

Panaji, 17th April, 2014 (Chaitra 27, 1936)

SERIES II No. 3

OFFICIAL GAZETTE



GOVERNMENT OF GOA

PUBLISHED BY AUTHORITY

Note:- There are two Extraordinary issues to the Official Gazette, Series II No. 2 dated 10-04-2014 as follows:—

- (1) Extraordinary dated 10-04-2014 from pages 43 to 44 regarding Notifications from Department of Finance (Revenue & Control Division).
- (2) Extraordinary No. 2 dated 13-04-2014 from pages 45 to 46 regarding Notifications from Department of Finance (Revenue & Control Division).

GOVERNMENT OF GOA

Department of Co-operation

Office of the Registrar of Co-operative Societies

Order

No. 1-4-76-EST/RCS/Part-I/4545

Government is pleased to promote the following Sr. Auditors/Sr. Inspectors/Special Recovery Officer, on the establishment of the Registrar of Co-op. Societies, Government of Goa, to the post of Co-operative Officer/Special Auditor (Group 'B'), Non-Gazetted on ad hoc basis in the PB—2 ₹ 9,300-34,800+ ₹ 4,200/- and posted at the places shown against each of their names:

Sr. No.	Name of the official	Place of present posting	Place of posting on promotion	Head of Account against which salary and allowances are debited in each post
1	2	3	4	5
1.	Smt. Ulka S. Bandekar	Office of the Asstt. Registrar of Co-op. Societies, South Zone, Margao-Goa	Registrar of Co-op. Societies, Headquarters, Panaji-Goa	Demand No. 71 2425 — Co-operation; 00 —; 001 — Direction & Administration; 02 — Superintendence (Non-Plan); 01 — Salaries.
2.	Shri Santosh P. Naik	Office of the Asstt. Registrar of Co-op. Societies, South Zone, Margao-Goa	Asstt. Registrar of Co-op. Societies, Central Zone, Panaji-Goa	Demand No. 71 2425 — Co-operation; 00 —; 101 — Audit of Co-operatives; 01 — Audit (Non-Plan); 01 — Salaries.
3.	Shri Rupesh L. Korde	Registrar of Co-op. Societies, Headquarters, Panaji-Goa	Registrar of Co-op. Societies, Headquarters, Panaji-Goa	Demand No. 71 2425 — Co-operation; 00 —; 001 — Direction & Administration; 03 — Direction (Plan); 01 — Salaries.

1	2	3	4	5
4.	Shri Harish S. Naik	Registrar of Co-op. Societies, Head- quarters, Panaji-Goa	Registrar of Co-op. Societies, Headquarters, Panaji-Goa	Demand No. 71 2425 —Co-operation; 00 —; 001 —Direction & Administration; 03—Direction (Plan); 01 —Salaries.
5.	Shri Sonu R. Gaunekar	Office of the Asstt. Registrar of Co-op. Societies, Quepem Zone, Quepem-Goa	Registrar of Co-op. Societies, Headquarters, Panaji-Goa	Demand No. 71 2425 —Co-operation; 00 —; 101 —Audit of Co-operatives; 01—Audit (Non-Plan); 01 —Salaries.

The appointment is purely on ad hoc basis, initially for a period of one year and will not bestow on the appointee any claim for regular appointment/promotion to higher post and seniority in the grade.

This order shall come into force with effect from the date of taking over the charge of the post.

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

J. B. Bhingui, Registrar & ex officio Joint Secretary (Co-op. Societies).

Panaji, 23rd December, 2013.



Department of Education, Art & Culture

Directorate of Education

State Council of Educational Research & Training

Notification

No. SCERT/Acad/PAC/458/2010/1069

Government is pleased to accept the report of the Committee revising the curriculum of D.Ed. (hereinafter D.El.Ed.) for implementation from the year 2014 onwards, to be followed in all recognized Government/Private D.El.Ed. Institutions in the State of Goa.

The revised curriculum is framed on the basis of National Curriculum Framework-2005 (NCF-2005) & National Curriculum Framework for Teacher Education-2009 (NCFTE-2009). Consequent upon the revision of curriculum, the admission procedure & fees shall be prescribed by the State Government for the concerned academic year to be followed by the recognized D.El.Ed. Institutions in the State.

The revised curriculum provides scope for community participation, excursion/educational tours, reporting and emphasis on practice teaching. The D.El.Ed. Course is divided into four semesters with even distribution of subjects with

credits. Semester system is introduced to ensure that the process of "Continuous Comprehensive Evaluation" is further strengthened in teacher education.

The complete document can be downloaded from the official website of Directorate of Education 'www.education.goa.gov.in'

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

Anil V. Powar, Director & ex officio Joint Secretary (School Education).

Porvorim, 26th February, 2014.



Department of Forest

Addendum

No. 4-2-2011-FOR/135

Read: Order No. 4-2-2011/FOR dated 22-11-2013.

After 1st para of the Government Order cited at preamble, Shri Anil Shetgaonkar, Assistant Conservator of Forests, who was posted against the vacant post of Assistant Conservator of Forests, South Goa Division, Margao shall draw his salary against the said post.

The rest of the contents shall remain unchanged.

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

Nivette F. D. Sapeco, Under Secretary (Forests),
Porvorim, 4th April, 2014.



Goa Human Rights Commission

Proceeding No. 231/2013

INQUIRY REPORT

The Complainant is the widow of late Shri Bhaskar Pandurang Khandeparkar. She claims that she is residing in House No.1 of Village Panchayat Pilerne, Moica wado, Pilerne, Bardez-Goa alongwith her two children. She has stated that she has filed an application before the Assistant Engineer, WD III(PHE), Porvorim-Goa/Respondent No. 2 for water connection to her house. It is her case that the Respondent No. 2 refused to accept the application stating that the N.O.C. given by Village Panchayat includes three names namely Vasant, Bhaskar and Vishnu Khandeparkar. She has further stated that the Respondent No. 2 directed the Complainant to obtain N.O.C. from the Health Officer, Candolim Health Centre, Candolim-Goa/Respondent No. 3. She states that the Respondent No. 3 denied to give N.O.C. for the same reasons.

2. This Commission issued notices to the Respondents. The Respondent No. 3 in its reply has stated that the water connection is supplied only after complying the conditions laid down in Goa Public Health Act and only after submission of relevant documents by the Applicant. It is further stated by Respondent No. 3 that the Applicant has not submitted the relevant documents namely, documents establishing her ownership rights of the house.

3. The Complainant has filed her Affidavit dated 16-12-2013 in which she has stated that she is residing in the said house as a Mundkar. She has produced Ration Card in respect of the said house No. 1 in which her name is figuring alongwith her deceased husband and her two children. She has also produced several other documents to indicate that she is residing in the said house. On the basis of the documents produced by her, it is apparent that the Complainant is residing in House No. 1 for which she has asked for releasing water connection from the Respondent No. 2.

4. Needless to say that water supply is a basic necessity of life which is a fundamental right guaranteed under Article-21 of the Constitution of India. State Government is bound to supply potable water to every citizen. Denial of such basic necessity of water would amount to violation of human rights. The Complainant therefore is entitled for release of water connection to her house since she has established that she is residing in the said house and the conditions laid down by the concerned authorities are fulfilled.

