

Panaji, 31st May, 2012 (Jyaistha 10, 1934)

SERIES II No. 9

OFFICIAL GAZETTE



GOVERNMENT OF GOA

PUBLISHED BY AUTHORITY

Note:- There are three Extraordinary issues to the Official Gazette, Series II No. 8 dated 24-05-2012 as follows:-

- 1) *Extraordinary dated 24-05-2012 from pages 389 to 474 regarding Notifications from Department of Panchayati Raj & Community Development (Directorate of Panchayats).*
- 2) *Extraordinary (No. 2) dated 28-05-2012 from pages 475 to 476 regarding Notification from Department of Public Health (Directorate of Health Services, Office of the Returning Officer of CCIM Election, Goa),*
- 3) *Extraordinary (No. 3) dated 30-05-2012 from pages 477 to 478 regarding Notification from Department of Forest.*

GOVERNMENT OF GOA

Department of Agriculture
Directorate of Agriculture

Corrigendum

No. 8/31/2007/D.Aagri./129

Read: Order No. 8/31/2007/D.Aagri./127 dated 18-05-2011.

The period of deputation in the above read Order dated 18-5-2011 may be read as one year w.e.f. "01-06-2011 to 31-05-2012" instead of "18-5-2011 (b.n.) to 17-5-2012".

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

S. S. P. Tendulkar, Director and ex officio Joint Secretary (Agriculture).

Tonca, Caranzalem 23rd May, 2012.

Department of Animal Husbandry &
Veterinary Services

Order

No. 14-9-AH/GSABAW/2012-13

Government is pleased to constitute a Committee to carry out the inspection of slaughter

houses in this State in adherence to the Prevention of Cruelty to Animals Act, 1960 and rules made therein.

The Committee shall be constituted with the following members:

1. Dy. Director (Farm)-Member Secretary of Goa State Advisory Board for Animal Welfare, Dte. of AH & VS Panaji-Goa.
2. Dr. A. D. P. Verlekar-Assistant Director, Veterinary Hospital, Mapusa.
3. Dr. R.V. Jog-Veterinary Officer, Dharbandora.
4. Ms. Norma Alvares-Member, Animal Welfare Board of India.
5. Dr. Rosario Menezes-Member of Goa State Advisory Board.

The function of the Committee shall be to inspect the licensed slaughter houses in the State every six months under the provision of Prevention of Cruelty to Animals (Slaughter House) Rules, 2001, made under the Prevention of Cruelty to Animals Act, 1960.

The major issues to be seen during the inspection are:

- a. Humane Slaughter and Provision of Stunning of animals prior to slaughter.
- b. State of lairages/Animal holding areas.
- c. Feeding and watering arrangements.
- d. General hygiene and sanitation of the slaughter house.
- e. To see that animals are not slaughtered in view of the each other, whether it is followed.
- f. To check if pregnant, very young (less than three months old), recently calved animals are being slaughtered.

- g. Whether ante and postmortem examination by a qualified Veterinarian is being carried out.
- h. Method adopted for disposal of condemned/ rejected meat.

The Committee so constituted will also comment on prevalence of illegal slaughtering/slaughter houses in the State. They should ensure that an action plan be worked out by co-ordinating with the State Pollution Control Board/State Animal Welfare Board and SPCAs to ensure that all slaughter houses have requisite clearances to meet the requirements as envisaged in the Prevention of Cruelty to Animals (Slaughter House) Rules, 2001.

This Notification supersedes all previous notification issued in this context issued in the past.

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

Dr. H. Faleiro, Director & ex officio Joint Secretary (A.H. & V.S.).

Panaji, 21st May, 2012.

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Goa Meat Complex Ltd.

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Order

Ref. No. 9-15/12-13/87

Read: Order No. 9-15/05-06/486 dated 01-09-2005.

In partial modification to this office order read above, *Dr. Ramdas S. Naik*, Sr. Veterinary Officer, Goa Meat Complex Ltd., Usgao is nominated as Public Information Officer of this Corporation, with immediate effect.

All the other terms and conditions stipulated therein, shall remain unaltered.

Dr. Benjamin Braganza, Managing Director.

Usgao, Ponda, 27th April, 2012.

V. No. A-4999/2012

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Department of Education, Art & Culture

Directorate of Higher Education

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Order

No. 21/4/90-EDN/1239

Government is pleased to accept the three months notice of Voluntary Retirement dated

17-2-2012 tendered by *Dr. (Mrs.) Shubhada Ashok Joshi*, Associate Professor in Hindi, Government College of Arts, Science and Commerce, Sanquelim under Rule 48(A) of CCS (Pension) Rules, 1972 read with Government O.M. dated 29-11-1989.

Accordingly, *Dr. (Mrs.) Shubhada Ashok Joshi*, Associate Professor in Hindi, stands relieved from service w.e.f. 16-7-2012 (b.n.) on account of Voluntary Retirement.

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

R. K. Halarnkar, Under Secretary (Higher Education).

Panaji, 18th May, 2012.

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Order

No. 22/8/91-EDN/1144

Dr. Prakash Vazrikar, Associate Professor in Konkani, Government College of Arts, Science & Commerce, Khandola is hereby directed to officiate as Director of Official Language in addition to his own duties at Govt. College, Khandola, until further orders.

He shall be entitled to charge allowances as admissible under the Rules in force.

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

R. K. Halarnkar, Under Secretary (Higher Education).

Panaji, 9th May, 2012.

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Directorate of Technical Education

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Order

No. DTE/CAD/RIT/2012

In partial modification of Order No.1/364/RTIA/ /DTE/2005/1695 dated 11-10-2005 name and designation of State Public Information Officer & Asstt. State Public Information Officer at Government Polytechnic, Panaji, stand modified as follows: 1

Sr. No.	Name of the Office	State Public Information Officer	Asstt. State Public Information Officer
1.	Government Polytechnic, Panaji	Shri Sunil Shetye, HOD, Mechanical	Shri Allwyn Facho, Lecturer in FTEE.

Vivek Kamat, Director (Technical Education).

Porvorim, 17th May, 2012.

Corrigendum

No. DE/AE/148/Bal Bhavan/Part I/07-08/557

Ref. Order No. DE/AE/148/Bal Bhavan/Part I/07-08/962 dated 22-03-2012.

Government is pleased to modify the above referred Order constituting the Bal Bhavan Board with immediate effect by nominating the following Members.

- 1) 4 members to be nominated by ... Member.
the Chairman of the Bal Bhavan Board
- 2) 4 members to be co-opted by ... Member.
the Board/Management
- 3) Director of Bal Bhavan ... Member
Secretary.

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

Anil V. Powar, Ex officio Joint Secretary (Education).

Porvorim, 18th May, 2012.

Forest Department

Order

No. 4-2-2001-02/FOR/164

On the recommendation of the Goa Public Service Commission as conveyed vide their letter No. COM/II/11/22(1)/2011/361 dated 27-01-2012, the Government of Goa is pleased to appoint Shri Anand Shivaji Jadhav, to the post of Assistant Conservator of Forests (Group "B" Gazetted) in the pay scale of ₹ 9,300-34,800+Grade Pay of ₹ 4,600/-, in the Forest Department, Panaji, under the Government of Goa, on temporary basis with effect from the date of his joining.

While fixing the pay of Shri Anand Shivaji Jadhav, pay protection has to be given to him, as per the special recommendation of the Goa Public Service Commission.

The medical fitness as well as verification of character and antecedents of Shri Jadhav is not required, since he is holding Group "B" Gazetted post, in Agriculture Department under the Government of Goa.

Shri Jadhav shall be on probation for a period of two years.

Shri Jadhav shall report to the Office of Additional Principal of Conservator of Forests, for further posting.

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

Maria J. R. Pires, Under Secretary (Forests).

Porvorim, 3rd May, 2012.

Order

No. 4-2-2001-02/FOR/164

On the recommendation of the Goa Public Service Commission as conveyed vide their letter No. COM/II/11/22(1)/2011/361 dated 27-01-2012, the Government of Goa is pleased to appoint Shri Nandakumar Eknath Parab, to the post of Assistant Conservator of Forests (Group "B" Gazetted) in the pay scale of ₹ 9,300-34,800+Grade Pay of ₹ 4,600/- in the Forest Department, Panaji, under the Government of Goa, on temporary basis with effect from the date of his joining.

While fixing the pay of Shri Nandakumar Eknath Parab, pay protection has to be given to him, as per the special recommendation of the Goa Public Service Commission.

Shri Parab has been found medically fit as per the Medical Board fitness Certificate forwarded by Goa Medical College vide their letter No. 4/106/84-H/GMC/660 dated 27-04-2012.

The verification of character and antecedents of Shri Parab is not required, since he is working as Range Forest Officer, in Forest Department, Panaji under the Government of Goa.

Shri Parab shall be on probation for a period of two years.

Shri Parab shall report to the Office of Additional Principal of Conservator of Forests, for further posting.

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

Maria J. R. Pires, Under Secretary (Forests).

Porvorim, 3rd May, 2012.

Order

No. 4-2-2001-02/FOR/164

On the recommendation of the Goa Public Service Commission as conveyed vide their letter No. COM/II/11/22(1)/2011/361 dated 27-01-2012, the Government of Goa is pleased to appoint Shri Aniket Pradeep Gaonkar, to the post of Assistant Conservator of Forests (Group "B" Gazetted) in the pay scale of ₹ 9,300-34,800+Grade Pay of ₹ 4,600/- in the Forest Department, under the Government of Goa, on temporary basis with effect from the date of his joining, subject to the verification of his character and antecedents.

Shri Goankar has been found medically fit as per the Medical Board fitness Certificate forwarded vide their letter No. 4/106/84-H/GMC/660 dated 27-04-2012.

Shri Goankar shall be on probation for a period of two years.

Shri Gaonkar shall report to the Office of Additional Principal of Conservator of Forests, for further posting.

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

Maria J. R. Pires, Under Secretary (Forests).

Porvorim, 3rd May, 2012.

Order

No. 4-2-2001-02/FOR/164

On the recommendation of the Goa Public Service Commission as conveyed vide their letter No. COM/II/11/22(1)/2011/361 dated 27-01-2012, the Government of Goa is pleased to appoint Shri Vishal Vishnu Surve, to the post of Assistant Conservator of Forests (Group "B" Gazetted) in the pay scale of ₹ 9,300-34,800+Grade Pay of ₹ 4,600/- in the Forest Department, under the Government of Goa, on temporary basis with effect from the date of his joining.

Shri Surve has been found medically fit as per the Medical Board fitness Certificate forwarded vide their letter No. 4/106/84-H/GMC/660 dated 27-04-2012. The verification of his character and antecedents has also

been certified vide letter No. 2/VCA/MISC/2012/987 dated 26-04-2012.

Shri Surve shall be on probation for a period of two years.

Shri Surve shall report to the Office of Additional Principal of Conservator of Forests, for further posting.

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

Maria J. R. Pires, Under Secretary (Forests).

Porvorim, 3rd May, 2012.

Corrigendum

No. 4-2-2001-02/FOR/189

Read: (1) Government Order No. 4-2-2001-02/FOR/164 dated 03-05-2012.

In the above referred Government Order, in the second line of para one the letter No. may be read as "COM/I/5/22(1)/2011/361 dated 27-01-2012" instead of "COM/II/11/22(1)/2011/361 dated 27-01-2012".

All other contents in the Order referred above remain unchanged.

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

Maria J. R. Pires, Under Secretary (Forests).

Porvorim, 22nd May, 2012.

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Department of Housing

Notification

No. 2/19/2007-HSG/Part

In exercise of the powers conferred by Section 4 read with sub-section (1) of Section 5 of the Goa Housing Board Act, 1968 (Act 12 of 1968) and in supersession of all earlier Notifications issued in this regard, the Government of Goa hereby reconstitute the Goa Housing Board, with immediate effect, as follows:

- 1) Shri Ticlo Glen J.V.A.E. Souza, ... Chairman.
MLA, Aldona
- 2) Shri Sandeep Falari, Mapusa, Goa ... Member.
- 3) Shri Deepak Kalangutkar, ... Member.
Parsem, Goa
- 4) Shri Vijay Chodankar, Porvorim, ... Member.
Bardez, Goa
- 5) Shri Goguldas Halarnkar, ... Member.
Pomburpa, Bardez, Goa

- 6) Shri Vassudev Karpe, M.P.T. ... Member.
Colony, Mormugao
- 7) Shri Girish Prabhu, Quitla, ... Member.
Aldona, Goa
- 8) Shri Babu Raghoba Shetye, ... Member.
Sancoale, Cortalim-Goa
- 9) Managing Director, ... Member
Goa Housing Board Secretary.

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

Elvis P. Gomes, Additional Secretary (Housing).
Porvorim, 24th May, 2012.



Department of Information Technology

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Notification

No. 1(90)/DOIT/ITG-DIR/2001/2854

In pursuance of Article 116 (2) of the Articles of Association of Info Tech Corporation of Goa Limited, Government of Goa is pleased to reconstitute the Board of Directors of Info Tech Corporation of Goa Limited, comprises of the following composition:

- 1) Shri Subhash Phal Dessai, ... Chairman.
MLA, Sanguem Constituency
- 2) Secretary (Information ... Director.
Technology),
Government of Goa
- 3) Manageing Director, ... Member
Info Tech Corporation of Goa Ltd. Secretary.

This supersedes all previous Notification issued in this regards from time to time.

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

Srinet N. Kothwale, Director & ex officio Joint
Secretary (IT).

Porvorim, 22nd May, 2012.



Department of Labour

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Notification

No. 28/1/2012-LAB

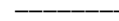
The following award passed by the Industrial Tribunal and Labour Court-I, at Panaji-Goa on 25-11-2011 in reference No. IT/30/2003 is hereby

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.

Hanumant T. Toraskar, Under Secretary (Labour).

Porvorim, 15th May, 2012.



IN THE INDUSTRIAL TRIBUNAL-
-CUM-LABOUR COURT
AT PANAJI, GOA

(Before Smt. Anuja Prabhudessai,
Hon'ble Presiding Officer)

Ref. No. IT/30/2003

Shri Neves Fernandes,
St. Jerome Complex,
Behind St. Jeromes Church,
Mapusa, Bardez-Goa. ... Workman/Party I

V/s

1. M/s. Gertrudes Hotels ... Employer/Party II (1)
Pvt. Ltd.
2. M/s. Brisa Holiday ... Employer/Party II (2)
Resorts,
Calangute, Bardez-Goa.

Workman/Party I represented by Adv. Shri G. B. Kamat.

Employer/Party II Ex parte.

AWARD

(Passed on this 25th day of November, 2011)

By order dated 4-6-2003, the Government of Goa, in exercise of the powers conferred by clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, has referred the following dispute for adjudication.

1. Whether Shri Neves Fernandes, house-keeper, can be construed as 'Workman' as per Section 2(s) of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).
2. If the answer to issue No. (1) above is in the affirmative, then, whether the action of the management of M/s. Gertrudes Hotels Pvt. Ltd., and Brisa Leisure Resorts, Calangute, Bardez-Goa in terminating the services of Shri Neves Fernandes, house-keeper, with effect from 1-3-2002, is legal and justified?

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

2. On receipt of the reference, IT/30/2003 was registered. Notices were issued to all the parties. Pursuant to which the Party I has filed claim statement at Exb. 4. The Party II has filed its written statement at Exb. 5. Rejoinder of the Party I is at Exb. 6.

3. The case of the Party I in brief is that Brisa Leisure Resorts [Party II (ii)] was one of the hotels belonging to Alfran group of hotels. The business of this group was separated and since then the Party II (ii) is run and managed by the Gertrudes Hotels Pvt. Ltd. [Party II (i)]. The Party I claims that in September, 1995 he was employed as a housekeeper at Dona Alcina Resorts. His services were transferred to the various resorts owned by the Party II (i). At the time of his termination he was employed at Party II (ii) which was owned and managed by Party II (i). The Party I has claimed that as a housekeeper he was required to keep inventory of bed sheets, towels, pillow covers. He was also required to check the linen in every room and if necessary, change the same as per the requirement of the guests. The Party I has claimed that he was also required to send and receive the linen from laundry. The Party I has stated that he was performing the work of 'Workman' as defined under Section 2 (s) of the Act.

4. The Party I has claimed that the Party II terminated his services w.e.f. 1-3-2002. Aggrieved by this Act the Party I raised an Industrial Dispute. The conciliation proceedings initiated by the Assitant Labour Commissioner ended in failure. The Conciliation Officer submitted a failure report. Pursuant to which the dispute has been referred to this Tribunal.

5. The Party I has claimed that he had put in continuous service and his service records are unblemished. The Party I has claimed that his termination is in contravention of Section 25 (F) of the Act and the same is illegal and unjustified. The Party I has therefore sought reinstatement with all consequential benefits.

6. The Party II has denied that the Party I is a Workman within the meaning of Section 2 (s) of the Act. The Party II has claimed that their business is seasonal and that the provisions of Industrial Disputes Act are not applicable. The Party II has further stated that it was running in to losses and had to reduce the staff at managerial

level hence, the services of the Party I amongst others were terminated. The Party II has claimed that the Party I was paid all the dues as per the provision of law. The Party II has claimed that the reference is not maintainable.

7. Based on the aforesaid pleadings, followings issues were framed:

1. Whether the Party I proves that he is a Workman within the meaning of Section 2(s) of the Industrial Disputes Act, 1947?
2. Whether the Party I proves that the termination of his service by the Party II is in violation of the provisions of Section 25 of the I. D. Act, 1947?
3. Whether the Party I proves that the action of the Party II in terminating his services w.e.f. 1-3-2002 is illegal and unjustified?
4. Whether the Party II prove that Shri Vincent D'Souza is the personnel Manager and has the authority to sign and verify the written statement on their behalf?
5. Whether the Party I prove that their business is seasonal and therefore, the Provisions of the Industrial Disputes Act, 1947 are not applicable?
6. Whether the Party I is entitled to any relief?
7. What Award?

8. The Party I has examined himself. The Party II has neither adduced evidence nor advanced any arguments. I have perused the records and considered the arguments advanced by Lnd. Adv. Shri Kamat for Party I and my findings on the issues are as under:

9. *Issue No. 1:* The Party I has deposed that Alfran Group of Hotel owned eight resorts including Dona Alcina. He has deposed that in 1995 he started working as floor room boy at Dona Alcina Resorts. He has deposed that subsequently his services were transferred to Party II (ii) which was also owned by Alfran Group of hotels. Sometime in 1999 or 2000, the business of Alfran Group of hotels was separated. Subsequent to the separation Brisa Leisure Resort [Party II (ii)] is run and managed by Party II (i). The Party I has stated that as a floor boy he was doing the work of cleaning of rooms, bedrooms, sweeping, dusting etc. From January, 1998 he started working as a housekeeper. As a housekeeper he was doing the same work as that of a floor room boy. He was taking inventory of the linen, giving solied linen to

the laundry and receiving clean linen from the laundry arranging the same in the racks. He has deposed that he had neither sanctioned nor recommended leave of any staff. He has deposed that though he was designated as housekeeper; he was doing duties of a room boy. He has deposed that the managers were paid salary by cheque whereas he being a Workman had to sign the wage register. He has further deposed that managers and officers were not paid washing allowances, whereas he and the other workers were paid washing allowance. He has deposed that he is a Workman within the meaning of Section 2 (s) of the Act. In his cross examination, he has stated that no other employee was working under him.

10. The evidence of the Party I clearly indicates that though he was designated as a housekeeper, he was performing duties such as cleaning the rooms, taking inventory of linen, changing the linen and giving and receiving linen from laundry. The salary statement at Exb. W1 colly shows that the name of the Party I alongwith other employees in the category of Workman. The store requisition book (Exb. W-9) shows that the material from stores were requisitioned by the Party I and others after obtaining permission from the manager. This fact shows that the Party I had no independent powers to take independent decision. The said evidence has gone unchallenged. Besides the Party II has also not adduced any evidence to controvert the evidence of Party I or to prove that the Party I was performing supervisory duties. The uncontroverted evidence of the Party I amply proves that he was discharging duties that of a Workman. It is advantageous to refer to the case of cricket club of India v/s Mrs. Balaji Shyam [1998 (78) F.L.R. 939]. The respondent in the said case was a housekeeper. She had no powers to take decisions, which would bind the Company. Nothing was brought on record to show that she was doing work of supervisory direction. On considering the evidence on record, the respondent was held to be a Workman. The facts of the present case are similar to the case of Cricket Club of India (supra). As stated earlier, the evidence adduced by the Party I clearly indicates that he was doing the work of house keeping. He had no powers to bind the Party II by any act or decision. The Party II has not adduced any evidence to prove that the Party I was doing work mainly of supervisory nature. Under the circumstances, the Party I is held to be a 'Workman' within the meaning of Section 2 (s) of the Act. Issue No. 1 is answered in the affirmative.

