्य को खंडित करने का कोई प्रयास नहीं किया है कि प्रार्थी को 30.5.2007 से 5.6.2009 तक नैमेत्तिक

मजदूर के रूप में समय समय पर कार्य अवधि में वृद्धि करते हुए रखा था। विपक्षी के साक्षी अश्विनी गुरावडिया ने अपने कथन में यह कहा है कि प्रार्थी को 30.5.2007 से 5.6.2009 तक नैमेत्तिक आधार पर नियुक्ति दी थी। साक्षी ने यह भी स्वीकार किया है कि प्रार्थी को खेतडी कॉपलेक्स द्वारा ही वेतन भुगतान किया जाता था एवं प्रदर्श डब्ल्यू 1/1 से 1/24 तक प्रार्थी की उपस्थिति पंजिका का अभिलेख प्रार्थी से संबंधित है।

14. इस प्रकार यह तथ्य तो विवादित नहीं है कि समय समय पर सेवाअवधि में विस्तार करते हुये दिनांक 30.5.2007 से 5.6.2009 तक प्रार्थी को नैमेत्तिक (आकस्मिक) मजदूर के रूप में विपक्षी द्वारा उनके गैस्ट हाउस में कार्य पर रखा गया। अभिभाषक विपक्षी का यह तर्क है कि प्रार्थी की सेवायें एक निश्चित अवधि के अनुबंध के आधार पर कार्य की आवश्यकतानुरूप ली गई थी और कार्य समाप्त हो जाने पर प्रार्थी के अनुबंध को आगामी अवधि के लिये नहीं बढ़ाया गया। इस संबंध में प्रदर्श डब्ल्यू 2/89 विपक्षी की कार्यालय टिप्पणी के अवलोकन से यह स्पष्ट होता है कि प्रार्थी की सेवाअवधि 20.5.09 को समाप्त होने वाली थी, इसलिये प्रार्थी की सेवा का विस्तार 21.5.09 से आगामी 2 माह की अवधि तक बढ़ाये जाने के लिये प्रबंधन द्वारा प्रस्ताव प्रेषित किया गया था। जिसे स्वीकार कर विपक्षी प्रबंधन द्वारा प्रदर्श डब्ल्यू 2/90 आदेश द्वारा प्रार्थी के सेवाकाल में 21.5.09 से 20.7.09 तक अभिवृद्धि करते हुये प्रार्थी को नैमेत्तिक मजदूर के रूप में गैस्ट हाउस में कार्य करने का निर्देश दिया गया था। इस आदेश में भी यह कहीं अंकित नहीं है कि प्रार्थी से मात्र सफाई कार्य ही लिया जाना हो। यदि तर्क के लिये यह मान लिया जावे कि प्रार्थी को कार्य की आवश्यकतानुरूप एक निश्चित अवधि के लिये कार्य पर रख रखा था तो भी प्रदर्श डब्ल्यू 2/90 आदेश के प्रकाश में यह स्पष्ट है कि प्रार्थी की सेवायें कम से कम 20.7.09 तक लिया जाना आवश्यकता होने के कारण प्रस्तावित एवं अपेक्षित था। किंतु प्रार्थी की सेवा दिनांक 6.6.2009 से ही किन परिस्थितियों में एवं किस कारण से समाप्त कर दी गई इसका कोई स्पष्टीकरण विपक्षी की साक्ष्य से नहीं होता है।

