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

भारत का राजपत्र
The Gazette of India

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प्राधिकार से प्रकाशित
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WEEKLY

सं. 50] नई दिल्ली, दिसम्बर 15—दिसम्बर 21, 2024, शनिवार/ अग्रहायण 24—अग्रहायण 30, 1946
No. 50] NEW DELHI, DECEMBER 15—DECEMBER 21, 2024, SATURDAY/ AGRAHAYANA 24–AGRAHAYANA 30, 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)

पेट्रोलियम और प्राकृतिक गैस मंत्रालय

नई दिल्ली, 12 दिसम्बर, 2024

का.आ. 2242.—केन्द्रीय सरकार ने पेट्रोलियम और खनिज पाइपलाइन (भूमि में उपयोग के अधिकार का अर्जन) अधिनियम, 1962 (1962 का 50) की धारा 6 की उपधारा (1) के अधीन जारी की गई भारत सरकार के पेट्रोलियम और प्राकृतिक गैस मंत्रालय की नीचे दी गई अनुसूची में यथा-उल्लिखित तारीखों एवं का. आ. संख्या द्वारा उन अधिसूचनाओं से संलग्न अनुसूची में विनिर्दिष्ट भूमि में उपयोग के अधिकार का अर्जन किया गया था।

और केन्द्रीय सरकार ने उक्त अधिनियम की धारा 6 की उपधारा (4) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए उक्त भूमियों में विल्लंगमों से मुक्त उपयोग का अधिकार एचपीसीएल राजस्थान रिफाइनरी लिमिटेड, (राजस्थान) में निहित किया गया था।

और सक्षम प्राधिकारी ने केन्द्रीय सरकार को रिपोर्ट दे दी है कि कच्चा तेल के परिवहन के लिए राजस्थान राज्य में एचपीसीएल राजस्थान रिफाइनरी लिमिटेड, (राजस्थान) की अरब मिक्स क्रूड आइल पाइपलाइन परियोजनान्तर्गत मुन्द्रा (गुजरात) से एचआरआरएल रिफाइनरी, पचपदरा, (राजस्थान) तक कच्चा तेल की पाइपलाइन बिछाई जा चुकी है, अतः

उस भूमि के बारे में जिसका संक्षिप्त विवरण इस अधिसूचना में संलग्न अनुसूची में विनिर्दिष्ट किया गया है, ऐसे प्रचलन को राजस्थान राज्य में समाप्त किया जाए।

अतः अब, केन्द्रीय सरकार, पेट्रोलियम और खनिज पाइपलाइन (भूमि में उपयोग के अधिकार का अर्जन), 1963 के नियम 4 के उप -नियम (1) के अंतर्गत दी गई परिभाषा (1) के अंतर्गत उस तारीख को जिस दिन पर यह अधिसूचना भारत सरकार के राजपत्र में प्रकाशित होती है, राजस्थान राज्य के जिला जालोर (वर्तमान जिला साँचौर) की तहसील साँचौर, बागोडा, जिला जालोर की तहसील भीनमाल, सायला और बाड़मेर (वर्तमान जिला बालोतरा) की सिणधरी, पचपदरा एवं पाटोदी तहसील के निम्नसूचित गाँवों के भूमि में मार्गाधिकार गतिविधियों की समाप्ति की तारीख के रूप में घोषणा करती है।

अनुसूची

क्र.सं.	6(1) अधिसूचना की का.आ.संख्या एवं दिनांक	गाँव का नाम	तहसील
1	2	3	4
जिला: जालोर (वर्तमान जिला साँचौर)		**राज्य: राजस्थान**	
1	293 (अ) दिनांक 15/01/2021	नानोल	**साँचौर**
2	582 (अ) दिनांक 10/02/2022	पांचला	
3	2910 (अ) दिनांक 22/07/2024	कूडा	
4		दाता	
5		कालुपूरा	
6		राजीवनगर	
7		सियागांव	
8		केरवी	
9		सुथारों का गोलिया	
10		अरणाय	
11		हनुवंतनगर	
12		लियादरा	
13		बिजरोलखेडा	
14		पमाणा	
15		मारूखेडा	
16		जेलातरा	
17		भलाणी साऊओ की ढाणी	
18	293 (अ) दिनांक 15/01/2021	कूका	**बागोडा**
19	582 (अ) दिनांक 10/02/2022	मेडा पुरोहितान	
20	2910 (अ) दिनांक 22/07/2024	भालनी	
21		रूपा की ढाणी	

क्र.सं.	6(1) अधिसूचना की का.आ.संख्या एवं दिनांक	गाँव का नाम	तहसील
1	2	3	4
22		गावडी	
23		लाखनी	
24		राऊता	
25		चैनपुरा	
26		नयाचेनपुरा	
27		गुजरवाड़ा	
28		बगोटी	
29		नांदिया	
30		कोरीध्वेचा	
31		लुम्बाराम बांता की ढाणी	
32		रंगाला	
33		मैया की ढाणी	
जिला: जालोर			**राज्य: राजस्थान**
34	293 (अ) दिनांक 15/01/2021	थोबाऊ	**भीनमाल**
35	582 (अ) दिनांक 10/02/2022	डाबली	**सायला**
36	2910 (अ) दिनांक 22/07/2024	खारी	
जिला: बाड़मेर ¼ वर्तमान जिला बालोतरा ½			**राज्य: राजस्थान**
37	279 (अ) दिनांक 15/01/2021	गालानाडी	**सिणधरी**
38	582 (अ) दिनांक 10/02/2022	अरणियाली महेचान	
39	2910 (अ) दिनांक 22/07/2024	चाडों की ढाणी	
40		खारा महेचान	
41		बामणी	
42		दण्ढ़	
43		दाखां	
44		शाहनगर	
45		तिलोणियों की ढाणी	
46		घाचीडां	
47	279 (अ) दिनांक 15/01/2021	कालूडी	**पचपदरा**
48	582 (अ) दिनांक 10/02/2022	वरिया भगजी	

क्र.सं.	6(1) अधिसूचना की का.आ.संख्या एवं दिनांक	गाँव का नाम	तहसील
1	2	3	4
49	2910 (अ) दिनांक 22/07/2024	वरिया तगजी	
50		वरिया वरेचा	
51		मेवानगर	
52		जोगेश्वर महादेव	
53		तिलवाडा	
54		मंडावास	
55		खेड	
56		कलावा	
57		सांभरा	**पचपदरा (वर्तमान तहसील पाटोदी)**

[फा. सं. आर-11025/1/2019-ओआर-I/ई-31849)]

शशि शेखर सिंह, अवर सचिव

MINISTRY OF PETROLEUM AND NATURAL GAS

New Delhi, the 12th December, 2024

S. O. 2242.—Whereas, by the notification of the Government of India in the Ministry of Petroleum and Natural Gas, S.O. Numbers and dated as mentioned in the Schedule below issued under Sub-section (i) of Section 6, Petroleum and Minerals Pipeline (Acquisition of Right of User in Land) Act, 1962 (50 of 1962), the Central Government acquired the Right of User in the said lands specified in the schedule appended to those notifications;

And whereas, in exercise of power conferred by Sub-section (4) of Section 6 of the said Act, the Central Government vested the Right of User in the lands free from all encumbrances in the HPCL Rajasthan Refinery Ltd;

And whereas, the Competent Authority has made a report to the Central Government that the pipeline has been laid in the said lands and hence the operation may be terminated for Arab Mix crude Oil Pipeline from Mundra (Gujarat) to HRRL Refinery, Pachpadra (Rajasthan) in the state of Rajasthan in respect of the said land which in brief are specified in the Schedule annexed to this Notification;

Now, therefore, as required under Explanation 1 of Rule 4 of the Petroleum and Minerals Pipeline (Acquisition of Right of User in Land) Rules1963, the Central Government hereby declare the date on which the notification is published in the Gazette of India as the date of "Termination of Operation" in ROU in the villages mentioned in Tehsil Sanchore, Bagoda of Sanchore District (New district which is formed with Parts of District Jalore) Bhinmal, and Sayala of Jalore District and Tehsil Sindhari, Pachpadra and Patodi of District Balotra (New district which is formed with Parts of District Barmer) in the State of Rajasthan.

SHEDULE

Sl. No.	6 (1) Notifications S.O. No. and Date	Name of the Village	TEHSIL
1	2	3	4
DISTRICT: JALORE (PRESENT NAME SANCHORE)			**STATE : RAJASTHAN**
1	293(E) Dtd. 15/01/2021	NANOL	SANCHORE

Sl. No.	6 (1) Notifications S.O. No. and Date	Name of the Village	TEHSIL
1	2	3	4
2	582 (E) Dtd. 10/02/2022	PANCHLA	
3	2910 (E) Dtd. 22//07/2024	KUDA	
4		DATA	
5		KALUPURA	
6		RAJIV NAGAR	
7		SIYAGAON	
8		KERVI	
9		SUTHARON KA GOLIYA	
10		ARANAY	
11		HANUVANT NAGAR	
12		LIYADARA	
13		BIJROLKHEDA	
14		PAMANA	
15		MARUKHEDA	
16		JELATARA	
17		BHALANI SAUO KI DHANI	
18	293(E) Dtd. 15/01/2021	KUKA	BAGODA
19	582 (E) Dtd. 10/02/2022	MEDA PUROHITAN	
20	2910 (E) Dtd. 22//07/2024	BHALANI	
21		RUPA KI DHANI	
22		GAWADI	
23		LAKHANI	
24		RAOUTA	
25		CHAINPURA	
26		NAYA CHAINPURA	
27		GUJARWADA	
28		BAGOTI	
29		NANDIYA	
30		KORIDHWECHA	
31		LUMBARAM BANTA KI DHANI	
32		RANGALA	
33		MAIYA KI DHANI	
DISTRICT: JALORE			**STATE : RAJASTHAN**
34	293(E) Dtd. 15/01/2021	THOBAU	BHINMAL
35	582 (E) Dtd. 10/02/2022	DABALI	SAYALA
36	2910 (E) Dtd. 22//07/2024	KHARI	

Sl. No.	6 (1) Notifications S.O. No. and Date	Name of the Village	TEHSIL
1	2	3	4
DISTRICT: BARMER (PRESENT NAME BALOTRA)			**STATE : RAJASTHAN**
37	279(E) Dtd. 15/01/2021	GALANADI	SINDHARI
38	582 (E) Dtd. 10/02/2022	ARNIYALI MAHECHAN	
39	2910 (E) Dtd. 22//07/2024	CHADO KI DHANI	
40		KHARA MAHECHAN	
41		BAMANI	
42		DANDH	
43		DAKHA	
44		SHAHNAGAR	
45		TILONIYON KI DHANI	
46		GHACHIDAN	
47	279(E) Dtd. 15/01/2021	KALUDI	PACHPADRA
48	582 (E) Dtd. 10/02/2022	VARIYA BHAGJI	
49	2910 (E) Dtd. 22//07/2024	VARIYA TAGJI	
50		VARIYA VARECHA	
51		MEVANAGAR	
52		JOGESHWAR MAHADEV	
53		TILWADA	
54		MANDAWAS	
55		KHED	
56		KALAVA	
57		SAMBHARA	PACHPADRA (Present Tehsil: Patodi)

[F. No. R-11025/1/2019-OR-I/E-31849)]

SHASHI SHEKHAR SINGH, Under Secy.

नई दिल्ली, 12 दिसम्बर, 2024

का.आ. 2243. —पेट्रोलियम और खनिज पाइपलाइन (भूमि में प्रयोक्ता के अधिकार का अर्जन) अधिनियम, 1962 (1962 का 50) (इसमें इसके बाद उक्त अधिनियम कहा गया है) की धारा 2 के खंड (क) के अनुसरण में भारत सरकार नीचे दी गयी सारणी के स्तंम्भ (1) में उल्लेखित व्यक्ति को श्री. डी.एन.तरे के स्थान पर मैसर्स रिलायन्स इंडस्ट्रीज लिमिटेड (आरआईएल) के लिए उक्त सारणी के स्तंभ (3) में उल्लेखित ईथेन, प्रोपेन, प्राकृतिक गैस और उपचारित अपषिश्ट जल का परिवहन करने वाली विभिन्न परिचालन पाइपलाइनों के लिए स्तंम्भ (2) में उल्लेखित क्षेत्रों के संबंध में सक्षम प्राधिकारी के कार्यों का पालन करने के लिए अधिकृत करती है :-

0;fDr dk uke vkj irk	{k=kf/kdkj	ikbiykbu
¼1½	¼2½	¼3½
श्री अनिल नाथूराम सावंत, डिप्टी कलेक्टर (सेवानिवृत्त)] महाराष्ट्र, सक्षम प्राधिकारी, रिलायन्स इंडस्ट्रीज लिमिटेड, नागोथाने मैन्युफॅक्चरींग डिवीजन, पी.ओ.:पेट्रोकॅमीकल टाउनशिप, नागोथाने, ज़िला रायगड, महाराष्ट्र - 402125	महाराष्ट्र राज्य के सभी जिले	रिलायन्स इंडस्ट्रीज लिमिटेड (आरआईएल) की परिचालन पाइपलाइनें

2. महाराष्ट्र राज्य में मैसर्स रिलायन्स इंडस्ट्रीज लिमिटेड के लिए दिनांक 08.03.2008 को भारत के राजपत्र में प्रकाषित दिनांक 03.03.2008 की अधिसूचना संख्या का.आ. 504 द्वारा पूर्व में अधिसूचित सक्षम प्राधिकारी, श्री. डी. एन. तरे, उप समाहर्ता (सेवानिवृत्त), महाराष्ट्र को निरस्त किया जाता है ।

3. यह अधिसूचना इसके जारी होने की तिथि से प्रभावी होगी ।

[फा. सं. एल-14014/34/2014-जीपी-II (ई-42150)]

रामजीलाल मीना, अवर सचिव

New Delhi, the 12th December, 2024

S.O. 2243.—In pursuance of clause (a) of Section 2 of the Petroleum and Minerals Pipelines (Acquisition of Right of User in Land) Act, 1962 (50 of 1962), (hereinafter called the said Act), the Central Government hereby authorizes the person mentioned in the column (1) of the table given below to perform the functions of the Competent Authority in place of Shri D.N.Tare under the said Act for M/s. Reliance Industries Limited (RIL) in respect of areas mentioned in the column (2) for various operational pipelines transporting Ethane, Propane, Natural Gas and treated Effluent water mentioned in Column (3) of the said Table:-

Name and Address of the Person	Area of Jurisdiction	Pipeline(s)
1	2	3
Shri Anil Nathuram Sawant, Deputy Collector (Retired), Maharashtra, Competent Authority, Reliance Industries Limited, Nagothane Manufacturing Division, P.O.: Petrochemicals Township, Nagothane, District Raigad, Maharashta - 402125	All Districts of Maharashtra State	Operational pipelines of Reliance Industries Limited (RIL)

2. Earlier notified Competent Authority for M/s. Reliance Industries Limited in the State of Maharashtra, Shri D.N.Tare, vide S.O. 504 dated 03.03.2008 published in the Gazette of India dated 08.03.2008 stands de-notified.

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

[F. No. L-14014/34/2014-GP-II (E-42150)]

RAMJI LAL MEENA, Under Secy.

Je ,oa jkstxkj e=kky;

नई दिल्ली, 12 दिसम्बर, 2024

का.आ. 2244.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार परमाणु ईंधन परिसर के प्रबंधतत्र, संबद्ध नियोजको और उनके कर्मकारो के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय gnjkckn के पंचाट (102/2015) प्रकाशित करती है।

[सं. एल-42012/211/2015- आई आर (बी-I)]

सलोनी, उप निदेशक

MINISTRY OF LABOUR AND EMPLOYMENT

New Delhi, the 12th December, 2024

S.O. 2244.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 102/2015*)* of the *Cent.Govt.Indus.Tribunal-cum-Labour Court Hyderabad* as shown in the Annexure, in the industrial dispute between the management of Nuclear Fuel Complex their workmen.

[No. L-42012/211/2015- IR(B-I)]

SALONI, Dy. Director

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT AT HYDERABAD

Present: - **Sri IRFAN QAMAR**

Presiding Officer

Dated the 27th day of September, 2024

INDUSTRIAL DISPUTE No. 102/2015

Between:

Sh. S. Sivalingam,

S/o Komaraiah,

R/o 1-99, Mallapur,

Nacharam, Uppal Mandal,

Hyderabad-500076. ..…Petitioner

AND

The Chief Executive,

Nuclear Fuel Complex,

Department of Atomic Energy,

Hyderabad-500062. ……Respondents

Appearances:

For the Petitioner : Sri G. Ravi Mohan, Advocate

For the Respondent: Sri Ravinder Viswanath , Advocate

AWARD

The Government of India, Ministry of Labour by its order No.L-42012/211/2015 -IR(DU) dated 07.12.2015 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 Nuclear Fuel Complex, and their workmen. The reference is,

SCHEDULE

"Whether the action of the management of Nuclear Fuel Complex, Hyderabad by terminating the services of the workman Sh. S. Sivalingam S/o Komaraiah, is illegal, arbitrary and violation of the Section 25F of ID Act, 1947? If yes to what relief the workman are entitled to?

The reference is numbered in this Tribunal as I.D. No. 102/2015 and notices were issued to the parties concerned.

2. Petitioner absent on the date fixed for Petitioner evidence. Despite sufficient opportunity accorded to him, the Petitioner did not adduce any evidence to substantiate his claim. Perused the record. Since the Petitioner has not substantiated his claim by any evidence, therefore, a 'No-claim' award is passed.

Award is passed accordingly. Transmit.

Typed to my dictation by Shri Vinay Panghal, LDC corrected and signed by me on this the 27th day of September, 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, 12 दिसम्बर, 2024

का.आ. 2245.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार ;fu;u cd vkQ bfM;k के प्रबंधतत्र, संबद्ध नियोजको और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं 2 दिल्ली के पंचाट (01/2022) प्रकाशित करती है।

[सं. एल-39025/01/2024- आई आर (बी-II)-44]

सलोनी, उप निदेशक

New Delhi, the 12th December, 2024

S.O. 2245.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref.01/2022*)* of the *Cent.Govt.Indus.Tribunal-cum-Labour Court No -II Delhi* as shown in the Annexure, in the industrial dispute between the management of Union Bank of India and their workmen.

[No. L-39025/01/2024- IR(B-II)-44]

SALONI, Dy. Director

ANNEXURE

BEFORE CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT NO-II, NEW DELHI

LCA No. 01/2022

Sh. Ajay Singh & 04 others,

1. Sh. Ajay Singh, 190, Mota Plt, Khadri Gram,
Shyaampur, Rishikesh, Uttarakhand-249209.

2. Neeraj Kumar,
R/o Lower Ajeet Nagar, Gurudwara, Bheemawala,
Vikas Nagar, Uttarakhand-248198.

3. Sh. Anuj Kumar,
R/o # 124, Chukkhuwala, Dehradun, Uttarakhand-248001.

4. Sh. Sandeep,
R/o # 137, Karanpur, Dehradun, Uttarakhand- 248001.

5. Sh. Rahul Goswami,
Yalde Cinema, Kuldi Market, Mussorie, Uttarakhand-248979.

Versus

1. **Deputy General Manager, Union Bank of India,**
Central Office: 239 Vidhan Bhawan Marg, Nariman Point,
Mumbai, Maharashtra-400021.

2. **Regional Manager, Union Bank of India,**

Regional Office: 4th Floor, Radha Palace, 78, Rajpur Road,

Dehradun, Uttarakhand0745869.

Appearance:-

For Claimants: Sh. Lalit Singh Negi, Advocate/AR for the workmen.

For Managements: Sh. Saurabh, Ld. AR for the management-1 & 2.

AWARD

This is an application **U/S 33C (2) of the Industrial Disputes Act (here in after is referred as an Act)** filed by the five claimants.

Counsel of the workmen submits that he wants to withdraw the present claims. His statement is recorded separately.

In view of the above submission made by AR of the claimants, claims stand dismissed as withdrawn. Award is accordingly passed. A copy of this award is sent to appropriate government for notification under section 17 of the I.D. Act. File is consigned to record room.

Date: 03.09.2024

ATUL KUMAR GARG, Presiding Officer

नई दिल्ली, 12 दिसम्बर, 2024

का.आ. 2246.—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 नं 1 दिल्ली के पंचाट (40/2023) प्रकाशित करती है।

[सं. एल - 12025/01/2024- आई आर (बी-I)-244]

सलोनी, उप निदेशक

New Delhi, the 12th December, 2024

S.O. 2246.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref.40/2023*)* of the *Cent.Govt.Indus.Tribunal-cum-Labour Court No -I 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)-244]

SALONI, Dy. Director

ANNEXURE

THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT DELHI - 1,

NEW DELHI.

ID No. 40/2023

Sh. Manish Nagar,

H.No. 47, Masjid Moth,

Andrews Ganj, South Delhi- 110049.

Workman…

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…

AWARD

In the present case, a reference was received from the appropriate Government vide letter No-ND.96(19)/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. Manish Nagar, Ex. Electrical Helper, has been terminated w.e.f. 24.10.2021 illegally and/or unjustifiably by the management of M/s R.D. Engineers? If yes, to what relief the workman concerned is entitled and what directions, are necessary in this 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.

Justice VIKAS KUNVAR SRIVASTAVA, Presiding Officer

Date: 10.09.2024

नई दिल्ली, 12 दिसम्बर, 2024

का.आ. 2247.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार केन्द्रीय लोक निर्माण विभाग के प्रबंधतत्र, संबद्ध नियोजको और उनके कर्मकारो के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं 2 दिल्ली के पंचाट (22/2022) प्रकाशित करती है।

[सं. एल - 12025/01/2024- आई आर (बी-I)-247]

सलोनी, उप निदेशक

New Delhi, the 12th December, 2024

S.O. 2247.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref.22/2022*)* of the *Cent.Govt.Indus.Tribunal-cum-Labour Court No -II Delhi* as shown in the Annexure, in the industrial dispute between the management of Central Public Work Department and their workmen.

[No. L-12025/01/2024- IR(B-I)-247]

SALONI, Dy. Director

ANNEXURE

BEFORE CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT NO-II, NEW DELHI

I.D. NO. 22/2022

Sh. Anurag Shani, S/o Sh. Ramsit,

R/o- N-135, Vishnu Garden, New Delhi-110018.

Versus

1. **Central Public Work Department,**

   Sewa Bhawan, Delhi Electrical Division, DED-301,

   CPWD R.K. Puram, New Delhi-110066.

2. **Aar Pee Refrigerations & Air Conditioning,**

   210, A2, Shahpur Jat, Maruti Complex, New Delhi-110049.

