

Panaji, 14th August, 2014 (Sravana 23, 1936)

SERIES II No. 20

# OFFICIAL GAZETTE



# GOVERNMENT OF GOA

PUBLISHED BY AUTHORITY

Note:- There are two Extraordinary issues to the Official Gazette, Series II No. 19 dated 07-08-2014 as follows:—

- (1) Extraordinary dated 08-08-2014 from pages 383 to 384 regarding Orders from Department of Panchayati Raj & Community Development (Directorate of Panchayats).
- (2) Extraordinary (No. 2) dated 11-08-2014 from pages 385 to 386 regarding Corrigendum from Department of Panchayati Raj & Community Development (Directorate of Panchayats).

## GOVERNMENT OF GOA

### Department of Animal Husbandry

Office of the Returning Officer to the  
Goa State Veterinary Council  
C/o Office of the Registrar of Co-op. Societies

### ELECTION TO THE GOA STATE VETERINARY COUNCIL

List of valid nominations of the members, contesting to the election of Goa State Veterinary Council under Indian Veterinary Council Act, 1984 (Central Act 52 of 1984)

Sr. No.	Name of the Candidates	Address
1	2	3
1.	Dr. Agostinho A. R. Misquita	H. No. 1397/C, Near St. Anthony Chapel, Dangvaddo, Benaullim-Goa.
2.	Dr. Mahendra A. Bale	H. No. 398, Laxmi Niwas, Ambaulim, Quepem-Goa.
3.	Dr. Prashant V. Naik	H. No. 59/8, Shristhal-Bhatpal, Canacona-Goa.

1	2	3
4.	Dr. Rajendra H. Prabhu Gaonkar	H. No. 1-D, Kasturi Apts., Opp. P.W.D., Fatorda, Margao-Goa.
5.	Dr. Rama Gopal Parab	H. No. 35, Kothambi, Pale-Goa.
6.	Dr. Tushar Avyang Gaunekar	H. No. 201, Tololem-Bandora, Ponda-Goa.

*J. B. Bhingui*, Returning Officer for the Goa State Veterinary Council.

Panaji, 11th August, 2014.

### Corrigendum

No. 50/3(1)/Elec/BOD/GSVC/RCS/HQ/14

Read: Election Programme of bearing No. 50/3(1)/Elec/BOD/GSVC/RCS/HQ/14 dated 31-07-2014 of Goa State Veterinary Council, notified in the Official Gazette Series II No. 18 dated 31-07-2014 (Sravana 9, 1936).

In the above referred election programme date, time & place of Poll indicated against Sr. No. 4 shall be read as "on or before 11-09-2014 up to 5.00 p.m., in the Office of the Registrar of Co-operative Societies, Sahakar Sankul, 4th & 5th Floor, Patto, Panaji-Goa", instead of "11-09-2014 from 9.00 a.m. to 5.00 p.m. in the O/o the Directorate of Animal Husbandry & Veterinary Services, Patto, Panaji-Goa".

The rest of the contents in the said Election Programme dated 31-07-2014 shall remain the same.

*J.B. Bhingui*, Returning Officer for the Goa State Veterinary Council.

Porvorim, 07th August, 2014.

## Department of Education, Art &amp; Culture

Directorate of Education

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Order

No. 1-1-(22)-2006/SE/Part/675

Sanction of the Government is hereby conveyed for re-employment of Smt. Margaret F. C. Monteiro, Headmistress, Government High School, Tarmatha Bhile Surla, Bicholim Goa under the Directorate of Education beyond her superannuation w.e.f. 1-10-2014 to 30-04-2015 i.e. up to the end of the academic year 2015, under Rule 88(1) and Amendment Rule to 162 of the School Education Rules, 1986.

Smt. Margaret F. C. Monteiro, Headmistress shall draw her emoluments as per Rules.

The re-employment is subject to termination without assigning any reason at any time during the period of re-employment.

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

*Anil V. Powar*, Director (Education).

Porvorim, 17th July, 2014.

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Department of Home

Home—General Division

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Order

No. 24/10/2011-HD(G)/2486

In pursuance to Section 4 of the Sexual Harassment of Women at Work place (Prevention, Prohibition and Redressal) Act, 2013, the following complaint committee is hereby constituted to deal with the complaints of sexual harassment of women at work place:

- |                               |   |              |
|-------------------------------|---|--------------|
| 1. Smt. Pratima Vernekar,     | — | Chairperson. |
| Public Prosecutor             |   |              |
| 2. Smt. Poonam Bharne,        | — | Member.      |
| Public Prosecutor             |   |              |
| 3. Smt. T. S. Sardinha,       | — | Member.      |
| Public Prosecutor             |   |              |
| 4. Smt. Anuradha Talaulikar,  | — | Member.      |
| Asst. Public Prosecutor       |   |              |
| 5. Advocate Smt. Caroline     | — | IIIrd Party  |
| Colaco                        |   | Member.      |
| 6. Dr. Smt. Pramod Salgaonkar | — | IIIrd Party  |
|                               |   | Member.      |

The above committee shall deal with all the complaints of sexual harassment of women pertaining to the staff of Directorate of Prosecution.

This issues with the approval of Chief Secretary.

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

*Neetal P. Amonkar*, Under Secretary (Home).

Porvorim, 31st July, 2014.

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Notification

No. 30/12/2014-Cyber Crime/HD(G)/2491

In exercise of the powers conferred by clause (s) of Section 2 of the Code of Criminal Procedure, 1973 (Central Act 2 of 1974), the Government of Goa hereby declares the Cyber Crime Cell functioning from and located at the Goa Institute of Management, Ribandar, Tiswadi, Goa to be a police station exclusively for the purpose of investigation of offences under the Information Technology Act, 2000 (Central 21 of 2000) and offences relating to intellectual property rights and other laws, for the time being in force, requiring investigation of the offences by the Cyber Crime Cell, with jurisdiction over the entire State of Goa.

This Notification shall come into force with immediate effect.

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

*Neetal P. Amonkar*, Under Secretary (Home).

Porvorim, 31st July, 2014.

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Notification

No. 4/2/2005-HD(G)/2496

In exercise of the powers conferred by clause (s) of Section 2 of the Code of Criminal Procedure, 1973 (Central Act 2 of 1974) and in supersession of the Government Notification No. 4/2/2005-HD(G)/2546 dated 24-07-2013, published in Official Gazette, Series II No. 18 dated 01-08-2013, the Government of Goa hereby declares the Integrated Anti Human Trafficking Units specified in column (2) of the Schedule below to be police stations for the purpose of investigation of the offences committed under the Immoral Traffic (Prevention) Act, 1956 (Central Act 104 of 1956).

SCHEDULE

Sr. No.	Name and place of Police Station	Area
1	2	3
1.	Integrated Anti Human Trafficking Unit (Women and Child Protection Unit), situated next to the Panaji Town Police Station, Panaji-Goa	Entire North-Goa District.
2.	Integrated Anti Human Trafficking Unit (Women and Child Protection Unit), situated in the building having office of Superintending of Police (South), South-Goa District Margao-Goa	Entire South-Goa District.

The Police Stations specified in column (2) of the above schedule shall exercise concurrent jurisdiction, with other police stations in the State of Goa, over the areas specified in the corresponding entries in column (3) of the above schedule.

This Notification shall come into force with immediate effect.

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

*Neetal P. Amonkar*, Under Secretary (Home).  
Porvorim, 1st August, 2014.



Department of Industries

Notification

No. 4/6/2014-IND(1)

In exercise of the powers conferred by clause (g) of Section 2 of the Goa Industrial Development Act, 1965 (Goa Act 22 of 1965), the Government of Goa hereby declares the area specified in the Schedule below to be an industrial area.

SCHEDULE

Taluka	Village	Survey No.	Sub-Division No.	Area in sq. mts.
Quepem	Cacora	165	1 part	2185
		164	8 part	500
		167		16600
		168	1	45700
		Total		

Boundaries:

North : S. No. 164/16, 164/15, 164/14, 164/8, 169.

South : S. No. 165/1, 164/8, 166/17, 16, 14, 166/12, 11, 6, 4, 5, 3, 170/2.

East : S. No. 165/1, 168/2, 164/1, 8, 165, Nalla Road.

West : S. No. 165/1, 168/2, 170/2.

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

*Shashank V. Thakur*, Under Secretary (Industries).  
Porvorim, 13th August, 2014.

Notification

No. 4/6/2014-IND(2)

In pursuance of clause (h) of Section 2, read with sub-clause (1) of clause (a) of sub-section (1) of Section 37A of the Goa Industrial Development Act, 1965 (Goa Act 22 of 1965), the Government of Goa hereby earmarks the area specified in the Schedule below which has been declared to be an industrial area vide Government Notification No. 4/6/2014-IND(1) dated 13-08-2014, as industrial estate.

SCHEDULE

Taluka	Village	Survey No.	Sub-Division No.	Area in sq. mts.
Quepem	Cacora	165	1 part	2185
		164	8 part	500
		167		16600
		168	1	45700
		Total		

Boundaries:

North : S. No. 164/16, 164/15, 164/14, 164/8, 169.

South : S. No. 165/1, 164/8, 166/17, 16, 14, 166/12, 11, 6, 4, 5, 3, 170/2.

East : S. No. 165/1, 168/2, 164/1, 8, 165, Nalla Road.

West : S. No. 165/1, 168/2, 170/2.

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

*Shashank V. Thakur*, Under Secretary (Industries).  
Porvorim, 13th August, 2014.

## Department of Labour

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## Notification

No. 28/1/2014-Lab/225

The following award passed by the Industrial Tribunal and Labour Court at Panaji-Goa on 10-02-2014 in reference No. IT/4/2000 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.

*Shashank V. Thakur*, Under Secretary (Labour).

Porvorim, 8th April, 2014.

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

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

Ref. No. IT/4/2000

Workmen rep. by  
The President  
Marmagoa Steel Employees Union,  
C/o House No. 447,  
Macazana, Curtorim,  
P. O. Salcete, Goa ..... Workmen/Party I  
V/s  
M/s. Marmagoa Steel  
280, Eclate,  
Curtorim, Salcete, Goa. .... Employer/Party II  
Party I/Workmen Mr. Caetano J. Fernandes,  
Mr. Caetano N. Fernandes and Mr. Concessao  
Hillario, represented by Adv. Shri M.P. Almeida.  
Employer/Party II represented by Adv. Shri G. K.  
Sardessai.

## AWARD

(Passed on this 10th day of February, 2014)

In exercise of powers conferred by sub-section (2) of Section 10 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947) (for short the Act), the Government of Goa vide order dated 4-1-2000 bearing No. CL/3-11/(39)/99/90 has referred the following dispute for adjudication by this Tribunal.

“(1) Whether the action of the management of M/s. Marmagoa Steel Limited, Curtorim, Goa, in dismissing from the services the following 6 workmen on the dates shown against their names is legal and justified?

- (1) Mr. B. Besavaraj with effect from 2-9-1999.
- (2) Mr. Caetano J. Fernandes with effect from 2-9-1999.
- (3) Mr. Caetano N. Fernandes with effect from 2-9-1999.
- (4) Mr. Concessao Hilario with effect from 2-9-1999.
- (5) Mr. Duiz Mourya with effect from 2-9-1999.
- (6) Mr. Prakash Patil with effect from 2-9-1999.

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

2. Upon receipt of the dispute, reference IT/4/00 came to be registered and notices were issued to both the parties under registered A.D. post. Upon appearance, Party I filed the claim statement at Exb. 5, Party II filed the written statement at Exb. 6 and Party I then filed the rejoinder at Exb. 7.

3. It is in short the case of Party I that on 22-6-94 the workers of the Party II unionized under Gomantak Mazdoor Sangh and a settlement under Sec. 12 (3) r/w Sec. 18 (3) of the Act was signed between the said union and Party II. That thereafter on 19-11-96, the workers formed an union i.e. Party I union and the said union through various letters and personal meetings brought to the notice of the management that the working conditions within the premises were not adequate but the management did not implement safety measures. That Party II terminated the services of workmen namely, Mr. B. Besavaraj, Mr. Caetano J. Fernandes, Mr. Caetano M. Fernandes, Mr. Concessao Hilario, Mr. Duiz Mourya and Mr. Prakash Patil by their letters dated 2-9-1999. Pursuant to this letter a dispute was raised before the Labour Commissioner who submitted failure report to the appropriate Government where upon the present industrial dispute has been referred to this Tribunal. It is stated that the workmen are not guilty of any allegations made in the charge sheets or letter dated 2-9-99 and their discharge is illegal, null and void and against the Certified Standing Orders of Party II. It is stated that the discharge is also against the principles of natural justice. It is stated that the workmen are presently unemployed. The workmen have therefore prayed to hold that the action of the management in discharging their services w. e. f. 2-9-99 as illegal and bad in law and to direct their reinstatement back in the services of the employer with continuity of services and full back wages w. e. f. 2-9-1999.

4. In the written statement it is in short the case of Party II that the reference deserves to be rejected as the workmen did not have the authority to sign the statement of claim. It is stated that the out of the six workmen concerned in this reference, 3 workers namely, Mr. B. Basavraj, Mr. Duiz Mourya and Mr. Prakash Patil have resigned from the services of the company and have signed the settlements u/s 2(p) of the Act, with the company and as such the entire dispute of these 3 workmen have been conclusively settled. It is stated that the company had severe set back from the inception but inspite it the company retained harmonious industrial relation signing long term settlement up to 31-5-97, with the union. That in December 1996 the workers formed separate union under the name of Marmagoa Steel Employees Union and then submitted a charter of demand by letter dated 14-4-1997. After negotiations, a settlement was signed between the parties for the period of three years u/s 12(3) r/w sec. 18(3) of the Act. It is stated that the settlement was to be effective from 1-4-97 but the wage revision was to be effective from 1-1-98 and it was further agreed that for the period from 1-4-97 to 31-12-97 a lump sum amount was to be paid as per full and final settlement of the said period and accordingly arrears were to be paid as per said terms of settlement. It is stated that during the month of November 98 union placed fresh demand to pay difference of overtime for the period from 1-4-97 to 31-12-97. That during the discussion on these demands, the company with the sole intention of maintaining peace, agreed to pay the said non-existing payment by 24-2-98. It is stated that due to financial difficulty, company could not raise the fund and thus a notice was displayed on 23-2-99 deferring the payment. It is stated that on account of above, the workers started non-co-operative attitude and as such the company had to suspend the work followed by lockout and accordingly a notice dated 27-2-1999 to that effect was given to the workmen. It is stated that during suspension of operation, the office bearers of the union and the dismissed employees started threatening the executives of the company of dire consequences and finally at the instance of Dy. Labour Commissioner, a settlement was arrived at on 17-3-99. It is stated that in terms of this settlement the lock out was to be lifted and the workmen were required to report for duty on 18-3-99. That the dismissal order issued to five workmen was revoked and they were kept under suspension pending enquiry as per the allegations made against them in the earlier

charge sheet dated 18-3-99 and the enquiry was to be continued thereafter. It is stated that inspite of lifting of lockout, the workers after resumption on duty did not co-operate with the management and continued to resort to go slow and restrictive labour practice. It is stated that company therefore declared the suspension of operation followed by lock out by notices dated 4-8-99, 6-8-99 and 7-8-99 in the departments of SMS, RM and QC respectively. It is stated that thereafter various meetings were held with the Chief Minister and other Ministers of Goa and the company decided to lift the lock out on 30-8-99. It is stated that before the company decided to lift the lockout, a group of workers including Mr. B. Besavaraj, Mr. Caetano J. Fernandes, Mr. Caetano S. Fernandes, Mr. Concessao Hilario and Mr. Prakash Patil brutally assaulted the Sr. Managers, Managers and other officers while coming on duty. It is stated that the entire incident and the involvement of workmen has been mentioned in the letter of dismissal dated 2-9-99 issued to the workers. It is stated that the company therefore having regards to the grave and serious nature of allegations received against those workers took a bonafide decision in the interest of entire organization not to retain them in services of the company as continuing them in the services would have defeated the purpose of running the company. It is stated that before dismissing those workers company did not hold the domestic enquiry. It is stated that after the dismissal the conduct of these workers was also violent as they were coming to the gate and were threatening the contractors and their workers. Thus according to Party II, Party I workmen have not made out any case for granting any relief and the entire reference deserves to be rejected.