15. प्रार्थी की ओर से माननीय सर्वोच्च न्यायालय द्वारा पारित निर्णय देवेन्द्र सिंह बनाम म्यूनिसिपल काउंसिल सानौर प्रस्तुत किया गया है। इस निर्णय में माननीय उच्चतम न्यायालय ने यह कहा है कि अधिनियम की धारा 2 (ओ.ओ) (बी.बी) के अंतर्गत सेवासमापन को सिद्ध करने के लिये अभिवचन और प्रमाण होना आवश्यक हैं। जब संविदा के आधार पर रखे गये कर्मकार को संविदाजन्य अवधि के एक माह पूर्व ही सेवामुक्त कर दिया गया हो तो कर्मकार द्वारा अधिनियम की धारा 25 (बी) के अनुरूप 240 दिन की सेवा पूर्ण कर लेने पर उसे धारा 25 (एफ) के प्रावधानों की अनुपालना किये बिना सेवामुक्त किया जाना अविधिपूर्ण होगा। इस निर्णय में माननीय उच्चतम न्यायालय द्वारा पारित अधिमत इस विवाद के तथ्यों पर प्रभावी एवं मार्गदर्शक है। विपक्षी की ओर से माननीय उच्चतम न्यायालय का निर्णय स्टेट ऑफ राजस्थान बनाम रामेश्वर लाल गहलोत प्रस्तुत करते हुये यह तर्क लिया गया है कि प्रार्थी को एक निश्चित अवधि के लिये एक दैनिक वेतन भोगी के रूप में रखा गया था इसलिये निश्चित अवधि के उपरांत सेवा का समाप्त हो जाना छंटनी नहीं है और ना ही धारा 25 (एफ) अधिनियम के प्रावधान आकृष्ट होते हैं। मैंने इस निर्णय में पारित विधि पर मनन किया। माननीय सर्वोच्च न्यायालय ने इस निर्णय में यह अवश्य कहा है कि जब नियोजन एक निश्चित अवधि के लिये हो तो अधिनियम की धारा 2 (ओ.ओ) (बी.बी) के अंतर्गत कर्मकार को सेवासमापन पर धारा 25 (एफ) अधिनियम के प्रावधानों का संरक्षण देय नहीं होगा, किंतु माननीय उच्चतम न्यायालय ने यह भी कहा है कि जब तक यह निष्कर्षित ना हो कि धारा 2 की उपधारा (ओ.ओ) (बी.बी) के अंतर्गत प्रदत्त शक्ति का दुराशयपूर्ण दुरुपयोग नहीं किया गया है या निर्धारित अवधि हेतु किया गया नियोजन इस शक्ति का आभासी प्रयोग मात्र ही नहीं है, तब तक धारा 25 (एफ) अधिनियम के प्रावधान आकृष्ट नहीं होंगे। इस निर्णय में पारित विधि के प्रकाश में साक्ष्य का यह विवेचन यह दर्शाता है कि दिनांक 30.5.2007 से प्रार्थी को नैमेत्तिक मजदूर के रूप में गैस्ट हाउस में 15.6.07 तक अवश्य कार्य पर रखा है। किंतु इस आदेश प्रदर्श डब्ल्यू 2/1 में यह कहीं अंकित नहीं है कि 15.6.07 के उपरांत प्रार्थी की सेवा में विस्तार नहीं होगा या नैमेत्तिक मजदूर के रूप में गैस्ट हाउस में प्रार्थी से लिया जाने वाला कार्य समाप्त हो जायेगा। प्रदर्श डब्ल्यू 2/2 प्रबंधन का प्रस्ताव है जिसमें प्रार्थी की सेवा 30.5.07 से आगामी 6 माह तक अभिवृद्धि किये जाने का प्रस्ताव किया गया है। किंतु साक्ष्य से यह प्रकट होता है कि प्रार्थी की सेवा का विस्तार समय समय पर 2-2 सप्ताह हेतु भी किया गया है और अंतिम बार यह

विस्तार प्रदर्श डब्ल्यू 2/90 आदेश के माध्यम से दिनांक 20.7.09 तक किया गया था। किंतु इस अवधि के पूर्व ही 6.6.09 को प्रार्थी को सेवा से पृथक कर दिया गया। विपक्षी ने अपनी साक्ष्य से यह प्रमाणित नहीं किया है कि किन परिस्थितियों में, अथवा आवश्यकता ना रहने पर दिनांक 20.7.09 के पूर्व ही प्रार्थी को सेवामुक्त कर दिया गया।

