

Panaji, 2nd May, 2013 (Vaisakha 12, 1935)

SERIES II No. 5

OFFICIAL GAZETTE



GOVERNMENT OF GOA

PUBLISHED BY AUTHORITY

Note:- There is one Extraordinary issue to the Official Gazette, Series II No. 4 dated 25-04-2013 namely, Extraordinary dated 29-04-2013 from pages 87 to 88 regarding Notification from Department of Inland Waterways (Captain of Ports).

Department of Civil Supplies &
Consumer Affairs

—
Order

Ref. No. DCS/ENF/Taluka-Matters/2013-14/25

Sub: Identification of Joint Mamlatdar to function as Authority under clause 7 & sub-clause 1 of clause 16 of the Goa Daman and Diu Controlled Commodities (Regulation of Distribution) Order, 1966 at Taluka Level.

In pursuance of circular of the Government vide No. DCS/ENF/ECA-13/2012-13/453 dated 13-03-2013 the below mentioned Joint Mamlatdar at Taluka are hereby identified to work as Authority under clause 7 & sub-clause 1 of clause 16 of the Goa Daman & Diu Controlled Commodities (Regulation of Distribution) Order, 1966 for Civil Supplies & Consumers Affairs at Taluka Level.

Sr. No.	Name of the Taluka	Joint Mamlatdar
1.	Tiswadi	Jt. Mamlatdar-I
2.	Bardez	Jt. Mamlatdar-II
3.	Satari	Jt. Mamlatdar-I
4.	Pernem	-do-
5.	Ponda	-do-
6.	Bicholim	Jt. Mamlatdar-II
7.	Mormugao	-do-
8.	Salcete	-do-
9.	Quepem	-do-
10.	Sanguem	-do-
11.	Canacona	-do-

The Authority for Civil Supplies at Taluka of Dharbandora shall remain with the Mamlatdar of Taluka.

This order shall come into force w.e.f. 01-05-2013.

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

Vikas S. N. Gaunekar, Director & ex officio Joint Secretary (Civil Supplies & Consumer Affairs).

Panaji, 23rd April, 2013.

◆◆◆◆◆
Department of Education, Art & Culture
Directorate of Education

—
Order

No. Acad/MGT/5/BCH/98/1084

Read: Order No. Acad/MGT/5/BCH/98/4259 dated 31-12-2012.

Whereas, the Government under the above order has taken over the Management of Shri Vijayanand Dnyaprasarak Saunstha running three schools, (1) Vijayanand High School, Maem (2) Vijayanand Dyanprasarak Saunstha's Higher Secondary School, Maem and (3) Shri Mahamaya High School, Ardhawada, Maem for further period from 13-12-2012 to 25-04-2013 by invoking the provision of sub-section (1) of Section 20 of Goa School Education Act, 1984.

And whereas, the above term of taking over the said schools have been expired on 25-04-2013 and in the interest of the School Education it is necessary that Government to continue the Management of Shri Vijayanand Dnyaprasarak Saunstha, Maem, Bicholim for further period of six months w.e.f. 26-04-2013 to 25-10-2013.

Now, therefore, in the interest of education of children, it is ordered that Dr. Thomas Mathew, Deputy Education Officer, North Education Zone, Mapusa-Goa is hereby appointed as Authorised

Officer of the said three (3) Schools, until the Management is restored back to the Society namely Shri Vijayanand Dnyanprasarak Saunstha, Maem-Bicholim.

The Order is issued after Government approval.

D. P. Dwivedi, IAS, Director (Education).

Porvorim, 22nd April, 2013.



Department of Finance

Revenue & Control Division

—
Order

No. 3/2/2009-Fin(R&C)

In exercise of the powers conferred by sub-section (3) of Section 5 of the Goa Entertainment Tax Act, 1964 (Act 2 of 1964), the Government of Goa is pleased to exempt the Gujarati Movie "SAPTAPADI" to be held in Cine Vishant, Margao on 27th April, 2013 and Cine Ashok, Panaji-Goa on 28th April, 2013 from the liability of payment of entertainment tax in whole.

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

Sd/- (Ajit S. Pawasker), Under Secretary, Fin (R & C).

Porvorim, 23rd April, 2013.



Directorate of Accounts

—
Order

No. DA/Admn/45-6/2013-14/Tr-186/13

The Government is pleased to order the transfer and posting of the following Assistant Accounts Officers under Common Accounts Cadre as shown below with immediate effect on administrative grounds.

Sr. No.	Name of the Officer	Present place of posting	Transferred and posted at
1	2	3	4
1.	Shri Agnelo A. Fernandes	Directorate of Accounts, Panaji, Goa	Directorate of Fire & Emergency Services, Campal, Panaji, Goa, thereby relieving Shri Shrikrishna Naik, AAO of additional duties.

1	2	3	4
2.	Shri Vitorino Colasso	O/o the Superintending Engineer, Circle IX, Public Works Department, Altinho, Panaji, Goa	Directorate of Accounts, South Branch Office Margao, Goa.

Shri Sumant P. Dessai, Assistant Accounts Officer, who is working in the O/o Principal Chief Engineer, Public Works Department, Altinho, Panaji, Goa, shall hold the additional charge of the post of Assistant Accounts Officer in the O/o the Superintending Engineer, Circle IX, Public Works Department, Altinho, Panaji, Goa, in addition to his own duties as a temporary stop gap arrangement till the time regular Assistant Accounts Officer is posted.

The transfer and posting in respect of Shri Vitorino Colasso, Assistant Accounts Officer is at his own request, hence he is not entitled for joining time, Composite Transfer grant/TA/DA.

Wherever the transferees do not change their place of residence from old station to new, they will not be entitled for availing of joining time nor transfer TA as provided under CCS Rule.

On joining their new assignments, the officers shall send two copies of CTC/Joining Report to this Directorate immediately for records.

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

Gurunath S. Potekar, Director & ex officio Joint Secretary (Accounts).

Panaji, 23rd April, 2013.



Department of Elections

Goa State Election Commission

—
Order

No. 3/5/2013/SEC/455

In exercise of the powers vested in me vide Rule 2(e) of the Goa Panchayat and Zilla Panchayat (Election Procedure) Rules, 1996, I, Dr. M. Modassir, Commissioner of Goa State Election Commission, Altinho, Panaji-Goa hereby appoint the following Officers as Returning Officers and Assistant Returning Officers within their concerned jurisdiction for the ensuing bye-election to the

vacant seats of Panchayat members in the wards mentioned against their names below:

Sr. No.	Name of the Returning Officer	Name of Assistant Returning Officer	Ward No. and name of the Village Panchayat
1.	Mamlatdar of Ponda Taluka, Ponda-Goa	Aval Karkun in the Office of the Mamlatdar, Ponda Taluka	Ward No. IX of Village Panchayat, Curti, Candepar.
2.	Mamlatdar of Pernem Taluka, Pernem-Goa	Aval Karkun in the Office of the Mamlatdar, of Pernem Taluka	Ward No. II of Village Panchayat, Corgao.
3.	Mamlatdar of Salcete Taluka, Margao-Goa	Head Clerk in the Office of the Mamlatdar, Salcete Taluka	Ward No. VII of Village Panchayat, Raia.
4.	Mamlatdar of Tiswadi Taluka, Panaji-Goa	Aval Karkun in the Office of the Mamlatdar, Tiswadi Taluka	Ward No. V of Village Panchayat, Corlim.

Dr. M. Modassir, IAS (Retd.), Commissioner (Goa State Election Commission).

Panaji, 25th April, 2013.

Notification

No. 3/5/2013/SEC/456

In exercise of the powers conferred upon me vide Rule 5 of the Goa Panchayat and Zilla Panchayat (Election Procedure) Rules, 1996, I, Dr. M. Modassir, Commissioner of Goa State Election Commission, hereby notify that the electoral rolls of the Goa Legislative Assembly prepared under the provisions of the Representation of People Act, 1950 (Central Act 43 of 1951) with 1st January, 2013 as the qualifying date and for the time being in force as on 15-01-2013 for such Constituency of the Assembly or any part thereof as is included in the area within the jurisdiction of the Panchayat shall be divided by the Returning Officer into different sections corresponding to the different wards of the Panchayats for the purpose of holding bye-elections to the following wards.

1. Ward No. IX of Village Panchayat, Curti, Candepar, Ponda.

2. Ward No. II of Village Panchayat, Corgao, Pernem Taluka.

3. Ward No. VII of Village Panchayat, Raia, Salcete Taluka.

4. Ward No. V of Village Panchayat, Corlim, Tiswadi Taluka.

Dr. M. Modassir, IAS (Retd.), Commissioner (Goa State Election Commission).

Panaji, 25th April, 2013.

Department of Labour

Order

No. 24/3/87-Lab-Part-I/153

The Government is pleased to order the transfer and posting of the following Insurance Medical Officers in E.S.I. Scheme, under the Office of the Commissioner, Labour and Employment with immediate effect as under:

Sr. No.	Name of the Official	Present place of working	Place of posting on transfer
1	2	3	4
1.	Dr. Francisco X. Pereira, I.M.O.	E.S.I. Dispensary Vasco	E.S.I. Hospital, Margao.

The transfer of the official is made at his own written request and hence he is not entitled to claim TA/DA and joining time.

He should report to the new place of posting immediately.

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

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

Porvorim, 4th April, 2013.

Order

No. 28/10/2013-LAB/162

Whereas the Government of Goa is of the opinion that an industrial dispute exists between the management of M/s. Funskool (India) Private Limited, Corlim, Goa, and its Workman Shri Dattakumar V. Shet, Junior Technician-cum-Operator-cum-Assembler, represented by the Goa Trade and Commercial Workers' Union, in respect of the matter specified in the Schedule hereto (hereinafter referred to as the "said dispute");

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

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

SCHEDULE

"(1) Whether the action of the management of M/s. Funkskool (India) Private Limited, Corlim, Goa, in dismissing the services of Shri Dattakumar V. Shet, Junior Technician-cum-Operator-cum-Assembler, with effect from 15-01-2011, is legal and justified?

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

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

D. S. Morajkar, Under Secretary (Labour).
Porvorim, 12th April, 2013.

Order

No. 28/9/2013-Lab/163

Whereas the Government of Goa is of the opinion that an industrial dispute exists between the management of M/s. Gomantak Private Limited, St. Inez, Panaji-Goa, and it's Workman Shri Prakash R. Kshirsagar, Sub-Editor, in respect of the matter specified in the Schedule hereto (hereinafter referred to as the "said dispute");

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

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

SCHEDULE

"(1) Whether the action of the management of M/s. Gomantak Private Limited, St. Inez, Panaji-Goa, in refusing employment to Shri Prakash R. Kshirsagar, Sub-Editor,

with effect from 01-07-2012, is legal and justified?

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

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

D. S. Morajkar, Under Secretary (Labour).
Porvorim, 12th April, 2013.

Order

No. 28/7/2013-Lab/164

Whereas the Government of Goa is of the opinion that an industrial dispute exists between the management of M/s. Nicomet Industries Limited, Cuncolim, Goa, and it's 10 Workmen in respect of the matter specified in the Schedule hereto (hereinafter referred to as the "said dispute");

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

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

SCHEDULE

"(1) Whether the action of the management of M/s. Nicomet Industries Limited, Cuncolim, Goa, in declining to give the benefits of the settlement dated 09-05-2008 to the below mentioned Workmen on the ground that they have ceased to be in employment before signing of the settlement, is legal and justified?

- (i) Shri Xavier Colaco.
- (ii) Shri Rajappa Liger.
- (iii) Shri Milagres Dias.
- (iv) Shri Suraj Deshpande.
- (v) Shri Deepak Gaonkar.
- (vi) Shri Ravindra Dhuri.
- (vii) Shri Rajesh Gawas.
- (viii) Shri Praveen Kamble.
- (ix) Shri Raju Singh.
- (x) Shri Veerandra Shukla.

(2) If the answer to issue No. (1) above is in the negative, then, to what relief the Workmen are entitled?"

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

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

Porvorim, 12th April, 2013.

Order

No. 28/8/2013-Lab/165

Whereas the Government of Goa is of the opinion that an industrial dispute exists between the management of M/s. Zuari Agro Chemicals Limited, Zuarinagar, Goa and it's Workmen represented by the Zuari Agro Chemicals Limited Employees Union, in respect of the matter specified in the Schedule hereto (hereinafter referred to as the "said dispute");

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

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

SCHEDULE

"(1) Whether the change effected by the management of M/s. Zuari Agro Chemicals Limited, Zuarinagar, Goa, in the weekly day off of it's below mentioned Workmen from Saturday/Sunday to Sunday/Monday as per their notice dated 11-04-2012, is legal and justified?

- (1) V. Das.
- (2) A. Parsekar.
- (3) H. A. Bhise.
- (4) W. P. L. D'Souza.
- (5) A. N. Redkar.
- (6) D. B. Pagi.
- (7) S. Shettigar.
- (8) T. Khandeparkar.
- (9) J. Pereira.
- (10) U. R. Gaude.
- (11) V. B. Gaude.
- (12) Albert Fernandes.
- (13) D. J. Samant.

- (14) P. N. Takkar.
- (15) R. R. Dabholkar.
- (16) G. E. D'Souza.
- (17) J. S. Tavares.
- (18) M. R. Gawas.
- (19) R. M. Shinde.

(2) If, the answer to issue No. (1) above is in the negative, then, what relief the above mentioned Workmen are entitled to?"

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

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

Porvorim, 12th April, 2013.

Order

No. 28/11/2013-Lab/173

Whereas the Government of Goa is of the opinion that an industrial dispute exists between the management of M/s. Gomantak Private Limited, Gomantak Bhavan, St. Inez, Panaji-Goa, and it's Workman Shri Maruti B. Raut, Sub-Editor, in respect of the matter specified in the Schedule hereto (hereinafter referred to as the "said dispute");

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

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

SCHEDULE

"(1) Whether the action of the management of M/s. Gomantak Private Limited, Gomantak Bhavan, St. Inez, Panaji-Goa, in refusing employment to it's Workman Shri Maruti B. Raut, Sub-Editor, with effect from 01-07-2012, is legal and justified?

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

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

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

Porvorim, 16th April, 2013.

Order

No. 28/14/2013-Lab/187

Whereas the Government of Goa is of the opinion that an industrial dispute exists between the management of M/s. Golden Peace Hotels and Resorts Private Limited (Casino Paradise), Neo Majestic, Porvorim, Bardez-Goa and it's Workman Shri Vitesh Vasant Joshi, Club Security, in respect of the matter specified in the Schedule hereto (hereinafter referred to as the "said dispute");

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

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

SCHEDULE

"(1) Whether the action of the management of M/s. Golden Peace Hotels and Resorts Private Limited (Casino Paradise), Neo Majestic, Porvorim, Bardez-Goa, in terminating the services of Shri Vitesh Vasant Joshi, Club Security, with effect from 04-03-2012, is legal and justified?

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

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

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

Porvorim, 22nd April, 2013.

Order

No. 28/15/2013-Lab/188

Whereas the Government of Goa is of the opinion that an industrial dispute exists between the management of M/s. Golden Peace Hotels and Resorts Private Limited (Casino Paradise), Neo Majestic, Porvorim, Bardez-Goa and it's Workman Shri Naasif Sattar, Dealer, in respect of the matter specified in the Schedule hereto (hereinafter referred to as the "said dispute");

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

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

SCHEDULE

"(1) Whether the action of the management of M/s. Golden Peace Hotels and Resorts Private Limited (Casino Paradise), Neo Majestic, Porvorim, Bardez-Goa, in terminating the services of Shri Naasif Sattar, Dealer, with effect from 26-03-2012, is legal and justified?

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

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

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

Porvorim, 22nd April, 2013.

Order

No. 28/16/2013-Lab/189

Whereas the Government of Goa is of the opinion that an industrial dispute exists between the management of M/s. Golden Peace Hotels and Resorts Private Limited (Casino Paradise), Neo Majestic, Porvorim, Bardez-Goa and it's Workman Shri Nicholas Fernandes, Senior Dealer, in respect of the matter specified in the Schedule hereto (hereinafter referred to as the "said dispute");

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

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

SCHEDULE

"(1) Whether the action of the management of M/s. Golden Peace Hotels and Resorts Private Limited (Casino Paradise), Neo Majestic, Porvorim, Bardez-Goa, in terminating the services of its Workman

Shri Nicholas Fernandes, Senior Dealer, with effect from 21-03-2012, is legal and justified?

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

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

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

Porvorim, 22nd April, 2013.

Order

No. 28/13/2013-Lab/190

Whereas the Government of Goa is of the opinion that an industrial dispute exists between the management of M/s. Atlantis Entertainments “Casino Palms” Hotel La Calypso, Saunta Wado, Calangute, Bardez, Goa, and its Workman Shri Upendra R. Volvoikar, Dealer, in respect of the matter specified in the Schedule hereto (hereinafter referred to as the “said dispute”);

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

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

SCHEDULE

“(1) Whether the action of the management of M/s. Atlantis Entertainments (Casino Palms) Hotel La Calypso, Saunta Wado, Calangute, Bardez, Goa, in terminating the services of Shri Upendra R. Volvoikar, Dealer, with effect from 11-04-2012, is legal and justified?

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

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

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

Porvorim, 22nd April, 2013.

Order

No. 21/20-2000-Lab/PF/179

- Read: (1) Government Order No. 21/20/2000-Lab dated 04-12-2009.
(2) Government Order No. 21/20/2000-Lab dated 09-03-2010.
(3) Government Order No. 21/20/2000-Lab dated 08-06-2010.
(4) Government Order No. 21/20/2000-Lab/PF dated 15-03-2011.
(5) Government Order No. 21/20/2000-Lab/PF dated 20-01-2012.

Government is pleased to extend the ad hoc appointment of Shri Milind P. Govekar, Labour Welfare Officer (Group ‘B’ Gazetted) in the Pay Band—2, ₹ 9,300-34,800/- plus Grade Pay of ₹ 4,600/- in the Office of the Commissioner of Labour and Employment, Panaji-Goa for a further period of one year with effect from 04-12-2012 to 03-12-2013 or till the post is filled on regular basis whichever is earlier on the same terms and conditions referred at Sr. No. 1 in the preamble.

This issues with the concurrence of Goa Public Service Commission vide their letter No. COM/II/11/28(1)/2010/3498 dated 25-03-2013.

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

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

Porvorim, 16th April, 2013.

Notification

No. 28/1/2013-Lab/169

The following award passed by the Lok Adalat, at Panaji-Goa on 12-01-2013 in reference No. IT/23/2010 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.

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

Porvorim, 15th April, 2013.

LOK ADALAT

Compromise Memorandum in Cases u/s 33 (c) of Industrial Disputes Act, 1947

Type of cases: Ref. No. IT/23/2010 (Matter relating to charter of demands).

Case No.: IT/23/2010 Pending before Industrial Tribunal-cum-Labour Court-I, Panaji.

Workmen Rep. by the ... Applicant/Party
President, Goa Trade & No. I.
Commercial Workers
Union

V/s

M/s. Equator ... Respondent/Party
No. II.

Sd/-
Signature of the
Applicant

Sd/-
Signature of the
Respondent/Party No. II

Sd/-
Signature of the
Advocate for the
Applicant

Sd/-
Signature of the
Advocate for the
Respondent

(Signature of the Authorized officer of the Government)

AWARD

The matter is amicably settled as above before the Lok Adalat held on 12th January, 2013 at Panaji-Goa.

