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भारत का राजपत्र
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सं. 19] नई दिल्ली, मई 12—मई 18, 2024, शनिवार/वैशाख 22—वैशाख 28, 1946
No. 19] NEW DELHI, MAY 12—MAY 18, 2024, SATURDAY/VAISAKHA 22– VAISAKHA 28, 1946

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

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

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

वित्त मंत्रालय

(वित्तीय सेवाएं विभाग)

नई दिल्ली, 13 मई, 2024

का.आ. 876.—भारतीय निर्यात-आयात बैंक अधिनियम, 1981 (1981 का 28) की धारा 6 की उप-धारा (1) के खंड (ड.) के उप-खंड (ii) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार, एतद् द्वारा, श्री ए. एस. राजीव के स्थान पर श्री अश्विनी कुमार, प्रबंध निदेशक एवं मुख्य कार्यकारी अधिकारी, यूको बैंक को तत्काल प्रभाव से और अगले आदेशों तक भारतीय निर्यात-आयात बैंक (एक्जिम बैंक) के बोर्ड में निदेशक नामित करती है।

[फा. सं. 9/1/2022-आईएफ-I]

अनिल कुमार, अवर सचिव

MINISTRY OF FINANCE

(Department of Financial Services)

New Delhi, the 13th May, 2024

S.O. 876.—In exercise of the powers conferred by Sub-Clause (ii) of Clause (e) of Sub-Section (1) of Section 6 of the Export Import Bank of India Act, 1981 (No. 28 of 1981), the Central Government hereby nominates Shri Ashwani Kumar, MD & CEO, UCO Bank, as Director on the Board of Export Import Bank of India (Exim Bank) vice Shri A S Rajeev, with immediate effect and until further orders.

[F. No. 9/1/2022-IF-I]

ANIL KUMAR, Under Secy.

विदेश मन्त्रालय

(सी.पी.वी. प्रभाग)

नई दिल्ली, 9 मई, 2024

का.आ. 877.—राजनयिक और कोंसुलीय अधिकारी (शपथ एवं फीस) के अधिनियम, 1948 की धारा 2 के खंड (क) के अनुसरण में वैधानिक आदेश ।

एतद्द्वारा, सरकार भारत के प्रधान कोंसलावास, शंघाई में श्री धनराज पुनिया और श्री मनीष कुमार दीक्षित, दोनों सहायक अनुभाग अधिकारी,को मई 09, 2024 से सहायक कांसुलर अधिकारी के रूप में कांसुलर सेवाओं का निर्वहन करने के लिए अधिकृत करती है।

[फा. सं. टी. 4330/1/2024(15)]

एस.आर.एच. फहमी, निदेशक (सीपीवी-I)

MINISTRY OF EXTERNAL AFFAIRS

(CPV Division)

New Delhi, the 9th May, 2024

S.O. 877.—Statutory Order in pursuance of the clause (a) of the Section 2 of the Diplomatic and Consular Officers (Oaths and fees) Act, 1948 (41 of 1048), the Central Government hereby appoints Shri Dhanraj Poonia and Shri Manish Kumar Dixit, both Assistant Section Officers in the Consulate General of India, Shanghai to perform the consular services as Assistant Consular Officers with effect from May 09, 2024.

[F. No. T. 4330/01/2024(15)]

S.R.H FAHMI, Director (CPV-I)

पेट्रोलियम और प्राकृतिक गैस मंत्रालय

नई दिल्ली, 14 मई, 2024

का.आ. 878.—केन्द्रीय सरकार, पेट्रोलियम और खनिज पाइपलाइन (भूमि में उपयोग के अधिकार के अर्जन) अधिनियम, 1962 (1962 का 50) की धारा 2 के खण्ड (क) के अनुसरण में और पेट्रोलियम एवं प्राकृतिक गैस मंत्रालय, भारत सरकार के का. आ. 320, दिनांक 06.03.2023 की अधिसूचना के संशोधन में उक्त अधिनियम के अधीन कर्नाटक राज्य के राज्यक्षेत्र के भीतर, हिन्दुस्थान पेट्रोलियम कार्पोरेशन लिमिटेड की हासन चेरलापल्ली एलपीजी पाइपलाइन (एच.सी.पी.एल) के कार्य के लिए श्रीमान एच एस सतीश बाबू, विशेष भूमि अर्जन अधिकारी, कर्नाटक राज्य, को उक्त अधिनियम के अंतर्गत सक्षम प्राधिकारी के कार्यो का निर्वहन करने के लिए प्राधिकृत करती है।

यह अधिसूचना जारी होने की तारीख से लागू होगी ।

[फा. सं. आर-12030(27)/2/2019-ओ.आर-I/ई-30930)]

पी. सोमाकुमार, अवर सचिव

MINISTRY OF PETROLEUM AND NATURAL GAS

New Delhi, the 14th May, 2024

S.O. 878.—In pursuance of clause (a) of Section 2 of the Petroleum Minerals Pipelines (Acquisition of Right of User in Land) Act, 1962 (50 of 1962) and in modification of Notification of the Government of India, Ministry of Petroleum and Natural Gas S.O.No.320 dated 06.03.2023, the Central Government hereby authorizes Shri. H S Sathish Babu, Special Land Acquisition Officer, Government of Karnataka to perform the functions of Competent Authority in the State of Karnataka under the said Act for Hassan Cherlapalli LPG Pipeline (HCPL) by M/s Hindustan Petroleum Corporation limited.

This notification will be effective from the date of issue

[F. No. R-12030(27)/2/2019-OR-I/E-30930]

P. SOMA KUMAR, Under Secy.

श्रम एवं रोजगार मंत्रालय

नई दिल्ली, 2 मई, 2024

का.आ. 879.—औद्योगिक विवाद अधिनियम, (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार **डीएफसीसी लिमिटेड, प्रगति मैदान मेट्रो स्टेशन, नई दिल्ली; मेसर्स -3097/रंगनाथ राय सुरक्षा एजेंसी, सेक्टर-19, द्वारका, नई दिल्ली,** के प्रबंधतंत्र के संबद्ध नियोजकों और **श्री सुखजिंदर सिंह, कामगार , द्वारा -कर्मकार एकता केंद्र, गोविंद पुरी, कालकाजी, नई दिल्ली,** के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण- सह- श्रम न्यायालय-2 नई दिल्ली पंचाट (संदर्भ संख्या 250 oF 2019) को जैसा कि अनुलग्नक में दिखाया गया है, प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 02.05.2024 को प्राप्त हुआ था।

[सं. एल - 42025-07-2024-79-आईआर (डीयू)]

दिलीप कुमार, अवर सचिव

MINISTRY OF LABOUR AND EMPLOYMENT

New Delhi, the 2nd May, 2024

S.O. 879.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 250 oF 2019) of the **Central Government Industrial Tribunal cum Labour Court–II New Delhi** as shown in the Annexure, in the Industrial dispute between the employers in relation to **DFCC Ltd., Pragati Maidan Metro Station, New Delhi; M/s. 3097/ Rangnath Rai Security Agency,Sector-19, Dwarka, New Delhi, and Shri Sukhjinder Singh, Worker, Through—Karamkar Ekta Kendra, Govind Puri, Kalkaji, New Delhi,** which was received along with soft copy of the award by the Central Government on 02.05.2024.

[No. L-42025-07-2024-79-IR (DU)]

DILIP KUMAR, Under Secy.

ANNEXURE

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

ID.NO. 250/2019

Sh. Sukhjinder Singh, S/o. Sh. Karam,

R/o Village – Amritsar, P.O. Soro, P.S. Marhali,

District – Taran Taaran, Punjab,

Through—Karamkar Ekta Kendra,

A – 704, Transit Camp, Saheed Rajeev Gandhi Colony,

Govind Puri, Kalkaji, New Delhi-110019. …..Claimant / workman

Versus

1. DFCC Ltd.,

Pragati Maidan Metro Station, New Delhi-110002,

2. M/s. 3097/Rangnath Rai Security Agency,

Chillar Complex-88, 101, 1st Floor, Amberahai Extn.,

Sector-19, Dwarka, New Delhi-110045. ……Managements

AWARD

This is an application Under Section 2A of the I.D Act whereby, the applicant made prayer that his termination from the service by the management be declared illegal and unjustified and he be reinstated with full back wages. It is the case of the applicant/workman that he has been working as security guard at his last drawn wages Rs. 23,000/- with the management. One Mr. Bharat Bhushan (Supervisor) took the commission every month Rs. 2000/- from workman. He has not been provided any legal facilities. Without any rhyme or reason his services were terminated on 27.03.2019 by the management. He has initiated the conciliation proceeding but, no result. Hence, he had filed the present claim petition.

Management no-1 & 2 have not appeared since long and have not participated in the proceedings. They have been proceeded ex-parte vide order dated 27.04.2022. The AR for the workman is directed to file ex-parte evidence in support of his claim. Despite providing several opportunities, workman has not brought any evidence to buttress his claim. Hence, no disputant award is passed. Award is passed accordingly. File is consigned to record room.

A copy of this award is hereby sent to the appropriate government for notification under section 17 of the I.D. Act 1947.

Date 08th November, 2023 ATUL KUMAR GARG, Presiding Officer

नई दिल्ली, 7 मई, 2024

का.आ. 880.—औद्योगिक विवाद अधिनियम, (1947 का 14) *की धारा* 17 *के अनुसरण में, केन्द्रीय सरकार* **मेसर्स वेलकम इंडस्ट्रीज लिमिटेड; खेडा टेरला माइंस** के प्रबंधतंत्र के संबद्ध नियोजकों और **श्री प्रताप सिंह** के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जयपुर, पंचाट **(रिफरेन्स न.-36/2015)** को जैसा कि अनुलग्नक में दिखाया गया है, प्रकाशित करती है, जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 07.05.2024 को प्राप्त हुआ था।

[सं. एल–29012/10/2015-आईआर (एम)]

दिलीप कुमार, अवर सचिव

New Delhi, the 7th May, 2024

S.O. 880.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award **(Reference No. 36/2015)** of the Central Government Industrial Tribunal cum Labour Court, Jaipur as shown in the Annexure, in the Industrial dispute between the employers in relation to **M/s Welcome industries limited; Kheda Terla Mines and Shri Pratap Singh** which was received along with soft copy of the award by the Central Government on 07.05.2024.

[No. L-29012/10/2015-IR (M)]

DILIP KUMAR, Under Secy.

अनुलग्नक

केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जयपुर सी.जी.आई.टी.प्रकरण सं.36/ 2015

पीठासीन अधिकारी : राधामोहन चतुर्वेदी

रेफरेन्स नं..L- 29012/10/2015–IR(M) दिनांक 10/04/2015

प्रतापसिंह पुत्र श्री रावतसिंह,

मुकाम पोस्ट पालडी एम, तहसील शिवगंज

जिला सिरोही – (राजस्थान)

बनाम

1. वोलकेम इण्डस्ट्रीज लिमिटेड, जरिये निर्देशक गौरांग सिंघल कोर्पोरेट आफिस पता– पोस्ट बाक्स नम्बर 21 ई 101 मेवाड इण्डस्ट्रीज एरिया, मादड़ी, उदयपुर (राजस्थान) 313003

2. खेडा टेरला माईन्स, जरिये महाप्रबन्धक वी.पी.पहाड़िया

पता– पोस्ट सिरोही रोड़, जिला सिरोही – (राजस्थान)

प्रार्थी की तरफ से : कोई उपस्थित नहीं

अप्रार्थी की तरफ से: श्री राजेन्द्र गुप्ता

अभिभाषक विपक्षी की और से –

: अधिनिर्णय :

दिनांक : 07.11.2023

1. श्रम मंत्रालय भारत सरकार, नई दिल्ली द्वारा दिनांक 10.4.2015 को औद्योगिक विवाद अधिनियम 1947 (जिसे आगे मात्र अधिनियम कहा जायेगा) की धारा 10 उपधारा (1) (डी) के प्रावधानों के अन्तर्गत निम्नांकित औद्योगिक विवाद इस अधिकरण को न्यायनिर्णयन हेतु संदर्भित किया गया :–

"Whether the action of the management M/s. Welcome Industries Ltd., Udaipur/Khera Tarla Mines, Sirohi (Raj) in terminating the services of Shri Pratap Singh S/o Sh. Rawat Singh w.e.f. 29.02.2012 is legal and justified ? If not, what relief the concerned workman is entitled for ?"

2. प्रार्थी ने दिनांक 17 सितम्बर 2015 को अपने दावे का अभिकथन प्रस्तुत करते हुए यह कहा है कि विपक्षी द्वारा उसे समय से पूर्व सेवानिवृत कर अवैध रूप से सेवा समाप्त कर दी गई है। प्रार्थी ने उपमुख्य श्रम आयुक्त केन्द्रीय अजमेर के समक्ष मांग पत्र प्रस्तुत किया। विपक्षी द्वारा मांग पत्र का गलत जवाब प्रस्तुत किया गया। दोनों पक्षों की बीच समझौता वार्ता भी करवायी गयी, किन्तु वह सफल नहीं हुई।

3. विपक्षी संस्थान् में नियुक्ति के समय एक फार्म संख्या 9 भरवाया जाता है लेकिन विपक्षी ने इस तथ्य से इन्कार किया है। सेवानिवृति के पत्र दिनांक 02 फरवरी 2012 प्रार्थी ने लेने से इन्कार कर दिया था लेकिन उसे डरा–धमकाकर पत्र लेने को विवश किया गया। प्रार्थी को 29 फरवरी 2012 को अनुचित रूप से सेवा से पृथक कर दिया गया। प्रार्थी को चूंकि 51 वर्ष की आयु में ही 7 वर्ष पूर्व सेवानिवृत्त कर दिया गया, प्रार्थी की पेंशन भी इस कारण घटी हुई दर से बनी।

4. अतः प्रार्थी को विपक्षी संस्थान् में पुनः नियुक्ति दिलवाई जाकर 01 मार्च 2012 से समस्त विगत परिलाभ दिलवाये जायें।

5. विपक्षी ने वादोत्तर में प्रार्थी के दावे को अस्वीकार करते हुए यह कहा है कि प्रार्थी को 01 जनवरी 1991 को फोरमैन के पद पर नियुक्त किया गया था। उस समय प्रार्थी ने अपनी जन्मतिथि छुपाकर आयु लगभग 36–37 वर्ष बतायी थी। इसी आधार पर प्रार्थी की आयु 58 वर्ष मानते हुये, उसे पूर्व सूचित कर दिनांक 29 फरवरी 2012 को प्रार्थी को सेवानिवृत्त कर दिया गया। प्रार्थी ने उपादान राशी एवं बकाया छुट्टियों का भुगतान स्वीकार कर लिया। सेवानिवृत्त के बाद प्रार्थी को अस्थायी कर्मचारी के रूप में 16 मार्च 2012 को पुनः काम पर रखा गया। जहां बिना किसी विरोध के प्रार्थी 18 दिसम्बर 2012 तक लगातार कार्य करता रहा। उसके बाद कार्य छोड़कर चला गया। प्रार्थी ने कभी अपनी जन्मतिथि, सम्बन्धित दस्तावेज प्रस्तुत नहीं किये और ना ही विवाद उठाया। इसलिये वाद चलने योग्य नहीं है।

6. प्रार्थी ने अपनी साक्ष्य में स्वयं प्रताप सिंह को परीक्षित किया तथा प्रलेखीय साक्ष्य में प्रदर्श 1 से 7 तक प्रलेखों को प्रदर्शित किया।

7. तदुपरांत विपक्षी ने अपनी साक्ष्य में नितिन राज भटनागर को प्रस्तुत कर शपथपत्र प्रस्तुत किया। किन्तु दिनांक 03 अप्रैल 2019 से कई अवसर दिये जाने के उपरांत भी प्रार्थी ने इस साक्षी से प्रतिपरीक्षा नहीं की। अतः दिनांक 2.11.2021 को विपक्षी साक्षी से प्रार्थी द्वारा प्रतिपरीक्षा का अवसर समाप्त कर दिया गया।

8. प्रार्थी पक्ष की लगातार अनुपस्थिति को देखते हुये दिनांक 26 अक्टूबर 2023 को मैनें विपक्षी के अभिभाषक के मौखिक तर्क सुने और उपलब्ध साक्ष्य का परिशीलन किया।

9. इस विवाद में निम्नांकित बिन्दु विचारणीय उत्पन्न हुये हैं :–

1. क्या विपक्षी द्वारा प्रार्थी को दिनांक 29 फरवरी 2012 को अनुचित रूप से सेवानिवृत्त करते हुये सेवा समाप्त कर दी गई? .....प्रार्थी।

2. अनुतोष ?

10. <u>विचारणीय बिन्दु संख्या –01</u>

प्रार्थी प्रताप सिंह ने अपने शपथ–पत्र में यह कहा है कि दिनांक 01 जनवरी 1991 को उसकी नियुक्ति फोरमेन के पद पर हुई थी। उस समय उससे फॉर्म नम्बर 9 भरवाया गया था। प्रार्थी ने उक्त फॉर्म की फोटोप्रति अपने दावे के अभिकथन के साथ प्रस्तुत की है। इस फॉर्म नम्बर 9 में प्रार्थी की जन्मतिथि का उल्लेख नहीं होकर 01 जनवरी 1991 (नियुक्ति तिथि) को प्रार्थी की आयु 30 वर्ष लिखी गई है। प्रार्थी ने यह भी कहा है कि उसकी जन्मतिथि 01 जनवरी 1961 मानते हुये 51 वर्ष की आयु के आधार पर पेंशन निर्धारित की गई है। यहां यह उल्लेख किया जाना आवशयक है कि उक्त फॉर्म नम्बर 9 न तो प्रार्थी द्वारा हस्ताक्षरित है और ना ही विपक्षी के किसी प्राधिकारी द्वारा प्रमाणित है। वरन् कर्मचारी भविष्य निधि संगठन के सहायक आयुक्त द्वारा हस्ताक्षरित प्रतीत होता है–जिसे सुविधा के लिए प्रदर्श सी–1 अंकित किया है।

11. प्रार्थी ने अपनी प्रतिपरीक्षा में दिनांक 07 जनवरी 2019 को स्वयं की आयु 58 वर्ष बतायी है। आश्चर्यजनक रूप से प्रार्थी यह भी स्वीकार करता है कि उसकी जन्म तिथि 17 मई 1955 है। किन्तु उसने इस कथन का कोई प्रमाण पत्र प्रस्तुत नहीं किया है। विपक्षी ने अपनी साक्ष्य में प्रदर्श एम–8 पेंशन आवेदन पत्र प्रदर्शित किया है। प्रार्थी प्रताप सिंह ने अपने कथन में यह स्वीकार किया है कि उसका पेंशन आवेदन फॉर्म प्रदर्श एम–8 उसने स्वयं भरा है। जिस पर उसके हस्ताक्षर भी हैं। लेकिन प्रार्थी कहता है कि प्रदर्श एम–8 आवेदन पत्र में जन्म तिथि उसने नहीं लिखी।

12. प्रार्थी ने यह भी स्वीकार किया है कि प्रदर्श एम–7 टी. सी. उसी की है। जिसमें जन्मतिथि 14 मई 1955 सही है या गलत वह नहीं कह सकता। इसी प्रकार प्रदर्श एम–10 ग्राम पंचायत पालड़ी द्वारा जारी प्रमाण–पत्र दिनांक 02 मई 2012 में प्रार्थी की आयु 58 वर्ष होना प्रार्थी सही मानता है। विपक्षी द्वारा प्रस्तुत प्रदर्श एम–8 पेंशन आवेदन पत्र प्रार्थी द्वारा स्वयं हस्ताक्षर करते हुये प्रस्तुत किया जाना प्रार्थी ने स्वीकार किया है। इस प्रार्थना पत्र में प्रार्थी ने अपनी जन्म तिथि 05 जनवरी 1954 लिखी है इस प्रकार दिनांक 04 जनवरी 2012 को ही प्रार्थी की आयु 58 वर्ष पूर्ण हो जाना प्रमाणित होता है। विपक्षी के पास प्रार्थी की जन्मतिथि संबन्धी कोई विश्वसनीय प्रमाण ना होने के कारण प्रार्थी स्वयं द्वारा वर्णित जन्मतिथि स्वीकार कर लिये जाने के अतिरिक्त और कोई विकल्प नहीं था। इस प्रकार प्रार्थी स्वंय की स्वीकारोक्ति के आधार पर 29 फरवरी 2012 को निश्चित रूप से 58 वर्ष की आयु पूर्ण कर चुका था। इसलिये विपक्षी द्वारा 29 फरवरी 2012 को प्रार्थी को सेवानिवृत्त किया जाना अनुचित एवं अवैध प्रमाणित नहीं होता है। अतः यह बिन्दु प्रार्थी के विरूद्ध निर्णित किया जाता है।

13. बिन्दु संख्या 2 चूंकि प्रार्थी ने अपनी स्वयं की जन्मतिथि प्रदर्श एम–8 पेंशन हेतु आवेदन पत्र में 05 जनवरी 1954 अंकित करते हुये विपक्षी से पेंशन हेतु आवेदन किया। प्रार्थी की आयु दिनांक 04 जनवरी 2012 को ही 58 वर्ष (सेवानिवृत्ति की नियमानुसार आयु) वह पूर्ण कर चुका था। इस प्रकार 29 फरवरी 2012 को प्रार्थी की सेवानिवृत्ति किसी प्रकार अवैध एवं अनुचित प्रमाणित नहीं होती है और प्रार्थी विपक्षी से कोई अनुतोष पाने का अधिकारी नहीं है।

14. भारत सरकार द्वारा प्रेषित औद्योगिक विवाद का इसी प्रकार निर्णयन किया जाता है।

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

राधा मोहन चतुर्वेदी, पीठासीन अधिकारी

नई दिल्ली, 7 मई, 2024

का.आ. 881.—औद्योगिक विवाद अधिनियम, (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार **मेसर्स बूंदी सिलिका सैंड सप्लाई कंपनी** के प्रबंधतंत्र के संबद्ध नियोजकों और श्री बाबू लाल के बीच अनुबंध में निर्दिष्ट

केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जयपुर, पंचाट (रिफरेन्स न.-68/2012) को जैसा कि अनुलग्नक में दिखाया गया है, प्रकाशित करती है, जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 07.05.2024 को प्राप्त हुआ था।

[सं. एल–29012/27/2011-आईआर (एम)]

दिलीप कुमार, अवर सचिव

New Delhi, the 7th May, 2024

S.O. 881.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award **(Reference No. 68/2012)** of the Central Government Industrial Tribunal cum Labour Court, Jaipur as shown in the Annexure, in the Industrial dispute between the employers in relation to **M/s Bundi Silica Sand Supply Company and Shri Babu Lal** which was received along with soft copy of the award by the Central Government on 07.05.2024.

[No. L-29012/27/2011-IR (M)]

DILIP KUMAR, Under Secy.

अनुलग्नक

केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जयपुर

राधा मोहन चतुर्वेदी

पीठासीन अधिकारी

सी.जी.आई.टी. प्रकरण सं. 68 / 2012

Reference No. L-29012/27/2011-IR (M) **Dated: 21.05.2012**

श्री बाबू लाल पुत्र श्री गोपी लाल, निवासी– बोरखण्डी, तहसील– हिण्डौली, जिला– बून्दी, (राजस्थान)

.....प्रार्थी

बनाम

1. श्री कन्हैया लाल घाटीवाला, प्रबंधक, बडौदिया सिलिका सेण्ड स्टोन माईन्स, बून्दी द्वारा, मै. बून्दी सिलिका सेण्ड सप्लाई कम्पनी, बडौदिया सिलिका सेण्ड स्टोन माईन्स, तहसील– हिन्डौली, बून्दी, (राजस्थान)

.....अप्रार्थीगण / विपक्षी

उपस्थितः–

अभिभाषक प्रार्थी की ओर से : श्री प्रवीण पुरोहित अभिभाषक।

अभिभाषक अप्रार्थी की ओर से : मुनेष चन्द्र शर्मा, अभिभाषक।

: **अधिनिर्णय** :

दिनांक : 30.10.2023

1- श्रम मंत्रालय भारत सरकार नई दिल्ली द्वारा दिनांक 04.06.2012 को औद्योगिक विवाद अधिनियम 1947 (जिसे आगे मात्र अधिनियम कीा जावेगा) की धारा 10 (1) (डी) व 2। के अन्तर्गत प्रदत्त शक्तियो के अनुसरण में निम्नांकित औद्योगिक विवाद न्यायनिर्णयन हेतु इस अधिकरण को संदर्भित किया गया :–

"*Whether the action of the management of M/s Bundi Silica Sand Supply Company, Kota in terminating the services of Shri Babu Lal S/o Shri Gopi Lal w.e.f. 05/05/2011 is legal and justified? What relief the workman is entitled to*? ''

2- दिनांक 03.08.2012 को प्रार्थी द्वारा अपने दावे का अभिकथन प्रस्तुत किया गया जिसके संक्षिप्त अभिवचन इस प्रकार हैः प्रार्थी को विपक्षी द्वारा कुछ वर्षो पूर्व माइन्स में कार्य करने हेतु नियोजित किया गया था। उसे दैनिक दर से वेतन भुगतान किया जाता था। दिनांक 05.05.2011 को विपक्षी द्वारा प्रार्थी को अकारण सेवा से हटा दिया। जो अवैध छंटनी की परिभाषा में आता है क्योंकि विपक्षी द्वारा अधिनियम की धारा 25 (F) के प्रावधानों की पालना नहीं की गई। प्रार्थी

को सेवा से हटाने के उपरांत नये श्रमिक सेवा में रख लिये गये। अतः प्रार्थी को विगत वेतन परिलाभों सहित सेवा में बहाल किया जाये।

3- विपक्षी ने अपने वादोत्तर में यह कहा है कि प्रार्थी दैनिक मजदूर के रूप में विपक्षी के यहॉ कार्य करता था– किंतु 05.05.2011 को या अन्य किसी दिन प्रार्थी को कार्य से नहीं हटाया– प्रार्थी ने 240 दिन तक निरंतर कार्य नहीं किया। विपक्षी ने किसी विधिक प्रावधान की अवहेलना नहीं की है– अतः वाद निरस्त किया जाये।

4- दिनांक 20.11.2019 को प्रार्थी ने अपना शपथ पत्र साक्ष्य में प्रस्तुत किया। तदुपरांत दिनांक 17.02.2020, 17.12.2020, 14.02.2022, 26.09.2022 व अंततः 16.10.2023 को प्रार्थी स्वयं प्रतिपरीक्षा हेतु उपस्थित नहीं हुआ। उल्लेखनीय है कि दिनांक 14.02.2022 व 26.09.2022 को प्रार्थी को साक्ष्य/ प्रतिपरीक्षा हेतु उपस्थित रहने हेतु अन्तिम अवसर के रूप में चेतावनी भी दे दी गई थी– किंतु प्रार्थी ने स्वयं को प्रतिपरीक्षा हेतु अधिकरण के समक्ष प्रस्तुत नहीं किया। 16.10.2023 को प्रार्थी की साक्ष्य का अवसर समाप्त कर दिया गया। आज भी प्रार्थी या उसके अभिभाषक उपस्थित नहीं हैं। श्री प्रवीण पुरोहित एड़. ने उपस्थित होकर प्रार्थी के अभिभाषक की ओर से उपस्थिति पत्र मात्र प्रस्तुत किया व स्थगन का निवेदन किया है। प्रार्थी के कृते साक्ष्य हेतु अवसर दिये जाने का निवेदन अथवा प्रार्थी को प्रतिपरीक्षा हेतु प्रस्तुत भी नहीं किया है। इसलिए प्रकरण को स्थगित किये जाने का कोई औचित्य नहीं हैं।

5- प्रार्थी का शपथ पत्र उसकी मुख्य परीक्षा के रूप में प्रस्तुत किया गया हैं किंतु विपक्षी द्वारा की जाने वाली प्रतिपरीक्षा प्रार्थी की सतत अनुपस्थिति के कारण सम्भव नहीं हो पायी है। इसलिए विधितः प्रतिपरीक्षा के अभाव में प्रार्थी के सशपथ कथन साक्ष्य में ग्रहण किये जाने योग्य नहीं हैं। इस तथ्यात्मक परिदृष्य में यह स्पष्ट है कि प्रार्थी के अभिवचनों को प्रार्थी द्वारा किसी साक्ष्य से प्रमाणित नहीं किया गया है– प्रार्थी के किसी साक्ष्य के अभाव में यह प्रमाणित नहीं हो पाया है कि दिनांक 05.05.2011 को विपक्षी द्वारा प्रार्थी की सेवा अवधिपूर्ण रीति से समाप्त की गई है। इस तथ्य के प्रमाणित नही होने पर प्रार्थी विपक्षी से कोई अनुतोष प्राप्त करने का अधिकारी प्रमाणित नहीं हुआ है।

6- केन्द्र सरकार द्वारा संदर्भित विवाद का अधिनिर्णयन इसी प्रकार किया जाता हैं।

7- अधिनिर्णय की प्रतिलिपि औद्योगिक विवाद अधिनियम, 1947 की धारा 17 (1) के अनुसरण में प्रकाषनार्थ प्रेषित की जाये।

राधा मोहन चतुर्वेदी, पीठासीन अधिकारी

नई दिल्ली, 7 मई, 2024

का.आ. 882.—औद्योगिक विवाद अधिनियम, (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार **मेसर्स बूंदी सिलिका सैंड सप्लाई कंपनी** के प्रबंधतंत्र के संबद्ध नियोजकों और **श्री लटूर लाल** के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, **जयपुर**, *पंचाट* (*रिफरेन्स न.*-71/2012) को जैसा कि अनुलग्नक में दिखाया गया है, प्रकाशित करती है, जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 07.05.2024 को प्राप्त हुआ था।

[सं. एल–29012/9/2012-आईआर(एम)]

दिलीप कुमार, अवर सचिव

New Delhi, the 7th May, 2024

S.O. 882.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award **(Reference No. 71/2012**) of the Central Government Industrial Tribunal cum Labour Court, **Jaipur** as shown in the Annexure, in the Industrial dispute between the employers in relation to **M/s Bundi Silica Sand Supply Company and Shri Latur Lal** which was received along with soft copy of the award by the Central Government on 07.05.2024.

[No. L-29012/9/2012-IR (M)]

DILIP KUMAR, Under Secy.

अनुलग्नक

केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जयपुर

राधा मोहन चतुर्वेदी

पीठासीन अधिकारी

सी.जी.आई.टी. प्रकरण सं. 71/2012

Reference No. L-29012/9/2012-IR (M) Dated: 04.06.2012

श्री लटूर लाल पुत्र श्री पीरू लाल, जाति– गुर्जर, निवासी– बोरखण्डी, तहसील– हिण्डौली, जिला– बून्दी, (राजस्थान)

.....प्रार्थी

बनाम

2. श्री कन्हैया लाल घाटीवाला, प्रबंधक, बडौदिया सिलिका सेण्ड स्टोन माईन्स, बून्दी द्वारा, मै. बून्दी सिलिका सेण्ड सप्लाई कम्पनी, बडौदिया सिलिका सेण्ड स्टोन माईन्स, तहसील– हिन्डौली, बून्दी, (राजस्थान)

.....अप्रार्थीगण / विपक्षी

उपस्थितः–

प्रार्थी की तरफ से : कोई उपस्थित नहीं।

अप्रार्थी की तरफ से : मुनेष चन्द्र शर्मा, अभिभाषक।

: **अधिनिर्णय** :

दिनांक : 30.10.2023

1. श्रम मंत्रालय भारत सरकार नई दिल्ली द्वारा दिनांक 04.06.2012 को औद्योगिक विवाद अधिनियम 1947 (जिसे आगे मात्र अधिनियम कीा जावेगा) की धारा 10 (1) (डी) व 2A के अन्तर्गत प्रदत्त शक्तियो के अनुसरण में निम्नांकित औद्योगिक विवाद न्यायनिर्णयन हेतु इस अधिकरण को संदर्भित किया गया :–

"*Whether the action of the management of M/s Bundi Silica Sand Supply Company, Kota in terminating the services of Shri Latur Lal S/o Shri Piru Lal w.e.f. 05/04/2010 is legal and justified? What relief the workman is entitled to*? ''

2. तदुपरांत प्रार्थी ने दिनांक 03.08.2012 को अपने दावे का अभिकथन प्रस्तुत किया जिसके संक्षिप्त कथन इस प्रकार हैः प्रार्थी को अप्रेल, 1989 में विपक्षी द्वारा दैनिक वेतन पर कार्य करने हेतु नियोजित किया गया था। किंतु दिनांक 05.04.2010 को विपक्षी ने अकारण प्रार्थी को कार्य से हटा दिया। प्रार्थी को इस प्रकार सेवा से हठाने के पूर्व कोई नोटिस, नोटिस वेतन या छंटनी का मुआवजा, भी विपक्षी ने नहीं दिया– इस प्रकार अधिनियम की धारा 25 (F) के प्रावधानों का उल्लंघन किया गया है। प्रार्थी को सेवा से हटाने के समय प्रार्थी से कनिष्ठ श्रमिंको को सेवा में ही रखा गया– और प्रार्थी को अवसर नहीं दिया– अतः प्रार्थी को विगत वेतन परिलाभों सहित सेवा में बहाल किया जाये।

3. विपक्षी ने 09.05.2013 को वादोत्तर प्रस्तुत करते हुये यह कहा है कि प्रार्थी ने वर्ष 2008 में 54 दिन, 2009 में 150 दिन व वर्ष 2010 में 50 दिन कार्य किया व इस अवधि का वेतन प्राप्त कर लिया– प्रार्थी ने स्वयं ही कार्य पर आना बंद कर दिया– वह अपनी इच्छा से ही काम पर आता था– विपक्षी ने नहीं हटाया। विपक्षी ने किसी विधिक प्रावधान का उल्लंघन नहीं किया है– अतः वाद अस्वीकार किया जावे दिनांक 20.02.2017 से 17.11.2021 तक प्रार्थी की साक्ष्य प्रस्तुत नहीं की गई। दिनांक 14.02.2022 को प्रार्थी के अभिभाषक द्वारा अधिकरण को मौखिक रूप से सूचित किया गया कि प्रार्थी का देहांत हो गया है– तथा वह प्रार्थी के विधिक प्रतिनिधियों को प्रार्थी के स्थान पर प्रत्यास्थापित करवाने हेतु प्रार्थना पत्र प्रस्तुत करना चाहते हैं। किंतु कोई प्रार्थना पत्र प्रस्तुत नहीं किया गया। दिनांक 29.09.2022 को भी अभिभाषक प्रार्थी ने अपना कथन पुनरावृत किया तथा अधिकरण द्वारा पूर्वानुसार प्रार्थना पत्र प्रस्तुत करने हेतु अवसर प्रदान किया गया। दिनांक 16.10.2023 को प्रार्थी या उसके विधिक प्रतिनिधियों की ओर से कोई उपस्थित नहीं था–फिर भी न्यायहित में अन्तिम अवसर देते हुए प्रकरण आज नियत किया गया। आज भी प्रार्थी (मृतक) के विधिक प्रतिनिधि या उनकी ओर से प्राधिकृत कोई व्यक्ति उपस्थित नहीं है। श्री प्रवीण पुरोहित एड़. ने मृतक प्रार्थी के अभिभाषक श्री कपिल शर्मा की ओर से उपस्थित पत्र आज प्रस्तुत किया है। किंतु श्री कपिल शर्मा एड. को जिस व्यक्ति ने प्राधिकृत किया था वह जीवित नहीं है– इसलिए श्री कपिल शर्मा एड. को श्री प्रवीण पुरोहित एड़. को मृतक प्रार्थी की ओर से उपस्थिति देने हेतु प्राधिकृत करने का अधिकार शेष नहीं रहा है।

4. इस तथ्यात्मक परिदृष्य में चूकिं प्रार्थी द्वारा दावे के समर्थन हेतु न तो कोई साक्ष्य प्रस्तुत की गई है–और न ही उसके स्थान पर कोई विधिक प्रतिनिधि (चूकिं प्रार्थी के अभिभाषक द्वारा अधिकरण को प्रार्थी की मृत्यु हो जाना सूचित किया गया है) प्रार्थी के स्थान पर अपने पक्ष के अग्रसरण हेतु उपस्थित हुआ है– इस अधिकरण के अधिमत से प्रार्थी (मृतक) के पक्ष में यह प्रमाणित नहीं हो सका है कि दिनांक 05.04.2010 को विपक्षी द्वारा प्रार्थी को अविधिपूर्ण रीति से सेवा से हटा दिया गया हो। इसलिए प्रार्थी विपक्षी से कोई अनुतोष प्राप्त करने का अधिकारी प्रमाणित नहीं होता है।

5. केन्द्र सरकार द्वारा संदर्भित विवाद का अधिनिर्णयन इसी प्रकार किया जाता हैं।

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

राधा मोहन चतुर्वेदी, पीठासीन अधिकारी

नई दिल्ली, 7 मई, 2024

का.आ. 883.—औद्योगिक विवाद अधिनियम, (1947 *का* 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार **इंडियन ऑयल कॉर्पोरेशन** के प्रबंधतंत्र के संबद्ध नियोजकों और **श्री अशोक कुमार गर्ग** के बीच अनुबंध में निर्दिष्ट केन्द्रीय

सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जयपुर, पंचाट **(रिफरेन्स न.-16/2001)** को जैसा कि अनुलग्नक में दिखाया गया है, प्रकाशित करती है, जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 07.05.2024 को प्राप्त हुआ थी।

[सं. एल–30012/157/2000-आईआर(एम)]

दिलीप कुमार, अवर सचिव

New Delhi, the 7th May, 2024

S.O. 883.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award **(Reference No. 16/2001)** of the Central Government Industrial Tribunal cum Labour Court, Jaipur as shown in the Annexure, in the Industrial dispute between the employers in relation to **Indian Oil Corporation and Shri Ashok Kumar Garg** which was received along with soft copy of the award by the Central Government on 07.05.2024.

[No. L-30012/157/2000-IR (M)]

DILIP KUMAR, Under Secy.

अनुलग्नक

केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जयपुर

पीठासीन अधिकारी

राधा मोहन चतुर्वेदी

सी.जी.आई.टी. प्रकरण सं.– 16 / 2001

Reference No. L-30012/157/2000-IR (M) **Dated: 13.03.2001**

श्री अशोक कुमार गर्ग पुत्र श्री बृजमोहन गुप्ता, निवासी– मेहताब सिंह जी का चौराहा, गोयल टेन्ट हाउस के पास, जिला– अलवर, (राजस्थान)।

.....प्रार्थी

बनाम

1. इंडियन ऑयल कारपोरेशन, आई. ओ. सी. प्लाट नं.– 348–349 इण्डस्ट्रीयल ऐरिया पो. आकेस भिवाड़ी, जिला– जयपुर।
2. इंडियन ऑयल कारपोरेशन, आई. ओ. सी. शिवटी ईस्ट पूर्व, मुम्बई, 400015
3. इंडियन ऑयल कारपोरेशन, आई. ओ. सी. गलेण्डर हाउस 8, नेताजी सुभाष चन्द्र रोड़, कलकत्ता, 700001

.....अप्रार्थीगण / विपक्षी

उपस्थितः–

: श्री सुरेश कश्यप, अभिभाशक प्रार्थी।

: श्री आर. सी. जोशी, अभिभाशक विपक्षीगण।

: **अधिनिर्णय** :

दिनांक : 09.11.2023

1. श्रम मंत्रालय भारत सरकार नई दिल्ली द्वारा दिनांक 13.03.2001 को औद्योगिक विवाद अधिनियम 1947 (जिसे आगे मात्र अधिनियम कहा जावेगा) की धारा 10 (1) (डी) व 2A के अन्तर्गत प्रदत्त शक्तियो के अनुसरण में निम्नांकित औद्योगिक विवाद न्यायनिर्णयन हेतु इस अधिकरण को संदर्भित किया गया :–

   "Whether the action of the management of M/s I.B.P. Co. Ltd., Bhiwani Distt. Alwar in terminating the services of Shri Ashok Kumar Garg, fitter is justified? If not, to what relief the workman is entitled? "

2. दिनांक 18.11.2019 को यह देखते हुये कि आई. बी. पी. कम्पनी लि. का विलय इंडियन ऑयल कारपोरेन में हो चुका है, इस विवाद के सम्यक न्यायनिर्णयन हेतु आई. बी. पी. कम्पनी के स्थान पर इंडियन ऑयल कारपोरेशन को प्रत्यास्थापित किये जाने का आदेश पारित किया गया तद्नुसार प्रार्थी ने संशोधित वाद शीर्षक प्रस्तुत किया।
3. प्रार्थी ने अपने दावे के अभिकथन में यह कहा है कि उसकी नियुक्ति विपक्षी संस्थान में दिनांक 12.08.1993 को हुई थी। प्रार्थी का नाम रोजगार कार्यालय से भेजा गया था और साक्षात्कार में उत्तीर्ण होने के बाद फिटर के पद पर नियुक्ति हुई थी। दिनांक 31.07.1994 को विपक्षीगण ने प्रार्थी को सेवा से हटा दिया। सेवा समाप्ति से पहले कोई

कारण नहीं बताया तथा बिना नोटिस अथवा नोटिस वेतन तथा छंटनी मुआवजा दिये सेवा से हटाया गया। इस प्रकार अधिनियम की धारा 25 (F) के प्रावधानों की पालना विपक्षी ने नहीं की।

4. प्रार्थी को सेवा से हटाने के पूर्व कोई वरिष्टता सूची विपक्षी ने नहीं बनाई जो अधिनियम की धारा 25 (G) के अन्तर्गत अवैध है। प्रार्थी जिस पद पर कार्यरत था वह स्थाई प्रकृति का पद था लेकिन विपक्षी जानबूझ कर शोषण करने के लिए प्रार्थी की सेवा अवधि बढ़ाता रहा, जो कि अनुचित श्रम अभ्यास की परिभाषा में आता है। प्रार्थी ने एक कलैण्डर वर्ष में 240 दिन से अधिक लगातार कार्य किया है। सेवा मुक्ति के उपरांत प्रार्थी बेरोजगार बैठा है तथा आय का कोई साधन नहीं है। इसलिए वाद स्वीकार कर प्रार्थी की सेवामुक्ति को अवैध घोषित करते हुये विगत वेतन व सेवा परिलाभों सहित बहाल किया जाये।

5. विपक्षीगण (इंडियन ऑयल कारपोरेशन) ने दिनांक 13.05.2013 को अंग्रेजी में वादोत्तर प्रस्तुत किया जिसके हिन्दी में अनुदित संक्षिप्त कथन इस प्रकार हैः प्रार्थी 1600 रू. वेतन प्राप्त कर रहा था इसलिए अधिनियम की धारा 2 (s) के अन्तर्गत वह कर्मकार नहीं है तथा अधिकरण को यह विवाद सुनने का क्षैत्राधिकार नहीं है। प्रार्थी ने अन्य 8 कर्मकारों के साथ एक रिट याचिका माननीय उच्च न्यायालय में प्रस्तुत की थी जो अस्वीकार कर दी गई, प्रार्थी ने यह तथ्य छिपाया है। आई. बी. पी. कम्पनी का प्रार्थी से संबंधित अभिलेख नष्ट किया जा चुका है। और यह वादोत्तर रिट याचिका में प्रस्तुत अभिवचनों पर आधारित है। प्रार्थी को अस्थाई रूप से 22.06.1993 को (रिट याचिका में प्रार्थी द्वारा किये गये अभिवचन के अनुसार) नियुक्त किया गया था। प्रार्थी की अस्थाई नियुक्ति का उल्लेख नियुक्ति आदेष में है। आई. बी. पी. कम्पनी ने 26.07.1994 को एक पत्र जारी किया था और प्रार्थी से यह कहा था कि वह जुलाई 1994 का वेतन व अन्य देय राशियॉ प्राप्त कर सकता है। नोटिस के बदले 3 महीनों का वेतन अतिरिक्त रूप से प्रार्थी को भेजा गया। प्रार्थी की नियुक्ति अवधि 31.07.1994 तक थी। किंतु प्रार्थी ने यह राशि स्वीकार नहीं की जो बाद में ड्रॉफ्ट बनाकर भेजी गई। आई. बी. पी. कम्पनी अब अस्तित्व में नहीं हैं। आई. बी. पी. कम्पनी द्वारा प्रार्थी को 31.07.1994 के उपरांत नियुक्त नहीं किया गया। अतः वाद निरस्त किया जाये।

6. प्रार्थी की ओर से 28.04.2014 को अतिरिक्त कथन प्रस्तुत किये गये जिसमे उसने माननीय उच्च न्यायालय के समक्ष प्रस्तुत याचिका में निर्णय न होने का तथ्य जानकारी के अभाव में वर्णित नहीं करना कहा तथा यह भी कहा कि प्रार्थी को नोटिस वेतन, नोटिस मुआवजा नहीं दिया गया न प्रार्थी ने लेने से मना किया।

7. दिनांक 08.10.2014 को प्रार्थी अशोक कुमार गर्ग ने साक्ष्य में अपना शपथ पत्र प्रस्तुत किया तथा प्रलेखीय साक्ष्य के रूप में प्रदर्ष– **W-1** से **W-7** तक प्रदर्श प्रलेखित किये।

8. विपक्षी ने अपने साक्ष्य में मनीष सिन्हा, जनरल मैनेजर को परीक्षित किया तथा प्रलेखीय साक्ष्य के रूप में प्रदर्श **R-1** से **R-7** तक प्रलेखों को प्रदर्शित किया।

9. दिनांक 30.10.2023 व 01.11.2023 को मेंने उभय पक्ष के परस्पर विरोधी तर्को, उपलब्ध साक्ष्य एवं प्रस्तुत किये गये निम्नाकिंत न्यायिक दृष्ट्रातों में प्रतिपादित विधि पर मनन किया।

10. प्रार्थी की ओर से प्रस्तुत न्यायिक दृष्टांतः

(1) **1981 (II) LLJ 70 (SC) मोहन लाल बनाम भारत इलेक्ट्रोनिक्स लि.।**

(2) **RLR 1988 (2) 272 शंभू दयाल बनाम R.S.R.T.C. (राजस्थान)।**

(3) **(2001) 2 SCC 423 श्रीराम फर्टीलाईजर एवं कैमीकल्स बनाम यूनियन ऑफ इंडिया व अन्य।**

(4) **JT 2018 (9) SC 243 the Management Regional Chief Engineer P.H.E.D Ranchi v/s Their Workmen Representative District Secretary.**

(5) **(2021) AIR (SC) 4400 राममनोहर लोहिया जाईन्ट हास्पीटल एण्ड अन्य बनाम मुन्ना प्रसाद सैनी व अन्य।**

(6) **सिविल अपील नं. 6890/2022 (SC) जीतूभा खानसंगजी जडेजा बनाम कच्छ डिस्ट्रिक्ट पंचायत।**

11. विपक्षी की ओर से प्रस्तुत न्यायिक दृष्टांतः

(1) (1998) 4 SCC 447 गोपाबन्धु बिस्वाल बनाम कृण्ण चन्द्र मोहन्ती व अन्य।

12. इस विवाद में निम्नलिखित विचारणीय बिन्दु उभय पक्ष के अभिवचनों एवं तर्क पर मनन के उपरांत उत्पन्न हुये हैंः

1. **<u>विचारणीय बिन्दु सं.–1</u>** क्या विपक्षी द्वारा 31.07.1994 को हुई प्रार्थी की सेवा समाप्ति के पूर्व अधिनियम की धारा 25 (**F**) के प्रावधानों की सम्यक अनुपालना न किये जाने के कारण प्रार्थी की सेवा समाप्ति अवैध है?

.....प्रार्थी

2. **<u>विचारणीय बिन्दु सं.– 2</u>** क्या विपक्षी द्वारा प्रार्थी की सेवा समाप्ति के पूर्व वरिष्ठता सूची न बनाने के आधार पर सेवा मुक्ति अवैध है?

3. **<u>विचारणोय बिन्दु सं.– 3</u>** क्या प्रार्थी के कर्मकार न होने के कारण इस अधिकरण को विवाद का श्रवणाधिकार प्राप्त नहीं है?

4. अनुतोष?

13. **विचारणीय बिन्दु सं.– 1** (1) प्रार्थी की ओर से अपने शपथ पत्र में यह कहा गया है कि उसकी नियुक्ति 12.08.1993 को नियमानुसार फिटर के पद पर विपक्षी संस्थान में हुई थी। उसे बिना कारण दिनांक 31.07.1994 को बिना कोई नोटिस या नोटिस वेतन दिये नौकरी से हटा दिया गया। उसने मान. उच्च न्यायालय में याचिका दायर की जो 28.01.2009 को स्वीकृत हुई। प्रार्थी का यह भी कथन है कि वह विपक्षी के अधीन स्थाई प्रकृति का कार्य करता था। विपक्षी अनफेयर लेबर प्रेक्टिस के तहत सेवा अवधि बढाता रहा। उसने 240 दिन से ज्यादा कार्य किया है। लेकिन प्रार्थी ने प्रतिपरीक्षा में यह भी स्वीकार किया है कि दिनांक 12.08.1993 का नियुक्ति पत्र पत्रावली पर नहीं है। उसे नियुक्ति की शर्ते भी याद नहीं है। प्रार्थी ने यद्वपि इस सुझाव को अस्वीकार किया है कि उसकी नियुक्ति निर्धारित अवधि के लिये व अस्थाई थी किंतु प्रार्थी आगामी कथन में यह स्वीकार करता है कि प्रदर्श **W-6** पत्र उसकी नियुक्ति से संबंधित है तथा इस पत्र में वर्णित शर्ते उसे स्वीकार थी। प्रदर्श **W-6** पत्र विपक्षी (**I.B.P. Co.**) द्वारा दिनांक 21.02.1994 को प्रार्थी को संबाधित कर लिखा गया है। इस पत्र में विषय के अन्तर्गत (**Temporary Appointment**) शब्दावली लिखी गई है और यह कहा गया है कि प्रार्थी को अस्थाई आधार पर 4 माह के लिये दिनांक 12.02.1994 से समेकित वेतन 1450/– रू. पर निम्नाकिंत शर्तो सहित नियुक्त किया गया है। शर्त सं. (2) (**A**) में यह शर्त वर्णित है है कि प्रार्थी की सेवाये पत्र में अंकित अवधि के समापन पर स्वतः समाप्त हो जायेंगी। इस प्रकार प्रार्थी की स्वयं की स्वीकारोक्ति है कि उसे 4 माह की अवधि के लिए विपक्षी द्वारा नियुक्त गया था। प्रार्थी ने अपने प्रतिपरीक्षण में यह कहा है कि दिनांक 05.05.1994 को उसका आखिरी नियुक्ति आदेश जारी हुआ था उसके बाद कोई आदेश नहीं मिला। यह महत्वपूर्ण है कि उक्त 05.05.1994 को जारी नियुक्ति आदेश प्रार्थी ने स्वेच्छया प्रस्तुत नहीं किया है और मात्र यह कहा है कि घ्यान में न रहने से प्रस्तुत नहीं किया।

(2) यहा यह उल्लेख करना असंगत नहीं होगा कि विपक्षी ने अपने वादोत्तर में यह कथन किया है कि **I.B.P. Co.** अब अस्तित्व में नहीं है और प्रार्थी से संबंधित अभिलेख Weedout किया जा चुका है। विपक्षी का वादोत्तर प्रार्थी द्वारा उच्च न्यायालय में प्रस्तुत रिट याचिका के साथ प्रस्तुत किये गये प्रलेखों और **I.B.P. Co.** द्वारा प्रस्तुत किये गये रिट याचिका के उत्तर पर आधारित है। विपक्षी ने अपने साक्ष्य में प्रार्थी द्वारा उच्च न्यायालय के समक्ष प्रस्तुत रिट याचिका की प्रमाणित प्रति प्रदर्श **R-2** प्रदर्शित की है। जिसके पैरा 10 में प्रार्थी ने यह कथन किया है कि विपक्षी द्वारा उनकी सेवा में अन्तिम बार विस्तार, पत्र दिनांक 26.04.1994 द्वारा किया गया था और विपक्षीगण ने यह भी कहा था कि याचीगण की सेवा में अब विस्तार नहीं किया जावेगा तथा दिनांक 31.07.1994 से उनकी सेवा समाप्त हो जायेगी। प्रार्थी की ओर से उसकी रिट याचिका में किये गये इन कथनों का कोई खण्डन नहीं किया गया। यह अवष्य है कि सेवा विस्तार पत्र दिनांक 26.04.1994 के स्थान पर प्रार्थी ने त्रुटिपूर्वक 05.05.1994 तिथि वर्णित कर दी है। इस विवेचन से यह स्पष्ट हो जाता है कि प्रदर्ष **W-6** विपक्षीगण के पत्र दिनांक 21.02.1994 के पश्चात 26.04.1994 के पत्र द्वारा प्रार्थी की सेवा अवधि में विस्तार किया गया था। क्योंकि प्रदर्ष **W-6** पत्र के अनुसार तो, 12.02.1994 से 4 माह की अवधि 12.06.1994 को ही समाप्त हो रही थी। इसलिए 26.04.94 को सेवा विस्तार करते हुये सेवा अवधि 31.07.1994 निर्धारित कर दी गई।

(3) प्रार्थी ने अपने सर्मथन में माननीय सर्वोच्च न्यायालय द्वारा मोहन लाल बनाम भारत इलेक्ट्रोनिक्स लि. के निर्णय में पारित विधि का अवलंब लिया है। माननीय सर्वोच्च न्यायालय ने इस निर्णय में यह प्रतिपादित किया है कि जब तथ्यों के आधार पर कर्मकार की सेवा समाप्ति अधिनियम की धारा 2 (**oo**) के अन्तर्गत वर्णित किसी अपवादित कोटि में नहीं आती हो तो ऐसी सेवा समाप्ति छंटनी कहलाती है। अधिनियम की धारा 25 (**F**) में वर्णित पूर्वापेक्षित शर्तों की अनुपालना न किये जाने पर छंटनी के रूप में की गई ऐसी सेवा समाप्ति प्रारंभ से ही अवैध व शून्य होती है।

(4) इस विधि के प्रकाश में, तथ्यों का परीक्षण इस संबंध में किया जाना आवष्यक है कि, प्रार्थी की सेवा समाप्ति, अधिनियम की धारा 2 (**oo**) के अन्तर्गत वर्णित अपवादित परिस्थितियों में तो नहीं आती?

(5) प्रार्थी ने अपने प्रतिपरीक्षण में प्रदर्श **W-6** पत्र को नियुक्ति के संबंध में संम्पूर्ण रूप से सवीकार किया है। इसी प्रकार प्रार्थी ने सेवा अवधि के विस्तार के संबंध में त्रुटिपूर्वक 26.04.1994 के स्थान पर 05.05.1994 को विपक्षी के पत्र द्वारा सेवा का विस्तार करते हुये 31.07.1994 तक सेवा अवधि बढाये जाने का तथ्य भी स्वीकार किया है। प्रार्थी ने यह भी स्वीकार किया है कि सेवा विस्तार की शर्त उसे याद नहीं है। इस तथ्यात्मक परिदृष्य में स्पष्ट रूप से यह प्रकट होता है कि प्रार्थी को अस्थाई रूप से एक निश्चित अवधि के लिए एकमुश्त वेतन पर नियुक्त किया गया था। जबकि प्रस्तुत किये गये विधिक दृष्टांत मोहन लाल बनाम भारत इलेक्ट्रोनिक्स लि. में माननीय सर्वोच्च न्यायालय के समक्ष एक ऐसे कर्मकार का प्रकरण विचारणीय था जिसे नियोजक द्वारा परिवीक्षा पर प्रथम बार में 6 माह के लिए नियुक्त किया गया था। इस विधिक दृष्टांत के तथ्यों में कर्मकार की नियुक्ति एक निर्धारित अवधि के उपरांत स्वतः समाप्त हो जाने की शर्त नहीं थी। परिवीक्षा काल के सफल समापन पर कर्मकार को स्थाई रूप से नियुक्त किये जाने की संभावना भी अस्तित्व में थी। इसके विपरीत प्रार्थी को अस्थाई रूप से एक निशिचत अवधि के लिए नियुक्त किया गया था जो कि उसका परिवीक्षा काल कदापि नहीं था। तदुपरांत प्रार्थी की सेवा में विस्तार एक निश्चित तिथि 31.07.1994 तक किया गया। इस प्रकार हस्तगत विवाद के तथ्य और माननीय सर्वोच्च न्यायालय के निर्णय में वर्णित तथ्य सुभिन्न हैं। इस तथ्यात्मक भिन्नता के कारण प्रार्थी की ओर से प्रस्तुत इस न्यायिक दृष्टांत में प्रतिपादित विधि को मैं संसम्मान प्रार्थी के पक्ष में सहायक नहीं पाता हूँ।

(6) प्रार्थी की ओर से यह तर्क प्रस्तुत हुआ है कि प्रार्थी की नियुक्ति के पश्चात वह 240 दिन से अधिक की सेवा विपक्षी के अधीन कर चुका है। इसलिए अधिनियम की धारा 25 (**F**) के अन्तर्गत सेवा समाप्ति के पूर्व 1 माह का नोटिस या नोटिस वेतन या छंटनी प्रतिकर दिया जाना आवष्यक था। इस प्रावधान की पालना न होने से सेवा समाप्ति अवैध है। इस संबंध में प्रदर्श **R-2,** रिट याचिका की प्रमाणित प्रति से यह प्रकट होता है कि प्रार्थी ने अन्य 8 व्यक्तियों के साथ संयुक्त रूप से एक रिट याचिका माननीय उच्च न्यायालय के समक्ष प्रस्तुत की थी ओर उसमें विपक्षी के विरूद्व यह अनुतोश मॉगा गया कि वे सेवा समाप्ति के आदेश (मौखिक) 31.07.1994 को शून्य घोषित कर अपास्त करें। इस रिट याचिका को यद्यपि माननीय उच्च न्यायालय द्वारा प्रार्थी के संदर्भ में निर्णीत नहीं किया गया तथा प्रदर्श **R-2,** आदेश दिनांक 22.08.1994 द्वारा मात्र याची सं. 1 कमलजीत के संन्दर्भ में निर्णीत गया है। उक्त याची कमलजीत द्वारा प्रस्तुत रिट याचिका को माननीय उच्च न्यायालय द्वारा इस आधार पर अस्वीकार किया गया है कि याची को अपना विधिक अधिकार स्थापित करते हुये उसका हनन किया जाना प्रमाणित करना चाहिये, लेकिन याची अपने विधिक अधिकार की स्थापना ही नहीं कर पाया है, इसलिए उसे अस्वीकार किया जाता है। माननीय उच्च न्यायालय ने इस आदेश में यह स्पष्ट रूप से वर्णित किया है कि याची का नियुक्ति आदेश दिनांक 21.02.1994 और सेवा विस्तार आदेश 24.04.1994 पारित करते हुये सेवा अवधि मात्र 31.07.1994 तक बढाई गई थी। इस प्रकार सेवा की संविदा 31.07.1994 तक ही वैध थी उसके पष्चात याची को सेवा में बने रहने का कोई अधिकार नहीं रहा।

(7) याची कमलजीत और प्रार्थी के संबंध में सभी तथ्य समान हैं, इसलिए माननीय उच्च न्यायालय के आदेश प्रदर्श **R-2,** में प्रतिपादित दिशा निर्देश को इस विवाद के तथ्यों पर प्रभावी स्वीकार किया जाना विधितः अपेक्षित है। इस विवेचन के उपरांत प्रार्थी की नियुक्ति अस्थाई रूप से दिनांक 31.07.1994 तक की निश्चित अवधि की सेवा संविदा के आधार पर किया जाना प्रमाणित होता है। इसलिए अधिनियम की धारा 2 (**oo**) की उपधारा (**bb**) के अंतर्गत वर्णित अपवादित परिस्थिति इस विवाद के तथ्यों पर प्रभावी है। चूकिं सेवा संविदा के अन्तर्गत सेवा अवधि का पर्यावसान 31.07.1994 को हुआ इसलिए यह सेवा समाप्ति अधिनियम की धारा 2 (**oo**) के अन्तर्गत छंटनी होना प्रमाणित नहीं होता है।

(8) चूकिं प्रार्थी की सेवा समाप्ति छंटनी की परिभाषा में नहीं आती है इसलिए प्रार्थी की सेवा समाप्ति के पूर्व धारा 25 (**F**) के प्रावधान का अनुपालन करते हुये प्रार्थी को एक माह का नोटिस अथवा नोटिस वेतन एवं छंटनी प्रतिकर का भुगतान किया जाना किसी प्रकार अपेक्षित नहीं है।

(9) प्रार्थी की ओर से विधिक दृष्टांत शंभू दयाल बनाम R.S.R.T.C. (राजस्थान), श्रीराम फर्टीलाईजर एवं कैमीकल्स बनाम यूनियन ऑफ इंडिया व अन्य व the Management Regional Chief Engineer P.H.E.D Ranchi v/s Their Workmen Through Representative District Secretary] एवं राममनोहर लोहिया जॉईन्ट हास्पीटल एण्ड अन्य बनाम मुन्ना प्रसाद सैनी व अन्य में प्रतिपादित विधि जो कि अवैध छंटनी होने पर अधिनियम की धारा 25 (**F**) के प्रावधानों के अनुपालन न किये जाने से संबंधित विधि है, इस विवाद में प्रार्थी की सेवा समाप्ति छंटनी के माध्यम से किया जाना प्रमाणित न होने पर, तथ्यात्मक भिन्नता के कारण ससम्मान प्रयोज्य नहीं है।

(10) उपयुर्क्त विवेचन के उपरांत प्रार्थी यह प्रमाणित करने में विफल रहा है कि दिनांक 31.07.1994 को की गई सेवा समाप्ति अवैध छंटनी के रूप में विपक्षी द्वारा की गई, वरन यह प्रमाणित हुआ है कि अधिनियम की धारा 2 (**oo**) (**bb**) की अपवादित परिस्थति के अंतर्गत प्रार्थी की नियुक्ति एक निष्चित अवधि की सेवा संविदा के आधार पर हुई थी, जिसके समापन पर स्वतः हुई सेवा समाप्ति छंटनी की परिभाषा में नहीं आती है और विपक्षी द्वारा अधिनियम की धारा 25 (**F**) के प्रावधानों की अनुपालना किया जाना विधितः अपेक्षित नहीं था। अतः यह बिन्दु प्रार्थी के विरूद्व निर्णीत किया जाता है।

14. **<u>विचारणीय बिन्दु सं.– 2</u>** (1) प्रार्थी ने अपने षपथ पत्र दिनांक 17.09.2002 में कहा हैं कि उसे सेवा से हटाने के पूर्व विपक्षी ने कोई वरिष्ठता सूची नहीं बनाई और उसे सेवा मुक्त कर दिया। तत्पश्चात दिनांक 08.10.2014 को पुनः प्रस्तुत शपथ पत्र में वरिष्ठता सूची के संबंध में प्रार्थी ने कोई कथन नहीं किया है– उल्लेखनीय है कि इसी शपथ पत्र के आधार पर विपक्षी द्वारा प्रार्थी से प्रतिपरीक्षा की गई हैं। इस संदर्भ में यह भी उल्लेखनीय है कि अधिनियम की धारा 25 (**G**) व नियम 77 के प्रावधानों का प्रयोजन तभी अपेक्षित है जब किसी औद्योगिक संस्थान द्वारा कर्मकार की छंटनी किया जाना अपेक्षित हो– यदि सेवा समाप्ति की रीति छंटनी से भिन्न हो तो धारा 25 (**G**) व नियम 77 के प्रावधान ऐसी सेवा समाप्ति के संबंध में प्रयोज्य नहीं होगें।

बिंदु सं. 1 के अन्तर्गत प्राप्त विवेचित निष्कर्ष के प्रकाश में यह प्रमाणित पाया गया है कि प्रार्थी की सेवा समाप्ति छंटनी के रूप में नहीं हुई है– इसलिए विपक्षी से अधिनियम की धारा 25 (**G**) व नियम 77 के प्रावधानों की अनुपालना किये जाने की अपेक्षा विधि सम्मत नहीं है। इस स्थिति में प्रार्थी की ओर से प्रस्तुत निर्णय जीतूभा खानसंगजी जडेजा बनाम कच्छ डिस्ट्रिक्ट पंचायत में माननीय उच्चतम न्यायालय द्वारा प्रतिपादित विधि तथ्यात्मक भिन्नता के कारण प्रार्थी का पक्ष पुष्ट नहीं करती है। अतः यह बिन्दु प्रार्थी के विरूद्व निर्णीत किया जाता है।

15. **<u>विचारणीय बिन्दु सं.– 3</u>** इस विवाधक का सिद्विभार विपक्षी पर है। किंतु तर्क के दौरान विपक्षी की ओर से इस बिन्दु के संबंध में कोई तर्क प्रस्तुत नहीं किये गये– न ही विपक्षी ने साक्ष्य के दौरान सशपथ कोई कथन किये। ऐसा प्रतीत होता है कि प्रलक्षित रूप से विपक्षी द्वारा उस बिन्दु पर कोई बल नही दिया गया है– अतः प्रार्थी को कर्मकार होना प्रमाणित मानते हुए– यह बिन्दु विपक्षी के विरूद्व निर्णीत किया जाता है।

16. **अनुतोषः** विचारणीय बिन्दु सं. 1 व 2 प्रार्थी के विरूद्व निर्णीत किये जाने के आधार पर विपक्षी द्वारा प्रार्थी की सेवा समाप्ति दिनांक 31.07.1994 वैध एवं उचित प्रमाणित हुई है। अतः प्रार्थी विपक्षी से कोई अनुतोष प्राप्त करने का अधिकारी नहीं है।

17. भारत सरकार द्वारा संदर्भित औद्योगिक विवाद का न्यायनिर्णयन इसी प्रकार किया जाता है।

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

राधा मोहन चतुर्वेदी, पीठासीन अधिकारी

नई दिल्ली, 7 मई, 2024

का.आ. 884.—औद्योगिक विवाद अधिनियम, (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार **दिल्ली इंटरनेशनल एयरपोर्ट लिमिटेड; सेलेबी दिल्ली कार्गो टर्मिनल मैनेजमेंट इंडिया प्राइवेट लिमिटेड; मेसर्स डेल्टा सिक्योरिटीज प्राइवेट लिमिटेड** के प्रबंधतंत्र के संबद्ध नियोजकों और **श्री ज्वाला सिंह** के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-1, नई दिल्ली, पंचाट **(रिफरेन्स न. 5/2020)** को जैसा कि अनुलग्नक में दिखाया गया है, प्रकाशित करती है, जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 07.05.2024 को प्राप्त हुआ था।

[सं. जेड–16025/04/2024-आईआर(एम)-34]

दिलीप कुमार, अवर सचिव

New Delhi, the 7th May, 2024

S.O. 884.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award **(Reference No. 5/2020)** of the Central Government Industrial Tribunal cum Labour Court-1, New Delhi as shown in the Annexure, in the Industrial dispute between the employers in relation to **Delhi International Airport Ltd; Celebi Delhi Cargo Terminal Management India Pvt. Ltd; M/s Delta Securities pvt. Ltd. and Shri Jawala Singh** which was received along with soft copy of the award by the Central Government on 07.05.2024.

[No. Z-16025/04/2024-IR (M)-34]

DILIP KUMAR, Under Secy.

ANNEXURE

THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT DELHI - 1
ROOM NO. 207, ROUSE AVENUE COURT COMPLEX, NEW DELHI.

ID No. 5/2020

Sh. Jawala Singh S/o Sh. Chander Sekhar,
R/o K.D.R. Colony Building no.1, Room no. 15,
Rangpuri, Mahipalpur, New Delhi
Through Hindustan Engineering and General Mazdoor Union (regd.) H.O. D2/24,
Sultanpuri, Delhi

Claimant…

Versus

1. Vice President,

Delhi International Airport Ltd.

Udaan, Airport Terminal-3

New Delhi.

2. Managing Director,

Celebi Delhi Cargo Terminal Management India Pvt. Ltd.,

M Number-CEO, 5th Floor,

Import Building, Building 11 Building International Cargo Terminal

IGI Airport, Delhi-37.

3. Managing Director,

M/s Delta Securities Pvt. Ltd.,

159, Nanak Pura, Moti Bagh,

Near PNB Bank,

Dhaula Kuan,

New Delhi.

Management…

None for the claimant

None for the management

AWARD

In the present case, a reference was received from the appropriate Government vide letter No. ND.96(22)2019-ID-FOC-DY.CLC dated 10.12.2019 under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Act, for adjudication of a dispute, terms of which are as under:

SCHEDULE

"Whether the services of the workman Sh. Jawala Singh S/o Sh. Chander Sekhar were terminated in an illegal and unjustified manner by M/s Delta Securities Pvt. Ltd. In the establishment of DAIL/ M/s Celebi Delhi Cargo Terminal Management India Pvt. Ltd., New Delhi w.e.f 25.10.2018? If yes, whether the workman is entitled reinstatement with full back wages and other consequential benefits? What other relief the workman is entitled to?"

2. In the reference order, the appropriate Government commanded the parties raising the dispute to file statement of claim, complete with relevant documents, list of reliance and witnesses with this Tribunal within 15 days of receipt of the reference order and to forward a copy of such statement of claim to the opposite parties involved in the dispute. Despite directions so given, Claimant union opted not to file the claim statement with the Tribunal.

3. On receipt of the above reference, notice was sent to the workman as well as the managements. Neither the postal article sent to the claimant, referred above, was received back nor was it observed by the Tribunal that postal services remained unserved in the period, referred above. Therefore, every presumption lies in favour of the fact that the above notice was served upon the claimant. Despite service of the notice, claimant opted to abstain away from the proceedings. No claim statement was filed on his behalf. Thus, it is clear that the workman is not interested in adjudication of the reference on merits.

4. Since the workman has neither put in his appearance nor he led any evidence so as to prove his cause against the management, this Tribunal is left with no choice, except to pass a 'No Dispute/Claim' award. Let this award be sent to the appropriate Government, as required under Section 17 of the Industrial Disputes Act, 1947, for publication.

Justice VIKAS KUNVAR SRIVASTAVA (Retd.), Presiding Officer

Date: 28.11.2023

नई दिल्ली, 8 मई, 2024

का.आ. 885.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार ई.सी.एल. के प्रबंधतंत्र के संबद्ध नियोजको और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में **केन्द्रीय सरकार औद्योगिक अधिकरण – सह – श्रम न्यायालय**, आसनसोल **के पंचाट** (सन्दर्भ संख्या **14/2017**) को प्रकाशित करती है, जो केन्द्रीय सरकार को **06/05/2024** को प्राप्त हुआ था।

[सं. एल–22012/81/2017-आईआर(सी.एम-II)]

मणिकंदन.एन, उप निदेशक

New Delhi, the 8th May, 2024

S.O. 885.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award **(Reference. I.D. No. 14/2017*)*** of the **Central Government Industrial Tribunal-cum-Labour Court, Asansol** as shown in the Annexure, in the industrial dispute between the Management of **E.C.L.** and their workmen, received by the Central Government on 06 /05/2024.

[No. L-22012/81/2017-IR (CM-II)]

MANIKANDAN. N , Dy. Director

ANNEXURE

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

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

REFERENCE CASE NO. 14 OF 2017

PARTIES: Muslim Mia

Vs.

Management of Satgram Incline of ECL and Another.

REPRESENTATIVES:

For the Union/Workman : None.

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

INDUSTRY: Coal.

STATE: West Bengal.

Dated: 10.04.2024

AWARD

In exercise of powers conferred under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), the Government of India through the Ministry of Labour, vide its Order **No. L-22012/81/2017-IR(CM-II)** dated 09.11.2017 has been pleased to refer the following dispute between the employer, that is the Management of Satgram Incline under Satgram Area of Eastern Coalfields Limited and their workman for adjudication by this Tribunal.

SCHEDULE

"*Whether the action of the Management of M/s. Eastern Coalfields Ltd. in relation to its Satgram Incline under Satgram Area in not paying the applicable House Rent Allowance to Sri Muslim Mia from February 2008 is just and legal? if not, to what relief the workman is entitled to?****"***

1. On receiving Order **No. L-22012/81/2017-IR(CM-II)** dated 09.11.2017 from the Government of India, Ministry of Labour, New Delhi for adjudication of the dispute, a **Reference case No. 14 of 2017** was registered on 21.11.2017 and an order was passed for issuing notice to the parties through registered post, directing them to appear and submit their written statements along with relevant documents in support of their claims and a list of witnesses.

2. Mr. P. K. Das, learned advocate of Eastern Coalfields Limited is present. The case is fixed up today for ex-parte hearing. On call at 12.45 p.m. Muslim Mia, the aggrieved workman as well as representative of Koyala Khadan Sharamik Congress, Union are found absent without representation.

3. On a perusal of the record, I find that management filed their written statement on 10.02.2023, after a period of six years, wherein it is stated that Muslim Mia was allotted quarters at New Satgram Colliery prior to January 2008 and he handed over the quarters to the company in November 2007 vide office order No. ECL/SP/PER/Housing/Allotment/2007/2736 dated 28/30.11.2007. Said quarters was therefore allotted to Shri Krishna Behera, another employee of the company. It has been ascertained that according to circular issued by Eastern Coalfields Limited (Headquarters) bearing No. ECL/CMO/C-6/WBE-1/489 dated 28.06.2006 which was reissued vide No. ECL/CMD/C-6E/10/613 on 16.07.2012, Muslim Mia is not entitled to House Rent Allowance. Notice was issued to Muslim Mia at his given address but same were returned on two occasions with endorsement that he left for his home. In my considered view sufficient opportunity was given to the aggrieved workman and union but they failed to file written statement and did not turn up for adducing necessary evidence. Without going into the merits and validity of the circular issued from the Headquarters of Eastern Coalfields Limited for disallowing the House Rent Allowance, this case is disposed of in the form of a No Dispute Award on default of the workman. Let a No Dispute Award be drawn up accordingly.

Hence,

ORDERED

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

ANANDA KUMAR MUKHERJEE, Presiding Officer

नई दिल्ली, 8 मई, 2024

का.आ. 886.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एस.सी.सी.एल.के प्रबंधतंत्र के संबद्ध नियोजको और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण – सह – श्रम न्यायालय, गोदावरीखानी के पंचाट **(संदर्भ संख्या 02/2022)** को प्रकाशित करती है, जो केन्द्रीय सरकार को **25/04/2024** को प्राप्त हुआ था।

[सं. एल–22013/01/2024-आईआर(सी.एम-II)]

मणिकंदन.एन, उप निदेशक

New Delhi, the 8th May, 2024

S.O. 886.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award **(Ref. No. 02/2022*)*** of the **Central Government Industrial Tribunal-cum-Labour Court, Godavarikhani** as shown in the Annexure, in the industrial dispute between the Management of **S.C.C.L.** and their workmen, received by the Central Government on **25/04/2024.**

[No. 22013/01/2024-IR (CM-II)]

MANIKANDAN. N , Dy. Director

ANNEXURE

BEFORE THE CHAIRMAN, INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-CUM- ADDL. DIST. & SESSIONS COURT, GODAVARIKHANI.

PRESENT:- **SRI Dr.T.SRINIVASA RAO,**

CHAIRMAN-CUM-PRESIDING OFFICER.

FRIDAY, ON THIS THE 1st DAY OF MARCH, 2024.

I.D. No. 02 of 2022

Between:-

Merugu Ramesh, S/o. Laxminaryana, Age:39 Years, E.C.No.2374049, Ex-Badli Worker, ALP-APA, R/o.Qr.No.SD-485, Bhagathsingh Nagar, Ramakrishnapur, Mandal: Mandamarri, District: Mancherial (T.S).

….Petitioner/Workman

AND

1. The Colliery Manager, Singareni Collieries Company Ltd., Adriyala Longwall Project, RG-III Area, Adriyala Project Area, Ramagundam Area-III, Centenary Colony, Ramagiri Mandal, District Peddapalli (T.S).
2. The General Manager, Singareni Collieries Company Ltd., Adriyala Project Area, Ramagundam Area-III, Centenary Colony, Ramagiri Mandal, District Peddapalli (T.S)
3. The Chairman & Managing Director, Singareni Collieries Company Ltd., P.O: Kothagudem, District Khammam (T.S).

…. Respondents/Management

This case coming before me for final hearing in the presence of Sri Javvaji Srinivas, Advocate for the Petitioner and of Sri T. Ravinder Singh, Advocate for the Respondents; and having been heard and having stood over for consideration till this day, the Tribunal delivered the following:-

AWARD

This petition is filed U/Sec.2-A (2) of I.D. Act praying to set aside the dismissal order dt.19.04.2019 passed by the Respondent No.2 and direct the Respondents' Corporation to reinstate the petitioner into service with continuity of service, together with all attendant benefits and full back wages.

2. The brief averments of the petition are as follows:-

2(a). The petitioner was appointed as Badli Filler by respondents' company under dependant employment scheme in place of his father Sri Laxminarayana, Ex-Elec. Helper of SRP Area, through Office Order dt.20.04.2007. He was posted to Mandamarri Area and he completed the Basic Job Training at MVTC, Mandamarri. Thereupon, he reported before the RK.1A-Incline, M.M Area as per Office Order dt.06.07.2007. Ever since the date of his appointment, the

petitioner was discharging his duties to the utmost satisfaction of all his superiors, without any kind of adverse remarks. He served the respondents' company effectively and rendered (12) years long service. He put-in more than (100) required musters per year and he was transferred to Adriyala Long Wall Project of the respondent No.1 and 2. But, the atmosphere and gases of the said mine did not suit his health and he suffered from chronic ill-health, severe joint pains and body pain from 2014 onwards. He underwent prolonged medical treatment in the respondents' Company Hospitals and other referral hospitals at regular intervals. But, due to underground work, his health was not cured completely and due to the indifferent attitude of the respondents and disregard to his chronic ill-health, he continued to work in the underground on one hand and undergoing treatment frequently on the other hand, due to which, his health completely deteriorated from 2014. Due to the above problems, he could not put-in the required (100) musters during the year 2016. But, without considering the above, the respondents have issued charge sheet dt.25.02.2017 to the petitioner alleging:-

"25.25: Habitual late attendance or habitual absence from duty without sufficient cause"

"25.31: Absence from duty without sanctioned leave or sufficient cause or overstaying beyond sanctioned leave"

2(b). There is no deliberate or intentional absence on the part of the petitioner, there is reasonable and sufficient cause for his not attending to duties regularly and for putting less musters during the charge sheet period of 2016. But, the respondent No.2 dismissed the petitioner from service through Ref.No.RG.3/PERIRI48/DA-828/1325, dt.19.04.2019, with effect from 25.04.2019, illegally which is highly arbitrary and against the basic principles of natural justice. The petitioner submitted his satisfactory explanation dt.28.02.2017 to the charge sheet, but, domestic enquiry was conducted while he was undergoing treatment. He participated in the enquiry on 04.09.2017, deposed the above true facts of his ill-health and his family problems and also submitted Medical Certificates. But, the enquiry officer did not properly appreciate the documentary and oral evidence in favour of the petitioner. The findings of the enquiry Officer are very cryptic and he gave his vague findings, which are quite biased and perverse. The Respondent No.2 required the petitioner to make representation on the findings of Enquiry Officer by letter dt.21.11.2017, to which he submitted detailed representation dt.07.12.2017. He improved his attendance during the years 2018 and 2019 and put-in (68) physical muster in (03) months till March 2019. But, the respondent No.2 unjustly dismissed him from service by order dt.19.04.2019 straight away, without issuing any prior Show Cause Notice proposing the said capital punishment of dismissal from service.

2(c). The petitioner preferred Appeal (03) times and moved from pillar to post before the respondents, but there is no response from the company and he was not taken to duty. His health condition badly deteriorated and he suffered from serious ill health, during the charge sheeted period. However, he improved his attendance during the years 2018 and 2019 and put-in (68) physical muster in (03) months i.e., till March, 2019. As such, it cannot be termed as misconduct. There is reasonable and sufficient cause for the alleged absence of the petitioner during the charge sheet period. Further, imposing the capital punishment of dismissal from service without any prior show cause notice proposing the capital punishment is against the settled Law and contrary to the principles of natural justice. It is a clear case of unfair Labour practice and victimization and the extremely harsh punishment of dismissal from service is highly excessive and shockingly disproportionate, which amounts to economic death of the petitioner. Ever since his unjust dismissal from service, he could not secure any other alternative job and remained unemployed. He lost lively hood and incurred huge debts for his medical and domestic expenses and he is facing lot of hard ship and misery to eke out lively hood for his family members. This Court has got every jurisdiction to try the case U/Sec.2-(A) (2) of I.D. Act, as per the settled law declared by the Hon'ble High Court and this Court has wide powers U/Sec.11-A of I.D. Act to grant every relief to the poor petitioner. Therefore, he prayed to the set aside the dismissal Order dt.19.04.2019 passed by Respondent No.2 and to direct the respondents' company to reinstate the petitioner into service with continuity of service, all other attendant benefits and full back wages.

3. On the other side, the Respondents'/Company has submitted counter by admitting the employment of Petitioner/Workman with the Respondents'-Company and inter-alia contended that the petitioner was appointed as badli-filler on 12.07.2007 under the dependant employment scheme and posted to work at Rk1A incline Mandamari Area as per office order dt.06.07.2007. The petitioner was a chronic absentee had not put the required musters in any calendar year though out his service. The service of the employees of the respondent company are governed by company standing orders and according to section 52(2) of the Mines Act 1952 an underground employee is required to put in minimum musters of (190) and surface employee has to put (240) musters in a calendar year. But the petitioner/employee being a chronic absentee had never put-in required musters since his appointment. The attendance particulars of the petitioner are as follows:-

Sl.No.	Year	Musters put in by the petitioner
1.	2008	27
2.	2009	103
3.	2010	110

4.	2011	100
5.	2012	56
6.	2013	01
7.	2014	01
8.	2015	05
9.	2016	47
10.	2017	49
11.	2018	08
12.	2019	68

3(b). The petitioner was issued with charge sheet dt.02.02.2013 under clause 25:31 but no action was taken and he was once again issued Charge Sheets for his absenteeism during the years 2013, 2014, 2015 & 2016 vide Letters dt:02.02.2014, 10.01.2015 and dt:20.01.2016, but no action was taken for the charge sheets. As the petitioner was not attending duties, the respondent company has also conducted counselling on 09.06.2014 and he attended with family members and has given written explanation on 09.06.2014 stating the he has financial problems and he assured to put in (23) musters in every month thereafter. But he did not change his attitude and failed to attend duties regularly. In the due course as the petitioner failed to put-in required musters, he was again issued a charge sheet dt.25.02.2017, it was received and he submitted his explanation dt.28.02.2017 which was found not satisfactory. The petitioner employee has not put in (190) musters due to which he was issued Charge sheet for habitual absenteeism without any sufficient cause and without any sanctioned leave which is misconduct under clause 25.25 & 25.31 of the Respondent Company Standing orders. The relevant clause of standing orders reads as under:

"Clause 25.25 – Habitual late attendance or habitual absence from duty without sufficient cause."

"Clause 25. 31 – Absence from duty without sanctioned leave or sufficient cause or overstaying beyond sanctioned leave."

3(c). The enquiry notice was issued informing about enquiry and date of enquiry as 04.09.2017 vide Letter dt.30.08.2017 and the petitioner attended the enquiry and fully participated in the enquiry proceedings. During the enquiry, he voluntarily accepted the charges levelled against him and stated that due to ill-health and financial problems he could not perform his duties. He further stated that he does not want any help or assistance to conduct the enquiry proceedings and he failed to cross examine the witness. The petitioner was habitual absentee and during the last (12) years he has not put in (190) musters as required. During the year 2018 he has put in only 8 musters and in the year 2014 he has put in (68) musters in spite of regular counselling and opportunities given to him. He was irregular to duties and remained absent from duty without sanctioned leave or sufficient cause and also he had put in below (100) musters from 2012 to 2018 for (07) years continuously. He submitted written explanation dt.28.02.2017 to charge sheet by mentioning that he has family problems and financial problems. He has not mentioned anything about his ill-health and not produced any documentary evidence relating to his ill-health. Further, the petitioner has under gone PME on 24.10.2017 and was found fit for duty. The Enquiry Officer has conducted enquiry proceedings duly following the principles of natural justice and by adducing full and fair opportunity to the petitioner to defend his case and he has not submitted any documents in his favour as evidence. The Enquiry Officer submitted his findings vide enquiry report dt.04.09.2017 by holding the petitioner guilty of misconduct.

3(d). The petitioner was issued show cause notice dt.21.11.2017 duly enclosing the copy of the enquiry report to make any representation against the findings of the enquiry officer within seven days. The petitioner received show cause notice & submitted his representation dt.28.02.2017. The Respondent Company having gone through the past record and representation, found no extenuating circumstances to take a lenient view, was constrained to impose capital punishment and the petitioner was dismissed from the services of the Respondent Company vide Office Order dt.19.04.2019 w.e.f 25.04.2019, which is legal and valid. As per Article-311 (1) of Constitution of India, no person who is a member of a Civil Service of the Union or an All India Service or Civil Service of a State or holds a civil post under the Union or State shall be dismissed or removed by an authority subordinate to that by which he was appointed. This makes it clear that the provision is applicable to only to the person holding civil post and as per the Article 311(2), no such person as aforesaid shall be dismissed or removed or reduced in rank except after an enquiry in which he has been informed the charges against him and given a reasonable opportunity of being heard in respect of those charges. Provided that where it is proposed after such enquiry to impose upon him any such penalty, such penalty may be imposed on the basis of the evidence adduced during such enquiry & it shall not be necessary to give such person any opportunity of making representation on the penalty imposed. Hence, issuing of the show cause notice by proposing punishment is not a requirement of the principles of natural justice. The respondent company's

standing orders which were approved as per the provisions of Industrial Employment (Standing Orders) Act, 1946, do not speak about issue of show cause notice proposing the punishment to be imposed on the delinquent employee. There is no victimization and the punishment of dismissal is not harsh and the Respondent Company was very much correct in imposing the punishment of dismissal because of the misconduct and the reckless attitude of the Petitioner. Further, s per the provision under clause No. 29 of the Company standing orders, an employee has a right to appeal against the penalty order imposed on him to the Appellate Authority i.e. Director (PA&W) within (45) days of receipt of the order of punishment, where as in case of the petitioner, he did not submitted Appeal to General Manager, APA within (45) days.

3(e). The habitual absenteeism creates lot of indiscipline among the workers, disturb the working system, it will reflect on the co- workers working system and also causing financial burden due to extending the benefits though they are not contributing in improving the production and productivity. Further huge sums are being forced to earmark the provisions for gratuity, etc., in spite of their zero contribution to the organization. The management examined all the possibilities to reduce the punishment, but, the petitioner being a chronic absentee failed to submit any proof in support of his contention. The respondent company could not find any way to take lenient view in this case and as the case of the petitioner was devoid of demerits, the respondent company was constrained to dismiss the petitioner from service.