AWARD

This is an application **U/S 2A of the Industrial Disputes Act (here in after referred as an Act)** filed by the claimant for his illegal termination. Claim of the claimant is that he was working with the management-1 through management-2 since January 2021 at the post of AC Operator at the last drawn salary of Rs. 16,500/- p.m. He has been doing his duty with diligently and honestly and did not give any chance to the management for any complaint. During the month of April, May and June 2021 the workman had worked in a very challenging situation because of 2nd COVID wave, but the managements never came forward to provide any social security and safety measures for the workman. When he demanded proper facilities from managements with regard to medical facility and social security but, the management did not pay any heed to his request and told him to leave the job if he is not happy at workplace. Management refused to extend any social security to workman and started harassing workman by not paying his monthly salary and force them to leave his job. On 02.07.2024 his services was illegally terminated and he has been told to not to come for work on the next day. Management also illegally withheld four months salary of the workman from March 2021 to June 2021. Management had also been regularly making statutory deductions pertaining to provident fund of workman but they have not been depositing the same in a gross illegal manner. Despite, several reminders and requests from workman, but the managements paid no heed to his legitimate requests. Hence he filed the present claim with the prayer that he be reinstated with full back wages.

Respondent-1 and 2 had filed their written statement. They had denied the averment made in his claim statement. They submit that claim is not maintainable and liable to be dismissed.

After completions of the pleadings, following issues have been framed vide order dated 08.11.2023 i.e.:

1. Whether the petitioner is entitled to the payment of salary of the alleged months as stated in its petition (OPW).

2. Relief.

Now, the matter is listed for workman evidence. On 08.02.2024, management-1 had filed the application under order I rule 10 (2) of CPC. Workman is required to file his affidavit as well as reply of the application. Despite, providing a number of opportunities, workman has not been appearing. Fresh notice was issued to the workman to substantiate his claim. After issuing notice he has not appeared.

In these circumstances, when the claimant is not interested in pursuing his claim. His claim stands dismissed. Award is passed 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.

ATUL KUMAR GARG, Presiding Officer

Date 07th, October, 2024

नई दिल्ली, 12 दिसम्बर, 2024

का.आ. 2248.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार कोटक महिंद्रा बैंक लिमिटेड के प्रबंधतत्र, संबद्ध नियोजकों और उनके कर्मकारो के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं 2 दिल्ली के पंचाट (176/2021) प्रकाशित करती है।

[सं. एल - 12025/01/2024- आई आर (बी-I)-245]

सलोनी, उप निदेशक

New Delhi, the 12th December, 2024

S.O. 2248.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref.176/2021*)* of the *Cent.Govt.Indus.Tribunal-cum-Labour Court No -II Delhi* as shown in the Annexure, in the industrial dispute between the management of Kotak Mahindra Bank Ltd . and their workmen.

[No. L-12025/01/2024-IR(B-I)-245]

SALONI, Dy. Director

ANNEXURE

BEFORE CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT NO-II, NEW DELHI

I.D. NO. 176/2021

Sh. Ravikant Tiwari, S/o Sh. Pawan Kumar Tiwari,

R/o- House No. A-141, Gali No. 05, West Vinod Nagar,

Delhi-110092.

Versus

1. The Managing Director,

Kotak Mahindra Bank Ltd.,

Registered Office At: 27-BKC, C-27,

G-Block, Bandra Kurla Complex Mumbai-400051.

Also At: Plot No. 07 Sector-125, Near Amity University,

Noida-201313.

2. Avon Solutions & Logistics Pvt. Ltd.,

Registered Office At: No. 01, Deepak Complex,

3rd Floor, Bharathi Nagar, 4th Street, T Nagar, Chennai-600017.

Also At: Roots Tower, Near- V3S Mall, 7th Floor 711,

Laxmi Nagar, Delhi-110092.

AWARD

This is an application **U/S 2A of the Industrial Disputes Act (here in after referred as an Act)** filed by the claimant for his illegal termination. Claim of the claimant is that he was working with the management-1 as Mailroom Staff through management-2 at the last drawn salary of Rs. 13,896/- since 08.01.2015. He has been doing his duty with diligently and honestly and did not give any chance to the management for any complaint. He was initially appointed at the monthly salary of Rs. 9,524/- p.m. Due to sincerity and dedication, management had always appreciated the work of the workman and because of this reason his salary was increase time to time. The salary of the workman was Rs. 13,896/- p.m which was less than the minimum wage determined by the Delhi Government under the Minimum Wages Act, 1948. Instead of giving attention to the workman's demand, the management got annoyed with the workman and the workman was told by the manager namely Nidhin and (CRM) Rohit Tyagi that he no longer needs to come to the office and banned him from his duties in the office. On 22.07.2019 the workman received a charge sheet cum show-cause notice from the management. An enquiry into the charges leveled against the workman was conducted by enquiry officer Mr. Puneet Saini in which not only the workman presented himself but also co-operated completely. The enquiry report was also submitted by the enquiry officer which held the workman liable of remaining absent from his duty and based on the same enquiry report the services of the workman were dismissed w.e.f. 22.10.2019. The notice of enquiry was not served upon the workman nor was notice of enquiry ever received by the workman. The workman was not given any opportunity to bring his defense witnesses and as such the workman could not put his case during the enquiry. After termination of the services, the workman visited the office of the management time and again for his reinstatement, but all in vain. Hence, he filed the present claim with the prayer that he be reinstated with full back wages. From his illegal termination by the management, he is unemployed.

Respondent-1 and 2 had filed their respective written statement. Management-1and 2 denies the averment made in his claim statement. Management-2 also submits that workman many times along with other colleague namely Badri Prasad and Vijay Tiwari remained unauthorized absent from the duties; all these persons without any reason wrote a false and fabricate complaint to the management. They submit that claim is not maintainable and liable to be dismissed.

After completion of the pleadings, following issues have been framed vide order dated 11.01.2023 i.e.:

1. Whether the proceeding is maintainable.
2. Whether there exists employer and employee relationship between the claimant and management-1.
3. Whether the service of the claimant was illegally terminated by management-2.
4. To what relief the claimant is entitled to and from which date.

Now, the matter is listed for workman evidence. He is required to file his affidavit. Despite, providing a number of opportunities, workman has not been appearing since long to substantiate his claim.

In these circumstances, when the claimant is not interested in pursuing his claim. His claim stands dismissed. Award is passed 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.

ATUL KUMAR GARG, Presiding Officer

Date 25th September, 2024

नई दिल्ली, 12 दिसम्बर, 2024

का.आ. 2249.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार केन्द्रीय लोक निर्माण विभाग के प्रबंधतत्र, संबद्ध नियोजको और उनके कर्मकारो के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं 2 दिल्ली के पंचाट (220/2021) प्रकाशित करती है।

[सं. एल - 12025/01/2024- आई आर (बी-I)-246]

सलोनी, उप निदेशक

New Delhi, the 12th December, 2024

S.O. 2249.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref.220/2021) of the *Cent.Govt.Indus.Tribunal-cum-Labour Court No -II Delhi* as shown in the Annexure, in the industrial dispute between the management of Central Public Work Department and their workmen.

[No. L-12025/01/2024-IR(B-I)-246]

SALONI, Dy. Director

ANNEXURE

BEFORE CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT NO-II, NEW DELHI

I.D. No. 220/2021

Sh. Jaipal Singh, S/o Sh. Sunder Singh,

Through- The President Sh. Hukum Chand,

CPWD Karamchari Union, Babu Lal Ji Complex,

Shop No.-04, Gurgaon Road, Opposite Bus Stand,

Gurgaon, Haryana-122001.

Versus

1. The Director General,

   Central Public Work Department,

   Nirman Bhawan, New Delhi-110001.

2. **Chief Engineer, East, CPWD,**

   Delhi Sarkar, MSO Building, I.P. Bhawan,

   Police H.Q., New Delhi-110002.

3. Superset Engineer, Shahdara Parimandal,
M-23, PWD, Near Chhat Ghat, Western Bank,
IP State, New Delhi-110002.

4. Executive Engineer, Karkardooma Court,
M-231, Noida Mor, Near Akshardham Mandir,
PWD, Delhi-110092.

5. Superintendent Engineer, Co-ordination East Block,
R.K. Puram, CPWD, New Delhi-110022.

Appearance:-

For Claimants: Ms. Kiran Dagar, Advocate/AR along with the workman.

For Management: Ms. Aditi Gupta, Ld. AR for the management-1.

AWARD

This is an application of **U/S 2A of the Industrial Disputes Act (here in after is referred as an Act)** filed by the claimant for his illegal termination.

Counsel of the workman submits that she wants to withdraw the present claim. Her statement is recorded separately.

In view of the above submission made by AR of the claimant, his claim stands dismissed as withdrawn. Award is accordingly passed. A copy of this award is sent to appropriate government for notification under section 17 of the I.D. Act. File is consigned to record room.

ATUL KUMAR GARG, Presiding Officer

Date: 04.09.2024

नई दिल्ली, 16 दिसम्बर, 2024

का.आ. 2250.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार राष्ट्रीय भवन निर्माण निगम लिमिटेड के प्रबंधतत्र, संबद्ध नियोजको और उनके कर्मकारो के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय u- I fnYyh के पंचाट (34/2021) प्रकाशित करती है।

[सं. एल - 12025/01/2024- आई आर (बी-I)-248]

सलोनी, उप निदेशक

New Delhi, the 16th December, 2024

S.O. 2250.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref.34/2021*)* of the *Cent.Govt.Indus.Tribunal-cum-Labour Court No.* I *Delhi* as shown in the Annexure, in the industrial dispute between the management of National Building Contruction Corporation Ltd and their workmen.

[No. L-12025/01/2024- IR(B-I)-248]

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.34/2021

Shri Surender Singh S/o Shri Mohan Singh,

Through Karamchari Ekta Kendra, Regd. (03310),

R/o A-704, Transit Camp, Shaheed Rajiv Gandhi Colony,

Govindpuri, Kalkaji, New Delhi-110019

Workman…

Versus

National Buildings Construction Corporation Ltd.,

JMC Maintenance Unit, Integrated Office Complex,

Lodhi Road, New Delhi-110003.

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 04.08.2017 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 form his service on 04.08.2017 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 filed the rebuttal written statement. Thereafter, none appeared on behalf of the claimant nor his A/R appeared 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: 17.10.2024

Justice VIKAS KUNVAR SRIVASTAVA, Presiding Officer

नई दिल्ली, 16 दिसम्बर, 2024

का.आ. 2251.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स एचडीएफसी बैंक लिमिटेड के प्रबंधतत्र, संबद्ध नियोजको और उनके कर्मकारो के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय u I fnYyh के पंचाट (232/2022) प्रकाशित करती है।

[सं. एल - 12012/03/2022- आई आर (बी-I)]

सलोनी, उप निदेशक

New Delhi, the 16th December, 2024

S.O. 2251.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 232/2022*)* of the *Cent.Govt.Indus.Tribunal-cum-Labour Court No.* I *Delhi* as shown in the Annexure, in the industrial dispute between the management of M/s HDFC Bank Limited and their workmen.

[No. L-12012/03/2022- IR(B-I)]

SALONI, Dy. Director

ANNEXURE

THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT DELHI - 1, NEW DELHI.

ID No. 232/2022

Sh. Shivam Singh S/o Sh. Ravi Tomar,

Through Indian National Migrant Worker's Union (Regd.)

1770/8 3rd Floor Govind Puri Extension, Main Road,

Kalkaji, New Delhi- 110019

Workman…

Versus

1. M/s HDFC Bank Limited,
   (i) 9th-10 Floor, Express Buildingm Bahadur Shah Marg,
   New Delhi-110002
   (ii) South Extension Part-I, New Delhi – 110003
2. M/s Bopari's Martial Security Private Limited,
   Through Sh. Gagan Deep, 16 MIG, Shopping Center,
   Near Vatika Apartment Maya Puri,
   New Delhi – 110064.

Management…

AWARD

In the present case, a reference was received from the appropriate Government vide letter No-L-12012/03/2022-IR(B-I)) dated 13.07.2022 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 Indian National Migrant Workers' Union in respect of the workman Shri Shivam Singh S/o Sh. Ravi Tomar as per his letter dated 17.12.2019 (copy enclosed) working under the contractor M/s bopari's Martial Security Pvt. Ltd. in the establishment of HDFC Bank Ltd. is fair legal & 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 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: 22.08.2024

Justice VIKAS KUNVAR SRIVASTAVA, Presiding Officer

नई दिल्ली, 16 दिसम्बर, 2024

का.आ. 2252.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार डॉयचे बैंक एजी के प्रबंधतत्र, संबद्ध नियोजको और उनके कर्मकारो के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय u- I fnYyh के पंचाट (60/2011) प्रकाशित करती है।

[सं. एल - 12012/13/2003- आई आर (बी-I)]

सलोनी, उप निदेशक

New Delhi, the 16th December, 2024

S.O. 2252.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref.60/2011*)* of the *Cent.Govt.Indus.Tribunal-cum-Labour Court No.* I *Delhi* as shown in the Annexure, in the industrial dispute between the management of The Deutsche Bank AG and their workmen.

[No. L-12012/13/2003- IR(B-I)]

SALONI, Dy. Director

ANNEXURE

THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT DELHI NO.1 NEW DELHI.

ID NO. 60/2011

Presiding Officer: **Justice Vikas Kunvar Srivastava (Retd.)**

Sh. Jagbir Singh,

B-48, Gali No. 4, Raja Puri,

Jyoti Colony, Shahdra,

New Delhi-110032

Claimants…

Versus

The General Manager,

The Deutsche Bank AG,

New Delhi Branch,

Tolstoy House, 15-17 Tolstoy Marg,

New Delhi-110001

Managements…

Dr. M.Y. Khan (Adv), A/R for the Claimant.

Ms. Raavi Birbal (Adv), A/R for the Management.

Reference of the industrial dispute

1. This Industrial Dispute case (ID No. 60/2011) directed against the management of 'Deutsche Bank' is referred by the Appropriate Government i.e. Government of India/Ministry of Labour, New Delhi under Clause (d) of Sub-Section (1) and Sub-Section (2A) of Section 10 of the Industrial Dispute Act, 1947 (14 of 1947) which shall hereinafter be called as "The Act" only. The reference mooted the said dispute for adjudication to this Central Government Industrial Tribunal No. 1, New Delhi *vide* order no. L-12012/13/2003-IR(B-I) dated 21.03.2003 by the Government of India. The reference schedules the industrial dispute in following terms-

> *"Whether the action of management of Deutsche Bank, AG, New Delhi paying the compensation etc. amounting to Rs. 68117.70 on the basis of his designation as sub staff instead of clerk to Sh. Jagbir Singh is justified. If not, to what relief the workman is entitled to?"*

Factual Matrix

2. Brief facts as emerged out from the statement of claim as well as the written statement in defense are as follows :-

> The claimant states, he was appointed as a Sub-Staff on contract in the services vide an appointment letter dated 02.07.1993. He continuously served without any break w.e.f 02.01.1994 vide bank's letter dated 03.01.1994. He was assigned duties of cleaning and dusting of the office premises, delivery of mail/documents within the bank and to other locations within India, and other duties assigned form time-to-time. By letter dated 01.11.1998 the bank had restructured the existing grading system of all the staff in India and had moved to the new levels of responsibility. As per the letter, the claimant was placed in the level of responsibility as LoR-08, but no other terms and conditions of his appointment were changed. In a letter

dated 07.04.1999 it was clearly stated by the bank that all 'clerical staff' are under LoR-08. Consequent there upon, the management requested the RBI to allow the claimant w.e.f. 02.01.1999 as a clerical staff under LoR-08 to lodge the morning clearing/high value/normal clearing/return clearing in which signature of the claimant were attested. In every communication addressed by the bank, he was referred as a clerk. Even in his ID card issued, he was referred as a clerk.

3. The claimant was terminated vide letter dated 02.01.2002 on the ground, his services as sub-staff had become surplus. It is claimed to be ex-facie bad and illegal in violation of section 25F of "the Act". A sum of Rs.36,544.50/- was paid as retrenchment compensation which the claimant alleges arbitrary and clear violation of the retrenchment procedure. The claimant submits that the entire action of termination by paying compensation of Rs. 68,117.70/- on the basis of designation as sub-staff instead of clerk is unjustified and illegal. It is firmly stated by the claimant that the RBI itself has stated that procedure under rule 12 of Uniform Rules and Regulations have to be strictly followed whereby each member bank shall be represented in the clearing house by a representative who shall deliver and receive the documents. Such representatives have to be either an officer or a clerical staff but not class-IV staff or courier agency etc. The advocate of the claimant sent a notice challenging the said termination and called upon the management to reinstate him immediately.

4. On the basis of above facts and material the claimant has prayed it is to declare that the services of the claimant was illegally terminated w.e.f. 02.01.2002 without resorting to the provisions of Section 25F and even otherwise the action of the management paying compensation etc. amounting to Rs.68,117.70/- given as ex-gratia amount on the basis of his designation as sub-staff instead of a clerk was not justified as per provisions of Section 25-F and was thus illegal. It is prayed that the claimant be reinstated immediately, and be held entitled to receive back wages from the bank and the bank be directed to pay the arrears w.e.f. 02.01.2002.

5. The management says the claims to be misconceived, ill-conceived and liable to be dismissed. Management admits that in the year 1998 they had restructured some then existing system for its staff members. The level of responsibility of the claimant as it was at that time changed to the level of responsibility named as 'LoR-08' w.e.f. Nov 1, 1998 and which was duly informed to him. According to the Management the said change was not promotion of the claimant to the clerical cadre as alleged by the claimant before the tribunal. Even after Nov 1, 1998 salary of the claimant remained the same as was earlier. No letter of promotion was ever issued to or served upon the claimant including revised salary, grade, scale etc. The nature of duties having been discharged by the claimant remained as such of a sub-staff. Management has further clarified that the duties assigned to the claimant after the said change were lodging cheques, drafts, and clearing instructions received by the bank from its customers and clients for getting cleared with the clearing house. The management has already issued the retrenchment compensation and all the formalities of retrenchment have been complied with and he has already received the said amount. The pay scale for the sub-staff cadre is 2750-55-2860-75-3010-90-3190-110-3520-130-4040-150-4490-170-5000 (20 years) and for clerical grade is 3020-135-3425-225-4100-320-5380-340-6400-380-7920-680-8600-380-8980 (20 years).

6. According to the management on the basis of the initial appointment and salary permissible to the post of sub-staff against which the claimant was appointed, he was paid his salary as sub-staff. Since there was no need for full-time sub-staff and his services became surplus, the same were terminated w.e.f. 02.01.2002 issuing the termination letter to him and a payment of Rs.68,117.70/- made to him alongwith statement of account. He was further directed to approach the trustees of the Provident Fund for his superannuation benefits, the PF. Management has denied in its pleading that thus erroneously showing the claimant as sub-staff and was paid less than. The management pressed on that the salary of the claimant from Dec 2001 till termination was Rs. 7038.20/- per month which he was rightly paid alongwith Rs. 50/- per month as washing allowance. His termination of services is legal, valid and justified.

7. On the basis of above facts pleaded by the parties to the present industrial dispute, following issues were settled on 30.05.2006 for adjudication of the dispute:

1. Whether the workman is employee of the management as clerk or sub-staff? Whether the services of the workman were terminated as per law?

2. As in terms of original reference which is as under after corrigendum dated 08.10.2005:

   "Whether the action of the management of Deutsche Bank, AG, New Delhi in terminating the services after paying the compensation etc. amounting to Rs.68117.70 on the basis of his designation as sub-staff instead of clerk to Sh. Jagbir Singh is justified. If not to what relief the workman is entitled to?

3. Whether the payment of said amount of compensation is appropriate and given as per law?

4. Relief.

Obviously, no issue of the jurisdiction of the Tribunal over the matter as to the dispute being an 'industrial dispute', as to the claimant being a 'workman' and management an 'industry' as defined in the Industrial Disputes Act, 1947 are

involved in the present matter in hand. However, this tribunal finds the matter under reference an 'industrial dispute', which worth to be adjudicated to answer the reference and passing of an Award in accordance with law.

EVIDENCE

8. Claimant produced himself as witness before the tribunal, his cross-examination in-chief was recorded on 27.04.2012 and further he pleaded himself for cross-examination also. Number of documents in evidence are also placed and proved by him which are marked as:

Ex.WW1/1 - The letter dated 02.07.1993 issued by the management offering him appointment as sub-staff specifically mentioning therein the date and salary with other emoluments and a probationary period for 6 months from the date of joining. Endorsed/admitted by the management.

Ex.WW1/2 - The letter dated 03.01.1994 is of confirmation in pension w.e.f. 02.01.1994.

ExWW1/3 - dated 01.11.1998 is also a letter addressed by the bank to the claimant regarding the move of bank whereby it had restructured and the then existing grading system for all the staff to the new level of responsibility. Both endorsed/admitted by the management.

Ex.WW1/4 addressed by the management bank to the Reserve Bank of India dated 02.01.1999 informing and requesting to allow Jagbir Singh as representative of bank which is 'LoR 08' (all clerical staff are under LOR 08).

Ex.WW1/5 – a letter dated 08.02.2001 addressed to the Reserve Bank of India requesting identity card to Jagbir Singh which is 'LOR 08' (all clerical staff are under LOR 08).

Ex.WW1/6 - it is also a letter dated 02.07.2001to the Reserve Bank of India sent by the bank.

Ex.WW1/7 - is a photostat identity card of Jagbir Singh issued by the Deutsche Bank on 21.12.1993 and then on 04.07.2001.

Ex.WW1/8 is an application (dated 03.02.1999) of General Manager seeking permission to represent at the clearing house by the clerical staff and to issue entry pass to him.

Ex.WW1/9 - is an office circular regarding instructions to banks to depute those staff only who have even the entry pass of NCC of New Delhi. The said document is dated 04.05.2000.

Ex.WW1/10- payment receipt of the claimant.

Ex.WW1/11- is a document mentioning performance review of the claimant.

Ex.WW1/12 –to the same effect. it is also a letter dated 07.04.1999 addressed to the Manager NCC Reserve Bank of India, New Delhi sent by the Head Customer Service of the Bank to allow Jagbir Singh (clerical employee of our office).

The management also in support of their pleading adduced oral and documentary evidences which are drafted herein below:

Ex.MW1/1 -- The letter dated 02.07.1993 issued by the management offering him appointment as sub-staff specifically mentioning therein the date and salary with other emoluments and a probationary period for 6 months from the date of joining. Endorsed/admitted by the management. (The same produced by the claimant as Ex.WW1/1).

Ex.MW1/2- agreement of employment dated 02.07.1993.

Ex.MW1/3- a letter dated 03.01.1994 is a letter of confirmation w.e.f. 02.01.1994.

Ex.MW1/4- termination letter dated 02.01.2022 stating services of the claimant to be terminated w.e.f. 02.01.2002.

Ex.MW1/5- statement of pay order for Rs.68,118.70/- enclosed with terminated letter.

Ex.MW1/6- attendance sheet.

Ex.MW1/7- payment of bonus paid.

Ex.MW1/8- seventh bipartite settlement on wage revision and other services.