Sd/-

1. Signature of the Presiding Officer of Panel of Lok Adalat.

Sd/-

2. Signature of the Member of Panel of Lok Adalat.

Sd/-

3. Signature of the Member of Panel of Lok Adalat.

Notification

No. 28/36/2011-Lab/166

In exercise of the powers conferred by sub-clause (vi) of Clause (n) of Section 2 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947) (hereinafter called the "said Act"), the Government of Goa, being satisfied that public interest so requires, hereby declares the service in fertilizer and pesticides industries to be public utility service for the purposes of the said Act, for a period of six months with effect from the date of publication of this Notification in the Official Gazette.

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

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

Porvorim, 12th April, 2013.

Notification

No. 28/1/2013-Lab/174

The following award passed by the Industrial Tribunal and Labour Court, at Panaji-Goa on 29-01-2013 in reference No. IT/51/97 is hereby published as required by Section 17 of the

MAY IT PLEASE YOUR HONOUR

Dispute in brief is that by order of reference dated 23-08-2010 the matter is referred to the Industrial Tribunal and during the course of discussion it is agreed between the parties to settle the matter on following terms of compromise.

We, that is Workmen, Represented by Adv. Suhas Naik—Applicant.

Shri Cosme Rui DeSouza, Proprietor of M/s. Equator—Respondent.

alongwith our Advocates, authorize panel/Bench constituting Lok Adalat, in the above said matter we have arrived at the compromise to settle the matter as follows:—

Terms of Compromise

The Employees Party No. II has agreed to give a wage rise of Rs. 1000/- per month, per worker effective from January, 2010 to December, 2010, which the employer has already paid to the Workmen in their salary. In addition to above wage rise to employer has agreed to pay an additional wage rise of Rs. 500/- per month per worker effective from January, 2011 to December, 2011 and further additional wage rise of Rs. 1000/- per worker per month for the period January, 2012 to December, 2012. In view of the above agreement the present dispute stands conclusively settled.

We have arrived at the compromise terms willingly before the Lok Adalat held on 12-01-2013 at 10.30 a.m. No coercion or force is applied. Today, though it is not working day for the Court we request the Panel/bench constituting the Lok Adalat to record the compromise today only and the aforesaid matter may be marked as settled accordingly. The arrears arising out of the above settlement shall be paid by the employer on or before 31-03-2013.

Dated this 12th day of January, 2013.

Industrial Disputes Act, 1947 (Central Act 14 of 1947).

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

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

Porvorim, 16th April, 2013.

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

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

Ref. No. IT/51/97

Shri Anand Laxmanrao Patel,
 Keri Chautura Matru Pitru Krupa,
 Via Sankhali, Satari,
 North-Goa.

... Workman/Party I

V/s

Bicholim Urban Cooperative
 Bank Limited,
 Nandawan, Central Office,
 Bicholim, Goa.

... Employer Party II

Workman/Party I represented by Shri Subhash Naik.

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

AWARD

(Passed on 29th day of January, 2013)

In exercise of powers conferred by clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) (for short the Act), the Government of Goa by order dated 12-8-97 bearing No. IRM/CON-MAP/(22)/95/4313 has referred the following dispute for adjudication by this Tribunal.

- “(1) Whether Shri Anand Laxmanrao Patil, is a Workman within the meaning of Section 2(s) of the Industrial Disputes Act, 1947 (Central Act 14 of 1947)?
- (2) If yes, whether the action of the Bicholim Urban Co-operative Bank Limited, Bicholim-Goa, in terminating the services of Shri Anand Laxmanrao Patil, with effect from 12-6-95, is legal and justified?
- (3) If not, to what relief the Workman is entitled?”

2. On receipt of the reference, a case was registered under No. IT/51/97 and registered A.D. notices were issued to the parties upon which Party I filed the claim statement at Exb. 5 and Party II filed the written statement at Exb. 6. Party I then filed the rejoinder at Exb. 7.

3. It is in short the case of Party I that Party I/ /Workman was recruited as Clerk on 15-11-93 and thereafter w.e.f. 2-5-94 was appointed as a probationary officer by Party II. It is stated that by letter dated 7-1-95, Party I was confirmed in services of the bank and was designated as Jr. Officer. That Party I worked as an officer at Bicholim branch till 28-2-95 and thereafter was transferred to Panaji branch where he worked till the date of his termination. It is stated that prior to his employment w.e.f. 15-11-93, Party I had answered the written test and oral interview and was then selected as Cashier-cum-Clerk by Party II vide letter dated 29-7-93. It is stated that the post of personal assistant in officers category was created by the Board of Directors of the Bank and accordingly an advertisement was published in Navhind Times dated 8-2-94 and also Party II had issued a circular dated 4-2-94 asking the eligible internal candidates to apply for the said post and accordingly Party II had applied for the same. It is stated that the said post was approved by the Registrar of Co-operative Societies, Panaji, Goa and the staff committee in the bank had resolved to select Party I as P.A. to the Managing Director and accordingly the Managing Director appointed him vide letter dated 2-5-94 as P.A. on probation for a period of six months. It is stated that the duties performed by Party I were those performed by Jr. Officers in the bank, which are generally clerical in nature. That Party I performed the duties such as writing minutes of Board of Directors meetings, arranged Board of Directors meetings, maintained inward/outward registers, did correspondence and forwarded loan proposals to the bank branches, passed vouchers and cheques in saving bank account, current account and over draft account etc. It is stated that the duties performed by Party I are performed by a Clerk as defined in the Act and thus Party I is a Workman. It is stated that the services of Party I were abruptly terminated w.e.f. 12-6-95 by Party II vide letter dated 12-6-95 and at the time of termination Party I had worked continuously from 15-11-93 to 11-6-95. It is stated that at the time of termination Party II did not prepare seniority list and also did not follow the principle of “last come, first go” and they also did not give a legally valid reason before termination. It is

stated that after termination of Party I from service, Party II have appointed four new officers and also three or four senior new officers and at the time of recruiting new officers, Party I was not called for employment in the bank and that Party II did not comply with the mandatory provisions of Sections 25F, 25G and 25H of the Act. It is stated that the Registrar of Co-operative Societies had told Party II to discontinue the services of Clerks and sub-staff and that at the time of termination Party I was employed as a Jr. Officer and not a clerk and therefore the question of termination or his services did not arise. Thus, it is prayed by Party I to reinstate him in service with full back wages and continuity of service with cost.

4. In the written statement Party II has denied the case set up by Party I and has stated that the reference is not maintainable in view of non-obstante clause contained in Section 91 of the Maharashtra Co-operative Societies Act, 1962 as applied to the State of Goa and also because Party I is not a Workman as defined u/s 2(s) of the Act. It is stated that Party II bank being a Co-operative bank registered under Maharashtra Co-operative Societies Act, 1960 is governed by the provisions of the said Act and is under the control of the registrar of Co-operative Societies of Goa. It is stated that the Registrar of Co-operative Societies issue directions to the bank as to its working and the bank has to strictly follow the same in all matters including the recruitment of the employees and the officers. It is stated that pursuant to the directions issued by the Government of Goa through the said Registrar u/s 79A of the Societies Act vide Order No. 41/1(4)/93/TS dated 18-6-93, the bank had constituted a staff Assessment and Selection Committee comprising of the then Chairman, the Managing Director and the then Assist. Registrar of the Co-operative Societies, H. O. Panaji for the assessment of the staff requirement of the bank and this committee had considered the applications of candidates received by the bank and on taking their written test and oral interview, prepared a merit list of 125 candidates for the post of clerks and 25 candidates for the post of peons/sub-staff. It is stated that on 28-7-93 the then Managing Director Mr. D. Kenkre with his forwarding; letter dated 28-7-93 submitted a copy of the purported resolution No. 2 of the Board of Directors of the same date to the Registrar of Co-operative Societies seeking approval for appointment of 65 Clerks, 17 Peons/Watchman and 5 officers. It is stated that such resolution had

not been passed at any time and that Managing Director, Mr. Kenkre submitted a fake resolution and the Registrar of Co-operative Societies on the basis of this resolution granted approval for creation/appointment of the post mentioned therein. It is stated that said posts were required to be filled up from the merit lists, as prepared by the Staff Assessment and Selection Committee and duly approved by the Registrar of Co-operative Societies. It is stated that Managing Director, Shri Kenkre on 29-7-93 issued letters of appointment to 65 Clerks, 10 Peons and 5 Watchmen ignoring the seniority of the merit list approved by the Staff Assessment and the Selection Committee and these letters of appointment were issued on xerox copies of the bank's letter head under the signature of Managing Director, Shri Kenkre. It is stated that these letters did not bear the outward number from the outward register maintained by the bank but contained imaginary outward numbers given by Managing Director, Mr. Kenkre. It is stated that in addition to above appointment letters Managing Director, Mr. Kenkre also issued appointment letters to 56 candidates for the post of Clerks and 15 Peons/sub-staff despite being aware that the appointments were in excess of the posts approved by the Registrar of Co-operative Societies vide his letter dated 29-7-93. It is stated that Managing Director, Shri Kenkre issued appointment letter to Party I as PA to Managing Director, without the creation of the post by the Staff Assessment and Selection Committee and without the approval of the Registrar of Co-operative Societies as required under the directions issued under Societies Act and therefore such appointment of Party I was contrary to law and as such illegal and bad. It is stated that out of 56 Clerks and 15 Peons/sub-staff to whom letters of appointments were issued in excess of the sanctioned strength, appointment letters to 33 Clerks were issued to those who were in the approved lists while appointment letters to 23 Clerks and 17 Peons/sub-staff were issued to those who were not in the merit list approved by the Registrar of Co-operative Societies. It is stated that the additional posts of 56 Clerks and 17 Peons/sub-staff were neither created by the Board of Directors nor assessed by the Staff Assessment and Selection Committee and therefore Managing Director, Mr. Kenkre was not entitled to send appointment letters to additional 56 Clerks and 17 Peons/sub-staff. It is stated that the senior auditor of Co-operative Societies in his special report pointed out the irregularity and pursuant to this report the Registrar of Co-operative

Societies by letter dated 31-5-95 informed the bank about the serious irregularities and directed that termination orders be issued to the said 56 Clerks and 17 Peons, Watchmen on or before 12-6-95 without fail and submit the report thereof to the Registrar on or before 14-6-95. It is stated that in compliance with the said directions Party II issued termination orders to the said 56 Clerks and 17 Peons/Watchmen on 12-6-95 and terminated their services with one month's wages in lieu of notice and compensation as permissible under the Act. It is stated that the services of Party I had to be terminated accordingly as the post to which he was appointed was found to be in excess of the posts for which the approval was accorded by the Registrar of Co-operative Societies. It is stated that alongwith the letter of termination, Party I was issued pay order No. 964 dated 12-6-95 on the same bank towards one month's wages in lieu of wages and compensation under the provisions of the Act and earned wages of 12 days of June, 1995, earned by Party I were credited to his account. It is stated that after the discharge of all the staff, whose recruitment was not approved by the Registrar of Societies on 12-6-95, a compliance report was sent to the registrar on 14-6-95. It is stated that as the initial appointment of Party I as a Clerk-cum-Cashier and further appointment as PA to Managing Director, was made contrary to law without the approval of the Registrar of Co-operative Societies. Party II had not option but to discharge the Party I as per the directions of the Registrar of Co-operative Societies w.e.f. 12-6-95 and therefore its action is just proper and legal. Thus, amongst and other grounds, Party II has prayed to reject the reference.

5. Based on the pleadings of the parties, the issues dated 20-3-98 at Exb. 8, were framed.

6. In the course of evidence, Party I, Shri Anand Laxmanrao Patel, examined himself as witness No. 1 and closed the case. On the other hand, Party II examined their Sr. Officer, Shri Carlos Figueredo as witness No. 1 and Shri Satish Jakhi as witness No. 2 and closed their case.

7. Heard Lnd. Representative, Shri Subhash Naik for Party I and Lnd. Adv. Shri P. J. Kamat for Party II.

8. I have gone through the records of the case and have duly considered the arguments advanced on behalf of both the parties, I am reproducing herewith the issues alongwith their findings and reasons thereof.

- | | |
|--|---------------------|
| 1. Whether the Party I proves that he is a "Workman" within the meaning of Sec. 2(S) of the I. D. Act, 1947? | In the negative. |
| 2. Whether the Party I proves that the action of the Party II in terminating his services from 12-6-95 is illegal and unjustified? | In the negative. |
| 3. Whether the Party II proves that the reference made by the Government is not maintainable and hence is liable to be rejected? | Not pressed. |
| 4. Whether the Party II proves that the appointment of the Party I as Clerk-cum-Cashier as well as Personal Assistant to the Managing Director was unauthorized and hence his services were terminated as per the directions of the Registrar of Co-operative Societies? | In the positive. |
| 5. Whether the Party II proves that the Party I is gainfully employed from the date of termination of his service? | In the positive. |
| 6. Whether the Party I is entitled to any relief? | In the negative. |
| 7. What Award? | As per order below. |

REASONS

9. *Issue No. 1:* It otherwise cannot be disputed that Party I has approached the Labour Commissioner with grievance that his services were terminated when he was already a PA to the Managing Director (MD for short) and therefore as rightly pointed out by the Learned Advocate for Party II, in terms of the reference forwarded to this Court for adjudication, Party I has to prove that at the time of termination of his services as above, he was a Workman.

10. In the claim statement as well as in his examination in chief, Party I has enumerated the duties performed by him and in which are writing of minutes of meeting of Board of Directors.

maintaining inward and outward book, doing the correspondence, posting/making entries in the loan account etc. However, in his cross examination Party I has admitted that as PA to the MD, he was writing letters to the customers of Party II though he has further clarified that these letters were being written as per the instructions of MD. Upon being shown xerox copy of a letter dated 25-6-94 (Exb. E-1). Party I has admitted of having written this letter to M/s. Kaps Printers. It is pertinent to note that there is nothing in this letter that it was written by Party I as per the instructions of the MD. This letter has been written by Party I informing M/s. Kaps Printers that inspire of their personal request M/s. Kaps Printers have not bothered to send their approval copy though the matter was most urgent and has requested to inform him (Party I) by 27th June, in this matter. Thus, reading of this letter gives a clear indication that Party I had authority to directly deal with M/s. Kaps printers.

11. In the similar way Party I was also shown xerox copies of the letters dated 25-6-94, 29-6-94, 14-17-94, 15-7-94, 18-7-94, 26-7-94 and 11-8-94 (Exb. E-2 colly) as well as xerox copies of letters dated 1-7-94, 6-7-94, 16-7-94, 19-7-94, 21-7-94, 29-7-94, 27-7-94, 10-8-93, 10-8-94, 13-8-94, 26-8-94, 5-9-94, 15-9-94, 22-9-94, 23-9-94, 26-9-94, 1-10-94, 3-10-94, 4-10-94, 5-10-94, 3-11-94, 4-11-94, 14-11-94, 15-11-94, 14-10-94 and 17-10-94 and Party I has admitted that he had written these letters. These letters are marked Exb. E-3 colly. It may be mentioned here that the above letters were written by Party I to the banks as well as to other establishments. He has admitted that he was entering into correspondence with the Government authorities however added that he was doing so as per the instructions of MD. It is pertinent to note that upon being shown xerox copies of letters dated 29-10-94 and 21-11-94 (Exb. E-4 colly) Party I has admitted that he had written these letters to the telephone exchange Bicholim-Goa and that in none of these letters i.e. Exb. E-2 colly, Exb. E-3 colly and Exb. E-4 colly he has stated that the said letters were written by him as per the directions or instructions of MD. He has stated as PA to MD he was drawing monthly salary of ₹ 4,500/-. He has stated that from among the persons who were appointed as clerks alongwith him, he was the only person who was subsequently appointed as PA to MD and hence he was drawing a salary of ₹ 4,500/- per month. As regards being the member of Bicholim Urban Co-operative Bank Employees Union, Party I has stated that he was the member of this Union when

he was working as a clerk but he did not continue as such, after appointment as PA to MD. He has stated that the clerks and sub-staff are governed by the settlements entered into between the Union and the management and that his salary as PA to MD was not paid according to the settlements entered into between the Union and the management. It is also brought on record in cross examination of Party I that PA to MD sits in the Head Office. He has stated that the head office does not conduct banking transactions like balancing of saving bank ledgers, writing of sub-diaries, receiving of cash or disbursing of cash, disbursing of loans and recovering loan amount etc. He has stated that even the other banking transactions which are conducted by the other branches of the bank are not conducted by the head office. He has stated that he was not doing the balancing work of savings, ledgers etc. as PA to MD. He has stated that he was also not posting and making entries in saving ledgers or any other ledgers while working as PA to MD. Though he has denied the suggestion that at the time when he was working as PA, he was not doing any clerical work but has admitted that after he was transferred to Panaji as a Junior officer, his work was to supervise the work of other clerks.

12. It may be mentioned here that Learned Representative of Party I has in the cross examination of Shri Carlos Fegueredo, brought on record the duties performed by Party I as PA to MD which according to Shri Fegueredo were arranging the Board of meeting, of Directors and sub-committees, writing of the minutes of the meeting, maintaining the inward and outward register of confidential correspondence and making correspondence with outside parties on behalf of Party II, allocating work to the staff subordinate such as typists, clerks, sub-staff and supervise their work. Shri Fegueredo has also stated that Party I was overall in-charge of the office of the MD.

13. Upon being shown the letters at Exb. E-1 and Exb. E-4 colly Shri Fegueredo has stated that these letters were written by Party I in his capacity as PA to MD. He has stated that the duties of a Jr. Officer are that of passing of cheques, DDs, S B Current and OD A/C allocate work to staff subordinate to him and supervise their work with the help of branch manager in rectifying the defects pointed out by the auditors, keep in his safe custody security articles such as cheques, DDs, FDRs etc. It is also brought on record in the cross examination of Shri Fegueredo that as PA, Party I was maintaining inward and outward

register and writing minutes of meeting of Board or Directors, Shri Fegueredo has also stated that Jr. Officers and Asstt. Sr. Officers work under the Sr. Officer and when a cheque is presented, entries are made by the clerk and it is past by the Jr. Officer. He has also stated that all the debit and credit vouchers are past by the Jr. Officer, that the balancing of the accounts is done by the clerks and is checked by the Jr. Officer; that the posting of the entries in the lower account are done by the clerks and checked by the Jr. Officer, Sr. Officer or by the Asstt. Sr. Officer. He has also stated that the cash is handled by the Clerk and is checked either by the Jr. Officer or by the Asstt. Sr. Officer or Sr. Officer.

14. By inviting my attention to the above statements brought on record in the cross examination of Shri Fegueredo, Learned representative Shri Subhash Naik contended that the above duties are all of clerical nature and therefore Party I is squarely covered under the definition of the "Workman". It worthwhile noting that the statements brought on record through Party I himself would weigh in favour of Party I as compared to the statements brought on record through Shri Fegueredo since Party I being the concerned person who was performing the duties, would be in a better position to explain the nature of duties which were being performed by him as PA to MD. I have already discussed supra by referring to letters at Exb. E-1, Exb. E-2 colly, Exb. E-3 colly and Exb. E-4 colly that they have been addressed to various establishments as well as Government offices and there is nothing in them indicating that the same have been returned on behalf of the MD. Even for that matter, the very statement made by Party I that when he was transferred to Panaji as a Jr. Officer his work was to supervise the work of the Clerks, speaks volumes. That apart, the statements made by Party I that the head office does not conduct banking transactions like balancing of saving bank ledgers, writing of sub-diaries, receipt of cash or disbursement of cash/loans, recovery of loan amount and also that other banking transactions which are conducted by the other branches of the bank are not conducted by the head office make it clear that the statements brought on record in the cross examinations of Shri Fegueredo regarding passing of the cheques debit and credit vouchers, checking of balancing of account, checking of entries in the lower account, checking of the cash handled by the clerk etc. by the Jr. Officer: Sr. Officer or Asstt. Sr. Officer are of no consequence to say that as a PA to MD sitting in

the head office, Party I was doing the above duties. Thus, I do not find myself in agreement with the Learned representative of Shri Subhash Naik that the duties performed by Party I as PA to MD were of clerical nature.