5. The Complainant has annexed a sketch showing the existence of the house and the location of the Soak Pit where she intends to construct the same. The Complainant therefore is entitled for release of water connection after the Soak Pit is constructed.

6. We therefore recommend that the Respondent No. 3 shall issue necessary N.O.C. for release of water connection after recording satisfaction that the Soak Pit has been constructed. Thereafter Respondent No. 2 shall take appropriate steps to release water connection to the Complainant without delay.

7. The Respondents shall submit action taken report or proposed to be taken to this Commission on 03-03-2014 at 11.00 a.m.

Date: 18-12-2013.

Place: Panaji.

Sd/-
Justice P. K. Misra
Chairperson
Goa Human
Rights
Commission

Sd/-
A. D. Salkar
Member
Goa Human
Rights
Commission

Sd/-
J. A. Keny
Member
Goa Human
Rights
Commission

No. PHCC/letter/2013-14/4167
Government of Goa,
Primary Health Centre,
Candolim, Bardez-Goa.
Dated: 18-03-2014.

To
The Under Secretary,
Goa Human Rights Commission,
Panaji-Goa.

Sub.:- Submission of Action Taken Report in
Proceeding No. 231/2013.

Sir,

After receiving the Inquiry Report dated 24-12-2013 in proceeding No. 231/2013, order for water connection was issued by the Primary

Health Centre, Candolim, vide order No. PHCC/ /13-14/2757 dated 8-01-14 to the Assistant Engineer, Water Supply Sub-Div V, Water Department XVII, Public Works Department, Porvorim.

This is for your information.

Yours faithfully,

Sd/-

Dr. D. Noronha
Primary Health Centre,
Candolim

Proceeding No. 100/2013

Proceeding No. 134/2013

Proceeding No. 149/2013

INQUIRY REPORT

By this common Order we propose to dispose of all the three proceedings mentioned above as they are based on facts which are identical and similar in nature relating to the incidents of alleged food poisoning of the students after consuming mid-day meals.

2. On the basis of the media reports which appeared in the local newspapers 'Herald' dated 28-06-2013 and 'Navhind Times' dated 28-06-2013 pertaining to the incident of food poisoning of students of Mallikarjun High School at Canacona, the media report which appeared in the 'Navhind Times' dated 20-07-2013 under the caption "23 students fell ill after mid-day meal in Usgao" pertaining to St. Joseph High School, Usgao, Ponda-Goa and the newspaper report which appeared in the 'Herald' dated 28-07-2013 under the caption "19 Pernem students fall ill after eating mid-day meal" of Kamleshwar High School, Deulwado, Korgao, Pernem-Goa, this Commission took *suo-motu* cognizance of the matter and issued notices to the Chairperson, Mallikarjun Vidyalaya High School, Canacona-Goa, Headmaster, St. Joseph High School, Usgao, Ponda-Goa, the Headmaster, Kamleshwar High School, Korgao, Pernem-Goa, Director of Education, Panaji-Goa, the Secretary, (Education), Secretariat, Porvorim and the State of Goa through the Chief Secretary, Secretariat, Porvorim-Goa. In pursuance to the notices, the respondents filed their respective responses.

3. The Chairman of Shree Mallikarjun Vidhyala High School, Canacona (proceeding No.100/2013) in his reply has stated that the students of Std. V to VIII were served bhaji and bread which was supplied by Omkar Self Help Group, Kindlem by the contractor Mrs. Sneha alias Sandhya Dinesh Dessai

from Canacona. It is stated that before the mid-day meal is served it is their usual practice to taste the food and the same was tasted by one of their teachers, Headmaster Mr. N. D. Fernandes and also by three mid-day meal servers. After the recess, during Vth period some students from Std. V started complaining of stomachache, headache and nausea. 18 students were shifted to the Community Health Centre, Canacona. Even after giving treatment 8 students did not recover and they were referred to Hospicio Hospital, Margao for further treatment. Initially, 23 students were admitted in the Community Health Centre. Later on the remaining students who had the mid-day meals were taken to the Community Health Centre as a precautionary measure. The total number of students who were given treatment were 86 in number. During the course of the day, the Mamlatdar/Executive Magistrate of Canacona taluka visited the school and inspected the mid-day meal and also sealed the samples of the mid-day meal which was served to the students. Thereafter, complaint was filed at Canacona Police Station. The Police Inspector of Canacona Police Station also visited the school. Later on the contractor Mrs. Sneha Dinesh Dessai was arrested by Canacona police.

4. The Manager of St. Joseph High School, Usgao, Ponda (proceeding No.134/2013) in his reply has stated that the food which is supplied to the school by the Self-Help Groups is tasted by two or more persons who are working in the school before serving to the students. The meal was tasted and was found to be good before giving to the students. It is further stated that the ambulance was called and the students were taken to the hospital so that there should be no delay in case the matter becomes serious. The students were fine and reached the hospital in a happy mood. The students were not admitted but were kept under observation and sent home at 4.00 p.m. The school continued the meals from next day onwards but on account of incident of another school report of food-poisoning from Pernem school made almost all the students to stop eating meals and accordingly he stopped the meals from 1st August onwards and had a meeting of parents on 5th August, 2013 and it was felt that the meals should be cooked in the school.

5. The Headmaster of Kamleshwar High School, Deulwado, Korgao (proceeding No.149/2013) in his reply has stated that mid-day meal supplier supplied meals to the students consisting of bhaji (green peas) and bread at 10.45 a.m. After about 10 minutes at 11.00 a.m. one student Ms. Rachana Mandrekar started vomiting. Immediately about 10-12 students also started vomiting. About 20

students were sent to the Community Health Centre, Tuem at about 11.10 a.m. accompanied by four teachers and two mid-day meal helpers. It is further stated that the Food Safety Officer visited the school at 3.00 p.m. and collected the sample of the MDM (bhaji/pao) and it was duly sealed.

6. The Director of Education has stated that by a Circular No. DE/VOC/466/MDM/2005/165 dated 10-06-2005, the Directorate of Education has informed all the Headmasters/Headmistresses of all Government/Government aided institutions to implement mid-day meal scheme by providing hot cooked food to all Government and Government aided primary schools children of Std. I to Std. IV under the National Programme of Nutritional Support to Primary Education, Mid-day Meal Scheme as per the Supreme Court directions. The concerned Headmasters of the primary schools were directed to check the quality and quantity of hot cooked food before distributing it to the school children. If the food items are of poor quality, food should not be distributed to the children and the same should be informed to the ADEI of the taluka.

7. By another Circular dated 03-06-2011 all the Presidents of Self-Help Groups were instructed to take all the measures to cook the meal in tidy and clean kitchen with quality ingredients which has to be added. The food served should contain appropriate weight and nutritional values as prescribed. It is further stated that the Directorate of Education is only the Nodal Agency to provide mid-day meals to the Government and Government aided schools. The responsibilities of tasting the food under the mid-day meal scheme is of the Headmaster and of the Parents-Teachers Association member of the school as per the guidelines issued.