9. In oral evidence the workman Sh. Jagbir Singh has produced himself before the tribunal for oral examination as WW1 and proved all his documentary evidences whereupon exhibits are marked. Most of the documentary evidences are endorsed/ admitted by the management/ opposite party. After proving the documentary evidences with regard to his status at the time of initial appointment on probation as sub-staff (subordinate staff) and confirmation of services after a successful completion of period of probation. He proved through documentary evidences with the management on restructuring the level of responsibility (LoR) and raising of his responsibility to the clerical cadre (LoR-08). In cross examination done by the AR for the management on various deferred dates the workman witness affirmed and proved orally that on 01.11.1998 he was promoted to the post of clerk vide letter dated 01.11.1998. however, he stated that his pay was not increased. He further stated in cross examination on Dec, 1998 that he asked

for enhancement of salary. He further asserted that after 01.11.1998 he was not in the cadre of subordinate staff. He stated in cross examination that his scale of pay was 2750-55-2860-75-3010-90-3190-110-3520-130-4040-150-4490-170-5000 (20 years) and in Dec 2001 he was paid Rs.10,088.20/- towards wages including a sum of Rs.3050/- towards arrears of washing allowance.

10. In another round of cross examination on March 27, 2014 the workman witness admitted that he was appointed as sub-staff in New Delhi branch and a sum of Rs. 68117.70/- was paid to him at the time of termination of his services which he received under protest. He further stated that when he was placed in the level of responsibility-08 he was told that he is to work as a clerk for which position he would be paid remuneration. However, he answered in cross examination that he had not demanded wages of clerk in writing. He denied that in LoR-08 he was doing the duty of sub-staff and not of a clerk. The WW1 further denied by stating that it is incorrect, the work of clearing cheques is being performed by sub-staff / was informed / told to have been promoted as a clerk as the rules of the management.

11. The management has also produced a number of documents and evidence marked as Ex.MW1/1 to MW1/8 respectively- an agreement of employment dated 02.07.1993, a letter of probation, the restructuring and change in the grading system by the opposite party, the termination of services of the claimant by reason of his becoming surplus, the termination letter etc. of the documentary evidences and in fact are proved in oral evidences for which one Jagdeep Paul, the Vice-President for the management is produced for oral examination as MW1. In Para 6 of the affidavit with regard to the Ex.MW1/A marked on 27.04.2017, MW1 states orally that the claimant was not in the clerical cadre but was in the cadre of sub-staff. The pay-scale for the sub-staff cadre at the relevant time was 2750-55-2860-75-3010-90-3190-110-3520-130-4040-150-4490-170-5000 (20 years) and at clerical cadre at the relevant time was 3020-135-3425-225-4100-320-5380-340-6400-380-7920-680-8600-380-8980 (20 years). In Para 10 of the same affidavit is also may be noted at this stage which runs as follows:

> *Para 10. The management is a signatory of 'Seventh Bipartite Settlement' on wage revision and other service conditions' dated 27th March, 2000, which, inter alia, revises as well as classifies the wages and allowances provided to employees of sub-staff and clerical cadre. The claimant in the scale rate of sub-staff. The said settlement has been exhibited as MW1/8 (Colly).*

12. Though, management has endorsed/ admitted the documentary evidence filed by the workman, a letter dated 01.11.1998 addressed to the workman by the management is denied by the MW1. He says, "I have seen Ex. WW1/3 is the document issued by the management. I cannot say regarding the Ex.WW1/4." The letter addressed to the RBI by the Management to the effect that, "Please allow our representative Mr. Jagbir Singh who is LoR-08 (all clerical staff are under LoR-08). Ex.WW1/4 is also endorsed as denied by the management which clarifies the LoR-08 as of clerical cadre. In cross examination the witness MW1 put vehemence, "the claimant was deputed to Reserve Bank of India for clearing duties." The entire cross examination is cited hereunder for the purpose of easy reference:-

> "*I have seen Ex.WW1/3 is the document issued by the management. I cannot say regarding the Ex.WW1/4. It is correct I am intentionally denying the document as it clarifies that employees under LOR 8 (level of responsibility) are clerical cadre. Management has not issued Ex.WW1/5. I cannot say whether Ex.WW1/7 has been issued by the management. The claimant was deputed to Reserve Bank of India for clearing duties. I have seen guidelines of RBI Ex.WW1/8 which are to be followed by banks. I cannot say whether Ex.WW1/6 has been issued by the management to RBI for issuing regular clearing pass to the claimant. I have seen circular Ex.WW1/9 issued by RBI and Bank is supposed to follow the guidelines. Ex.WW1/16 is not the performance report. Ex.WW1/13 and Ex.WW1/14 relate to overtime payment, however, I am not aware of any such payment. It is correct that the claimant was paid bonus according to clerical cadre. I do not remember whether claimant was being sanctioned performance allowance, special allowance, special pay etc. every year. It is also incorrect that as and when claimant claimed higher scale, he used to be granted special allowance, pay etc. It is incorrect that when the claimant insisted for scale pay, he was terminated. It is incorrect that I am deposing falsely."*

13. After going through the pleadings of the parties and the evidence both documentary and oral, following facts are found established and almost admitted namely viz.:-

a) The workman/claimant was initially appointed through appointment letter in writing on probation as sub-staff (subordinate staff) and on successful completion of the prescribed period of probation he was confirmed in services by the management.

b) In the year 1998vide letter dated 01.11.1998 the Bank had restructured the existing grading system of all the staff and had moved to the new level of responsibility. The level of responsibility assigned to the workman/claimant is LoR-08.

c) The workman/claimant was performing his duties as clerical staff of the Bank (LoR-08) to lodging cheques, drafts, clearing instruments received by the bank in RBI in which signature of the claimant are attested.

d) In pleading of the opposite party as well the evidence of MW1 in oral examination the pay-scale for the sub-staff cadre at the relevant time was 2750-55-2860-75-3010-90-3190-110-3520-130-4040-150-4490-170-5000 (20 years) and at clerical cadre at the relevant time was 3020-135-3425-225-4100-320-5380-340-6400-380-7920-680-8600-380-8980 (20 years).

e) The claimant was not paid his salaries payable to him as an employee working in LoR-08.

f) The claimant was terminated vide letter dated 02.01.2002 on the ground his services had become surplus as sub-staff.

14. In view of the above established facts the question mooted before this tribunal to adjudicate and answer the reference made is formulated as follows :-

A. Whether the management promoted the claimant from the post of subordinate staff to the next level of responsibility as clerical staff during his service nurture?

B. Had the claimant was reverted at any point of time before his termination from services?

C.-whether the claimant did not get the increased scale of pay and salary attached with the next level of his responsibility he was assigned by the management if yes what will be the legal effect of the non-payment.

D.-Whether the termination so made amount to retrenchment under the ID Act, validly terminating the services of the claimant?

E. If the claimant workman not validly retrenched what would be the fate of the workman with regard to the re instatement in service or entitled to the compensation.

Arguments of the claimant.

15. Dr. Khan submits that the claimant workman who was initially appointed on probation by the management as subordinate staff vide letter of appointment dated 02.07.1993 entered a bipartite contract of service with the management Bank. After successful completion of the period of probation to the entire satisfaction of the employer (the management) he was confirmed in services as such vide the letter of confirmation with effect from 02.01.1998. The letter of appointment and that of the confirmation and the initial contract of service are admitted by the management when placed in evidence before the tribunal. They are marked Exhibit WW1/1 and WW1/2. The management themselves have placed in evidence these documents as ExMW1/1 to MW1/3. Thus, the claimant assumed the status of the permanent employee of the management as sub ordinate staff (a class IV post) in the Bank prior to restructuring the existing grade in the year 1998.

16. Dr. Khan further argued, factually and actually the claimant was promoted by the management vide letter dated 02.11.1998 to the next level of the post in the Bank namely the clerk. Learned Advocate accentuated on the fact that the management had never reverted the claimant in writing to the post of sub staff upon which he was initially appointed.

17. The learned counsel argued that evidences on record show that the management intended to appoint the claimant on promotion on the post of clerk and throughout prior to his termination from services of the Bank recognized and treated as their clerical staff. He was informed by the management Bank through the letter dated 01.11.1998 that it had undergone the process of restructuring the existing grade system of all the staff and moved to the New Level of Responsibilities, in which he is assigned the LoR-08. He argued that it is admitted and proved in evidence also that LoR-08 consists of all the clerical staff of the management Bank. The claimant's status as clerical staff is communicated to the Reserve Bank of India (RBI) by the management as they increased his responsibility with the permission of the RBI to discharge duty of morning clearing high value/normal clearing, return clearing etc. vide letter dated 08.02.2001 and 02.07.2001. This is also argued with vehemence that RBI had instructed that no class IV staff be deputed by the management to represent the Bank in the 'clearing house'. The management had issued accordingly identity card to the claimant workman as clerk of the bank to represent in the New Delhi Bankers clearing house.

18. It is next argued that admittedly in the Bank the pay scale permissible to the category of staff in LoR-08 is distinct and higher than that of the subordinate staff of the Bank but the claimant was not paid the benefits of the promotion without assigning any reason to him, though the documents proved and stand unrebutted also by the management tend to establish his unblemished performance by the assessing authorities. This clearly amounts exploitation and unfair labour practice on the part of the management under the Industrial Dispute Act,1947

19. Lastly Dr. Khan argued, the management instead to providing the benefits of promotion as clerk opted to get rid of him. The management in most arbitrary and illegal manner terminated him from the services without serving prior notice of one month. Even the management did not follow the mandatory requirements for a valid retrenchment

under section 25 F of the Industrial Dispute Act, 1947. It is argued with vehemence that for retrenchment compensation the pay scale and salary of the post of sub staff is made basis illegally though the claimant was working till then as clerk. The termination / retrenchment thus, stands not only invalid but unjustified and arbitrary, thus it would have no effect in law being *void ab initio.* Reliance is placed on the decision in the case titled as **Municipal Board, Pratapgarh and Another Vs. Labour Court Bhilwara and Others, 2003 (97) FLR 747 (Raj. H.C.)**. For the retrenchment done in contravention of the provision of the section 25 G of the ID Act relating to rule of last come first go if not followed without assigning any reason the same would stand illegal, reliance is placed on **Harjinder Singh Vs. Punjab State Warehousing Corporation (AIR 2010 SC1116) and Sarita S. Melwani Vs. Talekar and Others, 2008 (117) FLR 791 (Bom. H.C.)**

Arguments of the management

20. Ms. Raavi Birbal, the learned Advocate / the Authorized Representative of the management argued the case in defense of the claim of the workman in the present industrial dispute. She submitted, though the initial appointment of the claimant as sub-staff vide appointment letter dated 02.07.1993 on probation and his confirmation vide letter dated 03.01.1994 is admitted to the management but the claim that he got promotion to the post of clerk in the year 1998 is absolutely denied.

21. Learned Advocate, however does not dispute the restructuring of the then existing gradation of the Bank staff all over in India in the year 1998 and fixing new level of responsibilities for them. She further, admits that considering the level of responsibility of the claimant as was there at the time, he was placed in the new level of responsibility that is to say LoR-08 effective from 01.11.1998. The claimant was accordingly informed by the letter of the same date. Learned Ms. Raavi Birbal despite the above material admission argues emphatically that such raising of the level of responsibilities of the claimant does not amount promotion of the claimant as even after that he was continued to be paid salary of sub staff till his termination from services. She put vehemence that the claimant was never issued and served with specific letter of promotion by the management specifying raised salary, grade and scales of pay. On the other hand, other employees working in clerical cadre were issued such specific letter of promotion including specification of increased pay scale. However, no such instances are shown in evidence before the Tribunal.

22. It is argued that the claimant worked in the clearing house of the RBI representing the management Bank as sub staff only and since there was no need of the full time sub staff in the Bank he became surplus therefore, his services were terminated. He was paid the retrenchment compensation along with termination letter 0n 02.01.2002. An amount of Rs. 68,117.70 was forwarded to the claimant with the account statement showing break-up of the paid amount. He was paid the compensation on the basis of his last drawn salary as sub staff, as such the termination / retrenchment of the claimant is valid and made as per the I.D. Act, 1947.

23. Reliance is placed on a judgement of the Hon'ble Madras H.C. Dated 22 September, 2008 in WP No. 4821 0f 2001, titled as **B. Narayansami Vs. The Management of Indian bank.** The facts of the case and findings of the court are quite different than those of the present industrial dispute case in hand.

24. Issue no. 1, "*whether the workman is employee of the management as clerk or sub staff?*" covers the question formulated as points A, B & C hereinabove for adjudication of the present industrial dispute, whereas the issue no 2,3 & 4 relating to the validity or illegality of the termination/retrenchment involves the finding on the question for determination framed as points D & E above. The relief / reliefs the claimant deserves will be dealt on the basis of the answers of aforesaid issues accordingly.

DISCUSSIONS

On the issue No.1

25. Promotion of employee means his/her ascension to higher rank. It involves an increase in position, responsibility, status and benefits. This aspect of the employment drives employee the most and the ultimate reward for dedication and loyalty towards his organization. In theory a promotion requires more work and effort in the assigned job. The decision to promote an employee may be based on different consideration like length of experience, performance, seniority or seniority cum suitability for the new responsibility. Promotion may be with or without benefit of enhancement of salary. the later kind of promotion is called dry promotion only when the level of responsibility is increased and not the benefits. The arguments of the parties mooted before the tribunal the only question pivotal for the adjudication of the dispute as to the termination / retrenchment of the present workman claimant, whether the management had duly raised his responsibilities from the level of a subordinate staff to the next level that is of a clerk. further had the workman ever been reduced to the level of responsibility prior to his retrenchment by the management?

26. The initial appointment of the workman as subordinate staff on probation and subsequent confirmation as such is admitted to the management before the restructuring process of existing cadre of staffs fixing their new level of responsibilities all over in India. In their written statement, the management themselves assert that, considering the level of responsibility of the claimant as was there at that time (Year 1998), he was placed in the level of

responsibility (LoR-08) effective from 1 November 1998 and the claimant was informed accordingly. In the evidence said letter dated 01.11.1998 is produced and proved by the claimant as witness WW1 upon which exhibit is marked WW1/3. Exhibit WW1/3 above stated is endorsed Admitted by the management. In quick succession of the above letter the management communicated the designation of the claimant clarifying that LoR-08 denotes to all clerical staff in the Bank so as to ensure the instruction of the RBI regarding representation through a clerk of the Bank only in the clearing house vide letters which are placed and proved by the claimant witness and marked by the tribunal exhibits WW1/4 to WW1/8.The management seems to pretend the above letters denied purposely to negate the claim that the LOR-08 is clerical cadre posts.. The management has neither placed in evidence any communication to the RBI regarding the designation of the claimant other than a clerk who admittedly was representing the bank in the clearing house of the RBI in New Delhi, nor they have denied that LoR-08 denotes all the clerical staff after the restructure in the year 1998. To the utter self-contradiction in written statement and also in affidavit submitted as statement of the 'examination in chief' of MW1 Jagdeep Paul, deposing as vice president of the management Bank (Exhibit MW1/A on 27.04.2017) admits that, "*due to a change in the grading system during the year 1998, the management placed the claimant in LOR 08*."

27. The Hon'ble Supreme Court in **BSNL Vs. R. Santhakumari Velusamy, (2011) 9 SCC 510** has discussed the kinds of promotion in the process of Restructuring citing some earlier judgement in the case of **V.K. Sirothia Vs. Union of India (2008) 9 SCC 283, Lalit Mohan Deb (1973) 3 SCC 862 and Tarsen Singh Vs. State of Punjab (1994) 5 SCC 392**. The relevant paras of the judgement 16, 17 and 18 are reproduced hereinbelow-

> *"16. The decision of this Court in V.K. Sirothia arose from a decision of the Allahabad Bench of the Tribunal which expressed a similar view (in V.K. Sirothia vs. Union of India - O.A. No.384/1986). The Tribunal held :*
>
> > *"The restructuring of posts was done to provide relief in terms of promotional avenues. No additional posts were created. Some posts out of existing total were placed in higher grade to provide these avenues to the staff who were stagnating. The placement of these posts cannot be termed as creation of additional posts. There were definite number of posts and the total remained the same. The only difference was that some of these were in a higher grade. It was deliberate exercise of redistribution with the primary object of betterment of chance of promotion and removal of stagnation."*
>
> *The Union of India challenged the said order of the Tribunal and this Court by a brief order dated 19.11.1998 (Union of India vs. V.K. Sirothia - 2008 (9) SCC 283) dismissed the appeal by a brief order. The relevant portion of the said order is extracted below :*
>
> > *"2. The finding of the Tribunal that "the so-called promotion as a result of redistribution of posts is not promotion attracting reservation" on the facts of the case, appears to be based on good reasoning. On facts, it is seen that it is a case of upgradation on account of restructuring of the cadres, therefore, the question of reservation will not arise. We do not find any ground to interfere with the order of the Tribunal."*
>
> *17. We may next consider the concepts of `promotion' and `upgradation'. In Lalit Mohan Deb, this Court explained the difference between a promotion post and a selection grade :*
>
> > *"7. It is well recognised that a promotion post is a higher post with a higher pay. A selection grade has higher pay but in the same post. A selection grade is intended to ensure that capable employees who may not get a chance of promotion on account of limited outlets of promotions should at least be placed in the selection grade to prevent stagnation on the maximum of the scale. Selection grades are, therefore, created in the interest of greater efficiency."*
>
> *18. In Tarsen Singh vs. State of Punjab - 1994 (5) SCC 392, this Court defined `promotion' thus :*
>
> > *"9. Promotion as understood under the service law jurisprudence means advancement in rank, grade or both. Promotion is always a step towards advancement to a higher position, grade or honour."*

28. In the wake of admitted facts of appointment and confirmation in services as sub staff and also in the process of the restructuring the existing grade of the staff the placing of the claimant in new level of responsibility termed LoR 08, the raising of responsibilities would be vital fact for consideration to find out had there was promotion in the eye of law? The letter of appointment which is an admitted piece of evidence available on record Exhibit WW1/1 prescribes the work assigned to the claimant as sub-staff was, "*cleaning and dusting of office premises, Delivery of mail/ / documents within the bank and to other location within India. Any other duty assigned from time to time".* Interestingly, the management witness, their vice president as MW1 in his affidavit of the examination in chief (EXHIBIT MW1/A) kept a suspicious silence over the work to be performed and responsibilities assigned to him on placing in L0R O8 category of the staff of the Bank. He neither admits nor denies in the affidavit and even in the cross examination the exhibits WW1/4 t0 WW1/8 which clarify the meaning of placing a staff in the LoR 08, saying

only he cannot say anything regarding them. It is notable that he swore on and verified the affidavit on the basis of personal knowledge on the basis of record. But, the truth is extracted from him in cross examination. he states, *"The claimant was deputed to Reserve Bank of India for clearing duties."*

29. None else than the MW1 is examined as witness by the management like the record keeper or any other authority entrusted with the responsibility of issuing or maintaining and preserving the letters / orders of the bank in the routine course of day to day business of the Bank who may be treated as their *custodia legis* so as to depose before this tribunal-cum-labour court the issuance of the communication of the letters to the RBI exhibit WW1/ 4 to WW1/8 sent to clarify that whether the staff (the claimant Jagbir Singh) deputed in clearing house, of the RBI in New Delhi to represent the Bank is a clerical staff included in the LoR-08. Since the claimant pleads and proves successfully thus discharged the initial burden of proof and the management is put under the *onus probandi* that is to disprove the letters exhibit WW1/4 to WW1/8 the clarification that placing in LoR-08 means placing in clerical cadre. The management Bank has miserably failed to do so for the reason explained above. Therefore, it is established and proved by evidence that the management placed the claimant who was in the cadre of sub staff before 02.01.1998 placed him on 02.01.1998 in next level of responsibilities LoR-08 including all the posts of clerical cadre.

30. In written statement the management deceptively and fallaciously makes an admission of the work assigned to the claimant after placing him in LOR 08 in following words, "*The claimant was doing the nature of duties, which are similar to that of a sub staff i.e. lodging cheques, drafts and clearing instruments received by the Bank from the customers and clients for clearing with the clearing house*". What is explicit in the said coloured admission is the nature of the work assigned to the claimant as staff placed in the LoR-08 and deputed in the clearing house of the RBI to represent the management Bank. What is false is that his duties were that of a sub-staff. Nothing remains for the claimant to prove in regard to the nature of work assigned to him. which is quite different from his earlier work as sub-staff before 01 11.1998 when he was placed in LoR-08 cadre.

31. Moreover, the statement of the MW1 recorded in evidence in the course of his oral examination along with the documentary evidences placed and proved by the management further elaborate the justification why the responsibilities of the claimant were increased by placing him in the LoR-08. In his cross examination on 27.04.2017, he admits the documents placed in evidence by the claimant workman marked Exhibit WW1/8 and WW1/9 the RBI circular and letter containing the RBI guidelines to banks relating to the posting of clerical staff to represent them in clearing house at New Delhi. He stated, "*The claimant was deputed to the Reserve Bank of India for clearing duties. I have seen guidelines of RBI ExWW1/8 which are to be followed by banks. ..... I have seen circular Ex WW1/9 issued by RBI and bank is supposed to follow the guide lines."* For the purpose of easy reference, the ExWW1/8 is reproduced hereunder of which relevant clause 3 is highlighted.

'ExWW1/8'

RESERVE BANK OF INDIA

JEEVAN BHARATI BUILDING

TOWER-1, 6-7. FLOOR

124 CONNAUGHT CIRCUS, NEW DELHI -110 001,

DEL. NEC No. 77/12.61.01/98-99 *3 February 1999*

The Officer Incharge

Service Branch

New Delhi

Dear Sir,

Representation at the Clearing House

Issuance of entry pass

As you are aware, entry to New Delhi Bankers' Clearing House is regulated under Rule 12 of the Uniform Rules & Regulations. However, it has been observed that some member banks depute representatives in violation of above rule. We, therefore, advise all member banks to strictly comply with provisions of rule 12 and follow the undernoted procedure.

1. Member bank may depute not more than 5 representatives at a time.

2. 5 blank cards will be issued to a member bank to be signed by the representative as well as the bank's authority. These cards are to be countersigned by the NCC authorities. It will then have status of an "Entry permit".

3. Each member bank shall be represented in the Clearing House by representative who shall deliver and receive the documents. Such representative shall be an officer or a clerical staff. No class IV staff or courier agency etc. should be deputed to represent the bank to Clearing House as such person does not give valid discharge on behalf of the bank. However, representative may be assisted by one more such person, when required.

4. Each representative should always have in his possession the clearing house entry card and Identity Card issued by his bank.

5. Entry pass shall be issued for a period of one year. Under no circumstances shall renewal of Entry pass be allowed. Member banks shall change their representatives accordingly.

6. All members of the Clearing House are advised to follow the above Instructions scrupulously.

Your's faithfully.

Deputy General Manager

hps/entrypas"

32. The relevant paras 12 of the guideline ExWW1/9 is also being quoted hereunder to appreciate that duty assigned to the claimant in clearing hose was how high and serious responsibility in nature which was distinctly different and increased from the duties of cleaning and dusting of the sub-staff (a class IV post in the bank).