11. *Issue Nos. 2, 3 and 5:* It is not in dispute that the services of the Party I were terminated vide letter dated 27-2-2007 (Exb. W-2) w.e.f. 1-3-2002. The evidence of the Party I indicates that he had worked continuously from 1995. The said statement has gone unchallenged. It may be mentioned that though the Party II had claimed that their business is seasonal, the Party II has not adduced any evidence to substantiate the said contention. On the contrary the statement at Exb. W-10, which was signed by the Personal Manager of the Party II and which was produced before the conciliation officer contains a clear admission that the Party I was in service since September, 1995. The salary statement at Exb. W1 colly also proves the contention of the Party I that he was in continuous service and further falsifies the contention of the Party II that their business is seasonal.

12. The letter at Exb. W2 states that the services of the Party I were terminated due to recession in the market and drastic drop in their charter booking. The Party I had put in continuous service within the meaning of Section 25B of the Industrial Disputes Act. Hence, the services of the Party I could not have been retrenched without complying with the provisions of Section 25F of the Act. The evidence of the Party I indicates that the Party II has not paid any dues. The Party II has neither controverted the said statement nor adduced any evidence to prove that they have complied with provisions of Section 25F of the Act. Needless to say that, for retrenchment to be valid, it is incumbent upon the employer to fulfill the requirements of clauses (a) and (b) of Sec. 25-F of the Act. Non-compliance of these mandatory requirements renders the retrenchments illegal. Hence, issues No. 2 and 3 are answered in the affirmative and issue No. 5 is answered in the negative.

13. *Issue No. 4:* The Party I had denied that Vincent D'Souza is the personnel Manager and had challenged his authority, of to sign and verify the written statement. It is true that the Party II has not adduced any evidence to prove this issue. Nonetheless, the evidence on record indicates that the salary statements at Exb. W-I colly were signed by Vincent D'Souza. The termination order was issued by Vincent D'Souza besides in the conciliation proceedings the management was represented by Vincent D'Souza without there being any objection on the part of the Party I. Under the circumstances, challenge to the authority of Vincent D'Souza to represent the

Party II is devoid of merit. Issue No. 4 is answered in the affirmative.

14. *Issue No. 5:* The next question that falls for my determination is what relief the Party I is entitled to. In the case of **In-charge Officer & Anr v/s Shankar Shetty 2010(9) SCC 126 and Senior Superintendent Telegraph (Traffic) Bhopal v/s Santosh Kumar Seal & Ors AIR 2010SC 2140**, the Apex Court has reiterated that *"It is true that the earlier view of this Court articulated in many decisions reflected the legal position that if the termination of an employee was found to be illegal, the relief of reinstatement with full back wages would ordinarily follow. However, in recent past, there has been a shift in the legal position and in a long line of cases, this Court has consistently taken the view that relief by way of reinstatement with back wages is not automatic and may be wholly inappropriate in a given fact situation even though the termination of an employee is in contravention of the prescribed procedure. Compensation instead of reinstatement has been held to meet the ends of justice."*

15. In the case of **Talwara Co-op. Credit & Service Society Ltd. v/s Sushil Kumar (2008 (9) SCC 486)** the Apex Court has held that *"Grant of a relief of reinstatement, it is trite, is not automatic. Grant of back wages is also not automatic. The Industrial Courts while exercising their power under Section 11A of the Industrial Disputes Act, 1947 are required to strike a balance in a situation of this nature. For the said purpose, certain relevant factors, as for example, nature of service, the mode and manner of recruitment, viz., whether the appointment had been made in accordance with the statutory rules so far as a public sector undertaking is concerned etc., should be taken into consideration. For the purpose of grant of back wages; one of the relevant factors would indisputably be as to whether the Workman had been able to discharge his burden that he had not been gainfully employed after termination of his service."*

16. It is thus well settled that gainful employment is one of the relevant aspects that needs to be considered while granting the relief. As regards the onus of proving this aspect, in **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 was 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."

17. In the light of aforesaid principles, the burden was on the Party I to prove that he is not gainfully employed since the date of termination of his service. In the instant case, the service of the Party I/Workman was terminated in the year 2002. The Party I has neither pleaded nor proved that he is not gainfully employed during this interregnum period. The Party I has also not explained how he has been maintaining himself in this interregnum period. These facts lead to an inference that the Party I is gainfully employed and is therefore not entitled for reinstatement. In my considered view, monetary compensation would meet the ends of justice. Considering the service period as well as the time in the litigation to get the legal dues, in my considered opinion, awarding compensation of Rs. 50,000/- to the Party I/Workmen in lieu of reinstatement shall be appropriate, just, and equitable.

Under the circumstances and in view of discussion supra, I pass the following order:

ORDER

1. Shri Neves Fernandes, housekeeper, is a 'Workman' within the meaning of section 2(s) of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).
2. The action of the management of M/s. Gertruders Hotels Pvt. Ltd., and Brisa Leisure Resorts, Calangute, Bardez, Goa, in terminating the services of Shri Neves Fernandes, housekeeper, with effect from 1-3-2002, is illegal and unjustified.
3. The Party II is directed to pay to the Party I/Workman monetary compensation of Rs. 50,000/- within two months from the date of publication of award failing which

the same shall carry interest at the rate of 9% p.a.

Inform the Government accordingly.

Sd/-

(A. Prabhudessai),
Presiding Officer,
Industrial Tribunal-cum-
-Labour Court-I.

Notification

No. 28/1/2012-LAB

The following award by the Industrial Tribunal and Labour Court-I, at Panaji-Goa on 2-4-2012 in reference No. IT/14/2006 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.

Hanumant T. Toraskar, Under Secretary (Labour).
Porvorim, 17th May, 2012.

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

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

Ref. No. IT/14/2006

Ms. Shakuntala Gaonkar,
Rep. by Goa Trade and
Commercial Workers Union,
Velho Bldg.,
Panaji, Goa.

...Workman/Party I

V/s

M/s. Glow Paints P.Ltd.
Plot No. 121,
Bethora Industrial Estate,
Ponda-Goa.

...Employer/Party II

Party I/Workman represented by Adv. Shri Suhas Naik.

Party II/Employer represented by Adv. Shri A. V. Nigalye.

Award

(Passed on 2nd day of April, 2012)

By order dated 24-2-2006, the Government of Goa in exercise of the powers conferred by clause (c) of

Section 10 of The Industrial Disputes Act, 1947 (for short The Act) has referred the following dispute for adjudication.

“(1) Whether the resignation dated 29-11-2004 of Ms. Shakuntala Gaonkar, Helper, was obtained under duress by M/s. Glow Paints Private Limited, Bethora Industrial Estate, Ponda, Goa or whether due resignation dated 29-11-2004 amounts to refusal of employment, with effect from 28-01-2005.

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

2. On receipt of the reference, IT/14/2006 was registered. Notices were issued to both the parties pursuant to which both the parties appeared before the Court represented by their respective advocates. Party I filed claim statement at Exb. 4 and Party II filed written statement at Exb. 5. Party I did not file the rejoinder.

3. It is in short the case of Party I in the claim statement that she joined the services of Party II as a packer on 27-4-2001 on a wage of ₹ 45/- per day; that Party II has not issued any appointment letter to her and also to other 30 workers; that the Workmen of Party II have unionized themselves under the banner of Goa Trade and Commercial Workers Union by taking a resolution dated 2-11-2003 and the Managing Director was informed by the Union vide their letter dated 3-11-2003 about the unionization of the Workmen employed at Party II and that the name of Party I figure at Sr. No. 6 in the resolution dated 2-11-2003. It is stated that the union representing Party I raised a Charter of Demands on the management of Party II by letter dated 5-11-2003 but instead of resolving the issues of Charter of Demands Party II started harassing the Workmen due to which the Workmen were refused employment by Party II w.e.f. 13-12-2003. That the Union representing the Workmen then filed a dispute vide letter dated 16-12-2003 in the matter of refusal of employment to the workmen, before the Asstt. Labour Commissioner, Government of Goa, Ponda, Goa and due to the effective intervention of said Asstt. Labour Commissioner on 23-12-2003 all the 12 Employees who were refused employment were allowed to report back for work w.e.f. 24-12-2003 with continuity of services and on this ground the dispute was conclusively settled. It is stated that the name of Party I figures at Sr. No. 9 of the minutes of the discussion. It is further stated that on 29-11-2004 the management transferred Party I to a godown situated at Mapsewada, Bethora, Ponda,

Goa. That the Managing Director of the Company took a letter of resignation in advance from the Workmen. That at the time of transfer Party II assured the Party I that she would be paid minimum wages of ₹ 87/- per day and also ₹ 10/- in addition as transfer allowance. It is stated that the action of Party II was an unfair labour practice with malafide intentions since the Charter of Demands was pending. That as the Workmen was not having any work at the place of transfer she requested Party II for her transfer back to the factory of Party II. It is further stated that Party II refused employment to Party I w.e.f. 28-1-2005 and as such the Workman was compelled to report the matter to the Union. That thereafter the Union raised the Industrial Dispute in the matter of refusal of employment to the Workman and despite letter to the management to attend the conciliation proceedings, the Party II did not attend the proceedings and as such ex-parte failure of conciliation proceedings was recorded by the Asstt. Labour Commissioner, Government of Goa, Ponda, was recorded on 7-10-2005. It is stated that presently Workman/Party I is out of employment and she does not have any source of income and that refusal of employment by Party II is entirely illegal, unjustified and bad in law. The Workman has therefore prayed to hold that the action of management of Party II in refusing employment to her is illegal and unjustified and to reinstate the Party I back in services with full back wages and continuity in services.

4. In the written statement at Exb. 5 it is stated by Party II that the reference is not maintainable as it has been made in mechanical manner; that there is no employer employee relationship between Party I and Party II on the date of reference and that there is no Industrial Dispute, existing or apprehended between Party I and Party II. It is also stated that Party I was employed in the establishment of Party II on daily basis on casual basis. That on 29-11-2004 Party I submitted a letter of resignation from the services of Party II stating that she was leaving her service due to her personal problem and her resignation was accepted on the same date and she was relieved from the services. That after about one month of her resignation, Party I approached the Managing Director of Party II stating that she could not get any other employment and requested to take her back in service, however the Managing Director of Party II told her that there is no vacancy in the establishment. That Party I however kept on pestering the Managing Director and his brother Shri Vipinkumar Shirsat for the subsequent two days to give her employment. That

Shri Vipinkumar Shirsat owns a Proprietorship Firm under the name and style of M/s. Glow Marine Paints & Allied Products, of which he is the sole proprietor and out of sympathy and purely on humanitarian grounds he employed Party I in his firm M/s. Glow Marine Paints & Allied Products w.e.f. 1-1-2005. That Party I worked in the said firm for 21 days in the month of January, 2005 and left the service without collecting her wages and without any notice and intimation. That her wages for the said 21 days amounting to ₹ 1,827/- were sent to her by M/s. Glow Marine Paints and Allied Products by cheque dated 21-2-2005 alongwith the letter of the same date. That Party I accepted the said letter and the cheque and thereafter raised an Industrial Dispute through Goa Trade and workers Union, falsely contending that her services were illegally terminated by Party II. It is stated that Party I was employed with M/s. Glow Marine Paints and Allied Products purely on humanitarian ground, which she left without notice. Thus, Party II has prayed to pass an award rejecting the claim of Party I.

5. On the basis of above averments of the respective parties, the issues were framed at Exb. 6. However the same were recasted with consent of both the parties and the recasted issues are at Exb. 21.

6. Heard Lnd. Adv. Shri S. Naik for Party I and Lnd. Adv. Shri A. V. Nigalye for Party II.

7. In his arguments Lnd. Adv. for Party I stated that Party II had not issued an appointment letter to Party I while employing her and that the contention of Party II on the subject of Party I giving resignation dated 29-11-2004 cannot be accepted for the reasons that there is nothing on record indicating the acceptance of said resignation by Party II and unless the resignation is accepted, the same does not come into effect. He also stated that merely because the Party II has taken the resignation of Party I that does not discharge Party II from the obligation of giving letter of acceptance of resignation. In support of his above submission, he relied on the judgments in Prabha Atri (DR.) v/s State of UP and Ors. 2003 1 CLR 221 and in North Zone Cultural Centre and Anr. v/s. Vedpathi Dinesh Kumar 2003. II CLR 376. He further stated that the management refused employment to the Workmen because the Union had raised the Charter of Demands, but due to effective intervention of the Asstt. Labour Commissioner on 23-12-2003, the Workmen were allowed to report back to work w.e.f. 24-12-2003 and that the said document vide which the workmen were allowed to report back for work

w.e.f. 24-12-2003 at Exb. 14 shows the conduct of the employer. According to him this is the instant case is of harassment of Party I at the hands of Party II.

8. On the other hand Lnd. Adv. for Party II stated that since Party I was employed on daily wages on casual basis, the question of giving appointment letter to Party I does not arise. As regards the allegation that a forcible resignation letter was obtained from Party I, he stated that this being a serious allegation, Party I has to prove the same to the hilt which Party I has failed to do. He further stated that there is nothing in the claim statement indicating that as there is no acceptance of resignation letter, such a resignation cannot be considered and therefore the above fact having not been pleaded in the claim statement cannot be considered, while deciding this reference. He also stated that present case is of strike and not of harassment by the employer. By inviting my attention to the contents of Exb. 14 he stated that there was otherwise no reason for the Workmen to agree for non-payment of wages for the intervening period from 13-12-2003 to 23-12-2003 and that as the Workman Yogesh has tendered apology regretting the alleged incident, the same speaks about the conduct of the Workmen and not that of the employer. He also stated that it is clear from the evidence that at the relevant time Party I was working with Glow Marine Paints and since this new employer is not before the court, the present reference is not maintainable. He has therefore prayed to reject the reference on above grounds.

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

ISSUES	FINDINGS
1. Whether the Party I proves that on 29-11-2004 the Party II had transferred her services to a godown situated at Mapsewada, Bethora, Ponda-Goa	In the negative.
2. Whether the Party II proves that the Managing Director of Party II had taken a letter of resignation from her in advance	In the negative.
3. Whether the Party I proves that the Party II had refused employment to her w.e.f. 28-1-2005	In the negative.
4. Whether the Party I proves that the refusal of employment is illegal, unjustified and bad in law	In the negative.

5. Whether the Party II proves that the Party I had resigned from the services on 29-11-2004	In the affirmative.
6. Whether the Party II proves that the Proprietor of Proprietorship firm under the name and style of M/s. Glow Marine Paints and Allied Products had employed the Party I in his firm on humanitarian ground w.e.f. 1-1-2005.	In the affirmative.
7. What relief? What Order?	As per award below.

REASONS

10. *Issue Nos. 1, 2 and 5:* All these issues are answered together for the sake of convenience as they revolve round the case of Party I about Party II obtaining forcible resignation from her and transferring her services to a godown situated at Mapsewada, Bethora, Ponda-Goa.

11. It is stated by Party I, Shakuntala Gaonkar that she was working with Party II as Packer and Helper since 27-4-2001 upto 28-11-2004. She has stated that she was not given appointment letter by Party II. She has stated that on 3-11-2003 she alongwith other workers joined the Union however Party II terminated all the Workmen including her for joining the Union and thereafter the Union raised the dispute before the Labour Commissioner. She has produced the copy of letter dated 16-12-2003 vide which the Union raised the aforesaid dispute before Labour Commissioner at Exb. 13. She has stated that before the Labour Commissioner Party II agreed to take back all the workers, vide minutes dated 23-12-2003, which she has produced at Exb. 14. She has stated that on 29-11-2004 Party II told her to go and work to another factory belonging to his brother doing the same work of packing and accordingly she started working in the said factory i.e. Glow Marine Paint at Mapsewada, Bethora, Revora. She has stated that before she was told to work in this factory of the brother of Party II, the said Party II did not give anything in writing nor paid any wages or compensation to her. In her cross-examination, she has admitted that the name of the brother of Party II having factory at Mapsewada is Shri Vipin Kumar Sirsat and that said Glow Marine Paints is owned by said Shri Vipin Kumar Sirsat. This witness was shown letter dated 29-11-2004 purporting to be the resignation letter given by her, on which she has identified her signature and which is marked as Exb. 18 and the witness has stated that

it was obtained from her by force. She has denied the suggestion that she prepared and signed Exb. 18 voluntarily and without any force or coercion as she was intending to resign the job and that it was accepted immediately by Party II.

12. It may be mentioned here that though in the statement of claim it is the case of Party I that the management on 29-11-2004 transferred her to a godown situated at Mapsewada, Bethora, Ponda, Goa by assuring that she would be paid a minimum wages of ₹ 87/- per day and also ₹ 10/- in addition as transfer allowance in her deposition before the court Party I has not stated anything about such transfer by management and also about assurance of payment of minimum wages of ₹ 87/- per day and ₹ 10/- as transfer allowance. It also deserves to be noted that in her deposition before the Court, Party I has stated that before she was told to work in the factory of his brother, Party II did not give anything in writing nor paid any wages or compensation to her, but in her claim statement Party I has not made any such averment and therefore such statements of Party I are required to be weighed cautiously.

13. Be that as it may, though according Party I she was transferred to Mapsewada, Bethora, Ponda, Goa on 29-11-2004, according to Party II it was on 29-11-2004 Party I submitted letter of her resignation from the services of Party II. As pointed out by me above, this letter is at Exb. 18. Reading of Exb. 18 makes it clear that it was accepted by the management on the same date i.e. on 29-11-2004 and this aspect has been made clear by Shri Balkrishna Sadanand Sirsat, the Employer/Party II. Even the suggestion put to Employer/Party II that the remark "accepted" was made subsequent to the raising of the dispute has been denied by Party II. It may be mentioned here that it is no where the case of Party I in the claim statement or in her deposition before the court that the above remark on Exb. 18 was put by Party II subsequent to the filing of the dispute and therefore the suggestion to this effect put to Party II is of no consequence.

14. Nevertheless, it is seen that though in her examination in chief Party I/Workman has stated that when Party II told her to go and work in the factory of his brother, her signature was obtained on the resignation letter which was prepared by him, however in her cross examination Party I/Workman has admitted that the contents of Exb. 18 are in her handwriting. This being the case it becomes clear that the contents of Exb. 18 were written by Party I herself and as regards her

contention that this resignation was obtained from her by force, it is seen that no cogent and convincing evidence on this aspect has been adduced by Party I to indicate as to where and in whose presence said so called forcible resignation was obtained from her by the Managing Director of Party II. As pointed out by Lnd. Adv. for Party I, forcible resignation of service is a serious allegation and therefore it was required of Party I to have proved this allegation to the hilt. In the absence of strong evidence to prove the allegation of seeking forcible resignation by Party II, I am unable to accept the case of Party I that the Managing Director of Party II took forcible letter of resignation from Party I.

15. As regards the contention of Lnd. Adv. for Party I that the resignation which has not been accepted in the required manner, is not a resignation in the eyes of law and the judgments relied upon by Lnd Adv. for Party I/Workman on this subject, upon going through the judgment in the case of Prabha Atri (Supra) it is seen that the facts in this case are totally different as in this case the appellant was placed under suspension and disciplinary proceedings were initiated against her and in her explanation to the same she has stated that if it was not accepted she would have no option but to tender her resignation with immediate effect. It was these contents of her explanation were interpreted to say that the same does not amount to the resignation. It is observed in this judgment that to constitute a resignation it must be unconditional and with an intention to operate as such. Viz-a-viz the above facts, undoubtedly the facts in the instant reference are totally different and even otherwise reading of Exb. 18 makes it clear that it is unconditional with an intention to operate as such and this is because Party I has mentioned in Exb. 18 that she was willing to give her job from 29-11-2004 for her personal problems. Thus, the ratio in the above case is not applicable to the present reference.

16. As regards the judgment in North Zone Cultural Centre (Supra), the employee in this case had tendered his resignation on 18-11-88 to take effect from that very date and though the management accepted the same on the very day, the acceptance was communicated on 1-12-88 and in the meantime the employee withdrew the resignation on 21-11-88 and therefore it was held that the resignation takes effect on its acceptance and the non-communication of the acceptance does not make the resignation inoperative provided there is in fact acceptance before withdrawal. In the case

at hand, as it is apparent from Exb. 18 the resignation was accepted by Party II on the very same day i.e. 29-11-04 and therefore the ratio in the case of North Zone Cultural Center (Surpa) is not applicable to the instant reference. Nevertheless I also in agreement with the arguments of Lnd. Adv. for Party II that as there is no averment in the claim statement stating that the resignation which was not accepted as required cannot be considered as a valid resignation, the arguments advanced on this subject cannot be accepted because Party II had no occasion to meet the above contention of Party I, through their written statement.

17. Thus, the fact that remains is that there is sufficient evidence before the court that Party I had resigned from the service on 29-11-04 and consequently it follows that her services were not transferred to a godown situated at Mapsewada, Bethora, Ponda, Goa. It is further established on the basis of aforesaid discussion that Party I has failed to prove that managing director of Party II had taken a letter of resignation from her in advance.

