रजिस्ट्री सं. डी.एल. (एन) 04/0007/2003—05 REGD. NO. D. L. (N) 04/0007/2003—05

भारत का राजपत्र
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सं. 26] नई दिल्ली, जून 30—जुलाई 6, 2024, शनिवार/ आषाढ़ 9—आषाढ़ 15, 1946
No. 26] NEW DELHI, JUNE 30—JULY 6, 2024, SATURDAY/ASHADHA 9– ASHADHA 15, 1946

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, 28 जून, 2024

का.आ. 1289.—भारतीय निर्यात-आयात बैंक अधिनियम, 1981 (1981 का 28) की धारा 6 की उप-धारा (2) के साथ पठित धारा 6 की उप-धारा (1) के खंड (कक) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार, एतद्वारा, वर्तमान में भारतीय निर्यात-आयात बैंक (एक्जिम बैंक) में मुख्य महाप्रबंधक (सीजीएम) के पद पर कार्यरत सुश्री दीपाली अग्रवाल (जन्म तिथि: 7.3.1973) को पद का कार्यभार ग्रहण करने की तारीख से तीन (03) वर्ष की अवधि के लिए अथवा अगले आदेशों तक, जो भी पहले हो, एक्जिम बैंक में उप-प्रबंध निदेशक (डीएमडी) के पद पर नियुक्त करती है।

[फा. सं. 9/4/2021-आईएफ-I]
सुभाषचन्द्र अमीन, अवर सचिव

MINISTRY OF FINANCE

(Department of Financial Services)

New Delhi, the 28th June, 2024

S.O. 1289.—In exercise of the powers conferred by clause (aa) of sub-section (1) of section 6 read with sub-section (2) of section 6 of the Export - Import Bank of India Act, 1981 (No. 28 of 1981), the Central Government hereby appoints Ms. Deepali Agrawal (DOB: 07.03.1973), currently working as Chief General Manager (CGM) in Export Import Bank of India as Deputy Managing Director (DMD), Export Import Bank of India, for a period of three (03) years, from the date of her taking over charge of the post or until further orders, whichever is earlier.

[F No. 9/4/2021-IF-I]

SUBHASHCHANDRA AMIN, Under Secy.

विदेश मन्त्रालय

(सी.पी.वी. प्रभाग)

नई दिल्ली, 28 जून, 2024

का.आ. 1290.—राजनयिक और कोंसुलीय अधिकारी (शपथ एवं फीस) के अधिनियम, 1948 की धारा 2 के खंड (क) के अनुसरण में वैधानिक आदेश ।

एतद्वारा,सरकार, भारत के प्रधान कोंसलावास,बर्मिंघम में श्री आशीष चौहान,सहायक अनुभाग अधिकारी को जून 28, 2024 से सहायक कांसुलर अधिकारी के रूप में कांसुलर सेवाओं का निर्वहन करने के लिए अधिकृत करती है।

[फा. सं. टी.4330/01/2024(22)]

नीरज अग्रवाल, निदेशक (सीपीवी)

MINISTRY OF EXTERNAL AFFAIRS

(CPV Division)

New Delhi, the 28th June, 2024

S.O. 1290.—Statutory Order in pursuance of the clause (a) of the Section 2 of the Diplomatic and Consular Officers (Oaths and fees) Act, 1948 (41 of 1048), the Central Government hereby appoints Shri Ashish Chauhan, Assistant Section Officer as Assistant Consular Officer in the Consulate General of India, Birmingham, to perform the consular services as Assistant Consular Officer with effect from June 28, 2024.

[F. No.T.4330/01/2024(22)]

NEERAJ AGRAWAL, Director (CPV)

नई दिल्ली, 3 जुलाई, 2024

का.आ. 1291.—राजनयिक और कोंसुलीय अधिकारी (शपथ एवं फीस) के अधिनियम, 1948 की धारा 2 के खंड (क) के अनुसरण में वैधानिक आदेश ।

एतद् द्वारा,सरकार, भारत के प्रधान कोंसलावास, दुबई में रोहित जॉर्ज और सचिन कटारिया, सहायक अनुभाग अधिकारियो को जुलाई 03, 2024 से सहायक कांसुलर अधिकारी के रूप में कांसुलर सेवाओं का निर्वहन करने के लिए अधिकृत करती है।

[फा. सं.टी.4330/01/2024(23)]

नीरज अग्रवाल, निदेशक (सीपीवी)

New Delhi, the 3rd July, 2024

S.O. 1291.—Statutory Order in pursuance of the clause (a) of the Section 2 of the Diplomatic and Consular Officers (Oaths and fees) Act, 1948 (41 of 1048), the Central Government hereby appoints Shri Rohit George and Shri Sachin Kataria, both Assistant Section Officers as Assistant Consular Officers in the Consulate General of India, Dubai, to perform the consular services as Assistant Consular Officer with effect from July 03, 2024.

[F. No.T.4330/01/2024(23)]

NEERAJ AGRAWAL, Director (CPV)

श्रम और रोजगार मंत्रालय

नई दिल्ली, 24 जून, 2024

का.आ. 1292.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार ई.सी.एल. के प्रबंधतंत्र के संबद्ध नियोजको और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में **कन्द्रीय सरकार औद्योगिक अधिकरण –सह –श्रम न्यायालय**,आसनसोल के पंचाट (सन्दर्भ संख्या **62/2000**) को प्रकाशित करती है, जो केन्द्रीय सरकार को **24/06/2024** को प्राप्त हुआ था।

[सं. एल. 22012/506/99-आई.आर. (सी.एम-II)]

मणिकंदन. एन, उप निदेशक

MINISTRY OF LABOUR AND EMPLOYMENT

New Delhi, the 24th June, 2024

S.O. 1292.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award **(Reference.I.D.No.62/2000***)* of the **Central Government Industrial Tribunal-cum-Labour Court, Asansol** as shown in the Annexure, in the industrial dispute between the Management of **E.C.L.** and their workmen, received by the Central Government on **24*/06/2024***.

[No. L-22012/506/99 – IR (CM-II)]

MANIKANDAN. N, Dy. Director

ANNEXURE

BEFORE THE CENTRAL GOVT. INDUSTRIAL TRIBUNAL -CUM- LABOUR COURT, ASANSOL.

PRESENT: Shri Ananda Kumar Mukherjee,
Presiding Officer,
C.G.I.T-cum-L.C., Asansol.

REFERENCE CASE NO. 62 OF 2000

PARTIES: Kashi Jana
(represented by the dependent son Gobinda Jana)

Vs.

Management of Parascole Colliery of ECL

REPRESENTATIVES:

For the Union/Workman: Mr. Rakesh Kumar, President, Koyala Mazdoor Congress.

For the Management of ECL: Mr. P. K. Das, Advocate.

INDUSTRY: Coal.

STATE: West Bengal.

Dated: 21.05.2024

A W A R D

In exercise of powers conferred under clause (d) of Sub-section (1) and Sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), the Government of India through the Ministry of Labour, vide its Order **No. L-22012/506/99/IR(CM-II)** dated 13.07.2000 has been pleased to refer the following dispute between the employer, that is the Management of Parascole Colliery under Kajora Area of Eastern Coalfields Limited and their workman for adjudication by this Tribunal.

SCHEDULE

"*Whether the action of the management of Parascole Colliery of M/s. E.C.Ltd. in not providing employment to the dependent of Late Sh. Kashi Jena, U.G.L. is legal and justified? If not, to what relief the workman is entitled?* **"**

1. On receiving Order **No. L-22012/506/99/IR(CM-II)** dated 13.07.2000 from the Government of India, Ministry of Labour, New Delhi for adjudication of the dispute, a **Reference case No. 62 of 2000** was registered on 01.08.2000 / 18.10.2001 and an order was passed for issuing notice to the parties through registered post, directing them to appear and submit their written statements along with relevant documents in support of their claims and a list of witnesses.

2. The case is fixed up today for appearance of Gobinda Jana and hearing of argument. Mr. Rakesh Kumar, representing Gobinda Jana, the dependent son of Late Kashi Jana submitted that the petitioner on whose behalf this Industrial Dispute has been raised has not turned up after several communications made to him. Mr. P. K. Das, learned advocate for the management of Parascole colliery under Kajora Area of Eastern Coalfields Limited (hereinafter referred to as ECL) is present.

3. The petitioner filed a written statement on 16.01.2002 through Mr. Rakesh Kumar, Union representative. Fact of the case in brief is that Kashi Jana was an employee of Parascole colliery under Kajora Area of ECL, having U.M. No. 602811 and was working as Underground Loader. Kashi Jana went to his native village on leave from 17.03.1994 to 23.03.1994 but due to his illness at his native place he was unable to report for duty. Period of his unauthorized absence was one month and twenty-seven days. After return he was placed in the 'Badli' list. Management wrongfully kept him in the 'Badli' list and in course of time Kashi Jana met with a railway accident on 10.02.1995 at Colliery Rail Siding. He died in course of his employment. Gobinda Jana being the eldest son prayed for providing employment as a dependent but the management of ECL did not provide him with employment on the pretext that his father was in the 'Badli' list and 'Badlis' are not entitled to the benefit of employment. Gobinda Jana thereafter raised an Industrial Dispute through Koyala Mazdoor Congress, Union, in which his father was a member.

4. The Management of ECL contested the case by filing written statement on 13.03.2002 through Dy. CME / Agent of Parascole Colliery. According to the management Kashi Jana was absent for a long time. After returning for work he was placed in the 'Badli' list of workers. There was no scope for providing employment to the dependent of 'Badli' workers. The Competent Authority expressed inability to consider the prayer for employment. ECL Head Quarters also communicated to Gobinda Jana about the inability by issuing letter No. KA/PM/C-6/35/4480/10405 dated 12.11.1998 through Manager (Personnel), Kajora Area. It is asserted that the dependents of 'Badli' workers cannot claim employment as legal right as the same is against the norms of the company.

5. In support of his case, Gobinda Jana examined himself as Workman Witness and filed affidavit-in-chief. He has produced a copy of his father's Identity Card issued by the management of the company which bears Man No. as 602811.

Copy of office order bearing No. PC/C-6/94-986 dated 19.05.1994 issued by Dy. CME of Parascole colliery has been produced, which is related to placement of Kashi Jana in 'Badli' List due to his unauthorized absence for more than ten days. Documents produced have not been marked as Exhibits but the same is relevant for consideration.

6. In cross-examination witness admitted that his father was in 'Badli' list. Witness stated that his father raised dispute challenging the decision of the management of placing him in the 'Badli' list but the witness was not able to produce any document to show that his father challenged his placement in the 'Badli' list during his lifetime.

7. Mr. Ashis Mohan, Assistant Manager (Personnel) of Parascole Colliery has been examined as Management Witness. He has placed copy of letter No. PC/C-6/94-986 dated 19.05.1994 by which Kashi Jana was placed under 'Badli' list. Witness further stated that there is no provision to provide employment to the dependent of 'Badli' workers. Witness faced cross-examination. He was unable to state as to who approved the decision of placing the workman in the 'Badli' list.

8. Mr. Rakesh Kumar, union representative argued the case for Gobinda Jana and submitted that his father was a permanent employee and died due to rail accident within the premises of the colliery while he was in the roll of the company. It is further argued that without approval of the competent authority, the Dy. CME/Agent of Parascole colliery had wrongfully placed him in 'Badli' list. It is argued that after returning from his native village, workman had to be considered as a regular employee of the company and the dependent son is entitled to get employment under the company.

9. Mr. P. K. Das, learned advocate for the management submitted that Gobinda Jana has not appeared before this Tribunal for several years and the petitioner is not entitled to get employment as a dependent, as his father was treated as a 'Badli' worker and no dispute was raised against the change in nature of employment of his father. It is further contended that due to inordinate delay, prayer for employment of the dependent son cannot be considered.

10. I have considered facts and circumstances of the case and the argument advanced by both parties. Admittedly, Kashi Jana was a 'Badli' worker at the time of his death on 10.02.1995. There is no evidence to suggest that any dispute was raised by Kashi Jana against order of his placement the in 'Badli' list. Therefore, conduct of workman during his lifetime establishes that he has accepted being treated as a 'Badli' worker. Raising an Industrial Dispute for not providing employment to the dependent cannot ipso facto grant opportunity to the dependent son to challenge the order of placement of his father in the 'Badli' list. To my mind the management of ECL is bound by the guiding rules and the fact that Kashi Jana who was relegated to a 'Badli' worker for his unauthorized absence was never restored to his original post and position before his death.

11. Under such circumstances management of the company cannot be said to have committed illegality by not accepting the claim of the dependent son, Gobinda Jana. I also find that the petitioner is not diligent in proceeding with this Industrial Dispute for the purpose of securing an employment. In my view I find no merit in this case and the same is accordingly dismissed on contest.

Hence,

O R D E R E D

that the Industrial Dispute is dismissed on contest. An award be drawn up in the light of my above findings. Let copies of the Award in duplicate be sent to the Ministry of Labour, Govt. of India, New Delhi for information and Notification.

ANANDA KUMAR MUKHERJEE**,** Presiding Officer

नई दिल्ली, 24 जून, 2024

का.आ. 1293.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार ई.सी.एल. के प्रबंधतंत्र के संबद्ध नियोजको और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में **केन्द्रीय सरकार औद्योगिक अधिकरण–सह– श्रम न्यायालय,आसनसोल** के पंचाट (सन्दर्भ संख्या **121/2005**) को प्रकाशित करती है, जो केन्द्रीय सरकार को **24/06/2024** को प्राप्त हुआ था।

[सं. .एल. 22012/450/2004-आई.आर.(सी.एम-II)]

मणिकंदन. एन, उप निदेशक

New Delhi, the 24th June, 2024

S.O. 1293.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award **(Reference.I.D.No.121/2005*)*** of the **Central Government Industrial Tribunal-cum-Labour Court, Asansol** as shown in the Annexure, in the industrial dispute between the Management of **E.C.L.** and their workmen, received by the Central Government on **24*/06/2024*.**

[No. L-22012/450/2004 – IR (CM-II)]

MANIKANDAN. N , Dy. Director

ANNEXURE

BEFORE THE CENTRAL GOVT. INDUSTRIAL TRIBUNAL -CUM- LABOUR COURT, ASANSOL.

PRESENT: Shri Ananda Kumar Mukherjee,

Presiding Officer,

C.G.I.T-cum-L.C., Asansol.

REFERENCE CASE NO. 121 OF 2005

PARTIES: Kapildeo Jha

Vs.

Management of Bhanora Colliery of ECL

REPRESENTATIVES:

For the Union/Workman: Mr. Rakesh Kumar, President, Koyala Mazdoor Congress.

For the Management of ECL: Mr. P. K. Das, Advocate.

INDUSTRY: Coal.

STATE: West Bengal.

Dated: 30.05.2024

A W A R D

In exercise of powers conferred under clause (d) of Sub-section (1) and Sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), the Government of India through the Ministry of Labour, vide its Order **No. L-22012/450/2004-IR(CM-II)** dated 01.09.2005 has been pleased to refer the following dispute between the employer, that is the Management of Bhanora Colliery under Sripur Area of Eastern Coalfields Limited and their workman for adjudication by this Tribunal.

SCHEDULE

" Whether the action of the management of Bhanora Colliery of M/s. E.C.L. in denying regularization and denying payment of differences of wages in respect of Sh. Kapildev Jha is legal and justified? If not to what relief the workman is entitled? "

1. On receiving Order **No. L-22012/450/2004-IR(CM-II)** dated 01.09.2005 from the Government of India, Ministry of Labour, New Delhi for adjudication of the dispute, a **Reference case No. 121 of 2005** was registered on 23.09.2005 and an order was passed for issuing notice to the parties through registered post, directing them to appear and submit their written statements along with relevant documents in support of their claims and a list of witnesses.

2. Mr. Rakesh Kumar, the General Secretary of Koyala Mazdoor Congress filed written statement of Kapildeo Jha on 10.06.2010. The Agent of Girmint/Bhanora Colliery filed their written statement on 24.08.2016. The fact of the case disclosed in the written statement of the workman is that Kapildeo Jha was a General Mazdoor at Bhanora West Block Colliery under Sripur Area of Eastern Coalfields Limited (hereinafter referred to as ECL). In 1997 he was deployed to work as a Pit Clerk along with others and the competent authority of ECL approved the placement of Kapildeo Jha to work as Pit Clerk, Grade-II. The management paid him difference of wages for rendering service as Pit Clerk, Grade-II. He was deployed to work as Pit Clerk as per order No. GM/SA/C-6D/6(Gen.)/97/97 dated 11/12.03.1997 which was communicated by the Agent of Bhanora (R) Colliery on 14.04.1997. According to the guidelines followed by the company, if any worker was deployed in a higher post, he would be entitled to higher pay but in the case of Kapildeo Jha initially he was not paid the difference wages. It is claim on behalf of the workman that he should be paid the difference of wages for working as a pit clerk till the date of regularization as Pit Clerk, Grade-II.

3. Further case of the union is that if a workman performed any underground work for 190 days or 240 days on surface, then the person would be entitled to be regularized in the said post in which he works for such duration. The management did not follow the norms and did not regularize him in the post after working for several years. According to the union the management of Bhanora Colliery paid the difference of wages to Kapildeo Jha only for one year and stopped the payment of difference of wages thereafter without any reason.

4. Some of the workmen who were deputed to work as Pit Clerk along with Kapildeo Jha were regularized as Pit Clerk on the basis of the direction passed by the Hon'ble High Court at Calcutta but the cases of Kapildeo Jha and few others have not been considered by the management without any reason. According to the prevailing practice of the company if any workman is permanently working in a particular work, then he shall be regularized in the same work in which he is working, but the policy has not been followed in the case of Kapildeo Jha. The relief sought for in this case is for regularization of Kapildeo Jha, Explosive Carrier at Bhanora Colliery to the post of Pit Clerk, Grade-II with notional seniority in Clerical Grade, after one year from the date of deployment as Pit Clerk and the second relief claimed on behalf of the workman is payment of difference of wages to the workman for working as a pit clerk.

5. Management contested the case by filing written statement. It is the case of the management that the concerned workman raised a dispute claiming regularization as Pit Clerk. It is their case that the Hon'ble High Court at Calcutta in Writ Petition No. 88 of 2006 filed by Mahendra Kumar Paswan and Others was pleased to direct the management to hear the writ petitioners and to take decision. The case of the writ petitioners for regularization was considered. It is further contended that for the purpose of regularization to any substantive post, notification of competent authority is necessary. The post of Pit Clerk, Grade-II is an entry level post of the Clerical Grade and the same requires financial approval by the competent authority. With introduction of Mechanization process Bhanora west Block Colliery has reduced the loader strength and no Pit Clerk is required. Therefore, claim for regularization of the workman to the post of Pit Clerk is not tenable and has no foundation. The concerned workman is not entitled to any relief and the Industrial Dispute is liable to be dismissed.

6. The short point for consideration is whether denial of regularization of Kapildeo Jha to the post of Pit Clerk and denial of payment of difference of wages is justified and legally tenable and to what relief the workman is entitled?

7. In support of his case the workman filed affidavit-in-chief and faced cross-examination by the management. The witness produced the following documents:

(i) Copy of the Office Order dated 11/12.03.1997 issued by the General Manager of Sripur Area has been produced as Exhibit WW-I, wherein it is stated that Kapildeo Jha along with others were deployed to work as Pit Munshi / Clerk and posted at Bhanora West Block Colliery and they would be entitled to difference of wages for the period.

(ii) Copy of the Office Order dated 15.01.2011 issued by the Personnel Manager (I/C), Sripur Area for regularization of eleven T.R. Employees as Clerk Grade-III, as Exhibit WW-II (collectively in two pages).

(iii) Copy of the letter dated 14.01.2011 issued by the Office of the Chief General Manager, Kajora Aera, as Exhibit WW-III. In the letter addressed to the Deputy Personnel Manager (Admin), Kajora Area it is evident that on recommendation of the Departmental Promotion Selection Committee constituted at Headquarters level, the competent authority has accorded approval for regularization of 9 T.R. Employees as Clerk, Grade-III with immediate effect.

8. On 14.11.2022 Mr. P. K. Das, learned advocate for the management of ECL submitted before the Tribunal that the management does not want to examine any witness.

9. Mr. Rakesh Kumar, Union representative advancing his argument submitted that Kapildeo Jha, who was a General Mazdoor at Bhanora West Block Colliery was deputed to work as a Pit Clerk, Grade-II on the basis of an Office Order dated 11/12.03.1997 (Ext. WW-I). He was never reverted to his earlier post of General Mazdoor and paid the difference of wages for one year. It is submitted that the workman had filed L. C. Application No. 01/2008 under Section 33 (C)(2) of Industrial Disputes Act, 1947, praying for payment of difference of wages to the workman for the post of Pit Clerk, Grade-II for the period from 14.04.1998 till date of filing of application. The L. C. Application was disposed of by an Award dated 30.01.2023, where the management agreed to pay Rs. 23,892.12/- as difference of wages from 04/1998 to 03/2000. Mr. Kumar submitted that the concerned workman has superannuated from his work w.e.f. 01.05.2023 and urged that the workman is entitled to difference of wages from 01.04.2000 until his retirement on 30.04.2023. No submission is made regarding the claim for regularization of the workman.

10. In reply Mr. P. K. Das, learned advocate for the management argued that the claim for regularization has become infructuous on superannuation of the workman from service w.e.f. 01.05.2023. It is also argued that the workman is not entitled to any difference of wages as he has not been regularized to the post, in respect of which he has claimed difference of payment of wages.

11. I have considered the facts and circumstances of the case, argument advanced by the contending parties and evidence adduced by the workman. The management has not disputed the fact that Kapildeo Jha was deputed as Pit Clerk on the basis of Office Order dated 11/13.03.1997. On a perusal of the Office Order, it appears that the competent authority, in the office order had observed that due to shortage of Pit Clerk at Muslia / New Ghusick / Bhanora / K.D. Incline, 12 persons were deployed to work as Pit Munshi / Clerk and posted accordingly. They would be on training for the period of 1 year in their existing category and shall be paid difference of wages for the period they will be working as Pit Munshi / Clerk and after completion of 1 year's training period they can be considered for regularization. From the available documents on record, I find that W. P. No. 88 of 2006 was filed by Mahendra Kumar Paswan and 5 Others and by order dated 19.09.2007 the Hon'ble Single Bench of the Hon'ble High Court at Calcutta considered the prayer of petitioners and directed that Respondent No. 4 i.e. the Director (Personnel), ECL shall, after giving an adequate opportunity of hearing to the writ petitioners, shall take a decision in the matter within a period of 8 weeks from the date of communication of the order and shall take into consideration the documents annexed to the writ petition and the affidavit, in reply, filed by the writ petitioners. It was further directed that if the same was found genuine, suitable steps were to be taken and the decisions so taken by the respondent be communicated to the writ petitioner within a period of fortnight. In the instant case Kapildeo Jha did not figure as a writ petitioner and as the Industrial Dispute raised by him was pending before this Tribunal, the management did not consider his regularization. From the materials on record and Award in L.C. Application 01 of 2008, I find that the workman has been paid the difference of wages till 03/2000. A workman who has rendered service in a higher post cannot be deprived of equal pay allocated for the post. The management has not taken any plea that the workman has been reverted to the post of General Mazdoor. Therefore, the workman is entitled to the difference of pay from 01.04.2000 till 30.04.2023 i.e. his last working day.

12. So far as the question of regularization to the post of Pit Clerk, Grade-II has concern, the workman having superannuated from his service there is no scope for his regularization to the post at this stage. The competent

authority had no occasion to consider the question of his regularization due to pendency of the Industrial Dispute. Therefore, it cannot be said with assertion that the workman would have qualified for his regularization. The process of consideration was inchoate.

Hence,

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that the Industrial Dispute raised on behalf of Kapildeo Jha is allowed in part. The management of ECL is directed to make payment of difference of wages to the workman from 01.04.2000 till 30.04.2023 within a period of two (2) months from the dated of communication of the Notification of the Award. The question of regularization not having been considered during the tenure of service, it cannot be said with assertion that there was any illegality on the part of the management. Let an award be drawn up in light of my above findings. Let copies of the Award in duplicate be sent to the Ministry of Labour, Government of India, New Delhi for information and Notification.

ANANDA KUMAR MUKHERJEE**,** Presiding Officer

नई दिल्ली, 24 जून, 2024

का.आ. 1294.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार ई.सी.एल. के प्रबंधतंत्र के संबद्ध नियोजको और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में **केन्द्रीय सरकार औद्योगिक अधिकरण –सह– श्रम न्यायालय**,आसनसोल के पंचाट (सन्दर्भ संख्या **98/2000**) को प्रकाशित करती है, जो केन्द्रीय सरकार को **24/06/2024** को प्राप्त हुआ था।

[सं..एल. 22012/156/2000-आई.आर. (सी.एम-II)]

मणिकंदन. एन, उप निदेशक

New Delhi, the 24th June, 2024

S.O. 1294.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award **(Reference.I.D.No.98/2000***)* of the **Central Government Industrial Tribunal-cum-Labour Court, Asansol** as shown in the Annexure, in the industrial dispute between the Management of **E.C.L.** and their workmen, received by the Central Government on **24*/06/2024***

[No. L-22012/156/2000 – IR (CM-II)

MANIKANDAN. N , Dy. Director

ANNEXURE

BEFORE THE CENTRAL GOVT. INDUSTRIAL TRIBUNAL -CUM- LABOUR COURT, ASANSOL.

PRESENT: Shri Ananda Kumar Mukherjee,
Presiding Officer,
C.G.I.T-cum-L.C., Asansol.

REFERENCE CASE NO. 98 OF 2000

PARTIES: Maheshwar Routh
(dependent son of Late Uday Routh)

Vs.

Management of Madhujore Colliery of ECL

REPRESENTATIVES:

For the Union/Workman: Mr. Rakesh Kumar, President, Koyala Mazdoor Congress.

For the Management of ECL: Mr. P. K. Das, Advocate.

INDUSTRY: Coal.

STATE: West Bengal.

Dated: 28.05.2024

A W A R D

In exercise of powers conferred under clause (d) of Sub-section (1) and Sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), the Government of India through the Ministry of Labour, vide its Order **No. L-22012/156/2000/IR(CM-II)** dated 21.11.2000 has been pleased to refer the following dispute between the employer, that is the Management of Madhujore Colliery of Eastern Coalfields Limited and their workman for adjudication by this Tribunal.

SCHEDULE

"Whether the action of the management of Madhujore Colliery of M/s. ECL in not providing employment to Sh. Maheshwar Routh, the dependent son of late Sh. Uday Routh, as per the provision of NCWA-V is legal and justified? If not, to what relief the workman is entitled? "

1. On receiving Order **No. L-22012/156/2000/IR(CM-II)** dated 21.11.2000 from the Government of India, Ministry of Labour, New Delhi for adjudication of the dispute, a **Reference case No. 98 of 2000** was registered on 26.12.2000 / 05.11.2001 and an order was passed for issuing notice to the parties through registered post, directing them to appear and submit their written statements along with relevant documents in support of their claims and a list of witnesses.

2. Mr. P. K. Das, learned advocate appeared for the management of Eastern Coalfields Limited. The case is fixed up today for appearance of Maheshwar Routh, dependent son of the deceased employee and hearing of argument. In compliance with order dated 20.02.2024 a Notice was sent to Maheshwar Routh at the address provided in Form 'B' register of Late Uday Routh. On repeated calls at 2.10 p.m. the petitioner has not appeared. Mr. Rakesh Kumar, union representative is present.

3. Perused the record. Both parties have filed written statement. Petitioner in the written statement filed through the General Secretary of Koyala Mazdoor Congress contended that after death of employee one dependent is entitled to employment. Uday Routh, father of the petitioner having died in harness, dependent son is entitled to employment. No written statement has been filed by the management.

4. The case was fixed up on 19.10.2005 for ex-parte hearing. The record reveals that 23.02.2006 was fixed for filing Memorandum of Settlement between parties. In course of evidence, Maheshwar Routh stated that his father died in the year 1993 and after one month he submitted application for employment. In the year 2015 petitioner stated that his age was about 39-40 years. Several opportunities were granted to the petitioner to appear and pursue his case but he is not diligent and did not appear since 21.05.2015. Under such circumstance I am of the considered view that the petitioner is not entitled to get relief as claimed by him in the Industrial Dispute. The case is dismissed ex-parte and a No Dispute Award is drawn up.

Hence,

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that a No Dispute Award be drawn up in the above Reference case. Let copies of the Award in duplicate be sent to the Ministry of Labour and Employment, Government of India, New Delhi for information and Notification.

ANANDA KUMAR MUKHERJEE, Presiding Officer

नई दिल्ली, 24 जून, 2024

का.आ. 1295.– औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार ई.सी.एल. के प्रबंधतंत्र के संबद्ध नियोजको और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में **केन्द्रीय सरकार औद्योगिक अधिकरण –सह– श्रम न्यायालय**,आसनसोल के पंचाट (सन्दर्भ संख्या **30/2022**) को प्रकाशित करती है, जो केन्द्रीय सरकार को **24/06/2024** को प्राप्त हुआ था।

[सं..एल. 22012/65/2022-आई.आर. (सी.एम-II)]

मणिकंदन. एन, उप निदेशक

New Delhi, the 24th June, 2024

S.O. 1295.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award **(Reference.I.D.No.30/2022***)* of the **Central Government Industrial Tribunal-cum-Labour Court, Asansol** as shown in the Annexure, in the industrial dispute between the Management of **E.C.L.** and their workmen, received by the Central Government on **24*/06/2024.***

[No. L-22012/65/2022 – IR (CM-II)]

MANIKANDAN. N , Dy. Director

ANNEXURE

BEFORE THE CENTRAL GOVT. INDUSTRIAL TRIBUNAL -CUM- LABOUR COURT, ASANSOL.

PRESENT: Shri Ananda Kumar Mukherjee,
Presiding Officer,
C.G.I.T-cum-L.C., Asansol.

REFERENCE CASE NO. 30 OF 2022

PARTIES: Bisundeo Singh

Vs.

Management of Central Kajora Colliery of ECL

REPRESENTATIVES:

For the Union/Workman: Mr. Milan Kumar Bandyopadhyay, Advocate.

For the Management of ECL: Mr. P. K. Das, Advocate.

INDUSTRY: Coal.

STATE: West Bengal.

Dated: 21.05.2024

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A W A R D

In exercise of powers conferred under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), the Government of India through the Ministry of Labour, vide its Order **No. L-22012/65/2022-IR(CM-II)** dated 04.07.2022 has been pleased to refer the following dispute between the employer, that is the Management of Central Kajora Colliery under Kajora Area of Eastern Coalfields Limited and their workman for adjudication by this Tribunal.

SCHEDULE

" *Whether the action of the Management of Central Kajora Colliery, Kajora Area, M/s. E.C. Ltd. in terminating services of Sri Bisundeo Singh, Ex-Pump Operator vide letter no. KA/APM/C-6/10/45 dated 29.12.2016/07.01.2017 is proper, legal and justified? If not, what relief the workman is entitled to?* **"**

1. On receiving Order **No. L-22012/65/2022-IR(CM-II)** dated 04.07.2022 from the Government of India, Ministry of Labour, New Delhi for adjudication of the dispute, a **Reference case No. 30 of 2022** was registered on 04.07.2022 / 01.08.2022 and an order was passed for issuing notice to the parties through registered post, directing them to appear and submit their written statements along with relevant documents in support of their claims and a list of witnesses.

2. Bisundeo Singh, dismissed workman has appeared accompanied by Mr. M. K. Bandyopadhyay, learned advocate. Mr. P. K. Das, learned advocate has appeared for the management of Eastern Coalfields Limited. The case is fixed up today for appearance and cross-examination of workman witness. At this stage, Bisundeo Singh has filed an application supported by an affidavit stating that he is not inclined in proceeding with this Industrial Dispute and like to withdraw the case against the management. He has further stated that he has no grievance if No Dispute Award is passed. In the application workman has prayed for disposing of the Industrial Dispute. Heard learned advocates for both parties.

3. After issuing Notice under registered post, written statements were filed by both parties. Bisundeo Singh filed affidavit-in-chief on 28.03.2023. This case relates to his objection against termination from service by letter No. KA/APM/C-6/10/45 dated 29.12.2016 / 07.01.2017. Since the workman has no grievance against order of dismissal passed and not inclined to proceed, the Industrial Dispute is dismissed for non-prosecution. Let a No Dispute award be drawn up.

Hence,

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that the Industrial Dispute is dismissed. A No Dispute Award be drawn up. Let copies of the Award in duplicate be sent to the Ministry of Labour and Employment, Government of India, New Delhi for information and Notification.

ANANDA KUMAR MUKHERJEE**,** Presiding Officer

नई दिल्ली, 24 जून, 2024

का.आ. 1296.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार ईएल.सी.. के प्रबंधतंत्र के संबद्ध नियोजको और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में **केन्द्रीय सरकार औद्योगिक अधिकरण –सह– श्रम न्यायालय**,आसनसोल के पंचाट (सन्दर्भ संख्या **09/2015**) को प्रकाशित करती है, जो केन्द्रीय सरकार को **24/06/2024** को प्राप्त हुआ था।

[सं..एल. 22012/61/2015-आई.आर. (सी.एम-II)]

मणिकंदन. एन, उप निदेशक

New Delhi, the 24th June, 2024

S.O. 1296.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award **(Reference.I.D.No.09/2015*)*** of the **Central Government Industrial Tribunal-cum-Labour Court, Asansol** as shown in the Annexure, in the industrial dispute between the Management of **E.C.L.** and their workmen, received by the Central Government on **24*/06/2024.***

[No. L-22012/61/2015 –IR (CM-II)]

MANIKANDAN. N , Dy. Director

ANNEXURE

BEFORE THE CENTRAL GOVT. INDUSTRIAL TRIBUNAL -CUM- LABOUR COURT,

ASANSOL.

PRESENT: Shri Ananda Kumar Mukherjee,
Presiding Officer,
C.G.I.T-cum-L.C., Asansol.

REFERENCE CASE NO. 09 OF 2015

PARTIES: Ramjee Bhuia

Vs.

Management of Bankola Colliery of ECL

REPRESENTATIVES:

For the Union/Workman: Mr. Rakesh Kumar, President, Koyala Mazdoor Congress.

For the Management of ECL: Mr. P. K. Goswami, Advocate.

INDUSTRY: Coal.

STATE: West Bengal.

Dated: 28.05.2024

A W A R D

In exercise of powers conferred under clause (d) of Sub-section (1) and Sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), the Government of India through the Ministry of Labour, vide its Order **No. L-22012/61/2015-IR(CM-II)** dated 15.09.2015 has been pleased to refer the following dispute between the employer, that is the Management of Bankola Colliery under Bankola Area of Eastern Coalfields Limited and their workman for adjudication by this Tribunal.

SCHEDULE

" Whether the action taken by management in dismissing Sri Ramjee Bhuia, Ex-EIMCO Helper, U.M.No. 249815 is legal and justified? If not, what relief is entitled to by the workman "

1. On receiving Order **No. L-22012/61/2015-IR(CM-II)** dated 15.09.2015 from the Government of India, Ministry of Labour, New Delhi for adjudication of the dispute, a **Reference case No. 09 of 2015** was registered on 29.09.2015 and an order was passed for issuing notice to the parties through registered post, directing them to appear and submit their written statements along with relevant documents in support of their claims and a list of witnesses.

2. The management contested the case by filing their written statement on 07.06.2016. The workman filed written statement on 10.01.2018 through Mr. Rakesh Kumar, Union representative. Fact of the case delineated in the written statement of the workman is that Ramjee Bhuia was a permanent employee under Eastern Coalfields Limited (hereinafter referred to as ECL) bearing U.M. No. 249815. Due to his absence from duty from 16.07.1999 a Charge Sheet was issued to the workman bearing No. BK:PD:15(10):286 Dated 27.08.1999. The workman replied to the charge levelled against him, informing that due to illness he was unable to attend his duty from 16.07.1999 to 27.08.1999. The management initiated a Departmental Enquiry and Notice of enquiry was issued to the workman but due to short notice it was not delivered to the workman in time and he was unable to have any information regarding the date fixed for enquiry. As a result, the workman could not appear before the Enquiry Officer. The enquiry was held ex-parte and report was submitted by the Enquiry Officer, holding the workman guilty of the charge. The colliery management submitted a proposal for dismissal of the workman and forwarded the same to the General Manager of the Area. The competent authority of the company in an illegal manner, without exercising its discretion imposed a harsh punishment of dismissal. According to the worker's union the punishment awarded should be proportionate to the nature of misconduct. In the instant case the management awarded disproportionate punishment for absenting from duty for a period of 1 month and 11 days. It is contended that the past record of the workman was good and he was regular in his attendance. Ramjee Bhuia submitted Mercy Petitions before the management of the company for being considered in terms of Memorandum of Settlement dated 22.05.2007 but the same were not taken into consideration. Though Ramjee Bhuia was a young man below 45 years of age and his period of absence was less than 9 months, the period of his absence in fact was only for 1 month and 11 days. It is the case of the workman that in the past several mercy petitions were considered and thousands of workers were allowed to join their duty. According to the aggrieved workman he has no source of income to maintain his livelihood and is facing hardship along with his family members.

3. It is contended on behalf of the workman that the management did not issue any 2nd Show Cause Notice and the documents related to the Enquiry Proceeding was not issued to him before his dismissal. It is urged that the dismissal of the workman without service of 2nd Show Cause Notice and not providing him with the Enquiry Report is violative to the law laid down by the Hon'ble Supreme Court of India in the case of **Union of India and Others Vs. Mohd. Ramzan Khan [AIR (1991) SC 471]** and Circular issued by the Director (P & IR) of Coal India Limited bearing No. CIL C-5A(vi)/50774/28 dated 12.05.1994. It is urged that in the case of Bagia Nayak of Chora Colliery and Damu Dakua of Khas Kajora Colliery, the Hon'ble High Court directed to issue 2nd Show Cause Notice and set aside the order of dismissal of the workman. It is urged that in the instant case the workman should be issued 2nd Show Cause Notice and the order of dismissal should be declared illegal and workman should be allowed to join his duty with full back wage.

4. The management in their written statement submitted that Ramjee Bhuia is a habitual absentee and on earlier occasion he was punished several times. In the year 1993 he was allowed to join duty after stoppage of 1 increment, in the year 1995 the workman was warned and 1 increment was stopped, in the year 1997 he was punished by stoppage of 3 increments, in the year 1998 he was suspended for 2 days, and in the year 1999 there have been stoppage of three increments for his misconduct of unauthorized absence. The management contended in their written statement that attendance of the workman during last 4 years was not good. In the year 1996 he did not attend his duty even for a single day, in the year 1997 he attended work only on 144 days, in the year 1998 his attendance went down to only 78 days and in the year 1999 up to June his attendance was only 27 days. Management appointed the Enquiry Officer and three Notice of enquiry dated 27.09.1999, 01.11.1999 and 18.1.1999 were issued to the workman for attending the Enquiry Proceeding. The workman did not reply to the Charge Sheet. The Enquiry Proceeding was held ex-parte and the General Manager, Bankola Area by his letter bearing No. BA/PD/Dis/301 dated 20.01.2000 sent the photocopies of Enquiry Proceeding and findings to the charged employee, asking him to reply. Finally, the service of the workman was terminated w.e.f. 16.02.2000. The workman raised an Industrial Dispute on 24.08.2012 after lapse of 12 years from his dismissal, without assigning any reason for such delay. The management strongly asserted that the dismissal of Ramjee Bhuia is legal and he is not entitled to any relief.

5. The point in controversy between the parties is whether the dismissal of Ramjee Bhuia, from services of the company is legal and justified. If not what relief the dismissed workman is entitled to?

6. In order to substantiate his case Ramjee Bhuia examined himself as Workman Witness – 1. He filed an affidavit-in-chief and faced the cross-examination. The workman produced three documents which are three Mercy Petitions dated 22.03.2012, 28.03.2012, and 29.03.2012, which are marked as Exhibit W-2, W-1, and W-3

respectively. In his affidavit-in-chief the workman stated that he replied to the Charge Sheet but management decided to appoint Enquiry Officer for enquiry. This goes to establish that management had served copy of Charge Sheet upon the workman disclosing the charge. At the time of his examination-in-chief the workman stated that he was absent from duty for 2 to 3 months in the year 1999, for which he was chargesheeted. He also stated that he did not remember anything regarding the Charge Sheet, enquiry and dismissal. The workman stated that he could not attend duty due to inconvenience as his place of residence was far away from his place of work.

7. In cross-examination the workman denied having received the 2nd Show Cause Notice and order of dismissal through registered post at his native place. The witness deposed that he will produce medical documents to prove that he was suffering from illness during his absence from duty but no such document was produced by him.

8. Mr. Dibyendu Ghosh, Deputy Manager (Personnel), Bankola Colliery was examined as Management Witness – 1. He filed an affidavit-in-chief wherein he disclosed that Ramjee Bhuia absented from duty from 16.07.1999 to 27.08.1999 without any intimation or prior leave, for which he was chargesheeted on 27.08.1999. In his examination-in-chief the witness stated that he has no document to show that the Charge Sheet was served upon the concerned employee. Three Notice of enquiry were sent to the workman under registered post and the same have been produced as Exhibit M-6 Series. The witness admitted that the Postal Envelope and Notice which have been produced as Exhibit M-1 and M-2 were not related with present proceeding and further admitted that the management had no record to show that the Charge Sheet and Notice of enquiry were served upon the workman. Apart from Exhibit M-1 and M-2, which are not related to the present proceeding management produced the following documents :

(i) Photocopy of Service Excerpt of Ramjee Bhuia has been marked as Exhibit M-3.

(ii) Photocopy of the Service Register of Ramjee Bhuia in two pages has been collectively marked as Exhibit M-4.

(iii) Photocopy of the Chargesheet dated 27.08.1999, as Exhibit M-5.

(iv) Photocopy of the Three Notice of enquiry, as Exhibit M-6 series.

(v) Photocopy of the Enquiry Proceeding and findings in four pages has been collectively marked as Exhibit M-7.

(vi) Photocopy of the 2nd Show Cause Notice dated 20.01.2000, as Exhibit M-8.

(vii) Photocopy of the Postal Receipt under which the 2nd Show Cause Notice was sent to the workman, as Exhibit M-9.

(viii) Photocopy of the letter of dismissal dated 15.02.2000, as Exhibit M-10.

9. Mr. Rakesh Kumar, Union representative advancing his argument on behalf of the dismissed workman submitted that the workman was absent for one month and eleven days from 16.07.1999 to 27.08.1999 only due to his illness but the management without serving any Charge Sheet, initiated an Enquiry Proceeding against the workman and imposed a disproportionate punishment of dismissal for a minor misconduct of absence, though the workman was not a habitual defaulter. It is further argued that at the time of dismissal the workman was only thirty-six years of age and he submitted mercy petitions which were not considered. Mr. Rakesh Kumar, Union representative strongly contended that the dismissal of the workman was arbitrary, unjust and the order of dismissal is liable to be set aside and the workman should be reinstated in service.

10. Mr. P. K. Goswami, learned advocate for the management of ECL argued that his Industrial Dispute is not maintainable. The workman had remained absent for a long period without any information or prior permission and that he was a habitual absentee and violated the provisions of Section 17(i)(n) of the Model Standing Orders applicable to the company. Learned advocate referring to Paragraph – 4 of the affidavit-in-chief submitted by Ramjee Bhuia, the workman admitted receipt of the Charge Sheet and submitted a reply against the same. Learned advocate argued that sufficient opportunity was given to the workman to participate in the Enquiry Proceeding and three Notice of enquiry were sent to him one after another at his home address under registered post but the workman chose to remain away. Though it has been claimed by the workman that he was suffering from illness, no medical document has been produced. In course of the Departmental Enquiry management representatives were examined who stated that Ramjee Bhuia was a habitual absentee and in the preceding three years he attended duty for only 48 days in the year 1998, 144 days in the year 1997 and in the year 1996 his attendance was nil. Learned advocate submitted that in the written statement management has categorically stated about habitual absence of the workman from duty but the workman has not denied the same. After the charge was proved against the workman a 2nd Show Cause Notice was issued to him by the General Manager of Bahula Colliery on 20.01.2000 (Exhibit M-8) providing him an opportunity to submit representation against the findings of Enquiry Officer. Learned advocate submitted that the 2nd Show Cause Notice was communicated to the workman under registered post and the postal receipts have been marked as Exhibit M-9. The competent authority thereafter observing the principles of natural justice passed an order of dismissal of Ramjee Bhuia in his letter dated 15.02.2000, which was sent to him under registered post at his home address at Vill:

Barhara Bartara, PO: Barhara, Dist.: Munghyer (Bihar). After twelve years the workman raised this Industrial Dispute which in a futile attempt for his reinstatement. Learned advocate urged that there is no merit in the Industrial Dispute and the same is liable to be set aside.

11. I have carefully considered the facts and circumstances, and evidence adduced by both parties and the argument advanced on behalf of the contending parties. The admitted fact is that Ramjee Bhuia is a permanent employee under ECL and hailed from Vill: Barhara Bartara, PO: Barhara, Dist.: Munghyer (Bihar). He was absent from duty from 16.07.1999 to 27.08.1999 without any information and was chargesheeted for his unauthorized and habitual absence from duty without information. The union representative argued that the Charge Sheet was not served upon the workman but in Paragraph – 4 of the written statement as well as in the affidavit-in-chief it is admitted that the workman replied to the Charge Sheet but the management decided to initiate an enquiry. Ordinary prudence would suggest that a person who is chargesheeted would try to find out the ultimate outcome of the reply he submitted. In the instant case the workman feigned not to have received the Notice of enquiry which were sent to him under registered post at his permanent address. In Paragraph – 6 of the written statement of the workman it is stated that the Enquiry Officer has served the Notice of enquiry to the workman through post but sufficient time was not given for which the letter did not reach the destination and he could not get the information about the date of enquiry. This statement implies that the Notice did not reach in time. From the evidence of management witness it transpires that three Notice of enquiry (Exhibit M-6 Series) addressed to the workman were issued on 27.09.1999, 01.11.1999, and 18.12.1999. At the Notices were issued during a period of three months, providing reasonable time to the charged employee to appear. Non-participation in the enquiry therefore speaks volume about the nonchalant conduct of the workman and his disinclination to respond to the Enquiry Proceeding. Copy of Enquiry Proceeding and findings has been produced as Exhibit M-7. The workman appears to have been found guilty the of charge for unauthorized and habitual absence, which have gone unrefuted. The controlling authority thereafter issued a 2nd Show Cause Notice along with a photocopy of the Enquiry Proceeding and findings, calling upon the charged employee for submitting his objection, if any, within three days from the receipt of the letter. The 2nd Show Cause Notice which has been produced as Exhibit M-8 was transmitted to the workman under registered post and the postal receipt has been marked as Exhibit M-9. The statement of the workman in cross-examination that he did not receive the 2nd Show Cause Notice is therefore not acceptable. The competent authority after considering the materials available to him decided to dismiss the workman and issued a letter of dismissal on 15.02.2000, which has been produced as Exhibit M-10. The order of dismissal was sent to the workman through registered post and the same is binding upon the charged employee. After passage of twelve year the workman submitted three representations under the guise of Mercy Petition for his reinstatement. The petition dated 22.03.2012, 28.03.2012, and 29.03.2012 have been produced as Exhibit W-1, W-2, and W-3. There is no rhyme and reasons as to why such application has to be entertained by the management of ECL after twelve years from the date of dismissal. The workman remained absent for several days and took a plea of his illness. Till date he has not disclosed the nature of illness or the place he has received the medical treatment. No medical document has been produced by him. In his examination-in-chief the workman has come out with the truth by deposing that he could not attend duty as his place of residence was far away from the place of work.

12. Having considered aforesaid facts and circumstances I hold that the order of dismissal of Ramjee Bhuia issued by the management suffers from no illegality, impropriety or irregularity and the same calls for no interference. The dismissed workman therefore is not entitled to any relief in this case and the Industrial Dispute is dismissed on contest.

Hence,

O R D E R E D

that the order of dismissal of Ramjee Bhuia from his service suffers from no illegality and there is no reason for interfering with the same. The Industrial Dispute is dismissed. Let an award be drawn up in the light of my above findings. Let copies of the Award in duplicate be sent to the Ministry of Labour, Government of India, New Delhi for information and Notification.

ANANDA KUMAR MUKHERJEE, Presiding Officer

नई दिल्ली, 24 जून, 2024

का.आ. 1297.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार ई.सी.एल. के प्रबंधतंत्र के संबद्ध नियोजको और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में **केन्द्रीय सरकार औद्योगिक अधिकरण –सह– श्रम न्यायालय**,आसनसोल के पंचाट (सन्दर्भ संख्या **18/2019**) को प्रकाशित करती है, जो केन्द्रीय सरकार को **24/06/2024** को प्राप्त हुआ था।

[सं..एल. 22012/27/2019-आई.आर. (सी.एम-II)]

मणिकंदन. एन, उप निदेशक

New Delhi, the 24th June, 2024

S.O. 1297.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award **(Reference.I.D.No.18/2019*)*** of the **Central Government Industrial Tribunal-cum-Labour Court, Asansol** as shown in the Annexure, in the industrial dispute between the Management of **E.C.L.** and their workmen, received by the Central Government on **24*/06/2024*.**

[No. L-22012/27/2019 – IR (CM-II)]

MANIKANDAN. N , Dy. Director

ANNEXURE

BEFORE THE CENTRAL GOVT. INDUSTRIAL TRIBUNAL -CUM- LABOUR COURT, ASANSOL.

PRESENT: Shri Ananda Kumar Mukherjee,
Presiding Officer,
C.G.I.T-cum-L.C., Asansol.

REFERENCE CASE NO. 18 OF 2019

PARTIES: Sunil Majhi

Vs.

Management of Madhabpur Colliery of ECL

REPRESENTATIVES:

For the Union/Workman: Mr. Rakesh Kumar, President, Koyala Mazdoor Congress.

For the Management of ECL: Mr. P. K. Das, Adv.

INDUSTRY: Coal.

STATE: West Bengal.

Dated: 20.05.2024

A W A R D

In exercise of powers conferred under clause (d) of Sub-section (1) and Sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), the Government of India through the Ministry of Labour, vide its Order **No. L-22012/27/2019-IR(CM-II)** dated 05.03.2019 has been pleased to refer the following dispute between the employer, that is the Management of Madhabpur Colliery under Kajora Area of Eastern Coalfields Limited and their workman for adjudication by this Tribunal.

SCHEDULE

" *Whether the action of the management of M/s Eastern Coalfields Ltd. in dismissing Sri Sunil Majhi, Ex-General Mazdoor of Madhavpur Colliery of Eastern Coalfields Ltd. vide Office Order No. KA: APM(IC): C-6: Dismissal: 10/2382 dated 13.3.2015 is legal and justified? If not, what relief Sri Sunil Majhi, Ex- General Mazdoor is entitled to?* **"**

1. On receiving Order **No. L-22012/27/2019-IR(CM-II)** dated 05.03.2019 from the Government of India, Ministry of Labour, New Delhi for adjudication of the dispute, a **Reference case No. 18 of 2019** was registered on 26.03.2019 and an order was passed for issuing notice to the parties through registered post, directing them to appear and submit their written statements along with relevant documents in support of their claims and a list of witnesses.

2. The dismissed workman filed his written statement through the workman's union on 13.12.2022. The management of Eastern Coalfields Limited (hereinafter referred to as ECL) contested the case by filing their written statement on 26.04.2023. The fact of the workman's case is that Sunil Majhi was a General Mazdoor at Madhabpur Colliery under Kajora Area of ECL, having U.M. No. 109553. On 25.11.2014 the management issued a Charge Sheet against Sunil Majhi on a charge of attempt to commit suicide in Pit No. 2 of Madhabpur Colliery in the night of 25.11.2014 at 11.00 p.m. The workman submitted his reply denying the allegation. According to him he was going to attend a nature's call in the premises of the Mine. Due to dearth of light, he suddenly fell down in Shaft No. 2 of Madhabpur Colliery but caught hold of Winding Rope to save his life. The workman denied the charge of attempt to commit suicide levelled against him and prayed for withdrawing the charge and allow him to join his duty. The management suspended him from work and initiated an enquiry against him by appointing an Enquiry Officer. The workman attended the Enquiry Proceeding where he disclosed that he fell down in the shaft but Enquiry Officer did not pay heed to his statement and awarded him the highest punishment of dismissal by order No. KA:APM(IC):C-6:Dismissal:10/2382 dated 13.03.2015.

3. The dismissed workman urged that the punishment awarded against him is disproportionate to the nature of alleged misconduct and that the management instead of issuing any 2nd Show Cause Notice, dismissed him from the service without complying with the mandate of the Hon'ble Supreme Court of India as well as the Circular issued by the Director (P & IR), Coal India Limited, regarding issuance of 2nd Show Cause Notice to the charged employee, seeking his representation on the findings of the Enquiry Officer.

4. According to the workman the order of dismissal is liable to be set aside and the workman should be reinstated in his service. Further case of the workman is that he has no source of income for his livelihood and he submitted a Mercy Petition before the management of the colliery as well as the Headquarters of ECL for considering his prayer for reinstatement but no decision has been taken on his application so far. The aggrieved workman contended that on the instruction of the local management he was compelled to admit the charge and undertook that in future he shall not commit any mistake or repeat such misconduct. It is contended that the management could not prove the charge on the basis of any independent evidence. According to the workman the occurrence was an accident. The workman has not been paid the sustenance allowance during the period of his suspension until his dismissal. It is also asserted that management could not prove the charge against him of violation of the Coal Mines Regulations, 1957.

5. The management contested the case by filing written statement through the Agent of Madhabpur Colliery. According to the management the Industrial Dispute raised by the workman is not sustainable under the law. It is their case that Sunil Majhi had attempted to commit suicide by jumping into pit shaft No. 2 of Madhabpur Colliery by crossing the pit fence from the southern side. Such act of the workman is a misconduct under Clause 26.3, 26.15, 26.22, and 26.26 of the Certified Standing Order of the company. The management chargesheeted the workman and Charge Sheet No. Madh/Mgr./suspension/14/1339 dated 25.11.2014 was issued. A Departmental Enquiry was initiated and the workman participated in the enquiry. In course of the Enquiry Proceeding charge was levelled under Clause 26.3 for wilful insubordination or disobedience, whether alone or in conjunction with another or others of any lawful or reasonable order of a superior. Charge was also levelled under 26.15 for breach of Mines Act, 1952 or any Rules, Regulations or by-laws thereunder. Furthermore, charge was levelled under Clause 26.22 for sabotage or causing wilful damage to work in progress or to the property of the company as well as under Clause 26.26 for his misconduct within the mines premises or its precincts which endangered the life or safety of any person. In course of enquiry the charges were established against the workman. The findings of the Enquiry Officer was communicated to the General Manager, Kajora Area. Ample opportunity was given to the workman to defend himself. Complying all the formalities and observing the principles of natural justice the workman was dismissed from his service and the question of wrongful dismissal does not arise. An order of dismissal was passed against the workman but the same was not challenged in any appeal within 45 days from the date of issuance of the order. It is further stated that the workman was awarded punishment on earlier occasion with stoppage of 3 SPRA (Special Peace Rate Allowance) with cumulative effect for his absence from duty from 14.04.1997 to 29.08.1997. On another instance in the year 2007 he was allowed to resume his duty after stoppage of 1 SPRA for his unauthorized absence from duty. Management relied upon the Hon'ble High Court at Calcutta in the case of **Some Majhi Vs. Coal India Limited & Others [W.P. No. 800 of 2014]**, wherein it was held that :

"An employee must take his duties seriously. He must perform his functions with honesty and sincerity. He cannot take his employment for granted. He must follow the rules and regulations of the employer company. He must conduct himself in a disciplined manner. He must perform his duty with responsibility."

The management of the company urged that the action of the management in dismissing Sunil Majhi was justified and the Industrial Dispute raised by the union has no merit and the case is liable to be dismissed.

6. Sunil Majhi filed an affidavit-in-chief and examined himself as Workman Witness – 1. He has reiterated the case disclosed in the written statement. It has been stated in the affidavit-in-chief that the workman participated in the Enquiry Proceeding and explained the situation as to how he fell down the shaft and how he saved his life. He asserted that he never attempted to commit suicide but instead of paying heed to that, the management of the colliery assured that if he accepted the charge and testified that would not commit such act in future, he would be allowed to join his duty. The workman misled by such persuasion stated that he committed the mistake and the Enquiry Officer held him guilty and submitted a report proposing the highest punishment of dismissal. It is asserted that the management without issuing any 2nd Show Cause Notice and without supplying copy Enquiry Proceeding and findings of the Enquiry Officer, issued the order of dismissal in violation of the mandate of the Hon'ble Supreme Court of India and Circular of the Director (P & IR), Coal India Limited. The management without considering all these aspects, issued an order of dismissal of Sunil Majhi. A mercy petition was filed by the workman for his reinstatement. The management of the Area sent the proposal to the Headquarters but no action was taken. Till date the management has not considered the mercy petition. The workman denied having attempted to commit suicide and asserted that the management failed to prove the charge against him. It is urged that there has been no violation of the Coal Mines Regulations, 1957 by the charged employee. The incident was an accident and there had been no deliberate attempt to jump into the shaft. In course of his evidence the witness has produced the following documents:

(i) Photocopy of the Identity Card of the workman issued by the management has been marked as Exhibit W-1.

(ii) Photocopy of the Charge Sheet dated 25.11.2014, as Exhibit W-2.

(iii) Photocopy of the reply submitted by the workman dated 12.12.2014 against the Charge Sheet, as Exhibit W-3.

(iv) Photocopy of the order of dismissal dated 13.03.2015, as Exhibit W-4.

(v) Photocopy of the Mercy Petition of the workman dated 29.07.2016, as Exhibit W-5.

(vi) Photocopy of the letter dated 21.02.2017 issued by the Senior Manager (Personnel) of Kajora Area for reinstatement of the Sunil Majhi along with others, as Exhibit W-6.

7. In course of cross-examination the workman witness deposed that he did not know that D. B. Chakraborty, a co-worker who was nominated to provide assistance to him. Workman admitted that he stated before the Enquiry Officer that due to mental illness and depression he had jumped into the mining pit. The workman witness stated that he recovered after 1 and ½ hours from the time he fell into the pit. The witness did not inform as to who were the persons who rescued him. In cross-examination he stated that he was taken straight to the Andal Police Station at the instance of the Manager. It may be derived from the cross-examination of workman witness – 1 that he did not sustain any injury due to the fall and that there was no fence around the pit, where he had fallen. He also denied the suggestion that he had jumped into the pit by crossing the fence. According to the workman he went to attend nature's call on the night and had slipped into the pit.

8. Mr. Proloy Dasgupta, Manager (Personnel), Khas Kajora Group of Mines of Madhabpur Colliery adduced evidence for the management. He has been examined as Management Witness – 1. The witness stated that Sunil Majhi was dismissed from his service for his attempt to commit suicide in the night of 22.11.2014 and also for his wilful insubordination and disobedience in complying the rules of the company and his superior officers and that he caused damage to the property of the management and endangered life and safety of other co-workers. After the Charge Sheet was served, Sunil Majhi submitted his reply and when the Enquiry Proceeding was initiated the workman participated in the Enquiry Proceeding. Md. Arif, Senior Manager / Safety Officer of Madhabpur Colliery held the enquiry and Mr. Mohit Kumar Nandi, Manager (M)/ Assistant Manager of Madhabpur Colliery represented the management. In course of his evidence the management witness has produced the following documents :

(i) Photocopy of the Charge Sheet dated 25.11.2014 has been produced as Exhibit M-1.

(ii) Photocopy of the reply of the workman dated 12.12.2014 submitted against the Charge Sheet, as Exhibit M-2.

(iii) (Photocopy of the office order dated 11.01.2015, appointing Md. Arif as Enquiry Officer and Mr. Mohit Kumar Nandi, as Management Representative for the enquiry has been produced as Exhibit M-3.

(iv) Photocopy of the Notice of enquiry dated 12.01.2015, as Exhibit M-4.

(v) Photocopy of the Enquiry Proceeding in eight pages collectively, as Exhibit M-5.

(vi) Photocopy of the findings of the Enquiry Officer dated 13.01.2015, as Exhibit M-6.

(vii) Photocopy of the letter dated 14.01.2015 by which the enquiry report along with Enquiry Proceeding and findings were submitted before the Chief Manager (M)/ Agent of Madhabpur Colliery, as Exhibit M-7.

(viii) Photocopy of the Note Sheet dated 14.01.2015 / 17.01.2015 whereby the Senior Manager (Mining) proposed a strong disciplinary action against the employee, as Exhibit M-8.

(ix) Photocopy of the order of dismissal of Sunil Majhi dated 13.03.2015, as Exhibit M-9.

9. In cross-examination the management witness deposed that no 2nd Show Cause Notice was issued to the workman and the workman filed a mercy petition after more than 1 year and 3 months from the date of dismissal. The same was forwarded to the headquarters but till date no decision on the mercy petition has been communicated by the headquarters. The witness admitted that no person was injured due to the occurrence. But the company sustained loss due to stoppage of work. The witness denied that the punishment was disproportionate to the nature of misconduct.

10. The point for consideration is whether dismissal of Sunil Majhi from the service of ECL is legal and justified and to what relief the dismissed workman is entitled to?

11. Mr. Rakesh Kumar, Union representative arguing the case on behalf of the workman submitted that Sunil Majhi was attending the night-shift duty on 22.11.2014 and when he went to attend nature's call, he accidentally fell in the shaft of the Pit No. 2 of Madhabpur Colliery. The management of the company instead of treating the matter

sympathetically issued a Charge Sheet against the workman on 25.11.2014 accusing him of attempt to commit suicide. Sunil Majhi was suspended from service and he participated in the Enquiry Proceeding. Though there was no charge of previous absence from duty, the Enquiry Officer in course of the Departmental Proceeding had considered extraneous material and proposed his dismissal. It is strenuously argued that after receiving a copy of the Charge Sheet (Exhibit W-2), Sunil Majhi submitted his reply dated 12.12.2014 (Exhibit W-3) where he stated that he went to attend nature's call and suddenly fell down into the pit. He denied the charge of attempt to commit suicide or being responsible for endangering the life of co-workers or liable for the loss of any production but the management decided to initiate a Departmental Proceeding against the workman where on the instruction and assurance of the management that if he admitted the charge he would be reinstated in service, Sunil Majhi admitted the charge levelled against him. The Enquiry Officer recorded the statement of Sunil Majhi that he has committed a blunder and would never repeat such type of misconduct and insubordination in future. It is urged that the contents of the reply submitted by Sunil Majhi against the Charge Sheet and the statement appeared to have been recorded by the Enquiry Officer are contradictory and diametrically opposite in nature. It is argued that charged employee was misled during the course of Enquiry Proceeding leading to such anomalous situation. It is vehemently argued that the charge of attempt to suicide has not been proved by any independent evidence of any management representative. It is further argued that the occurrence took place suddenly and there was no occasion for the workman to act in insubordinate manner to the instruction of superior officer in that part of the night. No management representative has been examined in course of Enquiry Proceeding to establish the charge against the workman. Mr. Rakesh Kumar asserted that after completion of enquiry by the Enquiry Officer no 2nd Show Cause Notice was issued to the workman seeking his representation in respect of the Enquiry Proceeding and the findings made against him. Non-issuance of 2nd Show Cause Notice and non-service of Enquiry Proceeding to the workman it is contended would vitiate the management's finding and dismissal of the workman. It is urged that the Enquiry Proceeding held against Sunil Majhi is arbitrary, in violation of natural justice and the order of dismissal is liable to be set aside and the workman is entitled to be reinstated in his service.

12. Mr. P. K. Das, learned advocate for the management of ECL, in reply argued that the Coal Mines Regulations, 1957 has to be complied by the employees and any breach of the said Regulation 38(1)(a), 38(1)(b), and 38(3)(a) would make him liable for punishment. It is submitted that every person in the mines is required to adhere to the provisions of the Mines Act and regulations and orders made thereunder, and to any order or direction issued by the Manager or any Official for the safety or convenience of, nor shall they neglect or refuse to obey such order or directions. It is argued that according to Regulation 38(3)(a) no person shall, except with the authority of an official, remove or pass through any fence, barrier or gate, or remove or pass any danger signal. Mr. P. K. Das argued that the charged employee had crossed the fence and jumped into Pit No. 2 of the colliery with an object to commit suicide and he willfully disobeyed the instruction of his co-workers and superiors when they tried to rescue him. According to learned advocate for the management the charged employee participated in the Enquiry Proceeding and admitted his guilt. The Enquiry Officer in his findings (Exhibit M-6), stated that a fair and impartial enquiry was conducted against Sunil Majhi, who attempted to commit suicide by jumping into the pit due to personal problems. Workman admitted the charge levelled against him and that he endangered his own safety as well as of other workers of the colliery, affecting the production of sixty tons of coal, causing a loss of Rs. 2,40,000/-. Learned advocate for the management referred to the order of dismissal and the Note Sheet of the General Manager of Kajora Area, whereby the controlling authority had taken a decision to dismiss the workman for his misconduct. It is argued that the punishment imposed by the management is proportionate to the misconduct and there is no valid reason for interfering with the same.

13. I have considered the facts and circumstances involved in this case as well as argument advanced by the rival parties. The Charge Sheet issued against the workman on 25.11.2014 (Exhibit W-2 or M-1) disclosed that on the night of 22.11.2014, Sunil Majhi attempted to commit suicide by jumping into the Pit No. 2 of Madhabpur Colliery from southern side, by crossing the fence and endangered his life as well as other persons working at top and below ground. It is further disclosed that such suicidal act interrupted the winding operation in Pit No. 2 in the 2nd shift, affecting production up to 4.00 a.m. The workman was hanging by holding the winding-rope about 15 feet below the surface, in the pit. When he was asked by the co-worker and management, he ignored their request to come out. By such act the charged employee deliberately violated the Regulation 38(1)(a), 38(1)(b), and 38(3)(a) of the Coal Mines Regulations, 1957 and acted in insubordinate manner and caused wilful damage to work in progress and to the property of the company. Charges under Clause 26.3, 26.15, 26.22, 26.26 of the Certified Standing Order were levelled against the workman. He was directed to submit a written reply, otherwise a disciplinary action would be initiated against him. The workman in his reply dated 12.12.2014 (Exhibit W-3) denied the charges and categorically stated that he went to attend nature's call beside the pit and suddenly fell down the pit, but was luckily saved. He denied the allegation of any attempt to commit suicide by him or that his act endangered the life of persons or loss of any property. The management of ECL has not been able to disclose the decision taken on the reply of Sunil Majhi against the Charge Sheet and without assigning any reason of non-acceptance of the reply, initiated a Departmental Proceeding. The workman participated in the Enquiry Proceeding and appears to have admitted the charge. In his affidavit-in-chief the workman witness categorically stated that during the enquiry he did not attempt to commit suicide but the Enquiry Officer and the management representative did not pay heed to him. In Paragraph 6 of the affidavit-in-chief he stated that the management of the colliery assured him that if he accepts the charge and promised

that in future, he will not repeat such type of act then he will be allowed to join his duty. Relying upon such commitment of management he made statement before the Enquiry Officer that in future he will not commit such mistake. The Enquiry Officer then submitted his report awarding the highest punishment of dismissal. In cross-examination the witness denied that he made any statement before the Enquiry Officer that due to mental illness and depression he had jumped into the mining pit or that he made statement before the Enquiry Officer that he shall not jump into the pit in future. The cross-examination of WW-1 reveals that he did not suffer any injury due to fall and he was taken right away to the Police Station, Andal at the instance of the Manager. The workman further stated that when he slipped into the pit, he held the winding engine rope to avoid injury. His statement reveals that there was no fence around the pit, in which he has fallen.

14. Mr. Proloy Dasgupta, management witness field an affidavit-in-chief. In Paragraph 3 of the affidavit-in-chief he stated that Sunil Majhi attempted to commit suicide by jumping into the pit no. 2 of Madhabpur Colliery by crossing the pit fence. In course of enquiry the Enquiry Officer has named 6 MR witnesses namely, Mr. Ajay Kumar Singh, Mr. Subodh Kumar Roy, Mr. Kailash Ch. Besai, Mr. Robin Bouri, Mr. Bipul Mondal, Mr. Sanyasi Bouri. On careful scrutiny of Enquiry Proceeding, I find that the Enquiry Officer did not record any statement of these six persons in first person. It appears from Page 7 of the Enquiry Proceeding (Exhibit M-5) that without recording the statement of the six Management Representative witnesses the Enquiry Officer set out to assess their statements. From the four corners of the Enquiry Proceeding, I am unable to find any material statement of any person that the concerned workman had cross-examination the fence to jump into the pit or that there was any occasion to disobey any statement of any superior officer, or any senior officer was present at the place of occurrence. No management representative was examined by the Enquiry Officer in support of the charge that the workman acted in insubordinate manner. From the facts and circumstances of the case it is crystal clear that Sunil Majhi fell into the mining pit and he tried to save himself by holding the winding rope fifteen feet below the surface, in the pit. Later on, he managed to reach the bottom of the pit without sustaining any injury or causing injury to other co-workers. The workman denied that there was any fence around the pit. No management evidence has been adduced to establish that adequate care and protection had been taken by the management to encircle the pit either with fence or by wall. Therefore, it cannot be assumed that the pit of the colliery is safeguarded with any fence. The question of violating the Regulation 38 of Coal Mines Regulations, 1957 therefore does not arise. I also find that there is dearth of evidence to establish the charges under Clause 26.3, 26.15, and 26.22 of Certified Standing Order applicable to the employer and employee of the coal mines. Admittedly, workman had fallen into the shaft but no injury of the workman or his co-employees was reported that night.

15. Mining activity and operations are inherently dangerous in nature and for the purpose of ensuring safety, different safety measures have been recommended and regulations have been promulgated, necessitating strict adherence to the provisions of the Act and Regulations and orders are made by the Manager and Officials for the purpose of safety. Despite such regulation and vigilant activity of the management, accidents do occur. To make good the loss, laws have been enacted for providing compensation to workman for such loss suffered by them arising out of and in course of their employment. In a similar situation when the charged employee meets with an accident in the mine, the management needs to consider the case in a pragmatic manner instead of being bent upon to disown the responsibility by making the unfortunate workman a scapegoat. The conduct of the workman has to be considered as a whole. At one stage he denied the charge levelled against him and disclosed that he fell into the pit as an accident. The contrary statement recorded by the Enquiry Officer in course of Departmental Proceeding thereafter cannot be sustained in the light of the initial statement made by the workman in his reply to the Charge Sheet.

16. Having considered the facts and materials in the Enquiry Proceeding, except an admission on the part of the charged employee there is no material to establish that there had been any violation of safety rules under the Coal Mines Regulations, 1957 or insubordination on the part of the concerned workman. No independent evidence nor any material has transpired in the Enquiry Proceeding to establish any loss of life or property of co-workers or management. On a holistic consideration of the Enquiry Proceeding, I do not find it sustainable under the law.

17. The second contention in this case is non-issuance of 2nd Show Cause Notice and non-supply of Enquiry Proceeding and findings of the Enquiry Officer to the charged employee. The Hon'ble Supreme Court of India in the case of **Union of India and Others Vs. Mohd. Ramzan Khan [AIR (1991) SC 471]**, laid down the law as follows:

" When the Inquiry Officer is not the Disciplinary Authority, the delinquent employee has a right to receive a copy of the inquiry officer's report before the Disciplinary Authority arrives at its conclusion with regard to the charges levelled against him. A denial of the inquiry officer's report before the Disciplinary Authority takes its decision on the charges, is denial of opportunity to the employee to prove his innocence and is a breach of principles of natural justice."

The principle laid down by the Hon'ble Supreme Court of India was enforced by the Coal India Limited by way of issuing a Circular bearing No. CIL C-5A(vi)/50774/28 dated 12.05.1994, wherein it has been clearly laid down that the charged employee had to be supplied with Enquiry Proceeding and Enquiry Report and a 2nd Show Cause Notice

had to be issued to him before taking any final decision of removing him from service. In the instant case a Note Sheet (Exhibit M-8), issued by the Senior Manager (Mining), Madhabpur Colliery has been produced before this Tribunal to show that the General Manager of Kajora Area having found no extenuating circumstance to take any lenient view decided to award the punishment of dismissing Sunil Majhi from the service of the company. On the basis of such decision Assistant Personnel Manager (IC) of Kajora Area issued an office order dated 13.03.2015 (Exhibit M-9), dismissing Sunil Majhi from service of the company w.e.f. 13.03.2015. It goes without saying that not having issued any 2nd Show Cause Notice to the workman, seeking his representation against the findings and possible punishment, there was no scope for the Disciplinary Authority to make any observation as to non-existence of extenuating circumstance. In my considered view the management having failed to issue 2nd Show Cause Notice has committed yet another lapse in the Enquiry Proceeding. I therefore hold that due to such lapse in the Enquiry Proceeding, dismissal of Sunil Majhi from service is not found sustainable in law and fact.

18. In view of my aforesaid discussion, I hold that order of dismissal dated 13.03.2015 issued against Sunil Majhi for his removal from service from 13.03.2015 is unreasonable, improper, arbitrary, passed in violation of natural justice and is not tenable under the facts and circumstances. The order of dismissal dated 13.03.2015 passed by the Assistant Personnel Manager (IC) of Kajora Area is set aside. Management is directed to reinstate the workman within one (1) month from the date of communication of the Award. Since the workman has not adduced any evidence that he did not work for gain after his dismissal and that he did not render service for the company since March, 2015 he shall not be entitled to any back wages. His only relief in this case is his reinstatement in service within one month from communication of the Award. He shall also be entitled to all consequential benefits, treating the period of his absence as dies non.

Hence,

O R D E R E D

that the Industrial Dispute is allowed on contest against management of ECL. The order of dismissal dated 13.03.2015 issued by the Assistant Personnel Manager (IC) of Kajora Area, ECL on approval of the General Manager of Kajora Area is hereby set aside. The management of ECL is directed to reinstate Sunil Majhi in the service of the company within one (1) month from the date of communication of the Award. Let an award be drawn up in the light of my above findings. Let copies of the Award in duplicate be sent to the Ministry of Labour, Government of India, New Delhi for information and Notification.

ANANDA KUMAR MUKHERJEE**,** Presiding Officer

नई दिल्ली, 24 जून, 2024

का.आ. 1298.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार वेकोलि पेंच क्षेत्र के प्रबंधतंत्र के संबद्ध नियोजको और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में **केन्द्रीय सरकार औद्योगिक अधिकरण –सह– श्रम न्यायालय**, जबलपुर के पंचाट (एल सी/14/आर/2022) को प्रकाशित करती है, जो केन्द्रीय सरकार को **18/06/2024** को प्राप्त हुआ था।

[सं..एल. 22012/28/2022-आई.आर. (सी.एम-II)]

मणिकंदन. एन, उप निदेशक

New Delhi, the 24th June, 2024

S.O. 1298.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award **(LC/R/14/2022*)*** of the **Central Government Industrial Tribunal-cum-Labour Court, Jabalpur** as shown in the Annexure, in the industrial dispute between the Management of **Vekoli Pench Area** and their workmen, received by the Central Government on **18*/06/2024***

[No. L-22012/28/2022 – IR (CM-II)]

MANIKANDAN. N , Dy. Director

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT, JABALPUR

NO. CGIT/LC/R/14/2022

Present: P.K.Srivastava

H.J.S..(Retd)

The In-charge,

Rashtriya Kalri Mazdoor Congress,

Post- Rawanwada, Jargal Camp,

Tehsil Parasia, District Chhindwara – 480447

Workman

Versus

The Chief General Manager,

Vekoli Pench Area,

District Chhindwara (Madhya Pradesh) - 480441

Management

A W A R D

(Passed on this 05th day of May-2024.)

As per letter dated 01/04/2022 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 reference number L-22012/28/2022 (IR(CM-II)) dt. 01/04/2022. The dispute under reference related to :-

"क्या राष्ट्रीय कोलियरी मजदुर कांग्रेस (म० प्र०) का श्री युसूफ खान, लिपिक के संबंध में मुख्य महाप्रबन्धक, वेकोलि, पेंच क्षेत्र, जिला छिंदवाड़ा (म० प्र०) व्दारा अनुचित श्रम व्यवहार करने, कथित ओवर टाइम का भुगतान न किये जाने एंव उनकी 216 दिनों की हाजरी काटे जाने एंव उनके नियम विरुध्द स्थानान्तरण किये जाने का दावा न्यायोचित है? यदि हाँ, तो कामगार श्री युसूफ खान, लिपिक (सेवा निवृत्ति दिनांक 30/4/2021) मुख्य महाप्रबन्धक, वेकोलि पेंच क्षेत्र, जिला छिंदवाड़ा (म० प्र०) से क्या कोई अनुतोष पाने के अधिकारी है? "

After registering the case on reference received, notices were sent to the parties and were duly served on them. Time was allotted to the workman to submit his statement of claim. In spite of the allotment of time and service of notice, the workman never turned up and submitted his statement of claim. Management also did not file its written statement of claim/ defence. No evidence was ever produced by any of the parties in this Tribunal.

The Initial burden to prove his claim is on the workman. Since the workman did not file any pleading nor did he file any evidence, in the absence of any evidence in support of holding the claim of the workman not proved, the reference deserves to be answered against the workman and is answered accordingly.

AWARD

In the light of this factual backdrop, holding that the claim of the workman is not proved, the reference deserves to be answered against the Workman and is answered accordingly.

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

P. K. SRIVASTAVA, Presiding Officer

DATE: 05/05/2024

नई दिल्ली, 24 जून, 2024

का.आ. 1299.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार वेकोलि पेंच क्षेत्र के प्रबंधतंत्र के संबद्ध नियोजको और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में **केन्द्रीय सरकार औद्योगिक अधिकरण –सह– श्रम न्यायालय**, जबलपुरकेपंचाट(एलसी-आर/**15/2022**) को प्रकाशित करती है, जो केन्द्रीय सरकार को **18/06/2024** को प्राप्त हुआ था।

[सं..एल. 22012/25/2022-आई.आर. (सी.एम-II)]

मणिकंदन. एन, उप निदेशक

New Delhi, the 24th June, 2024

S.O. 1299.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award **(Reference.LC/-R/15/2022*)*** of the **Central Government Industrial Tribunal-cum-Labour Court, Jabalpur** as shown in the Annexure, in the industrial dispute between the Management of **Vekoli Pench Area** and their workmen, received by the Central Government on **18*/06/2024.***

[No. L-22012/25/2022 – IR (CM-II)]

MANIKANDAN. N , Dy. Director

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT, JABALPUR

NO. CGIT/LC/R/15/2022

Present: P.K.Srivastava

H.J.S..(Retd)

The In-charge,
Rashtriya Kalri Mazdoor Congress,
Ravanwada, District Chhindwara – 480447

Workman

Versus

The Sub-Zone Manager,
Vekoli Nehria Sub-Zone,
Pench Area, District Chhindwara (Madhya Pradesh)- 480441

Management

A W A R D

(Passed on this 05th day of May-2024.)

As per letter dated 23/03/2022 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 reference number L-22012/25/2022 (IR(CM-II)) dt. 23/03/2022. The dispute under reference related to :-

"क्या राष्ट्रीय कालरी मज़दूर कांग्रेस, रावनवाड़ा, जिला छिंदवाड़ा व्दारा कामगार श्री युसूफ खान, क्लर्क, जो 30-04-2021 को सेवानिवृत हो चुके हैं, को वर्ष 2002 में नेहरिया उपक्षेत्र स्थानान्तरण होकर आने के पश्चात से वर्ष 2016 तक आवास किराया भत्ता, उपक्षेत्रीय प्रबन्धक, वेकोलि नेहरिया उपक्षेत्र, पेंच क्षेत्र, जिला छिंदवाड़ा (म० प्र०) व्दारा प्रदान नहीं किए जाने के सम्बन्ध में की गई मांग न्यायोचित है? यदि हाँ, तो श्री युसूफ खान, भूतपूर्व क्लर्क, वेकोलि नेहरिया उपक्षेत्र क्या अनुतोष पाने के अधिकारी है? "

After registering the case on reference received, notices were sent to the parties and were duly served on them. Time was allotted to the workman to submit his statement of claim. In spite of the allotment of time and service of notice, the workman never turned up and submitted his statement of claim. Management also did not file its written statement of claim/ defence. No evidence was ever produced by any of the parties in this Tribunal.

The Initial burden to prove his claim is on the workman. Since the workman did not file any pleading nor did he file any evidence, in the absence of any evidence in support of holding the claim of the workman not proved, the reference deserves to be answered against the workman and is answered accordingly.

AWARD

In the light of this factual backdrop, holding that the claim of the workman is not proved, the reference deserves to be answered against the Workman and is answered accordingly.

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

P. K. SRIVASTAVA, Presiding Officer

DATE: 05/05/2024

नई दिल्ली, 24 जून, 2024

का.आ. 1300.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार वेकोलि पेंच क्षेत्र के प्रबंधतंत्र के संबद्ध नियोजको और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में **केन्द्रीय सरकार औद्योगिक अधिकरण – सह – श्रम न्यायालय**, जबलपुरकेपंचाट(एलसी-आर/**16/2022**) को प्रकाशित करती है, जो केन्द्रीय सरकार को **18/06/2024** को प्राप्त हुआ था।

[सं..एल. 22012/27/2022-आई.आर. (सी.एम-II)]

मणिकंदन. एन, उप निदेशक

New Delhi, the 24th June, 2024

S.O. 1300.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award **(Reference.LC/-R/16/2022*)*** of the **Central Government Industrial Tribunal-cum-Labour Court, Jabalpur** as shown in the Annexure, in the industrial dispute between the Management of **Vekoli Pench Area** and their workmen, received by the Central Government on **18*/06/2024***

[No. L-22012/27/2022 – IR (CM-II)]

MANIKANDAN. N , Dy. Director

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT, JABALPUR

NO. CGIT/LC/R/16/2022

Present: P.K.Srivastava

H.J.S..(Retd)

The General Secretary,

United Coal Workers Union (AITUC),

Pench Kanhan Area, Ikalhara,

District Chhindwara (M.P) - 480441

Workman

Versus

The General Manager,

Vekoli Pench Area,

District Chhindwara (Madhya Pradesh)- 480441

Management

A W A R D

(Passed on this 05th day of May-2024.)

As per letter dated 01/04/2022 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 reference number L-22012/27/2022 (IR(CM-II)) dt. 01/04/2022. The dispute under reference related to :-

"क्या संयुक्त कोयला मजदूर संघ (एटक) का कामगार श्री नारायण पिता दिमाकचन्द, सुरक्षा प्रहरी का चौकीदार से सुरक्षा प्रहरी के पद पर पद परिवर्तन किये जाने के पश्चात दिसम्बर 2002 से कम किये गये वेतन में सुधार का महाप्रबन्धक वेकोलि पॅच क्षेत्र जिला छिंदवाड़ा (म० प्र०) से दावा न्यायोचित है? यदि हाँ तो कामगार नारायण पिता दिमाकचन्द प्रबन्धन से क्या अनुतोष पाने का अधिकारी है ? "

After registering the case on reference received, notices were sent to the parties and were duly served on them. Time was allotted to the workman to submit his statement of claim. In spite of the allotment of time and

service of notice, the workman never turned up and submitted his statement of claim. Management also did not file its written statement of claim/ defence. No evidence was ever produced by any of the parties in this Tribunal.

The Initial burden to prove his claim is on the workman. Since the workman did not file any pleading nor did he file any evidence, in the absence of any evidence in support of holding the claim of the workman not proved, the reference deserves to be answered against the workman and is answered accordingly.

AWARD

In the light of this factual backdrop, holding that the claim of the workman is not proved, the reference deserves to be answered against the Workman and is answered accordingly.

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

DATE: 05/05/2024

P. K. SRIVASTAVA, Presiding Officer

नई दिल्ली, 24 जून, 2024

का.आ. 1301.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एस.ई.सी.एल.के प्रबंधतंत्र के संबद्ध नियोजको और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में **केन्द्रीय सरकार औद्यागिक अधिकरण – सह – श्रम न्यायालय**, जबलपुर के पंचाट(एलसी-आर/**120/2012**) को प्रकाशित करती है, जो केन्द्रीय सरकार को **18/06/2024** को प्राप्त हुआ था।

[सं..एल. 22012/111/2012-आई.आर. (सी.एम-II)]

मणिकंदन. एन, उप निदेशक

New Delhi, the 24th June, 2024

S.O. 1301.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award **(Reference.LC/-R/120/2012*)*** of the **Central Government Industrial Tribunal-cum-Labour Court, Jabalpur** as shown in the Annexure, in the industrial dispute between the Management of **S.E.C.L.** and their workmen, received by the Central Government on **18*/06/2024***

[No. L-22012/111/2012 – IR (CM-II)]

MANIKANDAN. N , Dy. Director

ANNEXURE

THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT, JABALPUR

NO. CGIT/LC/R/120/2012

Present: P.K.Srivastava

H.J.S..(Retd)

The President,

Koyla Mazdoor Sabha (HMS), Qtr. No.-M/61

Dharam Colony, Post Chandra Sekharpur,

Aedu, District Raigarh, Chhattisgarh.

Workman

Vs

The Chief General Manager

SECL Raigarh Area, Behind Collectorate

Chhote Atarmuda, Post Box No.-26,

District Raigarh, Chhattisgarh.

Management

(J U D G E.M E N T)

(Passed on this 3rd day of June 2024)

As per letter dated 25/10/2012 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-22012/111/2012 IR(CM-II) dated 25/10/2012. The dispute under reference relates to:

> ***"Whether the action of management of the Chief General Manager, Raigarh Area of SECL, District Raigarh Chhattisgarh to deprive Shri Manoj Kumar Yadav for his promotion from Draughtsman (T&S Grade-C) to Senior Draughtsman (T&S Grade-B) in the year 2010 on the plea that the workman having no requisite minimum qualification for promotion (when the minimum qualification and experience are same for the promotion Draughtsman and Senior Draughtsman) was legal and justified ? To What relief the said workman is entitled to and from what date ?"***

After registering a case on the basis of the reference, notices were sent to the parties and were served. Parties appeared and filed their respective statements of claim and defense.

According to the workman, he was first appointed as General Mazdoor Category-1 on 29.12.1995 in Chhal incline of Raigarh area. He had qualification of ITI Surveyor, hence management engaged him on the post of Tracer/Draughtsman from the date of joining. He was regularized in higher category as Survey Mazdoor Category-2 vide order dated 22.11.1997. After passing written examination he was regularized in higher category as Tracer T & S, Grade-E vide order dated 04.09.1999. He was promoted as Assistant T & S, Grade-D vide order dated 21.12.2002 and Grade-C vide order dated 12.01.2007. According to the workman the qualifications for the post of Tracer and Senior Draughtsman are one and same i.e. Matriculate with Draughtsman ship from ITI. The ITI Surveyor is equivalent to Draughtsman ship from ITI on the basis of similar qualification other workers were promoted from Draughtsman T & S Grade-C to Draughtsman T & S Grade-B but it was refused in case of the workman by management in the year 2010 which is arbitrary on the part of management. The workman has accordingly prayed that holding this action of management in not promoting him from Draughtsman T & S Grade-C to Senior Draughtsman T & S Grade-B in 2010 on the ground that the workman did not have minimum qualification for promotion, (inspite of the fact the minimum qualification and experience for promotion of Senior Draughtsman & Draughtsman are same) illegal, the workman be held entitled to promotion to the post of Senior Draughtsman and also be held entitled to consequential benefits.

The Case of management is mainly that, the workman was first appointed as General Mazdoor Category-1. It came out that he had passed ITI Surveyor examination, he was permitted to work as Tracer. The General Mazdoor Cadre has not cadre scheme. The workman was promoted from General Category-1 to Category-2. The Cadre of Drawing Personnel is different from that of General Mazdoor. He was regularized in Drawing Personnel Cadre as Tracer T & S Grade-E vide order dated 07.04.1999 on the recommendation of committee. He was promoted to the post of Assistant Draughtsman, T&S Grade-D vide order dated 21.12.2002 and Draughtsman T&S Grade-C vide order dated 12.01.2007. At the time of consideration of his promotion as Senior Draughtsman, T&S Grade-B, it was found that he did not possess qualification for this promotion as per Cadre Scheme, hence was denied promotion to T&S Grade-B. It was also found that his promotion from post of Assistant Draughtsman to Draughtsman was due to mistake and oversight as he did not possess qualification required for this promotion. Accordingly, management has prayed that the reference be answered against the workman.

The workman filed his affidavit as his examination in chief he did not appear for cross examination. He has been cross examined by management. Management has filed affidavit of its witness as his examination in chief. He has been cross examined by workman side. The workman has filed and proved documents which are Ex. W/1 to W/32, referred to as and when required.

I have heard argument of learned Counsel Mr. R.C. Shrivastava for workman and learned Senior Advocate Mr. Anoop Nair assisted by Neeraj Kewat Advocate, for management and have gone through the record.

On perusal of record in the light of arguments it comes out that parties are at issue only on the point whether the refusal of promotion of the workman Manoj Yadav on the post of T&S Draughtsman Grade-B is justified in law and facts or not.

Management has relied on the Cadre Scheme for drawing personnel it goes to show that for promotion of a Draughtsman Grade-C to Senior Draughtsman Grade-B the minimum qualification is that he should be Matriculate with Draughtsman ship from ITI or Matriculate with short term course of Draughtsman ship conducted by recognized institution and should have minimum three years experience as Draughtsman. This promotion is to be done through the Departmental Promotion Committee (DPC). The minimum qualification for Draughtsman Grade-C is the same with minimum experience of three years as Junior Draughtsman/Assistant Draughtsman. Workman side does not dispute this. Case of the management is that the workman was promoted to Draughtsman Grade-C by way of mistake because he did not have the minimum required qualification of Draughtsman ship Certificate from ITI. Since, the

workman did not possess minimum qualification for the post of Senior Draughtsman Grade-B which is Draughtsman ship certificate from ITI alongwith other qualifications mentioned above, he was not considered for promotion to the post of Senior Draughtsman Grade-B. Management also admits that inspite of the fact that he was not qualified for promotion on the post of Draughtsman Grade-C, he was not reverted back when this mistake was discovered. On the other hand case of the workman side is that firstly the management was required to sent him for short terms course of Draughtsman ship by Government ITI when he was appointed as a Tracer on the basis of his qualification Matriculation with ITI Tracer certificate and secondly, the ITI certificate in Tracer has been recognized by the Government of Chhattisgarh as equivalent to ITI in Draughtsman ship certificate. There is no rule or circular of management recognizing the ITI certificate in Tracer as equivalent to ITI in Draughtsman ship certificate. Hence, the both cannot be held equivalent for appointment in the management company though they are equivalent for appointment in Chhattisgarh Government which recognizes both as equivalent. The argument that the management did not send the workman for short term course of Draughtsman ship as required in the Cadre Scheme when he was appointed as Tracer, may be a mistake on the part of management but it does not mean that both the certificates shall be deemed equivalent.

The workman side has attempted to seek parity with a co-workman Badri Prasad Durgwan who was promoted to Draughtsman Grade-B while he also had Tracer ITI certificate but there is nothing on record to show that he was not sent for short term course in Draughtsman ship.