Ex.WW1/9

12. (a) Each member bank shall be represented in The Clearing House by a representative who shall deliver and receive the documents to be cleared. Such representative may be assisted by one mora person, when required. Each representative, in addition to his identity card which shell be issued to him by his bank, should always have in his possession, whenever he is attending the Clearing House on behalf of his bank, the Clearing House entry card of member bank which shall be issued to his bank by the bank managing the Clearing House. Whenever and wherever the circumstances so warrant, it would be open to the member bank(s) to depute at any time any other representative who may be an officer or a member of clerical staff of the bank to the Clearing House for delivering/receiving documents to be cleared.

b) Such representative shall-

(i) abide by the Regulations and Rules of the Clearing House,

(ii) represent his/her bank. In the House.

(iii) refrain from any activity that may bring discredit to his/her bank or disrupt the clearing.

(iv) conduct himself/herself with dignity in the House and respect and obey the Supervisor and the President of the Clearing House.

(c) The representatives of member banks shall be changed once in six months, and earlier if so required. by the President, for any reason whatsoever. It should be further ensured that under no circumstances, the same individual gets his turn for a second time in the same year.

(d) Member banks shall take full responsibility for the action of their own representatives. Members must send their representatives to the Clearing House during clearing hours whether the member has any documents to pass through the clearing or not. The doors of the Clearing House will be closed after the scheduled timings of each delivery as indicated in Rule 2(a), and the return clearing in Rule 2(c) read with Rule 3.

Should any clearing representative be late, his documents shall not be accepted for the particular clearing but he shall remain in the Clearing House to receive all documents drawn on his bank. The President may at his descretion consider, on the merits of each case, allowing the representative(s) coming late, to take part in the clearing.

(e) Clearing House being Jointly organised for common good of all members, the member banks representatives will help in expediting balancing of the Clearing House. It shall not be permissible for any member bank's representative to leave the Clearing House except with the permission of the supervisor until all balances have been compared and agreed and the final balance has been struck by the supervisor of the Clearing House. But the assistant may

leave the Clearing House with the permission of the supervisor. Facilities consistent with expeditious and smooth conduct of clearing process shall be permitted by the supervisor to the extent possible.

(f) Once the representative of a member bank has entered the Clearing House, he has to participate in the clearing. It shall not be permissible for the representatives of any member bank to refuse to deal with the representatives of other member banks for any reason whatsoever.

(g) When a member bank is not in a position to participate in any clearing meeting for whatever reason, it should Intimate so, to the President at the earliest possible time. Wherever possible, the President shall circulate this information to all the members well in advance.

(h) Whenever any member bank does not participate in clearing it shall depute some authorised person to facilitate exchange of unpaid instruments. In such a contingency, the time allowed to the non-participating bank for, returning the unpaid instruments, presented at the earlier meetings by other banks will stand automatically extended by one working day. Alternatively, the hon-participating bank should make its own arrangements for returning the unpaid Instruments over the counters of member banks without any delay".

33. In the service jurisprudence in our country no fixed meaning has been scribed to the term "cadre". In **A. K. Subraman Vs. Union of India, (1975) 1 SCC 319** a three judges bench of Hon'ble the Supreme Court in para 20 page 328 observed,

" 20 ..... The word 'grade' has various shades of meaning in the service jurisprudence. It is sometimes used to denote a pay scale and sometimes a cadre. Here it is obviously used in the sense of cadre. A cadre may consist only of permanent posts and sometimes as is quite common these days also of temporary."

34. In the case of **Union of India V. Pushpa Rani (2008) 9 SCC 242** Hon'ble the Supreme Court explained the term promotion in the services in para 31 and 32 quoted here under with due respect from pages

"23. In legal parlance, upgradation of a post involves the transfer of a post from the lower to the higher grade and placement of the incumbent of that post in the higher grade. Ordinarily, such placement does not involve selection but in some of the service rules and/or policy framed by the employer for upgradation of posts, provision has been made for denial of higher grade to an employee whose service record may contain adverse entries or who may have suffered punishment - D.P. Upadhyay vs. G.M., N.R. Baroda House and Others [2002 (10) SCC 258].

24. The word `promotion' means "advancement or preferment in honour, dignity, rank, or grade". `Promotion' thus not only covers advancement to higher position or rank but also implies advancement to a higher grade. In service law the expression `promotion' has been understood in the wider sense and it has been held that "promotion can be either to a higher pay scale or to a higher post" - State of Rajasthan vs. Fateh Chand Soni [1996 (1) SCC 562]."

On the basis of above discussions this Tribunal is reached conclusively at the finding that the claimant/workman was promoted vide letter of the management dated 01.11.1998 w.e.f. the said date by placing in LoR-08 (Clerical Cadre of staff).

Had the claimant after his placement in LoR-08 ever been reverted to the cadre of sub-staff prior to his termination on 02.01.2002?

35. When in pleading and evidence both, the management bank has explicitly admitted the placement of the claimant/workman in the cadre of LoR-08 w.e.f. 01.11.1998 but they neither in pleading nor evidence have explained had the claimant/workman was reverted to the post of sub-staff and assigned with the work of sub-staff i.e. cleaning dusting or other works of class IV staff in the bank and if yes, then how and when they did so.

36. There is no evidence as to the fact that the workman/claimant was assigned any other duty than the 'clearing of instructions as representative of the bank in the clearing house of the RBI' in between 01.11.1998 (i.e. the placement in LoR-08 cadre) to 02.01.2002 (i.e. the date of termination of services by the management). There is no explanation how the services of the workman/claimant, a clerical staff working in LoR-08 since 01.11.1998 continuously was terminated from services by the bank as the sub-staff, a rank lower than he had has as staff of LoR-08. This is the established principle of law that one cannot be promoted in higher rank of cadre of staff nor demoted in lower rank of cadre without any specific order with reasons assigned therefore. In the present case there is admitted documentary evidence proving the increase in the rank from class IV (sub-staff) to the rank of clerical staff (LoR-08)

vide letter dated 01.11.1998 specifically informing the workman/claimant regarding his placement in LoR-08 cadre of staff but, no such letter making demotion of the workman/claimant to the post of sub-staff from LoR-08 cadre is referred, placed and proved in evidence by the management. On the reasons stated hereinabove the tribunal/labour court is of considered opinion that the workman/claimant was working in clerical cadre (LoR-08) when his services were terminated vide letter dated 02.01.2002 as such the letter of termination is not only found invalid or illegal but also null and void in the eye of law, having no enforceability. Issue no. 2, thus answered in favour of the claimant/workman.

37. The only reason for denying the status of workman/claimant has promoted from sub-staff (LoR-08) appears a mis-conceived idea and mis-conception of law, which is reflected from the written statement of the management. In para 4 of the written statement the management pleads, "*it is denied that there was a promotion of the claimant to the clerical cadre…… Even after 01.11.1998 salary of claimant remains to be same as was before. It may be added that as and when there is promotion of an employee, he is issued and served with a specific letter of promotion by the replying management, including his revised salary, grade, scale etc*."

38. In view of the law relating to promotion and upgradation in services laid down by the Hon'ble Supreme Court in the case of **Union of India Vs. Pushpa Rani (2008) SCC 242** and other cases that the increase of rank, responsibility or grade or increase in both i.e. rank and grade/pay-scale amounts to promotion the Apex Court held,

> "*In legal parlance, upgradation of a post involves transfer of a post from lower to higher grade and placement of the incumbent of that post in the higher grade. Ordinarily, such placement does not involve selection but in some of the service rules and/or policy framed by the employer for upgradation of posts, provision has been made for denial of higher grade to an employee whose service record may contain adverse entries or who may have suffered punishment. The word 'promotion' means advancement or preferment in honour, dignity, rank, grade. Promotion thus not only covers advancement to higher position or rank but also implies advancement to a higher grade. In service law, the word 'promotion' has been understood in wider sense and it has been held that promotion can be either to a higher pay scale or to a higher post."*

39. In the instant case, on 01.11.1998 in the process of restructuring only the rank was increased admittedly and no specific order for change in pay and other benefits were made at that time. This was certainly a promotion in the eye of law, though classified in the 'service jurisprudence' as dry promotion. But the workman waited for the increase in his salary in accordance to his work newly assigned to him with raising of responsibility under LoR-08. It is well explained by the witness MW1 in his affidavit filed as examination in chief before the tribunal which is Ex MW1/8 dated 27.04.2017. The relevant portion of the statement of MW1 is quoted hereunder for the purpose of easy reference and appreciating the justification why the order of promotion without any consequential/ financial/monetary benefit was made. It is clear from Ex MW1/8 which is bipartite agreement regarding pay-scale of staffs after restructuring is on record. According to which the pay-scale was clarified distinctly of both the cadre in para 6 of the affidavit of examination in chief:-

> *6. The claimant was not in the clerical cadre but was in the cadre of sub-staff. The pay-scale for the sub-staff cadre at the relevant time was 2750-55-2860-75-3010-90-3190-110-3520-130-4040-150-4490-170-5000 (20 years) and at clerical cadre at the relevant time was 3020-135-3425-225-4100-320-5380-340-6400-380-7920-680-8600-380-8980 (20 years).*

40. The tribunal concentrated itself on the date of bipartite settlement as to the revision of pay 27.03.2001 whereas the letter of promotion in rank placing the claimant/workman in LoR-08 is of 01.11.1998. This is therefore, self-explanatory why the promotion was instantly not specifying the increase in salary as the same was under consideration and deserved to be awaited by the employer and employee both. In his cross examination the claimant witness when asked why he did not represent his grievance as to the non-enhancement in salary pursuant to the promotion on the next rank? He answered, "*there was no situation at that time to ask for the hike of salary*."

41. A list of Class IV posts extracted from the bipartite agreement referred in the oral statement in evidence of MW1/8 is also being reproduced hereunder which names the posts of the workers treated as subordinate staff after restructuring which does not include LoR-08:

List of class IV staffs (subordinate staffs) for SPECIAL PAY

For Subordinate Staff	*Amount of Pay(in Rs.)*
1. Cyclostyle Machine Operator	*145*
2. Liftman	*178*
3. Relieving Liftman	*107*

4.	*Cash Peon*	*178*
5.	*Watchman/Watchman-cum-Peon*	*178*
6.	*Armed Guard*	*300*
7.	*Bill Collector*	*300*
8.	*Daftary*	*352*
9.	*Head Peon*	*406*
10.	*Air conditioning Plan Helper*	*816*
11.	*Electrician*	*816*
12.	*Driver*	*923*
13.	*Head Messenger in Indian Overseas Bank*	*690*

42. The above list does not include staff deputed for representing the bank as per RBI guidelines to depute such staff in clearing duties in the clearing house. Therefore, this tribunal has reason to conclude that the management cleverly enough, and falsely denied the status of promotion dated 01.11.1998 on the ground that ExWW1/3 the letter of promotion does not have the specific increase in salary also which was revised in bipartite settlement executed in the year 2001.

Termination, if may be held in this case, a valid retrenchment?

43. Any retrenchment shall amount and include termination of services but vice-versa is not true. Every termination of services may not be a valid and legal retrenchment as defined in the ID Act. Question to be decided by this tribunal is that whether the services of the claimant terminated by the management wrongfully and illegally? If no, to what relief the claimant is entitled will be a prime question for grant of relief. It is also proved that the workman was working as sweeping duty as cleaning staff in the office of the management bank since the initial date of joining, discharged duties as such workman. But on 01.11.1998 he was promoted on the post of clerical cadre (LoR-08) and started work in consonance with his increased liabilities of clearing the emoluments in clearing house of RBI. He remained there as such till the date of his termination i.e. 02.01.2002. The termination of service in other word is called retrenchment under the Industrial Dispute Act Section 2 (oo) defines the retrenchment as under:

> ***Section 2(oo)*** *"retrenchment" means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include-*
>
> *(a) Voluntary retirement of the workman; or*
>
> *(b) Retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains s stipulation in that behalf; or*
>
> *(bb) termination of service of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein; or*
>
> *(c) Termination of the service of a workman on the ground of continued ill-health.*

44. **In *K.V. Anil Mithra & Another V. Sree Sankaracharya University of Sanskrit & Another (2021 SCC online SC 982)*** the Apex Court in Para 22, held as under: -

> ***22:-*** *The term 'retrenchment' leaves no manner of doubt that the termination of the workman for any reason whatsoever, otherwise than as punishment inflicted by way of disciplinary action are being termed as retrenchment with certain exceptions and it is not dependent upon the nature of employment and the procedure pursuant to which the workman has entered into service. In continuation thereof, the condition precedent for retrenchment has been defined under Section 25F of the Act 1947 which postulates that workman employed in any industry who has been in continuous service for not less than one year can be retrenched by the employer after clauses (a) and (b) of Section 25F have been complied with and both the clauses (a) and (b) of Section 25F have been held by this Court to be mandatory and its non-observance is held to be void ab initio bad and what is being the continuous service has been defined under Section 25B of the Act 1947.*

45. **In the case of K.V Anil Mithra (Supra) the Apex Court further held-**

23:- *The scheme of the Act 1947 contemplates that the workman employed even as a daily wager or in any capacity, if has worked for more than 240 days in the preceding 12 months from the alleged date of termination and if the employer wants to terminate the services of such a workman, his services could be terminated after due compliance of the twin clauses (a) and (b) of Section 25F of the Act 1947 and to its non-observance held the termination to be void ab initio bad and so far as the consequential effect of non-observance of the provisions of Section 25F of the Act 1947, may lead to grant of relief of reinstatement with full back wages and continuity of service in favour of retrenched workman, the same would not mean that the relief would be granted automatically but the workman is entitled for appropriate relief for non-observance of the mandatory requirement of Section 25F of the Act, 1947 in the facts and circumstances of each case.*

24:- *The salient fact which has to be considered is whether the employee who has been retrenched is a workman under Section 2(s) and is employed in an industry defined under Section 2(j) and who has been in continuous service for more than one year can be retrenched provided the employer complies with the twin conditions provided under clauses (a) and (b) of Section 25F of the Act 1947 before the retrenchment is given effect to. The nature of employment and the manner in which the workman has been employed is not significant for consideration while invoking the mandatory compliance of Section 25F of the Act 1947.*

25:- *This can be noticed from the term 'retrenchment' as defined under Section 2(oo) which in unequivocal terms clearly postulates that termination of the service of a workman for any reason whatsoever provided it does not fall in any of the exception clause of Section 2(oo), every termination is a retrenchment and the employer is under an obligation to comply with the twin conditions of Section 25F of the Act 1947 before the retrenchment is given effect to obviously in reference to such termination where the workman has served for more than 240 days in the preceding 12 months from the alleged date of termination given effect to as defined under Section 25B of the Act.*

If termination of service by the employer to save skin from their unlawful acts, opposed to status and public policy: -

46. In the facts and circumstances of the present case, relying on the above decisions of Hon'ble the Supreme court and the observations made in the case of **Ramanand and others Vs. Chief Secretary Government (NCT of Delhi) and others (2020) 9 SCC 208** and in the case of **Union of India Vs. Pushpa Rani (supra) and BSNL Vs. R. Santhakumari Velusamy (2011) 9 SCC 510**, the tribunal has reason to hold that where There is restructuring of some cadre of posts does not involve creation of post but merely results in placement a higher rank to provide relief against stagnation the said process amounts to promotion to the next higher post whether or not the raise in grade of the pay or pay scale. This tribunal/labour court reaches at the conclusion that the claimant, a permanent subordinate staff (sub staff) of the management Bank was placed in the clerical cadre (in LoR-08) in the process of restructuring of the then existing staff in the year 1998. His level of responsibilities was raised by placing him in higher cadre of posts including the all clerical cadres, hence factually and legally he was promoted by the management Bank.

47. Section 2 (ra) of the Industrial Dispute Act defines 'Unfair Labour Practice' means any of the practices specified in the 5th schedule of the Act. In 5th Schedule there is item no. 5 which makes the practice unlawful to discharge or dismiss workmen not in good faith, but in the colourable exercise of the employer's rights quoted herein below.

"5. To discharge or dismiss workmen—

(a) by way of victimisation;

(b) not in good faith, but in the colourable exercise of the employer's rights;

(c) by falsely implicating a workman in a criminal case on false evidence or on concocted evidence;

(d) ……..

(e)……..

(f) ……..

(g) ……..."

In the present case the management has repeated pleading and statement in evidence also that the workman was Class IV (sub-staff) and his services were terminated by the management but this statement and pleading of the management is not proved whereas, the workman has successfully pleaded and proved in evidence also that he was employed continuously after 01.11.1998 as clerical staff (LoR-08). Therefore, action of the management if it be impeachable on the ground of dishonesty, or as being opposed to public policy, if it be forbidden by law the tribunal would not be just to allow itself to be made the instrument of enforcing obligations alleged to arise out of his alleged right to termination the services of their employee which is illegal.

The consequence of non-observance of the provision of Section 25F. Whether reinstatement in service?

48. On the relief of reinstatement with or without back wages the tribunal has to consider, consequence of it's finding as to the termination of service illegal, malafide and *void ab initio,* whether the workman should be treated as contin ued in services of the management. The Apex Court in three judge bench decision in **Hindustan Tin Works Pvt. Ltd. Vs. Employees of M/s Hindustan Tin Works Pvt. Ltd. and Ors. (1979) 2 SCC 80,** where retrenchment of employees was declared illegal, held in para 9 -

> "*It is no more open to debate that in the field of industrial jurisprudence a declaration can be given that the termination of service is bad and the workman continues to be in service. The spectre of common law doctrine that contract of personal service cannot be specifically enforced or the doctrine of mitigation of damages does not haunt in this branch of law. The relief of reinstatement with continuity of service can be granted where termination of service is found to be invalid. It would mean that the employer has taken away illegally the right to work of the workman contrary to the relevant law or in breach of contract and simultaneously deprived the workman of his earnings. If thus the employer is found to be in the wrong as a result of which the workman is directed to be reinstated, the employer could not shirk his responsibility of paying the wages which the workman has been deprived of by the illegal or invalid action of the employer. Speaking realistically, where termination of service is questioned as invalid or illegal and the workman has to go through the gamut of litigation, his capacity to sustain himself throughout the protracted litigation is itself such an awesome factor that he may not survive to see the day when relief is granted. More so in our system where the law's proverbial delay has become stupefying. If after such a protracted time and energy consuming litigation during which period the workman just sustains himself, ultimately he is to be told that though he will be reinstated, he will be denied the back wages which would be due to him, the workman would be subjected to a sort of penalty for no fault of his and it is wholly undeserved. Ordinarily, therefore, a workman whose service has been illegally terminated would be entitled to full back wages except to the extent he was gainfully employed during the enforced idleness. That is the normal rule. Any other view would be a premium on the unwarranted litigative activity of the employer. If the employer terminates the service illegally and the termination is motivated as in this case viz. to resist the workmen's demand for revision of wages, the termination may well amount to unfair labour practice. In such circumstances reinstatement being the normal rule, it should be followed with full back wages. Articles 41 and 43 of the Constitution would assist us in reaching a just conclusion in this respect. By a suitable legislation, to wit, the U.P. Industrial Disputes Act, 1947, the State has endeavored to secure work to the workmen. In breach of the statutory obligation the services were terminated and the termination is found to be invalid; the workmen though willing to do the assigned work and earn their livelihood, were kept away therefrom. On top of it they were forced to litigation up to the Apex Court now they are being told that something less than full back wages should be awarded to them. If the services were not terminated the workmen ordinarily would have continued to work and would have earned their wages. When it was held that the termination of services was neither proper nor justified, it would not only show that the workmen were always willing to serve but if they rendered service they would legitimately be entitled to the wages for the same. If the workmen were always ready to work but they were kept away therefrom on account of an invalid act of the employer, there is no justification for not awarding them full back wages which were very legitimately due to them. A Division Bench of the Gujarat High Court in Dhari Gram Panchayat v. SafaiKamdar Mandal [(1971) 1 LLJ 508 (Guj)] and a Division Bench of the Allahabad High Court in Postal Seals Industrial Cooperative Society Ltd. v. Labour Court II, Lucknow [(1971) 1 LLJ 327 (All)] have taken this view and we are of the opinion that the view taken therein is correct".*

49. In **Deepali Gundu Surwase Vs. Kranti Junior Adhyapak Mahavidyalaya & Ors. (2013) 10 SCC 324** Hon'ble Apex Court highlighted the need to adopt a restitutionary approach, the court has to consider whether to

reinstate an employee and if so, the extent to which back wages is to be ordered. Para 22 judgment in the aforesaid case is being reproduced here under-

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

50. In violation of Section 25 F of the Industrial Tribunal Act, Hon'ble Apex Court has consistently taken the view that in such cases reinstatement with back wages is not automatic and instead the workman should be given monetary compensation. The aforesaid view expressed in Para 33 & 34 by the Apex Court in the case of **Bharat Sanchar Nigam Ltd. V. Bhurmal, (2014) 7 SCC 177**

> *Para 33 It is clear from the reading of the aforesaid judgments that the ordinary principle of grant of reinstatement with full back wages, when the termination is found to be illegal is not applied mechanically in all cases. While that may be a position where services of a regular/permanent workman are terminated illegally and/or mala fide and/or by way of victimisation, unfair labour practice, etc. However, when it comes to the case of termination of a daily-wage worker and where the termination is found illegal because of a procedural defect, namely, in violation of Section 25-F of the Industrial Disputes Act, this Court is consistent in taking the view that in such cases reinstatement with back wages is not automatic and instead the workman should be given monetary compensation which will meet the ends of justice. Rationale for shifting in this direction is obvious.*
>
> *Para 34 the reason for denying the relief of reinstatement in such cases are obvious. It is trite law that when the termination is found to be illegal because of non-payment of retrenchment compensation and notice pay as mandatorily required under Section 25-F of the Industrial Disputes Act, even after reinstatement, it is always open to the management to terminate the services of that employee by paying him the retrenchment compensation. Since such a workman was working on daily-wage basis and even after he is reinstated, he has no right to seek regularization [see State of Karnataka v. Umadevi (3) [(2006) 4 SCC 1: 2006 SCC (L&S) 753]]. Thus when he cannot claim regularization and he has no right to continue even as a daily-wage worker, no useful purpose is going to be served in reinstating such a workman and he can be given monetary compensation by the Court itself in as much as if he is terminated again after reinstatement compensation and notice pay. In such a situation, giving the relief of reinstatement, that too after a long gap, would not serve any purpose.*

51. Lastly, this is to be noted that in oral evidence the claimant has stated that he has not worked for gain at any point of time after his illegal termination from services. Then also, he cannot be reinstated in services because of crossing the age of superannuation during litigation before this tribunal. But, his loss of employment put him in financial crisis and imperilled his livelihood. Therefore, he need to be compensated and awarded with damages separately also. The evidence shows and also proved that he was placed in LoR-08 vide letter dated 01.11.1998 and worked till as such the date of his termination from services i.e. 02.01.2002. The office to place on record a calculation of pay due to the workman/claimant in consonance with his stage depending on his service tenure, during the relevant period as such in the pay-scale of LoR-08 in clerical cadre 3020-135-3425-225-4100-320-5380-340-6400-380-7920-680-8600-380-8980 (20 years) which shall be made part of the award.