15. Be that as it may, from the very statement of Party I that from amongst the clerks he was the only person appointed as PA to MD on payment of salary of ₹ 4,500/- per month, it becomes clear that from the time of appointment of Party I as PA, he fell in the category of non-Workman as otherwise he would have continued on the same salary which was paid to the clerks. Another aspect which gains significance is that the salary paid to the Party I as PA was not according to the settlements entered into between the management and the Union where as the clerks and the sub-staff are governed by such settlements. In case Party I despite being his appointment as PA, continued to be a Workman, he would have been governed by the settlements entered into between the Union and the management. Thus, these aspects find favour with Party II, to say that at the time of termination of his services, Party I was a non-Workman.

16. In the judgment in the case of **Union Carbide (India) Ltd. v/s D. Samuel and others 1999 LLR 21** Hon'ble High Court of Bombay has drawn distinction between a Supervisor and a Workman and has laid down certain test and one of which is that if a person can bind the company/ employer to some kind of decisions on behalf or the company/employer he is a supervisor. The other test enumerated in this judgment is that the employee should have power to direct or oversee the work of his subordinates and also that the employee should have the power to supervise the work of the men in which case the said employee has to be categorized as supervisor. It is pertinent to note that Party No. I has herein has fulfilled the above tests and therefore it can be safely concluded that as PA to MD the work of Party I was supervisory in nature.

17. Reference is also made to the judgment in the case of **Standard Chartered Bank V. Vandana Joshi and Another 2010 1 CLR 163** in which Hon'ble High Court of Judicature at Bombay has held that Court has to examine the dominant nature of work of duties assigned to an employee to find out whether the employee is a Workman or otherwise. It is observed in this judgment that the Court must have due regard to the overall nature of duties and responsibilities attached to

the job and basically the answer to the question must depend upon the dominant nature of the duties and responsibilities. In the instant case, I have already discussed supra, by referring to the documentary evidence as well as the statements made by Party I that the dominant nature of duties and responsibilities performed by Party I were of supervisory nature and being so, in the light of observations in this judgment, Party I falls in the category of non-Workman.

18. In the light of aforesaid discussion, issue No. 1 is answered in the negative.

19. *Issue Nos. 2 and 4:* Both these issues are answered together for the sake of convenience, being interconnected.

20. It is the case of Party I in the claim statement that the termination of services of Party I is in violation or mandatory provisions of Section 25F, 25G and 25H of the Industrial Disputes Act, 1947.

21. In his cross-examination, Party I has admitted that alongwith the termination letter he received pay order towards payment of one months wages in lieu of notice and retrenchment compensation. Even for that matter, in his submissions learned representative Shri Subhash Naik has fairly admitted that in view of above statement of Party I, there is no scope to say that there is non-compliance of Section 25F of the Act.

22. Coming to Section 25G of the Act, in terms of this section where any Workmen in an industrial establishment is to be retrenched and he belongs to a particular category of Workman in that establishment, in the absence of any agreement between the employer and the Workman in this behalf, it is mandatory for the employer to retrench the Workman who was the last person to be employed in that category, unless for the reasons to be recorded he retrenches any other Workman. In the instant case, the termination of Party I is in compliance with the directions issued by the Registrar of Co-operative Societies in his letter dated 31-5-95 at Exb. E-15 colly. Party I has admitted in his cross-examination that Party II is governed by the Maharashtra Co-operative Societies Act as applicable to the State of Goa that it is under the control of Registrar of Co-operative Societies; that Party II has to work or function as per the directions given by the Registrar of Co-operative Societies; that the said directions include recruitment of staff/employees of all categories; that as per the bye-laws of Party II there is a staff assessment and selection committee comprising of chairman or the bank,

the managing director of the bank and one of the representative of the Registrar of Co-operative Societies. The above being the situation and in the light of admission by Party I that Party II functions under the control of Registrar of Co-operative Societies, the question or Party II complying with the provisions of Section 25G of the Act, does not arise. Even for that matter, having answered issue No. 1 in the negative, the question or Party II complying with Section 25G of the Act, does not arise.

23. Coming to Section 25H of the Act, the same states that when any Workmen are retrenched and the employee proposes to take into his employ any persons, he shall, in such manner as may be prescribed, give an opportunity to the retrenched Workmen to offer themselves for re-employment and such retrenched Workmen who offer themselves for re-employment shall have preference over other persons. I have already discussed in the above para, that since Party I is held not to be a Workman, the question of Party II complying with Section 25H of the Act does not arise. Even otherwise, no convincing evidence has been adduced by Party I to say that Party II has committed breach of the provisions of Section 25H of the Act.

24. There is otherwise no dispute that Party I has been in employment of Party II since 15-11-93. Party I has produced the xerox copy of letter dated 5-7-93 (Exb. W1) signed by then MD of Party II calling him to appear for the written test; pursuant to his application for the post of clerk. At Exb. W2 Party I has produced copy of letter dated 21-7-93 issued to him by the then MD of Party II calling him for the test and at Exb. W3 Party I has produced the copy of letter pertaining to the offer of employment dated 29-7-93 issued by the then MD of Party II. It is worth while noting that in Exb. W3 Party I is shown to have been appointed for the post of clerk-cum-cashier in the Bicholim Urban Co-operative Bank and as posted at C.O. Bicholim-Goa Branch of the bank. In his cross-examination it is suggested to Party I that his appointment as clerk was not approved by the Registrar of Co-operative Societies and Party I has stated that he is not aware of this. Party I has however admitted that the outward register at Exb. E6 colly for the period from 22-7-93 to 7-8-93 is maintained by Party II and that the letter pertaining to the offer of appointment dated 29-7-93 at Exb. W3 does not figure in the outward register at Exb. E6 colly. Even Shri Fegueredo has stated that whenever any letter is issued to any person, the same is outwarded in the outward

register and he has produced the xerox certified true copy of the outwards register for the period from 21-7-93 to 3-8-93 at Exb. E13 by making it clear that during the aforesaid period, the letter at Exb. W3 issued to Party I was not entered in Exb. E13. He has also made it clear that as per the offer of employment, the Party I was offered the post or clerk-cum-cashier and that no post of clerk-cum-cashier was at any time created by the Staff Assessment and Selection Committee. Thus, it is precisely for this reason Party I has feigned ignorance over the suggestion that his appointment as clerk (which infact is clerk-cum-cashier) was not approved by the Registrar of Co-operative Societies. It deserves to be noted that Party I has not produced any such approval before this Court and therefore it can be safely concluded that the appointment of Party I as Clerk-cum-Cashier was without approval of the board as well as the Registrar of Co-operative Societies as required under the Government directions issued u/s 79A of the Societies Act and also that letter of offer at Exb. W3 was not officially sent to Party I.

25. Now coming to appointment of Party I as Personal Assistant to MD w.e.f. 12-5-94, it is the case of Party II that the same is without creation of the post by the Staff Assessment and Selection Committee and without the approval of the Registrar of Co-operative Societies as required under the directions issued under the Societies Act. Party II has otherwise not disputed that the advertisement for the post of Personal Assistant was published in the Navhind Times dated 8-4-94 i.e. Exb. W-4. It is also not in dispute that a circular dated 4-2-94 asking eligible internal candidates within the bank to apply for the post of PA was issued by the bank. Party I has produced the copy of letter dated 8-2-94 vide which he had applied for the post of PA pursuant to circular dated 4-2-94, at Exb. W-5. He has produced the copy of his application dated 8-2-94 made to the MD of Party II in pursuance to the said circular, giving his biodata at Exb. W-6. He has produced the copy of letter dated 7-4-94 written to him by MD asking him to appear for the interview at Exb. W-7 and copy of letter dated 2-5-94 by MD to him informing that he was selected as PA to MD and that he was on probation for six months from the date of his appointment, at Exb. W8. He has produced letter dated 7-1-95 vide which he was informed that as per the regulation passed by the Board of Directors in the meeting held on 2-1-95, his services were confirmed as Jr. Officer w.e.f. 1-11-94 and his designation as PA to MD was

re-designated as Jr. Officer, at Exb. W-9. It may be mentioned here that the above evidence produced by Party I is otherwise not disputed by Party II however it has been suggested to Party I that his appointment as PA to MD was not approved by the Registrar of Co-operative Societies and Party I has admitted the same. It is therefore clear that despite of production of all the above documents by Party I to establish the manner in which he came to be appointed as PA to MD, from the very admission of Party I that his appointment as PA to MD was not approved by the Registrar of Societies, it becomes clear that the appointment so made is ab-initio void. Reference is made to the judgment in the case of **Eranalloor Service Co-op. Bank Ltd. v/s Labour Courts and others, reported in 1986 I LLJ 492**, in which it is held that the appointments made without obtaining the prior approval of Registrar of Co-operative Societies will be declared as appointments made without the authority of law and hence ab-initio void.

26. It may be mentioned here that in the above case the termination of service was of the person who was appointment on the post or Salesman though he was not eligible for such appointment. However, said appointment was made without obtaining prior approval of the Registrar of Co-operative Societies and therefore the same was held as made without authority of law and hence was ab-initio void. In this context, Learned Advocate for Party II placed reliance on the judgment in the case of **Keval Bana Gopal Mali and others v/s Dhule Municipal Council 1998 II CLR 842** in which President of Municipal Council had appointed 173 persons to various unsanctioned posts in the council without calling for applications and without interviews and tests but the Chief Officers did not allow them to join as the appointments were illegal and the Writ Petition filed by the said persons were dismissed since those persons were allowed to enter the Municipal Council by the then President of the Council, through the back door. It is held that since the very appointments were illegal, the so called employees had no right of employment and they could not be reinstated and continued in employment. It is also observed that by this back door entry, the other unemployed and aspirants and even more eligible persons have been deprived of the legitimate claim to the public employment in the Council. It is also observed that said appointees will have no legal right qua the Municipal Council and they may have their remedy to claim damages from the then President in his personal capacity.

27. In the light of above position of law, coupled with the fact that there was no approval of Registrar of Co-operative Societies as required under the directions issued under Societies Act, for the appointment of Party I as Clerk-cum-Cashier as well as PA to MD, no relief of any nature could be granted to Party I. Consequently it follows that the contention of Lnd. Representative of Party I that the Registrar of Co-operative Societies had told Party II to discontinue the services of clerks and sub-staff and that Party I at the relevant time was employed as Jr. Officer and not a clerk and therefore the reasons given by Party II while terminating the services of Party I, are wrong, cannot be accepted.

28. Be that as it may, Shri Fegueredo has made it clear that the work of staff assessment and selection committee is to assess the requirement of staff and present report to the management which report, is to be approved by the Board of Directors and then the approval has to be sought from the Registrar of Co-operative Societies. He has stated that on receipt of approval, a written test is conducted and the interview of successful candidates are held and thereafter the committee prepares a merit lists. He has stated that in pursuance to this, a merit list was prepared by the said committee by holding meetings between 24-7-93 to 27-7-93 and he has produced the copy of the minutes of the meeting dated 27-7-93 and of the merit lists at Exb. E-8 colly. He has stated that when this merit list was prepared, Mr. Dilip Kenkre was the MD and that as per Exb. E-8 colly the name of Party I figures at Sr. No. 83 of the merit list of clerks. He has stated that this merit list was sent to the Registrar of Co-operative Societies for approval in order to fill up the vacancies, alongwith the covering letter dated 28-7-93 and alongwith this a copy of the resolution was also sent. He has produced the copy of said covering letter at Exb. E-9 which letter was signed by Mr. Dilip Kenkre as MD. He has stated that Mr. Dilip Kenkre certified the true copy of the resolution of the Board passed in the meeting dated 28-7-93 and has produced the xerox copies of the extract of the resolution certified by Mr. Dilip Kenkre and which was sent alongwith Exb. E-9, to the Registrar of Co-operative Societies, at Exb. E-10. He has also produced the certified true copy of the minutes of the meeting held by the Board of Directors on 28-7-93 at Exb. E-11 and has made it clear that the resolution No. 2 passed in the meeting of the board of directors held on 28-7-93 is totally different from the one certified by Mr. Dilip Kenkre in Exb. E-10. He has further

stated that the Registrar of Co-operative Societies by letter dated 29-7-93 at Exb. E-12 granted approval for filling up the posts of the officers/ /Clerks/sub-staff based on Exb. E-10 and that on receiving the approval, the posts which were filled were not as per the merit list prepared by the committee. He has stated that on 29-7-93, 69 letters were issued for filling up the posts of clerks under the signature of Mr. Dilip Kenkre. He has stated that the name of Party I was not figuring within the Sr. Nos. 1 to 69 of the merit list but Party I was issued the letter of appointment. The above statements made by Shri Fegueredo are not seriously disputed in his cross-examination by bringing on record the contrary evidence and even for that matter, I have already discussed supra that the appointment letter issued to Party I i.e. Exb. W-3 is not entered in the outward register at Exb. E-13. This being the situation, it is clear that the appointment of Party I as Clerk-cum-Cashier as well as PA to MD was unauthorized and consequently his services were terminated as per the directions of the Registrar of Co-operative Societies and thus such termination w.e.f. 12-6-95 cannot be called as illegal and unjustified. Hence, issue No. 2 is answered in the negative whereas issue No. 4 is answered in the positive.

29. *Issue No. 3:* Learned Advocate for Party II did not advance any arguments in support of this issue and therefore the same is answered, as not pressed.

30. *Issue No. 5:* In his arguments Learned Advocate for Party II relied on the judgment in the case of **Kendriya Vidyalaya Sangathan and another v/s S.C Sharma 2005 (104) FLR 863** wherein it is observed that when the question of determining the entitlement of a person to backwages is concerned, the employee has to show that he was not gainfully employed. It is observed that the initial burden is on the said employee and if he placed materials in this regard, the employer then can bring on record materials to rebut the claim. Thus, it is clear that the burden is on the Party I to prove that he is unemployed. It may be mentioned here that in his claim statement Party I has nowhere stated that he is unemployed since the date of termination of his services but, in his examination in Chief Party I has stated that after termination of his service, he worked with Velgeum Urban Co-operative Society, Velgeum as a Manager from August, 1995 to December, 1995 and was drawing ₹ 2,000/- per month. He has stated that from April, 1996 he joined Satari Taluka Farmers Co-operative Credit

Society where he worked for about one and half year and was drawing ₹ 3,000/- per month. He has stated that he is unemployed from the date he ceased to work with the above said Co-operative Society. In his cross-examination he has denied that as MD of Satari Taluka Farmers Co-operative Credit Society he was drawing salary of ₹ 4,000/- per month. He has stated that when he was working MD of the above society one Mr. Balasaheb Dessai was the Chairman of the said society and upon being shown a letter dated 22-11-97 addressed to the acting MD of Party II by the Chairman of that society, he has identified the signature of the said Shri Balasaheb Dessai on the same. The letter is marked as Exb. E-5. It is pertinent to note that Exb. E-5 has been sent by said Shri Balasaheb Dessai as the Chairman of Satari Taluka Farmers Service Co-op. Sty. Ltd., to the acting MD of Party II with reference to Party II's letter dated 19-11-97 informing that Party I herein had joined their society on 4-3-97 as MD and in November, 1997 he was drawing a consolidated salary of ₹ 4,000/-. It is therefore clear from the above document that the statement made by Party I denying the suggestion that as MD of above society he was drawing salary of ₹ 4,000/- per month, is apparently incorrect. Party I has stated that after leaving the above society, he joined the Siddhartha Credit Co-operative Society at Belgaum on temporary basis as office secretary-cum-manager in October, 1999 and at that time his salary was ₹ 1,500/- per month and from April, 2001 his salary is ₹ 3,500/- per month and that he continues to work with the said society. He has denied the suggestion that he has been drawing ₹ 6,000/- per month while working with the above society.

31. It is pertinent to note that from the very statement of Party I that he continues to work with Siddhartha Credit Co-operative Society at Belgaum, it becomes clear that his statement in his examination in chief that he is unemployed from date he ceased to work with Satari Taluka Farmers Co-op. Credit Society is a false statement. Learned Advocate for Party II by relying on the judgment in the case of **Indiana Engineering Works (Bombay) Pvt. Ltd. v/s The Presiding Officer, 5th Labour Court and others 1996 (72) FLR 150** contended that the dismissed Workman owes a duty to the Industrial adjudicator to honestly disclose full particulars of the facts which are purely within his knowledge and that any attempt to mislead the Tribunal must surely be looked at askance. I have already pointed out above the statement made by Party I on the

subject of his unemployment viz-a-viz the statement in his cross-examination wherein he claims to continue to work with Siddhartha Credit Co-operative Society at Belgaum and which statements are indicative of the fact that Party I has attempted to mislead this Tribunal on the subject of his gainful employment. Being so, it would not stand to reason to say that Party I could claim back wages. This is more because no such claim has been made by Party I in his claim statement.

32. Shri Satish Jakhi has been examined by Party II to bring on record the fact that after leaving the service at Siddhartha Credit Co-operative Society in around December, 2001 Party I went to Dubai and has been working at Dubai since last about seven years and drawing wage of more than ₹ 60,000 per month. In his cross-examination he has denied the suggestion that Party I is not employed in Dubai and is not drawing the salary of ₹ 60,000/- per month. It may be mentioned here that no documentary evidence has been produced by Party II to substantiate the statements made by Shri Satish Jakhi in his chief examination and therefore such statements cannot be believed for want of proof nevertheless, since discussion supra makes it clear that Party I has been gainfully employed from the date of termination of his services, this issue is answered in the positive.

33. *Issue No. 6:* In view of aforesaid discussion, Party I is not entitled to any relief.

34. In the result, I pass the following.

ORDER

1. It is hereby held that Shri Anand Laxmanrao Patel, is not a Workman within the meaning of Section 2(S) of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).
2. Party I, Shri Anand Laxmanrao Patel is therefore not entitled to any relief.
3. No order as to costs.

Inform the Government accordingly.

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

Notification

No. 28/1/2013-Lab/168

The following award passed by the Industrial Tribunal and Labour Court, at Panaji-Goa on 07-01-2013 in reference No. IT/34/07 is hereby published as required by Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

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

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

Porvorim, 15th April, 2013.

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

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

Ref. No. IT/34/07

Ms. Rajashree P. Parab,

r/o Shantadurga Apts,

Near ITI, Peddem,

Mapusa, Bardez, Goa.

... Workman/Party I

V/s

M/s. Phil Corporation Ltd.,

Thivim Industrial Estate,

Thivim, Bardez-Goa.

... Employer/Party II

Party I/Workman represented by Shri Subhash Naik Jeorge.

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

AWARD

(Passed on 7th January, 2013)

In exercise of powers conferred by clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947), (for short 'the Act'), the Government of Goa by order dated 29-6-07 bearing No. 28/3/2007-LAB/654, has referred the following dispute for adjudication.