5. In the rejoinder Party I has denied the contentions raised by Party II in the written statement and has asserted its case projected in the claim statement.

6. On the basis of above averments of the respective parties, issues dated 15-1-01 at Exb. 8 were framed as under:

1. Whether the Workmen/Party I proves that action of the Party II in dismissing them from service w.e.f. 2-9-99 is illegal and unjustified?
2. Whether the Employer/Party II proves that the statement of claim filed by the Workmen/Party I is not maintainable?

3. Whether the Employer/Party II proves that the workmen Shri B. Basavraj, Shri Duiz Mourya and Shri Prakash Patil have resigned from service by signing settlement?
4. Whether the Employer/Party II proves that the workmen are guilty of misconducts?
5. Whether the Workmen/Party I are entitled to any relief?
6. What Award?

7. In terms of order dated 16-10-08 (Exb.32), it was held by this court that Party II has dismissed the workmen without holding the enquiry and therefore the onus of proving the charges levelled against the workmen justifying the action of dismissal is on Party II and therefore the Party II is required to begin first and adduce evidence on issue No. 4 and only then the burden would shift on Party I to prove that the action of the dismissal is illegal or unjustified. It is therefore clear from the above observations made in Exb. 32 that in case Party II fails to prove issue No. 4, Party I is not required to prove issue No.1. Thus, in terms of above order the evidence was first led by Party II.

8. In its evidence Party II examined Shri K. Raghvendran as witness No. 1, Shri Y. K. Govil as witness No. 2, Shri T. K. Tickoo as witness No. 3 and Shri Alexander A. C. Rodrigues as witness No. 4. On the other hand Party II examined Shri Conceicao Hillario, Shri Caetano Jose Fernandes and Shri Caetano N. Fernandes and closed their case.

9. Heard Ld. Adv. Shri G.K. Sardesai for Party II and Ld. Advocate Shri M. P. Almeida for Party I.

10. In his arguments Ld. Advocate for Party II stated that since the assault was on the superior officers of Party II, the court should not interfere in the punishment imposed. In support of his submissions, he relied on the judgments in the cases of **Kolhapur Zilla Sahakari Dudha Utpadak Sangh, Kolhapur v/s Shivaji Shankar Pharakate & Anr. 2009 I CLR 286, Hombe Gawda Educational Trust and another v/s State of Karnataka and others (2006) I SCC 430, Madhya Pradesh Electricity Board v/s Jagdish Chandra Sharma 2005 I CLR 1074, Orissa Cement Ltd., and Adikanda Sahu 1960 SC 518, Mahindra and Mahindra Ltd., v/s N. B. Narawade 2005 I CLR 803, New Shorrock Mills v/s Maheshbhai T. Rao (1996) 6 SCC 590, and U. P. State Road Transport Corporation v/s Subhash Chandra Sharma and others AIR 2000 SC 1163.**

11. On the other hand ld. advocate for Party I stated that there is no iota of evidence before this court to say that the charges of misconduct levelled against Party I workmen in the dismissal letters dated 2-9-99 are established. He further stated that once Party II fails to prove issue No. 4 relating to misconduct by Party I workmen, the question of proving issue No. 1 which is on the subject of justification and legality of dismissal from service w.e.f. 2-9-99, does not arise. By referring to the judgments relied upon the Ld. advocate for Party II, he stated that facts in the above cases are totally different from the facts in the instant case and therefore the observations made in those judgments though are correctly made in those peculiar set of facts, cannot be applied to the instant case. Thus, according to him, the ratios in the above judgments cannot be made applicable to the case in hand.

12. I have gone through the records of the case and have duly considered the submissions made by both the learned advocates.

13. I now proceed to answer the issues with my findings on the same and the reasons thereof:

- Issue No. 1 : Does not arise.  
 Issue No. 2 : In the negative.  
 Issue No. 3 : In the positive.  
 Issue No. 4 : In the negative.  
 Issue No. 5 : The workmen namely, Mr. Caetano J. Fernandes, Mr. Caetano N. Fernandes and Mr. Concessao Hillario are entitled for total compensation of Rs. 1,10,000/- each.  
 Issue No. 6 : As per order below.

#### REASONS

14. *Issue No. 4:* Undoubtedly, the workmen in this reference were dismissed from service by Party II vide letters dated 2-9-99. These letters are produced by Shri K. Raghavendran at Exb. 106, Exb. 107 and Exb.108. These letters were issued to the workmen Shri Conceicao Hilario, Shri Caetano N. Fernandes and Shri Caetano J. Fernandes respectively. Undoubtedly no enquiry was held against the workmen before their dismissal from services. It however cannot be disputed that in terms of the observations in the judgment in the case of **M/s. Firestone Tyre & Rubber Co. India (Pvt.) Ltd., v/s The Management and others 1972 I LLJ 278**, even if

no domestic enquiry is held or in a case where the domestic enquiry is held but is found to be defective, the employer can lead evidence before the Tribunal in justification of the dismissal or discharge of the workmen, which in other words means that the employer can lead evidence before the Tribunal to prove misconducts against the workmen. In such situation, the employer gets an opportunity of leading evidence before the court to prove the misconduct enlisted in the letters dated 2-9-99. It is therefore required to see if Party II has by leading sufficient and convincing evidence before this court has proved the misconducts as envisaged in the letters dated 2-9-99.

15. It is worthwhile mentioning at this juncture that in the written statement it is pleaded that dismissal orders issued to the workmen were revoked and they were kept under suspension pending enquiry and subsequently another charge sheet dated 18-3-99 was issued to them and the enquiry was to be continued thereafter. In the rejoinder Party I has denied the above pleadings by stating that the same are totally false. Even for that matter, in his evidence Shri R. Raghavendran has though produced several documents, he has not produced the copy of the so called charge sheets dated 18-3-1999 and therefore there is nothing before this court indicating that any charge sheet dated 18-3-1999 was issued to these workmen. Being so, the question of Party II leading evidence before this court for proving the misconducts mentioned in the so called charge sheets dated 18-3-99, does not arise.

16. Be that as it may, the dismissal order dated 2-9-1999 issued to Mr. Caetan J. Fernandes reads as under:

“you are working in the company as Desk Operator in Rolling Mill. The company had to suspend its operations and declare the lock out in SMS, Rolling Mill and Quality Control Depts. for the reasons mentioned in the Notices No. MSL/HR/452 dated 4-8-99, MSL/HR/453 and MSL/HR/471 dated 7-8-99 respectively displayed on the Notice Board as well as at the Gate of the factory. Subsequent to the declaration of the suspension of operations and the lock out various meetings were held before the Chief Minister of Goa and the other ministers at the instance of the Union and as per wishes and requests of the Chief Minister, and approaches of several workers and company had taken up decision to lift the lock out in all above departments.

On 30-8-99 General Managers, Managers, and other officers were coming for duty to the factory. At about 8.45 a.m. when Mr. T. K. Tikoo, G.M.- Rolling Mill while travelling in his car after crossing the Goa Oxygen coming towards the factory, you along with the mob of around 50 workers stopped his vehicle near the temple on the way to the factory. Thereafter you along with Mr. Concessao Hillario R. EMP. No. 5243, Mr. Duiz Mouraya, EMP No. 5194, Mr. B. Basavaraj, EMP No. 5237, Mr. Prakash Patil, EMP No. 5207 and Caetano N. Fernandes, EMP No. 5097 ordered Mr. Tikoo to come out of the car, otherwise his car would be smashed. Due to the threat of smashing his car, Mr. Tikoo came out of the car. At that point of time, you along with Mr. Concessao Hillario R. EMP. No. 5243, Mr. Duiz Mouraya, EMP No. 5194, Mr. B. Basavaraj, EMP No. 5237, Mr. Prakash Patil, EMP No. 5207 and Caetano N. Fernandes, EMP No. 5097 asked him as to when he is going to pay the salary. Before Mr. Tikoo could reply, you along with Mr. Concessao Hillario R. EMP. No. 5243, Mr. Duiz Mouraya, EMP No. 5194, Mr. B. Basavaraj, EMP No. 5237, Mr. Prakash Patil, EMP No. 5207 and Caetano N. Fernandes, EMP No. 5097 mercilessly started assaulting Mr. Tikoo by giving him fist blows on his face and stomach. Thereafter he was thrown on the ground and all of you stamping on his hands, hitting on his head with chappals, stones and umbrellas. Due to this Mr. Tikoo got grievous bodily injuries, he was profusely bleeding and his left hand was broken. He was also abused in filthy language and given the threat of dire consequences.

Thereafter, you along with Mr. Concessao Hillario R. EMP. No. 5243, Mr. Duiz Mouraya, EMP No. 5194, Mr. B. Basavaraj, EMP No. 5237, Mr. Patil EMP No. 5207 and Caetano N. Fernandes, EMP No. 5097 saw Mr. Y. K. Govil, Sr. Manager-Maintenance coming on his motor bike. A group of about 50 workers lead by you and Mr. Concessao Hillario R. EMP. No. 5243, Mr. Duiz Mouraya, EMP No. 5194, Mr. B. Basavaraj, EMP No. 5237, Mr. Prakash Patil, EMP No. 5207 and Caetano N. Fernandes, EMP No. 5097 stopped him and attacked him with fist blows and stones, threw his bike down. Due to the assault on Mr. Govil he sustained grievous injuries on his entire body.

By that time, the group lead by you and Mr. Concessao Hillario R. EMP. No. 5243, Mr. Duiz Mouraya, EMP No. 5194, Mr. B. Basavaraj, EMP No. 5237, Mr. Prakash Patil, EMP No. 5207 and

Caetano N. Fernandes. EMP No. 5097 saw Mr. K. K. Sharma, GM-SMS proceeding towards the factory, you along with Mr. Concessao Hillario R. EMP No. 5243, Mr. Duiz Mouraya, EMP No. 5194, Mr. B. Basavaraj, EMP No. 5237, Mr. Prakash Patil, EMP No. 5207 and Caetano N. Fernandes, EMP No. 5097 rushed towards his car, dragged him out of his car forcibly, damaged his car with stones and thereafter started hitting him stones and fist blows. Due to the above acts on your part, Mr. Sharma got various greivous injuries on his head, near the eyes and entire body.

Due to the grievous injuries caused to the above Managers, they were to be rushed to the Govt. Hospital Hospicio, Margao. Since the condition of Mr. K. K. Sharma was very serious, he was rushed to the Goa Medical Hospital at Bambolim. Due to head injury, scanning had to be done and he was required to be kept in Intensive Care Unit. Mr. Sharma thereafter was rushed for further urgent treatment to Manipal Hospital.

Mr. Tikoo and Mr. Sharma are presently taking treatment in the hospitals.

During the assault you along with others snatched the wrist watch of Mr. K. K. Sharma, Mr. Tikoo and gold chain and wrist watch of Mr. Govil.

According to the company, entire action on your part with the help of the workers was a systematic hatched conspiracy to either kill the officers of the company and/or to make a grievous hurt to the officers of the company by violent means. You also did not allow any of the officers or other staff to proceed towards the factory and therefore nobody could report for duty.

Subsequent to the above incident you were arrested by the police on the various sections of the Criminal Law.

Above acts on your part clearly amounts to acts of omissions and commissions interalia not limited to the following acts of misconducts.

1. Willfull insubordination or disobedience (whether or not in combination with another) of any lawful or reasonable order of a Superior.
2. Going on illegal strike or abetting, inciting, instigating or acting in furtherance thereof or resorting to obstruction aimed at or resulting in paralyzing the normal conduct or work of the company.

3. Theft or dishonesty in connection with the employer's business or property inside or outside the establishment or the theft of the property of another employee within the premises of the establishment.
4. Riotous, disorderly, indecent or improper behaviour on the premises of the establishment or outside the premises of the establishment if it adversely affects or is likely to affect the working or discipline of the establishment.
5. Commission of any act subversive or discipline or good behaviour on the precincts of the establishment.
6. Restraining or detaining or gheraoing any representative/employee or employees of the company either inside or outside the premises of the company.
7. Use of impolite and/or insulting and/or abusive language, assault or threat of assault, intimidation or coercion within the company premises against any employee of the company or any other person authorized to work in the company, and any such act outside the premises of the company if it directly affects or is likely to affect the discipline or work or business of the company.
8. Pursuance of any conduct against the interest of the company.

All the charges taken individually or severally are sufficient grave enough to take strict disciplinary action against you including dismissing you from the service of the company.

The company has gone through your past records and there are no extenuating circumstances.

The incident which has occurred has not only shaken the entire organization but also it amounts to an act totally unbecoming of an employee.

Having regard to the grave and serious nature of charges levelled against you, the management has bonafide decided in the interest of the entire organization not to retain you in the services as continuing you in the service would defeat the purpose of running the organization.

The management therefore dismisses you from the company's services with immediate effect without holding normal domestic enquiry.

The management however reserves its right to prove and rely upon the allegations levelled against you as stated above before the appropriate authority under the provisions of the Industrial Disputes Act, 1947 in justification of its action, including other circumstances and past records if any.”

17. It may be mentioned here that similar dismissal letters dated 2-9-99 with similar allegations have been issued to Shri Concessao Hillario and Shri Caetano N. Fernandes and therefore the same are not reproduced here, to avoid repetition.

18. In his affidavit in evidence Shri K. Raghavendran has in short stated that on 30-8-99 a group of workers including Mr. B. Basavaraj, Mr. Caetano J. Fernandes, Mr. Caetano S. Fernandes, Mr. Concessao Hillario and Mr. Prakash Patil brutally assaulted the senior managers, managers and other officers while coming on duty. He has stated that due to the said incident, the entire industry was shaken off. He has stated that company therefore having regards to the grave and serious nature of allegation received against those workers took a bonafide decision in the interest of entire organization not to retain them in the services of the company and accordingly dismissed them from the services of the company. He has reproduced the contents of dismissal orders dated 2-9-99 issued to Mr. Caetano J. Fernandes, Mr. Caetano N. Fernandes and Mr. Concessao Hillario in his affidavit in evidence.

19. I have already pointed out supra that Shri K. Raghavendran has produced the above dismissal orders dated 2-9-99 at Exb. 106 to Exb. 108. Besides these documents, Mr. K. Raghavendran has also produced a copy of letter dated 30-8-99 by the Executive Secretary one Mrs. Gyan D'sa to the Executive Director of Party II at Exb.60, copy of complaint dated 30-8-99 made to police and various authorities by Shri Chandra Bhushan Mishra at Exb. 61 and copy of F. I. R. dated 30-8-99 at Exb. 62.

20. In his cross examination Mr. K. Raghavendran has made it clear that he is not an eye witness to any of the incidents. He has stated that he has not seen the assault on Mr. K. K. Sharma, Mr. Tikoo and Mr. Govil which is the subject matter of this reference. He has denied the suggestion that the above incidents did not take place and that he along with others has concocted the above incidents to harass the workmen.