52. The reference issue no. 3 & 4 are answered in view of the discussion made hereinabove the tribunal passes the following award:

AWARD

1. The workman/claimant Sh. Jagbir Singh is declared a clerical staff of the management of Deutsche Bank in LoR-08 who was working in the clearing house of the RBI in New Delhi to represent the management bank since 01.11.1998 till the date of his termination 02.01.2002. He is held duly promoted and worked as such throughout his services till the date of termination in the pay-scale of clerical cadre 3020-135-3425-225-4100-320-5380-340-6400-380-7920-680-8600-380-8980 (20 years). He has never been sub-staff (subordinate staff) of the management bank after 01.11.1998 till the date of his termination of services on 02.01.2002.
2. The order of termination of services on 02.01.2002 as sub-staff (subordinate staff) is declared invalid. It is further held that the order of termination of services dated 02.01.2002 is illegal and *void ab initio* by reason of non-observance of provision of the Section 25F of the Industrial Disputes Act, 1947 as such the same does not have enforceability in law.
3. The workman/claimant is held entitled to the higher pay scale attached to the LoR-08 (all clerical staff) notionally fixed in the pay scale 3020-135-3425-225-4100-320-5380-340-6400-380-7920-680-8600-380-8980 (20 years) as on the date of his alleged termination from services as sub-staff and the computation/calculation of the compensation under section 25F of Industrial Disputes Act, 1947 as retrenchment compensation.
4. The management of Deutsche Bank is held liable directed to pay off the compensation under section 25F of the Industrial Disputes Act, 1947, on the basis of the last pay which would have been drawn, fixed notionally as ordered in clause 3 after adjusting the amount of Rs.68,117.70/- already paid by the management at the time of termination of services on 02.01.2002 with an interest @6% p.a. from the date of illegal termination of the services i.e. 02.01.2002 within 3 months from the date of award and special damages to the tune of Rs.5,00,000.00/- on account of loss of livelihood and litigation expenses be also paid separately within the aforesaid 3 months from the date of judgement and award.

   In case of failure in payment as prescribed above, penal interest @10% p.a. will be chargeable to be paid by the management till the actual payment is made/recovered through the process of court.

Let the award be sent to course of procedure as prescribed in Section 17 of the Industrial Disputes Act, 1947 for publication and implementation of the award.

Date :23.10.2024

Justice VIKAS KUNVAR SRIVASTAVA, Presiding Officer

नई दिल्ली, 16 दिसम्बर, 2024

का.आ. 2253.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार d{fn; ykd fuek.k foHkkx के प्रबंधतत्र, संबद्ध नियोजको और उनके कर्मकारो के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय u‚ I fnYyh के पंचाट (244/2015) प्रकाशित करती है।

[सं. एल - 12025/01/2024- आई आर (बी-I)-249]

सलोनी, उप निदेशक

New Delhi, the 16th December, 2024

S.O. 2253.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref.244/2015*)* of the *Cent.Govt.Indus.Tribunal-cum-Labour Court No.* I *Delhi* as shown in the Annexure, in the industrial dispute between the management of CPWD and their workmen.

[No. L-12025/01/2024- IR(B-I)-249]

SALONI, Dy. Director

ANNEXURE

THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT DELHI No.1 NEW DELHI.

ID. No. 244/2015

Shri. Pradeep Kumar, S/o Sh. Shyam Lal

C/o All India Central PWD (MRM)
Karamchari Sangathan (Regd),
House No. 4823, Gali No. 13,
Balbir Nagar Extension, Shahdara,
Delhi-110032. Workman……

Versus

The Executive Engineer,
Dehradun Central Division-1
CPWD, 20, Subhash Road, Dehradun.

Management…

Shri Satish Kumar Sharma, A/R for the claimant.

Shri Atul Bhardwaj, A/R for the management.

Justice Vikas Kunvar Srivastava (Retd.)

(Presiding Officer)

1. The Present Industrial Dispute is registered in this Central Government Industrial Tribunal on the application moved by the claimant/workman Sh. Pradeep Kumar under section 2A of the Industrial Dispute Act 1947, which shall herein after be called 'The ID Act' only. Opposite parties to the dispute is Executive Engineer Dehradun Central Division-2 CPWD, 20, Subhash Road Dehradun.

FACTUAL MATRIX

2. The workman's claim as emerges from the statement of claim filed on his behalf before this tribunal is that he was initially appointed as Plumber with effect from 07.07.1995 on direct work order for day to day work at ARC Sarsawa site by the management (CPWD). Some issues on differences with management were raised by the workman before conciliation officer, of the Labour Department Dehradun who fixed several dates for their settlement but the management remained adamant and reluctant to cooperate. The union of the workman has given an application to the Conciliation Officer to discontinue running conciliation process and permit the workman to take up the case with Central Government Industrial Tribunal directly under sub section 2 and 3 of section 2A of the ID Act, which was allowed and consequent thereupon the Conciliation Officer issued certificate in that regard. It is stated in the claim that the management has been in usual practice to utilize services of the workmen through several contractors engaged by them from time to time keeping continued the same workman working the same work at the same work place. The service of the workman was illegally terminated with effect from 25.09.2014. Till date of the termination, the workman had already rendered services for a continuous period of much more than 240 days in each year with effect from his initial date of joining. He was issued throughout his continuous service identity card by the contractor forwarded by Junior Engineer concerned which are evidence of his continuity in service as stated above. CPWD and his contractor both have not paid minimum wages to the workman though he was legally entitled for regular pay scale of post of Plumber in relation to the work performed and duties discharged by him at par with regular Plumber. This is also claimed that regular sanctioned posts of Plumbers were available in his division and regular workmen are posted qua sanctioned posts under other divisions of CPWD all over India, who are enjoying the benefits of regular pay scale and allowances. This act of non-payment of regular pay scale is violative of the provisions of Contract Labour (Regulation and Abolition) Act, 1970 (CLRA Act)

3. The workman further claims that he fulfills the qualification/eligibility criteria of recruitment rules for the post of Plumber and was performing his duties continuously under the direct control and supervision of principal employer w.e.f. 07.07.1995 till 24.09.2014, therefore, he is entitled for regularization and to receive the consequential benefits of pay and allowances equivalent to regular counterparts in CPWD in observance of the principal of equal pay for equal work. It is further stated that in the matter of **All India CPWD (MRM) Karamchari Sanganthan Vs. Union of India and Ors.** Vide order dated 26.05.2000 The High Court of Delhi in CWP No. 4817/99 directed the Ministry of Labour for constitution of a board to look into the aspect of contract system prevalent in the CPWD under section 10 of the Contract Labour (Abolition & Regulation) Act, 1970 (CLRA Act). The said board was constituted and recommended for abolishing contract system for 15 posts including the post of Plumber and Helper also. The Ministry of Labour issued the notification u/s 10 of CLRA Act, dated 31.07.2002 in accordance with the recommendation. The same was circulated to all concerned for implementation. The workman complains that the said notification had not been implemented in the CPWD at the level of Executive Engineer Division in violation of labour laws, the workmen were being adversely affected due to non-implementation of that prohibition notification. The matter of non-

implementation had been brought to the notice of management by the Union of workman namely, "All India CPWD (MRM) Karamchari Saganthan" raised the issue but the same remained in vain. The purpose of keeping the concerned workman on contract basis and also use of the contractors was with intention to avoid payment of their wages as per Minimum Wages Act. The workman was working directly under the control of the principal employer CPWD and even was unable to know who was his contractor and when the new contract came into force. The reason behind this unawareness was simple as only the concerned JE/AE were issuing directions to workman for doing works assigned to him as well as supplying materials for completing the day to day maintenance works. JE/AE concerned were the only authority to employ a workman and even to terminate his employment by restraining them from entering physically into premises for any work. The work which was being performed by him is of perennial nature under the principal employer. The contract entered into between the management and contractor is a sham and camouflage. High Court of Delhi in CWP No. 4817/99 (Supra) in its order dated 26.05.2000 had also issued direction for not substituting/terminating the service of such workman even after change of contractor. On the basis of above gamut of facts, the workman claims themselves entitled to be reinstated in service w.e.f. the date of illegal termination with full back wages and regularization in service w.e.f. the date of initial employment under the CPWD. He further claims right to receive benefits of pay at par with the regular counterparts in the CPWD as per the provision of CLRA Act, 1970.

4. The claimant in support of his pleadings has submitted documents in evidence viz. letter of conciliation officer certifying that the workman Sh. Pradeep Kumar raised an industrial Dispute under section 2 A of the ID Act which was taken up by conciliation officer on 15.12.2014. As the mandatory 45 days of raising dispute before the conciliation officer has been completed on 02.01.2015 but conciliation could not be arrived at, certificate for filing industrial dispute case was issued (Annexure-1). Further representation of workman Sh. Pradeep Kumar dated 09.09.2014 through his union against the action of management stopping the workman from discharging his duties on 25.09.2014 with the prayer for reinstating him in service (Annexure no. 2). Annexure no. 3 (Colly) are the photocopy of identity card and copy of certificate issued by establishment management in favour of the workman. Authority letter executed by the workman in favour of General Secretary of the Union Sh. Satish Kumar, Narender Dev & Sunil Dutt Assistant Secretary of the Union of All India CPWD (MRM) Karamchari Sangathan New Delhi, with signature of their acceptance. (Annexure 9) along with letter of espousal of dispute by the Labour Union. Circular letter issued by under secretary to the Ministry of Labour Union of India communicating minutes of the meeting of the Central Advisory Contract Labour Board held on 22.11.2001 with recommendation of the Board on the basis of majority view that, "the contract workers employed in 22 categories of job enumerated therein including the posts of plumber and helper are such jobs which satisfy the criteria laid down in sub section 2 of section 10 of the CLRA Act, 1970 because they are incidental to and necessary in terms of the responsibility entrusted to the CPWD for maintenance of buildings, plants and equipment under the control of the Central Government. All these are perennial in nature regular workers have been required on the jobs and nature and duration of the job is such the reasonable plumber of old-time workers can be employed accordingly". The aforesaid communication of meeting with recommendation is annexure 5. The notification issued by the Central Government in official gazette regarding recommendation for abolishing the contract in the services of 15 categories as also made annexure with the statement of claim and affidavit in support which consists of 15 categories of job including the post of plumber and helper.

5. The workman has prayed the tribunal on the basis of above facts and benefits following relief:

(i) To pass an award for reinstatement of service of Sh. Pradeep Kumar, Plumber w.e.f. the date of his illegal termination with full back wages.

(ii) To pass an award for regularization of services of the workman Sh. Pradeep Kumar under the CPWD w.e.f. the date of his initial employment with regular pay and allowances at par with the other regular counterpart workmen.

(iii) Any other relief which may kindly be deemed fit and proper to meet the end of justice.

Defense set forth by the management

6. The management on the other hand in their written statement have contested the claim with preliminary objection to the effect that, there is no relationship of employer and employee and that of a master and servant existing or otherwise exists between claimant and management. Claimant is labour of contractor to whom contract has been awarded by competent authority of CPWD in due course of procedure prescribed by law. Workman had never been appointed nor recruited in the employment by management of the CPWD. If any contract is in between the workman and his contractor the same would abide the contractor, the CPWD authorities are not responsible. The workman along with other workmen was working under the contractor's control and supervision, and even wages were being paid by the said contractor. The claim is not maintainable in view of the judgment passed by Supreme Court in cases v.i.z. **State of Karnataka Vs. Uma Devi & Ors. (2006) 4 SCC 1, Surender Prasad Tiwari Vs. U.P. Rajya Krishi Utpadan Mandi Parisad (Appeal Civil 3981 of 2006.** Management vehemently pleads that in view of para 34 and 36 of the judgment in **Uma Devi case (Supra).** Unless the appointment is in terms of relevant rules and after the proper competition amongst qualified persons, the same would not confer any right on the appointee. If it is a

contractual appointment, the appointments come to an end at the end of the contract, if it were an engagement or appointment on daily wages of casual basis the same would come to an end when it is discontinued. It is further impressed that the workman who had accepted the employment with open eyes, one has to proceed on the basis of that the employment was accepted fully knowing the nature of it and the consequences flowing from it, his claim is not maintainable. The management denies that one who has been working for some time on any post he will have right not to be discontinued.

7. In addition to the above preliminary objections and the maintainability of claim. The management has further denied that the workman has put in 240 days regular service in each year w.e.f. his initial date of joining till illegal termination as alleged. According to the management the workman was not their employee hence the question of working 240 days in their establishment does not arise. They have specific pleading that neither the management of CPWD nor the contractors engaged for hiring the services of the workman have paid wages lessor than minimum wages to the workman and he is not entitled to regular pay scale of the post of Plumber as alleged. According to them the workman never complained about the payment of wages below minimum wages rates to the office of the management. They further denied that the workman was performing his duties continuously under the principal employer w.e.f. 07.07.1995 till 24.09.2014 therefore, entitled for regularization in services as alleged.

8. The management further submits that they have well defined procedure with regard to the selection of contractors through whom thousands of employees work for the establishment. They have selected genuine contractor, entered with him agreement genuinely and overall performance of the contractor is monitored by a team of engineers and the executive engineer concerned. The workman had also been fired by the contractor directly for any fault in his duties, if any, the true fact is that the official of answering management has no control over the workers of the contractor. Moreover, the management CPWD cannot force the contractor to retain the same worker who were engaged by the earlier contractor. They further have specifically denied that workman is entitled to be reinstated in service w.e.f. the date of initial employment under the CPWD. It is stated that workman is not unemployed as alleged and that since the workman was never engaged by the department the question of regularization does not arise and he is not entitled for any relief.

Issues framed for adjudication

9. On the basis of above facts pleaded by the contesting parties of the present industrial dispute on 27.05.2016 following issues were framed.

(i) Whether services of the claimant has been wrongly and illegally terminated by the claimant and is entitled for reinstatement?

(ii) Whether the services of the claimant is liable to be regularized from the date of his initial employment, as alleged?

(iii) Whether there is no relationship of employer/employee between the claimant and the management?

(iv) Whether the petition is not maintainable in view of preliminary objections?

10. In view of the issues framed by the tribunal the first point of determination in the present industrial dispute, prior to adjudicate dispute relating to termination of service, if illegal and other consequential reliefs thereto, would be the question as to the maintainability of the workman's claim which is raised in issue no. 3 & 4. Unless there exists relation between the claimant and the opposite party (management) of workman-employer this tribunal will have no jurisdiction to entertain the claim for the purpose of adjudication under the ID Act. The pivotal question in present industrial dispute is legality of termination of service of the workman by the management. If termination of services in the facts found illegal, then his entitlement to be reinstated may be considered, likewise on positive answer to the question of reinstatement next question whether with or without back wages may be answered. The determination of the right of workman for regularization is contingent upon his reinstatement in services of the management. Tribunal has to look into not only pleadings of the parties to the industrial dispute but also evidences oral and documentary adduced before it.

11. Perused the documentary evidence placed on record by the litigating parties to the industrial dispute in hand. Perused the oral evidences of witnesses of claimant and management. Heard the arguments. Parties have filed their written argument also.

12. In oral evidence the concerned workman has submitted himself as claimant/witness WW1 and placed on record his affidavit in examination in chief as Ex. WW1/A. He is subjected to cross examination on September 25, 2017 and cross examined. He reiterated his averment in claim statement and stood firm and consistent thereon in cross examination which shall be discussed in forth coming paras wherever required.

Relationship of employee (workman) and the employer (Management) in the present case.

13. The claimant claims himself that he has been throughout his employment as contractual workman doing the work, discharging his duties under the control and supervision of CPWD through its authorities. It is also stated by the

workman that the management has been in usual practice to utilize services of the workman through several contractors engaged by them from time to time keeping continued the same work at the same work place. He states that with effect from the initial date of his employment i.e. 07.07.1995 his services were utilized as contractual workman of CPWD till date of his termination w.e.f. 25.09.2014. In their pleading, management though has denied existence of employer and employee relationship with the concerned workman but his engagement as contractual labour is not denied. Management pleads that claimant is labour of contractor to whom contract had been awarded by the competent authority of CPWD in due course of procedure prescribed by the law. Further the management has stated that the claimant has never been appointed or recruited in the employment by the management of CPWD and if any contract between the workman and the contractor exists, the same is not binding upon CPWD authorities. The management in explicit and unequivocal terms has admitted in written statement that concerned workman along with other workmen was working under the direct control and supervision of the contractor and even wages to them was also paid by the said contractor. Vehemence is placed on Para 34 & 36 of the judgment of Hon'ble Apex Court in the **State of Karnataka Vs. Uma Devi & Ors. (Supra)** highlighting the pleading in written statement that in the absence of appointment and recruitment the management the concerned workman on the basis of his contractual appointment does not have any right as workman of the CPWD.

14. When deployment of the concerned workman in the premises of the management though as contractual labour since 07.07.1995 till the end of his disengagement on 25.09.2014 is not denied and even admitted fact that the management has been in usual practice throughout in aforesaid period to engage workmen through several contractors engaged by them from time to time. It is also not specifically denied that work used to be done continuing the same workman working the same work at the same workplace, the tribunal has to examine whether utilization of claimant's labour and services by the management throughout the aforesaid period of his employment as contractual labour shall create relationship between him and the management as employee-employer. The Industrial Dispute Act defines 'workman' in following terms of section 2(s):

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

(i) Who is subject to the Air force Act, 1950 (45 of 1950), or the Army Act, 1950 (46(of 1950), or the Navy Act, 1957 (62 of 1957); or

(ii) Who is employed in the police service of as an officer or other employee of a prison; or

(iii) Who is employed mainly in a managerial or administrative capacity; or

(iv) who, being employed in a supervisory capacity, draws wages exceeding [ten thousand rupees] per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature.

15. According to the definition of workman 'any person' employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward shall be treated as workman for the purposes of any proceeding under the ID Act in relation to an industrial dispute like dismissal, discharge or retrenchment which had held that dispute provided such person does not fall in any exceptional category specified in definition from (i) to (iv) under section 2(s) of the ID Act.

16. In the "Contract Labour (Abolition and Regularization) Act", 1970 (the CLRA Act) definition of workman is also inclusive of contractual labours.

17. In Section 2(1) (b) of the CLRA Act, 1970 *"a workman shall be deemed to be employed 'as contract labour' in or in connection with the work of an establishment when he is hired in or in connection with such work by or through a contractor, with or without the knowledge of principal employer".*

Thus, in accordance with the aforesaid definition the claimant whose services is admittedly hired by the management of CPWD through a contractor the CPWD shall be treated as employer in relation to the claimant a workman.

Section 2(1) (c) defines 'contractor' also as under.

Sec 2 (1) (c)'Contractor "in relation to an establishment, means a person who undertakes to produce a given result for the establishment, other than a mere supply of goods or articles of manufacture to such establishment, through contract labour <u>or who supplies contract labour for any work of the establishment</u> and includes a sub-contractor".

18. Admittedly, the workman/claimant is contract labour whose services is hired by the CPWD through the contractor therefore, CPWD shall be treated as principal employer in relation to the claimant/workman.

The CLRA Act further defines the "Principal employer" in section 2 (1) (g) which runs as under-

Section 2(1) 'Principal employer' (g) means (i). in relation to any office or department of the Government or a local authority, the head of that officer or department or such other officer as the government or the local authority, as the case may be, may specify in this behalf,

(ii)…….

(iii)…….

(iv)…….

19. There are oral and documentary evidences also in addition to the admitted fact of the claimant/workman working as contract labour in the establishment of management CPWD. The claimant/workman Sh. Pradeep Kumar deposed on oath before the tribunal as witness and submitted on oath in the affidavit that, he acted on day to day labour basis as plumber in the campus of the management under direct control and supervision of one junior engineer of CPWD who used to take his attendance also. The witness was subjected to cross-examination by the management who did not carved out anything against the above statement on oath. He specifically denied the suggestion during cross examination that he was working through the contractor. In cross-examination he stands firm and reasserted that his wages were paid by the JE of the CPWD. He proved Ex. WW1/3 the entry pass issued to him as contract labour for entry in the premises of the CPWD where he was posted to work. He further denied that he was paid his wages by the contractor in cash and his work was supervised by him only. MW1 the management witness Sh. Prashant Singh admits in cross examination dated 20.02.2019 that Ex WW1/3 was issued by CPWD to the claimant on receiving the letter from contractor to make deployment of the workers and issuance of the gate pass.

20. The above pleadings and evidences when taken cumulatively they show and establish that there exist unambiguous relationship of workman and principal employer, between the claimant/ workman and the management CPWD and they have a relation of employer-employee in terms of the Industrial Dispute Act section 2(s) as well as with the deeming effect under section 2 (1) (b) of the CLRA Act 1970.

21. The recommendation of Central Advisory Board of the Appropriate Government made before issuance of notification under section 10 of the CLRA Act and other evidences of the management itself show that they had post of the helper/plumber vacant for a considerably long period of 10 years. The claimant has established through evidence that during the entire period he was working as contract labour on the above vacant post without having been issued any letter of appointment.

22. Formally, the appointments are made through prescribed recruitment agencies but exigencies of work may sometimes call for making appointments on adhoc or temporary basis. In the present case the claimant has pleaded that he possessed at the time of his initial engagement the requisite qualification and eligibility required for the post of plumber/helper. This is not explained and clarified by the management that what exigencies occurred before them not to fill up the post by regular appointment and to continue utilizing the service of the concerned workman as contract labour on the vacant post. In the **State of Haryana Vs. Piara Singh AIR 1992 Supreme Court 2130** The Supreme Court held that though the normal rule is recruitment through the prescribed agencies but due to administrative exigencies an adhoc or temporary appointment may be made. If casual or temporary or adhoc appointment were made against sanctioned posts and the policy is fell vacant for a long period without filling up those post on a regular basis then the Courts has reason to interfere. In **Rattan Lal vs. State of Haryana AIR 1987 Supreme Court 478** Hon'ble Supreme Court held that such situation cannot be permitted to last any longer.

23. The case of Uma Devi (Supra) which lays down that there should be no back door entry and every post should be filled by regular employment with terms of relevant service rules does not apply to the facts of present industrial dispute because it has severally been judicially noticed that in spite rigor of Uma Devi case (Supra) the same was being ignored and conveniently overlooked by various states by making appointments on contract/daily wage basis without due payment of salary. In **Shiv Narain Nagar and Ors. Vs. State of U.P and Ors. (2018) 13 SCC 432** the Apex Court held that since the management themselves have conferred temporary status to the employees even when there was requirement of work and availability of post, consequently there was no case of back door entry since there were no recruitment rules governing such situation then their appointment cannot be said to be illegal or in contravention of rules.

24. In the present matter where the workman is engaged directly or through a contractor as contract labour by an employer and the services is discharged, terminated or retrenched against the provision of Industrial Dispute Act the matter shall be governed under the provisions of Industrial Dispute Act, 1947 and other legislations connected therewith.

25. The present industrial dispute is brought before the tribunal for the purpose adjudicating disputes as to claim of workman for regularization in services of the management who have completed the required period of continuous services 240 days in every year prior to the termination of his services and for reinstatement of his services. Therefore, the present dispute comes within the definition of 'Industrial Dispute' as define in section 2 (k) of the Act.