8. It is further stated that the Directorate of Food and Drugs Administration has been requested to inspect the kitchen of Self-Help Groups/Mahila Mandals regularly and the Taluka ADEIs have been directed to ensure that the school authorities shall taste the meals before serving to the students. It is also stated that all necessary precautions are taken and instructions are issued to Self-Help Groups/Mahila Mandals to supply safe and secured standard and hygienic mid-day meals.

9. We have gone through the media reports and the responses filed by the Respondents in respective cases. We have also heard the Parties.

10. The records indicate that on 27-06-2013 the mid-day meal was supplied by Omkar Self-Help Group to the students of Mallikarjun Vidhyala High School. The samples of food were analysed by the

Directorate of Food and Drugs Administration, Panaji. The Analytical Report of Food and Drugs Administration indicates that out of five samples drawn, two samples of patal bhaji and bread showed presence of E-coli micro-organism. According to the Food and Drugs Administration the said food articles were unfit for consumption.

11. The food samples of St. Joseph High School, Usgao were also analysed by the Food and Drugs Administration. The Analytical Report indicates that all the five samples were of standard quality free from bacterial contamination and fit for consumption. Similarly, the food samples of Kamleshwar High School, Korga were also analysed by the Food and Drugs Administration and it was found that the sample analysed was fit for consumption and was free from pathogeni micro-organism of E.coli and Salmonela Bacterial contamination.

12. It is thus apparent that the food supplied by the Self-Help Group of Mallikarjun High School, Canacona was not fit for consumption. But food supplied to the students of St. Joseph High School, Usgao and Kamleshwar High School Korgao was found fit for human consumption.

13. The State of Goa is implementing the mid-day meal scheme sponsored by Government of India through Directorate of Education, Panaji. The contracts for supplying cooked food are awarded to Self Help Groups/Mahila Mandals by Directorate of Education. It appears that there are 82 Self-Help Groups/Mahila Mandals who have been awarded such contracts. Needless to say that the food required to be cooked in clean and tidy kitchens and in hygienic atmosphere. It is therefore imperative on the part of school managements as well as the Directorate of Education to keep a strict vigil over such activities to ensure that the food is cooked in clean and tidy kitchens and in hygienic atmosphere to prevent any untoward incident.

14. The International Covenant on Economic, Social and Cultural Rights which India is a State Party, specifically recognises that "the enjoyment of the highest attainable standard of health" is the right of every human being. Article-21 of the Constitution of India has been judiciously interpreted to expand the meaning and scope of the right to life to include right to health which is a fundamental right of every citizen. Thus, it is the primary obligation of the State Government to protect and promote the right to health of citizens including the students in letter and spirit.

15. In the facts and circumstances of these cases, we make following recommendations:

1. All the Self-Help Groups/Mahila Mandals which are given contracts to supply mid-day meals to the students of Government/Government aided schools should cook the food in clean and tidy kitchen rooms which are duly approved by Directorate of Food and Drugs Administration, Panaji-Goa. They should maintain cleanliness at the place of cooking and the food should be cooked in a hygienic atmosphere.
2. All the Self-Help Group/Mahila Mandals should supply hygienic and quality meals to the students.
3. The food/meals should be tasted by the representative of school management along with representative of Parent/Teachers Association before serving the cooked food to the students.
4. The ingredients used to cook the food should be stored in a hygienic and safe place to avoid contamination.
5. The Food & Drugs Administration should carry out periodical inspections of cooking places as well as ingredients used for cooking food with the assistance of representative of the Director of Education to ensure that hygienic food is supplied to the students.
6. As far as possible the concerned authorities must ensure that only hot cooked food is provided to the children to avoid any contamination in transit.
7. The Director of Education who is the overall Controlling and Supervisory Authority should keep strict vigilance over the Self-Help Groups/ /Mahila Mandals while implementing the mid-day meal scheme to avoid any untoward incidents.

The State of Goa through its Chief Secretary shall forward its comments on the report including the action taken or proposed to be taken thereon in terms of Section 18 (e) of the Protection of Human Rights Act, 1993 to this Commission on 14-02-2014 at 11.00 a.m.

Date: 08-01-2014.
Place: Panaji-Goa.

Sd/- Justice P. K. Misra Chairperson Goa Human Rights Commission	Sd/- A. D. Salkar Member Goa Human Rights Commission	Sd/- J. A. Keny Member Goa Human Rights Commission
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BEFORE THE GOA STATE HUMAN RIGHT
COMMISSION AT PANAJI

Proceeding No.100/2013
Proceeding No.134/2013
Proceeding No.149/2013

Suo Motu

V/s

State of GoaRespondent

REPORT/MEASURES TAKEN BY STATE OF GOA
ON THE BASIS OF RECOMMENDATION MADE
BY THIS HONOURABLE COMMISSION

1. This Respondent submits that this Honourable Commission on 8-01-2014 made the following recommendation as per Section 18(e) of The Protection of Human Rights Act, 1993 on the issue of "Mid-Day Meal".

- a) Recommendation No.1: All the Self Help Group/Mahila Mandals which are given contract to supply Mid-Day Meal to the students of Government/Government aided schools are having kitchens duly approved by Directorate of Food and Drugs Administration, Panaji-Goa. And cooking the food items in clean and tidy kitchen/rooms which are duly approved by Directorate of Food and Drugs Administration.
 - To this instructions have already been issued to all concern to maintain cleanliness at the place of cooking and to cook the food in hygienic conditions (copy enclosed).
 - The contract to supply Mid-Day Meal to the children in the elementary schools in the Goa State is given only to those Self Help Groups who have obtained license from Directorate of Food and Drugs Administration, Government of Goa.
- b) Recommendation No. 2: All the Self Help Groups/Mahila Mandals should supply hygienic and quality meals to the student.
 - On this, instructions are issued to all the Self Help Groups/Mahila Mandals to supply hygienic and quality meals to the students and inspections to ensure it is done regularly by the Officers of Directorate of Education.
- c) Recommendation No. 3: The food/meals should be tasted by the representative of school management alongwith representative of Parent/Teacher Association before serving the cooked food to the students.

- Circulars are already issued to the schools to taste the MDM before serving to the students (copy enclosed).
- d) Recommendation No. 4: The ingredients used to cook food should be stored in a hygienic and safe place to avoid contamination.
- Instructions are issued to Self Help Groups/Mahila Mandals regarding guidelines/suggestions for preparation of nutritious and economical Mid-day Meal.
- e) Recommendation No. 5: The Food and Drugs Administration should carry out periodical inspection of cooking places as well as ingredients used for cooking food with the assistance of representative to the Director of Education to ensure that hygienic food is supplied to the students.
- In view of the above, Directorate of Education has requested the Directorate of Food and Drugs Administration to collect samples of food from Self Help Group/Mahila Mandal randomly on surprise inspection for analysis to maintain the food quality and the report of the same may be submitted to this office to take further action in the matter.
- f) Recommendation No. 6: As far as possible, the concerned Authorities must ensure that only hot cooked food is provided to the children to avoid any contamination in transit.
- Director of Education has issued instructions to Self Help Groups to ensure that only hot cooked food is provided to the children to avoid any contamination in transit.
- g) Recommendation No. 7: The Director of Education who is overall controlling and supervisory Authority should keep strict vigilance over the Self Help Groups/Mahila Mandals while implementing the Mid Day Meal Scheme to avoid any untoward incidents.
- Director of Education through its zonal offices and ADEI offices keeps strict vigil and takes utmost care to avoid any untoward incidents. Director of Education has taken action on Omkar Self Help Group by suspending its contract.

