

Panaji, 13th December, 2012 (Agrahayana 22,1934)

SERIES II No. 37

OFFICIAL GAZETTE



GOVERNMENT OF GOA

PUBLISHED BY AUTHORITY

Note:- There are two Extraordinary issues to the Official Gazette, Series II No. 36 dated 06-12-2012 as follows:-

- 1) *Extraordinary dated 06-12-2012 from pages 1313 to 1314 regarding Order from Department of Finance (Revenue & Control Division).*
- 2) *Extraordinary (No. 2) dated 07-12-2012 from pages 1315 to 1316 regarding Corrigendums from Department of Finance (Revenue & Control Division).*

GOVERNMENT OF GOA

Department of Co-operation

Office of the Asstt. Registrar of Co-operative Societies

Notification

No. 5-1470-2012/ARSZ/HSG

In exercise of the powers vested in me under Section 8 of the Goa Co-op. Societies Act, 2001, "The Nav Vaibhav Co-operative Housing Society Ltd.," Near Maruti Mandir, Davorlim, Salcete-Goa, is registered under code symbol No. HSG-(b)-862/ /South-Goa/2012.

Sd/- (A. K. N. Desai), Asstt. Registrar of Co-op. Societies (South Zone).

Margao, 27th September, 2012.

Certificate of Registration

"The Nav Vaibhav Co-operative Housing Society Ltd.," Near Maruti Mandir, Davorlim, Salcete-Goa, has been registered on 27-9-2012 and it bears registration code symbol No. HSG-(b)-862/South Goa/2012 and it is classified as "Housing Society" under sub-classification No. 7-(b)-Co-partnership Housing Society in terms of Rule 8 of Goa Co-operative Societies Rules, 2003.

Sd/- (A. K. N. Desai), Asstt. Registrar of Co-op. Societies (South Zone).

Margao, 27th September, 2012.

Notification

No. 5-1474-2012/ARSZ/HSG

In exercise of the powers vested in me under Section 8 of the Goa Co-op. Societies Act, 2001, "The Sitara Classic Co-operative Housing society Ltd.," Colmorod, Margao-Goa, is registered under code symbol No. HSG-(b)-866/South-Goa/2012.

Sd/- (A. K. N. Desai), Asstt. Registrar of Co-op. Societies (South Zone).

Margao, 17th October, 2012.

Certificate of Registration

"The Sitara Classic Co-operative Housing Society Ltd.," Colmorod, Margao-Goa, has been registered on 17-10-2012 and it bears registration code symbol No. HSG-(b)-866/South Goa/2012 and it is classified as "Housing Society" under sub-classification No. 7-(b)-Co-partnership Housing Society in terms of Rule 8 of Goa Co-operative Societies Rules, 2003.

Sd/- (A. K. N. Desai), Asstt. Registrar of Co-op. Societies (South Zone).

Margao, 17th October, 2012.

Notification

No. 5-1484-2012/ARSZ/HSG

In exercise of the powers vested in me under Section 8 of the Goa Co-op. Societies Act, 2001, "The Lotus Heights Co-operative Housing Society Ltd.," Malbhat, Margao-Goa, is registered under code symbol No. HSG-(b)-870/South-Goa/2012.

Sd/- (A. K. N. Desai), Asstt. Registrar of Co-op. Societies (South Zone).

Margao, 12th November, 2012.

Certificate of Registration

"The Lotus Heights Co-operative Housing Society Ltd.," Malbhat, Margao-Goa, has been registered on 12-11-2012 and it bears registration code symbol No. HSG-(b)-870/South Goa/2012 and it is classified as "Housing Society" under sub-classification No. 7-(b)-Co-partnership Housing Society in terms of Rule 8 of Goa Co-operative Societies Rules, 2003.

Sd/- (A. K. N. Desai), Asstt. Registrar of Co-op. Societies (South Zone).

Margao, 12th November, 2012.

Notification

No. 5-1477-2012/ARSZ/HSG

In exercise of the powers vested in me under Section 8 of the Goa Co-op. Societies Act, 2001, "The Supreme Colmorod Central Co-operative Housing Society Limited," Colmorod, Navelim, Salcete-Goa, is registered under code symbol No. HSG-(b)-869/South-Goa/2012.

Sd/- (A. K. N. Desai), Asstt. Registrar of Co-op. Societies (South Zone).

Margao, 12th November, 2012.

Certificate of Registration

"The Supreme Colmorod Central Co-operative Housing Society Limited," Navelim, Salcete-Goa, has been registered on 12-11-2012 and it bears registration code symbol No. HSG-(b)-869/South Goa/2012 and it is classified as "Housing Society" under sub-classification No. 7-(b)-Co-partnership Housing Society in terms of Rule 8 of Goa Co-operative Societies Rules, 2003.

Sd/- (A. K. N. Desai), Asstt. Registrar of Co-op. Societies (South Zone).

Margao, 12th November, 2012.

Notification

No. 5-1459-2012/ARSZ/HSG

In exercise of the powers vested in me under Section 8 of the Goa Co-op. Societies Act, 2001, "The Talak Silver Residency Co-operative Housing Society Limited," Aquem Alto, Margao-Goa, is registered under code symbol No. HSG-(b)-860/South-Goa/2012.

Sd/- (A. K. N. Desai), Asstt. Registrar of Co-op. Societies (South Zone).

Margao, 10th August, 2012.

Certificate of Registration

"The Talak Silver Residency Co-operative Housing Society Limited," Aquem Alto, Margao-Goa, has been registered on 10-8-2012 and it bears registration code symbol No. HSG-(b)-860/South Goa/2012 and it is classified as "Housing Society" under sub-classification No. 7-(b)-Co-partnership Housing Society in terms of Rule 8 of Goa Co-operative Societies Rules, 2003.

Sd/- (A. K. N. Desai), Asstt. Registrar of Co-op. Societies (South Zone).

Margao, 10th August, 2012.

Notification

No. 5-1475-2012/ARSZ/HSG

In exercise of the powers vested in me under Section 8 of the Goa Co-op. Societies Act, 2001, "The Sand Castle Co-operative Housing Maintenance Society Limited," Gaundalim, Colva, Salcete-Goa, is registered under code symbol No. HSG-(d)-865/South-Goa/2012.

Sd/- (A. K. N. Desai), Asstt. Registrar of Co-op. Societies (South Zone).

Margao, 12th October, 2012.

Certificate of Registration

"The Sand Castle Co-operative Housing Maintenance Society Limited," Gaundalim, Colva, Salcete-Goa, has been registered on 12-10-2012 and it bears registration code symbol No. HSG-(d)-865/South Goa/2012 and it is classified as "Housing Society" under sub-classification No. 7-(d)-Co-partnership Housing Society in terms of Rule 8 of Goa Co-operative Societies Rules, 2003.

Sd/- (A. K. N. Desai), Asstt. Registrar of Co-op. Societies (South Zone).

Margao, 12th October, 2012.

Notification

No. 5-1473-2012/ARSZ/HSG

In exercise of the powers vested in me under Section 8 of the Goa Co-op. Societies Act, 2001, "The Confraria Enclave Co-operative Housing Society Limited," Opposite Shashi Sadan, Mundvel, Near Goa Shipyard Ltd., Vaddem, Vasco-da-Gama, Goa, is registered under code symbol No. HSG-(b)-864/South-Goa/2012.

Sd/- (A. K. N. Desai), Asstt. Registrar of Co-op. Societies (South Zone).

Margao, 4th October, 2012.

Certificate of Registration

"The Confraria Enclave Co-operative Housing Society Limited," Opposite Shashi Sadan, Mundvel, Near Goa Shipyard Ltd., Vaddem, Vasco-da-Gama, Goa, has been registered on 3-8-2012 and it bears registration code symbol No. HSG-(b)-864/South Goa/2012 and it is classified as "Housing Society" under sub-classification No. 7-(b)-Co-partnership Housing Society in terms of Rule 8 of Goa Co-operative Societies Rules, 2003.

Sd/- (A. K. N. Desai), Asstt. Registrar of Co-op. Societies (South Zone).

Margao, 4th October, 2012.

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Department of Finance

Revenue & Control Division

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Notification

No. 2/11/2012-Fin(R&C)

Whereas, it has been observed that easy availability of liquor (IMFL/CL) in sachets/pouches and their uncontrolled sale by retail vendors in the State of Goa has lured the student community to experiment with the same which has created a negative impact and tension in the society.

And whereas, the consumption of liquor from such sachets/pouches takes place also by a section of the public, mainly migrant labourers, who discard the empty sachets/pouches on the roads, roadside gutters, Nullahs and waterways, thereby blocking and choking the drainages and waterway systems, thus causing an environmental pollution in the towns and villages of the State of Goa.

And whereas, in order to curtail this menace and in larger public interest, it has been decided by the Government of Goa to prohibit possession and/or sale of liquor (IMFL/CL) in sachets/pouches at all shops selling liquor in the State of Goa.

Now, therefore, in exercise of the powers conferred by Section 10 of the Goa Excise Duty Act, 1964 (No. 5 of 1964), the Government, having considered it necessary in the public interest so to do, hereby prohibits the possession and/or sale of liquor (IMFL/CL) in sachets/pouches at all shops selling liquor in the State of Goa.

This Notification shall come into force from the date of its publication in the Official Gazette.

By order and in the name of the Governor of Goa.

Sd/- (Michael D'Souza), Joint Secretary, Finance (R&C).

Porvorim, 6th December, 2012.

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Department of Forest

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Order

No. 4-1-2006/FOR(Part)

Governor of Goa is pleased to promote the below mentioned Assistant Conservator of Forests, in the Forest Department, Panaji to the post of Dy. Conservator of Forests, Group 'A' Gazetted in the pay scale of ₹ 15,600-39,500+6,600/- on ad hoc basis, with immediate effect and until orders.

Sr. No.	Name of the Officer	Present post held	Posted on promotion
1.	Shri Subhas Henriques	Assistant Conservator of Forests (Soil Conservation)	Dy. Conservator of Forests (Soil Conservation).
2.	Shri Milind Karkhanis	Assistant Conservator of Forests (Legal Cell)	Dy. Conservator of Forests (Social Forestry Parks & Gardens).
3.	Shri Suhas Vasta	Assistant Conservator of Forests (Quepem)	Dy. Conservator of Forests (Work- ing Plan).

The above ad hoc appointment shall be initially for a period of six months.

The above promotion will not bestow on the promotee any claim for regular appointment and the services rendered on ad hoc basis will not count for the purpose of seniority in the grade and for eligibility of promotion in the next higher grade.

Shri Milind Karkhanis, Dy. Conservator of Forests (Social Forestry Parks & Gardens) shall also hold the charge of ACF (Legal Cell) in addition to his own duties.

Shri Raju B. Desai, Assistant Conservator of Forests is transferred and posted as Assistant

Conservator of Forests (Social Forestry Parks and Gardens), Ponda-Goa.

By order and in the name of the Governor of Goa.

Sd/-(Sushma D. Kamat), Under Secretary (Forests).

Porvorim, 30th November, 2012.

Information Officer concerned so as to furnish the information to the applicant within the stipulated period and within the provisions of the Act.

This supersedes earlier order.

Elvis P. Gomes, Managing Director.

Porvorim, 16th November, 2012.

V. No. A-6035

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Department of Housing Board

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Order

Ref: GHB/ADM/1494/2012

Read: Order No. GHB/ADM/30/2006 dated 07-07-2006.

In pursuance to clause 5 of Chapter II of the Right to Information Act, 2005, the following Officers are hereby appointed as First Appellate Authority, Public Information Officer at the Head Office and Assistant Public Information Officer in their respective jurisdiction for the Goa Housing Board to deal with the applications received from the public under the Right to Information Act, 2005.

Sr. No.	Name of the officials	First Appellate Authority/Public Information Officer/ Assistant Public Information Officer	Office Telephone
1.	Managing Director	First Appellate Authority	2412925
2.	Housing Engineer	Public Information Officer, Goa Housing Board, Porvorim	2417917
3.	Executive Engineer (North)	Assistant Public Information Officer for North Division	2413444
4.	Executive Engineer (South)	Assistant Public Information Officer for South Division	2752430

The Public Information Officer shall be responsible for the preparation and publication of the manual from time to time as per the said Act.

The Assistant Public Information Officer shall ensure that the applications received by him/her for information under the Right to Information Act, 2005 are submitted on top priority to the Public

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Department of Information Technology

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Order

No. 1(502)/2012/DOIT/IT Cadre/3985

Government of Goa has decided to create a Cadre of IT experts and Professionals in the Department of Information Technology whose services will be placed in various Departments so as to ensure strong and continuous technical support in these Departments.

To finalize the Structure, Designations, Roles & Responsibilities, Promotional Avenues, etc. of the various posts to be created under the IT Cadre of the Department of Information Technology (Government of Goa), the Government is pleased to constitute a Committee consisting of the following members:

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|---|-------------|
| 1. Director, Department of Information Technology, Porvorim-Goa | — Chairman. |
| 2. SIO, National Informatics Center, Porvorim-Goa | — Member. |
| 3. Director, Directorate of Technical Education, Porvorim-Goa | — Member. |
| 4. Additional Secretary, Personnel Department, Secretariat, Porvorim-Goa | — Member. |
| 5. Additional Secretary (Finance & Expenditure), Finance Department, Secretariat, Porvorim-Goa | — Member. |
| 6. Shri Girish P. Bharne, Associate Vice-President, PSL, Verna, Goa. (Representative from an Industry, Goa) | — Member. |

1. The committee will suggest the complete administrative structure of the Cadre of IT experts alongwith the Organogram and the exact number of each posts suggested.

2. The committee will suggest the nomenclature of various posts, so that they are in consonance with the existing setup.

3. The committee will suggest the draft RR's for all these posts under the IT cadre.

4. The committee will suggest the exact roles and responsibilities attached to these posts under the IT cadre.

5. The committee will suggest the promotional avenues for these posts in consonance of the 6th pay commission recommendations.

6. The committee will submit its report/ recommendation for the approval of the Government by 25th December, 2012.

This is issued with the approval of Government vide U.O. No. C.M. 9747-F dated 26-11-2012.

By order and in the name of the Governor of Goa.

Keshav Chandra, Secretary (IT).

Porvorim, 4th December, 2012.



Department of Labour

Order

No. 21/15/86-Lab/PF-III/658

- Read: (1) Government Order No. 21/15/86-Lab (PF)/1141 dated 02-11-2009.
 (2) Government Order No. 21/15/86-Lab (PF) dated 22-04-2010.
 (3) Government Order No. 21/15/86-Lab/ PF dated 22-06-2011.
 (4) Government Order No. 21/15/86-Lab/ PF/63 dated 20-01-2012.

Government is pleased to extend the ad hoc appointment of Shri Vaman Pai Bhatikar, Assistant Labour Commissioner in the pay scale of ₹ 6,500-200-10,500/- in the revised Pay Band—2 ₹ 9,300-34,800/- with Grade Pay of ₹ 4,600/- (Group 'B' Gazetted) in the office of the Commissioner of Labour and Employment, Panaji-Goa for a further period with effect from 29-09-2012 to 28-09-2013 or the said post is filled up on regular basis whichever is earlier on the same terms and conditions stipulated in the above referred order.

This issues with the concurrence of Goa Public Service Commission vide their letter No. COM/II/11/28(1)/2010/2193 dated 26-10-2012.