3(f). The Respondent's company employs more than 40,000 persons, which includes workmen, executives and supervisors. The production results will depend upon the overall attendance and performance of each and every individual. They are interlinked and inseparable. In this regard, if any one remains absent, without prior sanction of leave or without any justified cause, the work to be performed get effected. Such unauthorized absence creates sudden void, which at times is very difficult to fill-up, and there will be no proper planning and already planned schedules get suddenly disturbed without prior notice. That is the reason why the Respondents Company is compelled to take severe action against the unauthorized absentees. In the instant case, the Petitioner is one such unauthorized absentee having failed to improve his attendance and work performance even after being punished earlier. With the advent and implementation of new industrial and economic policies by Central Government as well as company, the Respondent Company cannot go on employing the persons who are chronic absentees, who are burden to the Respondent company. As such, the Respondent company was constrained to dismiss the petitioner for his unauthorized absenteeism through Office order dt.19.04.2019 w.e.f 25.04.2019. Therefore, the respondents prayed to dismiss the petition and not to grant any relief to the petitioner/workman.

4. In support of the claim of the Petitioner/Workman, he got marked Ex.W-1 and Ex.W-2 and on the other side, for the Respondents'-Company Ex.M-1 to Ex.M-8 were marked, with consent of both parties.

5. Heard, the learned counsel for Petitioner/Workman as well as learned counsel for the Respondents'/ Company, besides written arguments.

6. Now the points for consideration are:-

1. Whether the domestic enquiry conducted by the respondent is held valid or not?

2. Whether the charges leveled against the petitioner are proved basing on evidence or not?

3. Whether the dismissal order dt.19.04.2019 is liable to be set aside, if so, the petitioner is entitled for reinstatement with continuity of service with all attendant benefits and full back wages?

If not to what relief is the worker entitled to?"

7. From the pleadings of the Petitioner/Workman and Respondents'/Company, these are the admitted facts that the Petitioner/Workman was working as Badli Filler in Respondents'/ Company and he was dismissed from service for the charges of the unauthorized and habitual absenteeism to duties. Now coming to the documentary evidence of both sides, on behalf of the respondents'/company, Ex.M-1 to Ex.M-8 were marked, wherein, Ex.M-1 and Ex.M-2 are the attested copies of charge sheets issued to petitioner and Ex.M-3 is attested copy of letter acknowledged by the petitioner. Ex.M-4 is attested copy of enquiry proceedings vide enquiry report dt.04.09.2017. Ex.M-5 is attested copy of show cause notice. Ex.M-6 is attested copy of representation submitted by the petitioner. Ex.M-7 is attested copy of dismissal order of petitioner vide Lr.No.RG.3/PER/IR/48/DA-828/1325 and Ex.M-8 is attested copy of name removal letter of the petitioner. On the other side, the petitioner got marked Ex.W-1 and Ex. W-2 on his behalf, wherein, Ex.W-1 is O/c of legal notice/demand letter with RP receipts and Ex.W-2 is postal acknowledgements. The above documents of both sides are not in much dispute by either side.

8. Here, the learned counsel for the respondents'/company strenuously argued that the petitioner was appointed as badli-filler on 12.07.2007, he was a chronic absentee and he had not put the required musters in any calendar year through-out his service. He was issued with charge sheet dt.02.02.2013 under clause 25:31 but no action was taken and he was once again issued Charge Sheets for his absenteeism during the years 2013, 2014, 2015 & 2016 vide Letters dt:02.02.2014, 10.01.2015 and dt:20.01.2016, but no action was taken for the charge sheets. As the petitioner was not attending duties, the respondent company has also conducted counseling on 09.06.2014 and he attended with family members and has given written explanation on 09.06.2014 stating the he has financial problems and he assured

to put in (23) musters in every month thereafter. But he did not change his attitude and failed to attend duties regularly. In the due course as the petitioner failed to put-in required musters, he was again issued a charge sheet dt.25.02.2017 for habitual absenteeism without any sufficient cause and without any sanctioned leave which is misconduct under clause 25.25 & 25.31 of the Respondent Company Standing orders. The relevant clause of standing orders reads as under:

"Clause 25.25 – Habitual late attendance or habitual absence from duty without sufficient cause."

"Clause 25. 31 – Absence from duty without sanctioned leave or sufficient cause or overstaying beyond sanctioned leave."

8(a). The learned counsel for the respondents'/company further argued that the petitioner received the charge sheet and submitted his explanation dt.28.02.2017 which was found not satisfactory. The enquiry notice was issued to the petitioner and he participated in the enquiry proceedings. During the enquiry, he voluntarily accepted the charges levelled against him and stated that due to ill-health and financial problems he could not perform his duties. He further stated that he does not want any help or assistance to conduct the enquiry proceedings and he failed to cross examine the witness. The petitioner was habitual absentee and during the last (12) years, he has not put in (190) musters as required. In the year 2018, he has put in only 8 musters and in the year 2014 he has put in (68) musters in spite of regular counselling. He was irregular to duties and remained absent from duty without any sanctioned leave or sufficient cause and also he had put in below (100) musters from 2012 to 2018 for (07) years continuously. He has not mentioned anything about his ill-health and not produced any documentary evidence relating to his ill-health. The Enquiry Officer conducted enquiry duly following the principles of natural justice and by adducing full and fair opportunity to the petitioner to defend his case. The Enquiry Officer submitted his findings vide enquiry report dt.04.09.2017 by holding the petitioner/workman guilty of charges and misconduct under standing orders.

8(b). The petitioner was issued show cause notice dt.21.11.2017 enclosing the copy of the enquiry report to which he submitted his representation dt.28.02.2017. The Respondent Company having found no extenuating circumstances to take a lenient view, was constrained to impose the punishment of dismissal from service vide Office Order dt.19.04.2019 w.e.f 25.04.2019, which is legal and valid. There is no victimization and punishment of dismissal is not harsh and the Respondent Company was very much correct in imposing the punishment of dismissal because of the misconduct and the reckless attitude of the Petitioner. Further, the habitual absenteeism creates lot of indiscipline among the workers, disturb the working system and also causing financial burden due to extending the benefits though they are not contributing for the production and productivity. Therefore, he prayed to dismiss the petition and not to grant any relief to the petitioner/workman.

9. Per contra, the learned counsel for the Petitioner/ workman argued that the petitioner was appointed as Badli Filler by respondents' company through Office Order dt.20.04.2007. Ever since the date of his appointment, the petitioner was discharging his duties to the utmost satisfaction of all his superiors, without any kind of adverse remarks. He served the respondents' company effectively and rendered (12) years long service, the atmosphere and gases of the said mine did not suit his health and he suffered from chronic ill-health, severe joint pains and body pain from 2014 onwards. He underwent prolonged medical treatment in the respondents' Company Hospitals and other referral hospitals at regular intervals. But, due to underground work, his health was not cured completely and due to the indifferent attitude of the respondents and disregard to his chronic ill-health, he continued to work in the underground on one hand and undergoing treatment frequently on the other hand, due to which, his health completely deteriorated from 2014. Due to the above problems, he could not put-in the required (100) musters during the year 2016. There is no deliberate or intentional absence on the part of the petitioner, there is reasonable and sufficient cause for his not attending to duties regularly and for putting less musters during the charge sheet period of 2016. But, the respondent No.2 dismissed the petitioner from service through Ref. dt.19.04.2019, with effect from 25.04.2019.

9(a). The learned counsel for the Petitioner/ workman further argued that the petitioner submitted his satisfactory explanation dt.28.02.2017 to the charge sheet, participated in the enquiry and deposed the true facts of his ill-health and his family problems. But, the enquiry officer did not properly appreciate the evidence in favour of the petitioner. He improved his attendance during the years 2018 and 2019 and put-in (68) physical muster in (03) months till March 2019. Further, the extremely harsh punishment of dismissal from service is highly excessive and shockingly disproportionate, which amounts to economic death of petitioner. Ever since his unjust dismissal from service, he could not secure any other alternative job and remained unemployed. He lost lively hood and incurred huge debts for his medical and domestic expenses and he is facing lot of hard ship and misery to eke out lively hood for his family members. Therefore, he prayed to the set aside the dismissal Order and to direct the respondents' company to reinstate the petitioner into service, as prayed for.

POINT No.1:

10. In this matter, initially the petitioner/workman has denied the validity and legality of the enquiry report. But, on 05.02.2024 the learned counsel for petitioner filed memo U/Sec.11-A of I.D Act by accepting the procedure of domestic enquiry against the petitioner, hence, this Tribunal holding the domestic enquiry is valid. However, this is a

beneficial legislation and social legislation and in view of settled law, this Tribunal is to re-appreciate the evidence and come to its own conclusion with regard to finding guilty or not. Accordingly, the Point No.1 is answered.

POINT No. 2 & 3:

11. In view of the pleadings of the Petitioner/Workman as well as the Respondents/Company and rival arguments of both sides, now this Court will go into the evidence on record. From a perusal of the record, it is evident that the petitioner absented to duties for (291) days and had put-in only (47) musters during the year 2016, for which charge sheet 25.02.2017 was issued to the petitioner, which is marked as Ex.M-1. Further, the petitioner also absented to duties for (280) days and had put-in only (49) musters during the year 2017, for which charge sheet 06.01.2018 was issued to the petitioner, which is marked as Ex.M-2. Domestic enquiry was conducted regarding the absenteeism of the petitioner during the year 2016 for which Ex.M-1 charge sheet was issued to him. It appears from the proceedings of enquiry under Ex.M-3, that the Petitioner/Workman participated in the domestic enquiry and admitted he absented for (294) days and put in (47) musters only in the year 2016 and pleaded guilty. He further admitted that due to family problems, he could not attend to his duties regularly from 2012 onwards. He repented for his absenteeism to duty and assured that he will put-in (20) musters every month failing which the management can initiate any action against him. The enquiry officer further examined Sri I.Sai Srinivas, Asst. Supdt., and K.Venugopal, Pay Sheet Clerk on behalf of the respondents, who deposed in support of the charges. Further from the Enquiry Report under Ex.M-3, it is clearly evident that the charges were amply proved against the petitioner and he was asked to submit his representation if any, on the enquiry findings report within (07) days vide notice dt.21.11.2017, which is marked as Ex.M-4. The petitioner acknowledged the same and submitted his representation dt.28.02.2017 under Ex.M-6, which is on the same lines of his statement during enquiry. The petitioner admitted that charges and reiterated that due to family problems, he could not attend his duties regularly during the year 2016. The respondents/ company dismissed the petitioner/workman from service vide Office Order dt.19.04.2019 which is marked as Ex.M-7 and the name removal letter dt.25.04.2019 is marked as Ex.M-8. Thus, it is evident from the enquiry report under Ex.M-3 as well as the material on record, that the petitioner had not put in minimum required musters of (190) and he put-in only (47) musters and absented for (294) days, during the year 2016. For which, petitioner submitted that due to ill-health and family problems, he was unable to perform duty regularly during the charge sheet period. Both the enquiry statement of petitioner under Ex.M-3 and his explanation to the show cause notice under Ex.M-6 are on the same lines and they clearly show that the petitioner/workman suffered from family problems during the charge sheet period. However, it is clear that the petitioner has not attended to duties regularly and the charges were proved against him. Therefore, it can be said that the respondents/company has no axe to grind against the petitioner. Hence, this Tribunal has no hesitation to hold that the charges leveled against the petitioner/workman are proved and misconduct of the workman is established basing on the evidence and findings of enquiry officer are not perverse. Moreover, this is not the case of loaded dice situation against the petitioner by the respondents/corporation.

12. Here, the contention of the Petitioner/Workman is that he was appointed in the year 2007 and he served the company for (12) years, this is his very 1st dismissal from service and he hails from a very poor family, he has got no other livelihood and facing untold financial problems, and prayed to consider the case U/Sec.11-A of I.D. Act. In support of the above contentions, the learned counsel for the petitioner/workman has relied upon a decision of the Hon'ble High Court reported in 2012 (1) ALD 220 (DB), wherein their lordships observed that:

"The Industrial Disputes Act, 1947 is a social welfare legislation, which required to be interpreted keeping in view the goals set out in the Preamble and Directive principles of State Policy in Part-IV of the Constitution. Merely because workman approached to Labour Court with delay, relief cannot be denied. No indication in the Act that delay extinguishes right conferred on the workmen under Industrial Law. The Labour Court is conferred with very wide discretion U/Sec.11-A. The Industrial Court conferred with very wide discretion U/Sec.11-A of the Act for granting appropriate relief".

13. Therefore, in view of the above facts and circumstances of the case, if we come to quantum of sentence it is settled law that the discretion of which can be exercised U/Sec.11-A is available only on the existence of certain factors like punishment being disproportionate to the gravity of misconduct so as to disturb the conscience of the Court, or the existence of any mitigating circumstances which require the reduction of the sentence, or the past conduct of the workman which may persuade the Labour Court to reduce the punishment. Therefore, in the present case on hand, a perusal of record, it shows that this is the very 1st dismissal from service of the petitioner. Further, the petitioner submitted that he hail from a very poor family and has got no other livelihood and facing untold financial problems, hence prayed to consider the case U/Sec.11-A of I.D., Act. The petitioner is out of employment from 25.04.2019, he served the respondents/ company for (12) years and this is very 1st dismissal from service. In view of the above circumstances of the case, this Tribunal is of the opinion that the extreme punishment of dismissal from service imposed by the respondents/company against the Petitioner deserves to be set aside since the disciplinary authority cannot be permitted to act arbitrarily and work like a *Roman Knight and it cannot be allowed a fight between David and Goliath* as in the present case on hand.

14. Therefore, in view of the above facts and circumstances and keeping in view of the principle *"temper justice with mercy"* and to meet the ends of justice, this Tribunal is of the opinion that the punishment of dismissal from

service imposed on the Petitioner vide Office Order dt.19.04.2019 under Ex.M-7 deserves to be modified. However, since the charges leveled against the petitioner are proved, the relief is to be molded by this Tribunal appropriately and this Tribunal is of the considered opinion that the petitioner is entitled to be reinstated into service as "Afresh Badli Worker" only. Consequently, the petitioner is not entitled to any back wages, any continuity of service and any attendant benefits, since petitioner might have gainfully employed during pendency of this Industrial Dispute. Hence, the punishment of dismissal from service imposed by the Respondents Company is hereby modified appropriately. Accordingly, the Point No.2 & 3 are answered.

15. **IN THE RESULT,** the petition is partly allowed. The dismissal order dt.19.04.2019 under Ex.M-7 passed by the Respondent No.2 is hereby modified appropriately. The respondents'/company is directed to reinstate the petitioner into service as "Afresh Badli Worker" only, but without any continuity of service, without any attendant benefits and without any back wages. The petitioner is entitled to the salary only from the date of publication this Award. Copy of the Award be sent to the appropriate Government for publication. Both parties shall bear their own costs.

Typed to my dictation, corrected and pronounced by me in the open court, on this the 1st day of March, 2024.

Dr. T. SRINIVASA RAO, Chairman-cum-Presiding Officer,

APPENDIX OF EVIDENCE

WITNESSES EXAMINED

FOR WORKMAN:-	FOR MANAGEMENT:-
-Nil-	-Nil-

EXHIBITS

FOR WORKMAN:-

Ex.W-1	Dt.	02.05.2021	O/c of legal notice/demand letter with RP receipts.
Ex.W-2	Dt.	-	Postal acknowledgements.

FOR MANAGEMENT:-

Ex.M-1	Dt.	25.02.2017	Attested Copy of charge sheet issued to petitioner vide Lr.No. APA/ALP/ R07/(2016)/467
Ex.M-2	Dt.	06.01.2018	Attested Copy of charge sheet issued to petitioner vide Lr.No. APA/ALP/ R07/(2017)/157
Ex.M-3	Dt.	30.08.2017	Attested Copy of letter sent to the petitioner, acknowledged by the petitioner
Ex.M-4	Dt.	-	Attested Copy of Enquiry proceedings vide enquiry report dated:04.09.2017
Ex.M-5	Dt.	21.11.2017	Attested Copy of Show cause notice
Ex.M-6	Dt.	28.02.2017	Attested Copy of representation submitted by the petitioner
Ex.M-7	Dt.	19.04.2019	Attested copy of dismissal order of petitioner vide Lr.No.RG.3/PER/IR/ 48/DA-828/1325
Ex.M-8	Dt.	25.04.2019	Attested Copy of Name Removal letter of the petitioner vide Lr.No.APA/ALP/ P22/1201

नई दिल्ली, 8 मई, 2024

का.आ. 887.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एस.सी.सी.एल.के प्रबंधतंत्र के संबद्ध नियोजको और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण **–** सह **–** श्रम न्यायालय, गोदावरीखानी के पंचाट **(संदर्भ संख्या 12/2022)** को प्रकाशित करती है, जो केन्द्रीय सरकार को **25/04/2024** को प्राप्त हुआ था।

[सं. एल–22013/01/2024-आईआर(सी.एम-II)]

मणिकंदन.एन, उप निदेशक

New Delhi, the 8th May, 2024

S.O. 887.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award **(Ref. No. 12/2022*)*** of the **Central Government Industrial Tribunal-cum-Labour Court, Godavarikhani** as shown in the Annexure, in the industrial dispute between the Management of **S.C.C.L.** and their workmen, received by the Central Government on **25*/04/2024***.

[No. 22013/01/2024-IR (CM-II)]

MANIKANDAN. N , Dy. Director

ANNEXURE

BEFORE THE CHAIRMAN, INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-CUM- ADDL. DIST. & SESSIONS COURT, GODAVARIKHANI.

PRESENT:- **SRI Dr.T.SRINIVASA RAO,**

CHAIRMAN-CUM-PRESIDING OFFICER.

THURSDAY, ON THIS THE 21st DAY OF MARCH, 2024.

I.D.No. 12 of 2022

Between:-

K. Srinivas, S/o. Yellaiah, 46 Years, E.C.No.882907, Ex-Badli Filler, C/o. S.Sanjay Kumar, Advocate, H.No.19-1-103/A, Markandeya Colony, Godavarikhani, District Peddapalli, (Telangana) -505 209.

…Petitioner.

AND

1. The Colliery Manager, Singareni Collieries Company Ltd., K.K-5 Incline, Mandamarri Area, Mandamarri, District: Mancherial (T.S).
2. The General Manager, Singareni Collieries Company Ltd., Mandamarri Area, Mandamarri, District: Mancherial (T.S).
3. The Chairman and Managing Director, Singareni Collieries Company Ltd., P.O: Kothagudem, District: Khammam (T.S).

...Respondents.

This case coming before me for final hearing in the presence of Sri S.Sanjay Kumar, Advocate for the Petitioner and of Sri T. Ravinder Singh, Advocate for the Respondents; and having been heard and having stood over for consideration till this day, the Tribunal delivered the following:-

AWARD

This is a petition filed U/Sec.2-A (2) of I.D. Act, 1947 praying to set aside the dismissal order Ref. No. MMR/PER/D/072/21/3430, dt.20/24.05.2021 passed by Respondent No.2 and to direct the respondents'-company to reinstate the petitioner into service with continuity of service, all other consequential attendant benefits and full back wages.

2. The brief averments of the petition are as follows:-

2(a). It is to submit that the Petitioner/Workman was appointed in the Respondents'-Company initially during the year 1991 as Badli Filler and rendered long service. He put-in more than the (100) required musters per year and his musters from 2014 to 2016 as shown in the charge sheet is furnished here under:-

Sl. No.	Particulars	Total Musters
1.	Musters of 2014	(121) musters
2.	Musters of 2015	(102) musters
3.	Musters of 2016	(101) musters
4.	Musters of 2017	Due to severe ill-health and kidney problem of Smt. Kalvala

5.	Musters of 2018	Narmada - wife, petitioner imparted prolonged treatment to her from 2017-2020 and petitioner sustained fractures to his leg and hand, as such, he could not put-in (100) musters.
6.	Musters of 2019	
7.	Musters of 2020 (Charge sheet year)	

2(b). The petitioner suffered from chronic ill-health and sustained fractures to his leg and hand and he underwent prolonged medical treatment in the respondents' Company Hospitals and other referral hospitals, but, his health was not cured completely. Further, wife of petitioner Kalavala Narmada was suffering from Kidney Problem, chronic ill-health since 2017 and he imparted prolonged treatment to her in the SCCL Hospitals and the respondents referred her to NIMS Hospital and Satya Kidney Centre, Hyderabad, where-at the petitioner imparted prolonged treatment to her. Due to above health problems and COVID-2019, the petitioner could put-in (71) musters and fell short of (29) musters during the year 2020. The petitioner continued to work on one hand and undergoing treatment frequently for himself and his wife on the other hand and he improved his attendance during the years 2018 and 2020. But, the respondent issued charge sheet dt.06.02.2021 alleging:-

"25.25: Habitual late attendance or habitual absence from duty without sufficient cause".

"25.31: Absence from duty without sanctioned leave or sufficient cause or overstaying beyond sanctioned leave".

There is reasonable and sufficient cause for his not attending to duties regularly during the charge sheet period of 2020 and the respondents imparted treatment to the petitioner and his wife Kalavala Narmada in the SCCL Area Hospital and referred her to NIMS Hospital & Satya Kidney Centre, Hyderabad, due to chronic Kidney Problems. She was imparted prolonged treatment during the years 2017-2020. But, the 2nd respondent unjustly dismissed the petitioner from service through Ref. dt.20/24.05.2021.

2(c). The petitioner suffered from severe ill-health and fractures to his leg and hand. Further due to *bilateral flank pain more on left associated with vomiting & Kidney Problem*, wife of the petitioner Smt. Narmada was imparted treatment in the SCCL Area Hospitals. But, since her health condition was not improved, the respondents have referred wife of the petitioner to NIMS Hospital and Satya Kidney Centre, Hyderabad during the years 2018 to 2020. The doctors diagnosed her *"Right Kidney measures 10.8 x 5.5cm. Multiple Calculi (5), largest measuring ≤ 8.4mm noted in upper, mid and lower pole calyces. Left Kidney measures 9.4 x 5cm. One calculus measuring 5mm noted in upper pole calyx. Impression: Bilateral non obstructive renal calculi – Splenomegaly.* Medical documents and discharge summaries of SCCL Area Hospitals, NIMS Hospital, Satya Kidney Centre, other Hospitals and reference letters may kindly be considered by this Court. The 1st respondent served charge sheet to the petitioner on 22.03.2021 and obtained written explanation from him on the same day and a formal domestic enquiry was conducted within (4) days, assuring that he will be allowed to duty. He participated in the enquiry proceedings on 26.03.2021, deposed the facts of ill-health and his family problems and submitted Medical Certificates. But, the enquiry officer did not properly appreciate the documentary and oral evidence; and the findings of the Enquiry Officer are very cryptic vague, biased and perverse. The Respondent No.2 required the petitioner to make representation on the findings report of the Enquiry Officer by letter dt.24.04.2021, to which he submitted his satisfactory explanation. But, the 2nd respondent unjustly dismissed him from service by Ref. dt.20/24.05.2021 straight away, without issuing any prior Show Cause Notice proposing the said capital punishment of dismissal.

2(d). The petitioner's health condition badly deteriorated and he suffered from serious ill-health, during the charge sheeted period. Since his wife was a chronic Kidney Patient, the petitioner imparted prolonged treatment to her at regular intervals. The petitioner's health condition badly deteriorated and he suffered from serious ill health, during the charge sheeted period and there is sufficient and reasonable cause for the petitioner for not attending to duties during charge sheet period and it cannot be termed as misconduct. Further, imposing the capital punishment of dismissal from service on the petitioner without any prior show cause notice proposing the said capital punishment is against the settled Law and contrary to the principles of natural justice. The extremely harsh punishment of dismissal is highly excessive and shockingly disproportionate, which amounts to economic death of the petitioner. Ever since his dismissal from service, the petitioner is out of employment and could not secure any other alternative job inspite of his best efforts. He hails from a very poor family and has no other source of livelihood. Therefore, he prays to set aside the dismissal order dt. dt.20/24.05.2021 passed by the Respondent No.2 and to direct the Respondents'-Company to reinstate him into service with continuity of service, all consequential attendant benefits and full back wages.

3. On the other side the Respondents/Management filed counter by admitting the employment of the Petitioner/Workman with the Respondents'-Company, however, inter-alia contended that since the coal mining industry is a central subject the Appropriate Government for Respondent/Management is Central Government, which established an Industrial Tribunal-cum-Labour Court at Hyderabad from 29.12.2000 for adjudication of industrial

disputes and the Petitioner ought to have approached the said tribunal for the redressal of grievance, if any. But, the Petitioner conveniently avoided filing his petition before the Tribunal established by the Central Government and hence it is not maintainable under law and the same may be dismissed on this ground alone.

3(a). The Respondent Company without prejudice to its rights in respect of the objection raised as above submits that the petitioner was It is submitted that the petitioner initially was appointed as Badli-filler, worked as Coal Filler and dismissed from the service of this respondent company. He was later reappointed in the company on 02.05.2012 in compliance with the Award dt.10.01.2011, passed by Lok Adalath Bench of CGIT, Hyderabad. Further, respondents' company is governed by standing orders, according to section 52(2) of the Mines Act, 1953 an underground employee is required to put in minimum muster of 190 and surface employees has to put to 240 musters. The petitioner being underground employee is expected to put in minimum 190 musters in a calendar year, but from the year 2014 to till the date of dismissal of the petitioner, he did put in 190 musters in any of the calendar year and his attendance was not satisfactory, the details of the attendance put in by the petitioner since from the date of his re-appointment is mentioned below:-

Sl. No.	Year	No. of Musters
1.	2012	133
2.	2013	130
3.	2014	121
4.	2015	102
5.	2016	101
6.	2017	152
7.	2018	94
8.	2019	59
9.	2020	51
10.	2021	20

3(b). The averment of the petitioner that he suffered he suffered from chronic ill-health and sustained fractures to his leg and hand and he underwent prolonged medical treatment in the Company Hospital is incorrect and hence denied. The Respondent Company employs more than 43,600 persons and the production results will depend upon the overall attendance and performance of every individual. If anyone remains absent without prior sanction of leave or without any justified cause, the work to be performed gets effected. Such unauthorized absence creates sudden void, which at times is very difficult to fill-up with substitute, and there will be no proper planning and already planned schedules get suddenly disturbed without prior notice. For that reason every time the company inform its workers to intimate prior to the unit in-charge so that they may arrange substitute and failing to inform will result in to production and burden on the other employees.

3(c). The petitioner remained absent from duties without intimation which constitutes misconduct under Companies approved standing orders No. 25.25 and 25.31. As such charges were leveled and charge sheet No. MMR/KK5/R/007/21/499, dt.06-02-2021 was issued to the petitioner. The relevant clause of standing orders reads as under:

25.25: Habitual Late attendance or habitual absence from duty without sufficient cause.

25.31: Absence from duty without sanctioned leave or sufficient cause or overstaying beyond sanctioned leave.

The respondents' company is providing medical facilities to its employees and their dependants as In and Out-patients through its Hospitals and if required the patients will be referred to higher centers for further treatment and diagnosis. In the same manner, the petitioner was also extended medical facilities by the respondents' company for ailments which he was suffering for.

3(d). Enquiry into the charges leveled against the petitioner was conducted by the Enquiry Officer on 26.03.2021 and the Petitioner has participated in the enquiry proceedings. He was given full and fair opportunity to defend his case. In his deposition before the Enquiry Officer, the petitioner himself admitted that he remained absent on the dates mentioned in the charge sheet and admitted his mistake and added that he remained absent due to ill-health of himself and his wife. However, he did not submit any other documentary evidence about the alleged ill health which prevented him from remaining absent from duties during the entire absenteeism period. The Enquiry Officer gave him opportunity to adduce evidence and to produce documentary evidence; witnesses in support of his claim, but the Petitioner did not submit documentary evidence and not produced witness. The Enquiry Officer has given fair

findings basing on the documents and oral evidence given by petitioner and his finding is not vague. The enquiry was conducted by the Enquiry Officer following all the principles of natural justice and the petitioner did not raise any objections as to the conduct of enquiry proceedings at the time of enquiry and signed on the report submitted by the Enquiry Officer. The copies of enquiry report and proceedings were sent to the Petitioner No.MMR/PER/D/072/21/2705, dated 24.04.2021, to which he submitted a representation dt.30.04.2021 wherein he mentioned that that he and his wife were suffering from ill-health and hence he remained absent to duties. Even at this stage too, the petitioner did not substantiate with valid documentary evidence about the alleged ill-health which he and his wife were suffering. Hence, the respondents' company was constrained to impose the capital punishment and dismissed the petitioner from service vide Ref. No. MMR/PER/D/072/21/3430, dt.20/24.05.2021 and his Appeal was rejected confirming the dismissal order and communicated to the petitioner vide letter CRP/PER/IR/D/90/1186, dt.24.09.2021.

3(e). The Petitioner was given number of opportunities to correct himself and to be regular to his duties by imposing minor penalties such as issued Warning letter for the unauthorized absenteeism during the calendar year 2017, fine of Rs.2000/- for unauthorized absenteeism during the calendar year 2018 and stoppage of one increment without cumulative effect for the absenteeism during the calendar Year 2019. But, the petitioner has failed to improve his attendance and resorted to unauthorizedly absent for duty during the calendar year 2020. The petitioner has put-in 100 musters or more only in 05 occasions from the year 2012-2016 and from the year 2017 to till date of dismissal i.e., till 24.05.2021 he has put in below 100 musters continuously. The company has given many opportunities to the petitioner with a hope that he may change and attend to his duties. Even after giving opportunities to improve his attendance, the petitioner continued his absenteeism continuously and there is no improvement in the attendance. As no other go, the company issued charge sheet to the petitioner after giving all the opportunities and it is the Petitioner's misconduct which compelled the Respondent/ Management to impose penalty of dismissal which cannot be termed as unjust. The Respondent management cannot be held responsible for the alleged huge debts and unemployment. The other allegations of the petition are denied and Respondents'-Company prayed to dismiss the petition, without granting any relief to the petitioner.

4. In support of the claim of the Petitioner/Workman, he got examined himself as WW-1 and got marked Ex.W-1 to Ex.W-21 on his behalf. On the other side for the Respondents'-Company Ex.M-1 to Ex.M-8 were marked, with consent of the petitioner/workman.

5. Arguments of the learned counsel for Petitioner/workman as well as the learned counsel for the Respondents/Management heard. Perused the record produced before this Tribunal, rival arguments and citations.

6. ***Now the points for consideration are:-***

1. Whether the domestic enquiry conducted by the respondents is held valid or not?

2. Whether the charges leveled against the petitioner are proved basing on evidence or not?

3. Whether the dismissal order dt.20/24.05.2021 is liable to be set aside, if so, the petitioner is entitled to reinstatement with continuity of service with all attendant benefits and full back wages?

If not to what relief is the worker entitled to?"

7. From the pleadings of the Petitioner/Workman and Respondents' Company, these are the admitted facts that the petitioner/workman worked as Badli-Filler (Underground) in the Respondents'-Company and he was dismissed from service by order dt.20/24.05.2021. Now coming to the documentary evidence on both sides, on behalf of the Respondents'/Company Ex.M-1 to Ex.M-8 were marked, wherein, Ex.M-1 is attested copy of letter of R-1 for taking disciplinary action against petitioner and Ex.M-2 is attested copy of service and other particulars of petitioner (Proforma-A). Ex.M-3 is attested copy of charge sheet dt.06.02.2021 issued to petitioner and Ex.M-4 is attested copy of acknowledgment. Ex.M-5 is attested copy of explanation to the charge sheet submitted by the petitioner. Ex.M-6 is attested copy of Enquiry Notice to the petitioner and Ex.M-7 is attested copy of Muster particulars of petitioner from January 2020 to December 2020. Ex.M-8 is Disciplinary proceedings of Medical Board Lr.No.RKP/MED/W/22/ 9463 and OP Receipt.

7(a). On the other side, the petitioner himself was got examined as WW-1 and got marked Ex.W-1 to W-21 on his behalf, wherein, Ex.W-1 is Dismissal Order issued by R-2 and Ex.W-2 is Name Removal memo issued by R-1. Ex.W-3 is Pay Slip of December 2020 showing (71.50) yearly total musters during the year 2020. Ex.W-4 is Ultra sonogram of the abdomen report of Smt.Narmada, wife of petitioner, issued by SCCL Area Hospital, RG-I. Ex.W-5 is Discharge Summary of Smt.Narmada, wife of petitioner, issued by SCCL Area Hospital, RG-I. Ex.W-6 is OPD Card of Smt.Narmada, wife of petitioner, issued by Satya Kidney Centre, Hyderabad. Ex.W-7 is Discharge summary of inpatient treatment from 09.05.2018 to 14.05.2018, of Satya Kidney Centre & Super Specialty Hospital, Hyderabad. Ex.W-8 is Medical Treatment and Prescription of SCCL Area Hospital, Ramagundam to wife of petitioner from 26.01.2019 to 08.06.2020. Ex.W-9 is Medical Treatment & Prescription of SCCL Area Hospital, Ramagundam, for

wife of the petitioner from 02.11.2019 to 07.01.2020. Ex.W-10 is Discharge Card of inpatient treatment from 08.11.2019 to 14.11.2019 of SCCL Group of hospitals, to petitioner. Ex.W-11 is Discharge Card of inpatient treatment from 07.01.2020 to 09.01.2020 of SCCL Group of Hospitals, for Narmada, wife of the petitioner. Ex.W-12 is Medical treatment by Ambica Hospital, Godavarikhani to wife of petitioner from 12.10.2020 to 13.11.2020. Ex.W-13 is Blood Examination Report, Bio-Chemical Report & other reports of wife of petitioner. Ex.W-14 is Ultrasound Scan of Whole Abdomen Report of wife of petitioner by Aditya Diagnostics, CT Scan Centre. Ex.W-15 is Blood Examination Report, Bio-Chemical Report & other reports of wife of petitioner. Ex.W-16 is Medical treatment and reports of Ambica Hospital, Godavarikhani of wife of petitioner. Ex.W-17 is Blood Examination Report, Bio-Chemical Report & other reports of wife of petitioner. Ex.W-18 is Ultrasound Scan of Whole Abdomen & Pelvis Report of wife of petitioner by Lotus Scan Centre. Ex.W-19 is Complete Blood Picture report of Sigma Clinical Laboratory, Godavarikhani. Ex.W-20 is Appeal rejection order issued by Director (PA&W) and Ex.W-21 is O/c of Demand Letter of the petitioner.

8. Here, the learned counsel for the respondents'-company has strenuously argued that since the coal mining industry is a central subject the Appropriate Government for Respondents/Management is Central Government, which established Central Govt. Industrial Tribunal-cum-Labour Court at Hyderabad for adjudication of Industrial Disputes and the Petitioner ought to have approached the said Tribunal for the redressal of grievance, if any. But, the Petitioner conveniently avoided filing his petition before the Tribunal established by the Central Government and hence it is not maintainable under law and the same may be dismissed on this ground alone.

8(a). The learned counsel for the respondents'-company argued that the petitioner was initially was appointed as Badli-filler in the year 1991, he worked as Coal Filler and was dismissed from the service of this respondent company. He was later reappointed in the company on 02.05.2012 in compliance with Award, dt.10.01.2011 and he being an underground employee is expected to put–in minimum 190 Musters in a calendar year, but, he was not regular to his duties and in no year he had put in the required 190 musters. The contentions of the Petitioner that he suffered from chronic ill-health and sustained fractures to his leg and hand and he underwent prolonged medical treatment in the Company Hospital are incorrect. If he was really suffering from ill health, it becomes his primary responsibility to report sick in Colliery Hospital or he should have informed to unit officers about his incapability to attend duties and he would have got leave or loss of pay leave but he did not inform anything. The Respondent Company employs more than 43,600 persons and the production results will depend upon the overall attendance and performance of every individual. If any one remains absent without prior sanction of leave or without any justified cause, the work to be performed get effected. Such unauthorized absence creates sudden void, which at times is very difficult to fill-up with substitute, and there will be no proper planning and already planned schedules get suddenly disturbed without prior notice. For that reason every time the company inform its workers to intimate prior to the unit in-charge so that they may arrange substitute and failing to inform will result in to production and burden on the other employees.

8(b). The learned counsel for the respondents'-company further argued that the petitioner had put in 51 musters only and on all other days in the year 2020 he remained absent from duties without intimation. As the above act amounted to misconduct under Company Standing Orders No. 25.25 & 25.31, he was issued charge sheet dt.06-02-2021 for absenteeism for the year 2020, it was received by him on 22.03.2021 and he submitted his explanation dt.23.03.2021. The Petitioner did not report sick in Company's Hospitals during the entire absenteeism period. Enquiry into the charges leveled against the petitioner was conducted by the Enquiry Officer on 26.03.2021 and the Petitioner has participated in the enquiry proceedings. He was given full and fair opportunity to defend his case. In his deposition before the Enquiry Officer, the petitioner admitted that he remained absent on the dates mentioned in the charge sheet, admitted his mistake that he remained absent due to his ill-health and of his wife. However, he did not submit any other documentary evidence about the alleged ill-health which prevented him from remaining absent from duties during entire absenteeism period. Copies of enquiry report and proceedings were sent to the petitioner to enable him to submit his written representation against the findings contained in the enquiry report and he submitted his representation dt.30.04.2021 wherein he mentioned that he and his wife were suffering from ill-health and hence he remained absent to duties. Even at this stage also, the petitioner did not substantiate with valid documentary evidence about the alleged ill-health which he and his wife were suffering. Hence, the respondents' company was constrained to impose capital punishment and dismissed from service vide office order dt.20/24.05.2021 and his Appeal was rejected by Director (PA&W) vide letter dt.24.08.2021/24.09.2021.

8(c). The learned counsel for the respondents'-company also argued that the petitioner was given number of opportunities to correct himself and to be regular to his duties by imposing minor penalties such as such as issued Warning letter for the unauthorized absenteeism during the Calendar Year 2017, fine of Rs.2000/- for the unauthorized absenteeism during the Calendar Year 2018 and stoppage of one increment without cumulative effect for the unauthorized absenteeism during the Calender Year 2019. But, the petitioner has failed to improve his attendance and resorted to unauthorizedly absent for duty during the calendar year 2020. The petitioner put in 100 musters or more only in 05 occasions from the year 2012-2016 and from the year 2017 to till date of dismissal i.e., 24.05.2021 he has put in below 100 musters continuously. Even after giving opportunities to improve his attendance, the petitioner continued his absenteeism and there is no improvement in the attendance. The Petitioner's

misconduct compelled the Respondents /Management to impose penalty of dismissal which cannot be termed as unjust. The petitioner not utilized the opportunities given by the company and not improved his attendance. Hence, the Respondent Company dismissed him from service vide order dt.20/24.05.2021**,** which is justified. Hence, he prayed to dismiss the petition, without granting any relief.

9. Per contra, on the point of jurisdiction, the learned counsel for the Petitioner/workman contended that as per the Division Bench Judgment of the Hon'ble High Court reported in 1997 (III) LLJ (Supp.) 11, Between: U. Chinnappa Vs. Cotton Corporation of India, this Tribunal has jurisdiction over Singareni Collieries Company Ltd., to entertain the Industrial Dispute raised by the petitioner/workman though the appropriate Govt. is Central Govt., The petitioner need not raise the Industrial Dispute compulsorily before the Central Govt. Industrial Tribunal, Hyderabad alone, as contended by the respondents' company. Hence, this I.D petition filed by petitioner/ workman is well maintainable before this Tribunal for adjudication of the dispute on merits.

9(a). The learned counsel for the Petitioner/workman argued that the Petitioner/Workman was initially during the year 1991 as Badli Filler and rendered long service and he was re-appointed in the Company 2012 in compliance with the Award of CGIT, Hyderabad. He was put-in more than the (100) required musters per year and his musters from 2014 to 2016 as shown in the charge sheet. He suffered from chronic ill-health and sustained fractures to his leg and hand and he underwent prolonged medical treatment in the respondents' Company Hospitals and other referral hospitals, but, his health was not cured completely. Further, wife of the petitioner Kalavala Narmada was suffering from Kidney Problem, chronic ill-health since 2017 and he imparted prolonged treatment to her in the SCCL Hospitals and the respondents referred her to NIMS Hospital and Satya Kidney Centre, Hyderabad, where-at the petitioner imparted prolonged treatment to her. Due to above health problems and COVID-2019, the petitioner could put-in (71) musters and fell short of (29) musters during the year 2020. The petitioner continued to work on one hand and undergoing treatment frequently for himself and his wife on the other hand and he improved his attendance during the years 2018 and 2020. There is there is reasonable and sufficient cause for his not attending to duties regularly during the charge sheet period of 2020 and the respondents imparted treatment to the petitioner and his wife Kalavala Narmada in the SCCL Area Hospital and referred her to NIMS Hospital & Satya Kidney Centre, Hyderabad, due to chronic Kidney Problems. She was imparted prolonged treatment during the years 2017-2020. But, the 2nd respondent unjustly dismissed the petitioner from service through Ref. dt.20/24.05.2021.

9(b). The learned counsel for the Petitioner/workman further argued that due to *bilateral flank pain more on left associated with vomitings & Kidney Problem*, wife of the petitioner Smt.Narmada wife of the petitioner was imparted treatment in the SCCL Area Hospitals. But, since her health condition was not improved, the respondents have referred wife of the petitioner to NIMS Hospital and Satya Kidney Centre, Hyderabad during the years 2018 to 2020. The doctors diagnosed her *"Right Kidney measures 10.8 x 5.5cm. Multiple Calculi (5), largest measuring* $\leq$ *8.4mm noted in upper, mid and lower pole calyces. Left Kidney measures 9.4 x 5cm. One calculus measuring 5mm noted in upper pole calyx. Impression: Bilateral non obstructive renal calculi – Splenomegaly.* Medical documents and discharge summaries of SCCL Area Hospitals, NIMS Hospital, Satya Kidney Centre, other Hospitals and reference letters may kindly be considered by this Court. The 1st respondent served charge sheet to the petitioner on 22.03.2021 and obtained written explanation from him on the same day and a formal domestic enquiry was conducted within (4) days, assuring that he will be allowed to duty. He participated in the enquiry proceedings on 26.03.2021, deposed the facts of ill-health and his family problems and submitted Medical Certificates. But, the enquiry officer did not properly appreciate the documentary and oral evidence in favour of the petitioner; and findings of the Enquiry Officer are very cryptic vague, biased and perverse. The 2nd respondent required the petitioner to make representation on the findings report of the Enquiry Officer by letter dt.24.04.2021, to which he submitted his satisfactory explanation. But, the 2nd respondent dismissed him from service by Ref. dt.20/24.05.2021 straight away, unjustly, without issuing any prior Show Cause Notice proposing the said capital punishment of dismissal from service. His health condition was badly deteriorated and he suffered from serious ill health, during the charge sheeted period and there is sufficient and reasonable cause for the petitioner for not attending to duties during charge sheet period and it cannot be termed as misconduct.

9(c). The learned counsel for the Petitioner/workman further argued that imposing the capital punishment of dismissal from service without any prior show cause notice is against the principles of natural justice. The extremely harsh punishment of dismissal is highly excessive and shockingly disproportionate, which amounts to economic death of the petitioner. Ever since his dismissal from service, the petitioner is out of employment and could not secure any other alternative job in spite of his best efforts. He hails from a very poor family and has no other source of livelihood. Therefore, he prayed to set aside the dismissal order and direct the Respondents'-Company to reinstate the petitioner/workman into service with continuity of service, all attendant benefits and full back wages.

POINT No. 1:

10. Here, on the point of territorial jurisdiction of this Tribunal, it is settled Law that as per the Division Bench Judgment of the Hon'ble High Court reported in 1997 (III) LLJ (Supp.) 11, Between: U. Chinnappa Vs. Cotton Corporation of India, this Tribunal has got every jurisdiction to entertain the Industrial Dispute raised by the petitioner/workman who was an employee of Singareni Collieries Company Ltd., Even though, the Central Govt. is

appropriate Govt., for the respondents'-Company, the petitioner need not compulsorily raise the Industrial Dispute before the Central Govt. Industrial Tribunal, Hyderabad, as contended by the respondents' company; and he can file this I.D. case before this Tribunal as well. Hence, the contentions of the respondents'-company on the point of jurisdiction of this Tribunal are not sustainable under Law. Accordingly, it is answered in favour of the petitioner/workman and against the respondents' company.

11. Further, in this matter, initially the petitioner/workman denied the validity and legality of the enquiry report. But on 03.10.2023, the learned counsel for petitioner filed memo U/Sec.11-A of I.D Act by accepting the procedure of domestic enquiry. Now the next question is whether the misconduct is proved in the facts of the case and the findings are not perverse. So, this Tribunal is to re-appreciate the evidence and come to its own conclusion with regard to finding guilty or not based on evidence. Accordingly, the Point No.1 is answered.

POINT No. 2 & 3:

12. In view of the pleadings of the Petitioner/Workman as well as Respondents/corporation as well as in view of the rival arguments of their respective counsel now this Court will go into the evidence on record. Admittedly, the petitioner was dismissed from service by Proc. dt.20/24.05.2021 wherein it is alleged that the petitioner was absent from duty without sanctioned leave or sufficient cause during the year 2020. From a perusal of the record, it shows that Charge Sheet dt.06.02.2021 was issued to the petitioner, which is marked as Ex.M-3. It is evident from the charge sheet that the petitioner absented to duties for 220 days and had put-in only 51 actual musters during the year 2020. It further shows the musters of the petitioner during the years from 2015 to 2019 and it appears that he put in 102 muster during the year 2015 and 101 musters during the year 2016, 52 musters during the year 2017, 94 musters during the year 2018 and 59 musters during the year 2019. The petitioner submitted his explanation to charge sheet, which is marked as Ex.M-5 wherein he stated that he suffered from ill-health and sustained fractures to his right hand and due to heavy weight lifting while performing duties, there is swelling and pain. He further stated that his wife is a kidney patient and suffering from ill-health due to which he was imparting treatment to her and hence he could not attend to his duties during the year 2020.

12(a). Further, a perusal of Ex.M-6 enquiry call letter shows that domestic enquiry was scheduled to be conducted on 26.03.2021 and as per the pleadings of both parties the Petitioner/Workman participated in the domestic enquiry and deposed that he absented from duty from January 2020 due to his ill-health and of his wife. He assured that he will attend to his duties regularly and requested to take a lenient view. The muster particulars of petitioner from January 2020 to December 2020, which is marked as Ex.M-7 shows 92 actual musters, 20 leaves and 144 absent days of the petitioner. From the pleadings of both parties, it is evident that the petitioner absented to duty without sanctioned leave and he accepted charge, though pleaded that due to health problems of himself and his wife, he remained absent to his duties. The domestic enquiry file in original together with enquiry proceedings and Enquiry Report with service particulars of the petitioner were submitted to the respondent No.2 General Manager, vide letter dt.30.03.2021, which is marked as Ex.M-1. Further, the service particulars of the petitioner produced before this Tribunal under Ex.M-2 it is evident that the petitioner put-in 102 musters during the 2015, 101 musters during the year 2016, 92 musters during the year 2020 i.e., charge sheet year. Further, it appears from Ex.M-2 service particulars, that the petitioner was granted sick leave for 45 days during the year 2017, and 15 days each during the years 2018 to 2021. The proceedings dt.23.08.2022 of the Dy. Chief Medical Officer, SCCL Area Hospital, Ramakrishnapur is marked as Ex.M-7, wherein, O.P records of the petitioner/workman dt.15.11.2019 were furnished to respondent No.2 General Manager. Dismissal order dt.20/24.05.2021 is marked as Ex.W-1 and appeal submitted by the petitioner was rejected by the Director (PA&W) by order dt.24.08.2021/24.09.2021, which is marked as Ex.W-40.

12(b). Apart from the above, the petitioner/workman submitted several medical prescriptions and treatment imparted to him and his wife Smt. Nirmala, which are marked as Ex.W-3 to Ex.W-19. Most of the medical documents submitted by the petitioner were issued by the SCCL Hospitals and other referral hospitals such as, Satya Kidney Centre and NIMS Hospital, Hyderabad, which prima-facie show that the petitioner and his wife Smt. Nirmala suffused from ill-health during the years 2017 to 2020. The petitioner explained that due to his own ill-health and ill-health of his wife, he absented to duties during the charge sheeted year of 2020 and prayed to consider his case sympathetically. However, the respondents/company dismissed the petitioner/workman from service by Proc. dt.20/24.05.2021 which is marked as Ex.W-1. Thus, it is evident from the pleadings of both parties and material on record that the petitioner had not put in minimum required musters of 190 and he put-in less musters during the year 2020. For which, petitioner submitted that due to ill-health he was unable to perform duty regularly during the charge sheet period and submitted several medical prescriptions and reports, which are marked as Ex.W-3 to Ex.W-19. Further, the above medical documents of the petitioner lend support to the defense put-forth by the petitioner and his explanation to the charge sheet under Ex.M-5. These documents clearly show that the petitioner/workman and his wife have suffered from ill-health during the charge sheet period and hence the defense put-forth by him is plausible. However, it is clear that the petitioner has not attended to duties regularly and the charge was proved against him. Therefore, it can be said that the respondents/company has no axe to grind against the petitioner. Hence, this Tribunal has no hesitation to hold that the charge leveled against the petitioner/workman is proved and misconduct of the workman is established basing on the evidence and the findings of enquiry officer are not perverse. But, at the same time much gravity cannot be attributed to the petitioner since his ill-health and treatment imparted by SCCL and other

referral hospitals is supported by the medical documents produced before this Tribunal which shows reasonable cause for the petitioner's absence during the charge sheet period.

13. Here, the contention of the Petitioner/Workman is that he was appointed in the year 1991 and he served the company for several years. The petitioner suffered from chronic ill-health and sustained fractures to his leg and hand and he underwent prolonged medical treatment in the respondents' Company Hospitals and other referral hospitals. Further, his wife Smt.Nirmala suffered from serious ill-health and kidney problem and since her health condition was not improved, the respondents' company has referred her to the NIMS Hospital and Satya Kidney Centre, Hyderabad during the years 2018 to 2020. The doctors diagnosed her *"Right Kidney measures 10.8 x 5.5cm. Multiple Calculi (5), largest measuring ≤ 8.4mm noted in upper, mid and lower pole calyces. Left Kidney measures 9.4 x 5cm. One calculus measuring 5mm noted in upper pole calyx. Impression: Bilateral non obstructive renal calculi – Splenomegaly.* He hails from a very poor family, he has got no other livelihood and facing untold financial problems, and prayed to consider the case U/Sec.11-A of I.D. Act. In support of his contentions, the learned counsel for the petitioner relied upon the following citations:-

1) HON'BLE SUPREME COURT JUDGMENT REPORTED IN AIR 1988 SC 303 – Between: Scooter India Ltd, Labour Court, Lucknow & ors:

In this case, the Labour Court while holding that enquiry had conformed to statutory prescriptions and principles of natural justice, yet held that order of termination was not justified and ordered for reinstating employee with 75% back wages. Wide powers are vested in Labour Court or Tribunal. Labour Court can temper justice with mercy and give an opportunity to an erring workman to reform himself. Order of Labour Court granting relief of reinstatement with 75% back wages was upheld by Hon'ble Supreme Court.

2) HON'BLE HIGH COURT JUDGMENT IN W.A. No.1101/2008 and W.P.No.7671 of 2000, dt.07.04.2009 D.B. Judgment:

In this case, the Labour Court granted reinstatement with continuity of service and half-of back wages. The Hon'ble High Court held that since the petitioner remained unemployed from the date of removal, modified the award of Labour Court by granting full back wages.

3) Judgment of Hon'ble Supreme Court, dt.24-08-2009 in Civil Appeal No.5762 of 2009, Between: Coal India Ltd. & Anr Vs. Mukul Kumar Choudari and others.

4) Judgment of Hon'ble Supreme Court dt.14-05-2009 Between: Jagadish Singh Vs. Punjab Engineering College and others.

In the above Judgments of the Hon'ble Supreme Court at Sl.No.3 & 4 reveals that the Hon'ble Court held that the punishment should be in commensurate with the gravity of charges and not shockingly disproportionate.

13(a). Further, the learned counsel for the petitioner/workman has relied upon a decision of the Hon'ble High Court reported in 2012 (1) ALD 220 (DB), wherein their lordships observed that:

> *"The Industrial Disputes Act, 1947 is a social welfare legislation, which required to be interpreted keeping in view the goals set out in the Preamble and Directive principles of State Policy in Part-IV of the Constitution. The Labour Court is conferred with very wide discretion U/Sec.11-A. The Industrial Court conferred with very wide discretion U/Sec.11-A of the Act for granting appropriate relief".*

14. Therefore, in view of the above decisions and the facts and circumstances of the case, if we come to quantum of sentence it is settled law that the discretion of which can be exercised U/Sec.11-A is available only on the existence of certain factors like punishment being disproportionate to the gravity of misconduct so as to shock the conscience of the Court, or the existence of any mitigating circumstances which require the reduction of the sentence, or the past conduct of the workman which may persuade the Labour Court to reduce the punishment. A perusal of record shows that the petitioner and his wife have suffered from ill-health and submitted several medical documents showing the treatment imparted to them by SCCL Hospitals and other referral hospitals. Further, the petitioner submitted that he hails from a very poor family and has got no other livelihood and facing untold financial problems, hence prayed to consider the case U/Sec.11-A of I.D., Act. The petitioner is out of employment from the year 2021 and there is reasonable and sufficient cause for his absence to duties during charge sheet period, as the ill-health suffered by the petitioner is supported by the medical record of respondents' SCCL-company produced before this Tribunal. Further, it appears from the counter filed by the respondents' company that during the previous years from 2012 to 2017, the petitioner put-in musters of 133, 130, 121, 102, 101 and 152 respectively. In view of the above mitigating circumstances of the case, this Tribunal is of the opinion that the extreme punishment of dismissal from service imposed by the respondents'/ company against the petitioner deserves to be set aside since the disciplinary authority cannot be permitted to act arbitrarily and work like a *Roman Knight* and it cannot be allowed a *fight between David and Goliath* as in the present case on hand.

15. Therefore, in view of the above facts and circumstances and keeping in view of the principle *"temper justice with mercy"* and to meet the ends of justice, this Tribunal is of the considered opinion that the punishment of dismissal from service deserves to be set aside. However, since the charge leveled against the petitioner are proved, the relief is

to be molded by this Tribunal appropriately and considering the mitigating circumstances discussed supra, the petitioner is entitled to be reinstated into service with continuity of service only. But, the petitioner is not entitled to any back wages and any attendant benefits during the intervening period from the date of his dismissal to till date since he might have gainfully employed during pendency of this Industrial Dispute. Hence, the punishment of dismissal from service imposed by the Respondents' Company is hereby modified appropriately. Accordingly, the Point No.2 & 3 are answered.

16. **IN THE RESULT,** the petition is partly allowed. The dismissal order dt.20/24.05.2021, under Ex.W-1 passed by the Respondent No.2 is hereby modified appropriately. The respondents'/company is directed to reinstate the petitioner into service with continuity of service only, but, without any attendant benefits and without any back wages during the intervening period from the date of his dismissal to till date. The petitioner is entitled to the salary only from the date of publication this Award. Copy of the Award be sent to the appropriate Government for publication. Both parties shall bear their own costs.

Typed to my dictation, corrected and pronounced by me in the open court, on this the 21st day of March, 2024.

Dr. T. SRINIVASA RAO, Chairman-cum-Presiding Officer

APPENDIX OF EVIDENCE

WITNESSES EXAMINED

FOR WORKMAN:- FOR MANAGEMENT:-

W.W-1 K. Srinivas, Petitioner. -Nil-

EXHIBITS

FOR WORKMAN:-

Ex.W-1	Dt.	20/ 24.05.2021	Dismissal Order issued by R-2,
Ex.W-2	Dt.	25.05.2021	Name Removal memo issued by R-1,
Ex.W-3	Dt.	31.12.2020	Pay Slip of December 2020 showing (71.50) yearly total musters during the year 2020.
Ex.W-4	Dt.	13.07.2017	Ultrasonogram of the abdomen report of Smt Narmada, wife of petitioner, issued by SCCL Area Hospital, RG-I.
Ex.W-5	Dt.	14.07.2017	Discharge Summary of Smt Narmada, wife of petitioner, issued by SCCL Area Hospital, RG-I.
Ex.W-6	Dt.	09.05.2018	OPD Card of Smt Narmada, wife of petitioner, issued by Satya Kidney Centre, Hyderabad.
Ex.W-7	Dt.	14.05.2018	Discharge summary of inpatient treatment from 09.05.2018 to 14.05.2018, of Satya Kidney Centre & Super Specialty Hospital, Hyderabad.
Ex.W-8	Dt.	26.01.2019	Medical Treatment & Prescription of SCCL Area Hospital, Ramagundam to wife of the petitioner from 26.01.2019 to 08.06.2020.
Ex.W-9	Dt.	02.11.2019	Medical Treatment & Prescription of SCCL Area Hospital, Ramagundam, for wife of the petitioner from 02.11.2019 to 07.01.2020.
Ex.W-10	Dt.	14.11.2019	Discharge Card of inpatient treatment from 08.11.2019 to 14.11.2019 of SCCL Group of hospitals, to petitioner.
Ex.W-11	Dt.	09.01.2020	Discharge Card of inpatient treatment from 07.01.2020 to 09.01.2020 of SCCL Group of Hospitals, for Narmada, wife of the petitioner.
Ex.W-12	Dt.	12.10.2020	Medical treatment by Ambica Hospital, Godavarikhani to wife of petitioner from 12.10.2020 to 13.11.2020.

Ex.W-13	Dt.	-do-	Blood Examination Report, Bio-Chemical Report & other reports of wife of petitioner.
Ex.W-14	Dt.	-do-	Ultrasound Scan of Whole Abdomen Report of wife of petitioner by Aditya Diagnostics, CT Scan Centre.
Ex.W-15	Dt.	13.11.2021	Blood Examination Report, Bio-Chemical Report & other reports of wife of petitioner.
Ex.W-16	Dt.	15.11.2021	Medical treatment and reports of Ambica Hospital, Godavarikhani of wife of petitioner.
Ex.W-17	Dt.	-do-	Blood Examination Report, Bio-Chemical Report & other reports of wife of petitioner.
Ex.W-18	Dt.	-do-	Ultrasound Scan of Whole Abdomen & Pelvis Report of wife of petitioner by Lotus Scan Centre.
Ex.W-19	Dt.	30.12.2020	Complete Blood Picture report of Sigma Clinical Laboratory, Godavarikhani.
Ex.W-20	Dt.	24.08.2021/ 24.09.2021	Appeal rejection order issued by Director (PA&W).
Ex.W-21	Dt.	20.12.2021	O/c of Demand Letter of the petitioner by RPAD

FOR MANAGEMENT:-

Ex.M-1	Dt.	30.03.2021	Attested Copy of Disciplinary action against petitioner vide Lr.No.MMR/KK5/R/010/2021/1260
Ex.M-2	Dt.	-	Attested Copy of service and other particulars of petitioner (Proforma-A)
Ex.M-3	Dt.	06.02.2021	Attested Copy of charge sheet issued to petitioner vide Lr.No. MMR/KK5/R/007/21/499
Ex.M-4	Dt.	22.03.2021	Attested Copy of charge sheet acknowledgment received by the petitioner
Ex.M-5	Dt.	22.03.2021	Attested Copy of explanation of charge sheet by the petitioner
Ex.M-6	Dt.	22.03.2021	Attested Copy of Enquiry Notice to the petitioner vide Lr.No.MMR/KK5/R/010/2021/1127
Ex.M-7	Dt.	-	Attested Copy of Muster particulars of petitioner from Jan 2020 to Dec 2020
Ex.M-8	Dt.	23.08.2022	Disciplinary proceedings of Medical Board Lr.No. RKP/ MED/ W/22/9463 & (OP Receipt)

नई दिल्ली, 8 मई, 2024

का.आ. 888.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एस.सी.सी.एल.के प्रबंधतंत्र के संबद्ध नियोजको और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण **– सह –** श्रम न्यायालय, गोदावरीखानी के पंचाट **(संदर्भ संख्या 11/2022)** को प्रकाशित करती है, जो केन्द्रीय सरकार को **25/04/2024** को प्राप्त हुआ था।

[सं. एल–22013/01/2024-आईआर(सी.एम-II)]

मणिकंदन.एन, उप निदेशक

New Delhi, the 8th May, 2024

S.O. 888.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award **(Ref. No. 11/2022*)*** of the **Central Government Industrial Tribunal-cum-Labour Court, Godavarikhani** as shown in the Annexure, in the industrial dispute between the Management of **S.C.C.L.** and their workmen, received by the Central Government on **25*/04/2024*.**

[No. 22013/01/2024-IR (CM-II)]

MANIKANDAN. N , Dy. Director

ANNEXURE

BEFORE THE CHAIRMAN, INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-CUM- ADDL. DIST. & SESSIONS COURT, GODAVARIKHANI.

PRESENT:- **SRI Dr.T.SRINIVASA RAO,**

CHAIRMAN-CUM-PRESIDING OFFICER.

TUESDAY, ON THIS THE 12th DAY OF MARCH, 2024.

I.D.No. 11 of 2022

Between:-

R. Sadanandam, S/o. Murahari, Age:46 Years, E.C.No.2382806, Ex-Badli Filler, C/o. S.Sanjay Kumar, Advocate, H.No.19-1-103/4, Markandeya Colony, Godavarikhani, Dist:Peddapalli,(T.S) – 505209.

…Petitioner.

AND

1. The Colliery Manager, Singareni Collieries Company Ltd., K.K-5 Incline, Mandamarri Area, Mandamarri, District: Mancherial (T.S).
2. The General Manager, Singareni Collieries Company Ltd.,

   Mandamarri Area, Mandamarri, District: Mancherial (T.S).
3. The Chairman and Managing Director, Singareni Collieries Company Ltd., P.O: Kothagudem, District: Khammam (T.S).

...Respondents.

This case coming before me for final hearing in the presence of Sri S.Sanjay Kumar, Advocate for the Petitioner and of Sri T. Ravinder Singh, Advocate for the Respondents; and having been heard and having stood over for consideration till this day, the Tribunal delivered the following:-

AWARD

This is a petition filed U/Sec.2-A (2) of I.D. Act, 1947 praying to set aside the dismissal order Ref.No.MMR/PER/D/072/21/3431, dt.20/24.05.2021 passed by Respondent No.2 and to direct the respondents'-company to reinstate the petitioner into service with continuity of service, all other consequential attendant benefits and full back wages.

2. The brief averments of the petition are as follows:-

2(a). It is to submit that the Petitioner/Workman was appointed in the Respondents'-Company initially during the year 1997 as Badli Filler and rendered long service. During the year 2013, he was appointed as Badli Coal Filler for (1) one year on trial basis as recommended by High Power Committee, by order dt.27.05.2013 and put-in (197) musters during trial period. But, he was terminated from service by Office Order dt.31.5.2014, on completion of one (1) year trial period. Later, he was appointed as Badli Filler by order dt.25.08.2014, posted to Mandamarri Area on dt.04.09.2014 and he put-in more than (100) required musters per year as shown the charge sheet furnished here under:-

1.	Musters of 2013-14 during (01) year trial period.	(197) musters
2.	Musters of 2015	(168) musters
3.	Musters of 2016	(114) musters
4.	Musters of 2020 (Charge sheet year period)	(101) Musters

The petitioner suffered from severe ill-health and piles problem and took prolonged treatment in the SSCL Hospitals and other hospitals during the year 2017 and underwent surgery. Further during the year 2018 and 2019, the petitioner met with accident and sustained fractures to his right hand wrist and right leg and he sustained injuries to his Testicles in the underground mine while on duty. As such, he could put-in (45) musters in 2017 and (28) musters in 2018. Later, he improved his attendance and put-in (80) musters during the year 2019. He was imparted prolonged medical treatment in the respondents' Company Hospitals and other hospitals at regular intervals. Due to health problems and COVID-2019, the petitioner could put-in (101) musters and lock-down (20) musters during the year 2020.

2(b). The petitioner continued to work in the under ground on one hand and undergoing treatment frequently on the other hand and he improved his attendance during the years 2019 and 2020. But, the respondents have issued charge sheet dt.06.02.2021 to the petitioner alleging:-

> *"25.25: Habitual late attendance or habitual absence from duty without sufficient cause".*
>
> *"25.31: Absence from duty without sanctioned leave or sufficient cause or overstaying beyond sanctioned leave".*

There is no deliberate absenteeism on his part and there is reasonable and sufficient cause for his not attending to duties during the charge sheet period of 2020. The respondents imparted treatment to the petitioner in the SCCL Area Hospital and other hospitals. But without considering the true facts, the respondent No.2 dismissed the petitioner from service vide Ref. dt.20/24.05.2021, illegally. He suffered from severe ill-health, chronic piles and he sustained fractures to his right hand wrist and right leg due to accident. Further, he sustained injuries to his Testicles in the underground mine while on duty and SSCL Area Hospital authorities made unfit, imparted treatment to the petitioner for several days and later made him fit for duty during 2017 – 2019 and medical prescriptions, documents and discharge summaries of SCCL and other Hospitals may be considered.

2(c). The respondent No.1 served charge sheet to the petitioner on 19.02.2021, obtained written explanation from him on the next day on 20.02.2021 and a formal domestic enquiry was conducted within a week, assuring that he will be allowed to duty. He participated in the enquiry proceedings on 27.02.2021, deposed true facts of his ill-health, his family problems and submitted Medical Certificates. But, the enquiry officer did not properly appreciate the documentary and oral evidence in favour of the petitioner. The findings of the Enquiry Officer are very cryptic and he gave his vague findings, which are quite biased and perverse. The respondent No.2 required the petitioner to make representation on the findings report of the Enquiry Officer by letter dt.24.04.2021, to which he submitted his satisfactory explanation. But, respondent No.2 dismissed him from service vide Ref. dt.20/24.05.2021 straight away, without issuing any prior Show Cause Notice proposing the punishment of dismissal from service. He preferred Appeal dt.05.06.2021 and moved from pillar to post before the respondents, but there is no response from the company and he was not taken to duty. The petitioner's health condition badly deteriorated and he suffered from serious ill health, during the charge sheeted period. Since his wife was a chronic Kidney Patient, he imparted prolonged treatment to her at regular intervals and there is sufficient and reasonable cause for the petitioner for not attending to duties during charge sheet period and it cannot be termed as misconduct.

2(d). Imposing the capital punishment of dismissal from service on the petitioner without any prior show cause notice proposing the said capital punishment is against the settled Law and contrary to the principles of natural justice. The extremely harsh punishment of dismissal is highly excessive and shockingly disproportionate, which amounts to economic death of the petitioner. Ever since his dismissal from service, the petitioner is out of employment and could not secure any other alternative job inspite of his best efforts. He hails from a very poor family and has no other source of livelihood. Therefore, he prays to set aside the dismissal order dt.20/24.05.2021 passed by the Respondent No.2 and to direct the Respondents'-Company to reinstate him into service with continuity of service, all consequential attendant benefits and full back wages.

3. On the other side the Respondents/Management filed counter by admitting the employment of the Petitioner/Workman with the Respondents'-Company, however, inter-alia contended that the petitioner initially he worked as Badli Filler and dismissed him from the service. Later in compliance of the Memorandum of settlement dt.09.08.2011, the petitioner was re-appointed in the company as Badli Filler (UG) for a period of one year on trial basis vide Office Order dt.20-04-2013. Basing on the satisfactory performance during the one year trial period, he was re-appointed afresh as Badli Filler vide office order dt.25.08.2014. According to section 52(2) of the Mines Act, 1953 an underground employee is required to put in minimum 190 musters and surface employee has to put to 240 musters. The petitioner being underground employee is expected to put in 190 musters in a calendar year, but from the year 2014 to till the date of his dismissal, he did put in 190 musters in any of the calendar year and his attendance was not satisfactory, the details of his attendance is mentioned below:-

Year	2014	2015	2016	2017	2016	2019	2020	2021
Musters	38	168	114	45	28	80	81	12

3(a). That the contention of the petitioner that he suffered from TB severe ill health and chronic piles problems and he underwent prolonged medical treatment in the respondent company hospital is in correct. If the petitioner was really suffering from ill health, it becomes his primary responsibility to report sick in Colliery Hospital or he should have informed to unit officers about his incapability to attend duties and he would have got leave or loss of pay leave but he did not inform anything, without informing anything to his unit officers remained absent to the duties which amounts to un-authorized absenteeism. He had put in 81 musters only in the year 2020 and for remaining days he remained absent from duties without intimation and he was issued charge sheet dt.06.02.2021 with the charges as under:-

25.25: Habitual Late attendance or habitual absence from duty without sufficient cause.

25.31 : Absence from duty without sanctioned leave or sufficient cause or overstaying beyond sanctioned leave.

The petitioner submitted his written explanation on 20.02.2021, in his explanation he mentioned that he was not attended duties in the year 2020 due to health reasons of himself and his wife, but he has not submitted any documentary evidence in support of his claim. Along with this petition, he filed bunch of the documents which are created and most of the documents filed in Sl.No.18 to Sl.No.34 pertains to the years 2017 and issued by Sri Ramanjaneya clinic Mandamarri and Om Shanthi hari clinic Mandamarri. He collected those medical prescriptions from the said clinics by managing them after dismissal, if really he was suffering with ill health, the company providing treatment to its employees in its Hospital, the company appointed highly qualified doctors to provide treatment to its employees and also providing medical facilities to its employees by referring them to Corporate Hospital and also sending to the private hospitals depend on the necessities, if the petitioner is unable to attend the duties the company medical officer will certify the same and the employee will get leave and there is no need to attend the duties. But the petitioner not submitted any report of the company medical officer even he did not inform anything to his unit in charge, he was remained absent from duties without prior information which amount to gross negligence.

3(b). Further the enquiry officer has given full and fair opportunity to the petitioner to submit his defense. The enquiry officer followed all the principles of natural justice and the petitioner not raised any objection to conduct enquiry proceedings. Copy of enquiry report was supplied to petitioner vide letter dt.24.04.2021, to which he submitted representation. He did not submit any documentary evidence about alleged ill-health which prevented him from remaining absent from duties. The enquiry officer given fair findings basing on the documents and oral evidence given by petitioner and his finding is not vague as claimed by the petitioner. He was given number of opportunities to correct himself and to be regular to his duties by imposing minor penalties such as issued fine of Rs. 6,000/- for his unauthorized absenteeism during the calendar year 2018 and stoppage of one increment without cumulative effect for the unauthorized absenteeism during the calendar year 2019. The company given opportunity to the petitioner with hope that he may attend his duties. But, even after giving opportunities to improve his attendance, the petitioner continued his absenteeism and there is no improvement in the attendance. The petitioner preferred appeal to the Director (PA & W) with request to revoke the penalty of dismissal from service. Having gone through the past attendance particulars and given opportunities, as the petitioner not changed his attitude and not improved his attendance, the dismissal order was confirmed vide Ref. dt.22.11.2021.

3(c). The petitioner filed many medical prescriptions and treatment given in Company dispensary. As per the OP records available in the Company dispensary, the dates of unfit of the petitioner are:- 1. The petitioner was unfit on 21.04.2021 (Pain at right hand); 2. He was unfit on 02-02-2021 (Myolgia) 3. He was unfit on 28.01.2020 (Fever, body pain) and 4. He was unfit on 20-09-2019 (LBA). The petitioner was not reported for fitness the details are as under:- 1. He has not reported for fitness on 05-05-2021, 2. He was not reported for fitness on 15-02-2021, 3. He was not reported fitness on 04-02-2020 and 4. He was not reported for fitness on 04.10.2019. As per the company records the petitioner and his family members were not referred to the referral hospital. It is submitted that as per Op records, the diseases/ailments suffered by the petitioner was not really disable/prevent him from attending his duty/job regularly. Hence the claim of the petitioner is cooked up to gain the sympathy of the Hon'ble court. The petitioner not utilised the opportunities given by the company and not improved his attendance. Hence, the Respondent Company was constrained to dismiss the petitioner/workman from the company vide order dt.20/24.05.2021, which is justified. The other allegations of the petition are denied and the Respondents'-Company prayed to dismiss the petition, without granting any relief to the petitioner.

4. In support of the claim of the Petitioner/Workman, he himself was got examined as WW-1 and got marked Ex.W-1 to Ex.W-98 on his behalf. On the other side for the Respondents'-Company. Ex.M-1 to Ex.M-7 were marked with consent.

5. Arguments of the learned counsel for Petitioner/workman as well as learned counsel for the Respondents/Management heard. Perused the record produced before this Tribunal, written arguments and citations.

6. ***Now the points for consideration are:-***

1. Whether the domestic enquiry conducted by the respondents is held valid or not?

2. Whether the charges leveled against the petitioner are proved basing on evidence or not?

3. Whether the dismissal order dt.20/24.05.2021 is liable to be set aside, if so, the petitioner is entitled to reinstatement with continuity of service with all attendant benefits and full back wages?

If not to what relief is the worker entitled to?"

7. From the pleadings of the Petitioner/Workman and Respondents' Company, these are the admitted facts that the petitioner/workman worked as Badli-Filler (Underground) in the Respondents'-Company and he was dismissed from service. Now coming to the documentary evidence on both sides, on behalf of the Respondents'/Company, Ex.M-1 to Ex.M-7 were marked, wherein, Ex.M-1 is the attested copy of letter for taking suitable disciplinary action against the petitioner. Ex.M-2 is the enquiry notice and proceedings of enquiry. Ex.M-3 is the explanation to the Charge Sheet and Ex.M-4 is the Ack., of the petitioner to the charge sheet. Ex.M-5 is the charge sheet and Ex.M-6 is the service and other particulars of the petitioner. Ex.M-7 is the proceedings of the medical board and OP receipts of the petitioner.

7(a). On the other side, the petitioner got marked Ex.W-1 to W-98 on his behalf, wherein, Ex.W-1 is Dismissal Order issued by R-2 and Ex.W-2 is Name Removal memo issued by R-1. Ex.W-3 is Medical prescription & treatment imparted to petitioner by SCCL Area Hospital, RKP (SRP). Ex.W-4 and Ex.W-5 are Medical prescriptions and treatment imparted to petitioner by SCCL Area Hospital, RKP (SRP) from 21.11.2017 to 24.11.2017. Ex.W-6 is O.P Medical prescription and treatment imparted to petitioner by SCCL KK Dispensary, Mandamarri Area. Ex.W-7 to Ex.W-10 are O.P Medical prescription and treatment imparted to petitioner by SCCL KK Dispensary, Mandamarri Area. Ex.W-11 to Ex.W-14 are Medical prescription and treatment imparted to petitioner by Sri Ramanjaneya Clinic, Mandamarri. Ex.W-15 to Ex.W-28 are Medical prescriptions and treatment imparted to petitioner by Om Shanthi Hari Clinic, Mandamarri. Ex.W-29 to Ex.W-36 are O.P Medical prescriptions and treatment imparted to petitioner by SCCL KK Dispensary, Mandamarri Area. Ex.W-37 is Medical prescription and treatment imparted to petitioner by SCCL Area Hospital, RKP (SRP). Ex.W-38 is Medical prescription and treatment imparted to petitioner by SCCL Area Hospital, RKP (SRP) from 17.09.2018 to 16.10.2018. Ex.W-39 to are Ex.W-50 are Medical prescriptions and treatment imparted to petitioner by SCCL Area Hospital, RKP (SRP). Ex.W-51 to Ex.W-53 are O.P Medical prescriptions and treatment imparted to petitioner by SCCL KK Dispensary, Mandamarri Area. Ex.W-54 is O.P Medical prescriptions and treatment imparted to petitioner by SCCL KK Dispensary, Mandamarri Area from 07.03.2019 to 11.03.2019. Ex.W-55 is O.P Medical prescriptions and treatment imparted to petitioner by SCCL KK Dispensary, Mandamarri Area from 07.03.2019 to 11.03.2019. Ex.W-56 is O.P Medical prescriptions and treatment imparted to petitioner by SCCL KK Dispensary, Mandamarri Area from 07.03.2019 to 11.03.2019. Ex.W-57 is O.P Medical prescriptions and treatment imparted to petitioner by SCCL KK Dispensary, Mandamarri Area from 07.03.2019 to 11.03.2019. Ex.W-58 is O.P Medical prescriptions and treatment imparted to petitioner by SCCL KK Dispensary, Mandamarri Area from 07.03.2019 to 11.03.2019. Ex.W-59 is O.P Medical prescriptions and treatment imparted to petitioner by SCCL KK Dispensary, Mandamarri Area from 07.03.2019 to 11.03.2019. Ex.W-60 is O.P Medical prescriptions and treatment imparted to petitioner by SCCL KK Dispensary, Mandamarri Area from 02.07.2019 to 08.07.2019. Ex.W-61 is O.P Medical prescriptions and treatment imparted to petitioner by SCCL KK Dispensary, Mandamarri Area. Ex.W-62 is O.P Medical prescriptions and treatment imparted to petitioner by SCCL KK Dispensary, Mandamarri Area from 07.09.2019 to 12.09.2019. Ex.W-63 is O.P Medical prescriptions and treatment imparted to petitioner by SCCL KK Dispensary, Mandamarri Area from 07.09.2019 to 12.09.2019. Ex.W-64 is O.P Medical prescriptions and treatment imparted to petitioner by SCCL KK Dispensary, Mandamarri Area from 07.09.2019 to 12.09.2019. Ex.W-65 is O.P Medical prescriptions and treatment imparted to petitioner by SCCL KK Dispensary, Mandamarri Area from 07.09.2019 to 12.09.2019.

7(b). Further, Ex.W-66 to Ex.W-74 are Laboratory Investigations of the petitioner issued by the SCCL Hospital. Ex.W-75 to Ex.W-77 are the Medical prescriptions and treatment imparted to petitioner by Sai Krishna Hospital, Multi-specialty & Critical Care, Karimnagar. Ex.W-78 to Ex.W-85 are the O.P Medical prescriptions and treatment imparted to petitioner by SCCL KK Dispensary, Mandamarri Area. Ex.W-86 to Ex.W-89 are Medical prescriptions and treatment imparted to petitioner by SCCL Area Hospital, RKP (SRP). Ex.W-90 is O.P Medical prescriptions and treatment imparted to petitioner by SCCL KK Dispensary, Mandamarri Area. Ex.W-91 is Fit & Unfit Certificate for unfit period from 02.02.2021 to 15.02.2021 of the petitioner issued by SCCL KK-1 Dispensary, Mandamarri Area. Ex.W-92 is O.P Medical prescriptions and treatment imparted to petitioner by SCCL KK Dispensary, Mandamarri Area. Ex.W-93 is Fit & Unfit Certificate for unfit period from 21.04.2021 to 05.05.2021 of the petitioner issued by SCCL KK-1 Dispensary, Mandamarri Area. Ex.W-94 is O.P Medical prescriptions and treatment imparted to petitioner by SCCL KK Dispensary, Mandamarri Area. Ex.W-95 is Representation (Appeal) of petitioner forwarded by R-2 on 12.06.2021. Ex.W-96 is Appeal rejection order issued by Director (PA&W). Ex.W-97 is O/c of Demand Letter of the petitioner by RPAD. Ex.W-98 is O.P Medical prescriptions and treatment imparted to petitioner by SCCL KK Dispensary, Mandamarri Area. The above documents of both sides are not in much dispute by either side.

8. Here, the learned counsel for the respondents'-company has strenuously argued that since the coal mining industry is a central subject the Appropriate Government for Respondent/Management is Central Government, which established Central Govt. Industrial Tribunal-cum-Labour Court at Hyderabad for adjudication of Industrial Disputes and the Petitioner ought to have approached the said Tribunal for the redressal of grievance, if any. But, the Petitioner

conveniently avoided filing his petition before the Tribunal established by the Central Government and hence it is not maintainable under law and the same may be dismissed on this ground alone.

8(a). The learned counsel for the respondents'-company further argued the petitioner initially worked as Badli Filler and dismissed him from the service. Later he was re-appointed in the company as Badli Filler (UG) for a period of one year on trial basis vide Office Order dt.20.04.2013. Basing on the satisfactory performance during the one year trial period, he was re-appointed afresh as Badli Filler vide office order dt.25.08.2014. The contention of petitioner that he suffered from TB severe ill health and chronic piles problems and he underwent prolonged medical treatment in the respondent company hospital is in correct. If the petitioner was really suffering from ill health, it becomes his primary responsibility to report sick in Colliery Hospital or he should have informed to unit officers about his incapability to attend duties and he would have got leave or loss of pay leave but he did not inform anything, without informing anything to his unit officers remained absent to the duties which amounts to un-authorized absenteeism. He had put in 81 musters only in the year 2020 and for remaining days he remained absent from duties without intimation and he was issued charge sheet dt.06.02.2021. The petitioner submitted his written explanation on 20.02.2021, in his explanation he mentioned that he was not attended duties in the year 2020 due to health reasons of himself and his wife, but he has not submitted any documentary evidence in support of his claim. The bunch of medical certificates filed by him are created and if really he was suffering with ill health, the company appointed highly qualified doctors to provide treatment to its employees and also providing medical facilities to its employees by referring them to Corporate Hospital and also sending to the private hospitals depend on the necessities. The company medical officer will certify the same and employee will get leave and there is no need to attend the duties. But the petitioner not submitted any report of the company medical officer even he did not inform anything to his unit in charge, he was remained absent from duties without prior information which amount to gross negligence.

8(b). Further the learned counsel for the respondents also argued that the enquiry officer has given full and fair opportunity to the petitioner to submit his defense. The enquiry officer followed all the principles of natural justice and the petitioner not raised any objection to conduct enquiry proceedings. The enquiry officer given fair findings basing on the documents and oral evidence and the petitioner was given number of opportunities to correct himself and to be regular to his duties by imposing minor penalties, with hope that he may attend his duties. But, even after giving opportunities to improve his attendance, the petitioner continued his absenteeism and there is no improvement in the attendance. The petitioner not utilized the opportunities given by the company and not improved his attendance. Hence, the Respondent Company was constrained to dismiss the petitioner from the company by order dt.20/24.05.2021, which is justified. His appeal was rejected for want of merits, vide Ref. dt.22.11.2021.

8(c). The learned counsel for the respondents'-company further argued that the petitioner filed many medical prescriptions and treatment given in Company dispensary. As per the OP records available in the Company dispensary, the dates of unfit of the petitioner are: 1.The petitioner was unfit on 21.04.2021 (Pain at right hand); 2. He was unfit on 02.02.2021 (Myolgia) 3. He was unfit on 28.01.2020 (Fever, body pain) and 4. He was unfit on 20.09.2018(LBA). The petitioner was not reported for fitness the details are:- 1. He has not reported for fitness on 05.05.2021, 2. He was not reported for fitness on 15.02.2021, 3. He was not reported fitness on 04.02.2020 and 4. He was not reported for fitness on 04.10.2019. As per the company records the petitioner and his family members were not referred to the referral hospital. As per Op records, the diseases/ailments suffered by the petitioner was not really disable/prevent him from attending his duty/job regularly. The petitioner not utilized the opportunities given by the company and not improved his attendance. Hence, the Respondent Company dismissed him from service vide order dt.20/24.05.2021, which is justified. Hence, he prayed to dismiss the petition, without granting any relief to the petitioner/workman.

9. Per contra, on the point of jurisdiction the learned counsel for the Petitioner/workman contended that as per the Division Bench Judgment of the Hon'ble High Court reported in 1997 (III) LLJ (Supp.) 11, Between: U. Chinnappa Vs. Cotton Corporation of India, this Tribunal has jurisdiction over Singareni Collieries Company Ltd., to entertain the Industrial Dispute raised by the petitioner/workman though the appropriate Govt. is Central Govt., The petitioner need not raise the Industrial Dispute compulsorily before the Central Govt. Industrial Tribunal, Hyderabad alone, as contended by the respondents' company. Hence, this I.D petition filed by petitioner/ workman is well maintainable before this Tribunal for adjudication of the dispute on merits.

9(a). The learned counsel for the Petitioner/workman further contended that the Petitioner/Workman was appointed in the Respondents'-Company initially during the year 1997 as Badli Filler and rendered long service. During the year 2013, he was appointed as Badli Coal Filler for (1) one year on trial basis as recommended by the High Power Committee, by order dt.27.05.2013 and put-in (197) musters during trial period. But, he was terminated from service by Office Order dt.31.5.2014, on completion of one (01) year trial period. Later, he was appointed as Badli Filler by order dt.25.08.2014 and posted to Mandamarri Area through Office Order dt.04.09.2014 and he put-in more than (100) required musters per year. He suffered from chronic piles problem and took prolonged treatment SSCL Hospitals and other hospitals during the year 2017 and underwent surgery. Further during the year 2018 and 2019, the petitioner met with accident and sustained fractures to his right hand wrist and right leg and he sustained injuries to his Testicles in the underground mine while on duty. As such, he could put-in (45) musters in 2017 and (28) musters in 2018. Later, he improved his attendance and put-in (80) musters during the year 2019. He was imparted prolonged

medical treatment in the respondents' Company Hospitals and other hospitals at regular intervals. Due to health problems and COVID-2019, the petitioner could put-in (101) musters and lock-down (20) musters during the year 2020. But, the respondents have issued charge sheet dt.06.02.2021 to which he submitted written explanation and a formal domestic enquiry was conducted within a week, assuring that he will be allowed to duty. He participated in the enquiry proceedings on 27.02.2021, deposed true facts of his ill-health, his family problems and submitted Medical Certificates. But, the enquiry officer did not properly appreciate the documentary and oral evidence in favour of the petitioner. The findings of the Enquiry Officer are very cryptic and he gave his vague findings, which are quite biased and perverse. The respondent No.2 dismissed him from service vide Ref. dt.20/24.05.2021 straight away, without issuing any prior Show Cause Notice proposing the punishment of dismissal from service. The petitioner's health condition badly deteriorated and he suffered from serious ill health, during the charge sheeted period. Since his wife was a chronic Kidney Patient, he imparted prolonged treatment to her at regular intervals and there is sufficient and reasonable cause for the petitioner for not attending to duties during charge sheet period and it cannot be termed as misconduct.

9(b). The learned counsel for the Petitioner/workman further argued that imposing the capital punishment of dismissal from service without any prior show cause notice is against the principles of natural justice. The extremely harsh punishment of dismissal is highly excessive and shockingly disproportionate, which amounts to economic death of the petitioner. Ever since his dismissal from service, the petitioner is out of employment and could not secure any other alternative job in spite of his best efforts. He hails from a very poor family and has no other source of livelihood. Therefore, he prayed to set aside the dismissal order and to direct the Respondents'-Company to reinstate the petitioner/workman into service with continuity of service, all consequential attendant benefits and full back wages.

POINT No. 1:

10. Here, on the point of territorial jurisdiction of this Tribunal, it is settled Law that as per the Division Bench Judgment of the Hon'ble High Court reported in 1997 (III) LLJ (Supp.) 11, Between: U. Chinnappa Vs. Cotton Corporation of India, this Tribunal has got every jurisdiction to entertain the Industrial Dispute raised by the petitioner/workman who was an employee of Singareni Collieries Company Ltd., Even though, the Central Govt. is appropriate Govt., for the respondents'-Company, the petitioner need not compulsorily raise the Industrial Dispute before the Central Govt. Industrial Tribunal, Hyderabad, as contended by the respondents' company; and he can file this I.D. case before this Tribunal as well. Hence, the contentions of the respondents'-company on the point of jurisdiction of this Tribunal are not sustainable under Law. Accordingly, it is answered in favour of the petitioner and against the respondents' company.

11. Further, in this matter, initially the petitioner/workman denied the validity and legality of the enquiry report. But on 03.10.2023, the learned counsel for petitioner filed memo U/Sec.11-A of I.D Act by accepting the procedure of domestic enquiry. Now the next question is whether the misconduct is proved in the facts of the case and the findings are not perverse. So, this Tribunal is to re-appreciate the evidence and come to its own conclusion with regard to finding guilty or not based on evidence. Accordingly, the Point No.1 is answered.