16. प्रार्थी ने अपने सशपथ कथन में यह कहा है कि उसने दिनांक 30.5.2007 से 5.6.2009 तक लगातार कार्य किया है। विपक्षी साक्षी एन.ए.डब्ल्यू-1 अश्वनी गुराडिया ने अपने प्रतिपरीक्षण में प्रदर्श डब्ल्यू 1/1 से 1/24 तक उपस्थिति पंजिका को प्रार्थी की उपस्थिति से संबंधित बताया है। यह उपस्थिति पंजिका मार्च 2009 तक संधारित की गई है। इसी साक्षी ने यह भी स्वीकार किया है कि प्रार्थी ने एक केलेण्डर वर्ष की अवधि में 240 दिन से अधिक सेवा पूर्ण की है लेकिन बीच बीच में अंतराल भी आये हैं। विपक्षी ने यह स्पष्ट नहीं किया है कि बीच में जो अंतराल आये वह किस कारण से थे? जबकि यह सिद्धिभार विपक्षी पर ही है कि वह इस अवधि में आये अंतराल या निरंतरता के भंग को साक्ष्य से साक्ष्य से प्रमाणित करें। अधिनियम की धारा 25 (बी) के अंतर्गत यह स्पष्ट किया गया है कि जब श्रमिक किसी वैध आधार पर या स्थायी आदेशों के अनुरूप अवकाश पर रहा हो तो ऐसे अनुज्ञात: अवकाश व अनुपस्थिति की अवधि को 240 दिन की अवधि में से घटाया नहीं जावेगा। विपक्षी के स्पष्टीकरण के अभाव में यह प्रमाणित होता है कि प्रार्थी की सेवा अवधि में यदि कोई अंतराल आया भी हो, तो वह वैध कारणों से ही था जिसे 240 दिन की अवधि में से घटाया नहीं जा सकता। इस प्रकार प्रार्थी की सेवा समाप्ति तिथि 6.6.2009 के पूर्ववर्ती एक केलेण्डर वर्ष की अवधि में प्रार्थी द्वारा 240 दिन से अधिक की सेवा पूर्ण किया जाना साक्ष्य से प्रमाणित होता है। प्रार्थी की सेवा एक निश्चित अवधि के लिये अथवा कार्य की उपलब्धता के आधार पर नहीं ली गई वरन विपक्षी के गैस्ट हाउस में चलने वाली निरंतर गतिविधियों के अंतर्गत प्रार्थी को विभिन्न कार्यों के संपादन के लिये अनिश्चित अवधि के लिए रखे जाने का विपक्षी का मानस प्रकट होता है। श्रम विधि के अंतर्गत प्रार्थी को मिलने वाले संरक्षण को निवारित करने हेतु समय समय पर प्रार्थी के सेवकाल में विस्तार करना दर्शाया गया। इसलिये स्टेट ऑफ राजस्थान बनाम रामेश्वर लाल गहलोत के निर्णय में माननीय सर्वोच्च न्यायालय द्वारा पारित अधिमत का अनुसरण करते हुये यह स्पष्ट होता है कि विपक्षी ने अधिनियम की धारा 2 (ओ.ओ) (बी.बी) के अंतर्गत प्रदत्त शक्ति का दुराशपूर्ण दुरुपयोग किया और प्रार्थी की सेवाअवधि में समय समय पर दिखावटी विस्तार किया, जबकि प्रार्थी से लिया जाने वाला कार्य अनिश्चित अवधि तक गैस्ट हाउस में विद्यमान था।

17. प्रार्थी की और से प्रस्तुत निर्णय जनरल मैनेजर एस.बी.आई. बनाम पी.ओ. सीजीआईटी चेन्नई में माननीय मद्रास उच्च न्यायालय ने यह कहा है कि जब श्रमिक एक केलेण्डर वर्ष की अवधि में 240 दिन सेवा पूर्ण कर लेवे तो प्रबंधन को सेवासमाप्ति से पूर्व अधिनियम की धारा 25 एफ के प्रावधानों का अनुपालन करना अनिवार्य होगा।