By order and in the name of the Governor of Goa.

D. S. Morajkar, Under Secretary (Labour).

Porvorim, 7th December, 2012.

Order

No. 22/4/2001-Lab-Part/653

Government is pleased to promote Shri Sunil A. Gaonkar, Employment Counselling Officer to the post of the Employment Officer on ad hoc basis in the office of the Commissioner of Labour and Employment, Panaji in the pay scale of PB—2 ₹ 9,300-34,800 + ₹ 4,200/- Grade Pay (Group 'B' Gazetted) with immediate effect for a period of six months.

The above promotion will not bestow on the officer any claim on the regular appointment and services rendered by him on ad hoc basis in the grade will not count for the purpose of seniority and for eligibility for promotion to the next higher grade.

The expenditure on payment of salaries shall be debited to the Budget Head 2230—Labour and Employment, 02—Employment Service, 101—Employment Services, 05—Setting up of Job Development and Vocational Guidance Unit (Non-Plan), 01—Salaries.

By order and in the name of the Governor of Goa.

D. S. Morajkar, Under Secretary (Labour).

Porvorim, 30th November, 2012.

Order

No. 28/37/2012-Lab/652

Whereas the Government of Goa is of the opinion that an industrial dispute exists between the management of M/s. Wallace Pharmaceutical Private Limited, Curti, Ponda-Goa, and it's Workmen represented by the Gomantak Mazdoor Sangh, in respect of the matter specified in the Schedule hereto (hereinafter referred to as the "said dispute");

And whereas the Government of Goa considers it expedient to refer the said dispute for adjudication.

Now, therefore, in exercise of the powers conferred by clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947) (hereinafter referred to as the "said Act"), the Government of Goa hereby refers the said dispute for adjudication to the Industrial Tribunal of Goa, at Panaji-Goa, constituted under Section 7-A of the said Act.

SCHEDULE

“(1) Whether the action of the management of M/s. Wallace Pharmaceutical Private Limited, Curti, Ponda, Goa, in deducting the one day wages of 16-05-2012 from the wage period May, 2012, of all Workmen who were on roll as on 16-05-2012, is legal and justified?

(2) If not, what relief the workmen are entitled to?”

By order and in the name of the Governor of Goa.

D. S. Morajkar, Under Secretary (Labour).

Porvorim, 4th December, 2012.

Order

No. 28/39/2012-Lab/651

Whereas the Government of Goa is of the opinion that an industrial dispute exists between the management of M/s. Andrew Telecommunication (India) Private Limited, Verna, Goa, and it's Workman Shri Pravin Nanodkar, Operator, in respect of the matter specified in the Schedule hereto (hereinafter referred to as the “said dispute”);

And whereas the Government of Goa considers it expedient to refer the said dispute for adjudication.

Now, therefore, in exercise of the powers conferred by clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947) (hereinafter referred to as the “said Act”), the Government of Goa hereby refers the said dispute for adjudication to the Industrial Tribunal of Goa, at Panaji-Goa, constituted under Section 7-A of the said Act.

SCHEDULE

“(1) Whether the action of the management of M/s. Andrew Telecommunication (India) Private Limited, Verna, Goa, in dismissing from services Shri Pravin Nanodkar, Operator, with effect from 30-09-2011, is legal and justified?

(2) If not, what relief the Workman is entitled to?”

By order and in the name of the Governor of Goa.

D. S. Morajkar, Under Secretary (Labour).

Porvorim, 4th December, 2012.

Notification

No. 28/1/2012-LAB/625

The following award passed by the Labour Court-cum-Labour Court, at Panaji-Goa on 09-10-2012 in reference No. IT/73/2003 is hereby published as required by Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

D. S. Morajkar, Under Secretary (Labour).

Porvorim, 14th November, 2012.

IN THE INDUSTRIAL TRIBUNAL AND
LABOUR COURT
GOVERNMENT OF GOA
AT PANAJI-GOA

(Before **Smt. Bimba K. Thaly, Presiding Officer**)

Ref. No. IT/73/2003

Shri Deepak Agarwadekar and 2 others,
C/o Shri Suhas Naik,
Velho Bldg., Opp. Municipal Garden,
Panaji, Goa.

V/s.

M/s. Kylesal Holidays (P) Ltd.,
A Holiday and Travel Division of
Saldanha Group,
Office 302, Mathias Plaza,
18th June Road,
Panaji, Goa.

Adv. Shri S. Gaonkar for Workmen I/Party I.

Adv. Shri A. V. Nigalye for Employer I/Party II.

AWARD

(Passed on this 9th day of October, 2012)

In exercise of powers conferred by clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947) (for short the Act) the Government of Goa by order dated 12-11-03 bearing No. 28/8/2003-LAB has referred the following dispute for adjudication.

“(I) (1) Whether the action of the management of M/s. Kylesal Holidays (P) Ltd., Panaji, Goa, in terminating the services of S/Shri Deepak Agarwadekar, Electrician, and Maurice D'Souza, Barman, employed in their establishment, namely, Carmo Lobo Resort, Candolim, Bardez, Goa, with effect from 1-5-2002, is legal and justified?

- (2) If not, what relief the Workmen are entitled to?
- (II) (1) Whether the action of the management of M/s. Kylesal Holidays (P) Ltd., Panaji, Goa, in terminating the services of Shri Pravin Kanolkar, Electrician, employed in their establishment, namely, Maria Rosa Resort, Candolim, with effect from 7-5-2002, is legal and justified?
- (2) If not, what relief the Workmen is entitled to?"

2. Upon receipt of the reference, IT/73/2003 was registered. Notices were issued to both the parties under registered A/D post, upon which, both the parties were served. Party I filed the statement of claim at Exb. 3. Party II filed the written statement at Exb. 4. Rejoinder was filed by Party I at Exb. 5.

3. In the statement of claim, it is in short the case of Party I that the Workman Shri Deepak Agarwadekar was initially employed at Maria Rosa Resort as an Electrician and was subsequently transferred to Carmo Lobo Resort by Party II, where he continued in employment till the date of his illegal termination on 29-4-02 vide which his services were terminated w.e.f. 1-5-2002. It is stated that the termination of his services is illegal, unjustified and bad in law and the same is in contravention of Section 25F of The Act.

4. It is stated that the Workman Shri Maurice D'Souza was employed as Barman at Maria Rosa Resort of Party II w.e.f. 4-11-96 and later he was transferred to Carmo Lobo Resort till the date of his illegal termination vide letter of termination dated 29-4-02 by which his services were terminated w.e.f. 1-5-02 which termination according to Party I is illegal, unjustified and bad in law and in contravention of Section 25F of the Act.

5. It is stated that the Workman Shri Pravin Kanolkar was employed as Barman at Maria Rosa Resort of Party II in January, 1998 and that his services were illegally terminated by Personnel Officer of Party II w.e.f. 7-5-02 without issuing him any termination letter. It is stated that the action of the management is illegal, unjustified and bad in law and in contravention of Section 25F of The Act.

6. It is stated that after termination all the 3 Workmen contacted the Personnel Officer of Party II requesting for reinstatement but the request was turned down and as such they raised an industrial dispute which ended in

failure. It is thus prayed by Party I to hold that the action of management of Carmo Lobo Resort of Party II in illegally terminating the services of the Workmen Shri Deepak Agarwadekar and Shri Maurice D'Souza w.e.f. from 1-5-02 as illegal, unjustified and bad in law and also to hold that the action of Party II in illegally terminating the services of the Workman Shri Pravin Kanolkar w.e.f. 7-5-02 as illegal, unjustified and bad in law and to reinstate all the above three Workmen back in services with full back wages and continuity in services.

7. In the written statement Party II has denied the case set up by Party I and has stated that the reference is not maintainable as it is made without application of mind; that the matter referred to the Tribunal is not an industrial dispute; that the Government has referred the non-existent dispute which cannot be adjudicated by this Tribunal; that the said employees are not the "Workmen" within the meaning of section (2) (s) of the Act; that the matter referred to this Tribunal is not the actual dispute between the parties since the reference made is in respect of the alleged termination of the services in May, 2002 and that the services of the said employees were not terminated in May or at any other time, but they were given breaks for fixed period in July, 2002, which amounts to their layoff; that the subject matter of the purported dispute falls within the purview of Goa, Daman and Diu Shops and Establishments Act and therefore the authorities under the I.D. Act have no jurisdiction to adjudicate the dispute; that in the event the employees have alternate and efficacious remedy under the Goa, Daman and Diu Shops and Establishments Act which is a special law and that the statement of claim is not properly verified.

8. It is stated that none of the aforesaid employees were in continuous service of Party II and that they had not put in continuous service of one year during their tenure of employment with the Party II. It is stated that Party II is engaged in hospitality business in Goa. That the volume of business depends on the arrival of clients who are mostly foreign tourists. That the bookings of these tourists is done well in advance. That the occupancy of the hotels of Party II is extremely low in monsoon. That it has been the practice of the Party II to give layoff or break to some of its employees during these months due to low volume of business. That in the year 2002, based on advanced bookings, Party II anticipated very low arrivals till December, 2002 and therefore decided to lay off the said three employees till December, 2002 by giving breaks. It

is stated that a letter dated 30-7-02 was issued to Shri Maurice D'Souza stating that he has been given break in service and accordingly he was laid off from 30-7-2002 till the end of December, 2002. That a similar letter dated 20-7-02 was issued to Shri Deepak Agarwadekar stating that he has been given break from 20-7-02 to 31-12-02. That Shri Pravin Kanolkar was issued letter dated 17-7-02 informing that he was given break from 17-7-02 to 31-12-02. That though the personal officer of Party II tried to serve the said letters on the said employees, all of them refused to accept the same and accordingly appropriate remarks regarding the refusals were put on the said letters in the presence of the witnesses confirming the aforesaid facts. It is stated that the employees were paid wages for the month of May, June and July, 2002. It is stated that the said employees approached the Asstt. Labour Commissioner, Mapusa falsely contending that their services were terminated w.e.f. 1-5-02 and 7-5-02 respectively. It is stated that the purported dispute raised by the said employees was not at all in existence and the conciliation officer had no jurisdiction to deal with it and thus the conciliation proceeding held by the said Asstt. Labour Commissioner and the reference made by the Government on the basis of his report is, therefore, illegal without jurisdiction and authority of law. It is stated that the said employees failed to report of duty after the period of their lay off/break and that they are gainfully employed. Thus, amongst above and other grounds, Party II has prayed to reject the reference.

9. In their rejoinder, Party II has denied the contentions raised by Party II in their written statement.

10. On the basis of averments of the respective parties issues were framed at Exb. 6 on 10-12-04. It may be mentioned here that Party I/Workmen were initially represented by Adv. Shri Suhas Naik but in the course of further proceedings, Shri P. Goankar filed his authority letter at Exb. 19 representing only the Workmen namely Shri Deepak Agarwadekar and Shri Pravin Kanolkar and therefore there was no representation by anyone as regards the Workman Shri Maurice D'Souza. It is therefore clear that the present reference is pursued by Party I comprising of only the Workmen Shri Deepak Agarwadekar and Shri Pravin Kanolkar.

11. In the course of evidence Party I examined Shri Deepak Agarwadekar as witness No. 1 and Pravin Kanolkar as witness No. 2 and closed their case. On the other hand Party II examined the General Manager of Maria Rosa Resort namely

Shri George Fernandes as witness No. 1 and Shri Sandesh Balekar the Branch Manager, HDFC Bank, Candolim, Goa as witness No. 2 and closed their case.

12. Heard Learned Advocate Shri S. Gaonkar for Party I and Learned Advocate Shri A. V. Nilgale for Party II.

13. In his arguments Learned Advocate for Party I submitted that the services of workmen Shri Deepak Agarwadekar and Shri Pravin Kanolkar have been illegally terminated w.e.f. 1-5-02 and 7-5-02 respectively without compliance of Section 25F of the Act. He stated that as per Exb. 17 which is a letter dated 30-9-02 by Party II to the Asstt. Labour Commissioner, Mapusa, Goa, the aforesaid Workmen have been given a break in the service and according to him there is no concept of break in service under the Act. He invited my attention to the definition of "retrenchment" u/s 2(00) of the Act and stated that Party II cannot give break in service to their Workmen and if it is so the same amounts to retrenchment. He also stated that the so called alleged break cannot be for indefinite period and thus according to him the case of Party I squarely comes into the purview of retrenchment "for any reason whatsoever" and hence the Workmen are entitled for reinstatement in service with full back wages. By referring to the defence of Party II wherein they have claimed that the Workmen have been laid off/given break in the service he took me to the definition of "lay off" u/s 2(kkk) of the Act and stated that there is no ground of slump in business in the above definition and hence Party II cannot be heard to say that they have laid off the above Workmen. As regards the aspect of gainful employment of the Workmen upon termination of their services, he admitted that there is no pleading to the above effect in the claim statement but according to him no such averment is required in the pleadings.

14. In support of his above submissions he relied on the judgments in the case of *Haryana State Electronics Development Corporation Ltd., v/s Mamni 2006 II LLJ 744*, in the case of *Balihar Singh and others v/s Punjab University, Chandigarh and others 2003(96) FLR 479* in the case of *Haryana Warehousing Corporation v/s Presiding Officer, Industria! Tribunal-cum-Labour Court and anr (1997) 115 PLR 99*, in the case of *Hope Textiles Ltd., and Others v/s State of Madhya Pradesh and Others 1992 LLR 795* and in the case of *Allahabad Jal Sansthan v/s Daya Shankar Rai and another 2005 (5) scc 124*.

15. On the other hand, Learned Advocate of Party II submitted that the above Workmen have been paid wages for the months of May, June and July, 2002 since they had worked for Party II during these months and therefore according to him the dispute raised by these Workmen contending that their termination by the employer was in the month of May, 2002 is apparently incorrect and hence the present dispute does not survive. In support of his above submissions he invited my attention to the bank statements of the Workmen Shri Pravin Kanolkar and Shri Deepak Agarwadekar at Exb. E1 and Exb. E2. Further, by pointing to the ESI statements at Exb. E3 colly he stated that the ESI contribution of these Workmen have been paid till the month of September, 2002. According to him since the letter dated 30-9-2002 (Exb. 17) was by Party II to the Government informing about giving break in service to the Workmen, the reference ought to have been "whether the action of the management of giving break which is layoff is legal and justified?" and hence he stated that the reference has been made without application of mind. By referring to the definition of "lay off" u/s 2(kkk) of the Act he stated that since Party II is engaged in hospitality business, their case comes under the purview of "shortage of raw material" in Section 2(kkk) of the Act. According to him Party II has given break in service to the Workmen from July to December, 2002 and not in the month of May, 2002 as claimed by Party I. On the subject of gainful employment after the break in service, he stated that there has to be pleadings in the claim statement to that effect. In support of his submissions he relied on the judgment in the case of **Talwara Co-operative Credit and Services Society Limited v/s Sushil Kumar (2008) 9 SCC 486 Kendriya Vidyalaya Sangathan and Another v. S.C. Sharma, (2005) 2 SCC 363 and U.P. State Brassware Corporation Ltd. v/s Udai Narain Pandey 2006 AIR(SC) 586.**

16. In his arguments Lnd. Advocate for Party II also made it clear that though Party II has raised several preliminary objections in their written statement, the only objection pertaining to the reference having been made without application of mind and on the subject of the matter referred to this Tribunal being not the actual dispute between the parties are pressed. This being the case, the question of considering the other objections raised by Party II in para 2 of the written statement, on the maintainability of the reference, does not arise.