POINT No. 2 & 3:

12. In view of the pleadings of the Petitioner/Workman as well as Respondents/corporation as well as in view of the arguments of their respective counsel now this Court will go into the evidence on record. Admittedly, the petitioner was dismissed from service by Proc. dt.20/24.05.2021 wherein it is alleged that the petitioner was absent from duty without sanctioned leave or sufficient cause during the year 2020.

13. From a perusal of the record, it shows that Charge Sheet dt.06.02.2021 was issued to the petitioner, which is marked as Ex.M-5. It is evident from the charge sheet that the petitioner absented to duties for 187 days and had put-in only 81 actual musters during the year 2020 and further he put in 168 muster during the year 2015 and 114 musters during the year 2016. The petitioner submitted his explanation to charge sheet, which is marked as Ex.M-3 wherein he stated that he suffered from ill-health and undergone operation, that due to ill-health and family problems he could not attend to this duties regularly. Further, a perusal of Ex.M-2 proceedings of enquiry shows that the Petitioner/Workman participated in the domestic enquiry and deposed that he absented from duty from January 2020 to December 2020 for 187 days, that due to ill-health and family problems he was unable to attend to his regularly during the above charge sheet period of 2020. He assured that he will attend to his duties regularly and requested to take a lenient view. Further, the cut-leaf statement from January 2020 to December 2020 produced before the Enquiry Officer shows 122 actual musters, 20 leaves and 164 absent days of the petitioner. From the Enquiry Report which is also under Ex.M-2, it is evident that the petitioner absented to duty without sanctioned leave and he accepted charge, though pleaded that due to health problems, he remained absent to his duties. The domestic enquiry file in original together with enquiry proceedings and Enquiry Report with service particulars of the petitioner were submitted to the respondent No.2 General Manager, vide letter dt.19.03.2021, which is marked as Ex.M-1. Further, the service particulars of the petitioner produced before this Tribunal under Ex.M-6 it is evident that the petitioner put-in 168 musters during the 2015, 114 musters during the year 2016 and 122 musters during the year 2020 i.e., charge sheet

year. The proceedings dt.23.08.2022 of the Dy. Chief Medical Officer, SCCL Area Hospital, Ramakrishnapur is marked as Ex.M-7, wherein, O.P records of the petitioner/workman were furnished to respondent No.2 General Manager. Dismissal order dt.20/24.05.2021 is marked as Ex.W-3 and appeal submitted by the petitioner was rejected by the Director (PA&W) by order dt.22.11.2021, which is marked as Ex.W-96.

13(a). Apart from the above, the petitioner/workman submitted more than 90 medical prescriptions and treatment imparted to him, which are marked as Ex.W-3 to Ex.W-94 and Ex.W-98. Most of the medical documents submitted by the petitioner were issued by the SCCL Hospitals, which prima-facie show that the petitioner suffused from ill-health during the years 2017 to 2020. The petitioner explained that due to ill-health and family problems, he absented to duties during the charge sheeted year of 2020 and prayed to consider his case sympathetically. However, the respondents/ company dismissed the petitioner/workman from service by Proc. dt.20/24.05.2021 which is marked as Ex.W-1. Thus, it is evident from the enquiry proceedings and enquiry report under Ex.M-2 as well as the material on record, that the petitioner had not put in minimum required musters of 190 and he put-in only 122 musters during the year 2020. For which, petitioner submitted that due to ill-health he was unable to perform duty regularly during the charge sheet period and submitted more than 90 medical prescriptions and reports, which are marked as Ex.W-3 to Ex.W-94 and Ex.W-98. Further, the above medical documents of the petitioner lend support to his enquiry statement under Ex.M-2 and his explanation to the charge sheet under Ex.M-3; these documents clearly show that the petitioner/workman suffered from ill-health during the charge sheet period and that the defense put-forth by him is plausible. However, it is clear that the petitioner has not attended to duties regularly and the charge was proved against him. Therefore, it can be said that the respondents/company has no axe to grind against the petitioner. Hence, this Tribunal has no hesitation to hold that the charge leveled against the petitioner/workman is proved and misconduct of the workman is established basing on the evidence and the findings of enquiry officer are not perverse.

13(b). Apart from the above, the contention of the Petitioner/ Workman is that he was appointed in the year 1997 and he served the company for (21) years. The petitioner met with accident and sustained fractures to his right hand wrist and right leg and he sustained injuries to his Testicles in the underground mine while on duty during the years 2018-2019. He improved his attendance and put-in (101) musters and lock-down (20) musters during the year 2020. He hails from a very poor family, he has got no other livelihood and facing untold financial problems, and prayed to consider the case U/Sec.11-A of I.D. Act. Here, the learned counsel for the petitioner relied upon the following citations:-

1) HON'BLE SUPREME COURT JUDGMENT REPORTED IN AIR 1988 SC 303 – Between: Scooter India Ltd, Labour Court, Lucknow & ors:

In this case, the Labour Court while holding that enquiry had conformed to statutory prescriptions and principles of natural justice, yet held that order of termination was not justified and ordered for reinstating employee with 75% back wages. Wide powers are vested in Labour Court or Tribunal. Labour Court can temper justice with mercy and give an opportunity to an erring workman to reform himself. Order of Labour Court granting relief of reinstatement with 75% back wages was upheld by Hon'ble Supreme Court.

2) HON'BLE HIGH COURT JUDGMENT IN W.A. No.1101/2008 and W.P.No.7671 of 2000, dt.07.04.2009 D.B. Judgment:

In this case, the Labour Court granted reinstatement with continuity of service and half-of back wages. The Hon'ble High Court held that since the petitioner remained unemployed from the date of removal, modified the award of Labour Court by granting full back wages.

3) Judgment of Hon'ble Supreme Court, dt.24.08.2009 in Civil Appeal No.5762 of 2009, Between: Coal India Ltd. & Anr Vs. Mukul Kumar Choudari and others.

4) Judgment of Hon'ble Supreme Court dt.14.05.2009 Between: Jagadish Singh Vs. Punjab Engineering College and others.

In the above Judgments of the Hon'ble Supreme Court at Sl.No.3 & 4 reveals that the Hon'ble Court held that the punishment should be in commensurate with the gravity of charges and not shockingly disproportionate.

13(c). Further, the learned counsel for the petitioner/workman has relied upon a decision of the Hon'ble High Court reported in 2012 (1) ALD 220 (DB), wherein their lordships observed that:

> *"The Industrial Disputes Act, 1947 is a social welfare legislation, which required to be interpreted keeping in view the goals set out in the Preamble and Directive principles of State Policy in Part-IV of the Constitution. The Labour Court is conferred with very wide discretion U/Sec.11-A. The Industrial Court conferred with very wide discretion U/Sec.11-A of the Act for granting appropriate relief".*

14. Therefore, in view of the above decisions and the facts and circumstances of the case, if we come to quantum of sentence it is settled law that the discretion of which can be exercised U/Sec.11-A is available only on the existence of certain factors like punishment being disproportionate to the gravity of misconduct so as to shock the conscience of the Court, or the existence of any mitigating circumstances which require the reduction of the sentence, or the past

conduct of the workman which may persuade the Labour Court to reduce the punishment. A perusal of record shows that the petitioner suffered from ill-health and submitted several medical documents showing the treatment imparted to him by SCCL Hospitals. Further, the petitioner submitted that he hails from a very poor family and has got no other livelihood and facing untold financial problems, hence prayed to consider the case U/Sec.11-A of I.D., Act. The petitioner is out of employment from 2021 and there is reasonable and sufficient cause for his absence to duties during charge sheet period, as the ill-health suffered by the petitioner is supported by the medical record of respondents' SCCL-company produced before this Tribunal. In view of the above mitigating circumstances of the case, this Tribunal is of the opinion that the extreme punishment of dismissal from service imposed by the respondents'/company against the petitioner deserves to be set aside since the disciplinary authority cannot be permitted to act arbitrarily and work like a *Roman Knight* and it cannot be allowed a *fight between David and Goliath* as in the present case on hand.

15. Therefore, in view of the above facts and circumstances and keeping in view of the principle *"temper justice with mercy"* and to meet the ends of justice, this Tribunal is of the considered opinion that the punishment of dismissal from service deserves to be set aside. However, since the charge leveled against the petitioner are proved, the relief is to be molded by this Tribunal appropriately and considering the mitigating circumstances discussed supra, the petitioner is entitled to be reinstated into service with continuity of service only. But, the petitioner is not entitled to any back wages and any attendant benefits during the intervening period from the date of his dismissal to till date since he might have gainfully employed during pendency of this Industrial Dispute. Hence, the punishment of dismissal from service imposed by the Respondents' Company is hereby modified appropriately. Accordingly, the Point No.2 & 3 are answered.

16. **IN THE RESULT,** the petition is partly allowed. The dismissal order dt.20/24.05.2021, under Ex.W-3 passed by the Respondent No.2 is hereby modified appropriately. The respondents'/company is directed to reinstate the petitioner into service with continuity of service only, but, without any attendant benefits and without any back wages during the intervening period from the date of his dismissal to till date. The petitioner is entitled to the salary only from the date of publication this Award. Copy of the Award be sent to the appropriate Government for publication. Both parties shall bear their own costs.

Typed to my dictation, corrected and pronounced by me in the open court, on this the 12th day of March, 2024.

Dr. T. SRINIVASA RAO, Chairman-cum-Presiding Officer

APPENDIX OF EVIDENCE

WITNESSES EXAMINED

FOR WORKMAN:- FOR MANAGEMENT:-

WW-1 R.Sadanandam, Petitioner. -Nil-

EXHIBITS

FOR WORKMAN:-

Ex.W-1	Dt.	20/ 24.05.2021	Dismissal Order issued by R-2,
Ex.W-2	Dt.	25.05.2021	Name Removal memo issued by R-1,
Ex.W-3	Dt.	09.09.2017	Medical prescription & treatment imparted to petitioner by SCCL Area Hospital, RKP (SRP).
Ex.W-4	Dt.	21.11.2017	-do- from 21.11.2017 to 24.11.2017
Ex.W-5	Dt.	09.12.2017	-do-
Ex.W-6	Dt.	09.09.2017	O.P Medical prescription and treatment imparted to petitioner by SCCL KK Dispensary, Mandamarri Area.
Ex.W-7	Dt.	06.11.2017	-do-
Ex.W-8	Dt.	20.11.2017	-do-

Ex.W-9	Dt.	09.12.2017	-do-
Ex.W-10	Dt.	15.12.2017	-do-
Ex.W-11	Dt.	19.01.2017	Medical prescription and treatment imparted to petitioner by Sri Ramanjaneya Clinic, Mandamarri.
Ex.W-12	Dt.	24.08.2017	-do-
Ex.W-13	Dt.	08.12.2017	Medical prescription and treatment imparted to petitioner by Sri Ramanjaneya Clinic, Mandamarri.
Ex.W-14	Dt.	15.09.2018	-do-
Ex.W-15	Dt.	25.05.2017	Medical prescription and treatment imparted to petitioner by Om Shanthi Hari Clinic, Mandamarri.
Ex.W-16	Dt.	26.05.2017	-do-
Ex.W-17	Dt.	27.05.2017	-do-
Ex.W-18	Dt.	28.05.2017	-do-
Ex.W-19	Dt.	03.06.2017	-do-
Ex.W-20	Dt.	05.06.2017	-do-
Ex.W-21	Dt.	17.06.2017	-do-
Ex.W-22	Dt.	18.06.2017	-do-
Ex.W-23	Dt.	22.06.2017	-do-
Ex.W-24	Dt.	25.06.2017	-do-
Ex.W-25	Dt.	02.07.2017	-do-
Ex.W-26	Dt.	10.07.2017	-do-
Ex.W-27	Dt.	18.07.2017	-do-
Ex.W-28	Dt.	20.07.2017	-do-
Ex.W-29	Dt.	23.01.2018	O.P Medical prescription and treatment imparted to petitioner by SCCL KK Dispensary, Mandamarri Area.
Ex.W-30	Dt.	16.02.2018	-do-
Ex.W-31	Dt.	10.08.2018	-do-
Ex.W-32	Dt.	17.09.2018	-do-
Ex.W-33	Dt.	24.09.2018	-do-
Ex.W-34	Dt.	16.11.2018	-do-
Ex.W-35	Dt.	10.12.2018	-do-
Ex.W-36	Dt.	31.12.2018	-do-

Ex.W-37	Dt.	24.01.2018	Medical prescription and treatment imparted to petitioner by SCCL Area Hospital, RKP (SRP).
Ex.W-38	Dt.	17.09.2018	-do- from 17.09.2018 to 16.10.2018
Ex.W-39	Dt.	24.09.2018	Medical prescription & treatment by SCCL Area Hospital, RKP (SRP).
Ex.W-40	Dt.	25.09.2018	Medical prescription & treatment by SCCL Area Hospital, RKP (SRP).
Ex.W-41	Dt.	16.10.2018	-do-
Ex.W-42	Dt.	17.10.2018	-do-
Ex.W-43	Dt.	16.11.2018	-do-
Ex.W-44	Dt.	01.01.2019	Medical prescription and treatment imparted to petitioner by SCCL Area Hospital, RKP (SRP).
Ex.W-45	Dt.	17.01.2019	-do-
Ex.W-46	Dt.	22.02.2019	-do-
Ex.W-47	Dt.	07.03.2019	-do-
Ex.W-48	Dt.	03.04.2019	-do-
Ex.W-49	Dt.	03.07.2019	-do-
Ex.W-50	Dt.	28.09.2019	-do-
Ex.W-51	Dt.	11.01.2019	O.P Medical prescriptions and treatment imparted to petitioner by SCCL KK Dispensary, Mandamarri Area.
Ex.W-52	Dt.	17.01.2019	-do-
Ex.W-53	Dt.	22.02.2019	-do-
Ex.W-54	Dt.	07.03.2019	-do- from 07.03.2019 to 11.03.2019.
Ex.W-55	Dt.	03.04.2019	-do-
Ex.W-56	Dt.	27.04.2019	-do-
Ex.W-57	Dt.	14.05.2019	-do-
Ex.W-58	Dt.	16.05.2019	-do-
Ex.W-59	Dt.	19.06.2019	-do-
Ex.W-60	Dt.	02.07.2019	-do- from 02.07.2019 to 08.07.2019
Ex.W-61	Dt.	16.07.2019	O.P Medical prescriptions and treatment imparted to petitioner by SCCL KK Dispensary, Mandamarri Area.
Ex.W-62	Dt.	07.09.2019	-do- from 07.09.2019 to 12.09.2019
Ex.W-63	Dt.	28.10.2019	-do-

Ex.W-64	Dt.	29.11.2019	-do-
Ex.W-65	Dt.	30.12.2019	-do-
Ex.W-66	Dt.	22.01.2019	Laboratory Investigation of petitioner issued by SCCL Hospital.
Ex.W-67	Dt.	17.04.2019	Laboratory Investigation of petitioner issued by SCCL Hospital.
Ex.W-68	Dt.	01.05.2019	-do-
Ex.W-69	Dt.	24.05.2019	-do-
Ex.W-70	Dt.	04.06.2019	-do-
Ex.W-71	Dt.	26.06.2019	-do-
Ex.W-72	Dt.	03.07.2019	-do-
Ex.W-73	Dt.	14.02.2020	-do-
Ex.W-74	Dt.	06.04.2021	-do-
Ex.W-75	Dt.	25.08.2019	Medical prescription and treatment imparted to petitioner by Sai Krishna Hospital, Multi-specialty & Critical Care, Karimnagar.
Ex.W-76	Dt.	04.09.2019	-do-
Ex.W-77	Dt.	15.09.2019	-do-
Ex.W-78	Dt.	17.02.2020	O.P Medical prescriptions and treatment imparted to petitioner by SCCL KK Dispensary, Mandamarri Area.
Ex.W-79	Dt.	01.06.2020	-do-
Ex.W-80	Dt.	15.06.2020	-do-
Ex.W-81	Dt.	08.08.2020	-do-
Ex.W-82	Dt.	28.09.2020	-do-
Ex.W-83	Dt.	14.10.2020	-do-
Ex.W-84	Dt.	10.11.2020	-do-
Ex.W-85	Dt.	21.11.2020	-do-
Ex.W-86	Dt.	22.01.2020	Medical prescription & treatment imparted to petitioner by SCCL Area Hospital, RKP (SRP).
Ex.W-87	Dt.	17.02.2020	-do-
Ex.W-88	Dt.	02.05.2020	-do-
Ex.W-89	Dt.	20.02.2021	-do-
Ex.W-90	Dt.	11.01.2021	O.P Medical prescriptions and treatment imparted to petitioner by SCCL KK Dispensary, Mandamarri Area.

Ex.W-91	Dt.	02.02.2021	Fit & Unfit Certificate from 02.02.2021 to 15.02.2021 of the petitioner, by SCCL KK-1 Dispensary, Mandamarri Area.
Ex.W-92	Dt.	20.02.2021	O.P Medical prescriptions and treatment imparted to petitioner by SCCL KK Dispensary, Mandamarri Area.
Ex.W-93	Dt.	21.04.2021	Fit & Unfit Certificate for unfit period from 21.04.2021 to 05.05.2021 of the petitioner, issued by SCCL KK-1 Dispensary, Mandamarri Area.
Ex.W-94	Dt.	22.05.2021	O.P Medical prescriptions and treatment imparted to petitioner by SCCL KK Dispensary, Mandamarri Area.
Ex.W-95	Dt.	05.06.2021	Representation (Appeal) of petitioner forwarded by R-2 on 12.06.2021.
Ex.W-96	Dt.	22.10.2021 22.11.2021	Appeal rejection order issued by Director (PA&W).
Ex.W-97	Dt.	20.12.2021	O/c of Demand Letter of the petitioner by RPAD
Ex.W-98	Dt.	22.05.2021	O.P Medical prescriptions and treatment imparted to petitioner by SCCL KK Dispensary, Mandamarri Area.

FOR MANAGEMENT:-

Ex.M-1	Dt.	19.03.2021	Attested copy of letter for taking suitable disciplinary action against the petitioner.
Ex.M-2	Dt.	22.02.2021	Enquiry notice and proceedings of enquiry.
Ex.M-3	Dt.	20.02.2021	Explanation to the Charge Sheet
Ex.M-4	Dt.	19.02.2021	Ack., of the petitioner to the charge sheet.
Ex.M-5	Dt.	06.02.2021	Charge sheet
Ex.M-6	Dt.	-	Service and other particulars of the petitioner.
Ex.M-7	Dt.	23.08.2022	Proceedings of the medical board and OP receipts of the petitioner.

नई दिल्ली, 8 मई, 2024

का.आ. 889.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एस.सी.सी.एल.के प्रबंधतंत्र के संबद्ध नियोजको और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण–सह–श्रम न्यायालय, गोदावरीखानी के पंचाट **(संदर्भ संख्या 10/2022)** को प्रकाशित करती है, जो केन्द्रीय सरकार को **25/04/2024** को प्राप्त हुआ था।

[सं. एल–22013/01/2024-आईआर(सी.एम-II)]

मणिकंदन.एन, उप निदेशक

New Delhi, the 8th May, 2024

S.O. 889.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award **(Ref. No. 10/2022)** of the **Central Government Industrial Tribunal-cum-Labour Court, Godavarikhani** as shown in the Annexure, in the industrial dispute between the Management of **S.C.C.L.** and their workmen, received by the Central Government on **25/04/2024.**

[No. L-22013/01/2024-IR (CM-II)]

MANIKANDAN. N , Dy. Director

ANNEXURE

BEFORE THE CHAIRMAN, INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-CUM- ADDL. DIST. & SESSIONS COURT, GODAVARIKHANI.

PRESENT:- **SRI Dr.T.SRINIVASA RAO,**

CHAIRMAN-CUM-PRESIDING OFFICER.

WEDNESDAY, ON THIS THE 20th DAY OF MARCH, 2024.

I.D.No. 10 of 2022

Between:-

K. Chiranjeevi, S/o. Mallesham, 37 Years, E.C. 2377869, Ex-Badli Filler, C/o. S.Sanjay Kumar, Advocate, H. No. 19-1-103/4, Markandeya Colony, Godavarikhani, Dist:Peddapalli,(T.S) – 505209.

…Petitioner.

AND

1. The Colliery Manager, Singareni Collieries Company Ltd., K.K-1 Incline, Mandamarri Area, Mandamarri, District: Mancherial (T.S).
2. The General Manager, Singareni Collieries Company Ltd., Mandamarri Area, Mandamarri, District: Mancherial (T.S).
3. The Chairman and Managing Director, Singareni Collieries Company Ltd., P.O: Kothagudem, District: Khammam (T.S).

...Respondents.

This case coming before me for final hearing in the presence of Sri S.Sanjay Kumar, Advocate for the Petitioner and of Sri T. Ravinder Singh, Advocate for the Respondents; and having been heard and having stood over for consideration till this day, the Tribunal delivered the following:-

AWARD

This is a petition filed U/Sec.2-A (2) of I.D. Act, 1947 praying to set aside the dismissal order Ref.No.MMR/PER/D/072/20/6253, dt.20/27.10.2020 passed by Respondent No.2 and to direct the respondents'-company to reinstate the petitioner into service with continuity of service, all other consequential attendant benefits and full back wages.

2. The brief averments of the petition are as follows:-

2(a). It is to submit that the Petitioner/Workman was appointed in the Respondents'-Company during the year 2011 as Badli Filler, under dependant employment in place of his father Sri Mallesham, Ex-Shovel Operator, who died while in service during the year 2007. He served the respondents' company and put-in more than the (100) required musters per year and his performance from 2012 to 2017 is furnished here under:-

1.	Musters of 2012	(136) musters
2.	Musters of 2013	(135) musters
3.	Musters of 2014	(112) musters
4.	Musters of 2015	(0) musters
Due to severe ill-health, he was imparted prolonged treatment; but, penalty of (10) days suspension imposed for 2015 absenteeism		
5.	Musters of 2016	(19) musters
Due to severe ill-health, he was imparted prolonged treatment; but warning letter issued for 2016 absenteeism		
6.	Musters of 2017	(104) musters
Improved his attendance during the year 2017 by (104) musters.		
7.	Musters of 2018	(Charge sheet year)
Due to Brain blood clot, Heart Problem, ill-health & seizures, he was imparted prolonged treatment at SCCL & KIMS Hospitals.		

2(b). The petitioner suffered from chronic ill-health, heart problem and recurrent seizures from the year 2015. He underwent prolonged medical treatment in the respondents' Company Hospitals and other referral hospitals at regular intervals. But, his health was not cured completely and as he continued to work on one hand and undergoing treatment frequently on the other hand, his health completely deteriorated from 2018. But, the respondent issued charge sheet dt.13.02.2019 to the petitioner alleging:-

"25.25: Habitual late attendance or habitual absence from duty without sufficient cause".

"25.31: Absence from duty without sanctioned leave or sufficient cause or overstaying beyond sanctioned leave".

There is no deliberate absenteeism on the part of the petitioner and there is reasonable and sufficient cause for his not attending to duties regularly during the charge sheet period of 2018. The respondents imparted treatment to the petitioner in the SCCL Area Hospital and referred him to KIMS Hospital at Hyderabad, due to Brain Blood Clot and Heart Problems. He was imparted prolonged treatment during the years 2018 – 2019, but without considering the true facts, the 2nd respondent dismissed the petitioner from service through Ref. dt.20/27.10.2020, illegally.

2(c). The petitioner suffered from severe ill-health, heart problem and brain blood clot and was imparted treatment in the SCCL Area Hospital, RKP, Mandamarri Area. But, since his health condition was not improved, the respondents have referred the petitioner to KIM Hospital, Hyderabad during the years 2018 & 2019, through reference letters dt.08.11.2018 and 06.05.2019. The petitioner was getting *"frequent seizures (Focal and generalized) even after giving loading dose. He was incubated in view of poor GCS and ventilator support was given at KIMS Hospital. MRI (Brain) with MRV was done s/o hematoma noted involving left parietal lobe (cortical and sub-cortical) with superior sagittal sinus and bilateral transverse sinus (left>right) thrombosis. Patient was treated with Inj. Midaz, steroid, LMWH, ant edema measures along with antiepileptic drugs and other supportive drugs. 2D Echo was done. s/o RV dysfunction, cardiologist consultation was taken and advice followed. Bilateral LL venous Doppler was done and s/o chronic DVT in right LL. Hematologist consultation was taken for recurrent thrombotic events and advised further evaluation. CT Scan (Brain) were done and noted that left temporoparietal bleed was resolving with surrounding edema and no significant mass effect."* Medical documents and discharge summary may kindly be taken into consideration by this Court.

2(d). Formal domestic enquiry was conducted while the petitioner was undergoing treatment and he participated in the enquiry on 21.09.2019, deposed the above true facts of his ill-health and his family problems and also submitted Medical Certificates. But, the enquiry officer did not properly appreciate the documentary and oral evidence in favour of the petitioner. The findings of the Enquiry Officer are very cryptic and he gave his vague findings, which are quite biased and perverse. The respondent No.2 required the petitioner to make representation on the findings report of the Enquiry Officer by letter dt.25.10.2019, which was sent by Security Guard to his house; though the respondents are aware that his house was locked since (2) years, as he was undergoing prolonged treatment at Hyderabad. As such, he could not submit any representation on the findings report of Enquiry Officer. But, respondent No.2 dismissed him from service vide Ref. dt.20/27.10.2020 straight away, without issuing any prior Show Cause Notice proposing the punishment of dismissal from service. He preferred Appeal and moved from pillar to post before the respondents, but there is no response from the company and he was not taken to duty. The petitioner's health condition badly deteriorated and he suffered from serious ill health, during the charge sheeted period and there is sufficient and reasonable cause for the petitioner for not attending to duties during charge sheet period and it cannot be termed as misconduct.

2(e). Further, imposing the capital punishment of dismissal from service on the petitioner without any prior show cause notice proposing the said capital punishment is against the settled Law and contrary to the principles of natural justice. The extremely harsh punishment of dismissal is highly excessive and shockingly disproportionate, which amounts to his economic death. Ever since his dismissal from service, the petitioner is out of employment and could not secure any other alternative job inspite of his best efforts. He hails from a very poor family and has no other source of livelihood. Therefore, he prays to set aside the dismissal order dt.20/27.10.2020 passed by the Respondent No.2 and to direct the Respondents'-Company to reinstate him into service with continuity of service, all consequential attendant benefits and full back wages.

3. On the other side the Respondents/Management filed counter by admitting the employment of the Petitioner/Workman with the Respondents'-Company, however, inter-alia contended that since the coal mining industry is a central subject the Appropriate Government for Respondent/Management is Central Government, which established an Industrial Tribunal-cum-Labour Court at Hyderabad from 29.12.2000 for adjudication of industrial disputes and the Petitioner ought to have approached the said tribunal for the redressal of grievance, if any. But, the Petitioner conveniently avoided filing his petition before the Tribunal established by the Central Government and hence it is not maintainable under law and the same may be dismissed on this ground alone.

3(a). The Respondent Company without prejudice to its rights in respect of the objection raised as above submits that the petitioner was initially appointed into the services of the Respondent Company as Badli Filler on 12.09.2011 and worked as Badli Filler till dismissal. The Petitioner being an underground employee is expected to put minimum 190

Musters in a calendar year. But he was not regular to his duties and in no year he had put in the required 190 musters during the period from 2012:-

Sl. No.	Year	No. of Musters
1.	2012	136
2.	2013	135
3.	2014	112
4.	2015	0
5.	2016	19
6.	2017	104
7.	2018	0

The averments made by the Petitioner that he suffered from chronic ill-health, heart problem and recurrent seizures from the year 2015 and he underwent prolonged medical treatment in the Respondent Company hospital is incorrect. If the Petitioner was really suffering from ill health, it becomes his primary responsibility to report sick in Colliery Hospital or he should have informed to unit officers about his incapability to attend duties and he would have got leave or loss of pay leave but he did not inform anything. Without informing anything to his unit officers remained absent to the duties which amounts to un-authorized absenteeism. The Respondent Company employs more than 43,600 persons and the production results will depend upon the overall attendance and performance of every individual. If anyone remains absent without prior sanction of leave or without any justified cause, the work to be performed gets effected. Such unauthorized absence creates sudden void, which at times is very difficult to fill-up with substitute, and there will be no proper planning and already planned schedules get suddenly disturbed without prior notice. For that reason every time the company inform its workers to intimate prior to the unit in-charge so that they may arrange substitute and failing to inform will result in to production and burden on the other employees.

3(b). During the period from January, 2018 to December, 2018, the Petitioner has put in 00 musters. As the above act amounted to misconduct under Company Standing Orders No. 25.25 & 25.31, he was issued charge sheet dt.13-02-2019 for absenteeism for the year 2018 as sent to his postal address. The relevant clause of standing orders reads as under:

25.25: Habitual Late attendance or habitual absence from duty without sufficient cause.

25.31: Absence from duty without sanctioned leave or sufficient cause or overstaying beyond sanctioned leave.

The Petitioner being a habitual and chronic absentee never put in minimum required musters of 190 days, the Respondent Company was constrained to dismiss the Petitioner after conclusion of free and fair trail. The Respondent Company is providing Medical facilities as In and Out-patients to its employees and their dependants through its Hospitals and if required the patients will be referred to higher centers for further treatment/diagnosis. In the same manner, the petitioner was also extended medical facilities by this Respondent Company for the ailments which he was suffering for. It is further submitted that the Petitioner was not reported sick in Company's Hospitals during the entire absenteeism period.

3(c). Enquiry into the charges leveled against the petitioner was conducted by the Enquiry Officer on 21.09.2019 and the Petitioner has participated in the enquiry proceedings on 21.09.2019. He was given full and fair opportunity to defend his case. In his deposition before the Enquiry Officer, the petitioner himself admitted that he remained absent on the dates mentioned in the charge sheet and admitted his mistake and added that he remained absent due to family problems and ill health of himself. He submitted the referral letters dt.08.11.2018, 06.05.2019 issued by Hospital Authorities of the Respondent Company. However, he did not submit any other documentary evidence about the alleged ill health which prevented him from remaining absent from duties during entire absenteeism period. The Enquiry Officer gave him opportunity to adduce evidence and to produce documentary evidence and witnesses in support of his claim, but the Petitioner did not submit documentary evidence and not produced any witness. The Enquiry Officer has given fair findings basing on the documents and oral evidence given by petitioner and his finding is not vague. The enquiry was conducted by the Enquiry Officer following all the principles of natural justice and the petitioner did not raise any objections as to the conduct of enquiry proceedings at the time of enquiry and signed on the report submitted by the Enquiry Officer. The copies of enquiry report, proceedings etc., were sent by security guard, S&PC Department to the Petitioner's address vide Letter dt.25.10.2019 to enable him to submit his written representation against the findings contained in the enquiry report within seven days from the date of receipt of the report, but his house was in locked condition. Therefore the same was published in 'SAKSHI' Telugu News daily dt.02.06.2020 advising him to receive the show cause notice and documents from the office of the Respondent No.2, but petitioner failed to approach the Respondent Company. Hence, the respondents' company was constrained to

impose the capital punishment and dismissed the petitioner from service vide office order dt.20/27.10.2020. His Appeal was rejected by confirming the dismissal order vide letter dt.24.08.2021.

3(d). The Petitioner was given number of opportunities to correct himself and to be regular to his duties by imposing minor penalties such as issued suspension of 10 days for the unauthorized absenteeism during the Calendar Year 2015 and warning letter for the unauthorized absenteeism during the Calendar Year 2016. But, the Petitioner has failed to improve his attendance and resorted to unauthorizedly absent for duty during the calendar years 2018. The company gave many opportunities to the petitioner with hope that he may change and attend his duties. Even after giving opportunities to improve his attendance, the petitioner continued his absenteeism continuously and there is no improvement in the attendance. As no other go, the company issued charge sheet to the petitioner after giving all the opportunities to the petitioner being there is no change in his attendance. The petitioner's misconduct compelled the Respondent/Management to impose the penalty of dismissal which cannot be termed as unjust. The Respondent/Management cannot be held responsible for the alleged huge debts and unemployment and the other allegations of the petition are denied and hence the Respondents prayed to dismiss the petition, without granting any relief to the petitioner.

4. In support of the claim of the Petitioner/Workman, he got examined himself as WW-1 and got marked Ex.W-1 to Ex.W-29 on his behalf. On the other side, for the Respondents'-Company Ex.M-1 to Ex.M-21 were marked, with consent of the petitioner/workman.

5. Arguments of the learned counsel for Petitioner/workman as well as the learned counsel for the Respondents/Management heard. Perused the record produced before this Tribunal, their rival arguments and citations.

6. ***Now the points for consideration are:-***

1. Whether the domestic enquiry conducted by the respondents is held valid or not?

2. Whether the charges leveled against the petitioner are proved basing on evidence or not?

3. Whether the dismissal order dt.20/27.10.2020 is liable to be set aside, if so, the petitioner is entitled to reinstatement with continuity of service with all attendant benefits and full back wages?

If not to what relief is the worker entitled to?"

7. From the pleadings of the Petitioner/Workman and Respondents' Company, these are the admitted facts that the petitioner/workman worked as Badli-Filler (Underground) in the Respondents'-Company and he was dismissed from service. Now coming to the documentary evidence on both sides, on behalf of the Respondents'/Company, Ex.M-1 to Ex.M-21 were marked, wherein, Ex.M-1 is attested Copy of charge sheet issued to petitioner and Ex.M-2 is attested Copy of Enquiry Notice issued to the petitioner. Ex.M-3 is attested Copy of Application by the petitioner and Ex.M-4 is attested Copy of Enquiry proceedings. Ex.M-5 is attested Copy of Muster particulars of petitioner from Jan 2016 to Dec 2016. Ex.M-6 is attested Copy of Check list for Disciplinary cases forwarded to corporate office/Area office. Ex.M-7 is attested copy of 7 Days Notice, Ex.M-8 is attested Copy of explanation to the notice by the petitioner and Ex.M-9 is attested copy of Disciplinary action against absenteeism of petitioner of 2016 vide Lr.No.MMR/KK.1/R/010/163. Ex.M-10 is attested Copy of charge sheet issued to petitioner vide Lr.No.MMR/KK.1/R/008/705 and Ex.M-11 is the attested Copy of charge sheet acknowledgment. Ex.M-12 is attested Copy of Enquiry proceedings and Ex.M-13 is attested copy of disciplinary action against petitioner vide Lr.No.MMR/K.K.1/R/010/4187. Ex.M-14 is attested copy of publication of show because notice in Telugu daily vide Lr.No.MMR/PER/D/072/20/2863. Ex.M-15 is attested copy of dismissal order of petitioner and Ex.M-16 is attested Copy of dismissal order acknowledgment of petitioner. Ex.M-17 is attested Copy of service and other particulars of petitioner (Proforma-A). Ex.M-18 is attested Copy of Muster particulars of petitioner from January 2018 to December, 2018 and Ex.M-19 is attested copy of submission of request of petitioner to revoke the penalty of dismissal vide Lr.No.MMR/PER/D/072/21/5646. Ex.M-20 is attested Copy of Name Removal letter of the petitioner vide Lr.No.MMR/ KK.1/R/010/3990 and Ex.M-21 is Disciplinary proceedings of Medical Board Lr.No.RKP/MED/ W/22/9463 and OP Receipt.

7(a). On the other side, the petitioner got marked Ex.W-1 to W-29 on his behalf, wherein, Ex.W-1 is dismissal Order issued by R-2. Ex.W-2 is Charge Sheet issued by R-2. Ex.W-3 is Medical Assessment Form of Sunshine Hospital for pain & swelling of right-leg of petitioner. Ex.W-4 is Ultra-Sound Scanning Report and Films of Venous system issued by SL Diagnostics, Hyderabad. Ex.W-5 is Reference letter of Sowmya Hospital to AMS D.D Hospital, Cardiology, Hyderabad. Ex.W-6 is Medical Treatment, prescriptions and cardiology reports of Andhra Mahila Sabha D.D. Hospital, Hyderabad. Ex.W-7 is SCCL Reference letter for imparting medical treatment to the petitioner. Ex.W-8 is SCCL Reference letter of the Area Hospital, RKP to KIMS Hospital, Hyderabad. Ex.W-9 is Discharge summary of inpatient treatment of KIMS Hospital, Hyderabad from 2.11.2018 to 09.11.2018. Ex.W-10 is KIMS Hospital medical prescriptions for Right leg swelling and DVT to the petitioner. Ex.W-11 is KIMS Hospital medical prescription for both legs pain to the petitioner. Ex.W-12 is SCCL Hospital medical prescription of the petitioner.

Ex.W-13 is KIMS Hospital Discharge Summary imparting treatment to the petitioner from 02.05.2019 to 20.05.2019, for *recurrent seizures (Focal and generalized).* Ex.W-14 is KIMS Hospital Medical Investigation Reports of the petitioner. Ex.W-15 is KIMS Hospital neurology medical treatment prescriptions of the petitioner. Ex.W-16 is KIMS Hospital acute CSVT medical treatment prescriptions of the petitioner. Ex.W-17 is KIMS Hospital medical treatment prescriptions to the petitioner for neurology. Ex.W-18 is KIMS Hospital medical treatment prescriptions of the petitioner for Vascular Surgery, CSVT & Leg swelling. Ex.W-19 is KIMS Hospital medical treatment prescriptions to the petitioner for Cardiology–Ac. PTE, DVT & CSVT; and Ex.W-20 is KIMS Hospital Cardiology medical treatment prescriptions of petitioner. Ex.W-21 is KIMS Hospital medical treatment prescriptions to the petitioner for bleeding. Ex.W-22 is KIMS Hospital cardiology medical treatment prescriptions to the petitioner and Ex.W-23 is KIMS Hospital neurology medical treatment prescriptions to petitioner. Ex.W-24 is KIMS Hospital neurology medical treatment prescriptions to the petitioner. Ex.W-25 is KIMS Hospital Cardiology medical treatment prescriptions to the petitioner. Ex.W-26 is KIMS Hospital medical treatment prescriptions to the petitioner for pain in the legs and scrotal region. Ex.W-27 is KIMS Hospital Vascular surgery medical treatment prescriptions to the petitioner. Ex.W-28 is Appeal rejection order issued by Director (PA&W) and Ex.W-29 is O/c of Demand Letter of the petitioner by RPAD & Ack of the Respondent No.2. The above documents of both sides are not in much dispute by either side.

8. Here, the learned counsel for the respondents'-company has strenuously argued that since the coal mining industry is a central subject the Appropriate Government for Respondent/Management is Central Government, which established Central Govt. Industrial Tribunal-cum-Labour Court at Hyderabad for adjudication of Industrial Disputes and the Petitioner ought to have approached the said Tribunal for the redressal of grievance, if any. But, the Petitioner conveniently avoided filing his petition before the Tribunal established by the Central Government and hence it is not maintainable under law and the same may be dismissed on this ground alone.

8(a). The learned counsel for the respondents'-company argued that the petitioner was appointed as Badli Filler on 12.09.2011 and he being an underground employee is expected to put minimum 190 Musters in a calendar year, but, he was not regular to his duties and in no year he had put in the required 190 musters. The contentions of the Petitioner that he suffered from chronic ill-health, heart problem and recurrent seizures from the year 2015 and he underwent prolonged medical treatment in the Respondent Company hospital is incorrect. If he was really suffering from ill health, it becomes his primary responsibility to report sick in Colliery Hospital or he should have informed to unit officers about his incapability to attend duties and he would have got leave or loss of pay leave but he did not inform anything. The Respondent Company employs more than 43,600 persons and the production results will depend upon the overall attendance and performance of every individual. If anyone remain absent without prior sanction of leave or without any justified cause, the work to be performed get effected. Such unauthorized absence creates sudden void, which at times is very difficult to fill-up with substitute, and there will be no proper planning and already planned schedules get suddenly disturbed without prior notice. For that reason every time the company inform its workers to intimate prior to the unit in-charge so that they may arrange substitute and failing to inform will result in to production and burden on the other employees.

8(b). The learned counsel for the respondents'-company further argued that during the period from January 2018 to December 2018, the Petitioner has put in 00 musters. As the above act amounted to misconduct under Company Standing Orders No. 25.25 & 25.31, he was issued charge sheet dt.13-02-2019 for absenteeism for the year 2018 as sent to his postal address. The Petitioner did not report sick in Company's Hospitals during the entire absenteeism period. Enquiry into the charges leveled against the petitioner was conducted by the Enquiry Officer on 21.09.2019 and the Petitioner has participated in the enquiry proceedings on 21.09.2019. He was given full and fair opportunity to defend his case. In his deposition before the Enquiry Officer, the petitioner admitted that he remained absent on the dates mentioned in the charge sheet, admitted his mistake that he remained absent due to family problems and ill-health. **He submitted the referral letters dt.08.11.2018, 06.05.2019 issued by Company Hospitals.** However, he did not submit any other documentary evidence about the alleged ill-health which prevented him from remaining absent from duties during entire absenteeism period. Copies of enquiry report and proceedings were sent by security guard, S&PC Department to the Petitioner's address vide Letter dt.25.10.2019 to enable him to submit his written representation against the findings contained in the enquiry report, but his house was in locked condition. Therefore the same was published in 'SAKSHI' Telugu News daily dt.02.06.2020 by advising him to receive the show cause notice and documents from the office of the Respondent No.2, but petitioner failed to approach the Respondent Company. Hence, the respondents' company was constrained to impose capital punishment and dismissed from service vide office order dt.20/27.10.2020 and his Appeal was rejected vide letter dt.24.08.2021.

8(c). The learned counsel for the respondents'-company also argued that the petitioner was given number of opportunities to correct himself and to be regular to his duties by imposing minor penalties such as issued suspension of 10 days for the unauthorized absenteeism during the Calendar Year 2015 and warning letter for the unauthorized absenteeism during the Calendar Year 2016. But, the Petitioner has failed to improve his attendance and resorted to unauthorizedly absent for duty during the calendar year 2018. Even after giving opportunities to improve his attendance, the petitioner continued his absenteeism continuously and there is no improvement in the attendance. The petitioner's misconduct has compelled the Respondent/Management to impose penalty of dismissal which cannot be termed as unjust. The petitioner not utilized the opportunities given by the company and not improved his attendance.

Hence, the Respondent Company dismissed him from service vide order dt.20/27.10.2020, which is justified. Hence, he prayed to dismiss the petition, without granting any relief.

9. Per contra, on the point of jurisdiction, the learned counsel for the Petitioner/workman contended that as per the Division Bench Judgment of the Hon'ble High Court reported in 1997 (III) LLJ (Supp.) 11, Between: U. Chinnappa Vs. Cotton Corporation of India, this Tribunal has jurisdiction over Singareni Collieries Company Ltd., to entertain the Industrial Dispute raised by the petitioner/workman though the appropriate Govt. is Central Govt., The petitioner need not raise the Industrial Dispute compulsorily before the Central Govt. Industrial Tribunal, Hyderabad alone, as contended by the respondents' company. Hence, this I.D petition filed by petitioner/ workman is well maintainable before this Tribunal for adjudication of the dispute on merits.

9(a). The learned counsel for the Petitioner/workman argued that the Petitioner/Workman was appointed was appointed during the year 2011 as Badli Filler as a dependant in place of his father, who died while in service during 2007. He served the respondents' company and put-in more than (100) required musters per year. He suffered from chronic ill-health, heart problem and recurrent seizures from the year 2015 and underwent prolonged medical treatment in the respondents' Company Hospitals and other referral hospitals at regular intervals. But, due to the underground work, his health was not cured completely and as he continued to work on one hand and undergoing treatment frequently on the other hand, his health completely deteriorated from 2018. But, the respondents have issued charge sheet dt.13.02.2019 to the petitioner and there is reasonable and sufficient cause for his not attending to duties regularly during the charge sheet period of 2018. The respondents imparted treatment to the petitioner in the SCCL Area Hospital and referred him to KIMS Hospital at Hyderabad, due to Brain Blood Clot and Heart Problems. He was imparted prolonged treatment during the years 2018 – 2019, but without considering the true facts, the respondent No.2 dismissed the petitioner from service, illegally.

9(b). The learned counsel for the Petitioner/workman further argued that the petitioner suffered from severe ill-health, heart problem and brain blood clot. He was imparted treatment in the SCCL Area Hospital, RKP, Mandamarri Area. But, since his health condition was not improved, the respondents have referred the petitioner to KIMS Hospital, Hyderabad during the years 2018 & 2019, through reference letters dt.08.11.2018 and 06.05.2019. The petitioner was getting *"frequent seizures (Focal and generalized) even after giving loading dose. He was incubated in view of poor GCS and ventilator support was given at KIMS Hospital. MRI (Brain) with MRV was done s/o hematoma noted involving left parietal lobe (cortical and sub-cortical) with superior sagittal sinus and bilateral transverse sinus (left>right) thrombosis. Patient was treated with Inj. Midaz, steroid, LMWH, ant edema measures along with antiepileptic drugs and other supportive drugs. 2D Echo was done. s/o RV dysfunction, cardiologist consultation was taken and advice followed. Bilateral LL venous Doppler was done and s/o chronic DVT in right LL. Hematologist consultation was taken for recurrent thrombotic events and advised further evaluation. CT Scan (Brain) were done and noted that left temporoparietal bleed was resolving with surrounding edema and no significant mass effect.* He participated in the enquiry on 21.09.2019, deposed the true facts of his ill-health and his family problems and also submitted Medical Certificates. But, the enquiry officer did not properly appreciate the documentary and oral evidence and he gave his vague findings, which are quite biased and perverse. The 2nd respondent required the petitioner to make representation on the findings report of the Enquiry Officer by letter dt.25.10.2019, which was sent by Security Guard to his house; though the respondents are aware that his house was locked since (2) years, as he was undergoing prolonged treatment at Hyderabad. But, respondent No.2 dismissed him from service vide Ref. dt.20/27.10.2020 straight away, without issuing any prior Show Cause Notice proposing the punishment of dismissal. The petitioner's health condition was badly deteriorated and he suffered from serious ill health, during the charge sheeted period and there is sufficient and reasonable cause for the petitioner for not attending to duties during charge sheet period.

9(c). The learned counsel for the Petitioner/workman further argued that imposing the capital punishment of dismissal from service without any prior show cause notice is against the principles of natural justice. The extremely harsh punishment of dismissal is highly excessive and shockingly disproportionate, which amounts to economic death of the petitioner. Ever since his dismissal from service, the petitioner is out of employment and could not secure any other alternative job in spite of his best efforts. He hails from a very poor family and has no other source of livelihood. Therefore, he prayed to set aside the dismissal order and to direct the Respondents'-Company to reinstate the petitioner/workman into service with continuity of service, all consequential attendant benefits and full back wages.

POINT No. 1:

10. Here, on the point of territorial jurisdiction of this Tribunal, it is settled Law that as per the Division Bench Judgment of the Hon'ble High Court reported in 1997 (III) LLJ (Supp.) 11, Between: U. Chinnappa Vs. Cotton Corporation of India, this Tribunal has got every jurisdiction to entertain the Industrial Dispute raised by the petitioner/workman who was an employee of Singareni Collieries Company Ltd., Even though, the Central Govt. is appropriate Govt., for the respondents'-Company, the petitioner need not compulsorily raise the Industrial Dispute before the Central Govt. Industrial Tribunal, Hyderabad, as contended by the respondents' company; and he can file this I.D. case before this Tribunal as well. Hence, the contentions of the respondents'-company on the point of

jurisdiction of this Tribunal are not sustainable under Law. Accordingly, it is answered in favour of the petitioner and against the respondents' Singareni Collieries Company Limited.

11. Further, in this matter, initially the petitioner/workman denied the validity and legality of the enquiry report. But on 03.10.2023, the learned counsel for petitioner filed memo U/Sec.11-A of I.D Act by accepting the procedure of domestic enquiry. Now the next question is whether the misconduct is proved in the facts of the case and the findings are not perverse. So, this Tribunal is to re-appreciate the evidence and come to its own conclusion with regard to finding guilty or not based on evidence. Accordingly, the Point No.1 is answered.

POINT No. 2 & 3:

12. In view of the pleadings of the Petitioner/Workman as well as Respondents/corporation as well as in view of the rival arguments of their respective counsel now this Court will go into the evidence on record. Admittedly, the petitioner was dismissed from service by Proc. dt.20/27.10.2020 wherein it is alleged that the petitioner was absent from duty without sanctioned leave or sufficient cause during the year 2018. From a perusal of the record, it shows that Charge Sheet dt.13.02.2019 was issued to the petitioner, which is marked as Ex.M-10. It is evident from the charge sheet that the petitioner absented to duties during the year 2019 and further he put in 136 muster during the year 2012, 135 musters during the year 2013, 112 musters during the year 112, '0' musters during the year 2015, 19 musters during the year and improved musters to 104 during the year 2017. Domestic enquiry was conducted and the enquiry proceedings are marked as Ex.M-12. Further, a perusal of Ex.M-12 proceedings of enquiry shows that the Petitioner/Workman participated in the domestic enquiry and deposed that he remained absent on the dates as mentioned in the charge sheet and it was his mistake. He admitted that charge and pleaded guilty and deposed that due to family problems, his health was not good and he was admitted in the KIMS Hospital, Hyderabad for treatment from November 2018 and he was referred by the Area Hospital, RKP vide letter No.RKP/MED/ALL/D/002/14475, dt.08.11.2018 and later in May 2019 vide Lr.No.RKP/MED/AS/D/023/5904, dt.06.05.2019. He accepted his mistake for remaining absent during the charge sheet year of 2018 and assured that he will be more careful in future and he will not remain absent without prior sanction of leave. He submitted the medical treatment slips and report during enquiry. From the Enquiry Report which is also under Ex.M-12, it is evident that the petitioner absented to duty without sanctioned leave and he accepted charge, though pleaded that due to health problems and family problems, he remained absent to his duties. The domestic enquiry file in original together with enquiry proceedings and Enquiry Report with service particulars of the petitioner were submitted to the respondent No.2 General Manager, vide letter dt.27.09.2019, which is marked as Ex.M-13. Further, the 7 days notice was published in Telugu Daily paper vide letter dt.05.05.2020 which is marked as Ex.M-14. The appeal preferred by the petitioner was rejected by the Director (PA&W) vide Ref.dt.24.08.2021 which is marked as Ex.M-15 and acknowledgement of petitioner is under Ex.M-16. The service particulars of the petitioner produced before this Tribunal under Ex.M-16 it is evident that the petitioner put-in 135 musters and sick leave 15 days during the 2013, 112 musters and sick leave 15 days during the year 2014 and 104 musters and sick leave 24 days during the year 2017. The proceedings dt.23.08.2022 of the Dy. Chief Medical Officer, SCCL Area Hospital, Ramakrishnapur is marked as Ex.M-21, wherein, O.P records dt.07.05.2019 (CSVT) of the petitioner/workman were furnished to respondent No.2 General Manager. Dismissal order dt.20/27.10.2020 is marked as Ex.W-1 and appeal submitted by the petitioner was rejected by Director (PA&W) by Ref. dt.24.08.2021 which is marked as Ex.M-15.

13. Apart from the above, the petitioner/workman submitted as many as 25 medical prescriptions and treatment imparted to him, which are marked as Ex.W-3 to Ex.W-27. Most of the medical documents submitted by the petitioner were issued by the SCCL Hospitals, KIMS, Sunshine and other referral Hospitals, which prima-facie show that the petitioner suffused from ill-health for 3 years. The petitioner explained that due to ill-health and family problems, he absented to duties during the charge sheeted year of 2018 and prayed to consider his case sympathetically. However, the respondents/company dismissed the petitioner/workman from service by Proc. dt.20/27.10.2020 which is marked as Ex.W-1. Thus, it is evident from the enquiry proceedings and enquiry report under Ex.M-12 as well as the material on record, that the petitioner had not put in minimum required musters of 190 during the year 2018. For which, petitioner submitted that due to ill-health he was unable to perform duty regularly during the charge sheet period and submitted medical prescriptions and reports, which are marked as Ex.W-3 to Ex.W-27. Further, the above medical documents of the petitioner lend support to his enquiry statement under Ex.M-12 and further he produced medical documents before the enquiry officer as well in support of ill-health suffered by him. These documents clearly show that the petitioner/workman suffered from ill-health during the charge sheet period and hence the defense put-forth by him is plausible. However, it is clear that the petitioner has not attended to duties regularly and the charge was proved against him. Therefore, it can be said that the respondents/company has no axe to grind against the petitioner. Hence, this Tribunal has no hesitation to hold that the charge leveled against the petitioner/ workman is proved and misconduct of the workman is established basing on the evidence and the findings of enquiry officer are not perverse. But, at the same time much gravity cannot be attributed to the petitioner since his ill-health and treatment imparted by SCCL and other referral hospitals is supported by the medical documents produced before this Tribunal which shows reasonable cause for the petitioner's absence during the charge sheet period.

13(a). Apart from the above, the contention of the Petitioner/ Workman is that he was appointed in the year 2011 as a dependant of his deceased father who died while in service and put in more than 100 musters for four years. The petitioner submitted the referral letters dt.08.11.2018, 06.05.2019 issued by Company Hospitals during enquiry and the respondents have referred the petitioner to KIM Hospital, Hyderabad during the years 2018 and 2019, through the above reference letters dt.08.11.2018 and 06.05.2019. It appears from the medical documents submitted by the petitioner that he was suffering from:

"Frequent seizures (Focal and generalized) even after giving loading dose. He was incubated in view of poor GCS and ventilator support was given at KIMS Hospital. MRI (Brain) with MRV was done s/o hematoma noted involving left parietal lobe (cortical and sub-cortical) with superior sagittal sinus and bilateral transverse sinus (left>right) thrombosis. Patient was treated with Inj. Midaz, steroid, LMWH, ant edema measures along with antiepileptic drugs and other supportive drugs. 2D Echo was done. s/o RV dysfunction, cardiologist consultation was taken and advice followed. Bilateral LL venous Doppler was done and s/o chronic DVT in right LL. Hematologist consultation was taken for recurrent thrombotic events and advised further evaluation. CT Scan (Brain) were done and noted that left temporoparietal bleed was resolving with surrounding edema and no significant mass effect."

Further, the petitioner hails from a very poor family, he has got no other livelihood and facing untold financial problems, and prayed to consider the case U/Sec.11-A of I.D. Act. Here, the learned counsel for the petitioner relied upon the following citations:-

1) HON'BLE SUPREME COURT JUDGMENT REPORTED IN AIR 1988 SC 303 – Between: Scooter India Ltd, Labour Court, Lucknow & ors:

In this case, the Labour Court while holding that enquiry had conformed to statutory prescriptions and principles of natural justice, yet held that order of termination was not justified and ordered for reinstating employee with 75% back wages. Wide powers are vested in Labour Court or Tribunal. Labour Court can temper justice with mercy and give an opportunity to an erring workman to reform himself. Order of Labour Court granting relief of reinstatement with 75% back wages was upheld by Hon'ble Supreme Court.

2) HON'BLE HIGH COURT JUDGMENT IN W.A. No.1101/2008 and W.P.No.7671 of 2000, dt.07.04.2009 D.B. Judgment:

In this case, the Labour Court granted reinstatement with continuity of service and half-of back wages. The Hon'ble High Court held that since the petitioner remained unemployed from the date of removal, modified the award of Labour Court by granting full back wages.

3) Judgment of Hon'ble Supreme Court, dt.24-08-2009 in Civil Appeal No.5762 of 2009, Between: Coal India Ltd. & Anr Vs. Mukul Kumar Choudari and others.

4) Judgment of Hon'ble Supreme Court dt.14-05-2009 Between: Jagadish Singh Vs. Punjab Engineering College and others.

In the above Judgments of the Hon'ble Supreme Court at Sl.No.3 & 4 reveals that the Hon'ble Court held that the punishment should be in commensurate with the gravity of charges and not shockingly disproportionate.

13(b). Further, the learned counsel for the petitioner/workman has relied upon a decision of the Hon'ble High Court reported in 2012 (1) ALD 220 (DB), wherein their lordships observed that:

"The Industrial Disputes Act, 1947 is a social welfare legislation, which required to be interpreted keeping in view the goals set out in the Preamble and Directive principles of State Policy in Part-IV of the Constitution. The Labour Court is conferred with very wide discretion U/Sec.11-A. The Industrial Court conferred with very wide discretion U/Sec.11-A of the Act for granting appropriate relief".

14. Therefore, in view of the above decisions and the facts and circumstances of the case, if we come to quantum of sentence it is settled law that the discretion of which can be exercised U/Sec.11-A is available only on the existence of certain factors like punishment being disproportionate to the gravity of misconduct so as to shock the conscience of the Court, or the existence of any mitigating circumstances which require the reduction of the sentence, or the past conduct of the workman which may persuade the Labour Court to reduce the punishment. A perusal of record shows that the petitioner suffered from ill-health and submitted several medical documents showing the treatment imparted to him by SCCL Hospitals and other referral hospitals. Further, the petitioner submitted that he hails from a very poor family and has got no other livelihood and facing untold financial problems, hence prayed to consider the case U/Sec.11-A of I.D., Act. The petitioner is out of employment from 2020 and there is reasonable and sufficient cause for his absence to duties during charge sheet period, as the ill-health suffered by the petitioner is supported by the medical record of respondents' SCCL-company produced before this Tribunal. In view of the above mitigating circumstances of the case, this Tribunal is of the opinion that the extreme punishment of dismissal from service

imposed by the respondents'/company against the petitioner deserves to be set aside since the disciplinary authority cannot be permitted to act arbitrarily and work like a *Roman Knight* and it cannot be allowed a *fight between David and Goliath* as in the present case on hand.

15. Therefore, in view of the above facts and circumstances and keeping in view of the principle *"temper justice with mercy"* and to meet the ends of justice, this Tribunal is of the considered opinion that the punishment of dismissal from service deserves to be set aside. However, since the charges leveled against the petitioner are proved, the relief is to be molded by this Tribunal appropriately and considering the mitigating circumstances discussed supra, the petitioner is entitled to be reinstated into service with continuity of service only. But, the petitioner is not entitled to any back wages and any attendant benefits during the intervening period from the date of his dismissal to till date since he might have gainfully employed during pendency of this Industrial Dispute. Hence, the punishment of dismissal from service imposed by the Respondents' Company is hereby modified appropriately. Accordingly, the Point No.2 & 3 are answered.

16. **IN THE RESULT,** the petition is partly allowed. The dismissal order dt.20/27.10.2020, under Ex.W-1 passed by the Respondent No.2 is hereby modified appropriately. The respondents'/company is directed to reinstate the petitioner into service with continuity of service only, but, without any attendant benefits and without any back wages during the intervening period from the date of his dismissal to till date. The petitioner is entitled to the salary only from the date of publication this Award. Copy of the Award be sent to the appropriate Government for publication. Both parties shall bear their own costs.

Typed to my dictation, corrected and pronounced by me in the open court, on this the 20th day of March, 2024.

Dr. T. SRINIVASA RAO, Chairman-cum-Presiding Officer

APPENDIX OF EVIDENCE

WITNESSES EXAMINED

FOR WORKMAN:-	FOR MANAGEMENT:-
WW-1 K. Chiranjeevi, Petitioner.	-Nil-

EXHIBITS MARKED

FOR WORKMAN:-

Ex.W-1	Dt.	20/ 27.10.2020	Dismissal Order issued by R-2,
Ex.W-2	Dt.	13.02.2019	Charge Sheet issued by R-2,
Ex.W-3	Dt.	06.08.2018	Medical Assessment Form of Sunshine Hospital, for pain & swelling of right-leg of petitioner.
Ex.W-4	Dt.	27.08.2018	Ultra-Sound Scanning Report & Films of Venous system issued by SL Diagnostics, Hyderabad.
Ex.W-5	Dt.	02.11.2018	Reference letter of Sowmya Hospital to AMS D.D Hospital, Cardiology, Hyderabad.
Ex.W-6	Dt.	02.11.2018	Medical Treatment, prescriptions & cardiology reports of Andhra Mahila Sabha D.D. Hospital, Hyderabad.
Ex.W-7	Dt.	08.11.2018	SCCL Reference letter for imparting medical treatment to the petitioner.
Ex.W-8	Dt.	-do-	SCCL Reference letter of the Area Hospital, RKP to KIMS Hospital, Hyderabad.
Ex.W-9	Dt.	09.11.2018	Discharge summary of inpatient treatment of KIMS Hospital, Hyderabad from 2.11.2018 to 09.11.2018.
Ex.W-10	Dt.	16.11.2018	KIMS Hospital medical prescriptions for Right leg swelling & DVT to the petitioner.
Ex.W-11	Dt.	26.03.2019	KIMS Hospital medical prescription for both legs pain to the petitioner.

Ex.W-12	Dt.	02.05.2019	SCCL Hospital medical prescription of the petitioner
Ex.W-13	Dt.	20.05.2019	KIMS Hospital Discharge Summary imparting treatment to the petitioner from 02.05.2019 to 20.05.2019, for *recurrent seizures (Focal and generalized).*
Ex.W-14	Dt.	-do-	KIMS Hospital Medical Investigation Reports of the petitioner.
Ex.W-15	Dt.	22.07.2019	KIMS Hospital neurology medical treatment prescriptions of the petitioner.
Ex.W-16	Dt.	26.08.2019	KIMS Hospital acute CSVT medical treatment prescriptions of the petitioner.
Ex.W-17	Dt.	03.09.2019	KIMS Hospital medical treatment prescriptions to the petitioner for neurology.
Ex.W-18	Dt.	16.10.2019	KIMS Hospital medical treatment prescriptions of the petitioner for Vascular Surgery, CSVT & Leg swelling.
Ex.W-19	Dt.	23.10.2019	KIMS Hospital medical treatment prescriptions to the petitioner for Cardiology – Ac. PTE, DVT & CSVT.
Ex.W-20	Dt.	-do-	KIMS Hospital Cardiology medical treatment prescriptions of the petitioner.
Ex.W-21	Dt.	-do-	KIMS Hospital medical treatment prescriptions to the petitioner for bleeding.
Ex.W-22	Dt.	09.01.2020	KIMS Hospital cardiology medical treatment prescriptions to the petitioner.
Ex.W-23	Dt.	11.03.2020	KIMS Hospital neurology medical treatment prescriptions to the petitioner.
Ex.W-24	Dt.	04.06.2020	KIMS Hospital neurology medical treatment prescriptions to the petitioner.
Ex.W-25	Dt.	-do-	KIMS Hospital Cardiology medical treatment prescriptions to the petitioner.
Ex.W-26	Dt.	03.12.2020	KIMS Hospital medical treatment prescriptions to the petitioner for pain in the legs & scrotal region.
Ex.W-27	Dt.	05.12.2020	KIMS Hospital Vascular surgery medical treatment prescriptions to the petitioner.
Ex.W-28	Dt.	24.08.2021	Appeal rejection order issued by Director (PA&W).
Ex.W-29	Dt.	20.12.2021	O/c of Demand Letter of the petitioner by RPAD & Ack of the Respondent No.2

FOR MANAGEMENT:-

Ex.M-1	Dt.	04.02.2017	Attested Copy of charge sheet issued to petitioner vide Lr.No. MMR/KK.1/R/008/324
Ex.M-2	Dt.	13.02.2017	Attested Copy of Enquiry Notice to the petitioner vide Lr.No.MMR/KK.1/R/008/419
Ex.M-3	Dt.	13.02.2017	Attested Copy of Application by the petitioner
Ex.M-4	Dt.	-	Attested Copy of Enquiry proceedings
Ex.M-5	Dt.	-	Attested Copy of Muster particulars of petitioner from Jan 2016 to Dec 2016
Ex.M-6	Dt.	22.02.2017	Attested Copy of Check list for Disciplinary cases forwarded to corporate office/Area office

Ex.M-7	Dt.	07.03.2017	Attested copy of 7 Days Notice vide Lr. No. MMR/ PER/ D/ 072/17/1517
Ex.M-8	Dt.	18.03.2017	Attested Copy of explanation of notice by the petitioner
Ex.M-9	Dt.	11.01.2018	Attested copy of Disciplinary action against absenteeism of petitioner for year 2016 vide LR.No.MMR/KK.1/R/010/163
Ex.M-10	Dt.	13.02.2019	Attested Copy of charge sheet issued to petitioner vide Lr.No. MMR/KK.1/R/008/705
Ex.M-11	Dt.	-	Attested Copy of charge sheet acknowledgment received by the petitioner
Ex.M-12	Dt.	-	Attested Copy of Enquiry proceedings
Ex.M-13	Dt.	27.09.2019	Attested copy of disciplinary action against petitioner vide Lr.No.MMR/K.K.1/R/010/4187
Ex.M-14	Dt.	05.05.2020	Attested copy of publication of show cause notice in telugu daily vide Lr.No.MMR/PER/D/072/20/2863
Ex.M-15	Dt.	24.08.2021	Attested copy of dismissal order of petitioner vide Lr.No.CRP/PER/IR/D/90/1017
Ex.M-16	Dt.	-	Attested Copy of dismissal order acknowledgment received by the petitioner
Ex.M-17	Dt.	-	Attested Copy of service and other particulars of petitioner (Proforma-A)
Ex.M-18	Dt.	-	Attested Copy of Muster particulars of petitioner from Jan 2018 to Dec 2018
Ex.M-19	Dt.	30/ 31.08.2021	Attested copy of submission of request of petitioner to revoke the penalty of dismissal vide Lr.No.MMR/PER/D/072/21/5646
Ex.M-20	Dt.	02.11.2020	Attested Copy of Name Removal letter of the petitioner vide Lr.No.MMR/KK.1/R/010/3990
Ex.M-21	Dt.	23.08.2022	Disciplinary proceedings of Medical Board Lr.No.RKP/ MED/ W/22/9463 & (OP Receipt)

नई दिल्ली, 9 मई, 2024

का.आ. 890.—औद्योगिक विवाद अधिनियम, (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार **प्राचार्य, जवाहर नवोदय विद्यालय, तिलवासनी, जोधपुर - (राज.),** के प्रबंधतंत्र के संबद्ध नियोजकों **और श्री गणपत राम, कामगार,** के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण-सह-श्रम न्यायालय- जयपुर,पंचाट (संदर्भ संख्या 20/2016) को जैसा कि अनुलग्नक में दिखाया गया है, प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 08.05.2024 को प्राप्त हुआ था।

[सं. एल–42012/30/2016-आईआर(डीयू)]

दिलीप कुमार, अवर सचिव

New Delhi, the 9th May, 2024

S.O. 890.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 20/2016) of the **Central Government Industrial Tribunal cum Labour Court – Jaipur** as shown in the Annexure, in the Industrial dispute between the employers in relation to **The Principal, Jawahar Navodaya Vidyalaya, Tilvasni, Jodhpur - (Raj.), and Shri Ganpat Ram, Worker,** which was received along with soft copy of the award by the Central Government on 08.05.2024.

[No. 42012/30/2016-IR (DU)]

DILIP KUMAR, Under Secy.

अनुलग्नक

केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जयपुर

पीठासीन अधिकारी

राधा मोहन चतुर्वेदी

सी.जी.आई.टी. प्रकरण सं.– 20/2016

Reference No. L-42012/30/2016-IR (DU) Dated: 11.04.2016

श्री गणपत राम पुत्र श्री छोटूराम निवासी ग्राम– भावी, तहसील–बिलाड़ा, जोधपुर, (राज.)।

.....प्रार्थी

बनाम

1. प्राचार्य, जवाहर नवोदय विद्यालय, ग्राम–तिलवासनी, जोधपुर– (राज.) 342605।

.....अप्रार्थीगण/विपक्षी

उपस्थितः–

: श्री विकास राव, अभिभाषक प्रार्थी।

: श्री हवा सिंह, अभिभाषक विपक्षीगण।

: अधिनिर्णय :

दिनांक : 13.02.2024

1- श्रम मंत्रालय भारत सरकार नई दिल्ली द्वारा दिनांक 11.04.2016 को औद्योगिक विवाद अधिनियम 1947 (जिसे आगे मात्र अधिनियम कहा जावेगा) की धारा 10 (1) (डी) व 2। के अन्तर्गत प्रदत्त शक्तिया के अनुसरण में निम्नांकित विवाद न्यायनिर्णयन हेतु इस अधिकरण को संदर्भित किया गया :–

"क्या प्रबंधन प्राचार्य जवाहर नवोदय विद्यालय, तिलवासनी, जिला जोधपुर (राजस्थान) द्वारा श्री गणपत राम पुत्र श्री छोटूराम जी, को अनुभव प्रमाण पत्र जारी करने के बावजूद अपने संस्थान का कर्मकार न मानना एवं दिनांक 16.10.2000 से सेवा समाप्ति कार्यवाही वैध एवं विधि सम्मत है? यदि नहीं तो श्री गणपत राम किस राहत के और कब से हकदार ह?"

2- प्रार्थी ने दिनांक 01.08.2016 को अपने दावे का अभिकथन प्रस्तुत किया जिसके संक्षिप्त अभिवचन निम्नानुसार हैं:

3- प्रार्थी ने 15.11.1994 को विपक्षी संस्थान में हेल्पर के पद पर कार्य प्रारम्भ किया। दिनांक 15.10.2000 को बिना कोई कारण बताये एवं नोटिस दिये विपक्षी ने प्रार्थी को सेवा मुक्त कर दिया। प्रार्थी से कनिष्ठ कई व्यक्तियों को सेवा समाप्ति के बाद सेवा में लगाया गया तथा प्रार्थी को कोई वरीयता नहीं दी गई। विपक्षी द्वारा प्रार्थी को इस प्रकार सेवा मुक्त कर देना अनुचित श्रम व्यवहार है। दिनांक 15.11.2000 से अब तक पार्थी बेरोजगार है। प्रार्थी की सेवा समाप्ति अधिनियम की धारा 25 F, G, व H के उल्लंघन में होने से अवैध है। अतः सेवामुक्ति दिनांक 16.10.2000 को अवैध घोषित कर प्रार्थी को सेवा में निरंतरता एवं विगत वेतन परिलाभों सहित बहाल करने का आदेश दिया जावे।

4- दिनांक 29.08.2017 को विपक्षी ने वादोततर में दावे के अभिवचनों को अस्वीकार किया और यह कहा कि विपक्षी विद्यालय में प्रार्थी को हेल्पर के पद पर नियुक्ति नहीं दी गई बल्कि वह दैनिक मजदूरी करता था। प्रार्थी ने लगातार विपक्षी विद्यालय में दैनिक मजदूरी का कार्य भी नहीं किया। उसने स्वेच्छया काम पर आना छोड़ दिया। विगत 14 वर्षो में वह विपक्षी विद्यालय में नही आया न ही सम्पर्क किया। प्रार्थी ने 15.11.1994 से 15.10.2000 तक लगातार विपक्षी के विद्याालय में कार्य नहीं किया। उसने एक वर्ष में कभी 240 दिन लगातार कार्य भी नहीं किया। प्राथी को अधिनियम के किसी भी प्रावधान का संरक्षण नहीं दिया जा सकता। प्रार्थी ने वाद भी 14 वर्ष के विलंब से प्रस्तुत किया है, जिसे निरस्त किया जावें।

5- दिनांक 27.11.2017 को प्रार्थी की ओर से से वादोत्तर में किये गये कथनों का खण्डन करते हुए कहा गया है कि प्राथी से कनिष्ठ व्यक्ति ओमाराम विश्नोई, निवासी, तिलवासनी को श्रम न्यायालय के आदेश से सेवा में स्थापित किया गया है। अतः दावा स्वीकार किया जावें।

6- प्रार्थी ने अपने साक्ष्य में स्वयं प्रार्थी गणपत राम को परीक्षित किया एवं प्रलेखीय साक्ष्य में प्रदर्श W-1 से प्रदर्श W-5 तक प्रलेखों को प्रदर्शित किया।

7- विपक्षी ने अपने साक्ष्य में MW-1 श्रीमती उषा किरण को परीक्षित किया और कोई प्रलेख साक्ष्य में प्रदर्शित नहीं किया।

8- दिनांक 30.01.2024 को मेनें उभयपक्ष के अभिभाषकों के परस्पर विरोधी तर्क सुनें तथा साक्ष्य का परिशीलन किया।

9- प्रार्थी का यह तर्क है कि प्रदर्श W-2, W-3, एवं प्रदर्श W-4 विपक्षी द्वारा जारी अनुभव प्रमाण पत्र एवं पत्र है जिनमें विपक्षी के प्राचार्य द्वारा वर्ष 1996 में 264 दिन लगातार कार्य करना विपक्षी ने स्वीकार किया है। यद्यपि ये प्रमाण पत्र मार्च, 1998 तक की अवधि के ही है किन्तु इसके बाद भी प्रार्थी ने विपक्षी के अधीन कार्य किया है। प्रार्थी कभी भी कार्य छोडकर नहीं गया। 14 वर्ष का विलम्ब विपक्षी द्वारा बारम्बार दिये गये अश्वासनों के कारण हुआ है। विपक्षी ने भी ये स्वीकार किया है कि प्रार्थी ने वर्ष 2000 तक कार्य किया है, अतः वाद स्वीकार किया जावें।

10- अभिभाषक विपक्षी का यह विरोधी तर्क है कि प्रदर्श W-2 प्रमाण पत्र में वर्णित तथ्य सही नहीं है, जबकि प्रदर्श W-5 प्रार्थी के प्रार्थना पत्र पर अंकित कार्य अवधि सही है, जिससे वर्ष 1996 में प्रार्थी द्वारा 264 दिन कार्य किये जाने का तथ्य खण्डित हो जाता है। प्रार्थी ने न तो उपस्थिति रजिस्टर न वेतन भुगतान संबंधी प्रमाण, स्वयं द्वारा एक वर्ष की अवधि में 240 दिन से अधिक कार्य करने के प्रमाण स्वरूप प्रस्तुत किये और न ही प्रस्तुत करवाने हेतु कोई प्रार्थना पत्र प्रस्तुत किया। प्रार्थी ने यह स्वीकार किया है कि उसने कभी भी पूरे महीने लगातार नौकरी नहीं की, इस प्रकार प्रार्थी के संबंध में, जो कि स्वयं ही कार्य छोड कर चला गया, अधिनियम की धारा 25 (F)] (G) व ¼H½ के प्रावधान आकृष्ट नहीं होते है, अतः वाद अस्वीकार किया जावे।

11- मेनें उभय पक्ष के तर्को और साक्ष्य पर मनन किया इस विवाद में निम्नाकिंत विचारणीय बिन्दु उत्पन्न हुये हैः

1. क्या प्रार्थी ने उसकी सेवा समाप्ति तिथि 16.10.2000 से पूर्ववर्ती एक कलेण्डर वर्ष की अवधि में विपक्षी के अधीन 240 दिन से अधिक कार्य किया?

.....प्रार्थी

2. क्या विपक्षी द्वारा प्रार्थी की सेवा समाप्ति के पूर्व अधिनियम की धारा 25 (ध) के प्रावधानों की अनुपालना नहीं किये जाने से सेवा समाप्ति अवैध है?

.....प्रार्थी

3. क्या विपक्षी ने प्रार्थी की सेवा समापन के समय वरिष्ठता सूची नहीं बनाई और प्रार्थी से कनिष्ठतर श्रमिकों को सेवा में बनाये रखा एवं प्रार्थी को वरीयता नहीं दी गई?

.....पार्थी

4. अनुतोष क्या हो?

12- उभयपक्ष के तर्को और सुसंगत विधि पर मनन के उपरांत विचारणीय बिन्दुओं पर विनिश्चय इस प्रकार हैः

13- <u>विचारणीय बिन्दु सं.—1</u>

14- प्रार्थी गणपत राम ने अपने साक्ष्य में यह कहा है कि उसने अप्रार्थी संस्थान में 15.11.1994 से 15.10.2000 तक लगातार बिना किसी व्यवधान के कार्य किया है। प्रार्थी ने इस संबंध में प्रदर्श W-2 अनुभव प्रमाण पत्र साक्ष्य में प्रदर्शित किया है। इस अनुभव प्रमाण पत्र में अंकित विवरण के अनुसार प्रार्थी द्वारा प्रत्येक वर्ष में निम्नानुसार कार्य दिवसों पर कार्य किया जाना दर्शाया गया हैः—

वर्ष	दिन
1994	30
1995	104
1996	264
1997	153
1998 (मार्च तक)	83

15- प्रार्थी ने मार्च, 1998 के उपरांत विपक्षी के अधीन कार्य करने का कोई प्रलेखीय प्रमाण प्रस्तुत नहीं किया है। विपक्षी का यह आक्षेप है कि प्रदर्श W-2 प्रमाण पत्र उनके प्राचार्य द्वारा जारी किया गया किन्तु इसमें वर्णित तथ्य सत्य नहीं हैं, क्योकि प्रदर्श W-5 प्रार्थी के प्रार्थना पत्र पर 29.04.1998 को प्रार्थी के कार्य दिवसों की गणना करते हुये उनका सत्यापन किया गया है। इस गणना के अनुसार प्रार्थी द्वारा 1994 में 30, 1995 में 81, 1996 में 214, 1997 में 168, तथा 1998 में (27.03.1998) तक 86 दिन कार्य करना

प्रकट होता है। इस गणना को प्रार्थी द्वारा कोई चुनौती भी नहीं दी गई है। मार्च, 1998 के उपरांत 15.10.2000 तक लगातार कार्य करने का कोई प्रलेखी– प्रमाण प्रार्थी ने प्रस्तुत नहीं किया है। मैंनें इन तथ्यों पर विचार किया। प्रदर्श W-5 पार्थना पत्र स्वयं प्रार्थी द्वारा ही प्रस्तुत प्रलेख है जिस पर विपक्षी द्वारा अनुभव प्रमाण पत्र जारी करने के उद्देश्य से कार्य दिवसों की गणना करते हुये उनका सत्यापन किया गया है। प्रार्थी द्वारा इस गणना को किसी साक्ष्य से किसी प्रकार न तो चुनौती दी गई है न ही खण्डन किया गया है। इसलिये ये उपधारणा किया जाना न्यायोचित है कि प्रदर्श W-5 पर की गई कार्य दिवसों की गणना प्रार्थी को स्वीकार है।

16- प्रदर्श **W-5** प्रार्थना पत्र में प्रार्थी ने यह भी कहा है कि "अनुकूल परिस्थितिया होने से मैने कभी भी पूरा महीने लगातार नौकरी नहीं की है। अतः जितने दिन मैने कार्य किया है मुझे उतने दिन का अनुभव प्रमाण पत्र देने की कृपा करे।"

17- इस कथन के प्रकाश में यह स्पष्ट है कि प्रदर्श W-2 अनुभव प्रमाण पत्र तथा प्रदर्श W-5 प्रार्थना पत्र पर किये गये कार्य संपादन के सत्यापन में कार्य दिवसों की गणना में सारवान अंतर है। मरे अधिमत से प्रदर्श **W-5** प्रार्थना पत्र पर की गई गणना अधिक विश्वसनीय है। इसी गणना के आधार पर प्रदर्श W-2 प्रमाण पत्र दिनांक 01.06.1998 को जारी किया जाना था। प्रदर्श W-5 पर कार्य दिवसों की गणना तिथियों का अंकन करते हुये की गई है। इन तिथियों के अंकन से कार्यकाल की संगणना करने पर प्रार्थी का 15 नवम्बर, 1994 से 27 मार्च, 1998 तक किसी भी एक कलेण्डर वर्ष में 240 दिन से अधिक कार्य करना प्रमाणित नहीं होता है। उल्लेखनीय है कि प्रार्थी ने मार्च, 1998 के उपरांत अप्रेल, 1998 से 15 अक्टूबर, 2000 तक की अवधि में प्रत्येक महीने में कितने दिन कार्य किया अथवा सेवा समाप्ति तिथि के पूर्ववर्ती एक कलेण्डर वर्ष की अवधि में 240 दिन से अधिक कार्य करने का कोई प्रमाण भी प्रस्तुत नहीं किया है। जबकि इस प्रकार लगातार कार्य करने के तथ्य को प्रमाणित करने का सिद्विभार स्वयं प्रार्थी पर ही है।

18- प्रार्थी ने विपक्षी के अधीन अप्रेल, 1998 से 15.10.2000 तक कार्य करने एवं वेतन भुगतान प्राप्त करने के संबंध में न तो कोई प्रलेखीय प्रमाण प्रस्तुत किया है न ही कोई प्रलेख विपक्षी के आधिपत्य में होने का कथन करते हुये, विपक्षी से प्रस्तुत करवाने हेतु अधिकरण के समक्ष कोई आवेदन प्रस्तुत किया है।

19- विपक्षी साक्षी श्रीमती उषा किरण ने अपने परीक्षण में यह अवश्य कहा है कि वर्ष 2000 में प्रार्थी स्वेच्छा से मजदूरी छोडकर चला गया। साक्षी ने यह भी स्पष्ट किया है कि प्रार्थी ने 15.11.1994 से 15.10.2000 तक लगातार कार्य नहीं किया है।

20- विपक्षी साक्षी के इस कथन को प्रदर्श W-5 प्रार्थना पत्र में प्रार्थी द्वारा किये गये इस कथन से पुष्टि मिलती है कि उसने परिस्थितियों–वश (अनुकूल/प्रतिकूल) कभी भी पूरे महीने नौकरी नहीं की। इसलिये विपक्षी का यह कथन विश्वसनीय लगता है कि प्रार्थी ने 15.10.2000 तक कार्य तो किया किन्तु इस अवधि में प्रत्येक महीने में लगातार कार्य नहीं किया और न ही सेवा समाप्ति के पूर्ववर्ती एक कलेएडर वर्ष में 240 दिन से अधिक कार्य किया।

21- प्रार्थी का यह कथन, किसी प्रलेखीय साक्ष्य के अभाव में विश्वसनीय नहीं है कि उसकी कथित सेवा समाप्ति के उपरांत वह 14 वर्ष तक विपक्षी संस्थान में जाकर सेवा में रखने का निवेदन करता रहा और विपक्षीगण उसे सेवा में रखने का मौखिक अश्वासन देते रहे।

22- इस विवेचन के उपरांत यह निष्कर्षित है कि प्रार्थी विपक्षी के अधीन सेवा समाप्ति तिथि 16.10.2000 के पूर्ववर्ती एक कलेण्डर वर्ष में 240 दिन से अधिक लगातार कार्य करने का तथ्य प्रमाणित नहीं कर सका है। अतः यह बिन्दु प्रार्थी के विरूद्व निर्णीत किया जाता है।

23- विचारणीय बिन्दु सं.–2

24- अधिनियम की धारा 25 (F) के प्रावधानों के अन्तर्गत किसी कर्मकार की छंटनी किये जाने के पूर्व श्रमिक को एक माह की अवधि का नोटिस या नोटिस वेतन तथा छंटनी प्रतिकर का भुगतान किये जाने का दायित्व नियोजक पर आरोपित किया गया है। इन प्रावधानों को श्रमिक के लाभार्थ आकृष्ट किये जाने की पूर्ववर्ती शर्त यही है कि श्रमिक, नियोजक के अधीन सेवा समाप्ति तिथि के पूर्व एक वर्ष की सेवा पूर्ण कर चुका हो। अधिनियम की धारा 25 B (2) के अन्तर्गत यह प्रावधान है कि कर्मकार द्वारा जब एक वर्ष की लगातार सेवा नहीं की गई हो तो उस एक वर्ष में 240 दिन से अधिक कार्य कर लेने पर ही यह मान लिया जावेगा कि उसने एक वर्ष लगातार कार्य किया है। विचारणीय बिन्दु सं. 1 के अन्तगत ये निष्कर्षित किया गया है कि प्रार्थी विपक्षी के अधीन एक कलेण्डर वर्ष में 240 दिन से अधिक कार्य करने का तथ्य प्रमाणित नहीं कर पाया है। इस स्थिति में विपक्षी द्वारा प्रार्थी को सेवा समापन के पूर्व नोटिस अथवा नोटिस वेतन एवं छंटनी प्रतिकर के भुगतान की अध्यपेक्षा उत्पन्न ही नहीं होती है। इसलिये विपक्षी द्वारा अधिनियम की धारा 25 F के प्रावधानों का अनुपालन न किया जाना भी कथित सेवा समाप्ति को अवैध नहीं ठहराता है। अतः यह बिन्दु प्रार्थी के विरूद्व निर्णीत किया जाता है।

25- <u>विचारणीय बिन्दु सं.–3</u>

26- प्रार्थी गणपत राम ने अपने साक्ष्य में यह कहा है कि प्रार्थी से कनिष्ठ व्यक्ति ओमाराम विश्नोई जो तिलवासनी का रहने वाला है को श्रम न्यायालय के आदेश से सेवा में स्थापित किया गया जो नौकरी कर रहा है और भी कई कनिष्ट व्यक्ति सेवा में स्थापित है। इस कथन से ये तो स्वतः स्पष्ट है कि ओमाराम विश्नोई नाम के व्यक्ति को विपक्षी ने श्रम न्यायालय के आदेश के उपरांत दैनिक वेतन भोगी के रूप में लगाया है। लेकिन प्रार्थी ने अन्य कई व्यक्तियों के सेवा में रहने का जो कथन किया है वह किसी साक्ष्य के अभाव में प्रमाणित नहीं होता है। प्रार्थी ने अपने से कनिष्ठ वयक्तियां को नियुक्ति दी जाने के संबंध में कोई विवरण एवं प्रमाण प्रस्तुत नहीं किया है। इसलिये यह नहीं माना जा सकता कि प्रार्थी से कनिष्ठ व्यक्तियों को सेवा में रखते हुये प्रार्थी को उन पर वरीयता नहीं दी गई हो। इस प्रकार यह बिन्दु भी प्रार्थी के विरूद्व निर्णीत किया जाता है।

27- <u>अनुतोषः–</u>

28- विचारणीय बिन्दु सं. 1, 2 व 3 प्रार्थी के विरूद्व निर्णीत होने पर यह प्रमाणित हुआ है कि प्रार्थी विपक्षी संस्थान का दैनिक वेतन भोगी श्रमिक तो था किन्तु उसने सेवा समाप्ति तिथि 16.10.2000 के पूर्ववर्ती एक कलेण्डर वर्ष में 240 दिन से अधिक कार्य करने का तथ्य प्रमाणित नहीं किया है। प्रार्थी से कनिष्ठतर किसी व्यक्ति को सेवा समाप्ति के पश्चात विपक्षी द्वारा नियुक्त किया जाना भी प्रमाणित नहीं हुआ है। इसलिये प्रार्थी अधिनियम की धारा 25 F, G, व H के प्रावधानों का संरक्षण प्राप्त करने का अधिकारी नहीं है।

29- केन्द्र सरकार द्वारा संदर्भित विवाद को इसी प्रकार न्याय निर्णीत किया जाता है।

30- अधिनिर्णय की प्रतिलिपि समुचित सरकार को अधिनियम, की धारा 17 (1) के अंतर्गत प्रकाशनार्थ प्रेषित की जावें।

राधा मोहन चतुर्वेदी, पीठासीन अधिकारी

नई दिल्ली, 10 मई, 2024

का.आ. 891.—औघोगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार **भारतीय स्टेट बैंक** के प्रबंधतत्र, संबद्ध नियोजको और उनके कर्मकारो के बीच अनुबंध में निर्दिष्ट औघोगिक विवाद में केन्द्रीय सरकार औघोगिक अधिकरण/श्रम न्यायालय, **जयपुर** के पंचाट (75/2012) प्रकाशित करती है।

[सं. एल–12011/14/2012-आईआर(बी-I)]

सलोनी, उप निदेशक

New Delhi, the 10th May, 2024

S.O. 891.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 75/2012*)* of the *Cent.Govt.Indus.Tribunal-cum-Labour Court Jaipur* as shown in the Annexure, in the industrial dispute between the management of <u>State Bank of India</u> and their workmen.