Sd/-

Place: Panaji-Goa. State of Goa
Date: 01-04-2014. through its Chief Secretary
(Education Secretary)

Department of Handicrafts, Textiles & Coir

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Order

No. DHTC/Admn/18(1)/2013-14/582

Read: Notification No. 10/2/2005-LA regarding the Right to Information Act, 2005.

In pursuance of the Right to Information Act, 2005 and powers vested in me under Section 5(1) and (2) of the said Act, I hereby designate the following officers as State Public Information Officer/State Assistant Public Information Officer:

1. Assistant Director (Trg.) — State Public Information Officer.
2. Technical Officer — Assistant Public Information Officer(I).
3. Head Clerk — Assistant Public Information Officer(II).

The Assistant Director (Trg.) shall be the in-charge of the Establishment, Accounts Section, Purchase Section and Training Section.

Technical Officer, Assistant Public Information Officer (I) shall be incharge of Technical Section.

Head Clerk, Assistant Public Information Officer (II) shall be incharge of Establishment and Accounts Section.

Any other areas/sections not specified above shall be attended by Assistant Director (Trg.) for the purpose of Right to Information Act.

The Assistant Public Information Officers shall work under State Public Information Officer for concerned sections.

Further in terms of provisions of Section 19 of the said Act, the Director of Handicrafts, Textile & Coir shall be first Appellate authority.

The power and the functions of the above officers are defined and specified in the Notification of Right to Information Act, 2005.

S. V. Naik, Director (Handicrafts, Textiles & Coir).
Panaji, 7th March, 2014.

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Department of Home
Home—General Division

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Order

No. 13/3/84-HD(G)/Vol.II/1322

In exercise of the powers conferred by sub-section (3) of Section 3 of the National Security

Act, 1980 (Central Act 45 of 1980), the Government of Goa, being satisfied having regard to the circumstances likely to prevail in any area within the local limits of the jurisdiction of the District Magistrate, North Goa, Panaji and District Magistrate, South Goa, Margao, that it is necessary so to do, hereby directs that the said District Magistrates may also, if satisfied as provided in sub-section (2) of Section 3 of the said Act, exercise the powers conferred by the said Section within the local limits of their jurisdiction for a further period of three months from 01-04-2014.

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

Neetal P. Amonkar, Under Secretary (Home).

Porvorim, 1st April, 2014.

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Department of Labour

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Notification

No. 28/1/2013-Lab/740

The following award passed by the Industrial Tribunal and Labour Court at Panaji-Goa on 21-10-2013 in reference No. IT/19/013 in reference No. IT/45/99 is hereby published as required by Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

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

Shashank V. Thakur, Under Secretary (Labour).

Porvorim, 4th November, 2013.

IN THE INDUSTRIAL TRIBUNAL AND
LABOUR COURT

GOVERNMENT OF GOA

AT PANAJI

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

IT/19/13

In Ref. No. IT/45/99

Shri Sanjeev N. Sawant,
C/o Purushottam R. Sawant,
Police Quarters, Porvorim,
A-Block No. 4, Room No. 6,
Bardez-Goa.Workman/Party I

V/s

M/s. Whispering Palms Beach Resort,
Candolim Beach,
Candolim, Bardez-Goa. Employer/Party II
Party-I/Workman represented by Adv. Ms. S. Corriea.
Party-II/Employer represented by Adv. A. Kundaikar.

AWARD

(Passed on 21st day of October, 2013)

By order dated 12-4-99, bearing No. IRM/CON/ /MAP/(62)/97/2073, the Government of Goa in exercise of powers conferred by Section 10 (1) (d) of the Industrial Disputes Act, 1947 (for short The Act), has referred the following dispute to this Tribunal for adjudication.

“(1) Whether the action of the management of M/s. Whispering Palms Beach Resort, Candolim, Bardez-Goa, in terminating the services of Shri Sanjeev N. Sawant, ‘Carpentry-in-charge’, with effect from 18-2-1997, is legal and justified?”

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

2. Upon receipt of the dispute, it was registered as Ref. IT/45/99 and registered AD notices were issued to both the parties. Pursuant to service of notices Party I filed the claim statement at Exb. 3 and Party II filed the written statement at Exb. 4. Party I then filed the rejoinder at Exb. 5.

3. In the claim statement, it is in short the case of Party I that he was appointed by Party II from 1-4-92 as carpenter/painter and that he is a workman u/s 2(s) of the Act and it is stated that he was then promoted as Carpentry-Works-Incharge by letter dated 1-1-97 but even after the promotion, his work methods/work description/work responsibilities remained the same. It is stated that his designation was changed to Carpentry-Works-Incharge by Party II deliberately with an intention -malafide intention-to sack him by treating him as non-workman. It is stated that his services were suddenly terminated by termination letter dated 18-2-97 illegally and unjustifiably by hurling imaginary and fictitious charges which termination simplicitor infact amounts to dismissal from service, which is not permissible in law. It is stated that promoting him with malafide intention by sacking him conveniently treating him as a non-workman is in fact a serious unfair labour practice under the Industrial Disputes Act. It is stated that his services have been terminated without holding a proper, fair and valid inquiry and without observing the principles of natural justice for alleged misconduct and loss of confidence. It is stated that his services were infact terminated for his trade union activities

and it is motivated, malafide, by way of victimization and unfair labour practices as per clauses 5(a), (b), (c) and (d) of the fifth scheduled of the Act. That after his termination Party I received a letter dated 21-2-97 signed by personal manager enclosing a cheque for Rs. 9,854/-purporting to be his legal dues payable to him upon his termination. That Party I replied the termination order by reply dated 28-2-97 denying all the charges. The matter then went before the Asst. Labour Commissioner but the dispute ended in failure. It is therefore prayed by Party I to quash the termination order and to reinstate him with full back wages with continuity of service.

4. In the written statement Party II has denied the case set up by Party I and has stated that the promotion of Party I as Carpentry-Works-Incharge with effect from 1-5-96 was duly acknowledged and willfully accepted by Party I; that the said post is supervisory post with remuneration of Grade II scale drawing salary of Rs. 3,256/- and therefore Party I is not a workman as defined under section 2(s) of the Act. It is stated that on 1-2-97 at 16:00 hours while Mr. S. C. Parida, the General Manager, Administration and Finance was on his round in Maintenance Department in the hotel of Party II, an iron material weighing 1/2 kg. was thrown in his direction however Mr. Parida escaped and upon enquiry it was gathered that the same was thrown by Party I. It is stated that the management opted lenient view and warned Party I not to repeat such acts in future. It is stated that on 8-2-97 at about 21:30 hrs. Party I went to the residence of Mr. Parida and threw soda bottles in his house having some malafide intentions to again hurt Mr. Parida and subsequently Party I was arrested by Police and released on bail. It is stated that Party I is involved in serious type of misconduct and considering his riotous and disorderly behaviour with Mr. Parida and apprehending that his such behaviour could cause damage to hotel property the management discharged Party I from services for loss of confidence in him and for his involvement in serious type of misconduct. It is stated that his services were terminated as per clause 15 of the appointment letter dated 17-7-93.