17. I have gone through the records of the case and have duly considered the arguments advanced. I am reproducing herewith the issues alongwith their findings and reasons thereof:

Sr. No.	Issues	Finding
1	2	3
1.	Whether the Workmen/ /Party I Shri Deepak Agarwadekar and Shri Maurice D'Souza prove that the employer/Party II terminated their services w.e.f. 1-5-2002 in contraventions of the provisions of Sec. 25F of the I.D. Act, 1947?	Positive as regards the Workman Shri Deepak Agarwadekar and negative as regards the Workman Shri Maurice D'Souza.
2.	Whether the Workmen/ /Party I Shri Deepak Agarwadekar and Shri Maurice D'Souza prove that the termination of their service by the employer/Party II w.e.f. 1-5-2002 is illegal and unjustified?	Positive as regards the Workman Shri Deepak Agarwadekar and negative as regards the Workman Shri Maurice D'Souza.
3.	Whether the workman/ /Party I Shri Pravin Kanolkar proves that he was employed as Electrician in Maria Rosa Resort in January, 1998 and his services were terminated by the employer/Party II w.e.f. 7-5-2002 in contravention of the provisions of Sec. 25F of the I.D. Act, 1947?	In the positive.
4.	Whether the Workmen/ /Party I Shri Pravin Kanolkar proves that the termination of his service by the employer/Party II w.e.f. 7-5-2002 is illegal and unjustified?	In the positive.
5.	Whether the employer/ /Party II proves that the dispute referred is not an industrial dispute within the meaning of Section 2(k) of the I.D. Act, 1947?	Does not arise.

6. Whether the employer/
/Party II proves that
Shri Deepak Agarwadekar,
Shri Maurice D'Souza and
Shri Pravin Kanolkar are
not "Workmen" within the
meaning of Sec. 2(5) of the
I.D. Act, 1947? Does not arise.
7. Whether the employer/
/Party II proves that this
Tribunal has no jurisdiction
to decide the dispute? In the negative.
8. Whether the employer/
/Party II proves that the
Workmen were given lay
off/break for specific
period from July, 2002 to
December, 2002 and that
they did not report for
duty after the period of
their lay off/break? In the negative.
9. Whether the Workmen
are entitled to any relief? As per order below.
10. What Award? As per order below.

REASONS

18. *Issue Nos. 1, 2, 3, 4 and 8:* All these issues are answered together for the sake of convenience as they are interconnected and therefore could be discussed on the basis of common evidence relating to them.

19. There is otherwise no serious dispute on the part of Party II that the Workman Shri Deepak Agarwadekar and Shri Pravin Kanolkar were employed with Party II as Electricians. As stated by me above, Party II has also not disputed that these employees are the "Workmen" u/s 2(s) of the Act and also that the matter referred to this Tribunal is an industrial dispute within the meaning of Sec. 2(k) of The Act.

20. The Workmen have approached this Court contending that the services of Shri Deepak Agarwadekar have been illegally terminated by letter of termination dated 29-4-02 w.e.f. 1-5-02 and that the services of Shri Pravin Kanolkar were illegally terminated w.e.f. 7-5-02 upon oral intimation by the Personnel Officer of Party II. It is pertinent to note that the said letter dated 29-4-02 has been brought on record by Lnd. representative of Party I, at Exb. 20, in the cross examination of Shri George Fernandes, wherein upon being shown the said letter at Exb. 20 witness Shri George Fernandes has admitted that it was issued to Shri Deepak Agarwadekar. It is pertinent to note that

in para 3 of the claim statement Party I has referred to this letter by stating that by this letter the services of Shri Deepak Agarwadekar were terminated by Party II w.e.f. 1-5-02 and in para II of the written statement, the Party II has denied that the services of Shri Deepak Agarwadekar were terminated w.e.f. 1-5-2002 by letter dated 25-2-02, as alleged. The very fact of admission of Exb. 20 by Shri George Fernandes without giving any explanation on the subject of its existence, by itself makes it clear that denial of such letter vide para 11 of the written statement, is without any basis.

21. As regards Workman Shri Pravin Kanolkar, it is the contention of Party I that his services were illegally terminated vide oral intimation, w.e.f. 7-5-02 and the above averment of Party I is merely denied by Party II. Shri Pravin Kanolkar has also stated in his cross examination that pursuant to his termination from 7-5-02 he raised an industrial dispute on 5-8-02. Undoubtedly, it is the defence of Party II in para 5 of the written statement that by letter dated 20-7-2002 Shri Deepak Agarwadekar was given break from 20-7-02 to 31-12-02 and vide letter dated 17-7-02 Shri Pravin Kanolkar was given break from 17-7-02 to 31-12-02. It is also suggested to Shri Pravin Kanolkar that he had been given break in service from September, 2002 to December, 2002 and he was not terminated by Party II. It is further suggested to Shri Pravin Kanolkar that one Ms Ivy D'mello had handed over to them a letter stating that he had been given break in service from September to December, 2002 and that he refused to sign the said letter. It is further suggested to Shri Pravin Kanolkar that the above incident occurred in the presence of one Ms Annete D'Souza but Party II has failed to examine said Ms Annete D'Souza. It is pertinent to note that the copies of wage register of Party II, for the period from January, 2002 to October, 2002 are brought on record in the cross examination of Shri George Fernandes at Exb. E/4. Shri George Fernandes has admitted that there is no signature of Party I/Pravin appearing on Exb. E/4 from January, 2002 to October, 2002 though his name appears in the same. Thus, this aspect weighs in favour of Party I to say that there is no evidence on behalf of Party II to establish that Pravin Kanolkar was paid till July, 2002. Even for that matter, Party II has not produced any letter dated 1-7-02 issued to Shri Pravin Kanolkar informing that he was given break from 17-7-02. Thus, what follows from the above is that Shri Pravin Kanolkar has brought on record the positive evidence to establish that his services were terminated w.e.f. 7-5-02, upon oral intimation.

22. It is worthwhile noting that in the cross examination of Shri Deepak Agarwadekar, it has been suggested that he was sent a letter dated 28-7-02 (and not 20-7-02) stating that he was given break in service from 28-7-02 and that he refused to accept the said letter. Even Shri George Fernandes in his affidavit in evidence has stated about letter dated 28-7-02 (and not 20-7-02) issued to Shri Deepak Agarwadekar stating that he was given break from 28-7-02. He has also stated that a letter dated 17-7-02 was issued to Shri Pravin Kanolkar informing that he was given break from 17-7-02. Apart from variation in the pleading and proof as regards the so called letter dated 20-7-02 and dated 28-7-02 by which according to Party II Shri Deepak Agarwadekar was given break in service, it is noticed that Party II has not brought on record either the letter dated 20-7-02 or 28-7-02 and in this context Shri George Fernandes has made it clear in his cross examination that Party II does not have any acknowledgment to show that they had issued the letter to Party I stating that he was given a break from 28-7-02. He has further stated that he does not know whether the said letter dated 20-7-02 was issued to Party I by registered post A/D, as it was issued to Party I by Personnel Department. Nevertheless, Shri George Fernandes has denied the suggestion that no such letter dated 28-7-02 was issued to Party I. It is relevant to mention here that it is not at all the case of Party II in their pleadings that by letter dated 28-7-02 break was given to Shri Deepak Agarwadekar and therefore in such situation denial to the aforesaid suggestion by Shri George Fernandes, does not merit consideration.

23. At this juncture, it is worthwhile noting that it is the pleadings of Party II in para 5 of the written statement that though the Personnel Officer of Party II tried to serve the letters dated 20-7-02 and 17-7-02 on the said respective employees, they refused to accept the same and accordingly appropriate remarks regarding the refusal were put on the said letters in the presence of the witnesses confirming the aforesaid facts. Interestingly, Party II has not produced on record the said so called remarks put on the said letters in the presence of witnesses, to establish their such defence. Being so, the defence to the above effect taken by Party II, fails.

24. Be that as it may, coming to the contention of Lnd. Advocate for Party II, that both the aforesaid Workmen have been paid wages for the months of May, June and July, 2002, and therefore the dispute referred herein is a non-existent dispute, it is noted that no such specific stand has been taken by Party II in their written statement and even otherwise, no such case has

been suggested to Shri Deepak Agarwadekar and to Shri Pravin Kanolkar in their cross examination. Being so, the above contention of Lnd. Advocate for Party II deserves to be rejected.

25. It may be mentioned here that Shri Pravin Kanolkar has produced on record at Exb. W/1, xerox copy of his passbook of SBI Branch, Calangute and in his cross examination he has admitted that the last entry shown on Exb. W/1 is dated 24-10-2001. He has also stated that he has not updated the said pass book and that he can produce the fresh updated passbook. However his further cross examination reveals that since he has closed the said account with S.B.I, Calangute Branch, the authorities of said branch are not ready to update the said passbook though he was unable to produce anything in written from the said branch saying that they cannot update the passbook since the account has been closed. Nonetheless, in his evidence Shri George Fernandes has produced the bank statement of Shri Pravin Kanolkar at Exb. E/1 and of Shri Deepak Agarwadekar at Exb. E/2 and in his arguments Lnd. Advocate for Party II contended that the entries in the above document show that the aforesaid persons have been paid salaries till the month of July, 2002.

26. It may be mentioned here that Shri Sandesh Balekar, the Branch Manager in HDFC Bank at Candolim, Goa, examined by Party II was shown Exb. E/1 and Exb. E/2 and he has stated that Centurian Bank of Punjab Limited was taken over by HDFC Bank; that the above accounts have been maintained by HDFC Bank at Candolim Branch and both the above Exhibits are the salary accounts. In his cross examinations upon being shown Exb. E/1 he has stated that the amount of Rs. 1556/- was credited in the account of Shri Pravin Kanolkar by way of transfer on 22-7-02 and has admitted that on seeing the said statement of account, one cannot say as to whether the said particular entry of crediting the amount is on account of Bonus or leave wages or earned wages etc. He has also stated that he does not know personally whether the said amount shown as credited in Exb. E/1 and Exb. E/2 pertained to overtime wages. Thus, from the nature of above evidence pertaining to Exb. E/1 and Exb. E/2, it becomes clear that there is no convincing evidence to indicate that the entries in the above Exhibits pertain only to the salary of the above Workmen.

27. Shri George Fernandes has also produced the copy of statement of ESI at Exb. E/3 colly and in his arguments Learned Advocate for Party II submitted that these documents show the

contributions made by the employer till September, 2002 however in his cross examination Shri George Fernandes has made it clear that Exb. E/3 colly pertained to the consolidated payment of all the workers for half yearly towards the ESI contribution. It is also brought on record in the cross examination of Shri George Fernandes that the ESI contribution at Exb. E/3 colly has been paid to Party II by way of challan on 1-1-2003, for the month of July, 2002. This witness has also stated that he does not remember as to whether Party I raised an Industrial Dispute before ALC, Mapusa in the month of August, 2002 and he also does not know as to whether Party II was represented before ALC, Mapusa in the matter of dispute raised by Party I. This witness has further stated that he is not aware as to whether the payment of challan by way of ESI contribution at Exb. E/3 colly has been done for creating the evidence, since the management was aware that the Industrial Dispute was pending with ALC, Mapusa.

28. Since Exb. 21 dated 6-8-02 which is a letter issued by ALC, Mapusa to both the parties on the subject of raising an Industrial Dispute by Party I makes it clear that an Industrial Dispute was raised in the year 2002, the contention of Party I that payment of challan vide Exb. E/3 colly has been made for creating evidence, cannot be rejected outright and this is because there is no other supporting evidence to substantiate the contention of Party II, that the aforesaid Workmen have been paid salary for the months of May, June and July, 2002.

29. It may be mentioned here that neither in Exb. 17 dated 30-9-2002 nor in Exb. 20 dated 29-4-2002 there is mention as to when the Party I/Workmen had to join their duties after the break. Thus, as rightly pointed out by Lnd. Adv. for Party I it is not permissible to give such indefinite break and therefore the case of the Workmen come u/s 2(00) of the Act thereby making it clear that the termination was "for any reason whatsoever".

30. Section 2(00) of the Act defines 'Retrenchment' as under:

"retrenchment" means the termination by the employer of the service of a Workman for any reason whatsoever, otherwise than a punishment inflicted by way of disciplinary action but does not include—

- (a) *voluntary retirement of Workman; or*
- (b) *retirement of the Workman on reaching the age of superannuation if the contract of*

employment between the employer and the Workman concerned contains a stipulation in that behalf; or

- (bb) *termination of the service of the Workman as result of the non-renewal of the contract of employment between the employer and the Workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein; or*
- (c) *termination of the service of a Workman on a ground of continued ill-health.*

31. In the judgment in the case of *Haryana State Electronics (supra)* the Appellant Corporation was found appointing respondent as Junior Technician for a period of 89 days and reappointing her after a gap of one or two days, on regular basis and such action of the Corporation was held by the Hon'ble Supreme Court as not bonafide and adopted to defeat the rights available to the respondent u/s 25F of The Act.

32. In the judgment in the case of *Baliyar Singh (supra)* it is observed as under:

".....that the contract of employment was extended from time to time by giving notional breaks. In such a situation, calling upon the petitioner not to resume work on a particular date i.e. 1-9-2000 without complying with the provisions of Section 25F of the Act will be considered as an act of retrenchment within the meaning of Section 2(00), which defines retrenchment and it means the termination by the employer of the service of a Workman for any reason whatsoever. If the management fails to bring to case with any of its provisos of Section 2(00), in such a situation it has to be inferred reasonably that the dispensation of the service of the Workman is covered by the patent wording which means the termination by the employer of the service of a Workman for any reason whatsoever. Section 25 F is mandatory in character and if at the time of termination of the service of the petitioners retrenchment compensation has not been such action will be considered bad in the eyes of law not only on account of non-complying of the provisions of Section 25F but also on account of unfair labour practice on the part of the management"

33. It may be mentioned here that Party II has otherwise not disputed that Party I/Workmen have worked continuously for more than 240 days preceding 12 months and this aspect has been admitted by Shri George Fernandes in his cross examination.

34. In the judgment in the case of *Haryana Warehousing Corporation (supra)* it is observed as under:

".....in the present case respondent No. 2 worked for 240 days right from 1985 to 1987 and the provisions of section 25F have not been complied with and in these circumstances the action on the part of petitioner would amount to termination within the meaning of section 2(00) of the Act, which clearly states that it will be considered as termination of the service of the workman for any reason whatsoever....."

35. Thus, from the above settled proposition of law, it becomes clear that the Workmen in this case have been terminated illegally without complying with the provisions of Section 25F of the Act.

36. As regards the arguments of Lnd. Advocate for Party II that break amounts to lay off and that the Workmen herein have been laid off, it would be advantageous to refer to the definition of "lay off" u/s 2 (kkk) of the Act which when quoted reads as under:

"lay-off" (With its grammatical variations and cognate expressions) means the failure, refusal or inability of an employer on account of shortage of coal, power or raw material or the accumulation of stocks or the break-down of machinery (or natural calamity or for any other connected reason) to give employment to a Workman whose name is borne on the muster rolls of his industrial establishment and who has not been retrenched.