18. इसी क्रम में डिविजनल मैनेजर न्यू इंडिया एश्योरेंस कं. लि. बनाम ए. शंकरलिंगम के निर्णय में माननीय सर्वोच्च न्यायालय ने कहा है कि नियोक्ता के नियंत्रण और पर्यवेक्षण में कार्यरत अंशकालीन श्रमिक भी धारा 2 (एस) के अंतर्गत कर्मकार की परिभाषा में आता है तथा 240 दिन की निरंतर सेवा पूर्ण करने पर अधिनियम की धारा 25 एफ के प्रावधानों का संरक्षण पाने का अधिकारी है। उभयपक्ष के मध्य यह तथ्य विवादित नहीं है कि प्रार्थी और विपक्षी के मध्य कर्मकार और नियोक्ता के संबंध विद्यमान हैं। माननीय सर्वोच्च न्यायालय ने अपने पूर्वाक्त निर्णय देवेन्द्र सिंह बनाम म्यूनिसिपल कार्पोरेशन सानौर में अंशकालीन या संविदा जनित नियोजन के अंतर्गत नियुक्त श्रमिक को भी कर्मकार की परिभाषा में माना है।

19 उपर्युक्त विवेचन के उपरांत विपक्षी द्वारा प्रस्तुत निर्णयों एलआईसी बनाम राजीव कुमार श्रीवास्तव, नरेन्द्र कुमार व अन्य बनाम स्टेट ऑफ यू.पी. और पवन कुमार व अन्य बनाम यूनियन ऑफ इंडिया में माननीय इलाहाबाद व हिमाचल प्रदेश उच्च न्यायालय द्वारा प्रतिपादित यह विधि कि जब श्रमिक से लिया जाने वाला कोई कार्य उपलब्ध ना हो तथा श्रमिक का नियोजन संविदा की अवधि के साथ ही समाप्त हो चुका हो तो सेवासमाप्ति को छंटनी नहीं कहा जा सकता तथा अधिनियम की धारा 25 एफ के प्रावधान आकृष्ट नहीं होते, इस विवाद के तथ्यों से भिन्नता के कारण विपक्षी के पक्ष में सहायक प्रतीत नहीं होते हैं।

20. प्रार्थी द्वारा विपक्षी के अधीन एक कैलेण्डर वर्ष की अवधि में 240 दिन सेवा पूर्ण कर लिया जाना प्रमाणित होने पर विपक्षी से यह विधिक अपेक्षा उत्पन्न हो जाती है कि वह प्रार्थी की सेवासमाप्ति के पूर्व अधिनियम की धारा 25 एफ के प्रावधानों के अंतर्गत सेवासमाप्ति के पूर्व 1 माह का नोटिस अथवा नोटिस वेतन एवं छंटनी प्रतिकर का प्रार्थी को भुगतान करें। चूंकि विपक्षी द्वारा इन प्रावधानों का अनुपालन नहीं किया गया है, इसलिये दिनांक 6.6.2009 को विपक्षी द्वारा की गई प्रार्थी की सेवासमाप्ति अवैध प्रमाणित होती है। अतः ये दोनों बिंदु (सं.1 व 2) प्रार्थी के पक्ष में निर्णित किये जाते हैं।

विचारणीय बिंदु सं. 3 :-

21. प्रार्थी ने अपने साक्ष्य में यह तो कहा है कि उससे कनिष्ठतर श्रमिकों को विपक्षी प्रबंधन ने कार्य पर रखा हुआ है और उसकी सेवासमाप्ति के पश्चात आकस्मिक श्रमिकों की नियुक्ति भी की गई है। किंतु प्रार्थी ने उन कनिष्ठतर व्यक्तियों के संबंध में कोई विवरण ना तो अपने अभिवचनों में और ना ही साक्ष्य में प्रस्तुत किया है। प्रतिपरीक्षा में प्रार्थी का यह कथन है कि उसे उस व्यक्ति नाम स्मरण नहीं है जिसे उसे हटाने के बाद लगाया गया। इस स्थिति में प्रार्थी के कथन निराधार प्रमाणित होते हैं। यह प्रमाणित नहीं होता है कि प्रार्थी से कनिष्ठतर किसी व्यक्ति को विपक्षी द्वारा, प्रार्थी की सेवा समाप्ति के उपरांत नियुक्त किया गया हो। साक्ष्य के इस विवेचन के उपरांत यह विचारणीय बिन्दु प्रार्थी के विरुद्ध निर्णित किया जाता है।