- "(1) Whether, Ms. Rajashree P. Parab, Junior Officer, could be construed as "Workman" as defined under clause (s) of Section 2 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947)?
- (2) If the answer to the issue No. (1) above is in the affirmative, then, whether the action of M/s. Phil Corporation Limited, Thivim Industrial Estate, Karaswada, Mapusa,

Bardez, Goa in terminating the services of Ms. Rajashree P. Parab, with effect from 17-03-2006, is legal and justified?

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

2. Upon receipt of the reference, IT/34/07 was registered. Notices were issued to both the parties under registered A/D post upon which both the parties were served. Party I filed the statement of claim at Exb. 6. Party II filed the written statement at Exb. 7. rejoinder was filed by Party I at Exb. 13.

3. In the statement of claim, it is the case of Party I that she was engaged as Junior Officer with Party II. That she was employed since 1-6-90. That she worked in OPM department from the year 1995 to the year 2000 and in the store department from the year 2001 to the year 2006. She has stated about the duties performed by her with Party II as under:

- Receiving packing material that comes to the factory.
- After receiving the same, make GIN i.e. goods inward note on register maintained by her.
- She would maintain BIN cards and update the same manually as well as on computer.
- She would issue materials from store department to other departments as per their requirements.
- She would dispatch material to Karwar factory.
- She would report to head of her department.

4. It is further the case of Party I that around 10-3-06 she was issued a letter of the same date terminating her services w.e.f. 14-3-06. That at the time of termination no one month's notice, no retrenchment compensation and no leave wages were paid to her. That the management also did not prepare a seniority lists and follow the principles of "last come, first go" before terminating her services and has thereby violated the provisions of Section 25F and 25G of the Act. That Party I addressed several letters to Party II requesting to set aside the termination and also raised an industrial dispute with the Asst. Labour Commissioner, Government of Goa, Mapusa. That the matter could not be settled and hence referred for adjudication. Party I has therefore prayed to hold that her termination is illegal and

unjustified and to reinstate her in service with full back wages and continuity of service and also for grant of subsistence allowance of 50% wages by way of interim relief pending adjudication.

5. In the written statement Party II has stated that the reference is not maintainable since Party I is not a Workman u/s 2(s) of the Act and that the factory of Party II was closed w.e.f. 5-5-06 which closure has been accepted by the Workman, staff and officer of Party II and as such no relief after the date of closure could be granted. It is stated that as Party II was making losses and had become sick, at the instance of Board of Directors a reference was filed with Board for Industrial and Financial Reconstruction (BIFR) and then a reference was filed and consequently Party II was declared as sick industrial company u/s 3(1)(0) of the Sick Industrial Companies Act (SICA). Thus, according to Party II the provisions of Section 22 of SICA would be attracted. It is also the case of Party II that their units at Thivim as well as Bicholim have been finally closed w.e.f. 5-5-06 and 4-5-06 respectively and the services of all the Workmen/supervisors/executives had been terminated on account of closure. It is stated that Party I was employed initially as a Junior Packer and was a member of Union of workers at Party II factory and upon her promotion to the post of Junior Officer (M-A) w.e.f. 1-4-95 she ceased to be a member of the Union as she was in a supervisory cadre. It is stated that upon her promotion as Junior Officer, the conditions of service, emoluments, benefits and duties of Party I were changed and she was supervising the work of the Workmen working in the stores who were subordinate to her. It is stated that at the time of termination, Party I was given pay in lieu of one month's notice wage. Thus, amongst above and other grounds Party II has prayed to reject the reference.

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

7. On the basis of above averments of the respective parties, the issues dated 8-10-08 at Exb. 16 were framed.

8. In the course of the evidence Party I examined herself as witness No. 1 and Shri Shivanand Tople as witness No. 2 and closed the case. On the other hand Shri B. S. Sridhara was examined as witness No. 1 for Party II and the case of Party II was then closed.

9. Heard Learned Representative, Shri Subhash Naik George for Party I and Learned Advocate Shri P. J. Kamat for Party II. Written submissions were also placed on record by both the parties.

10. I have gone through the records of the case and have duly considered the arguments advanced.

11. I have reproducing the issues alongwith their findings and reasons thereof.

Sr. No.	Issues	Findings
1	2	3
1.	Whether the Workman/Party I proves that she is a "Workman" as defined u/s 2(s) of the Industrial Disputes Act, 1947?	In the negative.
2.	Whether the Workman/Party I proves that the action of Party II/Employer in terminating her services w.e.f. 17-03-06 is illegal and unjustified?	In the negative.
3.	Whether the Employer/Party II proves that the present order of reference is bad in law as stated in para 2(b) of their written statement.	In the positive.
4.	Whether the Party I is entitled to any relief?	In the negative.
5.	What Award?	As per order below.

REASONS

12. *Issue Nos. 1 & 2:* Both these issues are answered together for the sake of convenience as they are interconnected.

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

".....It is settled principle of law that the onus lies upon the Workman to prove that he satisfies the essential ingredients of being a

Workman and therefore, could raise all industrial dispute.....”

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

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

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

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

17. Party I has in para 3 of her affidavit in evidence specified the duties performed by her which were receiving packing material that comes to the factory, after receiving the same, make goods inward note on the registered maintained by her, maintained BIN cards and update the same manually as well as on computer, issue material from store department to other departments as per their requirements and dispatch material to Karwar factory. In the cross-examination of Party I, Party II has denied the above statements of Party I and has suggested that all the aforesaid duties were infact performed by the clerks working in the store section of Party II. As rightly pointed out by Learned Advocate of Party II except for making the above bare statements on the subject of the duties performed by her, Party I has not produced any documentary or other evidence to substantiate her said stand.

18. No doubt, Party I examined Shri Shivanand Tople who has supported the statements made by Party I on the subject of her duties but it is seen from the cross-examination of this witness that

his services were terminated w.e.f. 8-8-05 and even for that matter it is brought on record through his cross-examination that the dispute pertaining to termination of his services by Party II is also pending in this Court and that they had raised the Industrial dispute at one time against Party II on similar grounds. Being so, there is every reason for me to say that this witness is an interested witness and hence his testimony has to be accepted with due caution.

19. There is otherwise no dispute that Party I was initially appointed as Junior Packer from 1-6-90 vide letter dated 30-5-90. Her services were confirmed as Junior Packer from 1-12-90 vide letter dated 28-2-91 and she was promoted to the post of Junior Officer (M-A) vide letter dated 28-2-95.

20. Be that as it may, the letter of appointment of Party I dated 30-5-90 does not speak about the duties allotted to Party I and even the other letters i.e. the letter of confirmation of appointment and the letter of promotion state that all other terms and conditions of service of Party I would remain unchanged. However, this by itself cannot be construed to mean that the status of Party I has remained as that of “Workman” despite her promotion to the post of Junior Officer (M-A). It is otherwise not disputed by Party II that Party I was a “Workman” till the time she was holding the post of Junior Packer and therefore it is required to see on the basis of evidence adduced, if in reality Party I continued to be a “Workman” despite her promotion to the post of Junior Officer (M-A).

21. I have already pointed out supra that Party I has not made any efforts to bring on record the positive evidence describing the nature of duties performed by her, as a Workman, as on the date of termination of her services on 17-3-06. Though Learned Representative of Party I contented that such relevant documentary evidence is in possession of Party II and therefore it was for Party II to have produced the same however, I find no force in the above contention for the reasons that as the burden lies on Party I to prove that she is a “Workman”, it was for Party I to make application requesting the Court to direct Party II to produce those relevant documents or to notify Party II to produce those documents, which Party I has failed to do. Thus, it is clear that no attempt has been made by Party I to prove the nature of duties performed by her as a “Workman” upon her promotion as Junior Officer (M-A). In the above context, I would rely on the judgment in the case of **U.P. State Electricity Board and another v/s**

Aziz Ahmad 2009 I CLR 690 the Workman in which case had claimed 'equal pay for equal work' on the basis of the contention that his post as 'Boiler overhauling Mechanic' is equivalent to the post of 'Boiler mistry'. This contention was accepted by the Tribunal and even the Writ Petition filed by the employer was dismissed. However, the Apex Court held that the burden to prove that both the posts are equal was on the Workman. Apex Court observed as under:

".....The aforesaid findings are incorrect and cannot be upheld. The burden prove that a particular fact is always on the person who alleges the same. In the present case it was the contention of the respondent-Workman, who claimed that the job requirements, nature and responsibilities of the post of Boiler Mistry/Fitter are identical and similar with that of the Boiler Overhauling Mechanic. The burden, therefore, was on the Workman to prove and establish the aforesaid facts by leading cogent and reliable evidence. He was required to place documentary evidence in support of the same."

22. Cross-examination of Party I makes it clear that there was a recognized Union of the Workmen of Party II by name Phil Corporation Limited Employees' Union and that she was the member of the said Union till she was working as Junior Packer. She has admitted that from the date of her promotion as Junior Officer (M-A) she ceased to be a member of the said Employees' Union. She has further admitted that when she was the member of the said Employees' Union their grievances pertaining to service conditions were espoused by the said Employees' Union. She has also stated that the wage settlement signed by the said Employees' Union with the management were benefitted to her when she was working as junior packer and since the time of her promotion she was not getting any benefits of such settlements. She has also admitted that Party II was having its own certified standing orders governing the service conditions of its Workmen and said service conditions were applicable to her till she was designated as a junior packer and was a member of the Union. She has stated that after she was promoted as junior officer (M-A) her basic pay and other allowances changed. She has admitted that her revision of salary scale was done in August, 2001 and she was given the basic scale of pay ₹ 1,770-4100 in the management cadre and she accepted the same.

23. From the above statements of Party I, coupled with the absence of positive evidence on her part indicating the nature of duties performed by her as a "Workman", it can be safely gathered that upon promotion of junior officer (M-A) Party I ceased to be a Workman or else she would definitely raise an issue with Party II claiming benefits available to the Workmen. Thus, it would not be proper and justified to hold that Party I continued to be a Workman even after her promotion as junior officer (M-A).

24. It is also stated by Party I that one Mrs. Deepa Shetkar, Mrs. Manju Naik Gaonkar, Mrs. Sheetal Tari, Shri Uday Malvankar and Shri Subhash Gaonkar were working in her department at the relevant time. She has also identified the 9 leave cards of the above persons, maintained by Party II and the same are marked as Exb. E-1 colly. Upon being shown the above individual leave cards of the above mentioned respective persons, Party I has admitted her signatures on these cards at certain places in the column "Approval Department Head". Even Shri Shivanand Tople has identified the signatures of the Party I on Exb. E-1 colly. Party I has admitted that all the aforesaid workers whose leave she has approved were working under her and her HOD told her to sign the same. She has also admitted that the officers sign on the leave card under the column "Approval Dept. Head" indicates that the said officer who was incharge at the relevant time in the relevant shift, had sanctioned the leave applied by the concerned Workmen working under him.

25. No doubt, from the above evidence it becomes clear that Party I signed in the column "Approval Dept. Head" at the request of her HOD but it cannot lost sight of the fact that the person signing in such column should have the required status to sign as such as no HOD would permit a mere Workmen to sign in the column "Approval Dept. Head". Reference deserves to be made to the judgment in the case of **Karnataka Bank Ltd. v/s Sunita B. Vatsaraj 2007 CLR 650** in which it is observed as power to sanction leave is of considerable importance in any organization and that a leave is sanctioned to an employee only after assessing the exigencies and load of work by an officer who ordinarily supervises the work or an employee asking the leave. Thus, the above observations go to indicate that Party I herein was supervising the work of the employees whose leave she has sanctioned and that she was a non-Workman upon her promotion as junior officer (M-A).

26. It is also brought on record in the cross-examination of the Party I that the officers of the Party II were not getting the same benefits and the allowances from time to time which were given to the Workmen. She has admitted that the officers of the Party II were given more pay scale and other allowances than its Workmen category and that the officers of Party II including herself were not getting the benefits of DA, VDA, canteen allowance, special/additional allowance, LTA, accident leave, attendance bonus and OT. She has also admitted that in the memorandum of settlement signed by the Employees' Union with the management, the junior officers were excluded from the benefits of the said settlement. She has further admitted that in the stores section of Party II, where she was working at the relevant time, there were helpers working under her though she is not aware of the other categories of workers who were working in the store section of Party II at the relevant time. She has further stated that she was checking the material received in the store department by the employees in the store. According to her she used to report to the HOD for the administrative purposes.

27. Thus, from the nature of above statement made by Party I it becomes clear that upon her promotion as junior officer Party I was not doing the same work done by her when she was in the category of the Workman and consequently it follows that Party I has failed to prove issue No. 1 and as such termination of her services by Party II with effect from 17-3-06 cannot be said to be illegal and unjustified. Hence my findings.

28. *Issue No. 3:* In para 2(b) of the written statement it is the case of Party II that its factory is closed with effect from 5-5-06 which closure has been accepted by the Workmen, staff and officers of Party II and therefore no relief after the closure can be granted. In the rejoinder, Party I has denied that the factory of Party II has been closed with effect from 5-5-06 and also that the closure has been accepted by the Workmen, staff and officers of Party II.

29. It may be mentioned here that provisions of Section 25F and 25G of the Act would come into play only in case of the retrenchment of the Workman and not otherwise. The compensation to be given to the Workman in case of closing down of undertakings is as per Section 25FFF of the Act. The use of the expression "as if" in Section 25FFF (1) of the Act shows almost conclusively that the meaning of "retrenchment" is restrictive and does not in terms apply to the case of a bonafide closure of business, as the legislature has

not sought to place the closure of an undertaking on the same footing as retrenchment under Section 25F of the Act. This being the position of law and having accepted the closure by Party I, the question of compliance of Section 25F and 25G of the Act, by Party II, does not arise.

30. Shri B. S. Sridhara has produced at Exb. E-4 a notice dated 3-5-06 of suspension of operation at Bicholim unit w.e.f. 04-05-06, at Exb. E-5 copy of notice dated 04-05-06 of suspension of operation at Thivim unit w.e.f. 05-05-06, at Exb. E-6 copy of notice dated 21-04-07 to the Secretary, Department of Labour, Government of Goa of closure of Bicholim Factory w.e.f. 23-06-07, at Exb. E-7 copy of notice dated 21-04-07 to the Secretary Department of Labour, Government of Goa of closure of Thivim factory w.e.f. 23-6-07, at Exb. E-8 copy of letter dated 11-07-08 to the Chief Inspector of Factories and Boilers regarding surrender of factory license No. GOA/1234 of Valpoi unit and at Exb. E-9 colly copy of summary record of the proceedings of the hearing held on 18-01-07 before the Board of Industrial and Financial Reconstruction. The above documents produced by Shri B. S. Sridhara are not challenged by Party I and therefore it is clear that Party II has proved this issue. Hence my findings.

31. In view of findings on issue No. 1, Party I is not entitled to any relief. In the result, I pass the following:

ORDER

1. It is hereby held that Ms. Rajashree P. Parab, Junior Officer, could not be construed as a 'Workman' as defined under clause (s) of Section 2 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).
2. It is hereby further held that the action of management of M/s. Phil Corporation Ltd., Thivim Industrial Estate, Karaswada, Mapusa, Bardez-Goa, in terminating the services of Ms. Rajashree P. Parab, with effect from 17-03-2006 is legal and justified.
3. Party I, Ms. Rajashree P. Parab is therefore not entitled to any relief.
4. No order as to costs.

Inform the Government accordingly.

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

Notification

No. 28/1/2013-Lab/176

The following award passed by the Labour Court-II at Panaji-Goa on 22-02-2013 in reference No. LC-II/IT/07/12 is hereby published as required by Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

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

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

Porvorim, 16th April, 2013.

 THE LABOUR COURT-II
 GOVERNMENT OF GOA
 AT PANAJI

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

Case No. Ref. LC-II/IT/07/12

Shri Milind Shetye,
 R/o House No. 161,
 Near Mapusa Clinic,
 Mapusa, Bardez-Goa.

... Workman/Party I

V/s

M/s Andrew Telecommunications
 (India) Private Limited,
 Plot No. N 2, Phase IV,
 Verna Industrial Estate,
 Verna, Salcete-Goa.

... Employer/Party II

Workman/Party I remained absent.

Employer/Party II represented by Adv. Mrs. D. Chawdikar.

Panaji, Dated: 22-02-2013.

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 29-10-2012, bearing No. 28/30/2012-LAB/594, referred the following dispute for adjudication to the Industrial Tribunal of Goa. The Hon'ble Industrial Tribunal-cum-Labour Court thereafter assigned the present reference to this Labour Court-II for its adjudication vide its order dated 30-10-2012.

1. "Whether the action of the Management of M/s Andrew Telecommunications (India) Private Limited, Verna, Goa, in dismissing from service Shri Milind Shetye, Operator-I, with effect from 20-04-2011, is legal and justified?"

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

2. On receipt of the reference, a case was registered under No. LC-II/IT/07/2012 and registered A/D notice was issued to the parties. In pursuance to the said notice, the Employer/Party II (for short "Employer") put in their appearance. The Workman/Party I (for short 'Workman'), though served by registered post A.D., neither appeared in this Labour Court II on the scheduled dates of hearing nor filed any claim statement. Ld. Adv. Mrs. D. Chawdikar representing the Employer orally submitted that as the Workman did not file his claim statement, the Employer does not wish to file its written statement.

3. Heard Ld. Adv. Mrs. D. Chawdikar appearing for the Employer.

4. The proceedings before the Industrial Tribunal or Labour Court are judicial in nature even though the Indian Evidence Act does not apply to the proceedings, but principle underlying the said Act is applicable to the proceedings before the Industrial Court. It is well settled that if a Party challenged the legality of an Order, burden lies upon him to prove illegality of an Order and if no evidence is produced, the Party invoking jurisdiction of the Court must fail. In this case, the Government of Goa has referred the dispute to the Industrial Tribunal of Goa at the instance of the aggrieved Workman. Burden lies on the Workman to set out grounds challenging the validity of Termination Order and to prove that the Termination Order is illegal. The Workman, neither filed claim statement nor produced evidence. In the circumstances, there is no material before this court for recording a finding that the Order of termination passed by the Employer is illegal or unjustified. In the absence of evidence, the court has no jurisdiction to hold the Order of Termination illegal.

In view of the above, I proceed to pass the following order:

ORDER

1. It is held that the action of the Management of M/s Andrew Telecommunications (India) Private Limited, Verna, Goa, in dismissing from service Shri Milind Shetye, Operator-I, with effect from 20-04-2011, is legal and justified.

2. It is further held that the Workman Shri Milind Shetye, Operator-I, is not entitled to any relief.

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

Sd/-
(Suresh N. Narulkar),
Presiding Officer,
Labour Court-II.

Notification

No. 28/1/2013-Lab/185

The following award passed by the Labour Court II at Panaji-Goa on 18-02-2013 in reference No. LC-II/IT/07/10 is hereby published as required by Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

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

D. S. Morajkar, Under Secretary (Labour).
Porvorim, 17th April, 2013.

IN THE LABOUR COURT-II
GOVERNMENT OF GOA
AT PANAJI

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

Case No. Ref. LC-II/IT/07/10

Shri Rajan Naik,
House No. 55,
Tembim, Ambaulim,
Quepem-Goa.

... Workman/Party I

V/s

M/s. Karthik Alloys Ltd.,
L6/L7, Cuncolim Industrial Estate,
Cuncolim-Goa.

... Employer Party II

Party I/Workman represented by Shri P. Gaonkar.

Party II/Employer represented by Adv. Shri S. K.
Manjrekar.

Panaji, dated 18-2-2013.