Explanation.....
 Provided
 Provided

37. Though it is the contention of Lnd. Advocate for Party II that Party II is engaged in hospitality business and therefore its business depends upon arrival of clients who are mostly foreign tourists and hence slack in such business amounts to shortage of raw material, it is noted that no documentary evidence has been produced by Party II through Shri George Fernandes to establish that in the year 2002 based on advanced bookings, Party II anticipated very low arrivals till December, 2002. That apart, as rightly pointed out by the Lnd. Adv. for Party I to attract the definition of lay-off, the temporary unemployment must be on account of the reasons specified in the definition, so also due to the reasons which are allied or analogous to the reasons specified therein. In the judgment in the case of *Hope Textiles (supra)* the petitioner company had

declared lay off on the grounds of financial stringency or non-receipt of permission from the Government to develop and sell it and in this case it is observed as under:

"..... Financial Stringency is not a cause for which a lay off could be given. All the reasons shown by the petitioners are arising out of financial crises, which was being faced by the petitioner because the Government was not allowing it to develop its land and sell it. So far as the lay off is concerned, it is absolutely irrelevant whether the petitioner could raise funds by sale of land to run the unit"

38. Thus from the nature of above observations it can be safely gathered that Party II has to prove that its case fits within the definition of Section 2(kkk) of the Act, which in my opinion, it has failed to do.

39. As regards the Workman Shri Maurice D'Souza since he has failed to prove the pleas raised by him in the claim statement, by not appearing or by not being represented before the Court, he has also failed to prove that Party II terminated his services w.e.f. 1-5-02 in contravention of the provisions of Section 25F of the Act and that such termination of his service by Party II is illegal and unjustified. Hence my findings.

40. *Issue No. 7:* Since the above discussion reveals that Party I has succeeded in establishing that they have been retrenched by Party II without complying with the provisions of Section 25F of the Act, this Tribunal has jurisdiction to decide this dispute. Even otherwise, since Party II has failed to prove that the so called lay off which they claim to have been declared is legal, the reference as forwarded to this Tribunal is proper. Hence my findings.

41. *Issue No. 9:* Admittedly, there are no pleadings in the claim statement indicating that both the aforesaid Workmen are not gainfully employed after their termination. Even for that matter, Workman Shri Deepak Agarwadekar has also not stated the above fact his evidence though the Workman Shri Pravin Kanolkar has made the statement that he is unemployed and could not succeed in getting any employment. Lnd. Adv. Party I though by relying on the judgment in the case of *Allahabad Jal Sansthan (supra)* contended that back wages could be granted to the Workman even if no such plea is raised, however on going through this judgment it is seen that the Labour Court had passed ex parte award on the basis of the evidence adduced only by the Workman and granted 50% of back

wages in the facts and circumstances of that particular case. It is further seen that Hon'ble Apex Court by referring to the various judgments has observed that there cannot be a straitjacket formula for awarding relief of back wages and that the Tribunal has to exercise its discretion keeping in view all the relevant circumstances. Hon'ble Apex Court has also observed that it is necessary to develop a pragmatic approach to problems dogging industrial relations. Nonetheless in the case of **Kendriya Vidyalaya Sangathan and Another v. S.C. Sharma, (2005) 2 SCC 363**, the Apex Court has held that "*...When the question of determining the entitlement of a person to back wages is concerned the employee has to show that he has not gainfully employed. The initial burden is on him. After and if he places materials in that regard, the employer can bring on record materials to rebut the claim.*" Similarly, in the case of **U.P. State Brassware Corporation Ltd. v/s Udai Narain Pandey, reported in 2006 AIR(SC) 586**, the Apex Court has reiterated that "*It is now well-settled by various decisions of this Court that although earlier this Court insisted that it was for the employer to raise the aforementioned plea but having regard to the provisions of Section 106 of the Indian Evidence Act or the provisions analogous thereto, such a plea should be raised by the Workman.*" and in the case of **Talwara Co-operative (supra)** it is observed that "*..... For the purpose of grant of back wages, one of the relevant factors would undisputably be as to whether the Workman had been able to discharge his burden that he had not been gainfully employed after the termination of his service*"

42. Thus, considering the above position of law and also the fact that the Workman Shri Deepak Agarwadekar has not stated in his evidence that he was unemployed and also as the Workman Shri Pravin Kanolkar has not given the details as to the manner in which he tried to secure the employment, keeping in view all the relevant circumstances, I am of the considered opinion that the aforesaid Workmen have failed to prove that they are not gainfully employed after their termination. Thus, the question of granting them the back wages does not arise. Even for that matter, apparently both the above Workmen were working as Electricians with Party II, at the time of their termination way back in the year 2002 and no evidence has been brought on record to indicate that at present there exist vacancies in the post of Electricians with Party II. Thus, the question of ordering reinstatement of both the above Workmen in service, does not arise. Being

so, I am of the opinion that ends of justice will be met by payment of monetary compensation to both the above named Workmen, in lieu of reinstatement.

43. The present reference is of the year 2003, disposed in the year 2012 and therefore it is clear that the parties have pursued the matter before the Tribunal for a period of around 9 years and hence awarding monetary compensation of ₹ 1,50,000/- each, to both the above Workmen, shall be appropriate, just and equitable in the facts and circumstances of this case.

44. As regards the Workman Shri Maurice D'Souza since he has failed to prove the pleas raised by him in the claim statement, by not appearing or by not being represented before the Court, he is not entitled to any relief.

45. Under the circumstances and in view of discussion supra, I pass the following.

ORDER

1. It is hereby held that the action of the management of M/s. Kylesal Holidays (P) Ltd., Panaji, Goa, in terminating the services of Shri Deepak Agarwadekar, Electrician, employed in their establishment, namely, Carmo Lobo Resort, Candolim, Bardez, Goa, with effect from 1-5-2002, is illegal and unjustified.

2. It is hereby held that the action of the management of M/s. Kylesal Holidays (P) Ltd., Panaji, Goa, in terminating the services of Shri Maurice D'Souza, employed in their establishment, namely, Carmo Lobo Resort, Candolim, Bardez, Goa, with effect from 1-5-2002, is legal and justified.

3. It is hereby held that the action of the management of M/s. Kylesal Holidays (P) Ltd., Panaji, Goa, in terminating the services of Shri Pravin Kanolkar, Electrician, employed in their establishment, namely, Maria Rosa Resort, Candolim, Bardez, Goa, with effect from 7-5-2002, is illegal and unjustified.

4. The Party II is directed to pay to Party I/ Workmen namely Shri Deepak Agarwadekar and Shri Pravin Kanolkar, monetary compensation of ₹ 1,50,000/- each (Rupees one lakh and fifty thousand only each) within two months from the date of publication of award failing which the same shall carry interest @ 9% per annum.

5. Workmen Shri Maurice D'Souza is not entitled to any relief.

Inform the Government accordingly.

Sd/-
(B. K. Thaly),
Presiding Officer,
Industrial Tribunal-
-cum-Labour Court-I.

Notification

No. 28/1/2012-LAB/618

The following award passed by the Labour Court-cum-Labour Court, at Panaji-Goa on 08-10-2012 in reference No. IT/43/99 is hereby published as required by Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

D. S. Morajkar, Under Secretary (Labour).

Porvorim, 12th November, 2012.

IN THE INDUSTRIAL TRIBUNAL AND
LABOUR COURT
GOVERNMENT OF GOA
AT PANAJI-GOA

(Before Smt. Bimba K. Thaly, Presiding Officer)

Ref. No. IT/43/99

Shri Vijaykanta S. Naik,
H. No. 196, Ward No. 3,
Fondvem, Ribandar, Goa. ... Workman/Party I
V/s

M/s. "O Heraldo", Rua St. Thome,
B. O. Box No. 160,
Panaji-Goa. ... Employer/Party II

Party I/Workman represented by Shri Subhash Naik George at the time of evidence, arguments and Award.

Party II/Employer represented by Adv. Shri P. J. Kamat at the time of evidence and arguments

AWARD

(Passed on 8th day of October, 2012)

In exercise of powers conferred by clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947), (for short 'The Act'), the Government of Goa by order

dated 12-04-99 bearing No. PRM/CON/(101)/97/2112, has referred the following dispute for adjudication.

"(1). Whether the action of the management of M/s O Herald, Panaji-Goa, in terminating the services of Shri Vijayakant S. Naik, Foreman, with effect from 31-10-97, is legal and justified?

(2) If not, to what relief the Workman is entitled?"

2. Upon receipt of the reference, IT/43/99 was registered. Notices were issued to both the parties under registered A/D post upon which both the parties were served. Party I filed the statement of claim at Exb. 4. Party II filed the written statement at Exb. 5. Party I then filed the rejoinder at Exb. 6.

3. In the statement of claim it is in short the case of Party I that he was employed with Party II w.e.f. 5-8-1955 and was doing the work of compositor besides doing certain other odd jobs such as collection of bills and in the year 1975 he was designated as a Foreman. That his services were illegally terminated by Party II w.e.f. 31-8-1982 upon which he raised an Industrial Dispute for adjudication under reference No. IT/20/83/M-58/87. By award dated 25-10-89 the Hon'ble Tribunal directed the reinstatement of Party I in service with full back wages and continuity in service and held that the action of the Party II in terminating the services of Party I w.e.f. 31-8-1982 was bad in law. That Party II appealed against the said award in the High Court of Judicature at Bombay, Panaji Bench however, the Writ Petition filed by Party II was rejected thereby upholding the Award dated 25-10-89. That pending the disposal of the said Writ Petition, Party II did not reinstate Party I back in service but preferred to pay the monthly wages to Party I. Subsequently, Party I addressed a letter dated 16-8-97 to Party II demanding reinstatement in service and back wages. Pursuant to this, Party II vide letter dated 10-9-97 directed Party I to report for work and accordingly Party I reported for work w.e.f. 15-9-97. That Party I worked with Party II from 15-9-97 to 31-10-97 but during this period no actual work was given to Party I and harassment was meted out to him. That on 31-1-97 Party II issued a letter to Party I terminating his service with immediate effect i.e. 31-10-97. That at the time of termination, no notice of one month was given nor retrenchment compensation was paid to Party I. That no seniority list was also prepared. That the Junior workmen were retained in service and Party I who is the

senior most in service was removed from service. That at the time of termination of service, Party I was of 55 years of age and had not reached the retirement age of 58 years. Thus, the termination of Party I was in violation of Section 25 F and 25G of the Act. That Party I raised an Industrial Dispute regarding such illegal termination w.e.f. 31-10-97, by letter dated 22-12-97 addressed to Party II and demanded reinstatement in service with full back wages and continuity of service. That Party II did not agree for the same and the dispute therefore ended in failure. It is stated that according to Party II the retirement age in Party II establishment is 58 years or completion of 30 years of service. It is stated that there are no service rules with Party II stating that Party I can be retired on completion of 30 years of service. Hence Party I has prayed for reinstatement in service with full back wages and continuity of service with costs.

4. In the written statement Party II has denied the case of Party I and has in short stated that the said newspaper "O Heraldo" which was a daily in Portuguese language was taken over by Party II from the family of Aurea Elsa de Conceicao Mescias Gomes in the year 1966. That prior to taking over the newspaper for publication, by a notice dated 20-6-1966 the Party II informed all the Workmen employed by the said family that the said establishment "O Heraldo" would be taken over by Party II effective from 5-7-66 on the conditions that Party II were to take over the services of the Workmen previously employed by the said family as fresh employees without any past liabilities for the services rendered by the Workmen with the said family. That the said notice inter alia provided that age of superannuation as 58 years or on completion of 30 years of service, whichever is earlier. It is stated that Party II took over the said "O Heraldo" daily and the employees of the erstwhile employer as fresh employees without continuity of service and with clear understanding that the age of superannuation of all such Workmen would be in terms of aforesaid notice. That on 16-5-1969 the management of Party II issued notices to five of its Workmen namely Ms. Cipriano Almeida, Domingos P. Gonsalves, R. Naik Arondekar, Joao P. Fernandes and Jose Elias Gregorio Veigas retiring them from the services from 16-6-1969 as per notice dated 20-6-1966, on completion of 58 years of age. That the said action of management was challenged by the said retiring workers but the Award in reference No. (IT-GDD) No. 8/1973, the Presiding Officer of the Industrial Tribunal, Goa Daman and

Diu held that the action of Party II was legal and justified. That in the year 1982 the Party II abolished the post of Foreman in the composing section to reduce the financial burden put on the management in view of the Palekar Award and accordingly retrenched Party I by notice dated 31-8-82 which action of Party II was held as not justified by the Tribunal in reference No. 20/03 and the Writ Petition filed against the said award was dismissed by the Hon'ble High Court. It is stated that Party I was then reinstated in service and in the meantime he completed 30 years and therefore in terms of Clause (v) of Circular dated 20-6-1966 the Party I was retired vide letter dated 31-10-97. It is stated that the Presiding Officer of this Industrial Tribunal in his Award dated 16-10-74 in reference No. IT-GDD No. 8/73 has held that the action of the management of Party II in retiring the employees in terms of Clause (v) of the Circular dated 20-6-1966 is legal and justified and that the Union which has espoused the cause and represented the Workmen in the above reference did not challenge the said Award in the higher courts and as such the Award has become final and cannot be questioned now and is binding on all the said Workmen including Party I. It is stated that the said Award operates as "Resjudicata" against the Workman Party I and this dispute does not survive at all. Thus, according to Party II the action of the management is just, legal and bonafide and no interference is called for.

5. In the rejoinder Party I has denied the averments made by Party II in their written statement.

6. Based on the above averments, issues at Exb. 7 were framed on 21-11-99.

7. In the course of evidence, Party I, Workman Shri Vijaykanta Naik examined himself as witness No. 1 and closed the case. On the other hand Party II examined Shri Vinayak Pai Bir as witness No. 1 and closed their case.

8. The representatives of both the parties filed written submissions. In the course of the proceedings and after filling the written submissions Learned advocate Shri P. J. Kamat who was appearing for Party II all throughout, stopped appearing before this Court and therefore registered A/D notice was issued to Party II, who though served with the notice did not appear before this court. Thus, the oral arguments of Lnd. Representative Shri Subhash Naik George, for Party I were heard.

9. I have gone through the records of the case and have duly considered the submissions of both the learned representatives.

10. I am reproducing herewith the issues along with their findings and reasons there of.

Sr. No.	Issues	Findings
1.	Whether the Party I proves that the Party I terminated his services w.e.f. 1-10-97 which is illegal and unjustified?	In the positive.
2.	Whether the Party II proves that Award passed in Reference No. IT/8/1973 operates as "Resjudicata" against the Party I and hence the dispute does not survive?	In the negative.
3.	Whether the Party II proves that the Party I was retired from service on 31-10-97 in terms of clause (v) of the circular dated 20-6-1966?	In the negative.
4.	Whether the Party I is entitled to any relief?	As per order below.
5.	What Award?	As per order below.

REASONS

11. Issue No. 1, 2 & 3: All these three issues are answered together for the sake of convenience as they are interconnected, and this is because though it is the case of Party I that his services were illegally terminated by Party II, it is the defence of Party II that, Party I was retired from service on 31-10-97 in terms of clause (v) of the circular dated 20-6-1966 and that in the Award passed in Ref. No. IT-GDD No. 8/73 this Tribunal has held that the action of management of Party II in retiring the employees therein in terms of Clause (v) of the circular dated 20-6-1966 is legal and justified and therefore said Award operates as "Resjudicata" against Party I.