Learned Senior Counsel has relied on judgment of Supreme Court in the case of Havaldar (OFC) RWMWI Borgoyary and others Vs. Union of India (2020) 15 SCC 546 in which it has been held that right to equality cannot be claimed in case where benefit has been given to a person contrary to law. Further held that if a mistake has been committed in appointing few persons who were not eligible, a claim cannot be made by other in eligible person seeking appointment in violation of instructions. Para 13 of this judgment is specifically referred to in this respect.

In another judgment in the case of G.R. Sahu & Others Vs. Dr. Surendra Kumar Singh & Others (2020) 4 SCC 484 where the same principle has been reiterated by Hon'ble the Apex Court, in para 31 of the judgment. These decisions are applicable in the case in hand. On the basis of above discussion, the action of management in not promoting the workman to Draughtsman Grade-B, cannot be held to be unjustified in law.

Accordingly, the reference is answered as follows:-

AWARD

Holding, the action of management of the Chief General Manager, Raigarh Area of SECL, District Raigarh Chhattisgarh to deprive Shri Manoj Kumar Yadav for his promotion from Draughtsman T&S Grade-C to Senior Draughtsman T&S Grade-B in the year 2010 on the plea that the workman having no requisite minimum qualification for promotion legal and justified, the workman is held entitled to no relief. No order as to cost.

DATE:- 03/06/2024

P. K. SRIVASTAVA, Presiding Officer

नई दिल्ली, 24 जून, 2024

का.आ. 1302.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार डब्ल्यू.सी.एल.के प्रबंधतंत्र के संबद्ध नियोजको और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में **केन्द्रीय सरकार आद्योगिक अधिकरण – सह – श्रम न्यायालय**, जबलपुरकेपंचाट(एलसी-आर/**79/2015**) को प्रकाशित करती है, जो केन्द्रीय सरकार को **18/06/2024** को प्राप्त हुआ था।

[सं..एल. 22012/55/2015-आई.आर. (सी.एम-II)]

मणिकंदन. एन, उप निदेशक

New Delhi, the 24th June, 2024

S.O. 1302.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award **(Reference.LC/-R/79/2015*)*** of the **Central Government Industrial Tribunal-cum-Labour Court, Jabalpur** as shown in the Annexure, in the industrial dispute between the Management of **W.C.L.** and their workmen, received by the Central Government on **18*/06/2024***

[No. L-22012/55/2015 – IR (CM-II)]

MANIKANDAN. N , Dy. Director

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT, JABALPUR

NO. CGIT/LC/R/79/2015

Present: P.K.Srivastava

H.J.S..(Retd)

The Joint Mahamantri,
Rashtriya Koyala Khadan Mazdoor Sangh (INTUC),
Shramik Shakti Bhawan, PO: Chandametta,
Chhindwara (M.P.)

Workman

Versus

The Chief General Manager,
Western Coalfields Limited, Kanhan Area,
PO: Dungria, The, Junadev,
Chhindwara (M.P.)

Management

A W A R D

(Passed on this 29th day of May-2024.)

As per letter dated 14/09/2015 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this tribunal under section-10 of I.D. Act, 1947 as per reference number L-22012/55/2015 IR(CM-2) dt. 14/09/2015. The dispute under reference related to :-

" क्या प्रबंधन, नंदन माइन नंबर 2, वैस्टर्न कोलफील्ड लिमिटेड कन्हान क्षेत्र, जिला छिंदवाड़ा द्वारा श्री धनलाल पिता श्री गणेश को अपने आदेश क्रमांक नंदन/क्र.अ./पी.आर-टी.आर/2000-1432, दिनांक 8/9.6.2000 द्वारा पीस रेट से टाईम रेट कैटेगरी-चार एवं संबंध कैटेगरी के मध्यमान बेसिक रूपये 85.14 पर अस्थाई रूप से कार्य पर लगाया जाना उचित है ? यदि नही तो कामगार क्या अनुतोष पाने का अधिकारी है ? "

After registering the case on reference received, notices were sent to the parties and were duly served on them. Both the parties have filed their respective statement of claim / defence.

The skeletal facts necessary for determination of the lis are that the Workman Shri Dhanlal was initially piece rate worker who was converted into time rate category on his application by Management on 8-9 June, 2000 there was a settlement between Management and the union in which Management agreed to give pay protection to the workers in case of their conversion from piece rate to time rate and a circular was released in this respect on 14 April, 2016, again on 31 July, 2017.

According to Management, the Workman was granted this protection along with other workers this fact is support by the uncontroverted affidavit of Management witness with pay fixation details in Annexure M/3, M/4 & M/5, there is no evidence from Workman side in rebuttal. The Workman did not file any affidavit nor proved any document in support of his claim. Hence, holding that the dispute in reference has ceased to exist at present, The reference answered accordingly.

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

DATE: 29/05/2024

P. K. SRIVASTAVA, Presiding Officer

नई दिल्ली, 24 जून, 2024

का.आ. 1303.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एस.ई.सी.एल.के प्रबंधतंत्र के संबद्ध नियोजको और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में

केन्द्रीय सरकार औद्योगिक अधिकरण –सह– श्रम न्यायालय, जबलपुर के पंचाट (एलसी-आर/18/2019) को प्रकाशित करती है, जो केन्द्रीय सरकार को 18/06/2024 को प्राप्त हुआ था।

[सं0.एल. 22012/165/2018-आई.आर. (सी.एम-II)]

मणिकंदन. एन, उप निदेशक

New Delhi, the 24th June, 2024

S.O. 1303.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award **(Reference.LC/-R/18/2019*)*** of the **Central Government Industrial Tribunal-cum-Labour Court, Jabalpur** as shown in the Annexure, in the industrial dispute between the Management of **S.E.C.L.** and their workmen, received by the Central Government on **18*/06/2024***

[No. L-22012/165/2018 – IR (CM-II)]

MANIKANDAN. N , Dy. Director

ANNEXURE

THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT, JABALPUR

NO. CGIT/LC/R/18/2019

Present: P.K.Srivastava

H.J.S..(Retd)

Shri Trinath Gaur

Ex-Clerk, Grade-1 SECL, Hasdeo Area

Po- Godaripara, District Korea

C.G.-497555

Workman

Versus

The General Manager

SECL, Hasdeo Area

Po- South Jhagrakhand

Distt.-Korea (CG)-495677

Management

(J U D G E M E N T)

(Passed on this 7th day of June-2024)

As per letter dated 10/01/2019 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 Industrial Disputes Act, 1947 as per Notification No. L-22012/165/2018/IR(CM-II) dt. 10/01/2019. The dispute under reference relates to:

"Whether the action on the part of the management of SECL, Hasdeo Area in not considering for re-instatement in service in respect of Shri Trinath Gaur, Ex-Clerk, Grade-II without taking into consideration of past record of service and acquittal by CBI Court on benefit of doubt ground is appropriate and justified ? If not, what relief the dismissed workman Shri Trinath Gaur is entitled to ?"

After registering a case on the basis of the reference, notices were sent to the parties and were served. Parties appeared and file their respective Statement of Claims and Defense.

According to the workman, he was served a charge sheet on 07.02.2013 while working as Clerk Grade-1, and was required to show cause on the charge mentioned in the charge sheet, which was allegation of following misconducts under the Certified Standing Orders :-

Clause-26(2) :- Taking or giving bribe or illegal gratification whatsoever in connection with the employer's business on his own interest.

Clause-26(22) :- Any wilful and deliberate act which is subversive of discipline of which may be detrimental to the interest of company.

Clause-26(43) :- Breach of Standing Order.

The substance of the charge was he demanded illegal gratification of Rs. 10,000/- from a workman (retired) for processing the claim of his post retirral dues and was caught red handed while taking this amount by CBI, was detained in custody under a First Information Report registered by CBI in this matter.

A departmental enquiry was conducted by management in which the workman was found guilty of the charges. He was awarded punishment of his dismissal from services for the charges.

In the meanwhile he was acquitted from the criminal charges after trial before Special Court. He represented before management to review the punishment order in the light of his acquittal by Court which was refused.

The workman, in his statement of claim alleged that the enquiry was conducted against rules and principles of natural justice. The charges were not proved and also that he was acquitted after trial for the same charges and this fact was not considered by management. Hence, according to him the management committed illegality. He prayed that setting aside his dismissal, he be reinstated with all back wages and benefits.

Rebutting the allegations of the workman, management has taken a case in their written statement of defense that an information was received vide letter dated 05.02.2013 in the office of Chief Vigilance Officer according to which the workman was arrested by CBI on 29.01.2013, while taking illegal gratification of Rs. 10,000/- from Kanhaiya Lal for preparation of his PF & Pension file. A charge sheet was issued by management for misconduct in this respect and after finding that his explanation was not satisfactory, management was decided to conduct an enquiry. The workman participated in the enquiry. The Enquiry Officer submitted his report holding the workman guilty of misconduct. This report was sent to the workman with show cause notice dated 24.02.2016. After considering his representation on the enquiry report and show cause the Disciplinary Authority passed the punishment order on 08.07.2016 awarding the punishment of his dismissal from service. The workman thereafter filed mercy appeal which was dismissed. After his acquittal by Court, the workman filed representation against the punishment order seeking review of punishment order in the light of judgment of Court acquitting him from the charges. According to the judgment, the workman was acquitted on the ground that charges were not proved beyond reasonable doubt. His review was also dismissed. Accordingly, the management has prayed that the reference be answered against the workman.

Following preliminary issue was framed vide order dated 09.09.2021 :-

1. ***Whether the departmental enquiry conducted is legal and proper or not?***

Parties adduced their evidence on this preliminary issue the copy of enquiry papers was filed by management, admitted by workman.

Vide order dated 15.03.2022, preliminary issue was decided holding the departmental enquiry legal and proper. This order is part of this award.

Following additional issues were also framed on 15.03.2022:-

2. **Whether the charges are proved from the enquiry ?**
3. **Whether the punishment is disproportionate to the charge ?**
4. **Relief to which the workman is entitled ?**

Parties were directed to file their evidence on these additional issues in form of documents/affidavit. The workman file his affidavit and some documents with it, to be referred to as and when required. Management did not file any affidavit or document. I have heard argument of learned Counsel Mr. Rammilan Dey for workman and learned Senior Counsel Mr. Anoop Nair, assisted by Mr. Neeraj Kewat for management. The workman side has filed written arguments also which are part of record. I have gone through the record and the written arguments.

Issue No.-2 :-

Learned Counsel for workman has submitted that the basis of the charge before the Criminal Court during trial and in the departmental enquiry was one and the same. When the charges were held not proved by the Criminal Court after trial in its judgment, this finding will override the finding of enquiry officer holding the charges proved in his enquiry report. Learned Counsel has referred to the portion of the judgment in which it has been observed that in the light of facts mentioned in its judgment as well the contradictory statements of Kanhaiya Lal as well lapses in the investigation, the charges could not be held proved beyond reasonable doubt. Learned Counsel has referred to different contradictions in the statements of witnesses examined during the enquiry and before Court to buttress his argument that charges were wrongly held proved.

Learned Counsel has referred to judgment of Hon'ble Supreme Court in the case of **G.M. Tank vs. State of Gujarat (2006) 4 SCC 446, State Bank of Hyderabad Vs. P. Kata Rao (2008) 15 SCC 657 and Ramlal vs. State of Rajasthan AIR Online 2023 SC 1038** in this respect.

On the other hand, learned Senior Counsel has submitted that the standard of proof required for charge to be proved in a departmental enquiry is not the same as it is in a criminal trial. He further submits that the workman was acquitted on the ground of lapses in investigation, mentioned in the judgment and discrepancies in the statements of witnesses finding that the evidence was not sufficient to prove the charges beyond reasonable doubt. He also submits that CBI has preferred an appeal against this acquittal which is pending before Hon'ble High Court.

The settled proposition of law is that the charges need not be proved beyond reasonable doubt in a departmental enquiry. Following judgments are being referred to in this respect.

Scope of disciplinary proceedings and scope of criminal proceedings are quite distinct, exclusive and independent of each other. Standards of proof in the two proceedings are also different. Ref. ***T.N.C.S. Corpn. Ltd. vs. K. Meerabai, (2006) 2 SCC 255***

Standard of proof in a departmental enquiry which is quasicriminal/quasi-judicial in nature: Disciplinary proceedings, however, being quasi-criminal in nature, ***there should be some evidence to prove the charge.*** *Although the charges in a departmental proceedings are not required to be proved like a criminal trial i.e. beyond all reasonable doubts, we cannot lose sight of the fact that the enquiry officer performs a quasijudicial function, who upon analyzing the documents must arrive at a conclusion that there had been a preponderance of probability to prove the charges on the basis of materials on record. While doing so, he cannot take into consideration any irrelevant fact. He cannot refuse to consider the relevant facts. He cannot shift the burden of proof. He cannot reject the relevant testimony of the witnesses only on the basis of surmises and conjectures. Ref:* ***(i) Nirmala J. Jhala Vs. State of Gujarat & Another, AIR 2013 SC 1513 (paras 10 , 11, 12 & 13). (ii) M.V. Bijlani Vs. Union of India, (2006) 5 SCC 88 (Para 25)***

In the cases of (i) NOIDA Entrepreneurs Association Vs NOIDA & others, AIR 2007 SC 1161 (i4i) State Bank of India Vs. R.B. Sharma, (2004) 7 SCC 27 (iii) Kendriya Vidyalaya Sangathan Vs. T. Srinivas, (2004) 7 SCC 442 (iv) Depot Manager, APSRTC Vs. Mohd. Yousuf Miya, (1997) 2 SCC 699 (v) Captain M. Paul Anthony Vs. Bharat Gold Mines Limited (1999) 3 SCC 679 and (vi) State of Rajasthan Vs. B.K. Meena, (1996) 6 SCC 417 (vi) Pratap Singh Vs. State of Punjab, AIR 1964 SC 72 (vii) Jang Bahadur Singh Vs. Baij Nath, AIR 1969 SC 30, *it has been laid down by the Hon'ble Supreme Court that "the purpose of departmental enquiry and of prosecution are two different and distinct aspects. Departmental Enquiry is to maintain discipline in the service and efficiency of public service. Crime is an act of commission in violation of law or of omission of public duty. The enquiry in a departmental proceeding relates to the conduct or breach of duty by the delinquent officer to punish him for his misconduct defined under the relevant statutory rules or law. It is the settled legal position that the strict standard of proof or applicability of the Evidence Act stands excluded in a departmental proceeding. Criminal Proceedings and the departmental proceeding under enquiry can go on simultaneously."*

In the case of ***T.N.C.S. Corporation Ltd. Vs. K. Meerabai, (2006) 2 SCC 255****, it has been held by the Hon'ble Supreme Court that the scopes of the disciplinary proceedings and of criminal proceedings are quite distinct, exclusive and independent of each other. Standards of proof in the two proceedings are also different.*

In the cases of ***Mohd. Saleem Siddiqui Vs. State of UP & others, (2011) 2 UPLBEC 1575 (Allahabad High Court) and Ajeet Kumar Naag Vs. General Manager Indian Oil Corporation Ltd. Haldia, JT 2005 (8) SC 425****, the distinction between departmental enquiry and criminal proceedings has been drawn as under: "The two proceedings i.e. criminal and departmental are entirely different. They operate in different fields and have different objectives. The object of criminal proceedings is to inflict appropriate punishment on offender and the purpose of enquiry proceedings is to deal with the delinquent departmentally and to impose penalty in accordance service rules the rule relating to appreciation of evidence in the two proceedings is also not similar. In criminal law burden of proof is on the prosecution and unless the prosecution is able to prove the guilt of accused beyond reasonable doubts, he cannot be convicted by a court of law. In departmental enquiry, on the other hand, penalty can be imposed on the delinquent officer on a finding recorded on the basis of preponderance of probability. Procedure with respect to standard of proof in criminal case and departmental enquiry are different. In the case of departmental enquiry the technical rules of evidence have no application and the doctrine of "proof beyond doubt" has also no application in the departmental enquiry. Criminal prosecution is launched for an offence for violation of a duty the offender owes to the society or for breach of which law has provided that the offender shall make satisfaction to the public. So crime is an act of commission in violation of law or of omission of public duty. The departmental enquiry is to maintain discipline in the service and efficiency of public service. There would be no bar to proceed simultaneously with departmental enquiry and trial of criminal case. "*

In the cases referred to by the workman side the facts are found different from the case in hand. In the case of **Ramlal (Supra)** the charge against the employee was that be made alteration in his 8th Standard Marksheet in the date of birth column to project him a major at the time of his appointment. The Marksheet showed no such alteration rather

there was over writing in the application form which was held in advertent. In the other case of **G.M. Tank (Supra)** the employee was honorably acquitted from the charges by Criminal Court and not on the basis of reasonable doubt.

Hence, when it is clear that the acquittal was on the ground of benefit of doubt that too appeal is pending against the acquittal, the statements of witnesses recorded during the enquiry fully support the charge as it has been found after perusal of enquiry papers, the argument of learned Counsel for the workman that the finding of the Enquiry Officer holding the charges proved was wrong cannot be accepted. Accordingly, holding the finding of the Enquiry Officer, the charges against the workman are held proved. Issue no.-2 is answered accordingly.

Issue No.-3 :-

Learned Senior Counsel for management has referred to judgment of Hon'ble Supreme Court in the case of Maharashtra State Road Transport Corporation vs. Dilip Uttam Jaya Bhai (2022) 2 SCC 696 and has submitted that integrity is the core value that has to be maintained by an employee while in service. No employer can afford to have an employee on its rolls who has no integrity left in him.

On the other hand learned Counsel for workman has submitted that the fact that the workman was acquitted after trial should have been taken into account by management in awarding the punishment and atleast the workman should not have been awarded maximum punishment of his dismissal from service.

In the case referred to above by management, Hon'ble the Apex Court has, after analyzing the principle of law laid down in its various judgments has held that when the judgment of acquittal is based on hostility of witnesses or by giving the accused benefit of doubt, the Disciplinary Authority will be justified in ignoring it.

The settled proposition of law is that the punishment can be interfered by this Tribunal only when it is so disproportionate to the charge that it shocks the conscience of this Tribunal. Following judgments are being referred to in this respect.

Hon'ble Apex Court in ***B.C. Chaturvedi v. Union of India, (1995) 6 SCC 749*** while discussing about the scope of judicial review, in disciplinary matters, has observed as under:

> ***"The High Court/Tribunal, while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court/Tribunal, it would appropriately mold the relief, either directing the disciplinary/appellate authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases, imposed appropriate punishment with cogent reasons in support thereof."***

In ***DG, RPF vs. Sai Babu (2003) 4 SCC 331***, Hon'ble Apex Court has observed that:

> ***"6……. Normally, the punishment imposed by a disciplinary authority should not be disturbed by the High Court or a tribunal except in appropriate cases that too only after reaching a conclusion that the punishment imposed is grossly or shockingly disproportionate, after examining all the relevant factors including the nature of charges proved against, the past conduct, penalty imposed earlier, the nature of duties assigned having due regard to their sensitiveness, exactness expected of an discipline required to be maintained, and the department/establishment which the delinquent person concerned works."***

In ***United Commercial Bank vs. P.C. Kakkar (2003) 4 SCC 364*** Hon'ble Apex Court on review of a long line of cases and the principles of judicial review of administrative action under English law summarized the legal position in the following words:

> ***"11. The common thread running through in all these decisions is that the court should not interfere with the administrators' decision unless it was illogical or suffers from procedural impropriety or was shocking to the conscience of the court, in the sense that it was in defiance of logic or moral standards. In view of what has been stated in Wednesbury case the court would not go into the correctness of the choice made by the administrator open to him and the court should not substitute its decision to that of the administrator. The scope of judicial review is judicial review is limited to the deficiency in decision-making process and not the decision.***
>
> ***12. To put it differently, unless the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the court/tribunal, there is no scope for interference. Further, to shorten litigation it may, in exceptional and rare cases, impose appropriate punishment by recording cogent reasons in support thereof.***"

In ***Union of India vs. S.S. Ahluwalia (2007) 7 SCC 257*** Hon'ble Supreme Court reiterated the legal position as follows:

> ***"8. …… The scope of judicial review in the matter of imposition of penalty as a result of disciplinary proceedings is very limited. The court can interfere with the punishment only if it finds the same to be shockingly disproportionate to the charges found to be proved."***

In ***State of Meghalaya v. Mecken Singh N. Marak (2008) 7 SCC 580*** Hon'ble Supreme Court stated that:

> ***"The punishment imposed by the disciplinary authority or the appellate authority unless shocking to the conscience of the court, cannot be subjected to judicial review.***

Hon'ble Apex Court in *Administrator,* ***UnionTerritory of Dadra and Nagar Haveli vs. Gulbhia M. Lad (2010) 2 SCC (L&S) 101*** has observed that

> ***"The legal position is fairly well settled that while exercising the power of judicial review, the High Court or a Tribunal cannot interfere with the discretion exercised by the disciplinary authority, and/or on appeal the appellate authority with regard to the imposition of punishment unless such discretion suffers from illegality or material procedural irregularity or that would shock the conscience of the court/tribunal. The exercise of discretion in imposition of punishment by the disciplinary authority or appellate authority is dependent on host of factors such as gravity of misconduct, past conduct, the nature of duties assigned to the delinquent, responsibility of the position that the delinquent holds, previous penalty, if any, and the discipline required to be maintained in the department or establishment he works. Ordinarily the court or the tribunal would not substitute its opinion on reappraisal of facts.***

This extract is taken fro**m *State Bank of Bikaner & Jaipur v. Nemi Chand Nalwaya*, (2011) 4 SCC 584 : (2011) 1 SCC (L&S) 721 : 2011 SCC OnLine SC 416 at page 587**

> ***7. It is now well settled that the courts will not act as an appellate court and reassess the evidence led in the domestic enquiry, nor interfere on the ground that another view is possible on the material on record. If the enquiry has been fairly and properly held and the findings are based on evidence, the question of adequacy of the evidence or the reliable nature of the evidence will not be grounds for interfering with the findings in departmental enquiries. Therefore, courts will not interfere with findings of fact recorded in departmental enquiries, except where such findings are based on no evidence or where they are clearly perverse. The test to find out perversity is to see whether a tribunal acting reasonably could have arrived at such conclusion or finding, on the material on record. The courts will however interfere with the findings in disciplinary matters, if principles of natural justice or statutory regulations have been violated or if the order is found to be arbitrary, capricious, mala fide or based on extraneous considerations. (Vide B.C. Chaturvedi v. Union of India [(1995) 6 SCC 749 : 1996 SCC (L&S) 80 : (1996) 32 ATC 44] , Union of India v. G. Ganayutham [(1997) 7 SCC 463 : 1997 SCC (L&S) 1806] , Bank of India v. Degala Suryanarayana [(1999) 5 SCC 762 : 1999 SCC (L&S) 1036] and High Court of Judicature at Bombay v. Shashikant S. Patil [(2000) 1 SCC 416 : 2000 SCC (L&S) 144] .)***

In ***Air India Corporation Bombay vs. V.A. Ravellow 1972 (25) FLR 319 (SC)*** it has been observed that:

> ***"Once the employer has lost the confidence in the employee and the bona fide loss of confidence is affirmed, the order of punishment must be considered to be immune from challenge, for the reason that discharging the office of trust and confidence requires absolute integrity, and in a case of loss of confidence, reinstatement cannot be directed.***"

In ***Knhaiyalal Agarwal and others vs. Factory Manager, Gwaliar Sugar Co. Ltd. AIR 2001 SC 3645*** Hon'ble Apex Court laid down the test for loss of confidence to find out as to whether there was bona fide loss of confidence in the employee, observing that:

> ***"Loss of confidence cannot be subjective, based upon the mind of the management. Objective facts which would lead to a definite inference of apprehension in the mind of the management, regarding trust worthiness or reliability of the employee, must be alleged and proved."***

No doubt an employee has to maintain absolute integrity while in service. There can be no compromise on integrity of an employee in any institution. The acquittal of the workman was by granting him benefits of doubt that too has been appealed against. Hence, in these circumstances, the punishment to the workman inspite of the fact that he was acquitted from the charges after trial cannot be faulted in law or fact. Holding the punishment justified in law, issue no.-3 is answered accordingly.

Issue No.-4 :

On the basis of findings recorded above, the workman is held entitled to no relief.

Accordingly, the Reference is answered as follows :-

A W A R D

Holding the action on the part of the management of SECL Hasdev Area, in not considering for reinstatement in service in respect of Shri Trinath Gaur, Ex. Clerk Grade-2 without taking into consideration of past record of service and acquittal by CBI Court on benefit of ground is appropriate and justified. The workman Shri Trinath Gaur is entitled to no relief.

DATE:- 07/06/2024

P. K. SRIVASTAVA, Presiding Officer

नई दिल्ली, 28 जून, 2024

का.आ. 1304.—औद्योगिक विवाद अधिनियम (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार के **मेसर्स कंट्रोल यूनियन इंस्पेक्शन एंड सर्टिफिकेशन इंडिया प्राइवेट लिमिटेड, गांधीधाम, कच्छ (गुजरात),** के प्रबंधतंत्र के संबद्ध नियोजकों और **राष्ट्रीय महासचिव, अखिल भारतीय सफाई मजदूर संघ, गांधीधाम, कच्छ-(गुजरात),**के बीच अनुबंध में निर्दिष्ट **केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, अहमदाबाद पंचाट (संदर्भ संख्या 40/2022) को जैसा कि अनुलग्नक में दिखाया गया है,** प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 25/06/2024 को प्राप्त हुआ था।

[सं. एल- 42011/135/2022- आईआर-(डीयू)]

दिलीप कुमार, अवर सचिव

New Delhi, the 28th June, 2024

S.O. 1304.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (**Ref. No. 40/2022**) of the **Central Government Industrial Tribunal cum Labour Court, Ahmedabad,** as shown in the Annexure, in the Industrial dispute between the employers in relation to **M/s. Control Union Inspection and Certification India Pvt. Ltd., Gandhidham, Kutch- (Gujarat), and The National Secretary in General, Akhil Bhartiya Safai Mazdoor Sangh, Gandhidham, Kutch-(Gujarat),** which was received along with soft copy of the award by the Central Government on 25/06/2024.

[No. L- 42011/135/2022- IR (DU)]

DILIP KUMAR, Under Secy.

ANNEXURE

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

Present….
Radha Mohan Chaturvedi,
Presiding Officer (I/c),
CGIT-cum-Labour Court,
Ahmedabad

Dated 12th June, 2024

Reference (CGITA) No. - 40 / 2022

M/s. Control Union Inspection and Certification

India Pvt. Ltd.,

Gandhidham, Kutch(Gujarat) 370201 …. …….First Party

V/s

The National Secretary in General

Akhil Bhartiya Safai Mazdoor Sangh,

Gandhidham,

Kutch(Gujarat)- 370201 ..…. ….Second Party

For the First Party : None

For the Second Party : None

AWARD

The Ministry of Labour and Employment, Government of India have in exercise of powers conferred by the Clause (d) of Sub-section (1) and Sub-section 2A of Section 10 of Industrial Disputes Act, 1947 referred the below mentioned dispute vide reference adjudication Order No. L-42011/135/2022-IR (DU) dated 23.05.2022 for adjudication to this Tribunal.

SCHEDULE

"Whether Akhil Bharatiya Safai Mazdoor Sangh, Gandhidham vide letter dated 08.09.2021 in respect of Sh. Mukesh Narayanlal Dangi and 4 others has locus standi to raise industrial dispute under ID Act, 1947 against the management of M/s Control Union Inspection and Certification India Pvt. Ltd., Gandhidham?

If yes, whether the contract/arrangement between the management of M/s Control Union Inspection and Certification India Pvt. Ltd., Gandhidham (principal employer) and contractor(s) is sham, as raised by Akhil Bhartiya Safai Mazdoor Sangh, Gandhidham vide letter dated 08.09.2021? If yes, to what relief including regularisation is the disputant entitled and what directions are necessary in this respect?"

1. The reference was received in this Tribunal on 10th June, 2022. The Ministry had directed the party raising the dispute to file his statement of claim complete with relevant documents with the Tribunal within 15 days of receipt of this order of reference as per provision made under Rule 10 (B) of Industrial Disputes (Central) Rules, 1957. This order of reference had been sent to all the parties as well as this Tribunal through registered post by the Ministry. Therefore, it is inferred that the same had been delivered to all the parties including claimants.
2. A period of two years has been elapsed but none has appeared and filed the statement of claim as directed and expected by the Ministry.
3. In considered opinion of this Tribunal, it is established that either the claimant of this dispute is not interested to prosecute the claim or the said dispute is no more in existence.
4. It is therefore just & proper to pass an award considering "no dispute" between the parties.
5. The award is passed as above. The award be sent for publication U/s 17(1) of Industrial Disputes Act, 1947.

RADHA MOHAN CHATURVEDI, Presiding Officer (I/c)

नई दिल्ली, 28 जून, 2024

का.आ. 1305.—औद्योगिक विवाद अधिनियम (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार के **प्रधान मुख्य आयकर आयुक्त, आयकर विभाग, अहमदाबाद (गुजरात); उप आयकर आयुक्त, आयकर विभाग, अहमदाबाद (गुजरात); मेसर्स राजदीप एंटरप्राइज, गांधीनगर-(गुजरात), प्रबंधतंत्र के संबद्ध नियोजकों और सचिव, गुजरात मजदूर सभा, एलिसब्रिज, अहमदाबाद- (गुजरात),** के बीच अनुबंध में निर्दिष्ट **केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, अहमदाबाद पंचाट(संदर्भ संख्या 24/2022) को जैसा कि अनुलग्नक में दिखाया गया है**, प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 25/06/2024 को प्राप्त हुआ था।

[सं. एल- 42011/43/2022- आईआर-(डीयू)]

दिलीप कुमार, अवर सचिव

New Delhi, the 28th June, 2024

S.O. 1305.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (**Ref. No. 24/2022**) of the **Central Government Industrial Tribunal cum Labour Court, Ahmedabad,** as shown in the Annexure, in the Industrial dispute between the employers in relation to **The Principal Chief Commissioner of Income Tax, Income Tax Department, Ahmedabad-(Gujarat) ; The Dy. Commissioner of Income Tax,Income Tax Department, Ahmedabad-(Gujarat); M/s Rajdeep Enterprise, Gandhinagar-(Gujarat), and The Secretary, Gujarat Mazdoor Sabha, Ellisbridge,**

Ahmedabad- (Gujarat), which was received along with soft copy of the award by the Central Government on 25/06/2024.

[No. L- 42011/43/2022- IR (DU)]

DILIP KUMAR, Under Secy.

ANNEXURE

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

Present….

Radha Mohan Chaturvedi,

Presiding Officer (I/c),

CGIT-cum-Labour Court,

Ahmedabad

Dated 12th June, 2024

Reference (CGITA) No. - 24 / 2022

1. The Principal Chief Commissioner of Income Tax,
   Income Tax Department, Aayakar Bhawan,
   Ashram Road, Ahmedabad(Gujarat)- 380009
2. The Dy. Commissioner of Income Tax,
   Income Tax Department, Aayakar Bhawan,
   Ashram Road, Ahmedabad(Gujarat)- 380009
3. M/s Rajdeep Enterprise,
   601, Shalin Complex Sector-11,
   Gandhinagar(Gujarat)- 382011 …….First Parties

V/s

The Secretary,
Gujarat Mazdoor Sabha, 104, 1st Floor,
Maharana Pratap Complex, Nr. VS Hospital,
Ellisbridge, Ahmedabad (Gujarat) - 380006 ..…….Second Party

For the First Party : None

For the Second Party : None

AWARD

The Ministry of Labour and Employment, Government of India have in exercise of powers conferred by the Clause (d) of Sub-section (1) and Sub-section 2A of Section 10 of Industrial Disputes Act, 1947 referred the below mentioned dispute vide reference adjudication Order No. L-42011/43/2022-IR (DU) dated 25.02.2022 for adjudication to this Tribunal.

SCHEDULE

"Whether Income Tax Department is covered under Industrial Dispute Act, 1947 in respect of demands raised by Gujarat Mazdoor Sabha vide letter dated 30.06.2020 in respect of Shri Bhil Mahesh Laxman Bhai and 144 others? If yes, Whether the demand of Gujarat Mazdoor Sabha vide letter dated 30.06.2020 to the management of Principal Income Tax Department, Ahmedabad for regularization of the services of Shri Bhil Mahesh Laxman Bhai and 144 others (list attached) and consequential benefits is proper, legal & justified? If yes, What reliefs are the disputant workers entitled to and what directions are necessary in this respect?"

1. The reference was received in this Tribunal on 14th March, 2022. The Ministry had directed the party raising the dispute to file his statement of claim complete with relevant documents with the Tribunal within 15 days

of receipt of this order of reference as per provision made under Rule 10 (B) of Industrial Disputes (Central) Rules, 1957. This order of reference had been sent to all the parties as well as this Tribunal through registered post by the Ministry. Therefore, it is inferred that the same had been delivered to all the parties including claimants.

2. A period of more than two years has been elapsed but none has appeared and filed the statement of claim as directed and expected by the Ministry.

3. In considered opinion of this Tribunal, it is established that either the claimant of this dispute is not interested to prosecute the claim or the said dispute is no more in existence.

4. It is therefore just & proper to pass an award considering "no dispute" between the parties.

5. The award is passed as above. The award be sent for publication U/s 17(1) of Industrial Disputes Act, 1947.

RADHA MOHAN CHATURVEDI, Presiding Officer (I/c)

नई दिल्ली, 28 जून, 2024

का.आ. 1306.—औद्योगिक विवाद अधिनियम (1947 का 14) की धारा 17 के अनुसरण में,केन्द्रीय सरकार **प्रबंध निदेशक, स्कूटर्स इंडिया लिमिटेड, सरोजिनी नगर, लखनऊ,** के प्रबंधतंत्र के संबद्ध नियोजकों और **श्री सुभाष चंद्र शर्मा,कामगार,** के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण- सह-श्रम न्यायालय, लखनऊ पंचाट(संदर्भ संख्या **19/2012**) को जैसा कि अनुलग्नक में दिखाया गया है,प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 27.06.2024 को प्राप्त हुआ था।

[सं. एल- 42011/134/2011- आईआर-(डीयू)]

दिलीप कुमार, अवर सचिव

New Delhi, the 28th June, 2024

S.O. 1306.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 19/2012) of the **Central Government Industrial Tribunal cum Labour Court, Lucknow** as shown in the Annexure, in the Industrial dispute between the employers in relation to **The Managing Director, Scooters India Ltd., Sarojini Nagar, Lucknow, and Shri Subhash Chandra Sharma,Worker,** which was received along with soft copy of the award by the Central Government on 27.06.2024.

[No. L- 42011/134/2011- IR (DU)]

DILIP KUMAR, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM- LABOUR COURT, LUCKNOW

PRESENT

JUSTICE ANIL KUMAR

PRESIDING OFFICER

I.D. No. 19/2012

Ref. No. L-42011/134/2011-IR(DU) dated: 04.01.2012

BETWEEN

Sri Subhash Chandra Sharma S/O Ram Bharose Sharma R/O 212,Chandra Shekher Azad Nagar(Darogakhera) Po- Aurawan

Lucknow (UP)

AND

Managing Director, Scooters India Ltd.,

Sarojini Nagar, Lucknow (UP)

AWARD

Sri V.K. Jaiswal - Counsel for the Applicant/Workman

Sri A.K. Singh & Sri Sharad Shukla- Counsel for the Respondent

On 04.01.2012 appropriate government by order no.L-42011/134/2011-IR (DU) has referred the following dispute to this Tribunal and accordingly the I.D. Case No.19 of 2012 (Subhash Chandra Sharma vs. M/s. Scooter India Ltd.) was registered:-

> *"Whether the action of the management of Scooters India Ltd., Lucknow in not considering the application of workman Sri* Subhash Chandra Sharma S/O R. B. Sharma*, Grade 'D' dated 02.12.1993 and voluntarily retiring him w.e.f. 31.12.1993 without paying entire pensionery benefits, is legal and justified? What relief the workman is entitled to?"*

Case of claimant:

On 26.3.2012 on behalf of workman, Statement of Claim filed stating therein the following averments :-

a) The applicant was appointed as semi skilled worker under the opposite party/employer on 27.10.1976 being fully eligible for the post and his Service No. is 3624 and he was initially granted Grade 'D'. The applicant/workman started performing his work and duties with all satisfaction of his all concerned.

b) All of sudden in the year 1993 a rumors was flown away in the campus of company that Manager of the respondent is saying that the company is going to be windup within a very short period due to heavy financial loss and as such employees may take his all service benefits as soon as possible from the company otherwise company will not responsible for the same. Those employees who will seek his voluntary retirement under the announced voluntary retirement scheme, they will call back in job/service on requirement of work on seniority basis.

c) The applicant believing rumor on 30.11.1993 applied for his voluntary retirement with effect from 31.3.1994 under the voluntary retirement scheme dated 8.12.1988.

d) A circular dated 6.11.1993 was also circulated by the respondent stating therein that the voluntary retirement scheme circulated vide circular dated 8.12.1988 will remain suspended with effect from 1.12.1993.

e) The applicant immediately on 02.12.1993 moved an application for withdrawing his voluntary retirement, which was sought by him with effect from 31.03.1994, then he came to know that his voluntary retirement has already been accepted by the management of opposite party on the same date i.e. on which he moved an application on 03.12.1993.

f) The management was fully aware with all things but voluntary retirement of the applicant was accepted knowingly and with mal intention on the same date when the applicant submitted his VRS application i.e. on 30.11.1993 only to oust him from the job, therefore the action of the respondent is quite bad in law and unjust.

g) The applicant applied for voluntary retirement on 30.11.1993 w.e.f. 31.03.1994 but his voluntary retirement was accepted by the respondent on the same date when he moved his application on 30.11.1993. The management is well known that the VRS circulated vide letter dated 8.12.1988 will remain suspended w.e.f. 1.12.1993, therefore, action of the respondent in accepting his VRS w.e.f. 30.11.1993 instead of 31.03.1994 is fully illegal, arbitrary and unjust.

h) If the applicant's voluntary retirement was not accepted w.e.f. 30.11.1993 i.e. on the date when he moved his application for VRS, his application would be cancelled or rejected by the management of the respondent as he submitted another application dated 02.12.1993 for withdrawing his voluntary retirement and thus he would remain in job till attaining his retirement age from the job. In view of this the respondent may be directed to pay entire salary and other service benefits to the applicant from the date of his relieve till the date of his retirement.

i) It is provided in the standing orders of the company that the pay will be revised on each 5 years of employees which has not been done in the matter of the applicant before accepting his VRS. The company is quietly running till date, therefore his voluntary retirement deserves to be quashed and the respondent be directed to reinstate the applicant on the post with full salary benefits from the date of relieve from the job till his date of retirement from the post and pay his entire due salary with 12% interest to the applicant.

Case of respondent:

On 5.9.2012 the written statement filed on behalf of the respondent M/s. Scooters India Limited taking the following **preliminary objections** :-

a) The matter of dispute does not constitute a valid industrial dispute, as the dispute has not been transformed into an industrial dispute within the meaning of the terms as defined in Industrial Disputes Act 1947.

b) The Central Government has not taken facts in cognizance while making a reference to the Tribunal. The reference is not based on the pleadins of the parties advanced at the conciliation stage, especially the submissions of the respondent before the Conciliation Officer/Government have been completely ignored, while making the reference for adjudication. No cause of action arose on the date as mentioned in reference order as such also on his ground alone, the reference order is bad in the eyes of law.

c) The Industrial Disputes Act 1947 has been amended vide Industrial Disputes (Amendment) Act, 2010 (Act No.24 of 2010) and period of limitation has been provided by virtue of Section 2A(3), which is quoted as below:-

> *"2A(3) The application referred to in sub-section (2) shall be made to the Labour Court or Tribunal before expiry of three years from the date of discharge, dismissal, retrenchment or otherwise termination of services as specified in sub-section (1)"*

d) A period of limitation has been provided i.e. three years from the alleged date of termination of services, but the instant case has arisen after a period of 18 years which is liable to the dismissed on the ground of limitation alone.

e) Even otherwise, the applicant has not raised industrial dispute within reasonable time. The applicant has raised an industrial dispute regarding his acceptance of Voluntary Retirement very belatedly i.e. after elapse of more than about 18 years. It is trite law as held by the Apex Court that the dispute must be raised within reasonable period of time from the cause of action and where the industrial dispute is not raised within reasonable period of time the Labour Court or Industrial Tribunal should decline to grant any interim relief to the workman.

f) The Apex Court in the case of Nedungadi Bank Ltd. Versus K.P. Madhavankutty & others : 2000(84) FLR 673 SC, S.M. Niljakar Vs. Telecom District Manager, Karnataka:2003(97) FLR 608 SC, Manager R.B.I. Vs. Gopinath Sharma : 2006 FLR (110) FLR 803 SC has already held that the dispute must be raised within reasonable period of time from the cause of action and a dispute which is state could not be subject matter of reference.

g) The present reference is highly belated, inasmuch as it is made after more than eighteen years from the alleged date of cause of action. The instant delay caused prejudice to the respondent since the management not presumed to preserve the relevant record for such a long period.

h) It is settled law of the land that the person who is approaching this Tribunal should come with clean hand but in the instant matter, the applicant has concealed the actual material facts which are very necessary for the purposes of the adjudication of present matter of dispute, if any, as such also the reference is not maintainable before this Tribunal and accordingly deserves to be rejected.

i) Earlier the applicant had raised an industrial dispute under the provisions of Section 2A of the U.P. Industrial Disputes Act before the validly appointed conciliation officer. The conciliation officer on its turn called upon the parties for hearing and after conducting the necessary proceedings, the aforementioned application had been rejected by the competent authority.

j) The applicant preferred a Writ Petition No. 1624 (SS) of 2000 (Mohan Singh & another Vs. Scooters India Limited & others) along with some other ex-employees of the Company before the Hon'ble High Court, Lucknow Bench, Lucknow challenging the order passed by the competent authority and the Hon'ble High Court had been pleased to dismiss the aforesaid writ petition including bunch of writ petitions bearing W.P.No.2146 (SS) of 2000, W.P.No.6654 (SS) of 1999, W.P. No.2620 (SS) of 2000, W.P. No.1625 (SS) of 2000, W.P. No.1745 (SS) of 2000, W.P. No.1644 (SS) of 2000, W.P. No.1635 (SS) of 2000 & W.P. No.1624 (SS) of 2000 vide judgment and order dated 8.2.2006 after holding that there is no dispute that the petitioners themselves had approached the scheme and had accepted all the benefits and after accepting all the benefits, after a lapse of long time, had tried to raise this dispute. Further the Hon'ble Court has held that the Conciliation Officer, in these circumstances for sufficient reasons disallowed the application of the petitioners.

k) A Review Petition No.75 of 2006 was also filed by the applicant which has also been dismissed by the Hon'ble High Court, Lucknow Bench, Lucknow vide its judgment and order dated 13.5.2008. Thus it is clear that the matter has already been adjudicated upon by the competent court of law and these facts have not been disclosed by the applicant in their written statement, which amounts to concealment of facts and the instant application is liable to be dismissed on this ground alone.

l) An identical situated employee had also preferred a Writ Petition No.1165(SS) of 1994:Jagdish Chandra Nigam Versus M/s. Scooters India Limited before the Hon'ble High Court, Lucknow Bench, Lucknow challenging the action of the management in accepting the application for voluntary retirement, which has been dismissed by means of detail judgment and order dated 9.1.1997.

m) Being aggrieved from the aforesaid judgment and order dated 9.1.1997, Special Appeal No.48 (SB) of 1997 was preferred before the Division Bench of the Hon'ble High Court, Lucknow Bench, Lucknow and after conducting the necessary proceedings, the Hon'ble Division Bench of the Hon'ble High Court decided the said special appeal by means of judgment and order dated 18.12.2000 and set aside the judgment and order passed by the Single Judge to the extent that in case of the appellant/petitioner deposits the entire amount which he has received through cheque dated 12.3.1994 alongwith interest at the rate of 12% with respondent company as well as other benefits which might have been given to the appellant within four weeks from the production of certified copy of the order, the appellant will be reinstated in service.

n) The management preferred Special Leave Petition challenging the judgment and order dated 18.12.2000 before the Hon'ble Supreme Court of India, which was letter on converted into Civil Appeal No.1089 of 2004:M/s. Scooters India Limited & others Vs. Jagdish Chandra Nigam which was allowed by means of the judgment and order dated 12.2.2004 and the judgment and order dated 18.12.2000 rendered by the Division Bench of the High Court, Lucknow Bench, Lucknow has been set aside.

o) Being aggrieved from the judgment and order dated 12.2.2004, Sri Jagdish Chandra Nigam had preferred a Review Petition No.747 of 2004: J.C. Nigam Vs. M/s. Scooters India Limited, which has also been dismissed by the Hon'ble Supreme Court of India vide its judgment and order dated 28.4.2004. Sri Nigam also preferred a Curative Petition No.152 of 2008 and the same has also been dismissed by the Constitution Bench of Hon'ble Supreme Court vide its judgment and order dated 21.1.2009. Thus it is crystal clear that the matter in dispute has already been decided by the competent court of law and now nothing remains to be adjudicated upon by this Tribunal.

p) It is crystal clear that the principles of res-judicata applies into the matter and accordingly the reference is liable to be rejected, out rightly without going into the merit of the case.

Accordingly, it has been prayed by respondent that the present industrial dispute may be dismissed being devoid of any merit.

Thereafter documents, evidences etc. had been exchanged between the parties. Sri Sharad Kumar Shukla, Learned Counsel for the respondent submits that the preliminary objections taken by them may be considered first and thereafter the matter be heard on merits.

Finding & conclusion on the Preliminary Objections:

I have heard Sri V.K. Jaiswal, learned counsel for claimant and Sri Sharad Kumar Shukla and Sri A.K. Singh, learned counsel for the respondent.

It is not in dispute between the parties that Sri Subhash Chandra Sharma, applicant/workman was appointed as semi skilled worker in establishment known as Scooter India Limited on 27.09.1976, Grade-D having service No. 3624. Scooter India Limited floated a scheme known as Voluntary Retirement (hereinafter referred to as 'VRS').

On 30.11.1993 applicant submitted an application for opting VRS and the same was accepted by the respondent on 03.12.1993 and his date of release under the said scheme was notified as 31.11.1993 and consequently applicant was voluntary retired from service under the Scheme with all consequential benefits and the same were received by him.

Meanwhile on 6.11.1993 a circular was issued which reads as under:-

> "*Sub: Voluntary Retirement Scheme – suspension thereof*
>
> *The Voluntary retirement scheme circulated vide circular no.SIL/PER/NC-63/88 dated 8.12.88 for the employees of the Company will remain suspended w.e.f.1.12.1993*."

So a letter/representation dated 02.12.1993, submitted by applicant for withdrawal/rejection of his application dated 30.11.1993 for voluntary retirement from services on the ground mentioned therein.

From the material on record the position which emerges out that initially aggrieved by the action of the respondent thereby not considering application of the workman/applicant dated 02.12.1993 for rejecting/withdrawing acceptance of voluntary retirement by him under the scheme known as Voluntary Retirement Scheme, he raised a industrial dispute under Section 2-A of Industrial Disputes Act which rejected by the Conciliation Officer.

Aggrieved by the said facts, the workman/applicant (Subhash Chandra Sharma) along with other similarly situated employees filed a Writ Petition no. 1624 (SS) of 2000 (Mohan Singh & another Versus M/s. Scooter India Limited & others).

The said writ petition was heard by the Hon'ble High Court along with leading Writ Petition No.2146 (SS) of 2000 (S.V. Jaiswal Versus M/s. Scooter India Limited & others).

By means of order dated 8.2.2006 the Hon'ble High Court dismissed the Writ Petition No.2146 (SS) of 2000 along with other connected writ petitions including the Writ Petition No. 1624 (SS) of 2000, the relevant portion, quoted below:-

> "*The question whether voluntary retirement would come under the definition of retrenchment or compulsory retirement or not, was considered in a number of cases which have been relied upon by the learned counsel appearing on behalf of the opposite party, one main of them has been reported in 1997(2), UPLBEC 1262, Jagdish Chand Nigam Vs. Scooter India Limited.*
>
> *In similar circumstances, the petitioners had taken voluntary retirement. The Bench of this court observed that the petitioner had occupied offer of his premature retirement, in order to receive the compensation, for the last tenure of service offered by the respondents. The offer made by the employers was accepted by the employees. The benefits provided by the respondents under this scheme were accepted by the petitioner. Since the workman had accepted the scheme and himself had opted to retire under this scheme, he cannot be allowed to approbate or reprobate. In the present case of the petitioner, the employees had accepted all benefits under the Voluntary Retirement Scheme, so they cannot retract from the obligations and exercise their right, integrally connected with the performance of the obligations under the Voluntary Retirement Scheme.*
>
> *In view of the above facts and in view of the principles of law laid down in the above noted case and after accepting offer of huge incentive, they now cannot withdraw their resignation and if their services had come to an end on account of it, they cannot be allowed to raise it in this manner as their grievance. The Hon'ble Apex Court in Special Leave Petition affirmed this judgment. The same principles were laid down by the Hon'ble Apex Court in another case reported in 2004(100) FLR 648, Punjab National Bank Vs. Virendra Kumar Goel and others and AIR 2003 SC 858, Bank of India with other banks Vs. Virendra Kumar Goel and others, wherein it was laid down that retirement was to take effect only after the request was accepted. Such scheme is only an*

intimation to offer which can be withdrawn before it is accepted contractual bar created under the scheme to withdraw the request once made by employees cannot be made.

In the present case there is no dispute that the petitioners themselves had approached the scheme and had accepted all the benefits and after accepting all the benefits, after a lapse of long time, had tried to raise this dispute. The Conciliation Officer, in these circumstances for sufficient reasons allowed the application of the petitioners.

I find no merit in these writ petitions. They are fit to be dismissed and are accordingly dismissed with costs."

Against order dated 8.2.2006, a Review Petition No.75 of 2006, was dismissed by means of order dated 13.5.2008 which is quoted below:-

"*There appears no error apparent at the face of record. The review petition is dismissed. No order as to costs*."

However, above said facts have been concealed by applicant while filing the present I.D. Case with oblique motive and purpose.

As such, it is rightly submitted on behalf of respondent that present case on the same relief in respect to which earlier claimant's case u/s 2A of the Act was rejected, is barred by the principle of res-judicata.

Further, one Sri Jagdish Chandra Nigam whose case was identical to the case of claimant, filed a Special Appeal No.48 (SB) of 1997, allowed by means of judgment and order dated 18.12.2000 (reported in 2000CJ(All) 309), the relevant portion, quoted below:-

"18. The appeal is allowed. The judgment and order passed by the Hon'ble the single Judge is set aside to the extent, the observations made in the foregoing paragraph of this judgment. But we provide that in case the appellant deposits the entire amount which he has received through cheque dated March 12, 1994 alongwith interest at the rate of 12% with Scooters India Limited, as well as other benefits which might have been given to the appellant within four weeks from the date of production of the certified copy of this order, the appellant will be reinstated in service. But considering the facts and circumstances of the case, we further provide that the appellant will not be entitled for payment of back wages.

19. As far as the case of the petitioners of other writ petitions are concerned, the fact of those writ petitioners are not exactly identical to the facts which have been indicated in the present Special Appeal. But as this Court has decided the present Special Appeal more or less on same propositions of law although the fact might be different, we heard the arguments of the learned counsel for the parties in all the writ petitions alongwith special appeal, which are connected with this special appeal as well.

20. As we have already indicated that those employees who withdrew their application for voluntary retirement before the prospective date mentioned in the original application for voluntary retirement, shall he entitled for the relief. But those persons, who have not withdrawn their voluntary retirement before the prospective date, would not be entitled for any relief.

21. We further provide that those petitioners, who opted for the Voluntary Retirement Scheme from a prospective date and withdrew their resignations before the said prospective date, but were, relieved by the management of the Scooters India Ltd. would be entitled to the relief as Jagdish Chandra Nigam has been provided, provided they filed the writ petitions within one month from the date of the relieving orders. If they had filed the writ petition after one month from the date of relieving orders, they would not be entitled for any relief.

22. With the aforesaid observations, the Special Appeal as well as all the writ petitions are disposed of."

Judgment/order dated 18.12.2000 challenged by way of filing a S.L.P. having Special Leave Petition (Civil) No.10352/2001 (M/s. Scooters India Ltd & others versus Jagdish Chandra Nigam) along with other S.L.P.s which were connected. In the above noted S.L.P. an order dated 12.2.2004 was passed by the Hon'ble Supreme Court which reads as under:-

"*Leave Granted.*

For the reasons stated in our order passed today in C.A. No.4098/2002, this appeal is allowed.

The order and judgment under challenge is set aside. There shall be no order as to costs."

Thus, as per the order passed by the Hon'ble Supreme Court, the S.L.P. filed by M/s. Scooters India Limited was allowed and judgment and order passed in the case of Special Appeal filed by Sri Jagdish Chandra Nigam was set aside/S.L.P. filed by Sri Jagdish Chandra Nigam was dismissed.

Moreover order passed by the Hon'ble Supreme Court in Special Leave Petition (Civil) No.10352/2001 (M/s. Scooters India Ltd & others versus Jagdish Chandra Nigam) based upon order dated 12.2.2004 passed by the Hon'ble Supreme Court in C.A. No.4098 of 2002 (Bank of India & others Vs. Pale Ram Dhania), reproduced below:-

"1. It is not disputed that the appellant Bank introduced a Voluntary Retirement Scheme, 2000 (herein referred to as "the Scheme") for its employees which had the approval of its Board of Directors. The Scheme was operative w.e.f. November 15, 2000 to December 14, 2000 for the employees who sought voluntary retirement. It is not disputed that the respondent herein who was an employee of the appellant Bank sought voluntary retirement under the Scheme on November 30, 2000. It is also not disputed that on December 2, 2000 he wrote to the Bank for withdrawal of his application for voluntary retirement. On January 22, 2001, the appellant Bank accepted the request for voluntary retirement of the respondent. Further, on January 25, 2001, the respondent withdrew the retiral benefits deposited in the Bank in his name as per voluntary retirement. It appears that the respondent changed his mind after the respondent was relieved from the employment and he filed a petition under Article 226 of the Constitution challenging the acceptance of his request for voluntary retirement. A learned Single Judge of the High Court allowed the petition and set aside the acceptance of the application for voluntary retirement submitted by the respondent. Aggrieved, the appellants preferred a letters patent appeal which was dismissed. It is against the said judgment, the appellants are in appeal before us.

2. A Bench of three Judges of this Court in Punjab National Bank v. Virender Kumar Goel , has held that an employee who sought voluntary retirement and subsequently wrote for its withdrawal but has withdrawn the amount of retiral benefits as per the Voluntary Retirement Scheme, is not entitled to the withdrawal of his application for voluntary retirement. It is not disputed that in the present case the respondent herein withdrew the amount of retiral benefits on January 25, 2001.

3. For the aforesaid reason, this appeal deserves to be allowed. We order accordingly. The order and judgment under challenge is set aside. There shall be no order as to costs".

In Review Petition (Civil) No.53 of 2003 arising out of Appeal (Civil) No.896 of 2002 (Punjab National Bank Versus Virender Kumar Goel & others), the Hon'ble Supreme Court on 21.1.2004 passed an order. The relevant of order dated 21.1.2004 reads as under:-

"I.A.NOS. 1-22

These applications have been filed by the State Bank of Patiala for clarification/directions. The ground taken in these applications is that the State Bank of Patiala is not a nationalised bank. It is hundred per cent a subsidiary of the State Bank of India. The VRS scheme floated by the State Bank of Patiala is in para-materia with the scheme floated by the State Bank of India. This Court in the judgment dated 17.12.2002 allowed the appeals filed by the State Bank of India but nothing has been said about the appeals filed by the State Bank of Patiala. In the interregnum, a two-Judge Bench of this Court, in which one of us (Sema, J) was a member, considered the same question in Civil Appeal No. 2341 of 2003 arising out of Special Leave Petition No. 23530 of 2002 entitled State Bank of Patiala Vs. Jagga Singh, disposed of on 13.3.2003, where this Court after considering Clause 8 of the scheme floated by the State Bank of Patiala and Clause 7 of the scheme floated by the State Bank of India, had held that the scheme floated by the State Bank of Patiala is almost identical of the scheme floated by the State Bank of India. Accordingly, the appeal filed by the State Bank of Patiala was allowed. Review Petition was also dismissed on 3.12.2003. In view thereof, we clarify that our direction No.2, allowing the appeals filed by the State Bank of India, would also include the appeals filed by the State Bank of Patiala. In other words, the appeals filed by the State Bank of Patiala are allowed in terms of our judgment dated

17.12.2002. I.A.NOS. 14-15 I.A.No.14 has been filed by an employee of the bank sought to clarify/modify our order dated 17.12.2002. In this case, admittedly, the benefit of the scheme had been withdrawn by the applicant on 27.2.2001. The applicant had clearly admitted, in ground E of the application, withdrawal of the amount so credited in his account, albeit compelling financial constraints.

I.A.No.15 has been filed by an employee of the bank for clarification/modification of our order dated 17.12.2002. In para 6 of the application, the applicant admitted that he had withdrawn and utilised the benefit of the scheme credited in his account.

As noticed in our judgment, having accepted the benefit under the scheme by withdrawing and utilisation thereof they are not permitted to approbate and reprobate."

Moreover Sri J.C. Nigam filed a Review Petition (Civil) No.747 of 2004 in C.A. No.1089 of 2004 (J.C. Nigam Versus M/s. Scooter India Limited & others) before the Hon'ble Supreme Court in which the following order dated 28.4.2004 passed:-

"*We do not filed any merit in the review petition and the same is accordingly dismissed*."

Thereafter, Sri J.C. Nigam filed a Curative Petition No.152 of 2008 against order dated 28.4.2004 passed in Review Petition (Civil) No.747 of 2004 which was dismissed by an order dated 20.1.2009, quoted below:-

"*We have perused the petition and the connected papers. In our view, no case is made out within the parameters indicated in the decision of this Court in Rupa Ashok Hurra Vs. Ashok Hurra & Anr. 2002(4) SCC 388. Hence, the Curative Petition is dismissed*."

In addition to the above said facts, Hon'ble the Apex Court in the constitution bench in the case of ***Rupa Ashok Hurra Versus Ashok Hurra & Anr, reported in 2002(4) SCC 388*** held as under:-

"Incidentally, this Court stands out to be an avenue for redressal of grievance not only in its revisional jurisdiction as conferred by the Constitution but as a platform and forum for every grievance in the country and it is on this context Mr.Shanti Bhushan, appearing in support of the some of the petitioners, submitted that the Supreme Court in its journey for over 50 years has been able to obtain the confidence of the people of the country, whenever the same is required be it the atrocities of the police or a public grievance pertaining to a governmental action involving multitudes of problems. It is the Supreme Court, Mr. Shanti Bhushan contended, where the people feel confident that justice is above all and would be able to obtain justice in its true form and sphere and this is beyond all controversies. It has been contended that finality of the proceeding after an Order of the Supreme Court, there should be, but that does not preclude or said to preclude this Court from going into the factum of the petition for gross injustice caused by an Order of the Supreme Court itself under the inherent power being an authority to correct its errors any other view should not and ought not be allowed to be continued. Needless to record here, however, that review jurisdiction stand foisted upon this Court in terms of the provisions of the Constitution, as noticed hereinbefore and it is also well-settled that a second review petition cannot be said to maintainable. Reference maybe made in this context to a decision of this Court in the case of J.Ranga Swamy v. Govt. of A.P. & Ors. (AIR 1990 SC 535), wherein this Court in paragraph 3 stated as below :-

"We are clearly of the opinion that these applications are not maintainable. The petitioner, who appeared in person, referred to the judgment in Antulay's case (1988) 2 SCC 602 : (AIR 1988 SC 1531). We are, however, of the opinion that the principle of that case is not applicable here. All the points which the petitioner urged regarding the constitutionality of the Government orders in question as well as the appointment of respondent instead of petitioner to the post in question had been urged before the Bench, which heard the civil appeal and writ petitions originally. The petitioner himself stated that he was heard by the Bench at some length. It is, therefore, clear that the matters were disposed of after a consideration of all the points urged by the petitioner and the mere fact that the order does not discuss the contentions or give reasons cannot entitle the petitioner to have what is virtually a second review."

True, due regard shall have to have as regards opinion of the Court in Ranga Swamy (supra), but the situation presently centres round that in the event of there being any manifest injustice would

the doctrine of ex debito justitiae be said to be having a role to play in sheer passivity or to rise above the ordinary heights as it preaches that justice is above all. The second alternative seems to be in consonance with time and present phase of socio-economic conditions of the society. Manifest justice is curable in nature rather than incurable and this court would lose its sanctity and thus would belie the expectations of the founding fathers that justice is above all. There is no manner of doubt that procedural law/procedural justice cannot overreach the concept of justice and in the event an Order stands out to create manifest injustice, would the same be allowed to remain in silenco so as to affect the parties perpetually or the concept of justice ought to activate the Court to find a way out to resolve the erroneous approach to the problem. Mr. Attorney General, with all the emphasis in his command, though principally agreed that justice of the situation needs to be looked into and relief be granted if so required but on the same breath submitted that the Court ought to be careful enough to trade on the path, otherwise the same will open up Pandora's box and thus, if at all, in rarest of the rare cases the further scrutiny may be made. While it is true that law courts has overburdened itself with the litigation and delay in disposal of matters in the subcontinent is not unknown and in the event of any further appraisal of the matter by this Court, it would brook on further delay resulting in consequences which are not far to see but that would by itself not in my view deter this Court from further appraisal of the matter in the event the same, however, deserve such an additional appraisal The note of caution sounded by Mr. Attorney as regards opening up of pandora's box strictly speaking, however, though may be of very practical in nature but the same apparently does not seem to go well with the concept of justice as adumbrated in our constitution. True it is, that practicability of the situation needs a serious consideration more so when this Court could do without it for more than 50 years, which by no stretch of imagination can be said to be a period not so short. I feel it necessary, however, to add that it is not that we are not concerned with the consequences of reopening of the issue but the redeeming feature of our justice delivery system, as is prevalent in the country, is adherence to proper and effective administration of justice in stricto. In the event there is any affectation of such an administration of justice either by way of infraction of natural justice or an order being passed wholly without jurisdiction or affectation of public confidence as regards the doctrine of integrity in the justice delivery system technicality ought not to out-weigh the course of justice the same being the true effect of the doctrine of ex debito justitiae. The oft quoted statement of law of Lord Hewart, CJ in R v. Susssex Justices, ex p McCarthy (1924 (1) KB 256) that it is of fundamental importance that justice should not only be done, should manifestly and undoubtedly be seem to be done had this doctrine underlined and administered therein. In this context, the decision of the House of Lords in R v. Bow Street Metropolitan Stipendiary Magistrate and others, ex parte Pinochet Ugarte (No.2) seem to be an ipoc making decision, wherein public confidence on the judiciary is said to be the basic criteria of the justice delivery system any act or action even if it a passive one, if erodes or even likely to erode the ethics of judiciary, matter needs a further look. Brother Quadri has taken very great pains to formulate the steps to be taken and the methodology therefor, in the event of there being an infraction of the concept of justice, as such further dilation would be an unnecessary exercise which I wish to avoid since I have already recorded my concurrence therewith excepting, however, lastly that curative petitions ought to be treated as a rarity rather than regular and the appreciation of the Court shall have to be upon proper circumspection having regard to the three basic features of our justice delivery system to wit, the order being in contravention of the doctrine of natural justice or without jurisdiction or in the event of there is even a likelihood of public confidence being shaken by reason of the association or closeness of a judge with the subject matter in dispute. In my view, it is now time that procedural justice system should give way to the conceptual justice system and efforts of the law Court ought to be so directed. Gone are the days where implementation of draconian system of law or interpretation thereof were insisted upon - Flexibility of the law Courts presently are its greatest virtue and as such justice oriented approach is the need of the day to strive and forge ahead in the 21st century."

Thus, from the above said facts and the material on record, as the present industrial dispute stands on the same footing as of Sri Jagdish Chandra Nigam, so in view of the judgment passed Hon'ble Supreme Court in the case of Sri Jagdish Chandra Nigam thereafter in Review Petition and Curative Petition, by him which were also dismissed.

Accordingly, preliminary objection taken by learned counsel for respondent are allowed and claim petition filed by claimant liable to be dismissed.

Order

For the foregoing reasons the present industrial dispute is dismissed, workman is not entitled for any relief; and the reference is answered accordingly.

Lucknow.

07th May, 2024

Justice ANIL KUMAR, Presiding Officer

नई दिल्ली, 28 जून, 2024

का.आ. 1307.—औद्योगिक विवाद अधिनियम (1947 का 14) की धारा 17 के अनुसरण में,केन्द्रीय सरकार **प्रबंध निदेशक, स्कूटर्स इंडिया लिमिटेड, सरोजिनी नगर, लखनऊ,** के प्रबंधतंत्र के संबद्ध नियोजकों और **श्री अंबिका प्रसाद अतरौलिया,कामगार,** के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण- सह-श्रम न्यायालय, लखनऊ पंचाट(संदर्भ संख्या **13/2012**) को जैसा कि अनुलग्नक में दिखाया गया है,प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 27.06.2024 को प्राप्त हुआ था।

[सं. एल- 42011/123/2011- आईआर-(डीयू)]

दिलीप कुमार, अवर सचिव

New Delhi, the 28th June, 2024

S.O. 1307.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 13/2012) of the **Central Government Industrial Tribunal cum Labour Court, Lucknow** as shown in the Annexure, in the Industrial dispute between the employers in relation to **The Managing Director, Scooters India Ltd., Sarojini Nagar, Lucknow, and Shri Ambika Prasad Atraulia,Worker,** which was received along with soft copy of the award by the Central Government on 27.06.2024.

[No. L- 42011/123/2011- IR (DU)]

DILIP KUMAR, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM- LABOUR COURT, LUCKNOW

PRESENT

JUSTICE ANIL KUMAR

PRESIDING OFFICER

I.D. No.13 of 2012

Ref. No. L-42011/123/2011-IR(DU) dated: 05.01.2012

BETWEEN

Sri Ambika Prasad Atraulia R/o – Azad Nagar Benhind UPDPL,

Kanpur Road, Lucknow (UP)

AND

The Managing Director, Scooters India Ltd.,

Sarojini Nagar, Lucknow.

AWARD

Sri V.K. Jaiswal - Counsel for the Applicant/Workman

Sri A.K. Singh & Sri Sharad Shukla- Counsel for the Respondent

On 05.1.2012 appropriate government by order no.L-42011/123/2011-IR (DU) has referred the following dispute to this Tribunal and accordingly the I.D. Case No.13 of 2012 (Ambika Prasad Atraulia Versus M/s. Scooter India Ltd.) was registered:-

"Whether the action of the management of Scooters India Ltd., Lucknow in not considering the application of workman Sri Ambika Prasad Atraulia, Grade 'D' dated 27.11.1993 and voluntarily retiring him w.e.f. 11/01/1994 without paying entire pensionery benefits, is legal and justified? What relief the workman is entitled to?"

Case of claimant:

On 26.3.2012 on behalf of workman, Statement of Claim filed stating therein the following averments :-

a) The applicant was appointed as semi skilled worker under the opposite party/employer on 08.06.1976 being fully eligible for the post and his Service No. is 3289 and he was initially granted Grade 'D'. The applicant/workman started performing his work and duties with all satisfaction of his all concerned.

b) All of sudden in the year 1993 a rumors was flown away in the campus of company that Manager of the respondent is saying that the company is going to be windup within a very short period due to heavy financial loss and as such employees may take his all service benefits as soon as possible from the company otherwise company will not responsible for the same. Those employees who will seek his voluntary retirement under the announced voluntary retirement scheme, they will call back in job/service on requirement of work on seniority basis.

c) The applicant believing rumor on 22.11.1993 applied for his voluntary retirement with effect from 28.05.1994 under the voluntary retirement scheme dated 8.12.1988.

d) A circular dated 6.11.1993 was also circulated by the respondent stating therein that the voluntary retirement scheme circulated vide circular dated 8.12.1988 will remain suspended with effect from 1.12.1993.

e) The applicant immediately on 27.11.1993 moved an application for withdrawing his voluntary retirement, which was sought by him with effect from 08.05.1994, then he came to know that his voluntary retirement has already been accepted by the management of opposite party on the same date i.e. on which he moved an application on 22.11.1993.

f) The management was fully aware with all things but voluntary retirement of the applicant was accepted knowingly and with mal intention on the same date when the applicant submitted his VRS application i.e. on 27.11.1993 only to oust him from the job, therefore the action of the respondent is quite bad in law and unjust.

g) The applicant applied for voluntary retirement on 22.11.1993 w.e.f. 28.05.1994 but his voluntary retirement was accepted by the respondent on the same date when he moved his application on 22.11.1993. The management is well known that the VRS circulated vide letter dated 8.12.1988 will remain suspended w.e.f. 1.12.1993, therefore, action of the respondent in accepting his VRS w.e.f. 27.11.1993 instead of 1.2.1994 is fully illegal, arbitrary and unjust.

h) If the applicant's voluntary retirement was not accepted w.e.f. 22.11.1993 i.e. on the date when he moved his application for VRS, his application would be cancelled or rejected by the management of the respondent as he submitted another application dated 27.11.1993 for withdrawing his voluntary retirement and thus he would remain in job till attaining his retirement age from the job. In view of this the respondent may be directed to pay entire salary and other service benefits to the applicant from the date of his relieve till the date of his retirement.

i) It is provided in the standing orders of the company that the pay will be revised on each 5 years of employees which has not been done in the matter of the applicant before accepting his VRS. The company is quietly running till date, therefore his voluntary retirement deserves to be quashed and the respondent be directed to reinstate the applicant on the post with full salary benefits from the date of relieve from the job till his date of retirement from the post and pay his entire due salary with 12% interest to the applicant.

Case of respondent:

On 25.07.2012 the written statement filed on behalf of the respondent M/s. Scooters India Limited taking the following **preliminary objections** :-

a) The matter of dispute does not constitute a valid industrial dispute, as the dispute has not been transformed into an industrial dispute within the meaning of the terms as defined in Industrial Disputes Act 1947.

b) The Central Government has not taken facts in cognizance while making a reference to the Tribunal. The reference is not based on the pleadins of the parties advanced at the conciliation stage, especially the submissions of the respondent before the Conciliation Officer/Government have been completely ignored, while making the reference for adjudication. No cause of action arose on the date as mentioned in reference order as such also on his ground alone, the reference order is bad in the eyes of law.

c) The Industrial Disputes Act 1947 has been amended vide Industrial Disputes (Amendment) Act, 2010 (Act No.24 of 2010) and period of limitation has been provided by virtue of Section 2A(3), which is quoted as below:-

> *"2A(3) The application referred to in sub-section (2) shall be made to the Labour Court or Tribunal before expiry of three years from the date of discharge, dismissal, retrenchment or otherwise termination of services as specified in sub-section (1)"*

d) A period of limitation has been provided i.e. three years from the alleged date of termination of services, but the instant case has arisen after a period of 18 years which is liable to the dismissed on the ground of limitation alone.

e) Even otherwise, the applicant has not raised industrial dispute within reasonable time. The applicant has raised an industrial dispute regarding his acceptance of Voluntary Retirement very belatedly i.e. after elapse of more than about 18 years. It is trite law as held by the Apex Court that the dispute must be raised within reasonable period of time from the cause of action and where the industrial dispute is not raised within reasonable period of time the Labour Court or Industrial Tribunal should decline to grant any interim relief to the workman.

f) The Apex Court in the case of Nedungadi Bank Ltd. Versus K.P. Madhavankutty & others : 2000(84) FLR 673 SC, S.M. Niljakar Vs. Telecom District Manager, Karnataka:2003(97) FLR 608 SC, Manager R.B.I. Vs. Gopinath Sharma : 2006 FLR (110) FLR 803 SC has already held that the dispute must be raised within reasonable period of time from the cause of action and a dispute which is state could not be subject matter of reference.

g) The present reference is highly belated, inasmuch as it is made after more than eighteen years from the alleged date of cause of action. The instant delay caused prejudice to the respondent since the management not presumed to preserve the relevant record for such a long period.

h) It is settled law of the land that the person who is approaching this Tribunal should come with clean hand but in the instant matter, the applicant has concealed the actual material facts which are very necessary for the purposes of the adjudication of present matter of dispute, if any, as such also the reference is not maintainable before this Tribunal and accordingly deserves to be rejected.

i) Earlier the applicant had raised an industrial dispute under the provisions of Section 2A of the U.P. Industrial Disputes Act before the validly appointed conciliation officer. The conciliation officer on its turn called upon the parties for hearing and after conducting the necessary proceedings, the aforementioned application had been rejected by the competent authority.

j) The applicant preferred a Writ Petition No.6099 (SS) of 1999 (Daya Shanker Singh & another Vs. Scooters India Limited & others) along with some other ex-employees of the Company before the Hon'ble High Court, Lucknow Bench, Lucknow challenging the order passed by the competent authority and the Hon'ble High Court had been pleased to dismiss the aforesaid writ petition including bunch of writ petitions bearing W.P.No.2146 (SS) of 2000, W.P.No.6654 (SS) of 1999, W.P. No.2620 (SS) of 2000, W.P. No.1625 (SS) of 2000, W.P. No.1745 (SS) of 2000, W.P. No.1644 (SS) of 2000, W.P. No.1635 (SS) of 2000 & W.P. No.1624 (SS) of 2000 vide judgment and order dated 8.2.2006 after holding that there is no dispute that the petitioners themselves had approached the scheme and had accepted all the benefits and after accepting all the benefits, after a lapse of long time, had tried to raise this dispute. Further the Hon'ble Court has held that the Conciliation Officer, in these circumstances for sufficient reasons disallowed the application of the petitioners.

k) A Review Petition No.74 of 2006 was also filed by the applicant which has also been dismissed by the Hon'ble High Court, Lucknow Bench, Lucknow vide its judgment and order dated 13.5.2008. Thus it is clear that the matter has already been adjudicated upon by the competent court of law and these facts have not been disclosed by the applicant in their written statement, which amounts to concealment of facts and the instant application is liable to be dismissed on this ground alone.

l) An identical situated employee had also preferred a Writ Petition No.1165(SS) of 1994:Jagdish Chandra Nigam Versus M/s. Scooters India Limited before the Hon'ble High Court, Lucknow Bench, Lucknow challenging the action of the management in accepting the application for voluntary retirement, which has been dismissed by means of detail judgment and order dated 9.1.1997.

m) Being aggrieved from the aforesaid judgment and order dated 9.1.1997, Special Appeal No.48 (SB) of 1997 was preferred before the Division Bench of the Hon'ble High Court, Lucknow Bench, Lucknow and after conducting the necessary proceedings, the Hon'ble Division Bench of the Hon'ble High Court decided the said special appeal by means of judgment and order dated 18.12.2000 and set aside the judgment and order passed by the Single Judge to the extent that in case of the appellant/petitioner deposits the entire amount which he has received through cheque dated 12.3.1994 alongwith interest at the rate of 12% with respondent company as well as other benefits which might have been given to the appellant within four weeks from the production of certified copy of the order, the appellant will be reinstated in service.

n) The management preferred Special Leave Petition challenging the judgment and order dated 18.12.2000 before the Hon'ble Supreme Court of India, which was letter on converted into Civil Appeal No.1089 of 2004:M/s. Scooters India Limtied & others Vs. Jagdish Chandra Nigam which was allowed by means of the judgment and order dated 12.2.2004 and the judgment and order dated 18.12.2000 rendered by the Division Bench of the High Court, Lucknow Bench, Lucknow has been set aside.

o) Being aggrieved from the judgment and order dated 12.2.2004, Sri Jagdish Chandra Nigam had preferred a Review Petition No.747 of 2004: J.C. Nigam Vs. M/s. Scooters India Limited, which has also been dismissed by the Hon'ble Supreme Court of India vide its judgment and order dated 28.4.2004. Sri Nigam also preferred a Curative Petition No.152 of 2008 and the same has also been dismissed by the Constitution Bench of Hon'ble Supreme Court vide its judgment and order dated 21.1.2009. Thus it is crystal clear that the matter in dispute has already been decided by the competent court of law and now nothing remains to be adjudicated upon by this Tribunal.

p) It is crystal clear that the principles of res-judicata applies into the matter and accordingly the reference is liable to be rejected, out rightly without going into the merit of the case.

Accordingly, it has been prayed by respondent that the present industrial dispute may be dismissed being devoid of any merit.

Thereafter documents, evidences etc. had been exchanged between the parties. Sri Sharad Kumar Shukla, Learned Counsel for the respondent submits that the preliminary objections taken by them may be considered first and thereafter the matter be heard on merits.

Finding & conclusion on the Preliminary Objections:

I have heard Sri V.K. Jaiswal, learned counsel for claimant and Sri Sharad Kumar Shukla and Sri A.K. Singh, learned counsel for the respondent.

It is not in dispute between the parties that Sri Ambika Prasad Atraulia-applicant/workman was appointed as semi skilled worker in establishment known as Scooter India Limited on 08.06.1976, Grade-D having service No. 3289. Scooter India Limited floated a scheme known as Voluntary Retirement (hereinafter referred to as 'VRS').

On 22.11.1993 applicant submitted an application for opting VRS and the same was accepted by the respondent on 22.11.1993 and his date of release under the said scheme was notified as 31.11.1993 and consequently applicant was voluntary retired from service under the Scheme with all consequential benefits and the same were received by him.

Meanwhile on 6.11.1993 a circular was issued which reads as under:-

> "*Sub: Voluntary Retirement Scheme – suspension thereof*
>
> *The Voluntary retirement scheme circulated vide circular no.SIL/PER/NC-63/88 dated 8.12.88 for the employees of the Company will remain suspended w.e.f.1.12.1993*."

So a letter/representation dated 27.11.1993, submitted by applicant for withdrawal/rejection of his application dated 22.11.1993 for voluntary retirement from services on the ground mentioned therein.

From the material on record the position which emerges out that initially aggrieved by the action of the respondent thereby not considering application of the workman/applicant dated 27.11.1993 for rejecting/withdrawing acceptance of voluntary retirement by him under the scheme known as Voluntary Retirement Scheme, he raised a industrial dispute under Section 2-A of Industrial Disputes Act which rejected by the Conciliation Officer.

Aggrieved by the said facts, the workman/applicant along with other similarly situated employees filed a Writ Petition no. 6099 (SS) of 1999 (Daya Shanker Singh & others Versus M/s. Scooter India Limited & others).

The said writ petition was heard by the Hon'ble High Court along with leading Writ Petition No.2146 (SS) of 2000 (S.V. Jaiswal Versus M/s. Scooter India Limited & others).

By means of order dated 8.2.2006 the Hon'ble High Court dismissed the Writ Petition No.2146 (SS) of 2000 along with other connected writ petitions including the Writ Petition No.6099 (SS) of 1999, the relevant portion, quoted below:-

"*The question whether voluntary retirement would come under the definition of retrenchment or compulsory retirement or not, was considered in a number of cases which have been relied upon by the learned counsel appearing on behalf of the opposite party, one main of them has been reported in 1997(2), UPLBEC 1262, Jagdish Chand Nigam Vs. Scooter India Limited.*

In similar circumstances, the petitioners had taken voluntary retirement. The Bench of this court observed that the petitioner had occupied offer of his premature retirement, in order to receive the compensation, for the last tenure of service offered by the respondents. The offer made by the employers was accepted by the employees. The benefits provided by the respondents under this scheme were accepted by the petitioner. Since the workman had accepted the scheme and himself had opted to retire under this scheme, he cannot be allowed to approbate or reprobate. In the present case of the petitioner, the employees had accepted all benefits under the Voluntary Retirement Scheme, so they cannot retract from the obligations and exercise their right, integrally connected with the performance of the obligations under the Voluntary Retirement Scheme.

In view of the above facts and in view of the principles of law laid down in the above noted case and after accepting offer of huge incentive, they now cannot withdraw their resignation and if their services had come to an end on account of it, they cannot be allowed to raise it in this manner as their grievance. The Hon'ble Apex Court in Special Leave Petition affirmed this judgment. The same principles were laid down by the Hon'ble Apex Court in another case reported in 2004(100) FLR 648, Punjab National Bank Vs. Virendra Kumar Goel and others and AIR 2003 SC 858, Bank of India with other banks Vs. Virendra Kumar Goel and others, wherein it was laid down that retirement was to take effect only after the request was accepted. Such scheme is only an intimation to offer which can be withdrawn before it is accepted contractual bar created under the scheme to withdraw the request once made by employees cannot be made.

In the present case there is no dispute that the petitioners themselves had approached the scheme and had accepted all the benefits and after accepting all the benefits, after a lapse of long time, had tried to raise this dispute. The Conciliation Officer, in these circumstances for sufficient reasons allowed the application of the petitioners.

I find no merit in these writ petitions. They are fit to be dismissed and are accordingly dismissed with costs."

Against order dated 8.2.2006 Sri Daya Shankar Singh & others filed a Review Petition No.74 of 2006 (Daya Shankar Singh & others Vs. M/s. Scooter India Limited & others) which too was dismissed by means of order dated 13.5.2008 which is quoted below:-

"*There appears no error apparent at the face of record. The review petition is dismissed. No order as to costs*."

However, above said facts have been concealed by applicant while filing the present I.D. Case with oblique motive and purpose.

As such, it is rightly submitted on behalf of respondent that present case on the same relief in respect to which earlier claimant's case u/s 2A of the Act was rejected, is barred by the principle of res-judicata.

Further, one Sri Jagdish Chandra Nigam whose case was identical to the case of claimant, filed a Special Appeal No.48 (SB) of 1997, allowed by means of judgment and order dated 18.12.2000 (reported in 2000CJ(All) 309), the relevant portion, quoted below:-

"18. The appeal is allowed. The judgment and order passed by the Hon'ble the single Judge is set aside to the extent, the observations made in the foregoing paragraph of this judgment. But we provide that in case the appellant deposits the entire amount which he has received through cheque dated March 12, 1994 alongwith interest at the rate of 12% with Scooters India Limited, as well as other benefits which might have been given to the appellant within four weeks from the date of production of the certified copy of this order, the appellant will be reinstated in service. But considering the facts and circumstances of the case, we further provide that the appellant will not be entitled for payment of back wages.

19. As far as the case of the petitioners of other writ petitions are concerned, the fact of those writ petitioners are not exactly identical to the facts which have been indicated in the present Special Appeal. But as this Court has decided the present Special Appeal more or less on same propositions of law although the fact might be different, we heard the arguments of the learned counsel for the parties in all the writ petitions alongwith special appeal, which are connected with this special appeal as well.

20. As we have already indicated that those employees who withdrew their application for voluntary retirement before the prospective date mentioned in the original application for voluntary retirement, shall he entitled for the relief. But those persons, who have not withdrawn their voluntary retirement before the prospective date, would not be entitled for any relief.

21. We further provide that those petitioners, who opted for the Voluntary Retirement Scheme from a prospective date and withdrew their resignations before the said prospective date, but were, relieved by the management of the Scooters India Ltd. would be entitled to the relief as Jagdish Chandra Nigam has been provided, provided they filed the writ petitions within one month from the date of the relieving orders. If they had filed the writ petition after one month from the date of relieving orders, they would not be entitled for any relief.

22. With the aforesaid observations, the Special Appeal as well as all the writ petitions are disposed of."

Judgment/order dated 18.12.2000 challenged by way of filing a S.L.P. having Special Leave Petition (Civil) No.10352/2001 (M/s. Scooters India Ltd & others versus Jagdish Chandra Nigam) along with other S.L.P.s which were connected. In the above noted S.L.P. an order dated 12.2.2004 was passed by the Hon'ble Supreme Court which reads as under:-

"*Leave Granted.*

For the reasons stated in our order passed today in C.A. No.4098/2002, this appeal is allowed.

The order and judgment under challenge is set aside. There shall be no order as to costs."

Thus, as per the order passed by the Hon'ble Supreme Court, the S.L.P. filed by M/s. Scooters India Limited was allowed and judgment and order passed in the case of Special Appeal filed by Sri Jagdish Chandra Nigam was set aside/S.L.P. filed by Sri Jagdish Chandra Nigam was dismissed.

Moreover order passed by the Hon'ble Supreme Court in Special Leave Petition (Civil) No.10352/2001 (M/s. Scooters India Ltd & others versus Jagdish Chandra Nigam) based upon order dated 12.2.2004 passed by the Hon'ble Supreme Court in C.A. No.4098 of 2002 (Bank of India & others Vs. Pale Ram Dhania), reproduced below:-

"1. It is not disputed that the appellant Bank introduced a Voluntary Retirement Scheme, 2000 (herein referred to as "the Scheme") for its employees which had the approval of its Board of Directors. The Scheme was operative w.e.f. November 15, 2000 to December 14, 2000 for the employees who sought voluntary retirement. It is not disputed that the respondent herein who was an employee of the appellant Bank sought voluntary retirement under the Scheme on November 30, 2000. It is also not disputed that on December 2, 2000 he wrote to the Bank for withdrawal of his application for voluntary retirement. On January 22, 2001, the appellant Bank accepted the request for voluntary retirement of the respondent. Further, on January 25, 2001, the respondent withdrew the retiral benefits deposited in the Bank in his name as per voluntary retirement. It appears that the respondent changed his mind after the respondent was relieved from the employment and he filed a petition under Article 226 of the Constitution challenging the acceptance of his request for voluntary retirement. A learned Single Judge of the High Court allowed the petition and set aside the acceptance of the application for voluntary retirement submitted by the respondent. Aggrieved, the appellants preferred a letters patent appeal which was dismissed. It is against the said judgment, the appellants are in appeal before us.

2. A Bench of three Judges of this Court in Punjab National Bank v. Virender Kumar Goel , has held that an employee who sought voluntary retirement and subsequently wrote for its withdrawal but has withdrawn the amount of retiral benefits as per the Voluntary Retirement Scheme, is not entitled to the withdrawal of his application for voluntary retirement. It is not disputed that in the present case the respondent herein withdrew the amount of retiral benefits on January 25, 2001.

3. For the aforesaid reason, this appeal deserves to be allowed. We order accordingly. The order and judgment under challenge is set aside. There shall be no order as to costs".

In Review Petition (Civil) No.53 of 2003 arising out of Appeal (Civil) No.896 of 2002 (Punjab National Bank Versus Virender Kumar Goel & others), the Hon'ble Supreme Court on 21.1.2004 passed an order. The relevant of order dated 21.1.2004 reads as under:-

"I.A.NOS. 1-22

These applications have been filed by the State Bank of Patiala for clarification/directions. The ground taken in these applications is that the State Bank of Patiala is not a nationalised bank. It is hundred per cent a subsidiary of the State Bank of India. The VRS scheme floated by the State Bank of Patiala is in para-materia with the scheme floated by the State Bank of India. This Court in the judgment dated 17.12.2002 allowed the appeals filed by the State Bank of India but nothing has been said about the appeals filed by the State Bank of Patiala. In the interregnum, a two-Judge Bench of this Court, in which one of us (Sema, J) was a member, considered the same question in Civil Appeal No. 2341 of 2003 arising out of Special Leave Petition No. 23530 of 2002 entitled State Bank of Patiala Vs. Jagga Singh, disposed of on 13.3.2003, where this Court after considering Clause 8 of the scheme floated by the State Bank of Patiala and Clause 7 of the scheme floated by the State Bank of India, had held that the scheme floated by the State Bank of Patiala is almost

identical of the scheme floated by the State Bank of India. Accordingly, the appeal filed by the State Bank of Patiala was allowed. Review Petition was also dismissed on 3.12.2003. In view thereof, we clarify that our direction No.2, allowing the appeals filed by the State Bank of India, would also include the appeals filed by the State Bank of Patiala. In other words, the appeals filed by the State Bank of Patiala are allowed in terms of our judgment dated 17.12.2002. I.A.NOS. 14-15 I.A.No.14 has been filed by an employee of the bank sought to clarify/modify our order dated 17.12.2002. In this case, admittedly, the benefit of the scheme had been withdrawn by the applicant on 27.2.2001. The applicant had clearly admitted, in ground E of the application, withdrawal of the amount so credited in his account, albeit compelling financial constraints.

I.A.No.15 has been filed by an employee of the bank for clarification/modification of our order dated 17.12.2002. In para 6 of the application, the applicant admitted that he had withdrawn and utilised the benefit of the scheme credited in his account.

As noticed in our judgment, having accepted the benefit under the scheme by withdrawing and utilisation thereof they are not permitted to approbate and reprobate."

Moreover Sri J.C. Nigam filed a Review Petition (Civil) No.747 of 2004 in C.A. No.1089 of 2004 (J.C. Nigam Versus M/s. Scooter India Limited & others) before the Hon'ble Supreme Court in which the following order dated 28.4.2004 passed:-

"*We do not filed any merit in the review petition and the same is accordingly dismissed*."

Thereafter, Sri J.C. Nigam filed a Curative Petition No.152 of 2008 against order dated 28.4.2004 passed in Review Petition (Civil) No.747 of 2004 which was dismissed by an order dated 20.1.2009, quoted below:-

"*We have perused the petition and the connected papers. In our view, no case is made out within the parameters indicated in the decision of this Court in Rupa Ashok Hurra Vs. Ashok Hurra & Anr. 2002(4) SCC 388. Hence, the Curative Petition is dismissed*."

In addition to the above said facts, Hon'ble the Apex Court in the constitution bench in the case of ***Rupa Ashok Hurra Versus Ashok Hurra & Anr, reported in 2002(4) SCC 388*** held as under:-

"Incidentally, this Court stands out to be an avenue for redressal of grievance not only in its revisional jurisdiction as conferred by the Constitution but as a platform and forum for every grievance in the country and it is on this context Mr.Shanti Bhushan, appearing in support of the some of the petitioners, submitted that the Supreme Court in its journey for over 50 years has been able to obtain the confidence of the people of the country, whenever the same is required be it the atrocities of the police or a public grievance pertaining to a governmental action involving multitudes of problems. It is the Supreme Court, Mr. Shanti Bhushan contended, where the people feel confident that justice is above all and would be able to obtain justice in its true form and sphere and this is beyond all controversies. It has been contended that finality of the proceeding after an Order of the Supreme Court, there should be, but that does not preclude or said to preclude this Court from going into the factum of the petition for gross injustice caused by an Order of the Supreme Court itself under the inherent power being an authority to correct its errors any other view should not and ought not be allowed to be continued. Needless to record here, however, that review jurisdiction stand foisted upon this Court in terms of the provisions of the Constitution, as noticed hereinbefore and it is also well-settled that a second review petition cannot be said to maintainable. Reference maybe made in this context to a decision of this Court in the case of J.Ranga Swamy v. Govt. of A.P. & Ors. (AIR 1990 SC 535), wherein this Court in paragraph 3 stated as below :-

"We are clearly of the opinion that these applications are not maintainable. The petitioner, who appeared in person, referred to the judgment in Antulay's case (1988) 2 SCC 602 : (AIR 1988 SC 1531). We are, however, of the opinion that the principle of that case is not applicable here. All the points which the petitioner urged regarding the constitutionality of the Government orders in question as well as the appointment of respondent instead of petitioner to the post in question had been urged before the Bench, which heard the civil appeal and writ petitions originally. The petitioner himself stated that he was heard by the Bench at some length. It is, therefore, clear that the matters were disposed of after a consideration of all the points urged by the petitioner and the mere fact that the order does not discuss the contentions or give reasons cannot entitle the petitioner to have what is virtually a second review."