18. As regards the arguments of learned Adv. for Party I that the present dispute is in fact the case of harassment of Workman by Party II, it is noted that it is the case of Party I that after the Union raised Charter of Demands, Party II started harassing the Workman and refused them employment w.e.f. 13-12-03 upon which the Union representing the Workman filed a dispute vide letter dated 16-12-03. Party I has produced this letter at Exb. 13. It is the further the case of Party I that thereafter upon effective intervention of the Asst. Labour Commissioner, Ponda, Goa, on 23-12-03 the twelve employees who were refused employment, were allowed to report back, for work w.e.f. 24-12-03. Party I has produced the said minutes dated 13-12-03 at Exb. 14. Per contra it is the case of Party II that after the Union submitted the demands the workers started pressurizing and harassing the management of Party II and they even resorted to lightening strike w.e.f. 13-12-03. It is further case of Party II that after the intervention of Asstt. Labour Commissioner, Ponda, the said workers joined the duties after giving an undertaking to the Party II. In this context, perusal of Exb. 14 reveals that during the conciliation proceedings management made it clear that they did not refuse employment to the Workman in question and that they were free to join back in the service except the Workman Shri Yogesh Gaonkar who should submit an apology letter regretting the alleged incident. It is further clear from Exb. 14 that the Union accepted the above proposal of the management and that it was

agreed that all the eleven Workmen should report back for work w.e.f. 24-12-03 and the Workman Shri Yogesh from 27-12-03 so also that the Workman should not be paid any wages for the intervening period from 13-12-03 to 23-12-03 but they should get continuity in service. Thus, reading of above contents of Exb. 14 makes it clear that the Workmen were not refused work by Party II as otherwise they would not agree for non-payment of wages for the intervening period from 13-12-03 to 23-12-03 and also the Union would not agree for tendering of apology by the Workman, Shri Yogesh Gaonkar regretting the alleged incident. Thus, from the overall tenor of Exb. 14 it becomes clear that the case projected by Party I on the subject of harassment does not stand. At any rate since the discussion above makes it clear that the Party I has failed to prove issues No. 1, 3 and 5, I return my findings accordingly.

19. *Issue Nos. 3 and 6:* Both these issues are answered together as they are interlinked and can be discussed together.

20. It is clear from the evidence of Party I that from 29-11-04 she started working in Glow Marine Paint at Mapsewada, Bethora, Ponda-Goa. She has also stated that she worked at Mapsewada, Bethora for two months and thereafter on 28-1-05 the employer by name Balkrishna Sirsat came to the factory and told her not to report for work from 28-1-05 and since then she did not attend the work. However, in her cross examination Party I has stated that the factory at Mapsewada, Bethora, Revora is belonging to the brother of Party II by name Shri Vipin Kumar Sirsat. From the above statement of Party I it becomes clear that the statement made by her that Shri Balkrishna Sirsat, the employer came to the said factory and told her not to report for work from 28-1-05 cannot at all be believed as from her own statement in her cross examination it is clear that the factory at Mapsewada, Bethora, Revora is owned by Shri Vipin Kumar Sirsat.

21. Even for that matter, in her cross examination Party I was shown copy of a letter dated 21-2-05 from Glow Marine and Allied Products and postal acknowledgments and the Party I has stated that she has not received such letter and the acknowledgment does not bear her signature. Accordingly, this letter was marked as Exb. 'x'. Party I has however admitted of having received an amount of ₹ 1,827/- by cheque through post by further stating that she encashed the said cheque by depositing it in the bank. In this context, deposition of Employer I/Party II Shri Balkrishna Sirsat gains significance since he has made it clear

that after Party I resigned from the services of Party II she again came after about a month and requested for employment but she was told that there was no vacancy. He has also stated that Party I kept on pestering him and his brother Shri Vipin Kumar Sirsat who owns a proprietorship firm under the name and style of M/s. Glow Marine Paints and Allied Products, of which he is the sole proprietor and out of sympathy and purely on humanitarian grounds his brother employed Party I in his firm w.e.f. 1-1-05. He has stated that Party I worked in the said firm for 21 days in the month of January, 2005 and left the service without collecting her wages and also without any notice or intimation. He has stated that the wages of Party I for said 21 days amounting to ₹ 1,827/- was sent to her by M/s. Glow Marine Paints and Allied Products by cheque dated 21-2-05 alongwith the letter of the same date and that Party I duly accepted the letter and the cheque. After being shown the said letter 21-2-05 at Exb. 'x' he has identified the signature of his brother Shri Vipin Kumar Sirsat on the same and accordingly the letter is marked Exb. 20. He has further made it clear that this letter was sent by registered post and was received by Party I and the A. D. Card which is alongwith this letter bears the signature of Party I. Since there is no dispute on the part of Party I of having received the amount of ₹ 1,827/- by cheque through the post and since Exb. 20/A.D. card makes it clear that the aforesaid amount was sent by Glow Marine and Allied Products which is a company owned by Shri Vipin Kumar Sirsat, it becomes clear that the aforesaid amount was sent to Party I by Glow Marine and Allied Products and not by Party II. It is therefore clear from above that from the month of January, 2005 Party I was employed with Glow Marine and Allied Products and not with Party II and therefore the question of Party II refusing employment to Party I w.e.f. 28-1-05, does not arise. Hence, this issue is answered in the negative.

22. *Issue No. 4:* I have already discussed while answering issue Nos. 3 and 6 that Party I has failed to prove that Party II has refused her the employment w.e.f. 28-1-05 and therefore the question of the said so called refusal being illegal, unjustified and bad in law does not arise. Hence my findings.

In view of discussion supra, I pass the following award.

ORDER

1. It is hereby held that the resignation dated 29-11-04 of Ms. Shakuntala Gaonkar, Helper was

not obtained under duress by M/s. Glow Paints Pvt. Ltd., Bethora Industrial Estate, Ponda-Goa and that the said resignation dated 29-11-04 does not amount to refusal of employment w.e.f. 28-01-05.

2. Party I/Workmen is therefore not entitled to any relief.

3. No order as to costs. Inform the Government accordingly.

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

Notification

No. 28/1/2012-LAB

The following award passed by the Industrial Tribunal and Labour Court-II, at Panaji-Goa on 29-03-2012 in reference No. IT/21/01 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.

Hanumant T. Toraskar, Under Secretary (Labour).

Porvorim, 18th May, 2012.

THE LABOUR COURT II
GOVERNMENT OF GOA
AT PANAJI

(Before Shri Suresh N. Narulkar, Hon'ble
Presiding Officer)

Case No. Ref. IT/21/01

Shri C. Krishna Unni,
Rep. by the General Secretary,
Gomantak Mazdoor Sangh,
Shetye Sankul,
3rd Floor, Tisk,
Ponda, Goa.

... Workman/Party I

V/s

The Managing Director,
M/s Kerala Transport Company,
Margao Branch,
Margao-Goa.

... Employer/Party II

Workman/Party I represented by Adv. Shri S. Gaonkar.

Employer/Party II represented by Adv. Shri F. T. Rebello.

Panaji, dated 29-03-2012.

AWARD

1. 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) the Government of Goa, by Order dated 24-04-2001, bearing No. IRM/CON/(74)/2000/1912 referred the following dispute for adjudication by Industrial Tribunal of Goa.

“(1) Whether Shri C. Krishna Unni, Branch Manager, could be construed as a “Workman” within the meaning of Sec. 2(s) of the Industrial Disputes Act, 1947 (Central Act 14 of 1947)?

(2) (a) If the answer to the above question No. (1) is in affirmative, whether the action of the Management of M/s Kerala Transport Company in transferring Shri Unni to Belgaum, is legal and justified?

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

2. On receipt of the reference, a case was registered under No. IT/21/2001 and registered A/D notice was issued to the parties. In pursuance to the said notice, the parties put in their appearance. The Workman/Party I (for short ‘Workman’), filed his Statement of Claim on 12-06-2001 at Exb. 3. The facts of the case in brief as pleaded by the Workman are that he was appointed by the Employer/Party II (for short ‘Employer’) as a ‘Clerk’ at its Ponda Office w.e.f. 27-12-1975. He stated that he was subsequently promoted as ‘Asstt. Branch Manager’. He stated that as an ‘Asstt. Branch Manager’, he was performing the duties of clerical and manual in nature such as preparation of bills, parcel booking deliveries, helping for loading-unloading, maintaining the delivery registers, booking register etc. He submitted that neither he was leave sanctioning authority of the other Workmen nor he was performing the work of supervisory nature. He stated that he was transferred to Margao Branch of the Employer vide order dated 24-03-1999. He stated that as the said transfer order was reasonable and with the same service conditions, he immediately joined at his place of transfer at Margao after relieving him from Ponda Branch. He stated that he was again transferred to Belgaum, Karnataka vide letter dated 24-03-1999 and designated as ‘Business Executive’. He submitted that the said transfer order was affected within a period of six months from his earlier transfer only to victimize him. He stated that he was suffering from spinal cord pain and hence rejected the said offer of ‘Business

Executive’ and applied for sick leave vide his letter dated 12-04-1999 and since then he is under treatment of ESIC doctor. He stated that the Health Officer, Marcaim with whom he was taking medical treatment instructed him not to carry out the travelling work. He stated that he had replied to the letter of the Employer dated 22-06-1999 vide his reply dated 15-07-1999. The Workman submitted that due to his sickness he was unable to accept his new posting as ‘Business Executive’. He submitted that as he was not in good terms with the Area Manager, he was first transferred at Margao and thereafter within six months at Belgaum, Karnataka. He submitted that since the time of his joining in the employment of the Employer, he was not transferred outside Goa as his service condition did not specify the transfer from one State to another. He submitted that his last drawn salary was ₹ 3,600/- p.m. having no other source of income. He submitted that his children are studying in Goa and he was not able to maintain his family on two different destinations. He submitted that he could not shift his family due to education of his children. He submitted that the service conditions at Belgaum are different and hence the transfer order issued to him is null and void. He submitted that the transfer order is malafide effected only to victimize him as he was not having good terms with the Area Manager. He submitted that his transfer to Belgaum is illegal, unjustified and bad-in-law as it has been issued without complying with the provisions of law. He submitted that after refusal of allowing him to resume the duty, he is unemployed as he could not succeed in getting any job till date and is undergoing hardship due to unemployment. He therefore prayed that the transfer order issued to him be declared as illegal, improper and unjustified and direct the Employer to re-instate him in service with full back wages and continuity in service.

3. The Employer filed its Written Statement on 06-07-2001 at Exb. 5. The Employer Company controverted the claim of the Workman preliminarily on the ground that the reference is not maintainable as the Party I is not a “Workman” within the meaning of the Act. The Employer stated that the Party I was appointed as ‘Asstt. Branch Manager’ and he was working as ‘Asstt. Branch Manager’ with all the facilities of the said post with it.

4. The Employer stated that the Party I was appointed vide appointment letter dated 27-09-1977. The Employer stated that the duties attached to the post are fixed and each employee

is expected to carry out his/her duties as fixed and designated. The Employer stated that the duties attached to the post of 'Asstt. Branch Manager' which the Party I was holding, were to deal with the cash, salary of the staff, bringing him a fresh business and submitting the status report to its head office. The Employer stated that the 'Asstt. Branch Manager' is also required to act as a Manager in the absence of the Manager. The Employer stated that the Party-I did not work as alleged by him in his statement of claim, but carried out all the functions and duties as required by the 'Asstt. Branch Manager'. The Employer stated that the services of its employees are transferrable. The Employer stated that the transfer of the Party I is a part of its service condition and there is nothing malafide in the said transfer of the Party I. The Employer stated that the post of 'Business Executive' was vacant at its Belgaum Branch and since the Party I was found to be suitable to the said post of 'Business Executive', he was transferred and posted to the said post. The Employer submitted that the services of all its employees are subject to transfer as per its requirement and as such several of its employees have been transferred from Kerala to Goa and have been posted in its various branches. The Employer stated that the Party I at no point of time, prior to his posting at Belgaum informed them about his spinal problem and the same arose only after his posting at Belgaum. The Employer stated that the Party I did not reject the said posting at Belgaum, but chose to go on leave for several days and never reported to work and raised the present dispute. The Employer stated that there were no reports of the ill health of the Party I, nor the treatment taken by him with several doctors as alleged. The Employer contended that the entire story of ill health is concocted. The Employer stated that the Party I was unable to accept the posting at Belgaum as he has several business interests in Goa and therefore does not desire to leave the same. The Employer stated that the Party I has shops both in his own name and that of other persons for various reasons. The Employer stated that the relations of the Area Manager with all its employees are cordial. The Employer stated that the Area Manager has not initiated the transfer of the Party I. The Employer denied that the Party I has no other source of income. The Employer denied that the service conditions of its employees are different from one State to another. The Employer therefore prayed for the dismissal of the present reference with costs.

5. Thereafter, the Workman filed his rejoinder on 23-07-2001 at Exb. 6. The Workman by way of

his rejoinder reiterates and confirms all the submissions and averments made by him in his claim statement to be true and correct and denies all the statements and averments made by the Employer in its written statement which are contrary and inconsistent with the statements and averments made by him. The Party I submits that initially he was appointed as a 'Clerk' on 27-12-1975 and thereafter he was designated as 'Asstt. Branch Manager'. He submitted that the transfer of his service is intra-State and not inter-State. He submitted that his order of transfer to the post of 'Business Executive' itself indicates that there is change in service conditions as the duties of 'Asstt. Branch Manager' is of clerical nature and the duty of 'Business Executive' is of managerial in nature i.e. to carry out the tours of various places in Belgaum district in Karnataka. He submitted that the representative of the Employer was aware of the fact that he was suffering from neck pain since 1996 and was under treatment of various doctors.

6. Based on the pleadings of the respective parties filed in the present proceedings, the Hon'ble Industrial Tribunal framed the following issues at Exb. 07 on 08-08-2001.

1. Whether the Party I proves that he is a "Workman" within the meaning of Sec. 2(s) of the Industrial Disputes Act, 1947?
2. Whether the Party I proves that his transfer to Belgaum is malafide and by way of victimization?
3. Whether the Party I proves that the action of the Party II in transferring him to Belgaum is illegal and unjustified? '
4. Whether the Party I is entitled to any relief?
5. What Award?

7. My answers to the aforesaid issues are as under:

Issue No. 1	In the affirmative.
Issue No. 2	In the affirmative.
Issue No. 3	In the affirmative
Issue No. 4 & 5	As per final order.

REASONS

Issue No.1:

I have heard the arguments of Ld. Advocates appearing for the respective parties.

8. Ld. Adv. Shri S. Gaonkar representing the Workman, during the course of his oral arguments

submitted that it is the well settled principle of law that whether a particular employee is a 'Workman' or not as defined u/s 2(s) of the I. D. Act, 1947 depends upon his predominant nature of duties performed by him at the time of termination of his services, irrespective of his designation and grades. He submits that admittedly, the Workman was designated as 'Asstt. Branch Manager' at Margao Branch of the Employer at the time of his transfer order dated 24-03-1999. He submitted that as an 'Asstt. Branch Manager' of the Employer, the Workman was predominantly performing the duties of clerical and manual in nature such as preparation of bills, parcel booking deliveries, helping for loading-unloading, maintaining the delivery registers, booking register etc. He submitted that neither he was leave sanctioning authority of the other Workmen nor he was performing the work of supervisory nature. He submitted that the witness of the Employer, Shri M. P. Pavitrans during the course of his cross-examination clearly deposed that "It is true that it is the duty of the 'Asstt. Branch Manager' to carry out all the necessary work such as clerical duties, visiting the customer's office, taking the orders of the customers of the Party-II". He therefore submitted that the aforesaid duties performed by the Workman as an 'Asstt. Branch Manager' of the Employer at Margao Branch are manual and clerical in nature and as such the Party-I is a "Workman" within the meaning of Sec. 2(s) of the I. D. Act, 1947. In support of his aforesaid contention, Ld. Adv. Shri S. Gaonkar relied upon following decisions:

1. In the case of **P.C.G. Roy v/s National Commission for SC & ST**, reported in **CDJ 1999 APHS 585** of Hon'ble High Court of Andhra Pradesh.
2. In the case of **Burma-shell on Storage and distributing company of India Ltd., Madras v/s Labour Appellate Tribunal of India and 2 Ors.** reported in **1984 2 LLJ 155** of Hon'ble High Court of Madras.
3. In the case of **Delhi Consumer Co-op. wholesale and store Ltd. v/s S. L. Thakural & Ors.** reported in **1999 LLR 644** of Hon'ble High Court of Delhi.
4. In the case of **Indian Farmers Fertilizers Co-op. Ltd. New Delhi v/s P. O. Labour Court, Chandigarh and Anr.** reported in **2000 II-LLJ 90**, of Hon'ble High Court of Punjab & Haryana.
5. In the case of **Sunita B. Vatsaraj v/s Karnataka Bank Ltd. and Anr** reported in

1999 LLR 7 of Hon'ble High Court of Bombay.

6. In the case of **Operative Bank Ltd. v/s Punjab Co- R. D. Bahatia (Dead) through L. Rs.** Reported in **CDJ 1975 SC 285** of Hon'ble Supreme Court of India.
7. In the case of **National Engineering Industries Ltd. v/s Kishan Bhageria** reported in **AIR 1988 SC 329**, of Hon'ble Supreme Court of India.

9. On the contrary, Ld. Adv. Shri F. T. Rebello representing the Employer, during the course of his oral arguments submitted that the Party I was designated as 'Asstt. Branch Manager' at its Margao Branch at the time of his transfer order dated 24-03-1999, which post was administrative and managerial in nature. He submitted that being the 'Asstt. Branch Manager' of the Employer, the Party I was predominantly performing the duties such as dealing with cash, salary of the staff, bringing in fresh business and submitting status report to its Head Office. He submitted that the Party I was also required to act as a 'Manager' in the absence of regular Manager and performed the duties and responsibilities of the Manager. He therefore submitted that the Party I is not a "Workman" within the meaning of Sec. 2(s) of the I. D. Act, 1947. He relied upon a decision of Hon'ble Supreme Court of India in the case of **C. Gupta v/s Glaxo Smithkline Pharmaceuticals Ltd.** reported in **2007(4) Supreme 646** in support of his oral contention.

I have carefully perused the records of the present case. I have also considered the various oral submissions made by the Ld. Advocates for the respective Parties.

10. In the case of **Burmashell Oil Storage and distributing company of India Ltd., Madras v/s Labour Appellate Tribunal of India and 2 Ors.** reported in **1984 2 LLJ 155**, the Hon'ble High Court of Madras has held that "the Respondent was designated as "Depot Superintendent" and "Asstt. Depot Superintendent" employed by an oil distributing and marketing company who were responsible for stock receipts, storage and issue of stocks and also for compiling the companies standard forms and returns must be held to be "Workmen" within the meaning of Sec. 2(s) of the I. D. Act as this duties are clerical in substance. Where they have no powers to punish clerks and have no initiatives and they have to work under instructions from the Branch Office, it must be held that the Work (duties) of the Depot Superintendents

and Asstt. Depot Superintendents is merely clerical in nature i.e. carrying out the instructions of the head or branch office. A managerial or supervisory functions involves some degree of initiative and independent work and in absence of such powers or duties, they must be held to be Workmen within the meaning of the Act".

11. In the case of **Delhi Consumer Co-op. wholesale and store Ltd. v/s S. L. Thakural & Ors.** reported in **1999 LLR 644**, the Hon'ble High Court of Delhi has held that "it is not disputed as could be seen from the discussions by the Labour Court that Shri S. L. Thakural was in-charge of sales section and was interested with duty of a salesman. There is no hesitation in upholding the view taken by the Labour Court that he is a "Workman" within the meaning of Sec. 2 (s) of the Act".

12. In the case of **Indian Farmers Fertilizers Co-op. Ltd. New Delhi v/s P. O. Labour Court, Chandigarh and Anr.** reported in **2000 II-LLJ 90**, the Hon'ble High Court of Punjab and Haryana has held that "a salesman is a 'Workman' under the Act by observing that the job of the Respondent No. 2 is neither supervisory nor purely clerical not purely managerial".

13. In the case of **National Engineering Industries Ltd. v/s Kishan Bhageria and Ors.** reported in **AIR 1988 SC 329**, the Hon'ble Supreme Court of India has held that "where the Employee was working under Company and as an Internal Auditor on a monthly salary and his duties were mainly reporting and checking up on behalf of Management but he had no independent right or authority to take decision and his decisions did not bind the Company, the Employee would be a 'Workman' within the meaning of Sec. 2 (s) and not supervisor. A Checker on behalf of the Management or Employer is not a supervisor. The conclusion as to, by the High Court on appreciation of the evidence on record could not be interfered with under Article 136 of constitution.

14. In the case of **Sunita B. Vatsaraj v/s Karnataka Bank Ltd. and Anr.** reported in **1999 LLR 7**, the Hon'ble High Court of Bombay has held that the Petitioner, though designated as an Officer and entrusted with various power as per the Power of Attorney, was in fact left to the situation of carrying out work of clerical nature, no doubt, including the checking up of the work done by the other workers in her own section. On the basis of the material on record both oral and documentary, the Industrial Tribunal had totally misdirected

itself in appreciating the evidence and hence the award cannot be sustained, hence is set aside. The Petitioner is to be a 'Workman' and the Tribunal is, therefore directed to hear the reference and proceed further with in accordance with law".

15. In the case of **Operative Bank Ltd. v/s Punjab Co- R. D. Bahatia (Dead) through L. Rs. Reported in CDJ 1975 SC 285**, the Hon'ble Supreme Court of India has held that "the Respondent was designated as an Accountant used to sign the salary bills of the staffs including himself. The said duties were held to be a clerical and as such the Respondent is a 'Workman' within the meaning of the said Act".