12. Admittedly, Party I was given a letter dated 31-10-97 signed by the Managing Director of Party II which refers to a notice dated 20-6-1966 put on the notice board and which states that the retirement age of the Workmen taken over from the erstwhile management was fixed as 58 years or completion of 30 years of service; that this notice was upheld by the Hon'ble Industrial Tribunal of Goa vide Award dated 15-10-1974 which has become final for want of challenge; that Party I has already completed 30 years of service and he is retired from service w.e.f. the date of the said order. This notice further states that Party I could

collect his legal dues arising out of the retirement on any working day from the accounts department between 10.00 am to 6.00 pm. Party I has produced this notice at Exb. W-4.

13. It is however seen that in his cross examination Party I has denied the suggestion that at the time when 'O Heraldo' was taken over by Party II it was agreed that the retirement age of the employee would be 58 years or 30 years of service which ever is earlier. Party I has also denied the suggestion that a circular to that effect was displayed in the premises of 'O Heraldo'.

14. It is pertinent to note that no such circular was shown to Party I in his cross examination and on the contrary Shri Vinayak Pai Bir has in his cross examination has made it clear that he has not seen the notice dated 20-6-66 put up on the notice board by Party II; that he was not in the employment of Party II in the year 1966 so also that he has stated on the basis of records that notice dated 20-6-66 was put up on the notice board by the Party II though he has no personal knowledge about the same. he has also stated that he cannot produce any records to shows that said notice was put up on the notice board.

15. From the nature of above statemtns made by Shri Vinayak Pai Bir in his cross examination, it becomes clear that Party II has totally failed to established the existence of any such notice dated 20-6-66 and even to show on the basis of records that any such notice was put on the notice board. Being so, the contention of Party I that no such notice/circular was displayed in the premises of 'O Heraldo', appears to be correct.

16. Be that as it may, it is clear from the averments in the written statements of Party II that according to Party II on 16-5-1969 the management of Party II had issued notices to five of its workmen namely Ms Cipriano Almeida, Domingos P Gonsalves, R. Naik Arondekar, Joao P. Fernandes and Jose Elias Gregorio Veigas retiring them from the services from 16-6-1969 as per the notice dated 20-6-1966 on completion of 58 years of age, which action of management was challenged by these workers in reference No. IT-GDD No. 1973 however the Presiding Officer of the Industrial Tribunal, Goa Daman and Diu held that the action of the Party II was legal and justified being on the basis circular dated 20-6-1966, which award was not challenged any further and therefore according to Party II it has become final and binding on all the Workmen and it operates as "Resjudicata". It is pertinent to note that in the cross examination of Party I though it is suggested that the above named five Workmen were retired from service because they had completed 58 years

of service, interestingly, it is not suggested to Party I that above named five workmen had challenged the action of management vide reference No. IT-GDD No. 8/1973 and that the Tribunal had held that the action of the management was legal and justified being on the basis of circular dated 20-6-1966 and that this Award of Industrial Tribunal having not being challenged has become final and operates as "Resjudicata", To my mind, since this was the precise defence of Party II on the subject of "Resjudicata", it was the bounden duty of Party II to have put such defence to Party I in his cross examination, to afford him an opportunity to explain the situation. Having not put such a defence to Party I in his cross examination, the statement to that effect made by Shri Vinayak Pai Bir in his affidavit in evidence, losses its significance.

17. Nonetheless, it is noted that Shri Vinayak Pai Bir has produced the Award in reference No. IT-GDD No. 8/1973 at Exb.E-1. Perusal of this Award reveals that the management in order to bring on record the circular/notice dated 20-6-66 at Exb.C-1 had examined two witnesses and there was no effective cross examination of these witnesses and thus the Tribunal came to the conclusion that there did exist such notice/circular as Exb.C-1 and accordingly on the basis of other supporting evidence held that the action of the management in terminating the services of the above named five workers (in reference IT-GDD No. 8/ 1973) was justified.

18. As stated above, Party II herein has not produced the said circular/notice dated 20-6-66 on record and has merely taken the stand that the Award in the reference IT-GDD No. 8/1973 is binding on Party I as it has attained finality for want of challenge.

19. The term "Resjudicata" is defined in Section 11 of the Code of Civil Procedure as under:

No Court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a Court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such Court.

- Explanation I*
- Explanation II*
- Explanation III*
- Explanation IV*
- Explanation V*

- Explanation VI*
- Explanation VII*
- Explanation VIII*

20. Reading of above makes it clear that one of the requirements, to come within the definition of the term "Resjudicata" is that the pending suit and the former suit has to be between the same parties or between the parties under whom they or any of them claim, litigating under the same title. Undoubtedly, Party I Shri Vijaykant Naik was not a Party to reference No. IT-GDD No. 8/1973 and even for that matter reading of Exb.E-1 makes it clear that the cause of the Workmen therein was espoused by the Union unlike in the present case in which the cause of Party I/Workmen has been espoused by Shri Subhash Naik Jeorge in the capacity as the representative of Party I. Being so, it would not stand to reason to hold that Party I have been litigating under the same title as that of the Workmen in reference No. IT-GDD No. 8/1973.

21. In their written arguments, Party II has relied on the judgments in the case of *Bombay Gas Co. Ltd v/s Jagannath Pandurang and Ors. 1975 (31) FLR 166, Burn & Co., Calcutta v/s. Their Employees 1950-77 Vol. 4 SCLG 2382, in State of U.P v/s, Nawab Hussain 1977LIC 911 and in the case of The Direct Recruit Class II Eng. Officer Association v/s. State of Maharashtra and Ors. 1990 II CLR 235, to highlight the applicability of "Resjudicata" however on going through these judgments it is seen that in these cases parties to both the references/suits i.e. pending and the former were the same and it is in such situation the principle of "Resjudicata" was pressed into service. I have already pointed out above to the fact situation in the instant case to highlight as to how the Party I herein was not a party to reference No. IT- GDD No. 8/1973 and therefore the ratios in the above-mentioned judgments are not applicable to the instant case. It therefore follows from above discussion that stand taken by Party II that Party I was retired vide letter dated 31-10-1997 in terms of clause (v) of the circular dated 20-6-1966 is not established and consequently it follows that the services of Party I were terminated illegally and unjustifiably as admittedly he was not given one months notice nor was paid notice pay or retrenchment compensation. Even for that matter, no seniority list was prepared before terminating his services.*

22. Party I has stated that at the time when he was retired, he was 55 years old and he has produced his birth certificate showing his date of birth as 13-12-1942 at Exb. W 5. Party I has stated that he had not completed 58 years when his

services were terminated. It is also stated by Party I that Party II does not have its service rules. It may be mentioned here that the stand taken by Party I in the claim statement that he had not reached retirement age of 58 years would in other words mean that the retirement age in the establishment of Party II is 58 years but the above contention of Party I is not supported by any document. Even for that matter though Lnd. Representative for Party I in the written submission has stated that as per Manisana Award, the retirement age of employee is 58 years and the same is applicable to Party II establishment, it is seen that Party I has not produced said Manisana Award on record nor any reference is found made to this award in the claim statement. Thus, the arguments of Party I referring to the above award, merit no consideration.

23. Hence, issue No. 1 is answered in the positive and issue No. 2 and 3 are answered in the negative.

24. Issue No. 4: Party I has prayed in the claim statement, to reinstate him in service with full back wages and continuity of services with costs. I have already mentioned above, that as per the birth certificate of Party I at Exb. W5, the date of birth of Party I is 13-12-1942 which means that as on date i.e. in the year 2012, Party I is around 70 years. Being so the question of reinstatement of Party I back in service does not arise. As regards grant of back wages, I have already mentioned supra that Party I has failed to prove by way of cogent and convincing evidence that the retirement age of the employees in the establishment of Party II is 58 years. This is because it is submitted by Lnd. Representative of Party I that at the time of termination of service of Party I, his age was 55 years and being so he would have been in service for 3 more years and as such he deserves payment of back wages of such period. To my mind, in the absence of any evidence to indicate that Party I would have worked for 3 more years, it would not be proper and justified to grant him back wages of that period on such basis. Nevertheless, since Party I has succeeded in proving that termination of his services by Party II w.e.f. 31-10-97 is illegal and unjustified being in contravention of Sec. 25F, and Sec. 25G, in the fact situation discussed above, I am of the opinion that the ends of justice would be met by granting monitory compensation to Party I. In the circumstances of this particular case, I am of the opinion that grant of monitory compensation of Rs. 50,000/- to Party I would be just, proper and appropriate. Hence, my findings.

25. In the result and in view of discussion supra, I pass the following.

ORDER

1. It is hereby held that the action of management of M/s. O Herald. Panaji-Goa, in terminating the services of Shri Vijaykant S. Naik, Foreman, with effect from 31-10-97, is illegal and unjustified.
2. The Party II is directed to pay to Party I Workman Shr Vijaykant S. Naik, monitory compensation of Rs. 50,000/- (Rupees fifty thousand only) within two months from the date of publication of award failing which the same shall carry interest @ 9% per annum.

Inform the Government accordingly.

Sd/-

(B. K. Thaly),
Presiding Officer,
Industrial Tribunal-
cum-Labour Court

Notification

No. 28/1/2012-LAB/623

The following award passed by the Labour Court-cum-Labour Court, at Panaji-Goa on 28-09-2012 in reference No. IT/119/07 is hereby published as required by Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

D. S. Morajkar, Under Secretary (Labour).

Porvorim, 14th November, 2012.

IN THE INDUSTRIAL TRIBUNAL AND
LABOUR COURT
GOVERNMENT OF GOA
AT PANAJI-GOA

(Before Smt. Bimba K. Thaly, Presiding Officer)

Ref. No. IT/119/07

Shri Narayan V. Mone,
H. No. 261, at Maem,
Tirthbag, Bicholim-Goa. ... Workman/Party I
V/s

The Managing Director,
M/s. Phil Corporation Ltd.,
Thivim Industrial Estate,
Karaswada, Mapusa-Goa ... Employer/Party II

Party I/Workman represented by Shri Subhash Naik George.

Party II/Employer represented by Adv. Shri P. J. Kamat.

AWARD

(Passed on 28th day of September, 2012)

In exercise of powers conferred by clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947) (for short the Act), the Government of Goa by order dated 13-11-07 bearing No. 28/3/2007-LAB/1152 has referred the following dispute for adjudication.

“(1) Whether Shri Narayan V. Mone, Officer, could be construed as “Workman” as defined under clause (s) of Section 2 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947)?

(2) If the answer to the issue No. (1) above is in the affirmative, then, whether the action of the management of M/s. Phil Corporation Limited, Thivim Industrial Estate, Karaswada, Mapusa, Bardez-Goa, in terminating the services of Shri Narayan V. Mone, with effect from 22-07-2006, is legal and justified?

(3) If the answer to issue No. (2) above is in the negative, then, to what relief the Workman is entitled?”

2. Upon receipt of the reference, IT/119/07 was registered. Notices were issued to both the parties under registered A/D post upon which both the parties were served. Party I filed the statement of claim at Exb. 5, Party II filed written statement at Exb. 6. Rejoinder was filed by Party I at Exb. 7.

3. In the statement of claim it is the case of Party I that he was employed with Party II who is engaged in the manufacture of films, projectors, cameras, developing papers, services such as development of softwares, installation of ID machines, PPS machines, food processing such as Caju nuts etc. their factories at Thivim, Bicholim and Valpoi. That he was employed as officer with Party II. That he was employed since 28-03-1984. That he was initially appointed as Turner-cum-Fitter; was confirmed in September 1984, was promoted as Asstt. Inspector, then as Inspector, then as Junior Officer and finally as an Officer in the year 2001. That at the time of his termination he was working at Valpoi factory of Party II where he worked since August, 2005. He performed the following duties with Party II.

- a. He worked in quality control department at Valpoi.
- b. He made inward receipts of production material and inspected the quality of the same.
- c. He checked quality of photo paper production as well as did processing work.
- d. He did chemical preparation required for production processes.
- e. He tested for quality the final products.
- f. He operated machines as well as did packing of materials.
- g. No workers were working under or with Party I.
- h. There were only two officers in quality control department, namely, Party I and Mr. Umesh Bagueve.
- i. Both were reporting to Mr. Sanjay Shinde, Manager and were receiving instructions from him to do work.
- j. Leave of theirs was being sanctioned by Mr. Shinde and he would supervise their work as well as allot work to them.

4. It is further the case of Party I that his services were terminated by Party II vide letter dated 22-7-06 and that one month's notice was not given to him at the time of termination. It is stated that no retrenchment compensation and leave wages were paid to him and also the management did not prepare a seniority list and follow the principle of “last come, first go” before terminating his services thereby violating Section 25F and 25G of the Act. It is stated that Party I is a Workman as defined under the provisions of the Act and that he could not have been terminated by Party II without complying with the mandatory provisions of the Act. The Party I has therefore prayed to hold that his termination was illegal and unjustified and to reinstate him in service with full back wages and continuity in service with costs. He has further prayed for grant of subsistence allowance of 50% wages pending adjudication, by way of interim relief.

5. In the written statement, the Party II has denied the case set up by Party I in the claim statement and has stated that the reference is not maintainable since Party I is not a Workman defined U/S 2(s) of the Act and also because the factories of Party II at Tivim and Bicholim are closed from May, 2006 and the factory unit No. 2 at Valpoi has been closed from July, 2006, which closure has been accepted by the Workman, staff and officers of the Party II and therefore no relief

after the date of closure could be granted. It is further stated that Party II has been considered as a sick industrial company in terms of Sec. 3(1)(o) of the Sick Industrial Companies (Special Provisions) Act, 1985 (for short SICA). It is stated that when the reference is registered and the Board for Industrial and Financial Reconstruction has declared Party II as a sick industry, the provisions of Sec. 22 of SICA would be attracted. It is stated that Party I from the time of his promotion as Junior Officer was not a member of the union and he was in supervisory cadre and being so he was also not governed by the certified standing orders of Party II. It is stated that since the date of appointment of Party I as Junior Officer his duties were to supervise the work of the Workmen working in the production section and that his conditions of service, emoluments and benefits were all together different from the worker categories. It is stated that the work of the production and the quality control section where Party I was working, was to convert the films and papers, receive the production materials, inspection of the production materials, checking the quality of photo paper production, processing work, preparation of chemical required for production process, testing the production of final products, operation of machines, packing of material etc. which jobs were performed by the technicians, clerks employed in the Production/Quality control section with the help of the helpers, peons under the supervision of Party I was an officer. It is stated that Party I being the officer in supervisory category was discharged on account of the closure of the unit of Party II in July 2006 with one month's notice wage in lieu of notice and exgratia compensation and that Party I accepted and encashed the said cheque. It is stated that Party I being a permanent employee in non Workmen category, Party II could legally terminate his services, without complying with the provisions of Section 25F and 25G of the Act as these provisions do not apply to Party I. Thus, amongst above and other grounds Party II has prayed to reject the reference.

6. In the rejoinder Party I has denied the averments made by Party II in their written statement.

7. Based on the above averments, issues at Exb. 9 were framed on 30-9-08.

8. In the course of evidence, Party I examined himself as witness No. 1 and Shri Atchutanand Kalangutkar as witness No. 2 and closed his case. On the other hand Party II examined Shri B. S. Sridhara as witness No. 1 and Shri Gurudas Harmalkar as witness No. 2.