AWARD

1. In exercise of the powers conferred by Section 10 (1)(d) of the Industrial Disputes Act, 1947 (Central Act 14 of 1947), the Government of Goa, by order dated 18-02-2010, bearing No. 28/04/2010-LAB, referred the following dispute for

adjudication to the Industrial Tribunal of Goa. The Hon'ble Presiding Officer, Industrial Tribunal-cum-Labour Court thereafter assigned the matter to this Labour Court-II vide its order dated 16-08-2010.

SCHEDULE

"(1) Whether the action of the Management of M/s. Karthik Alloys Ltd., Cuncolim, Goa, in terminating the services of its Workman, Shri Rajan Naik. Control Room Operator, with effect from 20-08-2009, is legal and justified?

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

2. On receipt of the reference a case was registered under No. LC-II/IT/07/2010 and registered A/D notice was issued to the parties. In pursuance of the said notices, the parties put in their appearance. The Workman/Party I (for short, "Workman") filed his statement of claim on 28-09-2010 at Exhibit-5. The facts of the case in brief as pleaded by the Workman are that he was initially appointed as a 'Hoist/Batch Weighing Operator' trainee w.e.f. 01-10-1994 vide letter of the Employer/Party II (for short, 'Employer') dated 01-10-1994. He stated that after completion of his training period of one year, he was placed on probation vide letter of the Employer dated 19-11-1995. He stated that his services were confirmed by the Employer with retrospective effect from 01-04-1996 vide its letter dated 14-08-1996. He stated that on his confirmation in service, his salary was increased to ₹ 1,500/- p.m. by putting him in Grade III. He stated that he was promoted to the post of Control Room Operator w.e.f. 01-08-2007.

3. He stated that he was suspended from service for a period of 21 days for riotous and intimidating behaviour with w.e.f. 09-07-2009. He stated that vide his reply dated 14-07-2009 he alleged that he had never met the Assistant General Manager of the Employer on 09-07-2009 and as such the question of commission of the alleged misconduct does not arise. He further stated that the Assistant General Manager had verbally instructed him not to join duties on and from 10-07-2009 without giving reasons. He stated that as no show cause notice was issued to him, he performed his duties and even signed the Muster Roll as usual. He denied that he committed any misconduct as alleged in the said letter of the Employer. He stated that he was thereafter instructed to appear for inquiry on 30-07-2009 as per the standing order of the Employer. He stated that the Employer Company

extended his suspension period for another 9 days vide its letter dated 31-07-2009 by alleging that the reply dated 30-07-2009 filed by him is not satisfactory. He stated that he had filed his written reply dated 01-08-2009 to the letter of the Employer dated 24-07-2009 alleging that the Employer was forcing him to submit apology letter so as to initiate action against him. He stated that he had submitted a written reply to the letter of the Employer dated 31-07-2009 vide his reply dated 03-08-2009 by alleging that the charges of misconduct levelled against him are false. He further alleged that he reported on duty on 01-07-2009, but he was denied permission to join for his duties, however he was served with another letter of suspension. He submitted that he was being harassed and victimized in order to create false evidence against him. He submitted that during the course of purported inquiry on 30-07-2009, no explanations were sought from him and as such the alleged oral inquiry was a mere farce. He stated that on 07-08-2009 the Employer withdrew the suspension letter issued to him and directed him to attend the duties with immediate effect. He stated that on 20-08-2009, the Employer terminated his services on account of personal arrogant arguments with the Managing Director of the Employer which amounts to misconduct under the Standing Order. He stated that he raised an Industrial Dispute before the Deputy Labour Commissioner, Margao vide his letter dated 7-1-2009 which ended in failure.

4. He submitted that no show cause notice or a detailed charge-sheet was ever issued to him before termination of his service. He submitted that the Employer Company has not conducted any inquiry before termination of his services, thus violated the principles of natural justice. He therefore contended that the action of the Employer in terminating his service is malafide, illegal, bad-in-law and in violation of the principles of natural justice, He submitted that he was being forced to tender an apology letter by the Employer to victimize him. He submitted that the Employer has not given any sufficient cause to terminate his services without conducting any inquiry. He submitted that the letter of termination issued to him was merely to victimize him as the matter had already been amicably settled by the Hon'ble Labour Minister between the parties and he was directed to resume the duties. He contended that the termination of his service is void and illegal as the Manager, Administration has terminated his services and whereas he was appointed by the Joint Director of the Employer.

He therefore contended that the Manager, Administration is lower than the Joint Director in hierarchy. He submitted that an authority lower than the appointing authority cannot validly terminate his service. He submitted that the misconduct alleged against him has not even been proved by giving any findings and therefore dismissal of his service is malafide, illegal, arbitrary and in violation of the principles of natural justice.

5. He submitted that since after the termination of his service he is unemployed and could not succeed in getting any employment. He therefore prayed for declaration that the action of the Employer in terminating his services be declared as illegal, improper, unjustified and in violation of the principles of natural justice and direct the Employer to reinstate him in service with full back wages and continuity in service.

6. The Employer resisted the claim of the Party I by filing its written statement on 09-11-2010 at Exb-6. The Employer by way of preliminary objection submitted that the Party I is not a 'Workman' within the meaning of Section 2(s) of the I. D. Act, 1947. The Party I further submitted that the entire order of reference is bad-in-law, unsustainable, and deserves to be dismissed in limine as there do not exist an 'Industrial Dispute' in the matter.

7. The Employer stated that the Party I was working as a 'Control Room Operator' with them. The Employer stated that the said post of 'Control Room Operator' is supervisory, managerial and administrative in nature. The Employer stated that the Party I was drawing a salary more than ₹ 1,600/- p.m at the relevant time. The Employer therefore submitted that the Party I is not a 'Workman' within the meaning of Section 2(s) of the I. D. Act, 1947. The Employer stated that the Party I had started abusing and insulting his superiors as well as other co-workers. The Employer stated that the Party I was not following the reasonable orders of his' superiors. The Employer therefore submitted that the Party I had committed serious acts of misconducts including subversive of discipline while working with them. The Employer stated that the Party I started playing active politics and also involved in local politics while working with them. The Employer stated that the Party I contested the election of Panch Member of Gram Panchayat without seeking the required permission and/or even without intimation to them. The Employer stated that the post of Panch Member of Gram Panchayats/

/Local Self Body is a post of profit. The Employer stated that the Party I cannot and should not contest any election of Gram Panchayat, Local Self Government, Municipality, Legislative and/or Parliament unless he seeks the written permission from his Employer. The Employer stated that the Party I has violated the terms of employment and other such provisions. The Employer stated that the Party I also started interfering with the other workers by taking undue advantage of his political position. The Employer stated that the Party I abused and insulted the Asstt. General Manager. The Employer submitted that since the activities of the Party I became detrimental to the smooth functioning, work culture and discipline within the establishment, it had suspended the Party I from duties initially for a period of 21 days vide its order dated 11-07-2009. The Employer stated that it had decided to conduct a preliminary investigation in to the allegations and alleged misconducts committed by the Party I before issuing him a charge-sheet. The Employer stated that it had therefore instructed the Party I to 'co-operate and participate in the said preliminary inquiry/investigation. The Employer stated that it had also fixed dates for conducting preliminary inquiry. The Employer stated that the enquiry proceedings had been adjourned from time to time on account of non-participation of the Party I. The Employer stated that they could not complete the preliminary inquiry against the Party I on account of his non-co-operation. The Employer stated that it had therefore extended the suspension of the Party I for further period of 9 days. The Employer stated that the Party I did not co-operate the preliminary inquiry held against him deliberately and intentionally. The Employer stated that the Party I made some mischievous, false and baseless allegations vide his letter dated 14-07-2009 and letter dated 01-08-2009 and tried to pressurize them by using his political position and influence. The Employer stated that the Party I was instructed to report for his duties on account of intervention of the Hon'ble Labour Minister, Government of Goa by revoking his suspension vide letter dated 07-08-2009. The Employer stated that since the Party I had also promised that he will improve his behaviour and will follow the work culture as also the reasonable orders of his superiors as well as will maintain the discipline within the establishment, they decided to give him a chance to improve himself. The Employer stated that the Party I did not change his behaviour and attitude after resuming the duty. The Employer stated that the Party I became more rude and

arrogant and started activities detrimental to the smooth functioning of the factory. The Employer stated that the Party I was cautioned by the authority from time to time to change and improve his behaviour, however the Party I failed to do so. The Employer stated that the Party I has even abused and insulted its Managing Director in presence of other officials of the Company. The Employer stated that it has also lost confidence in the Party I.

8. The Employer stated that having regards to the nature and attitude of the Party I, it has bonafidely believed and came to the conclusion that the presence of the Party I within the factory premises will be detrimental for its smooth functioning and industrial peace and harmony. The Employer stated that taking into consideration the political background of the Party I, his attitude of using political pressure, unfair practice, it has come to the conclusion that it is practically impossible to conduct a fair and proper inquiry against the Party I by following the principles of natural justice. The Employer stated that it has therefore decided to dispense with the services of the Party I without conducting the domestic inquiry. The Employer stated that accordingly it has terminated the services of the Party I vide its letter dated 20-08-2009. The Employer stated that while terminating the services of the Party I, he was asked to collect all the legal dues including one month's salary in lieu of notice, retrenchment compensation and other accrued dues. The Employer stated that the Party I did not collect his dues for the reasons best known to him. The Employer submitted that the management is a better judge to decide what course of action shall be taken in the circumstance of the case. The Employer stated that Party I is gainfully employed and drawing more salary than he was drawing with them after termination of his services. The Employer denied the overall case of the Party I as pleaded by him and prayed for dismissal of the present reference in limine.

9. Thereafter the Party I filed his re-joinder on 06-12-2010 at Exb. 8. The Party I by way of his re-joinder submitted that as a 'Control Room Operator' he was performing the duties of manual and technical in nature. He submitted that drawing a salary more than ₹ 1600/- p.m. does not exclude him from the meaning of Section 2(s) of the I. D. Act, 1947. The Party I denied that he has committed any acts of misconduct including subversive of discipline while working with the Employer.

10. Based on the pleadings filed by the respective parties, this Court framed the following issues on 20-12-2010 at Exb. 9.

1. Whether the Workman/Party I proves that he is a 'Workman' as defined u/s 2(s) of the Industrial Disputes Act, 1947?
2. Whether the Workman/Party I proves that the action of the Employer/Party II in terminating his services w.e.f. 20-08-2009 is illegal and unjustified?
3. Whether the Workman/Party I proves that he has been victimized?
4. Whether the Party II/Employer proves that the Party I was working in the post of Supervisory, Managerial and Administrative in nature?
5. Whether the Party-II/Employer proves that the present order of reference is illegal and bad-in-law?
6. Whether the Workman/Party I is entitled for any relief?
7. What order? What Award?

11. 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 Negative. |
| Issue No. 4 | : | In the Negative. |
| Issue No. 5 | : | In the Negative. |
| Issue Nos. 6 & 7 | : | As per final Order. |

REASONS

12. Issue Nos. 1 & 4:

I am deciding the issue Nos. 1 & 4 simultaneously as both the said issues are co-related to each other.

I have heard the oral arguments of the Ld. Rep. Shri P. Gaonkar appearing for the Party I as well as Ld. Adv. Shri S. K. Manjrekar appearing for the Employer.

13. Ld. Rep. Shri. P. Gaonkar representing the Workman during the course of his oral arguments submitted that the Party I was designated as "Control Room Operator" at the time of termination of his service by the Employer. He submitted that as a Control Room Operator, the Party I was predominantly performing the duties such as to control any fluctuations in voltage by adjusting

the tap system, to keep vigilance on three electrodes which were used to supply current to the furnace, to increase or decrease the number of taps as per the instructions of the shift in-charge during power fluctuations, maintaining a log sheet and ride the units of power consumed every hour, noting down of the tapping-opening and closing time and also noting down data regarding the number of units of power consumed and the number of units required further, maintaining the necessary level of carbon test in the electrodes which were used to supply electricity, to maintain a required level as per the instructions of the shift in-charge, to check manually the level of paste in the electrodes, to maintain the current density after making necessary calculations and after taking necessary instructions from shift in-charge to co-ordinate with the workmen working in the previous shift and check with him how the operation took place before resuming duties, to clean and maintain all the machinery in the Control Room, the Conveyor Belt, Transformer etc. during the time when the plant used to be closed due to shortage of supply and to wait till the Workman working in the subsequent shift arrives in order to co-ordinate and inform him about the operation at the end of the shifts. He further submitted that the Party I was neither supervising the work of any Workman nor he was sanctioning/ recommending leave of any of Workman in the company. He submitted that as a Control Room Operator, the predominant nature of duties performed by the Party I were of manual and technical in nature. He therefore submitted that the Party-I is a 'Workman' within the meaning of Section 2(s) of the I. D. Act, 1947. He further submitted that the services of the Party I has been terminated vide letter of the Employer dated 20-08-2009 (Exb-W/13) by referring the provisions of the Certified Standing Order of the Employer Company. He submitted that the Party I was suspended vide letter of the Employer dated 11-07-2009 (Exb. W/7) and his suspension period was further extended for 9 days vide letter dated 31-07-2009 (Exb. W/10) in terms of provisions of the Certified Standing Order of the Employer Company. He submitted that the Party I was also called upon to appear for enquiry vide letter of the Employer dated 24-07-2009 (Exb. W/9) in terms of its Standing Order. He submitted that the said Certified Standing Order of the Employer Company is applicable to the Employer as well as its Workmen. He therefore submitted that the Employer therefore estopped from alleging that the Party-I is not a 'Workman' within the meaning of the Section 2(s) of the I. D. Act, 1947.

14. On the contrary, Ld. Adv. Shri S. K. Manjrekar representing the Employer during the course of his oral arguments submitted that the Party I was holding the post of "Control Room Operator". He submitted that the post of 'Control Room Operator' is of supervisory, managerial and administrative in nature. He therefore submitted that the Party I is not a 'Workman' within the meaning of Section 2(s) of the I. D. Act, 1947 and as such the present reference is bad-in-law.

I have carefully perused the entire records of the present case. I have also considered various oral as well as written submissions made by the Ld. Rep. Shri P. Gaonkar appearing for the Party I as well as Ld. Adv. Shri S. K. Manjrekar appearing for the Employer.

15. The Employer resisted the claim of the Party I by alleging that the Party I is not a "Workman" within the meaning of Sec. 2(s) of the I. D. Act, 1947. The burden to prove that he is a "Workman" as defined under Section 2(s) of the I. D. Act, 1947, is on the Party I. It is therefore necessary to refer to the provisions of Sec. 2(s) of the I. D. Act, 1947 which defines the term "Workman".

"Section 2 (s), "Workman" means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be expressed or implied and for the purposes of any proceedings under this act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with or a consequence of that dispute or dismissal, discharge or retrenchment has led to that dispute, but does not include any such person.

- (1) *who is subject to the AIR Force Act, 1950 (45 of 1950) or the Army Act, 1950 (46 of 1950) or the Navy Act, 1957 (62 of 1957) or*
- (2) *who is employed in the police service or as an Officer or other employee of a prison or*
- (3) *who is employed mainly in a managerial or administrative capacity*
- (4) *who, being employed in a supervisory capacity draws wages exceeding ₹ 1,600/- per mensem or exercises either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature."*

Thus, from the bare reading of the definition of the 'Workman' it appears that an employee claiming to be a "Workman" within the meaning of Section 2(s) of the I. D. Act, 1947, he/she must prove that he/she was employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward and it is not enough that he/she was not performing any work of supervisory, managerial and administrative in nature.

16. It is well settled principles of industrial jurisprudence that whether a particular employee is a "Workman" or not within the meaning of Section 2(s) of the I. D. Act, 1947, depends upon his/her primary and basic nature of duties performed by him/her at the time of termination of his service.

17. The letter of the Employer dated 01-08-2007 at Exb. W/5 on record indicates, that the Party I was promoted to the post of 'Control Room Operator' w.e.f. 01-08-2007 from 'Batch Weighing Operator' on the basis of his hard and satisfactory work. The evidence on record indicates that the Party I was designated and working as 'Control Room Operator' w.e.f. 01-08-2007 till the date of termination of his service w.e.f. 20-08-2009. Thus the Party I was designated and working as 'Control Room Operator' at the time of termination of his service. It is therefore necessary to examine the predominant nature of duties performed by him as a 'Control Room Operator'.

18. The Party I pleaded that as a 'Control Room Operator' he was performing the duties of manual and technical in nature. The Party I, in support of his pleadings examined himself and produced on record oral evidence to prove the nature of his duties. The oral evidence of the Party I on record indicates that as a 'Control Room Operator', he was predominantly performing the duties such as to control any fluctuations in voltage by adjusting the tap system as appropriate voltage is required for the melting of ores, to keep vigilance on three electrodes which were used to supply current to the furnace wherein melting used to take place, to increase or decrease the number of taps as per the instructions of the shift in-charge during power fluctuations, maintaining a log sheet and writing the units of power consumed every hour, noting down of the tapping-opening and closing time and also noting down data regarding the number of units of power consumed and the number of units required further, maintaining the necessary level of carbon test in the electrodes which were used to

supply electricity, to maintain a required level as per the instructions of the shift in-charge, to check manually the level of paste in the electrodes, to maintain the current density after making necessary calculations and after taking necessary instructions from shift in-charge to co-ordinate with the Workmen working in the previous shift and check with him how the operation took place before resuming duties, to clean and maintain all the machinery in the Control Room, the Conveyor Belt, Transformer etc. during the time when the plant used to be closed due to the shortage of supply and to wait till the Workman working in the subsequent shift arrives in order to co-ordinate and inform him about the operation at the end of the shifts. He deposed that neither he was supervising the work of any Workmen nor he was sanctioning/recommending leave of any of Workman in the company. The aforesaid oral evidence adduced by the Party I has not been denied by the Employer. Hence, the aforesaid oral evidence adduced by the Party I in the form of duties performed by him as a 'Control Room Operator' stands proved. On careful perusal of the oral evidence on record, the nature of the duties performed by the Party I as 'Control Room Operator' are predominantly manual and technical in nature.

19. On the contrary, the Employer examined Shri B. Srinivasa, its Managing Director. The said Shri B. Srinivasa in his affidavitory evidence deposed that the post of Control Room Operator is of supervisory category and not of a Workman's category and the Party I was drawing a salary more than ₹ 1,600/- p.m. at the relevant time. Thus, though the Employer alleged that as a Control Room Operator, the Party I was performing the duties of supervisory, managerial and administrative in nature, it has failed to specify the said nature of duties which according to them are supervisory, managerial and administrative in nature. Hence it is held that the Employer failed to prove that as a 'Control Room Operator', the Party I was performing the duties of supervisory, managerial and administrative in nature.

20. The evidence on record indicates that the services of the Party I has been suspended for 21 days by the Employer vide its letter dated 11-07-2009 (Exb-W/7) in terms of its Certified Standing Order. The suspension period of the Party I was extended for another 9 days by the Employer vide its letter dated 31-07-2009 (Exb. W/10) in terms of its Certified Standing Order. Further the Party I was called upon to

appear for inquiry by the Employer vide its letter dated 24-07-2009 (Exb. W/9) in terms of Section 3 (1) of its Certified Standing Order. The Employer Company terminated the services of the Party I vide its letter dated 20-08-2009 (Exb-W/13) by referring the provisions of its Certified Standing Order. Thus the evidence on record indicates that the Employer treated the Party I as a 'Workman' at all times and applied the provisions of its Certified Standing Order, which governs the service conditions of its Workmen. Therefore the principles of estoppel binds the Employer. The Employer is stopped from denying the status of the Party I as "Workman" within the meaning of Section 2(s) of the I. D. Act, 1947.