[No. L-12011/14/2012-IR (B-I)]

SALONI, Dy. Director

अनुलग्नक

केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जयपुर

पीठासीन अधिकारी

राधा मोहन चतुर्वेदी

सी.जी.आई.टी. प्रकरण सं. 75/2012

Reference No. L-12011/14/2012-IR (B-I) **Dated: 19.07.2012**

श्री लोकेश कुमार पुत्र श्री राधा किशन, C/o श्री गेहरा लाल जोशी, महामंन्त्री, राजस्थान प्रदेश बैंक वर्कर्स आर्गेनाइजेशन, स्टेट बैंक ऑफ इण्डिया, CCPC न्यू फतेहपुरा, उदयपुर, (राज.)।

.....प्रार्थी

बनाम

1- प्रबंध निदेशक, स्टेट बैंक ऑफ इण्डिया, प्रधान कार्यालय, तिलक मार्ग, जयपुर।

2- सहायक महाप्रबंधक, स्टेट बैंक ऑफ इण्डिया, तिलक मार्ग, सी. स्कीम, जयपुर।

3- मुख्य प्रबंधक, स्टेट बैंक ऑफ इण्डिया, शाखा स्टेशन रोड, अजमेर।

.....अप्रार्थीगण/विपक्षी

उपस्थितः–

: श्री आर. सी. जैन, अभिभाषक प्रार्थी।

: श्री उदय शर्मा, अभिभाषक (श्री आर. के. जैन, अभिभाषक की ओर से) –विपक्षीगण।

: अधिनिर्णय :

दिनांक : 28-03-2024

1- श्रम मंत्रालय भारत सरकार नई दिल्ली द्वारा दिनांक 19-07-2012 को औद्योगिक विवाद अधिनियम, 1947 (जिसे आगे मात्र अधिनियम कहा जावेगा) की धारा 10 (1) (डी) व 2A के अन्तर्गत प्रदत्त शक्तियों के अनुसरण में निम्नांकित औद्योगिक विवाद न्यायनिर्णयन हेतु इस अधिकरण को संदर्भित किया गया :–

"Whether the action of the management of State Bank of India, Ajmer in terminating the services of Shri Lokesh Kumar S/o Shri Radha Kishan w.e.f. 22.11.2011 is legal and justified? To what relief the workman is entitled? ''

2- दिनांक 14-12-2017 को श्रम मंत्रालय भारत सरकार द्वारा संदर्भ आदेश में संशोधन करते हुए विपक्षी बैंक का नाम स्टेट बैंक ऑफ बीकानेर एण्ड जयपुर के स्थान पर स्टेट बैंक ऑफ इण्डिया कर दिया गया। प्रार्थी की ओर से तद्नुसार संशोधित वाद शीर्षक प्रस्तुत कर दिया गया है।

3- दिनांक 31-10-2012 को प्रार्थी ने अपने दावे का अभिकथन प्रस्तुत किया जिसके तथ्य संक्षेप में इस प्रकार हैंः

4- प्रार्थी की नियुक्ति विपक्षी क्रम सं.–3 के अधीन दिनांक 03-03-2003 को हुई थी। प्रार्थी से नियमित सब स्टाफ कर्मचारी के सभी काम लिये जाते थे। जिनका विस्तृत उल्लेख दावे के पेरा सं. 1 में किया गया है। दिनांक 03-05-2004 से प्रार्थी को उसके वेतन का भुगतान विपक्षी सं.–३ द्वारा अन्य व्यक्तियों के नामों से जिनका उल्लेख पेरा सं. २ में किया गया है, डेबिट वाउचर बनाकर किया गया। जिससे प्रार्थी विपक्षी के अधीन अपना नियोजन सिद्ध न कर पाये। विपक्षी का यह कृत्य अनुचित श्रम अभ्यास व दण्डनीय अपराध है। दिनांक 23-11-2011 को विपक्षी ने प्रार्थी को मौखिक रूप से कार्य पर लेने से इन्कार कर दिया और अकारण सेवामुक्त कर दिया। सेवामुक्ति के पूर्व प्रार्थी को नोटिस अथवा नोटिस वेतन एवं मुआवजे का भुगतान भी नहीं किया। प्रार्थी की सेवामुक्ति के समय प्रार्थी से कनिष्ठ अनेक श्रमिक कार्य कर रहे थे तथा प्रार्थी की सेवामुक्ति के बाद नये श्रमिकों को भी भर्ती किया गया। अतः वाद स्वीकार कर प्रार्थी की सेवामुक्ति दिनांक 23-11-2011 को अवैध घोषित करते हुये सेवा में निरंतरता एवं विगत वेतन परिलाभों सहित प्रार्थी को सेवा में बहाल किया जावे।

5- दिनांक 03-04-2013 को विपक्षीगण ने वादोत्तर में यह कहा है कि प्रार्थी को बैंक में प्रचलित नियमों एवं प्रक्रिया के अधीन न तो कोई नियुक्ति दी गई और न ही वेतन भुगतान किया गया। प्रार्थी से बैंक में कोई कार्य नहीं लिया गया। प्रार्थी कभी विपक्षी के नियोजन में नहीं रहा। दिनांक 23-11-2012 को प्रार्थी को सेवामुक्त नहीं किया गया। विपक्षी ने अधिनियम के किसी प्रावधान का उल्लंघन नहीं किया। अतः वाद निरस्त किया जावे।

6- प्रार्थी ने अपने साक्ष्य में स्वयं प्रार्थी लोकेश कुमार वर्मा को परीक्षित किया तथा प्रलेखीय साक्ष्य में प्रदर्श W-1 से प्रदर्श W-15 तक प्रलेख प्रदर्शित किये। विपक्षी ने एकाधिक अवसर दिये जाने के बाद भी कोई साक्ष्य प्रस्तुत नहीं की। अतः अवसर समाप्त किया गया।

7- दिनांक 12-03-2024 को मेने उभयपक्ष के तर्क सुने एवं उपलब्ध साक्ष्य के संदर्भ में उन पर विचार किया।

8- प्रार्थी का यह तर्क है कि प्रार्थी ने अपने साक्ष्य से यह प्रमाणित किया है कि प्रार्थी विपक्षी के नियोजन में रहा है और विपक्षी बैंक ने प्रार्थी के पक्ष में उसे स्टाफ का सदस्य मानते हुए प्रदर्श W-2 एवं प्रदर्श W-3 सावधि जमा रसीद जारी की है। प्रदर्श W-5 से प्रदर्श W-10 तक प्रलेखों से प्रार्थी को समय–समय पर विपक्षी द्वारा किये गये भुगतान का तथ्य प्रमाणित होता है तथा प्रदर्श W-11 से प्रदर्श W-15 तक फोटोग्राफ्स से प्रार्थी का बैंक में कार्यरत होना प्रमाणित होता है। विपक्षी बैंक ने जानबूझ कर कोई साक्ष्य तथा अधिकरण द्वारा आदेशित वे प्रलेख जो प्रार्थी के पक्ष को पुष्ट करते, प्रस्तुत नहीं किये है। अतः प्रार्थी की साक्ष्य स्वीकार की जावे।

9- विपक्षी के अभिभाषक का यह विरोधी तर्क है कि प्रार्थी ने जो साक्ष्य प्रस्तुत की है वो विश्वसनीय नहीं है। प्रार्थी और विपक्षी के मध्य नियोक्ता और कर्मकार का संबंध प्रमाणित ही नहीं होता है। विपक्षी ने शपथ पत्र श्री डी. डी. शर्मा प्रस्तुत करते हुए यह कहा है कि चूकिं प्रार्थी को कभी कार्य पर नहीं रखा गया, उससे संबंधित कोई भी दस्तावेज बैंक के पास उपलब्ध नहीं है। इस स्थिति में प्रार्थी को अधिनियम के किसी भी प्रावधान का कोई भी लाभ नहीं दिया जा सकता। अतः वाद निरस्त किया जावे।

10- उभयपक्ष के अभिवचनों एवं तर्को पर विचार के उपरांत इस विवाद में निम्नलिखित विचारणीय बिन्दु उत्पन्न हुए हैः

11-<u>बिन्दु सं.–</u>

1- क्या प्रार्थी को विपक्षी के अधीन दिनांक 03-03-2003 को नियुक्त किया गया तथा दिनांक 23-11-2011 को विपक्षी द्वारा मौखिकरूप से प्रार्थी को सेवामुक्त कर दिया गया। इस प्रकार प्रार्थी एवं विपक्षी के मध्य नियोजक–कर्मकार के संबंध विद्यमान है?

.....प्रार्थी

2- क्या दिनांक 23-11-2011 को प्रार्थी की सेवामुक्ति किए जाने के पूर्व विपक्षी द्वारा अधिनियम की धारा 25 F के प्रावधानों की अनुपालना नहीं की गई इसलिए सेवामुक्ति अवैध है?

.....प्रार्थी

3- क्या प्रार्थी को सेवामुक्त करते समय विपक्षी द्वारा प्रार्थी से कनिष्ठतर श्रमिकों को नियोजन के रखते हुए नये श्रमिकों की भर्ती की गई?

.....प्रार्थी

4- अनुतोषः–

12-विचारणीय बिन्दुओं पर क्रमिक निर्णय इस प्रकार हैः

13-<u>विचारणीय बिन्दु सं.–१</u>

14- प्रार्थी लोकेश कुमार ने अपने शपथ पत्र में यह कहा है कि उसकी नियुक्ति विपक्षी क्रम सं.-3 के अधीन दिनांक 03-03-2003 को हुई थी। दिनांक 23-11-2011 को जब वह बैंक की शाखा में उपस्थित हुआ तो उसे शाखा प्रबंधक ने डयूटी पर लेने से मौखिक रूप से इन्कार कर दिया इस तरह उसे सेवामुक्त कर दिया। अपने प्रति परीक्षण में प्रार्थी ने यह स्वीकार किया है कि नौकरी प्राप्त करने के लिए उसने कोई आवेदन प्रस्तुत नहीं किया। मेनेजर साहब से जान पहचान थी उसी आधार पर काम करना शुरू किया। प्रलेखीय साक्ष्य के रूप में साक्षी ने प्रदर्श W-1 से प्रदर्श W-15 तक प्रलेख प्रदर्शित किये है, और यह कहा है कि इन प्रलेखों से प्रार्थी का विपक्षी बैंक में कार्यरत होना प्रमाणित होता है। मेंने इन प्रलेखों का ध्यान पूर्वक अवलोकन किया तो स्थिति इस प्रकार प्रकट हुई। प्रदर्श W-1 प्रार्थी के नाम से जारी स्टेटमेन्ट ऑफ अकाउंट है जो उसके बैंक खाते में किये गये लेन देन से संबंधित है। इस स्टेटमेन्ट से प्रार्थी की नियुक्ति विपक्षी द्वारा किया जाना अथवा वेतन भुगतान किया जाना प्रमाणित नहीं हुआ है।

15- प्रदर्श W-2 व प्रदर्श W-3 सावधि जमा सूचना है जो प्रार्थी के नाम से 26-02-2009 और 18-11-2008 को विपक्षी बैंक द्वारा जारी किये गये है। प्रार्थी के प्रतिनिधि का यह तर्क है कि इन सूचनाओं में योजना का नाम "स्टाफ" दर्शाया गया है। जिससे यह प्रमाणित होता है कि प्रार्थी विपक्षी बैंक का नियुक्त कर्मचारी है। मेरे अधिमत से इन प्रलेखों में "स्टाफ योजना" के अन्तर्गत धनराशि जमा होने के आधार पर यह नहीं माना जा सकता कि प्रार्थी को दिनांक 03-03-2003 को विपक्षी बैंक में किसी प्रकार अथवा किसी पद पर नियुक्ति दी गई हो। प्रार्थी की ओर से ऐसा कोई परिपत्र या नियम प्रस्तुत नहीं किये गये है जिसके आधार पर इस योजना में धनराशि जमा करने वाले व्यक्ति का विपक्षी बैंक का कर्मचारी होना अनिवार्य हो। इसलिए मात्र इन प्रलेखों में वर्णित तथ्य (प्रदर्श W-2, W-3) प्रार्थी को विपक्षी बैंक का कर्मचारी प्रमाणित करने हेतु पर्याप्त नहीं हैं।

16- प्रदर्श W-4 से प्रदर्श W-10 तक प्रार्थी द्वारा प्रस्तुत प्रार्थना पत्र और उन पर किये गये भुगतान से संबंधित प्रलेख है। यदि इन प्रलेखों में वर्णित तथ्यों को यथावत ग्रहण कर भी लिया जाये तो यही तथ्य प्रमाणित होता है कि प्रार्थी द्वारा समय–समय पर आकस्मिक रूप से किये गये कार्यो के लिए परिश्रमिक का भुगतान बैंक द्वारा प्रार्थी को किया गया। जिनमें भुगतान अथवा किये गये कार्य की कोई नियमितता एवं सततता नहीं है। इन प्रलेखों से यह प्रकट होता है कि वर्ष 2004 में प्रार्थी ने 6 दिन, वर्ष 2007 में 6 दिन, वर्ष 2008 में दिनांक 06-06-2008 को 100/– रू. ऑटो रिक्शा किराया और दिनांक 22-08-2008 को 60/– रू. का भुगतान प्रार्थी को किया गया। वर्ष 2010 में 250/–रू. लेबर चार्ज का भुगतान किसी लोकेश को किया जाना दर्शाया है। इसी प्रकार वर्ष 2011 में 130/–रू. और 80@& रू. का भुगतान लोकेश नाम के व्यक्ति को किया गया है। प्रदर्श W-11 से प्रदर्श W-15 तक प्रार्थी ने 5 रंगीन फोटो प्रस्तुत किये है। जिनका कोई संबंध

प्रार्थी से होना, प्रार्थी ने अपने साक्ष्य से प्रमाणित ही नहीं किया है। प्रार्थी द्वारा यह भी स्पष्ट नहीं किया गया कि इन फोटोग्राफ्स में दर्शित व्यक्ति कौन है व उसकी क्या सुसंगतता है।

17- इस प्रकार प्रार्थी द्वारा प्रस्तुत साक्ष्य से दिनांक 03-03-2003 को विपक्षी बैंक में प्रार्थी की नियुक्ति का तथ्य किसी प्रकार प्रमाणित नहीं होता है।

18- प्रार्थी का यह भी तर्क है कि उसने विपक्षी से, कतिपय श्रमिकों को किये गये भुगतान से संबंधित वाउचर, कैशबुक रजिस्टर, पासबुक/चैकबुक रजिस्टर प्रस्तुत करवाने हेतु निवेदन किया था जिसे अधिकरण द्वारा दिनांक 19-03-2015 को स्वीकार भी कर लिया गया था। किंतु विपक्षी द्वारा यह प्रलेख प्रस्तुत नहीं किये गये। यदि किये जाते तो प्रार्थी का विपक्षी बैंक के अधीन नियुक्त होना प्रमाणित हो सकता था। विपक्षी के अभिभाषक का यह तर्क है कि अधिकरण ने यह आदेश दिया था कि वांछित अभिलेख उपलब्धता के अनुसार विपक्षी प्रस्तुत करें अन्यथा उनके न होने के संबंध में सक्षम अधिकारी का शपथ पत्र प्रस्तुत करे। इस आदेश के अनुपालन में दिनांक 04-05-2016 को विपक्षी ने श्री डी. डी. शर्मा, उप प्रबंधक का शपथ पत्र प्रस्तुत कर दिया है और यह कहा है कि जब प्रार्थी को बैंक में कभी कार्य पर रखा ही नहीं गया तो उससे संबंधित कोई भी दस्तावेज बैंक के पास उपलब्ध होने का प्रश्न ही नहीं उठता है। मैंने इन तर्को पर विचार किया। प्रार्थी ने अपने शपथ पत्र में यह कहा है कि प्रार्थी द्वारा किये गये कार्य के वेतन का भुगतान प्रार्थी के अतिरिक्त 49 अन्य व्यक्तियों के नाम से (जिनका उल्लेख शपथ पत्र के पेरा 2 में है) डेबिट वाउचर्स बनाकर किया गया। प्रति परीक्षा में साक्षी ने यह कहा है कि अन्य व्यक्तियों को किये गये भुगतान के वाउचर्स उसके पास है जिन्हें वह पेश कर सकता है। किंतु प्रार्थी ने ऐसा कोई वाउचर साक्ष्य में प्रस्तुत ही नहीं किया है वरन् विपक्षी से प्रस्तुत करवाने हेतु प्रयास किया है। प्रार्थी के इस आचरण से यह स्पष्ट होता है कि वह वास्तविक तथ्यों को स्वयं के पास साक्ष्य उपलब्ध होते हुये भी प्रस्तुत नहीं करना चाहता। प्रार्थी यह भी स्वीकार करता है कि उसे अलग- अलग व्यक्तियों के नाम से भुगतान किये जाने के संबंध में उसने बैंक के किसी अधिकारी को लिखित रूप में शिकायत नहीं दी। इस स्थिति में विपक्षी के अधिकारी श्री डी. डी. शर्मा का शपथ पत्र में किया गया यह कथन स्वीकार्य प्रकट होता है कि प्रार्थी से संबंधित कोई भी दस्तावेज विपक्षी बैंक के पास उपलब्ध नहीं है। इसलिए विपक्षी के विरूद्ध कोई प्रतिकूल उपधारणा किया जाना न्यायोचित नहीं हैं। प्रार्थी को स्वयं ही यह तथ्य अपने साक्ष्य से प्रमाणित करना है कि उसके अभिवचनों के अनुसार विपक्षी के अधीन उसे नियुक्त किया और सेवामुक्त किया गया था। प्रार्थी अपने साक्ष्य से यह प्रमाणित नहीं कर सका है कि दिनांक 03-03-2003 को उसे विपक्षी ने नियुक्त किया एवं दिनांक 23-11-2011 को मौखिक रूप से सेवामुक्त भी किया। अतः यह बिन्दु प्रार्थी के विरूद्ध निर्णीत किया जाता है।

19-<u>विचारणीय बिन्दु सं.-2</u>

20- इस बिन्दु के अन्तर्गत यह विवेचनीय है कि क्या प्रार्थी को सेवामुक्ति के पूर्व नोटिस अथवा नोटिस वेतन एवं छटंनी प्रतिकर न दिये जाने से, सेवामुक्ति अवैध है। उपर्युक्त विचारणीय बिन्दु सं. 1 के अन्तर्गत प्राप्त निष्कर्ष यह दर्शाता है कि प्रार्थी को विपक्षी द्वारा सेवा में न तो नियुक्त किया गया न ही सेवामुक्त किया गया। अधिनियम की धारा 25 F के प्रावधानों का संरक्षण एक कर्मकार को तभी प्राप्त हो सकता है जब वह विपक्षी नियोजक के अधीन सेवामुक्ति से पूर्व एक कलेण्डर वर्ष की अवधि में 240 दिन से अधिक लगातार कार्य करना प्रमाणित करे। प्रार्थी की साक्ष्य से यह तथ्य प्रमाणित नहीं हुआ है। इसलिए मेरे अधिमत से प्रार्थी को अधिनियम की धारा 25 F के प्रावधानों का संरक्षण विधितः देय नहीं है। इस प्रकार प्रार्थी उसकी कथित सेवामुक्ति को अवैध प्रमाणित करने में सफल नहीं रहा है। अतः यह बिन्दु प्रार्थी के विरूद्ध निर्णीत किया जाता है।

21-<u>विचारणीय बिन्दु सं.-3</u>

22- प्रार्थी विपक्षी के अधीन नियुक्त किये जाने का तथ्य प्रमाणित नहीं कर सका है। प्रार्थी ने अपने साक्ष्य में यह अवश्य कहा है कि उसे सेवामुक्त किये जाते समय अनेकों जूनियर श्रमिक कार्यरत थे तथा सेवामुक्ति के उपरांत नये श्रमिकों को भर्ती किया गया है। किंतु प्रार्थी ने किसी भी जूनियर श्रमिक का कोई भी विवरण अथवा नियुक्ति आदेश प्रस्तुत नहीं किया है। इसलिए प्रार्थी का यह कथन ग्रहण करने योग्य नहीं है। उभयपक्ष के मध्य नियोजक और कर्मकार का संबंध भी स्थापित नहीं हुआ है। इसलिए यह बिन्दु प्रार्थी के विरूद्ध निर्णीत किया जाता है।

23-<u>अनुतोषः-</u>

24- उभयपक्ष के मध्य नियोजक और कर्मकार का संबंध प्रमाणित नहीं हुआ है। इसलिए बिन्दु सं. 1, 2, व 3 पर पारित निर्णय के प्रकाश में प्रार्थी अधिनियम की धारा 25 **F**, **G**, व **H** के प्रावधानों का संरक्षण प्राप्त करने का अधिकारी प्रमाणित नहीं होता है। तदनुसार प्रार्थी कोई अनुतोष विपक्षी से पाने का अधिकारी नहीं है।

25- श्रम मंत्रालय भारत सरकार द्वारा संदर्भित विवाद का न्याय निर्णयन इसी प्रकार किया जाता है।

26- अधिनिर्णय की प्रतिलिपि समुचित सरकार को अधिनियम, की धारा 17 (1) के अंतर्गत प्रकाशनार्थ प्रेषित की जावें।

राधा मोहन चतुर्वेदी, पीठासीन अधिकारी

नई दिल्ली, 10 मई, 2024

का.आ. 892.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एस.ई.सी.एल के प्रबंधतंत्र के संबद्ध नियोजको और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में **केन्द्रीय सरकार औद्योगिक अधिकरण – सह – श्रम न्यायालय**, जबलपुर के पंचाट (एलसी-आर/**61/2008**) को प्रकाशित करती है, जो केन्द्रीय सरकार को **12/05/2024** को प्राप्त हुआ था।

[सं. एल–22012/324/2007-आईआर(सी.एम- II)]

मणिकंदन.एन, उप निदेशक

New Delhi, the 10th May, 2024

S.O. 892.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award **(Reference. LC/-R/61/2008*)*** of the **Central Government Industrial Tribunal-cum-Labour Court, Jabalpur** as shown in the Annexure, in the industrial dispute between the Management of **S.E.C.L.** and their workmen, received by the Central Government on **12*/05/2024***.

[No. L-22012/324/2007-IR (CM-II)]

MANIKANDAN. N, Dy. Director

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT, JABALPUR

NO. CGIT/LC/RC/61/2008

Present: P.K.Srivastava

H.J.S..(Retd)

Shri Rajendra Singh

S/o. Late Shri Madhav Singh

Auto Fitter, Regional Workshop, NCL,

Dhanpuri SECL, Sohagpur, Shahdol (M.P.)

Workman

Versus

The General Manager,

SECL, Sohagpur Area,

Shahdol(M.P.)

The Chairman cum Managing Director,

South Eastern Coal Fields Ltd. (SECL),

Bilaspur (C.G.)

Management

(JUDGMENT)

(Passed on this 16th day of April 2024)

As per letter dated 17/04/2008 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No. L-22012/324/2007 IR(CM-II) dt. 17/04/2008. The dispute under reference relates to:

"Whether the action of management of SECL in dismissing Shri Rajendra Singh w.e.f. 27.06.2005 is legal and justified ? To what relief is the workman entitled ?"

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

According to the workman, he was first appointed as a General Mazdoor and during the course of time was promoted upto the post of Auto Fitter. He fell ill in 2004 and was admitted in company hospital and thereafter in private hospital for treatment. When he reported at his work place after recovery, he was not permitted by management to join his duties. He approached Hon'ble High Court. Management came out with its case before High Court that he was dismissed by management after conducting a departmental enquiry against him. It is further the case of the workman that no charge sheet was ever served on him, he was never communicated about any enquiry and even the punishment order was never served on him. After withdrawing his petition before Hon'ble High Court as alternate remedy was available to him to agitate against his dismissal before this Tribunal, he raised a dispute. After failure of conciliation, the appropriate Government referred the dispute to this Tribunal for adjudication.

It is further the case of the workman that on 15.08.2004 he suddenly fell ill and filed an application to the management requesting grant of leave on medical grounds. As he could not recover, he approached to District Hospital Shahdol on 16.08.2004, he was diagnosed with CPPP and was advised complete bed rest till removal of the disease. He remained under continuous treatment of doctors at District Hospital Shahdol and sent applications on 13.09.2004, 08.04.2004, 11.10.2004, 04.10.2004, 20.01.2003, 01.02.2005 & 04.03.2005 for extension of his leave on medical grounds by way of UPC Post. Further he suffered severe ailment on 20.03.2005 and was admitted on the same date in company hospital. He remained in the company hospital till 05.04.2005 and filed application dt. 03.05.2008 requesting the management for extension of his leave till recovery. On 06.04.2005 he had to go to District Hospital Shahdol for treatment and remained under treatment till 22.05.2005. He requested for extension of his leave by filing application before management on 06.04.2005. He further remained admitted in the hospital till 28.05.2005 and thereafter he remained in continuous treatment in company hospital and District Hospital Shahdol. He was advised complete bed rest till 29.06.2005 by the doctors and when he reached at his work place to perform his duties with fitness certificate, he was not allowed to do so. He filed applications on 29.06.2005, 23.08.2005 and 26.08.2005 before the management for resumption of duties but of no avail. The workman has further alleged that he was never served a charge sheet, never communicated about the departmental enquiry. He was also never served any enquiry report nor was he given opportunity by management to have his say on the enquiry report. He has accordingly prayed that setting aside his dismissal dt. 27.06.2005, he be reinstated with all back wages and benefits.

In its written statement of Defense, management has taken a case that while the applicant was working with management, he was very irregular in presence. His attendance was very poor and he was a habitual absentee. According to management the particulars of his attendance from 1993 to 2005 is as follows :-

Year	Attendance
1993	82 days
1994	120 days
1995	125 days
1996	96 days
1997	36 days
1998	216 days
1999	214 days
2000	54 days
2001	56 days
2002	93 days
2003	22 days
2004	25 days
2005	Nil

He was issued a charge sheet on 20.02.1993 for his absence. He was further issued charge sheet on 01.01.1996 for the same misconduct. He was issued charge sheet on 07.05.2003 for the same misconduct of unauthorized habitual absence. Since no satisfactory reply was received from him, management decided to conduct

enquiry for the charges on 26.06.2003. The enquiry officer conducted his proceedings and submitted his enquiry report holding the workman guilty of misconduct and he was awarded punishment of stoppage of two increments vide order dated 17.10.2003.

It is further the case of management that the workman did not improve himself, he was on casual leave from 11.08.2004 to 14.08.2004 for four days and unathorizedly absented himself from 16.08.2004. He was issued a charge sheet no.- 1441, dt. 19.11.2004 which was sent to him on his address by way of registered post but returned back undelivered with endorsement that addressee is not available on given address. The management decided to conduct enquiry. Enquiry officer and management representative were appointed vide order dated 25.01.2005. Copy of this order was sent to the workman vide registered post but was returned on served with the endorsement addressee is not available on given address. The memo of enquiry dt. 08.03.2005 fixing the date of hearing and further memos of enquiry for the dates fixed in the enquiry were sent by registered post but all returned undelivered with the same endorsement. Hence, the enquiry proceeded against the workman in his absence and the enquiry officer submitted his report holding the charge proved on the basis of evidence collected during the enquiry. The disciplinary authority passed the punishment of dismissal of the workman vide order dated 27.06.2005. the punishment order was also sent on the address of the workman by registered post which returned undelivered with the same endorsement. Thus according to management, the enquiry was legal and proper, charges were proved and punishment was proportionate to the charge. Management has further stated that the ground of ill health taken by workman is incorrect and also that the workers are given special leave as provided in the standing orders based on disease and medical advice. There is dispensary maintained by management at Colliery level and Central Hospital with all facilities at Dhanpuri where workers are treated free. Further they are referred to different hospitals for better treatment at the cost of the company. According to management a sick worker has to report to the Colliery Doctor who issues sickness certificate and leave is granted on the basis of this certificate till the worker is declared medically fit for employment. Accordingly, management has prayed that the reference be answered against the workman.

In his rejoinder, the workman has alleged that his absence was for medical reasons he further denied that his attendance was poor from 1993 to 2005 as pleaded by management regarding the charge sheet for absence issued against the workman in 1993 and 1996, the charges were dropped against him as he had furnished adequate medical grounds for his absence on the basis of his disease of Tuberculosis. For the 3rd charge sheet regarding his absence issued on 26.06.2003, the workman has alleged that he was under medical treatment in District Hospital Shahdol from 07.09.2002 to 05.04.2003. With regard to the case of management that the workman admitted his this absence of 07.09.2002 to 05.04.2003 the workman has alleged that it was given by him under compulsion which is itself evident from the so called admission letter Annexure M/4 relied by management. He further states that since he was out of his place with regard to treatment and the addresses on which the registered notices were sent were wrong, hence no registered letter could reach him. According to him the management was under legal obligation to get the notices published in a newspaper which they did not do intentionally.

On the basis of pleadings, following issues were framed by my learned Predecessor vide his order dated 24.01.2011 –

1. ***Whether departmental enquiry conducted against workman is proper and legal ?***
2. ***Whether charges imposed against workman are proved from the evidence in the enquiry ?***
3. ***Whether the punishment is legal and proper ?***
4. ***What relief the workman is entitled ?***

Issue no.-1 was taken as preliminary issue. The workman filed his affidavit as his examination in chief. He was cross examined by management. Management examined its witness and was cross examined by workman. Workman proved documents Ex. W/1 to Ex. W/11 which were admitted by management. Ex. W/2 was proved by workman during evidence. Management proved documents Ex. M/1 to M/3. Are these documents are papers relating to enquiry, to be referred to as and when required.

On the basis of the evidence on record, preliminary issue was decided vide order dated 29.01.2024 holding the departmental enquiry not legal and proper. This order is part of this award.

Thereafter, management was granted opportunity to prove the charges before this Tribunal.

Management re-examined its witness to proved documents Ex. M/4 to M/15 and was cross examined by workman. The workman filed his affidavit and was cross examined by management.

Heard argument of Shri Subodh Agrawal, learned Counsel for the workman, argument of learned Counsel for management Shri Neeraj Kewat were heard by me and the record has also been perused.

Issue No. 2:-

The charges against the workman were as follows:-

That, he absented himself from 16.08.2004 till date of charge sheet (09.11.2004) without getting any leave sanctioned and without any sufficient reason by way of overstaying on leave. Which is misconduct under Clause-26.30 of Certified Standing Orders.

The management witness has stated in his affidavit as his examination in chief that the workman went on casual leave from 11.08.2004 to 14.08.2004 for 4 days and did not return on job from 16.08.2004 and absented himself unauthorisedly without getting any leave sanctioned hence he was issued a charge sheet dt. 09.11.2004. He further states that enquiry was conducted against him for the charges and he was found guilty for the charges. He was dismissed from service. This witness further stated about the medical facilities and hospitals of management as stated above. He has also stated that as per standing orders, a worker who fell sick has to report sick to the Colliery Doctor who issues certificate and leave is granted to him on the basis of this certificate till he is declared medically fit. The workman did not follow this procedure.

This witness has been re-examined by management on 16.06.2022. He has stated that he was posted as time keeper from 1994 to 2014. His job was to mark attendance of the workers and note the timing of their entry and exist. He has proved different spells of absence of the workman from 1993 to 2005, details mentioned earlier.

In his cross examination this witness has admitted the medical card of the workman and states that the workman had filed an application for leave with certificate of the doctor on 16.06.2004. He denies the various applications for leave said to be filed by the workman before management on 11.10.2004, 04.11.2004, 08.12.2004, 20.01.2005, 09.02.2005, 04.03.2005, 03.05.2005.

Since, the charge on the basis of which the impugned punishment of dismissal has been passed on 27.06.2005 which is the subject matter of the Reference, relates to alleged unauthorized and willful absence from 16.08.2004 to date of issuing of the charge sheet on 09.11.2004. The core issue is to be decided is that whether the management has successfully proved this alleged unauthorized absence by way of evidence adduced before this Tribunal.

If, we concentrate to the point that the workman has not disputed his absence for this period, rather his case is that the absence was for medical reasons, the point arises as to whether he could successfully prove his this defense and conduct of informing the management regarding his absence at that time or not.

In his statement of claim the case of management is that he sent applications on 13.09.2004, 11.10.2004 and 04.10.2004 seeking extension of leave on medical grounds sent by UPC, the burden to prove this fact lies on the workman.

The workman has filed photocopies of these applications which have not been admitted by management or its witnesses, hence they required to be proved by the workman.

In his statement on oath and affidavit the workman has stated that he did sent these applications to the management. Management witness denies having received any such application by management. Hence, the burden lied on the workman to file the original treatment papers and prove them by examining the doctor who treated him and advised bed rest. He was also under a burden to file the original UPCs and prove them before this Tribunal. Only his statement not corroborated by any evidence is not sufficient to hold that he has discharged his this burden.

The settled law is that the standard of proof required to prove a charge during departmental enquiry and in criminal trial is different. In the former, charge is to be proved to the extent of preponderance whereas in the later, charge is to be proved beyond reasonable doubt.

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

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

In the cases of (i) NOIDA Entrepreneurs Association Vs NOIDA & others, AIR 2007 SC 1161 (i4i) State Bank of India Vs. R.B. Sharma, (2004) 7 SCC 27 (iii) Kendriya Vidyalaya Sangathan Vs. T. Srinivas, (2004) 7 SCC 442 (iv) Depot Manager, APSRTC Vs. Mohd. Yousuf Miya, (1997) 2 SCC 699 (v) Captain M. Paul Anthony Vs. Bharat Gold Mines Limited (1999) 3 SCC 679 and (vi) State of Rajasthan Vs. B.K. Meena, (1996) 6 SCC 417 (vi) Pratap Singh Vs. State of Punjab, AIR 1964 SC 72 (vii) Jang Bahadur Singh Vs. Baij Nath, AIR 1969 SC 30, *it has been laid down by the Hon'ble Supreme Court that "the purpose of departmental enquiry and of prosecution are two different and distinct aspects. Departmental Enquiry is to maintain discipline in the service and efficiency of*

public service. Crime is an act of commission in violation of law or of omission of public duty. The enquiry in a departmental proceeding relates to the conduct or breach of duty by the delinquent officer to punish him for his misconduct defined under the relevant statutory rules or law. It is the settled legal position that the strict standard of proof or applicability of the Evidence Act stands excluded in a departmental proceeding. Criminal Proceedings and the departmental proceeding under enquiry can go on simultaneously."

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

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

In the light of above discussion, the charge of unauthorized overstaying on leave for the period mentioned in the charge sheet dt. 09.11.2004 is held proved and issue no.-2 is answered accordingly.

Issue No. 3 :-

The settled proposition of law is that Courts will not interfere in the punishment unless it is found to be shockingly disproportionate to the charges.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

In the case in hand management has successfully proved this fact that the workman has absented himself from duty without getting any leave sanctioned and without informing the management on various occasions from 1993 to 2005 details mentioned in the written statement of management and proved by management witness. The workman tries to explain that regarding the two charge sheets issued the earlier, no action was taken because he explained his absence and regarding third charge sheet also he had medical reasons for his absence. Be it whatsoever, the point remains that every time he absented without information and without getting leave sanctioned as well without following the procedure for leave on medical ground mentioned in the certified standing orders mentioned earlier. His this conduct is a deciding factor in considering whether the punishment is proportionate to the charge or not. Taking this conduct of the workman, the punishment of his dismissal from service cannot be held excessive to the charge proved.

On the basis of above discussion the punishment is held not disproportionate to the charge and issue no.-3 is answered accordingly.

Issue No. 4 :-

In the light of findings recorded, the workman is held entitled to no relief.

No other point was argued.

Accordingly, the Reference is answered as follows :-

AWARD

Holding the action of management of SECL in dismissing Shri Rajendra Singh w.e.f. 27.06.2005 legal and proper, he is held entitled to no relief. No order as to cost.

DATE:- 16/04/2024

P.K. SRIVASTAVA, Presiding Officer

नई दिल्ली, 10 मई, 2024

का.आ. 893.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एस.ई.सी.एल के प्रबंधतंत्र के संबद्ध नियोजको और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में **केन्द्रीय सरकार औद्योगिक अधिकरण – सह – श्रम न्यायालय**, जबलपुर के पंचाट (एलसी-आर/**31/2018**) को प्रकाशित करती है, जो केन्द्रीय सरकार को **12/04/2024** को प्राप्त हुआ था।

[सं. एल–22012/86/2016-आईआर(सी.एम- II)]

मणिकंदन.एन, उप निदेशक

New Delhi, the 10th May, 2024

S.O. 893.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award **(Reference.LC/-R/31/2018*)*** of the **Central Government Industrial Tribunal-cum-Labour Court, Jabalpur** as shown in the Annexure, in the industrial dispute between the Management of **S.E.C.L.** and their workmen, received by the Central Government on **12*/04/2024***.

[No. L-22012/86/2016-IR (CM-II)]

MANIKANDAN. N, Dy. Director

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT, JABALPUR

NO. CGIT/LC/R/31/2018

Present: P.K.Srivastava

H.J.S..(Retd)

The President,

Coal India Pensioners Association,

Branch Bishrampur Area,

Qtr No. 1B-32, Bishrampur

Distt- Surajpur (CG) -497226

Workman

Versus

The General Manager

SECL, Bishrampur Area

PO- Bishrampur Colliery

Distt- Surajpur(CG) -497226

Management

AWARD

(Passed on this 1st day of February-2024.)

As per letter dated 26/06/2018 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this tribunal under section-10 of I.D. Act, 1947 as per reference number no.L-22012/86/2016 (IR(CM-II)) dt.26/06/2018. The dispute under reference related to :-

"Whether the action on the part of General Manager, Bisshrampur area of SECL in withholding the terminal benefits after retirement on non-submission of no dues certificates such as leave enchantments in respect of Shri Ram Bahadur Lama, Ex-Office Superintendent espoused by the President, Coal India Pensioners Association, Bishrampur branch is legal, appropriate and justified? If not, whether it is appropriate to recover the terminal dues from the employer?"

After registering a case on the basis of the reference received, Notices were sent to the parties.Despite service of notice on the workman, he did not appear and did not file any statement of claim.

Management has filed its written statement of defence, wherein it has stated that firstly the applicant union that is Coal India Pensioners Association is not a registered trade union as it has no locus-standi to raise the dispute and the reference may be answered against the applicant filed only on this ground.

It has further been pleaded with the claimant workman retired with effect from August 31, 2013, whereas the present dispute was raised in the year 2016 and the reference is barred due to delay and latches on the part of the claimant side. It is further, the case of management that the claimant workman was employed as Assistant Foreman with the management. He was allotted a residential accommodation house number 1B/71 by virtue of his employment. He got superannuation on August 31, 2013. He was under obligation to hand over the vacant possession of the house allotted to him during his service time after he superannuated, but he failed to do it and retained possession of the said house.

According to the management, the applicant workman is under obligation to pay penal rent and municipal bills as well the electricity charges for the accommodation till date of handing over of possession of the said accommodation by the applicant workman on December 31, 2019, which he has not paid and against this dues, fees, leave encashment and settle in allowance has been withheld by the management. According to management, able after withholding his dues as mentioned above, there is still a recovery against the applicant workman. Management has a accordingly requested that the reference is answered against the applicant workman.

The management has filed an affidavit of its witness which is on record, wherein the witness has supported the claim of management. None appeared from the side of workman for cross-examination of management witness an opportunity of the applicant workman to cross-examine the management witness was closed.

At the time of argument, none appeared from the side of workman. I have heard the argument of Sri Anup Nair for management and have gone through the record.

The reference itself is the issue for determination.

Since applicant side has not filed any evidence in support of its claim, the case of workman is held not proved. From the perusal of affidavit of management witness, the case of management is held proved. Hence, in the light of above discussion and finding, the reference deserves to be answered against the applicant workman and is answered accordingly, holding the action of management is not against law.

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

P.K. SRIVASTAVA, Presiding Officer

DATE: 01/02/2024

नई दिल्ली, 10 मई, 2024

का.आ. 894.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एस.ई.सी.एल के प्रबंधतंत्र के संबद्ध नियोजको और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में **केन्द्रीय सरकार औद्योगिक अधिकरण – सह – श्रम न्यायालय**, जबलपुर के पंचाट (एलसी-आर/13/2016) को प्रकाशित करती है, जो केन्द्रीय सरकार को **12/04/2024** को प्राप्त हुआ था।

[सं. एल–22012/101/2015-आईआर(सी.एम- II)]

मणिकंदन.एन, उप निदेशक

New Delhi, the 10th May, 2024

S.O. 894.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award **(Reference. LC/-R/13/2016)** of the **Central Government Industrial**

Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the industrial dispute between the Management of **S.E.C.L.** and their workmen, received by the Central Government on **12*/04/2024***.

[No. L-22012/101/2015-IR (CM-II)]

MANIKANDAN. N, Dy. Director

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT, JABALPUR

NO. CGIT/LC/R/13/2016

Present: P.K.Srivastava

H.J.S..(Retd)

Shri Shamro Sharma

S/o. Ram Lalu Sharma,

Village Dhigdhi, PO – Paudi Nougai

District – Singrauli (M.P.) - 486889

Workman

Versus

M/s Kohli Engineering,

Shukla Mondh. PO: Singrauli Colliery,

Dist. Singrauli (MP)

Singrauli - 486889

Management

(JUDGMENT)

(Passed on this19 th day of March 2024)

As per letter dated 22/01/2016 by the Government of India, Ministry of Labour, New Delhi, the reference is made to this Tribunal under Section -10 of Industrial Disputes Act, 1947 as per Notification No. L-22012/101/2015 IR(C.M.-II) dt. 22/01/2016. The dispute under reference relates to:

> **"Shri Shamro Sharma who worked as a Fitter from 26.02.2013 to 18.09.2014 under Sub-Contractor M/s. Kohli Engineering & Coal Mines of Sasan Power Ltd. Singrauli District (M.P.) whether worked for 240 days in each year or not ? If so, since the contract work has completed in lieu of reinstatement, how much Compensation, Notice Pay, Leave Pay, Bonus and other benefits, if any, etc. is payable to the ex-employee of M/s. Kohli Engineering Company ? If not, what relief he is entitled to ?"**

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

According to the workman, he was appointed on 26.02.2013 as a Helper by the management of M/s. Kohli Engineering, who was awarded work contract by M/s. Muher & Muher and M/s. Jamco India who were in Coal Extraction from the Mines and had established a plant there alongwith M/s. Sasan Power Ltd. He was issued pass and was working under the Control of the Coal Company for 12 hours of the day and 30 days in a month. He was never paid the minimum salary which he was entitled to. His services were terminated orally on 18.09.2014 without any enquiry, notice or compensation, which is against law. The management did not comply the principle of 'first come last go' and his juniors were retained in service. The management had also not issued any gradation list nor had obtained required permission from Competent Authority for his retrenchment. He had worked for more than 240 days continuously in every year. The workman has prayed his reinstatement with back wages and benefits holding his termination against law.

The management of M/s. Kohli Engineering has taken a case in their Written Statement of Defense, they had entered into an agreement with M/s. Sasan Power Ltd. to provide labour for Erection, Commissioning and product support of Shovel and Drag Line at Muher & Muher Coal Mines of Sasan Power Ltd. The contract was upto 31st December 2014 or till completion of Draglines Erection Project. The workman was a helper and was paid wages of unskilled labour as per Government Rate. The work completed within 2 years hence, there was no work left and the workman was disengaged. He was offered Rs. 50,000/- as lump sum compensation with pay of one month in lieu of notice which he refused and raised a dispute.

After filing the Statement of Claim the workman never appeared and did not file any evidence, management also has not filed any evidence.

Non appeared on behalf of workman for arguments. No written argument was filed, I have heard argument of Shri Vijay Tripathi learned Counsel for management and have gone through the record.

The reference itself is the issue for determination.

The initial burden to prove his claim is on workman. He has not filed any oral or documentary evidence proving his claim but pleadings reveal that the allegation of the workman that he was appointed by management and that he worked for 240 days in an year under continuous employment is not specifically denied by the management in their pleading. Hence, it can be concluded that the workman has completed 240 days in an year in continuous service of management is proved. The management has itself stated that no notice was given to the workman and the workman was offered Rs. 50,000/- by management as lump sum compensation alongwith one month salary which he refused to receive. Since, from the pleadings itself it is established that the workman was not given any notice or compensation, termination of his services is held in violation of Section 25-F & 25-G of the Industrial Disputes Act 1947.

As regards the relief, since the work was only for two years and there is nothing on record that the work is still going on, a lump sum compensation of Rs. 50,000/- in lieu of all the claims of the workman will serve the ends of justice.

In the light of above findings, the reference is answered as follows –

AWARD

Holding the termination of services of the workman Shri Shamro Sharma by the management of M/s. Kohli Engineering against law, the workman is held entitled to lump sum compensation of Rs. 50,000/- in lieu of all the claims, payable to him within 30 days from the date of publication of Award failing which interest @ of 6% p.a. from the date of Award till payment. No order as to cost.

P.K. SRIVASTAVA, Presiding Officer

DATE:- 19/03/2024

नई दिल्ली, 10 मई, 2024

का.आ. 895.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एस.ई.सी.एल के प्रबंधतंत्र के संबद्ध नियोजको और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में **केन्द्रीय सरकार औद्योगिक अधिकरण – सह – श्रम न्यायालय**, जबलपुर के पंचाट (एलसी-आर/**37/2017**) को प्रकाशित करती है, जो केन्द्रीय सरकार को **12/05/2024** को प्राप्त हुआ था।

[सं. एल–22012/75/2016-आईआर(सी.एम-II)]

मणिकंदन.एन, उप निदेशक

New Delhi, the 10th May, 2024

S.O. 895.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award **(Reference. LC/-R/37/2017*)*** of the **Central Government Industrial Tribunal-cum-Labour Court, Jabalpur** as shown in the Annexure, in the industrial dispute between the Management of **S.E.C.L.** and their workmen, received by the Central Government on **12*/05/2024.***

[No. L-22012/75/2016-IR (CM-II)]

MANIKANDAN. N, Dy. Director

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT, JABALPUR

NO. CGIT/LC/R/37/2017

Present: P.K.Srivastava

H.J.S..(Retd)

The President,
Coal India Pensioners Association,
Branch Bishrampur Area,
Qtr No. 1B-32, Bishrampur
Distt- Surajpur (CG) -497226

Workman

Versus

The General Manager
SECL, Bishrampur Area
PO- Bishrampur Colliery
Distt- Surajpur(CG) -497226

Management

AWARD

(Passed on this 17Th day of April-2024.)

As per letter dated 10/04/2017 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under section-10 of I.D. Act, 1947 as per reference number L-22012/75/2016 (IR(CM-II)) dt. 10/04/2017 . The dispute under reference related to :-

"Whether the action of the management of SECL, Bishrampur Area in withholding the leave encashment dues after retirement of workman Shri Mulchanda Sharma, Ex-Dragline Operator, Bishrampur (OCM) of Bishrampur Area is justified ? If not, what relief the workman is entitled to? "

After registering a case on the basis of the reference received, notices were sent to the parties and were duly served on them. Despite service of notice on the workman, he did not appear and did not file any statement of claim.

Management has filed its written statement of defence, wherein it has stated that firstly the applicant union that is Coal India Pensioners Association is not a registered trade union as it has no locus-standi to raise the dispute and the reference may be answered against the applicant filed only on this ground.

It has further been pleaded with the claimant workman retired with effect from October 31, 2011, whereas the present dispute was raised in the year 2016 and the reference is barred due to delay and latches on the part of the claimant side. It is further, the case of management that the claimant workman was employed as Dragline Operator with the management. He was allotted a residential accommodation house number IC-52 by virtue of his employment. He got superannuation on October 31, 2011. He was under obligation to hand over the vacant possession of the house allotted to him during his service time after he superannuated, but he failed to do it and retained possession of the said house. Eviction proceedings were initiated against him before the Estate Officer and eviction order was passed on December 01, 2016 directing him to hand over vacant possession of the said house and also pay the arrears of rent as well the compensation for unauthorised use of the accommodation. The appeal against this order was dismissed by the District Judge Surajpur, by his order dated January 17, 2016. In a writ petition No WP(PIL)53/2016 , the Honorable High Court of Chhattigarh issued directions to get the accommodations vacated from the undersized occupants within the timeframe.

According to the management, the applicant workman is under obligation to pay penal rent and municipal charges as well, Electricity charges for the accommodation till date of handing over of position of the said accommodation by the applicant workman on September 30, 2020, which he has not paid and against this dues, fees, leave encashment and settle in allowance has been withheld by the management. According to management, able after withholding his dues as mentioned above, there is still a recovery against the applicant workman. Management has a accordingly requested that the reference is answered against the applicant workman.

The management has filed an affidavit of its witness which is on record, wherein the witness has supported the claim of management. None appeared from the side of workman for cross-examination of management witness an opportunity of the applicant workman to cross-examine the management witness was closed.

At the time of argument, none appeared from the side of workman. Due to the absence of the workman, the reference proceeded ex-parte vide order dated October 18, 2023. I have heard the ex-parte argument of Adv. Shri Neeraj Kewat for management and have gone through the record.

The reference itself is the issue for determination.

Since applicant side has not filed any evidence in support of its claim, the case of workman is held not proved. From the perusal of affidavit of management witness, the case of management is held proved. Hence, in the light of above discussion and finding, the reference deserves to be answered against the applicant workman and is answered accordingly, holding the action of management is not against law.

AWARD

In the light of above discussion and finding, the reference deserves to be answered against the applicant workman and is answered accordingly, holding the action of management is not against law.

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

P.K. SRIVASTAVA, Presiding Officer

DATE: 17/04/2024

नई दिल्ली, 10 मई, 2024

का.आ. 896.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एस.ई.सी.एल के प्रबंधतंत्र के संबद्ध नियोजको और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में **केन्द्रीय सरकार औद्योगिक अधिकरण – सह – श्रम न्यायालय**, जबलपुर के पंचाट (एलसी-आर/37/2018) को प्रकाशित करती है, जो केन्द्रीय सरकार को **12/04/2024** को प्राप्त हुआ था।

[सं. एल–22012/23/2018-आईआर(सी.एम-II)]

मणिकंदन.एन, उप निदेशक

New Delhi, the 10th May, 2024

S.O. 896.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award **(Reference.LC/-R/37/2018*)*** of the **Central Government Industrial Tribunal-cum-Labour Court, Jabalpur** as shown in the Annexure, in the industrial dispute between the Management of **S.E.C.L.** and their workmen, received by the Central Government on **12*/04/2024***.

[No. L-22012/23/2018-IR (CM-II)]

MANIKANDAN. N, Dy. Director

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT, JABALPUR

NO. CGIT/LC/R/37/2018

Present: P.K.Srivastava

H.J.S..(Retd)

Shri Hari Yadav, President

Koyala Mazdoor Sabha (HMS)

Office- Katkona Colliery, Patna

Distt.- Korea (CG)

Workman

Versus

The Sub-Area Manager

SECL, Jhilmili Sub Area, PO- Pandavpara

District – Korea (CG)

Management

(JUDGMENT)

(Passed on this 12th day of April 2024)

As per letter dated 09/08/2018 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No. L-22012/23/2018 IR(CM-II) dt. 09/08/2018. The dispute under reference relates to:

"1. Whether the action on the part of management i.e. sub-area manager SECL Jhilimili Sub-Area in dismissing the service of the workman Shri Jhilmil S/o. Rambhajan as espoused by Shri Hari Yadav, President Koyla Mazdoor Sabha (HMS) from service on absenteeism ground without following the principles of natural justice after a period of four years of service and not regularizing him in the said post is appropriate and justified ?

2. Whether the action on the part of the management in not giving opportunity to the legal heir in the job after the death of the workman Jhilmil is appropriate and justified ? If not, what relief the legal heir of the deceased workman is entitled to ?"

After registering a case on the basis of the reference, notices were sent to the parties and were served. The workman side never appeared inspite of service and did not file any statement of claim. Management filed its Written Statement of Defense.

The case of management is mainly that the workman was initially appointed as trainee underground w.e.f. 03.06.2010 for training of 6 months. After completion of this training period, he was to work for a period of at least 95 days continuously for consideration for his regularization in the light of Clause- 3.3 of Certified Standing Orders. He could not complete 95 days in continuous service in any six months period for four years and was not considered for regularization. Hence, management had no option to terminate his services as a trainee. He was given opportunities to justify his absence various office memos in different dates but he did not improve. A charge sheet dated 17.12.2013 was issued against him. He did not reply the charge sheet and hence management decided to conduct enquiry for the charges of unauthorized and willful absence. He participated in the enquiry through his co-worker as his defense assistant. He also cross examined the management witness during the enquiry. The Enquiry Officer submitted his report holding him guilty for the charges. He was issued a show cause by disciplinary authority with copy of the enquiry report which was served on him. He did not submit his reply and then he was awarded the punishment of termination of his services.

As regards the claim of his legal heirs for compassionate appointment, since it is awarded to the heirs of regular and permanent employee declared medically unfit, his legal heirs are also not entitled to claim compassionate appointment. Management has thus prayed that the reference be answered against the workman.

Vide order dated 11.04.2022 the reference proceeded ex-parte against workman.

The management filed affidavit of its witness who corroborated the case of management and has proved the papers relating to the departmental enquiry and punishment. He has not been cross examined. No evidence was produced from the side of the workman at any time.

At the stage of argument, none appeared for the workman, hence argument of learned Counsel for management were heard by me and the record has also been perused.

On perusal of record in the light of argument reveals following issues for determination :-

1. ***Whether departmental enquiry conducted against workman is proper and legal ?***
2. ***Whether charges imposed against workman are proved from the evidence in the enquiry ?***
3. ***Whether the punishment is proportionate to the charges ?***
4. ***If not, to what relief the workman is entitled ?***

Since, the initial burden to prove his case is on workman in which he has failed, the case has to be decided on the basis of pleadings of management and evidence in support.

For the sake of convenience, all the issues are being taken together.

I have perused the enquiry record which goes to show that the workman participated in the enquiry, he was allowed to cross examine management witness. He was issued show cause notice with enquiry report, hence, since there is nothing on record to indicate that there was any procedural irregularity or statutory short comings in the enquiry process, the enquiry is held legal and proper. The findings of enquiry officer is also held correct in law and fact. Keeping in view the period of proved absence, that too at probation stage, the impugned punishment is also held proportionate to the misconduct. Since, the workman was not a permanent and regular employee the action of management in denying compassionate appointment to his legal heirs is also held justified in law.

Accordingly, the reference is answered as follows :-

AWARD

The action on the part of management i.e. sub-area manager SECL Jhilimili Sub-Area in dismissing the service of the workman Shri Jhilmil S/o. Rambhajan as espoused by Shri Hari Yadav, President Koyla Mazdoor Sabha (HMS) from service on absenteeism ground after a period of four years of service and not regularizing him in the said post is appropriate and justified ?

The action on the part of the management in not giving opportunity to the legal heir in the job after the death of the workman Jhilmil is appropriate and justified.

The legal heirs of the deceased workman are entitled to no relief.

P. K. SRIVASTAVA**,** Presiding Officer

DATE:- 12/04/2024

नई दिल्ली, 10 मई, 2024

का.आ. 897.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एस.ई.सी.एल के प्रबंधतंत्र के संबद्ध नियोजको और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में **केन्द्रीय सरकार औद्योगिक अधिकरण – सह – श्रम न्यायालय**, जबलपुर के पंचाट (एलसी-आर/**43/2021**) को प्रकाशित करती है, जो केन्द्रीय सरकार को **12/05/2024** को प्राप्त हुआ था।

[सं. एल–22012/34/2021-आईआर(सी.एम-II)]

मणिकंदन.एन, उप निदेशक

New Delhi, the 10th May, 2024

S.O. 897.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award **(Reference. LC/-R/43/2021)** of the **Central Government Industrial Tribunal-cum-Labour Court, Jabalpur** as shown in the Annexure, in the industrial dispute between the Management of **S.E.C.L.** and their workmen, received by the Central Government on **12/05/2024.**

[No. L-22012/34/2021-IR (CM-II)]

MANIKANDAN. N, Dy. Director

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT, JABALPUR

NO. CGIT/LC/R/43/2021

Present: P.K. Srivastava

H.J.S..(Retd)

The Organizing Secretary,

Koyala Mazdoor Panchayat (HMS)

Office- Ward no. 11, Post and

Distt.- Shahdol (M.P.)

Workman

Versus

The Sub-Area Manager

SECL, Naurozabad Sub Area, PO- Johila

District – Umaria (M.P.) and others

Management

(JUDGMENT)

(Passed on this 15th day of April 2024)

As per letter dated 10/09/2021 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No. L-22012/34/2021 IR(CM-II) dt. 10/09/2021. The dispute under reference relates to:

" Whether the demand of the workman Sunil Kumar Raidas General Mazdoor for reinstatement of his service from 08.03.2011 with back wages against the management of SECL, Sub Area Manager Narojabad is legal and proper? If yes, to what relief the workman is held entitled to."

After registering a case on the basis of the reference, notices were sent to the parties and were served. The workman side never appeared inspite of service and did not file any statement of claim. Management filed its Written Statement of Defense.

The case of management is mainly that the workman was initially appointed as general mazdoor. He was in the habit of unauthorizely and willfully absenting himself from duty without any prior information and sanctioned

leave. His attendance for the last 3 years was 151 days in 2008, 97 days in 2009 and 26 days in 2010. He was issued a charge sheet dated 24.04.2010 against him. He did reply the charge sheet and management decided to conduct enquiry for the charges of unauthorized and willful absence. He participated in the enquiry through his co-worker as his defense assistant. He also cross examined the management witness during the enquiry. The Enquiry Officer submitted his report holding him guilty for the charges. He was issued a show cause by disciplinary authority with copy of the enquiry report which was served on him. He did not submit his reply and then he was awarded the punishment of termination of his services.

Vide order dated 15.06.2022, the reference proceeded ex-parte against the workman.

The management filed affidavit of its witness who corroborated the case of management and has proved the papers relating to the departmental enquiry and punishment. He has not been cross examined. No evidence was produced from the side of the workman at any time.

At the stage of argument, none appeared for the workman, hence argument of learned Counsel for management were heard by me and the record has also been perused.

On perusal of record in the light of argument reveals following issues for determination :-

1. ***Whether departmental enquiry conducted against workman is proper and legal ?***
2. ***Whether charges imposed against workman are proved from the evidence in the enquiry ?***
3. ***Whether the punishment is proportionate to the charges ?***
4. ***If not, to what relief the workman is entitled ?***

Since, the initial burden to prove his case is on workman in which he has failed, the case has to be decided on the basis of pleadings of management and evidence in support.

For the sake of convenience, all the issues are being taken together.

I have perused the enquiry record which goes to show that the workman participated in the enquiry, he was allowed to cross examine management witness. He was issued show cause notice with enquiry report, hence, since there is nothing on record to indicate that there was any procedural irregularity or statutory short comings in the enquiry process, the enquiry is held legal and proper. The findings of enquiry officer is also held correct in law and fact. Keeping in view the period of proved absence, the impugned punishment is also held proportionate to the misconduct.

Accordingly, the reference is answered as follows :-

AWARD

The demand of the workman Sunil Kumar Raidas General Mazdoor for reinstatement of his service from 08.03.2011 with back wages against the management of SECL, Sub Area Manager Narojabad is held not legal and proper. The workman is held entitled to no relief.

DATE:- 15/04/2024

P.K. SRIVASTAVA, Presiding Officer

नई दिल्ली, 10 मई, 2024

का.आ. 898.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एस.ई.सी.एल के प्रबंधतंत्र के संबद्ध नियोजको और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में **केन्द्रीय सरकार औद्योगिक अधिकरण – सह – श्रम न्यायालय**, जबलपुर के पंचाट (एलसी-आर/**89/2016**) को प्रकाशित करती है, जो केन्द्रीय सरकार को **12/04/2024** को प्राप्त हुआ था।

[सं. एल–22012/65/2016-आईआर(सी.एम-II)]

मणिकंदन.एन, उप निदेशक

New Delhi, the 10th May, 2024

S.O. 898.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award **(Reference. LC/-R/89/2016*)*** of the **Central Government Industrial Tribunal-cum-Labour Court, Jabalpur** as shown in the Annexure, in the industrial dispute between the Management of **S.E.C.L.** and their workmen, received by the Central Government on **12*/04/2024.***

[No. L-22012/65/2016-IR (CM-II)]

MANIKANDAN. N, Dy. Director

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT, JABALPUR

NO. CGIT/LC/R/89/2016

Present: P.K.Srivastava

H.J.S..(Retd)

The President,

Coal India Pensioners Association,

Branch Bishrampur Area,

Qtr No. 1B-32, Bishrampur

Distt- Surajpur (CG) -497226

Workman

Versus

The General Manager

SECL, Bishrampur Area

PO- Bishrampur Colliery

Distt- Surajpur(CG) -497226

Management

AWARD

(Passed on this 20Th day of February-2024.)

As per letter dated 29/09/2016 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this tribunal under section-10 of I.D. Act, 1947 as per reference number L-22012/65/2016 (IR(CM-II)) dt.29/09/2016 . The dispute under reference related to :-

" Whether the action on the part of General Manager, Bisshrampur area of SECL in withholding the terminal benefits after retirement on quarter retention ground such as leave encashment and other dues as eligible in respect of Shri Mohan Singh, Ex-PCSA Grade B espoused by the President, Coal India Pensioners Association, Bishrampur branch is legal, appropriate and justified? If not, whether it is appropriate to recover the terminal dues from the employer? "

After registering a case on the basis of the reference received, notices were sent to the parties and were duly served on them. Despite service of notice on the workman, he did not appear and did not file any statement of claim.

Management has filed its written statement of defence, wherein it has stated that firstly the applicant union that is Coal India Pensioners Association is not a registered trade union as it has no locus-standi to raise the dispute and the reference may be answered against the applicant filed only on this ground.

It has further been pleaded with the claimant workman retired with effect from August 31, 2012, whereas the present dispute was raised in the year 2016 and the reference is barred due to delay and latches on the part of the claimant side. It is further, the case of management that the claimant workman was employed as PCSA Grade B with the management. He was allotted a residential accommodation house number 1B/232 by virtue of his employment. He got superannuation on August 31, 2012. He was under obligation to hand over the vacant possession of the house allotted to him during his service time after he superannuated, but he failed to do it and retained possession of the said house. Eviction proceedings were initiated against him before the estate officer and eviction order was passed on January 13, 2014 directing him to hand over vacant possession of the said house and also pay the arrears of rent as well the compensation for unauthorised use of the accommodation. An appeal against this order was returned by the District Judge Surajpur, while his order dated January 1, 2017. In a writ petition No WP(PIL)53/2016 , the Hon'ble High Court of Chhattigarh issued directions to get the accommodations vacated from the undersized occupants within the timeframe.

According to the management, the applicant workman is under obligation to pay penal rent and municipal as well. Electricity charges for the accommodation till date of handing over of position of the said accommodation by the applicant workman on December 31, 2018 , which he has not paid and against this dues, fees, leave encashment and settle in allowance has been withheld by the management. According to management, able after withholding his

dues as mentioned above, there is still a recovery against the applicant workman. Management has a accordingly requested that the reference is answered against the applicant workman.

The management has filed an affidavit of its witness which is on record, wherein the witness has supported the claim of management. None appeared from the side of workman for cross-examination of management witness an opportunity of the applicant workman to cross-examine the management witness was closed.

At the time of argument, none appeared from the side of workman. I have heard the argument of Shri Anup Nair for management and have gone through the record.

The reference itself is the issue for determination.

Since applicant side has not filed any evidence in support of its claim, the case of workman is held not proved. From the perusal of affidavit of management witness, the case of management is held proved. Hence, in the light of above discussion and finding, the reference deserves to be answered against the applicant workman and is answered accordingly, holding the action of management is not against law.

AWARD

In the light of this factual backdrop, the reference deserves to be answered against the applicant workman and is answered accordingly, holding the action of management is not against law.

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

P.K. SRIVASTAVA, Presiding Officer

DATE: 20/02/2024

नई दिल्ली, 10 मई, 2024

का.आ. 899.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एस.ई.सी.एल के प्रबंधतंत्र के संबद्ध नियोजको और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में **केन्द्रीय सरकार औद्योगिक अधिकरण – सह – श्रम न्यायालय**, जबलपुर के पंचाट (एलसी-आर/**52**/**2018**) को प्रकाशित करती है, जो केन्द्रीय सरकार को **12/04/2024** को प्राप्त हुआ था।

[सं. एल–22012/128/2018-आईआर(सी.एम-II)]

मणिकंदन.एन, उप निदेशक

New Delhi, the 10th May, 2024

S.O. 899.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award **(Reference. LC/-R/52/2018*)*** of the **Central Government Industrial Tribunal-cum-Labour Court, Jabalpur** as shown in the Annexure, in the industrial dispute between the Management of **S.E.C.L.** and their workmen, received by the Central Government on **12*/04/2024.***

[No. L-22012/128/2018-IR (CM-II)]

MANIKANDAN. N, Dy. Director

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT, JABALPUR

NO. CGIT/LC/R/52/2018

Present: P.K.Srivastava

H.J.S..(Retd)

The Area President,

Koyla Shramik Sabha,

Johila Area S.E.C.L.,

Post- Birsinghpur Pali,

Dist– Umaria (M.P.)0 - 484551

Workman

Versus

Chief General Manager,

S.E.C.L. Jihila Area, Post Nourozabad

District Umariya (M.P.)

Sub Area Manager

S.E.C.L. Pinoura, Sub Area Johila

Post Nourozabad, Distt.- Umariya (M.P.)

Management

(JUDGMENT)

(Passed on this 18th day of March 2024)

As per letter dated 01/11/2018 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No. L-22012/128/2018 IR(C.M.-II) dt. 01/11/2018. The dispute under reference relates to:

"अनावेदक/एसईसीएल प्रबंधन द्वारा कर्मकार श्री प्रशांत कुमार डे के मेडिकल अनफिट के प्रस्ताव को एसईसीएल कंपनी मुख्यालय के लिए न भेजा जाना क्या उचित है? यदि नहीं तो कर्मकार श्री प्रशांत कुमार डे क्या अनुतोष पाने के हकदार हैं ?"

After registering the case on the basis of the reference, notices were issued to the parties they appeared and filed their respective statements of claim and defense.

According to the workman, he was first appointed by management vide its order dated 25.06.19976 and worked with management till 20.08.2015 i.e. the date he was removed from his services. A policy with respect to the sick employees suffering with serious ailments and unable to perform their duties from last 3 years was issued by management and it was provided that such employees will move an application to management in prescribed profarma with their medical report for seeking voluntary retirement on medical grounds. It was also provided that this information/ application was to be furnished till or before 10.06.2015. Further it was provided in the scheme that the management might consider offering employment to one dependant of such employees subject to fulfilling of other conditions in case an employee was awarded voluntary retirement on medical grounds.

It is further the case of the workman that he has been suffering with various ailments and has been under treatment since 2008 to 2011 in Apollo Hospital Bilaspur and CMC Vellore. He was operated upon six times. He filed an application alongwith medical documents and requested the management to provide compassionate appointment to his dependant daughter considering his medical condition. His wife also had been suffering from various ailments and had been under continuous treatment in various hospitals. His application was forwarded to the Deputy General Manager on 06.06.2015 he had mentioned his date of birth and date of retirement i.e. 31.03.2017 in his application. His application was not considered by management and it was not sent to the higher authorities constituted by management for this purpose, on the ground that medical board constituted at regional level, after considering his case, found it not fit to be sent to the higher authority. The workman raised a dispute in this respect with the Assistant Labour Commissioner and after failure of conciliation, this reference. Thus, according to the workman the action of management not considering and recommending his case is nothing but arbitrary, discriminatory and unjust which requires to be set aside. The workman has accordingly prayed for an appropriate order commanding and directing the management to consider his case for medically unfit in the light of the policy dated 16/18.05.2015 and his application dated 06.06.2015, also a direction to the management to pass an order of his retirement on medical ground and to provide compassionate appointment to his daughter.

The case of management is mainly that vide letter no.- 382, dated 16/18.05.2015, issued by management which provided the following-

a. That, the employee who were suffering from serious ailments and unable to perform their duties from last 3 years.

b. The scheme was without is limit for employees suffering from the six diseases namely as follows

   (1) Cancer (not of primary stage) leading to permanent disability and bad prognosis.

   (2) Leprosy complicating with deformities and/ or loss of parts of body.

   (3) Paralysis of permanent nature with loss of locomotion movements and loss of coordination.

   (4) Heart Attack leading to cardio vascular complications of permanent nature.

(5) Total blindness of both eyes.

(6) Kidney failure with complications.

c. For other diseases under General Physical Debility, the age of employee should not be more than 58 years on the date of meeting of Apex Medical Board constituted under Clause-9.4.0 of NCWA (National Coal Wage Agreement).

According to management, applications of employees, including the applicant workman, were scrutinized at aria level by a committee consisting of Area Personnel Manager, Area Medical Officer and CGM/ GM of the area. The application of the workman was not recommended by the Area Screening Committee to the company level because **firstly**, the workman was able, fit and well performing his duties like a normal person as it was evident from his attendance record for the preceding 3 years and the disease of Pancreatitis, which he was suffering with is not among **secondly** the 6 listed diseases for which no age barrier was required. For other diseases, the workman applying had to be less than 58 years of age at the time of consideration of his case by Medical Board and the date of birth of the workman being 10.03.1957, his application filed on 06.06.2015 he had crossed the age limit. According to the management, the attendance of the workman was 281 days in 2012, 297 days in 2013, 257 days in 2014 and 113 days upto 30.04.2015 in the year 2015.Thus according to the management, the action of management is justified in law and fact, the management has thus requested that the reference be answered against the workman.

In evidence the workman has filed his affidavit his examination in chief he has been cross examined by management.

The management has filed affidavit of its witness as his examination in chief who has been cross examined by workman side. Workman has filed copy of the Circular No.- 382, dated 16/18.05.2015, copy of the application of the workman dated 06.06.2015. Management has also filed these two documents and certified copy of the attendance of the workman in the calendar years 2012, 2013 & 2014.

I have heard argument of working in person he has also filed written argument. No Counsel appeared for the management for arguments, written arguments has been filed by management through its Counsel Sh. Neeraj Kewat. I have gone through the written arguments and the record.

From perusal of record in the light of rival arguments, the reference itself appears to be the issue for determination.

As it is clear from the perusal of the Circular dated 16/18.05.2015, referred to earlier, there is six diseases in the list for which no age limit is prescribed for submitting application or referring the cases / screened list of employee suffering from these diseases who are unable to perform their duties since last 3 years. This is also provided in the said Circular that for the cases under General Physical Debility, age upto 58 years was required, cutoff date being the date of meeting of the medical board under Clause-9.4.0 of NCWA.

From the medical papers of the workman, it is established that he has been suffering from Chronic Pancreatitis with DM and has been operated upon for this disease. Hence, his case may be covered under the head of General Physical Debility. This is also established from his on oath statement and service documents that his date of birth is 10.03.1957. Hence, he is above 58 years of age even at the time of release of the said Circular of 16/18.05.2015. Management has successfully proved his attendance in the 3 preceding years i.e. 2012, 2013 & 2014. On the basis of his attendance sheet for these years, corroborated by the statement of the management witness, which goes to show that the workman has put in his attendance for sufficient period and militates against his claim that he has been unable to perform his duties due to his medical condition.

In these circumstances, since his case is not covered under the Circular, the action of management in not referring his case to Headquarter for consideration for his voluntary retirement on medical ground and compassionate appointment of his daughter in his place is held justified in law.

On the basis of above discussion, award is passed as follows-

AWARD

Holding the action of management in not referring his case to headquarter for consideration for his voluntary retirement on medical ground and compassionate appointment of his daughter in his place is held justified in law, the reference is answered against the workman. No order as to cost.

DATE:- 18/03/2024

P.K. SRIVASTAVA, Presiding Officer

नई दिल्ली, 10 मई, 2024

का.आ. 900.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एस.ई.सी.एल के प्रबंधतंत्र के संबद्ध नियोजको और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में

केन्द्रीय सरकार औद्योगिक अधिकरण – सह – श्रम न्यायालय, जबलपुर के पंचाट (एलसी-आर/**68/2015**) को प्रकाशित करती है, जो केन्द्रीय सरकार को **12/04/2024** को प्राप्त हुआ था।

[सं. एल–22012/31/2015-आईआर(सी.एम-II)]

मणिकंदन.एन, उप निदेशक

New Delhi, the 10th May, 2024

S.O. 900.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award **(Reference. LC/-R/68/2015*)*** of the **Central Government Industrial Tribunal-cum-Labour Court, Jabalpur** as shown in the Annexure, in the industrial dispute between the Management of **S.E.C.L.** and their workmen, received by the Central Government on **12*/04/2024.***

[No. L-22012/31/2015-IR (CM-II)]

MANIKANDAN. N, Dy. Director

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT, JABALPUR

NO. CGIT/LC/R/68/2015

Present: P.K.Srivastava

H.J.S..(Retd)

Shri Hem Kumar Khare

Ex. Electrical Helper

Pali Project SECL, P,O. Bersinghpur Disst Umaria

Umaria (M.P)- 484551.

Workman

Versus

The Manager

Johella Area of SECL

P.O. Johella Distt. Umaria

Umaria (M.P)-484886.

Management

AWARD

(Passed on this 02nd day of February-2024.)

As per letter dated 16/07/2015 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this tribunal under section-10 of I.D. Act, 1947 as per reference number No. L-22012/31/2015 (IR(CM-II)) dt. 16/07/2015 . The dispute under reference related to :-

"*श्री हेम कुमार खरे, एक्स इलैक्टिक हेल्पर, पाली परियोजना एसईसीएल जोहिल्ला क्षेत्र द्वारा प्रस्तुत दस्तावेजों में जन्म तिथि दिनांक* 20.05.1957 *एवं* 20.07.1957 *होते हुए भी प्रबंधक द्वारा आवेदक कर्मकार को दिनांक* 31.01.2012 *को सेवानिवृत्त करना क्या न्यायसंगत है? यदि नहीं तो कर्मकार क्या अनुतोष पाने का अधिकारी है?* "

After registering a case on the basis of the reference received, notices were issued to the parties and were duly served on them. They appeared and filed their respective statements of claim and defence.

The workman filed his affidavit and affidavit of his witness as well photocopy documents not admitted by management but never turned up for cross examination, Hence his evidence was closed. No evidence produced by management.

I have perused record, **the reference itself is the issue for determination**. The initial burden to prove his case is on the workman. He has filed his affidavit, but never turned up for cross examination. Hence, such an affidavit cannot be read in evidence in his favour.

Hence holding the claim of workman not proved, the reference deserved to be answered against the workman is answered accordingly.

AWARD

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

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

P.K. SRIVASTAVA, Presiding Officer

DATE: 02/02/2024

नई दिल्ली, 10 मई, 2024

का.आ. 901.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार डब्ल्यू.सी.एल के प्रबंधतंत्र के संबद्ध नियोजको और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में **केन्द्रीय सरकार औद्योगिक अधिकरण – सह – श्रम न्यायालय**, जबलपुर के पंचाट (एलसी-आर/**07/2017**) को प्रकाशित करती है, जो केन्द्रीय सरकार को **12/04/2024** को प्राप्त हुआ था।

[सं. एल–22012/8/2016-आईआर(सी.एम-II)]

मणिकंदन.एन, उप निदेशक

New Delhi, the 10th May, 2024

S.O. 901.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award **(Reference. LC/-R/07/2017*)*** of the **Central Government Industrial Tribunal-cum-Labour Court, Jabalpur** as shown in the Annexure, in the industrial dispute between the Management of **W.C.L.** and their workmen, received by the Central Government on **12*/04/2024*.**

[No. L-22012/8/2016-IR (CM-II)]

MANIKANDAN. N, Dy. Director

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT, JABALPUR

NO. CGIT/LC/R/07/2017

Present: P.K.Srivastava

H.J.S..(Retd)

Shri Prayag Modi,

Ex- Office Suptt., Nandan Khan-2,

PO: Nandan,

Distt. Chhindwara(MP) -480555

Workman

Versus

The Manager,

Western Coalfields Limited, Nandan Khan-2,

Kanhan Area, PO: Nandan,

Distt. Chhindwara (MP) -480555.

Management

AWARD

(Passed on this 1st day of February-2024.)

As per letter dated 07/04/2016 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this tribunal under section-10 of I.D. Act, 1947 as per reference number No. L-22012/8/2016 (IR(CM-II)) dt. 07/04/2016 . The dispute under reference related to :-

"*क्या प्रबंधक वैस्टर्न कोल फील्डस लिमिटेड नंदन खांन-2 कन्हान क्षेत्र, पो० नंदन, जिला छिंदवाडा (मध्य प्रदेश) द्वारा अपने आदेश दिनांक* N/11/00/CHS/Termination/01-1584 *दिनांक* 19.12.2001 *द्वारा आवेदक श्री प्रयाग मोदी भू०पू० कार्यालय अधीक्षक, नंदन खांन* 2 *वैस्टर्न कोल फील्डस लिमिटेड, कन्हान क्षेत्र, को सेवा से बर्खास्त किया जाना उचित है? यदि नहीं तो आवेदक क्या अनुतोष पाने का अधिकारी है?*"

After registering a case on the basis of the reference received, notices were issued to the parties and were duly served on them. They appeared and filed their respective statements of claim and defence.

According to the workman, he was initially appointed as an assistant clerk grade III on January 16, 1974 at Damua Coalfield. He was promoted to Clerk grade IV by management on May 1, 1976 in the same coalfield. He was again promoted to grade I by management on January 1 1992. He was transferred to Nandan Mines number II as Head Clerk. He has had an excellent service record. According to the Cadre Scheme, the job of checking and passing all kind of bills such as LLTC/LTC/TA bills, wages and other miscellaneous bills are part of the job of the accounts personnel that is the Accounts Clerk, Accountant and Accounts Officer. While preparing the list of LLTC quota for the year 2001 on December 21, 2000, he found that one Workman Ishunu was given the wrong or payment of LLTC in the block year 1998- 2001 to the tune of Rs. 10,224/-which was not permissible to him as per rules. According to the applicant workman, he immediately communicated this matter to the Accounts and Colliery Manager on December 21, 2000. orally and by way of written communication on December 22, 2000. The said workman Ishunu was chargesheeted for wrong payment and the amount was recovered from him. During the enquiry against the workman Ishunu, he took a plea that he was instigated by the applicant Workman (in the present case) to claim double L LTC for which the applicant would help and get it passed the and he would take Rs. 3000/-for facilitating this wrong payment. According to the applicant Workman, it was the clerk D.R.Pathak who was entrusted with the work of processing LLTC claims, who himself was a man of dubious character as he was, habitual in processing a wrong L LTC claims to as many as 10 employees of the management when he was posted in Nandan Mines and was chargesheeted for this. The management issued a chargesheet dated January 23, 2001 to the applicant Workman, with the allegation that he had not duly checked the in grant of payment of L LTC to the workman Ishunu, invoking the allegation of theft,dishonesty and fraud against the applicant Workman , which is misconduct as per rule 26.1 under the Certified Standing Orders and also misconduct under rule 26.22 of the Certified Standing Order. A departmental enquiry was instituted against the applicant which was conducted without giving him proper opportunity of defence . Thus, it was illegal and unjust enquiry. The enquiry officer wrongly held him guilty for wilful negligence as well fraud and dishonesty, holding the charges of misconduct, as mentioned above, proved. The disciplinary authority, without considering his representation on the enquiry report, imposed the punishment of his dismissal from service which is against law and is disproportionate to the charge proved. The appellate authority also unlawfully dismissed his appeal against the order of his dismissal without appreciating the facts submitted by him in his appeal. Accordingly, workman has prayed that, holding the action of management in dismissing his services against law, he be held entitled to be reinstated with all back wages and benefits.

The case of management, as taken in their statement of defence, is that the enquiry concluded and the validity of the termination order has already been adjudicated by this Tribunal in case number B/2/2001 in the case of the Manager. Nandan number II WCL Vs P.Modi, , a case filed by management. Under section 33(1)A of the Industrial Disputes Act 1947, hereinafter referred to by the word 'Act', vide its order dated May 10, 2013, this Tribunal has accorded sanction for terminating the services of the workman. A Writ Petition umber 20823/13 filed by the applicant Workman against this order has been dismissed by Hon'ble High Court of MP wide its order dated December 6, 2013. A Writ Appeal Number 361/14 has also been dismissed by a Division Bench of Hon'ble High Court wide its order dated July 14, 2015. Hence the said termination order is final between the parties over which no second round of adjudication is legally permitted because it is barred by the principal of res judicata. Accordingly, according to management, this reference is not maintainable before this Tribunal. The management has rebutted the allegation of the applicant Workman with regards to his case on legality of the enquiry and legality of finding recorded by enquiry officer with a pleading that the inquiry was conducted as per rules and the applicant Workman was given full opportunity to defend himself. It is further, the case of management that the finding of enquiry officer is based on sound evidence and the punishment also is not disproportionate to the charge. Accordingly, management has prayed that the reference be answered against the Workman.

In the light of pleadings of parties, following **preliminary issues** where framed-

1-whether the departmental enquiry was properly and legally conducted.

2-whether the principal of res judicata was applicable to the case in hand or not.

After recording evidence, these two preliminary issues where decided vide order dated November 23, 2011**. Preliminary issue number one was answered against the applicant Workman, holding that the departmental enquiry was legal and proper. Preliminary issue number two was answered against the management, holding that the dispute in the reference is not barred by the principal of res judicata. This order is part of this award.**

Thereafter, following **additional issues** were framed on the same date-

1-whether the charges are proved on the basis of evidence in enquiry.

2-whether the punishment awarded is proportionate to the charge.

Parties were given opportunity to lead evidence on affidavit on these two additional issues the Workman did file his affidavit, which related to the other facts on related to the additional issues. Hence only the facts related to the additional issues in the affidavit where to be considered. No evidence was filed by management on these two additional issues.

I have heard argument of learned Counsel, Mr Akshat Shukla for the workman and learned Counsel, Mr Anup Nayer for management. I have gone through the record as well.

An additional issue number one-

The charges against the workman ,leveled in the enquiry against him were as follows-

26.1-Theft, fraud or dishonesty in connection with the employer's

business or property

26.22-Any wilful and deliberate act which is subversive of discipline or which may be detrimental to the interests of the company."

The conclusion which the enquiry officer recorded in his enquiry report dated March 31, 2001 are being reproduced as follows-

"**Conclusion**

Sri Modi has signed the payment of L LTC and it could have been pointed out by him by checking the old/new L LTC register which he did not point out which proves that he has managed this wrong payment. Moreover, at one place Sri Modi has stated that he has detected several errors of L LTC payment and stopped wrong payment and at other place. He has stated that it was not possible to detect the error. In the case of double payment of L LTC to Sri Ishunu proves his involvement in the above wrong payment.

The charges levelled against Sri Modi in the chargesheet. Regarding theft, fraud and dishonesty in connection with the company business or property, and any wilful and deliberate act which is subversive of discipline, of which may be detrimental to the interests of the company had been clearly proved beyond doubt"

Before entering into any discussion on this additional issue, it is proper to mention the settled proposition of law with regard to standard of proof required for proving the charge of misconduct in departmental enquiry.

In case, **General Manager, State Bank of India Vs. R. Periyasamy**(2015) 3 SCC 101 the same principle has been reiterated in para 11 of the judgment which is being reproduced as follows:-

> **"11. It is interesting to note that the learned Single Judge went to the extent of observing that the concept of preponderance of probabilities is alien to domestic enquiries. On the contrary, it is well known that the standard of proof that must be employed in domestic enquiries is in fact that of the preponderance of probabilities. In Union of India Vs. Sardar Bahadur[3], this Court held that a disciplinary proceeding is not a criminal trial and thus, the standard of proof required is that of preponderance of probabilities and not proof beyond reasonable doubt."**

In the case of **Deputy General Manager,State Bank of India Vs.Ajai Kumar Srivastava**(2021)2 SCC 612 referred to by learned Counsel for the Management, the same principle has been reiterated in para 27 of the judgment which is being reproduced as follows:-

> **"27. It is true that strict rules of evidence are not applicable to departmental enquiry proceedings. However, the only requirement of law is that the allegation against the delinquent must be established by such evidence acting upon which a reasonable person acting reasonably and with objectivity may arrive at a finding upholding the gravity of the charge against the delinquent employee. It is true that mere conjecture or surmises cannot sustain the finding of guilt even in the departmental enquiry proceedings."**

Now examining the evidence on record collected during the departmental enquiry on this issue, it comes out that there is evidence collected during the enquiry that the applicant Workman was entrusted with the task of checking the claims of different Workman, including the workman Ishunu regarding LLTC claims and approve it thereafter for payment. There is also evidence on the point collected during the departmental enquiry that a wrong payment was made to the workman Ishunu with regard to his second L LTC claim for the same block, which was not otherwise admissible to him. There is statement of Ishunu the person who made wrong the claim and was paid wrongly, that he

was in need of money. It was the applicant Workman who instigated him to put a second claim with regard to LLTC and the applicant Workman would get it passed for which he would charge Rs. 3000 /-. This is also in the statement of that Ishunu that he did it pay the applicant Workman are some of Rs. 2000 /-. Taking bribery is a separate misconduct as provided in the certified standing orders. Clause 26.2 of the Certified Standing Orders Since there is no such charge against the applicant Workman leveled during the departmental enquiry, the enquiry officer rightly ignored the statement of Ishunu on the point of payment of bribery to the applicant Workman. In spite of that, on perusal of evidence collected during the departmental enquiry**, I find no occasion to disagree from the finding of the enquiry officer that had the applicant Workman acted with due diligence, double payment which was not permissible would not have been made to the Ishunu. Hence, the finding of wilful negligence stands proved against the Workman requires no interference as it has been recorded on the basis of evidence collected during the enquiry as is evidence from enquiry papers**. As regards the **charge** regarding committing theft, fraud and acting with dishonesty with the company's business or property, as mentioned as misconduct in rule 26.1 and charge under rule 26.22 of Certified Standing Orders, finding of the enquiry officer that this charge is also proved during the enquiry, cannot be said to have been recorded on the basis of evidence, because **firstly,** there is evidence during the enquiry that the applicant Workman was only the passing authority, the claim was to be primarily examined and processed by others**, secondly**, it was the applicant Workman himself who detected this wrong payment and reported it to the management.

On the basis of above discussion, only the charge of wilful negligence as mentioned in rule 26.5 of Certified Standing Orders is held proved and the charge of theft or dishonest act on the part of applicant Workman, as mentioned in rule 26.1 or 26.22 of Certified Standing Orders is held not proved. Additional issue number one is answered accordingly.