21. It may be mentioned here that Mr. K. Raghavendran in para of his affidavit in evidence, has mentioned the name of one Mr. Caetano S. Fernandes along with Mr. B. Basavaraj, Mr. Caetano J. Fernandes, Mr. Concessao Hillario and Mr. Prakash Patil as the persons who brutally assaulted the senior managers, managers and other officers of Party II. It deserves to be noted that even in para (N) of the written statement the same name Caetano S. Fernandes has been mentioned along with the names of above other persons. Nevertheless, the charge sheet at Exb. 107 is addressed to one Caetano N. Fernandes and not to Caetano S. Fernandes whose name has been mentioned by Mr. K. Raghavendran. Thus, the involvement of Mr. Caetano N. Fernandes who has been issued the charge sheet at Exb. 107, in this incident appears to be doubtful. Even for that matter, in this very same para of his affidavit in evidence Shri K. Raghavendran has not mentioned the name of Mr. Duiz Mourya and therefore even his involvement in this incident appears to be doubtful. Consequently, it is apparent that the testimony of Mr. K. Raghavendran needs to be scrutinized carefully in view of above unauthentic statements made by him.

22. Even otherwise reading of Exb. 60 makes it clear that no names of any of the above workers are mentioned on the same and what is stated in this letter addressed by Mrs. Gyan D'Sa to the Executive Director of Party II is in short that the crowd of over 50 workers gathered and assaulted Mr. Tikoo and then these agitating workers also assaulted Mr. Y. K. Govil and Mr. K. K. Sharma. It is therefore clear from the contents of Exb. 60 that involvement of the workers in this reference is not established in the incident dated 30-8-99.

23. As regards the complaint at Exb. 61 made by Shri Chandra Bhushan Mishra, reading of the same also makes it clear that involvement of the workers in this reference is not stated therein. This complaint in short states that the incident was caused by a mob of about 30 individuals out of whom 7 to 8 are the workers of Party II. This complaint also speaks about assault by the above mob on Mr. Tikoo, Mr. Govil and Mr. Sharma. Nevertheless, since no names of any of the workmen to this reference are found stated in this complaint, this document is of no assistance to Party II to show the involvement of workmen in this reference in the incident dated 30-8-99.

24. As regards the F.I.R. dated 30-8-99 at Exb. 62, this document also does not disclose the names of workmen in this reference as the persons who assaulted the above named three officers of

the company. It is stated in this F. I. R. which is filed against 30 unknown persons including about 7 to 8 workers of Party II, that these accused persons with their common object formed an unlawful assembly armed with wooden sticks etc., and wrongfully restrained the complainant Shri T. K. Tikoo, Goyal and K. K. Sharma and assaulted them with fist blows and wooden sticks etc., thereby causing injuries and also damaged Maruti car No. GA 02-Z-0587 and attempted to kill the above mentioned three individuals/Executives. It is therefore clear from above that this F. I. R. is also of no help to Party II to show involvement of workers in this reference in the incident dated 30-8-99.

25. Thus, to my mind the testimony of Shri K. Raghavendran does not advance the case of Party II to say that misconduct alleged in the dismissal letters dated 2-9-99 is proved.

26. Coming to the evidence of Shri Y. K. Govil, he has stated in short that on 30-8-99 while he was proceeding to factory on his motor cycle the workmen Mr. Caetano J. Fernandes, Mr. Caetano N. Fernandes, Mr. Concessao Hillario, Mr. Uma Shankar Yadav, Mr. Jayprakash Yadav, Mr. Agnelo Estebeiro and Mr. Mestrilal Sajiwan along with the mob of around 50 workers assaulted and abused him with threats of killing and that they also assaulted and abused Mr. K. K. Sharma and Mr. Tikoo.

27. In his cross-examination, Mr. Govil has stated that a police case was filed in respect of the above incident and he had deposed in the said case. He has stated that all the workmen who were the accused in that case were acquitted. He has stated that apart from the workers whose names he has mentioned in his affidavit there were 50 more persons at the spot. He has stated that he did not file written complaint about this incident with the management but he had orally informed Mr. R. K. Radhakrishnan and Mr. K. Raghavendran about this incident. He has stated that in his statement before police he had not stated that there were 30 workers amongst the 50 persons in that crowd but had not told the names of 30 workers who were amongst the 50 persons to Mr. R. K. Radhakrishnan and Mr. K. Raghavendran when he orally informed them about the incident. He has denied the suggestion that the incident stated by him is concocted by him along with Mr. K. K. Sharma, Mr. Tikoo, Mr. Raghavendran and Mr. Radhakrishnan. He has also denied the suggestion that the above officers were beaten by the people of the locality and not by the workmen as they were keeping the furnace on and polluting the atmosphere through out the day.

28. Reading of the evidence of Mr. Govil in entirety makes it clear that the first person to whom he informed of this incident on phone was Mr. Radhakrishnan but interestingly Mr. Radhakrishnan is silent about receiving such information on phone from Mr. Govil. Even otherwise at one place in his cross examination Mr. Govil has stated that he did not tell the names of 30 workmen who were amongst 50 persons to Mr. K. Raghavendran and Mr. Radhakrishnan when he orally informed them about this incident but in the same breath in his further cross examination, Mr. Govil has stated that he had told the names of the persons who assaulted him to Mr. Radhakrishnan thereby contradicting his earlier statement. Nevertheless as the complaint at Exb. 61 and F. I. R. at Exb. 62 are silent on the subject of names of workmen in this reference as the persons involved in the incident dated 30-8-99, the statement made by Mr. Govil showing their involvement in this incident is apparently an after thought and hence cannot be believed.

29. As regards the evidence of Shri T. K. Tikoo, his chief examination is almost on the same lines as that of Shri Govil. In his cross examination Shri Tikoo has stated that the names of the workers stated by him in his affidavit were also stated to the police along with other names. According to him Shri Caetano Fernandes reached the spot first. He was however unable to say whether it was Caetano J. Fernandes or Caetano N. Fernandes. He has also stated that he cannot say as to how many persons by name Caetano, Concessao, Yadav and Sajiwan were working with Party II at the relevant time. He has denied the suggestion that he along with Mr. Radhakrishnan, Mr. K. K. Sharma, Mr. Govil and Mr. Raghavendran has conspired to terminate the services of these workmen and has therefore implicated them in the alleged incident dated 30-8-99 by filing a false complaint.

30. From the nature of above evidence it is clear that the identification of the workers in the alleged incident by this witness is apparently doubtful and coupled with the fact that the names of the above workers are not found stated in Exb. 61 and Exb. 62, in my view the evidence of this witness cannot be accepted to say that the workers in this reference were involved in the incident dated 30-8-99. No doubt, it is clear from the defence of Party I that the act of assault on the officers of Party II is not in dispute but it is apparent from the said defence of Party I that these officers were beaten by the people of locality and not by the workmen. Even otherwise, such defence cannot

relieve Party II from proving their case showing involvement of these workmen in the incident dated 30-8-99. That apart, the criminal case filed against this workmen as regards incident dated 30-8-1999 has also ended in acquittal. It may be that in the enquiry Party II is not required to prove the charges levelled against Party I workmen with respect to incident dated 30-8-99 beyond reasonable doubt as is required in criminal trials but discussion supra makes it clear that Party II has failed to make out even a probable case against the Party I workmen.

31. Be that as it may, the workmen namely Mr. Caetano J. Fernandes, Mr. Caetano N. Fernandes and Mr. Concessao Hillario have categorically stated in their affidavits that they have been falsely implicated in the incident dated 30-8-99 and that their discharge from service is illegal, null and void and is against the principles of natural justice. 53. The above statements made by these workmen in their chief examination are merely denied in their cross examination. Even for that matter, not even a specific suggestion has been put to these workers that they along with others assaulted and threatened Mr. Govil, Mr. Tickoo and Mr. Sharma on 30-8-99 and that the above named three officers of the company were seriously injured and hospitalized due to assault by them. However only a general suggestion has been put to these witnesses that they were responsible for the assault on the officers of the company, which suggestion in my view, cannot be read as a pointer to the so called incident dated 30-8-99, which is narrated by Shri Govil and Shri Tickoo in their affidavit in evidence. Being so, I am of the considered opinion that the evidence adduced by Party II in support of proof of incident dated 30-8-99 showing involvement of these workers is not at all convincing.

32. Thus, from above discussion it is clear that Party II has totally failed to prove the charges of misconduct levelled against Shri Caetano J. Fernandes, Shri Caetano N. Fernandes and Shri Concessao Hillario, in the dismissal letters dated 2-9-99.

33. I have gone through the judgments relied upon by the Ld. advocate for Party II. In the judgment in the case of **Kolhapur Zilla (supra)**, the workman was a temporary workman and he was dismissed from service, for misconduct duly proved in disciplinary enquiry, as there was confession of guilt in the enquiry. His complaint of unfair labour practice was dismissed by the labour court. In revision the Industrial Court directed his reinstatement without back wages.

However, in the writ petition before the Hon'ble High Court of Bombay, it was held that the Industrial Court has virtually re-appreciated the evidence in its revisional jurisdiction; that admission of guilt by workman in the enquiry proceedings was categorical and unambiguous and thus the punishment of dismissal cannot be regarded as disproportionate. It is in the above context, observed by the Hon'ble High Court that Labour and Industrial Courts, when they deal with challenges to findings in disciplinary enquiries, must reflect a robust awareness of the realities of the economic situation; that serious cases of misconduct such as those of involving theft of the property of the employer have to be dealt with severely and that once a serious act of misconduct is proved, in a fair enquiry, the approach of the Labour Courts should not be to embark upon a search to find just any technical lapse or lacunae to vitiate the enquiry.

34. Viz-a-viz the above observations made in the set of facts in the above mentioned case, in the instant case the burden was on Party II to prove the misconduct alleged in the letter dated 2-9-99 by leading evidence before this Court, which Party II has failed. Thus, at no stretch of imagination, the observations made in the above case can be imported in the instant case.

35. In the judgment in the case of **Homba Gowda (supra)**, the observations therein are on the subject of jurisdiction vested in the Tribunal u/s 11-A of the Act, while dealing with punishment. This judgment indicates that the jurisdiction to interfere with the quantum of punishment could be exercised only when, inter alia, it is found to be grossly disproportionate. It also indicates that the interference at the hands of the Tribunal should be inter alia on arriving at a finding that no reasonable person could inflict such punishment. It also states that assaulting a superior at a work place amounts to an act of gross indiscipline. Similar is the case with the judgment in the case of **U.P. State Road Transport Corporation (supra)** in which the driver of the Corporation was held guilty of the misconduct of abusing and threatening to assault the cashier and was awarded punishment of removal from service. The Labour Court set aside the order of removal and substituted it by the punishment of stoppage one wage increment and payment of 50% of the back wages. The Writ Petition filed before the Hon'ble High Court was dismissed summarily. The Hon'ble Apex Court however held that the charge against the driver was a serious charge and thus the discretion exercised by the Labour Court was

capricious and arbitrary. It was also held that the punishment awarded was not shockingly disproportionate to the nature of charge found proved against the said driver.

36. It may be mentioned here that the facts in the above cases are totally different from the facts in the instant case, though the observations made in the above judgments which are in those peculiar facts cannot be disputed. However, said observations cannot be applied to the instant case wherein Party II has failed to prove the misconduct by Party I as envisaged in the letter dated 2-9-99, by leading convincing evidence before this Court. In such scenario, it would be inappropriate to conclude that punishment of dismissal imposed on Party I workmen vide letters dated 2-9-99, could be the one imposed by a reasonable person. Thus, the observations in the above mentioned judgment are of no help to Party II to advance its case.

37. In the judgment in the case of **Madhya Pradesh Electricity Board (supra)** a muster roll labourer in the appellant organization had physically assaulted his superior officer and after domestic enquiry, his services were terminated. Labour Court held that the said punishment was harsh and directed his reinstatement with back wages. In appeal, the industrial court restored the order of termination and in the writ petition the Hon'ble High Court upheld the order of the Labour Court. However, in civil appeal, the Hon'ble Apex Court set aside the orders of Labour Court and the Hon'ble High Court and upheld the order passed by the Industrial Court by observing that when punishment of termination is awarded for hitting and injuring a superior officer, with no extenuating circumstances established, it cannot be said to be not justified and it cannot be termed unduly harsh or disproportionate.

38. As stated in the preceding paras, the observations above do not apply to the set of facts in the instant case in which Party II has failed to prove the charges of misconduct levelled against Party I workmen in the letters dated 2-9-99.

39. In the case of **Orissa Cement (supra)**, the workman was sought to be dismissed from services for abusing his superior officer in vulgar and filthy language. The domestic enquiry was not held but in the application for permission, the employer adduced evidence and the Industrial Court held the workman guilty of misconduct alleged against him but refused to grant permission on the grounds that the concerned

workman had tendered an apology to the concerned officer, which apology was found by the Hon'ble Apex Court to be conditional only and as such the order of Tribunal refusing permission prayed for, was set aside.

40. It is noted that the fact situation in the above case is totally different from the fact situation in the instant case and therefore the ratio in the above case, cannot be applied to the instant case.

41. In the case of **Mahindra and Mahindra (supra)** the employee of the appellant was dismissed from service after inquiry for misconduct of using abusive and filthy language against his superior in the presence of subordinates not only once but twice. Labour Court held that punishment was harsh and thus ordered reinstatement with 2/3rd back wages. The Hon'ble Apex Court in appeal, restored the order of dismissal by observing that the language used by the workman is such that it cannot be tolerated by any civilized society and the use of such abusive language against a superior officer in the presence of subordinates, cannot be termed to be an indiscipline calling for lesser punishment in the absence of extenuating factor. Similar are the facts in the case of **New Sharrock Mills (Supra)** in which badli workman was found guilty in the departmental enquiry for abusing the deputy manager and threatening that the Mill Officers would not be safe outside the mill and that he might murder a few of them and therefore he was discharged. The Labour Court though came to the conclusion that the finding of the departmental enquiry was legal and proper; that the order of discharge was not by way of victimization; that the workmen had misbehaved and the workman was thus guilty of misconduct, interfered with the punishment awarded and ordered his reinstatement with 40% backwages. In these circumstances it was held that the punishment of discharge imposed upon the workman was held as not disproportionate so as to warrant judicial interference. The Labour Court should not have set aside the order of discharge by substituting the same with the order of reinstatement as the punishment imposed by the management was not disproportionate warranting interference by the Labour Court.

42. As pointed out by me in discussion supra, the facts in both the above cases are totally different from the facts in the case in hand in which Party II has failed to prove the charges of misconduct levelled against Party I workman and

hence the observations above cannot be applied to the instant case.

43. At any rate, since discussion supra makes it clear Party II has totally failed to prove issue No. 4, the same is answered in the negative. It therefore follows that dismissal of these workmen, from services w.e.f. 2-9-99 is illegal and unjustified.

44. *Issue No. 1:* Since Party II has failed to prove issue No. 4, the question of Party I proving this issue, does not arise and hence my findings.

45. *Issue No. 2:* It is the pleading of Party II that the present dispute has been raised by Party I union and only the President, General Secretary or any other Office bearer on the date of filing of the Statement of the Claim can have authority to sign the Statement of Claim. It may be mentioned here that in para 5 of the claim statement it is the pleading of Party I that Party I union has its managing committee comprising of Shri Vincent Dias as President, Shri Agnelo Esteibero as General Secretary, Shri Indal Prasad Gupta as Treasurer, Shri Umashankar Yadav and Shri Jayaprakash Yadav both as the members of the Executive Committee. In reply to the above para vide para 3 in the written statement, the contents of this para are said to be substantially correct by further stating that the said office bearers did not remain to be the office bearers as on 1-3-00 because the said union has held a fresh election and new office bearers were elected and therefore the said so called office bearers had no authority of representative character or otherwise to represent the workers.