2 (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".*

26. On the basis of discussions, made hereinabove the issue no 3 & 4 are positively decided in favour of the workman/claimant and against the management. The workman/claimant and the management were in relation of employee and employer. The present industrial dispute is maintainable before the Central Government Industrial Tribunal under the industrial dispute act for adjudication of the claim of the workman.

Discussion on issue no 1 & 2

Contractual workman through the contractor in continuous services

27. The claimant's case of initial date of employment 07.07.1995 as daily wager on contract basis in the services of management CPWD as Helper/Mali in their premises is not specifically denied in written statement. Likewise, the fact of termination of claimant's services w.e.f. 25.09.2014 is also evasively replied on the pretext of want of knowledge as he was employed by contractor. Moreover, it is admitted that the concerned workman was employee of contractor from whom his labour and services were hired by the management.

Want of specific denial, instead vague denial and consequence

28. General rule of pleading requires the burden of proof on the party to a his who pleaded a fact as ground of claim or defense as the case may be, but such burden arise when that fact is specifically denied by opponent. Failure of the management to specifically deny the fact of initial date of employment with CPWD would make the allegation in this regard made in the statement of claim as admitted against management. Principle of pleadings propounded in Civil Procedure Code, 1908 equally applicable to pleadings in all legal proceedings whether judicial or quasi-judicial. Order VIII R 3 & 5 of Civil procedure Code 1908 clearly provides for specific admission and denial of the pleading in the plaint. A General and evasive denial amounts deemed admission of the fact. In such an event the admission itself being proof, no other proof is necessary. (**Supreme Court in Jaspal Kaur Chema and Another V. Industrial Trade Links and Others (2017) 8 SCC 592** of which Para 7 is quoted below:

Para 7 In terms of Order 8 Rule 3 of the Code of Civil Procedure, 1908 (for short "the Code"), a defendant is required to deny or dispute the statements made in the plaint categorically, as evasive denial would amount to an admission of the allegation made in the plaint in terms of Order 8 Rule 5 of the Code. In other words, the written statement must specifically deal with each of the allegations of fact made in the plaint. The failure to make specific denial amounts to an admission. This position is clear from the decisions of this Court in Badat and Co. v. East India Trading Co. [Badat and Co. v. East India Trading Co., (1964) 4 SCR 19: AIR 1964 SC 538], Sushil Kumar v. Rakesh Kumar [Sushil Kumar v. Rakesh Kumar, (2003) 8 SCC 673] and M. Venkataramana Hebbar v. M. Rajagopal Hebbar [M. Venkataramana Hebbar v. M. Rajagopal Hebbar, (2007) 6 SCC 401]

29. The MW1 (management's witness) during his oral examination stated on oath when cross examined that, the post against which claimant asserts to have worked remained vacant for last 10 years without regular appointment. He further states that CPWD's competent authorities used to enter into contract with Contract Labour providers to do works in the department. Thus, in the absence of specific denial and presence of direct admissions on record with deemed admissions by virtue of evasive denial of the fact coupled with evidence of MW1 as to the availability of concerned post and work qua which the claimant claims his employment as contractual labour and utilization of his services by the management as such since 07.07.1995 till 24.09.2014 it is found established. This is importantly noteworthy that management has not denied eligibility and qualification which the claimant pleaded to possess at the time of his initial engagement with CPWD in their premises through a contractor.

30. The management in their pleading asserted the contract with concerned contractor who provided them contractual workmen including the claimant genuinely entered into following all prescribed procedures by competent authorities. This makes the employment of claimant as contractual workman legal emanating benevolence of the protective provisions of the Industrial Dispute Act relating to regularization in and termination from service. Section 25 B under the chapter V.A. of Industrial Dispute Act which governs retrenchment defines the continuous service as under Section 25 B

Section 25B. Definition of continuous service for the purpose of this chapter -

1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorized leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;

(2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer —

(a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than —

(i) one hundred and ninety days in the case of a workman employed below ground in a mine; and

(ii) two hundred and forty days, in any other case;

(b) for a period of six months, if the workman, during a period of six calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than —

(i) ninety-five days, in the case of a workman employed below ground in a mine; and

(ii) one hundred and twenty days, in any other case. Explanation—For the purposes of clause

(2), the number of days on which a workman has actually worked under an employer shall include the days on which —

(i)He has been laid-off under an agreement or as permitted by standing orders made under the Industrial Employment (Standing Orders) Act, 1946 (20 of 1946), or under this Act or under any other law applicable to the industrial establishment;

(ii) he has been on leave with full wages, earned in the previous years;

(iii) he has been absent due to temporary disablement caused by accident arising out of and in the course of his employment; and

(iv) in the case of a female, she has been on maternity leave; so, however, that the total period of such maternity leave does not exceed twelve weeks.

31. Since nothing is pleaded by the management in their written statement against the uninterrupted utilization of claimant' services except the specific plea of his being employee of the contractor has no right to be treated as employee of the management therefore, it is held that claimant had been in Continuous service of the management as contractual workman since 07.07.1995 to 24.09.2014. This would be noteworthy here that claimant has successfully discharged his burden to establish his relation with employer on the basis of number of days he has served as held by the Apex Court in state of **Uttrakhand Vs. Suresh wati 2021(168) FLR 488 (SC) and Bengal Nagpur Cotton Mills, Rajnand Gaon Vs. Bharat Lala and Ors. (2011) 1 SCC 635.**

Prohibition of employment of contract Labour

32. Before proceeding to discuss the prohibition of employment of contract Labour it would be pertinent to quote section 10 of The CLRA Act which is under

Section-10 Prohibition of employment of contract labour-

(*1) Notwithstanding anything contained in this Act, the appropriate Government may, after consultation with the Central Board or, as the case may be, a State Board, prohibit, by notification in the Official Gazette, employment of contract labour in any process, operation or other work in any establishment.*

(2) Before issuing any notification under sub-section (1) in relation to an establishment, the appropriate Government shall have regard to the conditions of work and benefits provided for the contract labour that establishment and other relevant factors, such as-

(a) whether the process, operation or other work is incidental to, or necessary for the industry, trade, business, manufacture or occupation that is carried on in the establishment;

(b) whether it is of perennial nature, that is to say, it is so of sufficient duration having regard to the nature of industry, trade, business, manufacture or occupation carried on in that establishment;

(c) whether it is done ordinarily through regular workmen in that establishment or an establishment similar thereto;

(d) whether it is sufficient to employ considerable number of whole-time workmen.

Explanation. - If a question arises whether any process or operation or other work is of perennial nature, the decision of the appropriate Government thereon shall be final.

33. Exhibit WW1/9 (Colly), filed and proved by the claimant and admitted also by the management, is minutes of the meeting of the Central Advisory Contract Labour Board constituted by the Appropriate Government in terms of

the section 10. The CLRA Act published on 18.12.2001 which recommends twenty number of posts for abolition of contract labour system in the establishment of CPWD which are-

1. AC Mechanic.
2. AC Operator.
3. AC Khalasi/helper.
4. Electrician.
5. Wireman.
6. Khalasi (Electrical).
7. DG Set Operators.
8. Pump Operators.
9. Fire Pump/fire alarm Operator.
10. Carpenter.
11. Mason.
12. Fitter.
13. Plumber.
14. Enquiry Clerk.
15. Helper/Beldar.
16. Mechanic.
17. Sewerman.
18. Sweeper.
19. Foreman.
20. Lift Operator.

34. As the board reached at opinion that the jobs under consideration are of perennial nature and must go from day to day. Further the board has opined in its recommendation, "CPWD wing of the Central Government has been created to undertake construction and maintenance of buildings, equipment's and plants within such buildings complex of the central government. In the majority of cases they are engaged in the business of maintenance of building of regular establishment of the central government on continuous basis. In effect the function of the owner of these buildings relating to maintenance has been assigned to CPWD". The board has further recorded in its aforesaid recommendation that, CPWD have admitted that the works are being done through contractors for regular man power did not available due to non-recruitment and have also not denied that regular workers have been deployed in the jobs. It is also recorded that the volume and duration of work is not insufficient. No instances have been cited by the CPWD wherein the yearly contracts have not been renewed and the work therefore, is of uncertain nature to employ considerable number of workmen.

35. Exhibit WW1/10 (Colly) includes the notification dated 31.07.2002 in the official gazette of India and prohibited employment of contract labours in the process, operation or work specified in the scheduled appended therewith in exercise of powers conferred by sub section (1) of section 10 of the CLRA Act. The schedule consists of following 14 categories of work-

1. Air conditioner Operator.
2. Air conditioner khalasi/helper.
3. Electrician.
4. Wireman.
5. Khalasi (Electrical).
6. Carpenter.
7. Mason.
8. Fitter.
9. Plumber.

10. Helper/Beldar.
11. Mechanic.
12. Sewerman.
13. Sweeper.
14. Foreman.

Employment of contract labour by CPWD opposed to law

36. The claimant in his statement of claim has clearly stated that he was initially appointed as plumber w.e.f. 07.07.1995 through contractor for day to day work at **A.R.C. Sarsawa, Service Centre**, and the contractors engaged for hiring the services of contractual workmen were being replaced from time to time by the management of CPWD. The workman was continuously working the same work at the same place prior to termination of his services till 25.09.2014. The notification dated 31.07.2002 has been circulated by the Ministry of Urban Development/ Director General of works CPWD for implementation which is Ex. WW1/10 proved by the claimant and also admitted by the management. In his statement the workman further states, the work which was being performed by him is of perennial nature under the principal employer. And that contract entered into between the management and the contactor is sham and camouflage. In written statement the said notification of the central government issued for prohibition of contract labour in aforesaid categories of work not denied but is admitted in evidence. Likewise, the fact of entering into contract for supply of hiring of labours (workman) including the present workman is not justified despite the fact they were squarely covered from the notification of prohibition of contract labour. It is also not explained in pleading and evidence that why the CPWD had not implemented the said notification for abolition of contract labour on 15 posts though brought into notice of the CPWD by Union of Workmen nothing was done by the CPWD. It is pleaded, impressed in affidavit of evidence that contractors were being used only for the purpose of getting payment of remuneration from them payable to the workman and the workman was engaged directly under the control of the principal employer and most of the time the workman was not aware of the contractor and when the new contract came into force. These facts are not denied specifically are by necessary implication in the written statement of the management. The claimant in his affidavit submitted in examination in chief before the tribunal deposed the above facts but in cross examination nothing could be elicited to the contrary by the management. In his cross-examination dated 25.09.2017 the claimant/workman has very clearly stated that he was terminated by the management, he was appointed on 07.07.1995 and terminated from service on 25.09.2014.

37. Explaining the expression "Control and Supervision" the Apex Court in the case of ***International Airport Authority of India V. International Air Cargo workers and another (2009) 13 SCC 374*** in Para 38 & 39 of the judgement laid down the tests to find out that in fact there is a direct employment. It has further been observed in Para 38 & 39 as under: -

"38" *The tests that are applied to find out whether a person is an employee or an independent contractor may not automatically apply in finding out whether the contract labour agreement is a sham, nominal and is a mere camouflage. For example, 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, if the salary is paid by a contractor, if the right to regulate the employment is with the contractor, and the ultimate supervision and control lies with the contractor.*

"39" *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 where 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 this is secondary control. The primary control is with the contractor.*

Management (CPWD) whether principal employer in relation to the claimant

38. CPWD is undisputedly a department of Central Government Section 2(g) of The Contract Labour (Regulation and Abolition) Act, 1970, in brief CLRA Act defines, principal employer means in relation to any office or department of government any person responsible for the supervision and control of the establishment. Further, in the context of present industrial dispute the "contractor" as defined in section 2(1) (c) of the CLRA Act, means and includes a person who supplies contract Labour for any work of the establishment. The case of the management is that claimant was hired under a contract duly entered with contractor for supply of contract Labour.

39. It is not the case of the management that they entered in contract with any person who undertakes to produce a given result for the establishment. Though, management had burden of proof but did not discharge the same by adducing evidence as to the terms of contract, neither the deed of contract entered with contractor itself is produced and proved, nor any contractor is examined in support of the control and supervision over the work to be done by a

contract Labour supplied by him who is deployed in the premises of management in connection with their work. The claimant in his statement in chief examination as well in cross examination has stated consistently that he was issued entry pass in premises of the management, his attendance was checked and works to be done were instructed and supervised in daily routine by a junior engineer of the establishment. Payment of wages were also made by the establishment accordingly. The management being in possession of the best evidence like book of account entering payment of wages to contractual workmen whether directly or through the contractor failed and more properly to say skipped to produce and prove before the tribunal. An adverse inference therefore, in the above context may be drawn against the management that they were in direct control, supervision and in payment of wages of contract laborers working in the establishment.

40. In **Nil Giri Co-op. Marketing Society Ltd V. State of Tamil Nadu 2004 last suit (SC) 142** where the facts were similar as in the present case the Apex Court has observed as under.

It is submitted by the Respondents- Unions that, the documents executed between petitioner and the Contractors are bogus, sham, concocted, fraudulent and inadmissible in evidence. The same have been prepared to avoid the statutory liability to give permanency benefits to these workmen and to deprive them of their legitimate rights of equal work equal pay at par with the permanent employees of the petitioner. They submitted that, many alleged contractors have come and gone in last 20 years but the concerned workmen involved in the Reference have been continued in service. Had these concerned workmen been the employees of somebody else, their service would have been terminated at the time of changing the contractor and or terminating the earlier alleged contracts with the contractors.

The learned counsel for the Unions contended that though the notification dated 9th December, 1976 may have been abolished, however the notification dated 30th January, 1996 is very much in existence. The said notification is in respect of the Petitioner Company. The said notification covers the workers in this petition who are working in the establishment of the Petitioner. Though, the members of the Respondents are covered by the notification dated 30th January,1996, however, in breach of this notification, the petitioner continues to employ contract labour including the workmen concerned with this petition. Out of the 37 employees, 21 are working as a valve operator, 13 are working in housekeeping in plant area and 3 are working as helpers (Maintenance), all of which as per the 1996 notification are prohibited jobs. The employment of contract labour in specified jobs was prohibited as per the notification w.e.f. 01st March, 1996, yet the Petitioner continues to treat the workmen concerned as contract labour. The learned counsel for the Respondents submitted that nowhere in the evidence, the petitioner has denied that the workmen concerned are not squarely covered by the notification dt. 30th January, 1996.

The Apex Court has held that question whether employee of principal employer of contractor is pure question of fact deserve to be decided by tribunal on the basis of evidence on record. Likewise, question whether the contract was a sham a camouflage is also a question of fact, to be decided by tribunal by piercing the veil, having regard to the provision of the Act when a definite plea is raised.

41. Notification issued by the central government on 04.07.2002 produced in evidence by the claimant, nothing is said against that by the management in their pleading hence the tribunal has taken judicial notice of prohibition of contract Labour in categories of work mentioned therein. Nowhere in their pleading and evidence the management has denied that the workman concerned is squarely covered with the notification under section 10 of the CLRA Act. The post of helper and plumber both are enumerated at serial no. 9 and 10 in the notification of prohibition issued under section 10 of CLRA Act dated 31.07.2002 as category of work where upon contract labour is prohibited. It is not denied that as contract labour the concerned workman's services were utilized by the CPWD. The workman has also proved in his statement before the tribunal in evidence that his services were utilized as helper/mali and with plumber also. He further states that his services were utilized day to day by the junior engineer who after taking attendance used to send him with either plumber, mason, carpenter etc. to redress complaints as helper and eventually work of Mali was also done by him on being deployed as such. He has completed in each and every year since the date of his initial engagement till termination of service that is to say 07.07.1995 to 24.09.2014 continuous service of more than 240 days. He had stated on oath that he was paid the salary by the junior engineer getting his signature on blank voucher in cash. In cross-examination the management has not elicited and carved out anything in rebuttal and contradiction of the said facts. Even, in cross-examination dated 25.09.2017 the claimant witness denied the suggestion by saying that it is wrong that I had never worked 240 days in a calendar year. It is wrong to suggest that I was working through the contractor. My wages were paid by JE of the management. Management had not produced documentary evidence in support of their pleading and arguments despite opportunity afforded.

Documents relevant to the issues summoned from the management- Not produced

42. The workman, before parties enter into the stage of leading evidence moved an application on 27.05.2016 para 2 whereof contains eight numbers of documents to be summoned from the management for production before the tribunal. For the purpose of easy reference, the said para 2 along with the details of documents sought to be summoned for production by the management are given here under: -

1. Copies of work orders dated 7.7.95 to 6.9.95.

2. Copies of agreements since 7.7.95 till date (ARC- Sarsawa site).

3. Copies of Task Registers since 7.7.95 till date (ARC – Sarsawa site).

4. Copies of Complaint Registers since 7.7.95 till date (ARC – Sarsawa site).

5. Copies of Worker's Diary since 7.7.95 till date (ARC – Sarsawa site).

6. Copies of Attendance Registers since 7.7.95 till date (ARC – Sarsawa site).

7. Copies of Salary Register maintained by the Contractors since 7.7.95 till date (ARC – Sarsawa site).

8. Copies of Overtime Registers since 7.7.95 till date (ARC – Sarsawa site).

9. Copies of Appointment letter issued by the contractors to the workmen (ARC – Sarsawa site).

10. Copies of Wage Card/ Slips issued by the contractors to the workmen (ARC – Sarsawa site).

11. Copies of License obtained by the Department as well as Contractors from the Labour Department (ARC – Sarsawa site).

12. Copies of Gate Passes issued to the workmen/contractors by the department of CPWD (ARC – Sarsawa site).

43. In the case of **Chintaman Rao, 1958 (II) LLJ 252** the Apex Court ruled that the concept of employment involves three ingredients:

(i) Employer

(ii) Employee

(iii) The contract of employment.

44. The employer is one who employs, that is one who engages the services of other persons. The employee is one who works for another for hire. The employment is the contract of services between the employer and employee where under the employee agrees to serve the employer subject to his control and supervision. In **Food Corporation of India 1985 (II) LLJ 4** the Apex Court held that a contract of employment discloses a relationship of command and obedience between them. Where a Contractor employs a workman to do the work which he contracted with a third person to accomplish, the workman of the contractor would not without something more become the workman of third person. The Apex Court further in the case of **Dharangadhara Chemical Works Ltd., 1957 (1) LLJ 477** 'Case of supervision and control' may be taken as the prima facie case for determining the relationship of employment it was further laid that existence of the right in master to supervise and control the work to be done by the servant, not only matter of directing that work the servant is to do but also the manner in which he shall do his work with the prima facie test for determining the existence of master and servant relationship.

45. **In the Case of Steel Authority of India Ltd. (SAIL) case, (2001) 7 SCC 1** the Apex Court ruled that there cannot be automatic absorption of contract labour by principal employer on issuance of notification by the Appropriate Government on abolition of contract labour system. Consequently, the principal employer cannot be required to order for absorption of the contract labour working in the establishment concerned. The Apex Court in the steel Authority of India (Supra) has made it clear that where workman is hired in or in connection with the work of an establishment by the principal employer through a contractor, he merely acts as an agent so there will be master and servant relationship between the principal employer and the workman. But when workman is hired in or in connection with the work of an establishment by a contractor, either because he has undertaken to produce a given result for the establishment or because he supplies workmen for any work of the establishment, a question might arise whether the contractor is a mere camouflage in Husain Bhai Case and in Indian Petrochemicals Corporation Case, 1999 (6) SCC 439, if the answer is in affirmative the workman will be in fact an employee of the principal employer.

46. In the present matter the management failed to prove the deed of contract entered with its contractor to supply the contract labour. Even term of the contract is not made clear in the pleading and explained in the evidence also. The argument of the management that the contractor might have engaged the workman on the work assigned to him by the department does not seem to be true in the wake of evidences placed on record.

47. The tribunal tends to record its finding on the basis of discussions made herein above that concerned workman was under the direct control and supervision of the principal employer namely the CPWD in the present industrial dispute. The contract under which contract labours were hired for the works and prohibited under the notification dated 31.07.2002 section 10 of the CLRA Act was sham and camouflage, had a nullity.

Effect of engagement of contract labour even after the notification prohibiting the contract labour for the work on 15 posts in the CPWD.

48. Undoubtedly the management was not just and rightful to engage contract labour on those 15 posts enumerated in the notification of prohibition issued under section 10 of the CLRA Act dated 31.07.2002. The present workman if continued working as contract labour even after the issuance of notification of prohibition under section 10 of the CLRA Act does not give him the right to be automatically absorbed in the CPWD establishment. In **SAIL case (Supra)** explained the position of workman engaged even after the issuance of notification of prohibition under section 10 of the CLRA Act in the case of **Kirloshkar Brothers Limited Vs. Ramcharan and Ors. (Civil Appeal No. 8446-8447 of 2022)** Justice M.R. Shah. Has summarised it relying on SAIL case Para 125. The Para 4.4 and 4.5 of the judgement in kirloshkar Brothers Limited (Supra) is being quoted here:

Para 4.4 After considering various decision of this court on the point, in paragraph 125. It was concluded as under: -

"125. *The upshot of the above discussion is outlined thus:*

(1)(a) Before 28-1-1986, the determination of the question whether the Central Government or the State Government is the appropriate Government in relation to an establishment, will depend, in view of the definition of the expression "appropriate Government" as stood in the CLRA Act, on the answer to a further question, is the industry under consideration carried on by or under the authority of the Central Government or does it pertain to any specified controlled industry, or the establishment of any railway, cantonment board, major port, mine or oilfield or the establishment of banking or insurance company? If the answer is in the affirmative, the Central Government will be the appropriate Government; otherwise in relation to any other establishment the Government of the State in which the establishment was situated, would be the appropriate Government;

(b) After the said date in view of the new definition of that expression, the answer to the question referred to above, has to be found in clause

(a) of Section 2 of the Industrial Disputes Act; if

(i) the Central Government company/undertaking concerned or any undertaking concerned is included therein eo nomine, or

(ii) any industry is carried on

(a) by or under the authority of the Central Government, or

(b) by a railway company; or

(c) by a specified controlled industry, then the Central Government will be the appropriate Government;

otherwise in relation to any other establishment, the Government of the State in which that other establishment is situated, will be the appropriate Government.

(2)(a) A notification under Section 10(1) of the CLRA Act prohibiting employment of contract labour in any process, operation or other work in any establishment has to be issued by the appropriate Government:

(1) after consulting with the Central Advisory Board or the State Advisory Board, as the case may be, and (2) having regard to

(i) conditions of work and benefits provided for the contract labour in the establishment in question, and

(ii) other relevant factors including those mentioned in sub-section (2) of Section 10;

(b) In as much as the impugned notification issued by the Central Government on 9-12-1976 does not satisfy the aforesaid requirements of Section 10, it is quashed but we do so prospectively i.e. from the date of this judgment and subject to the clarification that on the basis of this judgment no order passed or no action taken giving effect to the said notification on or before the date of this judgment, shall be called in question in any tribunal or court including a High Court if it has otherwise attained finality and/or it has been implemented.