Additional issue number two-

Before entering into any discussion, the settled proposition of law as propounded in following decisions requires to be mentioned as is being mentioned as follows-

1-State of Bank of Bikaner & Jaipur Vs. Nemi Chand Nalwaya(supra) specially para 7 and 8 of this judgment which are being reproduced as follows:-

> "7. " **It is now well settled that the Courts will not act as an appellate Court and reassess the evidence led in the domestic enquiry, nor interfere on the ground that another view is possible on the material on record. If the enquiry has been fairly and properly held and the findings are based on evidence, the question of adequacy of the evidence or the reliable nature of the evidence will not be grounds for interfering with the findings in departmental enquiries. Therefore, Courts will not interfere with findings of fact recorded in departmental enquiries, except where such findings are based on no evidence or where they are clearly perverse. The test to find out perversity is to see whether a Tribunal acting reasonably could have arrived at such conclusion or finding, on the material on record. Courts will however interfere with the findings in disciplinary matters, if principles of natural justice or statutory regulations have been violated or if the order is found to be arbitrary, capricious, mala fide or based on extraneous considerations. (vide B. C. Chaturvedi vs. Union of India - 1995 (6) SCC 749, Union of India vs. G. Gunayuthan - 1997 (7) SCC 463, and Bank of India vs. Degala Suryanarayana - 1999 (5) SCC 762, High Court of Judicature at Bombay vs. Shahsi Kant S Patil - 2001 (1) SCC 416).**
>
> **8. When a Court is considering whether punishment of `termination from service' imposed upon a bank employee is shockingly excessive or disproportionate to the gravity of the proved misconduct, the loss of confidence in the employee will be an important and relevant factor. When an unknown person comes to the bank and claims to be the account-holder of a long inoperative account, and a bank employee, who does not know such person, instructs his colleague to transfer the account from "dormant" to "operative" category (contrary to instructions regulating dormant accounts) without any kind of verification, and accepts the money withdrawal form from such person, gets a token and collects the amount on behalf of such person for the purpose of handing it over to such person, he in effect enables such unknown person to withdraw the amount contrary to the banking procedures; and ultimately, if it transpires that the person who claimed to be account holder was an imposter, the bank cannot be found fault with if it says that it has lost confidence in the employee concerned. A Bank is justified in contending that not only employees who are dishonest, but those who are guilty of gross negligence, are not fit to continue in its service."**

2-Para 10 of the case of **State Bank of India vs. Periyasamy(supra** is being reproduced as follows:-

> **10. "It is interesting to note that the learned Single Judge went to the extent of observing that the concept of preponderance of probabilities is alien to domestic enquiries. On the contrary,**

it is well known that the standard of proof that must be employed in domestic enquiries is in fact that of the preponderance of probabilities. In Union of India Vs. Sardar Bahadur[3], this Court held that a disciplinary proceeding is not a criminal trial and thus, the standard of proof required is that of preponderance of probabilities and not proof beyond reasonable doubt. This view was upheld by this Court in State Bank of India & ors. Vs. Ramesh Dinkar Punde[4]. More recently, in State Bank of India Vs. Narendra Kumar Pandey[5], this Court observed that a disciplinary authority is expected to prove the charges leveled against a bank-officer on the preponderance of probabilities and not on proof beyond reasonable doubt. Further, in Union Bank of India Vs. Vishwa Mohan[6], this Court was confronted with a case which was similar to the present one. The respondent therein was also a bank employee, who was unable to demonstrate to the Court as to how prejudice had been caused to him due to non-supply of the inquiry authorities report/findings in his case. This Court held that in the banking business absolute devotion, diligence, integrity and honesty needs to be preserved by every bank employee and in particular the bank officer. If this were not to be observed, the Court held that the confidence of the public/depositors would be impaired. Thus in that case the Court set-aside the order of the High Court and upheld the dismissal of the bank employee, rejecting the ground that any prejudice had been caused to him on account of non-furnishing of the inquiry report/findings to him.

While dealing with the question as to whether a person with doubtful integrity ought to be allowed to work in a Government Department, this Court in Commissioner of Police New Delhi & Anr. Vs. Mehar Singh[7], held that while the standard of proof in a criminal case is proof beyond all reasonable doubt, the proof in a departmental proceeding is merely the preponderance of probabilities. The Court observed that quite often criminal cases end in acquittal because witnesses turn hostile and therefore, such acquittals are not acquittals on merit. An acquittal based on benefit of doubt would not stand on par with a clean acquittal on merit after a full-fledged trial, where there is no indication of the witnesses being won over. The long standing view on this subject was settled by this Court in R.P. Kapur Vs. Union of India[8], whereby it was held that a departmental proceeding can proceed even though a person is acquitted when the acquittal is other than Hon'ble. We are in agreement with this view.

Learned Counsel for workman has referred to a judgement of Hon'ble High Court of **MP in WP number 20795/2016, the Manager, Western Coalfields Ltd Vs Parag Modi** and has supported his argument that the misconduct proved against the Workman is not an act of moral turpitude as it has been held by Hon'ble High Court in the said Writ Petition. The said Writ Petition was filed by the management against order of the Controlling Authority dated July 21, 2016 by which the Controlling Authority granted payment of Gratuity to the workman after he was dismissed from service. Learned Counsel has referred to following observation of Hon'ble High Court-

"13. In the present case, the respondent workman was punished on the basis of charge sheet dated January 23, 2001, following allegations were proved against him-

"आपके द्वारा श्री ईश्वु वल्द टुकडू हालेज खलासी टो.नं. 548 की एल.एल.टी.सी. फार्म को चैक किया गया एवं सबंधित कामगार श्री ईश्वु को एक ही ब्लाक वर्ष (98-2001) में दो बार एल.एल.टी.सी. एवं एक बार एल.टी.सी. का भुगतान हो गया यदि आपने सुक्ष्मता से जाँच की होती तो श्री ईश्वु को उक्त भुगतान जो किया गया वह नहीं हो पाता। आपके द्वारा सही परीक्षण न करने पर कंपनी को आर्थिक क्षति पहुंची।**"**

14. Although the employer has mentioned clause 26.1 and 26.2 to of standing orders in the charge sheet, the only allegation made and found proved against the Workman was relating to negligence the allegation was regarding issuance of L LTC twice in a block year. There was no allegation against the petitioner relating to moral turpitude. Put differently, it was not a charge against the petitioner that he committed the aforesaid act with any oblique motive or gained anything out of it. Thus, clause 2 of subsection 6 of section 4 is clearly in applicable…….

……

…….

17. It is made clear that this Court has not expressed any opinion on the legality, validity and propriety of the order of punishment, which is subject matter of adjudication before the Industrial Tribunal. This Court has only considered the nature of allegations in the teeth of various clauses after Gratuity Act in order to examine whether the employer was justified in

withholding the gratuity. Needless to emphasise that it will be open to the Tribunal to decide the legality of dismissal order on the basis of merits of the said case. Shri Abhinav Kherdikar , learned Counsel has taken pains to contend that clause 26.1 and 26.22 to cover cases of fraud, this honesty, misappropriation, etc. No doubt, a plain reading of clause 26.1 and 26.22 can lead us to such a conclusion. However, such classes are enabling provisions on the strength of which are charge can be framed against the Workman. It is not the enabling provision, which will determine the conduct or nature of the guilt, but it is the nature of the charge/allegation, which will throw light as to what was the actual allegation against the Workman. At the cost of repetition, in the considered opinion of this Court, no allegation is made out and established against the petitioner about the misappropriation of money, oblique motive, this honesty etc."

The learned Counsel for workman has submitted on the strength of these observations, as mentioned above, in the aforesaid Writ Petition, that even Hon'ble High Court has been of the view that the misconduct proved against the Workman does not involve any act of moral turpitude rather what is proved is negligence in discharging his duties by the Workman. Learned Counsel further summits that these observations are relevant and crucial. Learned Counsel further summits that this goes to show that the punishment of dismissal from service awarded by the management in the case in hand is excessive to the charge and is shockingly disproportionate to the charge. Learned Counsel also summits that conduct of the workman is also to be looked into while awarding him punishment and in case in hand, the irregularity was detected and reported to the management by the Workman himself which goes to show his bona fides which has been overlooked by the disciplinary authority while awarding the maximum punishment of dismissal. Learned Counsel as referred to a judgement of Hon'ble High Court of MP in the case **of Sanjai Singh Vs The Director General Police WP number 18904/2012**. Learned Counsel has specifically referred to by the 15, 16,19 and 20 of this judgement. The relevant portions of which are being reproduced as follows -

"**16.' a careful reading of the allegations against the aforesaid employees, makes it clear that the allegations against them are relating to negligence and financial irregularities. The enquiry officer in his report found that charge alleged against the said employees are established. The disciplinary authority wide order dated April 23, 2012, found that the allegations which are established against the petitioner are relating to financial irregularity and embezzlement. Accordingly, punishment of dismissal from service was inflicted on the petitioner.**

…….

this is a settled large that an employee cannot be punished for an allegation which is not subject matter of the chargesheet. This view was taken by the Supreme Court, way back in Luxmi Devi Sugar Mills Vs Nand Kishore AIR 1957 SC7. The same view was taken in the case of M.V.Bijlani Vs union of India and others 2006 (5) SCC 88. Hence, I find substantial force in the argument that petitioner has been punished for allegation of embezzlement, which was not subject matter of the charge.

19. A Division Bench of this Court in Ganesh Kumar Vs state of MP 2013(2) MP LJ 402 held that dismissal is a punishment of last resort and should ordinarily not to be inflicted until all other means of corrections have failed. This principle was followed in the case of Purushottam Vs state of MP 2014(3) MP LJ 704."

On the other hand, learned Counsel for management has submitted that what punishment should be awarded to a delinquent employee is within the discretion of management and it should not be lightly interfered with. He further summits that the certified standing orders provide punishment for misconduct. One of the punishment is dismissal from service. The disciplinary authority has acted according to law and rules in awarding the sentence of dismissal. Hence the punishment does not require any interference because it is not as disproportionate to the charge proved so as to shock the conscience of this Tribunal.

The settled proposition of law on this point is that punishments awarded with respect to misconduct committed by employee is the domain of the disciplinary authority, who exercises his discretion in the light of given facts and circumstances and the gravity of the misconduct proved and punishments should not be interfered with normally until and unless it is so disproportionate to the charge that its shocks the conscience of the Court. Following case laws. Maybe referred to in this respect-

1-Proportionality of punishment in departmental enquiries:

Where the employee had submitted his resignation due to personal reasons but the same was not accepted by the employer company, the order of removal cannot be justified in such case as the award of penalty of removal from

service is not proportionate to the misconduct of the employee in tenderinghis resignation**. Chairman-cum-Managing Director, Coal India Ltd.Vs. Mukul Kumar Choudhuri, AIR 2010 SC 75.**

2-Discretion to impose penalty must be exercised by the competentauthority judiciously: The discretion to impose penalty upon thedelinquent official must be impose by the competent authority in ajudicious manner. **AIR 1963 SC 395.**

3-Choice of punishment in the discretion of disciplinary authority: It is The disciplinary authority with whom lies the discretion to decide as to what kind of punishment is to be imposed on delinquent. This discretion has to be exercised objectively keeping in mind the nature and gravity of charge.The Disciplinary Authority is to decide a particular penalty specified in the relevant Rules. Host of factors go into the decision making while exercising such a discretion which include, apart from the nature and gravity of misconduct, past conduct, nature of duties assigned to the delinquent, responsibility of duties assigned to the delinquent, previous penalty, if any, and the discipline required to be maintained in department or establishment where he works, as well as extenuating circumstances, if any exist. **Deputy Commissioner, KVS & Others Vs. J. Hussain, AIR 2014 SC 766 (DB) (para 6).**

4-When should Courts and Tribunals interfere with the finding of facts recorded in enquiry reports: Courts can interfere with the findings of facts recorded in the enquiry reports under any of the following conditions:

(i) When finding of fact in the enquiry report is beyond record i.e. based on no evidence

(ii) when finding of fact is based on any irrelevant or extraneous factors

(iii) when finding of fact has been recorded by ignoring material evidence

(iv) when finding of fact appears to be mala-fide

(v) when finding of fact is perverse**. United Bank of India versus Biswanath Bhattacharjee, 2021 Live Law (SC) 109**

5-**. When should Courts or Tribunals not interfere with the penalty imposed by disciplinary authorities**: In exercise of judicial review, Court does not act as an appellate forum over findings of disciplinary authority

and does not re-appreciate evidence on the basis of which findings of misconduct have been arrived at in the course of disciplinary enquiry. Court in exercise of judicial review must restrict its review to determine whether:

(i) rules of natural justice have been complied with

(ii) finding of misconduct is based on some evidence

(iii) statutory rules governing conduct of disciplinary enquiry were

followed

(iv) findings of disciplinary authority suffer from perversity

(v) penalty imposed is disproportionate to the proved misconduct.

State of Karnataka Vs Umesh (2022) 6 SCC 563

Now coming to the case in hand in the light of the settled principles and proposition of law as mentioned above, it comes out that what stands proved after enquiry is that the workman did not act with due diligence in checking the

L LTC claims of Ishunu which resulted into grant of an otherwise impermissible claim of approximately 11,000 /-to Ishunu, hence was negligent in performance of his duty of thoroughly checking the claims sent to him, before granting them. This negligence is not an act of moral turpitude, because no dishonest intention was involved as it has been observed by Hon'ble High Court of MP details referred to above. This is also to be kept in mind that it was the applicant Workman himself who detected this wrong payment and first reported it to the management. Also, there is nothing on record to show that the past service record of the applicant Workman was not good which led the disciplinary authority to award maximum punishment of dismissal from service. In the backdrop of these facts and circumstances, the maximum punishment of dismissal of the applicant Workman. In the case in hand is nothing but shockingly disproportionate to the charge.

In the light of above findings, the punishment is held shockingly disproportionate to the charge and bad in law. Keeping in view of the facts and circumstances of the case in hand. As referred to above, I am of the considered view that ends of Justice will be served if the Workman is punished with reduction in one rank for the misconduct.

Issue number three is answered accordingly.

AWARD

Holding the action of management in dismissing the applicant Workman Parag Modi from service unjustified in law, the punishment of dismissal of the workman awarded by management is converted into reduction of one rank from the rank which he was holding on the date of the punishment order. He is further held entitled to all the in service and post retirral benefits, deeming him to be in continuous service, including back wages. No order as to cost.

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

P.K. SRIVASTAVA, Presiding Officer

DATE: 01/02/2024

नई दिल्ली, 10 मई, 2024

का.आ. 902.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एस.ई.सी.एल के प्रबंधतंत्र के संबद्ध नियोजको और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में **केन्द्रीय सरकार औद्योगिक अधिकरण – सह – श्रम न्यायालय**, जबलपुर के पंचाट (एलसी-आर/**56/2018**) को प्रकाशित करती है, जो केन्द्रीय सरकार को **12/04/2024** को प्राप्त हुआ था।

[सं. एल–22012/44/2018-आईआर(सी.एम-II)]

मणिकंदन.एन, उप निदेशक

New Delhi, the 10th May, 2024

S.O. 902.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award **(Reference. LC/-R/56/2018*)*** of the **Central Government Industrial Tribunal-cum-Labour Court, Jabalpur** as shown in the Annexure, in the industrial dispute between the Management of **S.E.C.L.** and their workmen, received by the Central Government on **12*/04/2024.***

[No. L-22012/44/2018-IR (CM-II)]

MANIKANDAN. N, Dy. Director

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT, JABALPUR

NO. CGIT/LC/R/56/2018

Present: P.K.Srivastava

H.J.S..(Retd)

Shri U.K Kar,

Vice President

Bhartiya Khadan Mazdoor Sangh

Pandavpara, Baikunthpur Area

Ditt Korea (Chattisgarh) - 497331

Workman

Versus

The General Manager,

SECL,Baikunthpur Area

Po-Baikunthpur

Distt- Korea (Chattisgarh) - 497335

Management

AWARD

(Passed on this 23Th day of January-2024.)

As per letter dated 05/11/2018 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this tribunal under section-10 of I.D. Act, 1947 as per reference number L-22012/44/2018 (IR(CM-II)) dt. 05/11/2018. The dispute under reference related to :-

"Whether the action of management of SECL. Baikunthpur Area in changing the wage period from 21st to 20th every month instead of 16th to 15th every month and even after the change in wage period, not paying the salary of the remaining working days based on physical attendance is violation of Terms of Settlement dated 28-06-2011? If not, what relief Shri U.K.Kar. Vice President, Bhartiya Khadan Mazdoor Sangh (BMS). Pandavpara of Baikunthpur Area as espoused on behalf of the retiring employees of Jhilmili Colliery of Baikunthpur Area are entitled to?"

After registering the case on reference received, Notices were sent to the parties and were duly served on them. Time was allotted to the workman to submit his statement of claim. In Spite of service of notices, the workman never appeared nor did he file any statement of claim, management filed its written statement of claim/ defence. No evidence was ever produced by any of the parties in this tribunal.

The reference itself is the issue for determination.

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

P.K. SRIVASTAVA, Presiding Officer

DATE: 23/01/2024

नई दिल्ली, 10 मई, 2024

का.आ. 903.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एस.ई.सी.एल के प्रबंधतंत्र के संबद्ध नियोजको और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में **केन्द्रीय सरकार औद्योगिक अधिकरण – सह – श्रम न्यायालय**, जबलपुर के पंचाट (एलसी-आर/**70/2013**) को प्रकाशित करती है, जो केन्द्रीय सरकार को **12/04/2024** को प्राप्त हुआ था।

[सं. एल–22012/22/2013-आईआर(सी.एम-II)]

मणिकंदन.एन, उप निदेशक

New Delhi, the 10th May, 2024

S.O. 903.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award **(Reference. LC/-R/70/2013*)*** of the **Central Government Industrial Tribunal-cum-Labour Court, Jabalpur** as shown in the Annexure, in the industrial dispute between the Management of **S.E.C.L.** and their workmen, received by the Central Government on **12*/04/2024***.

[No. L-22012/22/2013-IR (CM-II)]

MANIKANDAN. N, Dy. Director

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT, JABALPUR

NO. CGIT/LC/R/70/2013

Present: P.K.Srivastava

H.J.S..(Retd)

The President,
Janta Mazdoor Sangh (HMS),
B-3/6, Store Complex, Amradandi,
PO Amlia Colliery, Dist. Shahdol(MP)

Workman

Versus

The Chief General Manager,
Johilla Area of SECL,
PO/Distt. Umaria,
Madhya Pradesh

Management

AWARD

(Passed on this 11st day of March 2024)

As per letter dated 30/04/2013 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D. Act, 1947 as per Notification No. L-22012/22/2013 (IR(CM-II)) dt. 30/04/2013. The dispute under reference relates to:

"Whether the action of the Chief General Manager, Johilla Area of SECL in forcibly superannuating Shri Bharat S/o
Shri Gayadeen, either on the basis of wrong entry of data of birth or manipulating it, is legal and justified? If not, to what relief the workman is entitled for?"

After registering a case on the basis of the reference, notices were issued to the parties. They appeared and filed their respective statements of claims/defense**.**

The case of the workman as taken by him in his statement of claim, is mainly said that he entered in the service of the respondent management on 01.04.1981 and he was transferred to Rungta Colliery on 12.05.1984, in the last pay certificate issued to him in this regard, his age was written 20 years as on 01.04.1981. Thereafter, in the year 1994, he was transferred to Bangwar Colliery and to Pinaura Project from Bangwar in the year 2001. At that time due to clerical mistake, his date of birth was wrongly recorded as 31.03.1946 and date of appointment was also wrongly recorded as 31.03.197 6 in his last pay certificate, he was directed to superannuate on 31.03.2006 on the basis of the wrong entry with respect to the date of his birth treating it 31.03.1946 aster attaining age of 60 years he made a representation to management to correct the date of his birth in the records of management which was not how. He filed Writ Petition no.- 4209/2006 (S) before Hon'ble High Court which was disposed vide order dated 24.03.2006 on the ground of alternate remedy. Thereafter he raised a dispute before the Assistant Labour Commissioner after failure of conciliation, the reference was made to this Tribunal. It is further the case of the workman that an enquiry was held by the management on his representation and enquiry report was submitted wherein he had explained the circumstances in which his date of birth was wrongly recorded. Accordingly, the workman has prayed that holding the action of management in superannuating him on the basis of his date of birth as 31.03.1946, against law, he be held entitled to be reinstated with all service and post retiral benefits treating his date of birth as 01.04.1981.

The case of the management, as taken in their written statement of defense, is mainly that the workman did not produce any document regarding his date of birth or is and his age was recorded in the records maintained by management on the basis of information given by him to management at the time of his first appointment in his service register, his date of appointment is recorded as 31.03.1976 and age recorded as 30 years in Form-B maintained as Rungta Colliery and Bangwar Unit his same date of birth and age as well joining date was recorded. As major of one time settlement of disputes regarding date of birth of its workers, a general notice was published in the year 1987 to all the workers including the applicant workman in this notice also, his same date of birth and age as well date of first joining was recorded as mentioned earlier. He never raised any objection in this respect at that time. Further nor, on 17.12.1993 he had under gone medical examination according to mines rules at that time his age was recorded as 47 years in his LPC on his transfer to Bangwar Project also the same date of birth and date of appointment was recorded, it is further the case of management that the workman has raised this dispute at the fag and of his service which cannot be allowed, accordingly, management has prayed that the reference being answered against the workman.

In evidence, the workman filed his affidavit as his examination in chief. He was cross examine by management he has filed and proved Ex-W1 notice regarding superannuation, Ex.-W2 order of Hon'ble High Court dated 24.03.2006, Ex.-W3 petition before Regional Labour Commissioner raising dispute dated 29.03.2006, Ex.-W4 representation to the management dated 29.10.2005, failure report Ex.-W5.

Management has examined its witness who has been cross examined by workman side. Management has further filed and proved Ex.- M1 Copy of Service Register, Ex.- M2 Form-B Rungta, Ex.- M3 Form-B, Ex.-M4 LPC, Ex.-M5 notice of 1987, Ex.-M6 Medical Examination Report, Ex.-M7 LPC, Ex.-M8 Notice of Superannuation.

I have heard **arguments** of learned Counsel for workman. Learned Senior Counsel for Management Shri Anoop Nayar has filed written argument only which is on record workman side has also filed written argument which is on record I have gone through the record as well the written arguments.

On perusal of record in light of rival argument, **following issues** come up for determination.

1. **Whether the successfully proved his date of birth as 01.04.1981.**
2. **Whether the workman is entitled to any relief.**

Issue No.-1

Case of the parties on this issue has been detailed earlier. The workman has stated in his affidavit that he was first appointed on 01.04.1981 in Amlai Colliery and was transferred to Rungta Colliery on 12.05.1984. His age was mentioned 20 years and date of appointment has been mentioned 01.04.1981 in the last pay certificate issued by management on his transfer. He has filed photocopy of this document but has not proved, he further admit that on his

transfer from Rungta Colliery to Bangwar in the year 1994 and from Bangwar to Pinora Project in the year 2001, his date of birth was recorded 31.03.1946 and date of first joining was recorded as 31.03.1976. The case of management is that he first joined in Rungta Colliery on 31.03.1976 and on the basis of the information given by him with regard to date of his birth it was recorded as 31.03.1946, admittedly, in the documents prepared by management on the basis of his service register and Form-B, his date of birth was recorded as 31.03.1976, which is incorrect according to the workman. This is also established from evidence on record that service extracts of the workman were served on him in the year 1987 but he did not raised any dispute with regard to the alleged incorrect entry regarding date of his birth. There is on record Ex.-W4 which is internal report of management which indicates that in fact there were two employees, one is the son of Dayadeen and the second employee whose name also is Bharat who is son of Gayadeen. According to this report, the applicant Bharat who is son of Gayadeen joined the service on 31.03.1976 and his date of birth was 31.03.1946, whereas, the second Bharat son of Dayadeen joined on 01.04.1981 and was 20 years of age at the time of his joining. The applicant workman has declared Gayadeen as his father in his statement of claim, his affidavit as evidence and even in the writ petition 377/2009 copy on record.

Hence on the basis of above discussion, the claim of the applicant workman regarding his date of birth and date of joining is held not proved and issue no.-1 is answered accordingly.

Issue No. 2

In the light of finding recorded on issue no.-1, the workman is held and entitled to no relief and issue no.-2 is also answered accordingly.

On the basis of above discussion, the reference is answered as follows:-

AWARD

Holding the action of the Chief General Manager, Johilla Area of SECL in superannuating Bharat S/o. Gayadeen legal and justified, the workman is held entitled to no relief.

No order as to cost.

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

P.K. SRIVASTAVA, Presiding Officer

DATE: 11/03/2024

नई दिल्ली, 10 मई, 2024

का.आ. 904.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एस.ई.सी.एल के प्रबंधतंत्र के संबद्ध नियोजको और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में **केन्द्रीय सरकार औद्योगिक अधिकरण – सह – श्रम न्यायालय**, जबलपुर के पंचाट (एलसी-आर/**46/2019**) को प्रकाशित करती है, जो केन्द्रीय सरकार को **12/05/2024** को प्राप्त हुआ था।

[सं. एल–22012/33/2019-आईआर(सी.एम-II)]

मणिकंदन.एन, उप निदेशक

New Delhi, the 10th May, 2024

S.O. 904.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award **(Reference.LC/-R/46/2019*)*** of the **Central Government Industrial Tribunal-cum-Labour Court, Jabalpur** as shown in the Annexure, in the industrial dispute between the Management of **S.E.C.L.** and their workmen, received by the Central Government on **12*/05/2024.***

[No. L-22012/33/2019-IR (CM-II)]

MANIKANDAN. N, Dy. Director

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT, JABALPUR

NO. CGIT/LC/R/46/2019

Present: P.K.Srivastava

H.J.S..(Retd)

Shri Hari Yadav, President,

Koyla Mazdoor Sabha (HMS)

Address- Katkona Colliery, Patna

Dist.- Korea (C.G.) - 4973310

Workman

Versus

The General Manager,

SECL, Baikunthpur Area,

Po- Bahikunthpur

Dist.- Korea (C.G.) - 497335

Management

AWARD

(Passed on this 18Th day of March-2024.)

As per letter dated 12/04/2019 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this tribunal under section-10 of I.D. Act, 1947 as per reference number L-22012/33/2019 (IR(CM-II)) dt. 12/04/2019. The dispute under reference related to :-

> **"Whether the action on the part of the management of SECL, Baikunthpur Area in cancelling the appointment order dated 03-09-2015 in respect of Shri Budhram s/o Late Sajjan, Ex-Categary-1 mazdoor, after joining in the service and in the later stage without property verifying the date of birth as 03-05-1980 instead of 03-05-1975 based on the authentic documents and not considering for re-instatement in the job is appropriate and justified? If not, what relief the ex-workman namely Shri Budhram s/o Late Sajjan espoused by the President of Koyla Mazdoor Sabha (HMS), Baikunthpur Branch is entitled to? "**

After registering the case on reference received, notices were sent to the parties and were duly served on them. Workman never appeared in-spite of service of notice. He never submitted his statement of claim. Management filed their written statement of defence wherein they stated their case.

Workman never filed any evidence in this Tribunal. Management filed Affidavit of its witness. Case proceeded ex-parte against the workman vide order dated 16.08.2022. Heard ex-parte argument of Learned Counsel Adv. Neeraj Kewat for management. None for workman.

I have perused the records. The reference is itself the issue. No evidence was ever produced by workman in this Tribunal.

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

AWARD

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

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

P.K. SRIVASTAVA, Presiding Officer

DATE: 18/03/2024

नई दिल्ली, 13 मई, 2024

का.आ. 905.—औद्योगिक विवाद अधिनियम, (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार **मेसर्स ईशा प्रोटेक्शनल सिक्योरिटी गार्ड प्रा. लिमिटेड, बोदुप्पल, मेडिपल्ली (एम) हैदराबाद;महाप्रबंधक,भारी जल संयंत्र,गौतमिन नगर,भद्राद्रि कोठागुडेम,** के प्रबंधतंत्र के संबद्ध नियोजकों और **श्री चौ. बनप्पा, कामगार,** के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण- सह- श्रम न्यायालय- हैदराबाद पंचाट (संदर्भ संख्या 80/2022) को जैसा कि अनुलग्नक में दिखाया गया है, प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 13/05/2024 को प्राप्त हुआ था।

[सं. एल–42011/299/2022-आईआर(डीयू)]

दिलीप कुमार, अवर सचिव

New Delhi, the 13th May, 2024

S.O. 905.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 80/2022) of the **Central Government Industrial Tribunal cum Labour Court– Hyderabad** as shown in the Annexure, in the Industrial dispute between the employers in relation to **M/s Isha Protectional Security Guard Pvt. Ltd., Boduppal, Medipally(M), Hyderabad ; The General Manager, Heavy Water Plant, Gouthamin Nagar, bhadradri Kothagudemm, and Shri Ch. Banappa, Worker,** which was received along with soft copy of the award by the Central Government on 13/05/2024.

[No. L-42011/299/2022-IR (DU)]

DILIP KUMAR, Under Secy.

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT AT HYDERABAD

Present: - **Sri IRFAN QAMAR**

Presiding Officer

Dated the 2nd day of May, 2024

INDUSTRIAL DISPUTE No. 80/2022

Between:

The General Secretary,

The Heavy Water Project (M), Contract Workers &

Employees Union, H.No. 9-3-81, Oddugudem Paloncha

Bhadradri, KOTHAGUDEM-507115 .....Petitioner

AND

1. M/s Isha Protectional Security Guard Pvt. Ltd.
   97, 3rd Floor, Jayamma Nilayam, Bhavani Nagar
   Colony, Main Road, Boduppal, Medipally(M)
   Hyderabad-500092.
2. General Manager, Heavy Water Plant,
   Gouthamin Nagar, bhadradri Kothagudemm
   KOTHAGUDEM-507016 . … Respondents

Appearances:

For the Petitioner : None

For the Respondent : None present for R1

M/s. Ravinder Viswanath & P. Damodar Reddy, Advocates for R2

AWARD

The Government of India, Ministry of Labour by its order No.L-42011/ 299/ 2022 -(IR(DU)) dated 11.11.2022 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 Isha Protectional Security Guard Pvt. Ltd. and M/s. Heavy Water Plant and their workmen. The reference is,

SCHEDULE

"Whether the action of the management of M/s Isha Protectional Security Guard Pvt. Ltd., Bhopal, a contractor of Heavy Water Plant, Manuguru, denying payment of bonus under the payment of Bonus Act to their workmen for the year 2021-2022, as raised by General Secretary. The Heavy Water Project (M) Contract Workers and Employees Union, Bhadradri Kothagudem, is proper, legal and justified ? If not, to what relief is the disputant entitled and what direction(s), if any, is necessary in the matter?"

The reference is numbered in this Tribunal as I.D. No 80/2022 and notices were issued to the parties concerned.

2. Petitioner absent on the date fixed for filing of claim statement and documents. Record reveals that notice served on Petitioner but none present on behalf of Petitioner. Therefore, in absence of Petitioner and non-filing of claim statement by the Petitioner, the case is dismissed and 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 2nd day of May, 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, 13 मई, 2024

का.आ. 906.—औद्योगिक विवाद अधिनियम, (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार **मुख्य महाप्रबंधक, एमटीएनएल, लोधी रोड, नई दिल्ली; मेसर्स स्टेलर डायनेमिक्स प्रा. लिमिटेड, डीडीए नरीना विहार, नई दिल्ली,** के प्रबंधतंत्र के संबद्ध नियोजकों **और श्री अशोक कुमार,कामगार, द्वारा -समाजवादी कर्मचारी संघ,जगतपुरी मंडोली रोड, दिल्ली,** के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण- सह- श्रम न्यायालय-1 नई दिल्ली पंचाट (संदर्भ संख्या 301/2022) को जैसा कि अनुलग्नक में दिखाया गया है,प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 10.05.2024 को प्राप्त हुआ था।

[सं. एल–42025-07-2024-99-आईआर(डीयू)]

दिलीप कुमार, अवर सचिव

New Delhi, the 13th May, 2024

S.O. 906.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 301/2022) of the **Central Government Industrial Tribunal cum Labour Court –I New Delhi** as shown in the Annexure, in the Industrial dispute between the employers in relation to **The Chief General Manager, MTNL, Lodhi Road, New Delhi ; M/s Stellar Dynamics Pvt. Ltd., DDA Narina Vihar, New Delhi, and Shri Ashok Kumar, Worker, Through-Samajwadi Employees Union, Jagatpuri Mandoli Road, Delhi,** which was received along with soft copy of the award by the Central Government on 10.05.2024.

[No. L-42025-07-2024-99-IR (DU)]

DILIP KUMAR, Under Secy.

ANNEXURE

THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT DELHI - 1

ROOM NO. 207, ROUSE AVENUE COURT COMPLEX, NEW DELHI.

DID No. 301/2022

Shri Ashok Kumar,

Through Samajwadi Karamchari Union,

D-212, Gali No. 10, Jagatpuri Mandoli Road,

Delhi-110093.

Claimant…

Versus

1. Chief General Manager MTNL,

5th Floor Mahanagar Doorsanchar Sadan,

9 CGO Complex, Lodhi Road, New Delhi-110003

2. M/s Stellar Dynamics Pvt. Ltd.,

House No. 38, Ground Floor, Front Floor,

A-Block, DDA Narina Vihar, New Delhi-110028.

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 28.06.2021 by the management which be declare illegal and unjustified and he be reinstated with full back wages, it is the case of the applicant/workman that he has been working with the management. He has not been provided any legal facilities. He was illegally terminated from his service on 28.06.2021 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. Claimant filed an application to withdraw his case saying his case has been referred to the CGIT No.2 by the appropriate Government. In the said application he is asking for liberty to present his case in the CGIT No.2, Delhi.

3. Hence, in these circumstances this tribunal has no option except to dispose off the case as withdrawn. 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.

Justice VIKAS KUNVAR SRIVASTAVA (Retd.), Presiding Officer

Date: 23.04.2024

नई दिल्ली, 13 मई, 2024

का.आ. 907.—औद्योगिक विवाद अधिनियम, (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार **भाभा परमाणु अनुसंधान केंद्र, वास्तुकला और सिविल इंजीनियरिंग प्रभाग, सी.सी.सी.एम.प्रोजेक्ट, ई.सी.आई.एल. (पी.ओ.), हैदराबाद,** के प्रबंधतंत्र के संबद्ध नियोजकों और **श्रीमती बी. लक्ष्मी, कामगार,** के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण- सह- श्रम न्यायालय- हैदराबाद पंचाट (संदर्भ संख्या 48/2009) को जैसा कि अनुलग्नक में दिखाया गया है,प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 10/05/2024 को प्राप्त हुआ था।

[सं. एल–42025-07-2023-98-आईआर(डीयू)]

दिलीप कुमार, अवर सचिव

New Delhi, the 13th May, 2024

S.O. 907.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 48/2009) of the **Central Government Industrial Tribunal cum Labour Court– Hyderabad** as shown in the Annexure, in the Industrial dispute between the employers in relation to **Bhabha Atomic Research Centre, Architecture & Civil Engineering Division, C.C.C.M. Project, E.C.I.L. (P.O.),Hyderabad, and Smt. B. Laxmi, Worker,** which was received along with soft copy of the award by the Central Government on 10/05/2024.

[No. L-42025-07-2023-98-IR (DU)]

DILIP KUMAR, Under Secy.

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT AT HYDERABAD

Present: - **Sri Irfan Qamar**

Presiding Officer

Dated the 10th day of April, 2024

INDUSTRIAL DISPUTE L.C.No. 48/2009

Between:

Smt. B. Laxmi,

W/o Yellaiah,

R/o H.No.3-5-24/R-158,

Rajeev Nagar,

Moulali, Ranga Reddy District. ……Petitioner

AND

Bhabha Atomic Research Centre,

Arch. & Civil Engineering Division,

C.C.C.M.Project, E.C.I.L. (P.O.),

Hyderabad – 500 762. ….Respondent

Appearances:

For the Petitioner : M/s. G. Ravi Mohan, G. Naresh Kumar & Vikas Sharma, Advocates

For the Respondent : M/s. P. Ravnder Vishwanath, Sr. Central Government Counsel &

P. Damodar Reddy, Advocate

AWARD

Smt. B. Laxmi who worked as Gardener (who will be referred to as the workman) has filed this petition under Sec. 2A(2) of the Industrial Disputes Act, 1947 against the Respondent Bhabha Atomic Research Centre seeking for declaring the proceeding dated 30.9.2006 issued by Respondent as illegal, arbitrary and to set aside the same consequently directing the Respondents to reinstate the Petitioner into service duly granting all the consequential benefits such as continuity of service, back wages and all other attendant benefits etc., and such other reliefs as this court may deems fit.

2. **The averments made in the petition in brief are as follows**:

It is submitted that, the Petitioner is a lady having experience in gardening works prior to her appointment in the Respondent Center she was trained in the gardening work. Therefore, basing upon her technical nature of work she was appointed in the Respondent Center as a gardener. It is further submitted that though she was appointed as gardener she was also attending the other miscellaneous works such as sweeping, Attendar etc.. It is submitted that, the Petitioner was appointed in Respondent Center in the month of March 1995, since her appointment, she had been performing duties to the utmost satisfaction of her superiors. It is submitted that. there are about 40 employees in the Respondent Center. There are no regular attenders, sweepers in the Respondent Center, the Petitioner and other similar situated persons were being engaged on a consolidated pay which was less than Minimum Wages. It is submitted that, the Petitioner was expert in gardening work. It is submitted that, the Respondent used to calculate daily wages and used to pay the same once in a month. The Petitioner was enjoying the privileges of national and festival holidays and other benefits which were entitled by them. It is submitted that, the Respondent has been given Medical facilities in the form of making a member in the ESI corporation due to which the Petitioner was allotted with ESI number for the Petitioner and her family members availed Medical benefits from E.S.I., so also the Respondent used to deduct the amount towards the provident fund and the same was being deposited before the appropriate authority. It is submitted that, though the Respondent has not issued appointment order and the Respondent designated the Petitioner as an employee of the Respondent in the E.S.I. card and Provident Fund card. While the matter stood thus, the Respondent used to pay less wages than the minimum wages prescribed by the Government without issuing any notice w.e.f. September 2005. Then, the Petitioner made an Application to the Respondent to pay the minimum wages and also requested to pay more keeping in view of her length of services. But in vain. She made an Application to the Regional Labour Commissioner(C) in respect of pay for minimum wages, then the Respondent came with a plea before the RLC(C), stating that the Petitioner is not an employee of the Respondent Center and further stated that Petitioner is a contract Labour and showed Mr.Srinivas as a contractor. It is submitted that, it is unfair on the part of Respondent that Respondent has shown that one of the workmen as a contractor who does not have any license prescribed under provision of Law. It is submitted that, in view of the complaint of the Petitioner to the RLC(C) the Respondent terminated the Petitioner and did not permit the Petitioner to enter into the premises. It is submitted that, the Respondent obtained signature on a blank Paper for paying the salaries for the month of August & September, 2006 the said action of Respondent is nothing but unfair labour practice which attracts Penal action. It is submitted that, the Respondent tried to change the service condition of the Petitioner by converting him into a contract Labour without assigning any reason and without issuing any Notice which is illegal. It is submitted that Petitioner worked for 10 years without any break in service as a causal labour. Therefore it is obligation part of Respondent to regularize the service of the Petitioner but however the Respondent

terminated services of the Petitioner w.e.f. 31-09-2008 without issuing notice and without paying compensation of service rendered by her. The said action of Respondent is in violation of Sec 25 (F) of Industrial Disputes Act and in violation of Sec 9 of I.D. Act. Having no other alternative remedy the Petitioner is constrained to approach this Hon'ble Court under section 2 A (2) of Industrial Disputes Act, 1947 for necessary relief. It is submitted that the Petitioner is the only earning member of her family and it has become very difficult to eke their livelihood consequent to illegal termination. It is therefore prayed to set aside the Oral termination dated 31.9.2006 passed by the Respondent and consequently direct the Respondent to reinstate the Petitioner into service with continuity of service, back wages and all other attendant benefits.

3. **The Respondents filed counter denying the averments made in the petition, with the averments in brief which runs as follows**:

It is submitted that the Claim of the Petitioner is not maintainable on the grounds of Locus Standi and Limitation. It is submitted that 8 labourers working under contractor Shri E. Srinivas has filed Claim Statements No.20-27/2007 in the year 2007. The Petitioner Smt. Laxmi had not filed the Claim Statement along with other labourers. Filing the claim statement in the year 2009 vide LCID No.48/2009 for cause of action in the year 2007 is grossly barred by limitation. Further, the Petitioner was working under civil and garden contractor Shri E. Srinivas. Shri Srinivas in his letter dated 12/10/2006 has confirmed that he had engaged 8 labourers including the present Petitioner and had paid wages to them. He had also mentioned that all the necessary registers were maintained by him to that effect. The Work Order dated 19/06/2006 is ample proof that the Petitioner was never engaged as employee of the Respondent Organization, but was engaged by the Contractor. Therefore, the Petitioner has no Locus-Standi to claim regularization in the Respondents Organization. It is also submitted that the Petitioner has made a wrong statement in the Claim Statement stating that she was terminated orally on 31/09/2008, which is incorrect, since September has only 30 days. Hence, it is submitted that the Claim Statement is not maintainable and deserves to be dismissed in limine. The Applicant's statement that she was appointed in the Respondents Centre in the month of March 1995, which is far from truth and baseless. The fact is that the applicant was working under a Contractor and the Respondent had never engaged any gardener. It is submitted that it is the contractor, who had engaged the Petitioner. The Respondent is making payment to the Contractor on production/submission of the bills as approved in the Tender document. Petitioner is challenging the so-called oral termination order dated 30/09/2006 passed by the Respondent, which is baseless and without any substance. Hence, the Petitioner cannot claim to re-instate her into the service with continuity of service, back wages and all other benefits since in the first place, the Petitioner had never been appointed at all by the Respondent. A contract for horticulture maintenance was awarded to M/s. E. Srinivas w.e.f. 1/7/2006 and was valid upto 30/6/2007. Tenders were invited for the same and the contract was awarded to M/s. E. Srinivas, being the lowest bidder. As specified in the contract, the Contractor had employed eight gardeners for the purpose for which payment had to be made as per the Schedule of Quantities (Schedule 'A) of the Contract. It is further submitted that the Respondents are in receipt of Order No. 1/15(1)/2006- L.S.II dated 7/6/2006 from the Ministry of Labour and Employment, notifying the minimum wages including variable Dearness Allowance clause. It is also submitted that the Respondents received letter No. 95/1/2006-SK/E4 dated 29/8/2006 from the Labour Enforcement Officer (Central), Ministry of Labour & Employment intimating that the eight of the labourers engaged by the said Contractor Shri E.Srinivas had made a complaint that they were not in receipt of the wages as per the extant rules of the Minimum Wages Act and also to comment upon, since the Respondent is only the Principal Employer. On receipt of the said communication, the Respondent sought clarification from the contractor on the matter and the same was obtained vide letter dated 6/9/2006, which states that all the payments made by the contractor were as per the extant rules of the Minimum Wages Act. Further, the contractor stated that the lesser payments made by him to the Petitioner and others were the result of their absenteeism. Apart from the above, the contractor vide his letter dated 12.10.2006 also informed the Labour Enforcement Officer (Central), Hyderabad that he is following all the necessary prescribed procedures. Subsequently, the said complaint was withdrawn by the Petitioners vide letter dated 16/10/2006 addressed to Labour Enforcement Officer (Central) Hyderabad. It is denied that the Petitioner has ever been appointed by the Respondent. It is denied that the Respondent has ever employed the Petitioner as a Casual Labourer. The averments made by the Petitioner are baseless and devoid of merits. Besides, the Contractor has confirmed that the wages are being paid as per the extant rules under the Minimum Wages Act. It is submitted that all the employees of this Centre are covered and governed by Central Services Medical Attendants Rules (CSMA) 1944 and Contributory Health Services Scheme (CHSS) as in the Department of Atomic Energy and the question of availing of medical facilities under Employees State Insurance (ESI), does not arise. Hence, it is evident that the contractor had arranged to register the Petitioner and other workmen under the ESI for availing the medical facilities. It also submitted that the Respondents have never deducted any amount from the wages of the Petitioner, as alleged, and Respondents never disbursed salaries to the Petitioner. Shri E. Srinivas is a Contractor workman of the Respondent, as contended by the Petitioner. The Respondents deny that they had obtained any signature on the blank papers from the Petitioner and was never regarding the payments, since the same were always made by the Contractor and never by the Respondents. It is submitted that they had never terminated the Petitioner, as the Petitioner was not at all an employee of the Respondent. It is further reiterated that the Petitioner was never employed as casual labourer by the Respondents. However, the Contractor was at liberty to terminate the services of the Petitioner, if he felt that the work performed was unsatisfactory. Hence, the question of obligation on the part of

the Respondents to regularize the Petitioner or payment of compensation does not arise. It is further submitted that the Respondents are in no way involved in the present dispute between the Contractor and his labourers and hence, the Respondents crave leave to discharge them from the present dispute. It is also further submitted that Bhabha Atomic Research Centre (BARC) is a R&D constituent unit of Department of Atomic Energy. This Centre is excluded "Industry" under Section 2(0) of ID Act. Hence the provisions of this I.D. Act are not applicable to this Centre. Hence, it is submitted that C.G.I.T. has no jurisdiction to hear the cases and no relief on this account can be granted by this Hon'ble Tribunal to the Petitioners. It is to submit that the claim of the Petitioner is false, misleading and without any justification. It is submitted that the Petitioner has not made out any case, which merits the intervention of this Hon'ble Tribunal. The Respondents therefore prayed to dismiss this Claim Application, as the same being devoid of merits.

4. Petitioner has examined herself as WW1 and marked photocopies of documents as Ex.W1 to Ex.W4. On the other hand, Respondent has examined MW1 on their behalf who has marked photocopies of six documents i.e., Ex.M1 to M6.

5. The respondent has submitted written arguments, but despite the sufficient opportunity granted to the petitioner, he did not adduce either oral or written arguments.

6. On the basis of the pleadings of both parties and arguments advanced, the following points emerge for determination:-

I. Whether there existed employer and employee relationship between the Respondent and Petitioner? If yes, it's effect?

II. Whether the action of the management in terminating the services of the Petitioner through oral termination dated 30.9.2006 is illegal and unjustified? If so, whether said order be liable to be set aside?

III. To what relief is the petitioner entitled?

7. In order to prove her claim Petitioner in evidence has examined herself as WW1 and also filed the documentary evidence, i.e., Ex.W1 demand notice dated 21.11.2003, Ex.W2 acknowledgement card, Ex.W3 original ESI card of the Petitioner and Ex.W4 the certificate issued by the Respondent.

8. Per contra, Respondent has examined MW1 Sri P.M. Rao, in oral evidence and also filed the documentary evidence Ex.M1 to Ex.M5. Further, the witness MW1 has exhibited the document Ex.M1 an authorization letter dated 10.12.2010, Ex.M2 appointment letter dated 6.9.2006 in favour of M/s. E. Srinivas for Horticulture maintenance at CCCM, for contract. Ex.M3 is copy of attendance roll, Ex.M4 is letter dated 12.10.2006 from contractor to LEO(C) , Ex.M5 is the letter from Petitioner along with other workmen to the LEO(C) and Ex.M6 is the letter from LEO(C) regarding complaint on less payment of wages. Respondent has also filed his written submissions.

FINDINGS:-

9. **Point No. I**:- Petitioner has claimed in her claim statement that she was appointed in Respondent Centre in the month of March, 1995 to work as a Gardener. Further, the Petitioner claimed that she was also attending the other miscellaneous works such as Sweeping, Attender etc.. It is also submitted that the Respondent used to calculate daily wages and used to pay the same once in a month. She has also enjoyed the privileges of national and festival holidays which were entitled by the employees of Respondent. It is also submitted that Respondent has also given medical facilities in form of making member in the ESI corporation, due to which the Petitioner was allotted with ESI Number for her and to her family members to avail medical facility benefit from ESI. Further, it is contended that Respondent used to deduct the amount towards provident fund and the same was being deposited before the appropriate authority. Petitioner further contended that Respondent has not issued any appointment letter. But Respondent designated the Petitioner has an employee of the Respondent in the ESI card and PF card.

10. On the other hand, Respondent has refuted the claim made by the Petitioner that she was the employee of the Respondent. Further, it has been contended that Petitioner is the contract labour and contractor Mr. E. Srinivas who has been awarded the contract for Horticulture maintenance w.e.f 1.7.2006 to 30.7.2007 has engaged the Petitioner to work at the Respondent centre. Therefore, the Petitioner's submission that she was appointed in the Respondent centre in the month of March, 1995 is far from the truth and is baseless. The fact is that applicant was working under contractor and the Respondent has never engaged any gardener.

11. To determine the existence of employer and employee relationship between the Respondent and the Petitioner four elements generally need to be considered. They are:-

i) The selection and engagement of employee

ii) payment of wages

iii) Power of dismissal and

iv) power to control the employee's conduct

12. The burden of proof to establish the claim that the Workman was the employee of the Respondent, is upon the Petitioner, whereas in rebuttal Respondent has to prove that the dismissal was for valid reason. However, in the case of illegal dismissal, the employer and employee relationship must be established first. It is incumbent upon the employee to prove employer and employee relationship by adducing substantial evidence. However, for the element of control, it must be noted that not every form of control that will create an employer and employee relationship. No employer and employee relationship exists when control is in the form of rule that merely serve as guidelines towards the achievement of the results without dictating means and methods to attend them. Employer and employee relationship exists when control is in the form of rules that fix the methodology to attain the specific results and bind the worker to use such thing. It is settled law that the ultimate control is the most important element when determining the existence of employer and employee relationship. It pertains not only to result but also to means and methods of attaining those results.

13. Therefore, in view of the above, in order to find out whether there existed the employer and employee relationship between the parties, first of all we have to examine the evidence adduced on behalf of the Petitioner. In this context, Petitioner has filed chief affidavit as WW1, wherein she has reiterated the averments made in her claim statement. Further, in her chief examination she has also exhibited the documents, Ex.W1 to W4. Admittedly Petitioner has not filed any document in evidence to show that she was appointed by the Respondent as Gardener. She has not filed any document which would show that Respondent had paid wages to the Petitioner for the work done. Further, no iota of evidence has been adduced by Petitioner on record that the Respondent had the power of dismissal of the Petitioner from employment. Further, no evidence to show that the Respondent has power to supervise and control of the conduct of the employee for doing the job of maintenance of Horticulture at the Respondent centre**.**

In the case of Automobile Association Upper India V. P.O. Labour Court-II & Anor., 2006 DLJ 160 Hon'ble Delhi High Court have held:-

"engagement and appointment of the workman in service can be established either by direct evidence like existence and production of appointment letter or written agreement, or by circumstantial evidence of incidental or ancillary records, in nature of attendance register, salary register, leave records, deposit of PF contribution, ESI etc. or even by examination or co-worker who may depose before the court that the workman was working with the management."

But the Petitioner herein failed to produce such evidence and failed to discharge her onus to establish her claim.

14. Although Petitioner has filed the documents Ex.W1 to W4, but WW1 did not depose in her evidence that how and in what manner by these documents she purport to establish her claim of appointment at Respondent centre to work as a gardener. Further, perusal of these documents would reveal that no document pertains to the appointment of the Petitioner by the Respondent as she had claimed. Further, these documents would not show that Respondent had power of supervision and control the employees conduct to carry out the job assigned to her. Thus, Petitioner has not succeeded to establish the existence of employer and employee relationship between the Petitioner and Respondent from these documents. However, witness WW1 was cross examined by the Respondent counsel and in her cross examination WW1 has admitted that she was orally appointed in the Respondent centre and ever any appointment letter was given to her. Further, WW1 states that she did not receive any call letter from employment office. Further, WW1 states that, ESI card was issued to her by BARC though the name of the employer is not there on the card. It is correct that she made complaint to RLC(C) for less payment of wages by the BARC, the complaint was made against the BARC, not against the contractor. It is not correct to suggest that Mr. E. Srinivas has appointed her and has disengaged her. Further, WW1 states that, it is not correct that neither BARC has appointed her nor disengaged her. Further WW1 states that it is correct that letter dated 16.6.2006 was given by her and other co-workers. It was given for withdrawal of the earlier complaint which was given against the contractor. Further, paper No.6 of list of documents filed by the Respondent i.e., Xerox copy of the muster roll, her signature is there at serial No. 1 which is marked as Ex.M2. Further, she admits that she received the wages for 17 days Rs.1844.50 ps and others also received their respective wages.

15. Thus, from the statement of WW1 in her cross examination it manifests that although she was engaged to work at Respondent centre as a daily wager but no appointment letter has been issued by the Respondent. Petitioner has not adduced any evidence that paid wages by the Respondent. Thus, in the absence of evidence of appointment letter or payment of wages by the Respondent, it clearly delineates that she was not employed/ engaged by the Respondent. However, WW1 has admitted in her cross examination that the letter dated 16.10.2006, Ex.M5 was given by her and other co-workers regarding less payment of wages withdrawal of the complaint which was moved earlier against the contractor by them. The said letter would show that Petitioner along with co-employees has made the complaint to the competent authority, i.e., RLC(C) against contractor who had engaged them to work at Respondent center as gardener payment of less wages to them by the contractor. Thus, for the sake of argument of the Petitioner, if she was the employee of the Respondent, then why she had moved a complaint against the contractor for less payment of wages. This document goes to show that Petitioner was the employee of the contractor and not of the Respondent. Further, the documentary evidence Ex.W3 would show that there is no details of the

employer on these cards. Therefore, Petitioner could not succeed to establish her claim on the basis of these documents that she was the employee of the Respondent. Thus, her claim is not substantiated by any cogent evidence.

16. It is settled principle of law, that a person who set up his plea of relationship of employer and employee, the burden of proof would rests upon him. In this context, few decisions of Hon'ble High Court and Hon'ble Apex Court are being discussed below:-

In the case of **Baburam Vs. Govt. of NCT of Delhi & Anr., 247 (2018) Delhi Law times 596 wherein Hon'ble High Court of Delhi have held**:-

"It is well settled principle of law that the person, who sets up a plea of existence of relationship of employer and employee, the burden would be upon him. In this regard, the ***Hon'ble Supreme Court in the case of Workmen of Nilgiri Coop. Mkt. Society Ltd. V. State of T.N. and Others, (2004) 3 SCC 514*** *has approved the judgment of Kerala and Calcutta High Court, where the plea of the workman that he was employee of the company was denied by the company and it was held that it was not for the Company to prove that he was not an employee.*

The burden of proof being on the workman to establish employer and employee relationship an adverse inference cannot be drawn against the employer that if he were to produce books of accounts they would have proved employer and employee relationship."

In the case of **N.C. John Vs. Secretary Thodupuha Taluk Shop and Commercial Establishment Workers' Union and others, Hon'ble Kerala High Court have held:-**

"*The burden of proof being on the workman to establish the employer - employee relationship an adverse inference cannot be drawn against the employer that if he were to produce books of accounts they would have proved employer employee relationship."*

Further, in the case of **'Kanpur Electricity Supply Co. Ltd. Vs Shamim Mirza 2009 1 SCC 20, the Hon'ble Supreme Court held as under :-**

"*It is trite that the burden to prove that a claimant was in the employment of a particular management, primarily lies on the person who claims to be so but the degree of proof, so required, varies from case to case. It is neither feasible nor advisable to lay down an abstract rule to determine the employer - employee relationship."*

Thus, in view of the settled principle of law regarding burden of proof in this respect, in the present matter Petitioner has utterly failed to discharge her burden of proof on the basis of her documentary as well as oral evidence that she was employee of the Respondent center and it has not been proved that employer and employee relationship existed between them. Petitioner failed to produce any proof of payment of salary or wages to her by the management nor any appointment letter or termination order has been produced. There is no documentary evidence to prove relationship of employment in the case at hand. Merely oral testimony of Petitioner is not sufficient to prove relationship of employer and employee.

17. On the other hand, Respondent in his counter as well as in evidence has refuted the allegation and claim of the Petitioner as averred by him. Respondent has contended that a contract for Horticulture maintenance was awarded to Mr. E. Srinivas w.e.f 1.7.2006 to 30.7.2007 being the lowest bidder as specified in the contract and contractor had employed eight gardeners for the purpose for which payment had been made as per Schedule A of the contract. Further Respondent contended that as per receipt of the letter dated 7.6.2006 of the Ministry of Labour and Employment, notifying the minimum wages including the variable Dearness Allowance Clause, Respondent has directed the contractor to ensure the payment to the workmen as per the extent of rules of Minimum Wages Act. Respondent has filed the documents in evidence Ex.M1, M2, M3, M4 and M6, which goes to show that direction has been issued to contractor for the compliance of Minimum Wages Act in regard to payment of minimum wages to the contract labour i.e., Petitioner etc.. Ex.M5 is the document of withdrawal of complaint by Petitioner and other co-employees. It goes to show that Petitioner and co-employees vide letter dated 16.10.2006, addressed to the LEO(C), Hyderabad, has prayed that they are working at Respondent BARC centre, through contractor, though earlier they made a complaint for payment of less wages, now, he is paying the wages as per Act, hence they are withdrawing that complaint. Thus, document Ex.M5 manifests clearly that the Petitioner was engaged by contractor and had worked as contract labour at the Respondent centre. Petitioner was not employed by the Respondent directly. Therefore, documents exhibited by Respondent goes to show that Petitioner had worked at the Respondent centre as a contract labour and was paid wages through contractor. Respondent has examined witness MW1 who has marked the documents, Ex.M1 an authorization letter dated 10.12.2010, Ex.M2 letter dated 6.9.2006 in favour of M/s. E. Srinivas for Horticulture maintenance at CCCM, on contract, Ex.M3 is copy of attendance roll, Ex.M4 is letter dated 12.10.2006 from contractor to LEO(C), Ex.M5 is the letter written and moved by from Petitioner along with co-employees to the LEO(C) withdrawing complaint which was moved by them against contractor for less payment of wages. and Ex.M6 is the letter from LEO(C) regarding complaint on less payment of wages by the contractor Mr. E. Srinivas. Ex.M2 contains terms and conditions of the contract.

18. Thus, on going through the oral and documentary evidence relied upon by the Petitioner in support of her claim, and also documents filed by Respondent , I come to conclusion that Petitioner has utterly failed to establish and prove her claim that she was employee of Respondent management. The Petitioner has also not called her co-worker to examine and prove that she was appointed by the Management as claimed by her. None of the documents relied upon by the Petitioner are in respect of her appointment by the Respondent or payment of wages made by the Respondent Management. Merely oral or bald averments made by the Petitioner workman is not sufficient to prove that workman was the employee of Respondent centre. There is nothing in the testimony of the witness WW1 as well as documentary evidence to substantiate or corroborate the claim of the workman. Rather, testimony of the MW1 witness remains unimpeachable / uncontraverted in one way or other. Thus, Petitioner claimant utterly failed to produce any cogent proof of payment of wages/salary made by the Management or any appointment letter issued by the Respondent. Merely oral testimony of the Petitioner is not sufficient to prove the employer and employee relationship between the Respondent centre and the Petitioner workman. However, no document on record has been filed from which it can be ascertained that the workman Petitioner was on the rolls of the Management. Thus, for the want of such evidence it can be held safely that the onus has not been discharged by the Petitioner to establish her claim. Thus, Petitioner has utterly failed to prove that she was appointed by the Respondent as a gardener for the period claimed by her in the statement of claim or even she has failed to establish and prove that she had worked for a period of 240 days prior to her alleged termination of her services by the Respondent Management just preceding from the date of her termination in the 12 months of a calendar year. Therefore, the claim of the Petitioner herein is not found established and proved on the basis of evidence produced by her.

Constitutional Bench of Hon'ble Supreme Court of India in the case of Steel Authority of India and others Vs. National Union Water Front Workers & Ors dated 30.8.2001 AIR SCC 3527 has laid down, the principles for determining the relationship of employer and employee in any matter under the given circumstances, and have held:-

"*The term contract labour as defined in clause (b) of Section 2 reads:*

(2)(1)(b) 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 the principal employer. By definition the term contract labour is a species of workman. A workman shall be so deemed when he is hired in or in connection with the work of an establishment by or through a contractor, with or without the knowledge of the principal employer. A workman may be hired: (1) in an establishment by the principal employer or by his agent with or without the knowledge of the principal employer; or (2) in connection with the work of an establishment by the principal employer through a contractor or by a contractor with or without the knowledge of the principal employer. Where a 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 where a 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 workman for any work of the establishment, a question might arise whether the contractor is a mere camouflage as in Hussainbhai Calicuts case (supra) and in Indian Petrochemicals Corporations case (supra) etc.; if the answer is in the affirmative, the workman will be in fact an employee of the principal employer; but if the answer is in the negative, the workman will be a contract labour."

Here in the matter at hand, the document Ex.M2 would reveal that vide communication dated 19.6.2006 the Respondent had accepted the quotation of contractor Mr. E. Srinivas for maintenance of Horticulture work and annexed Schedule 'A' is terms and conditions of contract that goes to show that workman has been hired by the contractor, in or in connection with the work of the Respondent establishment and contractor has undertaken the contract to produce a given result for maintenance of Horticulture of the Respondent center and to produce a given result under said contract, contractor had engaged Petitioner and other co-workmen. Therefore, no employer and employee relationship existed between Petitioner and Respondent. Thus, in view of the law laid down by the Hon'ble Apex Court and on going through the evidence of both the parties on record, it can safely be held that there existed no employer and employee relationship between the Respondent and Petitioner.

Thus, Point No.I is answered accordingly.

19. **Point No. II:** - In view of the foregone discussion and finding given at Point No.I, it has been established that there existed no relationship of employer and employee between the Respondent and the Petitioner, and Petitioner was engaged by the contractor and also disengaged by the contractor. Petitioner was merely a contract labour. However, Petitioner was not directly engaged by the Respondent to work at their center, hence, the action of Respondent in termination of the service of Petitioner is legal and justified.

Thus, Point No. II is answered against the Petitioner and in favour of Respondent.

20. Point No. III:- In view of the fore gone discussion and finding arrived at points No.I & II, I am of the considered view that Petitioner is not entitled to any relief. Hence, Petitioner 's claim statement is liable to be dismissed.

AWARD

In the result, the action of the management in terminating the services of the Petitioner Smt. B. Laxmi, Gardener, through oral termination dated 30.9.2006 is held legal and justified. Hence, the Petitioner is not entitled to any relief, as such, the petition is liable to be dismissed. Therefore, the petition stands dismissed.

Award is passed accordingly. Transmit.

Dictated to Smt. P. Phani Gowri, Personal Assistant, transcribed by her, corrected and signed by me on this the 10th day of April, 2024.

IRFAN QAMAR, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner	Witnesses examined for the Respondent
WW1: Smt. B. Laxmi	MW1: Sri P.M. Rao

Documents marked for the Petitioner

Ex.W1: Photocopy of the demand notice dt. 21.11.2006

EX.W2: Acknowledgement card

Ex.W3: Original ESI Card of Petitioner a

Ex.W4: Photocopy of the character certificate of Petitioner

Documents marked for the Respondent

Ex.M1: Photocopy of the Lr.No.CCCM/BARC/Adm/2010/1212, dt.10.12.2010 from Respondent to Sr. CGSC

Ex.M2: Photocopy of the lr. No.CCCM/BARC/118/2006/689 dt.19.6.2006 reg. horticulture maintenance at CCCM to the contractor by Respondent.

Ex.M3: Photocopy of the lr. Dt.6.9.2006 from Mr. E. Srinivas to the Respondent.

Ex.M4: Photocopy of the lr. Dt. 12.10.2006 from Mr. E. Srinivas to the LEO(C)

Ex.M5: Photocopy of the lr. Dt. 16.10.2006 withdrawing complaint against contractor by Petitioner along with other workmen

Ex.M6: Photocopy of the lr. From LEO(C) to the Respondent reg. complaint recd. Reg. less payment of wages.

नई दिल्ली, 13 मई, 2024

का.आ. 908.—औद्योगिक विवाद अधिनियम, (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार **भाभा परमाणु अनुसंधान केंद्र, वास्तुकला और सिविल इंजीनियरिंग प्रभाग, सी.सी.सी.एम.प्रोजेक्ट, ई.सी.आई.एल. (पी.ओ.), हैदराबाद,** के प्रबंधतंत्र के संबद्ध नियोजकों और **श्री चौ. बनप्पा, कामगार,** के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण- सह- श्रम न्यायालय- हैदराबाद पंचाट (संदर्भ संख्या 27/2007) को जैसा कि अनुलग्नक में दिखाया गया है, प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 10/05/2024 को प्राप्त हुआ था।

[सं. एल–42025-07-2023-97-आईआर(डीयू)]

दिलीप कुमार, अवर सचिव

New Delhi, the 13th May, 2024

S.O. 908.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 27/2007) of the **Central Government Industrial Tribunal cum Labour Court– Hyderabad** as shown in the Annexure, in the Industrial dispute between the employers in relation to **Bhabha Atomic Research Centre, Architecture & Civil Engineering Division, C.C.C.M. Project, E.C.I.L. (P.O.),Hyderabad, and Shri Ch. Banappa, Worker,** which was received along with soft copy of the award by the Central Government on 10/05/2024.

[No. L-42025-07-2023-97-IR (DU)]

DILIP KUMAR, Under Secy.

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT AT HYDERABAD

Present: - **Sri Irfan Qamar**

Presiding Officer

Dated the 22nd day of April, 2024

INDUSTRIAL DISPUTE L.C.No.27/2007

Between:

Sri Ch. Banappa,

S/o Raju

R/o H.No. 15-76,

Balaji Nagar, Jawahar Nagar,

Yapral (P), Shamirpet (M),

Ranga Reddy District. ..….Petitioner

AND

Bhabha Atomic Research Centre,

Arch. & Civil Engineering Division,

C.C.C.M.Project, E.C.I.L. (P.O.),

Hyderabad – 500 762. ….Respondent

Appearances:

For the Petitioner : M/s. G. Ravi Mohan, G. Naresh Kumar & Vikas Sharma, Advocates

For the Respondent : M/s. P. Raveender Reddy & M. Mallikarjun, Advocates

AWARD

Sri Ch. Banappa who worked as Gardener (who will be referred to as the workman) has filed this petition under Sec. 2A(2) of the Industrial Disputes Act, 1947 against the Respondent Bhabha Atomic Research Centre seeking for declaring the proceeding dated 30.9.2006 issued by Respondent as illegal, arbitrary and to set aside the same consequently directing the Respondents to reinstate the Petitioner into service duly granting all the consequential benefits such as continuity of service, back wages and all other attendant benefits etc., and such other reliefs as this court may deems fit.

2. **The averments made in the petition in brief are as follows**:

It is submitted that, the Petitioner is having experience in gardening works prior to his appointment in the Respondent Center he was trained in the gardening work. Therefore, basing upon his technical nature of work he was appointed in the Respondent Center as a gardener. It is further submitted that though he was appointed as gardener he was also attending the other miscellaneous works such as sweeping, Attendar etc.. It is submitted that, the Petitioner was appointed in Respondent Center in the month of March 1995, since his appointment, he had been performing duties to the utmost satisfaction of his superiors. It is submitted that there are about 40 employees in the Respondent Center. There are no regular attenders, sweepers in the Respondent Center, the Petitioner and other similar situated persons were being engaged on a consolidated pay which was less than Minimum Wages. It is submitted that, the Petitioner was expert in gardening work. It is submitted that, the Respondent used to calculate daily wages and used to pay the same once in a month. The Petitioner was enjoying the privileges of national and festival holidays and other benefits which were entitled by them. It is submitted that, the Respondent has been given Medical facilities in the form of making a member in the ESI corporation due to which the Petitioner was allotted with ESI number for the Petitioner and his family members availed Medical benefits from E.S.I., so also the Respondent used to deduct the amount towards the provident fund and the same was being deposited before the appropriate authority. It is submitted that, though the Respondent has not issued appointment order and the Respondent designated the Petitioner as an employee of the Respondent in the E.S.I. card and Provident Fund card. While the matter stood thus, the Respondent used to pay less wages than the minimum wages prescribed by the Government without issuing any notice w.e.f. September 2005. Then, the Petitioner made an Application to the Respondent to pay the minimum wages and also requested to pay more keeping in view of his length of services. But in vain. He made an Application to the Regional Labour Commissioner(C) in respect of pay for minimum wages, then the Respondent came with a plea before the RLC(C),

stating that the Petitioner is not an employee of the Respondent Center and further stated that Petitioner is a contract Labour and showed Mr.Srinivas as a contractor. It is submitted that, it is unfair on the part of Respondent that Respondent has shown that one of the workmen as a contractor who does not have any license prescribed under provision of Law. It is submitted that, in view of the complaint of the Petitioner to the RLC(C) the Respondent terminated the Petitioner and did not permit the Petitioner to enter into the premises. It is submitted that, the Respondent obtained signature on a blank Paper for paying the salaries for the month of August & September, 2006 the said action of Respondent is nothing but unfair labour practice which attracts Penal action. It is submitted that, the Respondent tried to change the service condition of the Petitioner by converting him into a contract Labour without assigning any reason and without issuing any Notice which is illegal. It is submitted that Petitioner worked for 10 years without any break in service as a causal labour. Therefore it is obligation part of Respondent to regularize the service of the Petitioner but however the Respondent terminated services of the Petitioner w.e.f. 30-09-2006 without issuing notice and without paying compensation of service rendered by him. The said action of Respondent is in violation of Sec 25 (F) of Industrial Disputes Act and in violation of Sec 9 of I.D. Act. Having no other alternative remedy the Petitioner is constrained to approach this Hon'ble Court under section 2 A (2) of Industrial Disputes Act, 1947 for necessary relief. It is submitted that the Petitioner is the only earning member of his family and it has become very difficult to eke their livelihood consequent to illegal termination. It is therefore prayed to set aside the Oral termination dated 30.9.2006 passed by the Respondent and consequently direct the Respondent to reinstate the Petitioner into service with continuity of service, back wages and all other attendant benefits.

3. **The Respondents filed counter denying the averments made in the petition, with the averments in brief which runs as follows**:

It is submitted that the Applicant's statement that he was appointed in the Respondents Centre in the month of March 1995, which is far from truth and baseless. The fact is that the applicant was working under a Contractor and the Respondent had never engaged any gardener. It is submitted that it is the contractor, who had engaged the Petitioner. The Respondent is making payment to the Contractor on production/submission of the bills as approved in the Tender document. Petitioner is challenging the so-called oral termination order dated 30/09/2006 passed by the Respondent, which is baseless and without any substance. Hence, the Petitioner cannot claim to re-instate him into the service with continuity of service, back wages and all other benefits since in the first place, the Petitioner had never been appointed at all by the Respondent. A contract for horticulture maintenance was awarded to M/s. E. Srinivas w.e.f. 1/7/2006 and was valid upto 30/6/2007. Tenders were invited for the same and the contract was awarded to M/s. E. Srinivas, being the lowest bidder. As specified in the contract, the Contractor had employed eight gardeners for the purpose for which payment had to be made as per the Schedule of Quantities (Schedule 'A) of the Contract. It is further submitted that the Respondents are in receipt of Order No. 1/15(1)/2006- L.S.II dated 7/6/2006 from the Ministry of Labour and Employment, notifying the minimum wages including variable Dearness Allowance clause. It is also submitted that the Respondents received letter No. 95/1/2006-SK/E4 dated 29/8/2006 from the Labour Enforcement Officer (Central), Ministry of Labour & Employment intimating that the eight of the labourers engaged by the said Contractor Shri E.Srinivas had made a complaint that they were not in receipt of the wages as per the extant rules of the Minimum Wages Act and also to comment upon, since the Respondent is only the Principal Employer. On receipt of the said communication, the Respondent sought clarification from the contractor on the matter and the same was obtained vide letter dated 6/9/2006, which states that all the payments made by the contractor were as per the extant rules of the Minimum Wages Act. Further, the contractor stated that the lesser payments made by him to the Petitioner and others were the result of their absenteeism. Apart from the above, the contractor vide his letter dated 12.10.2006 also informed the Labour Enforcement Officer (Central), Hyderabad that he is following all the necessary prescribed procedures. Subsequently, the said complaint was withdrawn by the Petitioners vide letter dated 16/10/2006 addressed to Labour Enforcement Officer (Central) Hyderabad. It is denied that the Petitioner has ever been appointed by the Respondent. It is denied that the Respondent has ever employed the Petitioner as a Casual Labourer. The averments made by the Petitioner are baseless and devoid of merits. Besides, the Contractor has confirmed that the wages are being paid as per the extant rules under the Minimum Wages Act. It is submitted that all the employees of this Centre are covered and governed by Central Services Medical Attendants Rules (CSMA) 1944 and Contributory Health Services Scheme (CHSS) as in the Department of Atomic Energy and the question of availing of medical facilities under Employees State Insurance (ESI), does not arise. Hence, it is evident that the contractor had arranged to register the Petitioner and other workmen under the ESI for availing the medical facilities. It also submitted that the Respondents have never deducted any amount from the wages of the Petitioner, as alleged, and Respondents never disbursed salaries to the Petitioner. Shri E. Srinivas is a Contractor workman of the Respondent, as contended by the Petitioner. The Respondents deny that they had obtained any signature on the blank papers from the Petitioner and was never regarding the payments, since the same were always made by the Contractor and never by the Respondents. It is submitted that they had never terminated the Petitioner, as the Petitioner was not at all an employee of the Respondent. It is further reiterated that the Petitioner was never employed as casual labourer by the Respondents. However, the Contractor was at liberty to terminate the services of the Petitioner, if he felt that the work performed was unsatisfactory. Hence, the question of obligation on the part of the Respondents to regularize the Petitioner or payment of compensation does not arise. It is further submitted that the Respondents are in no way involved in the present dispute between the Contractor and his labourers and hence,

the Respondents crave leave to discharge them from the present dispute. It is also further submitted that Bhabha Atomic Research Centre (BARC) is a R&D constituent unit of Department of Atomic Energy. This Centre is excluded "Industry" under Section 2(0) of ID Act. Hence the provisions of this I.D. Act are not applicable to this Centre. Hence, it is submitted that C.G.I.T. has no jurisdiction to hear the cases and no relief on this account can be granted by this Hon'ble Tribunal to the Petitioner. It is to submit that the claim of the Petitioner is false, misleading and without any justification. It is submitted that the Petitioner has not made out any case, which merits the intervention of this Hon'ble Tribunal. The Respondents therefore prayed to dismiss this Claim Application, as the same being devoid of merits.

4. Petitioner has examined himself as WW1 and marked photocopies of documents as Ex.W1 to Ex.W4. On the other hand, Respondent has examined MW1 on their behalf who has marked photocopies of six documents i.e., Ex.M1 to M6.

5. The respondent has submitted written arguments, but despite the sufficient opportunity granted to the petitioner, he did not adduce either oral or written arguments.

6. On the basis of the pleadings of both parties and arguments advanced, the following points emerge for determination:-

I. Whether there existed employer and employee relationship between the Respondent and Petitioner? If yes, it's effect?

II. Whether the action of the management in terminating the services of the Petitioner through oral termination dated 30.9.2006 is illegal and unjustified? If so, whether said order be liable to be set aside?

III. To what relief is the petitioner entitled?

7. In order to prove his claim Petitioner in evidence has examined himself as WW1 and also filed the documentary evidence, i.e., Ex.W1 demand notice dated 21.11.2006, Ex.W2 acknowledgement card, Ex.W3 is the ESI card of the Petitioner and Ex.W4 is the character certificate issued by Respondent.

8. Per contra, Respondent has examined MW1 Sri P.M. Rao, in oral evidence and also filed the documentary evidence Ex.M1 to Ex.M6. Further, the witness MW1 has exhibited the document Ex.M1 an authorization letter dated 10.12.2010, Ex.M2 appointment letter dated 19.6.2006 in favour of M/s. E. Srinivas for Horticulture maintenance at CCCM, for contract. Ex.M3 is the letter from contractor dated 6.9.2006 to the Respondent along with payment and attendance list, Ex.M4 is copy of letter dated 12.10.2006 from contractor to LEO(C) along with acquaintance and attendance sheets. Ex.M5 is the letter from Petitioner along with other workmen to the LEO(C) withdrawing their complaint against contractor and Ex.M6 is the letter from Ministry of Labour & Employment dated 29.8.2006.

FINDINGS:-

9. **Point No.I**:- Petitioner has claimed in his claim statement that he was appointed in Respondent Centre in the month of March, 1995 to work as a Gardener. Further, the Petitioner claimed that he was also attending the other miscellaneous works such as Sweeping, Attender etc.. It is also submitted that the Respondent used to calculate daily wages and used to pay the same once in a month. He has also enjoyed the privileges of national and festival holidays which were entitled by the employees of Respondent. It is also submitted that Respondent has also given medical facilities in the form of making member in the ESI corporation, due to which the Petitioner was allotted with ESI Number for him and to his family members to avail medical facility benefit from ESI. Further, it is contended that Respondent used to deduct the amount towards provident fund and the same was being deposited before the appropriate authority. Petitioner further contended that Respondent has not issued any appointment letter. But Respondent designated the Petitioner as an employee of the Respondent in the ESI card and PF card.

10. On the other hand, Respondent has refuted the claim made by the Petitioner that he was the employee of the Respondent. Further, it has been contended that Petitioner is the contract labour and contractor Mr. E. Srinivas who has been awarded the contract for Horticulture maintenance w.e.f 1.7.2006 to 30.7.2007 has engaged the Petitioner to work at the Respondent centre. Therefore, the Petitioner's submission that he was appointed in the Respondent centre in the month of March, 1995 is far from the truth and is baseless. The fact is that applicant was working under contractor and the Respondent has never engaged any gardener.

11. To determine the existence of employer and employee relationship between the Respondent and the Petitioner four elements generally need to be considered. They are:-

i) The selection and engagement of employee

ii) payment of wages

iii) Power of dismissal and

iv) power to control the employee's conduct

12. The burden of proof to establish the claim that the Workman was the employee of the Respondent, is upon the Petitioner, whereas in rebuttal Respondent has to prove that the dismissal was for valid reason. However, in the case of illegal dismissal, the employer and employee relationship must be established first. It is incumbent upon the employee to prove employer and employee relationship by adducing substantial evidence. However, for the element of control, it must be noted that not every form of control that will create an employer and employee relationship. No employer and employee relationship exists when control is in the form of rule that merely serve as guidelines towards the achievement of the results without dictating means and methods to attend them. Employer and employee relationship exists when control is in the form of rules that fix the methodology to attain the specific results and bind the worker to use such thing. It is settled law that the ultimate control is the most important element when determining the existence of employer and employee relationship. It pertains not only to result but also to means and methods of attaining those results.

13. Therefore, in view of the above, in order to find out whether there existed the employer and employee relationship between the parties, first of all we have to examine the evidence adduced on behalf of the Petitioner. In this context, Petitioner has filed chief affidavit as WW1, wherein he has reiterated the averments made in his claim statement. Further, in his chief examination he has also exhibited the documents, Ex.W1 to W4. Admittedly Petitioner has not filed any document in evidence to show that he was appointed by the Respondent as Gardener. He has not filed any document which would show that Respondent had paid wages to the Petitioner for the work done. Further, no iota of evidence has been adduced by Petitioner on record that the Respondent had the power of dismissal of the Petitioner from employment. Further, no evidence to show that the Respondent has power to supervise and control of the conduct of the employee for doing the job of maintenance of Horticulture at the Respondent centre**.**

In the case of Automobile Association Upper India V. P.O. Labour Court-II & Anor., 2006 DLJ 160 Hon'ble Delhi High Court have held:-

"engagement and appointment of the workman in service can be established either by direct evidence like existence and production of appointment letter or written agreement, or by circumstantial evidence of incidental or ancillary records, in nature of attendance register, salary register, leave records, deposit of PF contribution, ESI etc. or even by examination or co-worker who may depose before the court that the workman was working with the management."

But the Petitioner herein failed to produce such evidence and failed to discharge his onus to establish his claim.

14. Although Petitioner has filed the documents Ex.W1 to W4, but WW1 did not depose in his evidence that how and in what manner by these documents he purport to establish his claim of appointment at Respondent centre to work as a gardener. Further, perusal of these documents would reveal that no document pertains to the appointment of the Petitioner by the Respondent as he had claimed. Further, these documents would not show that Respondent had power of supervision and control the employees conduct to carry out the job assigned to him. Thus, Petitioner has not succeeded to establish the existence of employer and employee relationship between the Petitioner and Respondent from these documents. However, witness WW1 was cross examined by the Respondent counsel and in his cross examination WW1 has admitted that he was orally appointed in the Respondent centre and ever any appointment letter was given to him. Further, WW1 states that he did not receive any call letter from employment office. Further, WW1 states that, ESI card was issued to him by BARC though the name of the employer is not there on the card. It is correct that he made complaint to RLC(C) for less payment of wages by the BARC, the complaint was made against the BARC, not against the contractor. It is not correct to suggest that Mr. E. Srinivas has appointed him and has disengaged him. Further WW1 states that it is correct that letter dated 16.6.2006 was given by her and other co-workers. It was given for withdrawal of the earlier complaint which was given against the contractor. Further, paper No. 6 of list of documents filed by the Respondent i.e., Xerox copy of the muster roll, her signature is there at serial No. 2 which is marked as Ex.M2. Further, she admits that she received the wages for 16 days Rs. 1736/- and others also received their respective wages.

15. Thus, from the statement of WW1 in his cross examination it manifests that although he was engaged to work at Respondent centre as a daily wager but no appointment letter has been issued by the Respondent. Petitioner has not adduced any evidence that wages were paid by the Respondent. Thus, in the absence of evidence of appointment letter or payment of wages by the Respondent, it clearly delineates that he was not employed/ engaged by the Respondent. However, the letter dated 16.10.2006, Ex.M5 was given by him and his co-workers regarding less payment of wages withdrawal of the complaint which was moved earlier against the contractor by them. The said letter would show that Petitioner along with co-employees has made the complaint to the competent authority, i.e., RLC(C) against contractor who had engaged them to work at Respondent center as gardener, regarding payment of less wages to them by the contractor. Thus, for the sake of argument of the Petitioner, if he was the employee of the Respondent, then why he had moved a complaint against the contractor for less payment of wages. This document goes to show that Petitioner was the employee of the contractor and not of the Respondent. Further, the documentary evidence Ex.W3 would show that there is no details of the employer on these cards. Therefore, Petitioner could not succeed to establish his claim on the basis of these documents that he was the employee of the Respondent. Thus, his claim is not substantiated by any cogent evidence.

16. It is settled principle of law, that a person who set up his plea of relationship of employer and employee, the burden of proof would rests upon him. In this context, few decisions of Hon'ble High Court and Hon'ble Apex Court are being discussed below:-

In the case of **Baburam Vs. Govt. of NCT of Delhi & Anr., 247 (2018) Delhi Law times 596 wherein Hon'ble High Court of Delhi have held**:-

"It is well settled principle of law that the person, who sets up a plea of existence of relationship of employer and employee, the burden would be upon him. In this regard, the ***Hon'ble Supreme Court in the case of Workmen of Nilgiri Coop. Mkt. Society Ltd. V. State of T.N. and Others, (2004) 3 SCC 514*** *has approved the judgment of Kerala and Calcutta High Court, where the plea of the workman that he was employee of the company was denied by the company and it was held that it was not for the Company to prove that he was not an employee.*

The burden of proof being on the workman to establish employer and employee relationship an adverse inference cannot be drawn against the employer that if he were to produce books of accounts they would have proved employer and employee relationship."

In the case of **N.C. John Vs. Secretary Thodupuha Taluk Shop and Commercial Establishment Workers' Union and others, Hon'ble Kerala High Court have held:-**

"*The burden of proof being on the workman to establish the employer - employee relationship an adverse inference cannot be drawn against the employer that if he were to produce books of accounts they would have proved employer employee relationship."*

Further, in the case of **'Kanpur Electricity Supply Co. Ltd. Vs Shamim Mirza 2009 1 SCC 20, the Hon'ble Supreme Court held as under :-**

"*It is trite that the burden to prove that a claimant was in the employment of a particular management, primarily lies on the person who claims to be so but the degree of proof, so required, varies from case to case. It is neither feasible nor advisable to lay down an abstract rule to determine the employer - employee relationship."*

Thus, in view of the settled principle of law regarding burden of proof in this respect, in the present matter Petitioner has utterly failed to discharge his burden of proof on the basis of his documentary as well as oral evidence that he was employee of the Respondent center and it has not been proved that employer and employee relationship existed between them. Petitioner failed to produce any proof of payment of salary or wages to him by the management nor any appointment letter or termination order has been produced. There is no documentary evidence to prove relationship of employment in the case at hand. Merely oral testimony of Petitioner is not sufficient to prove relationship of employer and employee.

17. On the other hand, Respondent in his counter as well as in evidence has refuted the allegation and claim of the Petitioner as averred by him. Respondent has contended that a contract for Horticulture maintenance was awarded to Mr. E. Srinivas w.e.f 1.7.2006 to 30.7.2007 being the lowest bidder as specified in the contract and contractor had employed eight gardeners for the purpose for which payment had been made as per Schedule A of the contract. Further Respondent contended that as per receipt of the letter dated 7.6.2006 of the Ministry of Labour and Employment, notifying the minimum wages including the variable Dearness Allowance Clause, Respondent has directed the contractor to ensure the payment to the workmen as per the extent of rules of Minimum Wages Act. Respondent has filed the documents in evidence Ex.M1, M2, M3, M4 and M6, which goes to show that direction has been issued to contractor for the compliance of Minimum Wages Act in regard to payment of minimum wages to the contract labour i.e., Petitioner etc.. Ex.M5 is the document of withdrawal of complaint by Petitioner and other co-employees. It goes to show that Petitioner and co-employees vide letter dated 16.10.2006, addressed to the LEO(C), Hyderabad, has prayed that they are working at Respondent BARC centre, through contractor, though earlier they made a complaint for payment of less wages, now, he is paying the wages as per Act, hence they are withdrawing that complaint. Thus, document Ex.M5 manifests clearly that the Petitioner was engaged by contractor and had worked as contract labour at the Respondent centre. Petitioner was not employed by the Respondent directly. Therefore, documents exhibited by Respondent goes to show that Petitioner had worked at the Respondent centre as a contract labour and was paid wages through contractor. Respondent has examined witness MW1 who has marked the documents, Ex.M1 an authorization letter dated 10.12.2010, Ex.M2 letter dated 6.9.2006 in favour of M/s. E. Srinivas for Horticulture maintenance at CCCM, on contract, Ex.M3 is copy of attendance roll, Ex.M4 is letter dated 12.10.2006 from contractor to LEO(C), Ex.M5 is the letter written and moved by from Petitioner along with co-employees to the LEO(C) withdrawing complaint which was moved by them against contractor for less payment of wages and Ex.M6 is the letter from LEO(C) regarding complaint on less payment of wages by the contractor Mr. E. Srinivas. Ex.M2 contains terms and conditions of the contract.