46. It may be mentioned here that in their chief examination all the 3 workmen have categorically stated that Shri Agnelo Esteibero who was the General Secretary of union had authority to file the claim statement. It is also stated that there have not been any elections as stated by Party II. In their cross-examination on the above subject, all the workmen have denied the suggestion that Shri Agnelo Esteibero had no authority to file the claim statement.

47. I have already pointed out above the defence taken by Party II in para 3 of their written statement in which they have substantially admitted the contents of para 5 of the claim statement and hence it is thereafter for Party II to establish that the said office bearers did not remain to be the same as on 1-3-00 because the union held a fresh election and elected new office bearers. It is apparent that Party II has not proved the above fact through the witnesses examined

by them or otherwise and therefore I have every reason to hold that the statement of claim filed by Party I workmen is maintainable. Hence my findings.

48. *Issue No. 3:* Though the present reference is with respect to total 6 workers, records reveal that vide application dated 7-8-03 (Exb.18) Party II informed this court that out of 6 workmen, 3 have settled with the management. The names of these 3 workmen who have settled with the management are stated in Exb.18 as Shri B. Basavaraj, who signed the settlement with the management on 25-1-2000 and Shri Duiz Mourya and Shri Prakash Patil who signed the settlement with management on 29-1-2000. Party II has also annexed the above settlements to this application i.e. Exb.18. Ld. advocate for Party I did not seriously dispute the above factual position. This being the case, it becomes clear that dispute does not survive as against the above three workmen as they have resigned from service by signing the settlements. Hence my findings.

49. *Issue No. 5:* Party I workmen have prayed to hold the action of management in discharging their services w. e. f. 2-9-99 as illegal and bad in law and to direct the management to reinstate them back in the services with continuity of services and full back wages w.e.f. 2-9-99. Discussion supra makes it clear that Party II has failed to prove that Party I workmen are guilty of misconduct. Thus, their dismissal from service w. e. f. 2-9-99 is apparently illegal and unjustified.

50. As regards the claim of Party I workmen of back wages, Ld. advocate for Party II stated that the law on the subject is well settled, which is that upon holding the termination as illegal and unjustified, back wages is not a natural consequence. He stated that for claiming back wages the person concerned has to show that he was not gainfully employed and that the initial burden lies on him. He stated that after the concerned person places material in that regard, the employer can bring on record materials to rebut the claim. He relied on the judgment in the case of **Kendriya Vidyalaya Sangathan and another v/s S. C. Sharma (2005) 2 SCC 363**, in which the above principle has been culled out.

51. It may be mentioned here that in the claim statement Party I workmen have pleaded that till date they are unemployed. However, in their affidavit in evidence, all these 3 workmen are silent on the subject of unemployment. It cannot

be disputed that pleadings without proof cannot be considered. No statement that they are unemployed till date or otherwise has been made by these workmen, on oath. Thus, I have every reason to hold that these workmen have failed to discharge the initial burden resting on them. Being so, the question of Party II bringing on record materials to prove otherwise, does not arise. Consequently, it follows that Party I workmen have failed to establish that they are unemployed. Thus they are not entitled to claim back wages.

52. As regards the claim of these workmen to reinstate them with continuity in service, Id. advocate for Party I submitted that once it is established that the termination is illegal and unjustified, these workmen are bound to be reinstated with continuity in service. However, Id. advocate for Party II submitted that present reference is of the year 2000 and thus long period has lapsed by now. He stated that by now the ages of these workmen have also been advanced. According to him, relation between these workmen and Party II is now strained and that the financial condition of Party II establishment is also not sound. Thus, he stated that the question of reinstatement of these workmen with continuity in service, does not arise.

53. As regards the evidence of Shri Alexander Rodrigues, he has produced on record copy of balance sheet and profit and loss account of Party II for the period from 1-4-09 to 31-3-13 (Exb.120-colly) letter dated 19-6-13 from Electricity department (Exb. 121), copy of order dated 20-8-99 (Exb. 122) and copy of order dated 1-8-13 by BIFR (Exb.123) passed during review hearing, to establish that financial condition of Party II is not sound. In his cross examination, to the suggestion that all the above documents are false and fabricated and that BIFR has been misled on the basis of such documents to declare Party II as sick unit, has been denied by Shri Alexander Rodrigues.

54. No doubt, it appears from the above documentary evidence that Party II is not financially stable, but this by itself cannot be a ground to reject relief to these workmen, to which they are legally entitled. This is because, once it is established that termination is illegal and unjustified, the natural consequence that follows is of reinstatement in service and these workmen cannot be deprived of the same. Even for that matter, lapse of time, advance age, strained relations or weak financial condition of company cannot be the grounds for rejecting the relief of

reinstatement to which these workmen are legally entitled. Nonetheless, the above factors can definitely be looked into to mould the relief to which these workmen are entitled to and this is because these workmen have not established that they are not gainfully employed. This in other words mean that these workmen must be earning their livelihood and it is precisely for this reason the statement on the subject of gainful unemployment is not made by them on oath.

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

56. In the light of above position of law viz-a-viz the fact situation in the instant case, I am of the opinion that grant of reasonable compensation to Party I workmen would meet the ends of justice.

57. In para 2 of the claim statement, it is pleaded that Shri Caetano J. Fernandes was appointed on 1-9-94 as Jr. Desk Operator, was confirmed w. e. f. 1-3-95 and he received a salary of Rs. 1,100/- p.m. As regards Shri Caetano N. Fernandes it is pleaded in this para that he was appointed on 1-7-93 as trainee, was confirmed w.e.f. 1-1-95; by letter dated 10-8-94 he was subsequently interviewed and appointed as GRADE II SEMI SKILLED and the total salary received by him was Rs. 1,100/- p.m. and in recognition of his good performance, increments were given to him by letter dated 3-7-96. As regards Shri Concessao Hillario, it is pleaded in this para that he was appointed on 21-11-95 as trainee, was confirmed as helper w.e.f. 4-12-96 and was paid a total salary of Rs. 1360/- p.m.

58. Considering the totality of the facts such as the quantum of salary paid to the workmen, the number of years they have worked, the period of

time taken for disposal of the present reference, the mental and physical hardships undergone by the workmen during the pendency of adjudication of this dispute, I am of the considered opinion that ends of justice would be met by granting them total compensation of Rs. 1,10,000/- each which compensation in my view shall be appropriate, just and equitable in the circumstances of this case.

59. Records reveal that vide order dated 14-09-04 my ld. predecessor had partly allowed the application for interim relief filed by Shri Caetano J. Fernandes, Shri Caetano N. Fernandes and Shri Concessao Hillario by ordering that Party II shall pay to them 50% of their last drawn wages as subsistence allowance from the date of their dismissal from service i.e. from 2-9-99 till the final award is passed in this reference. It is also observed in this order that payment of this subsistence allowance is subject to the final order that may be passed in the award on the issue of back wages. It has been submitted by Ld. Advocate for Party I that no amount as ordered above has been paid by Party II to the above named workmen. Nevertheless, since discussion supra makes it clear that the workmen herein, are not entitled to claim back wages, payment of compensation, as stated above, would meet the ends of justice. Hence my findings.

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

**ORDER**

1. It is hereby held that the action of the management of M/s. Marmagoa Steel Limited, Curtorim, Goa, in dismissing from the services, the workmen, Mr. Caetano J. Fernandes, Mr. Caetano N. Fernandes and Mr. Concessao Hillario with effect from 02-09-99 is illegal and unjustified.
2. It is hereby further held that the reference as against the workmen Mr. B. Basavaraj and Mr. Duiz Mourya and Mr. Prakash Patil, does not survive.
3. The Party II is directed to pay to the workman Mr. Caetano J. Fernandes, Mr. Caetano N. Fernandes and Mr. Concessao Hillario monetary compensation of Rs. 1,10,000/- (Rupees one lakh ten thousand only) each, within two months from the

date of publication of Award failing which the same shall carry interest at the rate of 9% p.a.

Inform the Government accordingly.

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

**Notification**

No. 28/1/2014-Lab/260

The following award passed by the Industrial Tribunal and Labour Court at Panaji-Goa on 10-03-2014 in reference No. IT/5/2000 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.

*Shashank V. Thakur*, Under Secretary (Labour).

Porvorim, 5th May, 2014.

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

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

Ref. No. IT/5/2000

Shri Vassudev Rajaram Gaude,  
Rep. by the Secretary,  
Goa Trade and Commercial Workers Union,  
Velhos Bldg., 2nd Floor,  
Panaji-Goa ..... Workman/Party I

V/s

M/s. Duple Constructions,  
301, Mahalaxmi Chambers,  
18th June Road,  
Panaji-Goa ..... Employer/Party II

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

Employer/Party II represented by Adv. Shri A. J. Kenkre.

**AWARD**

(Passed on this 10<sup>th</sup> day of March, 2014)

1. 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 vide order dated 29-12-99 bearing No. IRM/CON/(63)/97/9 has referred the following dispute for adjudication by this Tribunal.

- (1) Whether the action of the management of M/s. Dukle Construction, Panaji-Goa, in terminating the services of Shri Vassudev R. Gaude, driver, with effect from 22-4-1997, is legal and justified?
- (2) If not, to what relief the workman is entitled?

2. Upon receipt of the dispute, Ref. IT/5/2000 came to be registered and notices were issued to both the parties under registered A.D. post. Upon their appearance Party I filed the claim statement at Exb. 4, Party II filed the written statement at Exb. 5 and Party I then filed the rejoinder at Exb. 6.

3. It is in short the case of Party I that he was working as driver with Party II right from the year January, 1992 on monthly salary of Rs.3000/-. It is stated that Party II terminated his services with effect from 22-4-97 and prior to termination of his services he had completed continuous service of six years with Party II and as such was permanent workman of Party II. It is stated that after refusal of employment, he requested Party II to take him back in the employment but no heed was paid and as such the dispute was raised before the partner of Party II namely Shri Sameer Dukle with copy to Labour Commissioner, Panaji, Goa. It is stated that Party II filed explanations dated 16-2-98 and 23-2-98 before the Labour Commissioner stating that Party I was never employed by Party II but it was also stated that Party I was requested to join back. It is stated that when Party I went to report back for duties, he was again refused entry by Shri Sameer Dukle. It is stated that Party II in its earlier letter dated 12-8-97 addressed to the Secretary of the union had stated that Party I was employed as driver on daily wages in the year 1997 and that he remained absent causing great hardship and inconvenience. It is stated that these allegations are false and no enquiry was conducted in respect of the allegations and as such refusing employment to Party I w.e.f. 22-4-97 is illegal, unjustified, bad-in-law and in contravention of section 25-F of the Act. It is stated that as the parties could not arrive at a settlement, a failure report was recorded on 28-10-99. It is stated that presently Party I is unemployed and has no source of income. Party I has therefore prayed to hold the action of Party II

in refusing employment to him w.e.f. 22-4-97 as illegal, unjustified and bad-in-law and to direct Party II to reinstate him in service with full back wages and continuity in service with all consequent benefits.

4. In the written statement Party II has denied the case of Party I and has stated that Party I was never appointed as driver by Party II firm nor he was removed from service. It is stated that Party I therefore is not a workman within the meaning of section 2 (s) of the Act. It is stated that Party II firm was constituted by a Deed of Partnership dated 1-4-96 and was duly registered with the Registrar of Firms with Shri Sameer Gurudas Dukle and Shri Sachin Gurudas Dukle as its only two partners. It is stated that in the year 1992 Shri Sameer Dukle was a student doing his diploma in Polytechnic and until 1993 Shri Sachin Dukle was a student doing B.E. degree examination and they first started their construction business w.e.f. 1-4-96 when the partnership was constituted. It is stated that Party II does not own trucks ever since its constitution on 1-4-96. It is stated that the letters dated 16-2-98 and 23-2-98 are written by Shri Sameer Dukle in his personal capacity. It is stated that the experience certificate dated 27-9-96 was issued to Party I at his request as he wanted to apply for the post of driver with government. It is stated that since Party I was known to Party II such experience certificate was issued to him though Party I never worked with Party II as Party II was not in existence five years prior to the date of certificate. Thus, amongst above and other grounds Party II has prayed to reject the reference.

5. In the rejoinder Party I has asserted his case as projected in the claim statement and has denied the defence setup by Party II.

6. On the basis of the averments of respective parties issued dated 20-7-2000 at Exb. 7, were framed.

7. In support of his claim Party I examined himself as witness No. 1 and Shri Servo Fernandes as witness No. 2. On the other hand, Party II examined Shri Sachin Dukle and Shri Sameer Dukle as its witnesses and closed the case.

8. Heard Ld. Adv. Shri S. Naik for Party I and Ld. Adv. Shri A. J. Kenkre for Party II. Ld. Advocate for Party II has also filed written submissions.

9. In his arguments Ld. Advocate for Party I submitted that Party I who was employed as driver by Party II in the year 1992 was refused employment on 22-4-97 in violation of provisions

of Section 25-F of the Act. He stated that vide letters dated 23-2-98 (Exb. W2) and dated 27-9-96 (Exb.W4) which are on the letterhead of Party II, it is admitted by Party II that Party I was working for Party II as driver and also that he was working for past five years. He also invited my attention to the letter dated 16-2-98 (Exb. W8) addressed by Party II to the Labour Commissioner and stated that in this letter Party II has stated that Party I while driving the vehicle had damaged one house and since the time of this incident has not reported for duties. He stated that vide this letter Party II has levelled allegations of misconduct against Party I but did not conduct any enquiry and therefore termination on account of above misconduct amounts to summary termination which is again violative of Section 25-F of the Act. He relied on the judgment in the case of **Gammon India Ltd. v/s Niranjan Dass (1984) 1 SCC 509** to contend that termination of service not falling within exceptions (a), (b) and (c) of section 2(oo) amounts to retrenchment and in the absence of compliance with prerequisites of Section 25-F, the retrenchment bringing about the termination would be ab initio void. By referring to this very same letter, he stated that as per this letter Party I abandoned the services and in such situation it was for Party II to have proved the case of voluntary abandonment by Party I. He also stated that in such situation it was the duty of Party II to send letter to Party I requesting to join the services. In support of the above submissions, Ld. Adv. for Party I relied on the judgment in the case of **Ganagaram K. Medhekar v/s Zenith Safe Mfg. Co. & Ors. 1996 1 CLR 172**. By referring to this judgment he further stated that the employer unilaterally cannot say that the workman is not interested in employment and that a domestic enquiry is required to be held. He also stated that in case of oral evidence on this subject and assuming that it was word against word, the benefit in such circumstances must go to the workman because the company has to prove clearly the case of voluntary abandonment. Thus, according to Ld. Advocate for Party I a case has been made out by Party I to the effect that his termination w.e.f. 22-4-97 is in violation of provisions of section 25-F of the Act and thus is illegal and unjustified.

10. On the other hand, Ld. Advocate for Party II stated that letters dated 23-2-98 at Exb. W2 and dated 16-2-98 at Exb.W8 were issued by Shri Sameer Dukle in his personal capacity and not on behalf of Party II and even the experience certificate dated 27-9-96 (Exb.W4) was issued by

Shri Sachin Dukle at the request of Party I as Party I wanted to apply for a job. Thus according to Ld. Advocate for Party II, Party I cannot take advantage of above documents to claim that he was in continuous service of Party II. He then stated that Party I was never employed with Party II since January 1992 nor was paid monthly salary of Rs. 3,000/- as Party II firm came into existence only on 1-4-96 and the same is apparent from the registration certificate at Exb. E 1. He stated that no trucks belong to Party II and this is clear from the evidence of Shri Servo Fernandes, the witness of Party I. By referring to the provisional certificate of graduation of Shri Sachin Dukle at Exb. E2 and the provisional certificate of passing Diploma in Civil Engineering of Shri Sameer Dukle at Exb. E-3, Ld. Advocate for Party II stated that both the above persons who became the partners of Party II in the year 1996 were students in the year 1992/93 and therefore the contention of Party I of he being the employee of Party II with its partners as Shri Sameer Dukle and Shri Sachin Dukle, in the year 1992 therefore cannot be believed. It is therefore the case of Party II that certificate at Exb. 4 dated 27-9-96 stating that Party I was working for Party II for past five years could not have been issued by Sachin Dukle on behalf of Party II. Lastly it is the contention of Ld. Advocate for Party II that there is no evidence on record to indicate that Party I was either employed or terminated by Party II and hence he cannot be termed as a “workman” employed with Party II.