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

6. On the basis of averments of the respective parties issues were framed/recast on 18-7-07 (Exb. 20) and the said issues read as under:

1. Whether the Party I was a workman as defined under Section 2(s) of the Industrial Disputes

Act, 1947 at the time of termination of his service?

2. Whether termination of service of the Party I by the Party II w.e.f. 18-2-1997 is legal and justified?

3. Whether the Party I is entitled to the relief's as prayed for ?

4. What Award?

7. In the course of the evidence Party I/workman Shri Sanjeev N. Sawant examined himself and closed the case. On behalf of Party II Shri Ishrad Noor Siddique was examined as witness No. 1 and Shri S. C. Parida as witness No. 2 heard Ld. Adv. Ms S. Corriea for Party I and learned Adv. Shri A. Kundaikar for Party II.

8. Before advertng myself to the discussion on the merits of the issues framed, it would be proper and essential to narrate certain facts which led to the remand of this matter. After the evidence of aforesaid witness was recorded, my learned predecessor upon hearing the arguments advanced by the representatives of the respective parties, passed an award dated 24-7-07 in which he answered above mentioned issue No. 1 in the affirmative, issue No. 2 in the negative, with respect to issue No. 3 he held that Party I was entitled only to the back wages and vide issue No. 4 which was in terms of the order passed in the award he held that the action of Party II in terminating the services of Party I was illegal and unjustified and thereby set aside the said termination order by holding that Party I was entitled only to the back wages for the period from the date of termination of his services till the date of the award so also directed Party II to pay full back wages to Party I for the period from the date of termination of service till the date of passing of the award and further rejected the claim of Party I made for reinstatement in service. Records reveal that Party II challenged the award before Hon'ble High Court of Bombay at Goa vide writ petition No. 472/2007 in which it was the precise case of Party II that the learned tribunal had not considered the evidence of the two witnesses examined by Party II to prove the acts of misconduct committed by Party I and that on account of above reason the impugned award was vitiated and hence deserved to be quashed and set aside. Learned Adv. for Party II invited attention of His Lordship to the judgment in the case of **The Workmen of M/s Firestone Tyre and Rubber Co. of India P. Ltd. v/s The Management and others AIR 1973 SC 1227** to canvas that it was open to Party II to substantiate the grounds of termination before the Tribunal.

9. Perusal of the oral judgment dated 23-7-13, of the Hon'ble High Court reveals that some material was adduced by Party II in support of its case through Mr. Siddique and Mr. Parida should have been appreciated by the Tribunal on its own merits by considering the evidence adduced by both the parties. It was therefore the Hon'ble High Court found it appropriate in the interest of justice to quash and set aside the impugned award dated 24-7-07 and direct the tribunal to decide the matter afresh after hearing the parties in accordance with law. It is also observed by the Hon'ble High Court that the Tribunal after considering the rival contentions of the parties on merits should deal with it in accordance with law. Hon'ble High Court upon request by Ld. Adv. for Party I permitted him to file a certified copy of the judgment of acquittal passed by the Ld. Session Judge. It is on account of aforesaid reasons the award dated 24-7-07 was quashed and set aside and the matter was restored to the file of this court with directions to dispose of the same in the light of the observations made in the judgment after hearing the parties in accordance with law, as expeditiously as possible and in any event within six months from the date of the receipt of the order and also directed the parties to appear before this Tribunal on 26-8-13 at 10:30 a.m.

10. After receipt of the above writ on 20-8-13 and pursuant to the observations made by the Hon'ble High Court in the judgment, the matter was taken up on the board on 26-8-13 at 10:30 a.m. but only Advocate A. Kundaikar on behalf of Party II remained present and filed an application requesting to issue notice to Party II which request was granted. As none appeared for and on behalf of Party I, notice was also issued to Party I returnable on 2-9-13. On 2-9-13 Adv. A. Kundaikar represented Party II whereas Adv. Ms S. Corriea represented Party I. In terms of the observations made by Hon'ble High Court further examination in chief of Party I was recorded at the request of Adv. Ms S. Corriea and he was cross-examined by Adv. for Party II. Party II did not examine any witness in rebuttal. Accordingly, the final arguments were heard.

11. In his arguments Ld. Adv. for Party I submitted that in the written statement it is the precise case of Party II that on 1-2-97 at 16:00 hrs. when Mr. S. C. Parida was taking rounds in the maintenance department, Party I threw an iron material in his direction and again on 8-2-97 at about 21:30 hrs. Party I went to the residence of Mr. Parida and threw soda bottles in his house with an intention to hurt Mr. Parida. He stated that Party I had also committed other types of misconducts and as such

past record of Party I is not good. He then stated that after the first incident dated 1-2-97 Party I was warned and as regards the second incident dated 8-2-97 he stated that Party II all the way went to Altinho to the house of Mr. Parida from Porvorim where Party I stays, carrying soda bottles only with the intention to assault Mr. Parida. He stated that Party II is a three star hotel catering to the needs of international tourists and in case Party I with above nature and attitude is allowed to continue in employment in the hotel the same will bring disrepute to the hotel, resulting in loss of business. He stated that Party II has lost confidence in Party I and hence was dismissed without holding enquiry. He stated that the punishment of dismissal from service is proportionate to the gravity of misconduct and thus needs no interference by the court. In support of his above submissions he relied on the judgment in the case of **L. K. Verma v/s H. M. P. Ltd. and another AIR 2006 SC 975** in which by referring to the judgment in the case of **Muriadih Colliery v/s Bihar Colliery Kamgar Union (2005) 3 SCC 331**, observed as under:

".... It is well established principle in law that in a given circumstance it is open to the industrial tribunal acting under section 11-A of the Industrial Disputes Act, 1947 to interfere with the punishment awarded in the domestic enquiry for good and valid reasons. If the tribunal decides to interfere with such punishment it should bear in mind the principle of proportionality between the gravity of the offence and the stringency of the punishment"

12. He further relied on the judgment in the case of **Ramakant Misra v/s State of U. P. and Others 1982 ILLJ 472**, in which the Apex Court while specifying the purpose of introduction of Section 11-A has held that *"It is now crystal clear that the labour court has the jurisdiction and power to substitute its measure of punishment in place of the managerial wisdom once it is satisfied that the order of discharge or dismissal was not justified in the facts and circumstances of the case. Before we can exercise the discretion conferred by S. 11-A, the court has to be satisfied that the order of discharge or dismissal was not justified in the facts and circumstances of the case. These words indicate that even though misconduct is proved and a penalty has to be imposed, the extreme penalty of dismissal or discharge was not justified in the facts and circumstances of the case meaning thereby that the punishment was either disproportionately heavy or excessive. As stated earlier, it is a well recognized principle of jurisprudence which permits penalty to be imposed for misconduct that the penalty must be commensurate with the gravity of the offence charged"*.