18. Thus, on going through the oral and documentary evidence relied upon by the Petitioner in support of his claim, and also documents filed by Respondent, I come to conclusion that Petitioner has utterly failed to establish and prove his claim that he was employee of Respondent management. The Petitioner has also not called his co-worker to examine and prove that he was appointed by the Management as claimed by him. None of the documents

relied upon by the Petitioner are in respect of his appointment by the Respondent or payment of wages made by the Respondent Management. Merely oral or bald averments made by the Petitioner workman is not sufficient to prove that workman was the employee of Respondent centre. There is nothing in the testimony of the witness WW1 as well as documentary evidence to substantiate or corroborate the claim of the workman. Rather, testimony of the MW1 witness remains unimpeachable / uncontraverted in one way or other. Thus, Petitioner claimant utterly failed to produce any cogent proof of payment of wages/salary made by the Management or any appointment letter issued by the Respondent. Merely oral testimony of the Petitioner is not sufficient to prove the employer and employee relationship between the Respondent centre and the Petitioner workman. However, no document on record has been filed from which it can be ascertained that the workman Petitioner was on the rolls of the Management. Thus, for the want of such evidence it can be held safely that the onus has not been discharged by the Petitioner to establish his claim. Thus, Petitioner has utterly failed to prove that he was appointed by the Respondent as a gardener for the period claimed by him in the statement of claim or even he has failed to establish and prove that he had worked for a period of 240 days prior to his alleged termination of his services by the Respondent Management just preceding from the date of his termination in the 12 months of a calendar year. Therefore, the claim of the Petitioner herein is not found established and proved on the basis of evidence produced by him.

Constitutional Bench of Hon'ble Supreme Court of India in the case of Steel Authority of India and others Vs. National Union Water Front Workers & Ors dated 30.8.2001 AIR SCC 3527 has laid down, the principles for determining the relationship of employer and employee in any matter under the given circumstances, and have held:-

"*The term contract labour as defined in clause (b) of Section 2 reads:*

(2)(1)(b) 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 the principal employer. By definition the term contract labour is a species of workman. A workman shall be so deemed when he is hired in or in connection with the work of an establishment by or through a contractor, with or without the knowledge of the principal employer. A workman may be hired: (1) in an establishment by the principal employer or by his agent with or without the knowledge of the principal employer; or (2) in connection with the work of an establishment by the principal employer through a contractor or by a contractor with or without the knowledge of the principal employer. Where a 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 where a 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 workman for any work of the establishment, a question might arise whether the contractor is a mere camouflage as in Hussainbhai Calicuts case (supra) and in Indian Petrochemicals Corporations case (supra) etc.; if the answer is in the affirmative, the workman will be in fact an employee of the principal employer; but if the answer is in the negative, the workman will be a contract labour."

Here in the matter at hand, the document Ex.M2 would reveal that vide communication dated 19.6.2006 the Respondent had accepted the quotation of contractor Mr. E. Srinivas for maintenance of Horticulture work and annexed Schedule 'A' is terms and conditions of contract that goes to show that workman has been hired by the contractor, in or in connection with the work of the Respondent establishment and contractor has undertaken the contract to produce a given result for maintenance of Horticulture of the Respondent center and to produce a given result under said contract, contractor had engaged Petitioner and other co-workmen. Therefore, no employer and employee relationship existed between Petitioner and Respondent. Thus, in view of the law laid down by the Hon'ble Apex Court and on going through the evidence of both the parties on record, it can safely be held that there existed no employer and employee relationship between the Respondent and Petitioner.

Thus, Point No.I is answered accordingly.

19. **Point No. II:** - In view of the foregone discussion and finding given at Point No.I, it has been established that there existed no relationship of employer and employee between the Respondent and the Petitioner, and Petitioner was engaged by the contractor and also disengaged by the contractor. Petitioner was merely a contract labour. However, Petitioner was not directly engaged by the Respondent to work at their center, hence, the action of Respondent in termination of the service of Petitioner is legal and justified.

Thus, Point No. II is answered against the Petitioner and in favour of Respondent.

20. Point No. III:- In view of the fore gone discussion and finding arrived at Points No.I & II, I am of the considered view that Petitioner is not entitled to any relief. Hence, Petitioner 's claim statement is liable to be dismissed.

Thus, Point No.III is answered accordingly.

AWARD

In the result, the action of the management in terminating the services of the Petitioner Sri Ch. Banappa, Gardener, through oral termination dated 30.9.2006 is held legal and justified. Hence, the Petitioner is not entitled to any relief, as such, the petition is liable to be dismissed. Therefore, the petition stands dismissed.

Award is passed accordingly. Transmit.

Dictated to Smt. P. Phani Gowri, Personal Assistant, transcribed by her, corrected and signed by me on this the 22nd day of April, 2024.

IRFAN QAMAR, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner	Witnesses examined for the Respondent
WW1: Sri Ch. Banappa	MW1: Sri P.M. Rao

Documents marked for the Petitioner

Ex.W1:	Photocopy of the demand notice dt. 21.11.2006
EX.W2:	Acknowledgement card
Ex.W3:	ESI Card of Petitioner
Ex.W4:	Character certificate

Documents marked for the Respondent

Ex.M1:	Photocopy of the Lr.No.CCCM/BARC/Adm/2010/1212, dt.10.12.2010 from Respondent to Sr. CGSC
Ex.M2:	Photocopy of the lr. No.CCCM/BARC/118/2006/689 dt.19.6.2006 reg. horticulture maintenance at CCCM to the contractor by Respondent.
Ex.M3:	Photocopy of the lr. Dt.6.9.2006 from Mr. E. Srinivas to the Respondent.
Ex.M4:	Photocopy of the lr. Dt. 12.10.2006 from Mr. E. Srinivas to the LEO(C)
Ex.M5:	Photocopy of the lr. Dt. 16.10.2006 withdrawing complaint against contractor by Petitioner along with other workmen
Ex.M6:	Photocopy of the lr. From LEO(C) to the Respondent reg. complaint recd. Reg. less payment of wages.

नई दिल्ली, 13 मई, 2024

का.आ. 909.—औद्योगिक विवाद अधिनियम, (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार **भाभा परमाणु अनुसंधान केंद्र, वास्तुकला और सिविल इंजीनियरिंग प्रभाग, सी.सी.सी.एम.प्रोजेक्ट, ई.सी.आई.एल. (पी.ओ.), हैदराबाद,** के प्रबंधतंत्र के संबद्ध नियोजकों और **श्री एम. नरसिम्हा, कामगार,** के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण- सह- श्रम न्यायालय- हैदराबाद पंचाट (संदर्भ संख्या 26/2007) को जैसा कि अनुलग्नक में दिखाया गया है, प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 10/05/2024 को प्राप्त हुआ था।

[सं. एल–42025-07-2023-96-आईआर(डीयू)]

दिलीप कुमार, अवर सचिव

New Delhi, the 13th May, 2024

S.O. 909.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 26/2007) of the **Central Government Industrial Tribunal cum Labour Court– Hyderabad** as shown in the Annexure, in the Industrial dispute between the employers in relation to **Bhabha Atomic Research Centre, Architecture & Civil Engineering Division, C.C.C.M. Project, E.C.I.L. (P.O.),Hyderabad, and Shri M. Narsimha, Worker,** which was received along with soft copy of the award by the Central Government on 10/05/2024.

[No. L-42025-07-2023-96-IR (DU)]

DILIP KUMAR, Under Secy.

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT AT HYDERABAD

Present: - **Sri Irfan Qamar**

Presiding Officer

Dated the 22nd day of April, 2024

INDUSTRIAL DISPUTE L.C.No.26/2007

Between:

Sri M. Narsimha,

S/o Raju

R/o H.No. 15-76,

Balaji Nagar, Jawahar Nagar,

Yapral (P), Shamirpet (M),

Ranga Reddy District. ..….Petitioner

AND

Bhabha Atomic Research Centre,

Arch. & Civil Engineering Division,

C.C.C.M.Project, E.C.I.L. (P.O.),

Hyderabad – 500 762. ….Respondent

Appearances:

For the Petitioner : M/s. G. Ravi Mohan, G. Naresh Kumar & Vikas Sharma, Advocates

For the Respondent : M/s. P. Raveender Reddy & M. Mallikarjun, Advocates

AWARD

Sri M. Narsimha who worked as Gardener (who will be referred to as the workman) has filed this petition under Sec. 2A(2) of the Industrial Disputes Act, 1947 against the Respondent Bhabha Atomic Research Centre seeking for declaring the proceeding dated 30.9.2006 issued by Respondent as illegal, arbitrary and to set aside the same consequently directing the Respondents to reinstate the Petitioner into service duly granting all the consequential benefits such as continuity of service, back wages and all other attendant benefits etc., and such other reliefs as this court may deems fit.

2. **The averments made in the petition in brief are as follows**:

It is submitted that, the Petitioner is having experience in gardening works prior to his appointment in the Respondent Center he was trained in the gardening work. Therefore, basing upon his technical nature of work he was appointed in the Respondent Center as a gardener. It is further submitted that though he was appointed as gardener he was also attending the other miscellaneous works such as sweeping, Attendar etc.. It is submitted that, the Petitioner was appointed in Respondent Center in the month of March 1995, since his appointment, he had been performing duties to the utmost satisfaction of his superiors. It is submitted that there are about 40 employees in the Respondent Center. There are no regular attenders, sweepers in the Respondent Center, the Petitioner and other similar situated persons were being engaged on a consolidated pay which was less than Minimum Wages. It is submitted that, the Petitioner was expert in gardening work. It is submitted that, the Respondent used to calculate daily wages and used to pay the same once in a month. The Petitioner was enjoying the privileges of national and festival holidays and other benefits which were entitled by them. It is submitted that, the Respondent has been given Medical facilities in the form of making a member in the ESI corporation due to which the Petitioner was allotted with ESI number for the Petitioner and his family members availed Medical benefits from E.S.I., so also the Respondent used to deduct the amount towards the provident fund and the same was being deposited before the appropriate authority. It is submitted that, though the Respondent has not issued appointment order and the Respondent designated the Petitioner as an employee of the Respondent in the E.S.I. card and Provident Fund card. While the matter stood thus, the Respondent used to pay less wages than the minimum wages prescribed by the Government without issuing any notice w.e.f. September 2005. Then, the Petitioner made an Application to the Respondent to pay the minimum wages and also requested to pay more keeping in view of his length of services. But in vain. He made an Application to the

Regional Labour Commissioner(C) in respect of pay for minimum wages, then the Respondent came with a plea before the RLC(C), stating that the Petitioner is not an employee of the Respondent Center and further stated that Petitioner is a contract Labour and showed Mr.Srinivas as a contractor. It is submitted that, it is unfair on the part of Respondent that Respondent has shown that one of the workmen as a contractor who does not have any license prescribed under provision of Law. It is submitted that, in view of the complaint of the Petitioner to the RLC(C) the Respondent terminated the Petitioner and did not permit the Petitioner to enter into the premises. It is submitted that, the Respondent obtained signature on a blank Paper for paying the salaries for the month of August & September, 2006 the said action of Respondent is nothing but unfair labour practice which attracts Penal action. It is submitted that, the Respondent tried to change the service condition of the Petitioner by converting him into a contract Labour without assigning any reason and without issuing any Notice which is illegal. It is submitted that Petitioner worked for 10 years without any break in service as a causal labour. Therefore it is obligation part of Respondent to regularize the service of the Petitioner but however the Respondent terminated services of the Petitioner w.e.f. 30-09-2006 without issuing notice and without paying compensation of service rendered by him. The said action of Respondent is in violation of Sec 25 (F) of Industrial Disputes Act and in violation of Sec 9 of I.D. Act. Having no other alternative remedy the Petitioner is constrained to approach this Hon'ble Court under section 2 A (2) of Industrial Disputes Act, 1947 for necessary relief. It is submitted that the Petitioner is the only earning member of his family and it has become very difficult to eke their livelihood consequent to illegal termination. It is therefore prayed to set aside the Oral termination dated 30.9.2006 passed by the Respondent and consequently direct the Respondent to reinstate the Petitioner into service with continuity of service, back wages and all other attendant benefits.

3. **The Respondents filed counter denying the averments made in the petition, with the averments in brief which runs as follows**:

It is submitted that the Applicant's statement that he was appointed in the Respondents Centre in the month of March 1995, which is far from truth and baseless. The fact is that the applicant was working under a Contractor and the Respondent had never engaged any gardener. It is submitted that it is the contractor, who had engaged the Petitioner. The Respondent is making payment to the Contractor on production/submission of the bills as approved in the Tender document. Petitioner is challenging the so-called oral termination order dated 30/09/2006 passed by the Respondent, which is baseless and without any substance. Hence, the Petitioner cannot claim to re-instate him into the service with continuity of service, back wages and all other benefits since in the first place, the Petitioner had never been appointed at all by the Respondent. A contract for horticulture maintenance was awarded to M/s. E. Srinivas w.e.f. 1/7/2006 and was valid upto 30/6/2007. Tenders were invited for the same and the contract was awarded to M/s. E. Srinivas, being the lowest bidder. As specified in the contract, the Contractor had employed eight gardeners for the purpose for which payment had to be made as per the Schedule of Quantities (Schedule 'A) of the Contract. It is further submitted that the Respondents are in receipt of Order No. 1/15(1)/2006- L.S.II dated 7/6/2006 from the Ministry of Labour and Employment, notifying the minimum wages including variable Dearness Allowance clause. It is also submitted that the Respondents received letter No. 95/1/2006-SK/E4 dated 29/8/2006 from the Labour Enforcement Officer (Central), Ministry of Labour & Employment intimating that the eight of the labourers engaged by the said Contractor Shri E.Srinivas had made a complaint that they were not in receipt of the wages as per the extant rules of the Minimum Wages Act and also to comment upon, since the Respondent is only the Principal Employer. On receipt of the said communication, the Respondent sought clarification from the contractor on the matter and the same was obtained vide letter dated 6/9/2006, which states that all the payments made by the contractor were as per the extant rules of the Minimum Wages Act. Further, the contractor stated that the lesser payments made by him to the Petitioner and others were the result of their absenteeism. Apart from the above, the contractor vide his letter dated 12.10.2006 also informed the Labour Enforcement Officer (Central), Hyderabad that he is following all the necessary prescribed procedures. Subsequently, the said complaint was withdrawn by the Petitioners vide letter dated 16/10/2006 addressed to Labour Enforcement Officer (Central) Hyderabad. It is denied that the Petitioner has ever been appointed by the Respondent. It is denied that the Respondent has ever employed the Petitioner as a Casual Labourer. The averments made by the Petitioner are baseless and devoid of merits. Besides, the Contractor has confirmed that the wages are being paid as per the extant rules under the Minimum Wages Act. It is submitted that all the employees of this Centre are covered and governed by Central Services Medical Attendants Rules (CSMA) 1944 and Contributory Health Services Scheme (CHSS) as in the Department of Atomic Energy and the question of availing of medical facilities under Employees State Insurance (ESI), does not arise. Hence, it is evident that the contractor had arranged to register the Petitioner and other workmen under the ESI for availing the medical facilities. It also submitted that the Respondents have never deducted any amount from the wages of the Petitioner, as alleged, and Respondents never disbursed salaries to the Petitioner. Shri E. Srinivas is a Contractor workman of the Respondent, as contended by the Petitioner. The Respondents deny that they had obtained any signature on the blank papers from the Petitioner and was never regarding the payments, since the same were always made by the Contractor and never by the Respondents. It is submitted that they had never terminated the Petitioner, as the Petitioner was not at all an employee of the Respondent. It is further reiterated that the Petitioner was never employed as casual labourer by the Respondents. However, the Contractor was at liberty to terminate the services of the Petitioner, if he felt that the work performed was unsatisfactory. Hence, the question of obligation on the part of the Respondents to regularize the Petitioner or payment of compensation does not arise. It is further submitted that

the Respondents are in no way involved in the present dispute between the Contractor and his labourers and hence, the Respondents crave leave to discharge them from the present dispute. It is also further submitted that Bhabha Atomic Research Centre (BARC) is a R&D constituent unit of Department of Atomic Energy. This Centre is excluded "Industry" under Section 2(0) of ID Act. Hence the provisions of this I.D. Act are not applicable to this Centre. Hence, it is submitted that C.G.I.T. has no jurisdiction to hear the cases and no relief on this account can be granted by this Hon'ble Tribunal to the Petitioner. It is to submit that the claim of the Petitioner is false, misleading and without any justification. It is submitted that the Petitioner has not made out any case, which merits the intervention of this Hon'ble Tribunal. The Respondents therefore prayed to dismiss this Claim Application, as the same being devoid of merits.

4. Petitioner has examined himself as WW1 and marked photocopies of documents as Ex.W1 to Ex.W4. On the other hand, Respondent has examined MW1 on their behalf who has marked photocopies of six documents i.e., Ex.M1 to M6.

5. The respondent has submitted written arguments, but despite the sufficient opportunity granted to the petitioner, he did not adduce either oral or written arguments.

6. On the basis of the pleadings of both parties and arguments advanced, the following points emerge for determination:-

I. Whether there existed employer and employee relationship between the Respondent and Petitioner? If yes, it's effect?

II. Whether the action of the management in terminating the services of the Petitioner through oral termination dated 30.9.2006 is illegal and unjustified? If so, whether said order be liable to be set aside?

III. To what relief is the petitioner entitled?

7. In order to prove his claim Petitioner in evidence has examined himself as WW1 and also filed the documentary evidence, i.e., Ex.W1 demand notice dated 21.11.2006, Ex.W2 acknowledgement card, Ex.W3 is the ESI card of the Petitioner and Ex.W4 is the character certificate issued by Respondent.

8. Per contra, Respondent has examined MW1 Sri P.M. Rao, in oral evidence and also filed the documentary evidence Ex.M1 to Ex.M6. Further, the witness MW1 has exhibited the document Ex.M1 an authorization letter dated 10.12.2010, Ex.M2 appointment letter dated 19.6.2006 in favour of M/s. E. Srinivas for Horticulture maintenance at CCCM, for contract. Ex.M3 is the letter from contractor dated 6.9.2006 to the Respondent along with payment and attendance list, Ex.M4 is copy of letter dated 12.10.2006 from contractor to LEO(C) along with acquaintance and attendance sheets. Ex.M5 is the letter from Petitioner along with other workmen to the LEO(C) withdrawing their complaint against contractor and Ex.M6 is the letter from Ministry of Labour & Employment dated 29.8.2006.

FINDINGS:-

9. **Point No.I**:- Petitioner has claimed in his claim statement that he was appointed in Respondent Centre in the month of March, 1995 to work as a Gardener. Further, the Petitioner claimed that he was also attending the other miscellaneous works such as Sweeping, Attender etc.. It is also submitted that the Respondent used to calculate daily wages and used to pay the same once in a month. He has also enjoyed the privileges of national and festival holidays which were entitled by the employees of Respondent. It is also submitted that Respondent has also given medical facilities in the form of making member in the ESI corporation, due to which the Petitioner was allotted with ESI Number for him and to his family members to avail medical facility benefit from ESI. Further, it is contended that Respondent used to deduct the amount towards provident fund and the same was being deposited before the appropriate authority. Petitioner further contended that Respondent has not issued any appointment letter. But Respondent designated the Petitioner as an employee of the Respondent in the ESI card and PF card.

10. On the other hand, Respondent has refuted the claim made by the Petitioner that he was the employee of the Respondent. Further, it has been contended that Petitioner is the contract labour and contractor Mr. E. Srinivas who has been awarded the contract for Horticulture maintenance w.e.f 1.7.2006 to 30.7.2007 has engaged the Petitioner to work at the Respondent centre. Therefore, the Petitioner's submission that he was appointed in the Respondent centre in the month of March, 1995 is far from the truth and is baseless. The fact is that applicant was working under contractor and the Respondent has never engaged any gardener.

11. To determine the existence of employer and employee relationship between the Respondent and the Petitioner four elements generally need to be considered. They are:-

i) The selection and engagement of employee

ii) payment of wages

iii) Power of dismissal and

iv) power to control the employee's conduct

12. The burden of proof to establish the claim that the Workman was the employee of the Respondent, is upon the Petitioner, whereas in rebuttal Respondent has to prove that the dismissal was for valid reason. However, in the case of illegal dismissal, the employer and employee relationship must be established first. It is incumbent upon the employee to prove employer and employee relationship by adducing substantial evidence. However, for the element of control, it must be noted that not every form of control that will create an employer and employee relationship. No employer and employee relationship exists when control is in the form of rule that merely serve as guidelines towards the achievement of the results without dictating means and methods to attend them. Employer and employee relationship exists when control is in the form of rules that fix the methodology to attain the specific results and bind the worker to use such thing. It is settled law that the ultimate control is the most important element when determining the existence of employer and employee relationship. It pertains not only to result but also to means and methods of attaining those results.

13. Therefore, in view of the above, in order to find out whether there existed the employer and employee relationship between the parties, first of all we have to examine the evidence adduced on behalf of the Petitioner. In this context, Petitioner has filed chief affidavit as WW1, wherein he has reiterated the averments made in his claim statement. Further, in his chief examination he has also exhibited the documents, Ex.W1 to W4. Admittedly Petitioner has not filed any document in evidence to show that he was appointed by the Respondent as Gardener. He has not filed any document which would show that Respondent had paid wages to the Petitioner for the work done. Further, no iota of evidence has been adduced by Petitioner on record that the Respondent had the power of dismissal of the Petitioner from employment. Further, no evidence to show that the Respondent has power to supervise and control of the conduct of the employee for doing the job of maintenance of Horticulture at the Respondent centre**.**

In the case of Automobile Association Upper India V. P.O. Labour Court-II & Anor., 2006 DLJ 160 Hon'ble Delhi High Court have held:-

"engagement and appointment of the workman in service can be established either by direct evidence like existence and production of appointment letter or written agreement, or by circumstantial evidence of incidental or ancillary records, in nature of attendance register, salary register, leave records, deposit of PF contribution, ESI etc. or even by examination or co-worker who may depose before the court that the workman was working with the management."

But the Petitioner herein failed to produce such evidence and failed to discharge his onus to establish his claim.

14. Although Petitioner has filed the documents Ex.W1 to W4, but WW1 did not depose in his evidence that how and in what manner by these documents he purport to establish his claim of appointment at Respondent centre to work as a gardener. Further, perusal of these documents would reveal that no document pertains to the appointment of the Petitioner by the Respondent as he had claimed. Further, these documents would not show that Respondent had power of supervision and control the employees conduct to carry out the job assigned to him. Thus, Petitioner has not succeeded to establish the existence of employer and employee relationship between the Petitioner and Respondent from these documents. However, witness WW1 was cross examined by the Respondent counsel and in his cross examination WW1 has admitted that he was orally appointed in the Respondent centre and ever any appointment letter was given to him. Further, WW1 states that he did not receive any call letter from employment office. Further, WW1 states that, ESI card was issued to him by BARC though the name of the employer is not there on the card. It is correct that he made complaint to RLC(C) for less payment of wages by the BARC, the complaint was made against the BARC, not against the contractor. It is not correct to suggest that Mr. E. Srinivas has appointed him and has disengaged him. Further, WW1 states that, it is not correct that neither BARC has appointed him nor disengaged him. Further WW1 states that it is correct that letter dated 16.6.2006 was given by him and other co-workers. It was given for withdrawal of the earlier complaint which was given against the contractor. Further, paper No. 6 of list of documents filed by the Respondent i.e., Xerox copy of the muster roll, her signature is there at serial No.1 which is marked as Ex.M2. Further, she admits that she received the wages for 17 days Rs. 1844.50 ps. and others also received their respective wages.

15. Thus, from the statement of WW1 in his cross examination it manifests that although he was engaged to work at Respondent centre as a daily wager but no appointment letter has been issued by the Respondent. Petitioner has not adduced any evidence that wages were paid by the Respondent. Thus, in the absence of evidence of appointment letter or payment of wages by the Respondent, it clearly delineates that he was not employed/ engaged by the Respondent. However, the letter dated 16.10.2006, Ex.M5 was given by him and his co-workers regarding less payment of wages withdrawal of the complaint which was moved earlier against the contractor by them. The said letter would show that Petitioner along with co-employees has made the complaint to the competent authority, i.e., RLC(C) against contractor who had engaged them to work at Respondent center as gardener, regarding payment of less wages to them by the contractor. Thus, for the sake of argument of the Petitioner, if he was the employee of the Respondent, then why he had moved a complaint against the contractor for less payment of wages. This document goes to show that Petitioner was the employee of the contractor and not of the Respondent. Further, the documentary evidence Ex.W3 would show that there is no details of the employer on these cards. Therefore,

Petitioner could not succeed to establish his claim on the basis of these documents that he was the employee of the Respondent. Thus, his claim is not substantiated by any cogent evidence.

16. It is settled principle of law, that a person who set up his plea of relationship of employer and employee, the burden of proof would rests upon him. In this context, few decisions of Hon'ble High Court and Hon'ble Apex Court are being discussed below:-

In the case of **Baburam Vs. Govt. of NCT of Delhi & Anr., 247 (2018) Delhi Law times 596 wherein Hon'ble High Court of Delhi have held**:-

"It is well settled principle of law that the person, who sets up a plea of existence of relationship of employer and employee, the burden would be upon him. In this regard, the ***Hon'ble Supreme Court in the case of Workmen of Nilgiri Coop. Mkt. Society Ltd. V. State of T.N. and Others, (2004) 3 SCC 514*** *has approved the judgment of Kerala and Calcutta High Court, where the plea of the workman that he was employee of the company was denied by the company and it was held that it was not for the Company to prove that he was not an employee.*

The burden of proof being on the workman to establish employer and employee relationship an adverse inference cannot be drawn against the employer that if he were to produce books of accounts they would have proved employer and employee relationship."

In the case of **N.C. John Vs. Secretary Thodupuha Taluk Shop and Commercial Establishment Workers' Union and others, Hon'ble Kerala High Court have held:-**

"*The burden of proof being on the workman to establish the employer - employee relationship an adverse inference cannot be drawn against the employer that if he were to produce books of accounts they would have proved employer employee relationship."*

Further, in the case of **'Kanpur Electricity Supply Co. Ltd. Vs Shamim Mirza 2009 1 SCC 20, the Hon'ble Supreme Court held as under :-**

"*It is trite that the burden to prove that a claimant was in the employment of a particular management, primarily lies on the person who claims to be so but the degree of proof, so required, varies from case to case. It is neither feasible nor advisable to lay down an abstract rule to determine the employer - employee relationship."*

Thus, in view of the settled principle of law regarding burden of proof in this respect, in the present matter Petitioner has utterly failed to discharge his burden of proof on the basis of his documentary as well as oral evidence that he was employee of the Respondent center and it has not been proved that employer and employee relationship existed between them. Petitioner failed to produce any proof of payment of salary or wages to him by the management nor any appointment letter or termination order has been produced. There is no documentary evidence to prove relationship of employment in the case at hand. Merely oral testimony of Petitioner is not sufficient to prove relationship of employer and employee.

17. On the other hand, Respondent in his counter as well as in evidence has refuted the allegation and claim of the Petitioner as averred by him. Respondent has contended that a contract for Horticulture maintenance was awarded to Mr. E. Srinivas w.e.f 1.7.2006 to 30.7.2007 being the lowest bidder as specified in the contract and contractor had employed eight gardeners for the purpose for which payment had been made as per Schedule A of the contract. Further Respondent contended that as per receipt of the letter dated 7.6.2006 of the Ministry of Labour and Employment, notifying the minimum wages including the variable Dearness Allowance Clause, Respondent has directed the contractor to ensure the payment to the workmen as per the extent of rules of Minimum Wages Act. Respondent has filed the documents in evidence Ex.M1, M2, M3, M4 and M6, which goes to show that direction has been issued to contractor for the compliance of Minimum Wages Act in regard to payment of minimum wages to the contract labour i.e., Petitioner etc.. Ex.M5 is the document of withdrawal of complaint by Petitioner and other co-employees. It goes to show that Petitioner and co-employees vide letter dated 16.10.2006, addressed to the LEO(C), Hyderabad, has prayed that they are working at Respondent BARC centre, through contractor, though earlier they made a complaint for payment of less wages, now, he is paying the wages as per Act, hence they are withdrawing that complaint. Thus, document Ex.M5 manifests clearly that the Petitioner was engaged by contractor and had worked as contract labour at the Respondent centre. Petitioner was not employed by the Respondent directly. Therefore, documents exhibited by Respondent goes to show that Petitioner had worked at the Respondent centre as a contract labour and was paid wages through contractor. Respondent has examined witness MW1 who has marked the documents, Ex.M1 an authorization letter dated 10.12.2010, Ex.M2 letter dated 6.9.2006 in favour of M/s. E. Srinivas for Horticulture maintenance at CCCM, on contract, Ex.M3 is copy of attendance roll, Ex.M4 is letter dated 12.10.2006 from contractor to LEO(C), Ex.M5 is the letter written and moved by from Petitioner along with co-employees to the LEO(C) withdrawing complaint which was moved by them against contractor for less payment of wages and Ex.M6 is the letter from LEO(C) regarding complaint on less payment of wages by the contractor Mr. E. Srinivas. Ex.M2 contains terms and conditions of the contract.

18. Thus, on going through the oral and documentary evidence relied upon by the Petitioner in support of his claim, and also documents filed by Respondent, I come to conclusion that Petitioner has utterly failed to establish and prove his claim that he was employee of Respondent management. The Petitioner has also not called his co-worker to examine and prove that he was appointed by the Management as claimed by him. None of the documents relied upon by the Petitioner are in respect of his appointment by the Respondent or payment of wages made by the Respondent Management. Merely oral or bald averments made by the Petitioner workman is not sufficient to prove that workman was the employee of Respondent centre. There is nothing in the testimony of the witness WW1 as well as documentary evidence to substantiate or corroborate the claim of the workman. Rather, testimony of the MW1 witness remains unimpeachable / uncontraverted in one way or other. Thus, Petitioner claimant utterly failed to produce any cogent proof of payment of wages/salary made by the Management or any appointment letter issued by the Respondent. Merely oral testimony of the Petitioner is not sufficient to prove the employer and employee relationship between the Respondent centre and the Petitioner workman. However, no document on record has been filed from which it can be ascertained that the workman Petitioner was on the rolls of the Management. Thus, for the want of such evidence it can be held safely that the onus has not been discharged by the Petitioner to establish his claim. Thus, Petitioner has utterly failed to prove that he was appointed by the Respondent as a gardener for the period claimed by him in the statement of claim or even he has failed to establish and prove that he had worked for a period of 240 days prior to his alleged termination of his services by the Respondent Management just preceding from the date of his termination in the 12 months of a calendar year. Therefore, the claim of the Petitioner herein is not found established and proved on the basis of evidence produced by him.

Constitutional Bench of Hon'ble Supreme Court of India in the case of Steel Authority of India and others Vs. National Union Water Front Workers & Ors dated 30.8.2001 AIR SCC 3527 has laid down, the principles for determining the relationship of employer and employee in any matter under the given circumstances, and have held:-

"*The term contract labour as defined in clause (b) of Section 2 reads:*

(2)(1)(b) 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 the principal employer. By definition the term contract labour is a species of workman. A workman shall be so deemed when he is hired in or in connection with the work of an establishment by or through a contractor, with or without the knowledge of the principal employer. A workman may be hired: (1) in an establishment by the principal employer or by his agent with or without the knowledge of the principal employer; or (2) in connection with the work of an establishment by the principal employer through a contractor or by a contractor with or without the knowledge of the principal employer. Where a 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 where a 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 workman for any work of the establishment, a question might arise whether the contractor is a mere camouflage as in Hussainbhai Calicuts case (supra) and in Indian Petrochemicals Corporations case (supra) etc.; if the answer is in the affirmative, the workman will be in fact an employee of the principal employer; but if the answer is in the negative, the workman will be a contract labour."

Here in the matter at hand, the document Ex.M2 would reveal that vide communication dated 19.6.2006 the Respondent had accepted the quotation of contractor Mr. E. Srinivas for maintenance of Horticulture work and annexed Schedule 'A' is terms and conditions of contract that goes to show that workman has been hired by the contractor, in or in connection with the work of the Respondent establishment and contractor has undertaken the contract to produce a given result for maintenance of Horticulture of the Respondent center and to produce a given result under said contract, contractor had engaged Petitioner and other co-workmen. Therefore, no employer and employee relationship existed between Petitioner and Respondent. Thus, in view of the law laid down by the Hon'ble Apex Court and on going through the evidence of both the parties on record, it can safely be held that there existed no employer and employee relationship between the Respondent and Petitioner.

Thus, Point No.I is answered accordingly.

19. **Point No. II:** - In view of the foregone discussion and finding given at Point No.I, it has been established that there existed no relationship of employer and employee between the Respondent and the Petitioner, and Petitioner was engaged by the contractor and also disengaged by the contractor. Petitioner was merely a contract labour. However, Petitioner was not directly engaged by the Respondent to work at their center, hence, the action of Respondent in termination of the service of Petitioner is legal and justified.

Thus, Point No. II is answered against the Petitioner and in favour of Respondent.

20. Point No. III:- In view of the fore gone discussion and finding arrived at Points No.I & II, I am of the considered view that Petitioner is not entitled to any relief. Hence, Petitioner 's claim statement is liable to be dismissed.

Thus, Point No.III is answered accordingly.

AWARD

In the result, the action of the management in terminating the services of the Petitioner Sri M. Narsimha, Gardener, through oral termination dated 30.9.2006 is held legal and justified. Hence, the Petitioner is not entitled to any relief, as such, the petition is liable to be dismissed. Therefore, the petition stands dismissed.

Award is passed accordingly. Transmit.

Dictated to Smt. P. Phani Gowri, Personal Assistant, transcribed by her, corrected and signed by me on this the 22nd day of April, 2024.

IRFAN QAMAR, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner	Witnesses examined for the Respondent
WW1: Sri M. Narsimha	MW1: Sri P.M. Rao

Documents marked for the Petitioner

Ex.W1:	Photocopy of the demand notice dt. 21.11.2006
EX.W2:	Acknowledgement card
Ex.W3:	ESI Card of Petitioner
Ex.W4:	Character certificate

Documents marked for the Respondent

Ex.M1:	Photocopy of the Lr.No.CCCM/BARC/Adm/2010/1212, dt.10.12.2010 from Respondent to Sr. CGSC
Ex.M2:	Photocopy of the lr. No.CCCM/BARC/118/2006/689 dt.19.6.2006 reg. horticulture maintenance at CCCM to the contractor by Respondent.
Ex.M3:	Photocopy of the lr. Dt.6.9.2006 from Mr. E. Srinivas to the Respondent.
Ex.M4:	Photocopy of the lr. Dt. 12.10.2006 from Mr. E. Srinivas to the LEO(C)
Ex.M5:	Photocopy of the lr. Dt. 16.10.2006 withdrawing complaint against contractor by Petitioner along with other workmen
Ex.M6:	Photocopy of the lr. From LEO(C) to the Respondent reg. complaint recd. Reg. less payment of wages.

नई दिल्ली, 13 मई, 2024

का.आ. 910.—औद्योगिक विवाद अधिनियम, (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार **भाभा परमाणु अनुसंधान केंद्र, वास्तुकला और सिविल इंजीनियरिंग प्रभाग, सी.सी.सी.एम.प्रोजेक्ट, ई.सी.आई.एल. (पी.ओ.),हैदराबाद,** के प्रबंधतंत्र के संबद्ध नियोजकों और **श्रीमती एस. कल्याणी, कामगार,** के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण- सह- श्रम न्यायालय- हैदराबाद पंचाट (संदर्भ संख्या 24/2007) को जैसा कि अनुलग्नक में दिखाया गया है, प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 10/05/2024 को प्राप्त हुआ था।

[सं. एल–42025-07-2023-95-आईआर(डीयू)]

दिलीप कुमार, अवर सचिव

New Delhi, the 13th May, 2024

S.O. 910.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 24/2007) of the **Central Government Industrial Tribunal cum Labour Court– Hyderabad** as shown in the Annexure, in the Industrial dispute between the employers in relation to

Bhabha Atomic Research Centre, Architecture & Civil Engineering Division, C.C.C.M. Project, E.C.I.L. (P.O.),Hyderabad, and Smt. S. Kalyani, Worker, which was received along with soft copy of the award by the Central Government on 10/05/2024.

[No. L-42025-07-2023-95-IR (DU)]

DILIP KUMAR, Under Secy.

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT AT HYDERABAD

Present: - **Sri Irfan Qamar**

Presiding Officer

Dated the 22nd day of April, 2024

INDUSTRIAL DISPUTE L.C.No.24/2007

Between:

Smt. S. Kalyani,

W/o Raju

R/o H. No. 15-76,

Balaji Nagar, Jawahar Nagar,

Yapral (P), Shamirpet (M),

Ranga Reddy District. ..….Petitioner

AND

Bhabha Atomic Research Centre,

Arch. & Civil Engineering Division,

C.C.C.M.Project, E.C.I.L. (P.O.),

Hyderabad – 500 762. ….Respondent

Appearances:

For the Petitioner : M/s. G. Ravi Mohan, G. Naresh Kumar & Vikas Sharma, Advocates

For the Respondent : M/s. Ravinder Viswanath, Sr. Central Government Counsel & P. Damodar Reddy, Advocate

AWARD

Smt. S. Kalyani who worked as Gardener (who will be referred to as the workman) has filed this petition under Sec. 2A(2) of the Industrial Disputes Act, 1947 against the Respondent Bhabha Atomic Research Centre seeking for declaring the proceeding dated 30.9.2006 issued by Respondent as illegal, arbitrary and to set aside the same consequently directing the Respondents to reinstate the Petitioner into service duly granting all the consequential benefits such as continuity of service, back wages and all other attendant benefits etc., and such other reliefs as this court may deems fit.

2. **The averments made in the petition in brief are as follows**:

It is submitted that, the Petitioner is a lady having experience in gardening works prior to her appointment in the Respondent Center she was trained in the gardening work. Therefore, basing upon her technical nature of work she was appointed in the Respondent Center as a gardener. It is further submitted that though she was appointed as gardener she was also attending the other miscellaneous works such as sweeping, Attendar etc. It is submitted that, the Petitioner was appointed in Respondent Center in the month of March 1995, since her appointment, she had been performing duties to the utmost satisfaction of her superiors. It is submitted that there are about 40 employees in the Respondent Center.There are no regular attenders, sweepers in the Respondent Center, the Petitioner and other similar situated persons were being engaged on a consolidated pay which was less than Minimum Wages. It is submitted that, the Petitioner was expert in gardening work. It is submitted that, the Respondent used to calculate daily wages and used to pay the same once in a month. The Petitioner was enjoying the privileges of national and festival holidays and other benefits which were entitled by them. It is submitted that, the Respondent has been given Medical facilities in the form of making a member in the ESI corporation due to which the Petitioner was allotted with ESI number for the Petitioner and her family members availed Medical benefits from E.S.I., so also the Respondent used to deduct

the amount towards the provident fund and the same was being deposited before the appropriate authority. It is submitted that, though the Respondent has not issued appointment order and the Respondent designated the Petitioner as an employee of the Respondent in the E.S.I. card and Provident Fund card. While the matter stood thus, the Respondent used to pay less wages than the minimum wages prescribed by the Government without issuing any notice w.e.f. September 2005. Then, the Petitioner made an Application to the Respondent to pay the minimum wages and also requested to pay more keeping in view of her length of services. But in vain. She made an Application to the Regional Labour Commissioner(C) in respect of pay for minimum wages, then the Respondent came with a plea before the RLC(C), stating that the Petitioner is not an employee of the Respondent Center and further stated that Petitioner is a contract Labour and showed Mr.Srinivas as a contractor. It is submitted that, it is unfair on the part of Respondent that Respondent has shown that one of the workmen as a contractor who does not have any license prescribed under provision of Law. It is submitted that, in view of the complaint of the Petitioner to the RLC(C) the Respondent terminated the Petitioner and did not permit the Petitioner to enter into the premises. It is submitted that, the Respondent obtained signature on a blank Paper for paying the salaries for the month of August & September, 2006 the said action of Respondent is nothing but unfair labour practice which attracts Penal action. It is submitted that, the Respondent tried to change the service condition of the Petitioner by converting her into a contract Labour without assigning any reason and without issuing any Notice which is illegal. It is submitted that Petitioner worked for 10 years without any break in service as a causal labour. Therefore it is obligation part of Respondent to regularize the service of the Petitioner but however the Respondent terminated services of the Petitioner w.e.f. 30-09-2006 without issuing notice and without paying compensation of service rendered by her. The said action of Respondent is in violation of Sec 25 (F) of Industrial Disputes Act and in violation of Sec 9 of I.D. Act. Having no other alternative remedy the Petitioner is constrained to approach this Hon'ble Court under section 2 A (2) of Industrial Disputes Act, 1947 for necessary relief. It is submitted that the Petitioner is the only earning member of her family and it has become very difficult to eke their livelihood consequent to illegal termination. It is therefore prayed to set aside the Oral termination dated 30.9.2006 passed by the Respondent and consequently direct the Respondent to reinstate the Petitioner into service with continuity of service, back wages and all other attendant benefits.

3. **The Respondents filed counter denying the averments made in the petition, with the averments in brief which runs as follows**:

It is submitted that the Applicant's statement that she was appointed in the Respondents Centre in the month of March 1995, which is far from truth and baseless. The fact is that the applicant was working under a Contractor and the Respondent had never engaged any gardener. It is submitted that it is the contractor, who had engaged the Petitioner. The Respondent is making payment to the Contractor on production/submission of the bills as approved in the Tender document. Petitioner is challenging the so-called oral termination order dated 30/09/2006 passed by the Respondent, which is baseless and without any substance. Hence, the Petitioner cannot claim to re-instate her into the service with continuity of service, back wages and all other benefits since in the first place, the Petitioner had never been appointed at all by the Respondent. A contract for horticulture maintenance was awarded to M/s. E. Srinivas w.e.f. 1/7/2006 and was valid upto 30/6/2007. Tenders were invited for the same and the contract was awarded to M/s. E. Srinivas, being the lowest bidder. As specified in the contract, the Contractor had employed eight gardeners for the purpose for which payment had to be made as per the Schedule of Quantities (Schedule 'A) of the Contract. It is further submitted that the Respondents are in receipt of Order No. 1/15(1)/2006- L.S.II dated 7/6/2006 from the Ministry of Labour and Employment, notifying the minimum wages including variable Dearness Allowance clause. It is also submitted that the Respondents received letter No. 95/1/2006-SK/E4 dated 29/8/2006 from the Labour Enforcement Officer (Central), Ministry of Labour & Employment intimating that the eight of the labourers engaged by the said Contractor Shri E.Srinivas had made a complaint that they were not in receipt of the wages as per the extant rules of the Minimum Wages Act and also to comment upon, since the Respondent is only the Principal Employer. On receipt of the said communication, the Respondent sought clarification from the contractor on the matter and the same was obtained vide letter dated 6/9/2006, which states that all the payments made by the contractor were as per the extant rules of the Minimum Wages Act. Further, the contractor stated that the lesser payments made by him to the Petitioner and others were the result of their absenteeism. Apart from the above, the contractor vide his letter dated 12.10.2006 also informed the Labour Enforcement Officer (Central), Hyderabad that he is following all the necessary prescribed procedures. Subsequently, the said complaint was withdrawn by the Petitioners vide letter dated 16/10/2006 addressed to Labour Enforcement Officer (Central) Hyderabad. It is denied that the Petitioner has ever been appointed by the Respondent. It is denied that the Respondent has ever employed the Petitioner as a Casual Labourer. The averments made by the Petitioner are baseless and devoid of merits. Besides, the Contractor has confirmed that the wages are being paid as per the extant rules under the Minimum Wages Act. It is submitted that all the employees of this Centre are covered and governed by Central Services Medical Attendants Rules (CSMA) 1944 and Contributory Health Services Scheme (CHSS) as in the Department of Atomic Energy and the question of availing of medical facilities under Employees State Insurance (ESI), does not arise. Hence, it is evident that the contractor had arranged to register the Petitioner and other workmen under the ESI for availing the medical facilities. It also submitted that the Respondents have never deducted any amount from the wages of the Petitioner, as alleged, and Respondents never disbursed salaries to the Petitioner. Shri E. Srinivas is a Contractor workman of the

Respondent, as contended by the Petitioner. The Respondents deny that they had obtained any signature on the blank papers from the Petitioner and was never regarding the payments, since the same were always made by the Contractor and never by the Respondents. It is submitted that they had never terminated the Petitioner, as the Petitioner was not at all an employee of the Respondent. It is further reiterated that the Petitioner was never employed as casual labourer by the Respondents. However, the Contractor was at liberty to terminate the services of the Petitioner, if he felt that the work performed was unsatisfactory. Hence, the question of obligation on the part of the Respondents to regularize the Petitioner or payment of compensation does not arise. It is further submitted that the Respondents are in no way involved in the present dispute between the Contractor and his labourers and hence, the Respondents crave leave to discharge them from the present dispute. It is also further submitted that Bhabha Atomic Research Centre (BARC) is a R&D constituent unit of Department of Atomic Energy. This Centre is excluded "Industry" under Section 2(0) of ID Act. Hence the provisions of this I.D. Act are not applicable to this Centre. Hence, it is submitted that C.G.I.T. has no jurisdiction to hear the cases and no relief on this account can be granted by this Hon'ble Tribunal to the Petitioner. It is to submit that the claim of the Petitioner is false, misleading and without any justification. It is submitted that the Petitioner has not made out any case, which merits the intervention of this Hon'ble Tribunal. The Respondents therefore prayed to dismiss this Claim Application, as the same being devoid of merits.

4. Petitioner has examined herself as WW1 and marked photocopies of documents as Ex.W1 to Ex.W4. On the other hand, Respondent has examined MW1 on their behalf who has marked photocopies of six documents i.e., Ex.M1 to M6.

5. The respondent has submitted written arguments, but despite the sufficient opportunity granted to the petitioner, she did not adduce either oral or written arguments.

6. On the basis of the pleadings of both parties and arguments advanced, the following points emerge for determination:-

I. Whether there existed employer and employee relationship between the Respondent and Petitioner? If yes, it's effect?

II. Whether the action of the management in terminating the services of the Petitioner through oral termination dated 30.9.2006 is illegal and unjustified? If so, whether said order be liable to be set aside?

III. To what relief is the petitioner entitled?

7. In order to prove her claim Petitioner in evidence has examined herself as WW1 and also filed the documentary evidence, i.e., Ex.W1 demand notice dated 21.11.2006, Ex.W2 acknowledgement card, Ex.W3 photocopy of ESI card of the Petitioner and Ex.W4 is the attendance copy.

8. Per contra, Respondent has examined MW1 Sri P.M. Rao, in oral evidence and also filed the documentary evidence Ex.M1 to Ex.M6. Further, the witness MW1 has exhibited the document Ex.M1 an authorization letter dated 10.12.2010, Ex.M2 appointment letter dated 19.6.2006 in favour of M/s. E. Srinivas for Horticulture maintenance at CCCM, for contract. Ex.M3 is the letter from contractor dated 6.9.2006 to the Respondent along with payment and attendance list, Ex.M4 is copy of letter dated 12.10.2006 from contractor to LEO(C) along with acquaintance and attendance sheets. Ex.M5 is the letter from Petitioner along with other workmen to the LEO(C) withdrawing their complaint against contractor and Ex.M6 is the letter from Ministry of Labour & Employment dated 29.8.2006.

FINDINGS:-

9. **Point No. I**:- Petitioner has claimed in her claim statement that she was appointed in Respondent Centre in the month of March, 1995 to work as a Gardener. Further, the Petitioner claimed that she was also attending the other miscellaneous works such as Sweeping, Attender etc.. It is also submitted that the Respondent used to calculate daily wages and used to pay the same once in a month. She has also enjoyed the privileges of national and festival holidays which were entitled by the employees of Respondent. It is also submitted that Respondent has also given medical facilities in form of making member in the ESI corporation, due to which the Petitioner was allotted with ESI Number for her and to her family members to avail medical facility benefit from ESI. Further, it is contended that Respondent used to deduct the amount towards provident fund and the same was being deposited before the appropriate authority. Petitioner further contended that Respondent has not issued any appointment letter. But Respondent designated the Petitioner as an employee of the Respondent in the ESI card and PF card.

10. On the other hand, Respondent has refuted the claim made by the Petitioner that she was the employee of the Respondent. Further, it has been contended that Petitioner is the contract labour and contractor Mr. E. Srinivas who has been awarded the contract for Horticulture maintenance w.e.f 1.7.2006 to 30.7.2007 has engaged the Petitioner to work at the Respondent centre. Therefore, the Petitioner's submission that she was appointed in the Respondent centre in the month of March, 1995 is far from the truth and is baseless. The fact is that applicant was working under contractor and the Respondent has never engaged any gardener.

11. To determine the existence of employer and employee relationship between the Respondent and the Petitioner four elements generally need to be considered. They are:-

i) The selection and engagement of employee

ii) payment of wages

iii) Power of dismissal and

iv) power to control the employee's conduct

12. The burden of proof to establish the claim that the Workman was the employee of the Respondent, is upon the Petitioner, whereas in rebuttal Respondent has to prove that the dismissal was for valid reason. However, in the case of illegal dismissal, the employer and employee relationship must be established first. It is incumbent upon the employee to prove employer and employee relationship by adducing substantial evidence. However, for the element of control, it must be noted that not every form of control that will create an employer and employee relationship. No employer and employee relationship exists when control is in the form of rule that merely serve as guidelines towards the achievement of the results without dictating means and methods to attend them. Employer and employee relationship exists when control is in the form of rules that fix the methodology to attain the specific results and bind the worker to use such thing. It is settled law that the ultimate control is the most important element when determining the existence of employer and employee relationship. It pertains not only to result but also to means and methods of attaining those results.

13. Therefore, in view of the above, in order to find out whether there existed the employer and employee relationship between the parties, first of all we have to examine the evidence adduced on behalf of the Petitioner. In this context, Petitioner has filed chief affidavit as WW1, wherein she has reiterated the averments made in her claim statement. Further, in her chief examination she has also exhibited the documents, Ex.W1 to W4. Admittedly Petitioner has not filed any document in evidence to show that she was appointed by the Respondent as Gardener. She has not filed any document which would show that Respondent had paid wages to the Petitioner for the work done. Further, no iota of evidence has been adduced by Petitioner on record that the Respondent had the power of dismissal of the Petitioner from employment. Further, no evidence to show that the Respondent has power to supervise and control of the conduct of the employee for doing the job of maintenance of Horticulture at the Respondent centre**.**

In the case of Automobile Association Upper India V. P.O. Labour Court-II & Anor., 2006 DLJ 160 Hon'ble Delhi High Court have held:-

"engagement and appointment of the workman in service can be established either by direct evidence like existence and production of appointment letter or written agreement, or by circumstantial evidence of incidental or ancillary records, in nature of attendance register, salary register, leave records, deposit of PF contribution, ESI etc. or even by examination or co-worker who may depose before the court that the workman was working with the management."

But the Petitioner herein failed to produce such evidence and failed to discharge her onus to establish her claim.

14. Although Petitioner has filed the documents Ex.W1 to W4, but WW1 did not depose in her evidence that how and in what manner by these documents she purport to establish her claim of appointment at Respondent centre to work as a gardener. Further, perusal of these documents would reveal that no document pertains to the appointment of the Petitioner by the Respondent as she had claimed. Further, these documents would not show that Respondent had power of supervision and control the employees conduct to carry out the job assigned to her. Thus, Petitioner has not succeeded to establish the existence of employer and employee relationship between the Petitioner and Respondent from these documents. However, witness WW1 was cross examined by the Respondent counsel and in her cross examination WW1 has admitted that she was orally appointed in the Respondent centre and ever any appointment letter was given to her. Further, WW1 states that she did not receive any call letter from employment office. Further, WW1 states that, ESI card was issued to her by BARC though the name of the employer is not there on the card. It is correct that she made complaint to RLC(C) for less payment of wages by the BARC, the complaint was made against the BARC, not against the contractor. It is not correct to suggest that Mr. E. Srinivas has appointed her and has disengaged her. Further, WW1 states that, it is not correct that neither BARC has appointed her nor disengaged her. Further WW1 states that it is correct that letter dated 16.6.2006 was given by her and other co-workers. It was given for withdrawal of the earlier complaint which was given against the contractor.

15. Thus, from the statement of WW1 in her cross examination it manifests that although she was engaged to work at Respondent centre as a daily wager but no appointment letter has been issued by the Respondent. Petitioner has not adduced any evidence that wages were paid by the Respondent. Thus, in the absence of evidence of appointment letter or payment of wages by the Respondent, it clearly delineates that she was not employed/ engaged by the Respondent. However, the letter dated 16.10.2006, Ex.M5 was given by her co-workers regarding less payment of wages withdrawal of the complaint which was moved earlier against the contractor by them. The said letter would show that Petitioner along with co-employees has made the complaint to the competent authority,

i.e., RLC(C) against contractor who had engaged them to work at Respondent center as gardener, regarding payment of less wages to them by the contractor. Thus, for the sake of argument of the Petitioner, if she was the employee of the Respondent, then why she had moved a complaint against the contractor for less payment of wages. This document goes to show that Petitioner was the employee of the contractor and not of the Respondent. Further, the documentary evidence Ex.W3 would show that there is no details of the employer on these cards. Therefore, Petitioner could not succeed to establish her claim on the basis of these documents that she was the employee of the Respondent. Thus, her claim is not substantiated by any cogent evidence.

16. It is settled principle of law, that a person who set up his plea of relationship of employer and employee, the burden of proof would rests upon him. In this context, few decisions of Hon'ble High Court and Hon'ble Apex Court are being discussed below:-

In the case of **Baburam Vs. Govt. of NCT of Delhi & Anr., 247 (2018) Delhi Law times 596 wherein Hon'ble High Court of Delhi have held**:-

"It is well settled principle of law that the person, who sets up a plea of existence of relationship of employer and employee, the burden would be upon him. In this regard, the ***Hon'ble Supreme Court in the case of Workmen of Nilgiri Coop. Mkt. Society Ltd. V. State of T.N. and Others, (2004) 3 SCC 514*** *has approved the judgment of Kerala and Calcutta High Court, where the plea of the workman that he was employee of the company was denied by the company and it was held that it was not for the Company to prove that he was not an employee.*

The burden of proof being on the workman to establish employer and employee relationship an adverse inference cannot be drawn against the employer that if he were to produce books of accounts they would have proved employer and employee relationship."

In the case of **N.C. John Vs. Secretary Thodupuha Taluk Shop and Commercial Establishment Workers' Union and others, Hon'ble Kerala High Court have held:-**

"*The burden of proof being on the workman to establish the employer - employee relationship an adverse inference cannot be drawn against the employer that if he were to produce books of accounts they would have proved employer employee relationship."*

Further, in the case of **'Kanpur Electricity Supply Co. Ltd. Vs Shamim Mirza 2009 1 SCC 20, the Hon'ble Supreme Court held as under :-**

"*It is trite that the burden to prove that a claimant was in the employment of a particular management, primarily lies on the person who claims to be so but the degree of proof, so required, varies from case to case. It is neither feasible nor advisable to lay down an abstract rule to determine the employer - employee relationship."*

Thus, in view of the settled principle of law regarding burden of proof in this respect, in the present matter Petitioner has utterly failed to discharge her burden of proof on the basis of her documentary as well as oral evidence that she was employee of the Respondent center and it has not been proved that employer and employee relationship existed between them. Petitioner failed to produce any proof of payment of salary or wages to her by the management nor any appointment letter or termination order has been produced. There is no documentary evidence to prove relationship of employment in the case at hand. Merely oral testimony of Petitioner is not sufficient to prove relationship of employer and employee.

17. On the other hand, Respondent in his counter as well as in evidence has refuted the allegation and claim of the Petitioner as averred by her. Respondent has contended that a contract for Horticulture maintenance was awarded to Mr. E. Srinivas w.e.f 1.7.2006 to 30.7.2007 being the lowest bidder as specified in the contract and contractor had employed eight gardeners for the purpose for which payment had been made as per Schedule A of the contract. Further Respondent contended that as per receipt of the letter dated 7.6.2006 of the Ministry of Labour and Employment, notifying the minimum wages including the variable Dearness Allowance Clause, Respondent has directed the contractor to ensure the payment to the workmen as per the extent of rules of Minimum Wages Act. Respondent has filed the documents in evidence Ex.M1, M2, M3, M4 and M6, which goes to show that direction has been issued to contractor for the compliance of Minimum Wages Act in regard to payment of minimum wages to the contract labour i.e., Petitioner etc.. Ex.M5 is the document of withdrawal of complaint by Petitioner and other co-employees. It goes to show that Petitioner and co-employees vide letter dated 16.10.2006, addressed to the LEO(C), Hyderabad, has prayed that they are working at Respondent BARC centre, through contractor, though earlier they made a complaint for payment of less wages, now, he is paying the wages as per Act, hence they are withdrawing that complaint. Thus, document Ex.M5 manifests clearly that the Petitioner was engaged by contractor and had worked as contract labour at the Respondent centre. Petitioner was not employed by the Respondent directly. Therefore, documents exhibited by Respondent goes to show that Petitioner had worked at the Respondent centre as a contract labour and was paid wages through contractor. Respondent has examined witness MW1 who has marked the documents, Ex.M1 an authorization letter dated 10.12.2010, Ex.M2 letter dated 6.9.2006 in favour of M/s. E. Srinivas for Horticulture maintenance at CCCM, on contract, Ex.M3 is copy of attendance roll, Ex.M4 is letter dated 12.10.2006 from contractor to LEO(C), Ex.M5 is the letter written and moved by from Petitioner along

with co-employees to the LEO(C) withdrawing complaint which was moved by them against contractor for less payment of wages and Ex.M6 is the letter from LEO(C) regarding complaint on less payment of wages by the contractor
Mr. E. Srinivas. Ex.M2 contains terms and conditions of the contract.

18. Thus, on going through the oral and documentary evidence relied upon by the Petitioner in support of her claim, and also documents filed by Respondent , I come to conclusion that Petitioner has utterly failed to establish and prove her claim that she was employee of Respondent management. The Petitioner has also not called her co-worker to examine and prove that she was appointed by the Management as claimed by her. None of the documents relied upon by the Petitioner are in respect of her appointment by the Respondent or payment of wages made by the Respondent Management. Merely oral or bald averments made by the Petitioner workman is not sufficient to prove that workman was the employee of Respondent centre. There is nothing in the testimony of the witness WW1 as well as documentary evidence to substantiate or corroborate the claim of the workman. Rather, testimony of the MW1 witness remains unimpeachable / uncontraverted in one way or other. Thus, Petitioner claimant utterly failed to produce any cogent proof of payment of wages/salary made by the Management or any appointment letter issued by the Respondent. Merely oral testimony of the Petitioner is not sufficient to prove the employer and employee relationship between the Respondent centre and the Petitioner workman. However, no document on record has been filed from which it can be ascertained that the workman Petitioner was on the rolls of the Management. Thus, for the want of such evidence it can be held safely that the onus has not been discharged by the Petitioner to establish her claim. Thus, Petitioner has utterly failed to prove that she was appointed by the Respondent as a gardener for the period claimed by her in the statement of claim or even she has failed to establish and prove that she had worked for a period of 240 days prior to her alleged termination of her services by the Respondent Management just preceding from the date of her termination in the 12 months of a calendar year. Therefore, the claim of the Petitioner herein is not found established and proved on the basis of evidence produced by her.

Constitutional Bench of Hon'ble Supreme Court of India in the case of Steel Authority of India and others Vs. National Union Water Front Workers & Ors dated 30.8.2001 AIR SCC 3527 has laid down, the principles for determining the relationship of employer and employee in any matter under the given circumstances, and have held:-

"*The term contract labour as defined in clause (b) of Section 2 reads:*

(2)(1)(b) 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 the principal employer. By definition the term contract labour is a species of workman. A workman shall be so deemed when he is hired in or in connection with the work of an establishment by or through a contractor, with or without the knowledge of the principal employer. A workman may be hired: (1) in an establishment by the principal employer or by his agent with or without the knowledge of the principal employer; or (2) in connection with the work of an establishment by the principal employer through a contractor or by a contractor with or without the knowledge of the principal employer. Where a 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 where a 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 workman for any work of the establishment, a question might arise whether the contractor is a mere camouflage as in Hussainbhai Calicuts case (supra) and in Indian Petrochemicals Corporations case (supra) etc.; if the answer is in the affirmative, the workman will be in fact an employee of the principal employer; but if the answer is in the negative, the workman will be a contract labour."

Here in the matter at hand, the document Ex.M2 would reveal that vide communication dated 19.6.2006 the Respondent had accepted the quotation of contractor Mr. E. Srinivas for maintenance of Horticulture work and annexed Schedule 'A' is terms and conditions of contract that goes to show that workman has been hired by the contractor, in or in connection with the work of the Respondent establishment and contractor has undertaken the contract to produce a given result for maintenance of Horticulture of the Respondent center and to produce a given result under said contract, contractor had engaged Petitioner and other co-workmen. Therefore, no employer and employee relationship existed between Petitioner and Respondent. Thus, in view of the law laid down by the Hon'ble Apex Court and on going through the evidence of both the parties on record, it can safely be held that there existed no employer and employee relationship between the Respondent and Petitioner.

Thus, Point No.I is answered accordingly.

19. **Point No.II:** - In view of the foregone discussion and finding given at Point No.I, it has been established that there existed no relationship of employer and employee between the Respondent and the Petitioner, and Petitioner was engaged by the contractor and also disengaged by the contractor. Petitioner was merely a contract labour. However, Petitioner was not directly engaged by the Respondent to work at their center, hence, the action of Respondent in termination of the service of Petitioner is legal and justified.

Thus, Point No. II is answered against the Petitioner and in favour of Respondent.

20. Point No. III:- In view of the fore gone discussion and finding arrived at Points No.I & II, I am of the considered view that Petitioner is not entitled to any relief. Hence, Petitioner 's claim statement is liable to be dismissed.

Thus, Point No.III is answered accordingly.

AWARD

In the result, the action of the management in terminating the services of the Petitioner Smt. S. Kalyani, Gardener, through oral termination dated 30.9.2006 is held legal and justified. Hence, the Petitioner is not entitled to any relief, as such, the petition is liable to be dismissed. Therefore, the petition stands dismissed.

Award is passed accordingly. Transmit.

Dictated to Smt. P. Phani Gowri, Personal Assistant, transcribed by her, corrected and signed by me on this the day of April, 2024.

IRFAN QAMAR, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner	Witnesses examined for the Respondent
WW1: Smt. S. Kalyani	MW1: Sri P.M. Rao

Documents marked for the Petitioner

Ex.W1: Photocopy of the demand notice dt. 21.11.2006

EX.W2: Acknowledgement card

Ex.W3: Photocopy of ESI Card of Petitioner

Ex.W4: Photocopy of the attendance

Documents marked for the Respondent

Ex.M1: Photocopy of the Lr.No.CCCM/BARC/Adm/2010/1212, dt.10.12.2010 from Respondent to Sr. CGSC

Ex.M2: Photocopy of the lr. No.CCCM/BARC/118/2006/689 dt.19.6.2006 reg. horticulture maintenance at CCCM to the contractor by Respondent.

Ex.M3: Photocopy of the lr. Dt.6.9.2006 from Mr. E. Srinivas to the Respondent.

Ex.M4: Photocopy of the lr. Dt. 12.10.2006 from Mr. E. Srinivas to the LEO(C)

Ex.M5: Photocopy of the lr. Dt. 16.10.2006 withdrawing complaint against contractor by Petitioner along with other workmen

Ex.M6: Photocopy of the lr. From LEO(C) to the Respondent reg. complaint recd. Reg. less payment of wages.

नई दिल्ली, 13 मई, 2024

का.आ. 911.—औद्योगिक विवाद अधिनियम (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार **भाभा परमाणु अनुसंधान केंद्र, वास्तुकला और सिविल इंजीनियरिंग प्रभाग, सी.सी.सी.एम.प्रोजेक्ट, ई.सी.आई.एल. (पी.ओ.), हैदराबाद,** के प्रबंधतंत्र के संबद्ध नियोजकों और **श्रीमती बी. सक्कू बाई, कामगार,** के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण- सह- श्रम न्यायालय- हैदराबाद पंचाट (संदर्भ संख्या 23/2007) को जैसा कि अनुलग्नक में दिखाया गया है, प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 10/05/2024 को प्राप्त हुआ था।

[सं. एल–42025-07-2023-94-आईआर(डीयू)]

दिलीप कुमार, अवर सचिव

New Delhi, the 13th May, 2024

S.O. 911.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 23/2007) of the **Central Government Industrial Tribunal cum Labour Court– Hyderabad** as shown in the Annexure, in the Industrial dispute between the employers in relation to **Bhabha Atomic Research Centre, Architecture & Civil Engineering Division, C.C.C.M. Project, E.C.I.L. (P.O.), Hyderabad, and Smt. B. Sakku Bai, Worker,** which was received along with soft copy of the award by the Central Government on 10/05/2024.

[No. L-42025-07-2023-94-IR (DU)]

DILIP KUMAR, Under Secy.

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT AT HYDERABAD

Present: - **Sri Irfan Qamar**

Presiding Officer

Dated the 22nd day of April, 2024

INDUSTRIAL DISPUTE L.C.No. 23/2007

Between:

Smt. B. Sakku Bai,

W/o B. Kishore

R/o H.No.10-10-76,

Nehru Nagar , Block No.3,

E.C.I.L., Uppal (M),

Ranga Reddy District. ..….Petitioner

AND

Bhabha Atomic Research Centre,

Arch. & Civil Engineering Division,

C.C.C.M.Project, E.C.I.L. (P.O.),

Hyderabad – 500 762. ….Respondent

Appearances:

For the Petitioner : M/s. G. Ravi Mohan, G. Naresh Kumar & Vikas Sharma, Advocates

For the Respondent : M/s. P. Raveender Reddy & M. Mallikarjun, Advocates

AWARD

Smt. B. Sakku Bai who worked as Gardener (who will be referred to as the workman) has filed this petition under Sec. 2A(2) of the Industrial Disputes Act, 1947 against the Respondent Bhabha Atomic Research Centre seeking for declaring the proceeding dated 30.9.2006 issued by Respondent as illegal, arbitrary and to set aside the same consequently directing the Respondents to reinstate the Petitioner into service duly granting all the consequential benefits such as continuity of service, back wages and all other attendant benefits etc., and such other reliefs as this court may deems fit.

2. **The averments made in the petition in brief are as follows**:

It is submitted that, the Petitioner is a lady having experience in gardening works prior to her appointment in the Respondent Center she was trained in the gardening work. Therefore, basing upon her technical nature of work she was appointed in the Respondent Center as a gardener. It is further submitted that though she was appointed as gardener she was also attending the other miscellaneous works such as sweeping, Attendar etc.. It is submitted that, the Petitioner was appointed in Respondent Center in the month of March, 1995, since her appointment, she had been performing duties to the utmost satisfaction of her superiors. It is submitted that there are about 40 employees in the Respondent Center. There are no regular attenders, sweepers in the Respondent Center, the Petitioner and other

similar situated persons were being engaged on a consolidated pay which was less than Minimum Wages. It is submitted that, the Petitioner was expert in gardening work. It is submitted that, the Respondent used to calculate daily wages and used to pay the same once in a month. The Petitioner was enjoying the privileges of national and festival holidays and other benefits which were entitled by them. It is submitted that, the Respondent has been given Medical facilities in the form of making a member in the ESI corporation due to which the Petitioner was allotted with ESI number for the Petitioner and her family members availed Medical benefits from E.S.I., so also the Respondent used to deduct the amount towards the provident fund and the same was being deposited before the appropriate authority. It is submitted that, though the Respondent has not issued appointment order and the Respondent designated the Petitioner as an employee of the Respondent in the E.S.I. card and Provident Fund card. While the matter stood thus, the Respondent used to pay less wages than the minimum wages prescribed by the Government without issuing any notice w.e.f. September 2005. Then, the Petitioner made an Application to the Respondent to pay the minimum wages and also requested to pay more keeping in view of her length of services. But in vain. She made an Application to the Regional Labour Commissioner(C) in respect of pay for minimum wages, then the Respondent came with a plea before the RLC(C), stating that the Petitioner is not an employee of the Respondent Center and further stated that Petitioner is a contract Labour and showed Mr.Srinivas as a contractor. It is submitted that, it is unfair on the part of Respondent that Respondent has shown that one of the workmen as a contractor who does not have any license prescribed under provision of Law. It is submitted that, in view of the complaint of the Petitioner to the RLC(C) the Respondent terminated the Petitioner and did not permit the Petitioner to enter into the premises. It is submitted that, the Respondent obtained signature on a blank Paper for paying the salaries for the month of August & September, 2006 the said action of Respondent is nothing but unfair labour practice which attracts Penal action. It is submitted that, the Respondent tried to change the service condition of the Petitioner by converting her into a contract Labour without assigning any reason and without issuing any Notice which is illegal. It is submitted that Petitioner worked for 10 years without any break in service as a causal labour. Therefore it is obligation part of Respondent to regularize the service of the Petitioner but however the Respondent terminated services of the Petitioner w.e.f. 30-09-2006 without issuing notice and without paying compensation of service rendered by her. The said action of Respondent is in violation of Sec 25 (F) of Industrial Disputes Act and in violation of Sec 9 of I.D. Act. Having no other alternative remedy the Petitioner is constrained to approach this Hon'ble Court under section 2 A (2) of Industrial Disputes Act, 1947 for necessary relief. It is submitted that the Petitioner is the only earning member of her family and it has become very difficult to eke their livelihood consequent to illegal termination. It is therefore prayed to set aside the Oral termination dated 30.9.2006 passed by the Respondent and consequently direct the Respondent to reinstate the Petitioner into service with continuity of service, back wages and all other attendant benefits.

3. **The Respondents filed counter denying the averments made in the petition, with the averments in brief which runs as follows**:

It is submitted that Applicant's statement that she was appointed in the Respondents Centre in the month of March, 1995, which is far from truth and baseless. The fact is that the applicant was working under a Contractor and the Respondent had never engaged any gardener. It is submitted that it is the contractor, who had engaged the Petitioner. The Respondent is making payment to the Contractor on production/submission of the bills as approved in the Tender document. Petitioner is challenging the so-called oral termination order dated 30/09/2006 passed by the Respondent, which is baseless and without any substance. Hence, the Petitioner cannot claim to re-instate her into the service with continuity of service, back wages and all other benefits since in the first place, the Petitioner had never been appointed at all by the Respondent. A contract for horticulture maintenance was awarded to M/s. E. Srinivas w.e.f. 1/7/2006 and was valid upto 30/6/2007. Tenders were invited for the same and the contract was awarded to M/s. E. Srinivas, being the lowest bidder. As specified in the contract, the Contractor had employed eight gardeners for the purpose for which payment had to be made as per the Schedule of Quantities (Schedule 'A) of the Contract. It is further submitted that the Respondents are in receipt of Order No. 1/15(1)/2006- L.S.II dated 7/6/2006 from the Ministry of Labour and Employment, notifying the minimum wages including variable Dearness Allowance clause. It is also submitted that the Respondents received letter No. 95/1/2006-SK/E4 dated 29/8/2006 from the Labour Enforcement Officer (Central), Ministry of Labour & Employment intimating that the eight of the labourers engaged by the said Contractor Shri E.Srinivas had made a complaint that they were not in receipt of the wages as per the extant rules of the Minimum Wages Act and also to comment upon, since the Respondent is only the Principal Employer. On receipt of the said communication, the Respondent sought clarification from the contractor on the matter and the same was obtained vide letter dated 6/9/2006, which states that all the payments made by the contractor were as per the extant rules of the Minimum Wages Act. Further, the contractor stated that the lesser payments made by him to the Petitioner and others were the result of their absenteeism. Apart from the above, the contractor vide his letter dated 12.10.2006 also informed the Labour Enforcement Officer (Central), Hyderabad that he is following all the necessary prescribed procedures. Subsequently, the said complaint was withdrawn by the Petitioners vide letter dated 16/10/2006 addressed to Labour Enforcement Officer (Central) Hyderabad. It is denied that the Petitioner has ever been appointed by the Respondent. It is denied that the Respondent has ever employed the Petitioner as a Casual Labourer. The averments made by the Petitioner are baseless and devoid of merits. Besides, the Contractor has confirmed that the wages are being paid as per the extant rules under the Minimum Wages Act. It is

submitted that all the employees of this Centre are covered and governed by Central Services Medical Attendants Rules (CSMA) 1944 and Contributory Health Services Scheme (CHSS) as in the Department of Atomic Energy and the question of availing of medical facilities under Employees State Insurance (ESI), does not arise. Hence, it is evident that the contractor had arranged to register the Petitioner and other workmen under the ESI for availing the medical facilities. It is also submitted that the Respondents have never deducted any amount from the wages of the Petitioner, as alleged, and Respondents never disbursed salaries to the Petitioner. Shri E. Srinivas is a Contractor workman of the Respondent, as contended by the Petitioner. The Respondents deny that they had obtained any signature on the blank papers from the Petitioner and was never regarding the payments, since the same were always made by the Contractor and never by the Respondents. It is submitted that they had never terminated the Petitioner, as the Petitioner was not at all an employee of the Respondent. It is further reiterated that the Petitioner was never employed as casual labourer by the Respondents. However, the Contractor was at liberty to terminate the services of the Petitioner, if he felt that the work performed was unsatisfactory. Hence, the question of obligation on the part of the Respondents to regularize the Petitioner or payment of compensation does not arise. It is further submitted that the Respondents are in no way involved in the present dispute between the Contractor and his labourers and hence, the Respondents crave leave to discharge them from the present dispute. It is also further submitted that Bhabha Atomic Research Centre (BARC) is a R&D constituent unit of Department of Atomic Energy. This Centre is excluded "Industry" under Section 2(0) of ID Act. Hence the provisions of this I.D. Act are not applicable to this Centre. Hence, it is submitted that C.G.I.T. has no jurisdiction to hear the cases and no relief on this account can be granted by this Hon'ble Tribunal to the Petitioner. It is to submit that the claim of the Petitioner is false, misleading and without any justification. It is submitted that the Petitioner has not made out any case, which merits the intervention of this Hon'ble Tribunal. The Respondents therefore prayed to dismiss this Claim Application, as the same being devoid of merits.

4. Petitioner has examined herself as WW1 and marked photocopies of documents as Ex.W1 to Ex.W3. On the other hand, Respondent has examined MW1 on their behalf who has marked photocopies of six documents i.e., Ex.M1 to M6.

5. The respondent has submitted written arguments, but despite the sufficient opportunity granted to the petitioner, she did not adduce either oral or written arguments.

6. On the basis of the pleadings of both parties and arguments advanced, the following points emerge for determination:-

I. Whether there existed employer and employee relationship between the Respondent and Petitioner? If yes, it's effect?

II. Whether the action of the management in terminating the services of the Petitioner through oral termination dated 30.9.2006 is illegal and unjustified? If so, whether said order be liable to be set aside?

III. To what relief is the petitioner entitled?

7. In order to prove her claim Petitioner in evidence has examined herself as WW1 and also filed the documentary evidence, i.e., Ex.W1 demand notice dated 21.11.2006, Ex.W2 acknowledgement card and Ex.W3 ESI card of the Petitioner.

8. Per contra, Respondent has examined MW1 Sri P.M. Rao, in oral evidence and also filed the documentary evidence Ex.M1 to Ex.M6. Further, the witness MW1 has exhibited the document Ex.M1 an authorization letter dated 10.12.2010, Ex.M2 appointment letter dated 19.6.2006 in favour of M/s. E. Srinivas for Horticulture maintenance at CCCM, for contract. Ex.M3 is the letter from contractor dated 6.9.2006 to the Respondent along with payment and attendance list, Ex.M4 is copy of letter dated 12.10.2006 from contractor to LEO(C) along with acquaintance and attendance sheets. Ex.M5 is the letter from Petitioner along with other workmen to the LEO(C) withdrawing their complaint against contractor and Ex.M6 is the letter from Ministry of Labour & Employment dated 29.8.2006.

FINDINGS:-

9. **Point No. I**:- Petitioner has claimed in her claim statement that she was appointed in Respondent Centre in the month of March, 1995 to work as a Gardener. Further, the Petitioner claimed that she was also attending the other miscellaneous works such as Sweeping, Attender etc.. It is also submitted that the Respondent used to calculate daily wages and used to pay the same once in a month. She has also enjoyed the privileges of national and festival holidays which were entitled by the employees of Respondent. It is also submitted that Respondent has also given medical facilities in form of making member in the ESI corporation, due to which the Petitioner was allotted with ESI Number for her and to her family members to avail medical facility benefit from ESI. Further, it is contended that Respondent used to deduct the amount towards provident fund and the same was being deposited before the appropriate authority. Petitioner further contended that Respondent has not issued any appointment letter. But Respondent designated the Petitioner as an employee of the Respondent in the ESI card and PF card.

10. On the other hand, Respondent has refuted the claim made by the Petitioner that she was the employee of the Respondent. Further, it has been contended that Petitioner is the contract labour and contractor Mr. E. Srinivas who has been awarded the contract for Horticulture maintenance w.e.f 1.7.2006 to 30.7.2007 has engaged the Petitioner to work at the Respondent centre. Therefore, the Petitioner's submission that she was appointed in the Respondent centre in the month of March, 1995 is far from the truth and is baseless. The fact is that applicant was working under contractor and the Respondent has never engaged any gardener.

11. To determine the existence of employer and employee relationship between the Respondent and the Petitioner four elements generally need to be considered. They are:-

i) The selection and engagement of employee

ii) payment of wages

iii) Power of dismissal and

iv) power to control the employee's conduct

12. The burden of proof to establish the claim that the Workman was the employee of the Respondent, is upon the Petitioner, whereas in rebuttal Respondent has to prove that the dismissal was for valid reason. However, in the case of illegal dismissal, the employer and employee relationship must be established first. It is incumbent upon the employee to prove employer and employee relationship by adducing substantial evidence. However, for the element of control, it must be noted that not every form of control that will create an employer and employee relationship. No employer and employee relationship exists when control is in the form of rule that merely serve as guidelines towards the achievement of the results without dictating means and methods to attend them. Employer and employee relationship exists when control is in the form of rules that fix the methodology to attain the specific results and bind the worker to use such thing. It is settled law that the ultimate control is the most important element when determining the existence of employer and employee relationship. It pertains not only to result but also to means and methods of attaining those results.

13. Therefore, in view of the above, in order to find out whether there existed the employer and employee relationship between the parties, first of all we have to examine the evidence adduced on behalf of the Petitioner. In this context, Petitioner has filed chief affidavit as WW1, wherein she has reiterated the averments made in her claim statement. Further, in her chief examination she has also exhibited the documents, Ex.W1 to W3. Admittedly Petitioner has not filed any document in evidence to show that she was appointed by the Respondent as Gardener. She has not filed any document which would show that Respondent had paid wages to the Petitioner for the work done. Further, no iota of evidence has been adduced by Petitioner on record that the Respondent had the power of dismissal of the Petitioner from employment. Further, no evidence to show that the Respondent has power to supervise and control of the conduct of the employee for doing the job of maintenance of Horticulture at the Respondent centre**.**

In the case of Automobile Association Upper India V. P.O. Labour Court-II & Anor., 2006 DLJ 160 Hon'ble Delhi High Court have held:-

"engagement and appointment of the workman in service can be established either by direct evidence like existence and production of appointment letter or written agreement, or by circumstantial evidence of incidental or ancillary records, in nature of attendance register, salary register, leave records, deposit of PF contribution, ESI etc. or even by examination or co-worker who may depose before the court that the workman was working with the management."

But the Petitioner herein failed to produce such evidence and failed to discharge her onus to establish her claim.

14. Although Petitioner has filed the documents Ex.W1 to W3, but WW1 did not depose in her evidence that how and in what manner by these documents she purports to establish her claim of appointment at Respondent centre to work as a gardener. Further, perusal of these documents would reveal that no document pertains to the appointment of the Petitioner by the Respondent as she had claimed. Further, these documents would not show that Respondent had power of supervision and control the employees conduct to carry out the job assigned to her. Thus, Petitioner has not succeeded to establish the existence of employer and employee relationship between the Petitioner and Respondent from these documents. However, witness WW1 was cross examined by the Respondent counsel and in her cross examination WW1 has admitted that she was orally appointed in the Respondent centre and ever any appointment letter was given to her. Further, WW1 states that she did not receive any call letter from employment office. Further, WW1 states that, ESI card was issued to her by BARC though the name of the employer is not there on the card. It is correct that she made complaint to RLC(C) for less payment of wages by the BARC, the complaint was made against the BARC, not against the contractor. It is not correct to suggest that Mr. E. Srinivas has appointed her and has disengaged her. Further, WW1 states that, it is not correct that neither BARC has appointed her nor disengaged her. Further WW1 states that it is correct that letter dated 16.6.2006 was given by her and other co-workers. It was given for withdrawal of the earlier complaint which was given against the contractor. Further, paper No. 6 of list of documents filed by the Respondent i.e., Xerox copy of the muster roll, her signature is there at

serial No. 8 which is marked as Ex.M2. Further, she admits that she received the wages for 15 days Rs. 1627.50 ps. and others also received their respective wages.

15. Thus, from the statement of WW1 in her cross examination it manifests that although she was engaged to work at Respondent centre as a daily wager but no appointment letter has been issued by the Respondent. Petitioner has not adduced any evidence that wages were paid by the Respondent. Thus, in the absence of evidence of appointment letter or payment of wages by the Respondent, it clearly delineates that she was not employed/ engaged by the Respondent. However, WW1 has admitted in her cross examination that the letter dated 16.10.2006, Ex.M5 was given by her and other co-workers regarding less payment of wages withdrawal of the complaint which was moved earlier against the contractor by them. The said letter would show that Petitioner along with co-employees has made the complaint to the competent authority, i.e., RLC(C) against contractor who had engaged them to work at Respondent center as gardener payment of less wages to them by the contractor. Thus, for the sake of argument of the Petitioner, if she was the employee of the Respondent, then why she had moved a complaint against the contractor for less payment of wages. This document goes to show that Petitioner was the employee of the contractor and not of the Respondent. Further, the documentary evidence Ex.W3 would show that there is no details of the employer on these cards. Therefore, Petitioner could not succeed to establish her claim on the basis of these documents that she was the employee of the Respondent. Thus, her claim is not substantiated by any cogent evidence.

16. It is settled principle of law, that a person who set up his plea of relationship of employer and employee, the burden of proof would rests upon him. In this context, few decisions of Hon'ble High Court and Hon'ble Apex Court are being discussed below:-

In the case of **Baburam Vs. Govt. of NCT of Delhi & Anr., 247 (2018) Delhi Law times 596 wherein Hon'ble High Court of Delhi have held**:-

"It is well settled principle of law that the person, who sets up a plea of existence of relationship of employer and employee, the burden would be upon him. In this regard, the ***Hon'ble Supreme Court in the case of Workmen of Nilgiri Coop. Mkt. Society Ltd. V. State of T.N. and Others, (2004) 3 SCC 514*** *has approved the judgment of Kerala and Calcutta High Court, where the plea of the workman that he was employee of the company was denied by the company and it was held that it was not for the Company to prove that he was not an employee.*

The burden of proof being on the workman to establish employer and employee relationship an adverse inference cannot be drawn against the employer that if he were to produce books of accounts they would have proved employer and employee relationship."

In the case of **N.C. John Vs. Secretary Thodupuha Taluk Shop and Commercial Establishment Workers' Union and others, Hon'ble Kerala High Court have held:-**

"*The burden of proof being on the workman to establish the employer - employee relationship an adverse inference cannot be drawn against the employer that if he were to produce books of accounts they would have proved employer employee relationship."*

Further, in the case of **'Kanpur Electricity Supply Co. Ltd. Vs Shamim Mirza 2009 1 SCC 20, the Hon'ble Supreme Court held as under :-**

"*It is trite that the burden to prove that a claimant was in the employment of a particular management, primarily lies on the person who claims to be so but the degree of proof, so required, varies from case to case. It is neither feasible nor advisable to lay down an abstract rule to determine the employer - employee relationship."*

Thus, in view of the settled principle of law regarding burden of proof in this respect, in the present matter Petitioner has utterly failed to discharge her burden of proof on the basis of her documentary as well as oral evidence that she was employee of the Respondent center and it has not been proved that employer and employee relationship existed between them. Petitioner failed to produce any proof of payment of salary or wages to her by the management nor any appointment letter or termination order has been produced. There is no documentary evidence to prove relationship of employment in the case at hand. Merely oral testimony of Petitioner is not sufficient to prove relationship of employer and employee.

17. On the other hand, Respondent in his counter as well as in evidence has refuted the allegation and claim of the Petitioner as averred by her. Respondent has contended that a contract for Horticulture maintenance was awarded to Mr. E. Srinivas w.e.f 1.7.2006 to 30.7.2007 being the lowest bidder as specified in the contract and contractor had employed eight gardeners for the purpose for which payment had been made as per Schedule A of the contract. Further Respondent contended that as per receipt of the letter dated 7.6.2006 of the Ministry of Labour and Employment, notifying the minimum wages including the variable Dearness Allowance Clause, Respondent has directed the contractor to ensure the payment to the workmen as per the extent of rules of Minimum Wages Act. Respondent has filed the documents in evidence Ex.M1, M2, M3, M4 and M6, which goes to show that direction has been issued to contractor for the compliance of Minimum Wages Act in regard to payment of minimum wages to the

contract labour i.e., Petitioner etc.. Ex.M5 is the document of withdrawal of complaint by Petitioner and other co-employees. It goes to show that Petitioner and co-employees vide letter dated 16.10.2006, addressed to the LEO(C), Hyderabad, has prayed that they are working at Respondent BARC centre, through contractor, though earlier they made a complaint for payment of less wages, now, he is paying the wages as per Act, hence they are withdrawing that complaint. Thus, document Ex.M5 manifests clearly that the Petitioner was engaged by contractor and had worked as contract labour at the Respondent centre. Petitioner was not employed by the Respondent directly. Therefore, documents exhibited by Respondent goes to show that Petitioner had worked at the Respondent centre as a contract labour and was paid wages through contractor. Respondent has examined witness MW1 who has marked the documents, Ex.M1 an authorization letter dated 10.12.2010, Ex.M2 letter dated 6.9.2006 in favour of M/s. E. Srinivas for Horticulture maintenance at CCCM, on contract, Ex.M3 is copy of attendance roll, Ex.M4 is letter dated 12.10.2006 from contractor to LEO(C), Ex.M5 is the letter written and moved by from Petitioner along with co-employees to the LEO(C) withdrawing complaint which was moved by them against contractor for less payment of wages and Ex.M6 is the letter from LEO(C) regarding complaint on less payment of wages by the contractor Mr. E. Srinivas. Ex.M2 contains terms and conditions of the contract.

18. Thus, on going through the oral and documentary evidence relied upon by the Petitioner in support of her claim, and also documents filed by Respondent , I come to conclusion that Petitioner has utterly failed to establish and prove her claim that she was employee of Respondent management. The Petitioner has also not called her co-worker to examine and prove that she was appointed by the Management as claimed by her. None of the documents relied upon by the Petitioner are in respect of her appointment by the Respondent or payment of wages made by the Respondent Management. Merely oral or bald averments made by the Petitioner workman is not sufficient to prove that workman was the employee of Respondent centre. There is nothing in the testimony of the witness WW1 as well as documentary evidence to substantiate or corroborate the claim of the workman. Rather, testimony of the MW1 witness remains unimpeachable / uncontraverted in one way or other. Thus, Petitioner claimant utterly failed to produce any cogent proof of payment of wages/salary made by the Management or any appointment letter issued by the Respondent. Merely oral testimony of the Petitioner is not sufficient to prove the employer and employee relationship between the Respondent centre and the Petitioner workman. However, no document on record has been filed from which it can be ascertained that the workman Petitioner was on the rolls of the Management. Thus, for the want of such evidence it can be held safely that the onus has not been discharged by the Petitioner to establish her claim. Thus, Petitioner has utterly failed to prove that she was appointed by the Respondent as a gardener for the period claimed by her in the statement of claim or even she has failed to establish and prove that she had worked for a period of 240 days prior to her alleged termination of her services by the Respondent Management just preceding from the date of her termination in the 12 months of a calendar year. Therefore, the claim of the Petitioner herein is not found established and proved on the basis of evidence produced by her.