Hence it is held that the Party I is a 'Workman' within the meaning of Section 2(s) of the I. D. Act, 1947. The issue No. 1 is therefore answered in the affirmative and issue No. 4 is answered in the negative.

21. *Issue Nos. 2 & 3:* I have heard the oral arguments of the Ld. Rep. Shri P. Gaonkar appearing for the Party I as well as Ld. Adv. Shri S. K. Manjrekar appearing for the Employer.

Ld. Rep. Shri. P. Gaonkar representing the Workman during the course of his oral arguments submitted that the services of the Party I has been terminated by the Employer vide its letter dated 29-08-2009 at Exb. W/13. He submitted that the said letter of termination at Exb. W/13 on record clearly shows that the services of the Workman have been terminated on account of alleged misconduct listed at clause No. 24, sub-clause No. (5) (II), 24, 49 of its Certified Standing Order and in terms of clause No. 25, sub-clause (a) (iv) and (b) as well as clause No. 21 sub-clause (2) of its Standing Order. He submitted that thus the services of the Workman has been terminated by way of dismissal for the alleged misconduct on the part of the Workman without issuing him any show cause notice, charge-sheet and without conducting any domestic inquiry against him. He therefore submitted that the termination order issued to the Workman is therefore in violation of clause No. 25 sub-clause (b) (d) (i) of the Standing Order of the Employer Company. He further submitted that the Workman was punished by way of dismissal without being found him guilty of any of the misconduct. He further submitted that even otherwise, the Employer has examined Shri B. Srinivasa its Managing Director to justify its action of dismissal from services of the Workman. He submitted that the entire oral evidence adduced by the

Employer is vague and fictitious. He submitted that the oral evidence adduced by the Employer do not establish any of the charges of misconduct levelled against the Workman. The Employer also could not be able to produce on record any documentary evidence nor could examine any other witness in support of its oral evidence to corroborate the facts narrated by its witness. He therefore submitted that the Employer also failed to justify its action of dismissal of Workman from service before this Court by producing on record cogent and reliable evidence. He therefore submitted that the action of the Employer in terminating the services of the Workman by way of dismissal is illegal and unjustified. He submitted that the Employer after terminating the services of Workman vide its letter dated 20-08-2009 under reference no KAL:EMP:09:10:598, issued one more letter of termination to the Workman under reference no KAL:EMP:09:10:600 dated 20-08-2009 on the same day. He submitted that the said letter of termination issued to the Workman at Exb. 25 is an afterthought and null and void as the relation between the Employer and the Workman has been extinguished vide its earlier letter of termination at Exb. W/13.

22. On the contrary, Ld. Adv. Shri S. K. Manjrekar representing the Employer during the course of his oral arguments submitted that the Party I being Control Room Operator is not a "Workman" within the meaning of Section 2(s) of the I. D. Act, 1947 and as such the dispute raised by him is not an "industrial dispute" within the meaning of Section 2(k) of the I. D. Act, 1947. He submitted that after promotion of Party I as Control Room Operator, he was adamant, aggressive and harsh in nature. He submitted that the workers of the Employer Company were scared to complain against him to the Management about his nature. He submitted that the Party I started insulting and abusing not only the workers, but also his superiors and managers of the company and that he was not following the reasonable orders of his superiors and was involved in committing severe acts of misconduct including subversive of discipline. He further submitted that the activities of the Party I were becoming detrimental for the smooth functioning, work culture and discipline within the establishment. He submitted that having regards to the nature and attitude of the Party I, the disciplinary authority bonafidely believed and came to the conclusion that the presence of the Party I within its factory premises will be detrimental for the smooth functioning of its establishment and also caused disturbance

of industrial peace and harmony. He submitted that since the Party I was using political pressure and unfair practice, it was practically not possible to conduct a fair and proper inquiry against him by following the principles of natural justice and therefore the management has decided to dispense with the exercise of conducting a domestic inquiry and terminated the services of the Party I. He therefore submitted that the action of the Employer in terminating the services of the Workman is therefore just, legal, and bonafide in terms of its Certified Standing Order. He relied upon the following decisions in support of its oral arguments.

1. In the case of Holy Spirit Hospital and anr. v/s Banjamine Fernandes, reported in 2013 LLR 73, of Hon'ble High Court of Bombay.
2. In the case of Hindustan Vidyut Product Ltd. and ors. v/s Surendra Singh and ors., reported in 2002 LLR 722, of Hon'ble High Court of Madhya Pradesh.
3. In the case of Ajit Kumar Nag v/s General Manager (P. J.) Indian Oil Corporation Ltd, Haldia and ors., reported in 2005 LLR 1137, of Hon'ble Supreme Court of India.

I have carefully perused the entire records of the present case. I have also considered various oral as well as written submissions made by the Ld. Rep. Shri P. Gaonkar appearing for the Party I as well as Ld. Adv. Shri S. K. Manjrekar appearing for the Employer.

While deciding the issue Nos. 1 & 2, I have come to the conclusion and held that the Party I is a "Workman" within the meaning of Section 2(s) of the I. D. Act, 1947. Hence, the services of the Workman are governed by the Certified Standing Order of the Employer.

23. The services of the Workman has been terminated twice by the Employer vide its two separate letters i.e. letter dated 29-08-2009 at Exb. W/13 & letter dated 29-08-2009 at Exb. 25. On careful perusal of both the said letters of termination at Exb. W/13 and Exb. 25 issued to the Workman, it clearly reveals that the termination letter under reference number KAL:EMP:09:10:598 at Exb. W/13 was issued to the Workman first and another letter of termination under reference No. KAL:EMP:09:10:600 was issued subsequently. The letter of termination issued to the Workman at Exb. 25 is therefore null and void as the jural relationship of master-servant between the Employer and the Workman has already been extinguished by the first letter of termination at Exb. W/13.

24. The said letter of termination issued to the Workman at Exb. W/13 on record shows that the services of the Workman have been terminated in view of the alleged personal arrogant arguments with its Managing Director in front of its Officers and therefore he has allegedly committed misconduct as stated in clause No. 24, sub-clause No. (5) (II), 24 and 49. The services of the Party I is therefore terminated in terms of clause No. 25, sub-clause (a) (iv) and (b) and clause No. 21, sub-clause (2) of its Certified Standing Order. Clause-24 of the Certified Standing Order of the Company listed out the various misconducts.

25. Clause-24 (5) of the Certified Standing Order of the Employer reads the misconduct as refusal to accept transfer from one shift to another or from one section to another whether locally or out of station or from one establishment to any other establishment under the same management or where the Company has got its work. Clause-24 (24) of its Certified Standing Order reads as "refusal to accept a charge-sheet/order or other communications served either in accordance with conditions of service or in the interest of discipline. Similarly, Clause-24 (49) of its Certified Standing Order reads as 'behaving in a rude or indecent or impolite manner towards the suppliers, customers and any other officers of the Company'. Clause-25 (iv) of the Certified Standing Order of the Employer Company reads as 'dismissal or discharge from service'. In terms of the Clause-25 (b) a Workman is liable to be dismissed if he has been found guilty of a misdemeanor. A Workman dismissed for misdemeanor shall not be entitled to any notice or pay in lieu of notice and shall not be entitled to any wages or accounts or benefits or privileges provided by the Company. In terms of Clause-21 (II) of the Certified Standing Order of the Employer Company the employment of a permanent Workman shall be subject to termination on one month's notice in writing or on payment of one month's wages/salary in lieu of such notice without assigning any reasons unless the termination is on ground of misconduct.

Thus the services of the Workman have been terminated by the Employer without issuing him any show cause notice or charge-sheet or without conducting any enquiry in terms of Clause-21 (2) of its Certified Standing Order for the three alleged misconducts namely, 1. refusal to accept transfer from one shift to another or from one section to another whether locally or out of station or from one establishment to any other

establishment under the same management or where the Company has got its work, 2. refusal to accept a charge-sheet/order or other communications served either in accordance with conditions of service or in the interest of discipline and 3. behaving in a rude or indecent or impolite manner towards the suppliers, customers and any other officers of the Company.

26. Ld. Adv. Shri S. K. Manjrekar, representing the Employer, during the course of his oral arguments submitted the Employer has every right to sustain its Order of Dismissal by adducing independent evidence before the Tribunal if no enquiry has been held and relied upon the following decisions in support of his oral contention.

27. In the case of **Hindustan Vidyut Product Ltd. and ors. v/s Surendra Singh and ors., reported in 2002 LLR 722**, of Hon'ble High Court of Madhya Pradesh, it has been held that "an Employer has a right to prove the misconduct on merit by adducing evidence even when no inquiry has been conducted by an Inquiry Officer due to the circumstances created by the employees".

28. In the case of **Ajit Kumar Nag v/s General Manager (P. J.) Indian Oil Corporation Ltd., Haldia and ors., reported in 2005 LLR 1137**, of Hon'ble Supreme Court of India, the Workman was charged with an offence of assaulting the Doctor in the Refinery Hospital. The Workman was acquitted by the Criminal Court. However the services of the Workman were terminated without holding any inquiry in terms of the certified standing order of the industrial establishment. The Hon'ble High Court upheld the termination of services of the Workman. In an appeal filed by the Workman, before the Hon'ble Supreme Court, it has been held that the acquittal of the Workman by the Criminal Court did not preclude the corporation from taking action if it is otherwise permissible. It was not a case which deserves the interference in exercise of discretionary jurisdiction under article 136 of the Constitution of India pertaining to special in Supreme Court. The exercise of discretionary power in exceptional circumstances under Standing Order 20 (VI) in the circumstances of the case cannot be said to be arbitrary, unreasonable or malafide.

29. In the case of **Vajidali T. Kadri, Jalgaon v/s D. D. Shah & Co., reported in 2007 III CLR 4**, the Hon'ble High Court of Bombay, it has been held that "the law is settled by the Supreme Court that the right in the management to sustain its

order of dismissal, by adducing independent evidence before the tribunal if no inquiry has been held or if the inquiry is held to be defective, has been given judicial recognition over a long period of years and it has not been disturbed by Section 11-A of the Act”.

Thus, from the above referred various decisions, it is now settled law that the management has every right to sustain its order of dismissal by adducing independent evidence before the Labour Court/Industrial Tribunal if no inquiry has been held or if the inquiry held to be defective or if the inquiry proceedings held has not been relied by the Employer, provided that the Employer has to make a proper request to allow them to lead an independent evidence to prove the charges of misconduct.

30. In the case in hand, the said letter of termination issued to the Workman at Exb. W/13 on record clearly indicates that the services of the Workman have been terminated in view of the alleged personal arrogant arguments with its Managing Director in front of its Officers and therefore the Party I has been charged of having committed misconduct as stated in clause No. 24, sub-clause No. (5) (II), 24 and 49. The services of the Workman have been terminated without issuing him any show cause notice or charge-sheet or without conducting any enquiry into the alleged charges of misconduct. The Employer in its written statement filed in the present proceedings alleged that it was practically impossible to conduct an enquiry against the Workman in accordance with the principles of natural justice on account of his political influences for pressurizing the Management. It was therefore incumbent upon the Employer to make a proper request at the time of filing its written statement in the present proceedings to allow them to lead independent evidence to prove the charges of misconducts alleged against the Workman and also to prove that it was practically impossible to hold an enquiry against the Workman prior to his termination. The records of the present case however do not indicate that the Employer has made a proper request at the time of filing its Written Statement or at any other time to lead independent evidence to prove the charges of misconduct against the Workman. In the circumstances, the Employer failed to prove the charges of misconduct alleged against the Workman in its written statement by leading cogent evidence.

31. Even otherwise, the allegations levelled against the Workman in the letter of termination at Exb. W/13 that he had personal arrogant arguments with its Managing Director in front of its Officers and therefore he was charged for having committed misconducts such as refusal to accept transfer from one shift to another or from one section to another whether locally or out of station or from one establishment to any other establishment under the same management or where the Company has got its work, refusal to accept a charge-sheet/order or other communications served either in accordance with conditions of service or in the interest of discipline and behaving in a rude or indecent or impolite manner towards the suppliers, customers and any other officers of the Company. The said allegation of personal arrogant arguments with its Managing Director in front of its Officers do not in any way apply to the misconduct as stated in clause No. 24, sub-clause 5 and 24 of its certified standing order.

32. To prove the misconduct under Clause No. 24, sub-clause 5 and 24 of its certified standing order, one has to establish that a transfer order or charge-sheet or any other order or communications, etc. were issued to the Workman and that he refused to accept the said transfer order, or any other order or charge-sheet or any communications. However, the evidence on record indicates that there is absolutely no evidence of what-so-ever nature to show that any transfer order, or order or charge-sheet or any other communications were issued to the Workman and that he refused to accept the same. Hence it is held that the Employer failed to prove the charges of misconduct under clause No. 24, sub-clause 5 and 24 of its Certified Standing Order.

33. As regards the third charge of misconduct of clause No. 24 sub-clause 49 of its certified standing order i.e. behaving in a rude or indecent or impolite manner towards the suppliers, customers and any other officers of the Company, the allegations levelled against the Workman are that he had personal arrogant arguments with its Managing Director in front of its Officers. The Employer has examined its Managing Director Shri B. Srinivasa. The said witness of the Employer deposed that Party I has abused him. The said witness of the Employer has however failed to disclose the exact words uttered by the Party I as well as date, time and venue of the alleged incident. The Employer also failed to examine any other witness to corroborate the oral evidence of

its sole witness. Hence in the absence of any cogent and reliable evidence, it cannot be said that the Party I has abused and insulted its Managing Director, co-workers and his Superiors etc. On careful perusal of the entire oral evidence of the Employer's witness Shri B. Srinivasa, it reveals that the said oral evidence is vague in nature as it does not disclose any specific incident, by giving date, time and venue. Hence the oral evidence adduced by the Employer appears to be fictitious and imaginary. Hence it is held that the Employer failed to prove any of the misconducts alleged to have been committed by the Workman and for which the services of the Workman has been terminated by way of dismissal. Hence it is held that the action of the Employer in terminating the services of the Workman w.e.f. 20-08-2009 is illegal and unjustified. The issue No. 2 is therefore answered in the affirmative.

34. The Workman alleged that he was being forced by the Employer to tender an apology letter to terminate his service by way of victimization. The Workman however could not be able to produce any cogent and reliable evidence in support of his plea of victimization. Hence it is held that the Workman has failed to prove that he has been victimized by the Employer. The issue No. 3 is therefore answered in the negative.

35. *Issue No. 4:* While deciding the Issue No. 1 hereinabove, I have come to the conclusion and held that the Party I is a "Workman" within the meaning of section 2(s) of the I. D. Act, 1947. Similarly while deciding the Issue No. 4 herein above I have come to the conclusion and held that the Employer failed to prove that the Party I was working in the post of Supervisory, Managerial and Administrative in nature. Thus the dispute raised by the Workman is a dispute between the Workman and the Employer pertaining to his non-employment. Hence the dispute raised by the Workman is an 'Industrial Dispute' within the meaning of Section 2(k) of the I. D. Act, 1947 and as such this Labour Court has every jurisdiction to entertain and adjudicate the said dispute raised by the Workman. It is therefore held that the Employer failed to prove that the present order of reference is illegal and bad-in-law. The Issue No. 5 is therefore answered in the negative.

36. *Issue No. 6:* I have heard the oral arguments of the Ld. Rep. Shri P. Gaonkar appearing for the Party I as well as Ld. Adv. Shri S. K. Manjrekar appearing for the Employer.

Ld. Rep. Shri P. Gaonkar during the course of his oral argument submitted that the action of the Employer in terminating the services of the Workman is illegal and unjustified. He submitted that the Workman is gainfully un-employed from the date of his termination of service till date and hence he is entitled to reinstatement in service with full back wages and consequential relief.

37. On the contrary, Ld. Adv. Shri S. K. Manjrekar during the course of his oral argument submitted that it is settled principle of law that even if the termination of service of the Workman is held to be illegal and unjustified, the Workman is not entitled for reinstatement with full back wages and continuity in service and relied upon the following decisions.

1. In the case of Sr. Supdt. of Telegraph (Traffic) Bhopal v/s Santosh Kumar SEI and Ors., reported in 2010 LLR 677, of Hon'ble Supreme Court of India.
2. In the case of Ravindra N. Chaudhari v/s Zonal Manager, IDBI Bank Ltd., reported in 2012 LLR 1267, of Hon'ble High Court of Bombay.
3. In the case of General Manager (Telecom) Nagpur and Ors. v/s. Zarir s/o Pesi Mawalwala, Nagpur and Ors., reported in 2011 LLR 1020, of Hon'ble High Court of Bombay.
4. In the case of Oghad Masri Rabari v/s State of Gujarat, reported in 2011 LLR 811, of Hon'ble High Court of Gujarat.
5. In the case of Jayant Dehirajlal Kachalia v/s Dawells Electro Works and anr., reported in 2007 1 CLR 807, of Hon'ble High Court of Bombay.
6. In the case of Gujarat State Road Transport Corporation v/s Dawoodbhai I. Ghanchi c/o. Ms. Mansuri, Advocate reported in 2012 LLR 200, of Hon'ble High Court of Gujarat.
7. In the case of K. C. Sharam v/s Delhi Stock Exchange and Ors., reported in 2005 LLR 417, of Hon'ble Supreme Court of India.

I have carefully perused the entire records of the present case. I have also considered various oral as well as written submissions made by the Ld. Rep. Shri P. Gaonkar appearing for the Party I as well as Ld. Adv. Shri S. K. Manjrekar appearing for the Employer.

38. In the case of **Sr. Supdt. of Telegraph (Traffic) Bhopal v/s Santosh Kumar SEI and Ors. reported in 2010 LLR 677**, the Hon'ble Supreme

Court of India has held that “the relief by way of reinstatement with full back wages is not automatic even if termination of an employee is found to be illegal or is in contravention of Section 25-F of the Industrial Disputes Act, mandating for payment of retrenchment compensation and one month's notice or pay in lieu thereof, hence monetary compensation in lieu of reinstatement and back wages in cases of such nature may be appropriate”.

39. In the case of **Ravindra N. Chaudhari v/s Zonal Manager, IDBI Bank Ltd., reported in 2012 LLR 1267**, before the Hon'ble High Court of Bombay, the services of the Workman were terminated after he was found guilty of misappropriation of money. In an Industrial Dispute raised by him the Industrial Tribunal directed to re-instate him without back wages. The Appellant challenged the said order of Industrial Tribunal in Writ Petition before the Hon'ble High Court of Bombay. The Hon'ble High Court of Bombay has held that “Law is settled that reinstatement should not be always followed by full back wages in every matter. The Court is entitled to consider the fact, circumstances and background of the matter while granting back wages and hence it is not acceptable that the Court ought to have granted some compensation”.

40. In the case of **Oghad Masri Rabari v/s State of Gujarat, reported in 2011 LLR 811**, the Hon'ble High Court of Gujarat, has held that “back wages on reinstatement will not always be granted since it will be discretion of the Court, hence an order for payment of back wages should not be passed in a mechanical manner, since there are many factors to be considered for grant of relief’.