True, due regard shall have to have as regards opinion of the Court in Ranga Swamy (supra), but the situation presently centres round that in the event of there being any manifest injustice would the doctrine of ex debito justitiae be said to be having a role to play in sheer passivity or to rise above the ordinary heights as it preaches that justice is above all. The second alternative seems to be in consonance with time and present phase of socio-economic conditions of the society. Manifest justice is curable in nature rather than incurable and this court would lose its sanctity and thus would belie the expectations of the founding fathers that justice is above all. There is no manner of doubt that procedural law/procedural justice cannot overreach the concept of justice and in the event an Order stands out to create manifest injustice, would the same be allowed to remain in silenco so as to affect the parties perpetually or the concept of justice ought to

activate the Court to find a way out to resolve the erroneous approach to the problem. Mr.Attorney General, with all the emphasis in his command, though principally agreed that justice of the situation needs to be looked into and relief be granted if so required but on the same breath submitted that the Court ought to be careful enough to trade on the path, otherwise the same will open up Pandora's box and thus, if at all, in rarest of the rare cases the further scrutiny may be made. While it is true that law courts has overburdened itself with the litigation and delay in disposal of matters in the subcontinent is not unknown and in the event of any further appraisal of the matter by this Court, it would brook on further delay resulting in consequences which are not far to see but that would by itself not in my view deter this Court from further appraisal of the matter in the event the same, however, deserve such an additional appraisal The note of caution sounded by Mr. Attorney as regards opening up of pandora's box strictly speaking, however, though may be of very practical in nature but the same apparently does not seem to go well with the concept of justice as adumbrated in our constitution. True it is, that practicability of the situation needs a serious consideration more so when this Court could do without it for more than 50 years, which by no stretch of imagination can be said to be a period not so short. I feel it necessary, however, to add that it is not that we are not concerned with the consequences of reopening of the issue but the redeeming feature of our justice delivery system, as is prevalent in the country, is adherence to proper and effective administration of justice in stricto. In the event there is any affectation of such an administration of justice either by way of infraction of natural justice or an order being passed wholly without jurisdiction or affectation of public confidence as regards the doctrine of integrity in the justice delivery system technicality ought not to out-weigh the course of justice the same being the true effect of the doctrine of ex debito justitiae. The oft quoted statement of law of Lord Hewart, CJ in R v. Susssex Justices, ex p McCarthy (1924 (1) KB 256) that it is of fundamental importance that justice should not only be done, should manifestly and undoubtedly be seem to be done had this doctrine underlined and administered therein. In this context, the decision of the House of Lords in R v. Bow Street Metropolitan Stipendiary Magistrate and others, ex parte Pinochet Ugarte (No.2) seem to be an ipoc making decision, wherein public confidence on the judiciary is said to be the basic criteria of the justice delivery system any act or action even if it a passive one, if erodes or even likely to erode the ethics of judiciary, matter needs a further look. Brother Quadri has taken very great pains to formulate the steps to be taken and the methodology therefor, in the event of there being an infraction of the concept of justice, as such further dilation would be an unnecessary exercise which I wish to avoid since I have already recorded my concurrence therewith excepting, however, lastly that curative petitions ought to be treated as a rarity rather than regular and the appreciation of the Court shall have to be upon proper circumspection having regard to the three basic features of our justice delivery system to wit, the order being in contravention of the doctrine of natural justice or without jurisdiction or in the event of there is even a likelihood of public confidence being shaken by reason of the association or closeness of a judge with the subject matter in dispute. In my view, it is now time that procedural justice system should give way to the conceptual justice system and efforts of the law Court ought to be so directed. Gone are the days where implementation of draconian system of law or interpretation thereof were insisted upon - Flexibility of the law Courts presently are its greatest virtue and as such justice oriented approach is the need of the day to strive and forge ahead in the 21st century."

Thus, from the above said facts and the material on record, as the present industrial dispute stands on the same footing as of Sri Jagdish Chandra Nigam, so in view of the judgment passed Hon'ble Supreme Court in the case of Sri Jagdish Chandra Nigam thereafter in Review Petition and Curative Petition, by him which were also dismissed.

Accordingly, preliminary objection taken by learned counsel for respondent are allowed and claim petition filed by claimant liable to be dismissed.

ORDER

For the foregoing reasons the present industrial dispute is dismissed, workman is not entitled for any relief; and the reference is answered accordingly.

Lucknow.

07th May, 2024

Justice ANIL KUMAR, Presiding Officer

नई दिल्ली, 28 जून, 2024

का.आ. 1308.—औघोगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार **स्टेट बैंक ऑफ़ इंडिया** के प्रबंधतत्र, संबद्ध नियोजको और उनके कर्मकारो के बीच अनुबंध में निर्दिष्ट औघोगिक विवाद में केन्द्रीय सरकार औघोगिक अधिकरण/श्रम न्यायालय, 2 दिल्ली के पंचाट (154/2022) प्रकाशित करती है।

[सं..एल. 12025/01/2024-आई.आर. (बी-I)-176]

सलोनी, उप निदेशक

New Delhi, the 28th June, 2024

S.O. 1308.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref.154/2022*)* of the *Cent.Govt.Indus.Tribunal-cum-Labour Court No -2 Delhi* as shown in the Annexure, in the industrial dispute between the management of State Bank of India and their workmen.

[No. L-12025/01/2024 – IR (B-I)-176]

SALONI , Dy. Director

ANNEXURE

SH. ATUL KUMAR GARG, PRESIDING OFFICER, CENTRAL GOVT. INDUSTRIAL-TRIBUNAL CUM – LABOUR COURT NO II, NEW DELHI

I.D. 154/2022

Sh. Adesh Kumar Jha, S/o Sh. Vijay Kant Jha,
R/o House No.-RZF-J-1/214, Near Shakuntla Hospital,
West Sagarpur, Delhi-110046.

VERSUS

1. Ms. Aradhna Tripathi, Manager,
State Bank of India,
Padam Singh Road, Karol Bagh, New Delhi-110005.

2. **The Director, Sh. Rattan Singh,**
Tiger 4 Security & Facilities India Pvt. Ltd.
(Earlier Tiger 4 Security & Detective India Pvt. Ltd.)
Plot No.354, 01st Floor, Jagat Complex, 100 Foota Ghitaurni,
New Delhi-110030.

3. **The Director, Sh. Rattan Singh,**
Tiger 4 Security & Facilities India Pvt. Ltd.
(Earlier Tiger 4 Security & Detective India Pvt. Ltd.)
Plot No.354, 01st Floor, Jagat Complex, 100 Foota Ghitaurni,
New Delhi-110030.

AWARD

This is an application U/S 2A of the Industrial Disputes Act filed by the claimant with the prayer that his termination from the service by the management be declared unjust and he be reinstated in service with full back wages.

Management-1 is already proceeded ex-parte vide order dated 13.01.2023. Management-2 & 3 had filed their written statement denying the claim of the workman. Issues were framed vide order dated 18.12.2023. During the course of proceeding, workman wishes to withdraw the claim. His statement is recorded separately.

In view of the above said statement, claim of workman stands dismissed as withdrawn. Award is accordingly passed. A copy of this award is sent to the appropriate government for notification as required under section 17 of the ID act 1947. File is consigned to record room.

Date: 28.02.2024

ATUL KUMAR GARG, Presiding Officer

नई दिल्ली, 28 जून, 2024

का.आ. 1309.—औधोगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एमईएस के प्रबंधतत्र, संबद्ध नियोजको और उनके कर्मकारो के बीच अनुबंध में निर्दिष्ट औधोगिक विवाद में केन्द्रीय सरकार औधोगिक अधिकरण/श्रम न्यायालय, 2 दिल्ली के पंचाट (97/2012) प्रकाशित करती है।

[सं..एल. 12025/01/2024-आई.आर. (बी-I)-177]

सलोनी, उप निदेशक

New Delhi, the 28th June, 2024

S.O. 1309.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref.97/2012) of the *Cent.Govt.Indus.Tribunal-cum-Labour Court No -2 Delhi* as shown in the Annexure, in the industrial dispute between the management of MES and their workmen.

[No. L-12025/01/2024 – IR (B-I)-177]

SALONI , Dy. Director

ANNEXURE

SH. ATUL KUMAR GARG, PRESIDING OFFICER, CENTRAL GOV. INDUSTRIAL-TRIBUNAL CUM – LABOUR COURT NO II, NEW DELHI

I.D. No. 97/2012

Sh. Inder Pal Singh
S/o Sh. Lakhuram,
39, Patel Marg, Balmiki Colony,
Ghaziabad (U.P)

VERSUS

1. The Chief Engineer,
MES,
HQ, Bareilly Zone,
C/o 56 APO

2. The Garrison Engineer,
E & M and Water Supply,
MES,
Delhi Roorkee Road
Meerut (U.P)

AWARD

Desk Officer Sh. Ramesh Singh has sent the reference to this tribunal for adjudication in the following words.

> *"Whether the action of the management of MES, Meerut in terminating the services of Sh. Inder Pal Singh S/o Sh. Lakhoo Ram, from the post of FGM under AGE, E & M, Meerut Cantt., w.e.f. 12/07/1982, is legal and justified? What relief the workman is entitled to?"*

After receiving the said reference, notices were issued to both the parties. Both claimant and managment had appeared and filed their claim and written statement respectively. Issues have been framed vide order dated 14.05.2013. In between an order was passed by Ld. Predecessor of this tribunal holding the preliminary issue regarding enquiry. Enquiry was found to be proper. Thereafter, case was listed for workman evidence. His evidence stood closed vide order dated 28.09.2022. Management had filed the evidence. In between on 12.10.2023, the claimant has given the statement that he does not want to pursue his claim and made prayer, his claim be dismissed as withdrawn.

In view of the above statement on record, the claim of the workman stands dismissed as withdrawn. Award is accordingly passed. A copy of this award is sent to the appropriate government for publication U/S 17 of I.D Act.

ATUL KUMAR GARG, Presiding Officer

Dated: 12.10.2023

नई दिल्ली, 28 जून, 2024

का.आ. 1310.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार हिंदुस्तान कंस्ट्रक्शन कंपनी लिमिटेड के प्रबंधतत्र, संबद्ध नियोजको और उनके कर्मकारो के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, 2 दिल्ली के पंचाट (02/2018) प्रकाशित करती है।

[सं..एल. 12025/01/2024-आई.आर. (बी-I)-178]

सलोनी, उप निदेशक

New Delhi, the 28th June, 2024

S.O. 1310.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref.02/2018*)* of the *Cent.Govt.Indus.Tribunal-cum-Labour Court No -2 Delhi* as shown in the Annexure, in the industrial dispute between the management of Hindustan Construction Co. Ltd and their workmen.

[No. L-12025/01/2024 – IR (B-I)-178]

SALONI , Dy. Director

ANNEXURE

SH. ATUL KUMAR GARG, PRESIDING OFFICER, CENTRAL GOV. INDUSTRIAL-TRIBUNAL CUM – LABOUR COURT NO II, NEW DELHI.

ID.No.02/2018

The General Secretary,

Hindustan Construction Co. Ltd

Pipalkothi Chamoli,

Uttarakhand- 246481

VERSUS

The Project Manager,

Hindustan Construction Co. Ltd

Vishnugaad PipalkothiChamoli,

Uttarakhand- 246481

AWARD

The appropriate Government Sh. **Rajendra Joshi**, the Deputy Director, Government of India, Ministry of Labour/ ShramMantralya has sent the reference refer dated 27.12.2017 to this tribunal for adjudication in the following words:

> **"Whether the management of Hindustan Construction Co. Ltd. VishnugaadPipalkothi Hydro Electric Project, Chamoli were at fault having enforced the principle of 'no work no pay' without involving the Hindustan Construction workers union members/workers in negotiations for lifting the work stoppage? If so, whether any wages can be paid to the workmen for the period of work stoppage i.e. 14.05.2017 to 02.07.2017?"**

Claimant had stated in his claim statement that THDC India Ltd. is a joint venture of Government of India and Government of U.P. which is constructing Tehri Dam with effect from 13th May 2017 at the site of the Dam at Helong, the villagers of Helong blocked entry of the site workman presented themselves the work at the site of the management however site for workman was not accessible to the workman concerned by the management due to the blockade by the villagers. General Secretary of the Union had brought the notice of the project manager of M/s Hindustan Construction Company Ltd. vide email message dated 19.04.2017 to the effect that there was discontentment among left over PRU contractors and about their threats. The management of THDCIL filed a suit for permanent injunction before the Civil Judge (Senior Division) Chamoli seeking a decree of permanent Injunction against for respondents. However despite Injunction order villagers continued the blockade for acceptance of their demands. Management by giving notice dated 17.05.2017 notified that the period of work stoppage will be treated on the principle of 'No Work No Pay' till the time of works of Dam site are resumed. His case is that the workman concerned in the reference are not remotely concerned with the obstruction to the access to the project site and they never refused to do their duties. Hence, he has prayed the award to be passed in favour of the workman and against the management directing the management to pay salary to each of the 225 workmen for the period of which workmen had not turned his duty due to the blockade.

WS have been filed by the management-2 denying the averment. Issued were framed vide order dated 07.12.2022.

It is also the matter of facts that the claimant have not been representing since 22.05.2019. On 22.05.2019 Sh. Somdutt, AR of the claimant has withdrawn the authority letter. Only management -2 have been appearing

continuously. On 10.01.2024, management had filed the evidence. Since the workman has not been appearing, there is no use for examining the management witness.

In these circumstances, when the workmen are not interested in pursuing their claim since neither they have engage another counsel nor they have turned up for redressal of their grievances, claim of the claimant stand dismissed. Reference is answered accordingly. A copy of this award is sent to the appropriate government for notification as required under section 17 of the ID act 1947. File is consigned to record room.

13.03.2024

ATUL KUMAR GARG, Presiding Officer

नई दिल्ली, 28 जून, 2024

का.आ. 1311.—औद्योगिक विवाद अधिनियम (1947 का 14) की धारा 17 के अनुसरण में,केन्द्रीय सरकार **नवोदय, विद्यालय समिति, बी-15 इंस्टीट्यूशन एरिया, सेक्टर-62, नोएडा, गौतमबुद्ध नगर; नवोदय विद्यालय समिति क्षेत्रीय कार्यालय, तृतीय तल, लेखराज पन्ना, सेक्टर-3 विकास नगर; जवाहर नवोदय विद्यालय, औद्योगिक क्षेत्र, जालौन,(उ.प्र.)** ,के प्रबंधतंत्र के संबद्ध नियोजकों और **सचिव, लोक मजदूर सभा, ए, फेडरेशन ऑफ यूनियंस, राजाजी पुरम, लखनऊ,** के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण- सह-श्रम न्यायालय, लखनऊ पंचाट(संदर्भ संख्या **29/2017**) को जैसा कि अनुलग्नक में दिखाया गया है,प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 27.06.2024 को प्राप्त हुआ था।

[सं. एल- 42011/41/2015- आईआर-(डीयू)]

दिलीप कुमार, अवर सचिव

New Delhi, the 28th June, 2024

S.O. 1311.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 29/2017) of the **Central Government Industrial Tribunal cum Labour Court, Lucknow** as shown in the Annexure, in the Industrial dispute between the employers in relation to **Navodaya, Vidyalaya Samiti,B-15 Institution Area, Sector-62,Noida, Gautam Budh Nagar ; Navodaya, Vidyalaya Samiti ,Regional Office, IIIrd Floor, Lekhraj Panna, Sector-3 Vikas Nagar ; Jawahar Navodaya Vidyalaya, Industrial Area, Jalaun,(U.P.) , and The Secretary, Lok Mazdoor Sabha, A, Federation of Unions, Rajaji Puram, Lucknow,** which was received along with soft copy of the award by the Central Government on 27.06.2024

[No. L- 42011/41/2015- IR (DU)]

DILIP KUMAR, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL –CUM- LABOUR COURT, LUCKNOW

PRESENT

JUSTICE ANIL KUMAR

PRESIDING OFFICER

I.D. No. 29/2017

BETWEEN

Lok Mazdoor Sabha, A, Federation of Unions

through, Secretary, Mr. Om Narain Sahu

S/o Kate H, HO, Sahu, R/o F- 3351

Rajaji Puram, Lucknow

…… Workman

AND

(1) Navodaya, Vidyalaya Samiti

B-15 Institution Area, Sector-62,

Noida, District Gautam Budh Nagar

(2) Navodaya, Vidyalaya Samiti

Regional Office, IIIrd Floor

Lekhraj Panna, Sector-3 Vikas Nagar

(3) Jawahar Navodaya Vidyalaya

Industrial Area, Kalpi Road

Jalaun, U.P.

……. Respondent

ORDER

Claimant has filed complaint under section 33-A of the Industrial Dispute Act 1947 the facts which are stated in the claim petition are as under:-

The petitioner begs to complain that the opposite parties have been guilty of a contravention of the provisions of section 33-A of the Industrial Disputes Act, 1947 (14 of 1947), as shown below:-

1. *That the Central Government being the appropriate government vide its notification No. L-4200/41/2015ID(DL), New Delhi dated 11.06.2015 has referred the following matter of dispute before this Hon'ble Industrial Tribunal cum Labour Court for adjudication:-*

   ''क्या प्रबंन्धन, जवाहर नवोदय विद्यालय, उरई, जालौल व अन्य द्वारा श्री राजू उर्फ राजीव कुमार पुत्र विद्यालय, चतुर्थ श्रेणी को लगातार कई वर्षो सेवा करने पर सेवा में नियमित न किया जाना न्यायोचित एवं वैध है? यदि नही तो कामगार किस राहत को पाने का अधिकारी है ?''

2. *That the reference was registered as case number 51 of 2015 which was espoused by the abovementioned federation and is still pending before the Hon'ble Industrial Tribunal cum Labour Court and the same is being contested by the opposite parties.*

3. *That the complainant is a federation of trade unions working in the industrial sector of Uttar Pradesh and is approved by the Labour Commissioner as federation of unions under the provisions of Trade Unions Act, 1926 and as such has full powers and rights to raise and espouse the cause of its member and employees' members of its unions before the various authorities, Courts including the Hon'ble High Court and Hon'ble Supreme Court under the provisions of the Trade Unions Act, 1926.*

4. *That Mr. Om Narain Sahu is the secretary of the federation and has been authorized by its executive to file and prosecute the present industrial dispute and to do all the necessary and actions for proper prosecution of the case.*

5. *That the above noted case was filed for regularization of the workman concerned in the dispute i.e. Raju alia Rajiv Kumar which is pending before this Hon'be Court.*

6. *That the opposite parties have been continuously harassing the workman concerned mentally and physically and have been pressurizing the workman concerned to leave the school campus and not press the case.*

7. *That the opposite parties had forcefully made the workman concerned to live out of the school campus and due to these circumstances the workman concerned is living under the water tank due to non-availability of living space within the school premises and no food is being given to them while the other workman on the same post as that of the workman concerned are allotted living spaces in the school campus and are being given food as well.*

8. *That the opposite parties have not allotted any work to the workman concerned since two months and have not paid any salary to the workman for these two months and are threatening the workman that no salary will be paid to him for the upcoming month since they are not allotting any work to him.*

9. *That the opposite parties were deducting considerable amounts from the wages of the workman if the workman applied for leave to attend the proceeding of the case which is pending before this Hon'ble Court.*

10. *That the opposite parties have been threatening the workman to vacate the place under the water tank under which he living since few months.*

11. *That it is pertinent to mention here that the opposite parties have previously done such unlawful acts during the pendency of the conciliation proceedings before the Hon'ble Regional Labour Commissioner (Central), Luckow and the Hon'ble Regional Labour Commissioner had ordered to change the service conditions of the workman concerned by way of which the opposite parties allowed the workman to work as per the rules and regulations. But the opposite parties are again committing the said acts continuously.*

12. That the opposite parties are not making the presence of the workman concerned in the attendance register of the school and are not paying any wages to the workman in spite of the continuous availability of the workman concerned at work.

13. That the cause of action for filing the present complaint against the opposite parties arose when the opposite parties did not pay the salary of the workman and changed the service conditions of the workman concerned and due to the act being of continuous nature the cause of action persists until the present date.

14. That the workman concerned had also sent a written complaint to Hon'ble Presiding Officer Central Government Industrial Tribunal Cum Labour Court 8th Floor Kendriya Bhawan, Sector-H Aliganj, Lucknow through speed post on 12.06.2017 a copy of which was forwarded to the Hon'ble Regional Labour Commissioner (Central), Lucknow but o action has been taken against the opposite parties for the unlawful acts done by them. A copy of the complaint and the photocopy of the postal receipts is being annexed herewith as Annexure No. 1 and 2.

15. That it is pertinent to mention here that it is clearly stated under provision to sub clause 2 of section 33 of the Industrial Dispute Act, 1947 that no workman shall be discharged or dismissed, unless he has been paid wages for one months and an application has been made by the employer to the authority before the proceedings is pending for approval of action taken by the employer. Thus it is clear that the acts of the opposite parties for not allotting work, living space and food to the workman concerned are in contravention of the provision to sub clause 2 of section 33 of the Industrial Dispute Act, 1947 which is unlawful, illegal unjustified due to being unfair labour practices.

16. That in the light of these circumstances it is in the interest of justice to direct the opposite parties to stop these practices with immediate effect so that the concerned workman does not suffer injustice due to the change of service conditions during eh pendency of dispute before the Hon'ble Court.

I have heard the learned counsel for the parties and perused the record.

The core question is to be decided in the present case is whether that the application under section 33-A of the Industrial Dispute Act, 1947, moved by claimant as per the facts mentioned, this is maintainable or not?

In order to decide the controversy in question it will be appropriate to have a glance to related provisions as provided under Section 33 of the I.D. Act, which reads as under:-

Section 33. Condition of service, etc, to remain unchanged under certain circumstances during pendency of proceedings:-

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

In regard to any matter connected with the dispute, alter, to the prejudice of the workmen concerned in such dispute, the conditions of service applicable to them immediately before the commencement of such proceedings; or

For any misconduct connected with the dispute, discharge or punish, whether by dismissal or otherwise, any workmen concerned in such dispute,

Save with the express permission in writing of the authority in respect of an industrial dispute, the employer may, in accordance with the standing orders applicable to a workman concerned in such dispute [or, where there are no such standing orders, in accordance with the term of the contract, whether express or implied, between him and the workman],

Alter, in regard to any matter not connected with the dispute, the conditions of service applicable to that workman immediately before the commencement of such proceeding; or

For any misconduct not connected with the dispute, discharge or punish, whether by dismissal or otherwise, that workman:

Provided that no such workman shall be discharged or dismissed, unless he has been paid wages for one month and an application has been made by the employer to the authority before which the proceeding is pending for approval of the action taken by the employer.

During the pendency of any conciliation proceeding before a conciliating officer or a Board or any proceeding before an arbitrator or a Labour Court or Tribunal or National Tribunal in respect of an Industrial Dispute, No employer shall-

(2) During the pendency of any such proceeding in respect of an industrial dispute, the employer may in accordance with the standing orders applicable to a workman concerned in such dispute or, where there are

no such standing orders, in accordance with the terms of the contract, whether express or implied, between him and the workman.

Alter, in regard to any matter not connected with the dispute, the conditions of service applicable to that workman immediately before the commencement of such proceedings or

For any misconduct not connected with the dispute, discharge or punish, whether by dismissal or otherwise, that workman:

Provided that no such workman shall be discharged or dismissed, unless he has been paid wages for one month and an application has been made by the employer to the authority before which the proceeding is pending for approval of the action taken by the employer.

It is relevant to mention that section was amended in 1950, 1956 and 1964, this section as originally enacted at the time of enactment of the Industrial Disputes Act, 14 of 1947, same was as follows:

Section "33. Conditions of service, etc., to remain unchanged under certain circumstances during pendency of proceedings-No employer shall during the pendency of any conciliation proceeding or proceedings before a Tribunal, in respect of any industrial dispute, alter to the prejudice of the workmen concerned in the dispute, conditions of service applicable to them immediately before the commencement of such proceedings, nor save with the express permission in writing of the Conciliation Officer, Board or Tribunal, as the case may be, shall during the pendency of such proceedings discharge, dismiss or otherwise punish such workmen, except for misconduct not connected with the dispute." It may be pointed out that under the above provisions so far as the right of the employer to punish any workman for misconduct not connected with the dispute was concerned, it was left untouched, and the employer was, therefore, entitled to exercise the common law power of dealing with his workmen in accordance with the Industrial authbim, unaffected by the pendency proceedings before the Authorities. of any.

Thereafter, Industrial Disputes (Appellate Tribunal) Act, 48 of 1950 was enacted which amended and substituted the above provisions of section 33 of the Act as quoted below:

Section 33. Conditions of service, etc, to remain unchanged under certain circumstances during pendency of proceedings-During the pendency of any conciliation proceeding or proceedings before a Tribunal in respect of any industrial

dispute, no employer shall- (a) alter, to the prejudice of the workmen concerned in such dispute, the conditions of service applicable to them immediately before the commencement of such proceedings; or

(b) discharge or punish, whether by dismissal or otherwise, any workman concerned in such dispute, save with the express permission in writing of the Conciliation Officer, Board or Tribunal, as the case may be."

It is relevant to mention that after 1950 amendment liberty of the employer in respect of matters connected with the dispute became fettered and he could not during its pendency alter the conditions of service or punish whether by dismissal or otherwise the workman concerned in the dispute without obtaining the express written permission of the Authority before whom the proceeding was pending. The amended section also dropped the exception made for misconduct not connected with the dispute.

The provisions of section 33 were again substituted in 1956 by the Industrial Disputes (Amendment and Miscellaneous Provisions) Act, 36 of 1956 and lastly amended recently in 1964 by the Industrial Disputes (Amendment) Act, 36 of 1964 and brought to their present form.

By the 1956 amendment inter alia was brought to the stated that penalty for misconduct not connected with the dispute within the purview of section 33 but provided for a new procedure in such cases, normally instead of express written permission, as in the case of misconduct connected with the dispute permits such action being taken with the subsequent approval of the Authority concerned. Where action taken by the employer involves discharge or dismissal he will have to pay the workman one month's wages and simultaneously file an application before the Authority before which the proceeding is pending for its approval of the action taken.

Thereafter following amendments were made by the Industrial Disputes (Amendment) Act, 36 of 1964:- (i) In sub-section (1), after the words "any proceeding before" the words "an arbitrator or" have been inserted;

(ii) In sub-section (2) after the words "the Standing Orders applicable to a workman concerned in such dispute," the words "or, where there are no such standing orders, in accordance with the terms of the contract, whether express or implied between him and the workman" have been inserted.

The section 33 of the Act has been explained question was concerned by **The Hon'ble Apex Court in the case of Lord Krishna Textiles Mills Vs. Its Workmen 1961 (2) FLR 112,** it was held that the scope and nature of the enquiry which appropriate authority could hold when an appt extent of the jurisdiction it by the

employer under section 33 (1) of the Act and the extent of the jurisdiction which it could exercise in such an enquiry has been laid down in Punjab National Bank Ltd. V. A.I.P.N.B Employees that enquiry against an employee was conducted as per rules/regulations etc, in accordance with principle of natural justice.

The Hon'ble Culcutta High Court in the case of **Swapratik Mukherjee V. Third Industrial Tribunal, 1997 (75) FLR 428 (Cal.)** held that the only jurisdiction which the Industrial Tribunal has under section 33 of the Act, it is to be determine whether a prima facie case for the punishment sought to be meted out by employer to the workman has been made out by employer and employer is not actuated by any mala fides or unfair labour practice or victimization.

The Hon'ble Apex Court in the case of **East Coal Co. Ltd. v. P.S. Mukharjee, 1959 (2) LLJ227** held that Even a cursory perusal of section 33 of the Act makes it clear that the purpose of that section was not to confer any general power of adjudication of disputes. There is no reason to think that by Legislature, by a side wind as it were, vested in the Conciliation Officer and the Board the jurisdiction and power of adjudicating upon disputes which they normally do not possess and they may not be competent or qualified to exercise. The section only imposes a ban on the right of the employer and the only thing that the authority to grant or withhold the permission i.e. to lift or maintain the ban.

Further the Hon'ble Supreme Court in the case of **the Lord Krishna Textile Millls Vs. Its Workmen AIR1961SC860** held as under:-

"Section 33 (1) provides that during the pendency of such industrial proceedings no employer shall (a) in regard to any matter connected with the dispute alter to the prejudice of the workmen concerned in such dispute the conditions of service applicable to them immediately before the commencement of such proceedings, or (b) for any misconduct connected with the dispute discharge or punish whether by dismissal or otherwise any workman connected with such dispute, save with the express permission in writing of the authority before which the proceeding is pending. Thus the original unamended section has now been confined to cases where the proposed action on the part of the employer is in regard to a matter connected with a dispute pending before an industrial authority. Under section 33(1) if an employer wants to change the conditions of service in regard to a matter connected with a pending dispute he can do so only with the express permission in writing of the appropriate authority. Similarly, if he wants to take any action against an employee on the ground of an alleged misconduct connected with the pending dispute he cannot do so unless he obtains permission in writing of the appropriate authority. (see also).

Further at this stage it is relevant to mention here that from the reading of the above sub-section 1 of Section 33 makes it clear that its provisions are intended to be applied during the pendency of any proceeding either in the nature of conciliation proceeding or in the nature of proceeding by way of reference made under Section 10. The pendency of the relevant proceeding is thus one of the conditions prescribed for the application of section 33. Section (1) also shows that the provisions of the said-section protected workmen concerned in the main dispute which is pending conciliation or adjudication. The effect of sub-section (1) is that where the conditions precedent prescribed by it are satisfied, the employer is prohibited from taking any action in regard to matters specified by clauses (a) and (b) against employees concerned in such dispute without the previous express permission in writing of the authority before which the proceeding is pending. In other words, in cases failing under sub-section (1), before any action can be taken by the employer to which reference is made by clauses (a) and (b), he must obtain the express permission of the specified authority. Section 33(2) proceeds to lay down a similar provision and the conditions precedent prescribed by it are the same as those contained in Section 33(1)".

Further Sub-Section 1 of Section 33 of the Act in both its limbs undoubtedly uses mandatory language and Sec. 31(1) makes it penal for the employer to commit a breach of the provisions of Sec. 33, and therefore, if Sec. 33 stood alone, it might lend itself to the construction that any action by way of discharge or dismissal taken against the workman would be void if it is in contravention of Sec. 33. But Sec. 33 cannot be read in isolation, for the intention of the legislature has to be gathered not from one provision but from the whole of the statute. If Section 33 and 33A are read together, it is clear that legislative intent shall not invalidate an order of discharge or dismissal passed in contravention of Sec. 33 despite the mandatory language implied in the Section and the penal provision enacted in Sec. 31(1) of the Act.

Taking into consideration the above said facts admittedly in the present case the claimant/workman is working on daily wages and also filed a reference dated 11.06.2015 before this Tribunal quoted herein below:-

"क्या प्रबंधन, जवाहर नवोदय विद्यालय, उरई, जालौन व अन्य द्वारा श्री राजू उर्फ राजीव कुमार पुत्र विद्यालय, चतुर्थ श्रेणी को लगातार कई वर्षो सेवा करने पर सेवा में नियमित न किया जाना न्यायोचित एवं वैध है? यदि नही तो कामगार किस राहत को पाने का अधिकारी है ?"

On the basis of I.D. case no. 51/2015 registered pending for adjudication.

In I.D. case 51/2015 the controversy to be decided is whether the Claimant Raju Kumar Raidas is entitled for regularization or not, till the said controversy is not decided application in question moved by applicant, on the facts

mentioned therein, are misconceived and cannot be adjudicated under section 33-A of the Industrial Dispute Act, so the same is not maintainable.

ORDER

For the foregoing reasons application under section 33-A of the Industrial Dispute Act, 1947 dismissed as not maintainable.

Lucknow. Justice ANIL KUMAR, Presiding Officer

Date 10.04.2024

नई दिल्ली, 28 जून, 2024

का.आ. 1312.—औद्योगिक विवाद अधिनियम (1947 का 14) की धारा 17 के अनुसरण में,केन्द्रीय सरकार **प्रबंध निदेशक, स्कूटर्स इंडिया लिमिटेड, सरोजिनी नगर, लखनऊ,** के प्रबंधतंत्र के संबद्ध नियोजकों और **श्री दया शंकर,कामगार,** के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण- सह-श्रम न्यायालय, लखनऊ पंचाट(संदर्भ संख्या **33/2012**) को जैसा कि अनुलग्नक में दिखाया गया है,प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 27.06.2024 को प्राप्त हुआ था।

[सं. एल- 42011/88/2011- आईआर-(डीयू)]

दिलीप कुमार, अवर सचिव

New Delhi, the 28th June, 2024

S.O. 1312.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 33/2012) of the **Central Government Industrial Tribunal cum Labour Court, Lucknow** as shown in the Annexure, in the Industrial dispute between the employers in relation to **The Managing Director, Scooters India Ltd., Sarojini Nagar, Lucknow, and Shri Daya Shanker, Worker,** which was received along with soft copy of the award by the Central Government on 27.06.2024.

[No. L- 42011/88/2011- IR (DU)]

DILIP KUMAR, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM- LABOUR COURT, LUCKNOW

PRESENT

JUSTICE ANIL KUMAR

PRESIDING OFFICER

I.D. No.33 of 2012

Ref. No. L-42011/88/2011-IR(DU) dated: 19.01.2012

BETWEEN

Daya Shanker, S/o Sri Ram Sajan Singh,

R/o 551-Jha/137, Ram Nagar, Bhilawan, Alambagh, Lucknow

AND

Managing Director, Scooters India Ltd.,

Sarojini Nagar, Lucknow.

AWARD

Sri V.K. Jaiswal - Counsel for the Applicant/Workman

Sri A.K. Singh & Sri Sharad Shukla- Counsel for the Respondent

On 19.1.2012 appropriate government by order no.L-42011/88/2011-IR (DU) has referred the following dispute to this Tribunal and accordingly the I.D. Case No.33 of 2012 (Daya Shanker Versus M/s. Scooter India Ltd.) was registered:-

> *"Whether the action of the management of Scooters India Ltd., Lucknow in not considering the application of workman Sri Daya Shankar Singh, Grade 'D' dated 03/12/1993 and voluntarily retiring him w.e.f. 11/01/1994 without paying entire pensionery benefits, is legal and justified? What relief the workman is entitled to?"*

Case of claimant:

On 21.3.2012 on behalf of workman, Statement of Claim filed stating therein the following averments :-

a) The applicant was appointed as semi skilled worker under the opposite party/employer on 10.11.1975 being fully eligible for the post and his Service No. is 2571 and he was initially granted Grade 'D'. The applicant/workman started performing his work and duties with all satisfaction of his all concerned.

b) All of sudden in the year 1993 a rumors was flown away in the campus of company that Manager of the respondent is saying that the company is going to be windup within a very short period due to heavy financial loss and as such employees may take his all service benefits as soon as possible from the company otherwise company will not responsible for the same. Those employees who will seek his voluntary retirement under the announced voluntary retirement scheme, they will call back in job/service on requirement of work on seniority basis.

c) The applicant believing rumor on 30.11.1993 applied for his voluntary retirement with effect from 31.3.1994 under the voluntary retirement scheme dated 8.12.1988.

d) A circular dated 6.11.1993 was also circulated by the respondent stating therein that the voluntary retirement scheme circulated vide circular dated 8.12.1988 will remain suspended with effect from 1.12.1993.

e) The applicant immediately on 3.12.1993 moved an application for withdrawing his voluntary retirement, which was sought by him with effect from 1.2.1994, then he came to know that his voluntary retirement has already been accepted by the management of opposite party on the same date i.e. on which he moved an application on 30.11.1993.

f) The management was fully aware with all things but voluntary retirement of the applicant was accepted knowingly and with mal intention on the same date when the applicant submitted his VRS application i.e. on 30.11.1993 only to oust him from the job, therefore the action of the respondent is quite bad in law and unjust.

g) The applicant applied for voluntary retirement on 30.11.1993 w.e.f. 1.2.1994 but his voluntary retirement was accepted by the respondent on the same date when he moved his application on 30.11.1993. The management is well known that the VRS circulated vide letter dated 8.12.1988 will remain suspended w.e.f. 1.12.1993, therefore, action of the respondent in accepting his VRS w.e.f. 30.11.1993 instead of 1.2.1994 is fully illegal, arbitrary and unjust.

h) If the applicant's voluntary retirement was not accepted w.e.f. 30.11.1993 i.e. on the date when he moved his application for VRS, his application would be cancelled or rejected by the management of the respondent as he submitted another application dated 3.12.1993 for withdrawing his voluntary retirement and thus he would remain in job till attaining his retirement age from the job. In view of this the respondent may be directed to pay entire salary and other service benefits to the applicant from the date of his relieve till the date of his retirement.

i) It is provided in the standing orders of the company that the pay will be revised on each 5 years of employees which has not been done in the matter of the applicant before accepting his VRS. The company is quietly running till date, therefore his voluntary retirement deserves to be quashed and the respondent be directed to reinstate the applicant on the post with full salary benefits from 1.12.1993 till his date of retirement from the post and pay his entire due salary with 12% interest to the applicant.

Case of respondent:

On 5.9.2012 the written statement filed on behalf of the respondent M/s. Scooters India Limited taking the following **preliminary objections** :-

a) The matter of dispute does not constitute a valid industrial dispute, as the dispute has not been transformed into an industrial dispute within the meaning of the terms as defined in Industrial Disputes Act 1947.

b) The Central Government has not taken facts in cognizance while making a reference to the Tribunal. The reference is not based on the pleadins of the parties advanced at the conciliation stage, especially the

submissions of the respondent before the Conciliation Officer/Government have been completely ignored, while making the reference for adjudication. No cause of action arose on the date as mentioned in reference order as such also on his ground alone, the reference order is bad in the eyes of law.

c) The Industrial Disputes Act 1947 has been amended vide Industrial Disputes (Amendment) Act, 2010 (Act No.24 of 2010) and period of limitation has been provided by virtue of Section 2A(3), which is quoted as below:-

> *"2A(3) The application referred to in sub-section (2) shall be made to the Labour Court or Tribunal before expiry of three years from the date of discharge, dismissal, retrenchment or otherwise termination of services as specified in sub-section (1)"*

d) A period of limitation has been provided i.e. three years from the alleged date of termination of services, but the instant case has arisen after a period of 18 years which is liable to the dismissed on the ground of limitation alone.

e) Even otherwise, the applicant has not raised industrial dispute within reasonable time. The applicant has raised an industrial dispute regarding his acceptance of Voluntary Retirement very belatedly i.e. after elapse of more than about 18 years. It is trite law as held by the Apex Court that the dispute must be raised within reasonable period of time from the cause of action and where the industrial dispute is not raised within reasonable period of time the Labour Court or Industrial Tribunal should decline to grant any interim relief to the workman.

f) The Apex Court in the case of Nedungadi Bank Ltd. Versus K.P. Madhavankutty & others : 2000(84) FLR 673 SC, S.M. Niljakar Vs. Telecom District Manager, Karnataka:2003(97) FLR 608 SC, Manager R.B.I. Vs. Gopinath Sharma : 2006 FLR (110) FLR 803 SC has already held that the dispute must be raised within reasonable period of time from the cause of action and a dispute which is state could not be subject matter of reference.

g) The present reference is highly belated, inasmuch as it is made after more than eighteen years from the alleged date of cause of action. The instant delay caused prejudice to the respondent since the management not presumed to preserve the relevant record for such a long period.

h) It is settled law of the land that the person who is approaching this Tribunal should come with clean hand but in the instant matter, the applicant has concealed the actual material facts which are very necessary for the purposes of the adjudication of present matter of dispute, if any, as such also the reference is not maintainable before this Tribunal and accordingly deserves to be rejected.

i) Earlier the applicant had raised an industrial dispute under the provisions of Section 2A of the U.P. Industrial Disputes Act before the validly appointed conciliation officer. The conciliation officer on its turn called upon the parties for hearing and after conducting the necessary proceedings, the aforementioned application had been rejected by the competent authority.

j) The applicant preferred a Writ Petition No.6099 (SS) of 1999 (Daya Shanker Singh & another Vs. Scooters India Limited & others) along with some other ex-employees of the Company before the Hon'ble High Court, Lucknow Bench, Lucknow challenging the order passed by the competent authority and the Hon'ble High Court had been pleased to dismiss the aforesaid writ petition including bunch of writ petitions bearing W.P.No.2146 (SS) of 2000, W.P.No.6654 (SS) of 1999, W.P. No.2620 (SS) of 2000, W.P. No.1625 (SS) of 2000, W.P. No.1745 (SS) of 2000, W.P. No.1644 (SS) of 2000, W.P. No.1635 (SS) of 2000 & W.P. No.1624 (SS) of 2000 vide judgment and order dated 8.2.2006 after holding that there is no dispute that the petitioners themselves had approached the scheme and had accepted all the benefits and after accepting all the benefits, after a lapse of long time, had tried to raise this dispute. Further the Hon'ble Court has held that the Conciliation Officer, in these circumstances for sufficient reasons disallowed the application of the petitioners.

k) A Review Petition No.74 of 2006 was also filed by the applicant which has also been dismissed by the Hon'ble High Court, Lucknow Bench, Lucknow vide its judgment and order dated 13.5.2008. Thus it is clear that the matter has already been adjudicated upon by the competent court of law and these facts have not been disclosed by the applicant in their written statement, which amounts to concealment of facts and the instant application is liable to be dismissed on this ground alone.

l) An identical situated employee had also preferred a Writ Petition No.1165(SS) of 1994:Jagdish Chandra Nigam Versus M/s. Scooters India Limited before the Hon'ble High Court, Lucknow Bench, Lucknow challenging the action of the management in accepting the application for voluntary retirement, which has been dismissed by means of detail judgment and order dated 9.1.1997.

m) Being aggrieved from the aforesaid judgment and order dated 9.1.1997, Special Appeal No.48 (SB) of 1997 was preferred before the Division Bench of the Hon'ble High Court, Lucknow Bench, Lucknow and after conducting the necessary proceedings, the Hon'ble Division Bench of the Hon'ble High Court decided the said special appeal by means of judgment and order dated 18.12.2000 and set aside the judgment and order passed by the Single Judge to the extent that in case of the appellant/petitioner deposits the entire amount which he has received through cheque dated 12.3.1994 alongwith interest at the rate of 12% with respondent company as well as other benefits which might have been given to the appellant within four weeks from the production of certified copy of the order, the appellant will be reinstated in service.

n) The management preferred Special Leave Petition challenging the judgment and order dated 18.12.2000 before the Hon'ble Supreme Court of India, which was letter on converted into Civil Appeal No.1089 of 2004:M/s. Scooters India Limtied & others Vs. Jagdish Chandra Nigam which was allowed by means of the judgment and order dated 12.2.2004 and the judgment and order dated 18.12.2000 rendered by the Division Bench of the High Court, Lucknow Bench, Lucknow has been set aside.

o) Being aggrieved from the judgment and order dated 12.2.2004, Sri Jagdish Chandra Nigam had preferred a Review Petition No.747 of 2004: J.C. Nigam Vs. M/s. Scooters India Limited, which has also been dismissed by the Hon'ble Supreme Court of India vide its judgment and order dated 28.4.2004. Sri Nigam also preferred a Curative Petition No.152 of 2008 and the same has also been dismissed by the Constitution Bench of Hon'ble Supreme Court vide its judgment and order dated 21.1.2009. Thus it is crystal clear that the matter in dispute has already been decided by the competent court of law and now nothing remains to be adjudicated upon by this Tribunal.

p) It is crystal clear that the principles of res-judicata applies into the matter and accordingly the reference is liable to be rejected, out rightly without going into the merit of the case.

Accordingly, it has been prayed by respondent that the present industrial dispute may be dismissed being devoid of any merit.

Thereafter documents, evidences etc. had been exchanged between the parties. Sri Sharad Kumar Shukla, Learned Counsel for the respondent submits that the preliminary objections taken by them may be considered first and thereafter the matter be heard on merits.

Finding & conclusion on the Preliminary Objections:

I have heard Sri V.K. Jaiswal, learned counsel for claimant and Sri Sharad Kumar Shukla and Sri A.K. Singh, learned counsel for the respondent.

It is not in dispute between the parties that Sri Daya Shankar Singh-applicant/workman was appointed as semi skilled worker in establishment known as Scooter India Limited on 10.11.1975, Grade-D having service No. 02571. Scooter India Limited floated a scheme known as Voluntary Retirement (hereinafter referred to as 'VRS').

On 30.11.1993 applicant submitted an application for opting VRS and the same was accepted by the respondent on 30.11.1993 and his date of release under the said scheme was notified as 31.11.1993 and consequently applicant was voluntary retired from service under the Scheme with all consequential benefits and the same were received by him.

Meanwhile on 6.11.1993 a circular was issued which reads as under:-

> "*Sub: Voluntary Retirement Scheme – suspension thereof*
>
> *The Voluntary retirement scheme circulated vide circular no.SIL/PER/NC-63/88 dated 8.12.88 for the employees of the Company will remain suspended w.e.f.1.12.1993*."

So a letter/representation dated 03.12.1993, submitted by applicant for withdrawal/rejection of his application dated 30.11.1993 for voluntary retirement from services on the ground mentioned therein.

From the material on record the position which emerges out that initially aggrieved by the action of the respondent thereby not considering application of the workman/applicant dated 3.12.1993 for rejecting/withdrawing acceptance of voluntary retirement by him under the scheme known as Voluntary Retirement Scheme, he raised a industrial dispute under Section 2-A of Industrial Disputes Act which rejected by the Conciliation Officer.

Aggrieved by the said facts, the workman/applicant along with other similarly situated employees filed a Writ Petition no. 6099 (SS) of 1999 (Daya Shanker Singh & others Versus M/s. Scooter India Limited & others).

The said writ petition was heard by the Hon'ble High Court along with leading Writ Petition No.2146 (SS) of 2000 (S.V. Jaiswal Versus M/s. Scooter India Limited & others).

By means of order dated 8.2.2006 the Hon'ble High Court dismissed the Writ Petition No.2146 (SS) of 2000 along with other connected writ petitions including the Writ Petition No.6099 (SS) of 1999, the relevant portion, quoted below:-

> "*The question whether voluntary retirement would come under the definition of retrenchment or compulsory retirement or not, was considered in a number of cases which have been relied upon by the learned counsel appearing on behalf of the opposite party, one main of them has been reported in 1997(2), UPLBEC 1262, Jagdish Chand Nigam Vs. Scooter India Limited.*
>
> *In similar circumstances, the petitioners had taken voluntary retirement. The Bench of this court observed that the petitioner had occupied offer of his premature retirement, in order to receive the compensation, for the last tenure of service offered by the respondents. The offer made by the employers was accepted by the employees. The benefits provided by the respondents under this scheme were accepted by the petitioner. Since the workman had accepted the scheme and himself had opted to retire under this scheme, he cannot be allowed to approbate or reprobate. In the present case of the petitioner, the employees had accepted all benefits under the Voluntary Retirement Scheme, so they cannot retract from the obligations and exercise their right, integrally connected with the performance of the obligations under the Voluntary Retirement Scheme.*
>
> *In view of the above facts and in view of the principles of law laid down in the above noted case and after accepting offer of huge incentive, they now cannot withdraw their resignation and if their services had come to an end on account of it, they cannot be allowed to raise it in this manner as their grievance. The Hon'ble Apex Court in Special Leave Petition affirmed this judgment. The same principles were laid down by the Hon'ble Apex Court in another case reported in 2004(100) FLR 648, Punjab National Bank Vs. Virendra Kumar Goel and others and AIR 2003 SC 858, Bank of India with other banks Vs. Virendra Kumar Goel and others, wherein it was laid down that retirement was to take effect only after the request was accepted. Such scheme is only an intimation to offer which can be withdrawn before it is accepted contractual bar created under the scheme to withdraw the request once made by employees cannot be made.*
>
> *In the present case there is no dispute that the petitioners themselves had approached the scheme and had accepted all the benefits and after accepting all the benefits, after a lapse of long time, had tried to raise this dispute. The Conciliation Officer, in these circumstances for sufficient reasons allowed the application of the petitioners.*
>
> *I find no merit in these writ petitions. They are fit to be dismissed and are accordingly dismissed with costs*."

Against order dated 8.2.2006 Sri Daya Shankar Singh & others filed a Review Petition No.74 of 2006 (Daya Shankar Singh & others Vs. M/s. Scooter India Limited & others) which too was dismissed by means of order dated 13.5.2008 which is quoted below:-

> "*There appears no error apparent at the face of record. The review petition is dismissed. No order as to costs*."

However, above said facts have been concealed by applicant while filing the present I.D. Case with oblique motive and purpose.

As such, it is rightly submitted on behalf of respondent that present case on the same relief in respect to which earlier claimant's case u/s 2A of the Act was rejected, is barred by the principle of res-judicata.

Further, one Sri Jagdish Chandra Nigam whose case was identical to the case of claimant, filed a Special Appeal No.48 (SB) of 1997, allowed by means of judgment and order dated 18.12.2000 (reported in 2000CJ(All) 309), the relevant portion, quoted below:-

> *"18. The appeal is allowed. The judgment and order passed by the Hon'ble the single Judge is set aside to the extent, the observations made in the foregoing paragraph of this judgment. But we provide that in case the appellant deposits the entire amount which he has received through cheque dated March 12, 1994 alongwith interest at the rate of 12% with Scooters India Limited, as well as other benefits which might have been given to the appellant within four weeks from the date of production of the certified copy of this order, the appellant will be reinstated in service. But considering the facts and circumstances of the case, we further provide that the appellant will not be entitled for payment of back wages.*
>
> *19. As far as the case of the petitioners of other writ petitions are concerned, the fact of those writ petitioners are not exactly identical to the facts which have been indicated in the present Special Appeal. But as this Court has decided the present Special Appeal more or less on same propositions of law although the fact might be different, we heard the arguments of the learned counsel for the parties in all the writ petitions alongwith special appeal, which are connected with this special appeal as well.*

20. As we have already indicated that those employees who withdrew their application for voluntary retirement before the prospective date mentioned in the original application for voluntary retirement, shall he entitled for the relief. But those persons, who have not withdrawn their voluntary retirement before the prospective date, would not be entitled for any relief.

21. We further provide that those petitioners, who opted for the Voluntary Retirement Scheme from a prospective date and withdrew their resignations before the said prospective date, but were, relieved by the management of the Scooters India Ltd. would be entitled to the relief as Jagdish Chandra Nigam has been provided, provided they filed the writ petitions within one month from the date of the relieving orders. If they had filed the writ petition after one month from the date of relieving orders, they would not be entitled for any relief.

22. With the aforesaid observations, the Special Appeal as well as all the writ petitions are disposed of."

Judgment/order dated 18.12.2000 challenged by way of filing a S.L.P. having Special Leave Petition (Civil) No.10352/2001 (M/s. Scooters India Ltd & others versus Jagdish Chandra Nigam) along with other S.L.P.s which were connected. In the above noted S.L.P. an order dated 12.2.2004 was passed by the Hon'ble Supreme Court which reads as under:-

"*Leave Granted.*

For the reasons stated in our order passed today in C.A. No.4098/2002, this appeal is allowed.

The order and judgment under challenge is set aside. There shall be no order as to costs."

Thus, as per the order passed by the Hon'ble Supreme Court, the S.L.P. filed by M/s. Scooters India Limited was allowed and judgment and order passed in the case of Special Appeal filed by Sri Jagdish Chandra Nigam was set aside/S.L.P. filed by Sri Jagdish Chandra Nigam was dismissed.

Moreover order passed by the Hon'ble Supreme Court in Special Leave Petition (Civil) No.10352/2001 (M/s. Scooters India Ltd & others versus Jagdish Chandra Nigam) based upon order dated 12.2.2004 passed by the Hon'ble Supreme Court in C.A. No.4098 of 2002 (Bank of India & others Vs. Pale Ram Dhania), reproduced below:-

"1. It is not disputed that the appellant Bank introduced a Voluntary Retirement Scheme, 2000 (herein referred to as "the Scheme") for its employees which had the approval of its Board of Directors. The Scheme was operative w.e.f. November 15, 2000 to December 14, 2000 for the employees who sought voluntary retirement. It is not disputed that the respondent herein who was an employee of the appellant Bank sought voluntary retirement under the Scheme on November 30, 2000. It is also not disputed that on December 2, 2000 he wrote to the Bank for withdrawal of his application for voluntary retirement. On January 22, 2001, the appellant Bank accepted the request for voluntary retirement of the respondent. Further, on January 25, 2001, the respondent withdrew the retiral benefits deposited in the Bank in his name as per voluntary retirement. It appears that the respondent changed his mind after the respondent was relieved from the employment and he filed a petition under Article 226 of the Constitution challenging the acceptance of his request for voluntary retirement. A learned Single Judge of the High Court allowed the petition and set aside the acceptance of the application for voluntary retirement submitted by the respondent. Aggrieved, the appellants preferred a letters patent appeal which was dismissed. It is against the said judgment, the appellants are in appeal before us.

2. A Bench of three Judges of this Court in Punjab National Bank v. Virender Kumar Goel , has held that an employee who sought voluntary retirement and subsequently wrote for its withdrawal but has withdrawn the amount of retiral benefits as per the Voluntary Retirement Scheme, is not entitled to the withdrawal of his application for voluntary retirement. It is not disputed that in the present case the respondent herein withdrew the amount of retiral benefits on January 25, 2001.

3. For the aforesaid reason, this appeal deserves to be allowed. We order accordingly. The order and judgment under challenge is set aside. There shall be no order as to costs".

In Review Petition (Civil) No.53 of 2003 arising out of Appeal (Civil) No.896 of 2002 (Punjab National Bank Versus Virender Kumar Goel & others), the Hon'ble Supreme Court on 21.1.2004 passed an order. The relevant of order dated 21.1.2004 reads as under:-

"I.A.NOS. 1-22

These applications have been filed by the State Bank of Patiala for clarification/directions. The ground taken in these applications is that the State Bank of Patiala is not a nationalised bank. It is hundred per cent a subsidiary of the State Bank of India. The VRS scheme floated by the State Bank of Patiala is in para-materia with the scheme floated by the State Bank of India. This Court in the judgment dated 17.12.2002 allowed the appeals filed by the State Bank of India but nothing has been said about the appeals filed by the State Bank of Patiala. In the interregnum, a two-Judge Bench of this Court, in which one of us (Sema, J) was a member,

considered the same question in Civil Appeal No. 2341 of 2003 arising out of Special Leave Petition No. 23530 of 2002 entitled State Bank of Patiala Vs. Jagga Singh, disposed of on 13.3.2003, where this Court after considering Clause 8 of the scheme floated by the State Bank of Patiala and Clause 7 of the scheme floated by the State Bank of India, had held that the scheme floated by the State Bank of Patiala is almost identical of the scheme floated by the State Bank of India. Accordingly, the appeal filed by the State Bank of Patiala was allowed. Review Petition was also dismissed on 3.12.2003. In view thereof, we clarify that our direction No.2, allowing the appeals filed by the State Bank of India, would also include the appeals filed by the State Bank of Patiala. In other words, the appeals filed by the State Bank of Patiala are allowed in terms of our judgment dated 17.12.2002. I.A.NOS. 14-15 I.A.No.14 has been filed by an employee of the bank sought to clarify/modify our order dated 17.12.2002. In this case, admittedly, the benefit of the scheme had been withdrawn by the applicant on 27.2.2001. The applicant had clearly admitted, in ground E of the application, withdrawal of the amount so credited in his account, albeit compelling financial constraints.

I.A.No.15 has been filed by an employee of the bank for clarification/modification of our order dated 17.12.2002. In para 6 of the application, the applicant admitted that he had withdrawn and utilised the benefit of the scheme credited in his account.

As noticed in our judgment, having accepted the benefit under the scheme by withdrawing and utilisation thereof they are not permitted to approbate and reprobate."

Moreover Sri J.C. Nigam filed a Review Petition (Civil) No.747 of 2004 in C.A. No.1089 of 2004 (J.C. Nigam Versus M/s. Scooter India Limited & others) before the Hon'ble Supreme Court in which the following order dated 28.4.2004 passed:-

"*We do not filed any merit in the review petition and the same is accordingly dismissed*."

Thereafter, Sri J.C. Nigam filed a Curative Petition No.152 of 2008 against order dated 28.4.2004 passed in Review Petition (Civil) No.747 of 2004 which was dismissed by an order dated 20.1.2009, quoted below:-

"*We have perused the petition and the connected papers. In our view, no case is made out within the parameters indicated in the decision of this Court in Rupa Ashok Hurra Vs. Ashok Hurra & Anr. 2002(4) SCC 388. Hence, the Curative Petition is dismissed*."

In addition to the above said facts, Hon'ble the Apex Court in the constitution bench in the case of ***Rupa Ashok Hurra Versus Ashok Hurra & Anr, reported in 2002(4) SCC 388*** held as under:-

"Incidentally, this Court stands out to be an avenue for redressal of grievance not only in its revisional jurisdiction as conferred by the Constitution but as a platform and forum for every grievance in the country and it is on this context Mr.Shanti Bhushan, appearing in support of the some of the petitioners, submitted that the Supreme Court in its journey for over 50 years has been able to obtain the confidence of the people of the country, whenever the same is required be it the atrocities of the police or a public grievance pertaining to a governmental action involving multitudes of problems. It is the Supreme Court, Mr. Shanti Bhushan contended, where the people feel confident that justice is above all and would be able to obtain justice in its true form and sphere and this is beyond all controversies. It has been contended that finality of the proceeding after an Order of the Supreme Court, there should be, but that does not preclude or said to preclude this Court from going into the factum of the petition for gross injustice caused by an Order of the Supreme Court itself under the inherent power being an authority to correct its errors any other view should not and ought not be allowed to be continued. Needless to record here, however, that review jurisdiction stand foisted upon this Court in terms of the provisions of the Constitution, as noticed hereinbefore and it is also well-settled that a second review petition cannot be said to maintainable. Reference maybe made in this context to a decision of this Court in the case of J.Ranga Swamy v. Govt. of A.P. & Ors. (AIR 1990 SC 535), wherein this Court in paragraph 3 stated as below :-

"We are clearly of the opinion that these applications are not maintainable. The petitioner, who appeared in person, referred to the judgment in Antulay's case (1988) 2 SCC 602 : (AIR 1988 SC 1531). We are, however, of the opinion that the principle of that case is not applicable here. All the points which the petitioner urged regarding the constitutionality of the Government orders in question as well as the appointment of respondent instead of petitioner to the post in question had been urged before the Bench, which heard the civil appeal and writ petitions originally. The petitioner himself stated that he was heard by the Bench at some length. It is, therefore, clear that the matters were disposed of after a consideration of all the points urged by the petitioner and the mere fact that the order does not discuss the contentions or give reasons cannot entitle the petitioner to have what is virtually a second review."

True, due regard shall have to have as regards opinion of the Court in Ranga Swamy (supra), but the situation presently centres round that in the event of there being any manifest injustice would the doctrine of ex debito justitiae be said to be having a role to play in sheer passivity or to rise above the ordinary heights

as it preaches that justice is above all. The second alternative seems to be in consonance with time and present phase of socio-economic conditions of the society. Manifest justice is curable in nature rather than incurable and this court would lose its sanctity and thus would belie the expectations of the founding fathers that justice is above all. There is no manner of doubt that procedural law/procedural justice cannot overreach the concept of justice and in the event an Order stands out to create manifest injustice, would the same be allowed to remain in silenco so as to affect the parties perpetually or the concept of justice ought to activate the Court to find a way out to resolve the erroneous approach to the problem. Mr.Attorney General, with all the emphasis in his command, though principally agreed that justice of the situation needs to be looked into and relief be granted if so required but on the same breath submitted that the Court ought to be careful enough to trade on the path, otherwise the same will open up Pandora's box and thus, if at all, in rarest of the rare cases the further scrutiny may be made. While it is true that law courts has overburdened itself with the litigation and delay in disposal of matters in the subcontinent is not unknown and in the event of any further appraisal of the matter by this Court, it would brook on further delay resulting in consequences which are not far to see but that would by itself not in my view deter this Court from further appraisal of the matter in the event the same, however, deserve such an additional appraisal The note of caution sounded by Mr. Attorney as regards opening up of pandora's box strictly speaking, however, though may be of very practical in nature but the same apparently does not seem to go well with the concept of justice as adumbrated in our constitution. True it is, that practicability of the situation needs a serious consideration more so when this Court could do without it for more than 50 years, which by no stretch of imagination can be said to be a period not so short. I feel it necessary, however, to add that it is not that we are not concerned with the consequences of reopening of the issue but the redeeming feature of our justice delivery system, as is prevalent in the country, is adherence to proper and effective administration of justice in stricto. In the event there is any affectation of such an administration of justice either by way of infraction of natural justice or an order being passed wholly without jurisdiction or affectation of public confidence as regards the doctrine of integrity in the justice delivery system technicality ought not to out-weigh the course of justice the same being the true effect of the doctrine of ex debito justitiae. The oft quoted statement of law of Lord Hewart, CJ in R v. Susssex Justices, ex p McCarthy (1924 (1) KB 256) that it is of fundamental importance that justice should not only be done, should manifestly and undoubtedly be seem to be done had this doctrine underlined and administered therein. In this context, the decision of the House of Lords in R v. Bow Street Metropolitan Stipendiary Magistrate and others, ex parte Pinochet Ugarte (No.2) seem to be an ipoc making decision, wherein public confidence on the judiciary is said to be the basic criteria of the justice delivery system any act or action even if it a passive one, if erodes or even likely to erode the ethics of judiciary, matter needs a further look. Brother Quadri has taken very great pains to formulate the steps to be taken and the methodology therefor, in the event of there being an infraction of the concept of justice, as such further dilation would be an unnecessary exercise which I wish to avoid since I have already recorded my concurrence therewith excepting, however, lastly that curative petitions ought to be treated as a rarity rather than regular and the appreciation of the Court shall have to be upon proper circumspection having regard to the three basic features of our justice delivery system to wit, the order being in contravention of the doctrine of natural justice or without jurisdiction or in the event of there is even a likelihood of public confidence being shaken by reason of the association or closeness of a judge with the subject matter in dispute. In my view, it is now time that procedural justice system should give way to the conceptual justice system and efforts of the law Court ought to be so directed. Gone are the days where implementation of draconian system of law or interpretation thereof were insisted upon - Flexibility of the law Courts presently are its greatest virtue and as such justice oriented approach is the need of the day to strive and forge ahead in the 21st century."

Thus, from the above said facts and the material on record, as the present industrial dispute stands on the same footing as of Sri Jagdish Chandra Nigam, so in view of the judgment passed Hon'ble Supreme Court in the case of Sri Jagdish Chandra Nigam thereafter in Review Petition and Curative Petition, by him which were also dismissed.

Accordingly, preliminary objection taken by learned counsel for respondent are allowed and claim petition filed by claimant liable to be dismissed.

ORDER

For the foregoing reasons the present industrial dispute is dismissed, workman is not entitled for any relief; and the reference is answered accordingly.

Lucknow.

06th May, 2024

Justice ANIL KUMAR, Presiding Officer

नई दिल्ली, 28 जून, 2024

का.आ. 1313.–औद्योगिक विवाद अधिनियम (1947 का 14) की धारा 17 के अनुसरण में,केन्द्रीय सरकार **प्रबंध निदेशक, स्कूटर्स इंडिया लिमिटेड, सरोजिनी नगर, लखनऊ,** के प्रबंधतंत्र के संबद्ध नियोजकों और **श्रीमती आशा वर्मा,कामगार,** के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण- सह-श्रम न्यायालय, लखनऊ पंचाट(संदर्भ संख्या **34/2012**) को जैसा कि अनुलग्नक में दिखाया गया है,प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 27.06.2024 को प्राप्त हुआ था।

[सं. एल- 42011/67/2011- आईआर-(डीयू)]

दिलीप कुमार, अवर सचिव

New Delhi, the 28th June, 2024

S.O. 1313.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 34/2012) of the **Central Government Industrial Tribunal cum Labour Court, Lucknow** as shown in the Annexure, in the Industrial dispute between the employers in relation to **The Managing Director, Scooters India Ltd., Sarojini Nagar, Lucknow, and Smt. Asha Verma, Worker,** which was received along with soft copy of the award by the Central Government on 27.06.2024.

[No. L- 42011/67/2011- IR (DU)]

DILIP KUMAR, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM- LABOUR COURT, LUCKNOW

PRESENT

JUSTICE ANIL KUMAR

PRESIDING OFFICER

I.D. No.34 of 2012

Ref. No. L-42011/67/2011-IR(DU) dated: 23.01.2012

BETWEEN

Smt. Asha Verma W/o Late Radhey Krishna Verma C/o Kunwar Asit Pratap Singh H.No.569H/336, Prem Nagar Near Lalita Girls Inter College, Alambagh, Lucknow -

AND

The Managing Director, Scooters India Ltd.,

Sarojini Nagar, Lucknow.

AWARD

Sri V.K. Jaiswal - Counsel for the Applicant/Workman

Sri A.K. Singh & Sri Sharad Shukla- Counsel for the Respondent

On 23.01.2012 appropriate government by order no.L-42011/67/2011-IR (DU) has referred the following dispute to this Tribunal and accordingly the I.D. Case No.34 of 2012 (Asha Verma Versus M/s. Scooter India Ltd.) was registered:-

> *"Whether the action of the management of Scooter India Ltd., Lucknow in not giving compassionate appointment to Smt. Asha Verma, wife of deceased workman Late Sh. Radhekrishna Verma and not considering the application of workman dated 29/11 / 1993 and voluntarily retiring him w.e.f. 11/01/1994 without paying entire pensionery benefits is legal justified? what relief the applicant is entitled to?"*

Case of claimant:

On 21.3.2012 on behalf of workman, Statement of Claim filed stating therein the following averments :-

a) The husband of applicant was appointed as semi skilled worker under the opposite party/employer on 08.10.1975 being fully eligible for the post and his Service No. is 2475 and he was initially granted Grade 'D'. The applicant/workman started performing his work and duties with all satisfaction of his all concerned.

b) All of sudden in the year 1993 a rumors was flown away in the campus of company that Manager of the respondent is saying that the company is going to be windup within a very short period due to heavy financial loss and as such employees may take his all service benefits as soon as possible from the company otherwise company will not responsible for the same. Those employees who will seek his voluntary retirement under the announced voluntary retirement scheme, they will call back in job/service on requirement of work on seniority basis.

c) The husband of applicant believing rumor on 25.11.1993 applied for his voluntary retirement with effect from 31.03.1994 under the voluntary retirement scheme dated 8.12.1988.

d) A circular dated 6.11.1993 was also circulated by the respondent stating therein that the voluntary retirement scheme circulated vide circular dated 8.12.1988 will remain suspended with effect from 1.12.1993.

e) The husband of applicant immediately on 29.11.1993 moved an application for withdrawing his voluntary retirement, which was sought by him with effect from 31.03.1994, then he came to know that his voluntary retirement has already been accepted by the management of opposite party on the same date i.e. on which he moved an application on 25.11.1993.

f) The management was fully aware with all things but voluntary retirement of the applicant was accepted knowingly and with mal intention on the same date when the applicant submitted his VRS application i.e. on 25.11.1993 only to oust him from the job, therefore the action of the respondent is quite bad in law and unjust.

g) The applicant applied for voluntary retirement on 25.11.1993 w.e.f. 31.03.1994 but his voluntary retirement was accepted by the respondent on the same date when he moved his application on 22.11.1993. The management is well known that the VRS circulated vide letter dated 8.12.1988 will remain suspended w.e.f. 1.12.1993, therefore, action of the respondent in accepting his VRS w.e.f. 25.11.1993 instead of 31.03.1994 is fully illegal, arbitrary and unjust.

h) If the applicant's voluntary retirement was not accepted w.e.f. 25.11.1993 i.e. on the date when he moved his application for VRS, his application would be cancelled or rejected by the management of the respondent as he submitted another application dated 29.11.1993 for withdrawing his voluntary retirement and thus he would remain in job till attaining his retirement age from the job. In view of this the respondent may be directed to pay entire salary and other service benefits to the applicant from the date of his relieve till the date of his retirement.

i) It is provided in the standing orders of the company that the pay will be revised on each 5 years of employees which has not been done in the matter of the applicant before accepting his VRS. The company is quietly running till date, therefore his voluntary retirement deserves to be quashed and the respondent be directed to reinstate the applicant on the post with full salary benefits from the date of relieve from the job till his date of retirement from the post and pay his entire due salary with 12% interest to the applicant.

Case of respondent:

On 13.09.2012 the written statement filed on behalf of the respondent M/s. Scooters India Limited taking the following **preliminary objections** :-

a) The matter of dispute does not constitute a valid industrial dispute, as the dispute has not been transformed into an industrial dispute within the meaning of the terms as defined in Industrial Disputes Act 1947.

b) The Central Government has not taken facts in cognizance while making a reference to the Tribunal. The reference is not based on the pleadins of the parties advanced at the conciliation stage, especially the submissions of the respondent before the Conciliation Officer/Government have been completely ignored, while making the reference for adjudication. No cause of action arose on the date as mentioned in reference order as such also on his ground alone, the reference order is bad in the eyes of law.

c) The Industrial Disputes Act 1947 has been amended vide Industrial Disputes (Amendment) Act, 2010 (Act No.24 of 2010) and period of limitation has been provided by virtue of Section 2A(3), which is quoted as below:-

> *"2A(3) The application referred to in sub-section (2) shall be made to the Labour Court or Tribunal before expiry of three years from the date of discharge, dismissal, retrenchment or otherwise termination of services as specified in sub-section (1)"*

d) A period of limitation has been provided i.e. three years from the alleged date of termination of services, but the instant case has arisen after a period of 18 years which is liable to the dismissed on the ground of limitation alone.

e) Even otherwise, the applicant has not raised industrial dispute within reasonable time. The applicant has raised an industrial dispute regarding his acceptance of Voluntary Retirement very belatedly i.e. after elapse of more than about 18 years. It is trite law as held by the Apex Court that the dispute must be raised within reasonable period of time from the cause of action and where the industrial dispute is not raised within reasonable period of time the Labour Court or Industrial Tribunal should decline to grant any interim relief to the workman.

f) The Apex Court in the case of Nedungadi Bank Ltd. Versus K.P. Madhavankutty & others : 2000(84) FLR 673 SC, S.M. Niljakar Vs. Telecom District Manager, Karnataka:2003(97) FLR 608 SC, Manager R.B.I. Vs. Gopinath Sharma : 2006 FLR (110) FLR 803 SC has already held that the dispute must be raised within reasonable period of time from the cause of action and a dispute which is state could not be subject matter of reference.

g) The present reference is highly belated, inasmuch as it is made after more than eighteen years from the alleged date of cause of action. The instant delay caused prejudice to the respondent since the management not presumed to preserve the relevant record for such a long period.

h) It is settled law of the land that the person who is approaching this Tribunal should come with clean hand but in the instant matter, the applicant has concealed the actual material facts which are very necessary for the purposes of the adjudication of present matter of dispute, if any, as such also the reference is not maintainable before this Tribunal and accordingly deserves to be rejected.

i) Earlier the applicant had raised an industrial dispute under the provisions of Section 2A of the U.P. Industrial Disputes Act before the validly appointed conciliation officer. The conciliation officer on its turn called upon the parties for hearing and after conducting the necessary proceedings, the aforementioned application had been rejected by the competent authority.

j) The husband of applicant preferred a Writ Petition No.6099 (SS) of 1999 (Daya Shanker Singh & another Vs. Scooters India Limited & others) along with some other ex-employees of the Company before the Hon'ble High Court, Lucknow Bench, Lucknow challenging the order passed by the competent authority and the Hon'ble High Court had been pleased to dismiss the aforesaid writ petition including bunch of writ petitions bearing W.P.No.2146 (SS) of 2000, W.P.No.6654 (SS) of 1999, W.P. No.2620 (SS) of 2000, W.P. No.1625 (SS) of 2000, W.P. No.1745 (SS) of 2000, W.P. No.1644 (SS) of 2000, W.P. No.1635 (SS) of 2000 & W.P. No.1624 (SS) of 2000 vide judgment and order dated 8.2.2006 after holding that there is no dispute that the petitioners themselves had approached the scheme and had accepted all the benefits and after accepting all the benefits, after a lapse of long time, had tried to raise this dispute. Further the Hon'ble Court has held that the Conciliation Officer, in these circumstances for sufficient reasons disallowed the application of the petitioners.

k) A Review Petition No.74 of 2006 was also filed by the applicant which has also been dismissed by the Hon'ble High Court, Lucknow Bench, Lucknow vide its judgment and order dated 13.5.2008. Thus it is clear that the matter has already been adjudicated upon by the competent court of law and these facts have not been disclosed by the applicant in their written statement, which amounts to concealment of facts and the instant application is liable to be dismissed on this ground alone.

l) An identical situated employee had also preferred a Writ Petition No.1165(SS) of 1994:Jagdish Chandra Nigam Versus M/s. Scooters India Limited before the Hon'ble High Court, Lucknow Bench, Lucknow challenging the action of the management in accepting the application for voluntary retirement, which has been dismissed by means of detail judgment and order dated 9.1.1997.

m) Being aggrieved from the aforesaid judgment and order dated 9.1.1997, Special Appeal No.48 (SB) of 1997 was preferred before the Division Bench of the Hon'ble High Court, Lucknow Bench, Lucknow and after conducting the necessary proceedings, the Hon'ble Division Bench of the Hon'ble High Court decided the said special appeal by means of judgment and order dated 18.12.2000 and set aside the judgment and order passed by the Single Judge to the extent that in case of the appellant/petitioner deposits the entire amount which he has received through cheque dated 12.3.1994 alongwith interest at the rate of 12% with respondent company as well as other benefits which might have been given to the appellant within four weeks from the production of certified copy of the order, the appellant will be reinstated in service.

n) The management preferred Special Leave Petition challenging the judgment and order dated 18.12.2000 before the Hon'ble Supreme Court of India, which was letter on converted into Civil Appeal No.1089 of 2004:M/s. Scooters India Limtied & others Vs. Jagdish Chandra Nigam which was allowed by means of the judgment and order dated 12.2.2004 and the judgment and order dated 18.12.2000 rendered by the Division Bench of the High Court, Lucknow Bench, Lucknow has been set aside.

o) Being aggrieved from the judgment and order dated 12.2.2004, Sri Jagdish Chandra Nigam had preferred a Review Petition No.747 of 2004: J.C. Nigam Vs. M/s. Scooters India Limited, which has also been dismissed by the Hon'ble Supreme Court of India vide its judgment and order dated 28.4.2004. Sri Nigam also preferred a Curative Petition No.152 of 2008 and the same has also been dismissed by the Constitution Bench of Hon'ble Supreme Court vide its judgment and order dated 21.1.2009. Thus it is crystal clear that the matter in dispute has already been decided by the competent court of law and now nothing remains to be adjudicated upon by this Tribunal.

p) It is crystal clear that the principles of res-judicata applies into the matter and accordingly the reference is liable to be rejected, out rightly without going into the merit of the case.

Accordingly, it has been prayed by respondent that the present industrial dispute may be dismissed being devoid of any merit.

Thereafter documents, evidences etc. had been exchanged between the parties. Sri Sharad Kumar Shukla, Learned Counsel for the respondent submits that the preliminary objections taken by them may be considered first and thereafter the matter be heard on merits.

Finding & conclusion on the Preliminary Objections:

I have heard Sri V.K. Jaiswal, learned counsel for claimant and Sri Sharad Kumar Shukla and Sri A.K. Singh, learned counsel for the respondent.

It is not in dispute between the parties that Late Sh. Radhekrishna Verma- husband of applicant/workman was appointed as semi skilled worker in establishment known as Scooter India Limited on 08.10.1975, Grade-D having service No. 2475. Scooter India Limited floated a scheme known as Voluntary Retirement (hereinafter referred to as 'VRS').

On 25.11.1993 applicant submitted an application for opting VRS and the same was accepted by the respondent on 25.11.1993 and his date of release under the said scheme was notified as 31.11.1993 and consequently applicant was voluntary retired from service under the Scheme with all consequential benefits and the same were received by him.

Meanwhile on 6.11.1993 a circular was issued which reads as under:-

> "*Sub: Voluntary Retirement Scheme – suspension thereof*
>
> *The Voluntary retirement scheme circulated vide circular no.SIL/PER/NC-63/88 dated 8.12.88 for the employees of the Company will remain suspended w.e.f.1.12.1993*."

So a letter/representation dated 29.11.1993, submitted by applicant for withdrawal/rejection of his application dated 25.11.1993 for voluntary retirement from services on the ground mentioned therein.

From the material on record the position which emerges out that initially aggrieved by the action of the respondent thereby not considering application of the workman/applicant dated 29.11.1993 for rejecting/withdrawing acceptance of voluntary retirement by him under the scheme known as Voluntary Retirement Scheme, he raised a industrial dispute under Section 2-A of Industrial Disputes Act which rejected by the Conciliation Officer.

Aggrieved by the said facts, the workman/applicant along with other similarly situated employees filed a Writ Petition no. 6099 (SS) of 1999 (Daya Shanker Singh & others Versus M/s. Scooter India Limited & others).

The said writ petition was heard by the Hon'ble High Court along with leading Writ Petition No.2146 (SS) of 2000 (S.V. Jaiswal Versus M/s. Scooter India Limited & others).

By means of order dated 8.2.2006 the Hon'ble High Court dismissed the Writ Petition No.2146 (SS) of 2000 along with other connected writ petitions including the Writ Petition No.6099 (SS) of 1999, the relevant portion, quoted below:-

> "*The question whether voluntary retirement would come under the definition of retrenchment or compulsory retirement or not, was considered in a number of cases which have been relied upon by the learned counsel appearing on behalf of the opposite party, one main of them has been reported in 1997(2), UPLBEC 1262, Jagdish Chand Nigam Vs. Scooter India Limited.*
>
> *In similar circumstances, the petitioners had taken voluntary retirement. The Bench of this court observed that the petitioner had occupied offer of his premature retirement, in order to receive the compensation, for the last tenure of service offered by the respondents. The offer made by the employers was accepted by the employees. The benefits provided by the respondents under this scheme were accepted by the petitioner. Since the workman had accepted the scheme and himself had opted to retire under this scheme, he cannot be allowed to approbate or reprobate. In the present case of the petitioner, the employees had accepted all benefits under the Voluntary Retirement Scheme, so they cannot retract from the obligations and exercise*

their right, integrally connected with the performance of the obligations under the Voluntary Retirement Scheme.

In view of the above facts and in view of the principles of law laid down in the above noted case and after accepting offer of huge incentive, they now cannot withdraw their resignation and if their services had come to an end on account of it, they cannot be allowed to raise it in this manner as their grievance. The Hon'ble Apex Court in Special Leave Petition affirmed this judgment. The same principles were laid down by the Hon'ble Apex Court in another case reported in 2004(100) FLR 648, Punjab National Bank Vs. Virendra Kumar Goel and others and AIR 2003 SC 858, Bank of India with other banks Vs. Virendra Kumar Goel and others, wherein it was laid down that retirement was to take effect only after the request was accepted. Such scheme is only an intimation to offer which can be withdrawn before it is accepted contractual bar created under the scheme to withdraw the request once made by employees cannot be made.

In the present case there is no dispute that the petitioners themselves had approached the scheme and had accepted all the benefits and after accepting all the benefits, after a lapse of long time, had tried to raise this dispute. The Conciliation Officer, in these circumstances for sufficient reasons allowed the application of the petitioners.

I find no merit in these writ petitions. They are fit to be dismissed and are accordingly dismissed with costs."

Against order dated 8.2.2006 Sri Daya Shankar Singh & others filed a Review Petition No.74 of 2006 (Daya Shankar Singh & others Vs. M/s. Scooter India Limited & others) which too was dismissed by means of order dated 13.5.2008 which is quoted below:-

"*There appears no error apparent at the face of record. The review petition is dismissed. No order as to costs*."

However, above said facts have been concealed by applicant while filing the present I.D. Case with oblique motive and purpose.

As such, it is rightly submitted on behalf of respondent that present case on the same relief in respect to which earlier claimant's case u/s 2A of the Act was rejected, is barred by the principle of res-judicata.

Further, one Sri Jagdish Chandra Nigam whose case was identical to the case of claimant, filed a Special Appeal No.48 (SB) of 1997, allowed by means of judgment and order dated 18.12.2000 (reported in 2000CJ(All) 309), the relevant portion, quoted below:-

"18. The appeal is allowed. The judgment and order passed by the Hon'ble the single Judge is set aside to the extent, the observations made in the foregoing paragraph of this judgment. But we provide that in case the appellant deposits the entire amount which he has received through cheque dated March 12, 1994 alongwith interest at the rate of 12% with Scooters India Limited, as well as other benefits which might have been given to the appellant within four weeks from the date of production of the certified copy of this order, the appellant will be reinstated in service. But considering the facts and circumstances of the case, we further provide that the appellant will not be entitled for payment of back wages.

19. As far as the case of the petitioners of other writ petitions are concerned, the fact of those writ petitioners are not exactly identical to the facts which have been indicated in the present Special Appeal. But as this Court has decided the present Special Appeal more or less on same propositions of law although the fact might be different, we heard the arguments of the learned counsel for the parties in all the writ petitions alongwith special appeal, which are connected with this special appeal as well.

20. As we have already indicated that those employees who withdrew their application for voluntary retirement before the prospective date mentioned in the original application for voluntary retirement, shall he entitled for the relief. But those persons, who have not withdrawn their voluntary retirement before the prospective date, would not be entitled for any relief.

21. We further provide that those petitioners, who opted for the Voluntary Retirement Scheme from a prospective date and withdrew their resignations before the said prospective date, but were, relieved by the management of the Scooters India Ltd. would be entitled to the relief as Jagdish Chandra Nigam has been provided, provided they filed the writ petitions within one month from the date of the relieving orders. If they had filed the writ petition after one month from the date of relieving orders, they would not be entitled for any relief.

22. With the aforesaid observations, the Special Appeal as well as all the writ petitions are disposed of."

Judgment/order dated 18.12.2000 challenged by way of filing a S.L.P. having Special Leave Petition (Civil) No.10352/2001 (M/s. Scooters India Ltd & others versus Jagdish Chandra Nigam) along with other S.L.P.s which

were connected. In the above noted S.L.P. an order dated 12.2.2004 was passed by the Hon'ble Supreme Court which reads as under:-

"*Leave Granted.*

For the reasons stated in our order passed today in C.A. No.4098/2002, this appeal is allowed.

The order and judgment under challenge is set aside. There shall be no order as to costs."

Thus, as per the order passed by the Hon'ble Supreme Court, the S.L.P. filed by M/s. Scooters India Limited was allowed and judgment and order passed in the case of Special Appeal filed by Sri Jagdish Chandra Nigam was set aside/S.L.P. filed by Sri Jagdish Chandra Nigam was dismissed.

Moreover order passed by the Hon'ble Supreme Court in Special Leave Petition (Civil) No.10352/2001 (M/s. Scooters India Ltd & others versus Jagdish Chandra Nigam) based upon order dated 12.2.2004 passed by the Hon'ble Supreme Court in C.A. No.4098 of 2002 (Bank of India & others Vs. Pale Ram Dhania), reproduced below:-

"1. It is not disputed that the appellant Bank introduced a Voluntary Retirement Scheme, 2000 (herein referred to as "the Scheme") for its employees which had the approval of its Board of Directors. The Scheme was operative w.e.f. November 15, 2000 to December 14, 2000 for the employees who sought voluntary retirement. It is not disputed that the respondent herein who was an employee of the appellant Bank sought voluntary retirement under the Scheme on November 30, 2000. It is also not disputed that on December 2, 2000 he wrote to the Bank for withdrawal of his application for voluntary retirement. On January 22, 2001, the appellant Bank accepted the request for voluntary retirement of the respondent. Further, on January 25, 2001, the respondent withdrew the retiral benefits deposited in the Bank in his name as per voluntary retirement. It appears that the respondent changed his mind after the respondent was relieved from the employment and he filed a petition under Article 226 of the Constitution challenging the acceptance of his request for voluntary retirement. A learned Single Judge of the High Court allowed the petition and set aside the acceptance of the application for voluntary retirement submitted by the respondent. Aggrieved, the appellants preferred a letters patent appeal which was dismissed. It is against the said judgment, the appellants are in appeal before us.

2. A Bench of three Judges of this Court in Punjab National Bank v. Virender Kumar Goel , has held that an employee who sought voluntary retirement and subsequently wrote for its withdrawal but has withdrawn the amount of retiral benefits as per the Voluntary Retirement Scheme, is not entitled to the withdrawal of his application for voluntary retirement. It is not disputed that in the present case the respondent herein withdrew the amount of retiral benefits on January 25, 2001.

3. For the aforesaid reason, this appeal deserves to be allowed. We order accordingly. The order and judgment under challenge is set aside. There shall be no order as to costs".

In Review Petition (Civil) No.53 of 2003 arising out of Appeal (Civil) No.896 of 2002 (Punjab National Bank Versus Virender Kumar Goel & others), the Hon'ble Supreme Court on 21.1.2004 passed an order. The relevant of order dated 21.1.2004 reads as under:-

"I.A.NOS. 1-22

These applications have been filed by the State Bank of Patiala for clarification/directions. The ground taken in these applications is that the State Bank of Patiala is not a nationalised bank. It is hundred per cent a subsidiary of the State Bank of India. The VRS scheme floated by the State Bank of Patiala is in para-materia with the scheme floated by the State Bank of India. This Court in the judgment dated 17.12.2002 allowed the appeals filed by the State Bank of India but nothing has been said about the appeals filed by the State Bank of Patiala. In the interregnum, a two-Judge Bench of this Court, in which one of us (Sema, J) was a member, considered the same question in Civil Appeal No. 2341 of 2003 arising out of Special Leave Petition No. 23530 of 2002 entitled State Bank of Patiala Vs. Jagga Singh, disposed of on 13.3.2003, where this Court after considering Clause 8 of the scheme floated by the State Bank of Patiala and Clause 7 of the scheme floated by the State Bank of India, had held that the scheme floated by the State Bank of Patiala is almost identical of the scheme floated by the State Bank of India. Accordingly, the appeal filed by the State Bank of Patiala was allowed. Review Petition was also dismissed on 3.12.2003. In view thereof, we clarify that our direction No.2, allowing the appeals filed by the State Bank of India, would also include the appeals filed by the State Bank of Patiala. In other words, the appeals filed by the State Bank of Patiala are allowed in terms of our judgment dated 17.12.2002. I.A.NOS. 14-15 I.A.No.14 has been filed by an employee of the bank sought to clarify/modify our order dated 17.12.2002. In this case, admittedly, the benefit of the scheme had been withdrawn by the applicant on 27.2.2001. The applicant had clearly admitted, in ground E of the application, withdrawal of the amount so credited in his account, albeit compelling financial constraints.

I.A.No.15 has been filed by an employee of the bank for clarification/modification of our order dated 17.12.2002. In para 6 of the application, the applicant admitted that he had withdrawn and utilised the benefit of the scheme credited in his account.

As noticed in our judgment, having accepted the benefit under the scheme by withdrawing and utilisation thereof they are not permitted to approbate and reprobate."

Moreover Sri J.C. Nigam filed a Review Petition (Civil) No.747 of 2004 in C.A. No.1089 of 2004 (J.C. Nigam Versus M/s. Scooter India Limited & others) before the Hon'ble Supreme Court in which the following order dated 28.4.2004 passed:-

"*We do not filed any merit in the review petition and the same is accordingly dismissed*."

Thereafter, Sri J.C. Nigam filed a Curative Petition No.152 of 2008 against order dated 28.4.2004 passed in Review Petition (Civil) No.747 of 2004 which was dismissed by an order dated 20.1.2009, quoted below:-

"*We have perused the petition and the connected papers. In our view, no case is made out within the parameters indicated in the decision of this Court in Rupa Ashok Hurra Vs. Ashok Hurra & Anr. 2002(4) SCC 388. Hence, the Curative Petition is dismissed*."

In addition to the above said facts, Hon'ble the Apex Court in the constitution bench in the case of ***Rupa Ashok Hurra Versus Ashok Hurra & Anr, reported in 2002(4) SCC 388*** held as under:-

"Incidentally, this Court stands out to be an avenue for redressal of grievance not only in its revisional jurisdiction as conferred by the Constitution but as a platform and forum for every grievance in the country and it is on this context Mr.Shanti Bhushan, appearing in support of the some of the petitioners, submitted that the Supreme Court in its journey for over 50 years has been able to obtain the confidence of the people of the country, whenever the same is required be it the atrocities of the police or a public grievance pertaining to a governmental action involving multitudes of problems. It is the Supreme Court, Mr. Shanti Bhushan contended, where the people feel confident that justice is above all and would be able to obtain justice in its true form and sphere and this is beyond all controversies. It has been contended that finality of the proceeding after an Order of the Supreme Court, there should be, but that does not preclude or said to preclude this Court from going into the factum of the petition for gross injustice caused by an Order of the Supreme Court itself under the inherent power being an authority to correct its errors any other view should not and ought not be allowed to be continued. Needless to record here, however, that review jurisdiction stand foisted upon this Court in terms of the provisions of the Constitution, as noticed hereinbefore and it is also well-settled that a second review petition cannot be said to maintainable. Reference maybe made in this context to a decision of this Court in the case of J.Ranga Swamy v. Govt. of A.P. & Ors. (AIR 1990 SC 535), wherein this Court in paragraph 3 stated as below :-

"We are clearly of the opinion that these applications are not maintainable. The petitioner, who appeared in person, referred to the judgment in Antulay's case (1988) 2 SCC 602 : (AIR 1988 SC 1531). We are, however, of the opinion that the principle of that case is not applicable here. All the points which the petitioner urged regarding the constitutionality of the Government orders in question as well as the appointment of respondent instead of petitioner to the post in question had been urged before the Bench, which heard the civil appeal and writ petitions originally. The petitioner himself stated that he was heard by the Bench at some length. It is, therefore, clear that the matters were disposed of after a consideration of all the points urged by the petitioner and the mere fact that the order does not discuss the contentions or give reasons cannot entitle the petitioner to have what is virtually a second review."