Constitutional Bench of Hon'ble Supreme Court of India in the case of Steel Authority of India and others Vs. National Union Water Front Workers & Ors dated 30.8.2001 AIR SCC 3527 has laid down, the principles for determining the relationship of employer and employee in any matter under the given circumstances, and have held:-

"*The term contract labour as defined in clause (b) of Section 2 reads:*

(2)(1)(b) 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 the principal employer. By definition the term contract labour is a species of workman. A workman shall be so deemed when he is hired in or in connection with the work of an establishment by or through a contractor, with or without the knowledge of the principal employer. A workman may be hired: (1) in an establishment by the principal employer or by his agent with or without the knowledge of the principal employer; or (2) in connection with the work of an establishment by the principal employer through a contractor or by a contractor with or without the knowledge of the principal employer. Where a 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 where a 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 workman for any work of the establishment, a question might arise whether the contractor is a mere camouflage as in Hussainbhai Calicuts case (supra) and in Indian Petrochemicals Corporations case (supra) etc.; if the answer is in the affirmative, the workman will be in fact an employee of the principal employer; but if the answer is in the negative, the workman will be a contract labour."

Here in the matter at hand, the document Ex.M2 would reveal that vide communication dated 19.6.2006 the Respondent had accepted the quotation of contractor Mr. E. Srinivas for maintenance of Horticulture work and annexed Schedule 'A' is terms and conditions of contract that goes to show that workman has been hired by the contractor, in or in connection with the work of the Respondent establishment and contractor has undertaken the contract to produce a given result for maintenance of Horticulture of the Respondent center and to produce a given result under said contract, contractor had engaged Petitioner and other co-workmen. Therefore, no employer and employee relationship existed between Petitioner and Respondent. Thus, in view of the law laid down by the

Hon'ble Apex Court and on going through the evidence of both the parties on record, it can safely be held that there existed no employer and employee relationship between the Respondent and Petitioner.

Thus, Point No.I is answered accordingly.

19. **Point No. II:** - In view of the foregone discussion and finding given at Point No.I, it has been established that there existed no relationship of employer and employee between the Respondent and the Petitioner, and Petitioner was engaged by the contractor and also disengaged by the contractor. Petitioner was merely a contract labour. However, Petitioner was not directly engaged by the Respondent to work at their center, hence, the action of Respondent in termination of the service of Petitioner is legal and justified.

Thus, Point No. II is answered against the Petitioner and in favour of Respondent.

20. Point No. III:- In view of the fore gone discussion and finding arrived at Points No.I & II, I am of the considered view that Petitioner is not entitled to any relief. Hence, Petitioner 's claim statement is liable to be dismissed.

Thus, Point No.III is answered accordingly.

AWARD

In the result, the action of the management in terminating the services of the Petitioner Smt. B. Sakku Bai, Gardener, through oral termination dated 30.9.2006 is held legal and justified. Hence, the Petitioner is not entitled to any relief, as such, the petition is liable to be dismissed. Therefore, the petition stands dismissed.

Award is passed accordingly. Transmit.

Dictated to Smt. P. Phani Gowri, Personal Assistant, transcribed by her, corrected and signed by me on this the 22nd day of April, 2024.

IRFAN QAMAR, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner	Witnesses examined for the Respondent
WW1: Smt. B. Sakku Bai	MW1: Sri P.M. Rao

Documents marked for the Petitioner

Ex.W1: Office copy of the demand notice dt. 21.11.2006

EX.W2: Acknowledgement card

Ex.W3: ESI Card of Petitioner

Documents marked for the Respondent

Ex.M1:	Photocopy of the Lr.No.CCCM/BARC/Adm/2010/1212, dt.10.12.2010 from Respondent to Sr. CGSC
Ex.M2:	Photocopy of the lr. No.CCCM/BARC/118/2006/689 dt.19.6.2006 reg. horticulture maintenance at CCCM to the contractor by Respondent.
Ex.M3:	Photocopy of the lr. Dt.6.9.2006 from Mr. E. Srinivas to the Respondent.
Ex.M4:	Photocopy of the lr. Dt. 12.10.2006 from Mr. E. Srinivas to the LEO(C)
Ex.M5:	Photocopy of the lr. Dt. 16.10.2006 withdrawing complaint against contractor by Petitioner along with other workmen
Ex.M6:	Photocopy of the lr. From LEO(C) to the Respondent reg. complaint recd. Reg. less payment of wages.

नई दिल्ली, 13 मई, 2024

का.आ. 912.—औद्योगिक विवाद अधिनियम, (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार **भाभा परमाणु अनुसंधान केंद्र, वास्तुकला और सिविल इंजीनियरिंग प्रभाग, सी.सी.सी.एम.प्रोजेक्ट, ई.सी.आई.एल. (पी.ओ.), हैदराबाद,** के प्रबंधतंत्र के संबद्ध नियोजकों और **श्रीमती एम. जयम्मा, कामगार,** के बीच अनुबंध में निर्दिष्ट

केन्द्रीय सरकार औद्योगिक अधिकरण- सह- श्रम न्यायालय- हैदराबाद पंचाट (संदर्भ संख्या 22/2007) को जैसा कि अनुलग्नक में दिखाया गया है, प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 10/05/2024 को प्राप्त हुआ था।

[सं. एल–42025-07-2023-93-आईआर(डीयू)]

दिलीप कुमार, अवर सचिव

New Delhi, the 13th May, 2024

S.O. 912.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 22/2007) of the **Central Government Industrial Tribunal cum Labour Court– Hyderabad** as shown in the Annexure, in the Industrial dispute between the employers in relation to **Bhabha Atomic Research Centre, Architecture & Civil Engineering Division, C.C.C.M. Project, E.C.I.L. (P.O.),Hyderabad, and Smt. M.Jayamma, Worker,** which was received along with soft copy of the award by the Central Government on 10/05/2024.

[No. L-42025-07-2023-93-IR (DU)]

DILIP KUMAR, Under Secy.

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT AT HYDERABAD

Present: - **Sri Irfan Qamar**

Presiding Officer

Dated the 22nd day of April, 2024

INDUSTRIAL DISPUTE L.C.No.22/2007

Between:

Smt. M.Jayamma,

W/o Satyanarayana,

R/o H.No.16-78,

Balaji Nagar, Sai Nagar (P),

Yapral, Shamirpet (M),

Ranga Reddy District. .....Petitioner

AND

Bhabha Atomic Research Centre,

Arch. & Civil Engineering Division,

C.C.C.M.Project, E.C.I.L. (P.O.),

Hyderabad – 500 762. ….Respondent

Appearances:

For the Petitioner : M/s. G. Ravi Mohan, G. Naresh Kumar & Vikas Sharma, Advocates

For the Respondent : M/s. P. Raveender Reddy & M. Mallikarjun, Advocates

AWARD

Smt. M.Jayamma who worked as Gardener (who will be referred to as the workman) has filed this petition under Sec. 2A(2) of the Industrial Disputes Act, 1947 against the Respondent Bhabha Atomic Research Centre seeking for declaring the proceeding dated 30.9.2006 issued by Respondent as illegal, arbitrary and to set aside the same consequently directing the Respondents to reinstate the Petitioner into service duly granting all the consequential benefits such as continuity of service, back wages and all other attendant benefits etc., and such other reliefs as this court may deems fit.

2. **The averments made in the petition in brief are as follows**:

It is submitted that, the Petitioner is a lady having experience in gardening works prior to her appointment in the Respondent Center she was trained in the gardening work. Therefore, basing upon her technical nature of work she was appointed in the Respondent Center as a gardener. It is further submitted that though she was appointed as gardener she was also attending the other miscellaneous works such as sweeping, Attendar etc.. It is submitted that, the Petitioner was appointed in Respondent Center in the month of May, 1991, since her appointment, she had been performing duties to the utmost satisfaction of her superiors. It is submitted that there are about 40 employees in the Respondent Center. There are no regular attenders, sweepers in the Respondent Center, the Petitioner and other similar situated persons were being engaged on a consolidated pay which was less than Minimum Wages. It is submitted that, the Petitioner was expert in gardening work. It is submitted that, the Respondent used to calculate daily wages and used to pay the same once in a month. The Petitioner was enjoying the privileges of national and festival holidays and other benefits which were entitled by them. It is submitted that, the Respondent has been given Medical facilities in the form of making a member in the ESI corporation due to which the Petitioner was allotted with ESI number for the Petitioner and her family members availed Medical benefits from E.S.I., so also the Respondent used to deduct the amount towards the provident fund and the same was being deposited before the appropriate authority. It is submitted that, though the Respondent has not issued appointment order and the Respondent designated the Petitioner as an employee of the Respondent in the E.S.I. card and Provident Fund card. While the matter stood thus, the Respondent used to pay less wages than the minimum wages prescribed by the Government without issuing any notice w.e.f. September 2005. Then, the Petitioner made an Application to the Respondent to pay the minimum wages and also requested to pay more keeping in view of her length of services. But in vain. She made an Application to the Regional Labour Commissioner(C) in respect of pay for minimum wages, then the Respondent came with a plea before the RLC(C), stating that the Petitioner is not an employee of the Respondent Center and further stated that Petitioner is a contract Labour and showed Mr.Srinivas as a contractor. It is submitted that, it is unfair on the part of Respondent that Respondent has shown that one of the workmen as a contractor who does not have any license prescribed under provision of Law. It is submitted that, in view of the complaint of the Petitioner to the RLC(C) the Respondent terminated the Petitioner and did not permit the Petitioner to enter into the premises. It is submitted that, the Respondent obtained signature on a blank Paper for paying the salaries for the month of August & September, 2006 the said action of Respondent is nothing but unfair labour practice which attracts Penal action. It is submitted that, the Respondent tried to change the service condition of the Petitioner by converting her into a contract Labour without assigning any reason and without issuing any Notice which is illegal. It is submitted that Petitioner worked for 10 years without any break in service as a causal labour. Therefore it is obligation part of Respondent to regularize the service of the Petitioner but however the Respondent terminated services of the Petitioner w.e.f. 30-09-2006 without issuing notice and without paying compensation of service rendered by her. The said action of Respondent is in violation of Sec 25 (F) of Industrial Disputes Act and in violation of Sec 9 of I.D. Act. Having no other alternative remedy the Petitioner is constrained to approach this Hon'ble Court under section 2 A (2) of Industrial Disputes Act, 1947 for necessary relief. It is submitted that the Petitioner is the only earning member of her family and it has become very difficult to eke their livelihood consequent to illegal termination. It is therefore prayed to set aside the Oral termination dated 30.9.2006 passed by the Respondent and consequently direct the Respondent to reinstate the Petitioner into service with continuity of service, back wages and all other attendant benefits.

3. **The Respondents filed counter denying the averments made in the petition, with the averments in brief which runs as follows**:

It is submitted that Applicant's statement that she was appointed in the Respondents Centre in the month of March, 1995, which is far from truth and baseless. The fact is that the applicant was working under a Contractor and the Respondent had never engaged any gardener. It is submitted that it is the contractor, who had engaged the Petitioner. The Respondent is making payment to the Contractor on production/submission of the bills as approved in the Tender document. Petitioner is challenging the so-called oral termination order dated 30/09/2006 passed by the Respondent, which is baseless and without any substance. Hence, the Petitioner cannot claim to re-instate her into the service with continuity of service, back wages and all other benefits since in the first place, the Petitioner had never been appointed at all by the Respondent. A contract for horticulture maintenance was awarded to M/s. E. Srinivas w.e.f. 1/7/2006 and was valid upto 30/6/2007. Tenders were invited for the same and the contract was awarded to M/s. E. Srinivas, being the lowest bidder. As specified in the contract, the Contractor had employed eight gardeners for the purpose for which payment had to be made as per the Schedule of Quantities (Schedule 'A) of the Contract. It is further submitted that the Respondents are in receipt of Order No. 1/15(1)/2006- L.S.II dated 7/6/2006 from the Ministry of Labour and Employment, notifying the minimum wages including variable Dearness Allowance clause. It is also submitted that the Respondents received letter No. 95/1/2006-SK/E4 dated 29/8/2006 from the Labour Enforcement Officer (Central), Ministry of Labour & Employment intimating that the eight of the labourers engaged by the said Contractor Shri E.Srinivas had made a complaint that they were not in receipt of the wages as per the extant rules of the Minimum Wages Act and also to comment upon, since the Respondent is only the Principal Employer. On receipt of the said communication, the Respondent sought clarification from the contractor on the matter and the same was

obtained vide letter dated 6/9/2006, which states that all the payments made by the contractor were as per the extant rules of the Minimum Wages Act. Further, the contractor stated that the lesser payments made by him to the Petitioner and others were the result of their absenteeism. Apart from the above, the contractor vide his letter dated 12.10.2006 also informed the Labour Enforcement Officer (Central), Hyderabad that he is following all the necessary prescribed procedures. Subsequently, the said complaint was withdrawn by the Petitioners vide letter dated 16/10/2006 addressed to Labour Enforcement Officer (Central) Hyderabad. It is denied that the Petitioner has ever been appointed by the Respondent. It is denied that the Respondent has ever employed the Petitioner as a Casual Labourer. The averments made by the Petitioner are baseless and devoid of merits. Besides, the Contractor has confirmed that the wages are being paid as per the extant rules under the Minimum Wages Act. It is submitted that all the employees of this Centre are covered and governed by Central Services Medical Attendants Rules (CSMA) 1944 and Contributory Health Services Scheme (CHSS) as in the Department of Atomic Energy and the question of availing of medical facilities under Employees State Insurance (ESI), does not arise. Hence, it is evident that the contractor had arranged to register the Petitioner and other workmen under the ESI for availing the medical facilities. It is also submitted that the Respondents have never deducted any amount from the wages of the Petitioner, as alleged, and Respondents never disbursed salaries to the Petitioner. Shri E. Srinivas is a Contractor workman of the Respondent, as contended by the Petitioner. The Respondents deny that they had obtained any signature on the blank papers from the Petitioner and was never regarding the payments, since the same were always made by the Contractor and never by the Respondents. It is submitted that they had never terminated the Petitioner, as the Petitioner was not at all an employee of the Respondent. It is further reiterated that the Petitioner was never employed as casual labourer by the Respondents. However, the Contractor was at liberty to terminate the services of the Petitioner, if he felt that the work performed was unsatisfactory. Hence, the question of obligation on the part of the Respondents to regularize the Petitioner or payment of compensation does not arise. It is further submitted that the Respondents are in no way involved in the present dispute between the Contractor and his labourers and hence, the Respondents crave leave to discharge them from the present dispute. It is also further submitted that Bhabha Atomic Research Centre (BARC) is a R&D constituent unit of Department of Atomic Energy. This Centre is excluded “Industry" under Section 2(0) of ID Act. Hence the provisions of this I.D. Act are not applicable to this Centre. Hence, it is submitted that C.G.I.T. has no jurisdiction to hear the cases and no relief on this account can be granted by this Hon'ble Tribunal to the Petitioner. It is to submit that the claim of the Petitioner is false, misleading and without any justification. It is submitted that the Petitioner has not made out any case, which merits the intervention of this Hon'ble Tribunal. The Respondents therefore prayed to dismiss this Claim Application, as the same being devoid of merits.

4. Petitioner has examined herself as WW1 and marked photocopies of documents as Ex.W1 to Ex.W3. On the other hand, Respondent has examined MW1 on their behalf who has marked photocopies of six documents i.e., Ex.M1 to M6.

5. The respondent has submitted written arguments, but despite the sufficient opportunity granted to the petitioner, she did not adduce either oral or written arguments.

6. On the basis of the pleadings of both parties and arguments advanced, the following points emerge for determination:-

I. Whether there existed employer and employee relationship between the Respondent and Petitioner? If yes, it’s effect?

II. Whether the action of the management in terminating the services of the Petitioner through oral termination dated 30.9.2006 is illegal and unjustified? If so, whether said order be liable to be set aside?

III. To what relief is the petitioner entitled?

7. In order to prove her claim Petitioner in evidence has examined herself as WW1 and also filed the documentary evidence, i.e., Ex.W1 demand notice dated 21.11.2006, Ex.W2 acknowledgement card and Ex.W3 ESI card of the Petitioner.

8. Per contra, Respondent has examined MW1 Sri P.M. Rao, in oral evidence and also filed the documentary evidence Ex.M1 to Ex.M6. Further, the witness MW1 has exhibited the document Ex.M1 an authorization letter dated 10.12.2010, Ex.M2 appointment letter dated 19.6.2006 in favour of M/s. E. Srinivas for Horticulture maintenance at CCCM, for contract. Ex.M3 is the letter from contractor dated 6.9.2006 to the Respondent along with payment and attendance list, Ex.M4 is copy of letter dated 12.10.2006 from contractor to LEO(C) along with acquaintance and attendance sheets. Ex.M5 is the letter from Petitioner along with other workmen to the LEO(C) withdrawing their complaint against contractor and Ex.M6 is the letter from Ministry of Labour & Employment dated 29.8.2006.

FINDINGS:-

9. **Point No. I**:- Petitioner has claimed in her claim statement that she was appointed in Respondent Centre in the month of March, 1995 to work as a Gardener. Further, the Petitioner claimed that she was also attending the

other miscellaneous works such as Sweeping, Attender etc.. It is also submitted that the Respondent used to calculate daily wages and used to pay the same once in a month. She has also enjoyed the privileges of national and festival holidays which were entitled by the employees of Respondent. It is also submitted that Respondent has also given medical facilities in form of making member in the ESI corporation, due to which the Petitioner was allotted with ESI Number for her and to her family members to avail medical facility benefit from ESI. Further, it is contended that Respondent used to deduct the amount towards provident fund and the same was being deposited before the appropriate authority. Petitioner further contended that Respondent has not issued any appointment letter. But Respondent designated the Petitioner as an employee of the Respondent in the ESI card and PF card.

10. On the other hand, Respondent has refuted the claim made by the Petitioner that she was the employee of the Respondent. Further, it has been contended that Petitioner is the contract labour and contractor Mr. E. Srinivas who has been awarded the contract for Horticulture maintenance w.e.f 1.7.2006 to 30.7.2007 has engaged the Petitioner to work at the Respondent centre. Therefore, the Petitioner's submission that she was appointed in the Respondent centre in the month of March, 1995 is far from the truth and is baseless. The fact is that applicant was working under contractor and the Respondent has never engaged any gardener.

11. To determine the existence of employer and employee relationship between the Respondent and the Petitioner four elements generally need to be considered. They are:-

i) The selection and engagement of employee

ii) payment of wages

iii) Power of dismissal and

iv) power to control the employee's conduct

12. The burden of proof to establish the claim that the Workman was the employee of the Respondent, is upon the Petitioner, whereas in rebuttal Respondent has to prove that the dismissal was for valid reason. However, in the case of illegal dismissal, the employer and employee relationship must be established first. It is incumbent upon the employee to prove employer and employee relationship by adducing substantial evidence. However, for the element of control, it must be noted that not every form of control that will create an employer and employee relationship. No employer and employee relationship exists when control is in the form of rule that merely serve as guidelines towards the achievement of the results without dictating means and methods to attend them. Employer and employee relationship exists when control is in the form of rules that fix the methodology to attain the specific results and bind the worker to use such thing. It is settled law that the ultimate control is the most important element when determining the existence of employer and employee relationship. It pertains not only to result but also to means and methods of attaining those results.

13. Therefore, in view of the above, in order to find out whether there existed the employer and employee relationship between the parties, first of all we have to examine the evidence adduced on behalf of the Petitioner. In this context, Petitioner has filed chief affidavit as WW1, wherein she has reiterated the averments made in her claim statement. Further, in her chief examination she has also exhibited the documents, Ex.W1 to W3. Admittedly Petitioner has not filed any document in evidence to show that she was appointed by the Respondent as Gardener. She has not filed any document which would show that Respondent had paid wages to the Petitioner for the work done. Further, no iota of evidence has been adduced by Petitioner on record that the Respondent had the power of dismissal of the Petitioner from employment. Further, no evidence to show that the Respondent has power to supervise and control of the conduct of the employee for doing the job of maintenance of Horticulture at the Respondent centre**.**

In the case of Automobile Association Upper India V. P.O. Labour Court-II & Anor., 2006 DLJ 160 Hon'ble Delhi High Court have held:-

"engagement and appointment of the workman in service can be established either by direct evidence like existence and production of appointment letter or written agreement, or by circumstantial evidence of incidental or ancillary records, in nature of attendance register, salary register, leave records, deposit of PF contribution, ESI etc. or even by examination or co-worker who may depose before the court that the workman was working with the management."

But the Petitioner herein failed to produce such evidence and failed to discharge her onus to establish her claim.

14. Although Petitioner has filed the documents Ex.W1 to W3, but WW1 did not depose in her evidence that how and in what manner by these documents she purports to establish her claim of appointment at Respondent centre to work as a gardener. Further, perusal of these documents would reveal that no document pertains to the appointment of the Petitioner by the Respondent as she had claimed. Further, these documents would not show that Respondent had power of supervision and control the employees conduct to carry out the job assigned to her. Thus, Petitioner has not succeeded to establish the existence of employer and employee relationship between the Petitioner and Respondent from these documents. However, witness WW1 was cross examined by the Respondent counsel and

in her cross examination WW1 has admitted that she was orally appointed in the Respondent centre and ever any appointment letter was given to her. Further, WW1 states that she did not receive any call letter from employment office. Further, WW1 states that, ESI card was issued to her by BARC though the name of the employer is not there on the card. It is correct that she made complaint to RLC(C) for less payment of wages by the BARC, the complaint was made against the BARC, not against the contractor. It is not correct to suggest that Mr. E. Srinivas has appointed her and has disengaged her. Further, WW1 states that, it is not correct that neither BARC has appointed her nor disengaged her. Further WW1 states that it is correct that letter dated 16.6.2006 was given by her and other co-workers. It was given for withdrawal of the earlier complaint which was given against the contractor. Further, paper No. 6 of list of documents filed by the Respondent i.e., Xerox copy of the muster roll, her signature is there at serial No. 4 which is marked as Ex.M2. Further, she admits that she received the wages for 8 days Rs. 868/- and others also received their respective wages.

15. Thus, from the statement of WW1 in her cross examination it manifests that although she was engaged to work at Respondent centre as a daily wager but no appointment letter has been issued by the Respondent. Petitioner has not adduced any evidence that wages were paid by the Respondent. Thus, in the absence of evidence of appointment letter or payment of wages by the Respondent, it clearly delineates that she was not employed/ engaged by the Respondent. However, WW1 has admitted in her cross examination that the letter dated 16.10.2006, Ex.M5 was given by her and other co-workers regarding less payment of wages withdrawal of the complaint which was moved earlier against the contractor by them. The said letter would show that Petitioner along with co-employees has made the complaint to the competent authority, i.e., RLC(C) against contractor who had engaged them to work at Respondent center as gardener payment of less wages to them by the contractor. Thus, for the sake of argument of the Petitioner, if she was the employee of the Respondent, then why she had moved a complaint against the contractor for less payment of wages. This document goes to show that Petitioner was the employee of the contractor and not of the Respondent. Further, the documentary evidence Ex.W3 would show that there is no details of the employer on these cards. Therefore, Petitioner could not succeed to establish her claim on the basis of these documents that she was the employee of the Respondent. Thus, her claim is not substantiated by any cogent evidence.

16. It is settled principle of law, that a person who set up his plea of relationship of employer and employee, the burden of proof would rests upon him. In this context, few decisions of Hon'ble High Court and Hon'ble Apex Court are being discussed below:-

In the case of **Baburam Vs. Govt. of NCT of Delhi & Anr., 247 (2018) Delhi Law times 596 wherein Hon'ble High Court of Delhi have held**:-

"It is well settled principle of law that the person, who sets up a plea of existence of relationship of employer and employee, the burden would be upon him. In this regard, the ***Hon'ble Supreme Court in the case of Workmen of Nilgiri Coop. Mkt. Society Ltd. V. State of T.N. and Others, (2004) 3 SCC 514*** *has approved the judgment of Kerala and Calcutta High Court, where the plea of the workman that he was employee of the company was denied by the company and it was held that it was not for the Company to prove that he was not an employee.*

The burden of proof being on the workman to establish employer and employee relationship an adverse inference cannot be drawn against the employer that if he were to produce books of accounts they would have proved employer and employee relationship."

In the case of **N.C. John Vs. Secretary Thodupuha Taluk Shop and Commercial Establishment Workers' Union and others, Hon'ble Kerala High Court have held:-**

"*The burden of proof being on the workman to establish the employer - employee relationship an adverse inference cannot be drawn against the employer that if he were to produce books of accounts they would have proved employer employee relationship."*

Further, in the case of **'Kanpur Electricity Supply Co. Ltd. Vs Shamim Mirza 2009 1 SCC 20, the Hon'ble Supreme Court held as under :-**

"*It is trite that the burden to prove that a claimant was in the employment of a particular management, primarily lies on the person who claims to be so but the degree of proof, so required, varies from case to case. It is neither feasible nor advisable to lay down an abstract rule to determine the employer - employee relationship."*

Thus, in view of the settled principle of law regarding burden of proof in this respect, in the present matter Petitioner has utterly failed to discharge her burden of proof on the basis of her documentary as well as oral evidence that she was employee of the Respondent center and it has not been proved that employer and employee relationship existed between them. Petitioner failed to produce any proof of payment of salary or wages to her by the management nor any appointment letter or termination order has been produced. There is no documentary evidence to prove relationship of employment in the case at hand. Merely oral testimony of Petitioner is not sufficient to prove relationship of employer and employee.

17. On the other hand, Respondent in his counter as well as in evidence has refuted the allegation and claim of the Petitioner as averred by her. Respondent has contended that a contract for Horticulture maintenance was awarded to Mr. E. Srinivas w.e.f 1.7.2006 to 30.7.2007 being the lowest bidder as specified in the contract and contractor had employed eight gardeners for the purpose for which payment had been made as per Schedule A of the contract. Further Respondent contended that as per receipt of the letter dated 7.6.2006 of the Ministry of Labour and Employment, notifying the minimum wages including the variable Dearness Allowance Clause, Respondent has directed the contractor to ensure the payment to the workmen as per the extent of rules of Minimum Wages Act. Respondent has filed the documents in evidence Ex.M1, M2, M3, M4 and M6, which goes to show that direction has been issued to contractor for the compliance of Minimum Wages Act in regard to payment of minimum wages to the contract labour i.e., Petitioner etc.. Ex.M5 is the document of withdrawal of complaint by Petitioner and other co-employees. It goes to show that Petitioner and co-employees vide letter dated 16.10.2006, addressed to the LEO(C), Hyderabad, has prayed that they are working at Respondent BARC centre, through contractor, though earlier they made a complaint for payment of less wages, now, he is paying the wages as per Act, hence they are withdrawing that complaint. Thus, document Ex.M5 manifests clearly that the Petitioner was engaged by contractor and had worked as contract labour at the Respondent centre. Petitioner was not employed by the Respondent directly. Therefore, documents exhibited by Respondent goes to show that Petitioner had worked at the Respondent centre as a contract labour and was paid wages through contractor. Respondent has examined witness MW1 who has marked the documents, Ex.M1 an authorization letter dated 10.12.2010, Ex.M2 letter dated 6.9.2006 in favour of M/s. E. Srinivas for Horticulture maintenance at CCCM, on contract, Ex.M3 is copy of attendance roll, Ex.M4 is letter dated 12.10.2006 from contractor to LEO(C), Ex.M5 is the letter written and moved by from Petitioner along with co-employees to the LEO(C) withdrawing complaint which was moved by them against contractor for less payment of wages and Ex.M6 is the letter from LEO(C) regarding complaint on less payment of wages by the contractor Mr. E. Srinivas. Ex.M2 contains terms and conditions of the contract.

18. Thus, on going through the oral and documentary evidence relied upon by the Petitioner in support of her claim, and also documents filed by Respondent , I come to conclusion that Petitioner has utterly failed to establish and prove her claim that she was employee of Respondent management. The Petitioner has also not called her co-worker to examine and prove that she was appointed by the Management as claimed by her. None of the documents relied upon by the Petitioner are in respect of her appointment by the Respondent or payment of wages made by the Respondent Management. Merely oral or bald averments made by the Petitioner workman is not sufficient to prove that workman was the employee of Respondent centre. There is nothing in the testimony of the witness WW1 as well as documentary evidence to substantiate or corroborate the claim of the workman. Rather, testimony of the MW1 witness remains unimpeachable / uncontraverted in one way or other. Thus, Petitioner claimant utterly failed to produce any cogent proof of payment of wages/salary made by the Management or any appointment letter issued by the Respondent. Merely oral testimony of the Petitioner is not sufficient to prove the employer and employee relationship between the Respondent centre and the Petitioner workman. However, no document on record has been filed from which it can be ascertained that the workman Petitioner was on the rolls of the Management. Thus, for the want of such evidence it can be held safely that the onus has not been discharged by the Petitioner to establish her claim. Thus, Petitioner has utterly failed to prove that she was appointed by the Respondent as a gardener for the period claimed by her in the statement of claim or even she has failed to establish and prove that she had worked for a period of 240 days prior to her alleged termination of her services by the Respondent Management just preceding from the date of her termination in the 12 months of a calendar year. Therefore, the claim of the Petitioner herein is not found established and proved on the basis of evidence produced by her.

Constitutional Bench of Hon'ble Supreme Court of India in the case of Steel Authority of India and others Vs. National Union Water Front Workers & Ors dated 30.8.2001 AIR SCC 3527 has laid down, the principles for determining the relationship of employer and employee in any matter under the given circumstances, and have held:-

"*The term contract labour as defined in clause (b) of Section 2 reads:*

(2)(1)(b) 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 the principal employer. By definition the term contract labour is a species of workman. A workman shall be so deemed when he is hired in or in connection with the work of an establishment by or through a contractor, with or without the knowledge of the principal employer. A workman may be hired: (1) in an establishment by the principal employer or by his agent with or without the knowledge of the principal employer; or (2) in connection with the work of an establishment by the principal employer through a contractor or by a contractor with or without the knowledge of the principal employer. Where a 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 where a 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 workman for any work of the establishment, a question might arise whether the contractor is a mere camouflage as in Hussainbhai Calicuts case (supra) and in Indian Petrochemicals Corporations

case (supra) etc.; if the answer is in the affirmative, the workman will be in fact an employee of the principal employer; but if the answer is in the negative, the workman will be a contract labour."

Here in the matter at hand, the document Ex.M2 would reveal that vide communication dated 19.6.2006 the Respondent had accepted the quotation of contractor Mr. E. Srinivas for maintenance of Horticulture work and annexed Schedule 'A' is terms and conditions of contract that goes to show that workman has been hired by the contractor, in or in connection with the work of the Respondent establishment and contractor has undertaken the contract to produce a given result for maintenance of Horticulture of the Respondent center and to produce a given result under said contract, contractor had engaged Petitioner and other co-workmen. Therefore, no employer and employee relationship existed between Petitioner and Respondent. Thus, in view of the law laid down by the Hon'ble Apex Court and on going through the evidence of both the parties on record, it can safely be held that there existed no employer and employee relationship between the Respondent and Petitioner.

Thus, Point No.I is answered accordingly.

19. **Point No. II:** - In view of the foregone discussion and finding given at Point No.I, it has been established that there existed no relationship of employer and employee between the Respondent and the Petitioner, and Petitioner was engaged by the contractor and also disengaged by the contractor. Petitioner was merely a contract labour. However, Petitioner was not directly engaged by the Respondent to work at their center, hence, the action of Respondent in termination of the service of Petitioner is legal and justified.

Thus, Point No. II is answered against the Petitioner and in favour of Respondent.

20. Point No. III:- In view of the fore gone discussion and finding arrived at Points No.I & II, I am of the considered view that Petitioner is not entitled to any relief. Hence, Petitioner 's claim statement is liable to be dismissed.

Thus, Point No.III is answered accordingly.

AWARD

In the result, the action of the management in terminating the services of the Petitioner Smt. M.Jayamma, Gardener, through oral termination dated 30.9.2006 is held legal and justified. Hence, the Petitioner is not entitled to any relief, as such, the petition is liable to be dismissed. Therefore, the petition stands dismissed.

Award is passed accordingly. Transmit.

Dictated to Smt. P. Phani Gowri, Personal Assistant, transcribed by her, corrected and signed by me on this the day of April, 2024.

IRFAN QAMAR, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner	Witnesses examined for the Respondent
WW1: Smt. M.Jayamma	MW1: Sri P.M. Rao

Documents marked for the Petitioner

Ex.W1: Photocopy of the demand notice dt. 21.11.2006

EX.W2: Acknowledgement card

Ex.W3: Photocopy of ESI Card of Petitioner

Documents marked for the Respondent

Ex.M1: Photocopy of the Lr.No.CCCM/BARC/Adm/2010/1212, dt.10.12.2010 from Respondent to Sr. CGSC

Ex.M2: Photocopy of the lr. No.CCCM/BARC/118/2006/689 dt.19.6.2006 reg. horticulture maintenance at CCCM to the contractor by Respondent.

Ex.M3: Photocopy of the lr. Dt.6.9.2006 from Mr. E. Srinivas to the Respondent.

Ex.M4: Photocopy of the lr. Dt. 12.10.2006 from Mr. E. Srinivas to the LEO(C)

Ex.M5: Photocopy of the lr. Dt. 16.10.2006 withdrawing complaint against contractor by Petitioner along with other workmen

Ex.M6: Photocopy of the lr. From LEO(C) to the Respondent reg. complaint recd. Reg. less payment of wages.

नई दिल्ली, 13 मई, 2024

का.आ. 913.—औद्योगिक विवाद अधिनियम, (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार **भाभा परमाणु अनुसंधान केंद्र, वास्तुकला और सिविल इंजीनियरिंग प्रभाग, सी.सी.सी.एम.प्रोजेक्ट, ई.सी.आई.एल. (पी.ओ.), हैदराबाद,** के प्रबंधतंत्र के संबद्ध नियोजकों और **श्री ई. श्रीनिवास, कामगार,** के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण- सह- श्रम न्यायालय- हैदराबाद पंचाट (संदर्भ संख्या 21/2007) को जैसा कि अनुलग्नक में दिखाया गया है, प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 10/05/2024 को प्राप्त हुआ था।

[सं. एल–42025-07-2023-92-आईआर(डीयू)]

दिलीप कुमार, अवर सचिव

New Delhi, the 13th May, 2024

S.O. 913.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 21/2007) of the **Central Government Industrial Tribunal cum Labour Court– Hyderabad** as shown in the Annexure, in the Industrial dispute between the employers in relation to **Bhabha Atomic Research Centre, Architecture & Civil Engineering Division, C.C.C.M. Project, E.C.I.L. (P.O.),Hyderabad, and Shri E. Srinivas, Worker,** which was received along with soft copy of the award by the Central Government on 10/05/2024.

[No. L-42025-07-2023-92-IR (DU)]

DILIP KUMAR, Under Secy.

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT AT HYDERABAD

Present: - **Sri Irfan Qamar**

Presiding Officer

Dated the 24th day of April, 2024

INDUSTRIAL DISPUTE L.C.No.21/2007

Between:

Sri E. Srinivas,

S/o E. Laxmaiah,

R/o H.No.38-29/56/2,

Ambedkar Nagar, Sainik Puri(P),

Secunderabad. ..….Petitioner

AND

Bhabha Atomic Research Centre,

Arch. & Civil Engineering Division,

C.C.C.M.Project, E.C.I.L. (P.O.),

Hyderabad – 500 762. ….Respondent

Appearances:

For the Petitioner : M/s. G. Ravi Mohan, G. Naresh Kumar & Vikas Sharma, Advocates

For the Respondent : M/s. P. Raveender Reddy & M. Mallikarjun, Advocates

AWARD

Sri E. Srinivas who worked as Gardener (who will be referred to as the workman) has filed this petition under Sec. 2A(2) of the Industrial Disputes Act, 1947 against the Respondent Bhabha Atomic Research Centre seeking for declaring the proceeding dated 30.9.2006 issued by Respondent as illegal, arbitrary and to set aside the

same consequently directing the Respondents to reinstate the Petitioner into service duly granting all the consequential benefits such as continuity of service, back wages and all other attendant benefits etc., and such other reliefs as this court may deems fit.

2. **The averments made in the petition in brief are as follows**:

It is submitted that, the Petitioner has passed 7th class, prior to his appointment in the Respondent center he was trained in the gardening work. Therefore, basing upon his technical nature of work he was appointed in the Respondent Center as a gardener. It is further submitted that though he was appointed as gardener he was also attending the other miscellaneous works such as sweeping, Attendar etc.. It is submitted that, the Petitioner was appointed in Respondent Center in the month of March 1995, since his appointment, he had been performing duties to the utmost satisfaction of his superiors. It is submitted that, there are about 40 employees in the Respondent Center. There are no regular attenders, sweepers in the Respondent Center, the Petitioner and other similarly situated persons were being engaged on a consolidated pay which was less than Minimum Wages. It is submitted that, the Petitioner was expert in gardening work. It is submitted that, the Respondent used to calculate daily wages and used to pay the same once in a month. The Petitioner was enjoying the privileges of national and festival holidays and other benefits which were entitled by them. It is submitted that, the Respondent has been given Medical facilities in the form of making a member in the ESI corporation due to which the Petitioner was allotted with ESI number for the Petitioner and her family members availed Medical benefits from E.S.I., so also the Respondent used to deduct the amount towards the provident fund and the same was being deposited before the appropriate authority. It is submitted that, though the Respondent has not issued appointment order and the Respondent designated the Petitioner as an employee of the Respondent in the E.S.I. card and Provident Fund card. While the matter stood thus, the Respondent used to pay less wages than the minimum wages prescribed by the Government without issuing any notice w.e.f. September 2005. Then, the Petitioner made an Application to the Respondent to pay the minimum wages and also requested to pay more keeping in view of his length of services. But in vain. He made an Application to the Regional Labour Commissioner(C) in respect of pay for minimum wages, then the Respondent came with a plea before the RLC(C), stating that the Petitioner is not an employee of the Respondent Center and further stated that Petitioner is a contract Labour. It is submitted that, in view of the complaint of the Petitioner to the RLC(C) the Respondent terminated the Petitioner and did not permit the Petitioner to enter into the premises. It is submitted that, the Respondent obtained signature on a blank Paper for paying the salaries for the month of August & September, 2006 the said action of Respondent is nothing but unfair labour practice which attracts Penal action. It is submitted that, the Respondent tried to change the service condition of the Petitioner by converting him into a contract Labour without assigning any reason and without issuing any Notice which is illegal. It is submitted that Petitioner worked for 10 years without any break in service as a causal labour. Therefore it is obligation part of Respondent to regularize the service of the Petitioner but however the Respondent terminated services of the Petitioner w.e.f. 31-09-2006 without issuing notice and without paying compensation of service rendered by him. The said action of Respondent is in violation of Sec 25 (F) of Industrial Disputes Act and in violation of Sec 9 of I.D. Act. Having no other alternative remedy the Petitioner is constrained to approach this Hon'ble Court under section 2 A (2) of Industrial Disputes Act, 1947 for necessary relief. It is submitted that the Petitioner is the only earning member of his family and it has become very difficult to eke their livelihood consequent to illegal termination. It is therefore prayed to set aside the Oral termination dated 31.9.2006 passed by the Respondent and consequently direct the Respondent to reinstate the Petitioner into service with continuity of service, back wages and all other attendant benefits.

3. **The Respondents filed counter denying the averments made in the petition, with the averments in brief which runs as follows**:

It is submitted that the Petitioner has made a wrong statement in the Claim Statement stating that she was terminated orally on 31/09/2008, which is incorrect, since September has only 30 days. Hence, it is submitted that the Claim Statement is not maintainable and deserves to be dismissed in limine. The Applicant's statement that he was appointed in the Respondents Centre in the month of March 1995, which is far from truth and baseless. The fact is that the applicant was working under a Contractor and the Respondent had never engaged any gardener. It is submitted that it is the contractor, who had engaged the Petitioner. The Respondent is making payment to the Contractor on production/submission of the bills as approved in the Tender document. Petitioner is challenging the so-called oral termination order dated 30/09/2006 passed by the Respondent, which is baseless and without any substance. Hence, the Petitioner cannot claim to re-instate him into the service with continuity of service, back wages and all other benefits since in the first place, the Petitioner had never been appointed at all by the Respondent. A contract for horticulture maintenance was awarded to M/s. E. Srinivas w.e.f. 1/7/2006 and was valid upto 30/6/2007. Tenders were invited for the same and the contract was awarded to M/s. E. Srinivas, being the lowest bidder. As specified in the contract, the Contractor had employed eight gardeners for the purpose for which payment had to be made as per the Schedule of Quantities (Schedule 'A) of the Contract. It is further submitted that the Respondents are in receipt of Order No. 1/15(1)/2006- L.S.II dated 7/6/2006 from the Ministry of Labour and Employment, notifying the minimum wages including variable Dearness Allowance clause. It is also submitted that the Respondents received letter No. 95/1/2006-SK/E4 dated 29/8/2006 from the Labour Enforcement Officer (Central), Ministry of Labour & Employment intimating that the eight of the labourers engaged by the said Contractor

Shri E. Srinivas had made a complaint that they were not in receipt of the wages as per the extant rules of the Minimum Wages Act and also to comment upon, since the Respondent is only the Principal Employer. On receipt of the said communication, the Respondent sought clarification from the contractor on the matter and the same was obtained vide letter dated 6/9/2006, which states that all the payments made by the contractor were as per the extant rules of the Minimum Wages Act. Further, the contractor stated that the lesser payments made by him to the Petitioner and others were the result of their absenteeism. Apart from the above, the contractor vide his letter dated 12.10.2006 also informed the Labour Enforcement Officer (Central), Hyderabad that he is following all the necessary prescribed procedures. Subsequently, the said complaint was withdrawn by the Petitioners vide letter dated 16/10/2006 addressed to Labour Enforcement Officer (Central) Hyderabad. It is denied that the Petitioner has ever been appointed by the Respondent. It is denied that the Respondent has ever employed the Petitioner as a Casual Labourer. The averments made by the Petitioner are baseless and devoid of merits. Besides, the Contractor has confirmed that the wages are being paid as per the extant rules under the Minimum Wages Act. It is submitted that all the employees of this Centre are covered and governed by Central Services Medical Attendants Rules (CSMA) 1944 and Contributory Health Services Scheme (CHSS) as in the Department of Atomic Energy and the question of availing of medical facilities under Employees State Insurance (ESI), does not arise. Hence, it is evident that the contractor had arranged to register the Petitioner and other workmen under the ESI for availing the medical facilities. It is also submitted that the Respondents have never deducted any amount from the wages of the Petitioner, as alleged, and Respondents never disbursed salaries to the Petitioner. Shri E. Srinivas is a Contractor workman of the Respondent, as contended by the Petitioner. The Respondents deny that they had obtained any signature on the blank papers from the Petitioner and was never regarding the payments, since the same were always made by the Contractor and never by the Respondents. It is submitted that they had never terminated the Petitioner, as the Petitioner was not at all an employee of the Respondent. It is further reiterated that the Petitioner was never employed as casual labourer by the Respondents. However, the Contractor was at liberty to terminate the services of the Petitioner, if he felt that the work performed was unsatisfactory. Hence, the question of obligation on the part of the Respondents to regularize the Petitioner or payment of compensation does not arise. It is further submitted that the Respondents are in no way involved in the present dispute between the Contractor and his labourers and hence, the Respondents crave leave to discharge them from the present dispute. It is also further submitted that Bhabha Atomic Research Centre (BARC) is a R&D constituent unit of Department of Atomic Energy. This Centre is excluded “Industry" under Section 2(0) of ID Act. Hence the provisions of this I.D. Act are not applicable to this Centre. Hence, it is submitted that C.G.I.T. has no jurisdiction to hear the cases and no relief on this account can be granted by this Hon'ble Tribunal to the Petitioner. It is to submit that the claim of the Petitioner is false, misleading and without any justification. It is submitted that the Petitioner has not made out any case, which merits the intervention of this Hon'ble Tribunal. The Respondents therefore prayed to dismiss this Claim Application, as the same being devoid of merits.

4. Petitioner has examined himself as WW1 and marked photocopies of documents as Ex.W1 to Ex.W3. On the other hand, Respondent has examined MW1 on their behalf who has marked photocopies of six documents i.e., Ex.M1 to M6.

5. The respondent has submitted written arguments, but despite the sufficient opportunity granted to the petitioner, he did not adduce either oral or written arguments.

6. On the basis of the pleadings of both parties and arguments advanced, the following points emerge for determination:-

I. Whether employer and employee relationship existed between Respondent and Petitioner? If yes, it’s effect?

II. Whether the action of the management in terminating the services of the Petitioner through oral termination dated 30.9.2006 is legal and justified? If so, whether said order be liable to be set aside?

III. To what relief is the petitioner entitled?

7. In order to prove his claim Petitioner in evidence has examined himself as WW1 and also filed the documentary evidence, i.e., Ex.W1 demand notice dated 21.11.2006, Ex.W2 acknowledgement card, Ex.W3 is the attendance copies.

8. Per contra, Respondent has examined MW1 Sri P.M. Rao, in oral evidence and also filed the documentary evidence Ex.M1 to Ex.M6. Further, the witness MW1 has exhibited the document Ex.M1 an authorization letter dated 10.12.2010, Ex.M2 appointment letter dated 19.6.2006 in favour of M/s. E. Srinivas for Horticulture maintenance at CCCM, for contract. Ex.M3 is the letter from contractor dated 6.9.2006 to the Respondent along with payment and attendance list, Ex.M4 is copy of letter dated 12.10.2006 from contractor to LEO(C) along with acquaintance and attendance sheets. Ex.M5 is the letter from Petitioner along with other workmen to the LEO(C) withdrawing their complaint against contractor and Ex.M6 is the letter from Ministry of Labour & Employment dated 29.8.2006.

FINDINGS:-

9. **Point No. I**:- Petitioner has claimed in his claim statement that he was appointed in Respondent Centre in the month of March, 1995 to work as a Gardener. Further, the Petitioner claimed that he was also attending the other miscellaneous works such as Sweeping, Attender etc.. It is also submitted that the Respondent used to calculate daily wages and used to pay the same once in a month. He has also enjoyed the privileges of national and festival holidays which were entitled by the employees of Respondent. Further, Respondent has provided medical facilities him and family members. Respondent used to deduct the amount towards provident fund and the same was being deposited before the appropriate authority. Petitioner contended that though Respondent has not issued any appointment letter, but he has been designated as an employee of Respondent in the ESI card and PF card.

10. On the other hand, Respondent has refuted the claim made by the Petitioner. Respondent contended that Petitioner is the contract labour and contractor, who has been awarded the contract for Horticulture maintenance w.e.f 1.7.2006 to 30.7.2007 to work at the Respondent centre. Therefore, the Petitioner's submission that he was appointed in the Respondent centre in the month of March, 1995 is far from the truth and is baseless. The fact is that applicant was working under contractor and the Respondent has never engaged any gardener.

11. Petitioner has taken the plea that he was appointed as a gardener in the Respondent centre in the month of March, 1995 and was also given medical facilities in the form of making member in the ESI corporation. Further, Petitioner has taken the plea that the Respondent used to calculate the daily wages and used to pay the same once in a month. However, Petitioner has contended that the Respondent was paying less wages than the minimum wages prescribed by the Government and in view of that the Petitioner made an application to the Respondent to pay the minimum wages but the Respondent did not pay heed to the request of the Petitioner. Thereafter, the Petitioner moved an application to RLC(C) and sought for help in respect of payment of minimum wages. Then, the Respondent came with a plea before the RLC(C) stating that Petitioner is not an employee of the Respondent centre and further stand taken by the Respondent that the Petitioner is a contract labour. In view of the complaint made by the Petitioner to RLC(C), the Respondent has terminated the services of the Petitioner and did not permit the Petitioner to enter into the premises.

12. It is settled principle of law, that a person who set up plea of relationship of employer and employee, the burden of proof would rests upon him. In this context, relevant decisions of Hon'ble High Court and Hon'ble Apex Court are discussed below:-

In the case of **Baburam Vs. Govt. of NCT of Delhi & Anr., 247 (2018) Delhi Law times 596 wherein Hon'ble High Court of Delhi have held**:-

"It is well settled principle of law that the person, who sets up a plea of existence of relationship of employer and employee, the burden would be upon him. In this regard, the ***Hon'ble Supreme Court in the case of Workmen of Nilgiri Coop. Mkt. Society Ltd. V. State of T.N. and Others, (2004) 3 SCC 514*** *has approved the judgment of Kerala and Calcutta High Court, where the plea of the workman that he was employee of the company was denied by the company and it was held that it was not for the Company to prove that he was not an employee.*

The burden of proof being on the workman to establish employer and employee relationship an adverse inference cannot be drawn against the employer that if he were to produce books of accounts they would have proved employer and employee relationship."

In the case of **N.C. John Vs. Secretary Thodupuha Taluk Shop and Commercial Establishment Workers' Union and others, Hon'ble Kerala High Court have held:-**

"*The burden of proof being on the workman to establish the employer - employee relationship an adverse inference cannot be drawn against the employer that if he were to produce books of accounts they would have proved employer employee relationship."*

Further, in the case of **'Kanpur Electricity Supply Co. Ltd. Vs Shamim Mirza 2009 1 SCC 20, the Hon'ble Supreme Court held as under :-**

"*It is trite that the burden to prove that a claimant was in the employment of a particular management, primarily lies on the person who claims to be so but the degree of proof, so required, varies from case to case. It is neither feasible nor advisable to lay down an abstract rule to determine the employer - employee relationship."*

13. Thus, in view of the law laid down by the Hon'ble High Courts and Hon'ble Apex Court as discussed above, onus of proof to prove claim of employer and employee relationship rests upon the Petitioner. To substantiate his claim, Petitioner has filed chief examination affidavit as WW1. In his chief examination affidavit WW1 has reiterated the plea taken in the claim statement and further he has also exhibited documents Ex.W1, W2, and W3 to fortify his claim. The Petitioner has relied upon these documents and we have to examine its relevancy: Ex.W1, is a copy of representation dated 21.11.2006 addressed to the Respondent Management by the Petitioner for reinstatement into the service. Admittedly, as alleged by the Petitioner, he was disengaged on 30.9.2006. Then, the claim of the Petitioner that he was appointed in the Respondent Management as a gardener in the month of

March, 1995 is not proved. Further, Ex.W2 is an acknowledgement. Ex.W3 is three photocopies of Attendance register. On going perusal of these photocopies Ex.W3, it manifests that it has not been signed by any authority. Moreover, WW1 do not states about the relevancy of Ex.W3 in support of his claim. He did not tell even single sentence about the content of Ex.W3. Further, WW1 was cross examined by the Respondent wherein WW1 states that, he has not filed any appointment letter issued by the Respondent. Thus, in the absence of relevant documentary evidence, the claim of the Petitioner is not found proved.

14. On the other hand, Respondent contended that the Petitioner was a contractor as he has admitted it in his letter dated 12.10.2006, and he had engaged 8 (eight) labourers for work in the Respondent centre and he had also paid wages to these workers/ labourers. It is also contended that the Petitioner Sri E. Srinivas was a contractor as mentioned in all necessary registers maintained by him to this effect. Respondent Management has entrusted the work to him to maintain the Horticulture in the Respondent centre. MW1 in chief examination affidavit has supported the contention of the Respondent made in the counter. MW1 has also exhibited the documents Ex.M1 to M6. MW1 was cross examined by the Petitioner counsel and nothing has been elicited in cross examination to contradict or to disbelieve the testimony of the witness. Respondent has relied upon documents which are being discussed as follows: Ex.M1 is letter dated 10.12.2010 addressed to Sri P. Ravindra Reddy, by Head-NCCCM to authorize him to appear as a witness in the case. Ex.M2 is the work order dated 19.6.2006 issued by Respondent Management to M/s. E. Srinivas for maintenance of Horticulture at CCCM. Ex.M2 also reflects that the quotation dated 17.5.2006 of the Petitioner Sri E. Srinivas has been accepted by Respondent. Ex.M3 is the letter dated 6.9.2006 moved by Petitioner Sri E. Srinivas to the Head, CCCM, BARC, Hyderabad, in reference of payment of minimum wages to its labourers. Ex.M4 is the letter dated 12.10.2006 written by Petitioner Sri E. Srinivas to LEO(C) regarding assurance of payment of minimum wages to its workers. Ex.M5 is letter dated 16.10.2006, which reveals that eight workmen whose names mentioned in the letter have withdrawn their complaint, earlier made against the contractor for payment of less wages. Ex.M6 is the letter dated 29.10.2006 addressed to Director, CCCM/BARC, Hyderabad by LEO(C), Hyderabad regarding complaint of less payment of wages by contractor to the labourers. Thus, from the above discussed documents Ex.M1 to M6 it manifests that there is ample proof that Petitioner Sri E. Srinivas was engaged as a contractor by Respondent Management for work of maintenance of Horticulture at Respondent centre. Whereas, WW1 was cross examined regarding these documents Ex.M1 to M6. WW1 has admitted his signature on the letter to Head, CCCM, was approximately similar to his signature on his affidavit. Further, WW1 states that, signature on letter dated 12.10.2006 is not his signature. But when the Court put the question to the WW1that, "Why the Respondent Management is saying that you are a contractor", in reply WW1 states, "The Management has forcedly taken my signature as contractor." But he did not explain under what circumstances and why Respondent has obtained his signature on quotation for contract. There is no evidence from Petitioner that if Respondent obtained his signature forcibly why he did not make complaint to any authority for action? In such circumstances it appears that Petitioner is deliberately hiding the truth which makes his claim doubtful. Further, the witness was put a question by the Court, "Why the Management chosen only you to say their contractor?" He answered, "Because I perform very well." Further, witness states that, "I know that other Petitioners who made the complaint to Labour Enforcement Officer have withdrawn their complaint. In the withdrawal letter the Petitioners has stated that they are working under contractor." Further, WW1 states that, "Letter dated 19.6.2006 is addressed to me by the Government accepting the contract. It is not correct to suggest that I have given quotation to the Department for giving contract to me." Thus, from the above statement of the WW1, it goes to show that he has admitted his signature on the documents Ex.M3 and M4. On going through these documents, it is explicitly clear that the Petitioner Sri E. Srinivas was awarded contract for maintenance of Horticulture of CCCM, Respondent Centre vide document Exs.M3 and M4. Although he tried to make statement to deny the execution of these documents pertaining to contract, but he could not succeeded in his attempt.

15. Thus, in view of the fore gone discussion and evidence adduced by both the parties on record, I am constrained to hold that there existed no employer and employee relationship between the Respondent and Petitioner. Petitioner has utterly failed to discharge his onus to prove/establish his claim that he was appointed as gardener in the Respondent centre.

In this context, decision of Hon'ble Delhi High Court is relevant wherein the case of Automobile Association Upper India V. P.O. Labour Court-II & Anor., 2006 DLJ 160 Hon'ble Delhi High Court have held:-

"engagement and appointment of the workman in service can be established either by direct evidence like existence and production of appointment letter or written agreement, or by circumstantial evidence of incidental or ancillary records, in nature of attendance register, salary register, leave records, deposit of PF contribution, ESI etc. or even by examination of co-worker who may depose before the court that the workman was working with the management."

In the present matter Petitioner has not produced any appointment letter, or any wage slip or salary register to prove his claim that he was engaged as a workman by the Respondent. Even he did not examined any co-worker who could fortify Petitioner's claim. Therefore, in view of the fore gone discussion and law laid down by the Hon'ble Apex Court and High Courts, I am constrained to hold that there is no employer and employee relationship between the Respondent and the Petitioner.

Thus, Point No.I is answered accordingly.

16. **Point No. II:** - In view of the finding given at Point No.I, it has been established that there existed no relationship of employer and employee between the Respondent and the Petitioner. However, in the absence of relevant evidence of appointment and payment of wages, the claim of the Petitioner is not proved. Therefore, the action of Respondent in termination of the service of Petitioner is held legal and justified.

Thus, Point No. II is answered against the Petitioner and in favour of Respondent.

17. Point No. III:- In view of the discussion and finding arrived at Points No.I & II, I am of the considered view that Petitioner is not entitled to any relief. Hence, Petitioner 's claim statement is liable to be dismissed.

AWARD

In the result, the action of the management in terminating the services of the Petitioner Sri E. Srinivas, Gardener, through oral termination dated 30.9.2006 is held legal and justified. Hence, the Petitioner is not entitled to any relief, as such, the petition is liable to be dismissed. Therefore, the petition stands dismissed.

Award is passed accordingly. Transmit.

Dictated to Smt. P. Phani Gowri, Personal Assistant, transcribed by her, corrected and signed by me on this the 24th day of April, 2024.

IRFAN QAMAR, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner	Witnesses examined for the Respondent
WW1: Sri E. Srinivas	MW1: Sri P.M. Rao

Documents marked for the Petitioner

Ex.W1: Photocopy of the demand notice dt. 21.11.2006

EX.W2: Acknowledgement card

Ex.W3: Photocopy of the attendance copies

Documents marked for the Respondent

Ex.M1:	Photocopy of the Lr.No.CCCM/BARC/Adm/2010/1212, dt.10.12.2010 from Respondent to Sr. CGSC
Ex.M2:	Photocopy of the lr. No.CCCM/BARC/118/2006/689 dt.19.6.2006 reg. horticulture maintenance at CCCM to the contractor by Respondent.
Ex.M3:	Photocopy of the lr. Dt.6.9.2006 from Mr. E. Srinivas to the Respondent.
Ex.M4:	Photocopy of the lr. Dt. 12.10.2006 from Mr. E. Srinivas to the LEO(C)
Ex.M5:	Photocopy of the lr. Dt. 16.10.2006 withdrawing complaint against contractor by Petitioner along with other workmen
Ex.M6:	Photocopy of the lr. From LEO(C) to the Respondent reg. complaint recd. Reg. less payment of wages.

नई दिल्ली, 13 मई, 2024

का.आ. 914.—औद्योगिक विवाद अधिनियम, (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार **मुख्य पोस्टमास्टर जनरल, तेलंगाना सर्कल, डाक सदन, हैदराबाद; डाक सेवा निदेशक (मुख्यालय), हैदराबाद सिटी क्षेत्र, हैदराबाद; वरिष्ठ डाकघर अधीक्षक, हैदराबाद दक्षिण पूर्व डिवीजन, हैदराबाद; सहायक डाकघर अधीक्षक, हैदराबाद सेंट्रल सब डिवीजन, बेगमबाजार, हैदराबाद,** के प्रबंधतंत्र के संबद्ध नियोजकों और **श्री मोहम्मद शान पाशा, कामगार,** के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण- सह- श्रम न्यायालय- हैदराबाद पंचाट (संदर्भ संख्या 49/2018) को जैसा कि अनुलग्नक में दिखाया गया है, प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 10/05/2024 को प्राप्त हुआ था।

[सं. एल–42025-07-2023-90-आईआर(डीयू)]

दिलीप कुमार, अवर सचिव

New Delhi, the 13th May, 2024

S.O. 914.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 49/2018) of the **Central Government Industrial Tribunal cum Labour Court – Hyderabad** as shown in the Annexure, in the Industrial dispute between the employers in relation to **The Chief Postmaster General, Telengana Circle, Dak Sadan, Hyderabad ; The Director of Postal Services (HQ),Hyderabad City Region, Hyderabad; The Senior Superintendent of Post Offices, Hyderabad South East Division, Hyderabad ;The Assistant Superintendent of Post Offices, Hyderabad Central Sub Division, Begumbazar,Hyderabad, and Shri Mohd. Shan Pasha, Worker,** which was received along with soft copy of the award by the Central Government on 10/05/2024.

[No. L-42025-07-2023-90-IR (DU)]

DILIP KUMAR, Under Secy.

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT AT HYDERABAD

Present: - **Sri IRFAN QAMAR**

Presiding Officer

Dated the 28th day of March, 2024

INDUSTRIAL DISPUTE LC No.49/2018

Between:

Mohd. Shan Pasha,

S/o Mohd. Fayaz,

R/o 4-6-119, Hyderguda,

Attapur, Ranga Reddy District. ..….Petitioner

AND

1. Chief Postmaster General,
   Telengana Circle, Dak Sadan,
   Hyderabad -1.
2. The Director of Postal Services (HQ),
   Hyderabad City Region,
   Hyderabad –I.
3. The Senior Superintendent of Post Offices,
   Hyderabad South East Division,
   Hyderabad -2.
4. The Assistant Superintendent of Post Offices,
   Hyderabad Central Sub Division,
   Begumbazar, Hyderabad. … Respondents

Appearances:

For the Petitioner : Sri B. Pavan Kumar, Advocate

For the Respondent : M/s. Ravinder Viswanath, Sr.CGC

AWARD

Mohd. Shan who worked as GDSMD (who will be referred to as the workman) has filed this petition under Sec. 2A(2) of the Industrial Disputes Act, 1947 against the Respondents seeking for reinstatement into service duly granting all the consequential benefits such as continuity of service, back wages and all other attendant benefits etc., and such other reliefs as this court may deems fit.

2. On the date fixed for Petitioner's evidence, Petitioner called absent. The record shows that Petitioner is not attending the proceedings since 2019 and despite providing sufficient opportunity Petitioner has not adduced evidence to substantiate his claim. Hence, dismissed for default a 'No claim' award is passed.

Award is passed accordingly. Transmit.

Typed to my dictation by Smt. P. Phani Gowri, Personal Assistant and corrected by me on this the 28th day of March, 2024.

IRFAN QAMAR, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner	Witnesses examined for the Respondent
NIL	NIL

Documents marked for the Petitioner

NIL

Documents marked for the Respondent

NIL

नई दिल्ली, 13 मई, 2024

का.आ. 915.—औद्योगिक विवाद अधिनियम, (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार **सचिव, डीडीए, खेल गांव, नई दिल्ली; मैसर्स नीति एंटरप्राइजेज, किसान विहार, नई दिल्ली,** के प्रबंधतंत्र के संबद्ध नियोजकों **और श्री अमर प्रसाद, कामगार ,** के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण- सह- श्रम न्यायालय-1 नई दिल्ली पंचाट (संदर्भ संख्या 45/2015) को जैसा कि अनुलग्नक में दिखाया गया है, प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 10.05.2024 को प्राप्त हुआ था।

[सं. एल–42012/190/2014-आईआर(डीयू)]

दिलीप कुमार, अवर सचिव

New Delhi, the 13th May, 2024

S.O. 915.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 45/2015) of the **Central Government Industrial Tribunal cum Labour Court –I New Delhi** as shown in the Annexure, in the Industrial dispute between the employers in relation to **The Secretary, DDA, Khel Gaon, New Delhi; M/s Niti Enterprises, Kisan Vihar, New Delhi , and Shri Amar Prasad, Worker,** which was received along with soft copy of the award by the Central Government on 10.05.2024.

[No. L-42012/190/2014-IR (DU)]

DILIP KUMAR, Under Secy.

ANNEXURE

THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT DELHI - 1

ROOM NO.207, ROUSE AVENUE COURT COMPLEX, NEW DELHI.

ID No. 45/2015

Shri Amar Prasad S/o Sh. Manik Chand,

C/o 1800/9, Govindpuri Ext.,

Main Road, Kalkaji,

New Delhi- 110019 Claimant…

Versus

1. The Secretary,

DDA,

Sirifort Sports Complex August Kranti Marg,

Khel Gaon, New Delhi-110049

2. M/s Niti Enterprises,

L-88, KisanVihar,

New Delhi-110041 Management…

AWARD

1. In the present case, a reference was received from the appropriate Government vide letter No-L-42012/190/2014 (IR(DU)) dated 12.01.2015 under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Act, for adjudication of a dispute, terms of which are as under:

SCHEDULE

"Whether the action of the management of NITI Enterprises, Contractor in terminating the services of the workman Sh. Amar Prasad w.e.f. 01.05.2013 can be construed as termination of employment by DDA presuming the entity of contractor as sham and camouflage? If not what relief the workman concerned 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. Claim statement filed, rebuttal written statement filed on behalf of the management no. 1.

3. Management No.2 is not appearing since long therefore they are proceeded ex-parte. Thereafter, rejoinder was filed and issues were framed. Case was listed for claimant evidence on 09.04.2019. After that, none appeared on behalf of the claimant despite providing a number of opportunities neither filed claimant evidence or appeared to substantiate his claim.

4. Hence, in these circumstances this tribunal has no option except to pass the no disputant award. No disputant 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.

Justice VIKAS KUNVAR SRIVASTAVA (Retd.), Presiding Officer

Date: 23.04.2024

नई दिल्ली, 13 मई, 2024

का.आ. 916.—औद्योगिक विवाद अधिनियम, (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार **सचिव, डीडीए, खेल गांव, नई दिल्ली; मैसर्स नीति एंटरप्राइजेज, किसान विहार, नई दिल्ली,** के प्रबंधतंत्र के संबद्ध नियोजकों **और श्री नंदी, कामगार ,** के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण- सह- श्रम न्यायालय-1 नई दिल्ली पंचाट (संदर्भ संख्या 42/2015) को जैसा कि अनुलग्नक में दिखाया गया है, प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 10.05.2024 को प्राप्त हुआ था।

[सं. एल–42012/187/2014-आईआर(डीयू)]

दिलीप कुमार, अवर सचिव

New Delhi, the 13th May, 2024

S.O. 916.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 42/2015) of the **Central Government Industrial Tribunal cum Labour Court –I New Delhi** as shown in the Annexure, in the Industrial dispute between the employers in relation to **The Secretary, DDA, Khel Gaon, New Delhi ;M/s Niti Enterprises, Kisan Vihar, New Delhi , and Shri Nandi, Worker,** which was received along with soft copy of the award by the Central Government on 10.05.2024.

[No. L-42012/187/2014-IR (DU)]

DILIP KUMAR, Under Secy.

ANNEXURE

THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT DELHI - 1

ROOM NO.207, ROUSE AVENUE COURT COMPLEX, NEW DELHI.

ID No. 42/2015

Shri Nandi S/o Sh. Manora,

C/o 1800/9, Govindpuri Ext.,

Main Road, Kalkaji,

New Delhi- 110019 Claimant…

Versus

1. The Secretary,

DDA,

Sirifort Sports Complex August Kranti Marg,

Khel Gaon, New Delhi-110049

2. M/s Niti Enterprises,

L-88, KisanVihar,

New Delhi-110041 Management…

AWARD

1. In the present case, a reference was received from the appropriate Government vide letter No-L-42012/187/2014 (IR(DU)) dated 12.01.2015 under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Act, for adjudication of a dispute, terms of which are as under:

SCHEDULE

"Whether the action of the management of NITI Enterprises, Contractor in terminating the services of the workman Sh. Nandi w.e.f. 01.05.2013 can be construed as termination of employment by DDA presuming the entity of contractor as sham and camouflage? If not what relief the workman concerned 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. Claim statement filed, rebuttal written statement filed on behalf of the management no. 1.

3. Management No.2 is not appearing since long therefore they are proceeded ex-parte. Thereafter, rejoinder was filed and issues were framed. Case was listed for claimant evidence on 09.04.2019. After that, none appeared on behalf of the claimant despite providing a number of opportunities neither filed claimant evidence or appeared to substantiate his claim.

4. Hence, in these circumstances this tribunal has no option except to pass the no disputant award. No disputant 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.

Justice VIKAS KUNVAR SRIVASTAVA (Retd.), Presiding Officer

Date: 23.04.2024

नई दिल्ली, 13 मई, 2024

का.आ. 917.—औद्योगिक विवाद अधिनियम, (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार **मेसर्स ट्रिंग डिटेक्टिव प्रा. लिमिटेड, महिपालपुर एक्सटेंशन, नई दिल्ली; राष्ट्रीय सूचना केंद्र, डीएमआरसी बिल्डिंग, शास्त्री पार्क, नई दिल्ली,** के प्रबंधतंत्र के संबद्ध नियोजकों **और श्री बाबू राम कटारिया, कामगार,** के बीच अनुबंध में निर्दिष्ट केन्द्रीय

सरकार औद्योगिक अधिकरण- सह- श्रम न्यायालय-1 नई दिल्ली पंचाट (संदर्भ संख्या 171/2019) को जैसा कि अनुलग्नक में दिखाया गया है, प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 10.05.2024 को प्राप्त हुआ था।

[सं. एल–42012/85/2019-आईआर(डीयू)]

दिलीप कुमार, अवर सचिव

New Delhi, the 13th May, 2024

S.O. 917.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 171/2019) of the **Central Government Industrial Tribunal cum Labour Court –I New Delhi** as shown in the Annexure, in the Industrial dispute between the employers in relation to **M/s Tring Detective Pvt. Ltd., Mahipalpur Extension, New Delhi; National Information Centre, DMRC Building, Sastri Park, New Delhi, and Shri Babu Ram Kataria, Worker,** which was received along with soft copy of the award by the Central Government on 10.05.2024.

[No. L-42012/85/2019-IR (DU)]

DILIP KUMAR, Under Secy.

ANNEXURE

THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT DELHI-1

ROOM NO. 207, ROUSE AVENUE COURT COMPLEX, NEW DELHI.

ID No.171/2019

Shri Babu Ram Kataria,

C/o Progressive National Labour Union,

205, Pratap Khand Vishavkarma Nagar,

New Delhi-110095.

Claimant…

Versus

1. M/s Tring Detective Pvt. Ltd.,

A-383, Road No.3, Mahipalpur Extension,

New Delhi-110037

2. National Information Centre,

DMRC Building, Sastri Park,

New Delhi-110093.

Management…

None for the claimant

None for the management

AWARD

In the present case, a reference was received from the appropriate Government vide letter No.L-42012/85/2019 (IR(DU)) dated 24.07.2019 under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Act, for adjudication of a dispute, terms of which are as under:

SCHEDULE

"Whether termination of the workman Sh. Baburam Kataria without notice and retrenchment compensation by the Contractor M/s Tring Detective Private Limited of principal Employer National Informatics Center w.e.f. 01.09.2017 is just, fair and legal? If not, what relief the workman concerned 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. Claim statement filed, however, rebuttal written statement is not filed on behalf of the management No. 1 & 2.

3. After that, none appeared on behalf of the claimant as well as managements nor their respective A/R appeared despite providing a number of opportunities.

4. Hence, in these circumstances this tribunal has no option except to pass the no disputant award. No disputant 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.

Justice VIKAS KUNVAR SRIVASTAVA (Retd.), Presiding Officer

Date: 23.04.2024

नई दिल्ली, 13 मई, 2024

का.आ. 918.—औद्योगिक विवाद अधिनियम, (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार **सचिव, डीडीए, खेल गांव, नई दिल्ली; अंतर्राष्ट्रीय (पूर्व सैनिक) सुरक्षा सेवा, टैगोर गार्डन एक्सटेंशन,नई दिल्ली,** के प्रबंधतंत्र के संबद्ध नियोजकों **और श्री इनरदेव साह, कामगार,** के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण- सह- श्रम न्यायालय-1 नई दिल्ली पंचाट (संदर्भ संख्या 38/2015) को जैसा कि अनुलग्नक में दिखाया गया है, प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 10.05.2024 को प्राप्त हुआ था।

[सं. एल–42012/183/2014-आईआर(डीयू)]

दिलीप कुमार, अवर सचिव

New Delhi, the 13th May, 2024

S.O. 918.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 38/2015) of the **Central Government Industrial Tribunal cum Labour Court –I New Delhi** as shown in the Annexure, in the Industrial dispute between the employers in relation to **The Secretary, DDA, Khel Gaon, New Delhi ; International (Ex-servicemen) Security Service, Tagore Garden Extn.,New Delhi, and Shri Iner Dev Sah, Worker,** which was received along with soft copy of the award by the Central Government on 10.05.2024.

[No. L-42012/183/2014-IR (DU)]

DILIP KUMAR, Under Secy.

ANNEXURE

THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT DELHI - 1

ROOM NO.207, ROUSE AVENUE COURT COMPLEX, NEW DELHI.

ID No. 38/2015

Shri Iner Dev Sah S/o Sh. Guneshwar Sah,

C/o 1800/9, Govindpuri Ext.,

Main Road, Kalkaji,

New Delhi- 110019 Claimant…

Versus

1. The Secretary,

DDA,

Sirifort Sports Complex August Kranti Marg,

Khel Gaon, New Delhi-110049

2. International (Ex-servicemen) Security Service.

A-3B, Janta (Near Central School),

Tagore Garden Extn.,

New Delhi-110027 Management…

AWARD

1. In the present case, a reference was received from the appropriate Government vide letter No-L-41012/183/2014 (IR(DU)) dated 12.01.2015 under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Act, for adjudication of a dispute, terms of which are as under:

SCHEDULE

"Whether the action of the management of International (Ex-Servicemen) Security Services, Contractor in terminating the services of the workman Sh. Iner Dev Sah w.e.f. 29.05.2014 can be construed as termination of employment by DDA presuming the entity of contractor as sham and camouflage? If not what relief the workman concerned 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. Claim statement filed, rebuttal written statement filed on behalf of the management no. 1.

3. Management No. 2 is not appearing since long therefore they are proceeded ex-parte. Thereafter, issues were framed. Case was listed for claimant evidence on 16.07.2019. After that, none appeared on behalf of the claimant despite providing a number of opportunities neither filed claimant evidence or appeared to substantiate his claim.

4. Hence, in these circumstances this tribunal has no option except to pass the no disputant award. No disputant 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.

Justice VIKAS KUNVAR SRIVASTAVA (Retd.), Presiding Officer

Date: 23.04.2024

नई दिल्ली, 13 मई, 2024

का.आ. 919.—औद्योगिक विवाद अधिनियम, (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार **मुख्य महाप्रबंधक, एमटीएनएल, लोधी रोड, नई दिल्ली; मेसर्स स्टेलर डायनेमिक्स प्रा. लिमिटेड, डीडीए नरीना विहार, नई दिल्ली,** के प्रबंधतंत्र के संबद्ध नियोजकों **और श्री सतवीर, कामगार, द्वारा -समाजवादी कर्मचारी संघ,जगतपुरी मंडोली रोड, दिल्ली,** के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण- सह- श्रम न्यायालय-1 नई दिल्ली पंचाट (संदर्भ संख्या 302/2022) को जैसा कि अनुलग्नक में दिखाया गया है, प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 10.05.2024 को प्राप्त हुआ था।

[सं. एल–42025-07-2024-100-आईआर(डीयू)]

दिलीप कुमार, अवर सचिव

New Delhi, the 13th May, 2024

S.O. 919.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 302/2022) of the **Central Government Industrial Tribunal cum Labour Court –I New Delhi** as shown in the Annexure, in the Industrial dispute between the employers in relation to **The Chief General Manager, MTNL, Lodhi Road, New Delhi ; M/s Stellar Dynamics Pvt. Ltd., DDA Narina Vihar, New Delhi, and Shri Satveer, Worker, Through-Samajwadi Employees Union, Jagatpuri Mandoli Road, Delhi,** which was received along with soft copy of the award by the Central Government on 10.05.2024

[No. L-42025-07-2024-100-IR (DU)]

DILIP KUMAR, Under Secy.

ANNEXURE

THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT DELHI - 1

ROOM NO.207, ROUSE AVENUE COURT COMPLEX, NEW DELHI.

DID No.302/2022

Shri Satveer S/o Sh. Birpal Singh,

Through Samajwadi Karamchari Union,

D-212, Gali No. 10, Jagatpuri Mandoli Road,

Delhi-110093.

Claimant…

Versus

1. Chief General Manager MTNL,

5th Floor Mahanagar Doorsanchar Sadan,

9 CGO Complex, Lodhi Road, New Delhi-110003

2. M/s Stellar Dynamics Pvt. Ltd.,

House No. 38, Ground Floor, Front Floor,

A-Block, DDA Narina Vihar, New Delhi-110028.

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 28.09.2021 by the management which be declare illegal and unjustified and he be reinstated with full back wages, it is the case of the applicant/workman that he has been working with the management. He has not been provided any legal facilities. He was illegally terminated from his service on 28.09.2021 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. Claimant filed an application to withdraw his case saying his case has been referred to the CGIT No.2 by the appropriate Government. In the said application he is asking for liberty to present his case in the CGIT No.2, Delhi.

3. Hence, in these circumstances this tribunal has no option except to dispose off the case as withdrawn. 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.

Justice VIKAS KUNVAR SRIVASTAVA (Retd.), Presiding Officer

Date: 23.04.2024

नई दिल्ली, 13 मई, 2024

का.आ. 920.—औद्योगिक विवाद अधिनियम, (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार **भाभा परमाणु अनुसंधान केंद्र, वास्तुकला और सिविल इंजीनियरिंग प्रभाग, सी.सी.सी.एम.प्रोजेक्ट, ई.सी.आई.एल. (पी.ओ.), हैदराबाद,** के प्रबंधतंत्र के संबद्ध नियोजकों और **श्रीमती बालमणि @ बलम्मा, कामगार,** के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण- सह- श्रम न्यायालय- हैदराबाद पंचाट (संदर्भ संख्या 20/2007) को जैसा कि अनुलग्नक में दिखाया गया है,प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 10/05/2024 को प्राप्त हुआ था।

[सं. एल–42025-07-2023-91-आईआर(डीयू)]

दिलीप कुमार, अवर सचिव

New Delhi, the 13th May, 2024

S.O. 920.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 20/2007) of the **Central Government Industrial Tribunal cum Labour Court– Hyderabad** as shown in the Annexure, in the Industrial dispute between the employers in relation to **Bhabha Atomic Research Centre, Architecture & Civil Engineering Division, C.C.C.M. Project, E.C.I.L. (P.O.),Hyderabad, and Smt. Balamani @ Balamma, Worker,** which was received along with soft copy of the award by the Central Government on 10/05/2024.

[No. L-42025-07-2023-91-IR (DU)]

DILIP KUMAR, Under Secy.

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT AT HYDERABAD

Present: - **Sri Irfan Qamar**

Presiding Officer

Dated the 22nd day of April, 2024

INDUSTRIAL DISPUTE L.C.No. 20/2007

Between:

Smt. Balamani @ Balamma,

W/o Shankaraiah,

R/o H.No.29-138,

Neredmet, R.K. Puram,

Malkajgiri, Ranga Reddy District. ..….Petitioner

AND

Bhabha Atomic Research Centre,

Arch. & Civil Engineering Division,

C.C.C.M.Project, E.C.I.L. (P.O.),

Hyderabad – 500 762. ….Respondent

Appearances:

For the Petitioner : M/s. G. Ravi Mohan, G. Naresh Kumar & Vikas Sharma, Advocates

For the Respondent : M/s. Ravinder Viswanath, Sr. Central Government Counsel & P. Damodar Reddy, Advocate

AWARD

Smt. Balamani @ Balamma who worked as Gardener (who will be referred to as the workman) has filed this petition under Sec. 2A(2) of the Industrial Disputes Act, 1947 against the Respondent Bhabha Atomic Research Centre seeking for declaring the proceeding dated 30.9.2006 issued by Respondent as illegal, arbitrary and to set aside the same consequently directing the Respondents to reinstate the Petitioner into service duly granting all the consequential benefits such as continuity of service, back wages and all other attendant benefits etc., and such other reliefs as this court may deems fit.

2. **The averments made in the petition in brief are as follows**:

It is submitted that, the Petitioner is a lady having experience in gardening works prior to her appointment in the Respondent Center she was trained in the gardening work. Therefore, basing upon her technical nature of work she was appointed in the Respondent Center as a gardener. It is further submitted that though she was appointed as gardener she was also attending the other miscellaneous works such as sweeping, Attendar etc.. It is submitted that, the Petitioner was appointed in Respondent Center in the month of March 1995, since her appointment, she had been performing duties to the utmost satisfaction of her superiors. It is submitted that. there are about 40 employees in the Respondent Center. There are no regular attenders, sweepers in the Respondent Center, the Petitioner and other similar situated persons were being engaged on a consolidated pay which was less than Minimum Wages. It is submitted that, the Petitioner was expert in gardening work. It is submitted that, the Respondent used to calculate daily wages and used to pay the same once in a month. The Petitioner was enjoying the privileges of national and festival holidays and other benefits which were entitled by them. It is submitted that, the Respondent has been given Medical facilities in the form of making a member in the ESI corporation due to which the Petitioner was allotted with ESI number for the Petitioner and her family members availed Medical benefits from E.S.I., so also the Respondent used to deduct the amount towards the provident fund and the same was being deposited before the appropriate authority. It is submitted that, though the Respondent has not issued appointment order and the Respondent designated the Petitioner as an employee of the Respondent in the E.S.I. card and Provident Fund card. While the matter stood thus, the Respondent used to pay less wages than the minimum wages prescribed by the Government without issuing any notice w.e.f. September 2005. Then, the Petitioner made an Application to the Respondent to pay the minimum wages and also requested to pay more keeping in view of her length of services. But in vain. She made an Application to the Regional Labour Commissioner(C) in respect of pay for minimum wages, then the Respondent came with a plea before the RLC(C), stating that the Petitioner is not an employee of the Respondent Center and further stated that Petitioner is a contract Labour and showed Mr.Srinivas as a contractor. It is submitted that, it is unfair on the part of Respondent that Respondent has shown that one of the workmen as a contractor who does not have any license prescribed under provision of Law. It is submitted that, in view of the complaint of the Petitioner to the RLC(C) the Respondent terminated the Petitioner and did not permit the Petitioner to enter into the premises. It is submitted that, the Respondent obtained signature on a blank Paper for paying the salaries for the month of August & September, 2006 the said action of Respondent is nothing but unfair labour practice which attracts Penal action. It is submitted that, the Respondent tried to change the service condition of the Petitioner by converting her into a contract Labour without assigning any reason and without issuing any Notice which is illegal. It is submitted that Petitioner worked for 10 years without any break in service as a causal labour.

Therefore it is obligation part of Respondent to regularize the service of the Petitioner but however the Respondent terminated services of the Petitioner w.e.f. 31-09-2006 without issuing notice and without paying compensation of service rendered by her. The said action of Respondent is in violation of Sec 25 (F) of Industrial Disputes Act and in violation of Sec 9 of I.D. Act. Having no other alternative remedy the Petitioner is constrained to approach this Hon'ble Court under section 2 A (2) of Industrial Disputes Act, 1947 for necessary relief. It is submitted that the Petitioner is the only earning member of her family and it has become very difficult to eke their livelihood consequent to illegal termination. It is therefore prayed to set aside the Oral termination dated 31.9.2006 passed by the Respondent and consequently direct the Respondent to reinstate the Petitioner into service with continuity of service, back wages and all other attendant benefits.

3. **The Respondents filed counter denying the averments made in the petition, with the averments in brief which runs as follows**:

It is submitted that the Petitioner has made a wrong statement in the Claim Statement stating that she was terminated orally on 31/09/2008, which is incorrect, since September has only 30 days. Hence, it is submitted that the Claim Statement is not maintainable and deserves to be dismissed in limine. The Applicant's statement that she was appointed in the Respondents Centre in the month of March 1995, which is far from truth and baseless. The fact is that the applicant was working under a Contractor and the Respondent had never engaged any gardener. It is submitted that it is the contractor, who had engaged the Petitioner. The Respondent is making payment to the Contractor on production/submission of the bills as approved in the Tender document. Petitioner is challenging the so-called oral termination order dated 30/09/2006 passed by the Respondent, which is baseless and without any substance. Hence, the Petitioner cannot claim to re-instate her into the service with continuity of service, back wages and all other benefits since in the first place, the Petitioner had never been appointed at all by the Respondent. A contract for horticulture maintenance was awarded to M/s. E. Srinivas w.e.f. 1/7/2006 and was valid upto 30/6/2007. Tenders were invited for the same and the contract was awarded to M/s. E. Srinivas, being the lowest bidder. As specified in the contract, the Contractor had employed eight gardeners for the purpose for which payment had to be made as per the Schedule of Quantities (Schedule 'A) of the Contract. It is further submitted that the Respondents are in receipt of Order No. 1/15(1)/2006- L.S.II dated 7/6/2006 from the Ministry of Labour and Employment, notifying the minimum wages including variable Dearness Allowance clause. It is also submitted that the Respondents received letter No. 95/1/2006-SK/E4 dated 29/8/2006 from the Labour Enforcement Officer (Central), Ministry of Labour & Employment intimating that the eight of the labourers engaged by the said Contractor Shri E.Srinivas had made a complaint that they were not in receipt of the wages as per the extant rules of the Minimum Wages Act and also to comment upon, since the Respondent is only the Principal Employer. On receipt of the said communication, the Respondent sought clarification from the contractor on the matter and the same was obtained vide letter dated 6/9/2006, which states that all the payments made by the contractor were as per the extant rules of the Minimum Wages Act. Further, the contractor stated that the lesser payments made by him to the Petitioner and others were the result of their absenteeism. Apart from the above, the contractor vide his letter dated 12.10.2006 also informed the Labour Enforcement Officer (Central), Hyderabad that he is following all the necessary prescribed procedures. Subsequently, the said complaint was withdrawn by the Petitioners vide letter dated 16/10/2006 addressed to Labour Enforcement Officer (Central) Hyderabad. It is denied that the Petitioner has ever been appointed by the Respondent. It is denied that the Respondent has ever employed the Petitioner as a Casual Labourer. The averments made by the Petitioner are baseless and devoid of merits. Besides, the Contractor has confirmed that the wages are being paid as per the extant rules under the Minimum Wages Act. It is submitted that all the employees of this Centre are covered and governed by Central Services Medical Attendants Rules (CSMA) 1944 and Contributory Health Services Scheme (CHSS) as in the Department of Atomic Energy and the question of availing of medical facilities under Employees State Insurance (ESI), does not arise. Hence, it is evident that the contractor had arranged to register the Petitioner and other workmen under the ESI for availing the medical facilities. It also submitted that the Respondents have never deducted any amount from the wages of the Petitioner, as alleged, and Respondents never disbursed salaries to the Petitioner. Shri E. Srinivas is a Contractor workman of the Respondent, as contended by the Petitioner. The Respondents deny that they had obtained any signature on the blank papers from the Petitioner and was never regarding the payments, since the same were always made by the Contractor and never by the Respondents. It is submitted that they had never terminated the Petitioner, as the Petitioner was not at all an employee of the Respondent. It is further reiterated that the Petitioner was never employed as casual labourer by the Respondents. However, the Contractor was at liberty to terminate the services of the Petitioner, if he felt that the work performed was unsatisfactory. Hence, the question of obligation on the part of the Respondents to regularize the Petitioner or payment of compensation does not arise. It is further submitted that the Respondents are in no way involved in the present dispute between the Contractor and his labourers and hence, the Respondents crave leave to discharge them from the present dispute. It is also further submitted that Bhabha Atomic Research Centre (BARC) is a R&D constituent unit of Department of Atomic Energy. This Centre is excluded “Industry" under Section 2(0) of ID Act. Hence the provisions of this I.D. Act are not applicable to this Centre. Hence, it is submitted that C.G.I.T. has no jurisdiction to hear the cases and no relief on this account can be granted by this Hon'ble Tribunal to the Petitioner. It is to submit that the claim of the Petitioner is false, misleading and without any justification. It is submitted that the

Petitioner has not made out any case, which merits the intervention of this Hon'ble Tribunal. The Respondents therefore prayed to dismiss this Claim Application, as the same being devoid of merits.