16. In the case of **C. Gupta v/s Glaxo Smithkline Pharmaceuticals Ltd.** reported in **2007 (4) Supreme 646**, before the Hon'ble Supreme Court of India, the Appellant was designated as Industrial Relations Executive in Management Staff in Grade II-A and was performing the duties such as to represent the Company in the conciliation proceedings, before Government authorities under the Factories Act, ESI Act, PF Act, Contract Labour (Regulation and Abolition) Act, to represent the enquiries, to guide and advise the management's representative in domestic enquiries, to advise him about the line of cross-examination in such enquiries, advise about the quantum of punishment to be inflicted in disciplinary proceedings, to give advice on queries raised by the Management pertaining to the interpretation of statutes or settlements with the Unions or regarding the enquiries raised by the Government authorities to brief witnesses, to prepare drafts for the perusal of counsel, to brief counsel on facts as well as law to be present in Court when the arguments were taking in judicial matters related to the Company, to keep in touch with the latest case laws and amendments to the labour legislations to ensure that the Management fulfilled its obligations under the labour legislations and to advise the Management on provisions of settlements etc. the Hon'ble Apex Court has held that "the Appellant is not a 'Workman' within the meaning of the said Act".

17. Thus, the position immmerges from the above referred decisions relied upon by the Parties is that whether a particular employee is a Workman or not, depends upon his primary and basic nature of his duties and responsibilities in which post he was working at the time of his termination/transfer of service, irrespective of his designation and grades. Therefore, it is necessary to see the primary and basic nature of duties performed by the

Party I while working as 'Asstt. Branch Manager' at Margao branch of the Employer.

18. It is the Party I who has contended that he was performing the duties of clerical and manual in nature as an 'Asstt. Branch Manager' of the Party II. The burden to prove the aforesaid contention is on him. The Party I in order to prove his case has examined himself.

19. Admittedly, the Party I was designated as 'Asstt. Branch Manager' at Margao Branch of the Party II. The oral evidence of the Party I on record indicates that being the 'Asstt. Branch Manager', of the Party II, he was predominantly performing the clerical duties such as filling of Form No. I (details regarding the goods which were to be dispatched by the Party II), Form No. II (Dispatch sheet containing details regarding all the goods which were to be loaded in a lorry), Form No. III (delivery collection statement containing details regarding the goods which were to be delivered to the parties), preparing the bills and handover to the parties, preparing cash receipts and to do other work as per the instructions of the Manager, to go to the godown for giving the delivery of the goods to the parties, to receive the goods and prepare the bills etc. The aforesaid duties and responsibilities deposed by the Party I has not been denied by the Employer during the course of its cross-examination nor could produced on record any contrary evidence. Hence, it is proved that the Party I was performing the aforesaid duties. In his cross-examination, the Workman deposed that at Margao Branch, it is the duty of the Manager to contact the Party and collect the cash. He deposed that the Asstt. Branch Manager at Ponda Branch is doing the work of going to the factory, collecting cash, enquiring about the consignment received and to be dispatched at the factory. He denied that the work of the Asstt. Manager is the same as that of at Ponda Branch.

20. On the contrary, the Employer's first witness, Shri M. Babu in his affidavitary evidence deposed that the function of the 'Asstt. Branch Manager' was also to function as a 'Manager' in the absence of 'Regular Manager' and when on leave. He deposed that being the 'Asstt. Branch Manager', the Party I has to deal with cash, salary of the staff, to bring him fresh business and to submit the status to the Head Office. In his cross examination, he deposed that no written communication were given to the Employees mentioning their particular jobs specification by the Employer, but the Branch Manager gives the oral instructions to all the employees regarding their job specifications. He

admits that the status of salary staff, cash, to bring fresh business has to be submitted in writing to the Head Office. He deposed that no authorization or power of attorney was given by the Employer to its Workmen designated as 'Asstt. Branch Manager'. He deposed that when there is a Branch Manager, the Employer does not authorize the Asstt. Branch Manager to perform any bank transaction. He deposed that the Party I has not sanctioned any kind of leave of the Workmen working under him while in the employment of the Party II, but the leave of the Workmen are being sanctioned through its regional office.

21. The Employer's second witness, Shri M. P. Pavithran in his cross-examination deposed that the Branch Manager of the Employer is only authorized to deal with the banking transaction as well as transport business on his behalf. He further admits that it is the power of the Branch Manager to issue memo and show cause notice to the sub-ordinate staff of the Party II in respect of the minor misconduct and the Officers at the head office are issuing memos, show cause notice etc. for the serious misconduct by its employees. He also admits that it is the duty of the 'Asstt. Branch Manager' to carry out all the necessary work such as clerical duties, visiting the customer's office, taking the orders of the customers of the Party II etc. He further deposed that it is also the duty of the 'Asstt. Branch Manager' to perform the duty of the 'Branch Manager' and also of the peon depending upon the work.

22. The Employer's first witness, Shri M. Babu, Circle Manager, Goa Area in his examination-in-chief deposed that the Party I was dealing with cash, salary of the staff, to bring him fresh business and to submit the status to the Head Office. The said Employer's witness during the course of his cross-examination deposed that the Party II maintains the records of all its transactions, however he could not produce the same for the reason best known to him nor any justifications was given by him for non-production of the same. Hence, an adverse inference is drawn against him. The Employer's second witness, during the course of his cross-examination clearly admits that the Branch Manager of the Employer is only authorized to deal with the banking transaction as well as transport business on its behalf. Thus, the statement of the Employer's first witness, Shri M. Babu that the Party I used to deal with cash, salary of the staff, to bring him fresh business and to submit the status to the Head Office etc. is without any basis and hence appears to be fictitious.

23. Thus, from the aforesaid oral as well as documentary evidence adduced by both the parties before me, it appears that the Party I was designated as 'Asstt. Branch Manager' and posted at its Margao Branch at the time of his transfer order dated 24-03-1999. The evidence on record indicates that the Party I was predominantly performing the duties of manual and clerical in nature such as filling of Form No. I (details regarding the goods which were to be dispatched by the Party II), Form No. II (Dispatch sheet containing details regarding all the goods which were to be loaded in a lorry), Form No. III (delivery collection statement containing details regarding the goods which were to be delivered to the parties), preparing the bills and handover to the parties, preparing cash receipts and to do other work as per the instructions of the Manager, to go to the godown for giving the delivery of the goods to the parties, to receive the goods and prepare the bills etc. The Party I was not having any power to issue memos or show cause notice etc. even for minor misconducts to its sub-ordinate staff of the Employer. The evidence on record also indicates that the Party I was not the leave sanctioning authority of any of the Workmen working with the Employer. Thus, the aforesaid predominant duties and responsibilities attached to the post designated as 'Asstt. Branch Manager' which post the Party I was performing at the time of his transfer order dated 24-03-1999, were manual and clerical in nature and hence the Party I squarely falls within the meaning of expression "Workman" defined u/s 2(s) of the I. D. Act, 1947. The Issue No. 1 is therefore answered in the affirmative.

Issue No. 2 & 3 :

I have heard the arguments of Ld. advocates appearing for the respective parties.

24. Ld. Adv. Shri S. Gaonkar, representing the Workman during the course of his oral arguments submitted that the Workman was working as 'Asstt. Branch Manager' at Margao Branch of the Employer w.e.f. 27-10-1998 and prior to that he was working at their Ponda Branch in the similar post. He submitted that the Workman was again transferred and posted as 'Business Executive' at the Belgaum Office of the Employer vide letter of the Employer dated 24-03-1999. He submitted that the aforesaid transfer of the Workman from Margao Branch of the Employer to Belgaum Office was effected within a period of six months from his earlier transfer only to victimize him. He submitted that at the time of his transfer, the Workman was suffering from spinal cord pain and was taking

medical treatment in PHC, Marcaim. He submitted that the Workman was transferred to Belgaum as he was not having good terms with the Area Manager. He submitted that at the time of transfer of the Workman, his children were studying in School in Goa and as such he could not be able to shift his family due to education of his children and also on account of his meager salary. He submitted that the duties attached to the post of 'Asstt. Branch Manager' and that of 'Business Executive' are totally different. He submitted that the post designated as 'Asstt. Branch Manager' is lower in hierarchy than the post designated as 'Business Executive'. He therefore submitted that his so called transfer to Belgaum as 'Business Executive' from the 'Asstt. Branch Manager' is illegal, unjustified and amounts to change in service conditions of the Workman. He submitted that the so called transfer from Margao to Belgaum is also malafide affected only to harass and victimize the poor Workman. He submitted that the Employer cannot transfer its employee's interstate as there is no transfer policy available with the Employer. He relied upon the following decisions of various High Courts and Hon'ble Supreme Court of India.

- “1. In the case of **Birendra Kumar Singh v/s Union of India and Ors.** reported in **2002 LLR 1196** of Hon'ble High Court of Calcutta.
2. In the case of **P. C. G. Roy v/s National Commission For SC & ST** reported in **CDJ 1999 APHC 585** of Hon'ble High Court of Andhra Pradesh.
3. In the case of **S. C. Duggal v/s Department of Personnel, Union Bank of India, Bombay and Ors.** reported in **1996 LLR 792** of Hon'ble High Court of Allahabad.
4. In the case of **Shrinivasan C. N. v/s Bharat Heavy Electricals Ltd. and Ors.** reported in **2000-III LLJ 1592** of Hon'ble High Court of Andhra Pradesh.
5. In the case of **State of Punjab and Ors. v/s Joginder Singh Dhatt** reported in **AIR 1993 SC 2486** of Hon'ble Supreme Court of India.
6. In the case of **Cipla Ltd. v/s Jayakumar R.** reported in **1999 (1) SCC 300** of Hon'ble High Court of Bombay.

25. On the contrary, Ld. Adv. Shri F. T. Rebello representing the Employer during the course of his oral arguments submitted that the Party I was issued an appointment letter dated 27-09-1977 (Exb. E/1) at the time of his initial appointment as 'Clerk'

w.e.f. 01-10-1977 on certain terms and conditions. He submitted that the Party I has signed the said appointment letter issued to him of having accepted the terms and conditions specified in the said appointment letter. He submitted that as per Clause 4 of the said appointment letter issued to the Party I the services of the Party I are liable to be transferred to any other branch of the Company if so required by the Company, under the same terms and conditions stated therein. He therefore submitted that the Employer has right to transfer the service of the Party I to any of its branch in view of Clause 4 of the said appointment letter issued to the Party I. He submitted that transfer of the Party I to the Belgaum Office of the Employer as a 'Business Executive' is a routine transfer and there is no special treatment or malafidness or any kind of victimization on the part of the Employer. He submitted that the Party I refused to join his place of transfer at Belgaum on the alleged medical ground is fictitious. He submitted that the Party I at no point of time informed the Employer prior to his transfer at Belgaum about his alleged sickness of spinal cord. He therefore submitted that the transfer of the Party I from Margao Branch to Belgaum Office of the Party II is therefore perfectly legal and justified.

He relied upon the following two decisions of Hon'ble High Court of Bombay in support of his oral arguments:

1. In the case of **M. S. E. D. Kamgar Sena and Anr. v/s Managing Director and Ors.** reported in **2008 (supp) BOM. C. R. 712.**
2. In the case of **Cosmo Films Ltd. V/s Sunil Vasudeorao Deshmukh** reported in **2002 (4) MHLJ 709** of Hon'ble High Court of Bombay.

I have carefully perused the records of the present case. I have also considered the various oral submissions made by the Ld. Advocates for the respective parties.

26. In the case of **Birendra Kumar Singh v/s Union of India and Ors.** reported in **2002 LLR 1196**, before the Hon'ble High Court of Calcutta, the Petitioner has challenged the order of transfer dated 06-12-2001 on the grounds of malafide. The Respondent contended that the order of transfer was issued due to administrative exigency. The Hon'ble Court has held that "transferring of an employee from one place to another is prerogative of the Employer, but it should not be actuated with malafide. When the transfer of an employee is challenged by an employee, the Court can pierce the veil to discover whether the transfer is bonafide

or not. The Court further held that the order of transfer was not oriented by any administrative exigency or reason by observing the affidavit in opposition has not satisfactorily explained any such reasons for which such order of transfer was issued and therefore the said impugned order of transfer dated 06-12-2001 cannot be sustained and liable to be quashed".

27. In the case of **Cosmo Films Ltd. v/s Sunil Vasudeorao Deshmukh** reported in **2002 (4) MHLJ 709**, before the Hon'ble High Court of Bombay, there was a complaint of unfair labour practice of transferring the Respondent from Chikalthana Plant to Bombay Head Office under the transfer order dated 02-03-2000. The Respondent challenged his transferred order by contending that the action of transfer is malafide and has been taken to harass him and to compel him to withdraw the earlier complaint filed by him against the petition. The Petitioner contended that the transfer of the Respondent to Bombay is purely on administrative grounds and in terms of the contract of employment between the parties. The Hon'ble High Court of Bombay has ruled that "it is well established that when the transfer order, on the face of it, discloses that it is for the administrative exigencies, then unless it is established by cogent evidence on the part of the person accusing the employer of having adopted unfair labour practice in the matter of transfer, there cannot be any conclusion or inference against the contention of the employer that the transfer is for administrative exigencies".

28. In the case of **P. C. G. Roy v/s National Commission for SC & ST** reported in **CDJ 1999 APHC 585**, before the Hon'ble High Court of Andhra Pradesh, the Petitioner who was working as Dy. Manager (Marketing), has been transferred without giving any reasons or notice to Mechanical Section of the Respondent. The Petitioner challenged his transfer from the post of Dy. Manager (Marketing) to Mechanical is illegal, biased, and prejudicial for various reasons. The Respondent contended that both the post are in one organization and they are equal in status and that it is permissible to transfer him from one post to another post or one shift to another shift as per clause 7 of the appointment order and that his promotional chances are in no way affected. The Hon'ble Court has held that "when the posts are not inter se transferable it is well settled that a person holding one post cannot be transferred to the other post and vice-versa or inter-changeable for effecting transfer of an employee holding one such post to the other".

29. In the case of **S. C. Duggal v/s Department of Personnel, Union Bank of India, Bombay and Ors.** reported in **1996 LLR 792**, the Hon'ble High Court of Allahabad has held that "there is nothing in the order to indicate that exigencies of service were so urgent that it is not possible even to postpone the transfer till June, 1996. In fact grievances of the Petitioner contained in his representation have been brushed aside merely on the ground that they are of personal nature. This cannot be done. Even the grievances of personal nature are to be taken into consideration while deciding the representation".

30. In the case of **Shrinivasan C. N. v/s Bharat Heavy Electricals Ltd. and Ors.** reported in **2000-III LLJ 1592**, the Hon'ble High Court of Andhra Pradesh has held that (the standard of proof to establish malafides (in the employer's order of transfer challenged) in a Writ application was not proof to the hilt, but at the same time, there must be a clear proof of the facts pleaded in support of the plea of malafides. Further, the proved facts must be such that an inference of bad faith or mala fides is inescapable".

31. In the case of **State of Punjab and Ors. v/s Joginder Singh Dhatt** reported in **AIR 1993 SC 2486**, before the Hon'ble Supreme Court of India, "the Respondent who was working as Superintendent Grade-II in the service of the Petitioner was transferred from Hoshiarpur to Sangrur purely on administrative grounds. The Hon'ble Apex Court has held "*that it is entirely for the employer to decide when, where and at what point of time a public servant is transferred from his present posting. Ordinarily the Courts have no Jurisdictions to interfere with the order of transfer. The High Court grossly erred in quashing the order of transfer of the respondent from Hoshiarpur to Sangrur*".

32. In the case of **Cipla Ltd. V/s Jayakumar R.** reported in **1999 (1) SCC 300** the Hon'ble Supreme Court of India has held that "*there was no averment in the pleading before the High Court to this effect and nor is there any averment even in the complaint contained in the application under Section 33-A which was filed by the respondent. It was for the respondent to state in the said application that he was the a member of the managing committee or was involved with the trade Union activities and that his transfer was for malafide reason and amounted to unfair labour practice. In the plaint except for general submission that the respondent was resorting to unfair labour practice and malafides, there was no specific averment that the*

orders of transfer passed in respect of the respondent was for any malafide reason or that he was closely connected with or was an office bearer of the trade Union".

33. In the case of **M. S. E. D. Kamgar Sena and Anr. v/s Managing Director and Ors.** reported in **2008 (supp) BOM. C. R. 712**, the Hon'ble Supreme Court of India has held that "*(so far allegation of victimization petitioner 2 testimony is devoid of any substance and he failed to prove he was victimize on account of complaints submitted by him. Allegations are without support of evidence. Transfer impugned cannot be blamed to adversely affect conditions of service. Order of transfer is liable to be regarded as administrative action. Judgment impugned cannot be faulted. Petitioner 2 has fought case with urge and vigor will not fill in gaps of evidence*".

34. Thus, the position emerge from the above referred decisions are that it is the prerogative of the Employer as to when, where and at what point of time an employee is to be transferred and ordinarily the Courts have no jurisdiction to interfere with the said order of transfer unless it is actuated by malafide, unfair labour practice and victimization. It is also clear from the above referred decisions that the transfer shall be in the equivalent post and inter se transferrable. No doubt it is well settled principles of law that the standard of proof required to establish the plea of malafide is preponderance of probabilities and not to the hilt or beyond any reasonable doubt.

35. It appears from the pleadings and the material evidence adduced by both the parties on record that the Employer is a Company involved in the business of transporting goods, having its branches in various states in India. The Workman contended that he was initially appointed as a 'Clerk' from 27-12-1975 at Ponda Branch of the Employer. The Workman has however failed to produce on record any material evidence to show that he was appointed as 'Clerk' w. e. f. 27-12-1975, though the said date of appointment was disputed by the Employer. On the contrary, the Employer has produced the initial appointment order dated 27-09-1977 issued to the Workman which is on record at Exb. E/1 in support of its oral evidence. The said appointment order at Exb. E/1 issued and signed by the Workman clearly shows that the Workman was initially appointed as a 'Clerk' at its Ponda Branch w. e. f. 01-10-1977 and not from 27-12-1975 as alleged by the Workman. Thus, it is held that the Workman was initially appointed as 'Clerk' w. e. f. 01-10-1977 at Ponda Branch on such

terms and conditions specifically mentioned in the said appointment order at Exb. E/1.

36. The oral evidence adduced by the Workman on record indicates that the Workman has worked at Ponda Branch of the Employer from its initial appointment till about 1986. The evidence on record further indicates that the Workman was thereafter transferred to Margao-Goa Branch of the Employer vide transfer letter dated 27-10-1998 which is on record at Exb. W/1. The evidence on record indicates that though the Workman was designated as 'Asstt. Branch Manager', he was doing the work of clerk. The evidence on record further indicates that the Workman was issued another transfer order dated 24-03-1999 (Exb. W/2) thereby transferring his service at Belgaum Office of the Employer. The evidence on record further indicates that by the said transfer letter dated 24-03-1999, which is on record at Exb. W/2, the Workman was transferred to Belgaum Office and posted as 'Business Executive' and further directed to report before the Branch Manager at Belgaum on or before 14-04-1999 and also directed to attend the business promotional matter of Belgaum and surrounding areas. The Workman after receiving the aforesaid transfer order dated 24-03-1999 at Exb. W/2 did not report to his place of transfer as per Exb. W /2 however, went on sick leave till he raised an objection vide letters dated 02-07-1999 & 15-07-1999 which are on record at Exb. W/8-Colly stating that he is not accepting his promotional post of 'Business Executive' on account of his medical ground as well as children's education in Goa. The Manager (Personnel) of the Employer vide its letter dated 03-08-1999 addressed to the Workman (Exb. W/9) replied to the letter of the Workman dated 15-07-1999 (Exb. W/8-Colly) by stating that it is the right of the Employer to transfer the staff and promote them according to administrative exigencies and job requirements. The said Manager (Personnel) of the Employer further stated that the Workman has been transferred and posted as 'Business Executive' which post is equivalent to that of 'Asstt. Branch Manager' and as such no prejudice will be caused to the Workman. The evidence on record further indicates that the Workman vide his letter dated 14-08-1999 which is on record at Exb. W/10 informed the Employer that as he is sick, the work of 'Business Executive' would be difficult for him and also contended that his aforesaid transfer to Belgaum is malafide and effected with sole intention to harass him.

37. The Workman contended that his aforesaid transfer is malafide, illegal and unjustified as firstly

the Employer has no right to transfer him inter-state i.e. from one state to another. The Workman has however failed to produce on record any material evidence to substantiate his statement that the Employer has no right to transfer him from one State to another State. On the contrary, the Employer has produced on record the appointment order at Exb. E/1 issued to him at the time of his joining. The Clause 4 of the said appointment order issued to the Workman which is on record at Exb. E/1 clearly states that the services of the Workman are liable to be transferred to any other Branch of the Company if so required by the Company, under the same terms and conditions therein contained. The Workman has signed the said appointment order at Exb. E/1 after having agreed to the said terms and conditions stated therein. The Workman having accepted the said terms and conditions specified in the said appointment order issued to him, cannot turn round and alleged that his service is not transferrable. It is therefore held that the contract of employment signed by the Workman empowered the Employer to transfer his service to any of its branches which includes inter-state transfer.