True, due regard shall have to have as regards opinion of the Court in Ranga Swamy (supra), but the situation presently centres round that in the event of there being any manifest injustice would the doctrine of ex debito justitiae be said to be having a role to play in sheer passivity or to rise above the ordinary heights as it preaches that justice is above all. The second alternative seems to be in consonance with time and present phase of socio-economic conditions of the society. Manifest justice is curable in nature rather than incurable and this court would lose its sanctity and thus would belie the expectations of the founding fathers that justice is above all. There is no manner of doubt that procedural law/procedural justice cannot overreach the concept of justice and in the event an Order stands out to create manifest injustice, would the same be allowed to remain in silenco so as to affect the parties perpetually or the concept of justice ought to activate the Court to find a way out to resolve the erroneous approach to the problem. Mr.Attorney General, with all the emphasis in his command, though principally agreed that justice of the situation needs to be looked into and relief be granted if so required but on the same breath submitted that the Court ought to be careful enough to trade on the path, otherwise the same will open up Pandora's box and thus, if at all, in rarest of the rare cases the further scrutiny may be made. While it is true that law courts has overburdened itself with the litigation and delay in disposal of matters in the subcontinent is not unknown and in the event of any further appraisal of the matter by this Court, it would brook on further delay resulting in

consequences which are not far to see but that would by itself not in my view deter this Court from further appraisal of the matter in the event the same, however, deserve such an additional appraisal The note of caution sounded by Mr. Attorney as regards opening up of pandora's box strictly speaking, however, though may be of very practical in nature but the same apparently does not seem to go well with the concept of justice as adumbrated in our constitution. True it is, that practicability of the situation needs a serious consideration more so when this Court could do without it for more than 50 years, which by no stretch of imagination can be said to be a period not so short. I feel it necessary, however, to add that it is not that we are not concerned with the consequences of reopening of the issue but the redeeming feature of our justice delivery system, as is prevalent in the country, is adherence to proper and effective administration of justice in stricto. In the event there is any affectation of such an administration of justice either by way of infraction of natural justice or an order being passed wholly without jurisdiction or affectation of public confidence as regards the doctrine of integrity in the justice delivery system technicality ought not to out-weigh the course of justice the same being the true effect of the doctrine of ex debito justitiae. The oft quoted statement of law of Lord Hewart, CJ in R v. Susssex Justices, ex p McCarthy (1924 (1) KB 256) that it is of fundamental importance that justice should not only be done, should manifestly and undoubtedly be seem to be done had this doctrine underlined and administered therein. In this context, the decision of the House of Lords in R v. Bow Street Metropolitan Stipendiary Magistrate and others, ex parte Pinochet Ugarte (No.2) seem to be an ipoc making decision, wherein public confidence on the judiciary is said to be the basic criteria of the justice delivery system any act or action even if it a passive one, if erodes or even likely to erode the ethics of judiciary, matter needs a further look. Brother Quadri has taken very great pains to formulate the steps to be taken and the methodology therefor, in the event of there being an infraction of the concept of justice, as such further dilation would be an unnecessary exercise which I wish to avoid since I have already recorded my concurrence therewith excepting, however, lastly that curative petitions ought to be treated as a rarity rather than regular and the appreciation of the Court shall have to be upon proper circumspection having regard to the three basic features of our justice delivery system to wit, the order being in contravention of the doctrine of natural justice or without jurisdiction or in the event of there is even a likelihood of public confidence being shaken by reason of the association or closeness of a judge with the subject matter in dispute. In my view, it is now time that procedural justice system should give way to the conceptual justice system and efforts of the law Court ought to be so directed. Gone are the days where implementation of draconian system of law or interpretation thereof were insisted upon - Flexibility of the law Courts presently are its greatest virtue and as such justice oriented approach is the need of the day to strive and forge ahead in the 21st century."

Thus, from the above said facts and the material on record, as the present industrial dispute stands on the same footing as of Sri Jagdish Chandra Nigam, so in view of the judgment passed Hon'ble Supreme Court in the case of Sri Jagdish Chandra Nigam thereafter in Review Petition and Curative Petition, by him which were also dismissed.

Accordingly, preliminary objection taken by learned counsel for respondent are allowed and claim petition filed by claimant liable to be dismissed.

ORDER

For the foregoing reasons the present industrial dispute is dismissed, workman is not entitled for any relief; and the reference is answered accordingly.

Lucknow.

06th May, 2024

Justice ANIL KUMAR, Presiding Officer

नई दिल्ली, 28 जून, 2024

का.आ. 1314.—औद्योगिक विवाद अधिनियम (1947 का 14) की धारा 17 के अनुसरण में,केन्द्रीय सरकार **प्रबंध निदेशक, स्कूटर्स इंडिया लिमिटेड, सरोजिनी नगर, लखनऊ,** के प्रबंधतंत्र के संबद्ध नियोजकों और **श्री सुभाष चंद्र शर्मा,कामगार,** के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण- सह-श्रम न्यायालय, लखनऊ पंचाट(संदर्भ संख्या **19/2012**) को जैसा कि अनुलग्नक में दिखाया गया है,प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 27.06.2024 को प्राप्त हुआ था

[सं. एल- 42011/134/2011- आईआर-(डीयू)]

दिलीप कुमार, अवर सचिव

New Delhi, the 28th June, 2024

S.O. 1314.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 19/2012) of the **Central Government Industrial Tribunal cum Labour Court, Lucknow** as shown in the Annexure, in the Industrial dispute between the employers in relation to **The Managing Director, Scooters India Ltd., Sarojini Nagar, Lucknow, and Shri Subhash Chandra Sharma,Worker,** which was received along with soft copy of the award by the Central Government on 27.06.2024.

[No. L- 42011/134/2011- IR (DU)]

DILIP KUMAR, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM- LABOUR COURT, LUCKNOW

PRESENT

JUSTICE ANIL KUMAR

PRESIDING OFFICER

I.D. No. 19/2012

Ref. No. L-42011/134/2011-IR(DU) dated: 04.01.2012

BETWEEN

Sri Subhash Chandra Sharma S/O Ram Bharose Sharma R/O 212,Chandra Shekher Azad Nagar(Darogakhera) Po- Aurawan

Lucknow (UP)

AND

Managing Director, Scooters India Ltd.,

Sarojini Nagar, Lucknow (UP)

AWARD

Sri V.K. Jaiswal - Counsel for the Applicant/Workman

Sri A.K. Singh & Sri Sharad Shukla- Counsel for the Respondent

On 04.01.2012 appropriate government by order no.L-42011/134/2011-IR (DU) has referred the following dispute to this Tribunal and accordingly the I.D. Case No.19 of 2012 (Subhash Chandra Sharma vs. M/s. Scooter India Ltd.) was registered:-

> *"Whether the action of the management of Scooters India Ltd., Lucknow in not considering the application of workman Sri* Subhash Chandra Sharma S/O R. B. Sharma*, Grade 'D' dated 02.12.1993 and voluntarily retiring him w.e.f. 31.12.1993 without paying entire pensionery benefits, is legal and justified? What relief the workman is entitled to?"*

Case of claimant:

On 26.3.2012 on behalf of workman, Statement of Claim filed stating therein the following averments :-

a) The applicant was appointed as semi skilled worker under the opposite party/employer on 27.10.1976 being fully eligible for the post and his Service No. is 3624 and he was initially granted Grade 'D'. The applicant/workman started performing his work and duties with all satisfaction of his all concerned.

b) All of sudden in the year 1993 a rumors was flown away in the campus of company that Manager of the respondent is saying that the company is going to be windup within a very short period due to heavy financial loss and as such employees may take his all service benefits as soon as possible from the company otherwise company will not responsible for the same. Those employees who will seek his voluntary retirement under the announced voluntary retirement scheme, they will call back in job/service on requirement of work on seniority basis.

c) The applicant believing rumor on 30.11.1993 applied for his voluntary retirement with effect from 31.3.1994 under the voluntary retirement scheme dated 8.12.1988.

d) A circular dated 6.11.1993 was also circulated by the respondent stating therein that the voluntary retirement scheme circulated vide circular dated 8.12.1988 will remain suspended with effect from 1.12.1993.

e) The applicant immediately on 02.12.1993 moved an application for withdrawing his voluntary retirement, which was sought by him with effect from 31.03.1994, then he came to know that his voluntary retirement has already been accepted by the management of opposite party on the same date i.e. on which he moved an application on 03.12.1993.

f) The management was fully aware with all things but voluntary retirement of the applicant was accepted knowingly and with mal intention on the same date when the applicant submitted his VRS application i.e. on 30.11.1993 only to oust him from the job, therefore the action of the respondent is quite bad in law and unjust.

g) The applicant applied for voluntary retirement on 30.11.1993 w.e.f. 31.03.1994 but his voluntary retirement was accepted by the respondent on the same date when he moved his application on 30.11.1993. The management is well known that the VRS circulated vide letter dated 8.12.1988 will remain suspended w.e.f. 1.12.1993, therefore, action of the respondent in accepting his VRS w.e.f. 30.11.1993 instead of 31.03.1994 is fully illegal, arbitrary and unjust.

h) If the applicant's voluntary retirement was not accepted w.e.f. 30.11.1993 i.e. on the date when he moved his application for VRS, his application would be cancelled or rejected by the management of the respondent as he submitted another application dated 02.12.1993 for withdrawing his voluntary retirement and thus he would remain in job till attaining his retirement age from the job. In view of this the respondent may be directed to pay entire salary and other service benefits to the applicant from the date of his relieve till the date of his retirement.

i) It is provided in the standing orders of the company that the pay will be revised on each 5 years of employees which has not been done in the matter of the applicant before accepting his VRS. The company is quietly running till date, therefore his voluntary retirement deserves to be quashed and the respondent be directed to reinstate the applicant on the post with full salary benefits from the date of relieve from the job till his date of retirement from the post and pay his entire due salary with 12% interest to the applicant.

Case of respondent:

On 5.9.2012 the written statement filed on behalf of the respondent M/s. Scooters India Limited taking the following **preliminary objections** :-

a) The matter of dispute does not constitute a valid industrial dispute, as the dispute has not been transformed into an industrial dispute within the meaning of the terms as defined in Industrial Disputes Act 1947.

b) The Central Government has not taken facts in cognizance while making a reference to the Tribunal. The reference is not based on the pleadins of the parties advanced at the conciliation stage, especially the submissions of the respondent before the Conciliation Officer/Government have been completely ignored, while making the reference for adjudication. No cause of action arose on the date as mentioned in reference order as such also on his ground alone, the reference order is bad in the eyes of law.

c) The Industrial Disputes Act 1947 has been amended vide Industrial Disputes (Amendment) Act, 2010 (Act No.24 of 2010) and period of limitation has been provided by virtue of Section 2A(3), which is quoted as below:-

> *"2A(3) The application referred to in sub-section (2) shall be made to the Labour Court or Tribunal before expiry of three years from the date of discharge, dismissal, retrenchment or otherwise termination of services as specified in sub-section (1)"*

d) A period of limitation has been provided i.e. three years from the alleged date of termination of services, but the instant case has arisen after a period of 18 years which is liable to the dismissed on the ground of limitation alone.

e) Even otherwise, the applicant has not raised industrial dispute within reasonable time. The applicant has raised an industrial dispute regarding his acceptance of Voluntary Retirement very belatedly i.e. after elapse of more than about 18 years. It is trite law as held by the Apex Court that the dispute must be raised within reasonable period of time from the cause of action and where the industrial dispute is not raised within reasonable period of time the Labour Court or Industrial Tribunal should decline to grant any interim relief to the workman.

f) The Apex Court in the case of Nedungadi Bank Ltd. Versus K.P. Madhavankutty & others : 2000(84) FLR 673 SC, S.M. Niljakar Vs. Telecom District Manager, Karnataka:2003(97) FLR 608 SC, Manager R.B.I. Vs. Gopinath Sharma : 2006 FLR (110) FLR 803 SC has already held that the dispute must be raised within reasonable period of time from the cause of action and a dispute which is state could not be subject matter of reference.

g) The present reference is highly belated, inasmuch as it is made after more than eighteen years from the alleged date of cause of action. The instant delay caused prejudice to the respondent since the management not presumed to preserve the relevant record for such a long period.

h) It is settled law of the land that the person who is approaching this Tribunal should come with clean hand but in the instant matter, the applicant has concealed the actual material facts which are very necessary for the purposes of the adjudication of present matter of dispute, if any, as such also the reference is not maintainable before this Tribunal and accordingly deserves to be rejected.

i) Earlier the applicant had raised an industrial dispute under the provisions of Section 2A of the U.P. Industrial Disputes Act before the validly appointed conciliation officer. The conciliation officer on its turn called upon the parties for hearing and after conducting the necessary proceedings, the aforementioned application had been rejected by the competent authority.

j) The applicant preferred a Writ Petition No. 1624 (SS) of 2000 (Mohan Singh & another Vs. Scooters India Limited & others) along with some other ex-employees of the Company before the Hon'ble High Court, Lucknow Bench, Lucknow challenging the order passed by the competent authority and the Hon'ble High Court had been pleased to dismiss the aforesaid writ petition including bunch of writ petitions bearing W.P.No.2146 (SS) of 2000, W.P.No.6654 (SS) of 1999, W.P. No.2620 (SS) of 2000, W.P. No.1625 (SS) of 2000, W.P. No.1745 (SS) of 2000, W.P. No.1644 (SS) of 2000, W.P. No.1635 (SS) of 2000 & W.P. No.1624 (SS) of 2000 vide judgment and order dated 8.2.2006 after holding that there is no dispute that the petitioners themselves had approached the scheme and had accepted all the benefits and after accepting all the benefits, after a lapse of long time, had tried to raise this dispute. Further the Hon'ble Court has held that the Conciliation Officer, in these circumstances for sufficient reasons disallowed the application of the petitioners.

k) A Review Petition No.75 of 2006 was also filed by the applicant which has also been dismissed by the Hon'ble High Court, Lucknow Bench, Lucknow vide its judgment and order dated 13.5.2008. Thus it is clear that the matter has already been adjudicated upon by the competent court of law and these facts have not been disclosed by the applicant in their written statement, which amounts to concealment of facts and the instant application is liable to be dismissed on this ground alone.

l) An identical situated employee had also preferred a Writ Petition No.1165(SS) of 1994:Jagdish Chandra Nigam Versus M/s. Scooters India Limited before the Hon'ble High Court, Lucknow Bench, Lucknow challenging the action of the management in accepting the application for voluntary retirement, which has been dismissed by means of detail judgment and order dated 9.1.1997.

m) Being aggrieved from the aforesaid judgment and order dated 9.1.1997, Special Appeal No.48 (SB) of 1997 was preferred before the Division Bench of the Hon'ble High Court, Lucknow Bench, Lucknow and after conducting the necessary proceedings, the Hon'ble Division Bench of the Hon'ble High Court decided the said special appeal by means of judgment and order dated 18.12.2000 and set aside the judgment and order passed by the Single Judge to the extent that in case of the appellant/petitioner deposits the entire amount which he has received through cheque dated 12.3.1994 alongwith interest at the rate of 12% with respondent company as well as other benefits which might have been given to the appellant within four weeks from the production of certified copy of the order, the appellant will be reinstated in service.

n) The management preferred Special Leave Petition challenging the judgment and order dated 18.12.2000 before the Hon'ble Supreme Court of India, which was letter on converted into Civil Appeal No.1089 of 2004:M/s. Scooters India Limited & others Vs. Jagdish Chandra Nigam which was allowed by means of the judgment and order dated 12.2.2004 and the judgment and order dated 18.12.2000 rendered by the Division Bench of the High Court, Lucknow Bench, Lucknow has been set aside.

o) Being aggrieved from the judgment and order dated 12.2.2004, Sri Jagdish Chandra Nigam had preferred a Review Petition No.747 of 2004: J.C. Nigam Vs. M/s. Scooters India Limited, which has also been dismissed by the Hon'ble Supreme Court of India vide its judgment and order dated 28.4.2004. Sri Nigam also preferred a Curative Petition No.152 of 2008 and the same has also been dismissed by the Constitution Bench of Hon'ble Supreme Court vide its judgment and order dated 21.1.2009. Thus it is crystal clear that the matter in dispute has already been decided by the competent court of law and now nothing remains to be adjudicated upon by this Tribunal.

p) It is crystal clear that the principles of res-judicata applies into the matter and accordingly the reference is liable to be rejected, out rightly without going into the merit of the case.

Accordingly, it has been prayed by respondent that the present industrial dispute may be dismissed being devoid of any merit.

Thereafter documents, evidences etc. had been exchanged between the parties. Sri Sharad Kumar Shukla, Learned Counsel for the respondent submits that the preliminary objections taken by them may be considered first and thereafter the matter be heard on merits.

Finding & conclusion on the Preliminary Objections:

I have heard Sri V.K. Jaiswal, learned counsel for claimant and Sri Sharad Kumar Shukla and Sri A.K. Singh, learned counsel for the respondent.

It is not in dispute between the parties that Sri Subhash Chandra Sharma, applicant/workman was appointed as semi skilled worker in establishment known as Scooter India Limited on 27.09.1976, Grade-D having service No. 3624. Scooter India Limited floated a scheme known as Voluntary Retirement (hereinafter referred to as 'VRS').

On 30.11.1993 applicant submitted an application for opting VRS and the same was accepted by the respondent on 03.12.1993 and his date of release under the said scheme was notified as 31.11.1993 and consequently applicant was voluntary retired from service under the Scheme with all consequential benefits and the same were received by him.

Meanwhile on 6.11.1993 a circular was issued which reads as under:-

> "*Sub: Voluntary Retirement Scheme – suspension thereof*
>
> *The Voluntary retirement scheme circulated vide circular no.SIL/PER/NC-63/88 dated 8.12.88 for the employees of the Company will remain suspended w.e.f.1.12.1993*."

So a letter/representation dated 02.12.1993, submitted by applicant for withdrawal/rejection of his application dated 30.11.1993 for voluntary retirement from services on the ground mentioned therein.

From the material on record the position which emerges out that initially aggrieved by the action of the respondent thereby not considering application of the workman/applicant dated 02.12.1993 for rejecting/withdrawing acceptance of voluntary retirement by him under the scheme known as Voluntary Retirement Scheme, he raised a industrial dispute under Section 2-A of Industrial Disputes Act which rejected by the Conciliation Officer.

Aggrieved by the said facts, the workman/applicant (Subhash Chandra Sharma) along with other similarly situated employees filed a Writ Petition no. 1624 (SS) of 2000 (Mohan Singh & another Versus M/s. Scooter India Limited & others).

The said writ petition was heard by the Hon'ble High Court along with leading Writ Petition No.2146 (SS) of 2000 (S.V. Jaiswal Versus M/s. Scooter India Limited & others).

By means of order dated 8.2.2006 the Hon'ble High Court dismissed the Writ Petition No.2146 (SS) of 2000 along with other connected writ petitions including the Writ Petition No. 1624 (SS) of 2000, the relevant portion, quoted below:-

> "*The question whether voluntary retirement would come under the definition of retrenchment or compulsory retirement or not, was considered in a number of cases which have been relied upon by the learned counsel appearing on behalf of the opposite party, one main of them has been reported in 1997(2), UPLBEC 1262, Jagdish Chand Nigam Vs. Scooter India Limited.*
>
> *In similar circumstances, the petitioners had taken voluntary retirement. The Bench of this court observed that the petitioner had occupied offer of his premature retirement, in order to receive the compensation, for the last tenure of service offered by the respondents. The offer made by the employers was accepted by the employees. The benefits provided by the respondents under this scheme were accepted by the petitioner. Since the workman had accepted the scheme and himself had opted to retire under this scheme, he cannot be allowed to approbate or reprobate. In the present case of the petitioner, the employees had accepted all benefits under the Voluntary Retirement Scheme, so they cannot retract from the obligations and exercise their right, integrally connected with the performance of the obligations under the Voluntary Retirement Scheme.*
>
> *In view of the above facts and in view of the principles of law laid down in the above noted case and after accepting offer of huge incentive, they now cannot withdraw their resignation and if their services had come to an end on account of it, they cannot be allowed to raise it in this manner as their grievance. The Hon'ble Apex Court in Special Leave Petition affirmed this judgment. The same principles were laid down by the Hon'ble Apex Court in another case reported in 2004(100) FLR 648, Punjab National Bank Vs. Virendra Kumar Goel and others and AIR 2003 SC 858, Bank of India with other banks Vs. Virendra Kumar Goel and others, wherein it was laid down that retirement was to take effect only after the request was accepted. Such scheme is only an intimation to offer which can be withdrawn before it is accepted contractual bar created under the scheme to withdraw the request once made by employees cannot be made.*
>
> *In the present case there is no dispute that the petitioners themselves had approached the scheme and had accepted all the benefits and after accepting all the benefits, after a lapse of long time, had tried to raise this*

dispute. The Conciliation Officer, in these circumstances for sufficient reasons allowed the application of the petitioners.

I find no merit in these writ petitions. They are fit to be dismissed and are accordingly dismissed with costs."

Against order dated 8.2.2006, a Review Petition No.75 of 2006, was dismissed by means of order dated 13.5.2008 which is quoted below:-

"*There appears no error apparent at the face of record. The review petition is dismissed. No order as to costs*."

However, above said facts have been concealed by applicant while filing the present I.D. Case with oblique motive and purpose.

As such, it is rightly submitted on behalf of respondent that present case on the same relief in respect to which earlier claimant's case u/s 2A of the Act was rejected, is barred by the principle of res-judicata.

Further, one Sri Jagdish Chandra Nigam whose case was identical to the case of claimant, filed a Special Appeal No.48 (SB) of 1997, allowed by means of judgment and order dated 18.12.2000 (reported in 2000CJ(All) 309), the relevant portion, quoted below:-

"18. The appeal is allowed. The judgment and order passed by the Hon'ble the single Judge is set aside to the extent, the observations made in the foregoing paragraph of this judgment. But we provide that in case the appellant deposits the entire amount which he has received through cheque dated March 12, 1994 alongwith interest at the rate of 12% with Scooters India Limited, as well as other benefits which might have been given to the appellant within four weeks from the date of production of the certified copy of this order, the appellant will be reinstated in service. But considering the facts and circumstances of the case, we further provide that the appellant will not be entitled for payment of back wages.

19. As far as the case of the petitioners of other writ petitions are concerned, the fact of those writ petitioners are not exactly identical to the facts which have been indicated in the present Special Appeal. But as this Court has decided the present Special Appeal more or less on same propositions of law although the fact might be different, we heard the arguments of the learned counsel for the parties in all the writ petitions alongwith special appeal, which are connected with this special appeal as well.

20. As we have already indicated that those employees who withdrew their application for voluntary retirement before the prospective date mentioned in the original application for voluntary retirement, shall he entitled for the relief. But those persons, who have not withdrawn their voluntary retirement before the prospective date, would not be entitled for any relief.

21. We further provide that those petitioners, who opted for the Voluntary Retirement Scheme from a prospective date and withdrew their resignations before the said prospective date, but were, relieved by the management of the Scooters India Ltd. would be entitled to the relief as Jagdish Chandra Nigam has been provided, provided they filed the writ petitions within one month from the date of the relieving orders. If they had filed the writ petition after one month from the date of relieving orders, they would not be entitled for any relief.

22. With the aforesaid observations, the Special Appeal as well as all the writ petitions are disposed of."

Judgment/order dated 18.12.2000 challenged by way of filing a S.L.P. having Special Leave Petition (Civil) No.10352/2001 (M/s. Scooters India Ltd & others versus Jagdish Chandra Nigam) along with other S.L.P.s which were connected. In the above noted S.L.P. an order dated 12.2.2004 was passed by the Hon'ble Supreme Court which reads as under:-

"*Leave Granted.*

For the reasons stated in our order passed today in C.A. No.4098/2002, this appeal is allowed.

The order and judgment under challenge is set aside. There shall be no order as to costs."

Thus, as per the order passed by the Hon'ble Supreme Court, the S.L.P. filed by M/s. Scooters India Limited was allowed and judgment and order passed in the case of Special Appeal filed by Sri Jagdish Chandra Nigam was set aside/S.L.P. filed by Sri Jagdish Chandra Nigam was dismissed.

Moreover order passed by the Hon'ble Supreme Court in Special Leave Petition (Civil) No.10352/2001 (M/s. Scooters India Ltd & others versus Jagdish Chandra Nigam) based upon order dated 12.2.2004 passed by the Hon'ble Supreme Court in C.A. No.4098 of 2002 (Bank of India & others Vs. Pale Ram Dhania), reproduced below:-

"1. It is not disputed that the appellant Bank introduced a Voluntary Retirement Scheme, 2000 (herein referred to as "the Scheme") for its employees which had the approval of its Board of Directors. The Scheme

was operative w.e.f. November 15, 2000 to December 14, 2000 for the employees who sought voluntary retirement. It is not disputed that the respondent herein who was an employee of the appellant Bank sought voluntary retirement under the Scheme on November 30, 2000. It is also not disputed that on December 2, 2000 he wrote to the Bank for withdrawal of his application for voluntary retirement. On January 22, 2001, the appellant Bank accepted the request for voluntary retirement of the respondent. Further, on January 25, 2001, the respondent withdrew the retiral benefits deposited in the Bank in his name as per voluntary retirement. It appears that the respondent changed his mind after the respondent was relieved from the employment and he filed a petition under Article 226 of the Constitution challenging the acceptance of his request for voluntary retirement. A learned Single Judge of the High Court allowed the petition and set aside the acceptance of the application for voluntary retirement submitted by the respondent. Aggrieved, the appellants preferred a letters patent appeal which was dismissed. It is against the said judgment, the appellants are in appeal before us.

2. A Bench of three Judges of this Court in Punjab National Bank v. Virender Kumar Goel , has held that an employee who sought voluntary retirement and subsequently wrote for its withdrawal but has withdrawn the amount of retiral benefits as per the Voluntary Retirement Scheme, is not entitled to the withdrawal of his application for voluntary retirement. It is not disputed that in the present case the respondent herein withdrew the amount of retiral benefits on January 25, 2001.

3. For the aforesaid reason, this appeal deserves to be allowed. We order accordingly. The order and judgment under challenge is set aside. There shall be no order as to costs".

In Review Petition (Civil) No.53 of 2003 arising out of Appeal (Civil) No.896 of 2002 (Punjab National Bank Versus Virender Kumar Goel & others), the Hon'ble Supreme Court on 21.1.2004 passed an order. The relevant of order dated 21.1.2004 reads as under:-

"I.A.NOS. 1-22

These applications have been filed by the State Bank of Patiala for clarification/directions. The ground taken in these applications is that the State Bank of Patiala is not a nationalised bank. It is hundred per cent a subsidiary of the State Bank of India. The VRS scheme floated by the State Bank of Patiala is in para-materia with the scheme floated by the State Bank of India. This Court in the judgment dated 17.12.2002 allowed the appeals filed by the State Bank of India but nothing has been said about the appeals filed by the State Bank of Patiala. In the interregnum, a two-Judge Bench of this Court, in which one of us (Sema, J) was a member, considered the same question in Civil Appeal No. 2341 of 2003 arising out of Special Leave Petition No. 23530 of 2002 entitled State Bank of Patiala Vs. Jagga Singh, disposed of on 13.3.2003, where this Court after considering Clause 8 of the scheme floated by the State Bank of Patiala and Clause 7 of the scheme floated by the State Bank of India, had held that the scheme floated by the State Bank of Patiala is almost identical of the scheme floated by the State Bank of India. Accordingly, the appeal filed by the State Bank of Patiala was allowed. Review Petition was also dismissed on 3.12.2003. In view thereof, we clarify that our direction No.2, allowing the appeals filed by the State Bank of India, would also include the appeals filed by the State Bank of Patiala. In other words, the appeals filed by the State Bank of Patiala are allowed in terms of our judgment dated 17.12.2002. I.A.NOS. 14-15 I.A.No.14 has been filed by an employee of the bank sought to clarify/modify our order dated 17.12.2002. In this case, admittedly, the benefit of the scheme had been withdrawn by the applicant on 27.2.2001. The applicant had clearly admitted, in ground E of the application, withdrawal of the amount so credited in his account, albeit compelling financial constraints.

I.A.No.15 has been filed by an employee of the bank for clarification/modification of our order dated 17.12.2002. In para 6 of the application, the applicant admitted that he had withdrawn and utilised the benefit of the scheme credited in his account.

As noticed in our judgment, having accepted the benefit under the scheme by withdrawing and utilisation thereof they are not permitted to approbate and reprobate."

Moreover Sri J.C. Nigam filed a Review Petition (Civil) No.747 of 2004 in C.A. No.1089 of 2004 (J.C. Nigam Versus M/s. Scooter India Limited & others) before the Hon'ble Supreme Court in which the following order dated 28.4.2004 passed:-

"*We do not filed any merit in the review petition and the same is accordingly dismissed*."

Thereafter, Sri J.C. Nigam filed a Curative Petition No.152 of 2008 against order dated 28.4.2004 passed in Review Petition (Civil) No.747 of 2004 which was dismissed by an order dated 20.1.2009, quoted below:-

"*We have perused the petition and the connected papers. In our view, no case is made out within the parameters indicated in the decision of this Court in Rupa Ashok Hurra Vs. Ashok Hurra & Anr. 2002(4) SCC 388. Hence, the Curative Petition is dismissed*."

In addition to the above said facts, Hon'ble the Apex Court in the constitution bench in the case of ***Rupa Ashok Hurra Versus Ashok Hurra & Anr, reported in 2002(4) SCC 388*** held as under:-

"Incidentally, this Court stands out to be an avenue for redressal of grievance not only in its revisional jurisdiction as conferred by the Constitution but as a platform and forum for every grievance in the country and it is on this context Mr.Shanti Bhushan, appearing in support of the some of the petitioners, submitted that the Supreme Court in its journey for over 50 years has been able to obtain the confidence of the people of the country, whenever the same is required be it the atrocities of the police or a public grievance pertaining to a governmental action involving multitudes of problems. It is the Supreme Court, Mr. Shanti Bhushan contended, where the people feel confident that justice is above all and would be able to obtain justice in its true form and sphere and this is beyond all controversies. It has been contended that finality of the proceeding after an Order of the Supreme Court, there should be, but that does not preclude or said to preclude this Court from going into the factum of the petition for gross injustice caused by an Order of the Supreme Court itself under the inherent power being an authority to correct its errors any other view should not and ought not be allowed to be continued. Needless to record here, however, that review jurisdiction stand foisted upon this Court in terms of the provisions of the Constitution, as noticed hereinbefore and it is also well-settled that a second review petition cannot be said to maintainable. Reference maybe made in this context to a decision of this Court in the case of J.Ranga Swamy v. Govt. of A.P. & Ors. (AIR 1990 SC 535), wherein this Court in paragraph 3 stated as below :-

"We are clearly of the opinion that these applications are not maintainable. The petitioner, who appeared in person, referred to the judgment in Antulay's case (1988) 2 SCC 602 : (AIR 1988 SC 1531). We are, however, of the opinion that the principle of that case is not applicable here. All the points which the petitioner urged regarding the constitutionality of the Government orders in question as well as the appointment of respondent instead of petitioner to the post in question had been urged before the Bench, which heard the civil appeal and writ petitions originally. The petitioner himself stated that he was heard by the Bench at some length. It is, therefore, clear that the matters were disposed of after a consideration of all the points urged by the petitioner and the mere fact that the order does not discuss the contentions or give reasons cannot entitle the petitioner to have what is virtually a second review."

True, due regard shall have to have as regards opinion of the Court in Ranga Swamy (supra), but the situation presently centres round that in the event of there being any manifest injustice would the doctrine of ex debito justitiae be said to be having a role to play in sheer passivity or to rise above the ordinary heights as it preaches that justice is above all. The second alternative seems to be in consonance with time and present phase of socio-economic conditions of the society. Manifest justice is curable in nature rather than incurable and this court would lose its sanctity and thus would belie the expectations of the founding fathers that justice is above all. There is no manner of doubt that procedural law/procedural justice cannot overreach the concept of justice and in the event an Order stands out to create manifest injustice, would the same be allowed to remain in silenco so as to affect the parties perpetually or the concept of justice ought to activate the Court to find a way out to resolve the erroneous approach to the problem. Mr. Attorney General, with all the emphasis in his command, though principally agreed that justice of the situation needs to be looked into and relief be granted if so required but on the same breath submitted that the Court ought to be careful enough to trade on the path, otherwise the same will open up Pandora's box and thus, if at all, in rarest of the rare cases the further scrutiny may be made. While it is true that law courts has overburdened itself with the litigation and delay in disposal of matters in the subcontinent is not unknown and in the event of any further appraisal of the matter by this Court, it would brook on further delay resulting in consequences which are not far to see but that would by itself not in my view deter this Court from further appraisal of the matter in the event the same, however, deserve such an additional appraisal The note of caution sounded by Mr. Attorney as regards opening up of pandora's box strictly speaking, however, though may be of very practical in nature but the same apparently does not seem to go well with the concept of justice as adumbrated in our constitution. True it is, that practicability of the situation needs a serious consideration more so when this Court could do without it for more than 50 years, which by no stretch of imagination can be said to be a period not so short. I feel it necessary, however, to add that it is not that we are not concerned with the consequences of reopening of the issue but the redeeming feature of our justice delivery system, as is prevalent in the country, is adherence to proper and effective administration of justice in stricto. In the event there is any affectation of such an administration of justice either by way of infraction of natural justice or an order being passed wholly without jurisdiction or affectation of public confidence as regards the doctrine of integrity in the justice delivery system technicality ought not to out-weigh the course of justice the same being the true effect of the doctrine of ex debito justitiae. The oft quoted statement of law of Lord Hewart, CJ in R v. Susssex Justices, ex p McCarthy (1924 (1) KB 256) that it is of fundamental importance that justice should not only be done, should manifestly and undoubtedly be seem to be done had this doctrine underlined and administered therein. In this context, the decision of the House of Lords in R v. Bow Street Metropolitan Stipendiary Magistrate and others, ex parte Pinochet Ugarte (No.2) seem to be an

ipoc making decision, wherein public confidence on the judiciary is said to be the basic criteria of the justice delivery system any act or action even if it a passive one, if erodes or even likely to erode the ethics of judiciary, matter needs a further look. Brother Quadri has taken very great pains to formulate the steps to be taken and the methodology therefor, in the event of there being an infraction of the concept of justice, as such further dilation would be an unnecessary exercise which I wish to avoid since I have already recorded my concurrence therewith excepting, however, lastly that curative petitions ought to be treated as a rarity rather than regular and the appreciation of the Court shall have to be upon proper circumspection having regard to the three basic features of our justice delivery system to wit, the order being in contravention of the doctrine of natural justice or without jurisdiction or in the event of there is even a likelihood of public confidence being shaken by reason of the association or closeness of a judge with the subject matter in dispute. In my view, it is now time that procedural justice system should give way to the conceptual justice system and efforts of the law Court ought to be so directed. Gone are the days where implementation of draconian system of law or interpretation thereof were insisted upon - Flexibility of the law Courts presently are its greatest virtue and as such justice oriented approach is the need of the day to strive and forge ahead in the 21st century."

Thus, from the above said facts and the material on record, as the present industrial dispute stands on the same footing as of Sri Jagdish Chandra Nigam, so in view of the judgment passed Hon'ble Supreme Court in the case of Sri Jagdish Chandra Nigam thereafter in Review Petition and Curative Petition, by him which were also dismissed.

Accordingly, preliminary objection taken by learned counsel for respondent are allowed and claim petition filed by claimant liable to be dismissed.

ORDER

For the foregoing reasons the present industrial dispute is dismissed, workman is not entitled for any relief; and the reference is answered accordingly.

Lucknow.

07th May, 2024

Justice ANIL KUMAR, Presiding Officer

नई दिल्ली, 28 जून, 2024

का.आ. 1315.–औद्योगिक विवाद अधिनियम (1947 का 14) की धारा 17 के अनुसरण में,केन्द्रीय सरकार **प्रबंध निदेशक, स्कूटर्स इंडिया लिमिटेड, सरोजिनी नगर, लखनऊ,** के प्रबंधतंत्र के संबद्ध नियोजकों और **श्री जितेन्द्र कुमार,कामगार,** के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण- सह-श्रम न्यायालय, लखनऊ पंचाट(संदर्भ संख्या **20/2012**) को जैसा कि अनुलग्नक में दिखाया गया है,प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 27.06.2024 को प्राप्त हुआ था।

[सं. एल- 42011/135/2011- आईआर-(डीयू)]

दिलीप कुमार, अवर सचिव

New Delhi, the 28th June, 2024

S.O. 1315.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 20/2012) of the **Central Government Industrial Tribunal cum Labour Court, Lucknow** as shown in the Annexure, in the Industrial dispute between the employers in relation to **The Managing Director, Scooters India Ltd., Sarojini Nagar, Lucknow, and Shri Jitendra Kumar, Worker,** which was received along with soft copy of the award by the Central Government on 27.06.2024.

[No. L- 42011/135/2011- IR (DU)]

DILIP KUMAR, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM- LABOUR COURT, LUCKNOW

PRESENT

JUSTICE ANIL KUMAR

PRESIDING OFFICER

I.D. No. 20/2012

Ref. No. L-42011/135/2011-IR(DU) dated: 04.01.2012

BETWEEN

Sri Jitendra Kumar S/O Ram Autar H.No.332 village- Gaurigaon Po- Sarojini Nagar Lucknow (UP)

AND

Managing Director, Scooters India Ltd.,

Sarojini Nagar, Lucknow.

AWARD

Sri V.K. Jaiswal - Counsel for the Applicant/Workman

Sri A.K. Singh & Sri Sharad Shukla- Counsel for the Respondent

On 04.1.2012 appropriate government by order no.L-42011/135/2011-IR (DU) has referred the following dispute to this Tribunal and accordingly the I.D. Case No. 20 of 2012 (Jitendra Kumar Versus M/s. Scooter India Ltd.) was registered:-

> *"Whether the action of the management of Scooters India Ltd., Lucknow in not considering the application of workman Sri* Jitendra Kumar S/o Ram Autar*, Grade 'C' dated 28.11.1993 and voluntarily retiring him w.e.f. 31.12.1993 without paying entire pensionery benefits, is legal and justified? What relief the workman is entitled to?"*

Case of claimant:

On 26.3.2012 on behalf of workman, Statement of Claim filed stating therein the following averments :-

a) The applicant was appointed as semi skilled worker under the opposite party/employer on 17.07.1974 being fully eligible for the post and his Service No. is 1401 and he was initially granted Grade 'C'. The applicant/workman started performing his work and duties with all satisfaction of his all concerned.

b) All of sudden in the year 1993 a rumors was flown away in the campus of company that Manager of the respondent is saying that the company is going to be windup within a very short period due to heavy financial loss and as such employees may take his all service benefits as soon as possible from the company otherwise company will not responsible for the same. Those employees who will seek his voluntary retirement under the announced voluntary retirement scheme, they will call back in job/service on requirement of work on seniority basis.

c) The applicant believing rumor on 26.11.1993 applied for his voluntary retirement with effect from 31.3.1994 under the voluntary retirement scheme dated 8.12.1988.

d) A circular dated 6.11.1993 was also circulated by the respondent stating therein that the voluntary retirement scheme circulated vide circular dated 8.12.1988 will remain suspended with effect from 1.12.1993.

e) The applicant immediately on 28.11.1993 moved an application for withdrawing his voluntary retirement, which was sought by him with effect from 31.03.1994, then he came to know that his voluntary retirement has already been accepted by the management of opposite party on the same date i.e. on which he moved an application on 26.11.1993.

f) The management was fully aware with all things but voluntary retirement of the applicant was accepted knowingly and with mal intention on the same date when the applicant submitted his VRS application i.e. on 30.11.1993 only to oust him from the job, therefore the action of the respondent is quite bad in law and unjust.

g) The applicant applied for voluntary retirement on 26.11.1993 w.e.f. 31.03.1994 but his voluntary retirement was accepted by the respondent on the same date when he moved his application on 30.11.1993. The management is well known that the VRS circulated vide letter dated 8.12.1988 will remain suspended w.e.f. 1.12.1993, therefore, action of the respondent in accepting his VRS w.e.f. 30.11.1993 instead of 31.03.1994 is fully illegal, arbitrary and unjust.

h) If the applicant's voluntary retirement was not accepted w.e.f. 30.11.1993 i.e. on the date when he moved his application for VRS, his application would be cancelled or rejected by the management of the respondent as he submitted another application dated 28.11.1993 for withdrawing his voluntary retirement and thus he would remain in job till attaining his retirement age from the job. In view of this

the respondent may be directed to pay entire salary and other service benefits to the applicant from the date of his relieve till the date of his retirement.

i) It is provided in the standing orders of the company that the pay will be revised on each 5 years of employees which has not been done in the matter of the applicant before accepting his VRS. The company is quietly running till date, therefore his voluntary retirement deserves to be quashed and the respondent be directed to reinstate the applicant on the post with full salary benefits from the date of relieve from the job till his date of retirement from the post and pay his entire due salary with 12% interest to the applicant.

Case of respondent:

On 5.9.2012 the written statement filed on behalf of the respondent M/s. Scooters India Limited taking the following **preliminary objections** :-

a) The matter of dispute does not constitute a valid industrial dispute, as the dispute has not been transformed into an industrial dispute within the meaning of the terms as defined in Industrial Disputes Act 1947.

b) The Central Government has not taken facts in cognizance while making a reference to the Tribunal. The reference is not based on the pleadins of the parties advanced at the conciliation stage, especially the submissions of the respondent before the Conciliation Officer/Government have been completely ignored, while making the reference for adjudication. No cause of action arose on the date as mentioned in reference order as such also on his ground alone, the reference order is bad in the eyes of law.

c) The Industrial Disputes Act 1947 has been amended vide Industrial Disputes (Amendment) Act, 2010 (Act No.24 of 2010) and period of limitation has been provided by virtue of Section 2A(3), which is quoted as below:-

> *"2A(3) The application referred to in sub-section (2) shall be made to the Labour Court or Tribunal before expiry of three years from the date of discharge, dismissal, retrenchment or otherwise termination of services as specified in sub-section (1)"*

d) A period of limitation has been provided i.e. three years from the alleged date of termination of services, but the instant case has arisen after a period of 18 years which is liable to the dismissed on the ground of limitation alone.

e) Even otherwise, the applicant has not raised industrial dispute within reasonable time. The applicant has raised an industrial dispute regarding his acceptance of Voluntary Retirement very belatedly i.e. after elapse of more than about 18 years. It is trite law as held by the Apex Court that the dispute must be raised within reasonable period of time from the cause of action and where the industrial dispute is not raised within reasonable period of time the Labour Court or Industrial Tribunal should decline to grant any interim relief to the workman.

f) The Apex Court in the case of Nedungadi Bank Ltd. Versus K.P. Madhavankutty & others : 2000(84) FLR 673 SC, S.M. Niljakar Vs. Telecom District Manager, Karnataka:2003(97) FLR 608 SC, Manager R.B.I. Vs. Gopinath Sharma : 2006 FLR (110) FLR 803 SC has already held that the dispute must be raised within reasonable period of time from the cause of action and a dispute which is state could not be subject matter of reference.

g) The present reference is highly belated, inasmuch as it is made after more than eighteen years from the alleged date of cause of action. The instant delay caused prejudice to the respondent since the management not presumed to preserve the relevant record for such a long period.

h) It is settled law of the land that the person who is approaching this Tribunal should come with clean hand but in the instant matter, the applicant has concealed the actual material facts which are very necessary for the purposes of the adjudication of present matter of dispute, if any, as such also the reference is not maintainable before this Tribunal and accordingly deserves to be rejected.

i) Earlier the applicant had raised an industrial dispute under the provisions of Section 2A of the U.P. Industrial Disputes Act before the validly appointed conciliation officer. The conciliation officer on its turn called upon the parties for hearing and after conducting the necessary proceedings, the aforementioned application had been rejected by the competent authority.

j) The applicant preferred a Writ Petition No. 2620 (SS) of 1999 (Rajendra Singh & another Vs. Scooters India Limited & others) along with some other ex-employees of the Company before the Hon'ble High Court, Lucknow Bench, Lucknow challenging the order passed by the competent authority and the Hon'ble High Court had been pleased to dismiss the aforesaid writ petition including bunch of writ petitions bearing W.P.No.2146 (SS) of 2000, W.P.No.6654 (SS) of 1999, W.P. No.2620 (SS) of 2000, W.P. No.1625 (SS) of 2000, W.P. No.1745 (SS) of 2000, W.P. No.1644 (SS) of 2000, W.P. No.1635 (SS) of 2000 & W.P. No.1624

(SS) of 2000 vide judgment and order dated 8.2.2006 after holding that there is no dispute that the petitioners themselves had approached the scheme and had accepted all the benefits and after accepting all the benefits, after a lapse of long time, had tried to raise this dispute. Further the Hon'ble Court has held that the Conciliation Officer, in these circumstances for sufficient reasons disallowed the application of the petitioners.

k) An identical situated employee had also preferred a Writ Petition No.1165(SS) of 1994:Jagdish Chandra Nigam Versus M/s. Scooters India Limited before the Hon'ble High Court, Lucknow Bench, Lucknow challenging the action of the management in accepting the application for voluntary retirement, which has been dismissed by means of detail judgment and order dated 9.1.1997.

l) Being aggrieved from the aforesaid judgment and order dated 9.1.1997, Special Appeal No.48 (SB) of 1997 was preferred before the Division Bench of the Hon'ble High Court, Lucknow Bench, Lucknow and after conducting the necessary proceedings, the Hon'ble Division Bench of the Hon'ble High Court decided the said special appeal by means of judgment and order dated 18.12.2000 and set aside the judgment and order passed by the Single Judge to the extent that in case of the appellant/petitioner deposits the entire amount which he has received through cheque dated 12.3.1994 alongwith interest at the rate of 12% with respondent company as well as other benefits which might have been given to the appellant within four weeks from the production of certified copy of the order, the appellant will be reinstated in service.

m) The management preferred Special Leave Petition challenging the judgment and order dated 18.12.2000 before the Hon'ble Supreme Court of India, which was letter on converted into Civil Appeal No.1089 of 2004:M/s. Scooters India Limtied & others Vs. Jagdish Chandra Nigam which was allowed by means of the judgment and order dated 12.2.2004 and the judgment and order dated 18.12.2000 rendered by the Division Bench of the High Court, Lucknow Bench, Lucknow has been set aside.

n) Being aggrieved from the judgment and order dated 12.2.2004, Sri Jagdish Chandra Nigam had preferred a Review Petition No.747 of 2004: J.C. Nigam Vs. M/s. Scooters India Limited, which has also been dismissed by the Hon'ble Supreme Court of India vide its judgment and order dated 28.4.2004. Sri Nigam also preferred a Curative Petition No.152 of 2008 and the same has also been dismissed by the Constitution Bench of Hon'ble Supreme Court vide its judgment and order dated 21.1.2009. Thus it is crystal clear that the matter in dispute has already been decided by the competent court of law and now nothing remains to be adjudicated upon by this Tribunal.

o) It is crystal clear that the principles of res-judicata applies into the matter and accordingly the reference is liable to be rejected, out rightly without going into the merit of the case.

Accordingly, it has been prayed by respondent that the present industrial dispute may be dismissed being devoid of any merit.

Thereafter documents, evidences etc. had been exchanged between the parties. Sri Sharad Kumar Shukla, Learned Counsel for the respondent submits that the preliminary objections taken by them may be considered first and thereafter the matter be heard on merits.

Finding & conclusion on the Preliminary Objections:

I have heard Sri V.K. Jaiswal, learned counsel for claimant and Sri Sharad Kumar Shukla and Sri A.K. Singh, learned counsel for the respondent.

It is not in dispute between the parties that Sri Jitendra Kumar-applicant/workman was appointed as semi skilled worker in establishment known as Scooter India Limited on 17.07.1974, Grade-C having service No. 1401. Scooter India Limited floated a scheme known as Voluntary Retirement (hereinafter referred to as 'VRS').

On 26.11.1993 applicant submitted an application for opting VRS and the same was accepted by the respondent on 26.11.1993 and his date of release under the said scheme was notified as 31.11.1993 and consequently applicant was voluntary retired from service under the Scheme with all consequential benefits and the same were received by him.

Meanwhile on 6.11.1993 a circular was issued which reads as under:-

"*Sub: Voluntary Retirement Scheme – suspension thereof*

The Voluntary retirement scheme circulated vide circular no.SIL/PER/NC-63/88 dated 8.12.88 for the employees of the Company will remain suspended w.e.f.1.12.1993."

So a letter/representation dated 28.11.1993, submitted by applicant for withdrawal/rejection of his application dated 26.11.1993 for voluntary retirement from services on the ground mentioned therein.

From the material on record the position which emerges out that initially aggrieved by the action of the respondent thereby not considering application of the workman/applicant dated 28.11.1993 for rejecting/withdrawing acceptance

of voluntary retirement by him under the scheme known as Voluntary Retirement Scheme, he raised a industrial dispute under Section 2-A of Industrial Disputes Act which rejected by the Conciliation Officer.

Aggrieved by the said facts, the workman/applicant along with other similarly situated employees filed a Writ Petition no. 2620 (SS) of 1999 (Rajendra Singh & others Versus M/s. Scooter India Limited & others).

The said writ petition was heard by the Hon'ble High Court along with leading Writ Petition No.2146 (SS) of 2000 (S.V. Jaiswal Versus M/s. Scooter India Limited & others).

By means of order dated 8.2.2006 the Hon'ble High Court dismissed the Writ Petition No.2146 (SS) of 2000 along with other connected writ petitions including the Writ Petition No. 2620 (SS) of 1999, the relevant portion, quoted below:-

> "*The question whether voluntary retirement would come under the definition of retrenchment or compulsory retirement or not, was considered in a number of cases which have been relied upon by the learned counsel appearing on behalf of the opposite party, one main of them has been reported in 1997(2), UPLBEC 1262, Jagdish Chand Nigam Vs. Scooter India Limited.*
>
> *In similar circumstances, the petitioners had taken voluntary retirement. The Bench of this court observed that the petitioner had occupied offer of his premature retirement, in order to receive the compensation, for the last tenure of service offered by the respondents. The offer made by the employers was accepted by the employees. The benefits provided by the respondents under this scheme were accepted by the petitioner. Since the workman had accepted the scheme and himself had opted to retire under this scheme, he cannot be allowed to approbate or reprobate. In the present case of the petitioner, the employees had accepted all benefits under the Voluntary Retirement Scheme, so they cannot retract from the obligations and exercise their right, integrally connected with the performance of the obligations under the Voluntary Retirement Scheme.*
>
> *In view of the above facts and in view of the principles of law laid down in the above noted case and after accepting offer of huge incentive, they now cannot withdraw their resignation and if their services had come to an end on account of it, they cannot be allowed to raise it in this manner as their grievance. The Hon'ble Apex Court in Special Leave Petition affirmed this judgment. The same principles were laid down by the Hon'ble Apex Court in another case reported in 2004(100) FLR 648, Punjab National Bank Vs. Virendra Kumar Goel and others and AIR 2003 SC 858, Bank of India with other banks Vs. Virendra Kumar Goel and others, wherein it was laid down that retirement was to take effect only after the request was accepted. Such scheme is only an intimation to offer which can be withdrawn before it is accepted contractual bar created under the scheme to withdraw the request once made by employees cannot be made.*
>
> *In the present case there is no dispute that the petitioners themselves had approached the scheme and had accepted all the benefits and after accepting all the benefits, after a lapse of long time, had tried to raise this dispute. The Conciliation Officer, in these circumstances for sufficient reasons allowed the application of the petitioners.*
>
> *I find no merit in these writ petitions. They are fit to be dismissed and are accordingly dismissed with costs*."

However, above said facts have been concealed by applicant while filing the present I.D. Case with oblique motive and purpose.

As such, it is rightly submitted on behalf of respondent that present case on the same relief in respect to which earlier claimant's case u/s 2A of the Act was rejected, is barred by the principle of res-judicata.

Further, one Sri Jagdish Chandra Nigam whose case was identical to the case of claimant, filed a Special Appeal No.48 (SB) of 1997, allowed by means of judgment and order dated 18.12.2000 (reported in 2000CJ(All) 309), the relevant portion, quoted below:-

> *"18. The appeal is allowed. The judgment and order passed by the Hon'ble the single Judge is set aside to the extent, the observations made in the foregoing paragraph of this judgment. But we provide that in case the appellant deposits the entire amount which he has received through cheque dated March 12, 1994 alongwith interest at the rate of 12% with Scooters India Limited, as well as other benefits which might have been given to the appellant within four weeks from the date of production of the certified copy of this order, the appellant will be reinstated in service. But considering the facts and circumstances of the case, we further provide that the appellant will not be entitled for payment of back wages.*
>
> *19. As far as the case of the petitioners of other writ petitions are concerned, the fact of those writ petitioners are not exactly identical to the facts which have been indicated in the present Special Appeal. But as this Court has decided the present Special Appeal more or less on same propositions of law although the fact might be different, we heard the arguments of the learned counsel for the parties in all the writ petitions alongwith special appeal, which are connected with this special appeal as well.*

20. As we have already indicated that those employees who withdrew their application for voluntary retirement before the prospective date mentioned in the original application for voluntary retirement, shall he entitled for the relief. But those persons, who have not withdrawn their voluntary retirement before the prospective date, would not be entitled for any relief.

21. We further provide that those petitioners, who opted for the Voluntary Retirement Scheme from a prospective date and withdrew their resignations before the said prospective date, but were, relieved by the management of the Scooters India Ltd. would be entitled to the relief as Jagdish Chandra Nigam has been provided, provided they filed the writ petitions within one month from the date of the relieving orders. If they had filed the writ petition after one month from the date of relieving orders, they would not be entitled for any relief.

22. With the aforesaid observations, the Special Appeal as well as all the writ petitions are disposed of."

Judgment/order dated 18.12.2000 challenged by way of filing a S.L.P. having Special Leave Petition (Civil) No.10352/2001 (M/s. Scooters India Ltd & others versus Jagdish Chandra Nigam) along with other S.L.P.s which were connected. In the above noted S.L.P. an order dated 12.2.2004 was passed by the Hon'ble Supreme Court which reads as under:-

"*Leave Granted.*

For the reasons stated in our order passed today in C.A. No.4098/2002, this appeal is allowed.

The order and judgment under challenge is set aside. There shall be no order as to costs."

Thus, as per the order passed by the Hon'ble Supreme Court, the S.L.P. filed by M/s. Scooters India Limited was allowed and judgment and order passed in the case of Special Appeal filed by Sri Jagdish Chandra Nigam was set aside/S.L.P. filed by Sri Jagdish Chandra Nigam was dismissed.

Moreover order passed by the Hon'ble Supreme Court in Special Leave Petition (Civil) No.10352/2001 (M/s. Scooters India Ltd & others versus Jagdish Chandra Nigam) based upon order dated 12.2.2004 passed by the Hon'ble Supreme Court in C.A. No.4098 of 2002 (Bank of India & others Vs. Pale Ram Dhania), reproduced below:-

"1. It is not disputed that the appellant Bank introduced a Voluntary Retirement Scheme, 2000 (herein referred to as "the Scheme") for its employees which had the approval of its Board of Directors. The Scheme was operative w.e.f. November 15, 2000 to December 14, 2000 for the employees who sought voluntary retirement. It is not disputed that the respondent herein who was an employee of the appellant Bank sought voluntary retirement under the Scheme on November 30, 2000. It is also not disputed that on December 2, 2000 he wrote to the Bank for withdrawal of his application for voluntary retirement. On January 22, 2001, the appellant Bank accepted the request for voluntary retirement of the respondent. Further, on January 25, 2001, the respondent withdrew the retiral benefits deposited in the Bank in his name as per voluntary retirement. It appears that the respondent changed his mind after the respondent was relieved from the employment and he filed a petition under Article 226 of the Constitution challenging the acceptance of his request for voluntary retirement. A learned Single Judge of the High Court allowed the petition and set aside the acceptance of the application for voluntary retirement submitted by the respondent. Aggrieved, the appellants preferred a letters patent appeal which was dismissed. It is against the said judgment, the appellants are in appeal before us.

2. A Bench of three Judges of this Court in Punjab National Bank v. Virender Kumar Goel , has held that an employee who sought voluntary retirement and subsequently wrote for its withdrawal but has withdrawn the amount of retiral benefits as per the Voluntary Retirement Scheme, is not entitled to the withdrawal of his application for voluntary retirement. It is not disputed that in the present case the respondent herein withdrew the amount of retiral benefits on January 25, 2001.

3. For the aforesaid reason, this appeal deserves to be allowed. We order accordingly. The order and judgment under challenge is set aside. There shall be no order as to costs".

In Review Petition (Civil) No.53 of 2003 arising out of Appeal (Civil) No.896 of 2002 (Punjab National Bank Versus Virender Kumar Goel & others), the Hon'ble Supreme Court on 21.1.2004 passed an order. The relevant of order dated 21.1.2004 reads as under:-

"I.A.NOS. 1-22

These applications have been filed by the State Bank of Patiala for clarification/directions. The ground taken in these applications is that the State Bank of Patiala is not a nationalised bank. It is hundred per cent a subsidiary of the State Bank of India. The VRS scheme floated by the State Bank of Patiala is in para-materia with the scheme floated by the State Bank of India. This Court in the judgment dated 17.12.2002 allowed the appeals filed by the State Bank of India but nothing has been said about the appeals filed by the State Bank

of Patiala. In the interregnum, a two-Judge Bench of this Court, in which one of us (Sema, J) was a member, considered the same question in Civil Appeal No. 2341 of 2003 arising out of Special Leave Petition No. 23530 of 2002 entitled State Bank of Patiala Vs. Jagga Singh, disposed of on 13.3.2003, where this Court after considering Clause 8 of the scheme floated by the State Bank of Patiala and Clause 7 of the scheme floated by the State Bank of India, had held that the scheme floated by the State Bank of Patiala is almost identical of the scheme floated by the State Bank of India. Accordingly, the appeal filed by the State Bank of Patiala was allowed. Review Petition was also dismissed on 3.12.2003. In view thereof, we clarify that our direction No.2, allowing the appeals filed by the State Bank of India, would also include the appeals filed by the State Bank of Patiala. In other words, the appeals filed by the State Bank of Patiala are allowed in terms of our judgment dated 17.12.2002. I.A.NOS. 14-15 I.A.No.14 has been filed by an employee of the bank sought to clarify/modify our order dated 17.12.2002. In this case, admittedly, the benefit of the scheme had been withdrawn by the applicant on 27.2.2001. The applicant had clearly admitted, in ground E of the application, withdrawal of the amount so credited in his account, albeit compelling financial constraints.

I.A.No.15 has been filed by an employee of the bank for clarification/modification of our order dated 17.12.2002. In para 6 of the application, the applicant admitted that he had withdrawn and utilised the benefit of the scheme credited in his account.

As noticed in our judgment, having accepted the benefit under the scheme by withdrawing and utilisation thereof they are not permitted to approbate and reprobate."

Moreover Sri J.C. Nigam filed a Review Petition (Civil) No.747 of 2004 in C.A. No.1089 of 2004 (J.C. Nigam Versus M/s. Scooter India Limited & others) before the Hon'ble Supreme Court in which the following order dated 28.4.2004 passed:-

"*We do not filed any merit in the review petition and the same is accordingly dismissed*."

Thereafter, Sri J.C. Nigam filed a Curative Petition No.152 of 2008 against order dated 28.4.2004 passed in Review Petition (Civil) No.747 of 2004 which was dismissed by an order dated 20.1.2009, quoted below:-

"*We have perused the petition and the connected papers. In our view, no case is made out within the parameters indicated in the decision of this Court in Rupa Ashok Hurra Vs. Ashok Hurra & Anr. 2002(4) SCC 388. Hence, the Curative Petition is dismissed*."

In addition to the above said facts, Hon'ble the Apex Court in the constitution bench in the case of ***Rupa Ashok Hurra Versus Ashok Hurra & Anr, reported in 2002(4) SCC 388*** held as under:-

"Incidentally, this Court stands out to be an avenue for redressal of grievance not only in its revisional jurisdiction as conferred by the Constitution but as a platform and forum for every grievance in the country and it is on this context Mr.Shanti Bhushan, appearing in support of the some of the petitioners, submitted that the Supreme Court in its journey for over 50 years has been able to obtain the confidence of the people of the country, whenever the same is required be it the atrocities of the police or a public grievance pertaining to a governmental action involving multitudes of problems. It is the Supreme Court, Mr. Shanti Bhushan contended, where the people feel confident that justice is above all and would be able to obtain justice in its true form and sphere and this is beyond all controversies. It has been contended that finality of the proceeding after an Order of the Supreme Court, there should be, but that does not preclude or said to preclude this Court from going into the factum of the petition for gross injustice caused by an Order of the Supreme Court itself under the inherent power being an authority to correct its errors any other view should not and ought not be allowed to be continued. Needless to record here, however, that review jurisdiction stand foisted upon this Court in terms of the provisions of the Constitution, as noticed hereinbefore and it is also well-settled that a second review petition cannot be said to maintainable. Reference maybe made in this context to a decision of this Court in the case of J.Ranga Swamy v. Govt. of A.P. & Ors. (AIR 1990 SC 535), wherein this Court in paragraph 3 stated as below :-

"We are clearly of the opinion that these applications are not maintainable. The petitioner, who appeared in person, referred to the judgment in Antulay's case (1988) 2 SCC 602 : (AIR 1988 SC 1531). We are, however, of the opinion that the principle of that case is not applicable here. All the points which the petitioner urged regarding the constitutionality of the Government orders in question as well as the appointment of respondent instead of petitioner to the post in question had been urged before the Bench, which heard the civil appeal and writ petitions originally. The petitioner himself stated that he was heard by the Bench at some length. It is, therefore, clear that the matters were disposed of after a consideration of all the points urged by the petitioner and the mere fact that the order does not discuss the contentions or give reasons cannot entitle the petitioner to have what is virtually a second review."

True, due regard shall have to have as regards opinion of the Court in Ranga Swamy (supra), but the situation presently centres round that in the event of there being any manifest injustice would the doctrine of ex debito justitiae be said to be having a role to play in sheer passivity or to rise above the ordinary heights

as it preaches that justice is above all. The second alternative seems to be in consonance with time and present phase of socio-economic conditions of the society. Manifest justice is curable in nature rather than incurable and this court would lose its sanctity and thus would belie the expectations of the founding fathers that justice is above all. There is no manner of doubt that procedural law/procedural justice cannot overreach the concept of justice and in the event an Order stands out to create manifest injustice, would the same be allowed to remain in silenco so as to affect the parties perpetually or the concept of justice ought to activate the Court to find a way out to resolve the erroneous approach to the problem. Mr.Attorney General, with all the emphasis in his command, though principally agreed that justice of the situation needs to be looked into and relief be granted if so required but on the same breath submitted that the Court ought to be careful enough to trade on the path, otherwise the same will open up Pandora's box and thus, if at all, in rarest of the rare cases the further scrutiny may be made. While it is true that law courts has overburdened itself with the litigation and delay in disposal of matters in the subcontinent is not unknown and in the event of any further appraisal of the matter by this Court, it would brook on further delay resulting in consequences which are not far to see but that would by itself not in my view deter this Court from further appraisal of the matter in the event the same, however, deserve such an additional appraisal The note of caution sounded by Mr. Attorney as regards opening up of pandora's box strictly speaking, however, though may be of very practical in nature but the same apparently does not seem to go well with the concept of justice as adumbrated in our constitution. True it is, that practicability of the situation needs a serious consideration more so when this Court could do without it for more than 50 years, which by no stretch of imagination can be said to be a period not so short. I feel it necessary, however, to add that it is not that we are not concerned with the consequences of reopening of the issue but the redeeming feature of our justice delivery system, as is prevalent in the country, is adherence to proper and effective administration of justice in stricto. In the event there is any affectation of such an administration of justice either by way of infraction of natural justice or an order being passed wholly without jurisdiction or affectation of public confidence as regards the doctrine of integrity in the justice delivery system technicality ought not to out-weigh the course of justice the same being the true effect of the doctrine of ex debito justitiae. The oft quoted statement of law of Lord Hewart, CJ in R v. Susssex Justices, ex p McCarthy (1924 (1) KB 256) that it is of fundamental importance that justice should not only be done, should manifestly and undoubtedly be seem to be done had this doctrine underlined and administered therein. In this context, the decision of the House of Lords in R v. Bow Street Metropolitan Stipendiary Magistrate and others, ex parte Pinochet Ugarte (No.2) seem to be an ipoc making decision, wherein public confidence on the judiciary is said to be the basic criteria of the justice delivery system any act or action even if it a passive one, if erodes or even likely to erode the ethics of judiciary, matter needs a further look. Brother Quadri has taken very great pains to formulate the steps to be taken and the methodology therefor, in the event of there being an infraction of the concept of justice, as such further dilation would be an unnecessary exercise which I wish to avoid since I have already recorded my concurrence therewith excepting, however, lastly that curative petitions ought to be treated as a rarity rather than regular and the appreciation of the Court shall have to be upon proper circumspection having regard to the three basic features of our justice delivery system to wit, the order being in contravention of the doctrine of natural justice or without jurisdiction or in the event of there is even a likelihood of public confidence being shaken by reason of the association or closeness of a judge with the subject matter in dispute. In my view, it is now time that procedural justice system should give way to the conceptual justice system and efforts of the law Court ought to be so directed. Gone are the days where implementation of draconian system of law or interpretation thereof were insisted upon - Flexibility of the law Courts presently are its greatest virtue and as such justice oriented approach is the need of the day to strive and forge ahead in the 21st century."

Thus, from the above said facts and the material on record, as the present industrial dispute stands on the same footing as of Sri Jagdish Chandra Nigam, so in view of the judgment passed Hon'ble Supreme Court in the case of Sri Jagdish Chandra Nigam thereafter in Review Petition and Curative Petition, by him which were also dismissed.

Accordingly, preliminary objection taken by learned counsel for respondent are allowed and claim petition filed by claimant liable to be dismissed.

ORDER

For the foregoing reasons the present industrial dispute is dismissed, workman is not entitled for any relief; and the reference is answered accordingly.

Lucknow.

07th May, 2024

Justice ANIL KUMAR, Presiding Officer

नई दिल्ली, 28 जून, 2024

का.आ. 1316.–औद्योगिक विवाद अधिनियम (1947 का 14) की धारा 17 के अनुसरण में,केन्द्रीय सरकार **प्रबंध निदेशक, स्कूटर्स इंडिया लिमिटेड, सरोजिनी नगर, लखनऊ,** के प्रबंधतंत्र के संबद्ध नियोजकों और **श्री विजय कुमार,कामगार,** के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण- सह-श्रम न्यायालय, लखनऊ पंचाट(संदर्भ संख्या **15/2012**) को जैसा कि अनुलग्नक में दिखाया गया है,प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 27.06.2024 को प्राप्त हुआ था।

[सं. एल- 42011/130/2011- आईआर-(डीयू)]

दिलीप कुमार, अवर सचिव

New Delhi, the 28th June, 2024

S.O. 1316.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 15/2012) of the **Central Government Industrial Tribunal cum Labour Court, Lucknow** as shown in the Annexure, in the Industrial dispute between the employers in relation to **The Managing Director, Scooters India Ltd., Sarojini Nagar, Lucknow, and Shri Vijay Kumar, Worker,** which was received along with soft copy of the award by the Central Government on 27.06.2024.

[No. L- 42011/130/2011- IR (DU)]

DILIP KUMAR, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM- LABOUR COURT, LUCKNOW

PRESENT

JUSTICE ANIL KUMAR

PRESIDING OFFICER

I.D. No.15 of 2012

Ref. No. L-42011/130/2011-IR(DU) dated: 04.01.2012

BETWEEN

Shri Vijay Kumar S/o Sri Brahm Dev Singh Village & Post Jakhne

Distt-Varanasi (UP)

AND

The Managing Director, Scooters India Ltd.,

Sarojini Nagar, Lucknow.

AWARD

Sri V.K. Jaiswal - Counsel for the Applicant/Workman

Sri A.K. Singh & Sri Sharad Shukla- Counsel for the Respondent

On 04.01.2012 appropriate government by order no.L-42011/130/2011-IR (DU) has referred the following dispute to this Tribunal and accordingly the I.D. Case No. 15 of 2012 (Vijay Kumar M/s. Scooter India Ltd.) was registered;:-

> *"Whether the action of the management of Scooters India Ltd., Lucknow in not considering the application of workman Sri Vijay Kumar, Grade 'D' dated 15.12.1993 and voluntarily retiring him w.e.f. 11.01.1994 without paying entire pensionery benefits, is legal and justified? What relief the workman is entitled to?"*

Case of claimant:

On 26.3.2012 on behalf of workman, Statement of Claim filed stating therein the following averments :-

a) The applicant was appointed as semi skilled worker under the opposite party/employer on 28.12.1981 being fully eligible for the post and his Service No. is 5522 and he was initially granted Grade 'D'. The applicant/workman started performing his work and duties with all satisfaction of his all concerned.

b) All of sudden in the year 1993 a rumors was flown away in the campus of company that Manager of the respondent is saying that the company is going to be windup within a very short period due to heavy financial loss and as such employees may take his all service benefits as soon as possible from the

company otherwise company will not responsible for the same. Those employees who will seek his voluntary retirement under the announced voluntary retirement scheme, they will call back in job/service on requirement of work on seniority basis.

c) The applicant believing rumor on 30.11.1993 applied for his voluntary retirement with effect from 31.03.1994 under the voluntary retirement scheme dated 8.12.1988.

d) A circular dated 6.11.1993 was also circulated by the respondent stating therein that the voluntary retirement scheme circulated vide circular dated 8.12.1988 will remain suspended with effect from 1.12.1993.

e) The applicant immediately on 03.12.1993 moved an application for withdrawing his voluntary retirement, which was sought by him with effect from 31.03.1994, then he came to know that his voluntary retirement has already been accepted by the management of opposite party on the same date i.e. on which he moved an application on 30.11.1993.

f) The management was fully aware with all things but voluntary retirement of the applicant was accepted knowingly and with mal intention on the same date when the applicant submitted his VRS application i.e. on 30.11.1993 only to oust him from the job, therefore the action of the respondent is quite bad in law and unjust.

g) The applicant applied for voluntary retirement on 30.11.1993 w.e.f. 31.03.1994 but his voluntary retirement was accepted by the respondent on the same date when he moved his application on 30.11.1993. The management is well known that the VRS circulated vide letter dated 8.12.1988 will remain suspended w.e.f. 1.12.1993, therefore, action of the respondent in accepting his VRS w.e.f. 30.11.1993 instead of 31.03.1994 is fully illegal, arbitrary and unjust.

h) If the applicant's voluntary retirement was not accepted w.e.f. 30.11.1993 i.e. on the date when he moved his application for VRS, his application would be cancelled or rejected by the management of the respondent as he submitted another application dated 03.12.1993 for withdrawing his voluntary retirement and thus he would remain in job till attaining his retirement age from the job. In view of this the respondent may be directed to pay entire salary and other service benefits to the applicant from the date of his relieve till the date of his retirement.

i) It is provided in the standing orders of the company that the pay will be revised on each 5 years of employees which has not been done in the matter of the applicant before accepting his VRS. The company is quietly running till date, therefore his voluntary retirement deserves to be quashed and the respondent be directed to reinstate the applicant on the post with full salary benefits from the date of relieve from the job till his date of retirement from the post and pay his entire due salary with 12% interest to the applicant.

Case of respondent:

On 25.07.2012 the written statement filed on behalf of the respondent M/s. Scooters India Limited taking the following **preliminary objections** :-

a) The matter of dispute does not constitute a valid industrial dispute, as the dispute has not been transformed into an industrial dispute within the meaning of the terms as defined in Industrial Disputes Act 1947.

b) The Central Government has not taken facts in cognizance while making a reference to the Tribunal. The reference is not based on the pleadings of the parties advanced at the conciliation stage, especially the submissions of the respondent before the Conciliation Officer/Government have been completely ignored, while making the reference for adjudication. No cause of action arose on the date as mentioned in reference order as such also on his ground alone, the reference order is bad in the eyes of law.

c) The Industrial Disputes Act 1947 has been amended vide Industrial Disputes (Amendment) Act, 2010 (Act No.24 of 2010) and period of limitation has been provided by virtue of Section 2A(3), which is quoted as below:-

> *"2A(3) The application referred to in sub-section (2) shall be made to the Labour Court or Tribunal before expiry of three years from the date of discharge, dismissal, retrenchment or otherwise termination of services as specified in sub-section (1)"*

d) A period of limitation has been provided i.e. three years from the alleged date of termination of services, but the instant case has arisen after a period of 18 years which is liable to the dismissed on the ground of limitation alone.

e) Even otherwise, the applicant has not raised industrial dispute within reasonable time. The applicant has raised an industrial dispute regarding his acceptance of Voluntary Retirement very belatedly i.e. after elapse of more than about 18 years. It is trite law as held by the Apex Court that the dispute must be raised within reasonable period of time from the cause of action and where the industrial dispute is not raised within reasonable period of time the Labour Court or Industrial Tribunal should decline to grant any interim relief to the workman.

f) The Apex Court in the case of Nedungadi Bank Ltd. Versus K.P. Madhavankutty & others : 2000(84) FLR 673 SC, S.M. Niljakar Vs. Telecom District Manager, Karnataka:2003(97) FLR 608 SC, Manager R.B.I. Vs. Gopinath Sharma : 2006 FLR (110) FLR 803 SC has already held that the dispute must be raised within reasonable period of time from the cause of action and a dispute which is state could not be subject matter of reference.

g) The present reference is highly belated, inasmuch as it is made after more than eighteen years from the alleged date of cause of action. The instant delay caused prejudice to the respondent since the management not presumed to preserve the relevant record for such a long period.

h) It is settled law of the land that the person who is approaching this Tribunal should come with clean hand but in the instant matter, the applicant has concealed the actual material facts which are very necessary for the purposes of the adjudication of present matter of dispute, if any, as such also the reference is not maintainable before this Tribunal and accordingly deserves to be rejected.

i) Earlier the applicant had raised an industrial dispute under the provisions of Section 2A of the U.P. Industrial Disputes Act before the validly appointed conciliation officer. The conciliation officer on its turn called upon the parties for hearing and after conducting the necessary proceedings, the aforementioned application had been rejected by the competent authority.

j) The applicant preferred a Writ Petition No. 2620 (SS) of 1999 (Rajendra Singh & another Vs. Scooters India Limited & others) along with some other ex-employees of the Company before the Hon'ble High Court, Lucknow Bench, Lucknow challenging the order passed by the competent authority and the Hon'ble High Court had been pleased to dismiss the aforesaid writ petition including bunch of writ petitions bearing W.P.No.2146 (SS) of 2000, W.P.No.6654 (SS) of 1999, W.P. No.2620 (SS) of 2000, W.P. No.1625 (SS) of 2000, W.P. No.1745 (SS) of 2000, W.P. No.1644 (SS) of 2000, W.P. No.1635 (SS) of 2000 & W.P. No.1624 (SS) of 2000 vide judgment and order dated 8.2.2006 after holding that there is no dispute that the petitioners themselves had approached the scheme and had accepted all the benefits and after accepting all the benefits, after a lapse of long time, had tried to raise this dispute. Further the Hon'ble Court has held that the Conciliation Officer, in these circumstances for sufficient reasons disallowed the application of the petitioners.

k) A Review Petition No.76 of 2006 was also filed by the applicant which has also been dismissed by the Hon'ble High Court, Lucknow Bench, Lucknow vide its judgment and order dated 13.5.2008. Thus it is clear that the matter has already been adjudicated upon by the competent court of law and these facts have not been disclosed by the applicant in their written statement, which amounts to concealment of facts and the instant application is liable to be dismissed on this ground alone.

l) An identical situated employee had also preferred a Writ Petition No.1165(SS) of 1994:Jagdish Chandra Nigam Versus M/s. Scooters India Limited before the Hon'ble High Court, Lucknow Bench, Lucknow challenging the action of the management in accepting the application for voluntary retirement, which has been dismissed by means of detail judgment and order dated 9.1.1997.

m) Being aggrieved from the aforesaid judgment and order dated 9.1.1997, Special Appeal No.48 (SB) of 1997 was preferred before the Division Bench of the Hon'ble High Court, Lucknow Bench, Lucknow and after conducting the necessary proceedings, the Hon'ble Division Bench of the Hon'ble High Court decided the said special appeal by means of judgment and order dated 18.12.2000 and set aside the judgment and order passed by the Single Judge to the extent that in case of the appellant/petitioner deposits the entire amount which he has received through cheque dated 12.3.1994 alongwith interest at the rate of 12% with respondent company as well as other benefits which might have been given to the appellant within four weeks from the production of certified copy of the order, the appellant will be reinstated in service.

n) The management preferred Special Leave Petition challenging the judgment and order dated 18.12.2000 before the Hon'ble Supreme Court of India, which was letter on converted into Civil Appeal No.1089 of 2004:M/s. Scooters India Limtied & others Vs. Jagdish Chandra Nigam which was allowed by means of the judgment and order dated 12.2.2004 and the judgment and order dated 18.12.2000 rendered by the Division Bench of the High Court, Lucknow Bench, Lucknow has been set aside.

o) Being aggrieved from the judgment and order dated 12.2.2004, Sri Jagdish Chandra Nigam had preferred a Review Petition No.747 of 2004: J.C. Nigam Vs. M/s. Scooters India Limited, which has also been

dismissed by the Hon'ble Supreme Court of India vide its judgment and order dated 28.4.2004. Sri Nigam also preferred a Curative Petition No.152 of 2008 and the same has also been dismissed by the Constitution Bench of Hon'ble Supreme Court vide its judgment and order dated 21.1.2009. Thus it is crystal clear that the matter in dispute has already been decided by the competent court of law and now nothing remains to be adjudicated upon by this Tribunal.

p) It is crystal clear that the principles of res-judicata applies into the matter and accordingly the reference is liable to be rejected, out rightly without going into the merit of the case.

Accordingly, it has been prayed by respondent that the present industrial dispute may be dismissed being devoid of any merit.

Thereafter documents, evidences etc. had been exchanged between the parties. Sri Sharad Kumar Shukla, Learned Counsel for the respondent submits that the preliminary objections taken by them may be considered first and thereafter the matter be heard on merits.

Finding & conclusion on the Preliminary Objections:

I have heard Sri V.K. Jaiswal, learned counsel for claimant and Sri Sharad Kumar Shukla and Sri A.K. Singh, learned counsel for the respondent.

It is not in dispute between the parties that Vijay Kumkar-applicant/workman was appointed as semi skilled worker in establishment known as Scooter India Limited on 28.12.1981, Grade-D having service No. 1095. Scooter India Limited floated a scheme known as Voluntary Retirement (hereinafter referred to as 'VRS').

On 30.11.1993 applicant submitted an application for opting VRS and the same was accepted by the respondent on 30.11.1993 and his date of release under the said scheme was notified as 31.11.1993 and consequently applicant was voluntary retired from service under the Scheme with all consequential benefits and the same were received by him.

Meanwhile on 6.11.1993 a circular was issued which reads as under:-

"*Sub: Voluntary Retirement Scheme – suspension thereof*

The Voluntary retirement scheme circulated vide circular no.SIL/PER/NC-63/88 dated 8.12.88 for the employees of the Company will remain suspended w.e.f.1.12.1993."

So a letter/representation dated 03.12.1993, submitted by applicant for withdrawal/rejection of his application dated 30.11.1993 for voluntary retirement from services on the ground mentioned therein.

From the material on record the position which emerges out that initially aggrieved by the action of the respondent thereby not considering application of the workman/applicant dated 03.12.1993 for rejecting/withdrawing acceptance of voluntary retirement by him under the scheme known as Voluntary Retirement Scheme, he raised a industrial dispute under Section 2-A of Industrial Disputes Act which rejected by the Conciliation Officer.

Aggrieved by the said facts, the workman/applicant along with other similarly situated employees filed a Writ Petition no. 2620 (SS) of 2000 (Rajendra Singh & others Versus M/s. Scooter India Limited & others).

The said writ petition was heard by the Hon'ble High Court along with leading Writ Petition No.2146 (SS) of 2000 (S.V. Jaiswal Versus M/s. Scooter India Limited & others).

By means of order dated 8.2.2006 the Hon'ble High Court dismissed the Writ Petition No.2146 (SS) of 2000 along with other connected writ petitions including the Writ Petition No. 2620 (SS) of 2000, the relevant portion, quoted below:-

"*The question whether voluntary retirement would come under the definition of retrenchment or compulsory retirement or not, was considered in a number of cases which have been relied upon by the learned counsel appearing on behalf of the opposite party, one main of them has been reported in 1997(2), UPLBEC 1262, Jagdish Chand Nigam Vs. Scooter India Limited.*

In similar circumstances, the petitioners had taken voluntary retirement. The Bench of this court observed that the petitioner had occupied offer of his premature retirement, in order to receive the compensation, for the last tenure of service offered by the respondents. The offer made by the employers was accepted by the employees. The benefits provided by the respondents under this scheme were accepted by the petitioner. Since the workman had accepted the scheme and himself had opted to retire under this scheme, he cannot be allowed to approbate or reprobate. In the present case of the petitioner, the employees had accepted all benefits under the Voluntary Retirement Scheme, so they cannot retract from the obligations and exercise their right, integrally connected with the performance of the obligations under the Voluntary Retirement Scheme.

In view of the above facts and in view of the principles of law laid down in the above noted case and after accepting offer of huge incentive, they now cannot withdraw their resignation and if their services had come to an end on account of it, they cannot be allowed to raise it in this manner as their grievance. The Hon'ble Apex Court in Special Leave Petition affirmed this judgment. The same principles were laid down by the Hon'ble Apex Court in another case reported in 2004(100) FLR 648, Punjab National Bank Vs. Virendra Kumar Goel and others and AIR 2003 SC 858, Bank of India with other banks Vs. Virendra Kumar Goel and others, wherein it was laid down that retirement was to take effect only after the request was accepted. Such scheme is only an intimation to offer which can be withdrawn before it is accepted contractual bar created under the scheme to withdraw the request once made by employees cannot be made.

In the present case there is no dispute that the petitioners themselves had approached the scheme and had accepted all the benefits and after accepting all the benefits, after a lapse of long time, had tried to raise this dispute. The Conciliation Officer, in these circumstances for sufficient reasons allowed the application of the petitioners.

I find no merit in these writ petitions. They are fit to be dismissed and are accordingly dismissed with costs."

Against order dated 8.2.2006 Sri Rajendra Singh & others filed a Review Petition No.76 of 2006 (Rajendra Singh & others Vs. M/s. Scooter India Limited & others) which too was dismissed by means of order dated 13.5.2008 which is quoted below:-

"*There appears no error apparent at the face of record. The review petition is dismissed. No order as to costs*."

However, above said facts have been concealed by applicant while filing the present I.D. Case with oblique motive and purpose.

As such, it is rightly submitted on behalf of respondent that present case on the same relief in respect to which earlier claimant's case u/s 2A of the Act was rejected, is barred by the principle of res-judicata.

Further, one Sri Jagdish Chandra Nigam whose case was identical to the case of claimant, filed a Special Appeal No.48 (SB) of 1997, allowed by means of judgment and order dated 18.12.2000 (reported in 2000CJ(All) 309), the relevant portion, quoted below:-

"18. The appeal is allowed. The judgment and order passed by the Hon'ble the single Judge is set aside to the extent, the observations made in the foregoing paragraph of this judgment. But we provide that in case the appellant deposits the entire amount which he has received through cheque dated March 12, 1994 alongwith interest at the rate of 12% with Scooters India Limited, as well as other benefits which might have been given to the appellant within four weeks from the date of production of the certified copy of this order, the appellant will be reinstated in service. But considering the facts and circumstances of the case, we further provide that the appellant will not be entitled for payment of back wages.

19. As far as the case of the petitioners of other writ petitions are concerned, the fact of those writ petitioners are not exactly identical to the facts which have been indicated in the present Special Appeal. But as this Court has decided the present Special Appeal more or less on same propositions of law although the fact might be different, we heard the arguments of the learned counsel for the parties in all the writ petitions alongwith special appeal, which are connected with this special appeal as well.

20. As we have already indicated that those employees who withdrew their application for voluntary retirement before the prospective date mentioned in the original application for voluntary retirement, shall he entitled for the relief. But those persons, who have not withdrawn their voluntary retirement before the prospective date, would not be entitled for any relief.

21. We further provide that those petitioners, who opted for the Voluntary Retirement Scheme from a prospective date and withdrew their resignations before the said prospective date, but were, relieved by the management of the Scooters India Ltd. would be entitled to the relief as Jagdish Chandra Nigam has been provided, provided they filed the writ petitions within one month from the date of the relieving orders. If they had filed the writ petition after one month from the date of relieving orders, they would not be entitled for any relief.

22. With the aforesaid observations, the Special Appeal as well as all the writ petitions are disposed of."

Judgment/order dated 18.12.2000 challenged by way of filing a S.L.P. having Special Leave Petition (Civil) No.10352/2001 (M/s. Scooters India Ltd & others versus Jagdish Chandra Nigam) along with other S.L.P.s which were connected. In the above noted S.L.P. an order dated 12.2.2004 was passed by the Hon'ble Supreme Court which reads as under:-

"*Leave Granted.*

For the reasons stated in our order passed today in C.A. No.4098/2002, this appeal is allowed.

The order and judgment under challenge is set aside. There shall be no order as to costs."

Thus, as per the order passed by the Hon'ble Supreme Court, the S.L.P. filed by M/s. Scooters India Limited was allowed and judgment and order passed in the case of Special Appeal filed by Sri Jagdish Chandra Nigam was set aside/S.L.P. filed by Sri Jagdish Chandra Nigam was dismissed.

Moreover order passed by the Hon'ble Supreme Court in Special Leave Petition (Civil) No.10352/2001 (M/s. Scooters India Ltd & others versus Jagdish Chandra Nigam) based upon order dated 12.2.2004 passed by the Hon'ble Supreme Court in C.A. No.4098 of 2002 (Bank of India & others Vs. Pale Ram Dhania), reproduced below:-

"1. It is not disputed that the appellant Bank introduced a Voluntary Retirement Scheme, 2000 (herein referred to as "the Scheme") for its employees which had the approval of its Board of Directors. The Scheme was operative w.e.f. November 15, 2000 to December 14, 2000 for the employees who sought voluntary retirement. It is not disputed that the respondent herein who was an employee of the appellant Bank sought voluntary retirement under the Scheme on November 30, 2000. It is also not disputed that on December 2, 2000 he wrote to the Bank for withdrawal of his application for voluntary retirement. On January 22, 2001, the appellant Bank accepted the request for voluntary retirement of the respondent. Further, on January 25, 2001, the respondent withdrew the retiral benefits deposited in the Bank in his name as per voluntary retirement. It appears that the respondent changed his mind after the respondent was relieved from the employment and he filed a petition under Article 226 of the Constitution challenging the acceptance of his request for voluntary retirement. A learned Single Judge of the High Court allowed the petition and set aside the acceptance of the application for voluntary retirement submitted by the respondent. Aggrieved, the appellants preferred a letters patent appeal which was dismissed. It is against the said judgment, the appellants are in appeal before us.

2. A Bench of three Judges of this Court in Punjab National Bank v. Virender Kumar Goel , has held that an employee who sought voluntary retirement and subsequently wrote for its withdrawal but has withdrawn the amount of retiral benefits as per the Voluntary Retirement Scheme, is not entitled to the withdrawal of his application for voluntary retirement. It is not disputed that in the present case the respondent herein withdrew the amount of retiral benefits on January 25, 2001.

3. For the aforesaid reason, this appeal deserves to be allowed. We order accordingly. The order and judgment under challenge is set aside. There shall be no order as to costs".

In Review Petition (Civil) No.53 of 2003 arising out of Appeal (Civil) No.896 of 2002 (Punjab National Bank Versus Virender Kumar Goel & others), the Hon'ble Supreme Court on 21.1.2004 passed an order. The relevant of order dated 21.1.2004 reads as under:-

"I.A.NOS. 1-22

These applications have been filed by the State Bank of Patiala for clarification/directions. The ground taken in these applications is that the State Bank of Patiala is not a nationalised bank. It is hundred per cent a subsidiary of the State Bank of India. The VRS scheme floated by the State Bank of Patiala is in para-materia with the scheme floated by the State Bank of India. This Court in the judgment dated 17.12.2002 allowed the appeals filed by the State Bank of India but nothing has been said about the appeals filed by the State Bank of Patiala. In the interregnum, a two-Judge Bench of this Court, in which one of us (Sema, J) was a member, considered the same question in Civil Appeal No. 2341 of 2003 arising out of Special Leave Petition No. 23530 of 2002 entitled State Bank of Patiala Vs. Jagga Singh, disposed of on 13.3.2003, where this Court after considering Clause 8 of the scheme floated by the State Bank of Patiala and Clause 7 of the scheme floated by the State Bank of India, had held that the scheme floated by the State Bank of Patiala is almost identical of the scheme floated by the State Bank of India. Accordingly, the appeal filed by the State Bank of Patiala was allowed. Review Petition was also dismissed on 3.12.2003. In view thereof, we clarify that our direction No.2, allowing the appeals filed by the State Bank of India, would also include the appeals filed by the State Bank of Patiala. In other words, the appeals filed by the State Bank of Patiala are allowed in terms of our judgment dated 17.12.2002. I.A.NOS. 14-15 I.A.No.14 has been filed by an employee of the bank sought to clarify/modify our order dated 17.12.2002. In this case, admittedly, the benefit of the scheme had been withdrawn by the applicant on 27.2.2001. The applicant had clearly admitted, in ground E of the application, withdrawal of the amount so credited in his account, albeit compelling financial constraints.

I.A.No.15 has been filed by an employee of the bank for clarification/modification of our order dated 17.12.2002. In para 6 of the application, the applicant admitted that he had withdrawn and utilised the benefit of the scheme credited in his account.

As noticed in our judgment, having accepted the benefit under the scheme by withdrawing and utilisation thereof they are not permitted to approbate and reprobate."

Moreover Sri J.C. Nigam filed a Review Petition (Civil) No.747 of 2004 in C.A. No.1089 of 2004 (J.C. Nigam Versus M/s. Scooter India Limited & others) before the Hon'ble Supreme Court in which the following order dated 28.4.2004 passed:-

"*We do not filed any merit in the review petition and the same is accordingly dismissed*."

Thereafter, Sri J.C. Nigam filed a Curative Petition No.152 of 2008 against order dated 28.4.2004 passed in Review Petition (Civil) No.747 of 2004 which was dismissed by an order dated 20.1.2009, quoted below:-

"*We have perused the petition and the connected papers. In our view, no case is made out within the parameters indicated in the decision of this Court in Rupa Ashok Hurra Vs. Ashok Hurra & Anr. 2002(4) SCC 388. Hence, the Curative Petition is dismissed*."

In addition to the above said facts, Hon'ble the Apex Court in the constitution bench in the case of ***Rupa Ashok Hurra Versus Ashok Hurra & Anr, reported in 2002(4) SCC 388*** held as under:-

"Incidentally, this Court stands out to be an avenue for redressal of grievance not only in its revisional jurisdiction as conferred by the Constitution but as a platform and forum for every grievance in the country and it is on this context Mr.Shanti Bhushan, appearing in support of the some of the petitioners, submitted that the Supreme Court in its journey for over 50 years has been able to obtain the confidence of the people of the country, whenever the same is required be it the atrocities of the police or a public grievance pertaining to a governmental action involving multitudes of problems. It is the Supreme Court, Mr. Shanti Bhushan contended, where the people feel confident that justice is above all and would be able to obtain justice in its true form and sphere and this is beyond all controversies. It has been contended that finality of the proceeding after an Order of the Supreme Court, there should be, but that does not preclude or said to preclude this Court from going into the factum of the petition for gross injustice caused by an Order of the Supreme Court itself under the inherent power being an authority to correct its errors any other view should not and ought not be allowed to be continued. Needless to record here, however, that review jurisdiction stand foisted upon this Court in terms of the provisions of the Constitution, as noticed hereinbefore and it is also well-settled that a second review petition cannot be said to maintainable. Reference maybe made in this context to a decision of this Court in the case of J.Ranga Swamy v. Govt. of A.P. & Ors. (AIR 1990 SC 535), wherein this Court in paragraph 3 stated as below :-

"We are clearly of the opinion that these applications are not maintainable. The petitioner, who appeared in person, referred to the judgment in Antulay's case (1988) 2 SCC 602 : (AIR 1988 SC 1531). We are, however, of the opinion that the principle of that case is not applicable here. All the points which the petitioner urged regarding the constitutionality of the Government orders in question as well as the appointment of respondent instead of petitioner to the post in question had been urged before the Bench, which heard the civil appeal and writ petitions originally. The petitioner himself stated that he was heard by the Bench at some length. It is, therefore, clear that the matters were disposed of after a consideration of all the points urged by the petitioner and the mere fact that the order does not discuss the contentions or give reasons cannot entitle the petitioner to have what is virtually a second review."