विचारणीय बिंदु सं. 4 :- इस विचारणीय बिन्दु में प्रार्थी ने अपने अभिवचन और शपथ पर किये गये कथनों में यह कहा है कि वह पूर्णतः बेरोजगार है तथा परिवार के अन्य सदस्यों पर निर्भर है। विपक्षी ने प्रार्थी के अभिवचनों का मात्र यह कहकर खंडन किया है कि प्रार्थी बिना काम किये वेतन प्राप्त करने का अधिकारी नहीं है। विपक्षी के साक्षी अश्वनी गुराडिया ने भी यही कहा है कि बिना काम, वेतन प्राप्त करने का प्रार्थी को अधिकार नहीं है। इस विवाद के तथ्यों के अनुसार प्रार्थी एक दैनिक वेतन भोगी श्रमिक था और उसकी नियुक्ति किसी स्वीकृत रिक्त पद के विरुद्ध भी नहीं की गई थी। प्रार्थी का अस्थायी सेवाकाल मात्र 2 वर्ष का रहा है। प्रार्थी की सेवासमाप्ति के पूर्व विपक्षी द्वारा अधिनियम की धारा 25 (एफ) के प्रावधानों की अनुपालना न किये जाने के तकनीकी आधार पर ही प्रार्थी की सेवासमाप्ति अवैध पाई गई है। उल्लेखनीय है कि इस सेवासमाप्ति के उपरांत 12 वर्ष से अधिक अवधि व्यतीत भी हो चुकी है। सेवासमाप्ति के समय प्रार्थी को 100 रु. प्रतिदिन मजदूरी का भुगतान किया जाता था। प्रार्थी ने जनरल मैनेजर एस.बी.आई. बनाम पी.ओ. सीजीआईटी चेन्नई के निर्णय में माननीय मद्रास उच्च न्यायालय के अधिमत का अवलंब लेते हुये प्रार्थी को सेवा में निरंतरता एवं विगत वेतन परिलाभों सहित सेवा में बहाल करने का निवेदन किया है। इस निवेदन पर मैनें विचार किया तो यह पाया कि माननीय मद्रास उच्च न्यायालय ने पूर्ण विगत वेतन सहित सेवा में पुनर्स्थापन का अनुतोष इस कारण प्रदान किया था कि नियोक्ता बैंक ने श्रमिक द्वारा 480 दिन की सेवा पूर्ण कर लेने के उपरांत भी प्रचलित विधि के अंतर्गत श्रमिक को स्थायी रूप से नियुक्ति न देते हुये विभेदात्मक व्यवहार किया था। किंतु इस प्रकरण में विपक्षी संस्थान द्वारा ऐसा कोई विभेदात्मक व्यवहार नहीं किया गया है। इसके साथ ही माननीय उच्चतम न्यायालय ने निर्णयों की एक श्रृंखला में जिसमें बीएसएनएल बनाम महेशचन्द्र 2008 (3) एससीसी 474, जगवीर सिंह बनाम हरियाणा स्टेट एग्रीकल्चर मार्केटिंग बोर्ड (2009) 15 एससीसी 327 एवं सीनियर सुपरिटेण्डेंट टेलिग्राफ (ट्रेफिक) भोपाल बनाम संतोष कुमार सील (2010) 6 एससीसी 773 तथा इंचार्ज ऑफिसर बनाम शंकर शेट्टी (2010) 9 एससीसी 126 के निर्णयों में यह प्रतिपादित किया है कि विगत वेतन सहित सेवा में पुनर्स्थापन के स्थान पर आर्थिक क्षतिपूर्ति श्रमिक को दिलवाया जाना उचित है। ये सभी निर्णय प्रार्थी द्वारा प्रस्तुत माननीय सर्वोच्च न्यायालय के निर्णय देवेंद्र सिंह बनाम म्यूनिसिपल काँसिल सानौर के पूर्ववर्ती हैं। तत्पश्चात माननीय सर्वोच्च न्यायालय द्वारा बीएसएनएल बनाम भुरुमल (2014) 7 एससीसी 177, असिसटेंट इंजिनियर राजस्थान डवलपमेंट कार्पोरेशन बनाम गितम सिंह (2013) 5 एससीसी 136 तथा हरिनंदन प्रसाद बनाम मैनेजमेंट ऑफ एफसीआई, (2014) 7 एससीसी 190 में माननीय सर्वोच्च न्यायालय यह अधिमत व्यक्त किया है कि जो व्यक्ति दैनिक वेतनभोगी के रूप में रखे गये हों, जिनकी सेवायें एक दूरस्थ अतीत में समाप्त कर दी गई हों, एवं सेवासमाप्ति अधिनियम की धारा 25 (एफ) के प्रावधानों के उल्लंघन जैसे तकनीकी आधार पर अवैध मानी गयी हो, को