38. Undisputedly, the Workman was designated as 'Asstt. Branch Manager' at Margao Branch of the Employer at the time of effecting the transfer order dated 24-03-1999. The Employer vide its transfer order dated 24-03-1999 transferred the Workman and posted as 'Business Executive' at its Belgaum Branch. The Workman was further directed to report the Branch Manager at Belgaum on or before 14-04-1999 and also to attend the business promotional matter of Belgaum and surrounding areas. The Employer in reply to the Workman's various letters especially letter dated 22-06-1999 (Exb. W/7) and letter dated 03-08-1999 (Exb. W/9) addressed to him alleged that he has been transferred and posted as 'Business Executive' at Belgaum, which post is equivalent to that of 'Asstt. Branch Manager' and as such no prejudice would be caused to him. The Employer in the written statement filed in the present proceedings contended that the said transfer of the Workman at its Belgaum Branch as 'Business Executive' arose on account of vacancy at Belgaum and the Workman was found to be suitable for the said post. The Employer however, for the first time in the Affidavit-in-Evidence of its first witness and the Circle Manager for Goa Area Shri M. Babu, deposed that the Workman hereinabove was found suitable for the post of 'Business Executive' at Belgaum and was accordingly **promoted** and transferred to the said post. The aforesaid stand

taken by the Employer is quite different from its earlier stand. The said witness of the Employer in his cross-examination deposed that at the time of promotion of an employee, such employee is issued letter of promotion. He further deposed that in the promotion letter only the designation is mentioned and the salary and other things are not mentioned. He further deposed that he was not aware as to why the said transfer order was issued to the Workman. He admits that the post designated as 'Branch Manager' is promoted as 'Business Executive'. He also deposed that the 'Asstt. Branch Manager' is also promoted to the post of 'Business Executive'. He also admits that the duties as well as the service conditions applicable to the post designated as 'Asstt. Branch Manager' and 'Business Executive' are different than each other. He also admits that the 'Business Executive' has to travel from one place to another, however the 'Asstt. Branch Manager' has to work in particular branch only. The aforesaid statement of the Employer's witness namely Shri M. Babu clearly inferred that the transfer of the Workman was affected on account of his promotion to the post of 'Business Executive' from the 'Asstt. Branch Manager' as he was found to be suitable for the said post. The aforesaid statement of the said witness of the Employer further disclosed that though the Workman was promoted to the post of 'Business Executive', he was not issued any letter to that effect stating that he has been promoted to the said post of 'Business Executive' though there is practice of issuing promotion letter specifying the designation in which post he was promoted. The Employer has failed to give any proper and satisfactory justification for not issuing any promotion letter to the Workman thereby giving opportunity to him to accept/reject the said promotional post of 'Business Executive'. The Workman was also not made aware of the duties and responsibilities and other terms of his new posting as 'Business Executive'. On the contrary, the Workman was forced to accept the new posting as 'Business Executive' in the garb of transfer by alleging that no prejudice would be caused to him as he was transferred in the equivalent post of 'Asstt. Branch Manager'.

39. The Workman contended that his alleged transfer to Belgaum as 'Business Executive' amounts to change in service conditions. Sec. 9-A of the I. D. Act relates to the change in service condition of any of the Workman and it reads as under:

9-A Notice of change:- No Employer, who proposes to effect any change in the conditions of

service applicable to any Workman in respect of any matter specified in the Fourth Schedule, shall effect such change-

(a) Without giving to the Workmen likely to be affected by such change a notice in the prescribed manner of the nature of the change proposed to be effected; or

(b) Within twenty one days of giving such notice:

Provided that no notice shall be required for effecting any such change.

(a) Where the change is effected in pursuance of any settlement or award, or

(b) Where the Workman likely to be affected by the change are persons to whom the Fundamentals and Supplementary Rules, Civil Services (Classification, Control & Appeal) Rules, Civil Services, (Temporary Service) Rules, Revised Leave Rules, Civil Service Regulations, Civilians in Defence Service (Classification, Control and Appeal) Rules or the Indian Railway Establishment Code or any other rules or regulations that may be notified in this behalf by the appropriate Government in the Official Gazette, apply.

40. In the case in hand, undisputedly, the Workman was designated as 'Asstt. Branch Manager' at the Margao Branch of the Employer at the relevant time when the Order of transfer dated 24-03-1999 was issued to him. By the said transfer order dated 24-03-1999, the Workman was posted as 'Business Executive' and transferred to its Belgaum Office from Margao Branch of the Employer. The evidence on record indicates that the duties attached to the post designated as 'Asstt. Branch Manager' and the post designated as 'Business Executive' are totally different from each other. The evidence on record further indicates that the main duties of the post designated as 'Business Executive' is that he has to travel from one place to another for promotion of the business. However, the 'Asstt. Branch Manager' can perform his duties in a particular branch only. The evidence on record indicates that no notice of change in service conditions as required in sub-clause a & b of Sec. 9-A of the Act has been given to the Workman before issuing him the said transfer order dated 24-03-1999 nor it is the case of the Employer that the notice as required in sub-clause a & b of Sec. 9-A of the Act in pursuance of the any settlement or award or the said change in conditions of service in view of the applicability of

the Fundamentals and Supplementary Rules, Civil Services (Classification, Control & Appeal) Rules, Civil Services, (Temporary Service) Rules, Revised Leave Rules, Civil Service Regulations, Civilians in Defence Service (Classification, Control and Appeal) Rules or the Indian Railway Establishment Code or any other rules or regulations that may be notified in this behalf by the appropriate Government in the Official Gazette. Thus, the action of the Employer in transferring the services of the Workman at its Belgaum Branch as 'Business Executive' is in violation of Sec. 9-A of the I. D. Act, 1947.

41. Secondly, on perusal of the said transfer order dated 24-03-1999 issued to the Workman does not indicate the terms of transfer if any. The evidence on record indicates that the transfer of Workman from the post designated as 'Asstt. Branch Manager' at its Margao Branch to the Belgaum Office of the Employer as 'Business Executive' is not in the equivalent post. No material has been produced before the Court to show that the Workman would be entitled for transfer allowance, transfer grant etc. which would enable him to defray the expenses relating to the shifting of his luggage and household effect to the new place of transfer. In the circumstances, it appears that the Workman would have to bear the expenses on account of his transfer to Belgaum. To expect the Workman to bear the financial burden arising out of the unilateral decision of the management to transfer him to another location would amount to imposing an unfair financial burden/penalty. It is second from the records that the Workman has made allegations against the Employer that his transfer to Belgaum is malafide and to cover imposed punishment on him in the garb of transfer. Having examined the entire circumstance of the case, I have also noticed that the Employer has not cited any exigencies of pressing, urgency to transfer the Workman. Thus, I am inclined to hold that the said transfer order dated 24-03-1999 issued to the Workman is illegal and unjustified. The action of the Employer in transferring the services of the Workman is also malafide. The Issue Nos. 2 & 3 are therefore answered in the affirmative.

Issued No. 4.

42. While deciding the issue No. 2 & 3 herein above, I have discussed and come to the conclusion that the action of the Employer in transferring the Workman from Margao to Belgaum Branch is malafide, illegal and unjustified. The evidence on record indicates that the workman has refused to join his place of transfer i.e. at Belgaum Office of

the Employer as 'Business Executive'. The evidence on record also indicates that the Workman was designated as 'Asst. Branch Manager' at Margao at the time of his effecting transfer order dated 24-03-1999. The evidence on record indicates that the Workman was not allowed to report at the Margao Branch of the Employer after he was transferred to Belgaum as 'Business Executive' since it has been held by me that the transfer order dated 24-03-1999 is illegal and justified the Workman is therefore entitled to report at Margao Branch of the Employer as 'Asst. Branch Manager' in which post he was working at the time of his transfer. The evidence on record indicates that the Workman is having various business activities such as tailoring shop as well as readymade garment shop at Ponda which are being run by his brother and wife respectively. The workman is therefore not entitled for any back wages.

In the circumstance I pass the following order.

ORDER

1. It is held that the Workman Shri C. Krishna Unni, 'Asst. Branch Manager' is a "Workman" within the meaning of Section 2(s) of the Industrial Disputes Act, (Central Act 14 of 1947).
2. It is further held that the action of the Management of M/s. Kerala Transport Company in transferring the Workman, Shri C. Krishna Unni is malafide, illegal and unjustified.
3. The Employer M/s. Kerala Transport Company is therefore directed to allow the Workman, Shri C. Krishna Unni, the Asst. Branch Manager to join the duties at its Margao Branch with continuity in service in which post he was working at the time of his transfer to Belgaum with immediate effect.
4. No order as to cost.
5. Inform the Government accordingly.

Suresh N. Narulkar,
Presiding Officer,
Labour Court-II .

Notification

No. 28/1/2012-LAB

The following award passed by the Industrial Tribunal and Labour Court-II, at Panaji-Goa on 15-03-2012 in reference No. IT/26/2010 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.

Hanumant T. Toraskar, Under Secretary (Labour).
Porvorim, 17th March, 2012.

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

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

(Ref. No. IT/26/2010)

Shri Albano Fernandes & 30 others,
Rep. by the General Secretary,
G-5, Macedo Apartment,
Tisk, Ponda, Goa. ... Workmen/Party I

V/s

M/s. Jupiter Luxury Resort & Spa,
Benaullim, Goa.

Postal

Address : Mis Jupiter
Business &
Luxury Hotel,
Mumbai Agra
Highway,
Pathard Phate,
Nasik -420009. ... Employer/Party II

Workmen/Party I rep. by Shri P. Gaonkar.

Proceedings ex-parte against Party II.

Award

(Passed on 15th day of March, 2012)

The brief facts necessary to decide the reference are as under:

Party II M/s. Jupiter Luxury Resort and Spa is a part of Meuse Hospitality and Hotels Pvt. Ltd., having its head office in Singapore and corporate office in Mumbai. The 31 workmen mentioned in the reference have claimed to have joined Party II at different times and in different capacities. Since Party II abandoned the said hotel without informing the Workmen and also did not pay their wages, the Workmen approached the labour authorities and then through their Union raised the dispute, which is referred for adjudication by the Government of Goa in exercise of the powers conferred by clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 to this Tribunal. The schedule of the reference is as under:

"1. Whether the action of the management of M/s. Jupiter Luxury Resort and Spa, Benaullim, Goa in refusing employment to the following 31 Workmen, is legal and justified?

2. If not, to what relief the Workmen are entitled?"

2. The names of the 31 Workmen are as under:

- | | |
|-------------------------------|------------------------------|
| 1. Shri Albano Fernandes | Assistant Store Keeper. |
| 2. Shri Alex D'Cruz | Housekeeping Room Attendant. |
| 3. Shri Anand Roy | Demi Chef De Party. |
| 4. Shri Anand Das | Plumber. |
| 5. Ms. Anna Fernandes | Housekeeping Supervisor. |
| 6. Shri Anthony Dias | Cook. |
| 7. Shri Arun Kumar Kuilya | Air Conditioner Mechanic. |
| 8. Shri Binod Shani | Cook. |
| 9. Shri Fausto C. Fernandes | Maintenance Supervisor. |
| 10. Shri Dharmesh Vengurlekar | Housekeeping Room Attendant. |
| 11. Shri Miligres Dias | Baker. |
| 12. Shri Geneshsaw B. Pawar | Gardener. |
| 13. Shri Gurunath Rana | Senior Utility. |
| 14. Sdhri Arrya Kelageri | Painter. |
| 15. Shri Joaquim D'Costa | Telephone Mechanic. |
| 16. Shri Jose Mario Fernandes | Housekeeping Room Attendant. |
| 17. Shri Kiran Kumble | Gardener Supervisor. |
| 18. M/s. Loretta Pereira | Housekeeping Supervisor. |
| 19. Shri Louis M. Fernandes | Tailor. |
| 20. Shri M. P. Chandrashekar | Plumber. |
| 21. Ms. Maria Ciara Fernandes | Housekeeping Supervisor. |
| 22. Ms. Merylin Rana | Housekeeping Supervisor. |
| 23. Shri Nazareth Vaz | Driver. |
| 24. Ms. Nirmala Samad | Housekeeping Public Area. |

25. Ms. Pincy Fernandes	Utility.
26. Ms. Santi B. Pawar	Gardener.
27. Shri Socorro M. Fernandes	Driver.
28. Shri Sudin Kumar	Driver.
29. Ms. Vasanti Kumar Naik	Store Helper.
30. Shri Dara S. Chauhan	Gardener.
31. Shri Sanjeebhu Deo	Driver.

3. The notices of this reference was sent to both the parties pursuant to which Party I appeared, however, Party II did not appear before the Tribunal despite service of notice.

4. Party I filed the statement of claim by stating that the above Workmen have joined Party II at different times and in different capacities. That on 27-5-09 during discussions between Workmen, Party II and Deputy Labour Commissioner, Margao, Party II maintained that they were facing financial problems and therefore their establishment was not in operation w.e.f. July, 2008. The management however assured to make some part payment and also that once operations are restarted the worker shall be given first preference for employment. Since no action was not taken there upon by Party II, on 1-9-09 the Workmen through their Union raised a dispute before the Deputy Labour Commissioner pursuant to which notice were issued to both the parties for discussions but the management never attended the meetings and also did not respond to the notices. On 26-12-09 Party II wrote a letter to the Deputy Labour Commissioner stating that they wished to resolved the matter at the earliest and requested the Labour Commissioner to furnish details of the Workmen so that they could check their records. The conciliation proceedings went on but Party II never attended the same. The Deputy Labour Commissioner ended the matter in ex-parte failure on 3-5-10 and on 5-7-10 forwarded the failure report to the Government of Goa. According to Party I/Party II has violated the principles of natural justice before refusing employment to the Workmen and malafidely remained absent on every occasion before the Deputy Labour Commissioner to delay the proceedings. It is also their contention that Party II had deducted E.S.I and P.F. contributions but no benefit was given to these workers. Further it is the contention of the Party I that at the time of refusing the employment Party II did not pay the notice pay, retrenchment compensation or any legal dues and has thus violated Section 25F of the Industrial Disputes Act, 1947. Hence the application with prayer to hold the Party II in refusing employment to these workers as illegal, unjustified

and violative of principles of natural justice; to reinstate these Workmen with full back wages and continuity of service and to award the cost of the application. Alongwith the statement of claim the Party I has annexed at annexure 'A' the list of 31 Workmen with details of their designation, date of joining, salary and last paid salary.

5. Since Party II did not appear before this Tribunal despite giving opportunities, the proceedings were ordered to proceed ex-parte against Party II.

6. In the course of ex parte evidence Party I examined Shri Caitano Fausto Fernandes (Workmen at Sr. No. 9) as witness No. 1 for Party I and closed their case.

7. This witness has stated that he was employed as Maintenance Supervisor with Party II from 1-3-05 and was in continuous service till the illegal refusal of employment; that initially Party II's hotel was called "M/s. Clarion the Beach" thereafter the name was changed to "The Beach" and during the refusal of employment the hotel was named "Jupiter Luxury Resort". He has stated that in April, 2008 Party II started delaying the earned wages of the Workmen and in May, 2008 some Workmen were paid 50% of their wages and some were given the full amount and upon enquiry about the short fall in wages the Party II assured that they would pay them soon. He has stated that till May, 2008 the hotel was fully functional but from June, 2008 it was abandoned by Party II and the officers and Manager working there had left but the workers were never informed about the closure and therefore the workers had no option but to come regularly and attend the duties and till September, 2008 the Workmen have regularly gone and attended the duty but on account of no work they had to sit in the lobby. He has stated that the Workmen then approached the labour authorities and on 27-5-09 the discussions took place between the Workmen, Party II and Deputy Labour Commissioner in which the Party II maintained that they were facing financial problems. That as no action was taken by Party II the dispute was raised by their Union before Deputy Labour Commissioner but despite issuance of notices by the office of the Deputy Labour Commissioner the management did not attend the meetings. That on 5-7-10 the Deputy Labour Commissioner forwarded failure report to the Government of Goa and hence this reference.

8. The witness has produced the following documents.

Sr. No.	Document	Exhibit	1	2	3
1	2	3			
1.	Letter of Appointment of Sanjeev Deo dt. 29-01-2006 (Workman at Sr. No. 31).	Exb. 8	16.	Letter of Appointment of Mr. Irayya Kelagiri dt. 13-03-2007 (Workman at Sr. No. 14).	Exb. 23
2.	Letter of confirmation of Mr. Dara S. Chauhan dt. 01-06-2006 (Workman at Sr. No. 30).	Exb. 9	17.	Letter of confirmation of Mr. Gurunath Rane dt. 01-06-2006 (Workman at Sr. No. 13).	Exb. 24
3.	Letter of Appointment of Ms. Vasanti Kumar dt. 04-05-2007 (Workman at Sr. No. 29).	Exb. 10	18.	Letter of Appointment of Mr. Milagres Dias dt. 01-04-2007 (Workman at Sr. No. 11).	Exb. 25
4.	Letter of Appointment of Mr. Sudhir Kumar dt. 10-05-2005 (Workman at Sr. No. 28).	Exb. 11	19.	Letter of confirmation of Mr. Dharmesh Vengurlekar dt. 01-06-2006 (Workman at Sr. No. 10).	Exb. 26
5.	Letter of confirmation of Mr. Sudhir Kumar dt. 11-11-2006 (Workman at Sr. No. 28).	Exb. 12	20.	Letter of revision of salary of Mr. Caetano Fausto Fernandes dt. 30-03-2007 (Workman at Sr. No. 9).	Exb. 27
6.	Letter of Increment of Mr. Sudhir Kumar dt. 01-06-2008 (Workman at Sr. No. 28).	Exb. 13	21.	Letter of Appointment of Mr. Arun K. Kuliya, dt. 06-06-2006 (Workman at Sr. No. 7).	Exb. 28
7.	Letter of confirmation of Mr. Socorro M. Fernandes dt. 11-11-2006 (Workman at Sr. No. 27).	Exb. 14	22.	Certificate of Employment of Mr. Antonio Jose Mario Dias dt. 10-07-2008 (Workman at Sr. No. 6).	Exb. 29
8.	Letter of Appointment of Nirmala Samad dt. 25-06- 2008 (Workman at Sr. No. 24).	Exb. 15	23.	Letter of confirmation of Ms. Anna Fernandes dt. 01-06-2006 (Workman at Sr. No. 5).	Exb. 30
9.	Letter of confirmation of Mr. Nazareth F. Vaz dt. 21-11-2006 (Workman at Sr. No. 23).	Exb. 16	24.	Letter of Appointment of Mr. Anant Das dt. 27-02-2007 (Workman at Sr. No. 4).	Exb. 31
10.	Letter of Appointment of Mr. Nazareth F. Vaz dt. 01-06-2006 (Workman at Sr. No. 23).	Exb. 17	25.	Letter of confirmation of Mr. Alex D'Cruz dt. December, 2006 (Workman at Sr. No. 2).	Exb. 32
11.	Letter of revision of salary of Ms. Maria Clara Fernandes dt. 30-03-2007 (Workman at Sr. No. 21).	Exb. 18	26.	Letter of confirmation of Mr. Albano S. Fernandes dt. 13- 03-2007 (Workman at Sr. No. 1).	Exb. 33
12.	Letter of Appointment of Mr. Chandrashekar M. P dt. 17-08-2006 (Workman at Sr. No. 20).	Exb. 19	27.	Letter of confirmation of Mr. Luis Menino Fernandes dt. 01-06-2006 (Workman at Sr. No. 19).	Exb. 34
13.	Letter of Appointment of Mr. Kiran Kamble dt. 05-06-2006 (Workman at Sr. No. 17).	Exb. 20	28.	Letter of revision of salary of Mr. Shani Binod dt. 28-02-2007. (Workman at Sr. No. 8).	Exb. 35
14.	Letter of confirmation of Mr. Jose Mario Goes dt. 01-06-2006 (Workman at Sr. No. 16).	Exb. 21	29.	Letter of confirmation of Ms. Merlin Rana dt. 01-06-2006 (Workman at Sr. No. 22).	Exb. 36
15.	Letter of Appointment of Mr. Joaquim D'Costa dt. 11-11-2006 (Workman at Sr. No. 15).	Exb. 22			