True, due regard shall have to have as regards opinion of the Court in Ranga Swamy (supra), but the situation presently centres round that in the event of there being any manifest injustice would the doctrine of ex debito justitiae be said to be having a role to play in sheer passivity or to rise above the ordinary heights as it preaches that justice is above all. The second alternative seems to be in consonance with time and present phase of socio-economic conditions of the society. Manifest justice is curable in nature rather than incurable and this court would lose its sanctity and thus would belie the expectations of the founding fathers that justice is above all. There is no manner of doubt that procedural law/procedural justice cannot overreach the concept of justice and in the event an Order stands out to create manifest injustice, would the same be allowed to remain in silenco so as to affect the parties perpetually or the concept of justice ought to activate the Court to find a way out to resolve the erroneous approach to the problem. Mr.Attorney General, with all the emphasis in his command, though principally agreed that justice of the situation needs to be looked into and relief be granted if so required but on the same breath submitted that the Court ought to be careful enough to trade on the path, otherwise the same will open up Pandora's box and thus, if at all, in rarest of the rare cases the further scrutiny may be made. While it is true that law courts has overburdened itself with the litigation and delay in disposal of matters in the subcontinent is not unknown and in the event of any further appraisal of the matter by this Court, it would brook on further delay resulting in consequences which are not far to see but that would by itself not in my view deter this Court from further appraisal of the matter in the event the same, however, deserve such an additional appraisal The note of caution sounded by Mr. Attorney as regards opening up of pandora's box strictly speaking, however, though may be of very practical in nature but the same apparently does not seem to go well with the concept of justice as adumbrated in our constitution. True it is, that practicability of the situation needs a serious consideration more so when this Court could do without it for more than 50 years, which by no stretch of imagination can be said to be a period not so short. I feel it necessary, however, to add that it is not that we

are not concerned with the consequences of reopening of the issue but the redeeming feature of our justice delivery system, as is prevalent in the country, is adherence to proper and effective administration of justice in stricto. In the event there is any affectation of such an administration of justice either by way of infraction of natural justice or an order being passed wholly without jurisdiction or affectation of public confidence as regards the doctrine of integrity in the justice delivery system technicality ought not to out-weigh the course of justice the same being the true effect of the doctrine of ex debito justitiae. The oft quoted statement of law of Lord Hewart, CJ in R v. Susssex Justices, ex p McCarthy (1924 (1) KB 256) that it is of fundamental importance that justice should not only be done, should manifestly and undoubtedly be seem to be done had this doctrine underlined and administered therein. In this context, the decision of the House of Lords in R v. Bow Street Metropolitan Stipendiary Magistrate and others, ex parte Pinochet Ugarte (No.2) seem to be an ipoc making decision, wherein public confidence on the judiciary is said to be the basic criteria of the justice delivery system any act or action even if it a passive one, if erodes or even likely to erode the ethics of judiciary, matter needs a further look. Brother Quadri has taken very great pains to formulate the steps to be taken and the methodology therefor, in the event of there being an infraction of the concept of justice, as such further dilation would be an unnecessary exercise which I wish to avoid since I have already recorded my concurrence therewith excepting, however, lastly that curative petitions ought to be treated as a rarity rather than regular and the appreciation of the Court shall have to be upon proper circumspection having regard to the three basic features of our justice delivery system to wit, the order being in contravention of the doctrine of natural justice or without jurisdiction or in the event of there is even a likelihood of public confidence being shaken by reason of the association or closeness of a judge with the subject matter in dispute. In my view, it is now time that procedural justice system should give way to the conceptual justice system and efforts of the law Court ought to be so directed. Gone are the days where implementation of draconian system of law or interpretation thereof were insisted upon - Flexibility of the law Courts presently are its greatest virtue and as such justice oriented approach is the need of the day to strive and forge ahead in the 21st century."

Thus, from the above said facts and the material on record, as the present industrial dispute stands on the same footing as of Sri Jagdish Chandra Nigam, so in view of the judgment passed Hon'ble Supreme Court in the case of Sri Jagdish Chandra Nigam thereafter in Review Petition and Curative Petition, by him which were also dismissed.

Accordingly, preliminary objection taken by learned counsel for respondent are allowed and claim petition filed by claimant liable to be dismissed.

ORDER

For the foregoing reasons the present industrial dispute is dismissed, workman is not entitled for any relief; and the reference is answered accordingly.

Lucknow

07th May, 2024

Justice ANIL KUMAR, Presiding Officer

नई दिल्ली, 28 जून, 2024

का.आ. 1317.—औद्योगिक विवाद अधिनियम (1947 का 14) की धारा 17 के अनुसरण में,केन्द्रीय सरकार **प्रबंध निदेशक, स्कूटर्स इंडिया लिमिटेड, सरोजिनी नगर, लखनऊ,** के प्रबंधतंत्र के संबद्ध नियोजकों और **श्री इंदरपाल,कामगार,** के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण- सह-श्रम न्यायालय, लखनऊ पंचाट(संदर्भ संख्या **23/2012**) को जैसा कि अनुलग्नक में दिखाया गया है,प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 27.06.2024 को प्राप्त हुआ था।

[सं. एल- 42011/155/2011- आईआर-(डीयू)]

दिलीप कुमार, अवर सचिव

New Delhi, the 28th June, 2024

S.O. 1317.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 23/2012) of the **Central Government Industrial Tribunal cum Labour Court, Lucknow** as shown in the Annexure, in the Industrial dispute between the employers in relation to **The Managing Director, Scooters India Ltd., Sarojini Nagar,**

Lucknow, and Shri Indarpal, Worker, which was received along with soft copy of the award by the Central Government on 27.06.2024.

[No. L- 42011/155/2011- IR (DU)]

DILIP KUMAR, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM- LABOUR COURT, LUCKNOW

PRESENT

JUSTICE ANIL KUMAR

PRESIDING OFFICER

I.D. No.23 of 2012

Ref. No. L-42011/155/2011-IR(DU) dated: 05.01.2012

BETWEEN

Shri Indarpal S/o Ram Krishan Add- Plot No. 18, Shivani Puram

Sarojini Nagar, Lucknow (UP)

AND

The Managing Director, Scooters India Ltd.,

Sarojini Nagar, Lucknow.

AWARD

Sri V.K. Jaiswal - Counsel for the Applicant/Workman

Sri A.K. Singh & Sri Sharad Shukla- Counsel for the Respondent

On 05.01.2012 appropriate government by order no.L-42011/155/2011-IR (DU) has referred the following dispute to this Tribunal and accordingly the I.D. Case No. 23 of 2012 (Indarpal M/s. Scooter India Ltd.) was registered;:-

> *"Whether the action of the management of Scooters India Ltd., Lucknow in not considering the application of workman* Sri Indarpal S/o Ram Krishan*, Grade 'C' dated 07.12.1993 and voluntarily retiring him w.e.f. 13.12.1993 without paying entire pensionery benefits, is legal and justified? What relief the workman is entitled to?"*

Case of claimant:

On 27.3.2012 on behalf of workman, Statement of Claim filed stating therein the following averments :-

a) The applicant was appointed as semi skilled worker under the opposite party/employer on 08.10.1967 being fully eligible for the post and his Service No. is 03666 and he was initially granted Grade 'C'. The applicant/workman started performing his work and duties with all satisfaction of his all concerned.

b) All of sudden in the year 1993 a rumors was flown away in the campus of company that Manager of the respondent is saying that the company is going to be windup within a very short period due to heavy financial loss and as such employees may take his all service benefits as soon as possible from the company otherwise company will not responsible for the same. Those employees who will seek his voluntary retirement under the announced voluntary retirement scheme, they will call back in job/service on requirement of work on seniority basis.

c) The applicant believing rumor on 30.11.1993 applied for his voluntary retirement with effect from 31.03.1994 under the voluntary retirement scheme dated 8.12.1988.

d) A circular dated 6.11.1993 was also circulated by the respondent stating therein that the voluntary retirement scheme circulated vide circular dated 8.12.1988 will remain suspended with effect from 1.12.1993.

e) The applicant immediately on 03.12.1993 moved an application for withdrawing his voluntary retirement, which was sought by him with effect from 31.03.1994, then he came to know that his voluntary retirement has already been accepted by the management of opposite party on the same date i.e. on which he moved an application on 30.11.1993.

f) The management was fully aware with all things but voluntary retirement of the applicant was accepted knowingly and with mal intention on the same date when the applicant submitted his VRS application i.e. on 30.11.1993 only to oust him from the job, therefore the action of the respondent is quite bad in law and unjust.

g) The applicant applied for voluntary retirement on 30.11.1993 w.e.f. 31.03.1994 but his voluntary retirement was accepted by the respondent on the same date when he moved his application on 30.11.1993. The management is well known that the VRS circulated vide letter dated 8.12.1988 will remain suspended w.e.f. 1.12.1993, therefore, action of the respondent in accepting his VRS w.e.f. 30.11.1993 instead of 31.03.1994 is fully illegal, arbitrary and unjust.

h) If the applicant's voluntary retirement was not accepted w.e.f. 30.11.1993 i.e. on the date when he moved his application for VRS, his application would be cancelled or rejected by the management of the respondent as he submitted another application dated 03.12.1993 for withdrawing his voluntary retirement and thus he would remain in job till attaining his retirement age from the job. In view of this the respondent may be directed to pay entire salary and other service benefits to the applicant from the date of his relieve till the date of his retirement.

i) It is provided in the standing orders of the company that the pay will be revised on each 5 years of employees which has not been done in the matter of the applicant before accepting his VRS. The company is quietly running till date, therefore his voluntary retirement deserves to be quashed and the respondent be directed to reinstate the applicant on the post with full salary benefits from the date of relieve from the job till his date of retirement from the post and pay his entire due salary with 12% interest to the applicant.

Case of respondent:

On 10.10.2012 the written statement filed on behalf of the respondent M/s. Scooters India Limited taking the following **preliminary objections** :-

a) The matter of dispute does not constitute a valid industrial dispute, as the dispute has not been transformed into an industrial dispute within the meaning of the terms as defined in Industrial Disputes Act 1947.

b) The Central Government has not taken facts in cognizance while making a reference to the Tribunal. The reference is not based on the pleadings of the parties advanced at the conciliation stage, especially the submissions of the respondent before the Conciliation Officer/Government have been completely ignored, while making the reference for adjudication. No cause of action arose on the date as mentioned in reference order as such also on his ground alone, the reference order is bad in the eyes of law.

c) The Industrial Disputes Act 1947 has been amended vide Industrial Disputes (Amendment) Act, 2010 (Act No.24 of 2010) and period of limitation has been provided by virtue of Section 2A(3), which is quoted as below:-

> *"2A(3) The application referred to in sub-section (2) shall be made to the Labour Court or Tribunal before expiry of three years from the date of discharge, dismissal, retrenchment or otherwise termination of services as specified in sub-section (1)"*

d) A period of limitation has been provided i.e. three years from the alleged date of termination of services, but the instant case has arisen after a period of 18 years which is liable to the dismissed on the ground of limitation alone.

e) Even otherwise, the applicant has not raised industrial dispute within reasonable time. The applicant has raised an industrial dispute regarding his acceptance of Voluntary Retirement very belatedly i.e. after elapse of more than about 18 years. It is trite law as held by the Apex Court that the dispute must be raised within reasonable period of time from the cause of action and where the industrial dispute is not raised within reasonable period of time the Labour Court or Industrial Tribunal should decline to grant any interim relief to the workman.

f) The Apex Court in the case of Nedungadi Bank Ltd. Versus K.P. Madhavankutty & others : 2000(84) FLR 673 SC, S.M. Niljakar Vs. Telecom District Manager, Karnataka:2003(97) FLR 608 SC, Manager R.B.I. Vs. Gopinath Sharma : 2006 FLR (110) FLR 803 SC has already held that the dispute must be raised within reasonable period of time from the cause of action and a dispute which is state could not be subject matter of reference.

g) The present reference is highly belated, inasmuch as it is made after more than eighteen years from the alleged date of cause of action. The instant delay caused prejudice to the respondent since the management not presumed to preserve the relevant record for such a long period.

h) It is settled law of the land that the person who is approaching this Tribunal should come with clean hand but in the instant matter, the applicant has concealed the actual material facts which are very necessary for the purposes of the adjudication of present matter of dispute, if any, as such also the reference is not maintainable before this Tribunal and accordingly deserves to be rejected.

i) Earlier the applicant had raised an industrial dispute under the provisions of Section 2A of the U.P. Industrial Disputes Act before the validly appointed conciliation officer. The conciliation officer on its turn called upon the parties for hearing and after conducting the necessary proceedings, the aforementioned application had been rejected by the competent authority.

j) The concerned workman had himself stated in para 11 of his application as preferred before the Regional Labour Commissioner (Central), Lucknow to the effect that he had preferred a writ petition No. 4397 (S/S) of 2000 before the Hon'ble High Court Lucknow Bench, Lucknow challenging the order whereby the case was rejected by the Deputy Labour Commissioner.

k) The above mentioned writ petition has been dismissed as withdrawn vide judgment and order dated 25.10.2010 on the ground that the applicant wants to approach Central Administrative Tribunal as such it is also clear that the present case is not maintainable in the eyes of law. These facts have not been disclosed by the applicant/concerned workman in his written statement, which amounts to concealment of facts and the instant cases is liable to be dismissed on this ground alone.

l) An identical situated employee had also preferred a Writ Petition No.1165(SS) of 1994:Jagdish Chandra Nigam Versus M/s. Scooters India Limited before the Hon'ble High Court, Lucknow Bench, Lucknow challenging the action of the management in accepting the application for voluntary retirement, which has been dismissed by means of detail judgment and order dated 9.1.1997.

m) Being aggrieved from the aforesaid judgment and order dated 9.1.1997, Special Appeal No.48 (SB) of 1997 was preferred before the Division Bench of the Hon'ble High Court, Lucknow Bench, Lucknow and after conducting the necessary proceedings, the Hon'ble Division Bench of the Hon'ble High Court decided the said special appeal by means of judgment and order dated 18.12.2000 and set aside the judgment and order passed by the Single Judge to the extent that in case of the appellant/petitioner deposits the entire amount which he has received through cheque dated 12.3.1994 alongwith interest at the rate of 12% with respondent company as well as other benefits which might have been given to the appellant within four weeks from the production of certified copy of the order, the appellant will be reinstated in service.

n) The management preferred Special Leave Petition challenging the judgment and order dated 18.12.2000 before the Hon'ble Supreme Court of India, which was letter on converted into Civil Appeal No.1089 of 2004:M/s. Scooters India Limtied & others Vs. Jagdish Chandra Nigam which was allowed by means of the judgment and order dated 12.2.2004 and the judgment and order dated 18.12.2000 rendered by the Division Bench of the High Court, Lucknow Bench, Lucknow has been set aside.

o) Being aggrieved from the judgment and order dated 12.2.2004, Sri Jagdish Chandra Nigam had preferred a Review Petition No.747 of 2004: J.C. Nigam Vs. M/s. Scooters India Limited, which has also been dismissed by the Hon'ble Supreme Court of India vide its judgment and order dated 28.4.2004. Sri Nigam also preferred a Curative Petition No.152 of 2008 and the same has also been dismissed by the Constitution Bench of Hon'ble Supreme Court vide its judgment and order dated 21.1.2009. Thus it is crystal clear that the matter in dispute has already been decided by the competent court of law and now nothing remains to be adjudicated upon by this Tribunal.

p) It is crystal clear that the principles of res-judicata applies into the matter and accordingly the reference is liable to be rejected, out rightly without going into the merit of the case.

Accordingly, it has been prayed by respondent that the present industrial dispute may be dismissed being devoid of any merit.

Thereafter documents, evidences etc. had been exchanged between the parties. Sri Sharad Kumar Shukla, Learned Counsel for the respondent submits that the preliminary objections taken by them may be considered first and thereafter the matter be heard on merits.

Finding & conclusion on the Preliminary Objections:

I have heard Sri V.K. Jaiswal, learned counsel for claimant and Sri Sharad Kumar Shukla and Sri A.K. Singh, learned counsel for the respondent.

It is not in dispute between the parties that Indra Pal -applicant/workman was appointed as semi skilled worker in establishment known as Scooter India Limited on 08.10.1976, Grade-C having service No. 03666. Scooter India Limited floated a scheme known as Voluntary Retirement (hereinafter referred to as 'VRS').

On 30.11.1993 applicant submitted an application for opting VRS and the same was accepted by the respondent on 30.11.1993 and his date of release under the said scheme was notified as 31.11.1993 and consequently applicant was voluntary retired from service under the Scheme with all consequential benefits and the same were received by him.

Meanwhile on 6.11.1993 a circular was issued which reads as under:-

"*Sub: Voluntary Retirement Scheme – suspension thereof*

The Voluntary retirement scheme circulated vide circular no.SIL/PER/NC-63/88 dated 8.12.88 for the employees of the Company will remain suspended w.e.f.1.12.1993."

So a letter/representation dated 03.12.1993, submitted by applicant for withdrawal/rejection of his application dated 30.11.1993 for voluntary retirement from services on the ground mentioned therein.

From the material on record the position which emerges out that initially aggrieved by the action of the respondent thereby not considering application of the workman/applicant dated 03.12.1993 for rejecting/withdrawing acceptance of voluntary retirement by him under the scheme known as Voluntary Retirement Scheme, he raised a industrial dispute under Section 2-A of Industrial Disputes Act which rejected by the Conciliation Officer.

However, above said facts have been concealed by applicant while filing the present I.D. Case with oblique motive and purpose.

As such, it is rightly submitted on behalf of respondent that present case on the same relief in respect to which earlier claimant's case u/s 2A of the Act was rejected, is barred by the principle of res-judicata.

Further, one Sri Jagdish Chandra Nigam whose case was identical to the case of claimant, filed a Special Appeal No.48 (SB) of 1997, allowed by means of judgment and order dated 18.12.2000 (reported in 2000CJ(All) 309), the relevant portion, quoted below:-

"18. The appeal is allowed. The judgment and order passed by the Hon'ble the single Judge is set aside to the extent, the observations made in the foregoing paragraph of this judgment. But we provide that in case the appellant deposits the entire amount which he has received through cheque dated March 12, 1994 alongwith interest at the rate of 12% with Scooters India Limited, as well as other benefits which might have been given to the appellant within four weeks from the date of production of the certified copy of this order, the appellant will be reinstated in service. But considering the facts and circumstances of the case, we further provide that the appellant will not be entitled for payment of back wages.

19. As far as the case of the petitioners of other writ petitions are concerned, the fact of those writ petitioners are not exactly identical to the facts which have been indicated in the present Special Appeal. But as this Court has decided the present Special Appeal more or less on same propositions of law although the fact might be different, we heard the arguments of the learned counsel for the parties in all the writ petitions alongwith special appeal, which are connected with this special appeal as well.

20. As we have already indicated that those employees who withdrew their application for voluntary retirement before the prospective date mentioned in the original application for voluntary retirement, shall he entitled for the relief. But those persons, who have not withdrawn their voluntary retirement before the prospective date, would not be entitled for any relief.

21. We further provide that those petitioners, who opted for the Voluntary Retirement Scheme from a prospective date and withdrew their resignations before the said prospective date, but were, relieved by the management of the Scooters India Ltd. would be entitled to the relief as Jagdish Chandra Nigam has been provided, provided they filed the writ petitions within one month from the date of the relieving orders. If they had filed the writ petition after one month from the date of relieving orders, they would not be entitled for any relief.

22. With the aforesaid observations, the Special Appeal as well as all the writ petitions are disposed of."

Judgment/order dated 18.12.2000 challenged by way of filing a S.L.P. having Special Leave Petition (Civil) No.10352/2001 (M/s. Scooters India Ltd & others versus Jagdish Chandra Nigam) along with other S.L.P.s which were connected. In the above noted S.L.P. an order dated 12.2.2004 was passed by the Hon'ble Supreme Court which reads as under:-

"*Leave Granted.*

For the reasons stated in our order passed today in C.A. No.4098/2002, this appeal is allowed.

The order and judgment under challenge is set aside. There shall be no order as to costs."

Thus, as per the order passed by the Hon'ble Supreme Court, the S.L.P. filed by M/s. Scooters India Limited was allowed and judgment and order passed in the case of Special Appeal filed by Sri Jagdish Chandra Nigam was set aside/S.L.P. filed by Sri Jagdish Chandra Nigam was dismissed.

Moreover order passed by the Hon'ble Supreme Court in Special Leave Petition (Civil) No.10352/2001 (M/s. Scooters India Ltd & others versus Jagdish Chandra Nigam) based upon order dated 12.2.2004 passed by the Hon'ble Supreme Court in C.A. No.4098 of 2002 (Bank of India & others Vs. Pale Ram Dhania), reproduced below:-

"1. It is not disputed that the appellant Bank introduced a Voluntary Retirement Scheme, 2000 (herein referred to as "the Scheme") for its employees which had the approval of its Board of Directors. The Scheme was operative w.e.f. November 15, 2000 to December 14, 2000 for the employees who sought voluntary retirement. It is not disputed that the respondent herein who was an employee of the appellant Bank sought voluntary retirement under the Scheme on November 30, 2000. It is also not disputed that on December 2, 2000 he wrote to the Bank for withdrawal of his application for voluntary retirement. On January 22, 2001, the appellant Bank accepted the request for voluntary retirement of the respondent. Further, on January 25, 2001, the respondent withdrew the retiral benefits deposited in the Bank in his name as per voluntary retirement. It appears that the respondent changed his mind after the respondent was relieved from the employment and he filed a petition under Article 226 of the Constitution challenging the acceptance of his request for voluntary retirement. A learned Single Judge of the High Court allowed the petition and set aside the acceptance of the application for voluntary retirement submitted by the respondent. Aggrieved, the appellants preferred a letters patent appeal which was dismissed. It is against the said judgment, the appellants are in appeal before us.

2. A Bench of three Judges of this Court in Punjab National Bank v. Virender Kumar Goel , has held that an employee who sought voluntary retirement and subsequently wrote for its withdrawal but has withdrawn the amount of retiral benefits as per the Voluntary Retirement Scheme, is not entitled to the withdrawal of his application for voluntary retirement. It is not disputed that in the present case the respondent herein withdrew the amount of retiral benefits on January 25, 2001.

3. For the aforesaid reason, this appeal deserves to be allowed. We order accordingly. The order and judgment under challenge is set aside. There shall be no order as to costs".

In Review Petition (Civil) No.53 of 2003 arising out of Appeal (Civil) No.896 of 2002 (Punjab National Bank Versus Virender Kumar Goel & others), the Hon'ble Supreme Court on 21.1.2004 passed an order. The relevant of order dated 21.1.2004 reads as under:-

"I.A.NOS. 1-22

These applications have been filed by the State Bank of Patiala for clarification/directions. The ground taken in these applications is that the State Bank of Patiala is not a nationalised bank. It is hundred per cent a subsidiary of the State Bank of India. The VRS scheme floated by the State Bank of Patiala is in para-materia with the scheme floated by the State Bank of India. This Court in the judgment dated 17.12.2002 allowed the appeals filed by the State Bank of India but nothing has been said about the appeals filed by the State Bank of Patiala. In the interregnum, a two-Judge Bench of this Court, in which one of us (Sema, J) was a member, considered the same question in Civil Appeal No. 2341 of 2003 arising out of Special Leave Petition No. 23530 of 2002 entitled State Bank of Patiala Vs. Jagga Singh, disposed of on 13.3.2003, where this Court after considering Clause 8 of the scheme floated by the State Bank of Patiala and Clause 7 of the scheme floated by the State Bank of India, had held that the scheme floated by the State Bank of Patiala is almost identical of the scheme floated by the State Bank of India. Accordingly, the appeal filed by the State Bank of Patiala was allowed. Review Petition was also dismissed on 3.12.2003. In view thereof, we clarify that our direction No.2, allowing the appeals filed by the State Bank of India, would also include the appeals filed by the State Bank of Patiala. In other words, the appeals filed by the State Bank of Patiala are allowed in terms of our judgment dated 17.12.2002. I.A.NOS. 14-15 I.A.No.14 has been filed by an employee of the bank sought to clarify/modify our order dated 17.12.2002. In this case, admittedly, the benefit of the scheme had been withdrawn by the applicant on 27.2.2001. The applicant had clearly admitted, in ground E of the application, withdrawal of the amount so credited in his account, albeit compelling financial constraints.

I.A.No.15 has been filed by an employee of the bank for clarification/modification of our order dated 17.12.2002. In para 6 of the application, the applicant admitted that he had withdrawn and utilised the benefit of the scheme credited in his account.

As noticed in our judgment, having accepted the benefit under the scheme by withdrawing and utilisation thereof they are not permitted to approbate and reprobate."

Moreover Sri J.C. Nigam filed a Review Petition (Civil) No.747 of 2004 in C.A. No.1089 of 2004 (J.C. Nigam Versus M/s. Scooter India Limited & others) before the Hon'ble Supreme Court in which the following order dated 28.4.2004 passed:-

"*We do not filed any merit in the review petition and the same is accordingly dismissed*."

Thereafter, Sri J.C. Nigam filed a Curative Petition No.152 of 2008 against order dated 28.4.2004 passed in Review Petition (Civil) No.747 of 2004 which was dismissed by an order dated 20.1.2009, quoted below:-

"*We have perused the petition and the connected papers. In our view, no case is made out within the parameters indicated in the decision of this Court in Rupa Ashok Hurra Vs. Ashok Hurra & Anr. 2002(4) SCC 388. Hence, the Curative Petition is dismissed*."

In addition to the above said facts, Hon'ble the Apex Court in the constitution bench in the case of ***Rupa Ashok Hurra Versus Ashok Hurra & Anr, reported in 2002(4) SCC 388*** held as under:-

"Incidentally, this Court stands out to be an avenue for redressal of grievance not only in its revisional jurisdiction as conferred by the Constitution but as a platform and forum for every grievance in the country and it is on this context Mr.Shanti Bhushan, appearing in support of the some of the petitioners, submitted that the Supreme Court in its journey for over 50 years has been able to obtain the confidence of the people of the country, whenever the same is required be it the atrocities of the police or a public grievance pertaining to a governmental action involving multitudes of problems. It is the Supreme Court, Mr. Shanti Bhushan contended, where the people feel confident that justice is above all and would be able to obtain justice in its true form and sphere and this is beyond all controversies. It has been contended that finality of the proceeding after an Order of the Supreme Court, there should be, but that does not preclude or said to preclude this Court from going into the factum of the petition for gross injustice caused by an Order of the Supreme Court itself under the inherent power being an authority to correct its errors any other view should not and ought not be allowed to be continued. Needless to record here, however, that review jurisdiction stand foisted upon this Court in terms of the provisions of the Constitution, as noticed hereinbefore and it is also well-settled that a second review petition cannot be said to maintainable. Reference maybe made in this context to a decision of this Court in the case of J.Ranga Swamy v. Govt. of A.P. & Ors. (AIR 1990 SC 535), wherein this Court in paragraph 3 stated as below :-

"We are clearly of the opinion that these applications are not maintainable. The petitioner, who appeared in person, referred to the judgment in Antulay's case (1988) 2 SCC 602 : (AIR 1988 SC 1531). We are, however, of the opinion that the principle of that case is not applicable here. All the points which the petitioner urged regarding the constitutionality of the Government orders in question as well as the appointment of respondent instead of petitioner to the post in question had been urged before the Bench, which heard the civil appeal and writ petitions originally. The petitioner himself stated that he was heard by the Bench at some length. It is, therefore, clear that the matters were disposed of after a consideration of all the points urged by the petitioner and the mere fact that the order does not discuss the contentions or give reasons cannot entitle the petitioner to have what is virtually a second review."

True, due regard shall have to have as regards opinion of the Court in Ranga Swamy (supra), but the situation presently centres round that in the event of there being any manifest injustice would the doctrine of ex debito justitiae be said to be having a role to play in sheer passivity or to rise above the ordinary heights as it preaches that justice is above all. The second alternative seems to be in consonance with time and present phase of socio-economic conditions of the society. Manifest justice is curable in nature rather than incurable and this court would lose its sanctity and thus would belie the expectations of the founding fathers that justice is above all. There is no manner of doubt that procedural law/procedural justice cannot overreach the concept of justice and in the event an Order stands out to create manifest injustice, would the same be allowed to remain in silenco so as to affect the parties perpetually or the concept of justice ought to activate the Court to find a way out to resolve the erroneous approach to the problem. Mr.Attorney General, with all the emphasis in his command, though principally agreed that justice of the situation needs to be looked into and relief be granted if so required but on the same breath submitted that the Court ought to be careful enough to trade on the path, otherwise the same will open up Pandora's box and thus, if at all, in rarest of the rare cases the further scrutiny may be made. While it is true that law courts has overburdened itself with the litigation and delay in disposal of matters in the subcontinent is not unknown and in the event of any further appraisal of the matter by this Court, it would brook on further delay resulting in consequences which are not far to see but that would by itself not in my view deter this Court from further appraisal of the matter in the event the same, however, deserve such an additional appraisal The note of caution sounded by Mr. Attorney as regards opening up of pandora's box strictly speaking, however, though may be of very practical in nature but the same apparently does not seem to go well with the concept of justice as adumbrated in our constitution. True it is, that practicability of the situation needs a serious consideration more so when this Court could do without it for more than 50 years, which by no stretch of imagination can be said to be a period not so short. I feel it necessary, however, to add that it is not that we are not concerned with the consequences of reopening of the issue but the redeeming feature of our justice delivery system, as is prevalent in the country, is adherence to proper and effective administration of justice in stricto. In the event there is any affectation of such an administration of justice either by way of infraction

of natural justice or an order being passed wholly without jurisdiction or affectation of public confidence as regards the doctrine of integrity in the justice delivery system technicality ought not to out-weigh the course of justice the same being the true effect of the doctrine of ex debito justitiae. The oft quoted statement of law of Lord Hewart, CJ in R v. Susssex Justices, ex p McCarthy (1924 (1) KB 256) that it is of fundamental importance that justice should not only be done, should manifestly and undoubtedly be seem to be done had this doctrine underlined and administered therein. In this context, the decision of the House of Lords in R v. Bow Street Metropolitan Stipendiary Magistrate and others, ex parte Pinochet Ugarte (No.2) seem to be an ipoc making decision, wherein public confidence on the judiciary is said to be the basic criteria of the justice delivery system any act or action even if it a passive one, if erodes or even likely to erode the ethics of judiciary, matter needs a further look. Brother Quadri has taken very great pains to formulate the steps to be taken and the methodology therefor, in the event of there being an infraction of the concept of justice, as such further dilation would be an unnecessary exercise which I wish to avoid since I have already recorded my concurrence therewith excepting, however, lastly that curative petitions ought to be treated as a rarity rather than regular and the appreciation of the Court shall have to be upon proper circumspection having regard to the three basic features of our justice delivery system to wit, the order being in contravention of the doctrine of natural justice or without jurisdiction or in the event of there is even a likelihood of public confidence being shaken by reason of the association or closeness of a judge with the subject matter in dispute. In my view, it is now time that procedural justice system should give way to the conceptual justice system and efforts of the law Court ought to be so directed. Gone are the days where implementation of draconian system of law or interpretation thereof were insisted upon - Flexibility of the law Courts presently are its greatest virtue and as such justice oriented approach is the need of the day to strive and forge ahead in the 21st century."

Thus, from the above said facts and the material on record, as the present industrial dispute stands on the same footing as of Sri Jagdish Chandra Nigam, so in view of the judgment passed Hon'ble Supreme Court in the case of Sri Jagdish Chandra Nigam thereafter in Review Petition and Curative Petition, by him which were also dismissed.

Accordingly, preliminary objection taken by learned counsel for respondent are allowed and claim petition filed by claimant liable to be dismissed.

ORDER

For the foregoing reasons the present industrial dispute is dismissed, workman is not entitled for any relief; and the reference is answered accordingly.

Lucknow. 07th May, 2024

Justice ANIL KUMAR, Presiding Officer

नई दिल्ली, 28 जून, 2024

का.आ. 1318.—औद्योगिक विवाद अधिनियम (1947 का 14) की धारा 17 के अनुसरण में,केन्द्रीय सरकार **सचिव, चाय बोर्ड, 14-बी, बीटीएम सारनी, कोलकाता; अध्यक्ष बोर्ड चाय बोर्ड, 14-बी बीटीएम सारनी, कोलकाता,** के प्रबंधतंत्र के संबद्ध नियोजकों और **राज्य महासचिव, सीआईटीयू कार्यालय, स्थानीय बस स्टैंड, देहरादून,** के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण- सह-श्रम न्यायालय, लखनऊ पंचाट(संदर्भ संख्या **40/2009**) को जैसा कि अनुलग्नक में दिखाया गया है,प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 27.06.2024 को प्राप्त हुआ था।

[सं. एल- 42025/07/2024-119- आईआर-(डीयू)]

दिलीप कुमार, अवर सचिव

New Delhi, the 28th June, 2024

S.O. 1318.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 40/2009) of the **Central Government Industrial Tribunal cum Labour Court, Lucknow** as shown in the Annexure, in the Industrial dispute between the employers in relation to **The Secretary, Tea Board, 14-B, BTM Sarni, Kolkata ;The President Board Tea Board,14- B BTM Sarni ,Kolkata, and The State General Secretary, CITU Office, Local Bus Stand, Dehradun,** which was received along with soft copy of the award by the Central Government on 27.06.2024.

[No. L- 42025/07/2024-119- IR (DU)]

DILIP KUMAR, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL-CUM-LABOUR COURT,LUCKNOW

PRESENT

JUSTICE ANIL KUMAR

PRESIDING OFFICER

I.D. No. 40/2009

BETWEEN

The State General Secretary, CITU Office,

Local Bus Stand,

Dehradun

Workman

AND

1. The Secretary,
   Tea Board, 14-B, BTM Sarni,
   Kolkata- 700001
2. The President Board
   Tea Board,
   14- B BTM Sarni
   Kolkata- 700001

…….. Opp. Party

AWARD

Heard Sri B.P. Singh learned counsel for the workman.

Sri K.K. Pandey holding brief of Sri Rajkumar Singh learned counsel for respondent perused the record.

By letter /order dated 01.10.2009 appropriate government has referred the following dispute before this Tribunal.

> *"Whether the action of the management of Tea Board in terminating the services of Sri Desh Raj Gautam, employed at tea Board Regional Office, Almora, Uttrakhand w.e.f. 23/01/2008 is legal and justified? If not, what relief the workman is entitled to?*

Accordingly I.D. Case No. 40/2009 has been registered before this Tribunal

On 21.11.2009 claimant filed a claim statement supported by an affidavit.

18 May 2010 respondent no. 1 and 2 filed written statement Claimant/workman filed rejoinder affidavit on 11.11.2010.

On 16.11.2010, an application moved by the claimant for summoning/document from the respondent.

Thereafter documents have been exchanged between the parties.

From the careful scrutiny of the record the position which emerged out that till date no evidence on affidavit filed by the workman in support of this case.

Sri B.P. Singh learned counsel for the workman has not disputed the said facts i.e. filing of evidence on affidavit by workman after verifying the original record.

He further submits that as per instruction received to him by his client/workman he does not want to press the present case due to certain development taken after filing of present case as such the I.D. case be dismissed as not pressed (joining of the workman in some other institutions).

After hearing the learned counsel for parties, going through the record, in view of the above said facts and taking into consideration the law as laid by the Hon'ble High Court in the case of V. K. Raj Industries v. Labour Court (I) and others 1981 (29) FLR 194 as under:

"It is well settled that if a party challenges the legality of an order, the burden lies upon him to prove illegality of the order and if no evidence is produced the party invoking jurisdiction of the Court must fail. Whenever a workman raises a dispute challenging the validity of the termination of service if is imperative for him to file written statement before the Industrial Court setting out grounds on which the order is challenged and he must also produce evidence to prove his case. If the workman fails to appear or to file written statement or produce evidence, the dispute referred by the State Government cannot be answered in favour of the workman and he would not be entitled to any relief."

In the case of **M/s Uptron Powertronics Employees' Union, Ghaziabad through its Secretary v. Presiding Officer, Labour Court (II), Ghaziabad and others 2008 (118) FLR 1164** Hon'ble Allahabad High Court has held as under:

"The law has been settled by the Apex Court in case of Shanker Chakravarti v. Britannia Biscuit Co. Ltd., V.K. Raj Industries v. Labour Court and Ors., Airtech Private Limited v. State of U.P. and Ors. 1984 (49) FLR 38 and Meritech India Ltd. v. State of U.P. and Ors. 1996 FLR that in the absence of any evidence led by or on behalf of the workman the reference is bound to be answered by the court against the workman. In such a situation it is not necessary for the employers to lead any evidence at all. The obligation to lead evidence to establish an allegation made by a party is on the party making the allegation. The test would be, who would fail if no evidence is led."

And by the Hon'ble Allahabad High Court in the case of **District Administrative Committee, U.P. P.A.C.C.S.C. Services v. Secretary- cum-G.M. District Co-operative Bank Ltd. 2010 (126) FLR 519;** wherein it has been held as under:

"The submission is that even if the petitioner failed to lead the evidence, burden was on the shoulders of the respondent to prove the termination order as illegal. He was required to lead evidence first which he failed. A perusal of the impugned award also does not show that any evidence either oral or documentary was led by the respondent. In the case of no evidence, the reference has to be dismissed."

As the workmen/claimants have not filed any statement of claim/oral/documentary evidence, so the present case is liable to be dismissed.

Further in addition to the above said facts, taking into consideration the submission made by Sri B.P. Singh learned counsel for the workman that present I.D. case may be dismissed, as not pressed (As per instruction received to him by his client/workman he does not want to press the present case due to certain development taken after filing of present case as such the I.D. case be dismissed as not pressed, joining of the workman in some other institutions), same is liable to be dismissed.

For the foregoing reasons, the case is dismissed; the workman is not entitled for any relief.

Award as above.

Lucknow, Date 02.05.2024

Justice ANIL KUMAR, Presiding Officer

नई दिल्ली, 28 जून, 2024

का.आ. 1319.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार **उत्तर रेलवे** के प्रबंधतत्र, संबद्ध नियोजको और उनके कर्मकारो के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, 1 दिल्ली के पंचाट 240/2022) प्रकाशित करती है।

[सं..एल. 41011/47/2022-आई.आर. (बी-I)]

सलोनी, उप निदेशक

New Delhi, the 28th June, 2024

S.O. 1319.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref240/2022*)* of the *Cent.Govt.Indus.Tribunal-cum-Labour Court No -1 Delhi* as shown in the Annexure, in the industrial dispute between the management of Northern Railway and their workmen.

[No. L-41011/47/2022 – IR (B-I)]

SALONI , Dy. Director

ANNEXURE

THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT DELHI - 1, NEW DELHI.

ID No. 240/2022

Sh. Sanjay Kumar Verma

Through Secretary, Delhi Mazdoor Vikas Sangathan,

CB-6, Ring Road, Narayana,

New Delhi-110028

Claimant…

Versus

1. The General Manager,
   Northern Railway, Baroda House,
   New Delhi-110002.
2. M/s G.A. Digital Web World (P) Limited,
   R.O. Office No.1, Hargovind Enclave,
   Delhi-110092.

Management…

None for the claimant

None for the management no.1

Ms. Soniya Srivastava, A/R for M/s GA Digital Web World (P) Limited.

AWARD

In the present case, a reference was received from the appropriate Government vide letter No.L-41011/47/2022-IR(B-I) dated 21.07.2022 under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Act, for adjudication of a dispute, terms of which are as under:

SCHEDULE

"Whether the demand of the Delhi Dalit Mazdoor Vikas Sangthan, on behalf of the workman Sanjay Kumar Verma workin as a Data Entry Operator (DEO) in the establishment of the Northern Railway recruited through the contractor M/s G.A. Digital Web World (P) Limited, for the benefit of bonus for the period of 06.05.2019 to 30.11.2019 is legal and justified? If yes, what relief the workman is entitled to?"

2. In the reference order, the appropriate Government commanded the parties raising the dispute to file statement of claim, complete with relevant documents, list of reliance and witnesses with this Tribunal within 15 days of receipt of the reference order and to forward a copy of such statement of claim to the opposite parties involved in the dispute. Despite directions so given, Claimant union opted not to file the claim statement with the Tribunal.

3. On receipt of the above reference, notice was sent to the workman as well as the managements. Neither the postal article sent to the claimant, referred above, was received back nor was it observed by the Tribunal that postal services remained unserved in the period, referred above. Therefore, every presumption lies in favour of the fact that the above notice was served upon the claimant. Despite service of the notice, claimant opted to abstain away from the proceedings. No claim statement was filed on his behalf. Thus, it is clear that the workman is not interested in adjudication of the reference on merits.

4. Since the workman has neither put in his appearance nor he led any evidence so as to prove his cause against the management, this Tribunal is left with no choice, except to pass a 'No Dispute/Claim' award. Let this award be sent to the appropriate Government, as required under Section 17 of the Industrial Disputes Act, 1947, for publication.

Justice VIKAS KUNVAR SRIVASTAVA (Retd.), Presiding Officer

Date: 19.04.2024.

नई दिल्ली, 28 जून, 2024

का.आ. 1320.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार आईसीआईसीआई बैंक लिमिटेड के प्रबंधतत्र, संबद्ध नियोजको और उनके कर्मकारो के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, 1 दिल्ली के पंचाट (17/2023) प्रकाशित करती है।

[सं..एल. 12011/40/2022-आई.आर. (बी-I)]

सलोनी, उप निदेशक

New Delhi, the 28th June, 2024

S.O. 1320.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref.17/2023) of the *Cent.Govt.Indus.Tribunal-cum-Labour Court No -1 Delhi* as shown in the Annexure, in the industrial dispute between the management of ICICI Bank Ltd and their workmen.

[No. L-12011/40/2022 – IR (B-I)]

SALONI , Dy. Director

ANNEXURE

THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT DELHI - 1, NEW DELHI.

ID No.17/2023

Sh. Rohtas

By General Secretary Delhi Kapda Awam,

General Karamchari Vikas Union (Regd.), E-2/39,

Gali no. 1, Shivaji Mohalla Near Sr. Sec. School,

Soniya Vihar, Delhi-110094

Claimant…

Versus

1. The Branch Manager,
   ICICI Bank Ltd. Garg Trade Centre, Plot no. 6,
   Sector-11, Rohini, Delhi-110085
2. The Manager,
   M/s G.I. Group Network Security Technology Pvt. Ltd,
   Head Office, House No. 264-265, TA-2,
   Tuglakabad Extn., New Delhi-110019

Management…

None for the claimant

Sh. Ramesh Kumar Koel, A/R for the management

AWARD

In the present case, a reference was received from the appropriate Government vide letter No.L-12011/40/2022-IR(B-I) dated 22.12.2022 under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Act, for adjudication of a dispute, terms of which are as under:

SCHEDULE

"Whether demand raised by Delhi Kapda Awam General Karamchari Vikas Union vide letter dated 21.04.2022 in respect of Sh. Rohtas S/o Sh. Premchand against the contractor M/s. G.I. Group Network Security Technology Pvt. Ltd. New Delhi under the management of ICICI Bank Ltd., Delhi for reinstatement andmultiple demands is proper,

legal and justified? If yes, what relief the workman is entitled to and what other directions, if any, are necessary in the matter?"

2. In the reference order, the appropriate Government commanded the parties raising the dispute to file statement of claim, complete with relevant documents, list of reliance and witnesses with this Tribunal within 15 days of receipt of the reference order and to forward a copy of such statement of claim to the opposite parties involved in the dispute. Despite directions so given, Claimant union opted not to file the claim statement with the Tribunal.

3. On receipt of the above reference, notice was sent to the workman as well as the managements. Neither the postal article sent to the claimant, referred above, was received back nor was it observed by the Tribunal that postal services remained unserved in the period, referred above. Therefore, every presumption lies in favour of the fact that the above notice was served upon the claimant. Despite service of the notice, claimant opted to abstain away from the proceedings. No claim statement was filed on his behalf. Thus, it is clear that the workman is not interested in adjudication of the reference on merits.

4. Since the workman has neither put in his appearance nor he led any evidence so as to prove his cause against the management, this Tribunal is left with no choice, except to pass a 'No Dispute/Claim' award. Let this award be sent to the appropriate Government, as required under Section 17 of the Industrial Disputes Act, 1947, for publication.

Date: 05.04.2024

Justice VIKAS KUNVAR SRIVASTAVA (Retd.), Presiding Officer

नई दिल्ली, 28 जून, 2024

का.आ. 1321.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार उत्तर रेलवे के प्रबंधतत्र, संबद्ध नियोजको और उनके कर्मकारो के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, 1 दिल्ली के पंचाट (313/2022) प्रकाशित करती है।

[सं..एल. 41011/54/2022-आई.आर. (बी-I)]

सलोनी, उप निदेशक

New Delhi, the 28th June, 2024

S.O. 1321.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref.313/2022*)* of the *Cent.Govt.Indus.Tribunal-cum-Labour Court No -1 Delhi* as shown in the Annexure, in the industrial dispute between the management of Northern Railway and their workmen.

[No. L-41011/54/2022 – IR (B-I)]

SALONI , Dy. Director

ANNEXURE

THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT DELHI - 1

ROOM NO.207, ROUSE AVENUE COURT COMPLEX,

NEW DELHI.

ID No. 313/2022

Sh. Praveen Pathania S/o Sh. Om Prakash Pahania & 4 others

Through its General Secretary, Hindustan Engineering &

General Mazdoor Union (Regd. 4479),

Head Office – D-2/24, Sultan Puri, New Delhi-110086

Claimant…

Versus

1. Dy. Chief Commercial Manager Catering,

   Northern Railway, Headquarter Office, Baroda House,

New Delhi-110001.

2. The Manager,

IRCTC, Corporate Office, 11th Floor,

Statesman House, B-148, Barakhamba Road,

New Delhi-110001.

3. M/s Vision India Services Pvt. Ltd.

A-II, Sector-67, Noida (UP)-201301

4. The Manager,

M/s T&M Services Consulting Pvt. Ltd.,

Next to Maharaja Hotel, Mumbai-400068

Management…

AWARD

In the present case, a reference was received from the appropriate Government vide letter No-L-41011/54/2022 (IR(B-I)) dated 09.11.2022 under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Act, for adjudication of a dispute, terms of which are as under:

SCHEDULE

"Whether the demand raised by Hindustan Engineering and General Mazdoor Union, New Delhi in respect of Sh. Praveen Pathania and 4 others vide letter dated NIL against the action of contractors M/s Vision India Services Pvt. Ltd., Noida and M/s T&M Services Consulting Pvt. Ltd., Mumbai under the management of IRCTC, New Delhi and Dy. Chief Commercial Manager Catering, Northern Railway HQ, Baroda house, New Delhi for payment of Salary form June 2020 to 23 July 2020, reinstatement and other demands is proper, legal and justified? If yes, what relief the workmen are entitled to?"

2. In the reference order, the appropriate Government commanded the parties raising the dispute to file statement of claim, complete with relevant documents, list of reliance and witnesses with this Tribunal within 15 days of receipt of the reference order and to forward a copy of such statement of claim to the opposite parties involved in the dispute. Despite directions so given, Claimant union opted not to file the claim statement with the Tribunal.

3. On receipt of the above reference, notice was sent to the workman as well as the managements. Neither the postal article sent to the claimant, referred above, was received back nor was it observed by the Tribunal that postal services remained unserved in the period, referred above. Therefore, every presumption lies in favor of the fact that the above notice was served upon the claimant. Despite service of the notice, claimant opted to abstain away from the proceedings. No claim statement was filed on his behalf. Thus, it is clear that the workman is not interested in adjudication of the reference on merits.

4. Since the workman has neither put in his appearance nor he led any evidence so as to prove his cause against the management, this Tribunal is left with no choice, except to pass a 'No Dispute/Claim' award. Let this award be sent to the appropriate Government, as required under Section 17 of the Industrial Disputes Act, 1947, for publication.

Date: 23.04.2024

Justice VIKAS KUNVAR SRIVASTAVA (Retd.), Presiding Officer

नई दिल्ली, 28 जून, 2024

का.आ. 1322.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार सीपीडब्ल्यूडी इलेक्ट्रिकल के प्रबंधतत्र, संबद्ध नियोजको और उनके कर्मकारो के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, 1 दिल्ली के पंचाट (41/2023) प्रकाशित करती है।

[सं..एल. 12025/01/2024-आई.आर. (बी-I)-179]

सलोनी, उप निदेशक

New Delhi, the 28th June, 2024

S.O. 1322.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref.41/2023) of the *Cent.Govt.Indus.Tribunal-cum-Labour Court No -1*

Delhi as shown in the Annexure, in the industrial dispute between the management of CPWD Electrical and their workmen.

[No. L-12025/01/2024 – IR (B-I)-179]

SALONI , Dy. Director

ANNEXURE

Before the Justice Vikas Kunvar Srivastava (Retd.) Presiding Officer, Government of India Ministry of Labour & Employment, Central Government Industrial Tribunal Cum – Labour Court-I, New Delhi

ID No. 41/2023

Sh. Sahdev Singh, H.No. 47, Masjid Moth,

Andrews Ganj, South Delhi-110049.

Claimant…

Versus

1. Executive Engineer, CPWD Electrical,
   Schedule-B, Cabinet Secretariat, CGO Complex,
   New Delhi-110003.
2. M/s R.D. Engineers,
   A-1/409, Madhu Vihar,Dwarka,
   New Delhi-110059

Management…

None for the claimant

None for the management

AWARD

In the present case, a reference was received from the appropriate Government vide letter No-ND.96(20)/ID(2A)2022-DY.CLC dated 20.01.2023 under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Act, for adjudication of a dispute, terms of which are as under:

SCHEDULE

"Whether the service of Sh. Sahdev Singh Sikarwar, Ex. Lift Operator, has been terminated w.e.f. 22.08.2021 illegally and/or unjustifiably by the management of M/s R.D. Engineers? If yes, what relief the workman concerned is entitled to and what direction are necessary in the respect?"

2. In the reference order, the appropriate Government commanded the parties raising the dispute to file statement of claim, complete with relevant documents, list of reliance and witnesses with this Tribunal within 15 days of receipt of the reference order and to forward a copy of such statement of claim to the opposite parties involved in the dispute. Despite directions so given, Claimant union opted not to file the claim statement with the Tribunal.

3. On receipt of the above reference, notice was sent to the workman as well as the managements. Neither the postal article sent to the claimant, referred above, was received back nor was it observed by the Tribunal that postal services remained unserved in the period, referred above. Therefore, every presumption lies in favor of the fact that the above notice was served upon the claimant. Despite service of the notice, claimant opted to abstain away from the proceedings. No claim statement was filed on his behalf. Thus, it is clear that the workman is not interested in adjudication of the reference on merits.

4. Since the workman has neither put in his appearance nor he led any evidence so as to prove his cause against the management, this Tribunal is left with no choice, except to pass a 'No Dispute/Claim' award. Let this award be sent to the appropriate Government, as required under Section 17 of the Industrial Disputes Act, 1947, for publication.

Date: 23.04.2024

Justice VIKAS KUNVAR SRIVASTAVA (Retd.), Presiding Officer

नई दिल्ली, 28 जून, 2024

का.आ. 1323.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय कंटेनर निगम लिमिटेड के प्रबंधतत्र, संबद्ध नियोजको और उनके कर्मकारो के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, 1 दिल्ली के पंचाट (260/2018) प्रकाशित करती है।

[सं..एल. 12025/01/2024-आई.आर. (बी-I)-180]

सलोनी, उप निदेशक

New Delhi, the 28th June, 2024

S.O. 1323.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref.260/2018) of the *Cent.Govt.Indus.Tribunal-cum-Labour Court No -1 Delhi* as shown in the Annexure, in the industrial dispute between the management of Bhartiya Container Nigam Limited and their workmen

[No. L-12025/01/2024 – IR (B-I)-180]

SALONI , Dy. Director

ANNEXURE

THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT DELHI - 1

ROOM NO.207, ROUSE AVENUE COURT COMPLEX,

NEW DELHI.

DID No.260/2018

Sh. Sanjay Kumar Gupta S/o Late Sh. Ram Pravesh Gupta

Through All India General Mazdoor Trade Union (Regd. 3025)

170, Bal Mukund Nagar, Giri Nagar,

Kalkaji, New Delhi-110019 Claimant…

Versus

1. Chief Manager,

Bhartiya Container Nigam Limited,

Address: C-3, Mathura Road, Opposite Apollo Hospital,

New Delhi-110076.

2. M/s 3455 Sanjay Rana Security Agency,

F-20, Manish Global Mall Sector-22, Dwarka,

New Delhi-110077

Management…

AWARD

1. This is an application Under Section 2A of the I.D. Act whereby, the applicant made prayer that his termination from the service on 16.01.2018 by the management which be declare illegal and unjustified and he be reinstated with full back wages, it is the case of the applicant/workman that he has been working with the management. He has not been provided any legal facilities. He was illegally terminated from his service on 16.01.2018 without any rhyme or reason and without conducted any domestic enquiry by the management. He has initiated the conciliation proceeding but, no result. Hence, he had filed the present claim petition.

2. Management No.2 is not appearing since long therefore they are proceeded ex-parte. However, the management no.1 has appeared and filed the written statement. Thereafter, case was listed for filing of rejoinder and framing of issues on the basis of pleadings. Despite providing a number of opportunities, claimant have not appeared to substantiate his claim.

3. Hence, in these circumstances this tribunal has no option except to pass the no dispute award. No dispute award is passed accordingly. File is consigned to the record room. A copy of this award is hereby send to the appropriate government for notification under section 17 of the I.D. Act, 1947.

Date: 23.04.2024

Justice VIKAS KUNVAR SRIVASTAVA (Retd.), Presiding Officer

नई दिल्ली, 1 जुलाई, 2024

का.आ. 1324.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार स्टेट बैंक ऑफ **हैदराबाद** के प्रबंधतत्र, संबद्ध नियोजको और उनके कर्मकारो के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय **हैदराबाद** के पंचाट (19/2012) प्रकाशित करती है।

[सं..एल. 12025/01/2024-आई.आर. (बी-I)-181]

सलोनी, उप निदेशक

New Delhi, the 1st July, 2024

S.O. 1324.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref.19/2012*)* of the *Cent.Govt.Indus.Tribunal-cum-Labour Court Hyderabad* as shown in the Annexure, in the industrial dispute between the management of State Bank of Hyderabad and their workmen.

[No. L-12025/01/2024 – IR (B-I)-181]

SALONI , Dy. Director

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT AT HYDERABAD

Present: - **Sri IRFAN QAMAR**

Presiding Officer

Dated the 29th day of April, 2024

INDUSTRIAL DISPUTE LC No.19/2012

Between:

Smt. V. Vijaya Lakshmi,

W/o V. Venkatesh,

R/o 13-6-916/12, Banjawadi,

Karwan, Hyderabad. .. ….Petitioner

AND

1. The General Manager,

   State Bank of Hyderabad,

   Head Office, Gunfoundry,

   Hyderabad.

2. The Branch Manager,

State Bank of Hyderabad,

Attapur branch, D.No.2-4-77/5,

Boston Towers, P.V.N.R. Express Highway,

Pillar No.187, Attapur, Upparpally,

Hyderabad – 500 048.

3. M/s. Sri Bhagyalaxmi House Keeping,

3-4-899/2, Opp. Inidan Oil Petrol Pump,

Barkatpura, Hyderabad. … Respondents

Appearances:

For the Petitioner: Sri Y. Ranjeeth Reddy, Advocates

For the Respondent: Sri Ch. Siva Reddy, Advocate

A W A R D

Smt. V. Vijaya Lakshmi, who worked as Temporary Sub-staff/Safai Karmachari (who will be referred to as the workman) has filed this petition under Sec. 2A(2) of the Industrial Disputes Act, 1947 against the Respondents State Bank of Hyderabad against the termination order dated 1.9.2012 and seeking for reinstatement into service duly granting all the consequential benefits such as continuity of service, back wages and all other attendant benefits etc., and such other reliefs as this court may deems fit.

2. On the date fixed for Petitioner's evidence, Petitioner called absent. Despite providing sufficient opportunity Petitioner did not adduce any evidence to substantiate her claim. Therefore, a 'No claim' award is passed for want of evidence.

Award is passed accordingly. Transmit.

Typed to my dictation by Smt. P. Phani Gowri, Personal Assistant, corrected and signed by me on this the 29th day of April, 2024.

IRFAN QAMAR, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner	Witnesses examined for the Respondent
NIL	NIL

Documents marked for the Petitioner

NIL

Documents marked for the Petitioner

NIL

Presiding Officer

नई दिल्ली, 1 जुलाई, 2024

का.आ. 1325.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स बैंक ऑफ बड़ौदा के प्रबंधतत्र, संबद्ध नियोजको और उनके कर्मकारो के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय **हैदराबाद** के पंचाट (17/2022) प्रकाशित करती है।

[सं. एल -39025/01/2024- आई आर (बी.II)-26]

सलोनी, उप निदेशक

New Delhi, the 1st July, 2024

S.O. 1325.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref.17/2022*)* of the *Cent.Govt.Indus.Tribunal-cum-Labour Court Hyderabad* as shown in the Annexure, in the industrial dispute between the management of M/s. Bank of Baroda and their workmen.

[No. L-39025/01/2024- IR(B.II)-26]

SALONI, Dy. Director

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT AT HYDERABAD

Present: - **Sri IRFAN QAMAR**

Presiding Officer

Dated the 28th day of March, 2024

INDUSTRIAL DISPUTE No. 17/2022

Between:

Sri N. Roopa Chandra,
D.No.4-400-B-1-1,
Anjaneyaswamy Street,
Madanapalli,
Chittoor District(A.P.)-517325. . Petitioner

AND

1. Dy. Gen. Manager,
M/s. Bank of Baroda,
3rd Floor , Dhoom Complex,
Srinivasanagar, Bank Colony,
NTR Health University,
Vijayawada -520 008.

2. General Manager,
M/s. Bank of Baroda,
D.No.3-6-289, 1st Floor
Karim Manzil, Hyderguda,
Hyderabad – 500 029. … Respondents

Appearances:

For the Petitioner : Sri Venkat Sri Maithreya, Advocate

For the Respondent: M/s. Macharla Law Associates, Advocates

AWARD

The Government of India, Ministry of Labour by its order No. 7/48/2021-B1 dated 23.12.2021 referred the following dispute under section 10(1)(d) of the I.D. Act, 1947 for adjudication to this Tribunal between the management of M/s. Bank of Baroda and their workman. The reference is,

SCHEDULE

"Whether the action of the Management of M/s. Bank of Baroda, Vijayawada in dismissal of Shri N. Roopa Chandra, Ex. Cashier from the services is legal and justified or not? If not, to what relief the workman is entitled to?"

The reference is numbered in this Tribunal as I.D. No. 17/2022 and notices were issued to the parties concerned.

2. Petitioner absent on the date fixed for filing of claim statement and documents. Despite sufficient opportunity granted Petitioner did not file any claim statement. It seems he do not want to prosecute his case. Hence, a 'No Claim' award is passed.

Award is passed accordingly. Transmit.

Typed to my dictation by Smt. P. Phani Gowri, Personal Assistant, corrected by me on this the 28th day of March, 2024.

IRFAN QAMAR, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner	Witnesses examined for the Respondent
NIL	NIL

Documents marked for the Petitioner

NIL

Documents marked for the Respondent

NIL

नई दिल्ली, 1 जुलाई, 2024

का.आ. 1326.—औद्योगिक विवाद अधिनियम (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार **मैसर्स ओएनजीसी लिमिटेड; मेसर्स नॉर्थ ईस्टर्न ड्रिलिंग एंड वर्कओवर सर्विसेज कंपनी प्राइवेट लिमिटेड** के प्रबंधतंत्र के संबद्ध नियोजकों और **ग्लोरियस पेट्रोलियम मजदूर संघ** के बीच अनुबंध में निर्दिष्ट **केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, अहमदाबाद, पंचाट (रिफरेन्स न.-43/2022)** को जैसा कि अनुलग्नक में दिखाया गया है, प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 01.07.2024 को प्राप्त हुआ था।

[सं. एल-30011/14/2022-आईआर(एम)]

दिलीप कुमार, अवर सचिव

New Delhi, the 1st July, 2024

S.O. 1326.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award **(Reference No. 43/2022)** of the **Central Government Industrial Tribunal cum Labour Court, Ahmedabad** as shown in the Annexure, in the Industrial dispute between the employers in relation to **M/s ONGC Limited; M/s North Eastern Drilling and Workover Services Company Private Limited** and **Glorious Petroleum Mazdoor Sangh** which was received along with soft copy of the award by the Central Government on 01.07.2024.

[No. L-30011/14/2022-IR(M)]

DILIP KUMAR, Under Secy.

ANNEXURE

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

Present….

Radha Mohan Chaturvedi,

Presiding Officer (I/c),

CGIT-cum-Labour Court,

Ahmedabad

Dated 12th June, 2024

Reference (CGITA) No. - 43 / 2022

1. The Executive Director- AM
   M/s ONGC Ltd; Ahmedabad Asset, 5th Floor, Avani Bhavan, Chandkheda, Ahmedabad(Gujarat)- 380005
2. The Head Well Service,
   M/s ONGC Ltd; 2nd Floor, Avani Bhavan, Chandkheda,
   Ahmedabad(Gujarat)- 380005
3. M/s North Eastern Drilling and Workover Services Company Pvt. Ltd.
   PaltanBazar, Dibrugarh(Assam)- 786005 First Parties

V/s

The General Secretary,
Glorious Petroleum Mazdoor Sangh,
A/3, Priya Darshini Society, Nr. New Railway Colony,
Sabarmati, Ahmedabad(Gujarat)- 380019 Second Party

For the First Party : None

For the Second Party : None

AWARD

The Ministry of Labour and Employment, Government of India have in exercise of powers conferred by the Clause (d) of Sub-section (1) and Sub-section 2A of Section 10 of Industrial Disputes Act, 1947 referred the below mentioned dispute vide reference adjudication Order No. L-30011/14/2022-IR (M) dated 27.05.2022 for adjudication to this Tribunal.

SCHEDULE

"Whether the demand of the Glorious Petroleum Mazdoor Sangh, Ahmedabad for regularization in respect of 15 workmen (as per list) engaged by ONGC Ltd., Ahmedabad through its contractor M/s. North Eastern Drilling and Workover Services Co. Pvt. Ltd is fair, legal and justified? If yes, what relief the concerned workmen are entitled to?"

1. The reference was received in this Tribunal on 13th June, 2022. The Ministry had directed the party raising the dispute to file his statement of claim complete with relevant documents with the Tribunal within 15 days of receipt of this order of reference as per provision made under Rule 10 (B) of Industrial Disputes (Central) Rules, 1957. This order of reference had been sent to all the parties as well as this Tribunal through registered post by the Ministry. Therefore, it is inferred that the same had been delivered to all the parties including claimants.
2. A period of approximately two years has been elapsed but none has appeared and filed the statement of claim as directed and expected by the Ministry.
3. In considered opinion of this Tribunal, it is established that either the claimant of this dispute is not interested to prosecute the claim or the said dispute is no more in existence.
4. It is therefore just & proper to pass an award considering "no dispute" between the parties.
5. The award is passed as above. The award be sent for publication U/s 17(1) of Industrial Disputes Act, 1947.

RADHA MOHAN CHATURVEDI, Presiding Officer (I/c)

नई दिल्ली, 1 जुलाई, 2024

का.आ. 1327.—औद्योगिक विवाद अधिनियम (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार **मैसर्स ओएनजीसी लिमिटेड** के प्रबंधतंत्र के संबद्ध नियोजकों और **ओएनजीसी रिगमैन और टॉपमैन वर्कर्स यूनियन** के बीच अनुबंध में निर्दिष्ट **केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, अहमदाबाद, पंचाट (रिफरेन्स न.-37/2022)** को जैसा कि अनुलग्नक में दिखाया गया है, प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 01.07.2024 को प्राप्त हुआ था।

[सं. एल-30011/10/2022-आईआर(एम)]

दिलीप कुमार, अवर सचिव

New Delhi, the 1st July, 2024

S.O. 1327.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award **(Reference No. 37/2022)** of the **Central Government Industrial Tribunal cum Labour Court, Ahmedabad** as shown in the Annexure, in the Industrial dispute between the employers in relation to **M/s ONGC Limited** and **ONGC Rigman and Topman Workers Union** which was received along with soft copy of the award by the Central Government on 01.07.2024.

[No. L-30011/10/2022-IR(M)]

DILIP KUMAR, Under Secy.

ANNEXURE

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

Present….
Radha Mohan Chaturvedi,
Presiding Officer (I/c),
CGIT-cum-Labour Court,
Ahmedabad

Dated 12th June, 2024

Reference (CGITA) No. - 37 / 2022

1. The Executive Director,
   M/s ONGC Ltd., Ahmedabad Asset, 5th Floor, Avani Bhavan,
   Chandkheda, Ahmedabad(Gujarat)- 380005
2. The Executive Director,
   M/s ONGC Ltd., Cambay Asset, P.O. Kansari, Khambhat,
   District- Anand, Anand(Gujarat)- 388630
3. The Executive Director Chief HR,
   M/s ONGC Ltd., 5th Floor, Pandit Deendayal Upadhyay urja Bhavan,
   5, Nelson Mandela Marg, Vasant Kunj, New Delhi- 110070
4. The Chief HRD,
   M/s ONGC Ltd., Office of Chief HRD, Pandit Deedayal Upadhyay urja Bhavan, 5, Nelson Mandela Marg, Vasant Kunj, New Delhi- 110070
5. The Executive Director,
   M/s ONGC Ltd., Ankleshwar Asset, New Building, Gadkhol Part,
   Ankleshwar GIDC, Ankleshwar- 393001
6. The General Manager,
   M/s ONGC Ltd., Mehsana Asset, KDM Bhavan, Palavasna,
   Mehsana(Gujarat)- 384003 — First Parties

V/s

The President,
ONGC Rigman and Topman Workers Union,
C/o C.R. Trivedi, E-102, Sangath Plaza,
Near Sangath Mall-1, Motera,
Ahmedabad (Gujarat) - 380005 — Second Party

For the First Party : None

For the Second Party : None

AWARD

The Ministry of Labour and Employment, Government of India have in exercise of powers conferred by the Clause (d) of Sub-section (1) and Sub-section 2A of Section 10 of Industrial Disputes Act, 1947 referred the below mentioned dispute vide reference adjudication Order No. L-30011/10/2022-IR (M) dated 02.05.2022 for adjudication to this Tribunal.

SCHEDULE

"Whether the demand of the ONGC Rigman & Topman Workers Union, Ahmedabad for canteen facility or food compensatory allowances for daily duty employees, transportation allowance for drilling rig/site, adequate

manpower supply at Rig site and night shift allowances is legal, just & proper? If yes, what relief the Workers are entitled to?"

1. The reference was received in this Tribunal on 09th May, 2022. The Ministry had directed the party raising the dispute to file his statement of claim complete with relevant documents with the Tribunal within 15 days of receipt of this order of reference as per provision made under Rule 10 (B) of Industrial Disputes (Central) Rules, 1957. This order of reference had been sent to all the parties as well as this Tribunal through registered post by the Ministry. Therefore, it is inferred that the same had been delivered to all the parties including claimants.
2. A period of two years has been elapsed but none has appeared and filed the statement of claim as directed and expected by the Ministry.
3. In considered opinion of this Tribunal, it is established that either the claimant of this dispute is not interested to prosecute the claim or the said dispute is no more in existence.
4. It is therefore just & proper to pass an award considering "no dispute" between the parties.
5. The award is passed as above. The award be sent for publication U/s 17(1) of Industrial Disputes Act, 1947.

RADHA MOHAN CHATURVEDI, Presiding Officer (I/c)

नई दिल्ली, 1 जुलाई, 2024

का.आ. 1328.—औद्योगिक विवाद अधिनियम (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार **मैसर्स ओएनजीसी लिमिटेड; मेसर्स चेकमेट सिक्योरिटी सर्विसेज प्राइवेट लिमिटेड** के प्रबंधतंत्र के संबद्ध नियोजकों और **पेट्रोलियम एम्प्लाइज मज़दूर परिषद्** के बीच अनुबंध में निर्दिष्ट **केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, अहमदाबाद, पंचाट (रिफरेन्स न.-04/2022)** को जैसा कि अनुलग्नक में दिखाया गया है, प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 01.07.2024 को प्राप्त हुआ था।

[सं. एल-30011/01/2022-आईआर(एम)]

दिलीप कुमार, अवर सचिव

New Delhi, the 1st July, 2024

S.O. 1328.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award **(Reference No. 04/2022)** of the **Central Government Industrial Tribunal cum Labour Court, Ahmedabad** as shown in the Annexure, in the Industrial dispute between the employers in relation to **M/s ONGC Limited; M/s Checkmate Security Services Pvt. Ltd.** and **petroleum Employees Mazdoor Parishad** which was received along with soft copy of the award by the Central Government on 01.07.2024

[No. L-30011/01/2022-IR(M)]

DILIP KUMAR, Under Secy.

ANNEXURE

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

Present….
Radha Mohan Chaturvedi,
Presiding Officer (I/c),
CGIT-cum-Labour Court,
Ahmedabad

Dated 12th June, 2024

Reference (CGITA) No. - 04 / 2022

1. The Executive Director- Asset Manager,
   M/s ONGC Ltd; Avani Bhavan, Chandkheda
   Ahmedabad (Gujarat) – 380005
2. The Director
   M/s Checkmate Security Sevices Pvt. Ltd.,

28-Gulmohor Bunglow, Nr. Hanuman Temple, B/H
Nehrunagar Circle, Surendra Mangaldas Road, Ambawadi,
Ahmedabad(Gujarat)- 380006

First Parties

V/s

The General Secretary,
Petroleum Karmchari Mazdoor Parishad,
28-B, Narayan Park, B/h. Chandkheda Railway Station, Sabarmati,
Ahmedabad (Gujarat) – 382470 Second Party

For the First Party : None

For the Second Party : None

AWARD

The Ministry of Labour and Employment, Government of India have in exercise of powers conferred by the Clause (d) of Sub-section (1) and Sub-section 2A of Section 10 of Industrial Disputes Act, 1947 referred the below mentioned dispute vide reference adjudication Order No. L-30011/01/2022-IR (M) dated 19.01.2022 for adjudication to this Tribunal.

SCHEDULE

"Whether the action of M/s Checkmate Services Pvt. Ltd. under ONGC Ltd. Ahmedabad Asset in not paying wages for the quarantine period in respect of S/Shri Prakash Rameshbhai, Jainath Jha, Prabhaji Mangaji Thakore, Narayan Mohanbhai Chaudhary and Kalusingh Raguvirsingh- all Security Guards, is fair, legal & justified? If not, what relief these Security Guards are entitled to?"

1. The reference was received in this Tribunal on 27th January, 2022. The Ministry had directed the party raising the dispute to file his statement of claim complete with relevant documents with the Tribunal within 15 days of receipt of this order of reference as per provision made under Rule 10 (B) of Industrial Disputes (Central) Rules, 1957. This order of reference had been sent to all the parties as well as this Tribunal through registered post by the Ministry. Therefore, it is inferred that the same had been delivered to all the parties including claimants.

2. Considering the period of outbreak of the COVID-19 pandemic and spread of the new variant of the same which was from March 2020 to February 2022 as excluded, a period of more than two years has been elapsed but none has appeared and filed the statement of claim as directed and expected by the Ministry.

3. In considered opinion of this Tribunal, it is established that either the claimant of this dispute is not interested to prosecute the claim or the said dispute is no more in existence.

4. It is therefore just & proper to pass an award considering "no dispute" between the parties.

5. The award is passed as above. The award be sent for publication U/s 17(1) of Industrial Disputes Act, 1947.

RADHA MOHAN CHATURVEDI, Presiding Officer (I/c)

नई दिल्ली, 1 जुलाई, 2024

का.आ. 1329.—औद्योगिक विवाद अधिनियम (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार **हिंदुस्तान पेट्रोलियम कॉर्पोरेशन लिमिटेड** के प्रबंधतंत्र के संबद्ध नियोजकों और **श्री राजेश के. आर्य** के बीच अनुबंध में निर्दिष्ट **केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जबलपुर, पंचाट (रिफरेन्स न.-41/2014)** को जैसा कि अनुलग्नक में दिखाया गया है, प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 01.07.2024 को प्राप्त हुआ था।

[सं. एल-30012/68/2013-आईआर(एम)]

दिलीप कुमार, अवर सचिव

New Delhi, the 1st July, 2024

S.O. 1329.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award **(Reference No. 41/2014)** of the **Central Government Industrial Tribunal cum Labour Court, Jabalpur** as shown in the Annexure, in the Industrial dispute between the employers in relation to **Hindustan Petroleum Corporation Limited** and **Shri Rajesh K. Arya** which was received along with soft copy of the award by the Central Government on 01.07.2024.

[No. L-30012/68/2013-IR(M)]

DILIP KUMAR, Under Secy.

ANNEXURE

THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT, JABALPUR

NO. CGIT/LC/R/41/2014
Present: P.K.Srivastava
H.J.S..(Retd)
Shri Rajesh K. Arya
121-B, Nagin Nagar,
Aerodrum Road,
Indore-452002

Workman

Versus

The Regional Manager
Hindustan Petroleum Corpn. Ltd.
Regional Office, Gautam Nagar, P.B. No. 705
Bhopal (M.P.) – 462023

Management

AWARD

(Passed on this 30th day of May-2024.)

As per letter dated 19/02/2014 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 reference number L-30012/68/2013 IR(M) dt. 19/02/2014. The dispute under reference related to :-

^^Whether the action of the Management of Hindustan Petroleum Corporation Ltd., Bhopal in discharging the services of workman Sh. Rajesh K. Arya w.e.f. 23.09.2005 is justified ? If not, what relief the workman is entitled to ?**

After registering the case on reference received, Notices were sent to the parties and were duly served on them. They appeared and filed their respective statements of claim and defense.

The case of the applicant workman is that he was first appointed on 15.02.1984 as Class-IV Employee in the office of the management. He was promoted as LPG Operator in the year 1992 and Sr. LPG Operator in the year 1999. At relevant time he was working at Mongalia LPG Bottling Plant in Indore (M.P.). He had an unblemished service career. He always worked diligently to the satisfaction of his superiors. He met with an accident on 13.11.2011 in which he received serious head injuries. He was forced to take leave under intimation of Plant Manager. His Sister in Law also died in between and his mother got severe heart attacks two times, in such circumstances due to his own sickness and sickness of family members he had to take leave and even leave without wages. He was issued a charge sheet on 24.02.2024 with allegations of unauthorized absence. A Departmental enquiry was proceeded against him. The workman submitted an application for seeking voluntary retirement which was pending consideration during enquiry. The enquiry was not conducted as per rules and procedure. He was not supplied with a copy of report of Enquiry Officer which held him guilty of charge before the order of punishment. According to him, he was not given an opportunity to explain himself in the light of enquiry report and finding of Enquiry Officer which is in violation of Principles of Natural Justice.

The management has denied the allegations on this point and has submitted that the workman was a habitual absentee. He unauthorisedly absented himself for 50 days in the year 2001, 83 days in the year 2002 and 131 days in the year 2003, total absence 264 days. He was issued a charge sheet for these absence with the following charges of misconduct:-

Rule 31 Clause 7 :-

Habitual absence with leave or habitual absence without leave for more than 21 consecutive days or overstaying the sanctioned leave without sufficient grounds or proper and satisfactory explanation.

Rule 31 Clause 38 :-

Breach of standing order applicable to the establishment or any rule may there under.

According to the management, the workman submitted his explanation dated 06.03.2004 which was found unsatisfactory. A departmental enquiry was issued against him. The Enquiry Officer conducted the enquiry proceedings on 15.09.2004, 20.09.2004 and 29.09.2004 as per procedure and in line with the principles of natural justice. The workman took a defence that his absence was due to some unavoidable circumstances, mainly on the ground of his own sickness but he could not produce any document in support. He could not produce any documents in obtaining approval for the period of his absence. He pleaded guilty and accepted the charges. The Enquiry Officer submitted his enquiry report dated 04.02.2005, copy was forwarded to the workman for his comments and was duly acknowledged by him. He did not submit any comment on the report. The Disciplinary Authority accepted the findings in the enquiry report and awarded punishment.

Following preliminary issue no.-1 was framed on the basis of pleadings.

Whether, the departmental enquiry conducted is legal and proper ?

The workman has examined himself on oath as witness and has been cross-examined by Management. The management has examined Rajiv Singhai, Senior Manager as a witness. He has been cross-examined. He was the Presenting Officer during the enquiry. The management has proved the enquiry papers which are Ex. M/1 to M/5.

On the basis of evidence on record this preliminary issue was decided vide order dated 29.07.2022 holding the departmental enquiry legal and proper. This order is part of this award.

Following additional issues were framed thereafter:-

1) ***Whether, charges are proved from evidence adduced in enquiry proceedings ?***

2) ***Whether, punishment is disproportionate to the charge proved?***

3) ***Relief to which the workman is entitled ?***

The parties were granted opportunity to lead evidence on remaining issues. No evidence was adduced by any of the parties on remaining issues.

I have heard argument of learned Counsel Mr. R.K. Soni for the workman and Senior Advocate Mr. Anoop Nair assisted by Advocate Neeraj Kewat for management. None of the parties have filed any written arguments. I have gone through the record as well.

Issue No.-2 :-

The enquiry proceedings filed and proved have been perused by me. It comes out that during the enquiry proceedings, the workman admitted his absence and took the case in defence that his absence was due to his own sickness mainly. He did not produced any documents regarding his treatment in support of his defence. He also admitted that he did not seek prior approval of leave nor did he submit any medical papers to justified his absence. The statement of management witnesses have also corroborated the charge.

The settled proposition of law with respect to proof of charge in a departmental enquiry is that the charge need not be proved beyond reasonable doubt as is required in criminal trials. Testing the evidence collected during the enquiry in the light of admission of absence which is not explained, I find no occasion to disagree with the finding of enquiry officer that the charge of misconduct is proved against the workman. Hence, affirming the finding of the enquiry officer, issue no.-2 is answered accordingly.

Issue No.-3 :-

From the above discussion, it comes out that the charge proved against the workman in the enquiry is of habitual unauthorized and wilful absence from duty, which is misconduct in the Rule 31 Clause 7 and Rule 31 Clause 38. This misconduct provides punishment of dismissal.

The settled proposition of law is that unless the punishment is shockingly disproportionate to the charge, it need not be interfered with. I do not find any fact to hold that the punishment is shockingly disproportionate to the charge proved. Hence, holding the punishment awarded by Disciplinary Authority not disproportionate to the charge, issue no.-3 is answered accordingly.

In the light of above observations and findings, the reference deserves to be answered as follows.

AWARD

Holding the action of the management of Hindustan Petrolium Corporation Limited, Bhopal in discharging the services of workman Rajesh K. Arya w.e.f. 23.09.2005 legal and justified, the workman is held entitled to no relief. No order as to cost.

DATE: 30/05/2024 P.K.SRIVASTAVA, Presiding Officer

नई दिल्ली, 1 जुलाई, 2024

का.आ. 1330.—औद्योगिक विवाद अधिनियम (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार **सेंट्रल वेयरहाउसिंग कॉरपोरेशन; मेसर्स कृष्णेंदु भट्टाचार्य सिक्योरिटी एजेंसी** के प्रबंधतंत्र के संबद्ध नियोजकों और **कोलकाता पोस्ट एरिया कॉन्ट्रैक्टर्स वर्कर्स यूनियन** के बीच अनुबंध में निर्दिष्ट **केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, कोलकाता, पंचाट (रिफरेन्स न.-06/2022)** को जैसा कि अनुलग्नक में दिखाया गया है, प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 01.07.2024 को प्राप्त हुआ था।

[सं. एल-42011/2/2021-आईआर(एम)]

दिलीप कुमार, अवर सचिव

New Delhi, the 1st July, 2024

S.O. 1330.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award **(Reference No. 06/2022)** of the **Central Government Industrial Tribunal cum Labour Court, Kolkata** as shown in the Annexure, in the Industrial dispute between the employers in relation to **Central Warehousing Corporation; M/s Krishenndu Bhattacharya Security Agency** and **Kolkata Post Area Contractors Workers' Union** which was received along with soft copy of the award by the Central Government on 01.07.2024.

[No. L-42011/2/2021-IR(M)]

DILIP KUMAR, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT KOLKATA

Present: Justice K. D. Bhutia, Presiding Officer.

REF. NO. 06 OF 2022

Parties: Employers in relation to the management of

Central Warehousing Corporation & M/S Krishnendu Bhattacharya Security Agency

AND

Kolkata Port Area Contractors workers' Union

Appearance:

On behalf of the Management Central Warehousing Corporation:	Absent
On behalf of M/S Krishnendu Bhattacharya Security Agency:	Absent.
On behalf of the Union/Workmen:Mr. Subhadip Bhattacharyya, Ld.	Advocate.

Dated: 4th June, 2024

AWARD

By order No. L-42011/2/2021 –IR(M) dated 17-01-2022, the Central Government, Ministry of Labour in exercise of power conferred u/s 10 (1) (d) and sub-section (2A) of Industrial Dispute Act, 1947 has referred the following disputes to this Tribunal for adjudication:—

"Whether the termination of services of security personnel namely Sri Sunil Das, 11 ors. (list enclosed) engaged in the establishment of CWC at CFS Site in Kolkata for more tehan 20 years by various contractors and lastly by the new contractor M/S Krishnendu Bhattacharya Security Agency as per the direction of the principal employer without complying the provision of section 25 of I.D. Act, 1947, is legal and/or justified? If not, what relief the workmen are entitled to?" and

"Whether the action of the contractors in terminating the Civilian Security Guards at the direction of the Principal Employer i.e. CWC management during the pendency of conciliation attracts the violation of the provision of Section 33(1) of the ID Act? If so, what relief these workmen are entitled to?"

On perusal of the claim statement and both exparte oral and documentary evidence, the facts giving rise to the present dispute in brief are that Central Warehousing Corporation (hereinafter referred as "CWC") has a Container Freight Station (hereinafter referred as "CFS") at Kolkata Port area. That for safety and security of its CFS at Kolkata, it has engaged private contractors for supply of security guards. During the last 25 years CWC had engaged following contractors:-

(i) Bengal Protective Guards, from 1994 to 2006,

(ii) J.S.L. Security from 2007 to 2011,

(iii) Inder Security Agency from 2012 to2014,

(iv) Kasinath Dey Security Agency from 2016-2019,

(v) Mrinal Kanti Basak Security Agency and finally

(vi) Krishnendu Bhattacharyya Security Agency,

as the principal employer requires men power for discharging various types of duties at its warehouse situated at Kolkata Port such as watch and to take proper safety of material and stocks stored at Container Freight Station (CFS), Calcutta, control entry and exist of the vehicles carrying goods to and from the CFS. To maintain proper record of various vehicles entering the CFS, their time of entry and time of exit and to take thorough check up those vehicles exiting from CFS to ensure that goods bears authorised exist/release documents issued by the Manager, CFS. The security guards need to keep round the clock surveillance of warehouse both inside and outside the CFS complex.

The concerned workmen used to work in two shifts from 6-00 a.m. to 2-00 p.m. and from 2-00 p.m. to 10-00 p.m totally under the control and supervision of the principal employer i.e. the Manager/Supervisor of CFS. That the contractors were changed but the same set of workmen continued to work for CFS at Kolkata as a matter of normal practice. The CFS is a protected area and where no outsider and unknown persons are permitted to enter. The concerned workmen used to perform their respective duties under the strict, direction supervision and guidance of the principal employer who used to dictate each and every aspect of the job to the concerned workmen within the said premises. However, they were paid salary by the contractors and all the contractors complied all the statutory liabilities namely EPF, ESI and Minimum Wages for the benefits of the workmen concerned.

Further, it has been stated those concerned workmen never violated any instruction, order or suggestion of the principal employer in respect of any job which the principal employer used to assign to them. They never violated any direction or order of the contractors also. But, both the employers did not pay any wages to them from the month of July, 2019 onwards. Therefore, union raised a dispute for non-payment of wages before the Regional Labour Commissioner, but during the pendency of such conciliation proceeding both the employers terminated the service of concerned 12 security guards namely (i) Sri Sunil Das, (ii) Sri Krishna Rajbar,(iii) Sri Ram Chandra Rajbar, (iv) Sri Rambilas Rajbar, (v) Sri Biswajit Dey, (vi) Sri Bijoy Singh, (vii) Sk. Kalamuddin (viii) Sri Tarak Hira, (ix) Sri Pyarelal Bind, (x) Sri Santosh Kumar Jana, (xi) Sri Priya Ranjan Rit and (xii) Sri Ram Shankar Yadav in violation of the provision of section 31 (1) of the Industrial Disputes Act, 1947 and without following the provisions of section 25 of the Industrial Disputes Act. Thus, they have prayed for declaration that their termination to be illegal and for their reinstatement with full back wages.

Record shows, notice of the case has been duly served upon both the principal employer and the contractor employer, but they failed to appear and pursue with the hearing of the case and as such they have been proceeded exparte.

The workmen have examined Sri Ram Sankar Yadav as W.W. 1. The workmen have produced following documents:-

1. Copy of agreement executed between M/s. Bengal Protective Guards and Paschim Banga Security Karmi Union in respect of wages along with copy of terms and conditions for making security arrangement by Bengal Protective Guards at CFS which has been marked as Exb.-W-1.

2. Copy of sanction order dt.24-02-2009 issued by Central Warehouse Corpn. towards release of Rs.18,94,764/- including service tax of Rs.2,08,431/- to M/s. J.S.K. Securities, Kolkata, towards arrear wage bill on revised minimum wages including bonus for the period from 01-07-2007 to 30-09-2008 for deployment of security personnel at different warehouses, both in and outside Kolkata and at Container Freight Station at Kolkata and Haldia and which has been marked as Exb.W-2.

3. Copy of Memo of Settlement executed between M/s. Mrinal Kanti Basak Security Agency (4024) and Security Personnel deployed at CWC/CFS unit, Kolkata with Kolkata Port Area Contractors Workers Union on 23-10-2019 and which has been marked as Exb.W-3.

4. Copy of Regional Labour Commissioner (C), Kolkata's letter dt.30-10-2019 to the Management of Central Warehouse Corpn., Kolkata for payment of outstanding wages of its contractor's employees in view of the complaint lodged by the union and which has been marked as Exb.W-4.

5. Copy of Union's letter dt.02-12-2019 to RLC for intervention in respect of pending wages of security personnel engaged by CWC through contactor for the month of August to November, 2019 and which has been marked as Exb.W-5.

6. Copy of RLC's notice of hearing dt.11-12-2019 addressed to the Regional Manager, CWC and to the General Secretary of the Union and which has been marked as Exb.W-6.

7. Copy of Union's letter dt.20-01-2020 to RLC informing about illegal termination of 12 existing security personnel by CWC and which has been marked as Exb.W-7.

8. Copy of minutes of conciliation proceeding dt.19-03-2021 in two pages and which has been marked as Exb.W-8.

9. Copies of Union's letters dt.23-06-2020, 21-09-2020 and 02-11-2020 addressed to RLC, relating to non-payment of salary from January to May, 2020 to those 12 security personnel, details of employment and service of those 12 security personnel and which have been marked as Exb. W-9, W-9/A and W-9/B.

10. Copy of notice of CWC dt.19-02-2021 to its different officials for their appearance before RLC for bilateral discussion and which has been marked as Exb.-10.

11. Copy of conciliation failure report of RLC to the Ministry of Labour dt. 30-03-2021 and which has been marked as Exb.-11.

12. Copies of wage slips for different months of Sri Ram Sankar Yadav, Sri Priya Ranjan Rit, Sri Tarak Hira, Sri Krishna Rajbar, Sri Bijoy Singh, Sri Biswajit Dey, Santosh Kuamr Jana and Sri Pyarelal Bind and which have been marked as Exb. W-12 collectively.

13. Copies of EPF slips of Sri Tarak Hira, Sri Krishna Rajbar, Sri Biswajit Dey, Sri Bijoy Singh and Sri Santosh Kumar Jana which have been marked as Exb.-W-13 collectively.

14. Copies of Employees State Insurance Corpn., Identity Cards of Sri Krishna Rajbar, Sri Ram Sankar Yadav, Sri Bijoy Singh, Sri Santosh Kumar Jana and Sri Biswajit Dey and which have been marked as Exb-W-14 collectively.

15. Copies of Identity Cards of those employees issued by different contactors and same have been marked as Exb.-W-15 collectively.

16. Copy of Duty Roaster and which has been marked as Exb.-W-16.

17. Copies of Payment Sheets and which have been marked as Exb.-17 collectively and

18. Copies of Exit/Entry Register of CWC which have been marked as Exb.-W-18 collectively.

Ld. Counsel for the workmen has filed a written notes of argument and cited following decisions:-

1. Framatone Connectors O/E/N Ltd., -vs- Framatone Connectors O/E/N Workers ' Union (2002) 3 KLT 583,

2. Mohan Lal –vs- Bharat Electronics Ltd. (1981) 3 SCC 225,

3. Gammon India Ltd. –vs- Niranjan Dass (1984) 1 SCC 509,

4. Deepali Gundu Surwase –vs- Kranti Junior Adhyapak Mahavidyalaya (D. ED) & Ors. (2013) 10 SCC 324,
5. Jasmer Singh –vs- State of Haryana & Anr.(2015) 4 SCC 458,
6. Fisheries Department, State of Uttar Pradesh –vs- Charan Singh (2015) 8 SCC 150,
7. Jayantibhai Raojibhai Patel –vs- Municipal Council, Narkhed & Ors. (2019) 17 SCC 184,
8. Armed Force Ex-Officers Multi Services Cooperative Society Ltd. –vs- Rashtriya Mazdoor Sangh (INTUC) (2022) 9 SCC 586,
9. Allahabad Bank & Ors. –vs- Avtar Bhushan Bhartiya 2022 SCC OnLine SC 499,
10. Salim Ali Centre or Ornithology & Natural History, Coimbatore & Anrs. –vs- Dr. Mathew K. Sebastian 2022 SCC Online SC 451,
11. Durgapur Casual Workers Union & Ors. –vs- Food Corporation of India & Ors. (2015) 5 SCC 786 and
12. Tamil Nadu State Transport –vs- Presiding Officer, Secretary , LAWS (MAD) 2010 6 234.