41. In the case of **Jayant Dehirajlal Kachalia v/s Dawells Electro Works and anr., reported in 2007 1 CLR 807**, before the Hon'ble High Court of Bombay, the services of the Appellant was terminated. In an Industrial Dispute raised by the Appellant before the Labour Court ordered the termination of the Appellant is illegal and directed reinstatement without back-wages. In an appeal filed by the Appellant Workman before the Hon'ble High Court of Bombay, it is held that “after termination of services of the Appellant, there was no work available with respondent and hence no fault can be found in awarding compensation in lieu of reinstatement and award of compensation of ₹ 50,000/- in lieu of reinstatement cannot be said to be unreasonable or injustice”.

42. In the case of **Gujarat State Road Transport Corporation v/s Dawoodbhai I. Ghanchi c/o. Ms. Mansuri, Advocate, reported in 2012 LLR 200**, the Hon'ble High Court of Gujarat, has held that “back wages on reinstatement for interregnum should not have been awarded by the Labour Court when the Workman did not make any effort to find employment and the Ld. single Judge erred in allowing 50% back-wages for intervening period”.

43. In the case of **K. C. Sharma v/s Delhi Stock Exchange and Ors., reported in 2005 LLR 417**, the Hon'ble Supreme Court of India has held that “taking into consideration all circumstances we are of the view that although the termination of the Appellant's service was illegal and unjustified, the totality of the circumstances of the case render it improper and unjust to direct the relief of reinstatement with full back wages. The High Court even while moulding the relief on agreement of the parties directed a sum of ₹ 12,00,000/- to be paid to the Appellant as compensation from which the amount already paid from time to time under orders of the High Court were to be adjusted. In our view the impugned judgment needs to be upheld with a slight modification on the issue of compensation. The compensation payable in lieu of reinstatement and back wages shall be increased to ₹ 15,00,000/-.”

Thus, from the above referred series of decisions, it is now become settled law of industrial jurisprudence that even if the termination of service of an employee is held to be illegal and unjustified, he/she is not entitled for reinstatement with full back wages and continuity in service alongwith consequential benefits automatically and mechanically, but the relief would depend on several other factors.

45. In the case in hand, while deciding the issue No. 2 hereinabove, I have come to the conclusion and held that the action of the Employer in terminating the services of the Workman w.e.f. 20-08-2009 is illegal and unjustified. It is not in dispute that the Workman was in the employment of the Employer Company since 01-10-1994 continuously till the date of termination of his service w.e.f. 20-08-2009. The Workman alleged that his past record is clean and unblemished. On the contrary, the Employer alleged that the

past record of the Workman was clean and unblemished till he was promoted to the post of Control Room Operator w.e.f. 01-08-2007 and after promotion as "Control Room Operator", the behaviour of the Workman was harsh, aggressive and arrogant towards his co-workers and superiors etc. The Employer however failed to prove his aforesaid allegation by cogent and reliable evidence. Hence, it is held that the past record of the Workman was clean and unblemished atleast from the date of joining in the employment of the Employer till he was issued a suspension letter dated 11-07-2009. The evidence on record indicates that the Workman is unemployed from the date of his dismissal and could not succeed in getting any employment. The evidence on record further indicates that the Workman was elected as Panch Member of Village Panchayat of Ambaulim, Quepem Panchayat in election held in March, 2007 and he is getting an honorarium of ₹ 1,500/- p.m. The Workman is therefore entitled to re-instatement in service with continuity in service and consequential benefits. The Workman is also entitled to 50% of back wages taking into consideration the facts and circumstances of the case.

In view of above, I proceed to pass the following Order:

ORDER

1. It is held that the action of the Management of M/s. Karthik Alloys Ltd., Cuncolim, Goa, in terminating the services of its Workman Shri Rajan Naik, Control Room Operator, with effect from 20-08-2009, is illegal and unjustified.
2. The Workman Shri Rajan Naik, Control Room Operator is hereby ordered to be reinstated in the services of the Management of M/s. Karthik Alloys Ltd., Cuncolim, Goa along with 50% of back wages and continuity in service with consequential benefits.
3. No order as to costs.
4. Inform the Government accordingly.

Sd/-
(Suresh N. Narulkar),
Presiding Officer,
Labour Court-II.

Department of Law & Judiciary
Law (Establishment) Division

—
Order

File No. 8-2-2013-LD(Estt)/653

Read: Government Order No. 8-2-2013-LD(Estt)/638 dated 23-04-2013.

Government of Goa is pleased to constitute a Committee of the following officers for North Goa District to process the pending applications/future applications of Foreign Nationals/Indian Nationals as regards the purchase of property/sale of property by Foreigners/PIO/OCI etc. in terms of FEMA 1999:

- | | |
|---|------------------------|
| 1. State Registrar-cum-Head of Notary Services | — Chairman. |
| 2. Under Secretary (Revenue) | — Member. |
| 3. Under Secretary (Debt Management Unit) | — Member. |
| 4. Dy. Collector, North (Revenue Branch) | — Member. |
| 5. Official of R. B. I. | — Member. |
| 6. Ms. Sushma Khandeparkar (Chartered Accountant) | — Non-Official Member. |
| 7. District Registrar, North | — Member Secretary. |

Non-Official Member shall be paid sitting fee of ₹ 800/- per sitting in terms of O.M. No. 9/10/2010--Fin(DMU) dated 29-11-2011.

The expenditure towards sitting fee shall be debited to the budget head operated by State Registrar-cum-Head of Notary Services.

This is issued in supersession of Order No. 8-2-2013-LD(Estt)/638 dated 23-04-2013 referred to above.

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

Vasanti H. Parvatkar, Under Secretary, Law (Estt.).
Porvorim, 25th April, 2013.

Order

File No. 8-2-2013-LD(Estt)

Read: Government Order No. 8-2-2013-LD(Estt)/204 dated 08-02-2013.

Government of Goa is pleased to constitute a Committee of the following officers for North Goa District to process the pending applications/future applications of Foreign Nationals/Indian Nationals

as regards the purchase of property/sale of property by Foreigners/PIO/OCI etc. in terms of FEMA 1999:

1. State Registrar-cum-Head of Notary Services — Chairman.
2. Under Secretary (Revenue) — Member.
3. Under Secretary (Debt Management Unit) — Member.
4. Dy. Collector, South (Revenue Branch) — Member.
5. Official of R. B. I. — Member.
6. Ms. Sushma Khandeparkar (Chartered Accountant) — Non-Official Member.
7. District Registrar, North — Member Secretary.

Non-Official Member shall be paid sitting fee of ₹ 800/- per sitting interms of O.M. No. 9/10/2010-Fin(DMU) dated 29-11-2011.

The expenditure towards sitting fee shall be debited to the budget head operated by State Registrar-cum-Head of Notary Services.

This is issued in supersession of Order No. 8-2-2013-LD(Estt)/204 dated 08-02-2013 referred to above.

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

Vasanti H. Parvatkar, Under Secretary, Law (Estt.).
Porvorim, 23rd April, 2013.

◆◆◆

Department of Personnel

—
Order

File No. 7/10/2012-PER

Read: Order No. 7/2/99-PER(PF-IV) dated 1-04-2013.

In pursuance to Order 7/2/99-PER(PF-IV) dated 01-04-2013 read above, Shri P. Mathew Samuel, IAS (AGMUT: 2001), Secretary (Art & Culture), is relieved from Secretariat with immediate effect, in order to take up his new assignment in the office of Lokayukta, Panaji.

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

Umeshchandra L. Joshi, Under Secretary (Personnel-I).

Porvorim, 8th April, 2013.

Order

File No. 15/1/99-PER(Part)

Read: Order No. 15/1/99-PER(Part) dated 08-04-2013.

In partial modification to the Order read above, Shri Anil V. Rane Sardessai, Jt. Mamlatdar-II, Pernem who has been transferred as Chief Officer, Sankhali Municipal Council shall hold additional charge of the post of Jt. Mamlatdar-II, Pernem, until further orders.

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

Umeshchandra L. Joshi, Under Secretary (Personnel-I).

Porvorim, 23rd April, 2013.

Order

File No. 10/12/2013-PER

The Government of Goa is pleased to transfer and post Shri Surendra Naik, Dy. Collector (Revenue), Margao as, Under Secretary in the office of Lokayukta with immediate effect, in public interest and until further orders.

The deputation of Shri Surendra Naik, as Under Secretary, in office of Lokayukta shall be governed by standard terms of deputation as contained in this Department's Office Memorandum No. 13/4/74-PER dated 12-02-1999, and as amended from time to time.

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

Siddhi Halarnakar, Under Secretary (Personnel-II).
Porvorim, 23rd April, 2013.

Addendum

File No. 10/12/2013-PER

Read: Order No. 10/12/2013 dated 23-04-2013.

The following para shall be added to the Order dated 23-04-2013, read above.

“Smt. Sangeeta Naik, Administrator, Communi-dade (South) shall hold charge of the post of Deputy Collector (Revenue), South in addition to her own duties thereby relieving Shri Surendra Naik, until further orders.”

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

Siddhi Halarnakar, Under Secretary (Personnel-II).
Porvorim, 24th April, 2013.

Department of Public Health

—
Corrigendum

No. 8/43/91-II/PHD

Read: Government Order No. 8/43/91-II/PHD dated 13-4-1998.

The words appearing in the fifth line of the Government Order cited at preamble above shall be substituted to read as “on regular basis” instead of ‘on officiating basis’.

The rest of the contents shall remain unchanged.

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

D. G. Sardessai, Additional Secretary (Health).
Porvorim, 18th April, 2013.

—◆◆◆—
Department of Public Works

Office of the Principal Chief Engineer

—
Order

No. 64/1/2013/PCE-PWD-ADM(II)/456

Government is pleased to order the transfer of Shri Shivanand S. Salelkar, Surveyor of Works (Civil), presently attached to Circle Office VI (PHE), PWD, Altinho, Panaji and post him as Executive Engineer in Goa State Pollution Control Board, Panaji on deputation, with immediate effect.

The deputation of the aforesaid Officer is initially for a period of one year and shall be governed by the terms and conditions contained in O.M. No. 13/4/74/PER dated 12-2-1999 of the Department of Personnel, Government of Goa, Secretariat, Panaji as amended from time to time.

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

J. J. S. Rego, Principal Chief Engineer & ex officio Addl Secretary (PWD).

Panaji, 24th April, 2013.

—◆◆◆—
Department of Revenue

—
Notification

No. 22/5/2010-RD

Whereas it appears to the Government of Goa (hereinafter referred to as “the Government”) that the land specified in the Schedule hereto

(hereinafter referred to as the “said land”) is likely to be needed for public purpose, viz. Land Acquisition for development of Government Village School Playground at Chicolna, Bogmalo, Mormugao Taluka.

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

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

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

4. The Government further appoints under clause (c) of Section 3 of the said Act, the Deputy Collector & SDO, Mormugao, to perform the functions of a Collector, South Goa District, Margao-Goa, under the said Act in respect of the said land.

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

1. The Collector, South Goa District, Margao-Goa.
2. The Deputy Collector & SDO, Mormugao-Goa.
3. The Directorate of Sports and Youth Affairs, Campal, Panaji-Goa.
4. The Director of Settlement and Land Records, Panaji-Goa.

6. A rough plan of the said land is available for inspection in the Office of the Deputy Collector & SDO, Mormugao, for a period of 30 days from the date of publication of this Notification in the Official Gazette.

SCHEDULE

(Description of the said land)

Taluka: Mormugao City: Vasco

P. T. Sheet No./ Chalta No.	Names of the persons believed to be interested	Approx. area in sq. mts.
1	2	3
70/8	O: Fr. Francisco Antonio Camilo de Piedade Cruz.	25
70/7 P	O: Minguel de Quadros Barreto Xavier. Other rights & nature of right: House owned by Eugenio Silva. Jose Francisco Mascarenhas.	156
71/24 P	O: Rosendo Araujo. Other rights house owned: Rosalina Barreto.	29
71/21 P	O: Terezina Aria Pacheco.	97
71/16 P	O: Aida Azavedo Silveira.	353
71/1	O: Comunidade of Chicalim. T: Minino Fernandes.	950
71/2	O: Comunidade of Chicalim. T: Juliana Cruz.	450
71/3	O: Comunidade of Chicalim. T: Minino Fernandes.	425
71/4	O: Comunidade of Chicalim. T: Juliana Cruz.	500
71/5	O: Comunidade of Chicalim. T: Minino Fernandes.	500
71/6	O: Comunidade of Chicalim. T: Juliana Cruz.	575
71/7	O: Comunidade of Chicalim. T: Menino Fernandes.	825
71/8	O: Comunidade of Chicalim. T: Juliana Cruz.	625
71/9	O: Comunidade of Chicalim. T: Menino Fernandes.	775
71/10	O: Comunidade of Chicalim. T: Juliana Cruz.	750
71/11	O: Comunidade of Chicalim. T: Minino Fernandes.	1250
71/12	O: Comunidade of Chicalim. T: Juliana Cruz.	75
71/13	O: Comunidade of Chicalim. T: Minino Fernandes.	75
71/14	O: Comunidade of Chicalim. T: Juliana Cruz.	125

1	2	3
71/15	O: Comunidade of Chicalim. T: Menino Fernandes.	100
72/1 P	O: Minguel de Quadros Barreto Xavier.	2600

Boundaries:

North : S. No. 72/7, 1.

South : Road.

East : S. No. 72/1, 71/18, 17, 16,
21, 24, 25.

West : S. No. 73/4, 70/1, 2, 4, 6, 7.

Total: 11260

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

Ashutosh Apte, Under Secretary (Revenue-I).

Porvorim, 17th April, 2013.

Notification

No. 23/7/2012-RD

Whereas by Government Notification No. 23/7/2012-RD dated 11-07-2012 published at pages 741 to 742 of Series II No. 16 of the Official Gazette dated 19-07-2012 and in two local newspapers, namely, "The Navhind Times" and "Goa Doot" both dated 14-07-2012 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 (hereinafter referred to as the said land), was needed for public purpose, viz. L. A. for construction of road from Haturli to Doorli in Village Panchayat at Maem in Maem Constituency.

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 the provisions of Section 6 of the said Act that the said land is required for the public purpose specified above.

The Government also hereby appoints under clause (c) of Section 3 of the said Act, the Dy. Collector/SDO, Bicholim-Goa, to perform the

functions of the 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.

A plan of the said land can be inspected at the Office of the Dy. Collector/SDO, Bicholim-Goa till the award is made under Section 11.

SCHEDULE

(Description of the said land)

Taluka: Bicholim

Village: Naroa

Survey No./ /Sub-Div. No.	Names of the persons believed to be interested	Area in sq. mts.
1	2	3
110/1 P	1. Mahadeo Mangesh Salkar. 2. Ashok Dhakalo Morajkar. 3. Raghuvir Harichandra Morajkar. 4. Ranganath Surya Nagavekar. 5. Rohidas Surya Nagvekar. 6. Jaivant Gulabo Naik. 7. Chandravati Govind Patre. 8. Anand Gopal Nagvekar. 9. Vasu Sitaram Karbotkar. 10. Manohar Gulabo Naik. 11. Pandurang Bhiku Kalangutkar. 12. Chandrakant Surya Naik. 13. Parakash Vithoba Jannaik. 14. Uattam Vishwanath Pilgaonkar. 15. Director of Goa Health Service, Panaji-Goa a Area 2175 sq. mts. 16. Manohar Vishnu Morajkar. 17. Ramesh Pandurang Morajkar. 18. Sateri Sahakari Dudh Utpadak Sauntha Maryadit. 19. Yeshwnt Narayan Padavkar (600 sq. mts. only). 20. Ashok Popso Gaonkar. 21. Yamini Arun Chopdekar. 22. Guruprasad Jaganath Mandrekar. Cashu tree on lease with Shri Prabhakar Vishnu Morajkar & Harichandra Morajkar, Dhaklo Morajkar & Asok Morajkar has purchased 1000 sq mts. for worth of ₹ 5,000/- (765).	770

1	2	3
136 P	O: 1) Comunidade of Narve. C: Rohidas M. Shet Gaonkar. Shambu S. S. Gaonkar. Fati Rama S. Gaonkar. Jagannath M. S. Shet Gaonkar.	1437

Taluka: Bicholim

Village: Aturli

10/2 P	O: 1) Ganasham Vinayak Naik Prataprao Sardesai. 2) Bhikaji Raghunath Naik Prataprao Sardesa. 3) Parvati Shankar Kalangutkar. 4) Pradeep Vasant Kalangutkar. 5) Shailesh Shridhar Sardesai.	1085
--------	--	------

10/1 P	O: Jose Luis Vaz. Cowshed owned by Mahadev Vasudev Morajkar Supari Garden rented to Mahadev Vasu Morajkar, Vasudev Budhaji Morajkar and Harichandra Vasudev Morajkar. 3/5 of the Cashew Garden on rent Mahadev Vasu Morajkar & 2 others Vas Udev Budhaji Morajkar, Harischandra Vasudev Morajkar. 2/5 Cashew Garden on rented by Tukaram Sonu Morajkar.	2575
--------	--	------

Boundaries:

Village: Naroa

North : Village Boundary of Aturli.

South : Road.

East : S. No. 110/1, S. No. 136.

West : S. No. 110/1, S. No. 136.

Village: Aturli

North : S. No. 10/1.

South : Village Boundary of Naroa.

East : S. No. 10/1, 2.

West : S. No. 10/1, 2, 4.

Grand Total: 5867

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

Anju S. Kerkar, Under Secretary (Revenue-II).
 Porvorim, 23rd April, 2013.

Notification

No. 22/06/2012-RD

Whereas it appears to the Government of Goa (hereinafter referred to as "the Government") that the land specified in the Schedule hereto (hereinafter referred to as the "said land") is likely to be needed for public purpose, viz. Land Acquisition for construction of Handball Stadium at Fatorda, Margao, for hosting of the 36th National Games, 2014.

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

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

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

4. The Government further appoints under clause (c) of Section 3 of the said Act, the Deputy Collector (LA), South Goa District, Margao-Goa, to perform the functions of a Collector, South Goa District, Margao-Goa, under the said Act in respect of the said land.

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

- 1) The Collector, South Goa District, Margao-Goa.
- 2) The Deputy Collector (LA), South Goa District, Margao-Goa.

3) The Directorate of Sports & Youth Affairs, Panaji-Goa.

4) The Director of Settlement and Land Records, Panaji-Goa.

6. A rough plan of the said land is available for inspection in the Office of the Deputy Collector (LA), South Goa District, Margao-Goa for a period of 30 days from the date of publication of this Notification in the Official Gazette.