1	2	3	1	2	3						
30.	Certificate of employment of Ms. Merlin Rana dt. 18-10-2007. (Workman at Sr. No. 22).	Exb. 37	37.	Failure Report dt. 05-07-2010.	Exb. 56						
31.	Letter of confirmation of Ms Lorretta Pereira dt. 01- 06-2008. (Workman at Sr. No. 18).	Exb. 38	38.	Confirmation letter dated 1-6-2006 of Maria Fernandes (Workman at Sr. No. 21).	Exb. 57						
32.	Letter of revision of salary of Mr. Anand Roy dt. 28-02-2007. (Workman at Sr. No. 3). Provident Fund Slips (2005-06) of the following Workmen:	Exb. 39	39.	Appointment Letter dated 10-7-2006 of Vinod Shani (Workman at Sr. No. 8).	Exb. 58						
	a. Mr. Sanjeev Deo (Workman at Sr. No. 31).	Exb. 40	40.	Confirmation letter dated 1-6-2006 of Anthony Dias (Workman at Sr. No. 6).	Exb. 59						
	b. Mr. Dhara Chavan (Workman at Sr. No. 30).	Exb. 41	41.	Confirmation letter dated 1-6-2006 of Caitano Fausto Fernandes (Workman at Sr. No. 9).	Exb. 60						
	c. Ms. Vasanti V. Kumar (Workman at Sr. No. 29).	Exb. 42	9. This witness was not cross-examined as the proceedings proceeded ex parte against Party II.								
	d. Mr. Soccorro Fernandes (Workman at Sr. No. 27).	Exb. 43	10. Shri P. Gaonkar representing Party I filed written submissions at Exb. 61. I have gone through the records of the case and have duly considered the written submissions of Party I. The points that arise for my consideration are mentioned below alongwith the findings and reasons thereof.								
	e. Mr. Nazareth F. Vaz. (Workman at Sr. No. 23).	Exb. 44	<table border="1"> <thead> <tr> <th>Points</th> <th>Findings</th> </tr> </thead> <tbody> <tr> <td>1. Whether the action of Party II in refusing employment to 31 Workmen is illegal and unjustified?</td> <td>Affirmative as regards the Workmen at Sr. Nos. 1, 2, 5, 6, 9, 10, 13, 16, 18, 19, 21, 22, 23, 27, 28 and 30.</td> </tr> <tr> <td>2. To what relief the Workmen are entitled to?</td> <td>As per order below.</td> </tr> </tbody> </table>			Points	Findings	1. Whether the action of Party II in refusing employment to 31 Workmen is illegal and unjustified?	Affirmative as regards the Workmen at Sr. Nos. 1, 2, 5, 6, 9, 10, 13, 16, 18, 19, 21, 22, 23, 27, 28 and 30.	2. To what relief the Workmen are entitled to?	As per order below.
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	f. Ms. Maria Clara Fernandes (Workman at Sr. No. 21).	Exb. 45	REASONS								
	g. Mr. Kiran Kamble (Workman at Sr. No. 17).	Exb. 46	11. <i>Issue Nos. 1 & 2:</i> Both these issues are answered together for the sake of convenience as they are interconnected and to avoid repetition of facts.								
	h. Mr. Jose Marion Goes (Workman at Sr. No. 16).	Exb. 47	12. Since the proceedings against the Party II have proceeded ex parte, the statements made by Shri Caitan Fausto Fernandes have gone unchallenged. Thus, I have no hesitation to accept the said statements. It is apparent from his evidence that the Workmen mentioned in the order of reference have joined Party II at different times and in different capacities. I have already mentioned above the various documents produced by this witness at various exhibits and these documents include letters of appointment/letters of confirmations/letters of revision of salary, of the								
	i. Mr. Gurunath Rane (Workman at Sr. No. 13).	Exb. 48									
	j. Mr. Dharmesh Vengurlekar (Workman at Sr. No. 10).	Exb. 49									
	k. Mr. Caetano Fausto Fernandes (Workman at Sr. No. 9).	Exb. 50									
	l. Mr. Alex D'Cruz (Workman at Sr. No. 2).	Exb. 51									
	m. Ms. Anna Fernandes (Workman at Sr. No. 5).	Exb. 52									
34.	ESI Card of Mr. Sudhir Kumar (Workman at Sr. No. 28).	Exb. 53									
35.	Letter dt. 23-09-2008 to the Dy. Labour Commissioner (Margao) made by the Workmen, alongwith a list of the Workmen.	Exb. 54									
36.	Minutes of conciliation dt, 03-05-2010 before the Dy. Labour Commissioner (Margao).	Exb. 55									

Workmen who according to this witness were employed by Party II. He has stated that in April, 2008, Party II started delaying the earned wages of the Workmen and that in May, 2008 some Workmen have paid 50% of their wages and some were given the full amount. He has however not stated in detail as to how many of the Workmen were paid 50% wages in the month of May, and how many others were paid the full amount. Nonetheless, it is apparent from his deposition that till May, 2008 the hotel was fully functional. He has stated that from June, 2008 the hotel was completely abandoned by Party II. He has also stated that Party II paid them the salary in cash and never issued any wage slips. Since it is the contention of this witness that till May, 2008 the hotel was fully functional, I have every reason to hold that the Workmen were not paid the wages since the month of June, 2008 during which time the hotel was completely abandoned by Party II. It is also stated by this witness that till September, 2008 the Workmen have regularly gone and attended the duty and therefore it follows from the above that the Workmen attended their duties without payment of their wages from the month of June, 2008 till the month of September, 2008 i.e. for a period of four months.

13. There is otherwise no dispute that Party I vide letter dated 23-9-08 (Exb. 54 colly) had informed the Deputy Labour Commissioner to enquire into the matter and intervene to settle their grievances and a list of Workmen was annexed to this letter. The witness has produced minutes of conciliation dated 3-5-10 held before the Deputy Labour Commissioner at Exb. 55 as well as failure report dated 5-7-10 at Exb. 56. It is apparent from Exb. 55 that resort has been closed since 27-6-08 without informing the Workmen either in writing or orally about the closure and thus it can be inferred from this that the payment of wages. was stopped to the Workmen from the month of June, 2008. The witness has also stated that Party II has violated the principles of natural justice before refusing employment to the Workmen as they shut down their operations without any intimation to the Workmen and without settling their legal dues.

14. It has been rightly pointed out by Party I in written submissions that such closing of the establishment would not amount to "closure" under the Industrial Disputes Act, 1947 as in this case no notice as required to be given under Section 25FFA has been given by Party II of its intention to close down the undertaking. It is clear from the evidence of this witness that Party II did not at all give any notice or any intimation to the workers regarding

closing of the establishment and therefore I am in agreement with the contention of Shri P. Gaonkar that this amounts to refusal of employment by Party II.

15. Shri P. Gaonkar relied upon the judgment in **Imambhai Ghulamhusein Shaikh v/s Regional Provident Fund Commissioner 1982 LAB I. C. 1036** wherein it is observed as under:

"The contract of service does not automatically stand terminated merely because the Mill Company stops its manufacturing activities. It can be terminated by a notice of termination by recourse to appropriate procedure for collective or individual retrenchment."

16. He also relied upon the judgment in **D.C. Vasavada v/s Provident Fund Commissioner 1985 1) LLJ 263** in which it is observed as under:

"Any person employed continues to be employed until the services are validly terminated by the employer or by mutual agreement the services come to be terminated or the employee resigns from such service. The cessation of work by an employer by closing his mill may not by itself terminate the services of the employees. An employer may close his mill for many reasons, such as non-availability of raw material, non-availability of requisite power, temporary financial difficulties or such other situations. Merely because he tops working the factory, it need not be that the services of the employees stand automatically terminated; they continue in service. The requirement of a valid closure which alone will put an end to the services of the employees are to be found within the provisions of the Industrial Disputes Act. We are referring to this because the learned counsel for the respondent submitted that this is a matter of contract. It is certainly not so. The provision in S. 25FFA of the Industrial Disputes Act, 1947, prescribes 60 days notice to be given of intention to close down any undertaking and the notice is required to state clearly the reasons for the intended closure of the undertaking. The proviso is admittedly not relevant to the present case and therefore that is not referred to S. 25 FFF(1) stipulates the need for a notice and payment of compensation in accordance with the provisions of S. 25 F as if the Workmen are retrenched when the undertaking is closed. These provisions make it clear that closure which may be for any reason and which only amounts to the employer drawing the shutters need not necessarily result in termination of the services of the Workmen. It is one thing to say that a man has closed his

business, another to say that he has retrenched his employees. He may close his business and may not choose to send away his employees as actually has been done in regard to some mills before us or he may not advert to it at all nor apply the mind to it. It is only when closure in accordance with the enactment is effected that there would be termination of service. "

17. He then relied on the judgment in **Kerala Cashews Staff and Workers Union v/s Industrial Tribunal 1979 (1) LLJ 485** in which it is observed as under:

"The main part of the sub-section provides for notice and payment of compensation to the Workman in accordance with Section 25F. The proviso, however, says that in a case where the Tribunal has held that the closure is for reasons mentioned in that proviso, i. e. force majeure-the compensation payable to the Workman under Clause (b) of Section 25F shall not exceed his average pay for three months. The proviso does not make any reference to Clause (a) or Clause (c) of Section 25F and accordingly there is no exclusion of the notice required to be given under those clauses. Every Workman, therefore, even where an undertaking is closed down on account of unavoidable circumstances beyond the control of the employer, is entitled to one month's notice or wages in lieu thereof, as provided in Clause (a) of Section 25F. "

18. From the observations in the above judicial pronouncements vis-a-vis the facts in the instant case, as rightly pointed out on behalf of Party I, the present set of facts come within the purview of Section 25FFF vide which the employer can close his undertaking "for any reason whatsoever" and in such a case, the Workmen who are in "continuous service" for not less than one year are entitled to notice and compensation in terms of Section 25F of I.D. Act, as if the Workmen had been retrenched. Party II herein has not followed the retrenchment procedure as envisaged in Section 25F (a) of the Industrial Disputes Act, 1947 and therefore it is clear that the employment has never been terminated.

19. Be that as it may, the relief sought in this reference by Party I is of reinstatement of the Workmen with full back wages and in the event reinstatement is not possible to award compensation in view of reinstatement.

20. It cannot be disputed that Workman/Party I cannot claim any protection under the provisions of the Industrial Disputes Act, if they have not

worked for 240 days during a period of 12 calendar months preceding the date with reference to which calculation has to be made, in terms of sub-section (2) of Section 25B of the ID Act. Thus, it is required to go through the documents produced by the witness, which are the appointment letters, confirmation letters, and revisions of salary letters of the Workmen who have asked for the above relief.

21. On behalf of Party I reliance is placed on the judgment in **Director, Fisheries Terminal Division v/s Bhikubhai Meghajibhai Chavda 2009 III CLR 941** in which by referring to the observations in the judgment in **R. M. Yellatty v/s Assistant Executive Engineer (2006) 1 SCC 106** has observed that though the burden of proof to prove that he had worked for 240 days in a given year is on the Workman stepping in the witness box, he can discharge this burden by adducing cogent evidence, both oral and documentary and where there is no letter of appointment or termination or receipt of proof of payment, the Workman can only call upon the employer to produce before the Court the nominal muster roll for the given period, the letter of appointment or termination, if any, the wage register, the attendance register etc. and that drawing of adverse inference ultimately would depend thereafter on the facts of each case. By referring to the above observations, it is urged on behalf of Party I that since in the instant case proceedings have proceeded ex parte against the employer, the question of calling upon the employer to produce the relevant documents does not arise and therefore due weightage deserves to be given to the statements made by the witness examined by Party I wherein he has stated that the Workman have regularly attended the duties till September, 2008.

22. There is no dispute about the proposition of law culled out in the judgment in Director, Fisheries terminal Division (Supra) but it cannot be lost sight of the fact that each case has to be decided on the basis of the facts of the said case and hence the ratio culled out in the above judgement has to be read with reference to the facts of the said case. Unlike the case in Director, Fisheries Terminal Division (Supra) the Workman in the instant case were not paid daily wages and even otherwise though the relief in the instant case is claimed by 31 Workmen, the only witness examined in this case is Shri Caitano Fausto Fernandes who has produced the documentary evidence on behalf of all 31 Workmen. It may be mentioned here that there is nothing on record on the part of the above witness indicating that he could not produce

certain other documents because they were in possession of the employer, the proceedings against whom were proceeding ex-parte. Being so, the question of drawing adverse inference against the employer in the above scenario, does not arise. Thus, the fact situation in the instant case is totally different from the one in the case of Director, Fisheries Terminal Division (Supra) and therefore strictly speaking the ratio in this case cannot be equated to the facts of the case in hand.

23. It is pertinent to note that the witness Shri Caitano has not produced any documentary evidence as regards the appointment or, confirmation of services of Workmen at Sr. No. 12 Ganeshwar Pawar, Sr. No. 25 i.e. Pincy Fernandes and Sr. No. 26 i.e. Shanti Pawar. Thus, in the absence of examination of aforesaid Workmen before this Tribunal, there is no evidence to hold that the above three Workmen were at all employed with Party II or that they were in 'continuous service' of 240 days as required by the law. As regards the Workmen at Sr. No. 3 Shri Anand Roy the witness Shri Caitano has produced letter dated 28-2-07 at Exb. 39 which relates to the revision of salary of this Workmen and reading of this letter makes it clear that the management had revised, his salary w.e.f. 1-3-07 by keeping unchanged all the other terms and conditions of his appointment letter dated 22-11-06. It may be mentioned here that there is nothing in Exb. 39 to indicate that this Workmen had accepted Exb. 39 as the "acceptance of letter" which is a part of this document does not bear any signature and even otherwise Party I has not produced the appointment letter dated 22-11-06 of this Workmen to prove that this Workmen was confirmed in the services or that he was in 'continuous service' of Party II. Being so, I am not inclined to grant any relief to Shri Anand Roy i.e. the Workmen at Sr. No. 3, more particularly because this Workmen has not examined himself before this Tribunal.

24. As regards Workmen at Sr. No. 4. Shri Anand Das, Sr. No. 7. Arun Kumar Kuilya, Sr. No. 8. Binod Shani, Sr. No. 11 Shri Miligres Dias, Sr. No. 14. Shri Arrya Kelageri, Sr. No. 15. Joaquim D'Costa, Sr. No. 17 Shri Kiran Kumble, Sr. No. 20. Shri M. P. Chandrashekar Sr. No. 24 Ms. Nirmala Samad Sr. No. 29 Ms. Vasanti Kumar Naik and Sr. No. 31 Shri Sanjeebhu Deo, their appointment letters are at Exb. 31, Exb. 28, Exb. 35, Exb. 25, Exb. 23, Exb. 22, Exb. 20 Exb. 19, Exb.15, Exb. 10 and Exb. 8 respectively. These exhibits clearly show that the aforesaid Workmen were either appointed on contractual basis or on probation for a period of six

months/three months and therefore they were apparently not in continuous services of 240 days as required under the law. Even the witness Shri Caitano has not stated anything about these Workmen being in 'continuous service' of Party II and therefore no any relief could be granted to the aforesaid Workmen.

25. The details of the letters of confirmation in service of the remaining Workmen alongwith their last drawn salary is mentioned below corresponding to the serial numbers and the names of the respective Workmen.

Sr. No.	Exb.	Salary
1. Shri Albano Fernandes	Exb. 33 dated 13-3-07	₹ 7,000/-
2. Shri Alex D'Cruz	Exb. 32 dated Dec., 2006	₹ 2,700/-
5. Ms. Anna Fernandes	Exb. 30 dated 1-6-06	₹ 4,000/-
6 Shri Anthony Dias	Exb. 29 dated 10-7-08	₹ 5,734/-
9. Shri Fausto C. Fernandes	Exb. 60 dated 1-6-06	₹ 6,500/-
10. Shri Dharmesh Vengurlekar	Exb. 26 dated 1-6-06	₹ 2,700/-
13. Shri Gurunath Rana	Exb. 24 dated 1-6-04	₹ 2,937/-
16. Shri Jose Mario Fernandes	Exb. 21 dated 1-6-06	₹ 2,700/-
18. M/s. Loretta Pereira	Exb. 38 dated 1-6-08	₹ 4,500/-
19. Shri Louis M. Fernandes	Exb. 34 dated 1-6-08	₹ 5,000/-
21. Ms. Maria Ciara Fernandes	Exb. 57 dated 1-6-06	₹ 6,500/-
22. Ms. Merylin Rana	Exb. 36 dated 1-6-06	₹ 4,292/-
23. Shri Nazareth Vaz	Exb. 16 dated 1-6-06	₹ 6,127/-
27. Shri Socorro M. Fernandes	Exb. 14 dated 11-11-06	₹ 5,007/-
28. Shri Sudin Kumar	Exb. 12 dated 11-11-06	₹ 6,500/-
30. Shri Dara S. Chauhan	Exb. 9 dated 1-6-06	₹ 2,655/-

26. Admittedly, Party II has abandoned the hotel and therefore the question of reinstatement of aforesaid Workmen in services of Party II., does not arise.

27. In the case of **Incharge Officer & Anr v/s Shankar Shetty 2010(9) SCC 126 and Senior Superintendent Telegraph (Traffic) Bhopal v/s Santosh Kumar Seal & Ors AIR 2010SC 2140**, the Apex Court has observed that *"It is true that the earlier view of this Court articulated in many decisions reflected the legal position that if the termination of an employee was found to be illegal, the relief of reinstatement with full back wages would ordinarily follow. However, in recent past, there has been a shift in the legal position and in a long line of cases, this Court has consistently taken the view that relief by way of reinstatement with back wages is not automatic and may be wholly inappropriate in a given fact situation even though the termination of an employee is in contravention of the prescribed procedure. Compensation instead of reinstatement has been held to meet the ends of justice."*

28. As pointed out by me supra, since the hotel is not functioning, the fact situation in this case warrants that compensation is the adequate relief. I have already observed above that the Workmen were not paid wages for four months i.e. from June, 2008 to September, 2008. No evidence is adduced by Party I to establish that after the aforesaid period of four months the Workmen were not gainfully employed. It is held by Apex Court in the judgment in **Kendriya Vidyalaya Sangathan and Another v. S.C. Sharma, (2005) 2 SCC 363** that *"... When the question of determining the entitlement of a person to back wages is concerned, the employee has to show that he was 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."*

29. Considering the quantum of the last drawn salary of the respective Workmen and also considering the fact that these Workmen had attended their duties till September, 2009, I am of the considered opinion that awarding compensation of ₹ 12,000/- each to the Workmen at Sr. Nos. 2, 10, 13, 16 and 30, of ₹ 20,000/- each to the Workmen at Sr. Nos. 5, 18, 19, 22, 27 and ₹ 25,000/- each to the Workmen at Sr. Nos. 1, 6, 9, 21, 23, 28, in lieu of reinstatement shall be appropriate, just and equitable in the facts and circumstances of the case. Hence my findings.

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

ORDER

1. The action of the management of M/s. Jupiter Luxury Resort and Spa, Benaulim, Goa in refusing employment to the Workmen at Sr. Nos. 1. Shri Albano Fernandes, 2. Shri Alex D'Cruz, 5. Ms. Anna Fernandes 6. Shri Anthony Dias, 9. Shri Fausto C. Fernandes, 10. Shri Dharmesh Vengurlekar, 13. Shri Gurunath Rana, 16. Shri Jose Mario Fernandes, 18. Ms. Loretta Pereira, 19. Shri Louis M. Fernandes, 21. Ms. Maria Ciara Fernandes, 22. Ms. Merylin Rana, 23. Shri Nazareth Vaz, 27. Shri Socorro M. Fernandes, 28. Shri Sudin Kumar, 30. Shri Dara S. Chauhan, is illegal and unjustified.

2. Party II is directed to pay to the aforesaid Workmen at Sr. Nos. 2, 10, 13, 16, 30 compensation of ₹ 12, 000/- (Rupees twelve thousand only) each, Sr. No. 5, 18, 19, 22, 27 compensation of ₹ 20,000/- (Rupees twenty thousand only) each and Sr. Nos. 1, 6, 9, 21, 23, 28 ₹ 25,000/- (Rupees twenty five thousand only) each within two months from the date of publication of Award failing which the same shall carry interest at the rate of 9% per annum.

3. The Workmen at Sr. Nos. 3. Shri Anand Roy, Sr. No. 4. Shri Anand Das, Sr. No. 7. Arun Kumar Kuilya, Sr. No. 8. Shri Binod Shani, Sr. No. 11. Shri Milagres Dias, Sr. No. 12. Shri Ganeshsaw B. Pawar, Sr. No. 14. Irrya Keleigri, Sr. No. 15. Joaquim D'Costa, Sr. No. 17. Kiran Kumble, Sr. No. 20. Shri M.P. Chandrashekar, Sr. No. 24 Nirmala Samad, Sr. No. 25. Ms. Pincy Fernandes, Sr. No. 26 Ms. Shanti B. Pawar, Sr. No. 29 Vasanti Kumar Naik and Sr. No. 31 Sanjeebku Deo, are not entitled for any relief.

Inform the Government accordingly.

Sd/-
Bimba K. Thaly,
Presiding Officer,
Industrial Tribunal-
-cum-Labour Court-I.

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Department of Law and Judiciary

Law (Establishment) Division

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Order

File No. LS/1077/93-Part/446

The following Advocates as Government Advocate has been dropped from the panel of Government Advocate to the High Court of

Judicature at Bombay, Panaji Branch, Goa with immediate effect.

1. Shri Guru Shirodkar.
2. Shri Shaik Vahidulla.

They shall return all the briefs pending with them if any, to the office of Ld. Advocate General, Altinho, Panaji under intimation to this department.

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

N. P. Singnapurker, Under Secretary (Law-Estt.).

Porvorim, 28th March, 2012.

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Order

No. 4-1-2008-LD(Estt.)/Vol.I

Government of Goa is pleased to appoint private Adocate Shri H. Metha, Indore to defend the interest of the State Government in respect of all the cases filed by M/s. Bright Drugs Industries Ltd. against the Directorate of Food and Drugs Administration Government of Goa, Panaji before the Honorable Court of VIIIth Additional District Judge, Indore.