11. I have gone through the records of the case and have duly considered the submissions of both the Ld. Advocates. I am reproducing herewith the issues along with their findings and reasons thereof.

Sr. No.	Issues	Findings
1.	Whether the Party I proves that he was employed with Party II as a heavy vehicle driver on monthly salary of Rs. 3,000/- from January, 1992?	In the negative.
2.	Whether the Party I proves that the Party II terminated his services w. e. f. 22-4-97 in violation of the provisions of Sec. 25-F of the Industrial Disputes Act, 1947?	Does not arise.

3. Whether the Party I proves that termination of his services by Party II w. e. f. 22-4-97 is illegal and unjustified?	Does not arise.
4. Whether the Party II proves that the Party I is not a "Workman" within the meaning of Section 2(s) of the Industrial Disputes Act, 1947?	Party I is not a Workman employed with Party II.
5. Whether the Party I is entitled to any relief?	In the negative.
6. What Award?	As per order below.

be a workman u/s 2 (s) of the Act but in the peculiar situation like in this case in which Party II has denied the above contention of Party I, it would be for Party I to first prove that he was employed with Party II to show the existence of employer-employee relationship between him and Party II.

14. In his evidence, Party I Shri Vassudev R. Gaude has stated that he was employed with Party II as heavy vehicle driver from January, 92. In his cross examination he has made it clear that he was not issued any letter of appointment by Party II. He has also stated that he does not remember the exact date on which he was employed with Party II and that he does not have document to prove that he was being paid Rs. 3,000/- as a monthly salary by Party II.

REASONS

12. *Issue Nos. 1, 2, 3 and 4:* All these issues are answered together for the sake of convenience as they are interconnected. It may be mentioned that issue No. 4 is infact a jurisdictional issue going to the root of the matter and therefore is required to be answered before answering the other issues. Nevertheless, from the defence of Party II as also from the arguments advanced by Ld. Advocate for Party II it could be gathered that Party II has outright denied the employment of Party I with it and also of payment of monthly salary of Rs. 3,000/- to Party I. It is therefore for this reason, according to Party II, Party I is not a "workman" employed with it as there is no employer-employee relationship between Party I and Party II. Thus, it is required in such situation to answer all issues together since the fate of issues No. 2 and 3 would depend upon the outcome of the issues Nos. 1 and 4.

13. Be that as it may, issue No. 4 is infact framed on the basis of pleadings in the written statement. It however cannot be disputed that person approaching the court for any relief under the Act has to establish his status of being the "workman" under the Act. Thus, it is the burden on Party I to prove that he is a "workman" within the meaning of Sec. 2 (s) of the Act. In this context reference is made to the observations in the judgment in the case of **H. R. Adyanthya V. Sandoz (India) Ltd. 1994 II CLR 552** which indicate that it is settled principle of law that the burden lies on the person who asserts the status of a workman u/s 2 (s) of the Act to establish with reference to the dominant nature of his duties that the work which is performed falls in one of the categories stipulated in section 2(s). Apparently Party I has contended that he was employed as, driver with Party II, which fact Party II has denied. Undoubtedly, as a driver working for somebody else, Party I would

15. On the other hand to prove its case that Party II was not in existence in January, 1992 or that there was no employer-employee relationship between Party I and Party II, Ld. Advocate for Party II has suggested to Party I that Party II came into existence from 1-4-96 and was registered with Registrar of Firms on 25-9-96. In this context, even Party I has made it clear that he does not have any document to show that Party II came into existence prior to 1-4-96. It may be mentioned here that Party I has otherwise made it clear in his cross-examination that he has raised the dispute against Party II which is a partnership firm and its partners are Mr. Sachin Dukle and Mr. Sameer Dukle. The above statement of Party I therefore is indicative of the fact that dispute herein is not raised against either Mr. Sachin Dukle or Mr. Sameer Dukle in their individual capacities but it is against Party II firm.

16. In his evidence Shri Sachin Dukle has produced the xerox copy of the registration certificate issued by the Registrar of Firms regarding the registration of Party II firm, at Exb. E-1. In his cross-examination by Ld. Representative of Party I it is suggested that Party II firm was in existence even prior to the date of its registration with Registrar of Firms however no evidence is adduced to prove the above suggestion. Thus, the fact that stands established on the basis of Exb. E-1 is that Party II came into existence on 1-4-96 and it was registered on 25-9-96. This being the case, the question of Party II who was not in existence prior to 1-4-96, employing Party I as driver in the year 1992, does not arise.

17. It is apparent from the letter dated 14-5-97 (Exb. W 1-colly) by the Secretary of Goa Trade and Commercial Workers Union to Mr. Sameer

Dukle that the said union raised the dispute of refusal of employment to Party I with Mr. Sameer Dukle, partner of Party II. It is apparent from the failure report dated 20-10-99 (Exb.W3) that the aforesaid union made representation to the Asst. Labour Commissioner vide letter dated 31-7-97 as regards refusal of employment to Party I by the management of Party II with effect from 22-4-97. It is clear from the pleadings in the claim statement that before the Labour Commissioner Party II filed explanations dated 16-2-98 and 23-2-98. Party I/Shri Vassudev Gaude has produced the said letter dated 23-2-98 at Exb. W2. Whereas the letter dated 16-2-98 is produced by Shri Sameer Dukle at Exb. W8. It is otherwise not disputed that both the letters dated 16-2-98 and 23-2-98 at Exb. W-8 and Exb. W2 respectively which are on the letter head of Party II are signed by Mr. Sameer Dukle. In the letter dated 16-2-98 which is written to the Labour Commissioner by Shri Sameer Dukle referring to the notice served on him by the Labour Commissioner, it is stated that he has not refused employment to Party I; that he had sent a notice to Party I to rejoin duties on August, 1997 but Party I has not joined; that Party I who was driving his vehicle had damaged a house at Pernem and this accident was not reported to him but Party I remained absent from duty from the next date. Mr. Sameer Dukle has further requested in this letter to order Party I to join the work as the vehicle was off the road for two months resulting in heavy losses to him. Thus, what could be gathered from the contents of this letter is that it refers to the incident which had occurred prior to August, 97 as otherwise Mr. Sameer Dukle would have not sent a notice to Party I to rejoin duties in August, 97. Even for that matter, in the letter dated 23-2-98 (Exb. W2) Mr. Sameer Dukle has informed the Labour Commissioner that he had sent a letter to Party I in August, 97 to join the duties and has requested the Labour Commissioner to order Party I to join the duties at the earliest. It may be mentioned here that both the above letters are on the letter head of Party II and this is apparently because Party II came into existence in the year 1996 and the letters were written in the year 1998 referring to some incident, which had occurred prior to 1997.

18. It is worthwhile noting at this stage that in his evidence Shri Sameer Dukle has made it clear that he wrote the letter at Exb. W2 on the letter-head of Party II by mistake. He has also made it clear that he wrote the letters at Exb. W2 and Exb. W8 to the Labour Commissioner pursuant to the notice received from the Labour Commissioner.

Shri Sameer Dukle has further made it clear that after completing his education in the year 1992 he joined the firm M/s. Kamat Constructions where he worked for three years which is till March, 1996. He has stated that when he was working with M/s. Kamat constructions he was owning truck No. GA-01-T-1930 in March, 1994 and thereafter he purchased one more truck in March, 1995, which trucks exclusively belonged to him. He also stated that he was in transport business when he was working with M/s. Kamat Constructions and that his brother Sachin or Party II did not have any connection whatsoever with his transport business. It is also clear from the evidence of Shri Sameer Dukle that he sometimes used to call Party I to work whenever needed for his transport business. The fact of Shri Sameer Dukle dealing in transport business is also stated by Shri Sachin Dukle.

19. It deserves to be noted that Shri Servo Fernandes, the Asstt. Director of Transport, Panaji examined by Party I as his witness, has stated that as per the register maintained by the Transport Department, vehicle bearing No. GA-01-T-1930 is registered in the name of Shri Sameer Gurudas Dukle on 23-3-94 and subsequently NOC dated 25-8-98 was issued by their office to transport office at Bicholim for transferring this vehicle in the name of Shri Mahadev Y. Wadkar. He has produced the copy of the extract of the register maintained by their office showing the above transactions, at Exb. W6.

20. Shri Servo Fernandes has further stated that the vehicle No. GA-01-T-2826 was registered in the name of Shri Sameer Gurudas Dukle on 11-3-96 and NOC was issued to the transport office at Kudal on 12-8-98 for transferring the said vehicle for re-registering it in the same name at Kudal. He has produced the copy the extract of the register maintained by their office showing the above transactions, at Exb. W7.

21. It is therefore clear from the evidence of Shri Servo Fernandes that both the above numbered trucks were purchased by Shri Sameer G. Dukle prior to coming into existence of Party II on 1-4-96.

In the above context, perusal of failure report dated 28-10-99 (Exb.W3) reveals that during the proceedings before the conciliation officer, which were not attended by the management of Party II, the representative of Party I had stated that before refusing employment to Party I he had continuously worked for a period of more than five years with Mr. Sameer Dukle. It is pertinent to

note that it was not the case of the representative of Party I, that Party I worked for a period of more than five years with Party II. It is therefore clear that even at that point of time Party I had claimed to have worked continuously for more than five years with Sameer Dukle and not Party II.

23. Viewed from all the above angles, the probable conclusion which could be drawn is that the letters dated 16-2-98 (Exb.W8) and dated 23-2-98 (Exb. W2) written by Shri Sameer Dukle to the Labour Commissioner where in his individual capacity and not as partner of Party II though the same were written on the letter-head of Party II. Even otherwise, Shri Sameer Dukle has made it clear that he wrote the letter dated 23-2-98 (Exb.W2) on the letter-head of Party II by mistake and this statement of Shri Sameer Dukle is not denied in his cross examination. This being the situation, as rightly submitted by the Ld. Advocate for Party II, it is not open to Party I to take advantage of the above two letters to say that he was in continuous employment of Party II. For the similar reasons, the letter dated 16-2-98 (Exb.W8) written by Shri Sameer Dukle to the Labour Commissioner stating therein that after the incident of damage to a house at Pernem, Party I has remained absent from his duties, from the next day, also cannot be read to mean that by this letter Party II firm has informed the Labour Commissioner that Party I has abandoned his service with Party II. Consequently, the ratio in the judgment in the case of **Gangaram K. Medekar (supra)** cannot be pressed into services to say that it was for Party II to have conducted domestic enquiry to prove misconduct by Party I and that Party II cannot unilaterally say that Party I was not interested in the employment.

24. Even for that matter, it is also mentioned in the failure report dated 28-10-99 (Exb.W3) that the representative of Party I stated that Shri Dukle had also issued a certificate to Party I on the letter-head of Party II on 27-9-96 stating that Party I had worked for a period of five years with him and he bears a good moral character. This certificate is produced on record by Party I at Exb.W4. In his evidence Shri Sachin Dukle has stated that after completing his studies he joined Kamat Constructions where he continued to work till Party II firm was constituted on 1-4-96. He has stated that Party I was working for M/s. Kamat Constructions when he was working there. He has stated that the certificate dated 27-9-96 (Exb.W4) was issued by him. He has stated that Party I approached him and stated that he wanted to apply for a job and requested to issue a service

certificate to enable him to get a job. He has stated that he issued the said certificate to Party I in good faith though he was not in employment of Party II. In his cross-examination, the above statements made by Shri Sachin Dukle are merely denied, without suggesting otherwise.

25. Perusal of certificate dated 27-9-96 (Exb. W4) reveals that it is on the letter-head of Party II and it states that Party I is working in Party II firm as a driver for a heavy vehicle; that he has a good past record and that he is working in Party II firm for past five years. The above contents of Exb. W4 when read carefully, give a clear indication that the period of five years preceding the date 27-9-96 would start on 27-9-91. Undoubtedly, Party II firm as is evident from the registration certificate at Exb. E1 was not in existence on 27-9-91 and therefore at no stretch of imagination one could believe the contents of Exb. W4 and say that the certificate was issued by Shri Sachin Dukle on behalf of Party II firm.

26. The other reason that persuades me not to believe the case projected by Party I with the aid of Exb. W4 is that in para 8 of the written statement, Party II has pleaded that since Party I was known to Party II, a five year experience certificate was issued to him on 27-9-96 though Party I never worked with Party II, as is evident from the fact that Party II was not in existence five years prior to the date of certificate. In reply to this para vide para 5 in the rejoinder, Party I has denied that the experience certificate was issued to Party I to produce the same before the Government authorities for the post of driver, without in any way disclosing as to why the said experience certificate was issued by Shri Sachin Dukle. Party I has not disclosed the reason of issuance of the certificate at Exb.W4 and also it is not the case of Party I that the certificate at Exb. W4 was issued to him by Party II without any reason. Undoubtedly, certificate at Exb. W4 is an experience certificate in the name of Party I and therefore it can be safely presumed that it was issued at the request of Party I and it is precisely for this reason for Party I to disclose the reason for obtaining such certificate. Silence on the part of Party I on this subject could thus be a ground for drawing adverse inference that the certificate was issued at the request of Party I for the reasons stated by Shri Sachin Dukle. Thus, even for this reason the case of Party I as projected on the basis of Exb. W4 that he was in employment of Party II for a period of five years prior to 27-9-96 cannot be believed.

27. From the above discussion it is therefore clear that Party I has failed to prove that he was employed with Party II as a driver on the monthly salary of Rs. 3,000/- from January, 1992. Consequently, the question of Party II terminating the services of Party I w. e. f. 22-4-97 in violation of provisions of Section 25-F of the Act or of the said so called termination being illegal and unjustified does not arise. Being so, the observations in the judgment in the case of **Gammon India Ltd. (supra)** are not applicable to the fact situation in the instant case. It also follows from above that Party I is not a workman within the meaning of section 2(s) of the Act, as there is no employer-employee relationship between Party I and Party II. This being the case, the present dispute referred for adjudication is incompetent and therefore does not survive. Hence my findings on issue Nos. 1, 2, 3 and 4.

28. *Issue No. 5:* In view of discussion supra, Party I is not entitled to any relief.

29. In the result, I pass the following:

## ORDER

1. It is hereby held that the reference sent to this court to adjudicate as to whether the action of the management of M/s. Dukle Constructions, Panaji-Goa in terminating the services of Shri Vassudev R. Gaude, Driver, with effect from 22-4-1997, is legal and justified, is incompetent and therefore does not survive.
2. Party I, Shri Vassudev Rajaram Gaude is therefore not entitled to any relief.
3. No order as to costs.

Inform the Government accordingly.

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

## Notification

No. 28/1/2013-Lab/558

The following award passed by the Industrial Tribunal and Labour Court at Panaji-Goa on 23-07-2013 in reference No. IT/35/00 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.

*Meena Priolkar*, Under Secretary (Labour).  
Porvorim, 12th August, 2013.