4. Petitioner has examined herself as WW1 and marked photocopies of documents as Ex.W1 to Ex.W4. On the other hand, Respondent has examined MW1 on their behalf who has marked photocopies of six documents i.e., Ex.M1 to M6.

5. The respondent has submitted written arguments, but despite the sufficient opportunity granted to the petitioner, he did not adduce either oral or written arguments.

6. On the basis of the pleadings of both parties and arguments advanced, the following points emerge for determination:-

I. Whether there existed employer and employee relationship between the Respondent and Petitioner? If yes, it's effect?

II. Whether the action of the management in terminating the services of the Petitioner through oral termination dated 30.9.2006 is illegal and unjustified? If so, whether said order be liable to be set aside?

III. To what relief is the petitioner entitled?

7. In order to prove her claim Petitioner in evidence has examined herself as WW1 and also filed the documentary evidence, i.e., Ex.W1 demand notice dated 21.11.2006, Ex.W2 acknowledgement card, Ex.W3 ESI card of the Petitioner and Ex.W4 is the attendance copies.

8. Per contra, Respondent has examined MW1 Sri P.M. Rao, in oral evidence and also filed the documentary evidence Ex.M1 to Ex.M6. Further, the witness MW1 has exhibited the document Ex.M1 an authorization letter dated 10.12.2010, Ex.M2 appointment letter dated 19.6.2006 in favour of M/s. E. Srinivas for Horticulture maintenance at CCCM, for contract. Ex.M3 is the letter from contractor dated 6.9.2006 to the Respondent along with payment and attendance list, Ex.M4 is copy of letter dated 12.10.2006 from contractor to LEO(C) along with acquaintance and attendance sheets. Ex.M5 is the letter from Petitioner along with other workmen to the LEO(C) withdrawing their complaint against contractor and Ex.M6 is the letter from Ministry of Labour & Employment dated 29.8.2006.

FINDINGS:-

9. **Point No. I**:- Petitioner has claimed in her claim statement that she was appointed in Respondent Centre in the month of March, 1995 to work as a Gardener. Further, the Petitioner claimed that she was also attending the other miscellaneous works such as Sweeping, Attender etc.. It is also submitted that the Respondent used to calculate daily wages and used to pay the same once in a month. She has also enjoyed the privileges of national and festival holidays which were entitled by the employees of Respondent. It is also submitted that Respondent has also given medical facilities in form of making member in the ESI corporation, due to which the Petitioner was allotted with ESI Number for her and to her family members to avail medical facility benefit from ESI. Further, it is contended that Respondent used to deduct the amount towards provident fund and the same was being deposited before the appropriate authority. Petitioner further contended that Respondent has not issued any appointment letter. But Respondent designated the Petitioner as an employee of the Respondent in the ESI card and PF card.

10. On the other hand, Respondent has refuted the claim made by the Petitioner that she was the employee of the Respondent. Further, it has been contended that Petitioner is the contract labour and contractor Mr. E. Srinivas who has been awarded the contract for Horticulture maintenance w.e.f 1.7.2006 to 30.7.2007 has engaged the Petitioner to work at the Respondent centre. Therefore, the Petitioner's submission that she was appointed in the Respondent centre in the month of March, 1995 is far from the truth and is baseless. The fact is that applicant was working under contractor and the Respondent has never engaged any gardener.

11. To determine the existence of employer and employee relationship between the Respondent and the Petitioner four elements generally need to be considered. They are:-

i) The selection and engagement of employee

ii) payment of wages

iii) Power of dismissal and

iv) power to control the employee's conduct

12. The burden of proof to establish the claim that the Workman was the employee of the Respondent, is upon the Petitioner, whereas in rebuttal Respondent has to prove that the dismissal was for valid reason. However, in the case of illegal dismissal, the employer and employee relationship must be established first. It is incumbent upon the employee to prove employer and employee relationship by adducing substantial evidence. However, for the element of control, it must be noted that not every form of control that will create an employer and employee

relationship. No employer and employee relationship exists when control is in the form of rule that merely serve as guidelines towards the achievement of the results without dictating means and methods to attend them. Employer and employee relationship exists when control is in the form of rules that fix the methodology to attain the specific results and bind the worker to use such thing. It is settled law that the ultimate control is the most important element when determining the existence of employer and employee relationship. It pertains not only to result but also to means and methods of attaining those results.

13. Therefore, in view of the above, in order to find out whether there existed the employer and employee relationship between the parties, first of all we have to examine the evidence adduced on behalf of the Petitioner. In this context, Petitioner has filed chief affidavit as WW1, wherein she has reiterated the averments made in her claim statement. Further, in her chief examination she has also exhibited the documents, Ex.W1 to W4. Admittedly Petitioner has not filed any document in evidence to show that she was appointed by the Respondent as Gardener. She has not filed any document which would show that Respondent had paid wages to the Petitioner for the work done. Further, no iota of evidence has been adduced by Petitioner on record that the Respondent had the power of dismissal of the Petitioner from employment. Further, no evidence to show that the Respondent has power to supervise and control of the conduct of the employee for doing the job of maintenance of Horticulture at the Respondent centre**.**

In the case of Automobile Association Upper India V. P.O. Labour Court-II & Anor., 2006 DLJ 160 Hon'ble Delhi High Court have held:-

"engagement and appointment of the workman in service can be established either by direct evidence like existence and production of appointment letter or written agreement, or by circumstantial evidence of incidental or ancillary records, in nature of attendance register, salary register, leave records, deposit of PF contribution, ESI etc. or even by examination or co-worker who may depose before the court that the workman was working with the management."

But the Petitioner herein failed to produce such evidence and failed to discharge her onus to establish her claim.

14. Although Petitioner has filed the documents Ex.W1 to W4, but WW1 did not depose in her evidence that how and in what manner by these documents she purport to establish her claim of appointment at Respondent centre to work as a gardener. Further, perusal of these documents would reveal that no document pertains to the appointment of the Petitioner by the Respondent as she had claimed. Further, these documents would not show that Respondent had power of supervision and control the employees conduct to carry out the job assigned to her. Thus, Petitioner has not succeeded to establish the existence of employer and employee relationship between the Petitioner and Respondent from these documents. However, witness WW1 was cross examined by the Respondent counsel and in her cross examination WW1 has admitted that she was orally appointed in the Respondent centre and ever any appointment letter was given to her. Further, WW1 states that she did not receive any call letter from employment office. Further, WW1 states that, ESI card was issued to her by BARC though the name of the employer is not there on the card. It is correct that she made complaint to RLC(C) for less payment of wages by the BARC, the complaint was made against the BARC, not against the contractor. It is not correct to suggest that Mr. E. Srinivas has appointed her and has disengaged her. Further, WW1 states that, it is not correct that neither BARC has appointed her nor disengaged her. Further WW1 states that it is correct that letter dated 16.6.2006 was given by her and other co-workers. It was given for withdrawal of the earlier complaint which was given against the contractor. Further, paper No.6 of list of documents filed by the Respondent i.e., Xerox copy of the muster roll, her signature is there at serial No. 6 which is marked as Ex.M2. Further, she admits that she received the wages for 9 days Rs.976.50 ps and others also received their respective wages.

15. Thus, from the statement of WW1 in her cross examination it manifests that although she was engaged to work at Respondent centre as a daily wager but no appointment letter has been issued by the Respondent. Petitioner has not adduced any evidence that wages were paid by the Respondent. Thus, in the absence of evidence of appointment letter or payment of wages by the Respondent, it clearly delineates that she was not employed/ engaged by the Respondent. However, WW1 has admitted in her cross examination that the letter dated 16.10.2006, Ex.M5 was given by her and other co-workers regarding less payment of wages withdrawal of the complaint which was moved earlier against the contractor by them. The said letter would show that Petitioner along with co-employees has made the complaint to the competent authority, i.e., RLC(C) against contractor who had engaged them to work at Respondent center as gardener payment of less wages to them by the contractor. Thus, for the sake of argument of the Petitioner, if she was the employee of the Respondent, then why she had moved a complaint against the contractor for less payment of wages. This document goes to show that Petitioner was the employee of the contractor and not of the Respondent. Further, the documentary evidence Ex.W3 would show that there is no details of the employer on these cards. Therefore, Petitioner could not succeed to establish her claim on the basis of these documents that she was the employee of the Respondent. Thus, her claim is not substantiated by any cogent evidence.

16. It is settled principle of law, that a person who set up his plea of relationship of employer and employee, the burden of proof would rests upon him. In this context, few decisions of Hon'ble High Court and Hon'ble Apex Court are being discussed below:-

In the case of **Baburam Vs. Govt. of NCT of Delhi & Anr., 247 (2018) Delhi Law times 596 wherein Hon'ble High Court of Delhi have held**:-

"It is well settled principle of law that the person, who sets up a plea of existence of relationship of employer and employee, the burden would be upon him. In this regard, the ***Hon'ble Supreme Court in the case of Workmen of Nilgiri Coop. Mkt. Society Ltd. V. State of T.N. and Others, (2004) 3 SCC 514*** *has approved the judgment of Kerala and Calcutta High Court, where the plea of the workman that he was employee of the company was denied by the company and it was held that it was not for the Company to prove that he was not an employee.*

The burden of proof being on the workman to establish employer and employee relationship an adverse inference cannot be drawn against the employer that if he were to produce books of accounts they would have proved employer and employee relationship."

In the case of **N.C. John Vs. Secretary Thodupuha Taluk Shop and Commercial Establishment Workers' Union and others, Hon'ble Kerala High Court have held:-**

"*The burden of proof being on the workman to establish the employer - employee relationship an adverse inference cannot be drawn against the employer that if he were to produce books of accounts they would have proved employer employee relationship."*

Further, in the case of **'Kanpur Electricity Supply Co. Ltd. Vs Shamim Mirza 2009 1 SCC 20, the Hon'ble Supreme Court held as under :-**

"*It is trite that the burden to prove that a claimant was in the employment of a particular management, primarily lies on the person who claims to be so but the degree of proof, so required, varies from case to case. It is neither feasible nor advisable to lay down an abstract rule to determine the employer - employee relationship."*

Thus, in view of the settled principle of law regarding burden of proof in this respect, in the present matter Petitioner has utterly failed to discharge her burden of proof on the basis of her documentary as well as oral evidence that she was employee of the Respondent center and it has not been proved that employer and employee relationship existed between them. Petitioner failed to produce any proof of payment of salary or wages to her by the management nor any appointment letter or termination order has been produced. There is no documentary evidence to prove relationship of employment in the case at hand. Merely oral testimony of Petitioner is not sufficient to prove relationship of employer and employee.

17. On the other hand, Respondent in his counter as well as in evidence has refuted the allegation and claim of the Petitioner as averred by her. Respondent has contended that a contract for Horticulture maintenance was awarded to Mr. E. Srinivas w.e.f 1.7.2006 to 30.7.2007 being the lowest bidder as specified in the contract and contractor had employed eight gardeners for the purpose for which payment had been made as per Schedule A of the contract. Further Respondent contended that as per receipt of the letter dated 7.6.2006 of the Ministry of Labour and Employment, notifying the minimum wages including the variable Dearness Allowance Clause, Respondent has directed the contractor to ensure the payment to the workmen as per the extent of rules of Minimum Wages Act. Respondent has filed the documents in evidence Ex.M1, M2, M3, M4 and M6, which goes to show that direction has been issued to contractor for the compliance of Minimum Wages Act in regard to payment of minimum wages to the contract labour i.e., Petitioner etc.. Ex.M5 is the document of withdrawal of complaint by Petitioner and other co-employees. It goes to show that Petitioner and co-employees vide letter dated 16.10.2006, addressed to the LEO(C), Hyderabad, has prayed that they are working at Respondent BARC centre, through contractor, though earlier they made a complaint for payment of less wages, now, he is paying the wages as per Act, hence they are withdrawing that complaint. Thus, document Ex.M5 manifests clearly that the Petitioner was engaged by contractor and had worked as contract labour at the Respondent centre. Petitioner was not employed by the Respondent directly. Therefore, documents exhibited by Respondent goes to show that Petitioner had worked at the Respondent centre as a contract labour and was paid wages through contractor. Respondent has examined witness MW1 who has marked the documents, Ex.M1 an authorization letter dated 10.12.2010, Ex.M2 letter dated 6.9.2006 in favour of M/s. E. Srinivas for Horticulture maintenance at CCCM, on contract, Ex.M3 is copy of attendance roll, Ex.M4 is letter dated 12.10.2006 from contractor to LEO(C), Ex.M5 is the letter written and moved by from Petitioner along with co-employees to the LEO(C) withdrawing complaint which was moved by them against contractor for less payment of wages and Ex.M6 is the letter from LEO(C) regarding complaint on less payment of wages by the contractor Mr. E. Srinivas. Ex.M2 contains terms and conditions of the contract.

18. Thus, on going through the oral and documentary evidence relied upon by the Petitioner in support of her claim, and also documents filed by Respondent , I come to conclusion that Petitioner has utterly failed to establish and prove her claim that she was employee of Respondent management. The Petitioner has also not called her co-

worker to examine and prove that she was appointed by the Management as claimed by her. None of the documents relied upon by the Petitioner are in respect of her appointment by the Respondent or payment of wages made by the Respondent Management. Merely oral or bald averments made by the Petitioner workman is not sufficient to prove that workman was the employee of Respondent centre. There is nothing in the testimony of the witness WW1 as well as documentary evidence to substantiate or corroborate the claim of the workman. Rather, testimony of the MW1 witness remains unimpeachable / uncontraverted in one way or other. Thus, Petitioner claimant utterly failed to produce any cogent proof of payment of wages/salary made by the Management or any appointment letter issued by the Respondent. Merely oral testimony of the Petitioner is not sufficient to prove the employer and employee relationship between the Respondent centre and the Petitioner workman. However, no document on record has been filed from which it can be ascertained that the workman Petitioner was on the rolls of the Management. Thus, for the want of such evidence it can be held safely that the onus has not been discharged by the Petitioner to establish her claim. Thus, Petitioner has utterly failed to prove that she was appointed by the Respondent as a gardener for the period claimed by her in the statement of claim or even she has failed to establish and prove that she had worked for a period of 240 days prior to her alleged termination of her services by the Respondent Management just preceding from the date of her termination in the 12 months of a calendar year. Therefore, the claim of the Petitioner herein is not found established and proved on the basis of evidence produced by her.

Constitutional Bench of Hon'ble Supreme Court of India in the case of Steel Authority of India and others Vs. National Union Water Front Workers & Ors dated 30.8.2001 AIR SCC 3527 has laid down, the principles for determining the relationship of employer and employee in any matter under the given circumstances, and have held:-

"*The term contract labour as defined in clause (b) of Section 2 reads:*

(2)(1)(b) 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 the principal employer. By definition the term contract labour is a species of workman. A workman shall be so deemed when he is hired in or in connection with the work of an establishment by or through a contractor, with or without the knowledge of the principal employer. A workman may be hired: (1) in an establishment by the principal employer or by his agent with or without the knowledge of the principal employer; or (2) in connection with the work of an establishment by the principal employer through a contractor or by a contractor with or without the knowledge of the principal employer. Where a 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 where a 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 workman for any work of the establishment, a question might arise whether the contractor is a mere camouflage as in Hussainbhai Calicuts case (supra) and in Indian Petrochemicals Corporations case (supra) etc.; if the answer is in the affirmative, the workman will be in fact an employee of the principal employer; but if the answer is in the negative, the workman will be a contract labour."

Here in the matter at hand, the document Ex.M2 would reveal that vide communication dated 19.6.2006 the Respondent had accepted the quotation of contractor Mr. E. Srinivas for maintenance of Horticulture work and annexed Schedule 'A' is terms and conditions of contract that goes to show that workman has been hired by the contractor, in or in connection with the work of the Respondent establishment and contractor has undertaken the contract to produce a given result for maintenance of Horticulture of the Respondent center and to produce a given result under said contract, contractor had engaged Petitioner and other co-workmen. Therefore, no employer and employee relationship existed between Petitioner and Respondent. Thus, in view of the law laid down by the Hon'ble Apex Court and on going through the evidence of both the parties on record, it can safely be held that there existed no employer and employee relationship between the Respondent and Petitioner.

Thus, Point No.I is answered accordingly.

19. **Point No. II:** - In view of the foregone discussion and finding given at Point No.I, it has been established that there existed no relationship of employer and employee between the Respondent and the Petitioner, and Petitioner was engaged by the contractor and also disengaged by the contractor. Petitioner was merely a contract labour. However, Petitioner was not directly engaged by the Respondent to work at their center, hence, the action of Respondent in termination of the service of Petitioner is legal and justified.

Thus, Point No. II is answered against the Petitioner and in favour of Respondent.

20. Point No. III:- In view of the fore gone discussion and finding arrived at Points No.I & II, I am of the considered view that Petitioner is not entitled to any relief. Hence, Petitioner 's claim statement is liable to be dismissed.

Thus, Point No.III is answered accordingly.

AWARD

In the result, the action of the management in terminating the services of the Petitioner Smt. Balamani @ Balamma, Gardener, through oral termination dated 30.9.2006 is held legal and justified. Hence, the Petitioner is not entitled to any relief, as such, the petition is liable to be dismissed. Therefore, the petition stands dismissed.

Award is passed accordingly. Transmit.

Dictated to Smt. P. Phani Gowri, Personal Assistant, transcribed by her, corrected and signed by me on this the 22nd day of April, 2024.

IRFAN QAMAR, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner	Witnesses examined for the Respondent
WW1: Smt. Balamani @ Balamma	MW1: Sri P.M. Rao

Documents marked for the Petitioner

Ex.W1: Photocopy of the demand notice dt. 21.11.2006

EX.W2: Acknowledgement card

Ex.W3: Photocopy of ESI Card of Petitioner

Ex.W4: Photocopy of the attendance copies

Documents marked for the Respondent

Ex.M1: Photocopy of the Lr.No.CCCM/BARC/Adm/2010/1212, dt.10.12.2010 from Respondent to Sr. CGSC

Ex.M2: Photocopy of the lr. No.CCCM/BARC/118/2006/689 dt.19.6.2006 reg. horticulture maintenance at CCCM to the contractor by Respondent.

Ex.M3: Photocopy of the lr. Dt.6.9.2006 from Mr. E. Srinivas to the Respondent.

Ex.M4: Photocopy of the lr. Dt. 12.10.2006 from Mr. E. Srinivas to the LEO(C)

Ex.M5: Photocopy of the lr. Dt. 16.10.2006 withdrawing complaint against contractor by Petitioner along with other workmen

Ex.M6: Photocopy of the lr. From LEO(C) to the Respondent reg. complaint recd. Reg. less payment of wages.

नई दिल्ली, 13 मई, 2024

का.आ. 921.—औद्योगिक विवाद अधिनियम, (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार **महाप्रबंधक, भारत संचार निगम लिमिटेड, दक्षिणी दूरसंचार क्षेत्र, सैफाबाद, हैदराबाद; मंडल अभियंता, भारत संचार निगम लिमिटेड, दक्षिणी दूरसंचार क्षेत्र, करीमनगर; उप मंडल अभियंता, भारत संचार निगम लिमिटेड, दक्षिणी दूरसंचार क्षेत्र, करीमनगर,** के प्रबंधतंत्र के संबद्ध नियोजकों और **श्री अकुला मल्लेशम, कामगार,** के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण- सह- श्रम न्यायालय- हैदराबाद पंचाट (संदर्भ संख्या 69/2006) को जैसा कि अनुलग्नक में दिखाया गया है, प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 10/05/2024 को प्राप्त हुआ था।

[सं. एल–42025-07-2023-89-आईआर(डीयू)]

दिलीप कुमार, अवर सचिव

New Delhi, the 13th May, 2024

S.O. 921.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 69/2006) of the **Central Government Industrial Tribunal cum Labour Court – Hyderabad** as shown in the Annexure, in the Industrial dispute between the employers in relation to **The General Manager, Bharat Sanchar Nigam Ltd., Southern Telecom Region, Saifabad, Hyderabad ;The Divisional Engineer, Bharat Sanchar Nigam Ltd., Southern Telecom Region, Karimnagar; The Sub Divisional Engineer, Bharat Sanchar Nigam Ltd., Southern Telecom Region, Karimnagar, and Shri Akula Mallesham, Worker,** which was received along with soft copy of the award by the Central Government on 10/05/2024.

[No. L-42025-07-2023-89-IR (DU)]

DILIP KUMAR, Under Secy.

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT AT HYDERABAD

Present: - **Sri Irfan Qamar**

Presiding Officer

Dated the 24th day of April, 2024

INDUSTRIAL DISPUTE L.C.No. 69/2006

Between:

Sri Akula Mallesham,

S/o Narasaiah,

C/o A. Sarojana, Advocate,

Flat No.G-7, Rajeshwari Gayatri Sadan,

Opp: Badruka Girls Jr. College,

Kachiguda, Hyderabad . ..….Petitioner

AND

1. The General Manager,
   Bharat Sanchar Nigam Ltd.,
   Southern Telecom Region,
   6-1-85/10, Sai Nilayam, Saifabad,
   Hyderabad .
2. The Divisional Engineer,
   Bharat Sanchar Nigam Ltd.,
   Southern Telecom Region,
   Karimnagar.
3. The Sub Divisional Engineer,
   Bharat Sanchar Nigam Ltd.,
   Southern Telecom Region,
   Old Telephone Exchange Building,
   Karimnagar. ….Respondents

Appearances:

For the Petitioner : Sri M. Govind, Advocate

For the Respondent : Sri S. Prabhakar Reddy, Advocate

AWARD

Sri Akula Mallesham who worked as Mazdoor (who will be referred to as the workman) has filed this petition under Sec. 2A(2) of the Industrial Disputes Act, 1947 against the Respondents Bharat Sanchar Nigam Ltd., to direct the Respondents to reinstate the Petitioner into service w.e.f. 1.5.2005 and such other reliefs as this court may deems fit.

2. **The averments made in the petition in brief are as follows**:

It is submitted that Petitioner has worked as Full time Mazdoor in the office of the 3rd Respondent from July, 2001 onwards. But while drawing his pay Petitioner's name was shown as M.Rangaiah or some other name. Though, the Petitioner has requested the Respondents to continue him on his name instead of continuing on the name of M.Rangaiah, Respondents have ignored his request on the ground that as long as he is being paid salary, he shall not bother on which name he is being continued and Petitioner was informed that, he would be discontinued otherwise. As the Petitioner has no other source of livelihood, he could not resist the Respondents. It is submitted that Petitioner was continued upto 30-4-2005. Ultimately, from 1-5-2005 onwards, Petitioner was disengaged orally. Though, Petitioner pleaded the Respondents not to disengage his services, as he has no other source of livelihood, his

request did not yield any positive result. It is submitted that from the date of his initial engagement, Petitioner has been working as full time worker, he used to attend all sorts of works entrusted to him by the 3rd Respondent or other authorities, many other casual labours and temporary employees, who worked along with him, were given temporary status and were extended regular scales of pay, but to his misfortune, he was paid consolidated salary. Though, Petitioner discharged duties from July 2001 to April, 2005, for most of the time his salary was drawn, on some parties name, except for some time. It is further submitted that disengaging his services orally without issuing any notice or without following due process of law is wholly unjustifiable. It is submitted that 1st Respondent is an instrumentality of State under Article 12 Of Constitution of India, as such it cannot follow such arbitrary method of engaging the workers on third party's name, so as to disable such workmen from claiming regularization, in future. Though there is work of perennial nature existed, the action of the Respondents in dispensing with his services is also unjustifiable. As the Petitioner was engaged as full time Mazdoor from July,2001 to the end of April, 2005, the action of the Respondents in disengaging his services orally without following due process of law is unjustifiable and Petitioner is entitled to be reinstated into service, duly granting all other consequential benefits. It is therefore prayed to direct the Respondents to reinstate the Petitioner into service w.e.f. 1-5-2005, duly granting all other consequential benefits.

3. **The Respondents filed counter denying the averments made in the petition, with the averments in brief which runs as follows**:

It is submitted that he worked as a full time casual labour in the Office of the Sub-Divisional Engineer, OFC Maintenance, Karimnagar is wrong and denied. The Petitioner was never engaged and there is no scope to engage him in the name of M.Rangaiah and pay him the wages in violation of the Departmental Rules & Regulations to the effect that there could be engagement by letters of appointment and payment recorded in the Departmental records on the basis of such engagement specifically of the person so engaged. It is submitted that the Petitioner was never engaged as such and there is no scope to disengage him orally. The Petitioner is misrepresenting to gain undue sympathy of this Hon'ble Tribunal. It is submitted that the relief sought for re-engagement is baseless and incorrect in view of the total ban for engagement of casual labour as per DOT letters No. 269-4/93 STN II(PT) dated 12.2.1999 and letter no. 269-4/93 STN II dated I5-6-1999. The casual labour are engaged in several contingencies for a period not exceeding 100 days and as such there is no scope to engage the Petitioner as casual labour. Hence, it is prayed to dismiss the petition.

4. In order to establish and prove his claim Petitioner has examined himself as WW1 and has also filed the documentary evidence, Ex.W1 to W3. Ex.W1 is the photocopies of bunch of slips containing 8 pages, for obtaining cheque book from the State Bank of India, Karimnagar, Ex.W2 photocopies of bills prepared by 3rd Respondent containing pages from 9 to 62 and Ex.W3 photocopies of bills prepared by 3rd Respondent along with the receipts signed by the Petitioner from pg. No.63 to 91. On the other hand, Respondent refuted the allegations of the Petitioner, and has examined MW1.

5. Heard both parties and perused written arguments filed by both parties.

6. On the basis of the pleadings of both parties and arguments advanced, the following points emerge for determination:-

I. Whether the action of the Respondent Management in disengaging the services of the Petitioner orally is legal and justified?

II. To what relief is the Petitioner entitled?

Findings:-

7. Point No.I: Petitioner workman claimed that he was engaged by the Respondent for working as a full time worker and he continued to work from July, 2001 to 30.4.2005 and Respondent disengaged from the services orally w.e.f. 1.5.2005 without following due process of law. Thus onus to prove claim lies upon the Petitioner workman. In this context Hon'ble Supreme Court of India and High Courts have laid down the law from time to time in its decisions. The relevant decisions on the subject are being referred as follows:-

In the case of Automanagerial Association vs. Presiding Officer, Labour Court and others, 2006 DNT 160, Hon'ble High Court of Delhi has held:-

"Engagement and appointment of the workman, his services can be established by either direct evidence, like existence and production of appointment letter or written agreement or by circumstantial evidence or incidental or auxiliary records, in nature of attendance register, salary register, leave records, deposit of PF contribution, ESI etc., or even by examination of co-workers who may depose before the court, that the workman was working with the Management."

Further Hon'ble Supreme Court of India in the case of **Workman of Nilgiri Coop. Mkt. Society Ltd. Vs. State of Tamil Nadu AIR 2004 SC 1639 held:-**

"*It is a well-settled principle of law that the person who is set up a plea of existence of relationship of employer and employee, the burden would be upon him."*

Further, in the case of **N.C. John Vs. Secretary Thodupuha Taluk Shop and Commercial Establishment Workers' Union and others , 1973 Lab.I.C. 398, the Hon'ble High Court of Kerala** held:-

"*The burden of proof being on the workman Jai Prakash of 21 to establish the employer and employee relationship an adverse inference cannot be drawn against the employer that if he were to produce books of accounts they would have proved employer and employee relationship."*

Similarly, **Hon'ble Delhi High Court in case of Babu Ram Vs. Gove. Of NCT of Delhi & Anr., 247 (2018), Delhi Law Times 596 have held:-**

"*"It is well settled principle of law that the person, who sets up a plea of existence of relationship of employer and employee, the burden would be upon him."*

Thus, in view of the law laid down by the Hon'ble High Courts and Hon'ble Supreme Court of India as discussed above, the burden of proof to prove the claim that he was engaged by the Respondent from July, 2001 as a full time Mazdoor and worked for 240 days in a calendar year lies upon the Petitioner. Petitioner has filed the chief affidavit of WW1 reiterating the averments as such made in the claim statement that he was engaged by the Respondent for the work as a full time mazdoor and he continued to work from July, 2001 to 30.4.2005. WW1 was cross examined by the Respondent and in his cross examination WW1 states:-

"*I was orally given appointment by the Respondent. I do not remember my date of joining but I joined in the month of July, 2001. I have not filed any document to show that wage slip had been issued in my name. I have filed an application before the Respondent alleging that payment is being made in the name of one M. Rangaiah, but I have not filed any such document to that effect before this court along with my chief evidence affidavit. It is not correct to say that I had made allegation before the Respondent stating that even though I have been engaged to work under Sudhakar construction, but the said proprietor of the construction Company is not paying the wages in time. I was asked by the Respondent not to come to the office from the month of June, 2005 onwards. But there was no letter communication to that effect." Further, witness WW1 states, "it is not correct to suggest that I was worked for 240 days in a calendar year. The Department had not given any receipt to me towards payment of wages. It is not correct to suggest that I am not entitled to get any relief from the court since I was not working under the Respondent." Further witness states that, "I was not aware whether the power of engagement of casual labour had been withdrawn from the officers of the Respondent organization. I have not filed any document to prove that I was working continuously 240 days in a calendar year under the Respondent from the date of my this engagement till the date of my disengagement."*

Thus, from the above statement of the witness WW1 in cross examination it manifests that the Petitioner workman has not filed any documentary evidence, i.e., appointment letter or wage slip to prove his claim that he was engaged by the Respondent as a full time Mazdoor. Further, the witness WW1 admits that he has not filed any such document to prove that he had worked continuously 240 days in a calendar year under the Respondent from the date of his engagement till the date of his engagement. In absence of evidence of appointment letter or wage slips, it could not be inferred be said that the Petitioner was engaged by Respondent as a full time Mazdoor in the year 2001. Further, Petitioner failed to produce any reliable evidence of attendance register, leave record deposit of PF contribution and ESI etc.. to support his claim that he was appointed by Respondent in 2001. Further, Petitioner claims that he was drawing the pay in the name of Mr. M. Rangaiah is also not found to be proved in the absence of any evidence to the effect. However, WW1 states that he has filed application before the Respondent alleging that payment is being made in the name of Mr. M. Rangaiah. But, Petitioner has not filed any such document on record to substantiate this plea. In the absence of any cogent and reliable evidence this plea of Petitioner is untenable. However, Petitioner in support of claim has filed documents photocopies Ex.W1 a bunch of slips, which goes to show that cheque has been drawn by the Respondent on various dates in the name of person to withdraw the amount from the bank. However, on the back of these cheques signature of the Petitioner does appear, but it would not go to show that the Petitioner was appointed as full time Mazdoor in the Respondent Management. It only indicates that the cheque was handed over to Petitioner by Respondent to receive the amount from the bank. Further, Ex.W2 is the photocopies of different bills pertaining to payments made by Respondent on different dates to its workman. It pertains to the period from 2001 to 2005. However, Ex.W2 goes to reveal that the wages has been paid to the Petitioner on different dates intermittently. Ex.W3, manifests that wages have been paid to the Petitioner workman on different dates intermittently and also to other workmen. From this document it can be inferred that Petitioner has been paid wages as daily wage workman. But from these documents the claim of Petitioner that he had worked for 240 days continuously in a calendar year just preceding from the date of his alleged disengagement i.e., 1.5.2005 is not established and proved. Further, the onus of proof that his disengagement was done in contravention of law or in breach of provision of Sec.25F of I.D. Act, 1947 lies on Petitioner. He has to prove that he had worked for 240 days continuously in a calendar year preceding the date of termination by adducing cogent evidence. But Petitioner has failed to discharge his onus of proof by any cogent evidence. The claim of Petitioner by the above sworn testimony of WW1 can not be accepted.

Hon'ble Supreme Court of India has laid down the principle regarding onus of proof in such cases as referred below:-

In **Rajasthan State Ganganagar S. Mills Ltd. v. State of Rajasthan and Anr. (2004) Apex Court held: "***It was the case of the workman that he had worked for more than 240 days in the year concerned. This claim was denied by the appellant. It was for the claimant to lead evidence to show that he had worked for 240 days in the year preceding the date of his termination. He has filed an affidavit. It is statement which is in his favor and that cannot be regarded as sufficient evidence for any Court or Tribunal to come to the conclusion that in fact the claimant had worked for 240 days in a year."*

Hon'ble Apex Court in the case of Mohan Lal vs Management BEL has held: "*Clause (2)(a) provides for a fiction to treat a workman in continuous service for a period of one year despite the fact that he has not rendered uninterrupted service for a period of one year but he has rendered period of 240 days during the period of 12 calendar service for months counting backwards and just preceding the relevant date being the date of retrenchment. In other words, in order to invoke the fiction enacted in clause (2)(a) it is necessary to determine first the relevant date, ie. the date of termination of service which is complained of as retrenchment. After that date is ascertained, move backward to a period of 12 months just preceding the date of retrenchment and then ascertain whether within the period of 12 months, the workman has rendered service for a period of 240 days. If these three facts are affirmatively answered in favor of the workman pursuant to the deeming fiction enacted in clause (2)(a) it will have to be assumed that the workman is in continuous service for a period of one year and he will satisfy the eligibility qualification enacted in Section 25-F."*

Similarly, in the present case Petitioner has claimed that he had worked for 240 days continuously in a year with Respondent and onus to prove the fact is upon Petitioner that he had worked 240 days continuously in a year just preceding from date of his termination/disengagement. Evidence of the Petitioner goes to reveal only that he was engaged as a daily wager and worked not continuously but intermittently. Petitioner failed to produce cogent and reliable evidence to prove his claim.

8. On the other hand, Respondent has refuted the claim of the Petitioner as averred in claim statement. Respondent has examined MW1 in evidence. Has MW1 deposed that Petitioner was never engaged directly by the Respondent as such there is no scope to disengaged him orally. Further, MW1 states that there is a total ban for engagement of the casual labourers as per letters No.269-4/93 STN II (PT) dated 12.2.1999 and letter No. 269-4/93 STN II dated 15.6.1999. Therefore, question of and disengagement of the Petitioner does not arise.

9. Admittedly, the Respondent is an instrumentality of the Government of India and bound by the guidelines and directions issued by Government. As per circular Respondent Management has been directed not to engage casual labourers in the office. However, MW1 has admitted that salary / wages was paid to Petitioner but this payment of wages has been made intermittently to the Petitioner. Petitioner has not filed any evidence that wages was paid to him by the Respondent continuously for 240 days in a year. Thus, I find no force in the claim of the Petitioner that he had worked continuously for 240 days and his disengagement by Respondent was in contravention of provision of law is not established.

10. In view of foregone discussion, I am of the view that the Petitioner has failed to prove his claim by his oral and documentary evidence that he had worked continuously for 240 days in a calendar year just preceding from the date of his termination. Consequently, his plea that his termination was without due process is not found established. In these circumstances, it can not be held that the action of the Respondent Management by disengaging the Petitioner is unjustified.

Thus, Point No.I is answered accordingly.

11. **Point No.II:** In view of the fore gone discussion and finding given at Point No.I, Petitioner is not entitled for any relief and his petition is liable to be dismissed.

Thus, Point No. II is answered accordingly.

AWARD

In view of the fore gone discussion and finding at Points No. I & IIIt is held that the action of the Respondent in terminating the services of the Petitioner Sri Akula Mallesham is legal and justified. Petition stands dismissed as devoid of merits.

Award is passed accordingly. Transmit.

Dictated to Smt. P. Phani Gowri, Personal Assistant, transcribed by her, corrected and signed by me on this the 24th day of April, 2024.

IRFAN QAMAR, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner	Witnesses examined for the Respondent
WW1: Sri Akula Mallesham	MW1: Sri K. Venkateswarlu

Documents marked for the Petitioner

Ex.W1: Photocopies of bunch of slips containing 8 pages, for obtaining cheque book from the State Bank of India, Karimnagar,

Ex.W2: Photocopies of bills prepared by 3rd Respondent containing pages from 9 to 62

Ex.W3: Photocopies of bills prepared by 3rd Respondent along with the receipts signed by the Petitioner from pg. No.63 to 91.

Documents marked for the Respondent

NIL

नई दिल्ली, 13 मई, 2024

का.आ. 922.—औद्योगिक विवाद अधिनियम, (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार **मेसर्स लाइफ इन्सुरेंस कॉर्पोरेशन ऑफ़ इंडिया** के प्रबंधतंत्र के संबद्ध नियोजकों और **श्री के. बाल**कृष्ण के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, **हैदराबाद**, पंचाट **(रिफरेन्स न.-51/2014)** को जैसा कि अनुलग्नक में दिखाया गया है, प्रकाशित करती है, जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 13.05.2024 को प्राप्त हुआ था।

[सं. एल–17012/35/2013-आईआर(एम)]

दिलीप कुमार, अवर सचिव

New Delhi, the 13th May, 2024

S.O. 922.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award **(Reference No. 51/2014)** of the Central Government Industrial Tribunal cum Labour Court, **Hyderabad** as shown in the Annexure, in the Industrial dispute between the employers in relation to **M/s Life Insurance Corporation of India** and **Shri K. Balakrishna** which was received along with soft copy of the award by the Central Government on 13.05.2024.

[No. L-17012/35/2013-IR (M)]

DILIP KUMAR, Under Secy.

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT AT HYDERABAD

Present: - **Sri IRFAN QAMAR**

Presiding Officer

Dated the 23th day of April , 2024

INDUSTRIAL DISPUTE No. 51/2014

Between:

Shri K. Balakrishna,
S/o K. Sankar Rao,
R/o H.No. 3-62, Near Ramalayam,
Nallur Post, Aravapalli Village,
Reapalle Mandal,Guntur dist.-522265. ……Petitioner

AND

1. The Sr. Divisional Manager,
   LIC of India, Divisional Office,
   Kennedy Road, Manchilipatnam(AP).

2. The Divisional Manager,
LIC of India, Rapelle Branch,
Repalle, Guntur Dist. … Respondents

Appearances:

For the Petitioner : Sri Y Ranjeeth Reddy, Advocate

For the Respondent : Sri Venkatesh Dixit, Advocate

AWARD

The Government of India, Ministry of Labour by its order No. L-17012 /35/ 2013-(IR(M)) dated 04.03.2014 referred the following dispute under section 10(1)(d) of the I.D. Act, 1947 for adjudication to this Tribunal between the management of M/s LIC of India and their workman. The reference is,

SCHEDULE

"Whether the removal from service of Shri K. Bala Krishna, Ex-Temp. Class-IV, LIC of India, Repalle Branch w.e.f. 28.1.2013, is legal and justified? If not, what relief the workman is entitled to?

The reference is numbered in this Tribunal as I.D. No 51/2014 and notices were issued to the parties concerned.

2. After filing claim statement Petitioner remained absent. 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 23th day of April, 2024.

IRFAN QAMAR, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner	Witnesses examined for the Respondent
NIL	NIL

Documents marked for the Petitioner

NIL

Documents marked for the Respondent

NIL

नई दिल्ली, 13 मई, 2024

का.आ. 923.—औद्योगिक विवाद अधिनियम **(1947** का **14)** की धारा **17** के अनुसरण में**,** केन्द्रीय सरकार **मेसर्स लाइफ इन्सुरेंस कॉर्पोरेशन ऑफ़ इंडिया** के प्रबंधतंत्र के संबद्ध नियोजकों और **इन्सुरेंस एम्प्लाइज एसोसिएशन**; **इन्सुरेंस वर्कर्स आर्गेनाईजेशन**; **इन्सुरेंस कॉर्पोरेशन एम्प्लाइज कांग्रेस** के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय**, हैदराबाद,** पंचाट **(रिफरेन्स न.-47/2022)** को जैसा कि अनुलग्नक में दिखाया गया है**,** प्रकाशित करती है**,** जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ **13.05.2024** को प्राप्त हुआ था **।**

[सं. एल–17011/03/2022-आईआर(एम)]

दिलीप कुमार, अवर सचिव

New Delhi, the 13th May, 2024

S.O. 923.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award **(Reference No. 47/2022)** of the Central Government Industrial Tribunal cum

Labour Court, **Hyderabad** as shown in the Annexure, in the Industrial dispute between the employers in relation to **M/s Life Insurance Corporation of India** and **Insurance Employees Association; Insurance Workers Organization; Insurance Corporation Employees Congress** which was received along with soft copy of the award by the Central Government on 13.05.2024.

[No. L-17011/03/2022-IR (M)]

DILIP KUMAR, Under Secy.

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT AT HYDERABAD

Present: - **Sri IRFAN QAMAR**

Presiding Officer

Dated the 2nd day of May, 2024

INDUSTRIAL DISPUTE No. 47/2022

Between:

1. The General Secretary,
   Insurance Employees Association (AILICEF)
   C/o LIC of India, Divisional Office, Ground Floor
   Jeevan Prakash, Saifabad, Hyderabad-500063
2. The General Secretary,
   Insurance Workers Organisation(NOIW),
   C/o LIC of India, Divisional Office, 1st Floor
   Jeevan Prakash, Saifabad, Hyderabad-50063.
3. The General Secretary,
   Insurance Corporation Employees Congress (INTUC),
   Flat No.-D406, D-Block, Sri Balaji Indraprasth
   Apartments, Gandhi Nagar, Hyderabad-500080. .....Petitioner

AND

1. The Chairman,
   M/s Life Insurance Corporation of India,
   Central Office, Yogakshema Building,
   Nariman Point, Mumbai-400021.
2. The Zonal Manager,
   M/s Life Insurance Corporation of India,
   South Central Zonal Office, Jeevan Bhagya
   Saifabad, Hyderbad-500063
3. The Senior Divisional Manager,
   M/s. Life Insurance Corporation of India
   Divisional Office, Jeevan Prakash,
   Saifabad, Hyderabad - 500063.

… Respondents

Appearances:

For the Petitioner : None

For the Respondent : Sri Venkatesh Dixit, Advocate

AWARD

The Government of India, Ministry of Labour by its order No.L-17011/03/ 2022- (IR(M)) dated 11.4.2022 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 Life Insurance Corporation of India, and their workmen. The reference is,

SCHEDULE

"Whether the demand of the Insurance Corporation Employees Congress (INTUC), Insurance Workers Organization (NOIW) and Insurance Employees Association (AILICEF) against the management of LIC of India with regard to the transfer of Shri Shreekanta Mishra, Assistant from Patna Division, Bihar to P&GS Unit, DO, Hyderabad is in violation of

the existing rules, regulations and circulars of LIC of India is fair & legal? If yes, what relief the workman is entitled to?"

The reference is numbered in this Tribunal as ID No.47/2022 and notices were issued to the parties concerned.

2. None present on behalf of Petitioners/ Unions on the date fixed for filing of claim statement and documents. Record reveals that notice served on Petitioners/Unions but none present on behalf of Petitioners/Unions. Therefore, due to absence of Petitioners/Unions and non-filing of claim statement, the case is dismissed and 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 2nd day of May, 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, 13 मई, 2024

का.आ. 924.—औद्योगिक विवाद अधिनियम, **(1947** का **14)** की धारा 17 के अनुसरण में, केन्द्रीय सरकार **मेसर्स माहेश्वरी माइनिंग प्राइवेट लिमिटेड** के प्रबंधतंत्र के संबद्ध नियोजकों और **सिंगरेनी कोलियरीज एम्प्लाइज यूनियन** के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, **हैदराबाद,** पंचाट **(रिफरेन्स न.-42/2022)** को जैसा कि अनुलग्नक में दिखाया गया है, प्रकाशित करती है, जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ **13.05.2024** को प्राप्त हुआ था।

[सं. एल–29011/05/2022-आईआर(एम)]

दिलीप कुमार, अवर सचिव

New Delhi, the 13th May, 2024

S.O. 924.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award **(Reference No. 42/2022)** of the Central Government Industrial Tribunal cum Labour Court, **Hyderabad** as shown in the Annexure, in the Industrial dispute between the employers in relation to **M/s Maheshwari Mining Pvt. Ltd** and **Singareni Collieries Employees Union** which was received along with soft copy of the award by the Central Government on 13.05.2024.

[No. L-29011/05/2022-IR (M)]

DILIP KUMAR, Under Secy.

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT AT HYDERABAD

Present: - **Sri IRFAN QAMAR**

Presiding Officer

Dated the 25th day of April , 2024

INDUSTRIAL DISPUTE No. 42/2022

Between:

The Singareni Collieries Employees Union,

CITU, Mandamarri,

Mancherial-504231.

..……Petitioner

AND

M/s Maheshwari Mining Pvt. Ltd.,

21, CLMIame, Ranigunj,

Burdwan (West Bangal)-713347.

…Respondent

Appearances:

For the Petitioner : None

For the Respondent : M/s. R. Rangnathan & A. Dayakar, Advocates

AWARD

The Government of India, Ministry of Labour by its order No.L-29011/ 05/2022- (IR(M)) dated 15.02.2022 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 Maheshwari Mining Pvt. Ltd and their workmen. The reference is,

SCHEDULE

"Whether the action of the management of M/s Maheshwari Mining private Ltd., under the principal employer Singareni Collieries Company Ltd on the issue of Non-Payment of Medical Bills, Accidental Wage Payment and not providing alternative employment after accident in respect of Sri K. Shankar, Ex- Workman is justified or not? If not, what relief the workman is entitled to?"

The reference is numbered in this Tribunal as I.D No. 42/2022 and notices were issued to the parties concerned.

2. Petitioner absent on the date fixed for filing of claim statement and documents. Record reveals that notice served on Petitioner but none present on behalf of Petitioner. Therefore, in absence of any claim statement from the Petitioner, the case is dismissed and 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 25th day of April, 2024.

IRFAN QAMAR, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner	Witnesses examined for the Respondent
NIL	NIL

Documents marked for the Petitioner

NIL

Documents marked for the Respondent

NIL

नई दिल्ली, 13 मई, 2024

का.आ. 925.—औद्योगिक विवाद अधिनियम, (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार **मेसर्स सीमेंट कॉर्पोरेशन ऑफ़ इंडिया लिमिटेड** के प्रबंधतंत्र के संबद्ध नियोजकों और **सीमेंट कॉर्पोरेशन ऑफ़ इंडिया एम्प्लाइज यूनियन** के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, **हैदराबाद,** पंचाट **(रिफरेन्स न.-06/2018)** को जैसा कि अनुलग्नक में दिखाया गया है, प्रकाशित करती है, जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 13.05.2024 को प्राप्त हुआ था।

[सं. एल–29011/15/2017-आईआर(एम)]

दिलीप कुमार, अवर सचिव

New Delhi, the 13th May, 2024

S.O. 925.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award **(Reference No. 06/2018)** of the Central Government Industrial Tribunal cum Labour Court, **Hyderabad** as shown in the Annexure, in the Industrial dispute between the employers in relation to

M/s Cement Corporation of India Ltd. and **Cement Corporation of India Employees Union** which was received along with soft copy of the award by the Central Government on 13.05.2024.

[No. L-29011/15/2017-IR (M)]

DILIP KUMAR, Under Secy.

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT AT HYDERABAD

Present: - **Sri IRFAN QAMAR**

Presiding Officer

Dated the 30th day of April, 2024

INDUSTRIAL DISPUTE No. 06/2018

Between:

The General Secretary,
Cement Corporation of India Employees Union,
Tandur Cement Factory, Tandur,
Ranga Reddy District, Telangana-501158. .....Petitioner

AND

The General Manager,
M/s Cement Corporation of India Ltd.,
Tandur Cement Factory, Tandur,
Ranga Reddy District, Telengana-501158. ……Respondents

Appearances:

For the Petitioner : Sri G T Gopal Rao, Advocate

For the Respondent : Sri Valluri Mohan Srinivas, Advocate

AWARD

The Government of India, Ministry of Labour by its order No.L-29011/15/2017-IR(M) dated 18.09.2017 referred the following dispute under section 10(1)(d) of the I.D. Act, 1947 for adjudication to this Tribunal between the management of M/s Cement Corporation of India Ltd., and their workmen. The reference is,

SCHEDULE

"Whether the action of the management of Cement Corporation of India Limited, Tandur, by deducting the salaries of employees without issuing any notice is legal and justified? If not, to what relief the employees are entitled to?"

The reference is numbered in this Tribunal as I.D. No. 6/2018 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 30th day of April, 2024.

IRFAN QAMAR, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner	Witnesses examined for the Respondent
NIL	NIL

Documents marked for the Petitioner

NIL

Documents marked for the Respondent

NIL

नई दिल्ली, 13 मई, 2024

का.आ. 926.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सासन पावर लिमिटेड की कोहली इंजीनियरिंग और कोयला खदानें के प्रबंधतंत्र के संबद्ध नियोजको और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में **केन्द्रीय सरकार औद्योगिक अधिकरण – सह – श्रम न्यायालय**, जबलपुर के पंचाट (एलसी-आर/14/2016) को प्रकाशित करती है, जो केन्द्रीय सरकार को **12/05/2024** को प्राप्त हुआ था।

[सं. एल–22012/102/2015-आईआर(सी. एम-II)]

मणिकंदन.एन, उप निदेशक

New Delhi, the 13th May, 2024

S.O. 926.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award **(Reference. LC/-R/14/2016)** of the **Central Government Industrial Tribunal-cum-Labour Court, Jabalpur** as shown in the Annexure, in the industrial dispute between the Management of **Kohli Engineering & Coal Mines of Sasan Power Ltd.** and their workmen, received by the Central Government on **12/05/2024.**

[No. L-22012/102/2015-IR (CM-II)]

MANIKANDAN. N, Dy. Director

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT, JABALPUR

NO. CGIT/LC/R/14/2016

Present: P.K.Srivastava

H.J.S..(Retd)

Shri Pramod Sharma S/o Ram Lalu Sharma,

Vill. Dhigdhi, PO: Poudi Nougai,

Dist. Singrauli (MP) - 486886

Workman

Versus

M/s Kohli Engineering,

Shukla Mondh. PO : Singrauli Colliery,

Dist. Singrauli (MP) - 486889

Management

(JUDGMENT)

(Passed on this 19th day of March 2024)

As per letter dated 22/01/2016 by the Government of India, Ministry of Labour, New Delhi, the reference is made to this Tribunal under Section -10 of Industrial Disputes Act, 1947 as per Notification No. L-22012/102/2015 IR(C.M.-II) dt. 22/01/2016. The dispute under reference relates to:

"Shri Pramod Sharma who worked as a Fitter from 27.10.2012 to 18.09.2014 under Sub-Contractor M/s. Kohli Engineering & Coal Mines of Sasan Power Ltd. Singrauli District (M.P.) whether worked for 240 days in each year or not ? Whether the termination of the employee w.e.f 18.09.2014 was in violation of Section 25-F of I.D. Act, 1947 or not ? If so since the contract work has completed in lieu of reinstatement, how much Compensation, Notice Pay, Leave Pay, Bonus and other benefits, if any, etc. is payable to t he ex-employee of M/s. Kohli Engineering Company ? If not, what relief he is entitled to ?"

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

According to the workman, he was appointed on 27.10.2012 as a Helper by the management of M/s. Kohli Engineering, who was awarded work contract by M/s. Muher & Muher and M/s. Jamco India who were in Coal Extraction from the Mines and had established a plant there alongwith M/s. Sasan Power Ltd. He was issued pass and was working under the Control of the Coal Company for 12 hours of the day and 30 days in a month. He was never paid the minimum salary which he was entitled to. His services were terminated orally on 18.09.2014 without any enquiry, notice or compensation, which is against law. The management did not comply the principle of 'first come last go' and his juniors were retained in service. The management had also not issued any gradation list nor had obtained required permission from Competent Authority for his retrenchment. He had worked for more than 240 days continuously in every year. The workman has prayed his reinstatement with back wages and benefits holding his termination against law.

The management of M/s. Kohli Engineering has taken a case in their Written Statement of Defense, they had entered into an agreement with M/s. Sasan Power Ltd. to provide labour for Erection, Commissioning and product support of Shovel and Drag Line at Muher & Muher Coal Mines of Sasan Power Ltd. The contract was upto 31st December 2014 or till completion of Draglines Erection Project. The workman was a helper and was paid wages of unskilled labour as per Government Rate. The work completed within 2 years hence, there was no work left and the workman was disengaged. He was offered Rs. 50,000/- as lump sum compensation with pay of one month in lieu of notice which he refused and raised a dispute.

After filing the Statement of Claim the workman never appeared and did not file any evidence, management also has not filed any evidence.

Non appeared on behalf of workman for arguments. No written argument was filed, I have heard argument of Shri Vijay Tripathi learned Counsel for management and have gone through the record.

The reference itself is the issue for determination.

The initial burden to prove his claim is on workman. He has not filed any oral or documentary evidence proving his claim but pleadings reveal that the allegation of the workman that he was appointed by management and that he worked for 240 days in an year under continuous employment is not specifically denied by the management in their pleading. Hence, it can be concluded that the workman has completed 240 days in an year in continuous service of management is proved. The management has itself stated that no notice was given to the workman and the workman was offered Rs. 50,000/- by management as lump sum compensation alongwith one month salary which he refused to receive. Since, from the pleadings itself it is established that the workman was not given any notice or compensation, termination of his services is held in violation of Section 25-F & 25-G of the Industrial Disputes Act 1947.

As regards the relief, since the work was only for two years and there is nothing on record that the work is still going on, a lump sum compensation of Rs. 50,000/- in lieu of all the claims of the workman will serve the ends of justice.

In the light of above findings, the reference is answered as follows –

AWARD

Holding the termination of services of the workman Shri Pramod Sharma by the management of M/s. Kohli Engineering against law, the workman is held entitled to lump sum compensation of Rs. 50,000/- in lieu of all the claims, payable to him within 30 days from the date of publication of Award failing which interest @ of 6% p.a. from the date of Award till payment. No order as to cost.

P.K. SRIVASTAVA, Presiding Officer

DATE:- 19/03/2024

नई दिल्ली, 13 मई, 2024

का.आ. **927.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार डब्ल्यू.सी.एल के प्रबंधतंत्र के संबद्ध नियोजको और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में

केन्द्रीय सरकार औद्योगिक अधिकरण – सह – श्रम न्यायालय, जबलपुर के पंचाट (एलसी-आर/**89**/**2015**) को प्रकाशित करती है, जो केन्द्रीय सरकार को **12/05/2024** को प्राप्त हुआ था।

[सं. एल–22012/12/2014-आईआर(सी.एम-II)]

मणिकंदन.एन, उप निदेशक

New Delhi, the 13th May, 2024

S.O. 927.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award **(Reference.LC/-R/89/2015*)*** of the **Central Government Industrial Tribunal-cum-Labour Court, Jabalpur** as shown in the Annexure, in the industrial dispute between the Management of **W.C.L.** and their workmen, received by the Central Government on **12*/05/2024.***

[No. L-22012/12/2014-IR (CM-II)]

MANIKANDAN. N, Dy. Director

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT, JABALPUR

NO. CGIT/LC/R/89/2015

Present: P.K.Srivastava

H.J.S..(Retd)

Zonal Mahamantri

Coal Mines Engineering Workers Association

Ward No.-10, Gudi, P.O.- Palachaurai

Distt.- Chhindwara (MP)

Workman

Versus

Chief General Manager

Western Coal Field Ltd. Kanhan Area

Dungariya, P.O.- Dungariya,

Distt.- Chhindwara (MP)

Management

(JUDGMENT)

(Passed on this 17th day of April 2024)

As per letter dated 22/09/2015 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No. L-22012/12/2014 IR(CM-II) dt. 22/09/2015. The dispute under reference relates to:

"Whether the action of the management of M/s. Western Coal Field Ltd. in not giving employment to Deepak Pawar S/o. Tekchand, Ex. Pump Operator, is legal and justified ? if not, what relief the applicant is entitled to ?"

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

According to the workman union, Tekchand Pawar S/o. Ramji was appointed with the Ambada Colliery in Kanhan Area of WCL on 23.12.1974 and retired on 30.06.2009 after completing 35 years of service. In the light of Clause-10.4.4 of the National Coal Wage Agreement (in short NCWA) II and Clause-9.4.4 of NCWA III, his dependant, the present applicant applied for his appointment on the post which fell vacant due to superannuation of the workman. The management did not grant the relief to the applicant in violation of the said provisions which is against law and is arbitrary. The union has prayed that the applicant be held entitled to be considered for appointment as dependant of the superannuated workman Tekchand in the light of the aforesaid provisions.

In its written statement of defense, the management has taken a stand that NCWA VIII was in force at the time of retirement of the workman Tekchand on 30.06.2009 which does not contain this provision, hence, the claim of the applicant cannot be considered in law. Accordingly, management prayed that the reference be answered against the applicant.

Both the sides have laid evidence in form documents and affidavits to be referred to as and when required.

I have heard argument of learned Senior Counsel Shri Anoop Nair assisted by Advocate Shri Shubham Nanepag for management. None was present from the side of workman union for argument. No written submissions have been filed by any of the parties. I have gone through the record as well.

On the perusal of record in the light of argument the following limited point arises for determination in this case.

Whether provisions of NCWA applicable at the time of superannuation of the workman Tekchand i.e. 30.06.2009 will govern the claim of the applicant ?

No doubt Clause-10.4.4 and 9.4.4 provide for appointment one dependant of an employee who has superannuated in the service of management on the vacancy arising out of this superannuation but in the NCWA's which came in operation after NCWA IV i.e. NCWA V to NCWA IX in operation on the date of filing written statement of defense by management, there is no such provision. Management has referred to a Judgment of ***Hon'ble High Court of M.P. in W.P. No.-4996/2015 Vasudev Raut vs. Chairman, Coal India,*** wherein it has been held that the NCWA in force at the time of superannuation of the workman will guide the claim of the applicant regarding appointment as dependant of superannuated workman. In another case ***Indian Bank & Others vs. Promila & Others (2020) 2 SCC 729,*** on the point whether a claim for compassionate appointment under scheme of a particular year could be decided based on subsequent scheme that came into course much after the claim, it was held that the claim could be decided on the basis of the scheme in force at the time of death of the employee. On this analogy also the claim of the present applicant will be decided on the basis of NCWA VIII in force at the time of superannuation of workman Tekchand on 30.06.2009 which does not contain any such provision.

In the light of above discussion and findings, the reference deserves to be answered against the workman and is answered accordingly. No order as to cost.

P.K. SRIVASTAVA, Presiding Officer

DATE:- 17/04/2024

नई दिल्ली, 13 मई, 2024

का.आ. 928.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एस.ई.सी.एल के प्रबंधतंत्र के संबद्ध नियोजको और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में **केन्द्रीय सरकार औद्योगिक अधिकरण – सह – श्रम न्यायालय**, जबलपुर के पंचाट (एलसी-आर/**45/2019**) को प्रकाशित करती है, जो केन्द्रीय सरकार को **12/05/2024** को प्राप्त हुआ था।

[सं. एल–22012/32/2019-आईआर (सी. एम-II)]

मणिकंदन.एन, उप निदेशक

New Delhi, the 13th May, 2024

S.O. 928.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award **(Reference. LC/-R/45/2019)** of the **Central Government Industrial Tribunal-cum-Labour Court, Jabalpur** as shown in the Annexure, in the industrial dispute between the Management of **S.E.C.L.** and their workmen, received by the Central Government on **12*/05/2024***.

[No. L-22012/32/2019-IR (CM-II)]

MANIKANDAN. N, Dy. Director

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT, JABALPUR

NO. CGIT/LC/R/45/2019

Present: P.K.Srivastava

H.J.S..(Retd)

The General Secretary,

Koyla Mazdoor Sabha (HMS)

Kusmunda Area, Address-B-10, Vikas Nagar
Po- Kusmunda Distt.
Korba (C.G.) - 495454

Workman

Versus

The General Manager,
SECL, Kusmunda Area,
Po- Kusmunda Colliery
Dist.- Korea (C.G.) - 495454

Management

AWARD

(Passed on this 18Th day of March-2024.)

As per letter dated 12/04/2019 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this tribunal under section-10 of I.D. Act, 1947 as per reference number L-22012/32/2019 (IR(CM-II)) dt. 12/04/2019. The dispute under reference related to :-

> **"Whether the action on the part of the management of SECL, Kusmunda Area for giving promotion to Shri Rajeshwar Sharma from Mining Sardar (T&S). Grade-C to Overman(T&S). Grade-B without considering the date of joining in the transferred place and by simply saying promotion held on merit cum-seniority basis and not giving notional seniority to the co-employees namely Rajneesh Shrivastava, Hitendra Chaudhary, Shir R.L Jange and other is appropriate and justified? If not, what relief the above named co-employees becoming junior to Shri Rajeshwar Sharma Overman (T&S), Grade-B are entitled to?"**

After registering the case on reference received, notices were sent to the parties and were duly served on them. Workman never appeared in-spite of service of notice. He never submitted his statement of claim. Management filed their written statement of defence wherein they stated their case.

Workman never filed any evidence in this Tribunal. Management filed Affidavit of its witness. Case proceeded ex-parte against the workman vide order dated 16.08.2022. Heard ex-parte argument of Learned Counsel Adv. Neeraj Kewat for management. None for workman.

I have perused the records. The reference is itself the issue. No evidence was ever produced by workman in this Tribunal.

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

AWARD

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

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

P.K. SRIVASTAVA, Presiding Officer

DATE: 18/03/2024

नई दिल्ली, 13 मई, 2024

का.आ. 929.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एस.ई.सी.एल के प्रबंधतंत्र के संबद्ध नियोजको और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में **केन्द्रीय सरकार औद्योगिक अधिकरण – सह – श्रम न्यायालय**, जबलपुर के पंचाट (एलसी-आर/**15/2016**) को प्रकाशित करती है, जो केन्द्रीय सरकार को **12/04/2024** को प्राप्त हुआ था।

[सं. एल–22012/103/2015-आईआर (सी. एम-II)]

मणिकंदन.एन, उप निदेशक

New Delhi, the 13th May, 2024

S.O. 929.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award **(Reference. LC/-R/15/2016)** of the **Central Government Industrial**

Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the industrial dispute between the Management of **S.E.C.L.** and their workmen, received by the Central Government on **12*/04/2024.***

[No. L-22012/103/2015-IR (CM-II)]

MANIKANDAN. N, Dy. Director

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT, JABALPUR

NO. CGIT/LC/R/15/2016

Present: P.K.Srivastava

H.J.S..(Retd)

Ram Lallu Shah
S/o. Sh. Bajilal Shah,
Vill. & PO- Kachni
Distt. Singrauli (MP) - 486887

Workman

Versus

M/s Sarveshwari Enterprises,

Hyundai Agency, Majan Moud, PO : Waidan

Distt. Singrauli (MP) - 486886

Management

(JUDGMENT)

(Passed on this 20th day of March 2024)

As per letter dated 22/01/2016 by the Government of India, Ministry of Labour, New Delhi, the reference is made to this Tribunal under Section -10 of Industrial Disputes Act, 1947 as per Notification No. L-22012/103/2015 IR (C.M.-II) dt. 22/01/2016. The dispute under reference relates to:

Shri Ram Lallu Shah who worked as a Rigger from 15.11.2011 to 25.10.2014 under Sub-Contractor M/s. Sarveshwari Enterprises at Coal Mines of Sasan Power Ltd. Singrauli District (M.P.) whether worked for 240 days in each year or not ? If so, whether the termination of the employee w.e.f. 25.10.2014 was in violation of Section 25-F of I.D. Act 1947 or not ? If so since the contract work has been completed, in lieu of reinstatement, how much Compensation, Notice Pay, Leave Pay, Bonus and other benefits, if any, etc. is payable to t he ex-employee of M/s. Sarveshwari Enterprises ? If not, what relief he is entitled to ?

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

According to the workman, he was appointed on 15.11.2011 as a Rigger by the management of M/s. Sarveshwari Enterprises, who was awarded work contract by M/s. Muher & Muher and M/s. Jamco India who were in Coal Extraction from the Mines and had established a plant there alongwith M/s. Sasan Power Ltd. He was issued pass and was working under the Control of the Coal Company for 12 hours of the day and 30 days in a month. He was never paid the minimum salary which he was entitled to. His services were terminated orally on 31.10.2014 without any enquiry, notice or compensation, which is against law. The management did not comply the principle of 'first come last go' and his juniors were retained in service. The management had also not issued any gradation list nor had obtained required permission from Competent Authority for his retrenchment. He had worked for more than 240 days continuously in every year. The workman has prayed his reinstatement with back wages and benefits holding his termination against law.

The management of M/s. Sarveshwari Enterprises has taken a case in their Written Statement of Defense, they had entered into an agreement with M/s. Sasan Power Ltd. to provide labour for Erection, Commissioning and product support of Shovel and Drag Line at Muher & Muher Coal Mines of Sasan Power Ltd. The contract was upto 31st December 2014 or till completion of Draglines Erection Project. The workman was a Rigger and was paid wages of unskilled labour as per Government Rate. The work completed within 2 years hence, there was no work left and the workman was disengaged. He was offered Rs. 55,575/- as lump sum compensation with pay of one month in lieu of notice which he refused and raised a dispute.

After filing the Statement of Claim the workman never appeared and did not file any evidence, management also has not filed any evidence.

Non appeared on behalf of workman for arguments. No written argument was filed, I have heard argument of Shri Vijay Tripathi learned Counsel for management and have gone through the record.

The reference itself is the issue for determination.

The initial burden to prove his claim is on workman. He has not filed any oral or documentary evidence proving his claim but pleadings reveal that the allegation of the workman that he was appointed by management and that he worked for 240 days in an year under continuous employment is not specifically denied by the management in their pleading. Hence, it can be concluded that the workman has completed 240 days in an year in continuous service of management is proved. The management has itself stated that no notice was given to the workman and the workman was offered Rs. 55,575/- by management as lump sum compensation alongwith one month salary which he refused to receive. Since, from the pleadings itself it is established that the workman was not given any notice or compensation, termination of his services is held in violation of Section 25-F & 25-G of the Industrial Disputes Act 1947.

As regards the relief, since the work was only for two years and there is nothing on record that the work is still going on, a lump sum compensation of Rs. 55,000/- in lieu of all the claims of the workman will serve the ends of justice.

In the light of above findings, the reference is answered as follows –

AWARD

Holding the termination of services of the workman Shri Ram Lallu Shah by the management of M/s. Sarveshwari Enterprises against law, the workman is held entitled to lump sum compensation of Rs. 55,000/- in lieu of all the claims, payable to him within 30 days from the date of publication of Award failing which interest @ of 6% p.a. from the date of Award till payment. No order as to cost.

P.K. SRIVASTAVA, Presiding Officer

DATE:- 20/03/2024

नई दिल्ली, 13 मई, 2024

का.आ. 930.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सासन पावर लिमिटेड की कोयला खदानों में सर्वेश्वरी इंटरप्राइजेज के प्रबंधतंत्र के संबद्ध नियोजको और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में **केन्द्रीय सरकार औद्योगिक अधिकरण – सह – श्रम न्यायालय**, जबलपुर के पंचाट (एलसी-आर/**16/2016**) को प्रकाशित करती है, जो केन्द्रीय सरकार को **12/05/2024** को प्राप्त हुआ था।

[सं. एल–22012/104/2015-आईआर (सी. एम-II)]

मणिकंदन.एन, उप निदेशक

New Delhi, the 13th May, 2024

S.O. 930.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award **(Reference.LC/-R/16/2016*)*** of the **Central Government Industrial Tribunal-cum-Labour Court, Jabalpur** as shown in the Annexure, in the industrial dispute between the Management of **Srveshwari Enterprises at Coal Mines of Sasan Power Ltd** and their workmen, received by the Central Government on **12*/05/2024***.

[No. L-22012/104/2015-IR (CM-II)]

MANIKANDAN. N, Dy. Director

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT, JABALPUR

NO. CGIT/LC/R/16/2016

Present: P.K.Srivastava

H.J.S..(Retd)

Shri Kirodhan Sharma

S/o Sh. Shubhauram Sharma,

Vill. Beulongi, PO : Pachour,

Distt. Singrauli (MP) - 486887

Workman

Versus

M/s Sarveshwari Enterprises
Hyundai Agency, Majan Moud,
PO : Waidan, Distt. Singrauli (MP) - 486886

Management

(JUDGEMENT)
(Passed on this 20th day of March 2024)

As per letter dated 22/01/2016 by the Government of India, Ministry of Labour, New Delhi, the reference is made to this Tribunal under Section -10 of Industrial Disputes Act, 1947 as per Notification No. L-22012/104/2015 IR (C.M.-II) dt. 22/01/2016. The dispute under reference relates to:

> **Shri Kirodhan Sharma who worked as a Rigger from 04.03.2012 to 25.10.2014 under Sub-Contractor M/s. Sarveshwari Enterprises at Coal Mines of Sasan Power Ltd. Singrauli District (M.P.) whether worked for 240 days in each year or not ? If so, whether the termination of the employee w.e.f. 25.10.2014 was in violation of Section 25-F of I.D. Act 1947 or not ? If so since the contract work has been completed, in lieu of reinstatement, how much Compensation, Notice Pay, Leave Pay, Bonus and other benefits, if any, etc. is payable to t he ex-employee of M/s. Sarveshwari Enterprises ? If not, what relief he is entitled to ?**

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

According to the workman, he was appointed on 04.03.2012 as a Rigger by the management of M/s. Sarveshwari Enterprises, who was awarded work contract by M/s. Muher & Muher and M/s. Jamco India who were in Coal Extraction from the Mines and had established a plant there alongwith M/s. Sasan Power Ltd. He was issued pass and was working under the Control of the Coal Company for 12 hours of the day and 30 days in a month. He was never paid the minimum salary which he was entitled to. His services were terminated orally on 25.10.2014 without any enquiry, notice or compensation, which is against law. The management did not comply the principle of 'first come last go' and his juniors were retained in service. The management had also not issued any gradation list nor had obtained required permission from Competent Authority for his retrenchment. He had worked for more than 240 days continuously in every year. The workman has prayed his reinstatement with back wages and benefits holding his termination against law.

The management of M/s. Sarveshwari Enterprises has taken a case in their Written Statement of Defense, they had entered into an agreement with M/s. Sasan Power Ltd. to provide labour for Erection, Commissioning and product support of Shovel and Drag Line at Muher & Muher Coal Mines of Sasan Power Ltd. The contract was upto 31st December 2014 or till completion of Draglines Erection Project. The workman was a Rigger and was paid wages of unskilled labour as per Government Rate. The work completed within 2 years hence, there was no work left and the workman was disengaged. He was offered Rs. 52,725/- as lump sum compensation with pay of one month in lieu of notice which he refused and raised a dispute.

After filing the Statement of Claim the workman never appeared and did not file any evidence, management also has not filed any evidence.

Non appeared on behalf of workman for arguments. No written argument was filed, I have heard argument of Shri Vijay Tripathi learned Counsel for management and have gone through the record.

The reference itself is the issue for determination.

The initial burden to prove his claim is on workman. He has not filed any oral or documentary evidence proving his claim but pleadings reveal that the allegation of the workman that he was appointed by management and that he worked for 240 days in an year under continuous employment is not specifically denied by the management in their pleading. Hence, it can be concluded that the workman has completed 240 days in an year in continuous service of management is proved. The management has itself stated that no notice was given to the workman and the workman was offered Rs. 52,725/- by management as lump sum compensation alongwith one month salary which he refused to receive. Since, from the pleadings itself it is established that the workman was not given any notice or compensation, termination of his services is held in violation of Section 25-F & 25-G of the Industrial Disputes Act 1947.

As regards the relief, since the work was only for two years and there is nothing on record that the work is still going on, a lump sum compensation of Rs. 52,000/- in lieu of all the claims of the workman will serve the ends of justice.

In the light of above findings, the reference is answered as follows –

AWARD

Holding the termination of services of the workman Shri Kirodhan Sharma by the management of M/s. Sarveshwari Enterprises against law, the workman is held entitled to lump sum compensation of Rs. 52,000/- in lieu of all the claims, payable to him within 30 days from the date of publication of Award failing which interest @ of 6% p.a. from the date of Award till payment. No order as to cost.

P.K. SRIVASTAVA, Presiding Officer

DATE:- 20/03/2024

नई दिल्ली, 13 मई, 2024

का.आ. 931.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार भारत एल्युमीनियम कंपनी लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजको और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में **केन्द्रीय सरकार औद्योगिक अधिकरण – सह – श्रम न्यायालय**, जबलपुर के पंचाट (एलसी-आर/43/2019) को प्रकाशित करती है, जो केन्द्रीय सरकार को **12/05/2024** को प्राप्त हुआ था।

[सं. एल–22012/26/2019-आईआर (सी. एम-II)]

मणिकंदन.एन, उप निदेशक

New Delhi, the 13th May, 2024

S.O. 931.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award **(Reference. LC/-R/43/2019)** of the **Central Government Industrial Tribunal-cum-Labour Court, Jabalpur** as shown in the Annexure, in the industrial dispute between the Management of **Bharat Aluminium Company Ltd** and their workmen, received by the Central Government on **12*/05/2024*.**

[No. L-22012/26/2019-IR (CM-II)]

MANIKANDAN. N, Dy. Director

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT, JABALPUR

NO. CGIT/LC/R/43/2019

Present: P.K.Srivastava

H.J.S..(Retd)

The General Secretary,
Aluminium Employees Union (AITUC)
At- House No. 4/5, A type Sector-6, Balco Nagar
Distt- Korba (Chattisgarh) - 495684
The Working President,
Chhattisgarh Niji Koyla Khadan Mazdoor Sangh (INTUC)
Address- Village- Chotia Po- Madai,
Tahsil- Pondi Uprod
Distt- Korba (Chattisgarh) - 495445

Workman

Versus

The Mines Manager,
Chotia Coal Mines
Bharat Aluminium Company Ltd
Po- Madai
Korba (Chattisgarh) - 495445

Management

AWARD

(Passed on this 12Th day of February-2024.)

As per letter dated 19/03/2019 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this tribunal under section-10 of I.D. Act, 1947 as per reference number L-22012/26/2019 (IR(CM-II) dt. 19/03/2019. The dispute under reference related to :-

"Whether the action on the part of management of Balco Chotia Coal Mines in not paying the ex-gratia/bonus for the year 2015-16 to the employees working at Chotia Coal Mines at par with that of the ex-gratia paid to the employees of Balco, Korba Plant and Bauxite Mines managed by the same BALCO management is appropriate and justified? If not, what relief towards payment of ex-gratia/ bonus to the employees working at Chotia Coal Mines of BALCO are entitled to as far as the disagreement raised by the aluminium employees union (AITUC) is concerned?"

Shri Sunil Singh, the General Secretary of the Aluminium Employees Union (AITUC) appears from the side of Workman union and files his application, wherein it has been stated that the claim regarding ex-gratia/bonus of the workmen for the year 2015- 16, which is the subject matter of the dispute in the reference has been settled out of Court.

The management has accepted the claim and has paid bonus to the members of the workmen union in their monthly salary of April 2018. Since the claim has been accepted by management, there remains no dispute. He further prays that the reference be answered accordingly.

Learned counsel for management Shri Arun Patel, who has been supplied copy of the application and affidavit and also the Certificate of Registration of the union and its office bearers as well copy of the proceedings of the annual Gen assembly dated March 19, 2023 consents to the passing no dispute award admitting that the dispute has been settled out of court.

Since the dispute has been settled out of court, no dispute award is passed. The reference stands answered accordingly. No order as to cost

AWARD

In the light of this factual backdrop, Since the dispute has been settled out of court, no dispute award is passed.

The reference stands answered accordingly.

No order as to cost

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

P.K. SRIVASTAVA, Presiding Officer

DATE: 12/02/2024

नई दिल्ली, 13 मई, 2024

का.आ. 932.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार अमेलिया (उत्तर) कोयला खदानें के प्रबंधतंत्र के संबद्ध नियोजको और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में **केन्द्रीय सरकार औद्योगिक अधिकरण – सह – श्रम न्यायालय**, जबलपुर के पंचाट(एलसी-आर/**50**/**2020**) को प्रकाशित करती है, जो केन्द्रीय सरकार को **12/05/2024** को प्राप्त हुआ था।

[सं. एल–22012/23/2020-आईआर (सी.एम-II)]

मणिकंदन.एन, उप निदेशक

New Delhi, the 13th May, 2024

S.O. 932.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award **(Reference. LC/-R/50/2020*)*** of the **Central Government Industrial Tribunal-cum-Labour Court, Jabalpur** as shown in the Annexure, in the industrial dispute between the Management of **Amelia (North) Coal Mines** and their workmen, received by the Central Government on **12*/05/2024.***

[No. L-22012/23/2020-IR (CM-II)]

MANIKANDAN. N, Dy. Director

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT, JABALPUR

NO. CGIT/LC/R/50/2020

Present: P.K.Srivastava

H.J.S..(Retd)

The President,

Urja Visthapit and Kamgaar Union,

Main Road, Bargawan,

Distt. Singrauli (MP)

Workman

Versus

M/s Amelia (North) Coal Mines,

Village: Majhauli, PO: Bandha,

Tehsil: Deosar,

Distt. Singrauli (MP) 486886

M/s Hanuman Engineering,

Jaypee Rewa Plant, J P Nagar,

Distt. Rewa (MP) 486001

Management

AWARD

(Passed on this 20Th day of February-2024.)

As per letter dated 03/07/2020 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this tribunal under section-10 of I.D. Act, 1947 as per reference number L-22012/23/2020 (IR(CM-II)) dt. 03/07/2020 . The dispute under reference related to :-

" Whether the action taken by the employer M/s Hanuman Engineering (A Contractor of the Owner, Amelia North Coal Mines of Jaypee Power Ventures Ltd) in not paying the wages of year 2018 and 2019 (during which the workman Shri Ram Sagar Sahu did not work) to the workman Shri Ram Sahu is legal and justified? If not, what relief the workman Shri Ram Sagar Sahu is entitled for?"

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

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

AWARD

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

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

P.K. SRIVASTAVA, Presiding Officer

DATE: 20/02/2024

नई दिल्ली, 13 मई, 2024

का.आ. 933.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मोहन कालरी के प्रबंधतंत्र के संबद्ध नियोजको और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में **केन्द्रीय सरकार औद्योगिक अधिकरण – सह – श्रम न्यायालय**, जबलपुर के पंचाट (एलसी-आर/12/2022) को प्रकाशित करती है, जो केन्द्रीय सरकार को **12/05/2024** को प्राप्त हुआ था।

[सं. एल–22012/08/2022-आईआर (सी. एम-II)]

मणिकंदन.एन, उप निदेशक

New Delhi, the 13th May, 2024

S.O. 933.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award **(Reference. LC/-R/12/2022)** of the **Central Government Industrial Tribunal-cum-Labour Court, Jabalpur** as shown in the Annexure, in the industrial dispute between the Management of **Mohan kalri** and their workmen, received by the Central Government on **12*/05/2024.***

[No. L-22012/08/2022-IR (CM-II)]

MANIKANDAN. N, Dy. Director

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT, JABALPUR

NO. CGIT/LC/R/12/2022

Present: P.K.Srivastava

H.J.S..(Retd)

The President,

Coal Mazdoor Union,

Ambada, District Chhindwara

(M.P.) 480449

Workman

Versus

The Manager,

Mohan Kalri,

Vekoli Kanhan Area,

Post- Ambada,

District- Chhindwara (M.P.) - 480449

Management

AWARD

(Passed on this 17nd day of April-2024.)

As per letter dated 04/02/2022 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this tribunal under section-10 of I.D. Act, 1947 as per reference number L-22012/08/2022 (IR(CM-II)) dt. 04/02/2022. The dispute under reference related to :-

"क्या, प्रबंधकए मोहन कालरी, वेकोली कन्हान क्षेत्र, पोस्ट – अम्बाड़ा, जिला –छिंदवाड़ा (म० प्र०) द्वारा श्री जुबेद अहमद पिता बकरीदी, भूतपूर्व कामगार मोहर कालरी, कन्हान क्षेत्र को कथित रूप से न्यायालय द्वारा उन्हें दोषमुक्त किये जाने के आधार पर प्रबंधक वेकोली दमुआ कालरी के कार्यालय आदेश दिनांक 29/4/2010 के तहत विभागीय कार्यवाही उपरान्त उनकी रोकी गयी एक

वेतन वृध्दि को उनके बेसिक वेतन में 2010 से जोड़कर बेसिक फिटमेंट एंव वेतन लाभ नहीं दिया जाना न्यायोचित है? यदि नहीं तो श्री जुबेद अहमद पिता बकरीदी, भूतपूर्व कामगार मोहन कालरी, वेकोली कन्हान क्षेत्र किस अनुतोष के अधिकारी है।"

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

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

AWARD

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

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

P.K. SRIVASTAVA, Presiding Officer

DATE: 17/04/2024

नई दिल्ली, 13 मई, 2024

का.आ. 934.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार डब्ल्यू.सी.एल के प्रबंधतंत्र के संबद्ध नियोजको और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में **केन्द्रीय सरकार औद्योगिक अधिकरण–सह–श्रम न्यायालय**, जबलपुर के पंचाट (एलसी- बी/ **01/2017**) को प्रकाशित करती है, जो केन्द्रीय सरकार को **12/05/2024** को प्राप्त हुआ था।

[सं. एल–22013/01/2024-आईआर (सी. एम-II)]

मणिकंदन.एन, उप निदेशक

New Delhi, the 13th May, 2024

S.O. 934.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award **(Reference.LC/-B/01/2017*)*** of the **Central Government Industrial Tribunal-cum-Labour Court, Jabalpur** as shown in the Annexure, in the industrial dispute between the Management of **W.C.L.** and their workmen, received by the Central Government on **12*/05/2024*.**

[No. L-22013/01/2024-IR (CM-II)]

MANIKANDAN. N, Dy. Director

ANNEXURE

THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT, JABALPUR

NO. CGIT/LC/B/01/2017

The General Manager,

WCL, Kanhan Area,

Post: Junnardeo,

Via: Dungariya,

Distt: Chhindwara (MP)

APPLICANT

VERSUS

Anil Kumar Mall

S/o Shri K.N. Mall,

Post: Datla East, Niche Line,

Gram: Datla Wadi, Th: Junnardeo,

Dist: Chhindwara (MP)

NON-APPLICANT

ORDER

Passed on this 16th day of February 2024

The applicant management has filed this petition under section 33 of industrial disputes Act 1947, hereinafter referred to by the word Act against its Workman seeking approval of Action taken against the Workman, which is his dismissal from service with effect from September 27, 2017.

The case of the applicant management is mainly that the opposite party, which is the workman was working as clerk grade 1 in the office of General Manager. One Workman Hari Narayan filed a complaint against the opposite party, wherein he stated that the complainant wanted to withdraw an amount of Rs. 500,000/-from his provident fund for the marriage of his. The opposite party stated in the complainant that this amount would not be permitted to be withdrawn. However, a withdrawal of this amount would be permitted for construction of houses. The opposite party are so demanded bribes of Rs. 5000/-for getting the amount sanctioned and told that unless this bride was paid to him, he will ensure that the amount is not sanctioned to the compliment from his PF account. The compliment registered a complaint with the Central Bureau of Investigation, who laid a trap and the opposite party was caught red-handed while taking bribe. After investigation, chargesheet under section 7 and 13 (1)(d) of Prevention of Corruption Act was filed before the court and after trial, the opposite party was convicted. The opposite party preferred an appeal against this conviction before High Court and was released on bail the appeal is still pending.

As it is the case of applicant management, a chargesheet on the basis of these facts was served on the opposite party Workman leveling him charges of misconduct as mentioned in clause 26.2 and 26.22 of certified standing order. Enquiry officer and presenting officer were appointed. The opposite party Workman participated fully during the enquiry within his defence assistant. It is further, the case of management that before issuing order regarding departmental enquiry, the opposite party was issued a copy of chargesheet, asking him to have his say on the charges and the enquiry was instituted after considering his written representation. The enquiry officer submitted his report, holding the charges are proved. The opposite party workmen was issued a show cause notice, dated April 4, 2017 and was asked to submit his reply with respect to the enquiry report. In the meanwhile, the opposite party filed a petition before this tribunal under section 13 A of Industrial Employment (standing orders) Act 1946. Read with section 7A and second schedule of the Industrial Disputes Ac t1947 in which he challenged the enquiry proceedings. The Workman has been convicted by competent Court under Prevention of Corruption Act. Hence he does not deserve to remain in service. Accordingly, management has passed the punishment of his dismissal for the misconduct and has sought approval of the punishment.

After registering a miscellaneous case on the basis of this petition, notices were issued to the opposite party Workman. Thus to notice where also issued to the opposite party Workman, and were duly served on him. He never cared to appear before this tribunal. He never filed any reply or any evidence.

The management has filed the affidavit of its witness which is uncontroverted and has also filed and proved the enquiry proceedings.

I have heard argument of learned counsel for management. Mr Anup Nayar and have gone through the record. In spite of opportunity given, the opposite party has not filed any written arguments.

The section 33 of the Act is being reproduced as follows –

1[33. Conditions of service, etc., to remain unchanged under certain circumstances during pendency of proceedings.(/) During the pendency of any conciliation proceeding before a conciliation officer or a Board or of any proceeding before 2[an arbitrator or] a Labour Court or Tribunal or National Tribunal in respect of an industrial dispute, no employer shall,-

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

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

save with the express permission in writing of the authority before which the proceeding is pending.

(2) During the pendency of any such proceeding in respect of an industrial dispute, the employer may, in accordance with the standing orders applicable to a workman concerned in such dispute 2[or, where there are no such standing orders, in accordance with the terms of the contract, whether express or implied, between him and the workman].-

(a) Later, in regard to any matter not connected with the dispute, the

conditions of service applicable to that workman immediately before the commencement of such proceeding; or

(b) for any misconduct not connected with the dispute, or discharge or punish, whether by dismissal or otherwise, that workman:

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

(3) Notwithstanding anything contained in sub-section (2), no employer shall, during the pendency of any such proceeding in respect of an industrial dispute, take any action against any protected workman concerned in such dispute-

(a) by altering, to the prejudice of such protected workman, the conditions of service applicable to him immediately before the commencement of such proceedings; or

(b) by discharging or punishing, whether by dismissal or otherwise,

such protected express pe save with the express permission in writing of the authority before which the proceeding is pending.

The settled proposition of law on this point is that while according approval for proposed punishment to the management, only a prima facie and appreciation of evidence collected during the enquiry, legality of the enquiry and proportionality of the punishment is to be seen and in-depth enquiry is not required. Keeping this principle in view, I do not find any illegality of procedure or law in the enquiry. Charges are also found prima facie proved because the settled principles is that no is strict proof of charges as required during criminal trial is necessary in a departmental enquiry. The punishment proposed also does not appear disproportionate to the charge because no employer can afford an employee whose integrity is doubtful.

In the light of above discussion, the petition deserves to be allowed and is allowed accordingly. Management is accorded permission to impose the punishment of penalty on the basis of enquiry detailed in this order.

ORDER

Petition u/s 33(1) (b) of the Act is allowed. Application management is accorded permission to impose the punishment of penalty on the basis of enquiry detailed in this order.

Dated: 16-02-2024

P. K. SRIVASTAVA, Presiding Officer

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