9. The representatives of both the parties filed written submissions as well as advanced oral arguments.

10. I have gone through the records of the case and have duly considered the submissions of both the learned representatives.

11. I am reproducing herewith the issues along with their findings and reasons thereof.

Sr. No.	Issues	Findings
1.	Whether the Workman/ /Party I proves that he is "Workman" as defined u/s 2(s) of the Industrial Disputes Act, 1947?	In the negative.
2.	Whether the Workman/ /Party I proves that the action of Party II/ /employer in terminating his services w.e.f. 22-07-2006 is illegal and unjustified?	In the negative.
3.	Whether the employer/ /Party II Proves that the present order of reference is bad in law as stated in para 2(b) of their written statement?	In the positive.
4.	Whether the Party I is entitled to any relief?	In the negative.
5.	What Award?	As per order below.

REASONS

12. *Issue No. 1 & 2:* Both these issues are answered together for the sake of convenience as they are interconnected.

13. It otherwise cannot be disputed that the burden to prove that he is a 'Workman' within the meaning of Section 2(s) of the Act is on the Party I. In the above context, learned advocate for Party II has rightly relied on the judgment in the case of *S. T. Galande V/s P. O. Ind Labour Court. Pune 2008 (I) CLR 656* in which the Hon'ble High Court of Bombay has observed as under:

"..... It is settled principle of law that the onus lies upon the Workman to prove that he satisfies the essential ingredients of being a Workman and, therefore, could raise an industrial dispute....."

14. Lnd. Advocate for Party II has also relied upon the judgment in the case of *H.R. Adyanthaya and others V/s Sandoz (India) Ltd., 1994 II CLR 552* in which the constitutional bench of the Hon'ble Supreme Court has held as under:

"..... a person to be a Workman under the said act must be employed to do the work of any category, viz. manual, unskilled, skilled, operational, clerical, supervisory (drawing less than Rs. 1,600/-p.m. or technical. It is not enough that he is not covered by either by the four exceptions to the definition".

15. Thus, from the above settled proposition of law it becomes clear that the person claiming to be a "Workman" must come within the ambit of Section 2(s) of the Act. It is also clear that irrespective of the designation, it is the actual work done by the employee which is determinative of whether he falls within the scope of the definition of "Workman" under Section 2(s) of the Act and the burden to establish the same lies on the Workman.

16. It may be mentioned here that the outcome of issue No. 2 would depend on the outcome of issue No. 1 and this is because if Party I succeeds in proving issue No. 1 it is only then the decision on issue No. 2 would be material or else Party No. I would fail in proving issue No. 2.

17. Party I has in para 3 of his affidavit in evidence specified the duties performed by him which were to make inward receipts of production material and inspect the quality of the same; check quality of photo paper production as well as to do the processing work; to do the chemical preparation required for production processes, to test the quality of final products, to operate machines and do the packing of materials. In the cross-examination of Party I, has denied the above statements of Party I and has suggested that all the aforesaid duties were infact done by the persons working under the Party I, in the Workman category. As rightly pointed out by learned advocate for Party II except for making the above bare statements on the subject of the duties performed by him Party I has not produced any documentary or other evidence to substantiate his said stand.

18. No doubt, Party I has examined Atchutanand Kalangutkar who has supported the statements made by Party I on the subject of his duties, but it is apparent from the cross examination of this witness that he was working at Thivim unit up to October, 2002 and that Party I never worked at the Thivim unit of Party II. Even for that matter though this witness has stated of having seen

Party I working at Bicholim unit, he could not give the dates on which he had visited the Bicholim unit. That apart, it is further clear from the cross-examination of this witness that he was representing Party I in this reference and being so the possibility of this witness being a interested witness, cannot be ruled out. Thus, the testimony of Shri Atchutanand Kalangutkar is of no assistance to Party I to prove the nature of duties performed by him.

19. There is otherwise no dispute that Party No. I was initially employed as Turner cum fitter w.e.f. 28-3-1984 vide letter dated 31-5-1984 (Exb. W-1); that he was then promoted as Assistant. Inspector II with effect from 1-7-1989 vide letter dated 2-9-89 (Exb. W-3); then he was promoted as inspector w.e.f. 1-7-93 vide letter dated 26-8-93 (Exb.W-4); he was then promoted as Junior Officer (M-A) w.e.f. 1-4-95 vide letter dated 28-4-95 (Exb.W-5) and lastly he was promoted as an Officer w.e.f. 1-7-01 vide letter dated 4-10-01 (Exb. W-9).

20. Be that as it may, the letter of appointment given to Party I by Party II at Exb. W-1 does not speak about the duties allotted to Party I. It is true that in the subsequent letters i.e. Exb. W-3, Exb. W-5 and even in Exb. W-9 while promoting Party I to the post of Asst. Inspector, Junior Officer (M-A) and the Officer, it is mentioned that all other terms and conditions of the service of Party I would remain unchanged but this by itself cannot be construed to mean that the status of Party I has remained as that of the "Workman" despite his promotions to the post of Junior Officer and then to the Officer. It is pertinent to note that there is no dispute on the part of Party II that Party I was a "Workman" till the time he was holding the post as Inspector and therefore it is required to see on the basis of evidence adduced, if in reality Party I continued to be a "Workman" despite his promotion as Junior officer/officer.

21. As pointed out above, Party I has not made any efforts to bring on record the required documentary evidence to describe the nature of duties performed by him, as a Workman, as on the date of termination of his services. In this context, learned representative Shri Subhash Naik George has contended that such relevant documentary evidence is in possession of Party II and therefore it was for Party II to have produced the same. I find no force in the above contention of learned representative of Shri Subhash Naik George for the reasons that undoubtedly, the burden to prove that he is a Workman is on Party I and that too by adducing positive evidence and in case Party I was not in possession of the required documents towards its proof it was for him to make

application requesting the court to direct Party II to produce those relevant documents or to notify Party II to produce these documents, which Party I has failed to do. Thus, it is apparent that no attempt has been made by Party I to establish the nature of duties performed by him as a "Workman".

22. Perusal of evidence of Party I and more particularly his cross-examination makes it clear that there is admission on his part that till he was working as an Inspector, he was governed by the Certified Standing Orders of Party II. The above statement in other words means that upon his promotion as Junior Officer and thereafter as an Officer, Party I was not governed by the Certified Standing Orders of Party II. Learned representative Shri Subhash Naik Jeorge by relying on the judgments in the case of **S. A. Sarong v/s W. G. Forge & Allied Industries (1996) I LLJ 67 Bom**, in the case of **Cricket Club of India and Anr. v/s Baljit Shyam (Ms) and Anr. (1998) II LLJ578 Bom** and in the case of **Development Credit Bank Ltd., v/s Mr. Azim A. Charania 2000 (4) Bom CR 547** contended that when the employee is covered by Certified Standing Orders/Model Standing Orders he has to be considered as a "Workman". I have gone through all the above three judgments and have noticed that the facts in the above three cases are totally different from the facts of the instant case wherein apart from the above statement made by Party I, there is no admission on the part of Party II that Party I was covered by the Certified Standing Orders of Party II. This being the case, the observations in the above judgments are not applicable to the instant case.

23. Party I Workman has also stated in the cross-examination that till the time he was working as an Inspector, he was the member of the Phil Corporation Ltd., Employees Union, which is the union of Workman of Party II espousing their cause before the Party II as well as before the Labour Machinery Party I Workman while deposing in the above fashion has not stated that despite not being the member of the aforesaid union he still continued to be a Workman nor such suggestion has been put by learned representative of Party I to the management witnesses. Even for that matter, Party I has further made it clear that till he was working as an inspector, he was getting the benefits of the settlements with the Union. This statement of Party I makes it clear beyond doubt that upon his promotion as Junior officer, Party I ceased to be a workman or else Party I would definitely raise an issue with Party I on the said subject. Being so, it would not be proper and justified to hold that

Party I continued to be a "Workman" despite not being a member of Phil Corporation Employees Union.

24. It is stated by Party I that no workers were working under him or with him and that there were only two officers in quality control department, namely he and Mr. Umesh Baguve and that both of them were reporting to Mr. Shinde, Manager and were receiving instructions from him to do the work. He has also stated that the leave of employees was being sanctioned by Mr. Shinde who would supervise the work as well as allot work to them. He has further stated that around 22-7-06 he was issued a letter of the same date wherein it was mentioned that his services were terminated with immediate effect.

25. In his cross-examination the Party I has made it clear that at the time of his termination he was working at Valpoi unit of Party II. He has denied the suggestion that he was reporting to Mr. Sanjay Shinde only for the administrative purposes. It is however noted that in his cross-examination by learned representative of Party I, Shri B. S. Sridhara had admitted that both Party I and Mr. Umesh Baguve were administratively reporting to Mr. Shinde, Manager, though Shri B. S. Sridhara has denied the suggestion that both Party I and Shri Umesh Baguve were receiving instructions from Mr. Shinde.

26. It is therefore clear from the nature of above evidence that at the time of termination of the services party I was working at Valpoi unit and was administratively reporting to Mr. Shinde.

27. By inviting my attention to the cross-examination of B. S. Sridhara wherein he has stated that at Valpoi unit no workman of the company were working under Party I, learned representative of Party I contended that since Party I was not doing the supervisory duties at Valpoi unit he cannot be construed as a non workman. It is pertinent to note that Shri B. S. Sridhara has stated that contract labourers were working at Valpoi unit under the supervision of Party I but it is noted that he was not able to produce any documentary evidence to substantiate his above statement and even for that matter witness Shri Gurudas Harmalkar has not made any concrete statements supported by reliable documents, on the above subject.

28. Nevertheless, one cannot lose sight of the fact that when Party I Workman was working at Bicholim on promotion to the post of Junior Officer/Officer he had signed the leave cards of the workman working in his department, in the

column "Approval Dept. Head"; Upon being shown the said cards which are on record from Exb.E-1 to Exb. E-12, the Party I Workman has identified his signatures against certain dates on these cards and has stated that till he was working as an Inspector he never signed the leave registrar of the Workman in the column Approval Dept. Head. Though it is the contention of learned representative Shri Subhash Naik George, that Party I had signed as such in the absence of departmental head or due to leave or other reasons while officiating in his place and that this does not convert a Workman into a non Workman, but to my mind, even in such situation no departmental head would permit a "Workman" to sign in the column meant for the signature of the "Departmental Head". Reference deserves to be made to the judgment in the case of **Karnataka Bank Limited vis. Sunita B. Vatsaraj 2007 CLR 650** in which it observed that power to sanction leave is of considerable importance in any organization and that a leave is sanctioned to an employee only after assessing the exigencies and load of work by an officer who ordinarily supervises the work of the employee asking the leave. Thus, the above aspect goes to give a clear indication that Party I was a non workman upon his promotion as Junior Officer/Officer.

29. Irrespective of the fact that there is no evidence to indicate that there were Workmen working under Party I at Valpoi unit but in the situation pointed out above wherein Party I has signed the leave cards of the Workman at Bicholim unit, one has to conclude that the supervision conducted by Party I at Valpoi unit was the overall supervision on the said unit. In the above context, learned advocate for Party II rightly relied on the judgment in the case of **A. B. Manore v/s Wandleside National Conductors Ltd., and Ors. 1994 II CLR 793 Bom.** in which it is observed that a Senior Supervisor of management staff cadre is not a Workman and that if a supervisor prior to his termination was not called upon to exercise his supervisory faculties as much as his basic technical faculties, that does not detract from the fact that the character of his employment was essentially supervisory. Thus, merely because there is no convincing evidence on record indicating the supervisory duties performed by Party I at Valpoi unit, it would not be proper to conclude that the character of his employment at Valpoi unit was not supervisory. At this juncture, I would also refer to letter dated 14th August, 2001. (Exb.W-8) produced by Party I vide which Party II had revised his basic and HRA under the new

revised scales for **management cadre** and this letter in other words means that upon his promotion as Officer in the year 2001 Party I was placed in the management cadre. Thus, this factor also weighs against Party I while drawing the conclusion that as an Officer he was a non-Workman.

30. Thus, it is clear that Party I has failed to prove his status as "Workmen" by adducing positive evidence, and as on the contrary, the evidence brought on record by Party II clearly justifies that upon the promotion of Party I as Junior Officer/Officer he was placed in the category of non-workman. The question of Party II complying with the provisions of Section 25F and 25G of the Act, does not arise.

31. In his arguments learned representative of Party I submitted that the written statement at Exb. 6 is not signed by Party II and that the person who claimed to have authority to sign the said written statement has no such authority and is not authorized to sign the same. Thus, he prayed to reject the written statement. He also invited my attention to the order dated 3-5-10 (Exb. 31) wherein the above objection raised by him vide application at Exb. 23, was decided by learned Presiding Officer, Labour Court II, by holding that Party II is a company incorporated under the provisions of the Companies Act, 1956 and hence represented by his Managing Director and therefore there is nothing wrong in authorizing any person to sign the pleadings on behalf of the employer company as it is a body corporate unlike a person. It is also stated in this order that Party I has not challenged the aforesaid act of signing the written statement by the so called authorized signatory, in the subsequent proceedings till he raised the said objections and that it is for Party II to prove independently that the pleadings filed by the persons are authorized by them, failing which Party II shall fail in discharging the burden. By referring to the above order learned representative of Party I submitted that no authorization as required above has been produced on record by Party II in the course of evidence and therefore the written statement filed by Party II deserves to be rejected.

32. However, learned advocate for Party II made it clear that the above fact is not pleaded by Party I in his rejoinder or even by amending the claim statement and therefore no issue on the said subject has been framed and thus the court cannot look into the said matter.

33. Apart from Party I not pleading the said fact in his pleadings/rejoinder, admittedly along with the reply (Exb. 24) filed to (Exb. 23) Party II has filed the copy of power of attorney given by them to Shri B. S. Sridhara and this document makes it clear that power has been given to B. S. Sridhara to verify the written statement as well as other documents mentioned in clause 2 of the said power of attorney. Learned representative of Party I otherwise did not dispute that such power of attorney has been filed by Party II along with their reply (Exb. 24) and therefore to my mind, merely because such power of attorney is not exhibited on record through the management witness, one cannot jump to the conclusion that Shri B. S. Sridhara was not authorized to verify the written statement and taking such view at this stage would be too hypertechnical. Thus, I find no force in the above contention of learned representative of Party I that the written statement deserves to be rejected due to aforesaid reason.

34. At any rate, since discussion above makes it clear that Party I has failed to prove issue No. 1 issue No. 2 also deserves to be answered in the negative. Hence my findings.

35. *Issue No. 3:* In para 2 (b) of their written statement it is the contention of Party II that the factories at Thivim and Bicholim of Party II are closed from May, 2006 and the factory unit 2 at Valpoi has been closed from July, 2006 which closure has been accepted by the Workmen, staff and officers of the Party II and therefore no relief after the date of closure could be granted. In his rejoinder, in reply to above pleadings, Party I has denied the fact of closure of factories at Thivim and Bicholim from May, 2006 and at Valpoi from July, 2006 and has also denied that the Workmen, staff and officers of Party II have accepted the closure. It is also stated by Party I that Party II be directed to prove that they have legally closed down the company as well as the factory and that mere removal of some Workmen by giving them VRS does not amount to closure in the eyes of law. Party I has also stated that Party II has not closed down and that it has employees working with them, it has share holders, it has bank accounts and it is doing business.