Gone through the above cited decisions and find facts and circumstances of the present case entirely different from those cited decisions. Therefore, this Tribunal is not inclined to discuss the cases referred above for deciding the present case. More so, it is settled law each case has to be decided on its own merit as facts and circumstances of each case defers from others and Court should not place reliance on decisions without discussing as to how fact situation of case before it fits in with fact situation of decision on which reliance is placed. Observations of courts are neither to be read as Euclid's theorems nor as provisions of statute and that too taken out of their context. They must be read in context in which they appear to have been stated. Disposal of case by blindly placing reliance on a decision is not proper because one additional or different fact may make a world of difference between conclusions in two cases. Precedent should be followed only so far as it marks the path of justice.

From the evidence of the W.W. 1 it is seen that during the pendency of the case the union which has espoused the dispute before the Labour Commissioner and whose failure report the Ministry of Labour has referred the dispute to this Tribunal for adjudication has abandoned the case. That out of 12 concerned workmen three workmen namely Sri Sunil Das, Sri Ram Chandra Rajbar and Sri Rambilas Rajbar too have abandoned the present case. That at present only nine workmen are pursuing with the present dispute.

It is admitted fact that CWC had/has sourced out the job of security guards of its CFS at Kolkata to private contractors since 1994. That all the 12 concerned workmen, who are civil security guards were engaged by private contractors and they were deployed to work as security guards at Container Freight Station of Central Warehousing Corpn. situated at Kolkata Port area.

The Exhibit –W-12 (collectively), the wage slips of those concerned workmen corroborate the above admitted fact as those wage slips prima facie show they were paid wages by their immediate employers who were labour suppliers of CWC, namely Bengal Protective Guards from the month of July, 1997 to May, 2007, thereafter by J.S. K. Securities from June, 2007 onwards. That J.S.K. Securities also paid arrear revised minimum wages to those security guards for the period from August, 2007 to April, 2011. Such fact stands corroborated by Exhibit-W-2. That in the year 2013 the salary was paid by one Inder Security Services. That during the end of the year 2015 their salary was paid by M/s. Kashinath Security Agency. That in the year 2017 their salary was paid by Mrinal Kanti Basak Security Agency.

Unfortunately, the concerned workmen have failed to produce their pay slips /wage slips of the year 2018 to June 2019 to show who their employer were and who used to pay their wages. However, from Exhibit 3 it can be inferred in the month of October their employer was Mrinal Kanti Basak Security Agency and not M/s. Krishnendu Bhattacharyya Security Agency as alleged by them. Further, the workmen have failed to produce a single pay slip or any such document issued by their alleged contractor employer M/s. Krishnendu Bhattacharyya Security Agency, the O.P. No.2, of the present reference case or their EPF contribution and ESI contribution being deposited by it. No documentary evidence to corroborate the claim of the Union/workmen have come on record to prove they were lastly engaged by M/s. Krishnendu Bhattacharyya Security Agency to work in the establishment of CWC (CFS) at Kolkata Port Area or their service was terminated by such contractor.

Further, the Reference Order as well claim statement are totally silent regarding the exact date or month of the termination of those workmen. In Exhibit-W-7, a letter dt. 20-01-2020 addressed to the Regional Labour Commissioner by the concerned union, it had expressed its apprehension of termination of those concerned 12 security guards in near future as the duty roaster dt. 15-01-2020 issued by CWC management for CFS site exclude the names of those 12 security personnel. Further, the list of the documents filed by the union contains a letter dt.25-06-2020 of RLC addressed to Regional Manager, CWC, Kolkata and M/s. Krishnendu Bhattacharyya Security Agency regarding illegal termination of 12 nos. of existing security personnel and non-payment of salary from January, 2020. The letter too does not speak about the exact date of termination.

Sri Ram Sankar Yadav, W.W. 1 in his evidence in chief on affidavit has stated that names of concerned 12 workmen were excluded from the duty roaster w.e.f. 15-01-2020 and in their place other workmen were engaged at the site of CFS. That they have been illegally and unlawfully terminated from the service without complying provisions of I.D. Act, 1947.

Further, Exhibit-W-9 union's letter dt. 23-06-2020 to RLC speaks about non-payment of wages to those concerned 12 workmen from the month of January, 2020 to May, 2020 by the employer though they were continuously discharging their duty. And management of CWC informing them about their termination from the month of January, 2020. Thus, from the above documents it is seen the union and the workmen are not sure since when they have been terminated from the service by which contactor employer.

No clear picture has come before the Tribunal regarding the exact date of termination of service of those 12 security guards and also either by their alleged immediate employer M/s. Krishnendu Bhattacharyya Security Agency or by Mrinal Kanti Basak Security Agency with whom union had settlement on 23.10.2019. They have failed to produce the copy of the roaster of January 2020 issued by CWC where their names were excluded to prove it was CWC who terminated them or their duty cards, attendance register etc. to prove their continuance with their service on 23-06-2020 despite allegedly being terminated from the job from January, 2020.

Be that as it may, it is the case of the workmen/Union it was the norm or practise to retain old civilian security guards of previous contractor by the newly engaged contractor by CWC and as such they have claimed that they have been working for more than 20 years for CWC.

So, let see whether the continuance of contractor workers under various contractors engaged by principal employer means are they in actual service of the principal employer?

To such question, this Tribunal is of view the employees of the previous contractors may be taken by the new contractor to protect the continuance of the source of livelihood of the contractors' labours and perhaps those employees are already well aware of the nature of job to be rendered in the CSF, but such facts will not give prove those security guards are in direct employment under the principal employer and as such the question of termination of service of contractor's employees by the principal employer does not arise as there exists no relationship of employer and employee between the principal employer and the employees of its service provider or men-power supplier.

It is settled law a person who takes a job under a contractor who too is engaged by the principal employer for a specific period of time is presumed to have knowledge that his job too is limited for the period covered under the contract. If the contract comes to an end the employee of the contractor employer cannot seek re-employment in the establishment of the principal employer and that too from a newly engaged contractor.

That apart, Exhibi-13 (collectively) further prove their EPF contribution used to deposited by their concerned contractor employer and not by CWC. EPF slips also prove the establishment of the contractors were registered establishment under the EPF & MP Act, 1947.

Exhibit-14 (collectively) also shows that the contribution towards their insurance used to be made by their concerned contractor employers and not by the principal employer CWC.

Exhibit-15 (collectively) Identity Cards also prove those cards were issued to them by their concerned contractor employers and not by CWC.

Exhibit-W-16 (collectively), duty roaster and attendance sheet do not bear signature and seal of the authority of CWC to prove that indeed the management of CWC used to supervise the work and duty of those security guards or that officials of CWC used to assign the duty to those security guards and used to fix their shift duty as stated by W.W. 1 or used to maintain their duty roaster.

Exhibit-W-17 (collectively) appears to be the payment sheets for the months of June, 2019 and of May, 2020. The payment sheet for the month of June, 2020 does not bear any seal and signature of the authority of CWC, CFS Kolkata. No doubt payment receipt dt. 26-05-2020 appears to be in the prescribed form of CWC, but it too does not bear any seal and signature of the authority concerned. Nevertheless, it appears to be payment receipt dt.26-05-2020 showing payment of wages to the concerned security guards for the month of November and December, 2019.

Such document also creates a doubt regarding the allegation brought by the union regarding non-payment of wages from the month of July, 2019 by O.P. No.2 M/s. Krishnendu Bhattacharyya Security Agency, the alleged contractor employer. If that be so, then it is not known how they were paid wages in the month of May, 2020 for wage month November, 2019 and December, 2019 as per Exhibit-17 (collectively) a prescribed format of Central Warehousing Corporation and which does not disclose the name of the contractor employer. Exhibit 17 (collectively) appear to be manufactured documents for the purpose of the present case.

More so, Exhibit-W-3 reveals there was a memorandum of settlement between the then contractor employer M/s. Mrinal Kanti Basak Security Agency and the security personnel, deployed at CWC/CFS unit, Kolkata represented by Kolkata Port Area Contractor's Workers' Union on 23-10-2019 and which read as follows:-

a) Security personnel deployed at CWC/CFS, 18 COAL DOCK road, Kolkata- 700 043 will not be posted or transfer anywhere.

b) Any Fresh recruitment will be done from ex-servicemen only & the President INTTUC will provide names of Ex-Servicemen if available with him.

c) Monthly Salary must be paid on or before 7th day of every month.

d) Existing salary would not be reduced at any cost.

e) Monthly Pay Slip must be provided as per union guidelines and pay slip will be issued along with salary slip mentioning PF & ESI Code.

f) Salary increased by the DGR to be paid within 1 month after receiving the notification.

g) Provident Fund Account No. will be intimated to each personnel, irrespective of transfer of account also.

h) Identity Card must be provided to all security personnel.

i) All the existing facilities will be remain unchanged.

j) Disciplinary cases will be dealt as per the provision of law as discussed with the union.

Prima- facie, Exhibit-3 proves that M/s. Mrinal Kanti Basak Security Agency was the contractor of CWC on 23-10-2019 and not M/s. Krishnendu Bhattacharyya Security Agency as alleged by the union. If that be so, it is not known how M/s. Krishnendu Bhattacharyya Security Agency has been impleaded as a contractor employer in the present Reference Case. Further, it is not known how M/s. Krishnendu Bhattacharyya Security Agency, failed to pay wages to those 12 concerned security guards from the month of July, 2019 when they were engaged by M/s. Mrinal Kanti Basak Security Agency.

Thus, it can be said that the entire case and claim of the union against M/s. Krishnendu Bhattacharyya Security Agency to be baseless. Therefore, question of illegal termination of those concerned workmen by M/s. Krishnendu Bhattacharyya Security Agency without complying the provisions of section 25-F of I.D. Act does not arise. In fact, it appears the case of the union in respect of 12 contractor employees of M/s. Mrinal Kanti Basak Security Agency as per Exhibit-3 against an imaginary entity M/s. Krishnendu Bhattacharyya Security Agency is not maintainable. More so, the union and workmen have failed to prove existence of employer and employee relationship between those 12 concerned workmen and M/s. Krishnendu Bhattacharyya Security Agency by producing wage slips, EPF Slips, ESI Cards or Identity Cards, Appointment Letters issued to them by M/s. Krishnendu Bhattacharyya Security Agency.

Further, from such settlement it appears that in future security guards are to be ex-serviceman and to be engaged through DGR sponsored agency. In the present case CWC is a Central Govt. Public Sector Undertaking and which is bound to engage security personnel from ex-servicemen security agencies sponsored by DGR in view of O.M. No. 6/22/93-DPE (SC/ST Cell) Govt. of India, Ministry of Heavy Industries and Public Enterprises, Deptt. of Public Enterprises dt. 11-02-2005. It is admitted fact that present concerned workmen are civilian security guards. Failure to produce contract agreement between CWC and M/s. Krishnendu Bhattacharyya Security Agency creates a doubt about engagement of such agency by CWC after the contract period with M/s. Mrinal Kanti Basak Security Agency was over. In fact no clear picture has come on record when contract between CWC and M/s. Mrinal Kanti Basak Security Agency ended.

In view of above the present Reference is not maintainable either against the principal employer CWC or against the alleged imaginary contractor employer M/s. Krishnendu Bhattacharyya Security Agency and those 12 concerned contactor's workmen are not entitled to get the relief as prayed for. The inconsistent case and claim of the Union as discussed above makes its case speculative.

Accordingly, Reference No. 06 of 2022 is dismissed and an award is passed to that effect.

Justice K. D. BHUTIA, Presiding Officer.

नई दिल्ली, 1 जुलाई, 2024

का.आ. 1331.—औद्योगिक विवाद अधिनियम (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार **नेशनल इंश्योरेंस कंपनी लिमिटेड** के प्रबंधतंत्र के संबद्ध नियोजकों और **उनका यूनियन** के बीच अनुबंध में निर्दिष्ट **केन्द्रीय**

सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, कोलकाता, पंचाट (रिफरेन्स न.-02/2003) को जैसा कि अनुलग्नक में दिखाया गया है, प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 01.07.2024 को प्राप्त हुआ था

[सं. एल-17011/23/2002-आईआर(बी-II)]

दिलीप कुमार, अवर सचिव

New Delhi, the 1st July, 2024

S.O. 1331.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award **(Reference No. 02/2003)** of the **Central Government Industrial Tribunal cum Labour Court, Kolkata** as shown in the Annexure, in the Industrial dispute between the employers in relation to **National Insurance Company Limited** and **their Union** which was received along with soft copy of the award by the Central Government on 01.07.2024.

[No. L-17011/23/2002-IR(B-II)]

DILIP KUMAR, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT KOLKATA

Present : Justice K. D. Bhutia, Presiding Officer.

REF. NO. 02 OF 2003

Parties : Employers in relation to the management of

National Insurance Co. Ltd.

AND

Their Union

Appearance :

On behalf of National Insurance Co.Ltd.: Mr. Ranjay De, Ld. Advocate.

On behalf of the Union : Mr. Suvadip Bhattacharya , Ld. Advocate.

Dated: 29th April, 2024

ORDER

By order No. L-17011/23/2002 –IR(B-II) dated 29-11-2002, the Central Government, Ministry of Labour in exercise of power conferred u/s 10 (1) (d) and sub-section (2A) of Industrial Dispute Act, 1947 has referred the following disputes to this Tribunal for adjudication:-

> "Whether any employer-employee relationship exists between the management of National Insurance Co. Ltd. (NICL), Kolkata and Shri Bimal Mukherjee? If so, whether his claim for absorption in the service of NICL is legal and justified and what relief is the disputant entitled to?"

The case of the union which has espoused the present dispute is that it is the only representative trade union functioning in the establishment of National Insurance Co. Ltd. and it is affiliated with General Insurance Employees' All India Association and as such it has representative character and locustandi to espouse the cause of the workmen concerned.

It has also alleged that Sri Bimal Mukherjee, the workman concerned, was engaged to do the work of subordinate staff / Peon/ Group-D in the Divisional Office –XIII, Kolkata, National Insurance Co. Ltd. in the year 1993. That Sri Bimal Mukherjee was assigned to do perennial nature of works. National Insurance Co. Ltd. with malafide motive to exploit the human labour described the concerned workman as contractor labour or Badli in order to deprive him all the benefits and facilities which is otherwise admissible to a Group-D or Subordinate permanent staff of the company.

It has also alleged that by branding employee as contractor labour or Badli, the company wants to show that there exists no employer –employee relationship between it and the concerned workman. In fact, National Insurance Co. Ltd. never sourced out the job of subordinate staff or peon to any contractor at any point of time, rather it has directly engaged the concerned workman. That company used to make direct payment to Sri Bimal Mukherjee under the head of 'Office Upkeep". The alleged contactor, if any, exists had no license as required under the Contract Labour (Regulation & Abolition) Act, 1970 and rules framed therein. It has also alleged the company has cooked up the story of engaging labours through contractors only to avoid regularisation of the service of the concerned

workman. The company having indulged in unfair labour practice, the union has raised an industrial dispute with Regional Labour Commissioner, Central Kolkata. The conciliation failed and as such the Govt. referred the dispute in question to this Tribunal for adjudication. Therefore, the union has prayed for absorption or regularisation of the concerned workman and grant such other relief which may be deem fit and proper.

The National Insurance Co. Ltd. contested the case by filing written statement and alleged the union which has espoused the dispute has no locustandi and represent the concerned workman. That there exists no employer employee relationship between it and the concerned workman and as such the reference is bad in law. The concerned workman has no legal right or legal character to claim absorption when there exists no employer employee relationship between him and the company. That a daily wager has no right to claim regularisation.

It has further alleged there cannot be absorption or regularisation unless vacancies are determined and which is absent in the present case. There cannot be recruitment without the candidate being recommended by Employment Exchange. There are preconditions for eligibility in the context of age limit, qualification, satisfactory performance at the interview and other requirements and in the absence whereof there is no scope for any engagement in any cadre. It has categorically denied that the concerned workman being engaged since 1993 in the Division Office-XIII and working under the management. The concerned workman was engaged for few days in the year 1993-94 to water 'khaskhas' during summer time and never engaged him for doing perennial nature of job.

It has also alleged whenever there was requirement it always complied with the satisfactory provisions including compliance with Contract Labour (Regularisation & Abolition) Act, 1970 and denied engagement of any contractor for supply of labours to its establishment. Therefore, it has prayed for dismissal of the reference and claim of the concerned workman.

The union, who has espoused the case, in its rejoinder has alleged that by virtue of introduction of "Check Off System" the union has been declared as the only representative organisation of the workmen of National Insurance Co. Ltd. Since there exists employee and employer relationship between the concerned workman and the company and as such the dispute being an industrial dispute has been referred for adjudication by the Central Govt., Ministry of Labour.

That despite existence of a permanent vacant post, the company adopted unfair labour practice and engaged concerned workman to do the job of a subordinate staff keeping the post of Group-D/ Peon vacant. That the concerned workman has been continuously working for the company since 1993 and as such very fact also proves that job or work rendered by the concerned workman is perennial in nature and it has reiterated that the concerned workman is entitled for absorption as a regular employee in the establishment of National Insurance Co. Ltd..

The union to substantiate its case and claim has examined Sri Soumendra Nath Sanyal and Sri Kushal Nag, permanent staff of National Insurance Co. Ltd. who are Assistant Secretary and General Secretary of the union, which has espoused the dispute as W.W. No.1 and W.W. No.2. It has also examined the concerned workman Sri Bimal Mukherjee as W.W. No.3

The record shows copy of payment particulars in the account of Sri Bimal Mukherjee for the year 1994 and five vouchers have been marked as Exhibit-W-1, W-2, W-3, W-3/1, W-3/2 and W-3/3 on 03-08-2007.

On the other hand the National Insurance Co. Ltd. has examined Sri Pran Ranjan Saha, a retired employee of National Insurance Co. Ltd. as M.W. No.1. The order sheet dt. 04-06-2015 shows three documents namely copy of minutes of meeting dt.11-07-2002, copy of letter dt. 09-09-2002 and rules and regulations regarding recruitment produced by the management have been marked as Exhibit-M-1 to M-3 on formal proof being dispensed with.

Further, the Ld. Counsel for the Union in support of his contention has referred to the following decisions:—

1. State of Bihar –vs- Kripa Shankar Jaiswal AIR 1961 SC 304.
2. Workmen of Dimakuchi Tea Estate –vs- Management of Dimakuchi Tea Estate, AIR 1958 SC 353.
3. Indian Oxygen Ltd. vs Workmen as Represented by Indian Oxygen Karmachari Union, (1979) 3 SCC 291.
4. Deepka Industries Ltd. & Anrs. –vs- State of West Bengal & Ors., 1975 SCC Online 168.
5. Indian Drugs & Pharmaceuticals Ltd. –vs- Workmen, Indian Drugs & Pharmaceuticals Ltd. (2007) 1 SCC 408.
6. Principal, Mehar Chand Polytechnic & Anrs. –vs- Anu Lamba & Ors. (2006) 7 SCC 161.
7. Chairman cum Manging Director, Ennore Port Trust –v-s V. Manoharan & Ors. (2018) 3 SCC 612.
8. Workmen of M/s. Dharam Pal Prem Chand –vs- Dharam Pal Prem Chand, AIR 1966 SC 182.
9. News Paper Ltd., Allahabad –vs- U.P. State Industrial Tribunal & Ors., AIR 1960 SC 1328.
10. Manager, Hotel Imperial, New Delhi –vs- Chief Commissioner, Delhi & Ors. , AIR 1959 SC 1214.

11. Vanivilasa Co-operative Sugar Factory –vs- Second Additional Labour Court & Anrs. 1986 SCC OnLine Kar 125.
12. Durgapur Casual Workers Union & Ors. –vs- Food Corporation of India & Ors. (2015) 5 SCC 786.
13. Mahanadi Coalfields Ltd. –vs- Brajrajnagar Coal Mines Woekrs' Union, 2024 SCC OnLine SC 270 and
14. Tapas Kuamr Paul –vs- Bharat Sanchar Nigam Ltd. & Anrs. (2014) 15 SCC 313.

On the other hand Ld. Counsel for the management has filed written notes of argument and referred to the following citations in support of his contention:—

1. Chairman cum Manging Director, Ennore Port Trust –v-s V. Manoharan & Ors. (2018) 3 SCC 612.
2. Indian Drugs & Pharmaceuticals Ltd. –vs- Workmen, Indian Drugs & Pharmaceuticals Ltd. (2007) 1 SCC 408.
3. Oil and Natural Gas Corporation –vs – Krishan Gopal & Ors. ((2021) 18 SCC 707.
4. State of Bihar & Ors. –vs- Kirti Narayan Prasad, (2019) 13 SCC 250
5. Vibhuti Shankar Pandey –VS- State of Madhya Pradesh & Ors. (2023) 3 SCC 639.
6. Chief Executive Officer, Zila Parishad, Thane & Ors. –vs- Santosh Tukaram Tiware & Ors. (2023) 1 SCC 456.,
7. Management of M/s Tata Advance System Ltd. –vs- The Secretary to Department of Labour, Government of Karnataka & Ors. 2024, LLRT 266
8. Principal, Meher Chand Polytechnique & Anrs. Vs- Anu Lamba & Ors. (2006) 7 SCC 161.
9. Commissioner of Central Excise, Bangalore –vs- Srikumar Agencies & Ors. (2009) 1 SCC 469.
10. Deepka Industries Ltd. & Anrs. –vs- State of West Bengal & Ors., 1975 SCC Online 168.

The union in its written claim statement has alleged that the workman concerned has been though directly engaged by National Insurance Co. Ltd. in the year 1993 and has been branded him as a contractor labour or Badli, just to deny the absorption or regularisation of the concerned workman in a permanent post of subordinate staff/ Group-D/ Peon. The workman concerned has been working for the establishment of National Insurance Co. Ltd. since 1993 by doing perennial nature of job.

Unfortunately, no document whatsoever has come on record from the side of the union to show that at the relevant point of time National Insurance Co. Ltd. had sourced out the job of Peon or subordinate staff, normally done by permanent subordinate staff of a Public Sector Undertaking and who are generally known as Peon or Group-D staff, through contactors. Therefore, the case of the union that the National Insurance Co. Ltd. branded the concerned workman as contractor labour or Badli appears to be totally baseless.

On the other hand the management of National Insurance Co. Ltd. has categorically denied engagement of any contractor for supply of human power to do perennial nature of job of Peon or subordinate staff/Group-D in the establishment of National Insurance Co. Ltd.

Therefore, this Tribunal is of view that the union for the reasons best known to it has falsely set up a case of existence of contract labourers in the establishment of National Insurance Company as Badli.

Further, the union has failed to produce any cogent documentary evidence in support of the oral evidence of W.W.No1, W.W.No.2 and W.W. No.3 that since 1993 till the concerned workman deposed in the case before the Tribunal on 06-04-2015 he was in continuous service of National Insurance Co. as a Badli or casual worker and engaged to do perennial nature of job.

Ld. Counsel for the management at the very outset of argument has urged that the union which has espoused the present dispute in respect of Sri Bimal Mukherjee, a person who is not an employee and who has no relationship of employer-employee in any form with the company has no locustandi to espouse the dispute of an outsider and who is not a member of the concerned union. Thus, he has alleged that the present dispute espoused by the union which has no locustandi and is liable to be dismissed.

Before taking into consideration such issue raised by the Ld. Counsel for the management, let me first find out from both oral and documentary evidence produced by the parties, whether the claim and case of the union has legs to stand or not or whether there exist any relationship of employer- employee between the concerned workman and the National Insurance Co. or that the dispute under reference is indeed an industrial dispute as defined in Section 2 (k) of the Act.

From the evidence of W.W. No.1 Sri Soumendra Nath Sanyal, a permanent Staff of National Insurance Co. Ltd. posted at Divisional Office No.XII, 5, N. S. Road, Kolkata and an Assistant Secretary of the Union which has espoused the dispute has stated that during his visit at Divisional Office-XIII, Kolkata, located at 24, C. R. Avenue, Kolkata he had seen Sri Bimal Mukherjee working there as a member of subordinate staff since 1993. He has further stated that Sri Bimal Mukherjee being a subordinate staff his nature of job was/is dusting and carrying files from one table to another. That workman works under the instructions of the office management. The duty hour of sub-staff is from 9-30 a.m. to 5-30 p.m. with a break of half hour. Staff member's wages are paid through vouchers. Sri Bimal Mukherjee also receives his wages through vouchers. The management of the company controls and supervise the work of Sri Bimal Mukherjee. He has also stated that Sri Bimal Mukherjee has been working in Divisional Office-XIII since the date of his initial appointment and is liable to be absorbed.

However, during cross examination he has admitted that he has not filed any document to prove that Sri Bimal Mukherjee was appointed by National Insurance Co. Ltd. as a casual subordinate staff of the company or that the name of Sri Bimal Mukherjee is registered with the Employment Exchange or name of Sri Mukherjee was sponsored by Employment Exchange.

He has further stated that he was appointed by the company as its permanent staff after clearing written test and oral test and admitted that Sri Bimal Mukherjee was appointed as casual labour and not a permanent staff by the company. He also admitted that union which has espoused the cause of Mr. Mukherjee has no documents to prove that Sri Bimal Mukherjee was appointed by following recruitment procedure which he had undergone to get the permanent job in the company.

The manner in which this witness has deposed under oath before the Tribunal itself prove that he is an interested witness as he has stated that workman concerned was paid salary/wages through voucher. Even he being a permanent staff of the establishment he was paid salary through voucher, though in his appointment letter his fixed Grade and Scale is specifically mentioned and as such he used to draw salary on those Grade and Scale.

Such statement of W.W. No.1 may give rise to a question how a permanent employee of a Public Sector Undertaking whose Grade and Scale already mentioned in the appointment letter can draw salary through vouchers. Therefore, the aforesaid evidence given by this witness ipso facto proves that he is an interested witness and his evidence needs to be taken with a pinch of salt.

Further, this witness during his cross examination succumbed to the question put by the management and admitted that no appointment letter was ever issued to Sri Bimal Mukherjee by the management or that he is unable to produce documents issued by the management to prove Sri Bimal Mukherjee used to do perennial nature of job which is generally done by a permanent Group-D staff /subordinate staff or Peon of an establishment and that too under the directions and instructions of the management of the company. Ultimately, during cross examination he admitted the concerned workman being a casual employee he has/had no fixed duty hours or that Sri Bimal Mukherjee not being a permanent employee of the company is not governed by the bipartite settlement executed between the union and the management of the company.

Such evidence of this witness, a permanent staff of National Insurance Co. Ltd. and Assistant Secretary of the union which has espoused the dispute, further disprove the case of the union that the company in order to avoid absorption to permanent post has branded the alleged workman as a casual and badli.

Further, such evidence of W.W. No.1 corroborates the evidence of M.W. No.1 recorded under oath and who has categorically stated, that he was posted at Divisional Office-XIII of National Insurance Co. Ltd. situated at C.R. Avenue. That he never came across with a person named Sri Bimal Mukherjee while he was posted there. He has stated that from a letter submitted by the company during conciliation proceedings, there was mention, that during 1993-94 one Sri Bimal Mukherjee was engaged on casual basis for 43/45 days for watering the 'khaskhas'. He categorically denied seeing Sri Bimal Mukherjee working in Divisional Office-XIII of the company and who was engaged by the company for cleaning office establishment, serving water to the staff and for moving files from one table to another. He has further stated, the nature of works mentioned above is normally discharge by the permanent Class IV category staff of the company.

W.W. No.2, Sri Kushal Nag, another staff of the company and General Secretary of the concerned union has stated that he was a staff of Divisional Office-IV of the company and that Sri Bimal Mukherjee was posted at Divisional Office –XIII of the company. He has also stated that Sri Bimal Mukherjee belongs to Category-IV employees and whose job is/was to serve water, carry files, carry letters and other documents and who is paid remuneration through vouchers. That Sri Bimal Mukherjee is working for insurance company for more than 10 years. That he has proved Xerox copy of payment vouchers and payment particulars standing in the name of Sri Bimal Mukherjee.

That during cross examination he has stated that he being a permanent employee of the company he never received salary of the company through vouchers as stated by his co-employee W.W. No.1 before the Tribunal under oath that he being a permanent employee of the company he was initially paid salary through vouchers.

However, this witness, W.W. No.2 too has admitted that he has not filed any document to show that Sri Bimal Mukherjee was appointed by the company to serve water, carry files and carry letters to other offices and to discharge miscellaneous jobs of same nature. He further admitted like him the alleged workman never received any salary from the company. He has further admitted he is not in a position to produce any document to prove that Sri Bimal Mukherjee has been working in the National Insurance Co. Ltd. for more than 10 years or that Sri Bimal Mukherjee is still working for the company.

W.W. No.3, Sri Bimal Mukherjee in his evidence in chief on affidavit has stated that he was engaged by National Insurance Co. Ltd. in the month of May, 1983 and was posted at the Divisional Office –XIII situated at 24, C.R. Avenue, Kolkata. That he was engaged in Class-4 and still working in the same cadre.

On the other hand, para 4 of the claim statement filed by the concerned union shows that Sri Bimal Mukherjee was engaged in the Divisional Office-XIII, Kolkata in 1993 and not from the month of May, 1983 as stated by the alleged workman himself. So, it is seen neither the union nor the alleged workman are sure on which date the alleged workman was engaged by the company as a casual to do the following jobs as alleged by them:—

1. Serving water to the staff members.
2. Cleaning and sweeping of office toilets.
3. Cleaning of office tables, chairs, furniture, racks and cabinets.
4. Carrying of official files and official papers from one table to another table.
5. All types of miscellaneous cleaning works from time to time as per directions of the management and makes the case and claim of the union doubtful.

During cross examination Sri Bimal Mukherjee stated that he never applied in writing for his employment before the management of National Insurance Co. Ltd. However, he has stated that he has filed his letter of engagement issued by National Insurance Co. Ltd. in his favour in the year 1983 along with list of documents. But he was unable to identify his letter of engagement from the list of documents filed by the union and handed over to him during cross examination by the Tribunal rather he has taken a plea that he does not know the contents of his affidavit written in English. But he has admitted during cross examination that he never applied for any kind of leave before the management of the insurance company during his engagement as Class-4 cadre employee to prove that he was working directly under the control of the authorities of the management of the company.

During cross examination he further admitted the company pay wages to the workman through NEFT. That his wages too was/is directly deposited in his account with S.B.I. by his employer National Insurance Co. Ltd. through NEFT. But at the same time he has stated that he is not in a position to produce any document to show that wages paid to him by the insurance company is deposited in his account at S.B.I. through NEFT. That he or the union has failed to produce his Bank Pass Book with S.B.I. to prove indeed since May, 1983 or from 1993 the management of the Insurance Company has been regularly and without any break has been transferring the salary of the alleged workman through NEFT in his bank account directly to prove that the alleged workman was/is indeed engaged by the National Insurance Co. to do its perennial nature of job normally done by its permanent subordinate staff or Group-D staff or by a Peon or by Class-IV cadre employee.

That apart, the alleged workman during his cross examination has admitted that he was never given any direction in writing by the company specifying the nature of job for which he was engaged. He was never issued any document about his wages. That he never received any kind of letter directly addressed to him from the concerned authority of the management under whom he used to work or under whose supervision he used to work. He further admitted that he is unable to produce any document to show receiving overtime allowance from the management. However, he has stated that he having worked for more than 240 days in a year for the company is entitled to absorption.

Such evidence given by the alleged workman himself during cross examination make his case doubtful that he was engaged by National Insurance Co. Ltd. since 1983 as alleged by him or since 1993 as alleged by the union which has espoused the case, to do the work of a Group-D or Peon as neither the union which has espoused the dispute nor the alleged workman could produce any document to show his engagement since 1983 or 1993 to do the job of Class-4 cadre such as to serve water to the staff, cleaning and sweeping of the entire office, carrying office files from one table to another or to other officers and other miscellaneous jobs. Such facts further stand corroborated by the documents filed by the union which have been marked as Exb.W-1 to W-3/3.

Exb. W-1 prima facie shows that Divisional Office-XIII of National Insurance Co. Ltd. had made payment to Sri Bimal Mukherjee for watering 'khaskhas' for 28 days in the month of June/July, 1993, 43 days in the month of June and July, for 18 days in the month of May, 1994, 20 days in the month of June, 1994 and for 7 days in the month of July, 1994.

The contents of Exb. W-1 corroborates the statement of M.W. No.1, that Sri Bimal Mukherjee was engaged in the year 1993-94 for certain days just to water 'khaskhas'. Further, it disproves the case and claim of the union and the workman that he was engaged by the National Insurance Co. Ltd. to do the job of Class-IV cadre employee.

That apart, Exhibit-W-2, Exhibit-W-3, Exb.W-3/1, Exb.W-3/2 and Exb.W-3/3 appears to be general disbursement vouchers and which shows that Rs.650/- was paid in the account of Sri Bimal Mukherjee for the month of November, 2000, December, 2000, January, 2001 and April,2001 respectively towards fuel subsidy for running canteen. Exb.W-3 and W-3/1 appears to be same set of document.

Thus, Exhibit-W-2 and W-3 series prima facie prove that a sum of Rs.650/- used to be deposited in the account of Sri Bimal Mukherjee by the office of National Insurance Co. Ltd. towards fuel subsidy for running a canteen. Such documents further create doubt in the case and claim made by the union, that the concerned workman was engaged by National Insurance Co. in the cadre of Class-IV employee for doing jobs of cleaning, sweeping the office, carrying office files from one table to another and to do other officials miscellaneous jobs. In fact prima facie Exhibit-W-2 and Exb.W-3 series prove that Sri Bimal Mukherjee used to run a canteen.

Exbhibit-W-1 shows in the year 1993-94 he was paid for watering 'khaskhas' that too during summer months and Exb.W-2 and 3 series show that in the year 2000-2001 he used to run canteen of National Insurance Co. Ltd. situated in Divisional Office-XIII and he was paid fuel subsidy by National Insurance Co. Ltd. through general disbursement vouchers.

So, prima facie, from the above documents it appears Sri Bimal Mukherjee, a private individual person, who is admittedly not a member of the union which has espoused the dispute and with the help of some members of the union wanted to get himself a job of a Class-IV employee in the establishment of National Insurance Company merely on the basis Exb.W-1, payment particulars for the year 1993-94 made by National Insurance Co. in the account of Sri Bimal Mukherjee and tried to set up a false case of being engaged by the company as casual workman to do perennial nature of job. That apart, neither the union which has espoused the dispute and the workman have failed to produce any such documentary evidence to prove continuous engagement of the workman concerned by National Insurance Co. in any category since 1983 as alleged by workman or from 1993 as alleged by the union concerned till the passing of this award in the year 2024 or till the workman deposed before the Tribunal in 2015 where he under oath categorically stated still to be engaged by National Insurance Co. in Class-IV cadre. Therefore, neither the union which has espoused the dispute nor the workman concerned have been able to prove existence of employer-employee relationship between the workman concerned and insurance company and as such the present case is not maintainable and the case of the union and the concerned workman for latter's absorption has no legs to stand. Consequently, since there exists no relationship of employer-employee between the concerned workman and Insurance Company and existence of any industrial dispute between them too does not arise.

Further, the workman has tried to set up a case that he having worked for more than 240 days in a year and in view of provisions of 25B of the Act he is presumed to be in continuous service of National Insurance Co. and entitled to get the regularisation.

First, apart from a mere stray statement of the workman no corroborative either oral or documentary have been produced either by the alleged workman himself or the union which has espoused his cause to show engagement of the workman concerned for more than 240 days in a year by the insurance company. Exb. W-1 shows he was engaged to water 'khaskhas' for few days that too during summer time in the year 1993 and 1994. Exb. W-2 and Exb.-W-3 series shows the workman concerned used to run a canteen situated in the Division-XIII of the Insurance Co. and for which he was paid fuel subsidy of Rs.650/- in the month of November and December, 2000 and for the month of January and April, 2001. It is not the case of the union or that of the workman that he was engaged as a canteen boy by the management of the Insurance Company in the canteen situated in the said office. Further, no evidence has come on record to show that the canteen in which the workman used to work in the year 2000-2001 was /is a statutory canteen of National Insurance Company.

Secondly, National Insurance Co. Ltd. is a Public Sector Undertaking and the Public Sector Undertaking is bound to follow its recruitment rules and regulations. Exhibit-M-3 appears to be the procedure to be followed by the General Insurance Corporation for recruitment of Clerical and subordinate staff. Nothing has come on record to show that the concerned workman was engaged by the insurance company by following the procedure laid down in Exhibit-M-3 or engaged as a casual by calling his name from Employment Exchange.

Thirdly, the question of absorption comes if it is found the employer has indulged in an unfair labour practice by not filling up permanent post even though such posts are available and by continuing to employ workmen as temporary or daily wage employees despite they are performing the same work as regular workmen on lower wages. Nothing has come on record to show that Sri Bimal Mukherjee was made to work in Divisional Office-XIII of National Insurance Co. Ltd. against a sanctioned vacant post. Therefore, for the sake of argument also he is not entitled absorption and regularisation as sought by him as well as by the union which has no locustandi to raise dispute in favour of Sri Bimal Mukherjee, an outsider to the establishment of National Insurance Co. Ltd..

It is settled principle of law each case has to be decided on its own merit. Each case depends on its own facts and a close similarity between one case and another is not enough because even a single significant detail may alter the entire aspect. In deciding such cases one should avoid the temptation to decide cases by matching the colour of one case against the colour of another. To decide, therefore, on which side of the line a case falls, brought resemblance of another case is not at all decisive. Precedent should be followed only so far it marks the path of justice.

In view of the above settled principle I am not inclined to discuss the above mentioned cited cases as this Tribunal finds facts and circumstances of those cases entirely different from the present one.

It is admitted fact that the workman concerned is not the member of the union which has espoused the dispute of the workman regarding his regularisation. Union and workman have failed to prove existence of relationship of employer and employee between the alleged workman concerned and the company. So, it appears the registered union of National Insurance Co. has raised an industrial dispute in respect of a third person, whom it has failed to prove to be a temporary or a casual or a daily rated workman engaged by National Insurance Co. to do perennial nature of job normally discharge by a permanent Class-IV cadre employees of the company or the said alleged workman was engaged by the company for more than 240 days in a year to do perennial nature of job since 1983 or 1993 for decades. On such facts, it appear the concerned union has no locustandi to raise an industrial dispute in respect of a person who was engaged by the company to water 'khaskhas' during summer time for few days in the year 1993-94 and who was running the canteen situated in the concerned Divisional Office in the year 2000-2001. In fact, it appears the registered trade union of the Insurance Company for reasons best known to it has indulged in promoting the cause of a third person having no connection with the establishment of National Insurance Co. and has bent upon to provide him a permanent job by way of regularisation and absorption by setting up a false case.

In view of the above, the Reference Case no. 2 of 2003 is dismissed with the finding that there exists no employer-employee relationship between the management of National Insurance Co. Ltd. and Sri Bimal Mukherjee and as such the claim of the union having no locustandi or that of an alleged workman for absorption in the service of NICL is not maintainable and as such the alleged workman and the union is not entitled to get any relief. Accordingly, an award of dismissal is passed.

JUSTICE K. D. BHUTIA, Presiding Officer

नई दिल्ली, 1 जुलाई, 2024

का.आ. 1332.—औद्योगिक विवाद अधिनियम (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार **नेशनल इंश्योरेंस कंपनी लिमिटेड** के प्रबंधतंत्र के संबद्ध नियोजकों और **उनका यूनियन** के बीच अनुबंध में निर्दिष्ट **केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, कोलकाता, पंचाट (रिफरेन्स न.-04/2003)** को जैसा कि अनुलग्नक में दिखाया गया है, प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 01.07.2024 को प्राप्त हुआ था।

[सं. एल-17011/22/2002-आईआर(बी-II)]

दिलीप कुमार, अवर सचिव

New Delhi, the 1st July, 2024

S.O. 1332.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award **(Reference No. 04/2003)** of the **Central Government Industrial Tribunal cum Labour Court, Kolkata** as shown in the Annexure, in the Industrial dispute between the employers in relation to **National Insurance Company Limited** and **their Union** which was received along with soft copy of the award by the Central Government on 01.07.2024.

[No. L-17011/22/2002-IR(B-II)]

DILIP KUMAR, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT KOLKATA

Present : Justice K. D. Bhutia, Presiding Officer.

REF. NO. 04 OF 2003

Parties : Employers in relation to the management of

National Insurance Co. Ltd.

AND

Their Union

Appearance :

On behalf of National Insurance Co.Ltd.: Mr. Ranjay De, Ld. Advocate.

On behalf of the Union : Mr. Suvadip Bhattacharya , Ld. Advocate.

Dated: 30th April, 2024

ORDER

By order No. L-17011/22/2002 –IR(B-II) dated 29-11-2002, the Central Government, Ministry of Labour in exercise of power conferred u/s 10 (1) (d) and sub-section (2A) of Industrial Dispute Act, 1947 has referred the following disputes to this Tribunal for adjudication:-

"Whether any employer-employee relationship exists between the management of National Insurance Co. Ltd. (NICL), Kolkata and ten disputants viz. Sri Kamal Krishan Banik, Mohan Maity, Swapan Sardar, Anil Mondal, Shib Kumar Routh, Nitai Ghosh, Biswanath Bera, Sushanta Marjit, Anil Sahu and Sanjit Pal? If so, whether their claim for absorption in the service of NICL is legal and justified and what relief is the disputant entitled to?"

The case of the union which has espoused the present dispute is that it is the only representative trade union functioning in the establishment of National Insurance Co. Ltd. and it is affiliated with General Insurance Employees' All India Association and as such it has representative character and locustandi to espouse the cause of the workmen concerned.

It has also alleged that Sri Kamal Krishna Banik, one of the workmen concerned, was engaged to do the work of subordinate staff / Peon/ Group-D in the Divisional Office –XII, Kolkata, National Insurance Co. Ltd. on 25-10-1976.

Sri Mohan Maity, one of the workmen concerned, was engaged to do the work of subordinate staff / Peon/ Group-D in the Divisional Office –II, Kolkata, National Insurance Co. Ltd.

Sri Swapan Sardar, one of the workmen concerned, was engaged to do the work of subordinate staff / Peon/ Group-D in the Divisional Office –VII, Kolkata, National Insurance Co. Ltd. w.e.f. 1990. He is/was also made to work as a Sweeper and paid through disbursement voucher either in the name of Madhu Das, Ram Das, Ram Pal and Tapan Das.

Sri Anil Mondal, one of the workmen concerned, was engaged to do the work of subordinate staff / Peon/ Group-D in the Divisional Office –VI, Kolkata, National Insurance Co. Ltd. w.e.f. 1995.

Sri Shib Kumar Routh, one of the workmen concerned, was engaged to do the work of subordinate staff / Peon/ Group-D in the Divisional Office –XVIII, Kolkata, National Insurance Co. Ltd. w.e.f 1991. That he was paid Rs.250/- per week either in his own name or in the name of Ram Das, Ram Krishna and Hari Das Pal. That he was made to do the job of sweeper in the absence of part time sweeper Monoj Singh and was paid Rs.50/- per day.

Sri Nitai Ghosh, one of the workmen concerned, was engaged to do the work of subordinate staff / Peon/ Group-D in the Divisional Office –VIII, Kolkata, National Insurance Co. Ltd. w.e.f. 1985. That from 1998 onwards he was made to work as a Gateman even on Saturday and Sundays. That he was paid through vouchers drawn in the name of Tapan Ghosh, Gopal Ghosh, Aloke Ghosh, Manash Ghosh and Sankar Ghosh.

Sri Biswanath Bera, one of the workmen concerned, was engaged to do the work of subordinate staff / Peon/ Group-D in the Divisional Office –XVIII/1, Kolkata, National Insurance Co. Ltd. w.e.f. 1990.

Sri Anil Kumar Sahu, one of the workmen concerned, was engaged to do the work of subordinate staff / Peon/ Group-D in the Central Provident Fund Department, M.T.P.C.O. (Legal Cell), Central Stationary Department of Royal Insurance Building, 5, N.S. Road, w.e.f. 1992.

Sri Sanjib Paul, one of the workmen concerned, was engaged to do the work of subordinate staff / Peon/ Group-D and Record Clerk in the Divisional Office XII, Kolkata, National Insurance Co. Ltd. w.e.f. 1990.

Sri Sushanta Marjit, one of the workmen concerned, was engaged to do the work of subordinate staff, Sub-Staff, Record Clerk, Assistant and Sr. Assistant in the Divisional Office –XVIII, Kolkata, National Insurance Co. Ltd. and in D.O.-1 from 1998.

That all of them were engaged to do perennial nature of works. National Insurance Co. Ltd. with malafide motive to exploit the human labour described the concerned workman as contractor labour in order to deprive them all the benefits and facilities which is otherwise admissible to a Group-D or Subordinate permanent staff of the company.

It has also alleged that Insurance Company with malafide intention in its written statement filed before the Conciliation Officer, has alleged that all the above named persons are employees of its contractors and that there exists no employer –employee relationship between it and those persons. In fact, National Insurance Co. Ltd. never sourced out the job of subordinate staff or peon to any contractor at any point of time, rather it has directly engaged the concerned workmen as casuals. It has also alleged the company has cooked up the story of engaging labours through contractors only to avoid regularisation of the service of the concerned workmen. The company having indulged in unfair labour practice, the union has raised an industrial dispute with Regional Labour Commissioner,

Central Kolkata. The conciliation failed and as such the Govt. referred the dispute in question to this Tribunal for adjudication. Therefore, the union has prayed for absorption or regularisation of the concerned workmen and grant such other relief which may be deem fit and proper.

The National Insurance Co. Ltd. contested the case by filing written statement and alleged the union which has espoused the dispute has no locustandi and represent the concerned workmen. That there exists no employer employee relationship between it and the concerned workmen and as such the reference is bad in law. The concerned workmen have no legal right or legal character to claim absorption when there exists no employer employee relationship between them and the company. That a daily wagers have no right to claim regularisation.

It has further alleged there cannot be absorption or regularisation unless vacancies are determined and which is absent in the present case. There cannot be recruitment without the candidate being recommended by Employment Exchange. There are preconditions for eligibility in the context of age limit, qualification, satisfactory performance at the interview and other requirements and in the absence whereof there is no scope for any engagement in any cadre. It has categorically denied that the concerned workmen being engaged by it at different Divisions.

It has also alleged whenever there was requirement it always complied with the satisfactory provisions including compliance with Contract Labour (Regularisation & Abolition) Act, 1970 and denied engagement of any contractor for supply of labours to its establishment. Therefore, it has prayed for dismissal of the reference and claim of the union.

The union, who has espoused the case, in its rejoinder has alleged that by virtue of introduction of "Check Off System" the union has been declared as the only representative organisation of the workmen of National Insurance Co. Ltd. Since there exists employee and employer relationship between the concerned workmen and the company and as such the dispute being an industrial dispute has been referred for adjudication by the Central Govt., Ministry of Labour.

That despite existence of a permanent vacant post, the company adopted unfair labour practice and engaged concerned workmen to do the job of a subordinate staff keeping the post of Clerk, Group-D/ Peon, Sweeper vacant. That the concerned workmen have been continuously working for the company since the day of their engagement and such very facts also prove that job or work rendered by the concerned workmen is perennial in nature and it has reiterated that the concerned workmen are entitled for absorption as a regular employees in the establishment of National Insurance Co. Ltd.

The union to substantiate its case and claim has examined Sri Samarendra Nath Sanyal and Sri Kushal Nag, two permanent staff of National Insurance Co. Ltd. who are Assistant Secretary and General Secretary of the union, which has espoused the dispute as W.W. No.1 and W.W. No.2.

The record shows W.W. No.1 during his cross examination on 14-03-2005 has produced appointment letter of Sri Kamal Krishna Banik dt. 03-07-1976 as a casual employee and which has been marked as Exb. W-1.

On the other hand the National Insurance Co. Ltd. has examined Sri J. N. Roy, Retired Chief Manager, Head Office of National Insurance Co. Ltd. as M.W. No.1. The order sheet dt. 04-06-2015 shows four documents namely copy of letter dt. 07-02-2002, minutes of meeting dt.11-07-2002, copy of letter dt. 09-09-2002 and rules and regulations regarding recruitment produced by the management have been marked as Exhibit-M-1 to M-4 on formal proof being dispensed with.

Further, the Ld. Counsel for the Union in support of his contention has referred to the following decisions:-

1. State of Bihar –vs- Kripa Shankar Jaiswal AIR 1961 SC 304.
2. Workmen of Dimakuchi Tea Estate –vs- Management of Dimakuchi Tea Estate, AIR 1958 SC 353.
3. Indian Oxygen Ltd. vs Workmen as Represented by Indian Oxygen Karmachari Union, (1979) 3 SCC 291.
4. Deepka Industries Ltd. & Anrs. –vs- State of West Bengal & Ors., 1975 SCC Online 168.
5. Indian Drugs & Pharmaceuticals Ltd. –vs- Workmen, Indian Drugs & Pharmaceuticals Ltd. (2007) 1 SCC 408.
6. Principal, Mehar Chand Polytechnic & Anrs. –vs- Anu Lamba & Ors. (2006) 7 SCC 161.
7. Chairman cum Manging Director, Ennore Port Trust –v-s V. Manoharan & Ors. (2018) 3 SCC 612.
8. Workmen of M/s. Dharam Pal Prem Chand –vs- Dharam Pal Prem Chand, AIR 1966 SC 182.
9. News Paper Ltd., Allahabad –vs- U.P. State Industrial Tribunal & Ors., AIR 1960 SC 1328.
10. Manager, Hotel Imperial, New Delhi –vs- Chief Commissioner, Delhi & Ors. , AIR 1959 SC 1214.
11. Vanivilasa Co-operative Sugar Factory –vs- Second Additional Labour Court & Anrs. 1986 SCC OnLine Kar 125.
12. Durgapur Casual Workers Union & Ors. –vs- Food Corporation of India & Ors. (2015) 5 SCC 786.

13. Mahanadi Coalfields Ltd. –vs- Brajrajnagar Coal Mines Woekrs' Union, 2024 SCC OnLine SC 270 and
14. Tapas Kuamr Paul –vs- Bharat Sanchar Nigam Ltd. & Anrs. (2014) 15 SCC 313.

On the other hand Ld. Counsel for the management has filed written notes of argument and referred to the following citations in support of his contention:-

1. Chairman cum Manging Director, Ennore Port Trust –v-s V. Manoharan & Ors. (2018) 3 SCC 612.
2. Indian Drugs & Pharmaceuticals Ltd. –vs- Workmen, Indian Drugs & Pharmaceuticals Ltd. (2007) 1 SCC 408.
3. Oil and Natural Gas Corporation –vs – Krishan Gopal & Ors. ((2021) 18 SCC 707.
4. State of Bihar & Ors. –vs- Kirti Narayan Prasad, (2019) 13 SCC 250
5. Vibhuti Shankar Pandey –VS- State of Madhya Pradesh & Ors. (2023) 3 SCC 639.
6. Chief Executive Officer, Zila Parishad, Thane & Ors. –vs- Santosh Tukaram Tiware & Ors. (2023) 1 SCC 456.,
7. Management of M/s Tata Advance System Ltd. –vs- The Secretary to Department of Labour, Government of Karnataka & Ors. 2024, LLRT 266
8. Principal, Meher Chand Polytechnique & Anrs. Vs- Anu Lamba & Ors. (2006) 7 SCC 161.
9. Commissioner of Central Excise, Bangalore –vs- Srikumar Agencies & Ors. (2009) 1 SCC 469.
10. Deepka Industries Ltd. & Anrs. –vs- State of West Bengal & Ors., 1975 SCC Online 168.

The union in its written claim statement has alleged that the workmen concerned have been though directly engaged by National Insurance Co. Ltd. on different years ranging from 1976 to 1998 and branded them as a contractor labour during conciliation proceeding, just to deny the absorption or regularisation of the concerned workmen in a permanent post of subordinate staff/ Group-D/ Peon. The workmen concerned have been working for the establishment of National Insurance Co. Ltd. for decades doing perennial nature of job and they are still working by discharging the same nature of job for which they have been engaged.

The Insurance Company too in its written statement has categorically stated that it never engaged any contractor for supply of men power to do the work of Sweeper or the work/job normally done by a permanent subordinate staff of Class-IV cadre. Therefore, the case of the union that the National Insurance Co. Ltd. branded the concerned workmen as contractor labour appears to be baseless.

Ld. Counsel for the management at the very outset of argument has urged that the union which has espoused the present dispute in respect of those persons who are not employees and who have no relationship of employer-employee in any form with the company has no locustandi to espouse the dispute of an outsider and who are not members of the concerned union. Thus, it has alleged that the present dispute espoused by the union which has no locustandi is liable to be dismissed.

Before taking into consideration such issue raised by the Ld. Counsel for the management, let me first find out from both oral and documentary evidence produced by the parties, whether the claim and case of the union has legs to stand or not or whether there exist any relationship of employer- employee between the concerned workmen and the National Insurance Co. or that the dispute under reference is indeed an industrial dispute as defined in Section 2 (k) of the Act.

From the evidence of W.W. No.1 Sri Samarendra Nath Sanyal, a permanent Staff of National Insurance Co. Ltd. posted at Divisional Office No.XII, 5, N. S. Road, Kolkata and an Assistant Secretary of the Union, which has espoused the dispute has stated that workmen namely Kamal Krishna Banik and Sanjib Paul worked in the same Divisional Office No. XII where he is/was posted. He has further stated that he knows all other concerned workmen as they are posted in different Divisional Office of the Insurance Company and they discharge the functions of Peon, Bank Peon, Sub-Staff, Record Keeping, Sweeping, Cleaning and Dusting. That they have been rendering such services to the insurance company since the date of their engagement. They perform their assigned duty from 9-30 a.m. to 7-30 p.m. Those concerned workmen are/were paid wages through vouchers and payment is made by Accounts Department of the respective office of the National Insurnace Co.

He has further stated all those workmen are controlled and supervised by the management of the respective office. All those workmen are casual workmen but they are made to do the same work done by a permanent sub-staff. That their attendance is maintained by the office in which they are attached.

During cross examination he has admitted that none of the workmen concerned joined the service of the company as members of the Sub-Staff observing recruitment procedure and he is not in a position to produce the appointment letters of those workmen save and except that of Sri Kamal Krishna Banik who was appointed as a casual workman on 03-07-1976. He has further admitted that he cannot produce any document to show that those

concerned workmen are members of the union which has espoused the dispute and of which he is an Assistant Secretary. Those concerned workmen never took part in the check off system.

He has also stated that he had been working for the company for last 25 years and during the period of such 25 years none of those concerned workmen worked under him. The post of Record Clerk is a promotional post from the members of the sub-staff. That he has no document to show that none of those concerned workmen being appointed by the company as a part time sweeper or they have been made full time sweeper or to produce any document issued by the management of the company to prove those concerned workmen were/are made to work from 9-30 a.m. to 7-30 p.m. while he being a permanent of the company his duty hour is only from 10-00 a.m. to 5-30 p.m.

He has further stated that those workmen never submitted any letters of complaint before the management for making payment to them through vouchers in the wrong payment heads.

W.W. No.2, Sri Kushal Nag, another staff of the company and General Secretary of the concerned union has stated that he knows all the workmen concerned who are engaged by the company to do the job of Peon and Sweeper normally done by Class-IV category staff of the company and whose job are to serve water, carry files, carry letters and other documents. All those workmen have been working for the company from the date of their engagement and without any break.

During cross examination he has stated in the National Insurance Co. there is a 'check off' system but he has no document to show the concerned workmen participated in the 'check off' system or that copy of voucher vide which he was paid salary by the company being a permanent Class-III category staff of the company like payment were/are made to those concerned workmen. Further, he has admitted that he will not be able to produce appointment letters issued by the company to those concerned workmen engaging them as casual.

Thus, from the above evidence of W.W. No.1 and W.W. No.2, it appears the union which has espoused the present dispute for absorption and regularisation of those alleged ten workmen has not been able to prove the continuance service of those workmen from the date of their engagement decades ago without break and till the day those two witnesses have deposed before the Tribunal and where they have stated that those workmen concerned are still working for the company. They have also failed to produce the copy of payment vouchers or any such document from where it can been seen that those workmen have been working without any break as casuals for decades together and still working for the insurance company.

It is true M.W. No.1, Retired Chief Manager, Head Office of National Insurance Co. in his evidence has admitted engaging seven workmen out of ten named in order of reference as casuals, but at the same time has stated no longer existence of those seven workmen in the establishment of the company as casual at the time of reference.

He has stated that Sri Kamal Krishna Banik was employed as Canteen Boy by Staff Recreation Club and he has nothing to do with the management of the National Insurance Co.

Sri Mohan Maity was engaged as a casual part time cleaner from 1990 to 1995 and thereafter he was never engaged as part time cleaner. That he never worked for more than 240 days during the period from 1990 to 1995.

That Sri Swapan Sardar was an independent vendor supplying tea and snacks in the office and he never worked as casual staff.

Sri Anil Mondal was appointed as casual part time sweeper on 21-11-1995 and he is no more engaged thereafter.

That Sri Shib Kumar Routh was engaged for supply of water and cleaning the office, but he left the job of casual on 23-08-1996. That he never worked for more than 240 days.

That Sri Nitai Ghosh worked as a casual sub staff from 1985 to 27-05-1998 and he is no more with the company and never worked for more than 240 days in a year.

That Sri Biswanath Bera worked on casual basis as water supplier to the staff from 1992 to 1994 and after 1994 he was not engaged.

That Sri Sushanta Marjit worked on casual basis during the period from 1991 to 1994 as a water supplier and he is no more engaged thereafter.

That Sri Anil Sahu worked on casual basis in the year 1993 and thereafter he was never engaged and he never worked for more than 240 days in a year.

That Sri Sanjit Paul was a canteen boy of Recreation Club and never engaged by the company on casual basis.

Those concerned workmen are no more in service of the company in any capacity. Thus, he has alleged the reference is not maintainable.

Further, he in his evidence has categorically stated that the union which has raised the present dispute in respect of alleged workmen has no locustandi to represent them. That the company being a public sector undertaking

it cannot go beyond the recruitment rules for appointing Class-III or Class-IV categories staff. That there exists no employer-employee relationship between the company and those workmen.

Surprisingly, I do not find any cross examination by Ld. Counsel for the union in respect of his statement given in para 12 to para 21 of his evidence in chief on affidavit. Therefore, an inference can be drawn that union admits that those workmen whose cause it has espoused were no more in service of the company at the time of reference and that only seven out of ten alleged workmen were engaged by National Insurance Co. as casual for certain days not exceeding 240 days during their engagement as casuals and that other three workmen namely Sri Kamal Krishna Banik and Sri Sanjit Paul who were canteen boys in the canteen run by Recreation Club and Sri Swapan Sardar was an independent vendor supplying tea and snacks in the office have no connection whatsoever with the management of National Insurance Co. From such un-challenged evidence of M.W. No.1, it appears the union has raised the present dispute not only in respect of erstwhile casual workmen but also in respect of a tea vendor and two boys of Recreation Club's canteen.

That apart, the union or W.W. No.1 and W.W. No.2 have failed to produce documentary evidence to prove those concerned workmen were/ are still in service of the company as a casual or in between the order of reference and till they deposed before this Tribunal in the year 2008 or to prove their continuous engagement as casual by National Insurance Co. from the years they have been engaged and till date and that too without any break.

Further, union has failed to produce documentary evidence such as payment vouchers and attendance registers of those concerned workmen to prove that they were engaged or worked for more than 240 days in a year in any capacity for National Insurance Co. It is interesting to note the union never made a prayer before the Tribunal calling for production of payment vouchers or counterfoil of vouchers, Accounts Book or Cash Book from those Divisional office of Insurance Co. where those workmen concerned were allegedly engaged, in order to prove or substantiate it's claim that those workmen are still retained by the insurance company as casuals.

Therefore, the union which has espoused the dispute has failed to prove the existence of employer-employee relationship between the workmen concerned and insurance company. Since there exists no relationship of employer-employee between the concerned workmen and Insurance Company and consequently there exists no industrial dispute between those workmen and the management of insurance company.

Now, let me see whether the union in question has locustandi to raise the present dispute?

W.W. No.1 and W.W. No.2 in their evidence recorded under oath have admitted those ten workmen whose cause their union has espoused are not members of their union. Further, they have admitted those ten concerned workmen are not subjected to check off system. Further, they have failed to produce subscription slips to show that those ten workmen were members of the union which is a registered union of the permanent employees of National Insurance Co. or called for the documents from the office of the National Insurance Co. that through check off method the management of insurance company used to deduct union's subscription from the wages of those ten workmen. Further, the present dispute for absorption of alleged ten casual workmen not being raised by group of workmen of National Insurance Co. or supported by them, this Tribunal is of view the union which has espoused the dispute has no locustandi to raise an industrial dispute in respect of those persons who have nothing to do with the management of the insurance company and who were not engaged by the insurance company in whatsoever capacity as casual at the time of reference. This is Tribunal is of view a registered Trade Union of an establishment cannot raise an industrial dispute against the management in respect of outsiders and who has no connection whatsoever with the establishment.

So, it appears the registered union of National Insurance Co. has raised an industrial dispute in respect of a third persons, whom it has failed to prove to be temporary or a casual or a daily rated workmen engaged by National Insurance Co. to do perennial nature of job normally discharge by a permanent Class-IV cadre employees of the company or the said alleged workmen were engaged by the company for more than 240 days in a year to do perennial nature of job since the date of their engagement and for decades together. In fact, it appears the registered trade union of the Insurance Company for reasons best known to it has indulged in promoting the cause of those persons having no connection with the establishment of National Insurance Co. at the time of reference and has bent upon to provide them a permanent job by way of regularisation and absorption by setting up a false case.

That apart, National Insurance Co. Ltd. being a Public Sector Undertaking and the Public Sector Undertaking is bound to follow its recruitment rules and regulations. Exhibit-M-4 appears to be the procedure to be followed by the General Insurance Corporation for recruitment of Clerical and subordinate staff.

Further, the question of absorption comes if it is found the employer has indulged in an unfair labour practice by not filling up permanent post even though such posts are available and by continuing to employ workmen as temporary or daily wage employees despite they are performing the same work as regular workmen on lower wages. Nothing has come on record to show that those workmen were made to work in different Divisional Offices of National Insurance Co. Ltd. against sanctioned vacant post. In fact, from the above discussion it appears that seven persons named in the order of reference were engaged as casual for some point of time and their service as casual employees are no more in existence. Therefore, those alleged seven workmen who are no more in service of National

Insurance Company have no right to claim absorption and regularisation against permanent post. More so, the union espousing the dispute has failed to prove existence of vacant post of Class-IV cadre in National Insurance Co. at the time of reference and keeping those post vacant company was indulged in unfair labour practice by getting the work done by casual temporary employees.

It is settled principle of law each case has to be decided on its own merit. Each case depends on its own facts and a close similarity between one case and another is not enough because even a single significant detail may alter the entire aspect. In deciding such cases one should avoid the temptation to decide cases by matching the colour of one case against the colour of another. To decide, therefore, on which side of the line a case falls, brought resemblance of another case is not at all decisive. Precedent should be followed only so far it marks the path of justice.

In view of the above settled principle I am not inclined to discuss the above mentioned cited cases as this Tribunal finds facts and circumstances of those cases entirely different from the present one.

In view of the above, the Reference Case no. 4 of 2003 is dismissed with the finding that there exists no employer-employee relationship between the management of National Insurance Co. Ltd. and those ten workmen named in the order of reference and as such the claim of the union having no locustandi for absorption of those ten persons in the service of NICL is not maintainable and as such the alleged workmen and the union are not entitled to get any relief. Accordingly, an award of dismissal is passed.

Justice K. D. BHUTIA, Presiding Officer

नई दिल्ली, 1 जुलाई, 2024

का.आ. 1333.—औद्योगिक विवाद अधिनियम (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार **भारतीय जीवन बीमा निगम** के प्रबंधतंत्र के संबद्ध नियोजकों और **श्री रामस्वरूप** के बीच अनुबंध में निर्दिष्ट **केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जयपुर, पंचाट (रिफरेन्स न.-121/2005)** को जैसा कि अनुलग्नक में दिखाया गया है, प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 01.07.2024 को प्राप्त हुआ था।

[सं. एल-17012/11/2005-आईआर(बी-1)]

दिलीप कुमार, अवर सचिव

New Delhi, the 1st July, 2024

S.O. 1333.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award **(Reference No. 121/2005)** of the **Central Government Industrial Tribunal cum Labour Court, Jaipur** as shown in the Annexure, in the Industrial dispute between the employers in relation to **Bhartiya Jeevan Bima Nigam** and **Shri Ramswaroop** which was received along with soft copy of the award by the Central Government on 01.07.2024.

[No. L-17012/11/2005-IR(B-I)]

DILIP KUMAR, Under Secy.

अनुलग्नक

केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जयपुर

पीठासीन अधिकारी

राधा मोहन चतुर्वेदी

सी.जी.आई.टी. प्रकरण सं.– 121/2005

Reference No. L-17012/11/2005-IR (B-I) **Dated: 21.10.2005**

श्री रामस्वरूप पुत्र श्री किशन लाल महावर, द्वारा– श्री बलदेव सिंह, विधि सलाहकार निवासी– डडवाड़ा, जिला– कोटा (राज.)।

प्रार्थी

बनाम

1. वरिष्ठ शाखा प्रबंधक, भारतीय जीवन बीमा निगम, व्याना रोड, हिण्डौन सिटी, राज.।
2. वरिष्ठ मण्डल प्रबंधक, भारतीय जीवन बीमा निगम, अम्बेडकर सर्किल, जयपुर।

अप्रार्थीगण/विपक्षी

उपस्थितः–

: श्री आर. सी. जैन, अभिभाषक – प्रार्थी।

: श्री जे. के. अग्रवाल, अभिभाषक –विपक्षीगण।

: **अधिनिर्णय** :

दिनांक :13.05.2024

1. श्रम मंत्रालय भारत सरकार नई दिल्ली द्वारा दिनांक 21.10.2005 को औद्योगिक विवाद अधिनियम 1947 (जिसे आगे मात्र अधिनियम कहा जावेगा) की धारा 10 (1) (डी) व 2A के अन्तर्गत प्रदत्त शक्तियो के अनुसरण में निम्नांकित औद्योगिक विवाद न्यायनिर्णयन हेतु इस अधिकरण को संदर्भित किया गया :–

"Whether the contention of the workman Shri Ram Swaroop S/o Shri Kishan Lal Mahawar that he has worked from 08.05.2001 to 22.05.2004 continuously completing 240 days in the consecutive 12 months is correct? If yes, whether the action of the Sr. Branch Manager, LIC of India, Hindaun City in terminating the services of the workman w.e.f. 24.05.2004 is legal and justified? If not, to what relief the workman is entitled to and from which date?

2. प्रार्थी ने दिनांक 12.12.2005 को अपने दावे का अभिकथन प्रस्तुत किया जिसके संक्षिप्त अभिवचन इस प्रकार हैः–

3. प्रार्थी विपक्षी की हिण्डौनसिटी शाखा में दिनांक 08.05.2001 से वाटरमेन के पद पर 60 रू. प्रतिदिन वेतन पर नियुक्त किया गया था। विपक्षी ने दिनांक 24.05.2004 को मौखिक आदेश द्वारा प्रार्थी को बिना नोटिस अथवा नोटिस वेतन एवं मुआवजा दिये नौकरी से हटा दिया। प्रार्थी ने दिनांक 08.05.2001 से दिनांक 24.05.2004 तक विपक्षी के अधीन सेवा की है और एक कलेण्डर वर्ष में 240 दिन कार्य किया है। विपक्षी का यह कृत्य धारा 25 F अधिनियम का उल्लंघन है। विपक्षी के कार्यालय में प्रार्थी से कार्यालय का अन्य काम भी लिया जाता था, पानी, बिजली एवं टेलीफोन के बिल जमा करने, बाजार से सामान खरीदने का काम भी लिया जाता था। विपक्षी आज भी अन्य श्रमिकों से यह कार्य करवा रहा है। विपक्षी ने श्रमिकों की वरिष्ठता सूची नहीं बनाई और मनमाने ढंग से प्रार्थी की सेवा समाप्त कर दी। अतः वाद स्वीकार कर प्रार्थी की सेवा समाप्ति को अवैध घोषित किया जावे, एवं सेवा में निरंतरता व समस्त परिलाभों सहित प्रार्थी को सेवा में बहाल किया जावे।

4. दिनांक 05.04.2006 को विपक्षीगण ने वादोत्तर प्रस्तुत करते हुये यह कहा है कि वाद के तथ्य गलत होने से अस्वीकार हैं। प्रार्थी को दिनांक 08.05.2001 से 07.07.2001 तक 60 दिन के लिये 60 रू. दैनिक मजदूरी पर रखा गया था। उक्त अवधि समाप्त होने पर प्रार्थी की सेवा स्वतः समाप्त हो गई। इसके बाद विपक्षीगण ने तदर्थ नियुक्तियों के कारण रिक्त हुये पद पर दिनांक 06.02.2002 से दिनांक 01.05.2002 तक 85 दिन की निश्चित अवधि के लिये प्रार्थी को नियुक्त किया। नियुक्ति पत्र में यह स्पष्ट लिखा गया है कि नियुक्ति अस्थाई आधार पर की जा रही है जो अवधि की समाप्ति या उसके पूर्व भी बिना कोई कारण बताये समाप्त की जा सकेगी। प्रार्थी ने एक कलेण्डर वर्ष में 240 दिन कार्य नहीं किया है और न ही दिनांक 08.05.2001 से दिनांक 22.05.2004 तक लगातार सेवा की। इसलिए प्रार्थी को नोटिस अथवा नोटिस वेतन एवं क्षतिपूर्ती देने का प्रश्न नहीं उठता। प्रार्थी से कार्यालय का कोई अन्य कार्य नहीं लिया गया। विपक्षी निगम को अधिनियम के प्रावधानों से मुक्त रखा गया है। विपक्षी का कोई कृत्य अधिनियम के प्रावधानों के विपरीत नहीं है। कर्मचारियों की वरिष्ठता सूची बनाने का कोई प्रश्न ही नहीं है। क्योकि प्रार्थी को निश्चित अवधि के लिए नियुक्त किया गया था। अतः वाद निरस्त किया जावे।

5. प्रार्थी ने अतिरिक्त कथन प्रस्तुत करते हुये वादोत्तर में किये गये विपक्षी के कथनों को गलत बताया और प्रार्थी का कार्य नियमित एवं स्थाई प्रकृति का कहते हुये वाद स्वीकार करने का निवेदन किया।

6. प्रार्थी ने अपने साक्ष्य में दिनांक 24.01.2013 एवं 03.02.2015 को मुख्य परीक्षा के शपथ पत्र प्रस्तुत किये तथा प्रलेखीय साक्ष्य में **प्रदर्श** W-1 से **प्रदर्श** W-7 तक प्रलेख प्रदर्शित किये।

7. विपक्षीगण ने अपने साक्ष्य में श्री अवनी कुमार जैन, मैनेजर को परीक्षित किया एवं प्रलेखीय साक्ष्य में **प्रदर्श** M-1 नियुक्ति आदेश प्रदर्शित किया।

8. दिनांक 02.04.2024 एवं 04.04.2024 को मैंने उभयपक्ष के तर्क इस विवाद में सुने। एवं उपलब्ध साक्ष्य एवं विधिक दृष्टांतो में प्रतिपादित विधि पर ध्यान पूर्वक विचार किया।

9. प्रार्थी की ओर से यह तर्क है कि प्रार्थी ने दिनांक 08.05.2001 से दिनांक 24.05.2004 तक विपक्षी के अधीन कार्य किया है। दिनांक 06.02.2002 से नियुक्त किये जाने का आदेश दिनांक 09.03.2002 को दिया गया, जिसे विपक्षीगण ने जानबूझ कर प्रस्तुत नहीं किया क्योकि **प्रदर्श** W-1 आदेश द्वारा प्रार्थी को चतुर्थ श्रेणी कर्मचारी के पद पर नियमित नियुक्ति दे दी गई थी। विपक्षीगण के अधीन इस अवधि में लगातार कार्य करने के प्रमाण स्वरूप प्रार्थी ने दिनांक 30.04.2004 को प्रस्तुत भुगतान प्रार्थना पत्र साक्ष्य में प्रस्तुत किये है। **प्रदर्श** W- 4, 5 एवं 6 के माध्यम से प्रार्थी को अप्रेल एवं मई, 2004 में भुगतान किया जाना प्रमाणित होता है। **प्रदर्श** W-7 डिस्पेच रजिस्टर से यह स्पष्ट है कि पॉलिसी धारको को जो चैक विपक्षी द्वारा भेजे जाते थे उनका इंद्राज प्रार्थी करता था। इस रजिस्टर पर विपक्षी के कर्मचारियों के हस्ताक्षर विद्यमान हैं। प्रार्थी ने उसके सेवा काल से संबंधित दस्तावेज विपक्षी से प्रस्तुत करवाने का निवेदन किया किंतु अधिकरण के आदेश के उपरांत भी विपक्षी ने वह दस्तावेज पेश नहीं किये। अतः विपक्षी के प्रति प्रतिकूल उपधारणा की जानी चाहिये। यदि वह प्रलेख विपक्षी प्रस्तुत करता तो प्रार्थी का आलोच्य अवधि में लगातार कार्य करना प्रमाणित हो जाता। विपक्षी के साक्षी अवनी कुमार जैन ने अपने प्रतिपरीक्षण में प्रार्थी द्वारा प्रलेखों की वास्तबिकता को दबे शब्दों में स्वीकार कर लिया है कि साक्षी ने तो **प्रदर्श** W-1 को नियुक्ति पत्र होना भी नहीं माना है जो उसके दुराग्रह का प्रमाण है। विपक्षी ने वांछित अभिलेख प्रस्तुत नहीं किया और प्रार्थी की साक्ष्य में प्रस्तुत प्रलेखों को फोटोप्रति होने के कारण अस्वीकार किया जो किसी प्रकार न्यायोचित नहीं है। अतः वाद स्वीकार कर वांछित अनुतोष दिया जावे। उन्होने अपने तर्को के समर्थन में निम्नाकिंत निर्णय पेश कियेः–

1. बैंक ऑफ बडौदा बनाम घैमर भाई हरजी भाई रेवारी 2005 LAB I.C. 2279 (सुप्रीम कोर्ट)।
2. डायरेक्टर फिशरीज टर्मीनल डिवीजन बनाम भीकू भाई मेघाजी भाई चावडा 2010 (1) LLN 48 (सुप्रीम कोर्ट)।
3. गौरी शंकर बनाम स्टेट ऑफ राजस्थान 2016 (1) SSC (L&S) 546,
4. रामप्रसाद माली बनाम रीजनल ऑफीसर ए.एस.आई. ऑफ इंडिया रणथंम्भौर दुर्ग सवाईमाधोपुर 2017 (2) WLC (राज.) (U.C.) 637
5. सवाई माधोपुर सेंट्रल कोऑपरेटिव बैंक बनाम अशोक कुमार शर्मा व अन्य 1998 WLC (राज.) (U.C.) 178
6. स्टेट बैंक ऑफ इंडिया बनाम पूजा व अन्य 2022 (173) FLR 209
7. चीफ सेक्रेटरी हरियाणा व अन्य बनाम चेतराम 2006 SCC (L&S) 574
8. एल.आई.सी. ऑफ इंडिया बनाम आर. सुरेश 2008 (118) FLR 1189 (सुप्रीम कोर्ट)
9. भाव नगर म्युनिसीपल कोर्प. बनाम जडेजा गोवूभा छानूभा व अन्य 2015 (144) FLR 177 (सुप्रीम कोर्ट)।

10. विपक्षी की ओर से प्रार्थी के तर्को का विरोध करते हुये यह कहा गया है कि केन्द्र सरकार द्वारा रेफरेन्स आदेश में स्पष्टरूप से विपक्षी के अधीन 240 दिन सेवा 12 माह में पूर्ण करने का तथ्य प्रमाणित करने का सिद्दीभार प्रार्थी पर ही आरोपित किया गया है। यह तथ्य प्रमाणित होने के उपरांत ही यह विवेचनीय होगा कि प्रार्थी की कथित सेवा समाप्ति दिनांक 24.05.2004 वैध एवं न्यायोचित है या नहीं। प्रार्थी अपने साक्ष्य से यह प्रमाणित नहीं कर सका है कि उसने दिनांक 08.05.2001 से 24.05.2004 तक लगातार विपक्षी के अधीन सेवा की है। प्रार्थी की नियुक्ति क्रमशः 60 दिन एवं 85 दिन के लिए निश्चित अवधि हेतु की गई है। इन अवधियों के समाप्त हो जाने पर प्रार्थी की सेवा स्वतः समाप्त हो गई। **प्रदर्श** M-1 नियुक्ति पत्र पर प्रार्थी ने स्वयं के हस्ताक्षर होना स्वीकार किया है। प्रार्थी ने प्रथम नियुक्ति पत्र की अवधि समाप्त होने और द्वितीय नियुक्ति पत्र के अन्तर्गत सेवा के प्रारम्भ होने के मध्य की अवधि में कार्य करने का कोई प्रमाण प्रस्तुत ही नहीं किया है। प्रार्थी को तो अपने शपथ पत्र दिनांक 30.01.2015 में क्या लिखा है इसकी जानकारी भी नहीं है। **प्रदर्श** W-1 नियुक्ति पत्र में वर्णित अवधि के बाद का कोई वेतन प्रार्थी ने प्राप्त नहीं होना स्वीकार किया है। इस प्रकार प्रार्थी को जब **प्रदर्श** W-1 नियुक्ति पत्र के वर्णित अवधि के पश्चात कोई वेतन ही नहीं दिया गया तो यह संभव ही नहीं है कि प्रार्थी दिनांक 01.05.2002 के उपरांत भी विपक्षी के अधीन कार्य बिना कोई परिश्रमिक/वेतन लिए करता। प्रार्थी पर आरोपित सिद्दीभार उसने उन्मोचित नहीं किया है। इसलिए विपक्षी द्वारा काल्पनिक प्रलेखों का प्रस्तुतीकरण न करने के आधार पर कोई प्रतिकूल उपधारणा नहीं की जा सकती है। अतः वाद निरस्त किया जावे। उन्होनें अपने तर्को के समर्थन में निम्नाकिंत निर्णय प्रस्तुत कियेः–

1. शंभू व अन्य बनाम मै. सुगन ड्राईक्लीनर्स 2017 (155) FLR 291 (दिल्ली)
2. मै. वैदर कन्ट्रौल बनाम स्टेट ऑफ वेस्ट बंगाल व अन्य 2022 (173) FLR 390 (कलकत्ता)

3. डायरेक्टर इंस्टीटूयट ऑफ मेनेजमेन्ट डवलेपमेन्ट, यू.पी. बनाम पुष्पा श्रीवास्तव 1993 I LLJ 190 (सुप्रीम कोर्ट)

4. द रेंज फोरेस्ट ऑफीसर बनाम एस.टी. हादीमनी 2002 (93) FLR 179 (सुप्रीम कोर्ट)

5. मोहम्मद अली बनाम स्टेट ऑफ हिमाचल प्रदेश व अन्य AIR 2018 (सुप्रीम कोर्ट) 2194

6. स्टेट ऑफ उत्तराखण्ड व अन्य बनाम श्रीमती सुरेशवती AIR 2021(सुप्रीम कोर्ट) 923

11. उभयपक्ष की साक्ष्य, तर्क एवं न्यायिक दृष्टांतो में प्रतिपादित विधि पर मनन के उपरांत इस विवाद में निम्नलिखित विचारणीय बिन्दु उत्पन्न हुये हैः—

12. **विचारणीय बिन्दु**:

1. क्या प्रार्थी दिनांक 08.05.2001 से 24.05.2004 तक लगातार विपक्षी के अधीन वाटरमेन के पद पर कार्यरत रहा एवं कथित सेवा समाप्ति तिथि के पूर्ववर्ती एक कलेण्डर वर्ष में प्रार्थी ने 240 दिन से अधिक कार्य किया?

.....प्रार्थी

2. क्या विपक्षी द्वारा अधिनियम की धारा 25 F के प्रावधानों के अनुरूप सेवा समाप्ति के पूर्व प्रार्थी को एक माह का नोटिस, नोटिस वेतन अथवा छटंनी प्रतिकर का भुगतान न किये जाने से प्रार्थी की सेवा समाप्ति "अवैध छंटनी" है?

.....प्रार्थी

3. क्या विपक्षी द्वारा श्रमिकों की वरिष्ठता सूची नहीं बनाई गयी तथा "बाद में आने वाला पहले जावे" सिद्वांत का पालन नहीं किया गया?

.....प्रार्थी

4. क्या विपक्षी निगम को औद्योगिक विवाद अधिनियम के प्रावधानों से मुक्त रखे जाने के कारण अधिनियम के प्रावधान विपक्षी पर लागू नहीं होते?