(3) Neither Section 10 of the CLRA Act nor any other provision in the Act, whether expressly or by necessary implication, provides for automatic absorption of contract labour on issuing a notification by the appropriate Government under sub-section (1) of Section 10, prohibiting employment of contract labour, in any process, operation or other work in any establishment.

Consequently the principal employer cannot be required to order absorption of the contract labour working in the establishment concerned.

(4) We overrule the judgment of this Court in Air India case [(1997) 9 SCC 377] prospectively and declare that any direction issued by any industrial adjudicator/any court including the High Court, for absorption of contract labour following the judgment in Air India case [(1997) 9 SCC 377] shall hold good and that the

same shall not be set aside, altered or modified on the basis of this judgment in cases where such a direction has been given effect to and it has become final.

(5) On issuance of prohibition notification under Section 10(1) of the CLRA Act prohibiting employment of contract labour or otherwise, in an industrial dispute brought before it by any contract labour in regard to conditions of service, the industrial adjudicator will have to consider the question whether the contractor has been interposed either on the ground of having undertaken to produce any given result for the establishment or for supply of contract labour for work of the establishment under a genuine contract or is a mere ruse/camouflage to evade compliance with various beneficial legislations so as to deprive the workers of the benefit thereunder. If the contract is found to be not genuine but a mere camouflage, the so-called contract labour will have to be treated as employees of the principal employer who shall be directed to regularise the services of the contract labour in the establishment concerned subject to the conditions as may be specified by it for that purpose in the light of para 6 hereunder. (6) If the contract is found to be genuine and prohibition notification under Section 10(1) of the CLRA Act in respect of the establishment concerned has been issued by the appropriate Government, prohibiting employment of contract labour in any process, operation or other work of any establishment and where in such process, operation or other work of the establishment the principal employer intends to employ regular workmen, he shall give preference to the erstwhile contract labour, if otherwise found suitable and, if necessary, by relaxing the condition as to maximum age appropriately, taking into consideration the age of the workers at the time of their initial employment by the contractor and also relaxing the condition as to academic qualifications other than technical qualifications.

4.5 Thus, as observed and held by this Court, neither Section 10 of the CLRA Act nor any other provision in the Act, expressly or by necessary implication, provides for automatic absorption of contract labour on issuing a notification by the appropriate Government under sub-section (1) of Section 10, prohibiting employment of contract labour, in any process, operation or any other work in any establishment and consequently, the principal employer cannot be required to order absorption of the contract labour working in the establishment concerned. It has further been observed and held by this Court in the aforesaid decision that on issuance of prohibition notification under Section 10(1) of the CLRA Act, prohibiting employment of contract labour or otherwise, in case of an industrial dispute brought before it by any contract labour in regard to conditions of service, the industrial adjudicator will have to consider the question whether the contractor has been interposed either on the ground of having undertaken to produce any given result for the establishment or for supply of contract labour for work of the establishment under a genuine contract or is a mere ruse/camouflage to evade compliance with various beneficial legislations so as to deprive the workers of the benefits there under.

49. Despite the order of the Delhi High Court and even after the recommendation of notification under section 10 of the CLRA Act 31.07.2002 for abolishing contract system for 15 posts including the post of helper contract labour was employed for the work of helper by the CPWD. Helper seems to be a comprehensive term which signifies those workmen who work in assistance to the skilled labour like Plumber, Mali, Mason etc., though the workman employed as helper may be unskilled. In the present case the workman states himself in pleading and evidence a 'helper' with plumber or mason wherever he was deployed. When the Appropriate Government notified and prohibited the employment of contract labour in the category of work of helper what would be the status of the contract labour such a question arose before the Apex Court SAIL case (Supra). The apex Court ruled therein that there cannot be automatic absorption of contract labour by principal employer on issuance of notification by the appropriate government on abolition of contract labour system under sub section 1 of section 10 of the CLRA Act.

50. There is no explanation in pleadings of the management that how and why the management opted to terminate the services of workman who have stated in his statement of claim that in CWP No.4817/99 in the matter of All India CPWD (MRM) Karamchari Sangathan Vs, Union of India and Ors. Dated 26.05.2000 the Hon'ble High Court of Delhi directed the Ministry of Labour for constitution of a board to look into the aspect of contract system prevalent in the CPWD under the section 10 of the Contract labour in para 4 and 5 of the said order of Hon'ble Delhi High Court on record and quoted here under for easy reference

Para 4. If the decision is taken to abolish the contract labour in particular job/work process in any of the offices/establishments of CPWD (as per the terms of reference contained in Resolution dated 30th march, 2000), as per the judgement of the Supreme Court in All India Statuary Corporation (Supra) such Contract workers would be entitled to be absorbed with CPWD and would be entitled to claim the benefits in terms of aforesaid judgment. In case the decision of the "appropriate government" is not to abolish contract labour system in any of the works/jobs process in any offices/establishments of CPWD the effect of that would be that contract labour system is permissible and, in that eventuality, CPWD shall have the right to deal with these contract workers in any manner it deems fit.

Para 5. Such contract labours who are still working shall be paid their wages regularly as per the provision of section 21 of the Act and in those cases where the contractors fail to make payment of wages, it shall be the responsibility of the CPWD as principal employer to make the payment of wages.

51. The claimant rendered continuous service of more than ten years to the management on the date when his services were illegally retrenched he had to be given retrenchment compensation in accordance with section 25F of the Industrial Dispute Act if the retrenchment is made abruptly. Claimant sustained loss of means of livelihood without any just and proper cause the salient fact which the tribunal considered is that the workman who has been retrenched is a workman under section 2 (s) in an industry defined under section 2 (j) who has been in continuous service for more than one year could be retrenched provided the employer complies with the twin conditions provided under clauses (a) & (b) section 25F of the Act 1947 before the retrenchment is given effect to Section 25F of the act 1947 is reproduced here under for easy reference:

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

(a) The workman has been given on month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;

(b) The workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay [for every completed year of continuous service] or any part thereof in excess of six months, and

(c) Notice in the prescribed manner is served on the Appropriate Government [or such authority as may be specified by the appropriate government by notification in the official Gazette.]

Termination of service if illegal - consequence of illegal termination

52. It is proved in evidence by claimant/workman that his services were terminated by CPWD on 25.09.2014

The management has not rebutted the said fact of 'termination' by aforesaid assistant director of the CPWD through it's own witness. It remained on it's stand that claimant was employee of contractor therefore, it had no concern with his termination, but this argument has no legs to stand as against the evidence on record brought before the tribunal. This is also proved that claimant was in continuous employment as contract labour on 07.07.1995. Though he acquired legal right to be regularized in services of the CPWD, keeping him as daily wager contractual workman in the establishment was not just and legal under the provisions and prohibition contained in Industrial Dispute Act. Question to be decided by this tribunal is that whether the services of the claimant terminated by the management wrongfully and illegally? As such, to what relief the claimant is entitled will be a prime question for grant of relief. It is also proved that the workman was working as helper since the initial date of joining, discharged duties as such workman associated with and in assistance to plumber, electrician, mason, etc. as and when and wherever he was deployed. There is no evidence to contradict and repudiate the claim of workman that he has completed more than 240 days in every year of his employment. The termination of service in other word is called retrenchment under the Industrial Dispute Act Section 2 (oo) defines the retrenchment as under:

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

(a) Voluntary retirement of the workman; or

(b) Retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains s stipulation in that behalf; or

(bb) termination of service of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein; or

(c) Termination of the service of a workman on the ground of continued ill-health.

53. **In *K.V. Anil Mithra & Another V. Sree Sankaracharya University of Sanskrit & Another (2021 SCC online SC 982)*** the Apex Court in Para 22, held as under: -

***22:-** The term 'retrenchment' leaves no manner of doubt that the termination of the workman for any reason whatsoever, otherwise than as punishment inflicted by way of disciplinary action are being termed as retrenchment with certain exceptions and it is not dependent upon the nature of employment and the procedure pursuant to which the workman has entered into service. In continuation thereof, the condition precedent for retrenchment has been defined under Section 25F of the Act 1947 which postulates that*

workman employed in any industry who has been in continuous service for not less than one year can be retrenched by the employer after clauses (a) and (b) of Section 25F have been complied with and both the clauses (a) and (b) of Section 25F have been held by this Court to be mandatory and its non-observance is held to be void ab initio bad and what is being the continuous service has been defined under Section 25B of the Act 1947.

54. **In the case of K.V Anil Mithra (Supra) the Apex Court further held-**

23:- *The scheme of the Act 1947 contemplates that the workman employed even as a daily wager or in any capacity, if has worked for more than 240 days in the preceding 12 months from the alleged date of termination and if the employer wants to terminate the services of such a workman, his services could be terminated after due compliance of the twin clauses (a) and (b) of Section 25F of the Act 1947 and to its non-observance held the termination to be void ab initio bad and so far as the consequential effect of non-observance of the provisions of Section 25F of the Act 1947, may lead to grant of relief of reinstatement with full back wages and continuity of service in favour of retrenched workman, the same would not mean that the relief would be granted automatically but the workman is entitled for appropriate relief for non-observance of the mandatory requirement of Section 25F of the Act, 1947 in the facts and circumstances of each case.*

24:- *The salient fact which has to be considered is whether the employee who has been retrenched is a workman under Section 2(s) and is employed in an industry defined under Section 2(j) and who has been in continuous service for more than one year can be retrenched provided the employer complies with the twin conditions provided under clauses (a) and (b) of Section 25F of the Act 1947 before the retrenchment is given effect to. The nature of employment and the manner in which the workman has been employed is not significant for consideration while invoking the mandatory compliance of Section 25F of the Act 1947.*

25:- *This can be noticed from the term 'retrenchment' as defined under Section 2(oo) which in unequivocal terms clearly postulates that termination of the service of a workman for any reason whatsoever provided it does not fall in any of the exception clause of Section 2(oo), every termination is a retrenchment and the employer is under an obligation to comply with the twin conditions of Section 25F of the Act 1947 before the retrenchment is given effect to obviously in reference to such termination where the workman has served for more than 240 days in the preceding 12 months from the alleged date of termination given effect to as defined under Section 25B of the Act.*

If termination of service by the employer to save skin from their unlawful acts, opposed to status and public policy: -

55. Though this tribunal is not kept into a state of things by the management to know and peruse the terms of the contract between the 'contractor' and 'management' due to which 'pleadings' and 'statement in evidence of the management' that, workman concerned had been an employee of the contractor only working under his control and supervision find no support from facts to the contrary proved by the workman remained a bald statement only. The admission of management to the effect that the concerned post remained vacant for approximately 10 years, regular employee was not recruited against that post in the division whereas the other division of the management has such regular appointment, the contract labour after the year 2002 prohibited on 15 posts including helper, plumber, etc., then also employing and continuing the workman as contractual labour establishes the intention of management malicious to continue with the services of workman concerned year to year. Established principal of law relating to contracts is that parties to contracts are to be allowed to regulate their rights and liabilities themselves. However, the law in some cases over rights the will of the individuals making ineffective some intention under the contract which are opposed to statuary policy the tribunal will not to extend its aid to a party who based his cause of action or ground of defense on an immoral or illegal act. The Industrial Dispute Act and the Standing Orders Act both prohibit to keep a workman in temporary services for time infinite if he has successfully worked for a considerable length of time provided under the Industrial Dispute Act 240 days in a year (preceding 12 months).

56. Section 2 (ra) of the Industrial Dispute Act defines 'Unfair Labour Practice' means any of the practices specified in the 5th schedule of the Act. In 5th schedule there is item no. 10 which declares unlawful the practice to employ workman as "*badlis",* casuals or temporaries and to continue them as such for years, with the object of depriving them of the status and privileges of permanent workmen. Moreover, item no. 5 in the same schedule makes the practice unlawful to discharge or dismiss workmen not in good faith, but in the colourable exercise of the employer's rights. In the present case the management has repeated pleading and statement in evidence also that the workman was contractual labour and his services were terminated by the contractor to whom management had no right to compel to keep particular workman to supply but this statement and pleading of the management is not proved whereas, the workman has successfully pleaded and proved in evidence also that he was used to be employed continuously irrespective of the change of contractors. Therefore, action of the management if it be impeachable on the ground of dishonesty, or as being opposed to public policy, if it be forbidden by law the tribunal would not be just to allow itself to be made the instrument of enforcing obligations alleged to arise out of a contract for transaction which is illegal.

57. The management has not stated in its pleading or submitted any policy framed after the notification of prohibition u/s 10 of the CLRA Act. For the purposes of regularizing the services of such employees either *"badlis"* casual temporary or contract labours. Management failed to explain situations under which despite of issuance of notice of prohibition of contract labour under Section 10 of the CLRA Act, the contract labour was kept continued. They failed to rebut workman's pleading and evidence as to the continuous utilization of his services in the premises of management CPWD for the considerable long period of more than 10 years. The only provision in law upon which workman has based his claim for regularization is under Section 25 B of the Act, which defines the 'continuous service'. The aforesaid provision of the Act entitles the workman to claim regularization being a workman who worked under the direct supervision and control of the management CPWD for continuous period as specified in Sub Section 1 & Sub Section 2 of Section 25B. But, the management wrongfully stopped him to work thereafter. Therefore, in the present case of a workman who worked under the supervision of the management Section 25 B read with section 25 F shall be applicable. Non observance of both the provision shall be treated malafide.

58. The scheme of the ID Act 1947, thus contemplates that the workman though employed as a daily wager or in any other capacity, if has worked for more than 240 days in the preceding 12 months for the alleged date of termination and if the employer wants to terminate the services of such workman he may do so after due compliance of the section 25F of the Act. In the present matter there is no pleading and evidence of such compliance of twin clause (a) & (b) of section 25F therefore, termination of the workman is held illegal and declared *void ab initio*.

59. In the facts and circumstances established and proved by evidences available on record the tribunal tends to declare that termination of services of the concerned workman Sh. Pradeep Kumar not only illegal and *void ab initio* but malafide also because same was done by the management in utter violation and non-observance of section 2 (ra) section 25 B read with section 25 F of the I.D Act, so as to defy their obligation accrued from the continuous service of the workman.

The consequence of non-observance of the provision of section 25 F. Whether reinstatement in service?

60. On the relief of reinstatement with or without back wages the tribunal has to consider, consequence of it's finding as to the termination of service illegal, malafide and *void ab initio*, whether the workman should be treated as continued in services of the management. The Apex Court in three judge bench decision in **Hindustan Tin Works Pvt. Ltd. V. Employees of M/s Hindustan Tin Works Pvt. Ltd. and Ors. (1979) 2 SCC 80,** where retrenchment of employees was declared illegal, held in para 9 -

"*It is no more open to debate that in the field of industrial jurisprudence a declaration can be given that the termination of service is bad and the workman continues to be in service. The spectre of common law doctrine that contract of personal service cannot be specifically enforced or the doctrine of mitigation of damages does not haunt in this branch of law. The relief of reinstatement with continuity of service can be granted where termination of service is found to be invalid. It would mean that the employer has taken away illegally the right to work of the workman contrary to the relevant law or in breach of contract and simultaneously deprived the workman of his earnings. If thus the employer is found to be in the wrong as a result of which the workman is directed to be reinstated, the employer could not shirk his responsibility of paying the wages which the workman has been deprived of by the illegal or invalid action of the employer. Speaking realistically, where termination of service is questioned as invalid or illegal and the workman has to go through the gamut of litigation, his capacity to sustain himself throughout the protracted litigation is itself such an awesome factor that he may not survive to see the day when relief is granted. More so in our system where the law's proverbial delay has become stupefying. If after such a protracted time and energy consuming litigation during which period the workman just sustains himself, ultimately he is to be told that though he will be reinstated, he will be denied the back wages which would be due to him, the workman would be subjected to a sort of penalty for no fault of his and it is wholly undeserved. Ordinarily, therefore, a workman whose service has been illegally terminated would be entitled to full back wages except to the extent he was gainfully employed during the enforced idleness. That is the normal rule. Any other view would be a premium on the unwarranted litigative activity of the employer. If the employer terminates the service illegally and the termination is motivated as in this case viz. to resist the workmen's demand for revision of wages, the termination may well amount to unfair labour practice. In such circumstances reinstatement being the normal rule, it should be followed with full back wages. Articles 41 and 43 of the Constitution would assist us in reaching a just conclusion in this respect. By a suitable legislation, to wit, the U.P. Industrial Disputes Act, 1947, the State has endeavored to secure work to the workmen. In breach of the statutory obligation the services were terminated and the termination is found to be invalid; the workmen though willing to do the assigned work and earn their livelihood, were kept away therefrom. On top of it they were forced to litigation up to the Apex Court now they are being told that something less than full back wages should be awarded to them. If the services were not terminated the workmen ordinarily would have continued to work and would have earned their wages. When it was held that the termination of services was neither proper nor justified, it would not only show that the workmen were always willing to serve but if they rendered service they would legitimately be entitled to the wages for the same. If the workmen were always ready to work but they were*

kept away therefrom on account of an invalid act of the employer, there is no justification for not awarding them full back wages which were very legitimately due to them. A Division Bench of the Gujarat High Court in Dhari Gram Panchayat v. SafaiKamdar Mandal [(1971) 1 LLJ 508 (Guj)] and a Division Bench of the Allahabad High Court in Postal Seals Industrial Cooperative Society Ltd. v. Labour Court II, Lucknow [(1971) 1 LLJ 327 (All)] have taken this view and we are of the opinion that the view taken therein is correct"

61. In his cross-examination workman replying the quarry of the Learned Authorized Representatives of the management has unequivocally asserted that "I am unemployed now. This part of the cross examination is carved out from the cross-examination done by the management on 25.09.2017. Exhibit WW1/4 proved by the workman in his evidence on affidavit filed as examination in chief before the tribunal. The said letter reveals that after his employment with the management CPWD, in A.R.C. Sarswa Service Centre as contract labour right from 1.4.1996 discharged his uninterrupted and continuous services till 24.09.2014 but on 25.09.2014 he was abruptly stopped from working there. Exhibit WW1/4 aforesaid is an application addressed to the Executive Engineer Dehradun Central Circle-2 by workman praying to reinstate him in services w.e.f. the date of termination of services. Notice of the Industrial Dispute issued by Secretary of this Central Government Industrial Tribunal No.1 New Delhi issued by the Executive Engineer Dehradun Central Division and the Executive Engineer Mussorrie Central Division with regard to present industrial dispute under section 2A filed by Sh. Pradeep Kumar claimant/workman concerned on 01.12.2015. Though there is no provision in the Industrial Dispute Act and Central Rules made there under prescribing limitation for the claim of reinstatement of services setting aside termination of service of the workman but the tribunal has to consider the effect of delayed raising of dispute, over the claim of reinstatement and regularization. There is no explanation justifying in such passes of time the workman in his evidence has not stated anything why he had not raised his claim regularization at any point of time after the notification u/s 31/7/2002 of u/s 10 and prior to his illegal termination from service.

62. In **Deepali Gundu Surwase V. Kranti Junior Adhyapak Mahavidyalaya & Ors. (2013) 10 SCC 324** Hon'ble Apex Court highlighted the need to adopt a restitutionary approach, the court has to consider whether to reinstate an employee and if so, the extent to which back wages is to be ordered. Para 22 judgment in the aforesaid case is being reproduced here under-

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

63. When termination of daily wager workman is done by the management and the termination is found illegal because of procedural defect, namely, in violation of Section 25 F of the Industrial Tribunal Act, Hon'ble Apex Court has consistently taken the view that in such cases reinstatement with back wages is not automatic and instead the workman should be given monetary compensation. The aforesaid view expressed in Para 33 & 34 by the Apex Court in the case of **Bharat Sanchar Nigam Ltd. V. Bhurmal, (2014) 7 SCC 177**

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

Para 34 the reason for denying the relief of reinstatement in such cases are obvious. It is trite law that when the termination is found to be illegal because of non-payment of retrenchment compensation and notice pay as mandatorily required under Section 25-F of the Industrial Disputes Act, even after reinstatement, it is always open to the management to terminate the services of that employee by paying him the retrenchment compensation. Since such a workman was working on daily-wage basis and even after he is reinstated, he has no right to seek regularization [see State of Karnataka v. Umadevi (3) [(2006) 4 SCC 1: 2006 SCC (L&S) 753]]. Thus when he cannot claim regularization and he has no right to continue even as a daily-wage worker, no useful purpose is going to be served in reinstating such a workman and he can be given monetary compensation by the Court itself in as much as if he is terminated again after reinstatement compensation and notice pay. In such a situation, giving the relief of reinstatement, that too after a long gap, would not serve any purpose.

64. The contract labour whose services were terminated without observance of section 25F of the Act may be monetarily compensated rather to reinstate in services. The reason to deny the relief of reinstatement in such cases are obvious. It is well established that the opposite party management cannot be absolved of the primary responsibility in its litigated proclivity the workman has waited for approximately 9 years in getting his claim adjudicated the denial of back wages may result in punching him although the delay may be attributable to the judicial process. The litigation cost may also be given in the circumstances of the case where management made all possible twists and hassles in expeditious disposal of the claim like non-production of documents which were best evidence and in possession of the management itself.

65. In the above context, it also has been noticed from facts and evidences on record that that workman has not cited any instance where termination of his service as daily wager turned illegal because the same was resorted to in violation of principle of last come first go viz, while retrenching him daily wager junior to him were retained. It is also not pleaded and proved that person junior to him were regularized under some policy but he was terminated. It is noticed that claim of regularization is not pleaded and proved by the concerned workman raised at any point of time at any forum of law during his continuation in service.

66. Applying the above principles as laid down by the Apex Court it is kept in mind that the claimant was working as a daily wager. Moreover, the termination took place more than 10 years ago. However, the fact remains that no direct evidence for working 10 years has been furnished and most of his documents which he could place by his efforts relatable to few years only. For all these reasons the tribunal is of the view that ends of justice would be met by granting compensation in monetary terms in lieu of "reinstatement".

67. (a) The tribunal declares termination (retrenchment) of claimant Sh. Pradeep Kumar, daily wager from his services by the management on 25.09.2014 illegal for non-observance of section 25F of the ID Act, 1947 malafide and *void ab initio.*

(b) The tribunal further declares the claimant entitled to be paid compensation by the management in terms of money in lieu of his reinstatement in services of the management to the tune of Rs.10,00,000/- (Ten Lakhs only). The management of CPWD (Opposite parties no. 1 & 2) are jointly and severally directed to pay pf the amount of compensation ordered above within 30 days from the date of order, failing which interest @ 6% per annum shall be leviable till the date of actual payment to the claimant/workman.

(c) A litigation cost of Rs. 2 Lakhs (Two lakhs only) shall be payable to the claimant/workman by the opposite parties 1 & 2 jointly and severally within 30 days from the date of award in failure to pay off same shall be leviable with interest @ 6% per annum till the date of actual payment.

(d) The opposite parties 1 & 2 are further held responsible for paying penal cost amounting to Rs. 2 Lakhs (Two lakhs only) on account of the claimant's suffering mental harassment and trauma by reason of abrupt loss of livelihood through illegal retrenchment. The above cost shall also be payable along with the amount of compensation and litigation cost as ordered above within aforesaid period of 30 days, in failure to pay within prescribed time interest shall be leviable at the rate of 6 % per annum till the date of actual payment.