36. In his evidence Shri B. S. Sridhara has reiterated the facts pleaded in para 2 (b) of the written statement and has produced at Exb. E-16 and Exb. E.-17 copies of notices both dated 21-4-07 addressed to the Secretary to the

Government of Goa, Department of Labour informing their decision to close down Bicholim and Thivim factories respectively and at Exb. E-18 he has produced copy of letter dated 11-7-08 addressed to the Chief Inspector of Factories and Boilers on the subject of closure of their Valpoi unit and surrendering the factory licence, but there has been no effective cross examination of the said Shri B. S. Sridhara on the above subject. Even for the matter, Shri Gurudas Harmalkar has made it clear in his affidavit in evidence that the manufacturing process in all the three units of Party II namely, Thivim, Bicholim and Valpoi had been suspended w.e.f. 5-5-06, 4-5-06 and July 2006 and, then closed and the services of all the Workman, supervisory staff and executives had been terminated in 2006. The above statements made by Shri Harmalkar are not denied in his cross examination. Being so, it is clear that Party II has succeeded in proving issue No. 2. Hence my findings.

37. Issue No. 4: In view of findings on issue No. 1 Party I is not entitled to any relief.

38. In the result, I pass the following.

ORDER

1. It is hereby that Shri Narayan V. Mone, Officer could not be construed as "Workman" as define under clause (s) of Section 2 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).
2. It is hereby further held that the action of management of Ms. Phil Corporation Limited, Thivim Industrial Estate, Karaswada, Mapusa, Bardez, Goa, in terminating the services of Shri Narayan V. Mone, with effect from 22-07-2006 is legal and justified.
3. Party I Shri Narayan V. Mone is therefore not entitled to any relief.
4. No order as to costs.

Inform the Government accordingly.

Sd/-

(Bimba K. Thaly),
Presiding Officer,
Industrial Tribunal-
-cum-Labour Court

Corrigendum

No. 24/1/2004-LAB/642

Read: Memorandum No. 24/1/2004-LAB/299 dated 10-08-2011.

In the above referred Memorandum, the name of the incumbent at Sr. No. 9 "Dr. Roopali A. Prabhudesai", Insurance Medical Officer under E.S.I. Scheme of the office of the Commissioner of Labour and Employment, Panaji may be corrected and read as "Dr. Roopali Giu Naique Bhatcar".

By order and in the name of the Governor of Goa.

D. S. Morajkar, Under Secretary (Labour).

Porvorim, 27th November, 2012.



State Directorate of Craftsmen Training

Order

No. 2/123/2012/EST/SDCT/(24)-Part/4207

Read: 1. Order No. 2/123/2009/EST/SDCT/ / (24)-part/3385 dated 22-06-2009.

2. Order No. 2/123/2009/EST/SDCT/ / (24)-part/3097 dated 04-05-2010.

3. Order No. 2/123/2010/EST/SDCT/ / (24)-part/6778 dated 24-09-2010.

4. Order No. 2/123/2011/EST/SDCT/ / (24)-Part/7009 dated 05-09-2011.

The ad hoc promotion of Shri Edwin L. Fernandes, to the post of Principal, Jr. Scale (Group B) Gazetted is hereby extended for a further period of one year from 24-06-2012 to 23-06-2013 with the same terms and conditions stipulated in the above referred orders.

This issues with the concurrence of the Goa Public Service Commission vide its communication No. COM/II/11/60(1)/2012/1119 dated 11th September, 2012.

By order and in the name of the Governor of Goa.

Aleixo F. da Costa, State Director & ex officio Joint Secretary (Craftsmen Training).

Panaji, 9th October, 2012.

Order

No. 1/706/SDC/EST/2012/5018

Sanction of the Government is hereby conveyed for grant of Extraordinary leave without pay and allowances for taking up employment in India or abroad to Shri Rajesh P. Lolayekar, Assistant Director (Training), Office of the State Director of Craftsmen Training, Shramashakti Bhavan, Panaji, for a period of two years with effect from 12-11-2012 to 11-11-2014 in terms of Government Notification No. 2/5/95-PER dated 2-1-2003.

Sanction of the the leave is subject to and bound by all terms and conditions stipulated in Government Notification No. 2/5/95-PER dated 02-01-2003.

Shri Lolayekar, Assistant Director (Training) is informed that grant of an extension will be subject to the Government's decision. Request for extension of extraordinary leave should reach the Department at least 3 months in advance and the Government decision in this regard shall be communicated to him before expiry of sanctioned extraordinary leave.

The Department shall proceed against Shri Rejesh P. Lolayekar, A. D. (Training) if he fails to resume duty on expiry of the leave granted or after rejection of his application if any, for extension, is communicated to him.

He stands relieved with effect from 12-11-2012 (b.n.).

He shall hand over his charge to Assistant Director (Admn.).

By order and in the name of the Governor of Goa.

Aleixo F. da Costa, State Director & ex officio Joint Secretary (Craftsmen Training).

Panaji, 8th November, 2012.



Department of Law and Judiciary

Law (Establishment) Division



**Notification by the High Court of
Judicature Appellate Side, Bombay**

No. PL.B.1518/2012.

Shri Pralhad P. Kenavdekar, Protocol Officer-cum-Court Keeper, working on the establishment of the High Court of Bombay at Goa, Panaji-Goa, is hereby appointed to officiate as Assistant Registrar,

on the establishment of the High Court of Bombay at Goa, Panaji-Goa, purely on temporary and ad hoc basis with effect from the date he assumes charge of the said post, in the Pay Band of ₹ 15,600-39,100 and Grade Pay of ₹ 6,600/-, subject to the result of litigation/representation, whether pending, if any or that may be filed in which any appointment/seniority etc. in respect of the post of Assistant Registrar are/would be challenged.

High Court of Judicature at

By order and in the name of the Hon'ble the Chief Justice

S. B. Shukre, Registrar General,
Bombay, 9th November, 2012.

—————
No. A.1205/G/2012

In exercise of the powers conferred by sub-section (3) of Section 9 of the Code of Criminal Procedure, 1973 (No. 2 of 1974), the Hon'ble High Court is pleased to appoint Shri Vincent M. D'Silva, ad hoc District Judge-2 and Assistant Sessions Judge, Margao and Ms. V. M. Prabhu-Tendulkar, ad hoc District Judge-1 and Assistant Sessions Judge, Panaji, as Additional Sessions Judge, to exercise jurisdiction in the Court of Sessions with immediate effect.

High Court, Bombay

S. B. Shukre,

Dated 21st November, 2012. Registrar General

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Department of Mines

Directorate of Mines & Geology

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Notification

No. 01/226/2012-Mines/2328

In pursuance of the Office Memorandum No. 11-83/2005-IA-III (Vol.III) dated 08-11-2011 issued by the Deputy Director, Ministry of Environment and Forest (IA-III Division), Government of India, the Government of Goa hereby constitutes the following committees, namely:

(A) North Goa District Committee:

- (1) Collector, North Goa District, — Chairman.
Panaji-Goa

- (2) Assistant Environment Engineer, Goa State Pollution Control Board — Member.
- (3) Assistant Geologist, Directorate of Mines and Geology — Member.
- (4) Assistant Engineer, Water Resources Department — Member.
- (5) Technical Scientific Officer, Department of Science, Technology and Environment — Member Secretary.
- (6) Associate Professor in Geology, Department of Civil Engineering Goa College of Engineering, Farmagudi, Ponda-Goa — Member.
- (7) One Representative of the Local Community to be nominated by the Government — Member.
- (8) One Representative of the Local Civil Society to be nominated by the Government. — Member.

(B) South Goa District Committee:

- (1) Collector, South Goa District, Margao-Goa — Chairman.
- (2) Assistant Environment Engineer, Goa State Pollution Control Board — Member.
- (3) Assistant Geologist, Directorate of Mines and Geology — Member.
- (4) Assistant Engineer, Water Resources Department — Member.
- (5) Technical Scientific Officer, Department of Science, Technology and Environment — Member Secretary.
- (6) Associate Professor in Geology, Department of Civil Engineering, Goa College of Engineering, Farmagudi, Ponda-Goa — Member.
- (7) One Representative of the Local Community to be nominated by the Government — Member.
- (8) One Representative the Local Civil Society to be nominated by the Government — Member.

The above Committees shall strictly abide by the conditions as laid down in the above referred Office Memorandum and the provision as stipulated in Goa Minor Mineral Concessions Rules, 1985.

This Notification shall come into force with immediate effect.

By order and in the name of the Governor of Goa.

Prasanna A. Acharya, Director & ex officio Joint Secretary (Mines & Geology).

Panaji, 28th November, 2012.

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**Department of Panchayati Raj and
Community Development**

Directorate of Panchayats

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Order

No. 19/16/DP/ELECT/SARP-DYSARP/12/5645

In exercise of the powers conferred by sub-section (2) of Section 46 of the Goa Panchayat Raj Act, 1994 (Goa Act 14 of 1994) the Government of Goa hereby specifies the Officers mentioned in Col. No. (2) of the Schedule hereto as the Officers who shall preside over the first meeting of the Panchayats mentioned in the corresponding entry in Column No. (3) of the said Schedule to be held on 18-12-2012 to elect the Sarpanch and Deputy Sarpanch of the Panchayat.

SCHEDULE

Name of Taluka/Block: Pernem
Name of the District: North Goa

Sr. No.	Name and designation of Presiding Officer	Name of Village Panchayat
1	2	3
1.	Shri Sandeep Apule, E.O.R.E., O/o B.D.O., Pernem	V. P. Alorna.
2.	Shri Navnath Ambre, E.O.R.E., O/o B.D.O., Pernem	V. P. Chandel Hassapur.
3.	Shri J. T. Palni, Head Clerk, O/o B.D.O., Pernem	V. P. Casarvar- nem.
4.	Shri Pradeep Sawant, U.D.C., O/o B.D.O., Pernem	Reserved.

In the absence of any of the above Presiding Officer, the Block Development Officer, Pernem is hereby authorized to appoint the reserved staff or to make alternate arrangement.

By order and in the name of the Governor of Goa.

Narayan R. Sawant, Director & ex officio Joint Secretary (Panchayats).

Panaji, 12th December, 2012.

Notification

No. 19/18/DP/Delimit. Pernem/12/5644

In pursuance of sub-section (8) of Section 7 of the Goa Panchayat Raj Act, 1994 (Goa Act 14 of 1994) read with sub-rule 58 of the Goa Panchayat and Zilla Panchayats (Election Procedure) Rules, 1996, it is hereby notified for the information of the public that the persons specified in column No. 3 of the Schedule appended hereto have been duly elected as members of the Panchayats mentioned in the corresponding entry in column No. 2 from the wards shown against their names in column No. 4 of the said Schedule in the elections held on 09-12-2012.

SCHEDULE

Sr. No.	Name of Village Panchayat	Name and address of elected members	Ward No.
1	2	3	4
1.	Alorna	Shri Mahadev Vasant Naik, H. No. 493, Khutwal, Pernem-Goa	I
		Smt. Harshada Harsha- deep Parab, H. No. 136/A, Deulwada, Alorna, Pernem-Goa	II Reserved for Women.
		Shri Bhushan Sakharam Shirodkar, r/o H. No. 201/A, Near Fort Boralwada, Allorna, Pernem-Goa	III
		Shri Baban Atmaram Naik, r/o Pahilawada, Talarna, Pernem-Goa	IV
		Smt. Namisha Namdev Gawandi, r/o H. No. 19/1, Moryawada, Talarna, Pernem-Goa	V Reserved for Women.
2	Casar- varne	Shri Shamba Rama Warang, r/o Purva Wada, Casarvarnem, Pernem-Goa	I
		Smt. Mohini Mohan Naik, r/o H. No. 68, Deulwada, Casarvarnem, Pernem-Goa	II Reserved for Women.
		Shri Narahari Shridhar Desai, r/o H. No. 111, Bharadwada, Casarvarnem, Pernem-Goa	III

1	2	3	4
	Shri Vithal Keshav Parab, r/o H. No. 168, Parabwada, Casarvarnem, Pernem-Goa		IV
	Smt. Kirtimala Bhikaji Palyekar, r/o H. No. 268, Bodgul, Casarvarnem, Pernem-Goa		V Reserved for Women.
3. Chandel- Hassa- pur	Shri Sudhir Shanu Malik, r/o H. No. 303/1, Hassapur, Pernem-Goa		I
	Smt. Bhagyasri Bharat Malik, r/o H. No. 460/3, Near Sateri Temple, Hassapur, Pernem-Goa		II Reserved for Women.
	Shri Tulshidas Vasudev Gawas, r/o H. No. 59/1, Kumbharwada, Chandel, Pernem-Goa		III
	Shri Nitesh Madhukar Narulkar, r/o H. No. 351, Hali, Chandel, Pernem-Goa		IV
	Smt. Shailaja Shamsundar Malik, r/o H. No. 445/1, Hassapur, Pernem-Goa		V Reserved for Women.

By order and in the name of the Governor of Goa.

Narayan R. Sawant, Director & ex officio Joint Secretary (Panchayats).

Panaji, 12th December, 2012.

Notification

No. 19/11/DP/CO-OPTION V.P./12/5590

In pursuance of second proviso to sub-section (4) of Section 7 of the Goa Panchayat Raj Act, 1994 (Goa Act 14 of 1994), read with sub-rule (2) of the Rule 14 of the Goa Panchayat Raj (Co-option of Members) Rules, 1997, it is hereby notified for the information of the public that the persons in column No. 3 of the Schedule appended hereto have been co-opted as Members belonging to Scheduled Caste to the Panchayats mentioned in

the corresponding entry in column No. 2 in the Special meeting held on 29-11-2012.

SCHEDULE

1. Name of the Block: Pernem Name of District: North Goa

Sr. No.	Name of the Block	Name and address of the Co-opted Members
1	2	3
1.	Tamboxem-Mopa-Ugavem	Shri Gopal Krishna Arolkar, H. No. 27, Tamboxem, Pernem-Goa.
2.	Dhargal	Shri Rama Bhiva Vir, R/o Gaonwada, Dhargal, Pernem-Goa.

Name of the Block: Bardez Name of District: North Goa

Sr. No.	Name of the Block	Name and address of the Co-opted Member
1	2	3
1.	Candolim	Shri Babaji C. Toraskar, H. No. 233, Bamon Vaddo, Candolim, Bardez-Goa.

By order and in the name of the Governor of Goa.

Sd/- (Narayan R. Sawant), Director of Panchayats.

Panaji, 6th December, 2012.

Department of Personnel

Order

File No. 15/1/99-PER(Part)C.O.Val./San.

Shri Shrikant Naik, BDO, Bicholim shall hold charge of the post of Chief Officer, Valpoi Municipal Council in addition to his own duties, with immediate effect and until further orders, in public interest thereby relieving Shri Bhanudas Naik, ATO, Mapusa Municipal Council of the additional charge.

By order and in the name of the Governor of Goa.

Sd/- (Umeshchandra L. Joshi), Under Secretary (Personnel).

Porvorim, 4th December, 2012.

Department of Public Health

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Order

No. 4/23/2002-II/PHD

Read: Memorandum No. 4/23/2002-II/PHD dated 15-11-2012.