IN THE INDUSTRIAL TRIBUNAL AND  
LABOUR COURT  
GOVERNMENT OF GOA AT PANAJI  
(Before Ms. Bimba K. Thaly, Presiding  
Officer)

Ref. No. IT/35/00

Workmen rep. by  
The General Secretary,  
Gomantak Mazdoor Sangh,  
Shetye Sankul, Tisk,  
Ponda, Goa ... Workmen/Party I  
V/s

M/s. Modista Resortwear,  
Plot No. 63-64,  
Kundaim Industrial Estate,  
Kundaim, Goa ... Employer/Party II  
Workmen/Party I represented by Adv. Shri A.  
Kundaikar.

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

## AWARD

(Passed on this 23rd day of July, 2013)

By order dated 12-4-2000, bearing No. IRM/CON/PONDA/281/1999/2014, the Government of Goa in exercise of the powers conferred by clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (for short The Act) has referred the following dispute for adjudication:

- “(1) Whether the action of the management of M/s. Modista Resortwear, Kundaim Industrial Estate, Kundaim-Goa, in terminating the services of their Workmen, namely (1) Ratne Naik (2) Jayanti Naik (3) Sumati Naik (4) Akshata Naik (5) Vimal Naik (6) Jayanti Naik, with effect from 11-9-1999, is legal and justified?
- (2) If not, to what relief the above Workmen are entitled?”

2. Upon receipt of the reference, a case was registered under No. IT/35/00 and registered AD notices were issued to both the parties and upon service, Party I filed the claim statement at Exb. 4 and Party II filed the written statement at Exb. 6. Party I then filed the rejoinder at Exb. 7.

3. In the claim statement, it is in short the case of Party I that the Workmen whose names are mentioned in the schedule to the reference were in continuous employment of Party II since the time of the date of their employment. It is stated that Party II is an industrial establishment engaged in the manufacturing of leather and nylon garments and leather products. It is stated that in the year

1997 the Workmen demanded the implementation of minimum wages payable to the employees employed in readymade garment manufactory, as per notification dated 25-3-1997. It is stated that Party II refused to pay the said minimum wages and hence the matter was taken up before the Labour Commissioner. It is stated that on account of above demand of the Workmen, the employer started harassing the Workers particularly the members of Party I union and in order to victimize them, terminate their services by suspending the operation, on 11-9-99. It is stated that even after suspending the operations Party II continued their business through the contractor. It is stated that at the time of termination of their services the Workmen were not paid their legal dues and even before the termination, no enquiry was conducted. It is stated that the termination of the workers is illegal, unjustified and bad in law. It is stated that after their termination the workers are unemployed. Party I has therefore prayed to declare that the termination of the services of the Workmen as illegal, improper and unjustified and to direct the employer to reinstate them with full back wages and continuity of service.

4. In the written statement Party II has denied the case set up by Party I in the claim statement and has stated that the reference is not maintainable as the establishment of Party II has been permanently closed w.e.f. 11-9-99 and there cannot be an industrial dispute in respect of a closed unit; that no dispute was raised in respect of the termination of the services of the Workmen and that the original dispute which was raised was with respect of the closure of the establishment and what has been referred to this Tribunal is the dispute in connection with the termination of services of the said Workmen.

5. It is further the case of Party II that on 10-9-99 Ms. Jayanti Naik was not in the employment of the Party II as she had married in March/April, 1996 and did not report for work since then. It is stated that on account of overall recession in the market there was no demand for the goods manufactured by Party II and hence they suspended the activities of manufacture of goods and accordingly displayed a notice of seniority under rule 77 of the Industrial Disputes (Central) Rules, 1957 on the notice board of Party II. It is stated that Party II also informed all the other authorities under the law that it has decided to retrench 11 Workmen w.e.f. 11-9-99 and a copy of the notice was also displayed on the notice board of the establishment. It is stated that at the close of the working hours of 10-9-99 Party II

offered letters dated 10-9-99 to the Workmen present and intimated that their services stood retrenched from 11-9-99 for the reasons explained therein. It is stated that alongwith the said notices of retrenchment, Party II offered to the workers retrenched one months' wage in lieu of notice and retrenchment compensation u/s 25F of the Act vide demand draft/pay order issued in their favour. It is stated that Party II also offered separately the other dues of the Workmen mentioned in other letter dated 10-9-99. It is stated that except Ms. Ratne Naik, Sumati Naik, Akshata Naik and Vimal Naik all other workers accepted the letter of retrenchment, notice wage and compensation and as regards who had refused to accept the same on 10-9-99, the same were sent to them by registered A.D. post. However they again refused to accept the same. It is stated that Party II is not covered under the minimum wages as it is not a garment industry. Party II has also denied that it started harassing the workers upon their demand for implementation for minimum wages. Thus, Party II has stated that the Workmen are not entitled to any reliefs.

6. In the rejoinder, Party I has denied the contentions raised by Party II in the written statement.

7. Based on the pleadings of both the parties, issues were framed on 22-9-00 (Exb. 9).

8. In support of their case Party I examined Mrs. Akshata A. Naik as witness No. 1, Mrs. Sanjana S. Velip as witness No. 2, Miss. Vimal Naik as witness No. 3 and Mrs. Ratne Naik as witness No. 4. On the other hand Party II examined Mr. Shankar Iyer as their witness and closed their case.

9. Heard learned Adv. Shri A. Kundaikar for Party I and Learned Adv. Shri P. J. Kamat for Party II. Both the learned advocates also filed written submissions.

10. I have gone through the records of the case and have duly considered the case advanced by both the parties. I am reproducing herewith the issues along with their findings and reasons thereof.

Sr. No.	Issues	Findings
1.	Whether the Party I/Union proves that termination of services of the Workmen by the Employer/ Party II w.e.f. 11-9-99 is by way of victimization and is illegal and unjustified?	In the negative.

2. Whether the Employer/Party II proves that the reference is not maintainable?	In the positive.	minimum wages in terms of the notification at Exb. W-25 and therefore in my view, the allegations in the claim statement that on account of such demand, Party II by way of victimization terminated the services of the workers, are not proved.
3. Whether the Employer/Party II proves that the termination of services of the Workmen is on account of closure of the establishment w.e.f. 11-9-99?	In the positive.	13. All the witnesses examined by Party I have consistently stated that they became the members of Gomantak Mazdoor Sangh (GMS) by their letter dated 28-1-93 (Exb. W-8); that by letter dated 28-1-93 (Exb. W-9) GMS informed Party II that the workers had become their members; that GMS by letter dated 28-1-93 (Exb. W-10) submitted a Charter of Demands (COD) and that there was a settlement on this COD. The said settlement is at Exb. W-14/Exb. E-1. It is also stated by the witnesses of Party I that GMS then raised a fresh COD by letter dated 8-7-96 (Exb. W-23 colly) and that there was a settlement on this COD which is produced at Exb. W-24.
4. Whether the Employer/Party II proves that the Workmen, Miss Jayanti Naik absented from service in March/April 1996 after her marriage?	In the positive.	
5. Whether the Workmen is entitled to any relief?	In the negative.	
6. What Award?	As per order below.	

## REASONS

11. *Issue Nos. 1, 2 & 3:* All these issues are answered together for the sake of convenience as they are interconnected. This is because in paras 8 and 9 of the claim statement it is the pleading of Party I that the Workmen demanded the implementation of minimum wages due to which the employer started harassing the workers, particularly the members of the Gomantak Mazdoor Sangh and in order to victimize them, Party II terminated the services of the Workmen by suspending the operation from 11-9-99 and in reply to these paras vide paras Nos. 17 and 18 of the written statement Party II has denied the contentions of Party I. It may be mentioned here that it is also the case of Party II vide para 2 (a) of the written statement that its establishment has been permanently closed w.e.f. 11-9-99 and there cannot be an industrial dispute in respect of the closed unit. Thus, the evidence which Party I was required to adduce towards proof of issue No. 1 had to be rebutted by Party II by putting forward its defence. It is in this situation, all the above issues could be answered by considering the evidence adduced on these issues, by the rival parties.

12. Reading of the claim statement in entirety, gives a clear indication that it was due to the demand of the workers for implementation of minimum wages in terms of the notification at Exb. W-25, Party II by way of victimization terminated the services of the Workmen by suspending the operation from 11-9-99. Nevertheless, the witnesses of Party I have nowhere stated that the Workmen demanded the implementation of the

14. It may be mentioned here that none of the witnesses examined by Party I have stated that Party II did not comply with the terms of the settlement at Exb. W-14/Exb. E-1 or Exb. W-24. On the contrary, it is stated by these witnesses that their wages were paid according to these settlements.

15. Be that as it may, it is nowhere the case of Party I in the pleadings that the terms and conditions of the settlement at Exb. W-24 were drafted and submitted by Party II to the Labour Commissioner with a fraudulent intention of not giving effect to the said notification at Exb. W-25. However, suprisingly such a case is brought on record in the affidavit in evidence of witness No. 2 Mrs. Sanjana Velip, witness No. 3 Miss Vimal Naik, witness No. 4 Mrs. Ratne Naik. It is also suggested to the witness of Party II namely, Mr. Shankar Iyer that the settlement dated 2-12-98, Exb. W-24 was signed malafidely, giving effect retrospectively from 1-4-97, in order to escape the liability of payment of wages to the workers as per the notification at Exb. W-25. It is therefore clear from the nature of above statements/evidence that witnesses of Party I have deviated from the pleadings set up in the claim statement.

16. In the above context reference is made to the judgment in the case of **Shankar Chakravarthy v/s Britannia Biscuit Co. Ltd., 1979 (3) SCC 379** in which it is observed that the obligation to lead evidence to establish an allegation made by the Party is on the Party making the allegation and the test would be who would fail if no evidence is lead. Reliance is also placed on the judgment in the case of **Northcote Nursing**

**Home Pvt. Ltd., Bombay and another v/s Zarina H. Rahina (Dr Mrs.) and Anr. 2001 II CLR 155** in which it is observed that it is for the Party to lead evidence to prove the positive fact and it is not for the other side to prove the negative fact. Reference is also made to the judgment in the case of **Delta Engineering Co. (P) Ltd., Meerut v/s Industrial Tribunal-V Meerut 1998 LLR 622** in which it is observed that the burden of establishing the fact lies on the Party at whose instance the reference was made.

17. It is therefore clear from the above settled position of law coupled with the pleadings in the claim statement read with the evidence brought on record, that Party I has totally failed to prove their stand.

18. Now coming to the case of Party II, pleadings in the written statement when read in totality, makes it clear that Party II suspended its activities from 11-9-99 and retrenched the workers, on account of recession in the market and thereafter the establishment of Party II was closed. It is precisely due to this reason one of the defence of the Party I is that there cannot be an "Industrial Dispute" in respect of a closed unit.

19. Shri Shankar Iyer has stated that Party II had displayed a notice of seniority under rule 77 of the Industrial Disputes (Central) Rules, 1957 on the notice board on 28-8-99. He has produced the xerox copy of this document at Exb. E-4. He has stated that on 10-9-99, an application inform P under rule 76 of the above rules was sent to the Secretary, Ministry of Labour, Govt. of Goa, Panaji with copies to Asst. Labour Commissioner, Ponda, Goa, the Commissioner Labour, Panaji, the Director, Employment Exchange, Panaji, the Gomantak Mazdoor Sangh, Ponda, the Regional P. F. Commissioner and the Regional Director, E.S.I.C., Panaji intimating therein that Party II has decided to retrench eleven workers w.e.f. 11-9-99 for the reasons explained therein. He has produced the above documents at Exb. E-5 colly. He has stated that at the close of working hour on 10-9-99 the workers present were offered letters dated 10-9-99 intimating that all the workers stand retrenched from 11-9-99 and offered them the retrenchment compensation and one month's wage in lieu of notice by way of demand drafts/pay orders and that the workers were also offered their other dues namely bonus for 98-99 and 99-2000, leave encashment and wage of ten days of September by separate letter dated 10-9-99 by cheques drawn separately. He has stated that except Ratne Naik, Sumati Naik, Akshata Naik and Vimal Naik all other

Workmen accepted the letter of retrenchment, notice wage, retrenchment compensation and other dues offered to them. He has stated that the above named workers refused to accept the letters and money offered to them and hence the same were sent by registered A.D. post, which were also refused by them. He has produced the envelopes containing the letter dated 10-9-99 sent to above named workers by registered A.D. post and which were returned unserved, at Exb. E-6 colly. He has produced the letter sent with the above letters dated 10-9-99 regarding legal dues at Exb. E-7 colly. The above statements made by Shri Iyer are denied in his cross examination.

20. It may be mentioned here that witness 1 Mrs. Akshata Naik has in her chief examination stated that Party II did not give any notice to them prior to their termination of their service nor were they paid any retrenchment compensation or notice pay. In her cross examination she has denied the suggestion that on 10-9-99 Mr. Iyer handed over to them the letter alongwith the pay orders towards the payment of their dues and that she refused to accept the same. She has also denied the suggestion that alongwith her, the other workers namely, Ratne Naik, Sumati Naik and Vimal Naik also refused to accept the letter.

21. Witness No. 2 Mrs. Sanjana has stated in her chief examination that they came to know from their co-workers such as Mrs. Rajashree Bhomkar and Miss. Lata Naik that the retrenchment compensation and other dues paid to them vide letter dated 10-9-99 was short an that in calculating the amount Party II did not take into consideration the revised rates of minimum wages payable to the Workmen as per the notification at Exb. W-25. She has produced the above letter issued to Rajashree and Lata at Exb. W-33 colly and Exb. W-34 colly respectively. She has stated that on 14-9-99 the postman came to her house with an envelope addressed to her by Party II but she did not accept it as she was aware that the amount of compensation paid by Party II was short of retrenchment compensation and not the same to which they legally entitled. In her cross examination she has stated that on 11-9-99 Shri Iyer told them he was stopping the work in the factory and gave letters alongwith the cheque to all workers including her, dated 10-9-99 but she did not accept the said letter. She has stated that this letter was then sent to her by post but at that time she was not at home and later when she went to the post office to collect it, she was told that it was already returned. She has stated that Ratne Naik, Vimal Naik and Akshata Naik had told her that they had not accepted the said letter.

22. Miss Vimal Naik has also made the same statements as made by Sanjana Velip in her chief examination, on the subject of payment of retrenchment compensation by Party II. She has stated that on 14-9-99 postman had come to her house with an envelope addressed to her but she did not accept it as she was aware that the compensation amount was short of the retrenchment compensation. In her cross examination she has stated that she does not know how the payment of retrenchment compensation is worked out so also that she cannot say if the cheque was issued to her contained the correct amount towards the payment of her retrenchment compensation.

23. Witness Ratne Naik has also deposed on the same lines as that of Vimal Naik. In her cross examination she has stated that on 10-9-99 the proprietor of Party II gave them a letter stating that the factory will be closed from 11-9-99, alongwith a cheque but she did not accept the same. She has stated that she also did not accept the letter sent to her by post by Party II because the other workers who had accepted the letter and the cheque had told her that they were not paid the correct amount. She has otherwise stated that she does not know how the retrenchment compensation is worked out so also if the retrenchment compensation payable to her and in respect of which cheque was offered to her, was correctly calculated or not.