.....विपक्षी

5. अनुतोषः—

13. विचारणीय बिन्दुओं पर क्रमिक निर्णय निम्नानुसार पारित किया जा रहा है।

14. **विचारणीय बिन्दु सं.—1**

15. इस संदर्भ में यह तो विवदित नहीं है कि प्रार्थी की नियुक्ति दिनांक 08.05.2001 को वाटरमेन के पद पर विपक्षी के अधीन की गई थी, किंतु जहॉ प्रार्थी का यह कथन है कि उसने दिनांक 08.05.2001 से 24.05.2004 तक निरंतर कार्य किया, वही विपक्षी का यह विपरीत कथन है कि प्रार्थी को दिनांक 08.05.2001 से 07.07.2001 तक मात्र 60 दिन की निश्चित अवधि हेतु 60/—रू. प्रतिदिन मजदूरी पर पूर्णतः अस्थाई रूप से नियुक्ति दी गई थी। इस निश्चित अवधि के समापन पर प्रार्थी की सेवा स्वतः समाप्त हो गई। इसके बाद तदर्थ नियुक्तियों के कारण रिक्त हुये पद पर प्रार्थी को दिनांक 06.02.2002 से 01.05.2002 तक 85 दिन की निश्चित अवधि के लिये अस्थाई रूप से सेवा में पुनः नियुक्त किया गया। प्रार्थी की सेवा, इस अवधि के उपरांत पुनः समाप्त हो गई।

16. प्रार्थी रामस्वरूप ने अपने शपथ पत्र दिनांक 24.01.2013 पर की गई प्रतिपरीक्षा दिनांक 26.02.2013 में यह स्वीकार किया है कि **प्रदर्श** M-1 नियुक्ति पत्र दिनांक 08.05.2001 पर A से B उसके हस्ताक्षर है। इस नियुक्ति पत्र में प्रार्थी को दिनांक 08.05.2001 से 07.07.2001 तक 60/—रू. प्रतिदिन परिश्रमिक पर निश्चित अवधि हेतु नियुक्त किया जाना प्रामणित होता है। प्रार्थी कहता है कि उसे दुबारा एक नियुक्ति पत्र दिनांक 06.02.2002 से 01.05.2002 तक की अवधि के लिये दिया गया था किंतु प्रथम नियुक्ति के बाद उसे हटाया ही नहीं गया था। दूसरा नियुक्ति पत्र यद्यपि विपक्षी द्वारा प्रस्तुत नहीं किया गया है किंतु प्रार्थी ने इसे **प्रदर्श** W-1 के रूप में प्रदर्षित किया है। **प्रदर्श** W-1 नियुक्ति पत्र के अवलोकन से प्रार्थी की नियुक्ति चतुर्थ श्रेणी कर्मचारी के अस्थाई पद हेतु 2790/—रू. मूल वेतन व देय भत्तों पर दिनांक 06.02.2002 से 01.05.2002 तक 85 दिनों की निश्चित अवधि हेतु किया जाना प्रमाणित होता हैं। इस संबंध में यह उल्लेखनीय है कि यद्यपि प्रार्थी ने प्रथम एवं द्वितीय नियुक्ति के मध्य कार्यरत रहने एवं उक्त

अवधि का भुगतान प्राप्त करने का कथन साक्ष्य में किया है, किंतु इस मध्यवर्ती अवधि (08.07.2001 से 05.02.2002 तक) कार्य करने और भुगतान प्राप्त करने का कोई प्रमाण प्रस्तुत नहीं किया है। प्रार्थी यह स्वीकार करता है कि दिनांक 09.03.2002 की नियुक्ति के बाद उसे और कोई नियुक्ति पत्र नहीं दिया गया तथा इस नियुक्ति पत्र से संबंधित (**प्रदर्श** W-1) अवधि के बाद अर्थात दिनांक 01.05.2002 के पश्चात की अवधि का वेतन भी उसे नहीं दिया गया। यह महत्वपूर्ण है कि प्रार्थी ने अपने दावे के अभिकथन में इस तथ्य का उल्लेख नहीं किया है कि दिनांक 01.05.2002 से 24.05.2004 तक लगातार 2 वर्ष की अवधि में प्रार्थी द्वारा कार्य संपादित करने बाद भी इस अवधि का वेतन विपक्षी द्वारा प्रार्थी को नहीं दिया गया। प्रार्थी ने इस अवधि के बकाया वेतन की कोई मॉग भी वांछित अनुतोष के रूप में प्रस्तुत नहीं की। संभवतः प्रार्थी ने अपनी सेवा में निरंतरता दर्शाने के प्रयोजन से ही इस तथ्य का वर्णन अपने अभिवचनों में नहीं किया। जब साक्ष्य और अभिवचनों के मध्य सारवान अंतर या विरोधाभास उत्पन्न हो तो साक्ष्य संदिग्ध हो जाती है। अभिवचन के अभाव में साक्ष्य स्वतः आधार–विहीन एवं अग्राह्य हो जाती है।

17. प्रार्थी ने दिनांक 05.05.2010 को एक प्रार्थना पत्र प्रस्तुत कर दिनांक 08.05.2001 से 24.05.2004 तक प्रार्थी को किये गये भुगतान के वाउचर्स, कैशबुक एवं उपस्थिति दस्तावेज आदि विपक्षी से प्रस्तुत करवाने का निवेदन किया है, जबकि प्रार्थी अपने प्रतिपरीक्षण के दौरान स्वयं स्वीकार कर चुका है कि दिनांक 01.05.2002 के बाद उसे कोई वेतन भुगतान नहीं किया गया। भुगतान न किये जाने की स्थिति में किसी वाउचर का अस्तित्व में होना तथा कैशबुक में भुगतान की प्रविष्टी होना संभव ही नहीं है।

18. प्रार्थी ने **प्रदर्श** W-2 एवं **प्रदर्श** W-2 प्रार्थना पत्रों की फोटो प्रति साक्ष्य में प्रदर्शित की है। **प्रदर्श** W-2 दिनांकित 30.04.2004 में मार्च व अप्रेल माह में किये गये कार्य के भुगतान हेतु तथा अदिनांकित प्रार्थना पत्र **प्रदर्श** W-3 में मई माह के कार्य के भुगतान की मॉग की गई है। इस प्रकार इन प्रार्थना पत्रों के माध्यम से किस वर्ष के मार्च, अप्रेल व मई महीनों के भुगतान की मॉग की गई, ज्ञात नहीं होता है। प्रार्थी ने अपने शपथ पत्र दिनांक 30.01.2015 के पैरा 3 में **प्रदर्श** W-2 व **प्रदर्श** W-3 को, माह मार्च, अप्रेल व मई, 2014 के वेतन भुगतान हेतु प्रस्तुत करना कहा है। जबकि वर्ष 2014 के इन महीनों के भुगतान की कोई सुसंगता इस विवाद में है ही नहीं। इस शपथ पत्र के संबंध में प्रार्थी की यह स्वीकारोक्ति भी है कि शपथ पत्र में क्या लिखा है उसे इसकी जानकारी नहीं है। श्री ऋषभ जैन साहब ने यह शपथ पत्र तैयार करवाया है। वह शपथ पत्र लेकर कमिश्नर के पास नहीं गया। शपथ पत्र से संबधित मूल अभिलेख भी उसने नहीं देखा। इस स्थिति में **प्रदर्श** W-2 व **प्रदर्श** W-3 प्रार्थना पत्रों पर A.O. श्री कजोडमल बैरवा के A से B तक हस्ताक्षर होना भी अविश्वसनीय लगता है क्योकि प्रार्थी ने इनके मूल प्रलेखों को नहीं देखा। जहा तक **प्रदर्श** W-4, 5 व **प्रदर्श** W-6 वाउचर्स का प्रश्न है, प्रथम तो इन वाउचर्स की प्रतियो की मूल वाउचर्स की प्रतियों को साक्षी ने देखा ही नहीं इसलिए इन वाउचर्स की फोटोप्रति मूल को देखे बिना कैसे करवायी गई अथवा प्राप्त की गई यह तथ्य स्पष्टीकृत नहीं है। इसके अतिरिक्त **प्रदर्श** W-4 के माध्यम से 565/–रू., **प्रदर्श** W-5 के माध्यम से 183/–रू. और **प्रदर्श** W-6 के माध्यम से 1398/–रू. भुगतान किया जाना दर्शाया गया है। जो कि विविध व्ययं और टेलीफोन चार्जेज के रूप में इम्प्रेस्ट से भुगतान किया गया है, जो किसी प्रकार प्रार्थी का वेतन या परिश्रमिक नहीं माने जा सकते। प्रार्थी ने अपने साक्ष्य में इन प्रलेखों पर भी श्री कजोडमल बैरवा के हस्ताक्षर होना तो कहा है, किंतु स्वयं के हस्ताक्षर होना नहीं कहा।

19. **प्रदर्श** W-7 डिस्पेच रजिस्टर की फोटोप्रति होना कहा गया है जिसका मूल रजिस्टर प्रार्थी ने स्वयं नहीं देखा। इसलिए इन रजिस्टर के पृष्ठों पर विपक्षी के कर्मचारीगण श्री आर. सी. बैरवा तथा श्री आर. सी. शर्मा के हस्ताक्षर विद्यमान होना भी विश्वसनीय नहीं लगता।

20. इसके विपरीत विपक्षी ने अधिकरण के आदेश दिनांक 14.10.2010 के अनुपालन में दिनांक 06.04.2011 को यद्यपि प्रलेख प्रस्तुत नहीं किये किंतु दिनेष चन्द्र जैन, प्रबंधक (कार्मिक) का शपथ पत्र प्रस्तुत करते हुये अधिकरण को सूचित किया है कि दिनांक 01.05.2002 के बाद प्रार्थी के संबंध में कोई अभिलेख होने का प्रश्न ही नहीं होता– प्रार्थी के संबंध में भुगतान से सबंधित कोई वाउचर नहीं है क्योकि वह दिनांक 01.05.2002 के बाद नियोजित नहीं था, उससे कोई कार्य नहीं लिया गया और न ही भुगतान किया गया। विपक्षी के प्रबंधक के इस सशपथ कथन को प्रार्थी स्वयं के कथन से पुष्टि मिली है क्योकि उसने दिनांक 01.05.2002 के बाद की अवधि के वेतन का भुगतान विपक्षी द्वारा न किये जाने का कथन मात्र साक्ष्य में किया है।

21. विपक्षी साक्षी अवनी कुमार जैन ने अपने कथन में तथ्यों को पुनरावृत्त करते हुये यह कहा है कि दिनांक 24.05.2004 के पूर्व के किसी वर्ष में प्रार्थी द्वारा 240 दिन कार्य करने का प्रश्न ही नही उठता। प्रतिपरीक्षा में **प्रदर्श** W-2 से **प्रदर्श** W-7 तक के प्रलेखों, जो कि फोटोप्रतियो के रूप में है, के संबंध में साक्षी का कथन है कि **प्रदर्श** W-2 व **प्रदर्श** W-

3 की मूल प्रति उनके अभिलेख में नहीं है। मूल अभिलेख देखे बिना साक्षी ने इन अभिलेखों पर विपक्षीगण के कर्मचारियों के हस्ताक्षर होने के तथ्य को पुष्ट करने में असमर्थता व्यक्त की है। अवनी कुमार जैन ने यह भी कहा है कि दैनिक **प्रदर्श** W-2 वेतन भोगी या किसी भी कर्मचारी को नियुक्ति पत्र दिया जाता है और कार्य अवधि का उल्लेख भी किया जाता है। उससे संबंधित वेतन भुगतान तथा उपस्थिति का अभिलेख कार्यालय में रहता है, श्रमिक को नहीं दिया जाता है।

22. प्रार्थी ने माननीय उच्चतम न्यायालय के निर्णय बैंक ऑफ बडौदा बनाम घैमर भाई हरजी भाई रेवारी तथा डायरेक्टर फिशरीज टर्मीनल डिवीजन बनाम भीकू भाई मेघाजी भाई चावडा में प्रतिपादित विधि का अवलम्ब लिया है। इन निर्णयों में माननीय उच्चतम न्यायालय ने प्रार्थी द्वारा प्रस्तुत वाउचर्स जिनके माध्यम से उसे मजदूरी का भुगतान किया गया, वाउचर्स की राशि बैंक के खाते में नामे दर्शायी गयी तथा बैंक द्वारा इस साक्ष्य को खण्डित नहीं किया गया गया और किसी भी साक्षी को भी परीक्षित भी नहीं किया गया, तो यह माना गया कि प्रार्थी कर्मकार ने 240 दिन लगातार कार्य किया। जब प्रार्थी कर्मकार स्वयं को साक्षी के रूप में प्रस्तुत कर दे और कहे कि उसने 240 दिन की सेवा विपक्षी के अधीन की है तो इसके पश्चात अन्यथा प्रमाणित करने का भार नियोजक पर है। मैंनें इन निर्णयों के साथ विपक्षी द्वारा प्रस्तुत माननीय उच्चतम न्यायालय के निर्णय द रेंज फोरेस्ट ऑफीसर बनाम एस.टी. हादीमनी में प्रतिपादित अधिमत पर भी विचार किया। यह निर्णय दिनांक 15.02.2002 को पारित किया गया जिसमें यह प्रतिपादित किया गया है कि कर्मकार द्वारा 240 दिन तक लगातार कार्य करने का तथ्य प्रमाणित करने का सिद्वीभार नियोजक/प्रबंधक पर नहीं है वरन कर्मकार को अपने साक्ष्य से यह प्रमाणित करना होगा कि उसने एक वर्ष में 240 दिन तक कार्य किया है। इस संबंध में मात्र शपथ पत्र प्रस्तुत करना पर्याप्त नहीं है। प्रार्थी द्वारा प्रस्तुत ये निर्णय, विपक्षी द्वारा अवलंबित निर्णय द रेंज फोरेस्ट ऑफीसर बनाम एस.टी. हादीमनी में पारित किये निर्णय के पश्चातवर्ती हैं तथा पूर्ववर्ती निर्णय में प्रतिपादित विधि को इन पश्चातवर्ती–निर्णयों में अधिरोपित या निष्प्रभावी नहीं माना गया है। इस स्थिति में मै पूर्ववर्ती निर्णय में पारित विधि को ही मार्गदर्शक मानते हुये ग्रहण करना उचित समझता हूँ।

23. प्रार्थी ने ऐसे दस्तावेज विपक्षी से प्रस्तुत करवाने चाहे है जिनका अस्तित्व में न होना उसे स्वयं ज्ञात था। इसलिये विपक्षी के विरूद्व दस्तावेज प्रस्तुत न करने के आधार पर कोई प्रतिकूल उपधारण किया जाना न्यायोचित नहीं है। डायरेक्टर फिशरीज टर्मीनल डिवीजन बनाम भीकू भाई मेघाजी भाई चावडा में माननीय सर्वोच्च न्यायालय ने भी यह कहा है कि प्रतिकूल उपधारण किया जाना प्रत्येक मामलें के तथ्यों पर निर्भर होगा अर्थात इस निर्णय में पारित विधि सामान्य रूप से आच्छादित होने वाली विधि नहीं है।

24. इस तथ्यात्मक विवेचन के उपरांत प्रार्थी की और से अवलंबित निर्णय गौरी शंकर बनाम स्टेट ऑफ राजस्थान, चीफ सेक्रेटरी हरियाणा व अन्य बनाम चेतराम में माननीय उच्चतम न्यायालय द्वारा प्रतिपादित विधि इस विवाद के तथ्यों से सुभिन्न तथ्यों पर आधारित होने के कारण प्रार्थी के पक्ष में सहायक नहीं है। माननीय राजस्थान उच्च न्यायालय द्वारा पारित निर्णय रामप्रसाद माली बनाम रीजनल ऑफीसर ए.एस.आई. ऑफ इंडिया रणथंम्भौर दुर्ग सवाईमाधोपुर, स्टेट बैंक ऑफ इंडिया बनाम पूजा व अन्य एवं सवाई माधोपुर सेण्ट्रल कोऑपरेटिव बैंक बनाम अशोक कुमार शर्मा व अन्य में प्रतिपादित विधि भी इस विवाद में विद्यमान तथ्यों से सुभिन्न तथ्यों पर आधारित होने के कारण प्रार्थी के पक्ष को पुष्ट नहीं करती है।

25. विपक्षी द्वारा इस संबंध में निर्णय शंभू व अन्य बनाम मै. सुगन ड्राईक्लीनर्स में माननीय दिल्ली उच्च न्यायालय द्वारा, मै. वैदर कन्ट्रौल बनाम स्टेट ऑफ वेस्ट बंगाल व अन्य में माननीय कलकत्ता उच्च न्यायालय द्वारा तथा माननीय उच्चतम न्यायालय द्वारा डायरेक्टर इंस्टीटूयट ऑफ मेनेजमेन्ट डवलेपमेन्ट, यू.पी. बनाम पुष्पा श्रीवास्तव, मोहम्मद अली बनाम स्टेट ऑफ हिमाचल प्रदेश व अन्य तथा स्टेट ऑफ उत्तराखण्ड व अन्य बनाम श्रीमती सुरेशवती में पारित अधिमत का उल्लेख किया है। इन निर्णयों में यह विधि प्रतिपादित की गई है कि कर्मकार व नियोजक के संबंध को प्रमाणित करने तथा सेवा समाप्ति के तुरंत पूर्ववर्ती एक कलेण्डर वर्ष में 240 दिन कार्य करने का तथ्य प्रमाणित करने का सिद्वीभार स्वयं कर्मकार पर ही है। संबिदा पर एक निश्चित अवधि के लिये की गई नियुक्ति उस अवधि के पूर्ण होने पर स्वतः समाप्त हो जाती है।

26. इस तथ्यात्मक और विधिक विवेचन के उपरांत यह निष्कर्षित है कि प्रार्थी को विपक्षी द्वारा दिनांक 08.05.2001 से 07.07.2001 तक 60 दिन की निश्चित अवधि हेतु तथा उसके बाद दिनांक 06.02.2002 से 01.05.2002 तक 85 दिन की निश्चित अवधि के लिये नियुक्त किया गया। इन निश्चित अवधि के समापन के कारण प्रार्थी की सेवा दिनांक 01.05.2002 को स्वतः समाप्त हो गई। दिनांक 01.05.2002 के उपरांत तथा प्रथम व द्वितीय नियुक्ति के बीच की अवधि में विपक्षी के अधीन नियोजित रहने का तथ्य प्रार्थी को ही प्रमाणित करना था जो वह प्रमाणित नही कर सका है। दिनांक 01.05.2002 के उपरांत 24.05.2004 तक की अवधि में प्रार्थी ने कोई वेतन/परिश्रमिक का भुगतान भी विपक्षी

से प्राप्त न होना भी, स्वीकार किया है। इसलिए सेवा समाप्ति के तुरंत पूर्ववर्ती एक कलेण्उर वर्ष में 240 दिन से अधिक कार्य करने का तथ्य प्रार्थी अपने साक्ष्य से प्रमाणित नहीं कर सका है। अतः यह बिन्दु प्रार्थी के विरूद्व निर्णीत किया जाता है।

27. **विचारणीय बिन्दु सं.–2**

28. इस संबंध में विपक्षी द्वारा प्रस्तुत निर्णय मोहम्मद अली बनाम स्टेट ऑफ हिमाचल प्रदेश व अन्य में माननीय उच्चतम न्यायालय ने यह मार्गदर्शन दिया है कि कर्मचारी द्वारा, सेवा समाप्ति तिथि के तुरंत पूर्ववर्ती एक कलेण्डर वर्ष में 240 दिन कार्य करना प्रमाणित करना आवश्यक है यदि यह सिद्व न हो तो कर्मकार को अधिनियम की धारा 25 F के प्रावधानों का संरक्षण नहीं दिया जा सकता। इस विधि के प्रकाश में यह स्पष्ट है कि चूकिं प्रार्थी विपक्षी के अधीन सेवा समाप्ति के पूर्ववर्ती एक कलेण्डर वर्ष में 240 दिन लगातार कार्य करने का तथ्य प्रमाणित नहीं कर सका है इसलिए अधिनियम की धारा 25 F के प्रावधानों का संरक्षण प्रार्थी प्राप्त करने का अधिकारी नहीं है। विपक्षी से यह विधिक अपेक्षा नहीं की जा सकती कि वह प्रार्थी को एक निश्चित अवधि के लिए नियोजित करने तथा उक्त अवधि समापन के उपरांत स्वतः सेवा समाप्ति को अधिनियम की धारा 2 (OO) के अन्तर्गत छंटनी मानते हुये प्रार्थी को नोटिस अथवा नोटिस वेतन एवं छंटनी प्रतिकर का भुगतान करें। अतः यह बिन्दु प्रार्थी के विरूद्व निर्णीत किया जाता है।

29. **विचारणीय बिन्दु सं.–3**

30. प्रार्थी ने अपने कथन में यह स्पष्ट कहा है कि उसे सेवामुक्त किये जाने के पूर्व उसकी श्रेणी के श्रमिकों की कोई वरिष्ठता सूची जारी नहीं की गई। सेवामुक्ति के बाद उसकी श्रेणी के नये श्रमिकों की भर्ती की गई। प्रतिपरीक्षा में वह कहता है कि उसे हटाने के बाद जिन श्रमिकों को लिया उनके नाम मालूम नहीं है। यहा यह उल्लेख करना आवश्यक है कि **प्रदर्श** W-1 नियुक्ति पत्र जो कि दिनांक 06.02.2002 से 01.05.2002 तक 85 दिन की निश्चित अवधि हेतु था, प्रार्थी की सेवा अवधि समाप्त होने पर प्रार्थी की सेवा तत्समय समाप्त हो गई। इस स्थिति में विपक्षी से वरिष्ठता सूची का संधारण करने की अपेक्षा उत्पन्न ही नहीं होती है क्योंकि विपक्षी ने प्रार्थी की सेवा का समापन नहीं किया वरन सेवा स्वतः समाप्त हुई। अतः यह बिन्दु प्रार्थी के विरूद्व निर्णीत किया जाता है।

31. **विचारणीय बिन्दु सं.–4**

32. इस बिन्दु के संदर्भ में प्रार्थी की ओर से माननीय उच्चतम न्यायालय का निर्णय एल.आई.सी. ऑफ इंडिया बनाम आर. सुरेश प्रस्तुत किया गया है। माननीय उच्चतम न्यायालय ने इस निर्णय में यह मार्गदर्शित किया है कि संबिधान के अनुच्छेद 12 के अन्तर्गत जीवन बीमा निगम एक "राज्य" है। एक विकास अधिकारी को कर्मकार माना गया है। ऐसे कर्मकार को सेवा समाप्ति के विरूद्व सामान्य विधि के साथ साथ श्रम न्यायालय के समक्ष भी उपचार प्राप्त करने का विकल्प उपलब्ध है। इस प्रकार श्रम न्यायालय क्षेत्राधिकार विहीन नहीं है। इस अधिमत के प्रकाश में विपक्षी द्वारा किया गया आक्षेप स्वीकार्य नहीं है और यह प्रमाणित होता है कि विपक्षी निगम औद्योगिक विवाद अधिनियम के प्रावधानों से शासित है, और इस अधिनियम के प्रावधान विपक्षी पर भी लागू होते हैं। अतः यह बिन्दु विपक्षी के विरूद्व निर्णीत किया जाता है।

33. **अनुतोष–**

34. चूकिं प्रार्थी विपक्षी के अधीन दिनांक 01.05.2002 के उपरांत सेवारत रहना तथा सेवा समाप्ति के पूर्ववर्ती एक कलेण्डर वर्ष में 240 दिन से अधिक कार्य करना प्रमाणित नहीं कर पाया है, एवं प्रार्थी की सेवा समाप्ति अधिनियम की धारा 2 (OO) के अन्तर्गत "छंटनी" होना भी प्रमाणित नहीं हुई है इसलिए प्रार्थी विपक्षी के विरूद्व अधिनियम की धारा 25 F के प्रावधानों का संरक्षण पाने का अधिकारी नहीं है।

35. श्रम मंत्रालय भारत सरकार द्वारा संदर्भित विवाद को इसी प्रकार न्याय निर्णीत किया जाता है।

36. अधिनिर्णय की प्रतिलिपि समुचित सरकार को अधिनियम की धारा 17 (1) के अंतर्गत प्रकाशनार्थ प्रेषित की जावें।

राधा मोहन चतुर्वेदी, पीठासीन अधिकारी

नई दिल्ली, 1 जुलाई, 2024

का.आ. 1334.—औद्योगिक विवाद अधिनियम (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार **एलआईसी हाउसिंग फाइनेंस लिमिटेड** के प्रबंधतंत्र के संबद्ध नियोजकों और **श्री पवन कुमार शर्मा** के बीच अनुबंध में

निर्दिष्ट **केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जयपुर, पंचाट (रिफरेन्स न.-12/2010)** को जैसा कि अनुलग्नक में दिखाया गया है, प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 01.07.2024 को प्राप्त हुआ था।

[सं. एल-17012/5/2010-आईआर(एम)]

दिलीप कुमार, अवर सचिव

New Delhi, the 1st July, 2024

S.O. 1334.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award **(Reference No. 12/2010)** of the **Central Government Industrial Tribunal cum Labour Court, Jaipur** as shown in the Annexure, in the Industrial dispute between the employers in relation to **LIC Housing Finance Limited** and **Shri Pawan Kumar Sharma** which was received along with soft copy of the award by the Central Government on 01.07.2024.

[No L-17012/5/2010-IR(M)]

DILIP KUMAR, Under Secy.

अनुलग्नक

केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जयपुर

पीठासीन अधिकारी

राधा मोहन चतुर्वेदी

सी.जी.आई.टो. प्रकरण सं.– 12/2010

Reference No. L-17012/5/2010-IR (M) **Dated: 08.07.2010**

श्री पवन कुमार शर्मा पुत्र श्री श्रवण कुमार शर्मा, निवासी– संजय कॉलोनी, शान्ति पथ, आर. पी. ए. रोड, जयपुर (राज.)।

.....प्रार्थी

बनाम

3. ऐरिया मेनेजर, एल.आई.सी. हाउसिंग फाईनेन्स लि., उपासना टॉवर, सुभाष मार्ग, सी–स्कीम, जयपुर, राज.।
4. चीफ एग्जीक्यूटिव, एल.आई.सी. हाउसिंग फाईनेन्स लि., लाईफ बिल्डिग द्वितीय तल, 45/47 वीर नरीमन रोड, मुम्बई।

.....अप्रार्थीगण/विपक्षी

उपस्थितः–

: श्री बी. एम. बागड़ा, अभिभाषक – प्रार्थी।

: श्री जे. के. अग्रवाल, अभिभाषक –विपक्षीगण।

: अधिनिर्णय :

दिनांक :21.05.2024

1. श्रम मंत्रालय भारत सरकार नई दिल्ली द्वारा दिनांक 08.07.2010 को औद्योगिक विवाद अधिनियम 1947 (जिसे आगे मात्र अधिनियम कहा जावेगा) की धारा 10 (1) (डी) व 2। के अन्तर्गत प्रदत्त शक्तियो के अनुसरण में निम्नांकित औद्योगिक विवाद न्यायनिर्णयन हेतु इस अधिकरण को संदर्भित किया गया :–

> ***"Whether the action of the management of LIC Housing Finance Ltd. Jaipur in terminating the services of workman Shri Pawan Kumar Sharma w.e.f. 01.12.1998 is legal and justified? To what relief the workman is entitled?"***

2. दिनांक 19.08.2010 को प्रार्थी की ओर से दावे का अभिकथन प्रस्तुत किया जिसके संक्षिप्त अभिवचन इस प्रकार हैः–

3. प्रार्थी को विपक्षी के ऑचलिंक कार्यालय जयपुर में दिनांक 01.12.1991 से दैनिक वेतन पर काम करने के लिये रखा गया। प्रार्थी ने दिनांक 30.11.1998 तक निरंतर कार्य किया और प्रत्येक वर्ष में 240 दिन से अधिक कार्य किया। दिनांक 01.12.1998 से बिना कोई कारण बताये प्रार्थी को काम पर न लेते हुये सेवा से पृथक कर दिया। प्रार्थी ने माननीय उच्च न्यायालय के समक्ष एक रिट याचिका पेष की जो दिनांक 17.10.2006 को पोषणीय न मानते हुये निरस्त कर दी गई। तदुपरांत दिनांक 13.07.2009 को प्रार्थी ने समझौता अधिकारी के समक्ष प्रार्थना पत्र प्रस्तुत किया किंतु समझौता संभव न होने पर दिनांक 13.01.2010 को विफलता प्रतिवेदन प्रस्तुत किया गया। दिनांक 01.12.1998 को की गई प्रार्थी की सेवा समाप्ति अवैध है और अनुचित श्रमाभ्यास है। प्रार्थी को एक माह का नोटिस या नोटिस वेतन नहीं दिया गया। विपक्षी ने कोई वरिष्ठता सूची तैयार नहीं की और प्रार्थी से कनिष्ठ श्रमिकों को काम पर बनाये रखा गया। विपक्षी ने अधिनियम की धारा 25 F, G, व H के प्रावधानों का अनुपालन नहीं किया। अतः दिनांक 01.12.1998 को किया गया प्रार्थी का सेवापृथककरण अवैध घोषित करते हुये सेवा में निरंतरता व विगत वेतन परिलाभों सहित प्रार्थी को सेवा में पुर्नस्थापित किया जावे।

4. दिनांक 14.10.2010 को विपक्षी की ओर से वादोत्तर प्रस्तुत करते हुये यह कहा गया है कि प्रार्थी ने मिथ्या तथ्यों का निरूपण करते हुये अधिकरण से तथ्यों को छुपाया है और अनुतोष लेने का प्रयास किया है। प्रार्थी वर्ष 1995 से ही जीवन बीमा निगम की शाखा सं. 325 में नियुक्त एवं कार्यरत व्यक्ति है। प्रार्थी प्रतिमाह अच्छी आय कमाता है जिसमें से आयकर की कटौती होती है। दिनांक 28.01.1995 के बाद से अप्रार्थी के अधीन प्रार्थी की नियुक्ति हो ही नहीं सकती क्योकि एक व्यक्ति दो संस्थानों में कार्य नहीं कर सकता। सेवा समाप्ति की कथित तिथि के पिछले 12 महीनों में प्रार्थी की उपस्थिति विपक्षी के अधीन नहीं हो सकती। वर्ष 1992, 1993 में आकस्मिक श्रमिक के रूप में प्रार्थी ने कार्य उपलब्ध होने पर कुछ कार्य किया होगा जिसके बाद विपक्षी से उसका कोई संबंध नहीं है। यह विवाद प्रार्थी ने अत्यधिक विलम्ब से प्रस्तुत किया है। माननीय उच्च न्यायालय के समक्ष रिट याचिका भी विलम्ब से प्रस्तुत की गई, जबकि वह पोषणीय नहीं थी। प्रार्थी ने किसी वर्ष में 240 दिन कार्य नहीं किया। जीवन बीमा निगम को अधिनियम के प्रावधानों से मुक्त रखा गया है। प्रार्थी एवं विपक्षी के मध्य श्रमिक एवं नियोक्ता का संबंध नहीं रहा है। अतः वाद निरस्त किया जावे।

5. प्रार्थी ने अपने साक्ष्य में स्वयं प्रार्थी पवन कुमार शर्मा को परीक्षित किया तथा प्रलेखीय साक्ष्य में **प्रदर्श** W-1 से **प्रदर्श** W-172 तक प्रलेख प्रदर्षित किये जिन्हें त्रुटिवश W-203 तक लिखा गया है।

6. विपक्षी ने अपने साक्ष्य में श्री कैलाश चन्द्र रैगर, सीनियर ऐसोसिएट को परीक्षित किया और साक्ष्य में **प्रदर्श** M-1 प्रलेख प्रदर्षित किया।

7. दिनांक 25.04.2024 को मैंने उभयपक्ष के अभिभाषकगण के मौखिक तर्क सुने और उपलब्ध साक्ष्य एवं पक्षकारों द्वारा प्रस्तुत न्यायिक दृष्टांतों में प्रतिपादित विधि पर विचार किया।

8. प्रार्थी के विद्वान अभिभाषक का यह तर्क है कि प्रार्थी ने दिनांक 01.12.1998 को उसे सेवा से पृथक करने के विरूद्व माननीय उच्च न्यायालय के समक्ष रिट याचिका प्रस्तुत की थी किंतु माननीय उच्च न्यायालय द्वारा रिट याचिका इस आधार पर स्वीकार नहीं की गई कि प्रार्थी के पास औद्योगिक अधिकरण/न्यायालय के समक्ष अनुतोष प्राप्त करने का विकल्प उपलब्ध था। प्रार्थी अधिक पढ़ा लिखा नहीं है इसलिए याचिका एवं विवाद प्रस्तुत करने में कुछ वर्ष का विलम्ब हो गया। विपक्षी के अधीन कार्यरत रहने के संबंध में **प्रदर्श** W-2 से **प्रदर्श** W-13 तक के प्रलेख प्रार्थी ने प्रस्तुत किये जो विपक्षी के प्रबंधकों द्वारा विभिन्न तिथियों पर जारी किये गये है। यदि प्रार्थी विपक्षी का कर्मचारी नहीं होता तो उसके संबंध में समय समय पर यह पत्र नहीं लिखे जाते। प्रार्थी ने विपक्षी से उसे भुगतान किये गये वेतन/परिश्रमिक के प्रमाण स्वरूप वाउचर्स प्रस्तुत करवाने का निवेदन किया था लेकिन विपक्षी ने वे वाउचर्स प्रस्तुत नहीं किये। प्रार्थी ने इन वाउचर्स की फोटोप्रतियॉ जो उसके पास उपलब्ध थी उन्हें साक्ष्य में प्रस्तुत किया है। जिससे यह प्रमाणित होता है कि प्रार्थी विपक्षी के अधीन नवम्बर, 1998 तक कार्यरत रहा और भुगतान प्राप्त किया। विपक्षी ने प्रार्थी के साक्ष्य का कोई प्रभावी खण्डन नहीं किया और एक कनिष्ठ कर्मचारी को साक्ष्य में परीक्षित किया है जो कि तथ्यों से पूर्णतय अवगत ही नहीं था। इसलिए प्रार्थी की साक्ष्य को स्वीकार करते हुये वाद स्वीकार किया जावे। उन्होनें अपने तर्क के समर्थन में निम्नाकिंत न्यायिक दृष्टांत प्रस्तुत कियेः—

   1. पंजाब एण्ड सिंध बैंक बनाम जज सी.जी.आई.टी. कम लेबर कोर्ट जयपुर 2023 (6) WLC 471 (राजस्थान)।
   2. तमिलनाडु टर्मिनेटिड फुलटाईम टेम्परैरी एल.आई.सी. एम्पलाइज ऐसोसिऐशन बनाम एल.आई.सी ऑफ इंडिया सिविल अपील नं. 6950/2009 (सुप्रीम कोर्ट) निर्णय तिथि 18.03.2015

9. विपक्षी के विद्वान अभिभाषक ने सर्वप्रथम यह आक्षेप किया है कि वर्ष 1998 में सेवा पृथककरण के उपरांत प्रार्थी ने 8 वर्ष तक उच्च न्यायालय में रिट याचिका प्रस्तुत नहीं की। वर्ष 2006 में रिट याचिका निरस्त होने पर भी 3 वर्ष समझौता अधिकारी के समक्ष प्रार्थना पत्र देने में व्यतीत कर दिये। यह विलम्ब असाधारण है इसलिए वाद को निरस्त कर दिया जाना चाहिये। उनका आगामी तर्क यह भी है कि विपक्षी के अधीन सेवा समाप्ति तिथि के तुरंत पूर्ववर्ती एक कलेण्डर वर्ष की अवधि में 240 दिन से अधिक कार्य करने का तथ्य प्रार्थी को प्रमाणित करना है और वही तथ्य अधिकरण के समक्ष सुसंगत है। इसलिए वर्ष 1992, 1993 से 1995 तक की अवधि में कार्य करने का तथ्य सुसंगत नहीं है। और **प्रदर्श** W-2 से **प्रदर्श** W-13 तक प्रलेखों के आधार पर प्रार्थी 240 दिन लगातार कार्य करने का तथ्य प्रमाणित नहीं कर सका है। प्रार्थी ने प्रारम्भ से अन्त तक महत्वपूर्ण तथ्यों को या तो छुपाया है अथवा उनका मिथ्या वर्णन किया है। प्रार्थी यह स्वीकार करता है कि वर्ष 1995 से वह एल. आई. सी. ऐजेन्ट का कार्य जो कि पूर्ण कालिक है, कर रहा है। और उसे यह भी जानकारी थी कि एल. आई. सी. में ऐजेन्ट बनने के लिए अभ्यर्थी को कही अन्यंत्र सेवारत नहीं होना चाहिये। प्रार्थी एक ही अवधि में दो जगह सेवारत नहीं हो सकता। विपक्षी के वादोत्तर में किये गये इन कथनों का खण्डन करते हुये प्रार्थी ने कोई अतिरिक्त कथन भी प्रस्तुत नहीं किये हैं, वरन् प्रतिपरीक्षा में इस तथ्य को स्वीकार किया है। इन परिस्थितियों में प्रार्थी की ओर से प्रस्तुत **प्रदर्श** W-14 से **प्रदर्श** W-203 तक वाउचर्स प्रार्थी के पक्ष में कोई तथ्य प्रमाणित नहीं करते और विपक्षी के विरूद्व कोई प्रतिकूल उपधारण करने का आधार भी प्रदान नहीं करते। उन्होनें अपने तर्क के समर्थन में निम्नाकिंत न्यायिक दृष्टांत प्रस्तुत कियेः—

1. इंडियन बैंक ऐसोसिऐशन बनाम वर्कमेन ऑफ सिड़ीकेट बैंक व अन्य 2001 I LLJ 1045 (सुप्रीम कोर्ट)
2. असिस्टेंट एग्जीक्यूटिव इंजीनियर बनाम श्री शिवालिंगा 2002 (92) FLR 601 (सुप्रीम कोर्ट)
3. रेंज फोरेस्ट ऑफीसर बनाम एस. टी. हादीमनी 2002 (93) FLR 179 (सुप्रीम कोर्ट)
4. मोहम्मद अली बनाम स्टेट ऑफ हिमाचल प्रदेश व अन्य AIR 2018 (सुप्रीम कोर्ट) 2194
5. स्टेट ऑफ उत्तराखण्ड व अन्य बनाम श्रीमती सुरेशवती AIR 2021 (सुप्रीम कोर्ट) 923
6. आम जनता बनाम स्टेट ऑफ राजस्थान AIR 2021 (राज.) 106

10. उभयपक्षों के तर्को एवं साक्ष्य पर मनन के उपरांत इस विवाद में निम्नाकिंत विचारणीय बिन्दु उत्पन्न हुये हैंः—

11. **विचारणीय बिन्दुः—**

1. क्या प्रार्थी ने उसकी सेवा समाप्ति तिथि के तुरंत पूर्ववर्ती एक कलेण्डर वर्ष में 240 दिन से अधिक विपक्षी के अधीन कार्य किया?

.....प्रार्थी

2. क्या प्रार्थी को सेवा समाप्ति के पूर्व अधिनियम की धारा 25 के अन्तर्गत एक माह का नोटिस अथवा नोटिस वेतन तथा छंटनी प्रतिकर का भुगतान विपक्षी द्वारा न किये जाने से सेवा समाप्ति अवैध है?

.....प्रार्थी

3. क्या प्रार्थी की सेवा समाप्ति के पूर्व विपक्षी द्वारा श्रमिकों की वरिष्ठता सूची नहीं बनाई गई तथा प्रार्थी से कनिष्ठतर श्रमिकों को नियोजन में बनाये रखा गया?

.....प्रार्थी

4. क्या प्रार्थी द्वारा यह विवाद अत्यधिक विलम्ब से प्रस्तुत किये जाने के कारण प्रार्थी का वाद निरस्त किये जाने योग्य है?

.....विपक्षी

5. अनुतोषः—

12. उभयपक्ष की साक्ष्य, तर्को एवं न्यायिक दृष्टांतों में पारित विधि पर मनन के उपरांत विचारणीय बिन्दुओं पर निर्णय निम्नानुसार हैः—

13. **विचारणीय बिन्दु सं.—1**

14. इस बिन्दु के संदर्भ में प्रार्थी ने यह कहा है कि उसने अपने नियोजक विपक्षी के यहा प्रत्येक साल में 240 दिन से अधिक निरंतर कार्य किया है। जनवरी 1997 से नवम्बर, 1997 तक की अवधि में 241 दिन लगातार कार्य किया है।

प्रार्थी ने यह भी कहा है कि उसे दैनिक वेतन का भुगतान नियोजक द्वारा किया गया जिसके वाउचर्स की छायाप्रति उसने पेश की है। जो **प्रदर्श** W-14 से **प्रदर्श** W-202 तक है।

(**टिप्पणी**:– पत्रावली के सूक्ष्म परिशीलन से यह प्रकट हुआ कि प्रार्थी द्वारा दिनांक 18.09.2012 को जो वाउचर्स की फोटोप्रतियॉ प्रस्तुत की गई हैं वे **प्रदर्श** W-202 तक नहीं हैं वरन् **प्रदर्श** W-14 से **प्रदर्श** W-172 तक ही हैं अंतिम वाउचर दिनांक 02.11.1998 का है जिसके माध्यम से अक्टूबर, 1998 का भुगतान किया जाना प्रकट होता है। उल्लेखनीय है कि प्रार्थना पत्र दिनांक 18.09.2012 में प्रार्थी ने सन 1992 से 1998 तक कुल 90 पेज प्रार्थना पत्र के साथ संलग्न किये है जबकि वस्तुतः ये पृष्ठ, संख्या में 159 हैं। अंतिम वाउचर माह अक्टूबर, 1998 का है इसलिए यह भी संभव नहीं लगता कि अक्टूबर, 1998 के पश्चातवर्ती 30 वाउचर्स अथवा पृष्ठ प्रार्थी द्वारा प्रस्तुत किये गये हो क्योकि प्रार्थी ने मात्र नवम्बर, 1998 तक के ही वाउचर्स प्रस्तुत करना प्रार्थना पत्र में वर्णित किया है। साक्ष्य अभिलेखन के समय भूलवश इस तथ्य का उल्लेख दिनांक 30.05.2017 को साक्षी/प्रार्थी से प्रतिपरीक्षण के पूर्व नहीं किया गया। इस स्थिति में **प्रदर्श** W-14 से **प्रदर्श** W-172 तक के प्रलेखों का ही परिशीलन/विवेचन किया जा रहा है।)

15. विपक्षी ने इन फोटोप्रतियों को यह कहकर अस्वीकार किया है कि इनके मूल प्रलेख नहीं दिखाये गये।

16. इन प्रलेखों के साक्ष्य में प्रदर्षन के संबंध में विपक्षी द्वारा की गई आपत्ति को इस अधिकरण द्वारा दिनांक 20.09.2016 को आदेश पारित करते हुये अस्वीकार किया गया है। **यह आदेशित किया गया कि इन प्रलेखों की वास्तबिकता एवं ग्राह्यता का निर्धारण प्रार्थी से की जाने वाली प्रतिपरीक्षा के आधार पर किया जा सकेगा। इसलिए प्रार्थी द्वारा प्रस्तुत प्रलेखों की फोटोप्रतियों को साक्ष्य में प्रदर्शित करने से निवारित नहीं किया जा सकता है।** इस आदेश के अनुसरण में प्रार्थी के साक्ष्य का परिशीलन यह दर्षाता है कि प्रार्थी ने विपक्षी के इस सुझाव को दृढ़ता से अस्वीकार कर दिया है कि जो प्रलेख फोटोप्रतियों के रूप में प्रस्तुत किये गये है, वे सब फर्जी व बनावटी हों।

17. विपक्षी के साक्षी श्री कैलाश चन्द्र रैगर ने अपने प्रतिपरीक्षण में इन प्रलेखों के संबंध में फर्जी अथवा बनावटी होना नहीं कहा है वरन् यह कहा है कि उसे जानकारी नहीं है कि दिनांक 31.12.1991 से 30.11.1998 तक विपक्षी ने दैनिक वेतन भोगियों को वाउचर्स से भुगतान किया हो। साक्षी को यह भी जानकारी नहीं है कि ये वाउचर्स कार्यालय में है या नहीं। वह स्वीकार करता है कि भुगतान वाउचर्स से संबंधित प्रविष्टि कैशबुक में होती हैं, किंतु उसने कैशबुक कभी नहीं देखी। इस अवधि का मूल रिकार्ड उपलब्ध है या नहीं, वह नहीं जानता। साक्षी अपनी याददाश्त से कह रहा है कि पवन कुमार शर्मा ने 240 दिन काम नहीं किया। यह उल्लेखनीय है कि विपक्षी के साक्षी ने प्रार्थी द्वारा प्रस्तुत फोटोप्रतियों के संबंध में इनके अवास्तविक या बनावटी होने का कोई कथन नहीं किया है। विपक्षी द्वारा प्रार्थी का आकस्मिक श्रमिक के रूप में वर्ष 1992, 1993 तक कार्यरत रहना और उसे भुगतान किये जाने का तथ्य भी स्वीकार किया गया है। किंतु यह स्पष्ट नहीं किया गया कि भुगतान किस रीति से किया गया। वाउचर्स के माध्यम से भुगतान किये जाने के सुझाव को विपक्षी के साक्षी ने अज्ञानता के कारण अस्वीकार भी नहीं किया है। इसलिए यह नितांत संभव है कि प्रार्थी को उसके द्वारा किये गये कार्य के परिश्रमिक का भुगतान वाउचर्स के माध्यम से ही किया गया हो जिनकी मूलप्रतियॉ विपक्षी के आधिपत्य में विद्यमान भी हो। इस विवेचन के उपरांत चूकिं विपक्षी, प्रार्थी द्वारा प्रस्तुत की गई वाउचर्स की फोटोप्रतियो की वास्तविकता एवं विष्वसनीयता को आरोपित करने में सफल नहीं रहा है। इसलिए इन वाउचर्स की फोटोप्रतियो को मैं प्रार्थी को विपक्षी द्वारा किये गये भुगतान के साक्ष्य स्वरूप ग्रहण किया जाना न्यायोचित समझता हूँ।

18. प्रार्थी ने यद्यपि वर्ष 1992 से ही उसे किये गये भुगतान के वाउचर्स प्रस्तुत किये है। किंतु सेवा समाप्ति तिथि से तुरंत पूर्ववर्ती एक कलेण्डर वर्ष की अवधि में 240 दिन सतत सेवा के तथ्य को परीक्षित करने हेतु नवम्बर, 1998 से पूर्ववर्ती 12 माह के वाउचर्स ही सुसंगत प्रकट होते है। इन वाउचर्स के परिशीलन से निम्नलिखित तालिका में वर्णित विवरण दृष्टिगत होता है।

क्रम सं.	प्रदर्श सं.	दिनांक/माह	कार्य अवधि
1.	W-151	01.12.1997	नवम्बर, 1997 15 दिन
2.	W-152	01.01.1998	22 दिन
3.	W-154	02.02.1998	21 दिन

4.	W-155	अस्पष्ट	20 दिन
5.	W-157	03.04.1998	मार्च, 1998 22 दिन
6.	W-158	03.04.1998	मार्च, 1998 4 दिन
7.	W-159	01.05.1998	20 दिन
8.	W-161	01.06.1998	19 दिन
9.	W-163	02.07.1998	22 दिन
10.	W-165	01.08.1998	23 दिन
11.	W-167	01.09.1998	21 दिन
12.	W-169	05.10.1998	22 दिन
13.	W-171	02.11.1998	17 दिन
		योग–	**248 दिन**

19. उपर्युक्त तालिका से यह स्पष्ट है कि सेवा समाप्ति के तुरंत पूर्ववर्ती एक कलेण्डर वर्ष की अवधि में 248 दिन कार्य करने का तथ्य प्रार्थी ने भुगतान वाउचर्स की फोटोप्रतियों के आधार पर प्रमाणित किया है। विपक्षी द्वारा प्रस्तुत निर्णय रेंज फोरेस्ट ऑफीसर बनाम एस. टी. हादीमनी तथा स्टेट ऑफ उत्तराखण्ड व अन्य बनाम श्रीमती सुरेशवती में माननीय उच्चतम न्यायालय ने यह कहा है कि 240 दिन कार्य करने के तथ्य को प्रमाणित करने का सिद्वीभार कर्मकार पर है न कि प्रबंधन पर। दावा करने वाले को अपने साक्ष्य से यह तथ्य प्रमाणित करना होता है। मात्र उसका शपथ पत्र पर्याप्त नहीं है। इन निर्णयों में पारित विधि के प्रकाश में प्रार्थी उस पर आरोपित सिद्वीभार का उन्मोचन करते हुये यह प्रमाणित कर चुका है कि उसने सेवा समाप्ति तिथि 01.12.1998 के तुरंत पूर्ववर्ती एक कलेण्डर वर्ष की अवधि में विपक्षी के अधीन 248 दिन कार्य किया। अतः यह बिन्दु प्रार्थी के पक्ष में निर्णीत किया जाता है।

20. **विचारणीय बिन्दु सं.–2**

21. विपक्षी का यह तर्क रहा है कि प्रार्थी ने किसी भी वर्ष में 240 दिन कार्य नहीं किया इसलिए अधिनियम की धारा 25 F के प्रावधानों का अनुपालन अपेक्षित ही नहीं है। विपक्षी ने अपने साक्ष्य से यह प्रमाणित भी नहीं किया है कि उसने प्रार्थी को सेवा समापन के पूर्व एक माह का नोटिस या नोटिस वेतन और छंटनी प्रतिकर का भुगतान किया हो। जबकि प्रार्थी ने यह स्पष्ट कहा है उसे सेवा से अलग करते हुये छंटनी मुआवजा और नोटिस वेतन नहीं दिया गया।

22. विनिश्चय पंजाब एण्ड सिंध बैंक बनाम जज सी.जी.आई.टी. कम लेबर कोर्ट जयपुर के निर्णय में माननीय राजस्थान उच्च न्यायालय का यह अभिमत है कि अधिनियम की धारा 25 F के अधीन प्रक्रिया का अनुपालन न करने पर श्रमिक सेवा में बहाल होने व बकाया मजदूरी पाने का अधिकारी है।

23. तमिलनाडु टर्मिनेटिड फुलटाईम टेम्परैरी एल.आई.सी. एम्पलाइज ऐसोसिऐशन बनाम एल.आई.सी ऑफ इंडिया के निर्णय में माननीय सर्वोच्च न्यायालय ने कहा है कि जो कर्मकार अस्थाई/बदली/अंशकालीन कर्मचारी के रूप में स्थाई पदों के विरूद्व वर्ष पर्यन्त चलने वाले कार्य को वर्षो से करते आ रहें हो, तो यह अनुचित श्रमाभ्यास है तथा अधिनियम की धारा 25 T के अन्तर्गत प्रतिषिद्व है। इस निर्णय में पारित अधिमत विवाद के तथ्यों से भिन्न तथ्यों पर अधारित है। इसलिए तथ्यात्मक भिन्न्ता के कारण प्रार्थी के पक्ष में सहायक प्रतीत नहीं होता है।

24. माननीय सर्वोच्च न्यायालय ने मोहम्मद अली बनाम स्टेट ऑफ हिमाचल प्रदेश व अन्य के निर्णय में यह कहा है कि एक वर्ष में 240 दिन कार्य करने का तथ्य प्रमाणित न होने के आधार पर कर्मकार को अधिनियम की धारा 25 F के अन्तर्गत संरक्षण प्राप्त नहीं होगा।

25. तथ्यों एवं विधि के विवेचन के उपरांत यह प्रमाणित होता है कि विपक्षी ने प्रार्थी की सेवा समाप्ति के पूर्ववर्ती एक कलेण्डर वर्ष में प्रार्थी द्वारा 240 दिन से अधिक कार्य करने का तथ्य प्रमाणित होने पर भी अधिनियम की धारा 25 F के अन्तर्गत वर्णित आवश्यक शर्तो का अनुपालन प्रार्थी को नोटिस या नोटिस वेतन एवं छंटनी प्रतिकर के भुगतान के

रूप में नहीं किया है। इसलिए विपक्षी द्वारा की गई सेवा समाप्ति/ छंटनी अवैध प्रमाणित होती है। अतः यह बिन्दु प्रार्थी के पक्ष में निर्णीत किया जाता है।

26. **विचारणीय बिन्दु सं.–3**

27. प्रार्थी ने अपने साक्ष्य में यह कहा है कि उसे सेवा पृथक करने के बाद उसके साथ काम करने वाले व्यक्तियों को नियोजक द्वारा नियुक्ति दी गई है। उनके नाम योगेन्द्र सिंह, राजेश और शीशराम चौधरी बताये है। नये कर्मचारी भी काम पर रखे गये है जिनकी सूची **प्रदर्श**.203 दर्शायी गई है। किंतु ऐसी कोई सूची प्रार्थी के साक्ष्य में **प्रदर्श**.203 के रूप में उपलब्ध नहीं है। यह उल्लेखनीय है कि प्रार्थी ने इन तथ्यों का वर्णन अपने साक्ष्य में शपथ पत्र के पैरा सं. 11 में किया है। किंतु प्रार्थी ने अपने प्रतिपरीक्षण में स्वीकार किया है कि इन तथ्यों का उल्लेख उसने अपने दावे के अभिकथन अथवा समझौता अधिकारी को प्रस्तुत किये गये आवेदन में नहीं किया। इस प्रकार अभिवचनों के अभाव में प्रार्थी द्वारा प्रस्तुत की गई मौखिक साक्ष्य विधितः ग्रहण किये जाने योग्य नहीं है। मात्र अभिवचनों में कतिपय नामों का वर्णन करना तथा विपक्षी द्वारा वरिष्ठता सूची न बनाये जाने का कथन किसी ठोस साक्ष्य के अभाव में स्वीकार्य प्रतीत नहीं होता है। इस विवेचन के उपरांत यह प्रमाणित नहीं होता है कि प्रार्थी से कनिष्ठ किसी व्यक्ति को, वरिष्ठता सूची न बनाते हुये प्रार्थी की सेवा समाप्ति के उपरांत विपक्षी द्वारा नियोजन में रखा गया हो। अतः यह बिन्दु प्रार्थी के विरूद्व निर्णीत किया जाता है।

28. **विचारणीय बिन्दु सं.–4**

29. विपक्षी ने यह आक्षेप किया है कि प्रार्थी ने यह विवाद सेवामुक्त किये जाने के उपरांत उच्च न्यायालय द्वारा प्रार्थी की याचिका निरस्त कर दिये जाने के भी 4 वर्ष बाद उठाया है। इसलिए प्रार्थी विलम्बित विवाद प्रस्तुतीकरण के कारण अनुतोष पाने का अधिकारी नहीं है। उन्होनें अपने तर्क के समर्थन में माननीय सर्वोच्च न्यायालय द्वारा पारित निर्णय असिस्टेंट एग्जीक्यूटिव इंजीनियर बनाम श्री शिवालिंगा में पारित विधि का उल्लेख किया है। इस निर्णय में माननीय सर्वोच्च न्यायालय ने कहा है कि कर्मकार द्वारा सेवा समाप्ति के 9 वर्ष उपरांत विवाद प्रस्तुत करने के कारण नियोजक के लिये यह संभव नहीं है कि वह पूर्ण अभिलेख संधारित कर सकें। इसलिए यह विलम्ब याची के लिए घातक है तथा विवाद के संदर्भ को निरस्त किया जाना उचित है। मैंने इस विधि पर विचार किया तो यह पाया कि निर्णय में पारित विधि जिन तथ्यों पर आधारित है वे तथ्य इस विवाद के तथ्यों से सुभिन्न है। सेवा समाप्ति के पष्चात प्रार्थी ने माननीय उच्च न्यायालय के समक्ष उपचार हेतु याचिका प्रस्तुत की। अक्टूबर 2006 में याचिका निरस्त होने के तीन वर्ष बाद समझौता अधिकारी के समक्ष आवेदन किया। इसलिए मात्र तीन वर्ष की अवधि को प्रार्थी द्वारा प्रस्तुत विवाद के प्रति घातक न मानते हुये विवाद को निरस्त किया जाना न्योचित नहीं है। अतः यह बिन्दु विपक्षी के विरूद्व निर्णीत किया जाता है।

30. **अनुतोषः–**

31. बिन्दु सं. 1 व 2 प्रार्थी के पक्ष में निर्णीत होने के कारण प्रार्थी तकनीकी रूप से अवैध सेवा समाप्ति के विरूद्व समुचित विधिक अनुतोष प्राप्त करने का अधिकारी प्रकट होता है। किंतु प्रार्थी को सेवा में निरंतरता सहित पुर्नस्थापन एवं विगत वेतन परिलाभों का अनुतोष प्रदान करने के पूर्व इस विवाद में विद्यमान विशिष्ट परिस्थितियों पर गंभीरता पूर्वक विचार किया जाना आवष्यक है।

32. किसी भी न्यायिक प्रक्रिया अथवा कार्यवाही के माध्यम से कोई अनुतोष प्राप्त करने की याचना करते समय याची से यह अध्यपेक्षा की जाती है कि वह स्वच्छ हाथों से समस्त सुसंगत तथ्यों को न्यायालय के समक्ष प्रस्तुत करें। किंतु इस विवाद में प्रार्थी का आचरण महत्वपूर्ण सुसंगत तथ्यों को छुपाकर अपने पक्ष में अनुतोष प्राप्त करने का प्रयास प्रमाणित हुआ है।

33. प्रार्थी ने अपने दावे का अभिकथन दिनांक 19.08.2010 को प्रस्तुत किया है। प्रार्थी ने अपने प्रतिपरीक्षण में यह स्वीकार किया है कि वह दिनांक 01.01.1995 से एल.आई.सी. ऐजेन्ट का कार्य कर रहा है तथा ऐजेन्ट के रूप में उसे जो कमीषन मिलता है उसमें से आयकर की कटौती की जाती है, तथा वह वर्ष 1995 से ही आयकर रिर्टन भी भर रहा है। माननीय सर्वोच्च न्यायालय ने अपने निर्णय इंडियन बैंक ऐसोसिऐशन बनाम वर्कमेन ऑफ सिड़ीकेट बैंक व अन्य में अधिनियम की धारा 2 (rr) तथा 2 (s) के अन्तर्गत बैंक के डिपोजिट कलेक्टर को, बैंक के कर्मकार की परिभाषा में समाहित मानते हुये उनके द्वारा प्राप्त की गई कमीशन की राशि को उनकी मजदूरी अथवा वेतन माना है। इस निर्णय के प्रकाश में प्रार्थी को एल.आई.सी. द्वारा किया गया कमीशन का भुगतान भी उसका वेतन माना जावेगा। इसलिए एल.आई.सी. और प्रार्थी के बीच नियोजक और कर्मकार के संबंध होना भी स्पष्ट हो जाता है।

34. प्रार्थी को यह जानकारी भी है कि एल.आई.सी. में ऐजेन्ट बनने के लिये उसे अन्यत्र कही सेवारत नहीं होना चाहिये एवं बेरोजगार होना चाहिये। प्रार्थी द्वारा स्वीकृत रूप से, वह दिनांक 01.01.1995 को विपक्षी के अधीन नियोजित था फिर भी उसने अपने पूर्व नियोजित होने का तथ्य एल.आई.सी. ऐजेन्ट होने हेतु आवेदन करते समय एल.आई.सी. को नहीं बताया, न ही विपक्षी को स्वयं को एल.आई.सी. ऐजेन्ट के रूप में नियुक्त होने के तथ्य से अवगत कराया। यदि यह तथ्य प्रार्थी उद्घाटित कर देता तो विपक्षी उसे अपने नियोजन में संभवतः नहीं रखता। यही नहीं प्रार्थी ने एल. आई.सी. ऐजेन्ट के रूप में नियुक्त हो जाने का तथ्य माननीय उच्च न्यायालय के समक्ष प्रस्तुत की गई रिट याचिका, इस अधिकरण में प्रस्तुत दावे के अभिकथन एवं समझौता अधिकारी को प्रस्तुत किये गये प्रार्थना पत्र में भी वर्णित न करते हुये छुपा लिया, अन्यथा माननीय उच्च न्यायालय द्वारा याची की याचिका को संभवतः निरस्त कर दिया जाता एवं समुचित सरकार द्वारा यह विवाद इस अधिकरण को न्याय निर्णयन हेतु प्रेषित ही नहीं किया जाता। कथित सेवा समाप्ति दिनांक 01.12.1998 के समय भी प्रार्थी एल.आई.सी. ऐजेन्ट के रूप में सेवारत रहा और कर योग्य आय अर्जित कर रहा था। फिर भी प्रार्थी ने अपने अभिवचनों और साक्ष्य में स्वयं को बेरोजगार और परेशान वर्णित करते हुये इस अधिकरण के समक्ष शपथ पूर्वक नितांत मिथ्या कथन भी किये। प्रार्थी प्रथम दृष्टया ही मिथ्या साक्ष्य प्रस्तुत करने का दोषी प्रकट होता है। वास्तविकता को छुपाते हुये तथा असत्य तथ्यों को निरूपित कर प्रार्थी ने अधिकरण से अनुतोष प्राप्त करने का प्रयास किया है। जबकि वह कथित सेवा समाप्ति तिथि के पूर्व से ही एल.आई.सी. ऐजेन्ट के रूप में सारवान आय अर्जित कर रहा था।

35. माननीय राजस्थान उच्च न्यायालय की खण्ड पीठ ने आम जनता बनाम स्टेट ऑफ राजस्थान के निर्णय में यह मार्गदर्शन दिया है कि जब याचीगण सारवान तथ्यों को छुपाते हुये शपथ पूर्वक नितांत मिथ्या तथ्यों का निरूपण करे तो यह न्यायालयी प्रक्रिया का गंभीर अवमान है, तथा याचिका को 20,000/—रू. का उदाहरणात्मक परिव्ययं आरोपित करते हुये निरस्त किया जाना उचित है। इस निर्णय में पारित अधिमत के प्रकाष में विवाद की परिस्थतियों को दृष्टिगत रखते हुये प्रार्थी के दावे के अभिकथन को प्रार्थी पर समुचित परिव्ययं आरोपित करते हुये अस्वीकार किया जाना न्यायोचित प्रतीत होता है।

36. इस निष्कर्ष के उपरांत प्रार्थी विपक्षी के अधीन सेवा में निरंतरता सहित बहाली का अधिकारी नहीं है, न ही कोई विगत वेतन परिलाभ पाने का अधिकारी है।

37. प्रार्थी द्वारा प्रस्तुत यह विवाद मिथ्या साक्ष्य प्रस्तुत करते हुये न्यायिक प्रक्रिया का दुरूपयोग करने का निंदनीय प्रयास प्रतीत होता है। इसलिए प्रार्थी पर 5000/—रू. परिव्ययं आरोपित करते हुये दावे का अभिकथन अस्वीकार किया जाता है। प्रार्थी परिव्ययं राषि एक माह में राजस्थान राज्य विधिक सेवा प्राधिकरण में जमा करावे। प्रार्थी विपक्षी से कोई अनुतोष पाने का अधिकारी नहीं है।

38. श्रम मंत्रालय भारत सरकार द्वारा संदर्भित विवाद को इसी प्रकार न्याय निर्णीत किया जाता है।

39. अधिनिर्णय की प्रतिलिपि समुचित सरकार को अधिनियम की धारा 17 (1) के अंतर्गत प्रकाशनार्थ प्रेषित की जावें।

राधा मोहन चतुर्वेदी, पीठासीन अधिकारी

नई दिल्ली, 2 जुलाई, 2024

का.आ. 1335.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार सैन्य इंजीनियरिंग सेवाएँ के प्रबंधतत्र, संबद्ध नियोजको और उनके कर्मकारो के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, **चंडीगढ़**-II के पंचाट (22/2016) प्रकाशित करती है।

[सं. **एल**-12025/01/2024- आई आर (बी-I)-182]

सलोनी, उप निदेशक

New Delhi, the 2nd July, 2024

S.O. 1335.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref.22/2016*)* of the *Cent.Govt.Indus.Tribunal-cum-Labour Court Chandigarh-II* as shown in the Annexure, in the industrial dispute between the management of Military Engineering Service and their workmen.

[No. L-12025/01/2024- IR (B-I)-182]

SALONI, Dy. Director

ANNEXURE

In the Central Government Industrial Tribunal-cum-Labour Court-II, Chandigarh.
Present: Mr. Kamal Kant, Presiding Officer.

ID No.22/2016
Registered on:-16.06.2016
Sh. Gulshan Ali S/o Sh. Safdar Khan, R/o Village Dhera Guru, Post Office Chikan, Tehsil Kalka, District Panchkula(HR).

Workman

Versus

Garrison Engineer(Utility), Military Engineering Services, Chandimandir, District Panchkula(HR).

Respondent/Management

AWARD

Passed on:-06.03.2024

1. The workman Gulshan Ali has filed the present claim petition under Section 2-A of the Industrial Disputes Act, 1947(hereinafter called as 'Act') with the averment that he was interviewed and selected and recommended to be appointed as Mazdoor by a Selection Committee constituted by G.E. and was appointed as such in June 2005. After due Police Verification, he was allowed to join on 15.6.2005. His working hours were from 8 am to 5 pm daily with a break of one hour for lunch. It was usual practice in G.E.(U), Chandimandir that initially civilian employees are appointed on temporary basis, paid less that the prescribed rates, performance used to be observed and only then regularized on the job after having observed the performance of duties, work, conduct etc. for about one year. He was also assured at the time of his initial appointment/joining that he would be regularized as and when vacancies are sanctioned and notified in future on a regular scales of pay. He was being paid only Rs.50/- per day which was much less as prescribed under the Minimum Wages Act by the Government and whenever he made a demand for minimum wages/more pay he was threatened with termination of his employment and even threatened that he would not be regularized. His pay was increased from Rs.1500/- in 2002 to Rs.6000/- per month in 2015. He was discharging his duties sincerely and honestly. The management did not take any steps to regularize his service despite of the fact that the regular posts of Mazdoor, later on of Mates were existing and were vacant. The respondent/ management used the policy of hire and fire and as on date there are 10-15 Plumbers but still some vacancies are lying vacant. He made representations to the G.E.(U), Chandimandir through J.E. and A.G.E. concerned many times to enhance the wages and regularize his services as per the promise given at the time of his joining but every time rather than taking any action on the requests made he met with threat of termination of service. All his requests fell on the deaf ears. His services were terminated on 7.8.2015 without any notice of termination and without any compensation in lieu thereof. On 7.8.2015 he received one sentence verbal order that his services are terminated and he need not to come on duty w.e.f. 8.8.2015 by Sh. V.K. Sharma, A.G.E. a subordinate of G.E.(U), Chandimandir. He was also not given the salary for the month of August 2015. The respondent-management falls under the definition of Industry and he is the workman under the definition of Industrial Disputes Act. There was no compliance of Section 25-F of the Industrial Disputes Act neither any notice or any pay/wages in lieu thereof was given nor any retrenchment compensation was paid. The juniors were retained in service and he was terminated from service which is violation of Section 25-G of the ID Act. He demand Rs.2,58,320/- towards back wages along with interest @12% and reinstatement in service.

2. Respondent/management has filed its written statement, alleging therein that there are two types of employees i.e. Combatants and Civilians and not Civilian(Contractual). Daily wagers are employed through contractors and they are not the employees of the management. It is denied that workman was interviewed and selected and appointed as Mazdoor by Selection Committee. The workman was never employed by the management so the question of termination of services without any notice and any compensation does not arise. The management does not fall under the definition of Industry as the office of the management is under the control and administration of Ministry of Defence and the same being under the Central Government of India, the question of falling the management under the definition of Industry does not arise. The management has not violated the provisions of Section 25-F of the ID Act. Since the workman was never worked with the management, the question of payment of money in lieu of three months notice does not arise. Therefore, the present claim statement is liable to be dismissed being devoid of merits in the interest of justice.

3. The workman filed replication to the written statement filed by the management, alleging therein that he was employed and worked as Mazdoor for the management from 15.06.2005 to 8.8.2015 and was paid Rs.50/p per day from the day of joining which was revised from time to time and was being paid Rs.6000/- when his services were terminated in the month of August, 2015. He was not paid for the period from 1.8.2015 to 8.8.2015. No money in lieu of three months notice was paid to him.

4. It is pertinent to mention here that the management was proceeded ex parte on 16.11.2016 and the management has filed an application for setting aside the ex parte order dated 16.11.2016 to which reply was filed by the workman and the ex parte order dated 16.11.2016 passed against the management was set aside by my Ld. Predecessor on the payment of cost of Rs.300/- on 31.05.2017.

5. Parties were given opportunity to lead evidence.

6. The workman has examined himself as WW1 and filed his affidavit in evidence as Ex.WW1/A and has been cross-examined by the learned counsel of management. The workman has also examined WW2 Sh. Mohd. Aslam, who filed his affidavit in evidence as Ex.WW2/A, WW3 Raman Kumar who filed his affidavit in evidence as Ex.WW3/A, WW4 Sh. Mohd. Yamin who filed his affidavit in evidence as Ex.WW4/A and WW5 Sh. Anil Kumar who filed his affidavit in evidence as Ex.WW5/A and were cross-examined by the learned counsel of management.

7. The management has examined MW1 Sh. Ashish Yadav, working as AGE E/M-II in the office of Garrison Engineer(Utility) Chandimandir, who filed his affidavit in evidence as Ex.MW1/A and has been cross-examined by the learned AR of workman.

8 The workman filed written arguments, alleging therein that there are three types of employees i.e. Combatants, Civilian(Regular) and Civilian(Contractual) apart from daily wagers employed through contractors. There were about 250-260 civilian employees(regular as well as contractual) working under GE(U) Chandimandir. He was interviewed, selected and recommended to be appointed as Mazdoor by a Selection Committee constituted by G.E. and was appointed as such in June 2005 after due police verification and was allowed to join on 15.6.2005 from 8 am to 17 pm daily with a break of one hour for lunch. The workman was employed as Plumber/Pipe Fitter w.e.f. 1.1.2009. The workman was assured at the time of initial appointment/joining that he would be regularized as and when vacancies are sanctioned and notified in future on a regular scales of pay. The workman discharging his duties sincerely and honestly and his superiors never had any occasion to point out or having been found wanting. He had to work under strict military discipline in that when he used to enter/exit in/out of the Cantonment his Pass/I-card used to be checked and J.E. used to take daily attendance with time and date. Earlier Pass/I-Card used to made and issued by AGE and later on it was used to be issued by Station Headquarters, Chandimandir. Management was taking work for nine hours a day(including one hour break) from workman but was neither paying the minimum wages prescribed and notified from time to time by the Govt. nor any weekly holidays, any type of casual leave or earned leave was being given. The workman filed his affidavit in evidence and similarly four more witnesses were examined and cross-examined. All the witnesses have supported the version that there were three types of employees viz. Combatants, Civilian(Regular) and Civilian(Contractual) apart from daily wagers employed through Contractors and there were about 250-260 civilian employees working under GE(U) Chandimandir. Lone witness of the management is Assistant Garrison Engineer(AGE) who though posted on the incumbent post only December 2017 i.e. much after the period of workman's employment with management from 15.6.2005 to 7.8.2015 but claims to be in full knowledge of the case and hence competent to deposit. He denied of having any contractual employee like workman because management gives all maintenance works to Contractor and do not deal directly with contractual employees. The names of the contractors who were awarded such contract from 2005 to 2015 not given by the management and their date of contract/agreement, tenure of agreement, terms and conditions of agreement liability default or otherwise are not given. Assuming for the sake of argument that workman was employee of contractor as to how come same contractor continued from 15.06.2005 to 8.8.2015. It is a settled principle of law that if the facts are not specifically pleaded nor denied in pleadings are deem to be admitted facts and there is no question of its proof by oral or documentary evidence nor any such documentary of otherwise evidence is placed on record. The workman has placed on record complaint slips which are more than 130 in number for the period from 2007 to 2011, which belongs to the respondent/management having Docket Machine Numbers duly singed by the incumbent Junior Engineers(E/M) at the relevant time. By these signed slips, works/daily duties used to be assigned to the workman giving details of the nature of complaint, building number and location, individual tradesman detailed for the job and were required to be deposited back in the Service Centre on completion of job. These complaint slips conclusively prove that the workman was the employee of the management and the works/duties used to be allotted was supervised and monitored by JR(E/M) of the management. The workman has placed reliance to the judgment titled as ***Ram Singh and others Vs. Union Territory Chandigarh and***

others, Civil Appeal No.3166/2002, decided on 07.11.2003, which deals with the relationship between employer and employee/master and servant and forum for deciding nature of employment of workman with establishment and contractors.

9. The management filed written arguments, alleging therein that there are two types of employees i.e. Combatants and Civilians and not Civilian(Contractual). The daily wagers are employed through contractors and thus, they are not the employees of the management. The workman was never appointed by the management and thus, no payment has ever been made to the defence accounts and the workman should be asked to prove the same with cogent evidence. The workman requested for experience certificate with a request that he can work with any other contract/contractor and accordingly the experience certificate was issued with specific work that on contractual basis that means they are working under contractors and they were paid by the different contractors. The MES was issuing temporary entry passes for workers of contractors as well as to the dependents of MES employees. Dut to security, this practice was stopped by Station HW and direction was issued that security passes shall be issued by Station HQ and police verification was also the requirement of Station HQ. CMP persons started checking all the persons including deployed by the contractors on installations. Therefore, to overcome the problem, all the persons were asked to given an application so that it can be forwarded to the respective police verification. The present claim petition filed by the workman is liable to be dismissed in the interest of justice.

10. I have heard learned counsels for the parties and have gone through the entire evidence placed on file by the parties as well as written arguments.

11. It is added here, it is the case of the workman that it was usual practice in respondent-management that initially civilian employees are employed on temporary basis and paid less than the prescribed rates and after observing the performance, the workman are regularized on job after one year. The workman was paid Rs.50/- per day. Thus, the workman claims himself to be appointed on temporary daily wages. The first question is required to be determined is whether the claimant is a workman even if he was appointed on temporary daily wages and was drawing Rs.50/- per day. To my mind, the claimant is a workman within the definition of Section 2(S). In this regard, reference can be made to the decision in the case of ***Devinder Singh Vs. Municipal Council, Sanaur, AIR 2011 Supreme Court 2532,*** wherein the Hon'ble Apex Court while interpreting the provisions of Section 2(S) of the Act which deals with the definition of "workman" has observed as under :-

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

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

12. The real controversy lies between the parties with respect to the relationship of workman with management. The issue as to whether the workman was engaged by the employer/management directly or through contractors is the bone of contention between the parties. There is no dispute about preposition of law that onus to prove that claimant was in the employment of management is always on the workman/claimant and it is for the workman to adduce evidence to prove factum of his employment with the management. Such evidence may be in form of receipt of salary or wages for 240 days or record of their appointment or engagement for that period to show that he had worked with the respondent-management for 240 days or more in a calendar year. In this regard, reference may be made to judgment of Hon'ble Supreme Court in case of ***Batala Coop. Sugar Mills Ltd. Vs. Sowaran Singh, (2005) 8 Supreme Court Cases 481 as well as Director Fisheries terminated Division Vs. Bhikubhai Meghajibhai Gavda(2012) 1 SCC 47.***

13. Question remains to be seen whether claimant/workman Gulshan Ali has proved that he was directly engaged by the management on 15.6.2005 and served till his termination on 7.8.2015. This fact has to be proved by the documentary evidence as well as oral evidence. At the very outset, it may be

mentioned that there is no single reliable document to prove that workman/claimant was directly employed by the management. In this connection, workman Gulshan Ali has accepted that neither any appointment letter nor any termination letter was issued by the respondent-management. Undoubtedly, witness examined by the respondent-management namely Ashish Yadav, AGE E/M-II, Garrison Engineer(Utility) Chandimandir has categorically stated in his evidence that the claimant/workman was not employed by the management as such, neither notice nor retrenchment compensation was given by management.

14. The Hon'ble Supreme Court after analysing the catena of cases has laid down in ***Balwant Raj Saluja Vs. Air India Limited in Civil Appeal No.10266 dated 25.08.2014,*** two well recognised tests to find out whether the labours are the contract employees of the principal employer as follows:-

1) Whether the principal employer pays the salary instead of contractor and

2) Whether the principal employer controls and supervise the work of the employees?

The facts regarding the payment of salary by the management or contractor has not been specifically stated in the claim petition of the workman. In fact, claim petition is totally silent regarding the payment of wages, salary, letter of appointment or anything likewise. Similarly, workman has not mentioned anything regarding the mode of payment of wages, salaries etc. in his affidavit. Thus, this basic features for holding the relationship of employer and employee is totally lacking not in the pleading but also in the evidence submitted by the workman.

15. WW1 Gulshan Ali has stated in his cross-examination that he does not have documentary proof to show that payment of wages were paid by management. He do not have any proof that any person was regularized. He was engaged through contractor. Thus, his stand that he was employed by the respondent-management stands falsified. Even from his cross-examination it can be inferred that he was getting wages in cash. Actually the workman was not employed by the management as it is his case that he was interviewed, selected and recommended as Mazdoor by a Selection Committee constituted by G.E. and joined as such on 15.6.2005. His police verification was also done. The said statement of him also seemed to be afterthought because had he been interviewed, selected and recommended to be appointed as Mazdoor. He could have summoned the documents from respondent-management by filing an application but he has not summoned the documents which clearly shows that he was not getting any wages from respondent-management nor he was appointed by the respondent-management.

16. Secondly, so far as the question of controls and supervision is concerned. Workman has categorically stated that his work was controlled and supervised by the officials of the management. To this effect, he has placed on record the temporary entry pass and complaint slips. Except this, nothing is brought on record to prove that it is management who were supervising and controlling the work of claimant/workman. The apex court while explaining the factor of supervision and control in the case of ***International Airport Authority of India vs. International Air Cargo Workers Union [209 (13) SCC374]*** has held as follows:-

> ***"If the contract is for supply of labour, necessarily, the labour supplied by the contractor will work under the directions, supervision and control of the principal employer but that would not make the worker a direct employee of the principal employer, if the salary is paid by contractor, if the right to regulate employment is with the contractor, and the ultimate supervision and control lies with the contractor.***
>
> ***The principal employer only controls and directs the work to be done by a contract labour, when such labour is assigned/allotted/sent to him. But it is the contractor as employer, who chooses whether the worker is to be assigned/allotted to the principal employer or used otherwise. In short, worker being the employee of the contractor, the ultimate supervision and control lies with the contractor as he decides whether the employee will work and how long he will work and subject to what conditions. Only when the contractor assigns/sends the worker to work under the principal employer, the worker works under the supervision and control of the principal employer but that is secondary control. The primary control is with the contractor."***

17. Thus, the principal enunciated by the Hon'ble Supreme Court clearly establishes that mere supervision of work is not sufficient to prove the relationship of employer and employee till it is proved that there was a complete control and supervision. The management control includes the authority of dismissal, taking of disciplinary action and continuity of service etc. Claim petition filed by the claimant/workman is mum on this score and workman has not mentioned any specific averment in his affidavit regarding the appointment, authority of dismissal or taking of disciplinary action by the management. There is nothing on record to prove that it is the management who grant

the leave or has authority to take any disciplinary action. In my considered opinion, mere saying of supervision regarding the execution of the work as alleged by the witness may not be called effective and absolute control. Such control is being emphasized to control the work of the management for a specific work in efficient manner done by the management in the establishment. So far as the photocopies of complaint slips and entry pass placed on record by the workman are concerned, they have also not been proved by calling the concerned official from the respondent-management. Moreover, from these slips and entry pass, it cannot be said that workman was working under the control and supervision of the respondent-management. So far as case law of Ram Singh and others(supra) referred by the learned AR for the workman is concerned, it stated that control by employer is only one factor to determine relation between employers and employees along with many other interrelated factors.

18. Undoubtedly, in Tribunal cases, has to be decided on the basis of the preponderance of probability and not the proof beyond reasonable doubt. So far as this case is concerned, there is no documentary evidence on record to prove the factum of direct employment of workman with the management. In any way nothing is on record with respect of the payment of salary, attendance register or work done by the claimant/workman during the course of alleged employment with the management. There is nothing mentioned in the claim petition as well as affidavit of the workman that who was the person-concerned by which he was directly engaged in the respondent-management of Garrison Engineer, Chandimandir. I am of the considered opinion that mere saying that he was employed by the Selection Committee constituted by G.E. and was appointed as Mazdoor which is clearly not proved by the workman. Thus, it may be observed that there is nothing conclusive either oral or documentary to prove that it was principal-employer Garrison Engineer, Chandimandir who controls and supervise the work of the workman. Workman Gulshan Ali has examined four witnesses WW2 Mohd. Aslam, WW3 Raman Kumar, WW4 Mohd. Yamin and WW5 Anil Kumar, their testimonies are of similar nature as that of workman. They were engaged through contractor. No appointment letter was issued to them. They have no documentary proof to show that they were paid by the management. They do not have any termination letter issued by the management. They do not have any proof to show that the management has released the vacancy on regular basis. They are also daily wager like the workman and as such, their statements are also of no use to prove the case of workman.

19. So far as the question pertaining to the non-compliance of the provisions of Section 25-F of the ID Act is concerned. It is not disputed that management has neither issued any show cause notice nor given any compensation in lieu of notice as is envisaged under Section 25-F of the ID Act. Learned counsel of management contended that workman in fact was not the employee of the establishment as such, neither he is terminated by the management nor such notice and compliance of Section 25-F of Act is required by the establishment. In this connection, learned counsel of management has placed reliance in case of ***Municipal Corporation, Faridabad Vs. Siri Niwas, Appeal(Civil) No.1851 of 2002, decided on 06.09.2004, Rajasthan State Ganganagar S. Mills Ltd. Vs. State of Rajasthan & Anr. Civil Appeal No.5969 od 2004, decided on 13.09.2004*** as well as ***State of Rajasthan, Manager RBI Bangalore Vs. S. Mani & Ors. Civil Appeal No.6306-6316 of 2003 decided on 14.03.2005.*** Learned counsel of workman contended that workman is rendering his services with management for so many years and he had completed 240 days in the year 7.8.2015 before termination by the management. As per pleading of the workman he was terminated from 7.8.2015 without compliance of Section 25-F of the ID Act. It is pertinent to mention that pleadings required specific averments with respect to the facts alleged in it. It is not specifically pleaded that workman was retrenched/terminated by management in preceding year i.e. on 7.8.2015 even he had rendered 240 days of service in the management. Thus, there is no specific pleading with respect to the working of 240 days in preceding year of the alleged termination. In the affidavit even there is no mention that the workman has worked for 240 days in the preceding year i.e. on 7.8.2015. Thus, this is a general assertion for rendering services with the management rather specific averments with respect to the 240 days in the preceding year before the termination. Thus, claim petition as well as affidavit filed by the workman is not very specific with respect to 240 days working in the establishment. In the light of the specific denial by the management for rendering services with the management, burden lies on the workman to prove this fact. The workman has failed to prove it. Thus, there is no necessity of issuing any show cause notice to the workman.

20. The claimant/workman has also claimed in his claim petition as well as in his affidavit and even in his cross-examination that Junior Engineer had given oral assurance for regularization in the department. In this regard, it is pertinent to mention here that he cannot have been regularized in the department as in those cases where the case fall under the definition of industrial dispute as mentioned under Section 2(k) of the ID Act only then regularization can be made. Section 2(k) of the ID Act defines “industrial dispute”, which reads as under:

"2. Definitions.-In this Act, unless there is anything repugnant in the subject or context,-

x x x x

(k) "industrial dispute" means any dispute or difference between employers and employers, or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person;"

And ID Act was amended adding Section 2A making individual dispute of a workman as an industrial dispute, if the dispute is related to dismissal, discharge, retrenchment or termination of individual workmen. Thus, Section 2A carves an exception to the definition of individual dispute as given in Section 2(k) of the ID Act. Thus, in order to give jurisdiction to the appropriate government to refer the dispute to the Tribunal/Labour Court, it was essential for the workman to show that his individual dispute for regularization was sponsored or espoused by the union of the workmen. The five Bench of the Apex Court in the case of ***Workmen of Dharampal Premchand (Saughandhi) Vs. Dharampal Premchand (Saughandhi), Civil Appeal No.532/1963, decided on 16.03.1965***, has support the above view.

21. The Hon'ble Karnatana High Court in the case titled as ***Prakash and Ors. Vs. Superintending Engineer(Electrical), O and M Circle, Belgaum and Ors., Writ Petition Nos.41747-757/1999, decided on 31.03.2000***, has taken a view that the individual workman cannot raise a dispute with regard to absorption and regularization.

22. The Delhi High Court in the case of ***Management of Hotel Samrat and Ors. Vs. Government of NCT and Ors., Writ Petition(C) No.6247 & 6682/2002, decided on 04.01.2007***, has taken a similar view that in order to be an industrial dispute, it has to satisfy the definition of Section 2(k) of the ID Act.

23. In view of the above discussion, this Tribunal is of the firm view that there is no merit in the case and the same is liable to be dismissed.

24. Let copy of the award be sent to the Central Government for publication as required under Section 17(1) of the Act.

KAMAL KANT, Presiding Officer

नई दिल्ली, 2 जुलाई, 2024

का.आ. 1336.—औघोगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार **केनरा बैंक** के प्रबंधतत्र, संबद्ध नियोजको और उनके कर्मकारो के बीच अनुबंध में निर्दिष्ट औघोगिक विवाद में केन्द्रीय सरकार औघोगिक अधिकरण/श्रम न्यायालय, **चंडीगढ़**-II के पंचाट (29/2015) प्रकाशित करती है।

[सं. एल - 12012/36/2015- आई आर (बी-II)]

सलोनी, उप निदेशक

New Delhi, the 2nd July, 2024

S.O. 1336.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref.29/2015*)* of the *Cent.Govt.Indus.Tribunal-cum-Labour Court Chandigarh-II* as shown in the Annexure, in the industrial dispute between the management of Canara Bank and their workmen.

[No. L-12012/36/2015- IR (B-II)]

SALONI, Dy. Director

ANNEXURE

In the Central Government Industrial Tribunal-cum-Labour Court-II, Chandigarh.

Present: Mr. Kamal Kant, Presiding Officer.

ID No.29/2015

Registered on:-02.09.2015

Sh. Arun Kumar Ghai(since deceased), S/o Sh. Jagdish Mitter Ghai, B-XI, 1662, Rari Mohalla, Ludhiana, through his legal heirs:-

1. Smt. Madhu Ghai-Wife

2. Karnh Ghai-Son

3. Mohit Ghai-Son

All residents of B-XI, 1662, Rari Mohalla, Ludhiana.

Workman

Versus

1. Canara Bank, Circle Office, Plot No.1, Sector 34-A, Chandigarh, through its Deputy Manager.
2. Canara Bank, Head Office, 112-J, C Road, Bangalore through its General Manager

…..Respondents/Managements

Award

Passed on:-13.03.2024

Central Government vide Notification No.L-12012/36/2015-IR(B-II), Dated 03/11.08.2015, under clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947(hereinafter called the Act), has referred the following Industrial dispute for adjudication to this Tribunal:-

"Whether the action of the management of Canara Bank in dismissing the workman Shri Arun Kumar Ghai(since deceased) S/o Sh. Jagdish Mitter Ghai w.e.f. 16.07.1998 is fair, legal and justified? If not, what relief the workman is entitled to and from which date?

1. The brief facts, related to the case are that claimant/workman Arun Ghai(since deceased) was employed with the management-bank as Clerk/Defence Assistant from the year 1976 in Luxumi Commercial Bank, which subsequently merged with Canara Bank. The workman was a Defence Assistant in about 50 cases against management in the Labour Courts as well before the Assistant Labour Commissioner as such, management of respondent no.1 Canara Bank wanted to get rid of the workman. Consequently record was faked against the workman. It is alleged by the workman that he had unblemished service record but management issued a charge-sheet containing vague, baseless and fabricated charges, alleging therein that he withdrew cash from the account of Sarabjit Singh and Pardeep Kumar amounting Rs.70,000/- and Rs.1,40,000/- respectively by forging withdrawal form. The respondent-management after conducting the preliminary enquiry behind the back of the workman and appointed K. Sudhindra Enquiry Officer who started enquiry from 21.07.1997 after serving the charge-sheet to the workman and concluded on 06.03.1998. The workman was not given due opportunity in the enquiry even the defence witnesses who could not come on the date fixed were debarred from giving the statements and thus statement of the defence witnesses of the workman was not recorded. The workman was dismissed by the order dated 16.07.1998 after getting the approval from Central Govt. Industrial Tribunal-cum-Labour Court-II, Chandigarh, which was challenged before the Hon'ble High Court in Writ Petition No.7350 of 2011 which stand disposed of with the observation that matter has to be decided by the CGIT being competent-forum. The enquiry officer in a haste prejudice mind concluded the enquiry in a very short span on 06.03.1998 without summoning the defence witnesses of the workman which were ordered to be summoned in the proceeding dated 10.02.1998 namely Sarabjit Singh, Madhusudan Jain, Devi Das, D.K. Jawa, Thorasalappa, A. Ramnathan. It is further alleged that enquiry officer has summoned the above witnesses for their evidence on 06.03.1998 and issued summons to Sarabjit and Madhusudan, mentioning incomplete address resulting the registered post undelivered. The workman has further alleged that in spite of the specific order by the Presiding Officer of this Tribunal 4-5 times the management did not produce the original record intentionally and willfully and submitted photocopies against the order of the Tribunal. Thus, the original documents is retained by the management which could clearly show that the documents were faked and that is why original documents were not produced including the fax dated 10.02.1998 allegedly sent by the account holder Sarabjit Singh. Management has failed to provide documents in spite of the order of the enquiry officer causing great prejudice and workman could not lead evidence in his defence. Thus, the enquiry officer did not conducted fair and proper enquiry. Learned enquiry officer did not take an objective decision and failed to appreciate the evidence given by the witnesses of the management Bhupinder Singh, Jagdish Lal, Mahesh Kumar, Monika Kuresa and K. Sudhir Kumar.

2. The management has submitted its written statement, alleging therein that a enquiry was conducted in a fair and proper manner after giving opportunity to the workman for cross-examining the bank-witnesses as well as defence witnesses. The enquiry officer after holding fair and proper enquiry and giving proper opportunity to the workman to prove his innocence has submitted enquiry report dated 30.03.1998 to disciplinary authority, holding guilty against both the charges leveled against the workman. In fact, the workman was served a notice and charge-sheet after conducting fair, legal and proper enquiry based on

the findings, evidence and enquiry materials on record and giving proper opportunity, dismissal order is passed by the disciplinary-authority.

3. Initially in this case vide order dated 27.04.2018 issues were framed and it was decided to treat the issue of fairness of domestic inquiry as preliminary issue. In preliminary enquiry workman himself got examined as WW1. On the other hand, the management has examined MW1/A Bhaskar Krishna Sanjay, Senior Manager, Circle Office, Sector 34-A, Chandigarh.

4. It is added here that my Predecessor Sh. A.K. Singh vide its order dated 18.02.2021 has vitiated the domestic enquiry conducted against the deceased-workman.

5. It is pertinent to mention here that the management was given opportunities for adducing evidence to prove that the inquiry conducted in the present case is fair and proper but management failed to adduce evidence despite avail of numerous opportunities and ultimately the evidence of management was closed on 15.01.2024 as the case was fixed for evidence of management since 18.02.2021. Thereafter, the case was adjourned for evidence of the management on 22.03.2021, 27.04.2021, 14.06.2021, 09.07.2021, 17.08.2021, 22.09.2021, 28.10.2021/02.11.2021, 24.12.2021, 29.04.2022, 21.06.2022, 12.09.2022, 20.10.2022, 29.11.2022, 17.01.2023, 29.03.2023, 18.07.2023, 11.09.2023, 06.11.2023 and 15.01.2024 and on 11.03.2024 the case was fixed for arguments on merit.

6. I have heard Ld. Counsels for the parties and have gone through the entire record of the case.

7. It is settled position of law that if the Industrial Tribunal has come to the conclusion that domestic enquiry is illegal because it was conducted against the principle of natural justice against the workman, respondent-bank is under legal obligation to prove the misconduct/charges against the charged employee before the Tribunal in order to prove the charges against the charge-sheeted workman. It is also fairly settled that in any industrial dispute, the respondent-bank is required to prove the charges on preponderance of probability and not on proof beyond reasonable doubt. Reference may be made of the judgment of Supreme Court in the case of ***Union of India Vs. Sardar Bahadur(1974)4 SCC 618, R.S. Singh Vs. State of Punjab and Other(1999)8 SCC page 90, State Bank of India Vs. Narender Kumar Pandey, Civil Appeal No.263/2013 dated 14.01.2013.***

8. It is a settled principle of law as laid down by the Hon'ble Supreme Court in the case of ***Neeta Kaplish Vs. Presiding Officer, Labouir Court, arising from Appeal(Civil) 6079 of 1998, decided on 04.12.1998***, that record pertaining to the domestic enquiry would not constitute fresh evidence and the management is required to prove its case on fresh evidence. The Hon'ble Supreme Court has held as follow:-

"The record pertaining to the domestic enquiry would not constitute "fresh evidence" as those proceedings have already been found by the Labour Court to be defective. Such record would also not constitute "material on record", as contended by the counsel for the respondent, within the meaning of Section 11-A as the enquiry proceedings, on being found to be bad, have to be ignored altogether. The proceedings of the domestic enquiry could be, and, were, in fact, relied upon by the management for the limited purpose of showing at the preliminary stage that the action taken against the appellant was just and proper and that full opportunity of hearing was given to her in consonance with the principles of natural justice. This contention has not been accepted by the Labour Court and the enquiry has held to be bad. In view of the nature of objections raised by the appellant, the record of enquiry held by the management ceased to be "material on record" within the meaning of section 11-A of the Act and the only course open to the management was to justify its action by leading fresh evidence as required by the Labour Court. If such evidence has not been led, the management has to suffer the consequences."

Thus, the proposition of law which emerges from the judgment of Hon'ble Supreme Court is crystal clear and management has to prove the charges on the basis of fresh evidence but the management-bank has not led any oral and documentary evidence for the reasons best known to it.

9. It is also added here that respondent-bank has even not examined the enquiry officer as witness in this Court despite of the fact that Sh. A.K. Singh my Ld. Predecessor has pointed out in his order dated 18.02.2021. Thus, enquiry proceeding stands vitiated on this score alone.

10. Since no new evidence has been led by the management before this Tribunal, so finding of my Ld. Predecessor Sh. A.K. Singh dated 18.02.2021 cannot be reversed.

11. Now the question arises whether the claimant/workman is entitled to any incidental relief of payment of back wages and or reinstatement in service with continuity of service. It is added here that the workman had attained the age of superannuation on 31.07.2015 and he remained dismiss from 16.07.1998 to 31.07.2015. It is added here that workman has not pleaded anything about his post employment after his dismissal from service in his claim statement as well as in his affidavit.

12. The Hon'ble Supreme Court in the case titled as ***"Deepali Gundu Surwase v. Kranti Junion Adhyapak Mahavidyalaya" reported as (2013) 10 SCC 324*** has held as under:-

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

i) In cases of wrongful termination of service, reinstatement with continuity of service and back wages is the normal rule.

ii) The aforesaid rule is subject to the rider that while deciding the issue of back wages the adjudicating authority or Court may to take into consideration the nature of job and misconduct if any found proved against the employee/workman the financial condition of the employer and similar other factors.

iii) 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 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."

13. The Hon'ble Punjab & Haryana High Court while referring different judgments of Hon'ble Supreme Court including ***Deepali Gundu Surwase(supra),*** and ***Hindustan Tin Works Private Limited v. Employees of Hindustan Tin Works Private Limited (1979) 2 SCC 80*** as well as in the case of ***Tapash Kumar Paul Vs. BSNL,(2014) 15 SCC 313, Surender Kumar Verma Vs. Central Government Industrial Tribunal-cum-Labour Court,(1980) 4 SCC 443,*** has observed that there cannot be a straight jacket formula for awarding relief of back wages along with all the relevant benefits. More or less, it can be address to the discussion of the Tribunal with full back wages could be the normal rule and the party objecting to it must establish. The circumstances insisting the departure at this stage, the Tribunal while exercises its consideration keeping in view of the relevant circumstances but the discretion must be exercises judiciously must be cogent and convincing and must be appear on the face on record. When it is within the discussion of the authority that something has to be done according to the rules, reasons and justice is not according to law and not he humour it is not arbitrary, vague but legal and regular.

14. So far as the facts and evidence of the case is concerned, nothing has been stated in the claim petition and affidavit with respect to the post employment after alleged dismissal period by the workman. Thus, the facts in the claim petition lacks the basic requirement for providing back wages. No doubt, this Tribunal has got power to mould a relief or cover it. The incidental relief for the consequences rendered by illegal dismissal of the workman.

15. In these circumstances, where workman has superannuated on 31.07.2015 and thereafter expired so he cannot be reinstated however, the legal heirs of the deceased-workman are entitled for 25% back wages from the date of dismissal of the deceased-workman upto the date of superannuation with all retiral benefits under the relevant rules. The management-bank is directed to pay the aforesaid benefits to the legal heirs of the deceased-workman within 2 months from the publication of the award. The reference is answered accordingly.

16. The reference is answered accordingly. Let copy of the award be sent to the Central Government for publication as required under Section 17(1) of the Act.

KAMAL KANT, Presiding Officer

नई दिल्ली, 2 जुलाई, 2024

का.आ. 1337.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार सैन्य इंजीनियरिंग सेवाएँ के प्रबंधतत्र, संबद्ध नियोजको और उनके कर्मकारो के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, **चंडीगढ़**-II के पंचाट (23/2016) प्रकाशित करती है।

[सं. एल - 12025/01/2024- आई आर (बी-I)-184]

सलोनी, उप निदेशक

New Delhi, the 2nd July, 2024

S.O. 1337.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref.23/2016*)* of the *Cent.Govt.Indus.Tribunal-cum-Labour Court Chandigarh-II* as shown in the Annexure, in the industrial dispute between the management of Military Engineering Service and their workmen.

[No. L-12025/01/2024- IR (B-I)-184]

SALONI, Dy. Director

ANNEXURE

In the Central Government Industrial Tribunal-cum-Labour Court-II, Chandigarh.

Present: Mr. Kamal Kant, Presiding Officer.

ID No.23/2016

Registered on:-16.06.2016

Sh. Mohd. Aslam S/o Sh. Sarwar Khan, R/o H.No.543, Village Rampursuri, Mahadev Colony, BCW Surajpur, Tehsil Kalka, District Panchkula(HR).

……..Workman

Versus

Garrison Engineer(Utility), Military Engineering Services, Chandimandir, District Panchkula(HR).

…….Respondent/Management

AWARD

Passed on:-06.03.2024

1. The workman Mohd. Aslam has filed the present claim petition under Section 2-A of the Industrial Disputes Act, 1947(hereinafter called as 'Act') with the averment that he was interviewed and selected and recommended to be appointed as Mazdoor by a Selection Committee constituted by G.E. and was appointed as such in April 2002. After due Police Verification, he was allowed to join on 7.5.2002. His working hours were from 8 am to 5 pm daily with a break of one hour for lunch. He was employed as Plumber w.e.f. 1.1.2009. It was usual practice in G.E.(U), Chandimandir that initially civilian employees are appointed on temporary basis, paid less that the prescribed rates, performance used to be observed and only then regularized on the job after having observed the performance of duties, work, conduct etc. for about one year. He was also assured at the time of his initial appointment/joining that he would be regularized as and when vacancies are sanctioned and notified in future on a regular scales of pay. He was being paid only Rs.50/- per day which was much less as prescribed under the Minimum Wages Act by the Government and whenever he made a demand for minimum wages/more pay he was threatened with termination of his employment and even threatened that he would not be regularized. His pay was increased from Rs.1500/- in the year 2002 to Rs.6000/- per month in 2015. He was discharging his duties sincerely and honestly. The management did not take any steps to regularize his services despite the fact that the regular posts of Mazdoor or Plumber, later on of Mates as well as Plumbers were existing and were vacant. The respondent/ management used the policy of hire and fire and as on date there are 10-15 Plumbers but still some vacancies are lying vacant. He made representations to the G.E.(U), Chandimandir through J.E. and A.G.E. concerned many times to enhance the wages and regularize his services as per the promise given at the time of his joining but every time rather than taking any action on the requests made he met with threat of termination of service. All his requests fell on the deaf ears.

His services were terminated on 7.8.2015 without any notice of termination and without any compensation in lieu thereof. On 7.8.2015 he received one sentence verbal order that his services are terminated and he need not to come on duty w.e.f. 8.8.2015 by Sh. B.K. Sharma, A.G.E. a subordinate of G.E.(U), Chandimandir. He was also not given the salary for the month of August 2015. The respondent-management falls under the definition of Industry and he is the workman under the definition of Industrial Disputes Act. There was no compliance of Section 25-F of the Industrial Disputes Act neither any notice or any pay/wages in lieu thereof was given nor any retrenchment compensation was paid. The juniors were retained in service and he was terminated from service which is violation of Section 25-G of the ID Act. He demand Rs.2,77,520/- towards back wages along with interest @12% and reinstatement in service.

2. Respondent/management has filed its written statement, alleging therein that there are two types of employees i.e. Combatants and Civilians and not Civilian(Contractual). Daily wagers are employed through contractors and they are not the employees of the management. It is denied that workman was interviewed and selected and appointed as Mazdoor by Selection Committee. The workman was never employed by the management so the question of termination of services without any notice and any compensation does not arise. The management does not fall under the definition of Industry as the office of the management is under the control and administration of Ministry of Defence and the same being under the Central Government of India, the question of falling the management under the definition of Industry does not arise. The management has not violated the provisions of Section 25-F of the ID Act. Since the workman was never worked with the management, the question of payment of money in lieu of three months notice does not arise. Therefore, the present claim statement is liable to be dismissed being devoid of merits in the interest of justice.