(e) Office is directed to send the award in the manner as prescribed under section 17 of the I.D Act, 1947 to the appropriate government for implementation and enforcement of the Award.

Date : 25.09.2024

Justice VIKAS KUNVAR SRIVASTAVA, Presiding Officer

नई दिल्ली, 17 दिसम्बर, 2024

का.आ. 2254.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार dfn; ykd fuek.k foHkkx के प्रबंधतत्र, संबद्ध नियोजको और उनके कर्मकारो के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं 2 दिल्ली के पंचाट (207/2019) प्रकाशित करती है।

[सं. एल - 12025/01/2024- आई आर (बी-I)-250]

सलोनी, उप निदेशक

New Delhi, the 17th December, 2024

S.O. 2254.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref.207/2019*)* of the *Cent.Govt.Indus.Tribunal-cum-Labour Court No -II Delhi* as shown in the Annexure, in the industrial dispute between the management of CPWD and their workmen.

[No. L-12025/01/2024- IR(B-I)-250]

SALONI, Dy. Director

ANNEXURE

BEFORE CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT NO-II, NEW DELHI

I.D. No. 207/2019

Sh. Mahender Pal Singh, S/o Sh. J.S. Rawat,

Through- All India Central PWD (MRM) Karamchari Sangathan,

House No.-4823, Gali No. 13, Balbir Nagar Extension,

Shahadra, Delhi-110032.

Versus

The Executive Engineer, C.P.W.D.,

Dehradun Central Division, Dehradun-248001.

Appearance:-

For Claimant- Sh. Satish Kumar Sharma, Ld. AR.

For Management- Sh. Atul Bhardwaj, Ld. AR.

AWARD

The appropriate government, Sh. V.K. Thakur, Section Officer had sent the reference referred dated 25.07.2019 to this tribunal for adjudication with the following words.

> ***"Whether the workman Sh. Mahender Pal Singh is entitled for grant of regular status having completed 240 days of service for two consecutive years in 1995 & 1996 as per CPWD Departmental manual? If so, what should be the date of effective regularization and what consequential benefits the workman is entitled to? (ii) Whether the workman is entitled for withdrawal of recovery order against him, pensionary benefits and promotion from Beldar to Mason? If yes, what benefits the workman is entitled to and to what extent?"***

Claimant had stated in his claim statement that he was initially appointed on the post of Beldar on 08.09.1994 under the Executive Engineer, Border Fencing Division, CPWD, Jaisalmer. Upon completion of the project of fencing, the services of the workman were transferred under the Garhwal Central Division, CPWD, Srinagar and thereafter, his services were again transferred to Dehradun Central Division No. 1 where at present he was working. The services of the workman was regularized w.e.f. 11.12.2006 vide order dated 11.07.2011. He had completed 240 days of his services in each calendar year. As per CPWD Manual Volume 3, there are clear cut mentioning that the workman whosoever complete the 240 days working in each calendar year he gets the right of regularization on the same post. The management after granting the temporary status have fixed his pay and started to give him regular pay and allowance & other benefits i.e. GPF etc. The above management have given a letter to the workman on 17.11.2017 for intimation that the temporary status granted to him was wrong granted which was after completion of 20 years. At the time of fixation of his pay upon grant of annual increments his pay was fixed as Rs. 28,000/0 from 27,200/- w.e.f. 01.07.2017. The temporary status already granted to him was withdrawn vide order dated 31.01.2018 and his pay was refixed to Rs. 24,900/- against Rs. 28,000/- and also passed a recovery order. The

workman objected the same and represented his case before Executive Engineer-Dehradun Central Division-1. The authorized union of the workman represented the case of the workman on 01.11.2018. The workman passed the trade test from Beldar for the post of Mason vide order dated 05.01.2018. He is illegally and rightfully entitled to promoted to the post of Mason and also entitled for grant of ACP/MACPS benefits as per rules. The management have got sanctioned 8982 posts for regularization of casual labourers of the department upon implantation of judgement of **Hon'ble Supreme Court of India** given in the matter of **Surinder Singh & Others V/s. Engineer-In-Chief-CPWD** and thereafter also vacant posts was accumulated on account of retirement/death etc. Hence the workman reserve the right of his regularization since the date of initial appointment. That the management of CPWD had regularized the services of some workmen upon implementation of the order and they have also been granted the benefits of antedating and their services were declared as regularized since their initial dates of employment i.e. on Muster Roll/Casual Labour. The workman is also entitled for pensionary benefits under Section 14 of Pension Rule 1972 and the management of CPWD have also issued orders in this respect. The management have never given any notice to the workman U/s 9A for changing in his service condition which is clear cut violation of provisions of ID Act 1947 and also comes under the definition of unfair labour practice. The management has never given the reply of workman till date. Hence he has filed the present claim with the prayer to regularize his service from the intial date of appointment with all consequential benefits.

WS has been filed by the management denying the averment made in the claim statement. He submits that claim is not maintainable and is liable to be dismissed.

After completion of the pleadings following issues have been framed vide order dated 23.03.2022 i.e.-

1. Whether the proceeding is maintainable and there exist an industrial dispute between the parties.
2. Whether the claimant is entitled to regularization of his services on completion of 240 days of work for two consecutive years i.e. 1995 and 1996 and if so what would be the effective date of regularization
3. Whether the management can be directed to withdraw the recovery order issued against the claimant and grant him pensionary benefit including promotion to the post of Mason from Beldar and what would be the effective date for the same.
4. To what relief the claimant is entitled to.

Now, the matter is listed for cross-examination of the workman. Claimant has not been appearing for cross-examination since long, inspite of providing a number of opportunities. Workman AR submits that claimant is not in contact with him.

In these circumstances, when the claimant has not been appearing since long to substantiate his claim, it appears that he is not interested to pursue his case. His claim stands dismissed. Award is passed 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.

Date 29th, August, 2024

ATUL KUMAR GARG, Presiding Officer

नई दिल्ली, 18 दिसम्बर, 2024

का.आ. 2255.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार कैंटोनमेंट बोर्ड क्लेमेंट टाउन, देहरादून के प्रबंधतत्र, संबद्ध नियोजको और उनके कर्मकारो के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय लखनऊ के पंचाट (07/2024) प्रकाशित करती है।

[सं. एल - 12025/01/2024- आई आर (बी-I)-252]

सलोनी, उप निदेशक

New Delhi, the 18th December, 2024

S.O. 2255.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref.07/2024*)* of the *Cent.Govt.Indus.Tribunal-cum-Labour Court Lucknow* as shown in the Annexure, in the industrial dispute between the management of Cantonments Board Clement Town,Dehradun and their workmen.

[No. L-12025/01/2024- IR(B-I)-252]

SALONI, Dy. Director

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL –CUM- LABOUR COURT, LUCKNOW

PRESENT

JUSTICE ANIL KUMAR

PRESIDING OFFICER

I.D. No. 07/2024

BETWEEN

District General Secretary, City Committee Dehradun

…… Workman

\Versus

Chief Executive Officer, Cantonments Board Clement Town, Dehradun,

……. Respondent

AWARD

On 29.07.2022 appellant moved an application under section 33-A of the ID Act praying there under:-

अतः माननीय महोदय से प्रार्थना है कि सेवायोजक पक्ष को यह आदेश देने का सादर कृपा की जाय कि वह कार्यवाही के लम्बित रहते विवाद से सम्बन्धित सभी श्रमिकगणों को वाद योजित करने से पूर्व में दी जा रही समस्त सुविधाऐं प्रदान की जायें तथा उनके वेतन से की गयी अवैधानिक कटौती का भुगतान उचित ब्याज सहित तत्काल किया जाय एवं सेवायोजक पक्ष के उक्त कृत्य को अनुचित श्रम व्यवहार घोषित कर श्रमिकगणों के विरूद्ध किसी प्रकार की उत्पीडनात्मक कार्यवाही न की जाय एवं उनकी कार्य दशाओं में अवैध परिवर्तन न किया जाय एवं यथास्थिति बनाये रखी जायें।

On 03.10.2022 respondent filed their objection denying the case as set up in his application under section 33-A of the Industrial Dispute Act, 1947.

On 9.01.2023 claimant filed rejoinder.

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

Further during the course of argument, workmen namely were present

(A) Sri Saurav Gupta

(B) Sri Kamal Yadav

(C) Sri Vinod Kumar

(D) Sri Adesh Kumar

Further after consulting above named workmen, Sri M.C. Pant Advocate submits that claimant does not want to press the present application moved on their behalf under section 33-A of the ID Act.(endorsement also made in order sheet dated 15.05.2024) so the same may kindly be dismissed as not pressed.

Sri U.K. Bajpai learned counsel for respondent has no objection as above said prayer.

ORDER

For the foregoing reasons application moved by workmen under section 33-A of the ID Act, is dismissed as not pressed.

Award as above.

Lucknow.

Date 24.06.2024

Justice ANIL KUMAR, Presiding Officer

नई दिल्ली, 18 दिसम्बर, 2024

का.आ. 2256.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार mrj io jyo के प्रबंधतत्र, संबद्ध नियोजको और उनके कर्मकारो के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय लखनऊ के पंचाट (64/2014) प्रकाशित करती है।

[सं. एल - 12025/01/2024- आई आर (बी-I)-251]

सलोनी, उप निदेशक

New Delhi, the 18th December, 2024

S.O. 2256.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref.64/2014*)* of the *Cent.Govt.Indus.Tribunal-cum-Labour Court Lucknow* as shown in the Annexure, in the industrial dispute between the management of North Eastern Railway and their workmen.

[No. L-12025/01/2024- IR(B-I)-251]

SALONI, Dy. Director

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL –CUM- LABOUR COURT, LUCKNOW

PRESENT

JUSTICE ANIL KUMAR

PRESIDING OFFICER

I.D. No. 64/2014

BETWEEN

The working Zonal President, Rail Sewak Sangh,

C/o D.P. Awashthi, 49, Tilak Nagar, Lucknow

…… … Workman

AND

(1) Divisional Railway Manager

North Eastern Railway, DRM

Office, Ashok Marg, Lucknow

(2) Sr. Divisional Personnel Officer,

North Eastern Railway DRM Office,

Ashok Marg, Lucknow

… …. Respondent

AWARD

By letter/order dated 14.10.2014 the following reference has been referred to this Tribunal for adjudication.

''क्या पूर्वोत्तर रेल प्रशासनए लखनऊ/गोंडा द्वारा कामगार श्री चन्द्रिका प्रसाद, तकनीशियन ग्रेड–II को एलपीसी में उल्लेख 41 दिन का इनकेशमेंट न किया जाना न्यायोचित एवं वैध है? यदि नही तो वह किस राहत को पाने का हकदार है?''

Accordingly I.D. case no. 64/2014 registered before this Tribunal.

On 24.07.2015 on behalf of claimant statement filed, relevant paragraph quoted herein below:-

1. That the workman aforenamed was working as Technician in Grade 950-1500 in steam LOCO Running Shed N.E. Railway, Lucknow and while working there the said steam LOCO running shed was abolished in the year 1992 and all the shed staff was declared surplus.

2. That the said surplus staff was deployed in other depots of the N.E. Railway and in the same process the workman was transferred and was posted in the Diesel shed N.E. Railway Gonda.

3. That the workman on 03.07.1993 was spared from steam LOCO shed N.E. Railway with order to join his duties in Diesel shed N.E. Railway, Gonda. He was also issued L.P.C. showing there 41 days LAP (earned Value) to his credit. Photocopy of this LPC be being filed as Annexure-I to this claim statement.

4. That the workman in pursuance of the said transfer order joined his duties in Diesel Shed Gonda under SSE, Diesel Shed N.E. Railway Gonda there he was promoted as technician Grade II, performed his duties till his superannuation on 31.01.2005.

5. That the workman on his retirement was given the benefit of leave encashment of only 33 days by taking into consideration of working period and leave record from 03.07.1993 to 30.01.2005 but his 41 days in LAP in credit of working as mentioned in LPC for the period prior to his transfer while he worked at Lucknow was ignored and he was not paid leave encashment of 41 days for which he is entitled.

6. That the applicant submitted several applications and representations but opposite parties did not make the payment of 41 days LAP on his retirement and till now.

7. The opposite parties have still with held the encashment of 41 days LAP of the workman for which he is entitled to receive from opposite parties.

It is therefore, respectfully prayed that this Hon'ble Tribunal may very kindly be pleased to hold that the Action of Management of North Eastern Railway in not making payment of 41 days LAP mentioned in L.P.C. to workman Shri Chandrika Prasad Technician Grade II is not justified and he is entitled to get the payment of 41 days LAP in addition to 33 days LAP for which he has been paid.

On 09.09.2016 respondent filed written statement facts in brief are mentioned as under:-

4. That in terms of Divisional Railway Manager (P) Lucknow's letter dated 09.10.2013 the Leav Account of the applicant for the period from 1989 to 03.10.1993 was not available. Hence in terms of Rly. Board's circular letter no. E/637/0/Part-II dated 05/17.09.1991, the leave account for the missing period was prepared on average basis and the same was got vetted by the accounts department. Thereafter payment of leave encashment was made to the applicant. The true photo copy of the letter dated 9.10.2023 in annexed herewith as Annexure No. 1.

5. Applicant vide letter dated 04.10.2005 issued by Divisional Railway Manager (P) Lucknow Camp Office, Diesel Shed, Gonda.

6. In view of the facts as stated above, payment of leave encashment as due has already been made to the applicant. Now nothing is due to him against his leave account.

On 27.10.2016 on behalf of claimant rejoinder affidavit was filed.

Thereafter the relevant documents and material has been exchanged between the parties.

Today matter is taken up in the revised cause list.

None appeared on behalf of clamant, in spite of notice.

From the perusal of record the position which emerged out that in spite of the notice given to the workman he has not filed any evidence on affidavit.

I have heard the learned counsel for respondent and going through the record, same orders passed reproduced as under:-

On 20.09.2022 an order was passed held as under:-

Case called out.

Present Sri D.P. Awashthi fo workman.

Sri N. Nath for OP.

Sri D.P. Awashthi informed that the workman Chandrika Prasad had died. And prays and granted time to move substitution application by next date of listing.

List on 03.11.2022 for hearing.

On 03.11.2022 an order was passed held as under:

Matter taken up in the revised list.

Sri D.P. Awashthi counsel for workman and Sri N.Nath for management.

Sri Awasthi submitted that workman, Chadrika Prasad on whose behalf claim petition has been filed has died. Accordingly a prayer has been moved to move substitution application. Allowed.

List on 06.12.2022

On 6.12.2022 an order was passed held as under:-

Matter taken up in revised list.

Parties absent.

Further time is granted for filing of substitution application by workman

List on 23.2.2023.

On 23.2.2023 an order was passed held as under:-

Matter taken up in revised list.

None for claimant.

Sri N. Nath for respondent.

One more opportunities is granted to claimants counsel to move substitution application.

List on 19.05.2023

On *19.07.2023* an order was passed held as under:-

Sri D.P. Awashti for claimant.

Miss. Pinky Sharma filed authority on behalf of OP taken on record.

As prayed by claimant matter is adjourned to 29.09.2023

9.10.2023 an order was passed held as under:-

Matter taken up in revised list.

Sri Pinky Sharma for OP.

None for claimant.

Notice be issued to workman.

List on 19.01.2023.

On 12.03.2024 an order was passed held as under:-

Mater is taken up in revised list.

None for claimant.

Smt. Pinky Sharma for OP.

List on 07.5.2024

Today the matter was taken up for hearing on 12.03.2024, inspite of the notice, Sri V.K. Awashti learned counsel for appellant is not present.

I have heard leaned counsel for the respondent and gone through record.

In spite of the notice, none appeared on behalf of claimant today.

Accordingly, after hearing the learned counsel for respondent and taking into consideration the above said facts that till date no evidence on behalf of claimant on affidavit filed in support of his case further also keeping in view of the provisions of the sub-section 8 of section 10 of the Industrial Dispute Act 1947.

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 workman/claimant has not filed any evidence in support of his case, so the present case is liable to be dismissed.

ORDER

For the foregoing reasons, the case is dismissed; workman is not entitled for any relief.

Award as above.

Lucknow.

Date 24.06.2024

Justice ANIL KUMAR, Presiding Officer

नई दिल्ली, 18 दिसम्बर, 2024

का.आ. 2257.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार cd vkQ bfM;k के प्रबंधतत्र, संबद्ध नियोजको और उनके कर्मकारो के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय जबलपुर के पंचाट (11/2019) प्रकाशित करती है।

[सं. एल - 39025/01/2024- आई आर (बी-II)-45]

सलोनी, उप निदेशक

New Delhi, the 18th December, 2024

S.O. 2257.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref.11/2019*)* of the *Cent.Govt.Indus.Tribunal-cum-Labour Court Jabalpur* as shown in the Annexure, in the industrial dispute between the management of Bank of India their workmen.

[No. L-39025/01/2024- IR(B-II)-45]

SALONI, Dy. Director

ANNEXURE

THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT, JABALPUR

NO. CGIT/LC/RC/11/2019

Present: P.K.Srivastava

H.J.S..(Retd)

Golu S/o Shri Kailash Mandloi,

Transferee Sepoy Bank of India,

Branch Ankawadi (9913)

District: Khargone (MP)

Through: General Secretary

Dainik Vetanbhogi Bank Karamchari Sangathan

K. Ka. F-1, Tripti Vihar, Ujjain (M.P.)

Workman

Vs

1. **The Regional Manager**

   Bank Of India,

   Regional Office, Khandwa (MP)

2. **Branch Manager**

   Bank of India,

   Branch Ankawadi (9913)

   District Khargone (MP)

Management

(JUDGEMENT)

(Passed on this 14th day of November-2024)

The applicant workman has filed a petition under Section 10 (A) (2&3) of the Industrial Dispute Acts, 1947 has amended by act of 2010, hereinafter referred to by the word 'ACT' with an allegation that the workman was illegally retrenched by the Management in-spite of his continuous service of 10 years from 22.11.2009 to 08.03.2019 without any composition of notice which is against Section 25 (F) of the Act. He raised a dispute through the Workman Union before the Assistant Labour Commissioner, Bhopal, which could not be resolved, hence this petition. Workman has prayed that holding the action of Management against the Act, he be held entitled to be reinstated with back wages and benefits.

Case of management in brief is mainly that the Workman was never appointed by Management Bank rather he was engaged as when required by Management on Daily Basis as a Casual Labour and was paid his wages accordingly. He never worked continuously for 245 days in any year, he was not appointed against any required vacancy following recruitment process. In the year 2019, the Bank framed scale for offering regular appointment to those Casual Labours who had worked with the Bank for a specific period. According to Management Bank, the applicant Workman was issued an interview letter by Management Bank to appear in the test/interview. It had participated in the recruitment process but failed. The Management has prayed that the petition be dismissed holding the action of Management legal and proper.

The Workman did not filed any evidence in form of affidavits. He did filed some photocopy documents which were not admitted by Management. He did not care to prove them.

The Management has filed an affidavit of its witness. The Workman side did not appear to cross-examine the witness.

At an argument stage also, none appeared for the Workman, hence argument of Learned Counsel for Management Shri Neeraj Kevat were heard and recorded has been perused by me.

The initial burden to prove its claim is on the Workman in which he is miserably failed. On the other hand, the management side has successfully proved its case by way of uncross-examined affidavit of Management witness.

Hence on the basis of above discussion, holding the case of the workman not proved. The petition deserves to be dismissed and is dismissed accordingly.

DATE:- 14/11/2024

P. K. SRIVASTAVA, Presiding Officer

नई दिल्ली, 18 दिसम्बर, 2024

का.आ. 2258.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार cd vkQ bfM;k के प्रबंधतत्र, संबद्ध नियोजको और उनके कर्मकारो के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय जबलपुर के पंचाट (09/2019) प्रकाशित करती है।

[सं. एल - 39025/01/2024- आई आर (बी-II)-46]

सलोनी, उप निदेशक

New Delhi, the 18th December, 2024

S.O. 2258.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref.09/2019*)* of the *Cent.Govt.Indus.Tribunal-cum-Labour Court Jabalpur* as shown in the Annexure, in the industrial dispute between the management of Bank of India their workmen.

[No. L-39025/01/2024- IR(B-II)-46]

SALONI, Dy. Director

ANNEXURE

THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT, JABALPUR

NO. CGIT/LC/RC/09/2019

Present: P.K.Srivastava

H.J.S..(Retd)

Deepak Dasodhi,

Transferee Sepoy Bank Of India,

Branch Oon (9917)

District: Khargone (MP)

Through: General Secretary

Dainik Vetanbhogi Bank Karamchari Sangathan

K.Ka.F-1, Tripti Vihar, Ujjain (M.P.)

Workman

Vs

1. **The Regional Manager**
   Bank of India,
   Regional Office,
   Anandnagar Khandwa (MP)
2. **Branch Manager Bank of India,**
   Branch Oon (9917)
   District Khargone (MP)

Management

(JUDGEMENT)

(Passed on this 14th day of November-2024)

The applicant workman has filed a petition under Section 10 (A) (2&3) of the Industrial Dispute Acts, 1947 has amended by act of 2010, hereinafter referred to by the word 'ACT' with an allegation that the workman was illegally retrenched by the Management in-spite of his continuous service of 10 years from 12.05.2015 to 20.03.2019 without any composition of notice which is against Section 25 (F) of the Act. He raised a dispute through the Workman Union before the Assistant Labour Commissioner, Bhopal, which could not be resolved, hence this petition. Workman has prayed that holding the action of Management against the Act, he be held entitled to be reinstated with back wages and benefits.

Case of management in brief is mainly that the Workman was never appointed by Management Bank rather he was engaged as when required by Management on Daily Basis as a Casual Labour and was paid his wages accordingly. He never worked continuously for 245 days in any year, he was not appointed against any required vacancy following recruitment process. In the year 2019, the Bank framed scale for offering regular appointment to those Casual Labours who had worked with the Bank for a specific period. According to Management Bank, the applicant workman was issued an interview letter by Management Bank to appear in the test/interview. It had participated in the recruitment process but failed. The Management has prayed that the petition be dismissed holding the action of Management legal and proper.

The Workman did not filed any evidence in form of affidavits. He did filed some photocopy documents which were not admitted by Management. He did not care to prove them.

The Management has filed an affidavit of its witness. The Workman side did not appear to cross-examine the witness.

At an argument stage also, none appeared for the Workman, hence argument of Learned Counsel for Management Shri Neeraj Kevat were heard and recorded has been perused by me.

The initial burden to prove its claim is on the Workman in which he is miserably failed. On the other hand, the management side has successfully proved its case by way of uncross-examined affidavit of Management witness.

Hence on the basis of above discussion, holding the case of the workman not proved. The petition deserves to be dismissed and is dismissed accordingly.

DATE:- 14/11/2024

P. K. SRIVASTAVA, Presiding Officer

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