Advocate Shri H. Metha will be paid one time fee of ₹ 15,000/- (Rupees fifteen thousand only) in each case.

The expenditure shall be debited to the appropriate Budget Head of the Directorate of Food and Druge Administration, Panaji.

This issues with the concurrence of Finance Department (Exp.) vide U.O. No. Pr./FS/1416014/F dated 26-03-2012.

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

N. P. Singnapurker, Under Secretary (Law-Estt.).

Porvorim, 16th April, 2012.

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Order

No. 4-1-2008-LD(Estt.)/Vol.I

Government of Goa is pleased to appoint following panel of Advocates of Court of local jurisdiction under Food Safety and Standards Act, 2006 (Central Act 34 of 2006) for the conduct of Adjudication inquiry before the Adjudicating Officer under the Food Safety and Standards Rules, 2011:

1. Adv. Vishnu Naik.
2. Adv. Purushottam Karpe.
3. Adv. Gaurish Agni

The each Advocate of the above Panel shall be paid @ ₹ 1,000/- (Rupees One thousand only) for per hearing per day and the maximum an amount of ₹ 2,500/- (Rupees two thousand five hundred only) per day, if more than three hearings per day.

The expenditure shall be debited to the appropriate Budget Head of Directorate of Food & Drugs Admn., Panaji-Goa.

This issues in supersession of Order of even number dated 16-04-2012.

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

N. P. Singnapurker, Under Secretary (Law-Estt.).

Porvorim, 7th May, 2012.



**Department of Panchayati Raj and
Community Development**

Directorate of Panchayat

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Notification

No. 19/17/DP/ELEC/PUBL/12/1883

In pursuance of sub-section (1) of Section 46 of the Goa Panchayat Raj Act, 1994 (Goa Act 14 of 1994) it is hereby notified for the information of the public that the member mentioned in the column No. 3 of the schedule hereinbelow has been elected as Sarpanch/Dy. Sarpanch to the Panchayat mentioned in the corresponding entry No. 2 of the said schedule in the meeting held on as mentioned in column No. 4 of the said schedule.

SCHEDULE

Sr. No.	Name of the Village Panchayats	Name and Address of Sarpanch/ /Deputy Sarpanch	Date of Election
1	2	3	4
		<i>Sarpanch</i>	
1.	V. P Usgao- -Ganjem	Shri Dnyaneshwar Narso Naik, Tiral, Usgao-Goa.	25-01-2012
		<i>Dy. Sarpanch</i>	
2.	V. P. Varca	Shri Francisco A. Afonso, H. No. 816, 2nd Fatrade, Varca, Salcete-Goa.	19-01-2012

1	2	3	4	1	2	3	4
3.	V. P. Seraulim	<i>Dy. Sarpanch</i> Shri Agnelo Joaquim Da Silva, H. No. 37/A, Per-Seraulim, VII Salcete-Goa.	07-02-2012	11.	V. P. Kirlapal- -Dabal	<i>Sarpanch</i> Shri Damodar Surya Bandekar, Vagon, P. O. Kirlapal-Dabal, Goa.	29-12-2011
4.	V. P. Sancoale	<i>Dy. Sarpanch</i> Shri Girish Gopal Krishna Pillai, Flat No. CII Tamarind Court, Zarint, Zuarinagar, Goa.	26-03-2012	12.	V. P. Dhar- galim	<i>Sarpanch</i> Shri Satish Chandrakant Dhumal, Deulwada, Dhargal, Pernem-Goa.	16-12-2011
5.	V. P. Sancoale	<i>Sarpanch</i> Smt. Jamina N. Nazareth Pereira, H. No. 141, Rua Da Maria, Sancoale-Goa.	26-03-2012	13.	V. P. Nerul	<i>Sarpanch</i> Smt. Sarita Shiru Shirodkar, H. No. 326, Bhatiwada, Nerul, Bardez-Goa.	12-12-2011
6.	V. P. Velcao- -Pale-Issorcim	<i>Sarpanch</i> Smt. Maria Dolorosa Rodrigues, H. No. 234, Velcao-Challe, Mormugao-Goa.	22-03-2012	14.	V. P. St. Lawrence (Agassaim)	<i>Dy. Sarpanch</i> Shri Jaime Antonio Afonso, H. No. 353, F-1 Mercurim, Grande, Tiswadi-Goa.	06-12-2011
7.	V. P. Davorlim- Dicarpale	<i>Sarpanch</i> Shri Arcanjo Santano Carvalho, H. No. 10B, Rucol, Dicarpale, Salcete-Goa.	17-02-2012	15.	V. P. Agar- -wada Chopde	<i>Dy. Sarpanch</i> Smt. Suhasini Suresh Pokhare, Agarwada, Pednem-Goa.	03-11-2011
8.	V. P. Macazana	<i>Dy. Sarpanch</i> Shri Leoncio Raikar, Cotta, Davorlim, Salcete-Goa.		16.	V. P. Betora- -Nirankal- -Conxem- -Codar	<i>Sarpanch</i> Shri Guru Omu Salelkar, Barazanmol, Betora, Ponda-Goa.	31-10-2011
9.	V. P. Marcaim	<i>Sarpanch</i> Shri Joaquim J. Barretto, 191/A, Povacao, Macazana, Salcete-Goa.	14-03-2012	17.	V. P. Borim	<i>Dy. Sarpanch</i> Smt. Vimal Prabhakar Gaude, Shirshirem, Borim, Ponda-Goa.	20-10-2011
10.	V. P. Agar- -wada-Chopde	<i>Sarpanch</i> Shri Amardeep G. Madkaikar, Dutolem, Marcaim, Ponda-Goa.	14-03-2012	18.	V. P. Durbhat	<i>Sarpanch</i> Shri Kashinath B. Naik, H. No. 524, Adpoi, Durbhat, Ponda-Goa.	29-09-2011
		<i>Sarpanch</i> Smt. Ekta Eknath Chodankar, Chopde, Pernem-Goa.	30-12-2011	19.	V. P. Varkhand- Nagzar	<i>Dy. Sarpanch</i> Shri Narayan Laximan Talkatkar, Kadsare, Warkhand Nagzar, Pernem-Goa.	22-10-2011

1	2	3	4	1	2	3	4
20.	V. P. War- khand-Nagzar	<i>Sarpanch</i> Gauri Govind Josalkar, Warchawada, Warkhand- Nagzar, Pernem-Goa.	22-10-2011	28.	V. P. Allorna	<i>Sarpanch</i> Shri Kanhoba Vishnu Raul, H. No. 35(2), Madhalawada, Talarna, Pernem-Goa.	14-03-2012
21.	V. P. Uguem	<i>Sarpanch</i> Smt. Vidiksha V. Bhandari, H. No. 268/1, Pedamol, Uguem, Sanguem-Goa.	05-10-2011	29.	V. P. Nerul	<i>Dy. Sarpanch</i> Smt. Piedade N. Almeida, H. No. 41/1, Forta Waddo, Neruel, Bardez-Goa.	15-02-2012
22.	V. P. Tivim	<i>Sarpanch</i> Shri Shivdas Tukaram Kambli, H. No. 528, Comprem, Tivim, Bardez-Goa.	24-10-2011	30.	V. P. Amona	<i>Sarpanch</i> Shri Damodar Anant Parab, Pimpalwada, Amona, Bicholim-Goa.	09-02-2012
23.	V. P. Maem- -Vainguinim	<i>Sarpanch</i> Smt. Kajol Kishor Karbotkar, Chinch, Bhatwadi, Maem, Bicholim-Goa.	24-10-2011	31.	V. P. Dhar- galim	<i>Sarpanch</i> Shri Gokuldas Anant Salgaonkar, 673/15, Chichola, Dhargal, Pernem-Goa.	08-02-2012
24.	V. P. Se-Old- -Goa	<i>Dy. Sarpanch</i> Smt. Sandra P. D. Gonsalves, Katyebhat, Ella, Old-Goa.	27-10-2011	32.	V. P. Chandel- Hassapur	<i>Sarpanch</i> Shri Vishant Nakul Gawas, Khumbharwada, Chandel-Hassapur, Pernem-Goa.	07-02-2012
25.	V. P. Amona	<i>Sarpanch</i> Smt. Ujwala Ulhas Ghadi, H. No. 322, Ghadiwada, Amona, Bicholim-Goa.	22-03-2012	33.	V. P. Casar- vornem	<i>Dy. Sarpanch</i> Smt. Janki Jairam Parab, Parabwada, Casarvornem, Pernem-Goa.	04-02-2012
26.	V. P. Reis- -Magos	<i>Dy. Sarpanch</i> Shri Francis Serrao, Tuant waddo, H. No. F2, Verem, Reis-Magos, Bardez-Goa.	16-03-2012	34.	V. P. Chandor- -Cavorim	<i>Dy. Sarpanch</i> Smt. Janet Jackson Remy Silveira, H. No. 177, Igorjebhat, Chandor-Cavorim, Salcete, Margao-Goa.	30-01-2012
27.	V. P. Uguem	<i>Dy. Sarpanch</i> Shri Subhash P. Gaonkar, H. No. 02, Mugoli, Sanguem-Goa.	14-03-2012	35.	V. P. Usgao- -Ganjem	<i>Dy. Sarpanch</i> Shri Dnyaneshwar Narso Naik, Tiral, Usgao, Ponda-Goa.	15-12-2011

1	2	3	4	1	2	3	4
36.	V. P. Chin-chinim	<i>Dy. Sarpanch</i> Smt. Doura Fernandes, H. No. 68, Durga, Grand Chinchinim, Salcete-Goa.	6-12-2011	43.	V. P. Siolim-Marna	<i>Sarpanch</i> Smt. Savita Shyam Govekar, H. No. 855, Port-waddo, Siolim, Bardez-Goa.	19-01-2012
37.	V. P. Chodan-Madel	<i>Sarpanch</i> Shri Prasad V. Chodankar, H. No. 564, Sodet, Chodan, Tiswadi-Goa.	15-12-2011	44.	V. P. Tambo-xem-Mopa-Ugavem	<i>Sarpanch</i> Shri Sunil Shankar Mahale, Temwada, Ugavem, Pernem-Goa.	07-12-2011
38.	V. P. Maem-Vaiguinim	<i>Dy. Sarpanch</i> Smt. Jayanti S. Haldankar, H. No. 188, Madel-Chodan, Tiswadi-Goa.	30-01-2012	45.	V. P. Mercedes	<i>Sarpanch</i> Shri Sunil Raghuvir Kalangutkar, H. No. 514, Mestabhat, Merces-Goa.	16-01-2012
39.	V. P. Betora-Nirankal-S Conxem-Codar	<i>Sarpanch</i> Shri Sanjay Sitaram Arondekar, Kelbaiwada, Maem, Bicholim-Goa.	21-12-2011	46.	V. P. Mandrem	<i>Dy. Sarpanch</i> Smt. Sneha Sadanand Kalshaokar, Mandrem, Pedne-Goa.	11-11-2011
40.	V. P. Corgao	<i>Sarpanch</i> Shri Laxman Yeshwant Gawandi, Devsu, H. No. 83, Corgao, Pernem-Goa.	23-01-2012	47.	V. P. Taleigao	<i>Sarpanch</i> Smt. Ilda Camilo Falcao, Cardoz, Taleigao, Tiswadi-Goa.	10-05-2012
41.	V. P. Amona	<i>Dy. Sarpanch</i> Smt. Anushka Ashok Gawas, H. No. 421, Ambeshiwada, Amona, Bicholim-Goa.	18-01-2012	48.	V. P. Assagao	<i>Sarpanch</i> Miss Daisy Sebastiao D'Souza, H. No. 182, Alto, Assagao, Bardez-Goa.	09-04-2012
42.	V. P. Cundaim	<i>Sarpanch</i> Shri Ulhas Vishwanath Naik, Godkadev Nagar, Cundaim, Ponda-Goa.	10-01-2012	49.	V. P. Maem-Vaiguinim	<i>Dy. Sarpanch</i> Smt. Vinita Vasudev Gaonkar, Vaiguinim, Maem, Bicholim-Goa.	23-12-2011
				50.	V. P. Sirigao	<i>Sarpanch</i> Smt. Meenal Meghnath Ghadi, Sirigao, Bicholim-Goa.	18-11-2011
				51.	V. P. Cola	<i>Sarpanch</i> Shri Pandhari G. Prabhu Dessai, Molloreem, Cola, Canacona-Goa.	12-12-2011

1	2	3	4	1	2	3	4
52.	V. P. Assagao	<i>Sarpanch</i> Shri Ajit Pandurang Sawant, H. No. 208, Mazal- -wado, Assagao, Bardez-Goa.	02-12-2011	60.	V. P. Kudne	<i>Sarpanch</i> Shri Naveen Vinayak Falkar, H. No. 104, Falwada, Kudne, Bicholim-Goa.	02-12-2011
		<i>Dy. Sarpanch</i> Miss Daisy Sebastiao D'Souza, H. No. 182, Alto Assagao, Bardez-Goa.		61.	V. P. Nuvem	<i>Sarpanch</i> Smt. Philipa F. Barreto, Nuvem, Salcete-Goa.	14-10-2011
		<i>Dy. Sarpanch</i> Shri Newton Rosario Colaco, Nuvem, Salcete-Goa.				<i>Dy. Sarpanch</i> Smt. Trupti Tulshidas Prabhu, Gaonkerwada, Usgao, Ponda-Goa.	22-03-2012
53.	V. P. Agonda	<i>Sarpanch</i> Shri Jovi M. Fernandes, Agonda, Canacona-Goa.	13-01-2012	62.	V. P. Usgao- -Ganjam	<i>Dy. Sarpanch</i> Smt. Suzana Mariano Dias, Chandor-Cavorim, Salcete-Goa.	25-11-2011
		<i>Dy. Sarpanch</i> Shri Damodar Vasant Chari, Chapoli, Shristhal, Canacona-Goa.	23-01-2012	63.	V. P. Chandor- -Cavorim	<i>Sarpanch</i> Smt. Soniya Santosh Fadte, Tariwada, Marcel-Goa.	29-11-2011
54.	V. P. Shristhal	<i>Dy. Sarpanch</i> Shri Ramchandra P. Kankonkar, H. No. 179, Nauxim, Bambolim.	03-04-2012	64.	V. P. Tivrem- -Orgao	<i>Sarpanch</i> Shri Nazareth Romaldo Gomes, H. No. 473/A, Dagualle, Raia, Salcete-Goa.	16-12-2011
55.	V. P. Curca- Bambolim- -Taulim	<i>Sarpanch</i> Shri Ramchandra P. Kankonkar, H. No. 179, Nauxim, Bambolim.	03-04-2012	65.	V. P. Raia		
56.	V. P. Ibrampur- -Hankhane	<i>Dy. Sarpanch</i> Shri Devidas Tukaram Parwar, Ibrampur, Pernem-Goa.	10-04-2012				
57.	V. P. Dhargal	<i>Sarpanch</i> Shri Pradeep Madan Naik, Tivwada, Dhargal, Pernem-Goa.	31-03-2012				
58.	V. P. Batim	<i>Sarpanch</i> Shri Francisco X. Jacques, H. No. 84, Vodlembhat, Batim, Tiswadi-Goa.	02-04-2012				
59.	V. P. Azossim- -Mandur	<i>Sarpanch</i> Smt. Paulina Oliveira F. Po. H. No. 252, Padribhat, Mandur, Tiswadi-Goa.	05-04-2012				

Menino D'Souza, Director (Panchayats).
Panaji, 21st May, 2012.

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Department of Personnel

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Order

File No. 7/2/99-PER/PF-III

In pursuance of the Government of India, Ministry of Home Affairs, New Delhi Order No. 14020/1/2012-UTS-I dated 09-04-2012, the Governor of Goa is pleased to relieve Shri Tahang Taggu, IAS (AGMUT:1999), Secretary (Sports & Youth Affairs) from this Administration w.e.f. 24-04-2012

(AN), in order to take up his new assignment in the Government of Arunachal Pradesh.

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

N. P. Singnapurker, Under Secretary (Personnel-II).
Porvorim, 24th April, 2012.

Order

File No. 7/2/99-PER/PF-IV

In pursuance to the Government of India, Ministry of Home Affairs, Order No. 14020/1/2011-UTS-I dated 09-09-2011, the Governor of Goa is pleased to appoint Shri Parimal Rai, IAS (AGMU: 85), as the Secretary to the Government of Goa and allot him the charge of following work/Departments as indicated below with immediate effect:

1. Urban Development.
2. Housing.
3. Health..

Shri Parimal Rai, IAS (AGMU: 85) has reported for duty to this Administration on 13-04-2012 (f.n.) and was awaiting for posting.

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

N. P. Singnapurker, Under Secretary (Personnel-II).
Porvorim, 25th April, 2012.

Order

File No. 7/6/99-PER(PF-I)

Read: Notification No. 7/6/99-PER(PF) dated 23-12-2011.

Shri V. P. Rao, IAS (AGMU:99), Secretary (Education) shall hold the charge of the Secretary (Sports & Youth Affairs), with immediate effect, in addition to his own duties, until further orders.

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

N. P. Singnapurker, Under Secretary (Personnel-II).
Porvorim, 3rd May, 2012.

Order

File No. 7/6/99-PER(PF)

Read: Notification No. 7/6/99-PER (PF) dated 23-12-2011.
Order No. 7/6/99-PER (PF-I) dated 03-05-2012.

In partial modification to the Notification read above, Shri V. P. Rao, IAS (AGMU:99), Secretary

(Education) shall also hold the charge of the following subjects in addition to his own duties, with immediate effect and until further orders.

1. RND and Inland Water Transport.
2. Printing & Stationery.
3. Animal Husbandry & V. S.
4. Rural Development.
5. Tribal Welfare.
6. Public Grievances.
7. Official Language.
8. Catering Management.

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

N. P. Singnapurker, Under Secretary (Personnel-II).
Porvorim, 4th May, 2012.

Order

File No. 7/6/99-PER(PF)

Shri V. P. Rao, IAS (AGMU:99), Secretary (Education) shall hold the charge of the Secretary (General Administration Department), with immediate effect, in addition to his own duties, during leave period of Shri R. K. Verma, IAS (AGMUT:1984) from 07-05-2012 to 09-05-2012.

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

N. P. Singnapurker, Under Secretary (Personnel-II).
Porvorim, 7th May, 2012.

Order

P File No. 7/9/2012-PER

In pursuance of the Government of India, Ministry of Home Affairs, New Delhi Order No. 14020/1/2012-UTS-I (Pt.) dated 07-05-2012, the Governor of Goa is pleased to relieve Shri Ragesh Chandra, IAS, from this Administration, with effect from 11-05-2012 (a.n.), in order to take up his new assignment in the Government of Pundicherry.

Shri Ragesh Chandra, IAS, is on compulsory wait period from 07-05-2012 to 11-05-2012. He shall draw his salary against the vacant post of Commissioner of Excise, during the above mentioned compulsory wait period.

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

N. P. Singnapurker, Under Secretary (Personnel-II).
Porvorim, 10th May, 2012.

Order

File No. 7/17/97-PER(PF)

Shri T. M. Balakrishnan, IAS (AGMUT:1996), Secretary (Town & Country Planning) shall hold the charge of the Secretary (Transport), with immediate effect, in addition to his own duties, during leave period of Shri R. K. Verma, IAS (AGMUT:1984).

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

N. P. Singnapurker, Under Secretary (Personnel-II).

Porvorim, 10th May, 2012.

Order

File No. 7/10/2011-PER

Shri Swapnil M. Naik, Director of Tourism shall hold the charge of the Commissioner of Excise, with immediate effect, in addition to his own duties, during leave period of Shri Neeraj Semwal, IAS (AGMUT:2003) from 09-05-2012 to 18-05-2012.

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

N. P. Singnapurker, Under Secretary (Personnel-II).

Porvorim, 11th May, 2012.