सेवा में पूर्ण विगत वेतन सहित पुनर्स्थापन का अनुतोष दिया जाना अनुचित है। सेवा में विगत वेतन सहित बहाली अथवा क्षतिपूर्ति दिये जाते समय न्यायालय को श्रमिक द्वारा धारित पद की प्रकृति, सेवा की अवधि, विवाद प्रस्तुतीकरण में श्रमिक द्वारा कारित विलंब, पद की प्रकृति तथा सेवासमाप्ति के उपरांत अधिनिर्णय पारित किये जाने तक व्यतीत हुई अवधि जैसे तथ्यों पर विचार किया जाना आवश्यक है। हरिनंदन प्रसाद बनाम एफसीआई के निर्णय में पारित विधि हस्तगत विवाद में विद्यमान तथ्यों पर पूर्ण रूप से प्रभावी और मार्गदर्शक है।

22. प्रार्थी की अवैध सेवासमाप्ति लगभग 12 वर्ष पूर्व हुई है। प्रार्थी दैनिक वेतन भोगी पद पर अस्थायी रूप से नियुक्त था। समय समय प्रार्थी की सेवाअवधि में विपक्षी द्वारा विस्तार किया गया है। महत्वपूर्ण यह भी है कि प्रार्थी की सेवासमाप्ति अधिनियम की धारा 25 (एफ) के प्रावधानों के अपालन जैसे तकनीकी आधार पर ही अवैध मानी गयी है। इसलिये इस अधिकरण के सुविचारित अभिमत से प्रार्थी की सेवा में पुनर्स्थापन के स्थान पर प्रार्थी को दो लाख रुपये आर्थिक क्षतिपूर्ति विपक्षी से दिलवाये जाने पर ही न्यायहित साधन हो सकेगा।

23. अतः विपक्षी द्वारा दिनांक 6.6.2009 को मौखिक रूप से की गई प्रार्थी की सेवासमाप्ति को अधिनियम की धारा 25 (एफ) के प्रावधानों के अपालन के कारण अवैध, घोषित किया जाता है। प्रार्थी को विगत वेतन परिलाभों सहित सेवा में पुनर्स्थापन के स्थान पर विपक्षी से दो लाख रु. आर्थिक क्षतिपूर्ति दिलवाया जाना आदेशित किया जाता है। विपक्षी क्षतिपूर्ति राशि का भुगतान 2 माह की अवधि में प्रार्थी को करें अन्यथा प्रार्थी अधिनिर्णय की तिथि से भुगतान किये जाने तक इस राशि पर नौ प्रतिशत वार्षिक ब्याज दर से ब्याज भी प्राप्त करने का अधिकारी होगा।

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

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

राधा मोहन चतुर्वेदी, पीठासीन अधिकारी