13. He further relied on the judgment in the case of **Mahindra & Mahindra Ltd., v/s N. B. Nawade 2005-I CLR 803** in which a three Judge Bench of the Apex Court has held that *"It is no doubt true that after introduction of Section 11-A in the Industrial Disputes Act, certain amount of discretion is vested with the Labour Court/Industrial Tribunal in interfering with the quantum of punishment awarded by the Management where the concerned workman is found guilty of misconduct. The said area of discretion has been very well defined by the various judgments of this Court referred to herein above and it is certainly not unlimited as has been observed by the Division Bench of the High Court. The discretion which can be exercised under Section 11-A is available only on the existence of certain factors like punishment being disproportionate to the gravity of misconduct so as to disturb the conscience of the court, or the existence of any mitigating circumstances which requires the reduction of the sentence, or the past conduct of the workman which may persuade the Labour Court to reduce the punishment. In the absence of any such factor existing, the Labour Court cannot by way of sympathy alone exercise the power under Section 11-A of the Act and reduce the punishment"*.

14. The above principles have been reiterated by the Apex Court in several subsequent judgments including the case of **Jagdish Singh v/s Punjab Engineering College and Others 2009 LLR 752**, relied upon by the Ld. Advocate for Party II, wherein it has been held that *"The Courts and the Tribunals can interfere with the decision of the disciplinary authority, only when they are satisfied that the punishment imposed by the disciplinary authority is shockingly disproportionate to the gravity of the charges alleged and proved against a delinquent employee and not otherwise"*.

15. He then relied in the judgment in the case of **Madhya Pradesh Electricity Board v/s Jagdish Chandra Sharma 2005 I CLR 1074 (SC)** in which it is observed that when the punishment of termination is awarded in hitting and injuring a superior officer supervising the work of an employee, with no extenuating circumstance established, it cannot be said to be not justified and it cannot be termed unduly harsh or disproportionate.

16. He also relied on the judgment in the case of **V. Ramana v/s A.P. S.R.T.C. and others AIR 2005 SC 3417** in which the services of the conductor were terminated for not issuing tickets at the boarding point itself to the passengers who were in the bus, failure to collect fare and issue tickets to the persons

who were alighting at the particular destination and not properly maintaining records of the tickets and fare however it was held that the act of the conductors is in fiduciary capacity and it would be a case of gross misconduct if they do not collect any fare or the correct amount of fare and that a conductor holds a post of trust. It is held that a person guilty of breach of trust should be imposed punishment of removal from service. It is also held in his judgment that unless the punishment imposed by the Disciplinary Authority or the Appellate Authority shocks the conscience of the court/tribunal, there is no scope for interference.

17. On the other hand Ld. Adv. for Party I contended that the workman has been terminated by imposing false charges upon him and has been victimized for his unionized activities. By referring to Exb. E-9 produced by Shri Siddique which is a reply dated 28-1-02 by P. I. Calangute Police Station to the application dated 16-1-02 filed before Police Station by Shri Siddique as Personal Manager of Party I, Ld. Advocate for Party I stated that though by this reply, P.I. Calangute Police Station has informed that Party I was arrested in Calangute P. S. Cr. No. 45/98 u/s 143, 147, 324, 307, 506, 427, 120-B r/w 149 IPC relating to Sessions case No. 2/2000, the incident in this case had taken place on 4-8-93 which is much after the termination of the services of the workman in the year 1997 and therefore Exb. E-9 cannot be read to mean that Party I has a criminal background. By inviting my attention to the judgment in SC. No. 2/2000 (Exb. 25) she stated that Party I herein was arrayed as accused No. 5 and that he was discharged. Thus, according to her this itself makes it clear that Exb. E-9 has no legal force. Further, by inviting my attention to Exb. E-5 which is a N. C. complaint dated 9-2-97 with respect to the incident dated 8-2-97, she stated that this complaint does not bear the signature of the complainant and that above the column meant for the signature of the complainant, it is written as "As per application" and therefore according to her Exb. E-5 cannot be considered as a complaint in the eyes of law. She also stated that no incident stated to have occurred on 1-2-97 did occur and therefore the question of issuing warning to Party I by General Manager or any other person does not arise. Thus, in short it is her contention that there is no convincing evidence towards proof of any misconducts allegedly committed by Party I and therefore the termination of his services by Party II w.e.f. 18-2-97 without holding enquiry is illegal and unjustified.

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

19. As observed by the Hon'ble High Court while remanding the matter, this court has to find out on the basis of the evidence on record if Party II has succeeded in proving the misconduct by Party I as no enquiry was held prior to the termination of services of Party I. In this context, certain observations made in para 27 of the judgment in the case of **The Workmen of M/s Firestone Tyre and Rubber Co (supra)** referred to by the Hon'ble High Court are very material and the same are reproduced as under:

"27. From those decisions, the following principles broadly emerge:- (1) The right to take disciplinary action and to decide upon the quantum of punishment are mainly managerial functions, but if a dispute is referred to a Tribunal, the latter has power to see if action of the employer is justified.

(2) Before imposing the punishment, an employer is expected to conduct a proper enquiry in accordance with the provisions of the Standing Orders, if applicable, and principles of natural justice. The enquiry should not be an empty formality.

(3) When a proper enquiry has been held by an employer, and the findings of misconduct is plausible conclusion flowing from the evidence, adduced at the said enquiry, the Tribunal has no jurisdiction to sit in judgment over the decision of the employer as an appellate body. The inference with the decision of the employer will be justified only when the findings arrived at in the enquiry are perverse or the management is guilty of victimization, unfair labour practice or malafide.

(4) Even if no enquiry has been held by an employer or if the enquiry held by him is found to be defective, the Tribunal in order to satisfy itself about the legality and validity of the order, has to give an opportunity to the employer and employee to, adduce evidence before it. It is open to the employer to adduce evidence for the first time justifying his action; and it is open to the employee to adduce evidence contra.

(5) The effect of an employer not holding an enquiry is that the Tribunal would not have to consider only whether there was a prima facie case. On the other hand, the issue about the merits of the impugned order of dismissal or discharge is at large before the Tribunal and the latter on the evidence adduced before it, has to decide for itself whether the misconduct alleged is proved.

In such cases, the point about the exercise of managerial functions does not arise at all. A case of defective enquiry stands on the same footing as no enquiry.

(6) The Tribunal gets jurisdiction to consider the evidence placed before it for the first time in justifications of the action taken only, if no enquiry has been held or after the enquiry conducted by an employer is found to be defective.

(7) It has never been recognised that the Tribunal should straightaway, without anything more, direct reinstatement of a dismissed or a discharged employee, once it is found that no domestic enquiry has been held or the said enquiry is found to be defective.

(8) An employer, who wants to avail himself of the opportunity of adducing evidence for the first time before the Tribunal to justify his action, should ask for it at the appropriate stage. If such an opportunity is asked for, the Tribunal has no power to refuse. The giving of an opportunity to an employer to adduce evidence for the first time before the Tribunal is in the interest of both the management and the employee, and to enable the Tribunal itself to be satisfied about the alleged misconduct.