Notification

File No. 7/6/99-PER(PF)

The Governor of Goa is pleased to order the allocation of work/Departments amongst the Secretaries to the Government as follows with immediate effect, until further orders:

Sr. No.	Name & Designation	Department
1	2	3
1.	Shri S. K. Srivastava, IAS (1980) Chief Secretary	1. Home 2. Personnel 3. A.R.D. 4. Chief Vigilance Officer 5. Civil Aviation 6. Principal Resident Commissioner.
2.	Shri B. Vijayan, IAS (1982) Principal Secretary	1. Finance 2. Planning 3. P.P.P. 4. Convention Centre 5. Agriculture

1	2	3
		6. Power 7. Water Resources 8. Science & Technology 9. Environment.
3.	Shri R. K. Verma, IAS (1984) Principal Secretary	1. PWD 2. Forest 3. Mines & Geology 4. Transport 5. G. A. D. 6. Revenue 7. Information & Publicity 8. Special Secretary (Personnel) 9. Special Secretary (ARD).
4.	Shri Parimal Rai, IAS (1985) Principal Secretary	1. Health 2. Urban Development 3. Housing 4. Town & Country Planning 5. Industries, Trade & Commerce 6. Information Technology
5.	Shri S. Kumaraswamy, IAS (1991) Commissioner & Secretary	1. Elections 2. Chief Electoral Officer.
6.	Shri Keshav Chandra, IAS (1995) Secretary	1. School Education 2. Higher Education 3. Technical Education 4. Social Welfare 5. Women & Child Development 6. Tribal Welfare 7. Institute of Public Assistance/ Provedoria 8. Sports & Youth Affairs.
7.	Shri D. C. Sahoo, IAS (1996) Secretary	1. Civil Supplies & Price Control 2. Co-operation 3. Panchayati Raj
8.	Shri T. M. Balakrishnan, IAS (1996) Secretary	1. Labour & Employment 2. Craftsmen Training 3. Legal Metrology 4. Factories & Boilers

1	2	3
		5. Non-Conventional Energy
		6. Protocol
		7. Catering Management
		8. Printing and Stationery.
9. Shri V. P. Rao, IAS (1999) Secretary		1. Ports
		2. Fisheries
		3. Vigilance/ /Director of Vigilance
		4. River Navigation & Inland Waterways
		5. Animal Husbandry & Veterinary Services
		6. Rural Development.
10. Shri Mathew Samuels, IAS, Secretary		1. Art & Culture
		2. Tourism
		3. Archives & Archaeology
		4. Museum
		5. NRI Affairs.
11. Shri Mohan Lal, IAS, Secretary		1. Public Grievances
		2. Gazetteer
		3. Official Language
		4. Special Secretary (Home).
12. Shri Neeraj Semwal, IAS (2003), Secretary		1. Secretary to Governor.
13. Shri Pawan K. Sain IAS (2005), Secretary		1. Secretary to Chief Minister
		2. Director (MOPA Airport).
14. Shri Pramod Kamat, Secretary (Law)		1. Law
		2. Judiciary
		3. Legislative Affairs.

This issues in supersession of earlier all Notifications in this regard.

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

N. P. Singnapurker, Under Secretary (Personnel-II).

Porvorim, 18th May, 2012.

Department of Public Health

Order

No. 4/19/2002-II/PHD

Read: (1) Memorandum No. 4/19/2002-II/PHD dated 16-03-2012.

(2) Corrigendum No. 4/19/2002-II/PHD dated 17-04-2012.

On the recommendation of the Goa Public Service Commission as conveyed vide their letter No. COM/1/5/30(9)/2011/351 dated 23-01-2012, Government is pleased to appoint Dr. Chetan Govind Shirodkar to the post of Assistant Lecturer in Anesthesiology (ICU) in the Department of Anesthesiology in Goa Medical College, Bambolim on temporary basis in the Pay Band—3, ₹ 15,600-39,100 + Grade Pay of ₹ 5,400/-, and as per the terms and conditions contained in the memorandum cited above, with immediate effect.

Dr. Chetan Govind Shirodkar shall be on probation for a period of two years.

Dr. Chetan Govind Shirodkar has been declared medically fit by the Medical Board.

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

The appointment is made against the vacancy occurred due creation of the posts of Assistant Lecturer in Anesthesiology(ICU) vide Order No. 4/4/2010-II/PHD dated 04-08-2011.

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

D. G. Sardessai, Joint Secretary (Health).

Porvorim, 22nd May, 2012.

Certificate

No. 4/4/2007-II/PHD

Read: (1) Government Order No. 4/4/2007-II/PHD dated 22-12-2011.

(2) Corrigendum No. 4/4/2007-II/PHD dated 18-01-2012.

Certified that the character and antecedents of Dr. Ankush Balasaheb Patil, Assistant Lecturer, Department of Forensic Medicine in Goa Medical College and Hospital, Bambolim mentioned in the above referred Order have been verified by the District Magistrate, South Goa District, Margao and

nothing adverse has come to the notice of the Government.

B. S. Kudalkar, Under Secretary (Health).

Porvorim, 21st May, 2012.

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Department of Revenue

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Order

F. No. 30-1-2005-RD(I)

Ref.: Order No. 30/1/2005-RD(I) dated 9th August, 2011.

In continuation of the above order, the Government of Goa is pleased to designate the following additional officers of the Collectorate of South Goa District as Public Information Officers/Assistant Public Information Officers and the Appellant Authority as required under Section 5 of the Right to Information Act, 2005, with immediate effect:

Sr. No.	Name of the Section of the Collectorate	Name of Asstt. Public Information Officer	Name of the Public Information Officer	Appellant Authority
1.	MPLAD Section	Accountant	Additional Collector-II	Collector.
2.	Election Branch	Aval Karkun of Election Section	Additional Collector-II	Collector.
3.	Establishment Section	Head Clerk of Establishment Section	Additional Collector-II	Collector.
4.	Disaster Management Section	Head Clerk of Disaster Management Section	Additional Collector-I	Collector.

Parag M. Nagarcenkar, Under Secretary (Rev-I).

Porvorim, 22nd May, 2012.

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Order

No. 22/24/2010-RD

Whereas, the Government of Goa, vide Notification No. 22/24/2010-RD dated 10-11-2010, issued under sub-section (1) of Section 4 of the Land Acquisition Act, 1894 (Act 1 of 1894) (hereinafter referred to as the "said Act"), and published in the Official Gazette, Series II No. 34 dated

18-11-2010, notified that the land specified in the Schedule thereof (hereinafter referred to as the "said land") is likely to be needed for public purpose viz. Land Acquisition for construction of diversion/bye-pass road for mining traffic from Taak to Sirvoi near Teacher's Colony via Mendek in Village Rivona of Sanguem Taluka & Village Deao and Sirvoi of Quepem Taluka (addl. area) (hereinafter referred to as the "said public purpose");

And Whereas, the Government of Goa considered the report made by the Collector under sub-section (2) of Section 5A of the said Act and on being satisfied that the said land is needed for the said public purpose, vide Notification No. 22/24/2010-RD dated 09-12-2011, issued under Section 6 of the said Act, and published in the Official Gazette, Series II No. 38 dated 22-12-2011 and Corrigendum No. 22/24/2010-RD dated 07-02-2012 and published in the Official Gazette, Series II No. 45 dated 09-02-2012 declared that the said land is required for the said public purpose.

Now, therefore, in exercise of the powers conferred by Section 7 of the Land Acquisition Act, 1894 (Act 1 of 1894), the Government of Goa hereby directs the Special Land Acquisition Officer, Goa-IDC, EDC Complex Patto, Panaji to take the order for acquisition of the said land.

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

Parag M. Nagarcenkar, Under Secretary (Rev-I).

Porvorim, 21st May, 2012.

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Order

No. 23/33/2009-RD

Whereas, the Government of Goa, vide Notification No. 22/33/2009-RD dated 22-06-2010, issued under sub-section (1) of Section 4 of the Land Acquisition Act, 1894 (Act 1 of 1894) (hereinafter referred to as the "said Act"), and published in the Official Gazette, Series II No. 14 dated 01-07-2010, notified that the land specified in the Schedule thereof (hereinafter referred to as the "said land") is likely to be needed for public purpose viz. Land Acquisition for construction of road from Vadaval Savordhat Dangarwada to Ussap Harijanwada in V. P. Latambarcem in Mencurem and Dhumasem in Bicholim Constituency (hereinafter referred to as the "said public purpose");

And Whereas, the Government of Goa considered the report made by the Collector under sub-section (2) of Section 5A of the said Act and on being satisfied that the said land is needed for the said public purpose, vide Notification No. 23/33/2009-RD dated 27-07-2011, issued under Section 6 of the

said Act, and published in the Official Gazette, Series II No. 18 dated 04-08-2011, declared that the said land is required for the said public purpose.

Now, Therefore, in exercise of the powers conferred by Section 7 of the Land Acquisition Act, 1894 (Act 1 of 1894), the Government of Goa hereby directs the Collector, North Goa to take the order for acquisition of the said land.

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

Parag M. Nagarcenkar, Under Secretary (Rev-I).
Porvorim, 22nd May, 2012.

Order

No. 23/40/2009-RD

Whereas, the Government of Goa, vide Notification No. 23/40/2009-RD dated 31-08-2010, issued under sub-section (1) of Section 4 of the Land Acquisition Act, 1894 (Act 1 of 1894) (hereinafter referred to as the "said Act"), and published in the Official Gazette, Series II No. 24 dated 09-09-2010, notified that the land specified in the Schedule thereof (hereinafter referred to as the "said land") is likely to be needed for public purpose viz. Land Acquisition for Dhangarwada road near Bicholim Industrial Estate in Bicholim Constituency (hereinafter referred to as the "said public purpose");

And Whereas, the Government of Goa considered the report made by the Collector under sub-section (2) of Section 5A of the said Act and on being satisfied that the said land is needed for the said public purpose, vide Notification No. 23/40/2009-RD dated 16-09-2011, issued under Section 6 of the said Act, and published in the Official Gazette, Series II No. 25 dated 22-09-2011, declared that the said land is required for the said public purpose.

Now, Therefore, in exercise of the powers conferred by Section 7 of the Land Acquisition Act, 1894 (Act 1 of 1894), the Government of Goa hereby directs the Collector, North Goa to take the order for acquisition of the said land.

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

Parag M. Nagarcenkar, Under Secretary (Rev-I).
Porvorim, 22nd May, 2012.

Notification

No. 23/33/2010-RD

Whereas by Government Notification No. 23/33/2010-RD dated 18-01-2011 published on pages 1106

to 1107 of Series II No. 44 of the Official Gazette, dated 27-01-2011 and in two newspapers (1) "Goa Doot" dated 20-01-2011 (2) "The Navhind Times" dated 20-01-2011, it was notified under Section 4 of the Land Acquisition Act, 1894 (Central Act 1 of 1894) (hereinafter referred to as "the said Act") that the land specified in the Schedule appended to the said Notification was likely to be needed for the public purpose viz. Land Acquisition for construction of DWC 8L & 8L(A) of Sal distributory of LBMC of TIP at Sal Village in Bicholim Taluka.

And Whereas, the Government of Goa (hereinafter referred to as "the Government") after considering the report made under sub-section (2) of Section 5-A the said Act is satisfied that the land specified in the Schedule hereto is needed for the public purpose specified above (hereinafter referred to as "the said land").

Now, Therefore, the Government hereby declares, under Section 6 of the said Act that the said land is required for the public purpose specified above.

The Government also appoints, under clause (c) of Section 3 of the said Act, the Special Land Acquisition Officer (N), GTIDC, Karaswada, Bardez-Goa to perform the functions of a Collector, for all proceedings hereinafter to be taken in respect of the said land, and directs him under Section 7 of the said Act to take order for the acquisition of the said land.

3. A plan of the said land can be inspected at the Office of the Special Land Acquisition Officer (N), GTIDC, Karaswada, Bardez-Goa, till the award is made under Section 11.

SCHEDULE

(Description of the said land)

<i>Taluka:</i> Bicholim		<i>Village:</i> Salem
Survey No./ Sub-Div. No.	Names of the persons believed to be interested	Approx. area in sq. mts.
1	2	3
93/2 Part	O: 1. Shri Deu Mahadev Bhumica. 2. Executive Engineer, GTIDC, WC VIII, Irrigation Dept., Government of Goa. OR: Janu Babli Zore, 644.	203
96/1 Part	O: 1. Soma Dattaram Raut. 2. Sitaram Narayan Raut. 3. Executive Engineer, GTIDC, WD VIII, Irrigation Dept. Government of Goa. T: Ranchandra Ganesh Sawant.	2033

1	2	3
96/2 Part	O: 1. Sitaram Narayan Raut. 2. Executive Engineer, GTIDC, WD VIII, Irrigation Dept., Government of Goa.	52
<i>Boundaries :</i>		
North : S. No. 96/1, 2, 93/2.		
South : S. No. 96/1, 2, 93/2.		
East : S. No. 96/2.		
West : S. No. 96/2.		
		Total: 2288

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

Neela S. Dharwadkar, Under Secretary (Rev-I)/Link.
Porvorim, 24th February, 2012.



Department of Town & Country Planning

Order

Ref. No. 27/15-2/TCP/CC/2012/1695

In supersession of the earlier Order No. 27/15-3/TCP/2010/3956 dtd. 14-11-2010, the Government is pleased to re-constitute the Conservator Committee comprising of the following members as per the provisions of the Goa Land Development and Building Construction Regulations, 2010 notified vide No. 21/1/TCP/10/Pt.file/3256 dtd. 6-9-2010 and published in the Official Gazette, Series 1 No. 24 dated 9-9-2010 under the Goa (Regulation of Land Development and Building Construction) Act, 2008 (Act 6 of 2008);

- | | | |
|--|---|----------------|
| 1. Hon'ble Minister (Town & Country Planning) | — | Chairman. |
| 2. Chief Secretary | — | Vice-Chairman. |
| 3. Secretary (Town & Country Planning) | — | Member. |
| 4. The Chief Architect, PWD, Altinho, Panaji | — | Member. |
| 5. The Suptd. of Archeology ASI Goa Circle, Old Goa | — | Member. |
| 6. The Director of Achieves and Archeology, Panaji | — | Member. |
| 7. Nominee of Indian Institute of Architects (Goa Chapter) | — | Member. |
| 8. Nominee of Institution of Engineers (Goa State Centre) | — | Member. |

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|--|---|-------------------|
| 9. Nominee of Institute of Town Planners (Goa Regional Chapter) | — | Member. |
| 10. Nominee of Confederation of Real Estate Developers Association of India (CREDAI) Goa | — | Member. |
| 11. Govt. Nominee Architect, Armenio Rebeiro, Fontainhas, Panaji | — | Member. |
| 12. Govt. Nominee Engineer, Viresh Nadkarni, Campal, Miramar | — | Member. |
| 13. Chief Town Planner, TCP Department, Panaji | — | Member Secretary. |

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

S. T. Puttaraju, Chief Town Planner & ex officio Joint Secretary (TCP).

Porvorim, 22nd May, 2012.



Department of Transport

Directorate of Transport

Notification

No. 5/9/90-Tpt/2012/2049

In exercise of the powers conferred by clause (xii) of sub-rule (1) of Rule 22 of the Goa, Daman and Diu Motor Vehicles Tax Rules, 1974, the Government of Goa hereby exempts New Vehicle No. GA-03/N-8899, Ambulance of make Toyota Innova 2-5 G (E3)-7S bearing chassis No. MBJ11JV4007317495 0212 and Engine No. 2KD6971918 owned by Keshave Seva Sadhana, Manerkar Bhavan, Ansabhat, Mapusa, Goa, from payment of tax due to this State, being a charitable Institution.

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

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

Panaji, 28th May, 2012.



Department of Water Resources

Office of the Chief Engineer

Notification

No. 4/4/EO-WRD/108

Read: Notification No. 19-2/CE-Irrg/EO/435 dated 24-02-2000.

In exercise of the powers conferred by sub-section (3) of Section 4 of the Goa Tillari Irrigation Development Corporation Act, 1999 (Goa Act 6 of 1999), the Government of Goa is pleased to terminate the term of the office as Director of the following Non-Official Director of the Goa Tillari Irrigation Development Corporation with immediate effect.

- 1) Shri Savio G. De Souza, ... Director.
Nachinola, Bardez, Goa.
- 2) Shri Vishwanath Dhavaskar, ... Director.
Carapur, Bicholim, Goa

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

P. J. Kamat, Chief Engineer & ex officio Addl. Secretary.

Panaji, 21st May, 2012.

Notification

No. 4/4/EO-WRD/110

- Read: 1) Notification No. 19-2/CE-Irrg/EO/435 dated 24-02-2000.
- 2) Notification No. 4/4/EO/WRD/799, dated 13-02-2012.
 - 3) Notification No. 4/4/EO/WRD/108, dated 21-05-2012.

In exercise of the powers conferred by sub-section (1) of Section 4 of the Goa Tillari Irrigation Development Corporation Act, 1999 (Goa Act 6 of 1999), the Government of Goa is pleased to appoint the following members as Non-Official Directors of the Goa Tillari Irrigation Development Corporation in place of the Director whose post is vacant due to resignation vide Notification referred at 2 and terminated vide Notification referred at 3. This will come into force with immediate effect.

- 1) Shri Vasudev Korgaonkar, ... Director.
Anjuna, Goa
- 2) Shri Rama Parab, ... Director.
Oxel, Siolim, Goa
- 3) Shri Vilas Shetye, ... Director.
Torxem, Pernem, Goa

Rest other Directors and conditions mentioned in the Notification at Sr. No. 1 above remains unchanged.

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

P. J. Kamat, Chief Engineer & ex officio Addl. Secretary.

Panaji, 21st May, 2012.

Order

No. 3/25-15/90/WR/189

Government is pleased to promote Shri R. R. Yaragatti, Executive Engineer, Works Div. X, Water Resources Department, Pajimol, Sanguem, Goa to the post of Superintending Engineer on ad hoc basis initially for a period of 6 months in the Pay Band+Grade Pay of ₹ 15,600-39,100+₹ 7,600/- and posted in Central Planning Organisation, Water Resources Department, Panaji with immediate effect.

The promotion is purely on ad hoc basis and will not bestow 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 and for eligibility for promotion to the next higher grade.

Consequent upon the promotion of Shri R. R. Yaragatti to the post of Superintending Engineer, Shri S. V. Prabhavalkar, Superintending Engineer, Central Planning Organisation, WRD, Panaji is transferred and posted in Circle Office I, Water Resources Department, Panaji.

On promotion, Shri R. R. Yaragatti, shall hold the charge of Works Div. X, WRD, Pajimol, Sanguem in addition to his own duties, until further orders.

This issues with the approval of Government vide No. Pr. Secy(WR)/333 dated 24-04-2012.

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

Chief Engineer & ex officio Addl. Secretary (WR).

Panaji, 22nd May, 2012.

Order

No. 3/25-15/90/WR/129

On the recommendation of the Goa Public Service Commission as conveyed vide confidential letter No. COM/II/11/27(1)/90-94 Vol. 136 dated 18-4-2012, Government is pleased to order the promotion of Shri S. Sekar and S. V. Prabhavalkar, both Executive Engineers/Surveyor of Works of Water Resources Department, Government of Goa to the post of Superintending Surveyor of Works/Superintending Engineer in Water Resources Department on regular basis in the revised pay scale of Pay Band ₹ 15,600-39,100+Grade Pay ₹ 7,600/- plus other allowances

with immediate effect and post them as indicated below:—

Sr. No.	Name of the Officer	Present Place of working	Place of posting on promotion
1.	Shri S. Sekar, Executive Engineer	GTIDC, Panaji	Superintending Surveyor of works, (GTIDC), Panaji.
2.	Shri S. V. Prabhavalkar, Surveyor of Works	CPO, WRD, Panaji	Superintending Engineer, CPO, WRD, Panaji.

The Officer at serial No. 1 shall be on deputation in Goa Tillari Irrigation Development Corporation and it shall be governed as per the standard terms and conditions stipulated in the Government O. M. No. 13-4-74-PER dated 12-02-1999 and as amended from time to time.

The Goa Tillari Irrigation Development Corporation shall be liable to pay the salary and the other allowances to the Officers from the funds as per the sub-section (6) of Section 16 of the aforesaid Act.

The Goa Tillari Irrigation Development Corporation shall be liable to pay to the Government leave salary and pension contribution to the Officer at Serial No. 1 at the prescribed rate.

No deputation allowances shall be admissible to the Officer, at Sl. No. 1 in view of sub-section (5) of Section 16 of G.T.I.D.C. Act, 1999.

Their pay will be fixed as per rules. They may exercise their option if they desire, within 1 month from the date of issue of this order for fixing their pay.

Their Pay/Scale of pay shall be protected on their promotion to the post of Superintending Surveyor of Works/Superintending Engineer.

T. T. A. will be admissible provided change of residence is actually involved.

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

S. T. Nadkarni, Chief Engineer & ex officio Addl. Secretary (WR) .

Panaji, 8th May, 2012.

Order

No. 3/25-15/90/WR/193

Read: 1) Govt. Order No. 3/25-15/90/WR/862 dated 20-10-2011.

2) Corrigendum No. 3/25-15/90/WR/1061 dated 09-12-2011.

Government is pleased to extend the ad hoc promotion of following Assistant Engineers/ Assistant Surveyor of Works (Civil) in the Water Resources Department promoted vide Govt. order referred above, for further period of six months from 21-04-2012 to 20-10-2012 or till the posts are filled on regular basis, whichever is earlier, on the same terms and conditions as stipulated in the aforesaid order.

This is issued with the approval of Government vide No. Pr. Secy (WR)/339 dated 25-04-2012.

1. Shri Chimeta D. Narayan.
2. Shri Azad S. Vernekar.
3. Shri Shantaram S. Ghantkar.
4. Shri Ravlu P. Shetye.
5. Shri Franklin D'Souza.
6. Shri Dilip B. N. Bhandodkar.
7. Shri Rajendra M. Gaonkar.
8. Shri Dilip V. Tembkar.

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

Sd/-, Chief Engineer & ex officio Addl. Secretary (WR) .

Panaji, 23rd May, 2012.

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Published and Printed by the Director, Printing & Stationery,
Government Printing Press,
Mahatma Gandhi Road, Panaji-Goa 403 001.

PRICE—Rs. 46.00

PRINTED AT THE GOVERNMENT PRINTING PRESS, PANAJI-GOA-83/420-5/2012.