3. The workman filed replication to the written statement filed by the management, alleging therein that he was employed and worked as Mazdoor/Plumber for the management from 7.5.2002 to 8.8.2015 and was paid Rs.50/- per day from the day of joining which was revised from time to time and was being paid Rs.6000/- when his services were terminated in the month of August, 2015. He was not paid for the period from 1.8.2015 to 8.8.2015. No money in lieu of three months notice was paid to him.

4. It is pertinent to mention here that the management was proceeded ex parte on 16.11.2016 and the management has filed an application for setting aside the ex parte order dated 16.11.2016 to which reply was filed by the workman and the ex parte order dated 16.11.2016 passed against the management was set aside by my Ld. Predecessor on the payment of cost of Rs.300/- on 31.05.2017.

5. Parties were given opportunity to lead evidence.

6. The workman has examined himself as WW1 and filed his affidavit in evidence as Ex.WW1/A along with documents i.e. Temporary Pass and work order slips(colly) and has been cross-examined by the learned counsel of management. The workman has also examined WW2 Raman Kumar, who filed his affidavit in evidence as Ex.WW2/A, WW3 Anil Kumar who filed his affidavit in evidence as Ex.WW3/A, WW4 Gulshan Ali who filed his affidavit in evidence as Ex.WW4/A and WW5 Mohd. Yamin @ Geja who filed his affidavit in evidence as Ex.WW5/A and were cross-examined by the learned counsel of management.

7. The management has examined MW1 Sh. Ashish Yadav, working as AGE E/M-II in the office of Garrison Engineer(Utility) Chandimandir, who filed his affidavit in evidence as Ex.MW1/A and has been cross-examined by the learned AR of workman.

8. The workman filed written arguments, alleging therein that there are three types of employees i.e. Combatants, Civilian(Regular) and Civilian(Contractual) apart from daily wagers employed through contractors. There were about 250-260 civilian employees(regular as well as contractual) working under GE(U) Chandimandir. He was interviewed, selected and recommended to be appointed as Mazdoor by a Selection Committee constituted by G.E. and was appointed as such in April 2002 after due police verification and was allowed to join on 7.5.2002 from 8 am to 17 pm daily with a break of one hour for lunch. The workman was employed as Plumber w.e.f. 1.1.2009. The workman was assured at the time of initial appointment/joining that he would be regularized as and when vacancies are sanctioned and notified in future on a regular scales of pay. The workman discharging his duties sincerely and honestly and his superiors never had any occasion to point out or having been found wanting. He had to work under strict military discipline in that when he used to enter/exit in/out of the Cantonment his Pass/I-card used to be checked and J.E. used to take daily attendance with time and date. Earlier Pass/I-Card used to made and issued by AGE and later on it was used to be issued by Station Headquarters, Chandimandir. Management was taking work for nine hours a day(including one hour break) from workman but was neither paying the minimum wages prescribed and notified from time to time by the Govt. nor any weekly holidays, any type of casual leave or earned leave was being given. The workman filed his

affidavit in evidence and similarly four more witnesses were examined and cross-examined. All the witnesses have supported the version that there were three types of employees viz. Combatants, Civilian(Regular) and Civilian(Contractual) apart from daily wagers employed through Contractors and there were about 250-260 civilian employees working under GE(U) Chandimandir. Lone witness of the management is Assistant Garrison Engineer(AGE) who though posted on the incumbent post only December 2017 i.e. much after the period of workman's employment with management from 7.5.2002 to 7.8.2015 but claims to be in full knowledge of the case and hence competent to depose. He denied of having any contractual employee like workman because management gives all maintenance works to Contractor and do not deal directly with contractual employees. The names of the contractors who were awarded such contract from 2002 to 2015 not given by the management and their date of contract/agreement, tenure of agreement, terms and conditions of agreement liability default or otherwise are not given. Assuming for the sake of argument that workman was employee of contractor as to how come same contractor continued from 7.5.2002 to 8.8.2015. It is a settled principle of law that if the facts are not specifically pleaded nor denied in the pleadings are deem to be admitted facts and there is no question of its proof by oral or documentary evidence nor any such documentary or otherwise evidence is placed on the record. The workman has placed on record the complaint slips which are more than 130 in number for the period from 2007 to 2011, which belongs to the respondent-management having Docket Machine Numbers duly singed by the incumbent Junior Engineers(E/M) at the relevant time. By these signed slips, works/daily duties used to be assigned to the workman giving details of the nature of complaint, building number and location, individual tradesman detailed for the job and were required to be deposited back in the Service Centre on completion of job. These complaint slips conclusively prove that the workman was the employee of the management and the works/duties used to be allotted was supervised and monitored by JR(E/M) of the management. The workman has placed reliance to the judgment titled as ***Ram Singh and others Vs. Union Territory Chandigarh and others, Civil Appeal No.3166/2002, decided on 07.11.2003*** which deals with the relationship between employer and employee/master and servant and forum for deciding nature of employment of workman with establishment and contractors.

9. The management filed written arguments, alleging therein that there are two types of employees i.e. Combatants and Civilians and not Civilian(Contractual). The daily wagers are employed through contractors and thus, they are not the employees of the management. The workman was never appointed by the management and thus, no payment has ever been made to the defence accounts and the workman should be asked to prove the same with cogent evidence. The workman requested for experience certificate with a request that he can work with any other contract/contractor and accordingly the experience certificate was issued with specific work that on contractual basis that means they are working under contractors and they were paid by the different contractors. The MES was issuing temporary entry passes for workers of contractors as well as to the dependents of MES employees. Dut to security, this practice was stopped by Station HW and direction was issued that security passes shall be issued by Station HQ and police verification was also the requirement of Station HQ. CMP persons started checking all the persons including deployed by the contractors on installations. Therefore, to overcome the problem, all the persons were asked to given an application so that it can be forwarded to the respective police verification. The present claim petition filed by the workman is liable to be dismissed in the interest of justice.

10. I have heard learned counsels for the parties and have gone through the entire evidence placed on file by the parties as well as written arguments.

11. It is added here, it is the case of the workman that it was usual practice in respondent-management that initially civilian employees are employed on temporary basis and paid less than the prescribed rates and after observing the performance, the workman are regularized on job after one year. The workman was paid Rs.50/- per day. Thus, the workman claims himself to be appointed on temporary daily wages. The first question is required to be determined is whether the claimant is a workman even if he was appointed on temporary daily wages and was drawing Rs.50/- per day. To my mind, the claimant is a workman within the definition of Section 2(S). In this regard, reference can be made to the decision in the case of ***Devinder Singh Vs. Municipal Council, Sanaur, AIR 2011 Supreme Court 2532***, wherein the Hon'ble Apex Court while interpreting the provisions of Section 2(S) of the Act which deals with the definition of "workman" has observed as under :-

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

Section 2(s) from which it can be inferred that only person employed on regular basis or a person employed for doing whole time job is a workman and the one employed on temporary, part time or contract basis on fixed wages or as a casual employee or for doing duty for fixed hours is not a workman."

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

12. The real controversy lies between the parties with respect to the relationship of workman with management. The issue as to whether the workman was engaged by the employer/management directly or through contractors is the bone of contention between the parties. There is no dispute about preposition of law that onus to prove that claimant was in the employment of management is always on the workman/claimant and it is for the workman to adduce evidence to prove factum of his employment with the management. Such evidence may be in form of receipt of salary or wages for 240 days or record of their appointment or engagement for that period to show that he had worked with the respondent-management for 240 days or more in a calendar year. In this regard, reference may be made to judgment of Hon'ble Supreme Court in case of ***Batala Coop. Sugar Mills Ltd. Vs. Sowaran Singh, (2005) 8 Supreme Court Cases 481 as well as Director Fisheries terminated Division Vs. Bhikubhai Meghajibhai Gavda(2012) 1 SCC 47.***

13. Question remains to be seen whether claimant/workman Mohd. Aslam has proved that he was directly engaged by the management on 7.5.2002 and served till his termination on 7.8.2015. This fact has to be proved by the documentary evidence as well as oral evidence. At the very outset, it may be mentioned that there is no single reliable document to prove that workman/claimant was directly employed by the management. In this connection, workman Mohd. Aslam has accepted that neither any appointment letter nor any termination letter was issued by the respondent-management. Undoubtedly, witness examined by the respondent-management namely Ashish Yadav, AGE E/M-II, Garrison Engineer(Utility) Chandimandir has categorically stated in his evidence that the claimant/workman was not employed by the management as such, neither notice nor retrenchment compensation was given by management.

14. Hon'ble Supreme Court after analysing the catena of cases has laid down in ***Balwant Raj Saluja Vs. Air India Limited in Civil Appeal No.10266 dated 25.08.2014,*** two well recognised tests to find out whether the labours are the contract employees of the principal employer as follows:-

1) Whether the principal employer pays the salary instead of contractor and

2) Whether the principal employer controls and supervise the work of the employees?

The facts regarding the payment of salary by the management or contractor has not been specifically stated in the claim petition of the workman. In fact, claim petition is totally silent regarding the payment of wages, salary, letter of appointment or anything likewise. Similarly, workman has not mentioned anything regarding the mode of payment of wages, salaries etc. in his affidavit. Thus, this basic features for holding the relationship of employer and employee is totally lacking not in the pleading but also in the evidence submitted by the workman.

15. WW1 Mohd. Aslam has stated in his cross-examination that he was paid salary by the JE of the Department in cash and signatures were obtained in a register. Salary slip was not issued to the workman. It appears that workman has taken the above plea just to cover up his case that he was employed by the respondent-management. Actually the workman was not employed by the respondent-management as it is his case that he was interviewed, selected and recommended as Mazdoor by a Selection Committee constituted by G.E. and joined as such on 7.5.2002. His police verification was also done. The said statement of him also seemed to be afterthought because had he been interviewed, selected and recommended to be appointed as Mazdoor. He could have summoned the documents from the respondent-management by filing an application but he has not summoned the documents which clearly shows that he was not getting any wages from the respondent-management nor he was appointed by the respondent-management.

16. Secondly, so far as the question of controls and supervision is concerned. Workman has categorically stated that his work was controlled and supervised by the officials of the management. To this effect, he has placed on record the temporary entry pass and complaint slips. Except this, nothing is brought on record to prove that it is management who were supervising and controlling the work of claimant/workman. The apex court while explaining the factor of supervision and control in the case of

International Airport Authority of India vs. International Air Cargo Workers Union [209 (13) SCC374] has held as follows:-

> ***"If the contract is for supply of labour, necessarily, the labour supplied by the contractor will work under the directions, supervision and control of the principal employer but that would not make the worker a direct employee of the principal employer, if the salary is paid by contractor, if the right to regulate employment is with the contractor, and the ultimate supervision and control lies with the contractor.***
>
> ***The principal employer only controls and directs the work to be done by a contract labour, when such labour is assigned/allotted/sent to him. But it is the contractor as employer, who chooses whether the worker is to be assigned/allotted to the principal employer or used otherwise. In short, worker being the employee of the contractor, the ultimate supervision and control lies with the contractor as he decides whether the employee will work and how long he will work and subject to what conditions. Only when the contractor assigns/sends the worker to work under the principal employer, the worker works under the supervision and control of the principal employer but that is secondary control. The primary control is with the contractor."***

17. Thus, the principal enunciated by the Hon'ble Supreme Court clearly establishes that mere supervision of work is not sufficient to prove the relationship of employer and employee till it is proved that there was a complete control and supervision. The management control includes the authority of dismissal, taking of disciplinary action and continuity of service etc. Claim petition filed by the claimant/workman is mum on this score and workman has not mentioned any specific averment in his affidavit regarding the appointment, authority of dismissal or taking of disciplinary action by the management. There is nothing on record to prove that it is the management who grant the leave or has authority to take any disciplinary action. In my considered opinion, mere saying of supervision regarding the execution of the work as alleged by the witness may not be called effective and absolute control. Such control is being emphasized to control the work of the management for a specific work in efficient manner done by the management in the establishment. So far as the photocopies of complaint slips placed on record by the workman are concerned, they have also not been proved by calling the concerned official from the respondent-management. Moreover, from these slips and entry pass, it cannot be said that workman was working under the control and supervision of the respondent-management. So far as the case law ***Ram Singh and other(supra)*** referred by the learned AR for the workman is concerned, it stated that control by employer is only one factor to determine relation between employers and employees along with many other interrelated factors.

18. Undoubtedly, in Tribunal cases, has to be decided on the basis of the preponderance of probability and not the proof beyond reasonable doubt. So far as this case is concerned, there is no documentary evidence on record to prove the factum of direct employment of workman with the management. In any way nothing is on record with respect of the payment of salary, attendance register or work done by the claimant/workman during the course of alleged employment with the management. There is nothing mentioned in the claim petition as well as affidavit of the workman that who was the person-concerned by which he was directly engaged in the respondent-management of Garrison Engineer, Chandimandir. I am of the considered opinion that mere saying that he was employed by the Selection Committee constituted by G.E. and was appointed as Mazdoor which is clearly not proved by the workman. Thus, it may be observed that there is nothing conclusive either oral or documentary to prove that it was principal-employer Garrison Engineer, Chandimandir who controls and supervise the work of the workman. Workman Mohd. Aslam has examined four witnesses WW2 Raman Kumar, WW3 Anil Kumar, WW4 Gulshan Ali and WW5 Mohd. Yamin, their testimonies are of similar nature as that of workman. They all had also stated that salary was paid to them also by the J.E. of the department in cash. They had also admitted that there was no advertisement at the time of their joining. They had not submitted any form or application for the job. There was no call letter for joining the service. They are also daily wager like the workman and as such, their statements are also of no use to prove the case of workman.

19. So far as the question pertaining to the non-compliance of the provisions of Section 25-F of the ID Act is concerned. It is not disputed that management has neither issued any show cause notice nor given any compensation in lieu of notice as is envisaged under Section 25-F of the ID Act. Learned counsel of the management contended that workman in fact was not the employee of the establishment as such, neither he is terminated by the management nor such notice and compliance of Section 25-F of the Act is required by the establishment. In this connection, learned counsel of the management has placed reliance in the case of ***Municipal Corporation, Faridabad Vs. Siri Niwas, Appeal(Civil) No.1851 of 2002,***

decided on 06.09.2004, Rajasthan State Ganganagar S. Mills Ltd. Vs. State of Rajasthan & Anr. Civil Appeal No.5969 od 2004, decided on 13.09.2004 as well as ***State of Rajasthan, Manager RBI Bangalore Vs. S. Mani & Ors. Civil Appeal No.6306-6316 of 2003 decided on 14.03.2005.*** Learned counsel of the workman contended that workman is rendering his services with the management for so many years and he had completed 240 days in the year 7.8.2015 before termination by the management. As per pleading of the workman he was terminated from 7.8.2015 without compliance of Section 25-F of the ID Act. It is pertinent to mention that pleadings required specific averments with respect to the facts alleged in it. It is not specifically pleaded that workman was retrenched/terminated by the management in preceding year i.e. on 7.8.2015 even he had rendered 240 days of service in the management. Thus, there is no specific pleading with respect to the working of 240 days in preceding year of the alleged termination. In the affidavit even there is no mention that the workman has worked for 240 days in the preceding year i.e. on 7.8.2015. Thus, this is a general assertion for rendering services with the management rather specific averments with respect to the 240 days in the preceding year before the termination. Thus, claim petition as well as affidavit filed by the workman is not very specific with respect to 240 days working in the establishment. In the light of the specific denial by the management for rendering services with the management, burden lies on the workman to prove this fact. The workman has failed to prove it. Thus, there is no necessity of issuing any show cause notice to the workman.

20. The claimant/workman has also claimed in his claim petition as well as in his affidavit and even in his cross-examination that Junior Engineer had given oral assurance for regularization in the department. In this regard, it is pertinent to mention here that he cannot have been regularized in the department as in those cases where the case fall under the definition of industrial dispute as mentioned under Section 2(k) of the ID Act only then regularization can be made. Section 2(k) of the ID Act defines "industrial dispute", which reads as under:

> ***"2. Definitions.-In this Act, unless there is anything repugnant in the subject or context,-***
>
> ***x x x x***
>
> ***(k) "industrial dispute" means any dispute or difference between employers and employers, or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person;"***

And ID Act was amended adding Section 2A making individual dispute of a workman as an industrial dispute, if the dispute is related to dismissal, discharge, retrenchment or termination of individual workmen. Thus, Section 2A carves an exception to the definition of individual dispute as given in Section 2(k) of the ID Act. Thus, in order to give jurisdiction to the appropriate government to refer the dispute to the Tribunal/Labour Court, it was essential for the workman to show that his individual dispute for regularization was sponsored or espoused by the union of the workmen. The five Bench of the Apex Court in the case of ***Workmen of Dharampal Premchand (Saughandhi) Vs. Dharampal Premchand (Saughandhi), Civil Appeal No.532/1963, decided on 16.03.1965***, has also support the above view.

21. The Hon'ble Karnatana High Court in the case titled as ***Prakash and Ors. Vs. Superintending Engineer(Electrical), O and M Circle, Belgaum and Ors., Writ Petition Nos.41747-757/1999, decided on 31.03.2000***, has taken a view that the individual workman cannot raise a dispute with regard to absorption and regularization.

22. The Delhi High Court in the case of ***Management of Hotel Samrat and Ors. Vs. Government of NCT and Ors., Writ Petition(C) No.6247 & 6682/2002, decided on 04.01.2007***, has taken a similar view that in order to be an industrial dispute, it has to satisfy the definition of Section 2(k) of the ID Act.

23. In view of the above discussion, this Tribunal is of the firm view that there is no merit in the case and the same is liable to be dismissed.

24. Let copy of the award be sent to the Central Government for publication as required under Section 17(1) of the Act.

KAMAL KANT, Presiding Officer

नई दिल्ली, 2 जुलाई, 2024

का.आ. 1338.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार सैन्य इंजीनियरिंग सेवाएँ के प्रबंधतत्र, संबद्ध नियोजको और उनके कर्मकारो के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, **चंडीगढ़**-II के पंचाट (20/2016) प्रकाशित करती है।

[सं. एल - 12025/01/2024- आई आर (बी-I)-183]

सलोनी, उप निदेशक

New Delhi, the 2nd July, 2024

S.O. 1338.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref.20/2016*)* of the *Cent.Govt.Indus.Tribunal-cum-Labour Court Chandigarh-II* as shown in the Annexure, in the industrial dispute between the management of Military Engineering Service and their workmen.

[No. L-12025/01/2024- IR (B-I)-183]

SALONI, Dy. Director

ANNEXURE

In the Central Government Industrial Tribunal-cum-Labour Court-II, Chandigarh.

Present: Mr. Kamal Kant, Presiding Officer.

ID No.20/2016

Registered on:-16.06.2016

Sh. Anil Kumar S/o Sh. Ram Kishan, R/o Khadak Mangoli, Gate No.3, Old Panchkula, District Panchkula(HR).

Workman

Versus

Garrison Engineer(Utility), Military Engineering Services, Chandimandir, District Panchkula(HR).

Respondent/Management

AWARD

Passed on:-06.03.2024

1. The workman Anil Kumar has filed the present claim petition under Section 2-A of the Industrial Disputes Act, 1947(hereinafter called as 'Act') with the averment that he was interviewed and selected and recommended to be appointed as Mazdoor by a Selection Committee constituted by G.E. and was appointed as such in April 2002. After due Police Verification, he was allowed to join on 7.5.2002. His working hours were from 8 am to 5 pm daily with a break of one hour for lunch. He was employed as Plumber w.e.f. 1.1.2009. It was usual practice in G.E.(U), Chandimandir that initially civilian employees are appointed on temporary basis, paid less than the prescribed rates, performance used to be observed and only then regularized on the job after having observed the performance of duties, work, conduct etc. for about one year. He was also assured at the time of his initial appointment/joining that he would be regularized as and when vacancies are sanctioned and notified in future on a regular scales of pay. He was being paid only Rs.50/- per day which was much less as prescribed under the Minimum Wages Act by the Government and whenever he made a demand for minimum wages/more pay he was threatened with termination of his employment and even threatened that he would not be regularized. His pay was increased from Rs.1500/- in 2002 to Rs.6000/- per month in 2015. He was discharging duties sincerely and honestly. The management did not take any steps to regularize his service despite of the fact that the regular posts of Mazdoor or Plumber, later on of Mates as well as Plumbers were existing and were vacant. The respondent/ management used the policy of hire and fire and as on date there are 10-15 Plumbers but still some vacancies are lying vacant. He made representations to the G.E.(U), Chandimandir through J.E. and A.G.E. concerned many times to enhance the wages and regularize his services as per the promise given at the time of his joining but every time rather than taking any

action on the requests made he met with threat of termination of service. All his requests fell on the deaf ears. His services were terminated on 7.8.2015 without any notice of termination and without any compensation in lieu thereof. On 7.8.2015 he received one sentence verbal order that his services are terminated and he need not to come on duty w.e.f. 8.8.2015 by Sh. V.K. Sharma, A.G.E. a subordinate of G.E.(U), Chandimandir. He was also not given the salary for the month of August 2015. The respondent-management falls under the definition of Industry and he is the workman under the definition of Industrial Disputes Act. There was no compliance of Section 25-F of the Industrial Disputes Act neither any notice or any pay/wages in lieu thereof was given nor any retrenchment compensation was paid. The juniors were retained in service and he was terminated from service which is violation of Section 25-G of the ID Act. He demand Rs.2,77,520/- towards back wages along with interest @12% and reinstatement in service.

2. Respondent/management has filed its written statement, alleging therein that there are two types of employees i.e. Combatants and Civilians and not Civilian (Contractual). Daily wagers are employed through contractors and they are not the employees of the management. It is denied that workman was interviewed and selected and appointed as Mazdoor by Selection Committee. The workman was never employed by the management so the question of termination of services without any notice and any compensation does not arise. The management does not fall under the definition of Industry as the office of the management is under the control and administration of Ministry of Defence and the same being under the Central Government of India, the question of falling the management under the definition of Industry does not arise. The management has not violated the provisions of Section 25-F of the ID Act. Since the workman was never worked with the management, the question of payment of money in lieu of three months notice does not arise. Therefore, the present claim statement is liable to be dismissed being devoid of merits in the interest of justice.

3. The workman filed replication to the written statement filed by the management, alleging therein that he was employed and worked as Mazdoor/Plumber for the management from 7.5.2002 to 8.8.2015 and was paid Rs.50/p per day from the day of joining which was revised from time to time and was being paid Rs.6000/- when his services were terminated in the month of August, 2015. He was not paid for the period from 1.8.2015 to 8.8.2015. No money in lieu of three months notice was paid to him.

4. It is pertinent to mention here that the management was proceeded ex parte on 16.11.2016 and the management has filed an application for setting aside the ex parte order dated 16.11.2016 to which reply was filed by the workman and the ex parte order dated 16.11.2016 passed against the management was set aside by my Ld. Predecessor on the payment of cost of Rs.300/- on 31.05.2017.

5. Parties were given opportunity to lead evidence.

6. The workman has examined himself as WW1 and filed his affidavit in evidence as Ex.WW1/A along with documents i.e. Temporary Pass and work order slip(colly) and has been cross-examined by the learned counsel of management. The workman has also examined WW2 Sh. Mohd. Yamin, who filed his affidavit in evidence as Ex.WW2/A, WW3 Raman Kumar who filed his affidavit in evidence as Ex.WW3/A, WW4 Gulshan Ali who filed his affidavit in evidence as Ex.WW4/A and WW5 Mohd. Aslam who filed his affidavit in evidence as Ex.WW5/A and were cross-examined by the learned counsel of management.

7. The management has examined MW1 Sh. Ashish Yadav, working as AGE E/M-II in the office of Garrison Engineer(Utility) Chandimandir, who filed his affidavit in evidence as Ex.MW1/A and has been cross-examined by the learned AR of workman.

8. The workman filed written arguments, alleging therein that there are three types of employees i.e. Combatants, Civilian(Regular) and Civilian(Contractual) apart from daily wagers employed through contractors. There were about 250-260 civilian employees (regular as well as contractual) working under GE(U) Chandimandir. He was interviewed, selected and recommended to be appointed as Mazdoor by a Selection Committee constituted by G.E. and was appointed as such in April 2002 after due police verification and was allowed to join on 7.5.2002 from 8 am to 17 pm daily with a break of one hour for lunch. The workman was employed as Plumber w.e.f. 1.1.2009. The workman was assured at the time of initial appointment/joining that he would be regularized as and when vacancies are sanctioned and notified in future on a regular scales of pay. The workman discharging his duties sincerely and honestly and his superiors never had any occasion to point out or having been found wanting. He had to work under strict military discipline in that when he used to enter/exit in/out of the Cantonment his Pass/I-card used to be checked and J.E.

used to take daily attendance with time and date. Earlier Pass/I-Card used to made and issued by AGE and later on it was used to be issued by Station Headquarters, Chandimandir. Management was taking work for nine hours a day(including one hour break) from workman but was neither paying the minimum wages prescribed and notified from time to time by the Govt. nor any weekly holidays, any type of casual leave or earned leave was being given. The workman filed his affidavit in evidence and similarly four more witnesses were examined and cross-examined. All the witnesses have supported the version that there were three types of employees viz. Combatants, Civilian(Regular) and Civilian(Contractual) apart from daily wagers employed through Contractors and there were about 250-260 civilian employees working under GE(U) Chandimandir. Lone witness of the management is Assistant Garrison Engineer(AGE) who though posted on the incumbent post only December 2017 i.e. much after the period of workman's employment with management from 7.5.2002 to 7.8.2015 but claims to be in full knowledge of the case and hence competent to deposit. He denied of having any contractual employee like workman because management gives all maintenance works to Contractor and do not deal directly with contractual employees. The names of the contractors who were awarded such contract from 2002 to 2015 not given by the management and their date of contract/agreement, tenure of agreement, terms and conditions of agreement liability default or otherwise are not given. Assuming for the sake of argument that workman was employee of contractor as to how come same contractor continued from more than thirteen years from 7.5.2002 to 8.8.2015. It is a settled principle of law that if the facts are not specifically pleaded nor denied in pleadings are deem to be admitted facts and there is no question of its proof by oral or documentary evidence nor any such documentary of otherwise evidence is placed on record. The workman has placed on record complaint slips which are more than 130 in number for the period from 2007 to 2011, which belongs to management having Docket Machine Numbers duly singed by the incumbent Junior Engineers(E/M) at the relevant time. By these signed slips, works/daily duties used to be assigned to the workman giving details of the nature of complaint, building number and location, individual tradesman detailed for the job and were required to be deposited back in the Service Centre on completion of job. These complaint slips conclusively prove that the workman was the employee of the management and the works/duties used to be allotted was supervised and monitored by JR(E/M) of the management. The workman has placed reliance to the judgment titled as ***Ram Singh and others Vs. Union Territory Chandigarh and others, Civil Appeal No.3166/2002, decided on 07.11.2003***, which deals with the relationship between employer and employee/master and servant and forum for deciding nature of employment of workman with establishment and contractors.

9. The management filed written arguments, alleging therein that there are two types of employees i.e. Combatants and Civilians and not Civilian(Contractual). The daily wagers are employed through contractors and thus, they are not the employees of the management. The workman was never appointed by the management and thus, no payment has ever been made to the defence accounts and the workman should be asked to prove the same with cogent evidence. The workman requested for experience certificate with a request that he can work with any other contract/contractor and accordingly the experience certificate was issued with specific work that on contractual basis that means they are working under contractors and they were paid by the different contractors. The MES was issuing temporary entry passes for workers of contractors as well as to the dependents of MES employees. Dut to security, this practice was stopped by Station HW and direction was issued that security passes shall be issued by Station HQ and police verification was also the requirement of Station HQ. CMP persons started checking all the persons including deployed by the contractors on installations. Therefore, to overcome the problem, all the persons were asked to give an application so that it can be forwarded to the respective police verification. The present claim petition filed by the workman is liable to be dismissed in the interest of justice

10. I have heard learned counsels for the parties and have gone through the entire evidence placed on file by the parties as well as written arguments filed by both the parties.

11. It is added here, it is the case of the workman that it was usual practice in respondent-management that initially civilian employees are employed on temporary basis and paid less than the prescribed rates and after observing the performance, the workman are regularized on job after one year. He was paid Rs.50/- per day. Thus, workman claims himself to be appointed on temporary daily wages. The first question is required to be determined is whether the claimant is a workman even if he was appointed on temporary daily wages and was drawing Rs.50/- per day. To my mind, the claimant is a workman within the definition of Section 2(S). In this regard, reference can be made to the decision in the case of ***Devinder Singh Vs. Municipal Council, Sanaur, AIR 2011 Supreme Court 2532***, wherein the Hon'ble Apex Court while interpreting the provisions of Section 2(S) of the Act which deals with the definition of "workman" has observed as under :-

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

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

12. The real controversy lies between the parties with respect to the relationship of workman with management. The issue as to whether the workman was engaged by the employer/management directly or through contractors is the bone of contention between the parties. There is no dispute about preposition of law that onus to prove that claimant was in the employment of management is always on the workman/claimant and it is for the workman to adduce evidence to prove factum of his employment with the management. Such evidence may be in form of receipt of salary or wages for 240 days or record of their appointment or engagement for that period to show that he had worked with the respondent-management for 240 days or more in a calendar year. In this regard, reference may be made to judgment of Hon'ble Supreme Court in case of ***Batala Coop. Sugar Mills Ltd. Vs. Sowaran Singh, (2005) 8 Supreme Court Cases 481 as well as Director Fisheries terminated Division Vs. Bhikubhai Meghajibhai Gavda(2012) 1 SCC 47.***

13. Question remains to be seen whether claimant/workman Anil Kumar has proved that he was directly engaged by the management on 7.5.2002 and served till his termination on 7.8.2015. This fact has to be proved by the documentary evidence as well as oral evidence. At the very outset, it may be mentioned that there is no single reliable document to prove that workman/claimant was directly employed by the management. In this connection, workman Anil Kumar has accepted that neither any appointment letter nor any termination letter was issued by the respondent-management. Undoubtedly, witness examined by the respondent-management namely Ashish Yadav, AGE E/M-II, Garrison Engineer(Utility) Chandimandir has categorically stated in his evidence that the claimant/workman was not employed by the management as such, neither notice nor retrenchment compensation was given by management.

14. The Hon'ble Supreme Court after analysing the catena of cases has laid down in ***Balwant Raj Saluja Vs. Air India Limited in Civil Appeal No.10266 dated 25.08.2014,*** two well recognised tests to find out whether the labours are the contract employees of the principal employer as follows:-

    1) Whether the principal employer pays the salary instead of contractor and

    2) Whether the principal employer controls and supervise the work of the employees?

The facts regarding the payment of salary by the management or contractor has not been specifically stated in the claim petition of the workman. In fact, claim petition is totally silent regarding the payment of wages, salary, letter of appointment or anything likewise. Similarly, workman has not mentioned anything regarding the mode of payment of wages, salaries etc. in his affidavit. Thus, this basic features for holding the relationship of employer and employee is totally lacking not in the pleading but also in the evidence submitted by the workman.

15. WW1 Anil Kumar has stated in his cross-examination that he was paid salary by the JE of the Department in cash and signatures were obtained in a register. Salary slip was not issued to the workman. It appears that workman has taken the above plea just to cover up his case that he was employed by the respondent-management. Actually the workman was not employed by the respondent-management as it is his case that he was interviewed, selected and recommended as Mazdoor by a Selection Committee constituted by G.E. and joined as such on 7.5.2002. His police verification was also done. The said statement of him also seemed to be afterthought because had he been interviewed, selected and recommended to be appointed as Mazdoor. He could have summoned the documents from the respondent-management by filing an application but he has not

summoned the documents which clearly shows that he was not getting any wages from the respondent-management nor he was appointed by the respondent-management.

16. Secondly, so far as the question of controls and supervision is concerned. Workman has categorically stated that his work was controlled and supervised by the officials of the management. To this effect, he has placed on record the temporary entry pass and complaint slips. Except this, nothing is brought on record to prove that it is management who were supervising and controlling the work of claimant/workman. The apex court while explaining the factor of supervision and control in the case of ***International Airport Authority of India vs. International Air Cargo Workers Union [209 (13) SCC374]*** has held as follows:-

> ***"If the contract is for supply of labour, necessarily, the labour supplied by the contractor will work under the directions, supervision and control of the principal employer but that would not make the worker a direct employee of the principal employer, if the salary is paid by contractor, if the right to regulate employment is with the contractor, and the ultimate supervision and control lies with the contractor.***
>
> ***The principal employer only controls and directs the work to be done by a contract labour, when such labour is assigned/allotted/sent to him. But it is the contractor as employer, who chooses whether the worker is to be assigned/allotted to the principal employer or used otherwise. In short, worker being the employee of the contractor, the ultimate supervision and control lies with the contractor as he decides whether the employee will work and how long he will work and subject to what conditions. Only when the contractor assigns/sends the worker to work under the principal employer, the worker works under the supervision and control of the principal employer but that is secondary control. The primary control is with the contractor."***

17. Thus, the principal enunciated by the Hon'ble Supreme Court clearly establishes that mere supervision of work is not sufficient to prove the relationship of employer and employee till it is proved that there was a complete control and supervision. The management control includes the authority of dismissal, taking of disciplinary action and continuity of service etc. Claim petition filed by the claimant/workman is mum on this score and workman has not mentioned any specific averment in his affidavit regarding the appointment, authority of dismissal or taking of disciplinary action by the management. There is nothing on record to prove that it is the management who grant the leave or has authority to take any disciplinary action. In my considered opinion, mere saying of supervision regarding the execution of the work as alleged by the witness may not be called effective and absolute control. Such control is being emphasized to control the work of the management for a specific work in efficient manner done by the management in the establishment. So far as the photocopies of complaint slips and entry pass placed on record by the workman are concerned, they have also not been proved by calling the concerned official from the respondent-management. Moreover, from these slips and entry pass, it cannot be said that workman was working under the control and supervision of the respondent-management. So far as case law of ***Ram Singh and others(supra)*** referred by the learned AR for the workman is concerned, it stated that control by employer is only one factor to determine relation between employer and employees along with many other interrelated factors.

18. Undoubtedly, in Tribunal cases, has to be decided on the basis of the preponderance of probability and not the proof beyond reasonable doubt. So far as this case is concerned, there is no documentary evidence on record to prove the factum of direct employment of workman with the management. In any way nothing is on record with respect of the payment of salary, attendance register or work done by the claimant/workman during the course of alleged employment with the management. There is nothing mentioned in the claim petition as well as affidavit of the workman that who was the person-concerned by which he was directly engaged in the respondent-management of Garrison Engineer, Chandimandir. I am of the considered opinion that mere saying that he was employed by the Selection Committee constituted by G.E. and was appointed as Mazdoor which is clearly not proved by the workman. Thus, it may be observed that there is nothing conclusive either oral or documentary to prove that it was principal-employer Garrison Engineer, Chandimandir who controls and supervise the work of the workman. Workman Anil Kumar has examined four witnesses WW2 Mohd. Yamin, WW3 Raman Kumar, WW4 Gulshan Ali and WW5 Mohd. Aslam, their testimonies are of similar nature as that of workman. They all had also stated that salary was paid to them also by the J.E. of the department in cash. They had also admitted that there was no advertisement at the time of their joining. They had not submitted any form or application for the job.

There was no call letter for joining the service. They are also daily wager like the workman and as such, their statements are also of no use to prove the case of workman.

19. So far as the question pertaining to the non-compliance of the provisions of Section 25-F of the ID Act is concerned. It is not disputed that management has neither issued any show cause notice nor given any compensation in lieu of notice as is envisaged under Section 25-F of the ID Act. Learned counsel of the management contended that workman in fact was not the employee of the establishment as such, neither he is terminated by the management nor such notice and compliance of Section 25-F of the Act is required by the establishment. In this connection, learned counsel of the management has placed reliance in the case of ***Municipal Corporation, Faridabad Vs. Siri Niwas, Appeal(Civil) No.1851 of 2002, decided on 06.09.2004, Rajasthan State Ganganagar S. Mills Ltd. Vs. State of Rajasthan & Anr. Civil Appeal No.5969 od 2004, decided on 13.09.2004*** as well as ***State of Rajasthan, Manager RBI Bangalore Vs. S. Mani & Ors. Civil Appeal No.6306-6316 of 2003 decided on 14.03.2005.*** Learned counsel of the workman contended that workman is rendering his services with the management for so many years and he had completed 240 days in the year 7.8.2015 before termination by the management. As per pleading of the workman he was terminated from 7.8.2015 without compliance of Section 25-F of the ID Act. It is pertinent to mention that pleadings required specific averments with respect to the facts alleged in it. It is not specifically pleaded that workman was retrenched/terminated by the management in preceding year i.e. on 7.8.2015 even he had rendered 240 days of service in the management. Thus, there is no specific pleading with respect to the working of 240 days in preceding year of the alleged termination. In the affidavit even there is no mention that the workman has worked for 240 days in the preceding year i.e. on 7.8.2015. Thus, this is a general assertion for rendering services with the management rather specific averments with respect to the 240 days in the preceding year before the termination. Thus, claim petition as well as affidavit filed by the workman is not very specific with respect to 240 days working in the establishment. In the light of the specific denial by the management for rendering services with the management, burden lies on the workman to prove this fact. The workman has failed to prove it. Thus, there is no necessity of issuing any show cause notice to the workman.

20. The claimant/workman has also claimed in his claim petition as well as in his affidavit and even in his cross-examination that Junior Engineer had given oral assurance for regularization in the department. In this regard, it is pertinent to mention here that he cannot have been regularized in the department as in those cases where the case fall under the definition of industrial dispute as mentioned under Section 2(k) of the ID Act only then regularization can be made. Section 2(k) of the ID Act defines "industrial dispute", which reads as under:

> ***"2. Definitions.-In this Act, unless there is anything repugnant in the subject or context,-***
>
> ***x x x x***
>
> ***(k) "industrial dispute" means any dispute or difference between employers and employers, or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person;"***

And ID Act was amended adding Section 2A making individual dispute of a workman as an industrial dispute, if the dispute is related to dismissal, discharge, retrenchment or termination of individual workmen. Thus, Section 2A carves an exception to the definition of individual dispute as given in Section 2(k) of the ID Act. Thus, in order to give jurisdiction to the appropriate government to refer the dispute to the Tribunal/Labour Court, it was essential for the workman to show that his individual dispute for regularization was sponsored or espoused by the union of the workmen. The five Bench of the Apex Court in the case of ***Workmen of Dharampal Premchand (Saughandhi) Vs. Dharampal Premchand (Saughandhi), Civil Appeal No.532/1963, decided on 16.03.1965***, also support the above view.

21. The Hon'ble Karnatana High Court in the case titled as ***Prakash and Ors. Vs. Superintending Engineer(Electrical), O and M Circle, Belgaum and Ors., Writ Petition Nos.41747-757/1999, decided on 31.03.2000***, has taken a view that the individual workman cannot raise a dispute with regard to absorption and regularization.

22. The Delhi High Court in the case of ***Management of Hotel Samrat and Ors. Vs. Government of NCT and Ors., Writ Petition(C) No.6247 & 6682/2002, decided on 04.01.2007***, has taken a

similar view that in order to be an industrial dispute, it has to satisfy the definition of Section 2(k) of the ID Act.

23. In view of the above discussion, this Tribunal is of the firm view that there is no merit in the case and the same is liable to be dismissed.

24. Let copy of the award be sent to the Central Government for publication as required under Section 17(1) of the Act.

KAMAL KANT, Presiding Officer

नई दिल्ली, 2 जुलाई, 2024

का.आ. 1339.— औद्योगिक विवाद अधिनियम (1947 का 14) की धारा 17 के अनुसरण **में,केन्द्रीय सरकार** निदेशक, एम्स, टाटीबंध, रायपुर (छ.ग.),मेसर्स प्रिंसिपल सिक्योरिटी एंड अलाइड सर्विसेज प्राइवेट, ग्रीन पार्क एक्सटेंशन, **नई दिल्ली,** प्रबंधतंत्र के संबद्ध नियोजकों और **श्री वंदना देवांगन, कामगार,** के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण- सह- श्रम न्यायालय, जबलपुर पंचाट(संदर्भ संख्या CGIT/LC/R/**58/2023**) को जैसा कि अनुलग्नक में दिखाया गया है,प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 25.06.2024 को प्राप्त हुआ था।

[सं. एल - 42025-07-2024-118-आईआर (डीयू)]

दिलीप कुमार, अवर सचिव

New Delhi, the 2nd July, 2024

S.O. 1339.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. CGIT/LC/R/58/2023) of the **Central Government Industrial Tribunal cum Labour Court, Jabalpur** as shown in the Annexure, in the Industrial dispute between the employers in relation to **The Director, AIIMS, Tatibandh, Raipur (C.G.); M/s Principal Security & Allied Services Pvt. Green Park Extension, New Delhi, and Shri Vandna Devangan, Worker,** which was received along with soft copy of the award by the Central Government on 25.06.2024.

[No L-42025-07-2024-118-IR (DU)]

DILIP KUMAR, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT, JABALPUR

NO. CGIT/LC/R/58/2023
Present: P.K.Srivastava
H.J.S..(Retd)

Vandna Devangan,
Adarsh Nagar, Ward-25, Birgaon,
Raipur, (C.G .)- 493221 **Workman**

Versus

The Director,
AIIMS, Tatibandh,
Raipur (C.G .) - 493221

M/s Principal Security & Allied Services Pvt. Ltd.
H-12, Green Park Extension,
New Delhi, - 110016

Management

AWARD

(Passed on this 28th day of May-2024.)

As per letter dated 01/08/2023 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 reference number RP-8(3-5)/2023-ES-III dt. 01/08/2023. The dispute under reference related to :-

" Whether the service of the workman has been illegally terminated by the contractor (M/s Principal Security and allied Services) working in AIIMS Raipur? Whether the workman is entitled for reinstatement of her services ? And, to what all remedies is the workman entitled to in relation to the present industirial dispute ? "

After registering the case on reference received, notices were sent to the parties and were duly served on them. Time was allotted to the workman to submit his statement of claim. In spite of the allotment of time and service of notice, the workman never turned up and submitted his statement of claim. Management also did not file its written statement of claim/ defence. No evidence was ever produced by any of the parties in this Tribunal.

I have perused record. The Initial burden to prove his claim is on the workman. Since the workman did not file any pleading nor did he file any evidence, in the absence of any evidence in support of holding the claim of the workman not proved, the reference deserves to be answered against the workman and is answered accordingly.

AWARD

In the light of this factual backdrop, holding that the claim of the workman is not proved, the reference deserves to be answered against the Workman and is answered accordingly.

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

P.K.SRIVASTAVA, Residing Officer

नई दिल्ली, 2 जुलाई, 2024

का.आ. 1340.— औद्योगिक विवाद अधिनियम (1947 का 14) की धारा 17 के अनुसरण **में,केन्द्रीय सरकार मुख्य महाप्रबंधक,भारत संचार निगम लिमिटेड दूरसंचार कारखाना,रिछाई, जबलपुर,** प्रबंधतंत्र के संबद्ध नियोजकों और **श्री गोपाल दहिया, कामगार,** के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण- सह- श्रम न्यायालय, जबलपुर पंचाट(संदर्भ संख्या CGIT/LC/R/**39/2011**) को जैसा कि अनुलग्नक में दिखाया गया है,प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 25.06.2024 को प्राप्त हुआ था।

[सं. एल - 40012/102/2010-आईआर (डीयू)]

दिलीप कुमार, अवर सचिव

New Delhi, the 2nd July, 2024

S.O. 1340.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. CGIT/LC/R/39/2011) of the **Central Government Industrial Tribunal cum Labour Court, Jabalpur** as shown in the Annexure, in the Industrial dispute between the employers in relation to **The Chief General Manager, Bharat Sanchar Nigam Limited Telecom Factory, Richhai, Jabalpur, and Shri Gopal Dahiya, Worker,** which was received along with soft copy of the award by the Central Government on 25.06.2024.

[No. L-40012/102/2010-IR (DU)]

DILIP KUMAR, Under Secy.

ANNEXURE

THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT, JABALPUR

NO. CGIT/LC/R/39/2011
Present: P.K.Srivastava
H.J.S..(Retd)

Shri Gopal Dahiya
S/o. Late Swamideen
R/o. H.No. 910, Bapu Nagar,
Ranjhi, Jabalpur. **Workman**

Versus

The Chief General Manager
Bharat Sanchar Nigam Limited

Telecom Factory, Richhai
Jabalpur.

Management

AWARD

(Passed on this 27th day of May-2024.)

As per letter dated 05/05/2011 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 reference number L-40012/102/2010 IR(DU) dt. 05/05/2011. The dispute under reference related to :-

^^Whether the action of the Management of Chief General Manager Bharat Sanchar Nigam Limited, Jabalpur (M.P.) in dismissing from service of Sh. Gopal Dahiya w.e.f. 25.10.2007 is legal and justified ? What relief the workman is entitled to ?**

After registering the case on reference received, Notices were sent to the parties and were duly served on them. They appeared and filed their respective statements of claim and defense.

According to the workman, he was appointed by the management on 13.04.1973 as a Helper and was made permanent against confirmed vacancy by management from 1994 he fell ill, lost his wife and his son became disabled due to Polio attack. He had to remain under medical treatments and could not attain his duties till March 2000. He worked in March & April 2000 as the management condoned his absence in the light of his conditions. Again he fell ill and could not attend his job and he was under medical treatment. The management issued a charge sheet against him on 27.07.2007 leveling the charge of unauthorized and wilful absence from 29.09.1994 till date of charge sheet. He denied the charges and management decided to conduct a departmental enquiry against him, which was conducted against rules without giving reasonable and proper opportunity to defend himself. The Enquiry Officer wrongly held him guilty of misconduct by wilfully absenting himself from work for the period though he had been on job of and on during this period. The Disciplinary Authority passed the impugned order of his termination vide his order dated 25.10.2007 which is against law. The Appellant authority also dismissed his appeal against law. The workman accordingly has sought the relief of his reinstatement with all consequential benefits and back wages.

In its written statement of defense, the management has pleaded that the workman absented himself un-authorizedly and wilfully from 29.03.1994 till date without any intimation and without getting any leave sanctioned which is misconduct under Section 31(A) and 31(6) of the Certified Standing Orders. A charge sheet was issued and after his reply was found not sufficient, a departmental enquiry was conducted. The workman participated during the enquiry. The Enquiry Officer filed his enquiry report holding him guilty of the charge. The Disciplinary Authority, after considering the reply of the workman on enquiry report, passed the impugned order of punishment, which is proportionate to the charge. Accordingly, the management has requested that the reference be answered against the workman.

Vide his order dated 25.03.2015, my learned Predecessor framed following issues :-

1) ***Whether, the enquiry conducted against the workman is just, proper and legal ?***

2) ***Whether, charges alleged against workman are proved from evidence adduced in enquiry proceedings ?***

3) ***Whether, punishment of dismissal imposed against workman is just and legal ?***

4) ***If so, to what relief the workman is entitled ?***

Issue no.-1 was taken as preliminary issue and was decided vide order dated 21.09.2022 holding the departmental enquiry legal and proper. This order is part of this Award.

The parties were granted opportunity to lead evidence on remaining issues. No evidence was adduced by any of the parties on remaining issues.

I have heard argument of learned Counsel Mr. Arun Patel for the workman. None appeared for management. None of the parties have filed any written arguments. I have gone through the record as well.

Issue No.-2 :-

The enquiry proceedings filed and proved have been perused by me. It comes out that during the enquiry proceedings the chargeman Suresh Kumar was examined by management who has detailed about the absence of the workman in his statement. Similarly, witnesses Santosh Kumar, Daulat Ram Saini, Suresh Kumar have corroborated

and have stated about the absence of the workman. They further stated that no leave was applied for nor was any intimation to the management regarding absence. They have also filed and proved documents in this respect.

The settled preposition of law with respect to proof of charge in a departmental enquiry is that the charge need not be proved beyond reasonable doubt as it is required to prove a charge in a criminal proceeding.

Though the workman has filed some medical papers and has stated that he was under treatment. Even these papers are taken as true on their face value, they do not justify such a long absence.

Hence, in the light of above discussion, the charges are held proved against the workman and issue no.-2 is answered accordingly.

Issue No.-3 :-

From the above discussion, it comes out that the charge proved against the workman in the enquiry is of unauthorized and wilful absence from duty for as many as about 13 years, which is misconduct in the Clause-31(a) and 31(g). This misconduct provides punishment of dismissal.

The settled proposition of law is that unless the punishment is shockingly disproportionate to the charge, it need not be interfered with. I do not find any fact to hold that the punishment is shockingly disproportionate to the charge proved. Hence, holding the punishment awarded by Disciplinary Authority not disproportionate to the charge, issue no.-3 is answered accordingly.

Issue No.-4:-

On the basis of findings recorded above, the workman held entitled to no relief. Issue no.-4 is answered accordingly.

In the light of above observations and findings, the reference deserves to be answered as follows.

AWARD

Holding the action of the management of Chief General Manager Bharat Sanchar Nigam Limited Jabalpur MP in dismissing the services of Sh. Gopal Dahiya w.e.f. 25.10.2007 legal and justified, the workman is held entitled to no relief. No order as to cost.

P. K. SRIVASTAVA, Presiding Officer

नई दिल्ली, 2 जुलाई, 2024

का.आ. 1341.—औद्योगिक विवाद अधिनियम (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार **उप-अधीक्षक पुरातत्व, रसायनज्ञ, भारतीय पुरातत्व सर्वेक्षण, पश्चिमी क्षेत्र, संरक्षण अनुसंधान प्रयोगशाला, नंदनवन कॉलोनी, औरंगाबाद; संयुक्त महानिदेशक(विज्ञान),भारतीय पुरातत्व सर्वेक्षण, देहरादून (उत्तरांचल); महानिदेशक, भारतीय पुरातत्व सर्वेक्षण, जन पथ, नई दिल्ली,** के प्रबंधतंत्र के संबद्ध नियोजकों और **श्री दीपक मणिराम घालडे एवं अन्य; श्री अशोक दामोदर फुलारे; श्री अशोक रावसाहेब मिसाल; श्री राजेंद्र भीकाजीपंत कुलकर्णी; श्री सुभाष नीलकंठ सोसे, कामगार, श्री दीपक मणिराम घालडे एवं अन्य; श्री अशोक दामोदर फुलारे; श्री अशोक रावसाहेब मिसाल; श्री राजेंद्र भीकाजीपंत कुलकर्णी; श्री सुभाष नीलकंठ सोसे,**के बीच अनुबंध में निर्दिष्ट **श्रम न्यायालय- औरंगाबाद पंचाट(संदर्भ संख्या 1800103/2019)** को जैसा कि अनुलग्नक में दिखाया गया है,प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 25.06.2024 को प्राप्त हुआ था

[सं. एल - 42025-07-2024-120-आईआर (डीयू)]

दिलीप कुमार, अवर सचिव

New Delhi, the 2nd July, 2024

S.O. 1341.— In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 1800103/2019) of the Labour Court- Aurangabad as shown in the Annexure, in the Industrial dispute between the employers in relation to **The Dy. Superintendent Archaeological,**

Chemist, Archaeological Survery of India, Western Zone, Conservation Research Lab, Nandanvan Colony,Aurangabad ; The Joint Director General (Science) Archaeological Survey of India, Deharadun (Uttaranchal) ; The Director General, Archaeological Survey of India, Jana Path, New Delhi, and Shri Deepak Maniram Ghalde and others ; Shri Ashok Damodhar Phulare; Shri Ashok Raosaheb Misal; Shri Rajendra Bhikajipant Kulkarni ; Shri Subhash Nilkanth Sose, Worker, which was received along with soft copy of the award by the Central Government on 16.04.2024.

[No. L-42025-07-2024-120-IR (DU)]

DILIP KUMAR, Under Secy.

ANNEXURE

IN THE LABOUR COURT AT AURANGBAD

(BEFORE S. S. SAHASRABUDHE, PRESIDING OFFICER, SECOND LABOUR COURT, AURANGABAD)

Ref. IDA No. – 1800103 of 2019 **Exh.O-7**
CNR No.MHLC2000066662019

1) The Dy. Superintendent Archaeological Chemist, Archaeological Survery of India, Western Zone,
Conservation Research Lab, Nandanvan Colony,
Aurangabad, AURANGABAD-431 002. **First Party**

2) The Joint Director General (Science) Archaeological Survey of India,
29, New Cantonment Road,
Deharadun (Uttaranchal),

3) The Director General, Archaeological Survey of India,
Jana Path, New Delhi-110 001.

Versus

1) Mr. Deepak Maniram Ghalde and others
R/o. H. No.1-16-79 Samaj Mandir Gali,
New Pahadsingpura, Near Bibika Makbara,
Aurangabad, AURANGABAD-431 004.

2) Mr. Ashok Damodhar Phulare
Age : 55 years, Occ. labour,
R/o. At.Post.Verul, Tal. & Dist. Aurangabad,

3) Mr. Ashok Raosaheb Misal
Age : 46 years, Occ. labour,
R/o. At.Post.Verul, Tal. & Dist. Aurangabad,

4) Mr. Rajendra Bhikajipant Kulkarni,
Age : 45 years, Occ. labour,
R/o. Flat No.9, Mewad Residency,
Nageshwarwadi, Aurangabad.

5) Mr.Subhash Nilkanth Sose
Age : 55 years, Occ. Service as labour,
R/o. Tarkas Galli, Begumpura, Aurangabad. **Second Party**
workmen

Appearances :
Shri. Amol N. Patale, Advocate for First Party no.1 and 3.
Shri. U. M. Deshpande, Advocate for Second Party.

AWARD

[Dictated on :- 03/04/2024]

1. The Appropriate Government i.e. Government of India/Bharat Sarkar, Ministry of Labour / Shram Mantralaya, New Delhi by an order dt.23/07/2019 passed under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) the Central Government has referred this dispute on following terms:

"*1) Whether the Archaeological Chemist, Western Zone, Conservation Research Lab, Aurangabad-431002 is an 'Industry' within the meaning of Sec.2(j) of Industrial Disputes Act, 1947? and 2) Whether the work of dusting, cleaning and preservation of environment are the work of perennial nature as it is required throughout the year? If it is permanent, perennial nature of work, then the 1/30th status of wage is applicable to the workers or not? If yes, to what relief they are entitled to?"*

2. Second party has filed statement of claim at Exh.U-5 and submitted that they are working as workmen/labours with first party no.1 at Bibi Ka Makbara, Ellora Caves, Daulatabad Fort,etc. at Aurangabad District. Their dates of appointments are mentioned as below :-

Sr.No.	Name of workman/labour	Date of appointment
1	Mr.Ashok Damodhar Phulare	01.11.1992
2	Mr. Ashok Raosaheb Misal	01.11.1992
3	Mr. Rajendra Bhikajipant Kulkarni	09.11.1996
4	Mr. Subhash Nilkanth Sose	02.08.1999
5	Mr. Deepak Maniram Ghalde	08.12.1993

3. They are the workmen as defined u/s.2(s) of the Industrial Disputes Act, 1947. The work which they are doing is available with first party throughout the year and there is no interruption / breaks in service of those workers. As such they have attained the status of deemed permanency. They requesting the department i.e. first party no.1 to 3 to pay them 1/30th pay scale and their demand has been forwarded by first party no.1 to first party no.2 & 3 for consideration. Since last more than 20 years they are continuously working with first party no.1 and have completed more than 240 days working per year. Their record of attendance is available with first party. After lot of persuasion the first party department has not given the benefits of 1/30th + DA to the second party workman without assigning any reason. Said benefits have been granted to various workmen, who have joined the services after the date of their joining. As such first party has not followed seniority list while calculating the benefits. The pick and choose method is being followed rather than maintaining seniority list and/or any other criteria. Even the principles of natural justice have been violated by first party while granting the benefits of said scheme. The first party department has engaged in unfair labour practices as per Schedule IV of the MRTU & PULP Act, 1971. The first party is trying to abolish the work of regular nature and to give such work to contractors. First party shown favouritism and partiality to one set of workers regardless of merit and seniority. Therefore, second party workmen have approached to Central Labour Commissioner at Pune and filed representation for non-payment of 1/30th pay of minimum of relevant pay scale + DA to daily wage casual labours, who are working with first party department. The office of Labour Commissioner issued notice to first party, who appeared before Central Labour Commissioner, Pune. However, matter could not be settled between the parties, therefore they have forwarded closure report to the appropriate Government. The Second party workman are denied the benefits. Therefore, the appropriate Government vide it's order dated 23.07.2019 forwarded this dispute to this Court for adjudication. Accordingly, second party workmen have prayed that they may be given benefits of 1/30th pay scale with DA as per their entitlement from the date of their joining.

4. First party no.1 and 3 filed their written statement at Exh.C-11 and submitted that, second party workmen are working as casual labours from initial appointment under Dy.S.A.C., Archaeological Survey of India, Western Zone, Aurangabad on various MR works at different sites such as Bibi Ka Makbara, Ellora Caves, Daulatabad Fort,etc. However, first party contended that, they have not worked continuously as MR works are for specific period only. Though the second party workmen are falling under definition of 'workman' however, as per OM no.15-10/2001-Estt dated 15th Sept.2003 the activities of Archaeological Survey of India does not constitute an 'industry' for the purpose of I.D.Act, 1947. Hence, the reference it not maintainable. First party no.1 & 3 submits that, second party workman are working as casual labours on various sanctioned MR estimate works for definite periods only, as work finished their continuity will be broken. As per letter of Section Officer, O/o the Director Genera, ASI 24-Tilak Marg, New Delhi, F.No.C-

18-35/2017 - Adm.II dated 27th October, 2017, F.No.C-18015/128/2018-Adm.II dated 10th December, 2018 a casual worker has been engaged for work of intermittent nature, such as those employed in ASI for AR and SR works against sanctioned estimate for a definite period, the casual workers can be paid only minimum wages as notified by the Ministry of Labour, Government of India from time to time as per the Minimum Wages Act, 1948. After the works against the said estimates are complete they are liable to be disengaged. Therefore, the casual workers in ASI who have been engaged against work estimate for casual work and not against any regular vacancy are not eligible for grant of wages at the rate of 1/30th of the pay at the minimum of the relevant pay scale plus DA for work of 8 hours a day. The casual workers worked under this office has never granted or given benefit to any casual labour of 1/30th pay + DA, so the question of violation of seniority list does not arise. This office is following guidelines received from the Directorates regarding engagement of casual workers vide letters dated 26.07.2016 and 11.04.2017. This office has never granted or given benefits to any casual labour of 1/30the pay + DA wages who has been engaged after year 2000. First party has denied all other averments and lastly prayed for dismissal of reference.

5. In view of rival pleadings of the parties, I have framed issues at Exh.O-6. Now I have reproduced those issues and recorded my findings thereon for the reasons thereof as under :-

Sr. No.	*ISSUES*	*FINDINGS*
1	Whether the reference is maintainable?	Yes
2	Whether the First party no.1 and 3 Archaeological Chemist, Western Zone, Conservation Research Lab, Aurangabad is an 'industry' u/s.2(j) of the Industrial Disputes Act, 1947?	Yes
3	Do second party workmen prove that they were in the employment with first party and the work which they were alleged to be doing is perennial nature and they had worked for more than 240 days as provided under Sec. 25(B) of the I.D.Act, 1947?	Yes
4	Do second party workmen prove that First Party Department has committed illegality by denying 1/30th Pay Scale with DA to the second party workmen?	Yes
5	Whether the Second Party workmen are entitled for the relief as sought for by them?	Yes
6	What Order?	As per final order

R E A S O N S

AS TO ISSUES NO.1 and 2 :-

6. The first party has raised defense that, though the second party workmen are falling under definition of 'workman' however, as per OM no.15-10/2001-Estt dated 15th Sept.2003 the activities of Archaeological Survey of India does not constitute an 'industry' for the purpose of I.D.Act, 1947. Hence, the reference it not maintainable. The first party came before the Court with a defense that Archaeological Survey Of India (ASI) did not fall within the meaning of 'industry' as defined under section 2 (j) of the Industrial Disputes Act, 1947. The learned Counsel for first party Advocate Shri. A.N.Patale argued that the primary activities of ASI for implementation of the statutory law and maintenance, conservation and preservation of centrally protected monuments sites and remains, conducting archaeological explorations and excavations, development of geographically and numismatic research and publication, setting up the recognisation of the site museums, training in archeology, archaeological expeditions outside India, horticulture operations in and around ancient monuments and remains etc. All these statutory duties entrusted to first party are regal function and therefore it is by no means any business, trade undertaking, manufacturing or calling of employers, aimed to earn profits. Thus function of ASI is not an activity carries on for production, supply or distribution or goods or services with a view to satisfy human wants or wishes. Therefore, the activities of first party do not come under the definition of the Industry for the purpose of Industrial Disputes Act, 1947. Therefore, the Reference is not itself maintainable. He further argued that the O.M. of Government of India,Ministry of Tourism and Cultural Department, New Delhi dtd.15/09/2013 held that the activity of ASI does not constitute the Industry for the purpose of I.D.Act and therefore provisions of I.D.Act are not applicable to Archaeological Survey Of India. The said O.M. is itself is a Government approved policy. The OM dated 15/09/2003 has been issued in concurrence with the provisions of "Ancient Monuments and Archaeological Sites and Remains Act,1958 and "Antiquities Arts Treasurer Act, 1972". It is not just an office letter, it has a statutory effect of the above Acts passed by the Parliament. He further argued that first

party is not receiving income from tickets, publication, use of camera etc. The said amount of collection is being deposited with the Government of India through Treasury Office. It is not running a business model which carries production, service of any kind to fulfill human needs of any kind. He further argued that the services of the second party were utilized as a casual labour on daily wages basis at Daulatabad Fort, that too as and when work is available for cleaning, sweeping, watch and ward, removal of rank vegetation etc., as per the requirement and availability of the work under the provisions in the estimate and budget alloted to this office by the Central Government. He further argued that the second party has completed 240 days of work in a calendar year. In capacity of Casual Labour he is not entitled for appointment for permanent employment as "Casual Workers" or "temporary workers". He further argued that as per General Finance Rules, 2017 framed by Government of India, Ministry of Finance Department of expenditure the need of casual labourers is being fulfilled through outsourcing from contractor. Since 2017 no direct work is being alloted by the ASI directly to the labours on daily work basis or otherwise. Since 2017 all kind of work is being allotted through consulting services providers. It is argued that the Government has framed policy of engaging casual labour through outsourcing following the GFR Provisions. Addl. Director General(Admn.) ASI, New Delhi has informed vide letter dated 10/08/2017 the said guidelines. Since, the policy is framed by the Government in 2017, and since then no direct engagement is being carried by the ASI. All necessary manpower required for the specific labour work is being fulfilled through outsourcing strictly in accordance of GFR 2017. It is argued that the first party is not industry within the meaning of section 2 (j) of the I.D.Act, therefore, the provisions of I.D.Act are not applicable.

7. The learned Counsel for the second party Mr. Deshpande submitted that it is not disputed that second party had completed 240 days in every calendar year. The disputed fact is only whether the first party employer is coming within the meaning of 'industry' as defined under Sec. 2 (j) of the I.D.Act, 1947. It is argued that first party earned its revenue collecting ticket fare and by publishing the information. The first party does not carries Sovereign function then automatically the first party will be in the ambit of industry. The administrative order issued by any Government office is not binding on any Court. The issue of 'industry' has to be decided by this Court only and not by Government Department. He further argued that any central government or state office have no right to decide or give any verdict whether the particular department is an 'industry' or not. Therefore office order or whatever issued by the department about 'industry' or not is illegal and without any jurisdiction. Only Labour &Industrial Courts have powers to adjudicate the issue whether the particular department is 'industry' or not. He further argued that in ***Bangalore Water Supply & Sewarage Board etc V. A. Rajappa and Ors etc.,*** it is held that Appellant falls within the definition of Industry and that there was nothing wrong in the Tribunal granting the relief to the respondent by considering him as a workman. In case of ***Union of India Thru. it's secretary Culture and Anr. Vs.Surendra Singh Rashtriya Adhyaksha INTUC and Anr. 2019 SCC online LL 4671,*** the Hon'ble Court had already held that the Garden of the Archaeological Survey Of India is an industry. Hence, reference is maintainable and the activities carried out by first party department definitely falls under the definition of 'industry'.

8. Considering the rival submissions of both sides it is necessary to ascertain as to whether first party department is an 'industry' as defined in Section 2(j) of Industrial Disputes Act, 1947. For ascertaining this it is necessary to take into consideration the actual activities of first party which is carried out by them with the help of second party. As per the second party workmen all of them are working at Bibi ka Makbara, Ellora Fort, Daulatabad Fort. They used to do work of dusting, cleaning and preservation of environment. There is no dispute in between parties that, all the above three referred are Ancient Monuments and the first party i.e. Archaeological Department used to maintain these monuments with the help of their employees. Judicial note can be taken of the fact that, Archaeological Department used to issue tickets to the visitors and collect money from them. Certainly, the department has to incur expenses for the maintenance of these monuments. So, for that purpose it is necessary for them to incur the expenses of repairing, supervision, so also the salary of employees. Admittedly, the first party is doing all these systematic activities with the help of their employees including the second party workmen. Hence, it can be easily gathered that, the first party by selling the tickets to the persons who are visiting to see these monuments, earning money. The first party used to do these activities with the help of their employees including the second party workmen. Hence, certainly, the first party i.e. Archaeological Chemist, Western Zone, Conservation Research Lab. Aurangabad can be considered as an 'industry' as defined u/s.2(j) of the Industrial Disputes Act, 1947.

9. On this point Ld.Counsel for second party relied on ***Bangalore Water Supply & Sewerage Board etc V. A. Rajappa and Ors etc.,***reported in ***AIR 1978 Supreme Court 548,*** wherein it was held that, "*Where there is (i) systematic activity, (ii) organized by co-operation between employer and employee, (iii) for the production and/or distribution of goods and services calculated to satisfy human wants and wishes, prima-facie, there is an "industry" in the enterprise. Absence of profit motive or gainful objective is relevant, be the venture in the public, joint, private or other sector. The true focus is functional and the decisive test is the nature of the*

activity with special emphasis on the employer-employee relations. If the organization is a trade or business it does not cease to be one because of philanthropy animating the undertaking."

10. Considering the ratio laid down in above referred case law cited supra it appears that, the facts of present case and the facts of cited case are identical. In the present case also the first party used to carry out the systematic activities of Govt. by selling the tickets to the Tourist. Not only this the first party also carried out these systematic activities with the help of their employees. Therefore, I am not having any hesitation to hold that, the First party no.1 and 3 Archaeological Chemist, Western Zone, Conservation Research Lab, Aurangabad is an 'industry' u/s.2(j) of the Industrial Disputes Act, 1947 and present reference is maintainable. Hence, I have recorded my affirmative findings on issues no.1 and 2.

AS TO ISSUE NO.3 to 6 :-

11. It is the case of second party workmen that, they are working as workmen/labours with first party no.1 at Bibi Ka Makbara, Ellora Caves, Daulatabad Fort,etc. at Aurangabad District. They are working since last more than 20 years continuously with first party no.1 and have completed more than 240 days working per year. First party used to maintain their attendance. The work which they are doing is available with first party throughout the year and there is no breaks in their service, hence they covered under the definition of 'workmen' as defined u/s.2(s) of the Industrial Disputes Act, 1947. As such they have attained the status of deemed permanency and entitled for 1/30th pay scale + DA as made applicable to other workers. They requested the department i.e. first party no.1 to 3 to pay them 1/30th pay scale and their demand has been forwarded by first party no.1 to first party no.2 & 3 for consideration. After lot of persuasion the first party department has not given the benefits of 1/30th + DA to the second party workman without assigning any reason. Said benefits have been granted to various workmen, who have joined the services after the date of their joining. As such first party has not followed seniority list while calculating the benefits. There is violation of rule 81 of I.D.Act. Thus, the act of first party department is illegal and amounts to unfair labour practices as per Schedule IV of the MRTU & PULP Act, 1971.

12. In order to prove their contentions second party workmen have examined themselves at Exh.U-11 to U-15 and reiterated the contentions made in their statement of claim. The second party workmen have called documents from first party and produced the muster rolls at Exh.U-21 collectively, wherein their names are shown. In cross-examination by Ld.Counsel for first party second party has admitted that such type of demand can be made to the DG office and they have made such demand to DG office but they have not received reply from DG office. He admitted that, regular work used to be given to him.

13. The first party have examined their Dy. Superintendent, Archaeological Chemist, Aurangabad namely Shrikant S/o. Subhash Chandra at Exh.C-22, who has deposed that, second party-complainants are working as casual labours from initial appointment under office of Dy.S.A.C., Archaeological Survey of India, Western Zone, Aurangabad on various MR works at different sites such as Bibika Makbara, Ellora Caves, Daulatabad Fort, etc. He further deposed that they have not continuously worked, as MR works are for specific periods only, as work finished their continuity will be broken. As per letter of Section officer, O/o the Director General, ASI 24- Tilak Marg, New Delhi dated 27-10-2017 and letter dated 10-12-2018 a casual worker has been engaged for work of intermittent nature, such as those employed in ASI for AR and SR works against sanctioned estimate for a definite period, the casual workers can be paid only minimum wages as notified by the Ministry of Labour, Govt.of India from time to time as per the Minimum Wages Act, 1948. After the works against the said estimates are complete they are liable to be disengaged. Therefore, the casual workers in ASI who have been engaged against work estimate for casual work and not against any regular vacancy are not eligible for grant of wages at the rate of 1/30th of the pay at the minimum of the relevant pay scale plus D for work of 8 hours a day. He further deposed that, complainants are working as casual labours on various sanctioned MR estimate works for definite periods only. As complainants are worked under many estimates on different sites may they complete 240 days criteria in one year.

14. In cross-examination of this witness taken by Ld.Counsel for second party, said witness has admitted that, he is working with first party since last 32 years. He is working at Aurangabad since the year 2016. He knows the second party workmen since March, 2016. He admitted that, prior to 2016 said workers are working with first party. He admits that, Ashok Damodar Phulare is working since 1999, Ashok Misal, Rajendra Kulkarni, Deepak Dhalde were working since 1995 and Suhas Sose and Chandrakant Bhunkar were working since 1999 and 2010 respectively. He admits that, first party used to pay their wages. He also admitted that, their office has recommended for 1/30 pay scale to those workers. He further admits that, 1/30 pay scale was given to 3 persons of their office, who were working at Ajintha. The letter dated 23.02.2015 is shown to the witness. He admits that, as per said letter 1/30 Pay scale was made applicable to 29 workers. Said witness further admits that, at that time such benefit was given the workers who were employed in the year 2005, 2006 and 2007. He admits that, though second party workmen are senior to those 29 workers but 1/30 pay scale is not made applicable to them. He admits that, work is available for those worker for whole year.

15. Considering the oral as well as documentary evidence on record it can be gathered that, second party workmen are working as workmen/labours with first party no.1 at Bibi Ka Makbara, Ellora Caves, Daulatabad Fort,etc. at Aurangabad District. They are working since last more than 20 years continuously with first party no.1 and have completed more than 240 days working per year. The work which they are doing is carried out for whole year. Thus, the work is available with first party throughout the year and there is no breaks in their service, hence they covered under the definition of 'workmen' as defined u/s.2(s) of the Industrial Disputes Act, 1947. Therefore, I hold that, second party workmen have proved that, they were in the employment with first party and the work which they were alleged to be doing is perennial nature and they had worked for more than 240 days as provided under Sec. 25(B) of the I.D.Act, 1947. Considering the evidence brought on record it can also be gathered that, the work of dusting, cleaning and preservation of environment are the work of perennial nature as it is required throughout the year. It is permanent, perennial nature of work.

16. No doubt, the second party workmen are working with first party department since last 20 years as casual labours. However, the fact cannot be ignored that they are continuously working for years together and they are doing the work of perennial nature. Therefore, it can be easily gathered that, the second party workmen have acquired the status of deemed permanency. No doubt, the second party workman can sought relief of permanency by filing appropriate proceedings before Industrial Court and that relief can be granted by that Court only and not by this Court. However, only by that fact it cannot be inferred that this Court cannot be empowered to declare that, the work which second party workmen are doing are of perennial nature and same is available for whole year. The second party workmen have adduced sufficient oral and documentary evidence for proving this fact. Therefore, considering the said evidence I hold that, the second party workman have proved the fact that, they are doing work of dusting, cleaning and preservation of environment with the first party and the said work is available throughout the year.

17. So far as the entitlement of second party workmen to 1/30th Pay Scale + DA is concerned, certainly, that is applicable to the permanent workers. However, as discussed earlier, the second party workmen are working with first party since last 20 years without break in service, therefore they can be treated at par with the permanent employees because it was necessary for first party to grant the benefits of permanency to them considering their long tenure of service. However, the first party department had not done so. Admittedly, due to this inaction on the part of first party, the second party workmen cannot be held responsible because there is no fault on their part. Therefore, considering this fact, I hold that second party workmen are entitled for 1/30th Pay Scale + DA as sought by them. Hence, I have recorded my affirmative findings on issues no.3,4 and 5 in affirmative and in answer to issue no.6 I pass following order :-

Order

1. Reference is answered in affirmative.
2. It is hereby declared that, the first party Archaeological Chemist, Western Zone, Conservation Research Lab, Aurangabad-431 002 is an 'industry' within the meaning of Sec.2 (J) of Industrial Disputes Act, 1947.
3. It is further declared that, the work of dusting, clearing and preservation of environment are the work of perennial nature as it is required throughout the year. It is permanent, perennial nature of work hence, 1/30th status of wage is applicable to the second party workers.
4. Copies of this award be sent for publication for appropriate action u/s.17 of I.D.Act, 1947.

S. S. SAHASRABUDHE**,** Presiding Officer,

नई दिल्ली, 2 जुलाई, 2024

का.आ. 1342.— औघोगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार राजस्थान मरुधरा ग्रामीण बैंक के प्रबंधतत्र, संबद्ध नियोजको और उनके कर्मकारो के बीच अनुबंध में निर्दिष्ट औघोगिक विवाद में केन्द्रीय सरकार औघोगिक अधिकरण/श्रम न्यायालय **जयपुर** के पंचाट (27/2018) प्रकाशित करती है।

[सं. एल - 12011/35/2018- आई आर (बी-I)]

सलोनी, उप निदेशक

New Delhi, the 2nd July, 2024

S.O. 1342.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref.27/2018) of the *Cent.Govt.Indus.Tribunal-cum-Labour Court Jaipur* as shown in the Annexure, in the industrial dispute between the management of Rajasthan Marudhara Gramin Bank and their workmen.

[No. L-12011/35/2018- IR (B-I)]

SALONI, Dy. Director

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM-LABOUR COURT, JAIPUR

(RAJASTHAN)

Presiding Officer – Radha Mohan Chaturvedi

I.D No. – 27/2018

(Ref. No. L-12011/35/2018-IR(B-I))

Dated: 13.12.2018

Association of Rajasthan Gramin Bank Officers,

Through Sh Lokendra Singh Shaktawat, Authorised rep,

House No- C 20/21, Pratap Nagar, Udaipur

APPLICANT

Verses

The Chairman,

Rajasthan Marudhara Gramin Bank

HO-Tulsi Tower, 9th floor,

B Road Sardarpura, Jodhpur

NON APPLICANT

Present: Shri Sarvesh Sharma Advoacate for non-applicant
None is present for applicant.

AWARD **Dated: 08.01.24**

1. The Ministry of Labour, Government of India, New Delhi under the exercise of powers conferred under the clause (d) of sub section (1) of sub section (2A) of section 10 of the industrial dispute act 1947 referred the under mentioned dispute for adjudication to this tribunal on 13.12.2018

"Whether the demand of Shri Lokendra Shaktavat for refund of excess Locker Rent for the year 2015, 2016, 2017 from the management of Rajasthan Marudhara Gramin Bank is legal and justified? If yes, then to what relief the concerned workman is entitled to?"

2. The applicant has filed his statement of claim on 18.03.2019 before this tribunal. Averments of statement of claim in brief are as under. Applicant was an employee of Mewar Aanchalik Gramin Bank Udaipur which was merged with Marudhara Gramin Bank, Pali and new bank namely Rajasthan Marudhara Gramin Bank, HO-Jodhpur was established. Non-applicant is employer of the applicant and responsible for implementing service condition of the employees of the bank. The applicant was entitled for a concession in locker charges as per circular dated 12.02.2014. As per Gazette notification amalgamating the MAGB with MGB establishing the new Bank RMGB clearly directs that there will not be any change in the service condition of the existing employees and they will continue to enjoy all the facilities as were immediately before the merger. The applicant is operating a locker at Sevashram Branch of RMGB Udaipur since 2006 but the RMGB has changed the locker rent at a rate applicable to staff/ ex staff while the applicant is entitled to the rate applicable to staff/ ex staff mentioned in "Annexure C" in terms of amalgamation notification. The

applicant is entitled to receive concessional rate of locker charges prevailing before the merger of banks. Therefore, the claim of applicant be allowed and an award may be issued in favour of applicant of for refund of excess locker charges Rs 1600 deducted from the account of applicant and to continue with the concessional charges.

3. The non-applicant filed his reply on 29.05.2019 and oppose the claim. It averred that the applicant was not entitled to concessional locker rate as per bank (staff) service regulations 1981. The claim has been filed by the association while the applicant is alleging a dispute about charges pertaining to his locker. The concessional locker rates were not part of service condition of the claimant. The applicant is not entitled to receive any concessional locker rate as per circular 12.02.2014. Therefore, the claim may be dismissed as claimant is not entitled to any relief.

4. Since 29.05.2019 when the reply to claim was filed by the non-applicant the applicant has been absenting himself. That is why on 15.02.2021 opportunity to file rejoinder and documents was closed for the applicant.

5. On 22.11.2021 last opportunity to produce evidence in favour of applicant was given to applicant but of no avail till 03.01.2024. Hence the opportunity to produce evidence by applicant was closed. In these circumstances non applicant was not interested to adduce any evidence.

6. Arguments of non-applicant heard on 03.01.2024.

7. The applicant has not adduced any evidence on oath in its favour. Thus it is very much clear that applicant has not been able to prove its averments made in the statement of claim. Therefore applicant is not entitled to get any relief whatsoever may be from the non-applicant, without any evidentiary support.

8. The dispute referred by the Government of India is adjudicated as above. Copy of award be sent for publication under the provisions of 17(1) of the ID Act.

RADHA MOHAN CHATURVEDI, Presiding Officer

नई दिल्ली, 2 जुलाई, 2024

का.आ. 1343.— औद्योगिक विवाद अधिनियम (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार **प्रबंधक, मेसर्स इंडस टावर लिमिटेड, विमान नगर, पुणे; प्रबंधक, मेसर्स टीमलीज सर्विसेज लिमिटेड, चर्च रोड, पुणे,** के प्रबंधतंत्र के संबद्ध नियोजकों और **श्री थानसिंह सदाशिव पाटिल,** के बीच अनुबंध में निर्दिष्ट **श्रम न्यायालय- औरंगाबाद पंचाट (संदर्भ संख्या 1800163/2017)** को जैसा कि अनुलग्नक में दिखाया गया है,प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 25.06.2024 को प्राप्त हुआ था

[सं. एल - 42025-07-2024-121-आईआर (डीयू)

दिलीप कुमार, अवर सचिव

New Delhi, the 2nd July, 2024

S.O. 1343.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 1800163/2017) of the Labour Court- Aurangabad as shown in the Annexure, in the Industrial dispute between the employers in relation to **The Manager, M/s. Indus Tower Ltd.,Viman Nagar, Pune; The Manager, M/s. TeamLease Services Ltd.,Church Road, Pune, and Shri Thansingh Sadashiv Patil, Worker,** which was received along with soft copy of the award by the Central Government on 16.04.2024.

[No. L-42025-07-2024-121-IR (DU)

DILIP KUMAR, Under Secy.

ANNEXURE

IN THE LABOUR COURT AT AURANGBAD

(BEFORE S. S. SAHASRABUDHE, PRESIDING OFFICER,

SECOND LABOUR COURT, AURANGABAD)

Ref. IDA No. – 1800163 of 2017 **Exh.O-4**

CNR No.MHLC2000015522016

1) The Manager, M/s. Indus Tower Ltd., **First Party No.I**

E crore, Office no.2010, 2nd Floor, Marvbel Edge,

Viman Nagar, Pune. Pune-411 014.

2) Manager,M/s. TeamLease Services Ltd., **First Party No.II**

Office # 509, 5th Floor, Nucleus MLL, 1

Church Road, Pune-411001

Vs.

Shri.Thansingh Sadashiv Patil, **Second party**

Age : 32 years, Occ. Service,

R/o. Talonde (PD), Tal. Chalisgaon, Dist. Jalgaon.

AWARD

1. The Deputy Director, Government of India, Ministry of Labour / Shram Mantralaya, New Delhi in exercise of powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) has referred this industrial dispute to this Court for adjudication of industrial dispute between the employers in relation to the management of M/s. Indus Tower Ltd., and their workmen.

2. It appears from record that, after filing WS by first parties, issues have been framed on 15.09.2020 and matter has been posted for evidence of second party. More than 3 years and 5 months have been lapsed but second party failed to adduce evidence. By passing orders below Exh.O-1 second party was directed to adduce evidence. The adjournment application filed by Ld.Counsel for second party was granted as last chance on 15.04.2023. However, till today the second party has not adduced his evidence. The second party has not turned up to see the status of his case. Therefore it appears that he is not interested in proceeding with this case. Hence, I proceed to pass following order.

Order

1. Reference is answered in the negative for want of prosecution.

2. Copy of Award be sent to The Deputy Director, Government of India, Ministry of Labour / Shram Mantralaya, New Delhi for appropriate action

S. S. SAHASRABUDHE, Presiding Officer

नई दिल्ली, 2 जुलाई, 2024

का.आ. 1344.—औद्योगिक विवाद अधिनियम (1947 का 14) की धारा 17 के अनुसरण में,केन्द्रीय सरकार **महाप्रबंधक, भारत संचार निगम लिमिटेड, मंडी, हिमाचल प्रदेश,** के प्रबंधतंत्र के संबद्ध नियोजकों और **श्री जिया लाल,, कामगार,** के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण- सह-श्रम न्यायालय-2, चंडीगढ़,पंचाट(संदर्भ संख्या **02/2019**) को जैसा कि अनुलग्नक में दिखाया गया है,प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 18.06.2024 को प्राप्त हुआ था।

[सं. एल - 40012/20/2018-आईआर (डीयू)]

दिलीप कुमार, अवर सचिव

New Delhi, the 2nd July, 2024

S.O. 1344.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 02/2019) of the **Central Government Industrial Tribunal cum Labour Court -2, Chandigarh,** as shown in the Annexure, in the Industrial dispute between the employers in relation to **The Ganeral Manager, Bharat Sanchar Nigam Limited, Mandi, Himachal Pradesh, and Shri Jiya Lal, Worker,** which was received along with soft copy of the award by the Central Government on 18.06.2024.

[No. L-40012/20/2018-IR (DU)]

DILIP KUMAR, Under Secy.

ANNEXURE

In the Central Government Industrial Tribunal-cum-Labour Court-II, Chandigarh.

Present: Sh. Kamal Kant, Presiding Officer.

ID No.2/2019
Registered on:-26.02.2019

Sh. Jiya Lal S/o Sh. Jawahar Lal, R/o Anjnu-Balh, P.O.-Behli, Tehsil Sunder Nagar, Distt.-Mandi (HP)-175001.

Workman

Versus

The General Manager, BSNL, Mandi, Himachal Pradesh-175001.

Respondent/Management

Award

Passed on:-25.04.2024

Central Government vide Notification No.L-40012/20/2018-IR(DU) Dated 04.02.2019, under clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947(hereinafter called the Act), has referred the following Industrial dispute for adjudication to this Tribunal:-

"Whether the action of the management of Bharat Sanchar Nigam Ltd. in terminating the services of Sh. Jiya Lal S/o Sh. Jawahar Lal in the year 2012 just, fair and legal? If not, to what relief is the workman entitled?

1. Today i.e. 25.04.2024 the case was fixed for filing affidavit by the workman. On scrutiny of the order sheets, it is revealed that the workman has not come present on 18.12.2023 and today also i.e. 25.04.2024 continuously and the case is fixed for filing affidavit by the workman on 23.11.2021, 9.2.2022, 18.4.2022, 2.6.2022, 11.1.2023, 10.3.2023, 27.4.2023, 18.7.2023, 13.9.2023, 18.12.2023 and 25.04.2024. Since several dates for filing affidavit by the workman have been fixed by the Tribunal and the workman has failed to file affidavit, which denotes that workman is neither serious nor interested in disposal of the case on merit.

2. Since the workman has neither put his appearance for long nor he has filed any affidavit and the workman has left the case unattended for a long time without any intimation, as such, this Tribunal is left with no choice, except to pass a 'No Claim Award'. Accordingly, 'No Claim Award' is passed in the present reference for the non-prosecution of the workman.

3. Let copy of this award be sent to the Appropriate Government as required under Section 17 of the Act for publication.

KAMAL KANT, Presiding Officer,

नई दिल्ली, 2 जुलाई, 2024

का.आ. 1345.—औद्योगिक विवाद अधिनियम (1947 का 14) की धारा 17 के अनुसरण में,केन्द्रीय सरकार **मेसर्स अंखी एंटरप्राइज, हावड़ा, वैज्ञानिक, "ई" एचओओ, एजेसी बोस इंडियन बोटेनिक गार्डन, हावड़ा,** के प्रबंधतंत्र के संबद्ध नियोजकों और **उनके कामगार,** के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण- सह-श्रम न्यायालय,कोलकाता,पंचाट(संदर्भ संख्या **REF. NO.22 OF 2020**) को जैसा कि अनुलग्नक में दिखाया गया है,प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 02.07.2024 को प्राप्त हुआ था।

[सं. **एल - 42011/19/2020-आईआर (डीयू)**]

दिलीप कुमार, अवर सचिव

New Delhi, the 2nd July, 2024

S.O. 1345.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 22 OF 2020 of the Central Government Industrial Tribunal cum Labour Court, Kolkata, as shown in the Annexure, in the Industrial dispute between the employers in relation to The

Proprietor, M/s. Ankhi Enterprise, Howrah, The Scientist, "E" HOO, AJC Bose Indian Botanic Garden, Howrah, and Their Workmen, which was received along with soft copy of the award by the Central Government on 02.07.2024.

[No. L-42011/19/2020-IR (DU)

DILIP KUMAR, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT KOLKATA

Present: Justice K. D. Bhutia, Presiding Officer.

REF. NO.22 OF 2020

Parties: Employers in relation to the management of

The Proprietor, M/s. Ankhi Enterprise, Howrah, The Scientist, "E" HOO, AJC Bose Indian Botanic Garden, Howrah

AND

Their Workmen

Appearance :

On behalf of Management, **AJC Bose Indian Botanic Garden** : Avhijit Bhadra, Advocate

On behalf of the Workmen/**Union**: Absent

Dated 11th September, 2023

AWARD

Today too like on previous dates, the Union is found absent. The Management is present through its Ld. Counsel.

The Union fails to file show cause petition as called for.

Such conduct on the part of the Union give rise to an inference that it is no more interested to proceed with the dispute raised by it.

Be that as it may the Central Govt., Ministry of Labour by order No. L-42011/19/2020-IR(DU) dated 22.09.2020, has referred the following issue to this Tribunal for adjudication.

> "Whether termination w.e.f. 31.03.2018 of the service of 09 Contractual workers (list enclosed) engaged through contractual Agency under AJC Bose Indian Botanic Garden, Howrah is proper, legal and justified? If not, what relief the concerned workers are entitled to? What other directions, if any, are necessary in the matter?".

Unfortunately, non-appearance, non-pursuance with the hearing of the case by the Union, which has espoused the dispute despite due service of notice upon it, a presumption can be drawn that it no longer has any dispute with the Concerned Employers.

In view of above No Dispute Award is passed and Reference Case No. 22/2020 is disposed of.

JUSTICE K.D. BHUTIA, Presiding Officer

नई दिल्ली, 2 जुलाई 2024

(हिन्दी अनुभाग)

शुद्धिपत्र

का.आ. 1346.—एतद्वारा इस मंत्रालय की दिनांक 01.11.2023 की समसंख्यक अधिसूचना का.आ. 491 जो दिनांक 16 मार्च, 2024 को भारत के राजपत्र में प्रकाशित हुई थी के अंग्रेजी संस्करण में, क्रम संख्या 01 से 07 में कार्यालयों के नाम को निम्नानुसार पढ़ा जाए:—

के लिए:	पढ़ा जाए:
Employees' State Insurance Corporation	**Employees' Provident Fund Organisation**

[सं. ई-11016/1/2022-रा.भा.नी.]

नागेश कुमार सिंह, उपमहानिदेशक

New Delhi, the 2nd July 2024

(Hindi Section)

CORRIGENDUM

S.O. 1346.—In this Ministry's notification of even number S.O. 491 dated 01.11.2023 published on 16th March, 2024 in the Gazette of India, the name of the offices at serial numbers 01 to 07 may be read as following:—

For:	Read:
Employees' State Insurance Corporation	**Employees' Provident Fund Organisation**

[No. E-11016/1/2022-RBN]

NAGESH KUMAR SINGH, Dy. Director General

अधिसूचना

नई दिल्ली, 2 जुलाई 2024

का.आ. 1347.—केंद्र सरकार, राजभाषा (संघ के शासकीय प्रयोजनों के लिए प्रयोग) नियम, 1976 (यथा संशोधित, 1987) के नियम 10 के उप-नियम (4) के अनुसरण में, श्रम और रोजगार मंत्रालय के प्रशासकीय नियंत्रणाधीन निम्नलिखित कार्यालयों को, जिनके 80 प्रतिशत से अधिक कर्मचारियों ने हिन्दी का कार्यसाधक ज्ञान प्राप्त कर लिया है, एतद्वारा अधिसूचित करती है:

1. कर्मचारी राज्य बीमा निगम अस्पताल, आदित्यपुर, झारखंड
2. कर्मचारी राज्य बीमा निगम चिकित्सा महाविद्यालय एवं अस्पताल, अलवर (राजस्थान)
3. कर्मचारी राज्य बीमा निगम अस्पताल, कोल्हापुर

[सं. ई-11016/1/2022-रा.भा.नी.]

नागेश कुमार सिंह, उपमहानिदेशक

NOTIFICATION

New Delhi, the 2nd July 2024

S.O. 1347.—In pursuance of Sub-Rule (4) of Rule 10 of the Official Language (Use for official purposes of the Union) Rules, 1976 (as amended, 1987) the Central Government hereby notifies the following offices under the administrative control of the Ministry of Labour & Employment, more than 80% Staff whereof have acquired working knowledge of Hindi:-

1. Employees' State Insurance Corporation Hospital, Adityapur, Jharkhand

2. Employees' State Insurance Corporation Medical College and Hospital, Alwar (Rajasthan)

3. Employees' State Insurance Corporation Hospital, Kolhapur

[No. E-11016/1/2022-RBN]

NAGESH KUMAR SINGH, Dy. Director General

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