24. From the nature of above evidence, viz-a-viz the documentary evidence such as Exb. E-6 colly and Exb. E-7 colly it becomes clear that Party I had offered the retrenchment compensation alongwith other dues to Vimal Naik, Akshata Naik, Sumati Naik and Ratne Naik but they refused to accept the same. It is worthwhile noting that in the claim statement it is the case of Party I Workmen that at the time of termination of their service, Party II did not pay the legal dues in accordance with the provisions of the I.D. Act. It is not their case that Party II had offered them the legal dues but that they refused to accept the same. It is also apparent from the deposition of Sanjana, Vimal and Ratne that they refused to accept the letter/cheques sent to them by registered A.D. post by presuming that the amount was short. However, no justification had been given by them as to on what basis they presumed that the said amount was short as it is their specific statement that they do not know how the retrenchment compensation is worked out or that they do not know whether the amount in the

cheque offered to them was correctly calculated or not. Though these witnesses have come out with a case that co-workers Mrs. Rajashree and Miss Lata had told them that the amount of compensation calculated was short but it is seen that both these co-workers are not examined to say that the compensation amount received by them was short or that they had told about it to Sanjana, Vimal and Ratne. This was required because there is no pleading in the claim statement stating that above co-workers had told Sanjana and others that the amount of compensation calculated was short. Nevertheless, the fact that remains is that retrenchment compensation was offered to Party I Workmen which they refused to accept and therefore it cannot be said that Party II violated the provisions of the I.D. Act while terminating the services of Party I Workmen.

25. Ld. Adv. for Party I by relying on the judgment in the case of **D.S. Vasavada, Textile Labour Association, Ahmedabad v/s Regional Provident Fund Commissioner, Gujarat State, Ahmedabad 1985 I LLJ 263** contended that services of the employees are put to an end only upon a valid closure and that there would be no termination of services without compliance of the provisions of Sec. 25FFA and Sec. 25FFF of I.D. Act. He stated that since according to Party II their establishment was closed, and as they have not complied with the above provision of law there is no termination of Party I Workmen. It is pertinent to note that Party II initially suspended the operations and it was thereafter the establishment was closed and at the time of suspension of operation, Party II paid/offered legal dues to the Workmen, which is not the case in the judgment in the case of **D.S. Vasadeva (supra)**. That apart, in case of closure of the unit the payment of notice wage and retrenchment compensation u/s 25F is arising out of the said closure and same is not condition precedent to closure. Even for that matter, like in the case in the above judgment, there is nothing on record to indicate that Party II was employing more than 50 Workmen at the relevant time and therefore Sec. 25FFA cannot be made applicable in such situation. Hence, the ratio in the judgment in the case of **D.S. Vasadeva (supra)** is not applicable to the instant case.

26. Though in para 10 of the claim statement it is pleaded that Party II continued their business by manufacturing their products through contractor, evidence on record makes it clear that Party I has failed to prove the same. It is worthwhile mentioning here that in her evidence Smt. Akshata Naik has stated that Party II started

another factory at Bethora and has transferred the machinery from Party II factory to Bethora. Even Mrs. Sanjana has stated that Party II started another factory at Bethora and in her cross examination stated that they did not make complaint to ALC, Ponda about it. She has also stated that she did not personally see the said factory so also she does not have any document to prove that Party II has started the factory at Bethora. Witness Vimal Naik has also stated that Party II started another factory at Bethora by transferring some machines from Party II factory to the factory at Bethora. In her cross examination her above statement is denied. It is therefore clear from the nature of above statements made by the aforesaid witnesses that they have set up a case which is not pleaded by Party I in the claim statement and even for that matter has not proved that Party I has started another factory at Bethora by transferring the machinery from Party II factory to Bethora. Therefore the fact that remains is that Party II after closing their unit, did not restart it.

27. In her cross examination Mrs. Akshata has stated that factory of Party II was closed after 11-9-99. Mrs. Sanjana has also stated in her cross examination that they had gone to the factory for about 2 months from 11-9-99 and at that time the factory was closed. Miss Vimal has also stated in her cross examination that the factory was locked from 11-9-99 and as such they could not enter the factory. Thus, it is clear that there is admission from the witnesses of Party I that the factory was closed after 11-9-99. The above statements of the aforesaid witnesses have to be read in context with the pleadings of the parties which give a clear indication that the operation in the factory was suspended from 11-9-99 and as thereafter the factory did not operate, the same was closed. *Ld. Adv. for Party II* relied on the judgment in the case of **Asian Paints India Ltd., v/s Mazdoor Kranti Union and another 1997 II CLR 1053 and in the case of Indian Hume Pipe Co. Ltd., v/s Their Workmen 1950 SCLJ Vol.8 183** the ratios in which indicate that the Tribunal cannot go into the question as to the motive of the management in closing down the factory and once the closure is admitted the reference as to the validity of closure is not maintainable. As in this case, after suspension of operation and payment of legal dues, Party II closed the factory, this reference does not survive.

28. Hence all these issues are answered accordingly.

29. *Issue No. 4:* In para 2 of the claim statement it is the case of the claimant that Workmen in this reference including Jayanti Naik were in continuous employment of Party II and in reply to this para vide para 2 of the written statement Party II has stated that the Workmen except Jayanti Naik were in continuous employment of Party II. It is the specific pleading of Party II that Jayanti Naik absented from her services after her marriage in March/April 1996 as she was living at Vasco da Gama, Goa. Since it is the pleading of Party I that Jayanti Naik (along with others) was in continuous service of Party II and which fact has been denied by Party II, it is the burden on Party I to prove such continuous employment of Jayanti Naik with Party II.

30. Party I has not examined Jayanti Naik to prove her continuous employment with Party II. On the contrary, in her cross examination Smt. Akshata Naik has stated that Jayanti Naik got married in March, 1996 and she did not report for work after her marriage. Even Mrs. Sanjana Velip has stated in her cross examination that Jayanti Naik got married in the year 1996 and she did not report for work after the marriage. Miss Vimal Naik has also stated that Jayanti Naik got married in the year 1996 and though according to her Jayanti Naik continued to work even after her marriage, she appears not to remember as to for how many months she continued to work. It is therefore clear from the above evidence that Party I has failed to adduce cogent and convincing evidence to establish that Jayanti Naik was in “continuous service” of Party II as required by Sec. 25B (2) (a) (ii) of the Act. Consequently, it follows that the stand taken by Party II that Jayanti Naik absented from services after her marriage appears to be probable and hence Party II was not bound to comply with the provisions of Sec. 25FFF of the Act with respect to Jayanti Naik. Hence my findings.

31. *Issue No. 5:* In view of the above discussion, Party I/Workmen are not entitled to any relief.

32. In the result, I pass the following:

#### ORDER

1. It is hereby held that the action of the management of M/s. Modista Resortwear, Kundaim Industrial Estate, Kundaim-Goa, in terminating the services of their Workmen, namely (1) Ratne Naik (2) Jayanti Naik (3) Sumati Naik (4) Akashata Naik (5) Vimal Naik (6) Jayanti Naik, with effect from 11-9-1999, is legal and justified.

2. Party I/Workmen are 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.

◆◆◆  
Department of Law & Judiciary  
Law (Establishment) Division

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**Order**

File No. 8-15-2013-LD(Estt)(1)/1586

Whereas, the Government vide Notification No. 5-40-96/LD(20) dated 16-10-1996, published in the Official Gazette, Series II No. 12 dated 19-06-1997, appointed Shri Shashikant Anant Parab, Advocate, as a Notary for a period of three years with effect from 16-10-1996 in Bicholim Judicial Senior Division (hereinafter called as the "Notary");

And whereas, on 07-05-2013 at 12.45 p.m., the Competent Authority carried out a surprise inspection of the office of the Notary;

And whereas, during such inspection, the Competent Authority noticed that the certificate of practice was not exhibited in the chamber/office of the Notary, the exhibition of which is mandatory as per rule 15 of the Notaries Rules, 1956;

And whereas, the Competent Authority further noticed that the notarial registers were incomplete and not maintained properly which amounts to violation of Rule 11(2) of the Notaries Rules, 1956;

And whereas, the Competent Authority also noticed that the receipt books were not maintained properly which amounts to violation of Rule 11(9) of the Notaries Rules, 1956;

And whereas, the Competent Authority submitted the inspection report to the Government (hereinafter referred to as the "Inspection Report");

And whereas, the Government, after considering the Inspection Report, has decided to issue a Show Cause Notice to the Notary;

And whereas, Show Cause Notice bearing No. 8-15-2013-LD(Estt)(1)/1049 dated 24-06-2013 has been issued to the Notary calling upon him to show cause as to why action as deemed fit should not be initiated against him for his failure to comply with the provisions contained in the Notaries Act, 1952 (Act 53 of 1952) and the Notaries Rules, 1956, within a period of fifteen days from the date of receipt of the Show Cause Notice (hereinafter referred to as the "said Show Cause Notice");

And whereas, in response to the said Show Cause Notice, the Notary filed his reply dated 08-07-2013 (hereinafter referred to as the "said Reply");

And whereas, the Government after considering the said Reply of the Notary and parawise comments of the Competent Authority on the said Reply of the Notary has decided to let off the Notary with a warning to follow the Notarial Act/Rules and Regulations scrupulously and failing which in future stern action will be taken against the Notary;

Now, therefore, in pursuance of Rule 13(12)(b)(iii) of the Notaries Rules, 1956, the Government of Goa hereby let off the Notary with a warning to follow the Notarial Act/Rules and Regulations scrupulously and failing which in future stern action will be taken against the Notary.

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

*R. K. Srivastava*, Law Secretary.

Porvorim, 28th July, 2014.

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**Order**

File No. 8-15-2013-LD(Estt)(2)/1587

Whereas, the Government vide Notification No. 9-18-2004-LD(Estt.)/Part-II (XXV)/1546 dated 17-09-2010, published in the Official Gazette, Series II No. 26 dated 23-9-2010 appointed Smt. Aruna K. Shahapurkar @ Rutuja Chetan Kubal, Advocate, as a Notary for a period of five years with effect from 17th September, 2010 for the area of Pernem taluka (hereinafter called as the "Notary");

And whereas, on 07-05-2013 at 11.30 a.m., the Competent Authority carried out a surprise inspection of the office of the Notary;

And whereas, during such inspection, the Competent Authority noticed that the certificate of practice was not exhibited in the chamber/office of the Notary, the exhibition of which is mandatory as per rule 15 of the Notaries Rules, 1956;

And whereas, the Competent Authority further noticed that the rates of fees to be charged by the Notary were displayed on the door but it was too small and not clearly visible, the display of which in conspicuous place inside as well as outside the chamber/office of the Notary is mandatory as per Rule 10(2) of the Notaries Rules, 1956;

And whereas, the Competent Authority also noticed that the notarial registers were incomplete and not maintained properly which amounts to violation of Rule 11(2) of the Notaries Rules, 1956;

And whereas, the Competent Authority submitted the inspection report to the Government (hereinafter referred to as the "Inspection Report");

And whereas, the Government, after considering the Inspection Report, has decided to issue a Show Cause Notice to the Notary;

And whereas, Show Cause Notice bearing No. 8-15-2013-LD(Estt)(2)/1049 dated 24-06-2013 has been issued to the Notary calling upon her to show cause as to why action as deemed fit should not be initiated against her for her failure to comply with the provisions contained in the Notaries Act, 1952 (Act 53 of 1952) and the Notaries Rules, 1956, within a period of fifteen days from the date of receipt of the Show Cause Notice (hereinafter referred to as the "said Show Cause Notice");

And whereas, in response to the said Show Cause Notice, the Notary filed her reply dated 08-07-2013 (hereinafter referred to as the "said Reply");

And whereas, the Government after considering the said Reply of the Notary and parawise comments of the Competent Authority on the said Reply of the Notary has decided to let off the Notary with a warning to follow the Notarial Act/Rules and Regulations scrupulously and failing which in future stern action will be taken against the Notary;

Now, therefore, in pursuance of Rule 13(12)(b)(iii) of the Notaries Rules, 1956, the Government of Goa hereby let off the Notary with a warning to follow the Notarial Act/Rules and

Regulations scrupulously and failing which in future stern action will be taken against the Notary.

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

*R. K. Srivastava*, Law Secretary.

Porvorim, 28th July, 2014.

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**Order**

File No. 8-15-2013-LD(Estt)(3)/1588

Whereas, the Government vide Notification No. 5-40-2000/LD(Estt.) dated 24-05-2000, published in the Official Gazette, Series II No. 10 dated 08-06-2000, appointed Shri Hanumant G. Gawandi, Advocate, as a Notary for a period of five years with effect from 24th May, 2000 in Pernem Taluka (hereinafter called as the "Notary");

And whereas, on 07-05-2013 at 11.00 a.m., the Competent Authority carried out a surprise inspection of the office of the Notary;

And whereas, during such inspection, the Competent Authority noticed that the certificate of practice was not exhibited in the chamber/office of the Notary, the exhibition of which is mandatory as per Rule 15 of the Notaries Rules, 1956;

And whereas, the Competent Authority further noticed that the rates of fees to be charged by the Notary were displayed in one corner near the reception which was not visible to the public, the display of which in conspicuous place inside as well as outside the chamber/office of the Notary is mandatory as per Rule 10(2) of the Notaries Rules, 1956;

And whereas, the Competent Authority further noticed that the notarial registers were incomplete and not maintained properly which amounts to violation of Rule 11(2) of the Notaries Rules, 1956;

And whereas, the Competent Authority also noticed that the receipt books were not maintained which amounts to violation of Rule 11(9) of the Notaries Rules, 1956;

And whereas, the Competent Authority submitted the inspection report to the Government (hereinafter referred to as the "Inspection Report");

And whereas, the Government, after considering the Inspection Report, has decided to issue a Show Cause Notice to the Notary.

And whereas, Show Cause Notice bearing No. 8-15-2013-LD(Estt)(3)/1049 dated 24-06-2013

has been issued to the Notary calling upon him to show cause as to why action as deemed fit should not be initiated against him for his failure to comply with the provisions contained in the Notaries Act, 1952 (Act 53 of 1952) and the Notaries Rules, 1956, within a period of fifteen days from the date of receipt of the Show Cause Notice (hereinafter referred to as the “said Show Cause Notice”);

And whereas, in response to the said Show Cause Notice, the Notary filed his reply dated 09-07-2013 (hereinafter referred to as the “said Reply”);

And whereas, the Government after considering the said Reply of the Notary and parawise comments of the Competent Authority on the said Reply of the Notary has decided to let off the Notary with a warning to follow the Notarial Act/Rules and Regulations scrupulously and failing which in future stern action will be taken against the Notary;

Now, therefore, in pursuance of Rule 13(12)(b)(iii) of the Notaries Rules, 1956, the Government of Goa hereby let off the Notary with a warning to follow the Notarial Act/Rules and Regulations scrupulously and failing which in future stern action will be taken against the Notary.

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

*R. K. Srivastava*, Law Secretary.

Porvorim, 28th July, 2014.