SCHEDULE

(Description of the said land)

Taluka: Salcete		City: Margao
Survey No./ /Sub-Div. No./ /P. T. Sheet No./ /Chalta No.	Names of the persons believed to be interested	Approx. area in sq. mts.
1	2	3
111 2/1	H: Comunidade de, Margao. T: Martinho Soares.	943
2/2	H: Comunidade de, Margao. T: Rosario Furdato.	986
2/3	H: Comunidade de, Margao. T: Caisano Felipe Soares.	979
2/4	H: Comunidade de, Margao. T: Piedade Soares.	1012
2/5	H: Comunidade de, Margao. T: Maria Angelica Barretto.	156
2/6	H: Comunidade de, Margao. T: Caesan Felipe Soares.	146
2/7	H: Comunidade de, Margao. T: Maria Angelica Barretto.	139
2/8	H: Comunidade de, Margao. T: Rosario Furdato.	139
2/9	H: Comunidade de, Margao. T: Caelano Felipe Soares.	108
2/10	H: Comunidade de, Margao. T: Caclano Felip Soraes.	122
2/11	H: Comunidade de, Margao. T: Maria Angelica Barretto.	119
2/12	H: Comunidade de, Margao. T: Rosario Furtado.	117
2/13	H: Comunidade de, Margao. T: Caetano Felip Soares.	51
2/14	H: Comunidade de, Margao. T: Caetano Felip Soares.	44
111 3/1	H: Comunidade de, Margao. T: Paulo Braganza.	694
3/2	H: Comunidade de, Margao. T: Sebastiao Soares.	75
3/3	H: Comunidade de, Margao. T: Sebastiao Soares.	94
3/4	H: Comunidade de, Margao. T: Sebastiao Soares.	550

1	2	3
3/5	H: Comunidade de, Margao. T: Paulo Braganza.	503
3/6	H: Comunidade de, Margao. T: Sebastiao Soares.	566
3/7	H: Silva. T: Paulo Braganza.	618
3/8	H: Silva. T: Sebastiao Soares.	684
3/9	H: Comunidade de, Margao. T: Provisional.	624
111 4/1	H: Comunidade de, Margao. T: Pascoal Miranda.	312
4/2	H: Comunidade de, Margao. T: Candida Vaz.	60
4/3	H: Comunidade de, Margao. T: Pascoal Miranda.	121
4/4	H: Comunidade de, Margao. T: Candida Vaz.	119
4/5	H: Comunidade de, Margao. T: Pascoal Miranda.	310
4/6	H: Comunidade de, Margao. T: Pascoal Miranda.	320
4/7	H: Comunidade de, Margao. T: Candida Vaz.	320
4/8	H: Comunidade de, Margao. T: Candida Vaz.	377
4/9	H: Comunidade de, Margao. T: Pascoal Miranda.	365
4/10	H: Comunidade de, Margao. T: Pascoal Miranda.	354
4/11	H: Comunidade de, Margao. T: Candida Vaz.	328
Total: 12455		

Boundaries :

North : Nala.

South : Nala, P.T.S. No. 111, Chalta
No. 4 Sub-Div. 12.East : P.T.S. No. 111, Chalta No. 3,
S.D. 10, P.T.S. No. 111,
Chalta No. 4, S. D. 12.West : P.T. S. No. 111, Chalta No. 1,
S.D. 10.**Notification**

No. 22/09/2013-RD

Whereas it appears to the Government of Goa (hereinafter referred to as "the Government") that the land specified in the Schedule hereto (hereinafter referred to as the "said land") is likely to be needed for public purpose, viz. Land Acquisition for widening of existing road on Sy. No. 78/2 in Village Panchayat Rachol.

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

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

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

4. The Government further appoints under clause (c) of Section 3 of the said Act, the Deputy Collector (LA), South Goa District, Margao-Goa, to perform the functions of a Collector, South Goa District, Margao-Goa, under the said Act in respect of the said land.

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

- 1) The Collector, South Goa District, Margao-Goa.
- 2) The Deputy Collector (LA), South Goa District, Margao-Goa.

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

Ashtosh Apte, Under Secretary (Revenue-I).

Porvorim, 25th April, 2013.

3) The Block Development Officers, Salcete, Margao-Goa.

4) The Director of Settlement and Land Records, Panaji-Goa.

6. A rough plan of the said land is available for inspection in the Office of the Deputy Collector (LA), South Goa District, Margao-Goa for a period of 30 days from the date of publication of this Notification in the Official Gazette.

SCHEDULE

(Description of the said land)

Taluka: Salcete

Village: Rachol

Survey No./ /Sub-Div. No.	Names of the persons believed to be interested	Approx. area in sq. mts.
1	2	3
78/2	1. Minguel Figueiredo. 2. Josefina Vaz. 3. Caetano Jesus Vaz. 4. Santana Isabela Cardozo. 5. Rosario Vaz. 6. Lilly Cyna Fernandes. 7. Thereza Gomes. 8. Edris Cruz Lopes. 9. Constantino Gomes. 10. Anastasia Rodrigues alias Inacina Gomes. 11. The Village Panchayat of Rachol. 12. Francisca Alemao. 13. Felix Piedade Vaz.	277
	OR	
	1. House occupied by Josepa Alemao (768).	

Boundaries :

North: Road, S. No. 78/2.

South: S. No. 78/2.

East : S. No. 78/2.

West : S. No. 78/2.

Total: 277

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

Ashutosh Apte, Under Secretary (Revenue-I).

Porvorim, 25th April, 2013.

Notification

No. 23/18/2012-RD

Whereas by Government Notification No. 23/18/2012-RD dated 30-10-2012 published at Series II No. 32 of the Official Gazette, dated 08-11-2012 and in two local newspapers namely "The Times of India" and "Lokmat" both dated 05-11-2012, 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 (hereinafter referred to as the said land), was needed for the public purpose viz. Land Acquisition for the construction of Calangute distributory from ch. 3.400 kms. to ch. 4.410 kms. for LBMC of TIP in Calangute Village of Bardez 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 the provisions of Section 6 of the said Act that the said land is required for the public purpose specified above.

The Government also hereby 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 the 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.

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)

Taluka: Bardez

Village: Calangute

Survey No./ /Sub-Div. No.	Names of the persons believed to be interested	Approx. area in sq. mts.
1	2	3
416/6 pt	O: Comunidade. T: Krishna Sagun Parab Palyekar.	311
417/2 pt	O: Santa Monika Goa. T: Sister Rosa.	489

1	2	3	1	2	3
418/1 pt	O: Comunidade. T: Boaventura D'Souza.	39	419/13 pt	O: Elvira D'Souza. T: Madhu Pundolik Asweker.	98
418/2 pt	O: Comunidade. T: Tukaram Babulo Kerker.	66	421/1 pt	O: Raul Pinto Lobo. <i>Other rights:</i> Arjun Sagun Porob. Shantaram Porob Paliyeker. Bhiva Vasudeo Porob Paliyeker. Shambhu Vasudeo Porob Paliyeker. Anant Vasudeo Kalangutkar.	1
418/3 pt	O: Comunidade. T: Dharma Lakhu Kerker.	53	422/1 pt	O: 1. Bernardo Damaso De Conceicao De Souza. 2. Antonio Menino Da Conceicao De Souza. 3. Carlos Hipolito Conceicao De Souza. T: 1. Shamba Vasudeo Palyekar. 2. Tukaram Bhiva Parab Palyekar. 3. Bhiva Vasudev Parab Palyekar.	240
418/4 pt	O: Comunidade. T: Boaventura D'Souza.	18	422/5 pt	O: 1. Bernardo Damaso De Conceicao De Souza. 2. Antonio Menino Da Conceicao De Souza. 3. Carlos Hipolito Conceicao De Souza. T: Krishna Sgun Parab Palyekar.	6
418/5 pt	O: Comunidade. T: Dharma Lakhu Kerker.	21	422/6 pt	O: 1. Bernardo Damaso De Conceicao De Souza. 2. Antonio Menino Da Conceicao De Souza. 3. Carlos Hipolito Conceicao De Souza. T: 1. Shambhu Vasudeo Palyekar. 2. Tukaram Bhiva Parab Palyekar.	24
418/6 pt	O: Comunidade. T: Tukaram Babulo Kerker.	20	422/7 pt	O: 1. Bernardo Damaso De Conceicao De Souza. 2. Antonio Menino Da Conceicao De Souza. 3. Carlos Hipolito Conceicao De Souza. T: Krishna Sagun Parab Palyekar.	38
418/7 pt	O: Comunidade. T: Boaventura D'Souza.	58	422/8 pt	O: 1. Bernardo Damaso De Conceicao De Souza. 2. Antonio Menino D Conceicao De Souza. 3. Carlos Hipolito Conceicao De Souza. T: Bhiva Vassudeo Porab Palyekar.	43
418/8 pt	O: Comunidade. T: Tukaram Babulo Kerker.	27			
418/9 pt	O: Comunidade. T: Dharma Lakhu Kerker.	66			
419/1 pt	O: Mary Fernandes. T: Madhu Pundolik Asweker.	54			
419/2 pt	O: Sertorio De Souza. T: Shambhu Vasudeo Porob Paliyeker.	50			
419/3 pt	O: 1. Timotio De Souza. 2. Alexio Manuel Fernandes. T: Jaganath Krishna Porob Paliyeker.	35			
419/4 pt	O: Bebiana Saldanha. T: Shambhu Vasudeo Porob Palyekar.	18			
419/5 pt	O: 1. Patricia Aurora D'Souza. 2. Joseph Ignatius Simon D'Souza. T: Shambhu Vasudeo Porob Palyekar.	19			
419/6 pt	O: Jose Anton Caitan Mascarenhas. T: Arjun Sogun Parab Palyekar.	38			
419/7 pt	O: 1. Liberata Geraldina Braganza. 2. Alex Jose Janivario. T: Arjun Sogun Parab Palyekar.	35			
419/8 pt	O: 1. Manohar Chandro Sawant. 2. Ajay Shridhar Vengurlekar. T: Manohar Chandru Sawant.	43			
419/9 pt	O: Jose Coelho. T: Shambhu Vasu Porob Palyekar.	35			
419/10 pt	O: 1. Patricia Aurora D'Souza. 2. Joseph Ignatius Simon D'Souza. T: Shambhu Vasu Palyekar.	53			
419/11 pt	O: John Anthony De Souza. T: Sonu Sogun Porab Palyekar.	65			
419/12 pt	O: Jose Micolau De Souza. T: Sonu Sogun Palyekar.	64			

1	2	3	1	2	3
423/1 pt	O: Mario Madgalin Matilda Pinto.	19		2. Antonio Menino Conceicao De Souza.	
423/2 pt	O: Terza P. Cutinho. T: Guno Bablo Simepurusker.	20		3. Carlos Hipolito Conceicao De Souza.	
423/3 pt	O: Sertorio D'Souza. T: Shambhu Vasudeo Porob Paliyeker.	19		T: Krishna Sagun Parab Palyeaker.	
423/4 pt	O: Mery Fernandes. T: Shambhu Vassudeo Porob Paliyeker.	14	423/16 pt	O: 1. Bernardo Damaso De Conceicao De Souza. 2. Antonio Menino Conceicao De Souza. 3. Carlos Hipolito Conceicao De Souza.	101
423/5 pt	O: Maria A. D'Mello. T: Sonu Sogun Porob Palyenkar.	23		T: Bhiva Vassudeo Porob Palyeaker.	
423/6 pt	O: Caetano Antonio Conceicao De Souza. T: Guno Bablo Simepurusker.	18	423/17 pt	O: 1. Bernardo Damaso De Conceicao De Souza. 2. Antonio Menino Conceicao De Souza. 3. Carlos Hipolito Conceicao De Souza.	62
423/7 pt	O: Jose Coelho. T: Shamba Vasudeo Porob Palyeaker.	19		T: Krishna Sagun Parab Palyeaker.	
423/8 pt	O: 1. Arquibaldo Felix Jose Abrio. 2. Beryl Natividade Ludovina Cecilia Abrio. T: Guno Bablo Simepurusker.	20	423/18 pt	O: 1. Bernardo Damaso De Conceicao De Souza. 2. Antonio Menino Conceicao De Souza. 3. Carlos Hipolito Conceicao De Souza.	44
423/9 pt	O: 1. Jose Anton Caitano Mascarenha. 2. Sylvia Mascarenhas. T: Sadanand Ganpat Morajker.	17		T: Bhiva Vassudeo Porob Palyeaker.	
423/10 pt	O: Jose Coelho. T: Shamba Vasudeo Porob Palyeaker.	19	423/19 pt	O: 1. Bernardo Damaso De Conceicao De Souza. 2. Antonio Menino Conceicao De Souza. 3. Carlos Hipolito Conceicao De Souza.	59
423/11 pt	O: 1. Patricia Aurora D'Souza. 2. Joseph Ignatius Saimon Souza. T: Shambhu Vasudeo Porob Palyeaker.	20		T: Krishna Sagun Parab Palyeaker.	
423/12 pt	O: Bernardo Fernandes.	19	424/1 pt	O: Comunidade. T: Tukaram Dhaku Shemepuruskar.	41
423/13 pt	O: 1. Bernardo Damaso De Conceicao De Souza. 2. Antonio Menino Conceicao De Souza. 3. Carlos Hipolito Conceicao De Souza. T: Krishna Sgun Parab Palyeaker.	50	424/2 pt	O: Comunidade. T: Manohar Dhaku Shimepuruskar.	43
423/14 pt	O: 1. Bernardo Damaso De Conceicao De Souza. 2. Antonio Menino Conceicao De Souza. 3. Carlos Hipolito Conceicao De Souza. T: Bhiva Vassudeo Porob Palyeaker.	48	424/3 pt	O: Comunidade. T: Gopi Vishnu Shimepurusker.	59
423/15 pt	O: 1. Bernardo Damaso De Conceicao De Souza.	51	424/4 pt	O: Comunidade. T: Dattaram Shiva Kerker.	70
			424/5 pt	O: Comunidade. T: Rajaram Raghunath Salgaonker.	76
			424/6 pt	O: Comunidade. T: Pascoal Mascarenhas.	99
			424/7 pt	O: Comunidade. T: Diukar Rao Mukteshwar Dessai.	61

1	2	3	1	2	3
424/8 pt	O: 1. Arlinda Prezios D'Costa. 2. Amarer Prezenes D'Costa. T: Tukaram Vasu Parab Paliakar.	168	429/2 pt	O: Jaidev Vishnu Simepurusker.	32
424/9 pt	O: 1. Ivarcio Souza Ermita. 2. Carlos Francisco Joao Fernandes.	59	429/3 pt	O: Orpanto De Sant. Alexio Calangute.	51
424/10 pt	O: Orpanto De Sant. Alex Calangute.	22	429/4 pt	O: Comunidade. T: Kashiram Mutheswar Dessai.	30
424/11 pt	O: Domingos Phausto Andrad. T: Pedrinha De Souza.	12	429/5 pt	O: Comunidade. T: Amrutrao Mutheswar Dessai.	17
424/12 pt	O: 1. Ciro Joao Francisco Sales. 2. Gasper Salis and Rosa Epifamia Anjela Sales E Monteiro. T: Gregorio D'Souza.	12	429/6 pt	O: Comunidade. T: Balkrishna Mutheswar Dessai.	16
424/13 pt	O: Pedriyan D'Souza.	139	429/7 pt	O: Comunidade. T: Devkerrao Mutheswar Dessai.	24
424/14 pt	O: Domingos Fhausto Andrad. T: Pedrinho D'Souza.	37	429/8 pt	O: Jaideo Vishnu Simepursker.	107
428/1 pt	O: Ricardo Joseph D'Souza.	4	429/9 pt	O: Comunidade. T: 1. Radhabai Raghoba Dessai. 2. Savitribai Balvantrao Dessai.	136
428/2 pt	O: Comunidade.	21	429/10 pt	O: Tamatargo De Souza. T: Sitaram Damu Simepurusker.	33
428/4 pt	O: Comunidade. T: Kamini Rajaram Parulekar.	37	429/11 pt	O: Comunidade. T: Balakrishnarao Dessai.	2
428/5 pt	O: Comunidade. T: Babli Purushottam Simepurusker.	30	<i>Boundaries :</i>		
428/6 pt	O: Comunidade. T: Anant Lakhlo Naik Kerker.	34	North : S. No. 419/1 to 13, S. No. 417/2, S. No. 416/6, S. No. 423/1 to 19, S. No. 424/1 to 8, S. No. 428/4 to 14.		
428/7 pt	O: Comunidade. T: Carmilina Baina.	23	South : Road, S. No. 428/15 to 18, S. No. 424/8 to 14, S. No. 421/1, S. No. 423/1 to 19, S. No. 422/2 to 8, S. No. 418/1 to 9, S. No. 419/1 to 13.		
428/8 pt	O: Comunidade. T: Laureneo Couinho.	23	East : Village Boundary of Saligao, S. No. 422/1, S. No. 429/3, 8, 10, S. No. 428/2, 15.		
428/9 pt	O: Comunidade. T: Luis Fernandes.	28	West : S. No. 429/2 4, to 9, 11, S. No. 422/1, S. No. 416/6, S. No. 423/19, S. No. 428/1 to 4, 15.		
428/10 pt	O: Comunidade. T: Domingo Fernandes.	24	Total: 4799		
428/11 pt	O: Comunidade. T: Prabhavati Vasant Motker.	13	By order and in the name of the Governor of Goa.		
428/12 pt	O: Comunidade. T: Anant Lakhlu Kerker.	37	<i>Anju S. Kerkar, Under Secretary (Revenue-II).</i>		
428/13 pt	O: Comunidade. T: Dhondu Yeshwant Motker.	20	Porvorim, 23rd April, 2013.		
428/14 pt	O: Comunidade. T: Khemu Dhaku Simepurusker.	24			
428/15 pt	O: 1. Amar Preet Singh Chadha. 2. Gurwant Singh.	116			
428/16 pt	O: Orpanto Sant. Alexio Calangute.	117			
428/17 pt	O: Vishve Sharmanath Chawla.	73			
428/18 pt	O: Antoneta Estrocio. T: 1. Santana D'Souza. 2. Carmelina D'Souza.	60			

Corrigendum

No. 20/1/2006-RD(8359)

Read: 1) Order No. 20/1/2006-RD(8359) dated 08-04-2013.

In the above cited order with respect to appointment of temporary Managing Committee of Comunidade of Serula, the names of effective members and substitute members shall be read as the following:

Effective Members:—

- * President-Adv. Shankar Fadtey shall be read as Shankar Mukund Phadte.
- * Treasurer-Alex D'Souza shall be read as Alex Valerio A. D'Souza.

Substitute Members:—

- * President-Rajesh Kauthankar shall be read as Rajesh M. Kauthankar.
- * Attorney-Rajesh R. Mhambrey shall be read as Rajesh Ramacanta P. Mambro.
- * Treasurer-Arvind Gangaram Shirodkar Fadtey shall be read as Arvind Gangaram Fadte Shirodkar.

The rest of the contents of the above read order and corrigendum shall remain unchanged.

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

Ashutosh Apte, Under Secretary (Revenue-I).

Porvorim, 26th April, 2013.

**Department of Transport**

Directorate of Transport

**Notification**

No. D.Tpt/EST/2115/2013/1708

In exercise of the powers conferred by sub-section (2) of Section 11 of the Goa, Daman and

Diu Motor Vehicles Tax Act, 1974 (Act No. 8 of 1974) (hereinafter referred to as the "said Act"), the Government of Goa is hereby pleased to exempt the motor vehicles engaged in transportation of mineral ore from the payment of the tax under the said Act, for the period from 01-04-2013 to 31-03-2014 subject to the following conditions namely:

- (i) The claimant should be a registered owner of the vehicle and no claim from the third party shall be entertained for granting exemption from payment of tax.
- (ii) The claimant shall produce evidence of exclusive use of the vehicle for transportation of mineral ore only.
- (iii) The claimant shall produce a certificate from the Regional Transport Authority certifying that the vehicle was not granted any temporary permit to operate in any other State.
- (iv) The claimant seeking exemption shall be one who has been paying motor vehicle tax at the rate prescribed for the mining vehicle and his vehicle tax due should have been cleared upto 31-03-2013.
- (v) The claimant shall produce a certificate from the Mines Department certifying that the vehicle has been registered as a mining vehicle.
- (vi) The claimant shall produce a certificate from the management of the respective mines/operator of mines specifying that the vehicle was engaged on their mines and also the period of employment.

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

Arun L. Desai, Director & ex officio Addl. Secretary (Transport).

Panaji, 30th April, 2013.

www.goaprintingpress.gov.in

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-34/400-5/2013.