On the recommendation of the Goa Public Service Commission conveyed vide letter No. COM/I/5/30(1)/04/259 dated 31-10-2012, Government is pleased to appoint Dr. Rukma Jagannath Kolwalkar to the post of Lecturer in the Department of Medicine in Goa Medical College, Bambolim on temporary basis in the Pay Band—3, ₹ 15,600-39,100+Grade Pay of ₹ 6,600/- with immediate effect and as per the terms and conditions contained in the Memorandum cited above.

Dr. Rukma Jagannath Kolwalkar shall be on probation for a period of two years.

Dr. Rukma Jagannath Kolwalkar has been declared medically fit by the Medical Board.

The appointment is made subject to the verification of her character and antecedents. In the event of any adverse remarks noticed by the Government on verification of her character and antecedents, her services will be terminated.

The appointment is made against the vacancies occurred due to creation of post of Lecturer in Medicine in Goa Medical College and Hospital, Bambolim vide Order No. 4/19/2009-II/PHD dated 12-01-2011.

By order and in the name of the Governor of Goa.

D. G. Sardesai, Additional Secretary (Health).
Porvorim, 4th December, 2012.

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Certificate

No. 4/16/2001-II/PHD/Part1

Read: Government Order No. 4/16/2001-II/PHD/Part 1 dated 31-07-2012.

Certified that the character and antecedents of Dr. Sushila Pundalik Nagarsenkar, Assistant Lecturer in the Department of Paediatrics in Goa Medical College and Hospital, Bambolim appointed vide above referred order has been verified by the District Magistrate, South Goa District, Margao and nothing adverse has been recorded against her.

Sd/- (Harish Adconkar), Under Secretary (Health).

Porvorim, 4th December, 2012.

Certificate

No. 4/19/2002-II/PHD/Part

Read: Order No. 4/19/2002-II/PHD/Part dated 10-07-2012.

Certified that the character and antecedents of Dr. Naresh Suresh Padte, Assistant Lecturer in Anesthesiology (ICU) in the Department of Anesthesiology in Goa Medical College and Hospital, Bambolim appointed vide above referred order has been verified by the District Magistrate, North Goa District, Panaji and nothing adverse has been recorded against him.

Sd/- (Harish Adconkar), Under Secretary (Health).

Porvorim, 7th December, 2012.

◆◆◆
Department of Revenue—
Order

No. 17/17/2008-RD(Part-I)

- Refer: 1. Order No. 17/17/2008/RD/1569 dated 13-3-2008.
2. Order No. 6/5/2011-PER dated 08-05-2012.
3. Order No. 6/5/2011-PER dated 12-09-2012.

The Managing Committee of the Comunidade of Sirsaim elected for the triennium 2007-2010 was dissolved by the Government on recommendations of Collector North & DCA North and a Substitute Committee was appointed vide order under Article 41 of the Code of Comunidade, which is referred above at Sr. No. 1 (No.17/17/2008/RD/1569 dated 13-3-2008), for the tenure ending on December, 2010.

The time limit of the Substitute Managing Committee was extended by the Government, till April, 2010 for preparation of Voters List for conducting election to the Comunidade of Sirsaim for the triennium 2010 to 2013, on recommendation of Collector North and DCA North.

The Administrator of Comunidade for North Zone reported that there are discrepancies in the voters list prepared by the Attorney and Registrar in-charge of Sirsaim Comunidade, and as such the elections for the triennium 2010-2013 could not be held.

Pending the issue of finalization of Voter's List, allegations were received against the said Managing Committee for hampering the process of disposal of case pending before the High Court and also defying the Orders of Administrator of Comunidades. On the recommendations of Collector & DCA North, the Managing Committee was dissolved and Administrator was appointed by the Government vide order referred above at Sr. No. 2 (No. 6/5/2011-PER dated 08-05-2012).

The Government rescinded the earlier Order referred at Sr. No. 2 (No. 6/5/2011-PER dated 08-05-2012) by issuing an Order referred at Sr. No. 3 (No. 6/5/2011-PER dated 12-09-2012) above, after making a submission before Hon'ble High court of Bombay at Goa in Writ Petition No. 493 of 2008.

In order to ensure that an elected body is able to assume the functions of the Sirsaim Comunidade after preparation of error free Voters List for the Comunidade, the Government of Goa, on the recommendation of the Collector and DCA North and in exercise of powers vested in the Government vide Article 51 of the Code of Comunidade, hereby appoints the Managing Committee to the Sirsaim Comunidade for preparation of Voters List in order to ensure conduct of Election to the Comunidade for the Triennium 2013-2016.

The managing committee shall comprise of:

Effective Members:

1. President — Santosh Chandrakant Parob.
2. Attorney — Antonio Alex D'Souza.
3. Treasurer — Shashikant Dharma Parob.

Substitute Members:

1. President — Madhukar Krishna Parob.
2. Attorney — Daigo Francisco Fernandes.
3. Treasurer — Naresh Shivaram Parob.

The Managing Committee shall assume charge of the administration of the Comunidade of Sirsaim immediately. The Managing Committee shall prepare the voters list as envisaged in the Code of Comunidade and ensure that the Elections are held on time for the Triennium 2013-2016. This Managing Committee shall cease to exist on constitution of the new Managing

Committee by way of election for the triennium 2013-2016.

By order and in the name of the Governor of Goa.

Ashutosh Apte, Under Secretary (Revenue-I).

Porvorim, 10th December, 2012.

—————
Notification

No. 22/12/2012-RD

Whereas it appears to the Government of Goa (hereinafter referred to as "the Government") that the land specified in the Schedule hereto (hereinafter referred to as the "said land") is likely to be needed for public purpose, viz. Land Acquisition for setting up an Industrial Estate at Poinguinim Village of Canacona Taluka.

Now, therefore, the Government hereby notifies under sub-section (1) of Section 4 of the Land Acquisition Act, 1894 (Central Act 1 of 1894) (hereinafter referred to as "the said Act") that said land is likely to be needed for the purpose specified above.

2. All persons interested in the said land are hereby warned not to obstruct or interfere with any surveyor or other persons employed upon the said land for the purpose of the said acquisition. Any contract for the disposal of the said land by sale, lease, mortgage, assignment, exchange or otherwise or any outlay commenced or improvements made thereon without the sanction of the Collector appointed under paragraph 4 below, after the date of the publication of this notification, will under clause (seventh) of Section 24 of the said Act, be disregarded by him while assessing compensation for such parts of the said land as may be finally acquired.

3. If the Government is satisfied that the said land is needed for the aforesaid purpose, a declaration to that effect under Section 6 of the said Act will be published in the Official Gazette and in two daily newspapers and public notice thereof shall be given in due course. If the acquisition is abandoned wholly or in part the fact will also be notified in the same manner.

4. The Government further appoints under clause (c) of Section 3 of the said Act, the Special

Land Acquisition Officer, Goa, Goa-IDC, Panaji-Goa to perform the functions of a Collector, South Goa District, Margao-Goa under the said Act in respect of the said land.

5. The Government also authorizes under sub-section (2) of Section 4 of the said Act, the following Officers to do the acts, specified therein in respect of the said land.

1. The Collector, South Goa District, Margao-Goa.
2. The Special Land Acquisition Officer, Goa-IDC, Panaji-Goa.
3. The Chief General Manager, Goa-IDC, Panaji-Goa.
4. The Director of Settlement and Land Records, Panaji-Goa.

6. A rough plan of the said land is available for inspection in the Office of the Special Land Acquisition Officer, Goa-IDC, Panaji-Goa for a period of 30 days from the date of publication of this Notification in the Official Gazette.

SCHEDULE

(Description of the said land)

Taluka: Canacona *Village:* Poinguinim

Survey No./ /Sub-Div. No.	Names of the persons believed to be interested	Approx. area in sq. mts.
1	2	3
157/1 P	O: 1. Comunidade of Poinguinim. O: 2. Konkan Railway Corporation Ltd. O: 3. Santosh Y. Pagui. T: 1. Yeshwant Laxman Pagi. T: 2. Subhadra Maya Metri. T: 3. Daya Harischandra Pagi.	383028
157/4	O: 1. Shabaya Vithal Phal Goankar.	2800
131/1 P	O: 1. Comunidade of Poinguinim. T: 2. Shri Daniel Silva.	660

Boundaries :

North : S. No. 202/43, S. No. 131/1,
S. No. 157/1.

South : S. No. 164/10, S. No. 163/1,
2, 3, 4, 5, 6, 7, 8, 9, 161/1, 2,
7-A, 7-D, 3, 3-A, 3-B, 15.

East : S. No. 156, S. No. 155, 158,
S. No. 131/1, S. No. 157/1,
S. No. 159/1.

1	2	3
West : S. No. 157/1, S. No. 131/1.		
Total: 386488		

By order and in the name of the Governor of Goa.

Sd/- (Ashutosh Apte), Under Secretary (Revenue-I).
Porvorim, 30th November, 2012.



Department of Science, Technology &
Environment

Corrigendum

No. 7/4/98/STE-DIR/Part I/980

Read: No. 7/4/98/STE-DIR/Part I/1407 dated
08-02-2012 published in Official
Gazette Series II No. 46 dated
16-02-2012.

The date in the column No. (3) at Sr. No. (12),
"Tripurari/Kartiki Pornima", in the Schedule to
Order dated 08-02-2012, read above, shall be
read as 28th November, 2012 instead of 27th
November, 2012.

By order and in the name of the Governor of
Goa.

Levinson J. Martins, Director & ex officio Joint
Secretary (STE).

Saligao, 26th November, 2012.



Department of Transport
Directorate of Transport

Order

No. D.Tpt/EST/244/2012/4134

Government is pleased to promote Shri Vishram
J. Govekar, Asstt. Director of Transport to the
post of Deputy Director of Transport purely on
ad hoc basis in the pay scale of ₹ 15,600-39,100+
₹ 5,400/- (GP) (Group 'A' Gazetted) plus usual
allowances with immediate effect against the
vacant post of Deputy Director of Transport, South
Margao.

The above appointment shall be for a period of six months in the first instance.

The above ad hoc promotion to the post of Deputy Director of Transport shall not bestow upon him any claim for regular appointment and service rendered on ad hoc basis in the Grade will not count for the purpose of seniority in the Grade for eligibility for promotion in the next higher grade.

The pay shall be fixed as per Rules in force.

The expenditure on salary and allowances shall be debited to the Budget Head: 3055—Road Transport, 00, 001—Direction & Administration, 06—Strengthening of the Transport Department (Plan), 01—Salaries.

This is issued with the concurrence of the Government under OM No. 8873-F dated 26-11-2012, 1669 dated 27-11-2012 and 9987-F dated 30-11-2012.

By order and in the name of the Governor of Goa.

Arun L. Desai, Director of Transport and ex officio Joint Secretary (Tpt).

Panaji, 4th December, 2012.

Order

No. 5/2/93-Tpt/2012/4168

Consequent upon the promotion of Assistant Director of Transport, Bicholim to the post of Dy. Director of Transport (South), Margao on ad hoc basis, the following Assistant Directors of Transport are hereby transferred with immediate effect on administrative grounds and in public interest.

Sr. No.	Name of the Officer	Present posting	Office to which transferred
1	2	3	4
1.	Shri Nandakishor Arolkar	A.D.T. (HQ)	A.D.T Bicholim.
2.	Shri Sandeep Dessai	A.D.T. Dharbandora/OSD to Director of Transport	Shall hold the additional charge of Assistant Director of Transport (HQ) till further orders.

The Officers transferred stand relieved from their present postings with immediate effect and

shall not avail any joining period or any type of leave till they assume their new postings.

By order and in the name of the Governor of Goa.

Arun L. Desai, Director of Transport and ex officio Joint Secretary (Tpt).

Panaji, 5th December, 2012.

Notification

No. 5/9/90-Tpt/2012/4191

In exercise of the powers conferred by clause (xii) of sub-rule (1) and Rule 22 of the Goa, Daman and Diu Motor Vehicles Tax Rules, 1974, the Government of Goa hereby exempts New Vehicle GA-03/K-9159 of make Tata Mini Bus bearing chassis No. MAT453552B7D17211 and Engine No. 497TC92DYY820677 owned by Monte de Guirim Educational Society, Monte Guirim, Mapusa, Bardez-Goa, from payment of tax due to this State, being a Charitable Educational Institution.

Arun L. Desai, Director and ex officio Joint Secretary (Tpt.).

Panaji, 7th December, 2012.



Department of Urban Development
Directorate of Municipal Administration

Notification

No. 1/18/UDD/2012/2340

The Government of Goa is pleased to constitute a Task Force to coordinate all developmental activities pertaining to areas in EDC, Patto Plaza, Capital City and surrounding areas comprising of the following members:

1. Shri Manohar Parrikar, MLA, Panaji & Chief Minister — Chairman.
2. Mayoress of Corporation of City of Panaji — Vice-Chairman.
3. Chairperson of EDC — Member.
4. Principal Secretary (Urban Development) — Member.
5. Director, Tourism — Member.
6. Managing Director, EDC or his representative — Member.
7. Commissioner, Corporation of City of Panaji — Member.

8. Representative of M/s. Rahul Deshpande & Associates — Member.
9. Shri. Arvind Ghatkar, GM, EDC — Member Secretary.

The mandate of this Task Force shall be as follows:

1. To take all decisions on projects pertaining to development of Patto Plaza and the Capital City Entrance which will broadly include project of reconstruction of jetty below Mandovi Bridges, Multilevel Parking project opposite jetty, Divja Circle area, traffic movement plan of the area, exit/entry of bridges across Mandovi River, relocation and upgradation of inter-state/intra-state KTC Bus Stand, inter-state Bus Stand, Vehicular bridge across Rua-De-Qurem connecting EDC Patto Plaza area & Neuginagar-Mala, Foot-Bridge across Rua-De-Qurem connecting EDC Patto Plaza area & Cortin area, Tourism project at Patto Plaza, development of District Court Complex at Morombi O'Piqueno, Raibandar Causeway upto Raibandar Ferry and any other project/issues in the zone of consideration.
2. To approve conceptual drawings/designs and monitor financial/physical progress of the works.
3. Analyzing the financial arrangements and recommend to the Government the financial calendar for the projects.
4. Remove any difficulty that arises in execution of project in consultation with concerned authority.

5. Issue appropriate directions.

In order to maintain continuity of designs and holistic view of the entire area, EDC shall engage the services of the consultant M/s Rahul Deshpande & Associates who have been already appointed by them for their Patto Plaza works, to work on the preparation of the master plan and Detailed Project Report (DPR) of the area mandated under the Task Force. The additional fees for the additional work of Master Planning and DPR will be borne by EDC.

M/s Rahul Deshpande & Associates, consultants appointed by the Economic Development Corporation (EDC), will act as Project Managers for development of EDC Patto Plaza including additional works by Tourism Department pertaining to Rua De Qurem adjoining the EDC Patto Plaza Complex, additional expenditure for which, beyond Central Government grants, Shall be covered by the financial mandate as indicated in the budget speech. The firm will also prepare Master Plan & DPR for rest of the projects covered under the scope for which appropriate fees will be worked out and paid by EDC.

The task force shall be free to call other Government officials, Corporators, concerned citizens and experts to the meeting as invitees as required.

By order and in the name of the Governor of Goa.

Sd/- (Parimal Rai), Principal Secretary (Urban Development).

Panaji, 12th December, 2012.

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