9. Once the misconduct is proved either in the enquiry conducted by an employer or by the evidence placed before a Tribunal for the first time, punishment imposed cannot be interfered with by the Tribunal except in cases where the punishment is so harsh as to, suggest victimization.

*10. In a particular case, after setting aside the order of dismissal, whether a workman should be reinstated or paid compensation is, as held by this court in **The Management of Panitole Tea Estate v/s The Workmen (1)**, within the judicial decision of a Labour Court or Tribunal."*

20. This court is therefore required to answer only issue Nos. 2, 3 and 4 and this is in terms of the observations made by the Hon'ble High Court in its oral judgment dated 23-7-13, which observations are in turn based on the observations in the judgment in the case of **M/s Firestone Tyre (supra)**.

21. My findings on the above issues are as under:

Issue No. 2: In the affirmative.

Issue No. 3: In the negative.

Issue No. 4: As per order below.

REASONS

22. *Issue No. 2:* The Principles which emerge from the judgments relied upon by Ld. Advocate for Party II are that u/s 11-A, the Tribunal/Court can interfere with the punishment and alter the same only if it comes to the conclusion that the punishment imposed is either shockingly disproportionate to the gravity of misconduct and shocks the conscience of the Tribunal/Court and persuades the Tribunal/Court to reduce the punishment or when there are mitigating circumstances which require reduction of the sentence.

23. In the instant case, the services of Party I are admittedly terminated without holding any enquiry by termination letter dated 18-02-97 (Exb.W4, Exb. W6 and Exb. W9). It is in short stated in the termination letter that on 01-02-97 at 16:00 hours while Mr. S. C. Parida was on his round in Maintenance Department an iron metal weighing about 1/2 kg. approx. was thrown in his direction and Mr. Parida avoided the blow of the said material which fell on his leg. It is stated that Mr. Parida immediately went to the place from where the iron material was thrown and noticed Party I behind the shed and thereafter Party I was warned not to repeat such acts. It is stated that on 8-2-97 at above 21:30 hrs. Party I alongwith two other employees went to the residence of Mr. Parida at Altinho, Panaji and threw soda bottles towards his house having some malafide intentions to hurt Mr. Parida upon which Mr. Parida lodged a complaint and Party I was arrested and then released on bail. It is further stated in this order that on account of such attitude on the part of Party I, Party II apprehends that Party I would sabotage the machinery of the hotel thereby causing lot of damage to the hotel as well as hampering the business of the hotel. Party II also apprehended that Party I may cause hurt to Mr. Parida as well as other managerial staff of the hotel and that management cannot repose confidence in Party I and as such has decided to discharge Party I from the service for loss of confidence with immediate effect.

24. It is therefore clear from the above order that the misconduct alleged against Party I was committed on two dates firstly on 1-02-97 and secondly on 8-02-97 which led Party II to take the decision of discharging Party I from service.

25. In the light of the observations in the judgment in the case of *M/s Firestone Tyres (supra)* the employer has liberty to adduce evidence before the Tribunal to satisfy itself about the validity and legality of the dismissal order. It is therefore required

to see if the evidence adduced before the court justifies the legality and validity of the dismissal order dated 18-02-97.

26. In his evidence Party I has stated that Party II appointed him as Carpenter-cum-Painter vide appointment letter dated 27-03-92 (Exb. W3); that thereafter his salary was revised vide letter dated 21-12-96 (Exb. W1) and then he was promoted as Carpentry-Works-Incharge w.e.f. 01-05-96 by letter dated 1-1-97 (Exb.W2). According to Party I this was forcible promotion given to him to remove him from the service by considering him as an officer. It may be mentioned here that no convincing evidence has been adduced by Party I to prove that he was forcibly promoted and even otherwise it is not suggested to the witnesses of Party II that Party I was forcibly promoted as Carpentry-Works-Incharge, to remove him from service by considering him as an officer. Thus, the above stand taken by Party I for justifying illegal termination of his service, apparently cannot be believed.

27. Be that as it may, the suggestion put to Party I in his cross-examination that on 1-2-97 he had hurled an iron material at Mr. Parida is denied by him. Nonetheless, it is stated by Party I that a police complaint was made against him by Mr. Parida. Party I has further stated that he does not know the contents of the said complaint. He has stated that he was arrested by Police and was released on the same day. He has stated that the reason for arrest as told to him was that he had assaulted Mr. Parida. From the above statements made by Party I in his cross examination, it becomes apparent that the incident of 01-02-97 did occur and it also shows *prima facie* involvement of Party I in it. At this juncture, it needs to be mentioned that it is not the case of Party II that Party I was arrested on account of the incident dated 1-2-97. This is because Mr. Parida has stated that after the incident dated 1-2-97 he told about it to GM who issued warning letter to Party I. On this subject Mr. Siddique has also stated that after the incident dated 1-2-97 Party I was warned by GM and Director. It is pertinent to note that in his cross examination Shri Siddique has stated of having seen the iron material which was thrown at Mr. Parida. He has further stated that he was present when the warning was given to Party I stating that he should not repeat such types of incidents and in case he did it, his services would be terminated. No doubt, the above statement made by Shri Siddique pertaining to giving of warning of Party I in his presence is denied in his cross-examination but there is nothing in the cross-examination stating that Shri Siddique had made

such false statement for certain reasons or as to what are those reasons. Thus, it would not stand to reason to say that Mr. Siddique has made such false statement and therefore there is every reason to hold that Party I was warned after the incident dated 01-02-97 as stated by Mr. Parida and Mr. Siddique.

28. Mr. Parida has stated that on 01-02-97 at about 4.00 p.m. when he reached near Maintenance Department, a metal piece weighing about 400 to 500 gms. was thrown at him but he managed to avoid the same. He has stated that the said piece fell on his left leg. He has stated that he tried to verify as to who had thrown the metal piece at him and he saw Party I hiding behind a small shed by the side of Maintenance Department. In his cross-examination, the above statements made by Mr. Parida are denied and it is suggested that on the said date Party I was inside the shed with other employees and that Mr. Parida had enquired with Party I as to why he had thrown the metal piece at him. It is also suggested to Mr. Parida that Party I told him that he does not know who has thrown the metal piece at him however Mr. Parida has clarified that Party I refused to admit that he had thrown the metal piece at him. It is thus clear from the nature of above evidence that the presence of Party I at the spot of the incident as well as the incident of throwing the metal piece at Mr. Parida is not denied by Party I, though, Party I has not admitted that he had thrown the said metal piece at Mr. Parida.

29. Mr. Siddique has also stated that on 1-2-97 Mr. Parida reported to the General Manager that at about 4.00 p.m. when he was having round in the Maintenance Department, an iron material was thrown in his direction and that he had seen Party I hiding behind the shed from which direction the said iron material was thrown at him. In the cross-examination of Mr. Siddique his above statements are denied but it is suggested to him that Mr. Parida enquired with Party I as to who has thrown the iron material on him and Party I told him that he had not seen anyone throwing the iron material at him. Thus, by means of above suggestion presence of Party I at the spot at the relevant time stands admitted. I have already discussed in para 28 above that Party I has not denied the incident of throwing of metal piece at Mr. Parida though he has not admitted that he threw the same. In the light of above situation if one assesses the evidence on the touchstone of preponderance of probabilities, one can safely conclude that it was Party I who threw the said metal piece towards Mr. Parida.