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**Order**

File No. 8-15-2013-LD(Estt)(4)/1589

Whereas, the Government vide Notification No. 9-18-2004/LD(Estt.)/Part-II (VIII)/1164 dated 20-07-2010, published in the Official Gazette, Series II No. 18 dated 20th July, 2010, appointed Smt. Rupa Amitkumar Dublay, Advocate, as a Notary for a period of five years with effect from 20th July, 2010 for the area of Pernem Taluka (hereinafter called as the “Notary”);

And whereas, on 07-05-2013 at 10.30 a.m., the Competent Authority carried out a surprise inspection of the office of the Notary;

And whereas, during such inspection, the Competent Authority noticed that the certificate of practice was not exhibited in the chamber/office of the Notary, the exhibition of which is mandatory as per Rule 15 of the Notaries Rules, 1956;

And whereas, the Competent Authority further noticed that the chart of the rates of fees to be charged by the Notary was hanging at the entrance of the door which was not visible, the display of which in conspicuous place inside as well as outside the chamber/office of the Notary is mandatory as per Rule 10(2) of the Notaries Rules, 1956;

And whereas, the Competent Authority further noticed that the notarial registers were incomplete and not maintained properly, notarial acts were not mentioned and the Notary did not sign the notarial registers which amounts to violation of Rule 11(2) of the Notaries Rules, 1956;

And whereas, the Competent Authority also noticed that the fees and charges realized by the Notary were not shown in the notarial register and the receipt books were not maintained which amounts to violation of Rule 11(9) of the Notaries Rules, 1956;

And whereas, the Competent Authority submitted the inspection report to the Government (hereinafter referred to as the “Inspection Report”);

And whereas, the Government, after considering the Inspection Report, has decided to issue a Show Cause Notice to the Notary;

And whereas, Show Cause Notice bearing No. 8-15-2013-LD(Estt)(4)/1049 dated 24-06-2013 has been issued to the Notary calling upon her to show cause as to why action as deemed fit should not be initiated against her for her failure to comply with the provisions contained in the Notaries Act, 1952 (Act 53 of 1952) and the Notaries Rules, 1956, within a period of fifteen days from the date of receipt of the Show Cause Notice (hereinafter referred to as the “said Show Cause Notice”);

And whereas, in response to the said Show Cause Notice, the Notary filed her reply dated 03-07-2013 (hereinafter referred to as the “said Reply”);

And whereas, the Government after considering the said Reply of the Notary and parawise comments of the Competent Authority on the said Reply of the Notary has decided to let off the Notary with a warning to follow the Notarial Act/Rules and Regulations scrupulously and failing which in future stern action will be taken against the Notary;

Now, therefore, in pursuance of Rule 13(12)(b)(iii) of the Notaries Rules, 1956, the Government of Goa hereby let off the Notary with a warning to follow the Notarial Act/Rules and Regulations scrupulously and failing which in future stern action will be taken against the Notary.

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

*R. K. Srivastava*, Law Secretary.

Porvorim, 28th July, 2014.

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**Order**

File No. 8-15-2013-LD(Estt)(5)/1590

Whereas, the Government vide Notification No. 5/40/99/LD dated 12-01-2000, published in the Official Gazette, Series II No. 10 dated 08-06-2010, appointed Shri Deelip Yeshwant Govenkar, Advocate, as a Notary for a period of five years with effect from 11-1-2000 throughout the Pernem Junior Division (hereinafter called as the "Notary");

And whereas, on 07-05-2013 at 10.00 a.m., the Competent Authority carried out a surprise inspection of the office of the Notary;

And whereas, during such inspection, the Competent Authority noticed that the certificate of practice was not exhibited in the chamber/office of the Notary, the exhibition of which is mandatory as per Rule 15 of the Notaries Rules, 1956;

And whereas, the Competent Authority further noticed that the rates of fees to be charged by the Notary were not displayed in conspicuous place inside as well as outside the chamber/office of the Notary, the display of which is mandatory as per Rule 10(2) of the Notaries Rules, 1956;

And whereas, the Competent Authority further noticed that the notarial registers were incomplete and not maintained properly, notarial acts were not mentioned and the Notary did not sign the notarial registers which amounts to violation of Rule 11(2) of the Notaries Rules, 1956;

And whereas, the Competent Authority also noticed that the fees and charges realized by the Notary were not shown in the notarial register and the receipt books were not maintained which amounts to violation of Rule 11(9) of the Notaries Rules, 1956;

And whereas, the Competent Authority submitted the inspection report to the Government (hereinafter referred to as the "Inspection Report");

And whereas, the Government, after considering the Inspection Report, has decided to issue a Show Cause Notice to the Notary;

And whereas, Show Cause Notice bearing No. 8-15-2013-LD(Estt)(5)/1049 dated 24-06-2013 has been issued to the Notary calling upon him to show cause as to why action as deemed fit should not be initiated against him for his failure to comply with the provisions contained in the Notaries Act, 1952 (Act 53 of 1952) and the Notaries Rules, 1956, within a period of fifteen days from the date of receipt of the Show Cause Notice (hereinafter referred to as the "said Show Cause Notice");

And whereas, in response to the said Show Cause Notice, the Notary filed his reply dated 01-07-2013 (hereinafter referred to as the "said Reply");

And whereas, the Government after considering the said Reply of the Notary and parawise comments of the Competent Authority on the said Reply of the Notary has decided to let off the Notary with a warning to follow the Notarial Act/Rules and Regulations scrupulously and failing which in future stern action will be taken against the Notary;

Now, therefore, in pursuance of Rule 13(12)(b)(iii) of the Notaries Rules, 1956, the Government of Goa hereby let off the Notary with a warning to follow the Notarial Act/Rules and Regulations scrupulously and failing which in future stern action will be taken against the Notary.

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

*R. K. Srivastava*, Law Secretary.

Porvorim, 28th July, 2014.

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**Order**

No. 2/21/2014-LD(Estt.)/1637

The following shall be the standing arrangement of the Civil Registrar-cum-Sub-Registrar, Group 'B', Gazetted Officers, in the Registration Department, Panaji for disposal of work indicated in column No. 2 by giving additional charge of the posts indicated in column No. 4. They shall perform all the duties of the posts shown in

column No. 4, in addition to their own duties, with immediate and until further orders:

Sl. No.	Name & Designation of the officer	Present posting	Additional charge of the vacant post of CR & SR
1.	Shri Arjun Shetye, Civil Registrar-cum-Sub-Registrar	Civil Registrar-cum-Sub-Registrar, Bardez	Civil Registrar-cum-Sub-Registrar, Ilhas (Tiswadi).
2.	Smt. Shobhana Chodankar, Civil Registrar-cum-Sub-Registrar	Civil Registrar-cum-Sub-Registrar, Sanguem	Civil Registrar-cum-Sub-Registrar, Dharbandora.
3.	Smt. Shubha H. Dessai, Civil Registrar-cum-Sub-Registrar	Civil Registrar-cum-Sub-Registrar, Headquarters, O/o State Registrar, Panaji	Joint Civil -Registrar-cum-Sub-Registrar, Ilhas (Tiswadi).

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

*Vasanti H. Parvatkar*, Under Secretary (Law-Estt.).  
Porvorim, 1st August, 2014.

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

No. A.1201/G/2014/2200

**I**

The Hon'ble the High Court has been pleased to make the transfer and posting of the following Judicial Officer:

Sr. No.	Name & present posting	New posting
1.	(On repatriation) Shri Pramod V. Kamat, Law Secretary, Government of Goa	District Judge-2 and Additional Sessions Judge, Panaji.

**II**

The Hon'ble the High Court has been pleased to make the ranking of the Judicial Officer in the order as shown herein below:

Sr. No.	Name & present posting	New posting
1.	Shri Agha Irshad, District Judge-2 & Assistant Sessions Judge, Panaji	District Judge-3 & Assistant Sessions Judge, Panaji.

High Court, Bombay,  
Dated: 16th July, 2014

Dr. Mrs. *Shalini S. Phansalkar-Joshi*  
Registrar General.

**Department of Mines**

Directorate of Mines & Geology

**Order**

No. 01/20/2014/STA/ADM/MINES/1503

Government is pleased to promote Shri Jayant G. Sirsat, Assistant Geologist to the post of Senior Technical Assistant (Group 'B', Gazetted) in the pay scale of PB-2, ` 9,300-34,800+GP ` 4,600/- on ad hoc basis for an initial period of six months or till the post is filled on regular basis, whichever is earlier.

The above ad hoc promotion shall not confer any right for regular promotion, and the services so rendered shall not count for the purpose of seniority in that grade and for eligibility for promotion to the next higher grade.

The expenditure towards his pay and allowances shall be debitible under Demand No. 83, Budget Head:2853—Non Ferrous Mining & Metallurgical Industries; 02—Regulation and Development of Mines; 001—Direction and Administration; 01—Mines Development (Non-Plan); 01—Salaries.

He shall exercise his option for fixation of the pay and allowances in the promotional grade in terms of F.R. 22(I)(a)(1) within a period of one month from the date of his promotion as Senior Technical Assistant. The option once exercised shall be final.

Consequent upon above promotion, Shri Jayant G. Sirsat is posted in the Technical Section (Major & Minor Minerals) of this Directorate.

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

*Prasanna A. Acharya*, Director (Mines & Geology).

Panaji, 5th August, 2014.

## Department of Personnel

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Order

No. 3/1/80-PER (Part) Vol. I/4454

Read: Order No. 19/10/2014-PER dated 12-08-2014.

In pursuance to the Government of India, Ministry of Home Affairs, New Delhi, Order No. 14020/02/2014-UTS-I (Part II) dated 18-07-2014, the Government of Goa is pleased to relieve Dr. O. P. Mishra, IPS, AGMU Cadre from 17-10-2014 (a.n.) from this Administration on completion of Phase-III Mid-Career Training Programme (MCTP), for IPS officers, with direction to report to New Delhi.

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

R. Aga, Under Secretary (Personnel-II).

Porvorim, 12th August, 2014.



## Department of Public Health

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Order

No. 4/1/2014-IV/PHD/Part

Government is pleased to invoke the provisions of the Agreement-cum-Bond executed by the Post Graduate Students (MDS) and appoint the following MDS passed out students in the capacity as Lecturer in the specialities as indicated against their names in Goa Dental College & Hospital, Bambolim-Goa.

Sr. No.	Name of the passed out MDS Student	Name of the speciality
1	2	3
1.	Dr. Ronak Mukundkumar Shah	Prosthodontics and Crown & Bridge.
2.	Dr. Rahul Dilip Kamat	Oral & Maxillofacial Surgery.
3.	Dr. Nabha D. Deshpande	Periodontics.
4.	Dr. Aruna Namdev Daware	Periodontics.
5.	Dr. Neha S. Sinai Sukhthankar	Orthodontics & Dentofacial Orthopaedics.
6.	Dr. Divya Bhardwaj	Oral Medicine and Radiology.

1	2	3
7.	Dr. Karla Carvalho Maria do Rosario	Oral Pathology and Microbiology.
8.	Dr. Mayuri Mohan Naik	Conservative Dentistry and Endodontics.

They shall be paid monthly emoluments of Rs. 45,000/- (Rupees forty five thousand only) per head per month against the respective Budget Head, and on the terms and conditions contained in the Agreement to be executed by them with the Government.

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

Sangeeta M. Porob, Under Secretary (Health).

Porvorim, 24th July, 2014.

Order

No. 11/3/89-IV/PHD/3 (Part I)/1264

Government is pleased to promote Dr. Manisha M. Khorate, Lecturer in Oral Medicine and Radiology to the post of Assistant Professor in Oral Medicine and Radiology in Goa Dental College and Hospital purely on ad hoc basis in the Pay Band—3 ` 15,600-39,100+ Grade Pay of ` 6,600/-+ NPA and other allowances admissible as per the rules, with immediate effect.

The ad hoc appointment is initially for a period of one year or till the post is filled on regular basis, whichever is earlier.

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

The above ad hoc promotion is made against the vacancy caused due to creation of one post of Assistant Professor in Oral Medicine and Radiology vide Order No. 4/1/2009-IV/PHD dated 20-06-2013.

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

Sangeeta M. Porob, Under Secretary (Health).

Porvorim, 6th August, 2014.

**Certificate**

No. 4/13/2011-II/PHD

Read: Government Order No. 4/13/2011-II/PHD dated 29-10-2013.

Certified that the character and antecedents of Dr. Rajesh Gurudas Halarnakar, Assistant Lecturer in the Department of Urology in Goa Medical College and Hospital, Bambolim appointed vide above referred Order has been verified by the Addl. District Magistrate, North Goa District, Panaji and nothing adverse has come to the notice of the Government.

*Sangeeta M. Porob*, Under Secretary (Health).

Porvorim, 20th November, 2013.

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**Department of Public Works**

Office of the Principal Chief Engineer

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**Order**

No. 34/3/2014/PCE-PWD-ADM(II)/96

Government is pleased to promote Shri Madhu P. Yallurkar, Assistant Engineer/Assistant Surveyor of Works/Engineering Assistants (Civil) on ad hoc basis to the post of Executive Engineer/Surveyor of Works (Civil) in Public Works Department, Group 'A', Gazetted in the pay band ` 15,600-39,100+ G.P. 6,600/- with immediate effect for a period of one year or till the post is filled on regular basis whichever is earlier.

His posting will be issued separately.

He shall continue to hold the charge of the post of his current place of posting, until further orders.

The above ad hoc promotion will not bestow on the promoted officer any claim for regular promotion nor the service rendered on ad hoc basis in the grade will be counted for the purpose of seniority in that grade for eligibility for promotion to the next higher grade.

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 July, 2014.

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**Order**

No. 34/3/2014/PCE-PWD-ADM(II)/103

Read: Order No. 34/3/2014/PCE-PWD-ADM(II)/100 dated 31-07-2014.

Government is pleased to order the postings of the below mentioned Superintending Engineers/Superintending Surveyor of Works/Superintending Engineer (Mon. & Eva.) (Civil) in Public Works Department who were promoted on ad hoc basis and awaiting postings vide order referred to above, in the places shown against their names in column No. (3) below:

Sr. No.	Name of the Officer	Place of posting on promotion
1	2	3
1.	Shri Ashok Dhaiwajna	As Senior Technical Examiner in Directorate of Vigilance, Panaji on deputation.
2.	Shri Sadanand Arolkar	As Superintending Engineer in the Sports Authority of Goa on deputation.

The above Officers shall draw their pay and allowances as Superintending Engineers/Superintending Surveyor of Works/Superintending Engineer (Mon. & Eva.) (Civil) from the date of their joining in the new place of postings.

The Officer at Sr. No. (2) above, shall hold the additional charge of the post of Executive Engineer, Division XXIII (Roads), Bicholim in addition to his own duties, until further orders.

The deputation of the above Officers shall be governed by the terms & conditions of the Government O. M. No. 13/4/74-PER dated 12-2-1999 which is amended from time to time of the Department of Personnel, Secretariat, Panaji.

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

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

Panaji, 1st August, 2014.

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**Department of Transport**

Directorate of Transport

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**Notification**

No. 5/9/90-Tpt/2014/2767

In exercise of powers conferred by Clause (xii) of sub-rule (1) of Rule 22 of the Goa, Daman and Diu Motor Vehicles Tax Rules, 1974, the Government of Goa hereby exempts New Vehicle Nissan Terrano 1.5 Dci XL bearing Chassis No. MDHHSNAW5E4009271 and Engine No. K9K8796E063578 of model April 2014 owned by the Assagao Pallottine Society, Casa Pallotti,

Assagao, Mapusa, Bardez-Goa, from payment of tax due to this State, being a Charitable Institution.

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

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

Panaji, 7th August, 2014.

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**Notification**

No. 5/5/90-Tpt/2014/2768

In exercise of powers conferred by Clause (xii) of sub-rule (1) of Rule 22 of the Goa, Daman and Diu Motor Vehicles Tax Rules, 1974, the Government of Goa hereby exempts Vehicle No. GA-03/N-0222 of make Ashok Leyland (Mini-Bus) bearing Chassis No. DFR142172 and Engine No. FDH351612 of model March, 2006 owned by Domnic & Jo-an Ministries, H. No. 315/4 Near Sodiem Panchayat, Tropa Vaddo, Sodiem, Siolim, Bardez-Goa from payment of tax due to this state, being a Charitable Trust.

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

Panaji, 7th August, 2014.

**Department of Women & Child  
Development**

Directorate of Women & Child Development

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**Notification**

File No. 2-280-SL-2012-DWCD/07676

Read: No. 2-280-SL-2012-DW&CD/6523 dated 26-11-2012.

In exercise of powers conferred by clause 6(a) of Griha Aadhar Scheme, Government is pleased to appoint Smt. Rupa Bhakta, resident of Mapusa in place of Shri Rupesh Kamat, a Social Worker as a member of the Committee constituted in terms of clause 6 of the scheme, with immediate effect and until further orders.

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

*Vikas S. N. Gaunekar*, Director & ex officio Joint Secretary (Women & Child Development).

Panaji, 1st August, 2014.

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