30. Coming to the incident dated 8-2-97 in his cross-examination, Party I has denied the suggestion that on 8-2-97 he went to the house of Mr. Parida and assaulted him with soda bottle. Mr. Parida has stated in his examination in chief that on 8-2-97 at about 9.30 p.m. he was sitting in the drawing room of his flat at Altinho, Panaji, Goa and the door of the drawing room leading to balcony was open. He has stated that he suddenly found about 7 to 8 soda bottles hurled at his drawing room and some of them leading inside the drawing room where he was sitting. He has stated that he immediately closed the door and opened it after sometime and saw Party I on the motor bike below his flat. He has stated that on the next date i.e. on 9-2-97 morning, he filed a complaint at Panaji Police Station which is at Exb. E5. He has stated that Party I was then arrested by Police. He has stated that he reported this incident to the General Manager of Party II and thereafter the services of Party I were terminated. In his cross examination it is suggested that on 8-2-97 Party I did not go to his flat at Altinho, Panaji-Goa, that Shri Parida did not see Party I on the motor bike below his flat and that Party I did not throw any soda bottles at the drawing room of the flat of Mr. Parida.

31. Mr. Siddique has also referred to the above incident dated 8-2-97 though in his cross examination he has made it clear that he had not seen Party I along with two other workers coming to the residence of Mr. Parida and throwing soda bottles at his residence. He has stated that he was told about this incident by Mr. Parida. He has stated that the other two workers who were with Party I were Mr. Laxman Chodankar and Mr. Ajay Gawas and their names were given to him by Mr. Parida and the same are also mentioned in the complaint at Exb. E5. He has denied the suggestion that Exb. E5 is a false complaint and has further denied the suggestion that Party I along with Mr. Laxman Chodankar and Mr. Ajay Gawas did not go to the residence of Mr. Parida on 8-2-97 nor did they throw soda bottles at his residence. He has also denied the suggestion that Party I, Mr. Laxman and Mr. Ajay were arrested by police upon a false complaint lodged against them. It is therefore clear from above, that filing of the complaint at Exb. E5 and of arrest of Party I, Mr. Laxman and Mr. Ajay is not denied by Party I, though according to Party I it was a false complaint pursuant to which they were arrested.

32. Perusal of Exb. E5 makes it clear that it is stated therein that on 8-2-97 at 21:30 hrs. Party I, Laxman Chodankar and Ajay Gawas threw soda bottles on the flat of Mr. Parida thereby causing

damage to Mr. Parida. Interestingly no mention of above complaint and of his arrest along with two others is made in the claim statement by Party I to contend that he was arrested by police upon a false complaint made by Shri Parida. Thus, it appears that Party I has conveniently avoided to mention the said incident which occurred on 8-2-97 in his claim statement filed on 15-7-99 and therefore adverse inference deserves to be drawn against Party I by holding that the same was not mentioned because if mentioned it would go against the case set up by Party I in the claim statement. It deserves to be mentioned that in para 5 of rejoinder Party I has stated that Party II used money power and police influence to see that he was arrested by police on fake charges and for doing normal union activities. It is however noted that the above statement is made by Party I in the rejoinder only after Party II projected the said incident in the written statement, when infact the incident was within the knowledge of Party I at the time of filing of the claim statement. Even for that matter, Party I has not adduced evidence to suggest that Party II used man power and police influence to get him arrested on the fake charges and hence this stand taken by Party I is apparently not proved by him. This being the case, there is every reason for me to conclude that it was Party I and two others with him who threw soda bottles in the drawing room of the flat of Mr. Parida.

33. As regards the judgment in Sessions case No. 2/2000 at Exb. 25 in which Party I herein is arrayed as accused No. 5 along with four others, as rightly pointed out by Ld. Advocate for Party I, the incident leading to filing of this charge-sheet is dated 4-3-98 where as Party I herein was terminated vide termination dated 18-2-97 and therefore this judgment cannot at all be considered to look into the past conduct of Party I. It has further been rightly pointed out by Ld. Advocate for Party I that reading of this judgment makes it clear that Party I herein who was accused No. 5 in Exb. 25, was discharged as no case was made out against him and therefore no weightage could be given to the letter dated 28-01-02 (Exb. E9) by P.I., Calangute Police Station to the Personal Manager of Party II, in which Party I is shown as involved in criminal activities. This is because Exb. E9 pertains to the session's case the judgment of which is at Exb. 25.

34. Nevertheless, the discussion in the preceding para by itself is not sufficient to hold that Party I has not committed any misconduct and this is because in the termination letter dated 18-2-97 Party II has referred only to the incidents dated

01-02-97 and 8-2-97 on account of which Party II had apprehension of Party I sabotaging the machinery of the hotel, causing damage to the hotel and this consequently hampering the business of the hotel. This being the case, the question of this court referring to any other acts of misconduct committed by Party I, to find out whether the termination of services of Party I was legal and justified, does not arise.

35. Apparently, Mr. Parida was working as General Manager (Admn. and Finance) with Party II. He has stated that he left the services of Party II somewhere in the month of March 1999 because he was being harassed by Party I. I have already discussed above as to how the involvement of Party I in the incidents dated 1-2-97 and 8-2-97 is established. These acts have been committed by Party I apparently, to harass Mr. Parida who was General Manager (Admn. and Finance) of Party II. Such acts towards superior officer definitely amount to serious misconduct and in such situation punishment of termination of services cannot be called as harsh and disproportionate. Thus, the observations in the judgment in the case of **Madhya Pradesh Electricity Board (supra)** stating that punishment of termination awarded for hitting and injuring a superior officer cannot be called as unduly harsh and disproportionate, squarely apply to the case in hand. By commission of aforesaid acts, Party I has committed breach of trust imposed upon him by Party II and therefore as observed in the judgment in the case of **V. Ramana (Supra)** punishment of termination of services is proper.

36. That apart, I find force in the submissions of Ld. Advocate for Party II that Party II is a three star hotel, catering to the needs of international tourists and therefore safety and security are of prime importance in the premises of Party II or else the business of Party II would be definitely affected. It is apparent that due to the acts (discussed supra) committed by Party I there was every reason for the management to loose confidence in Party I as he has indulged in the activities highly prejudicial to the interest of Party II. Thus, the punishment imposed upon Party I cannot be called as unduly harsh or disproportionate to the gravity of offence.

37. Be that as it may, in his claim statement Party I has tried to set up a case that he was promoted as Carpentry-in-Charge with malafide intention of sacking him by treating him as a non working so also that his termination is by way of victimization. In his examination in chief Party I has stated that he was the active member of the union and that he was given forcible promotion so

as to remove him from service, by considering him as an officer. It may be mentioned here that there is no documentary evidence on record suggesting that the promotion of Party I was forcible or that it was against his wishes. Party I has produced the letter of his promotion as Carpentry-in-Charge dated 1-1-97 at Exb. W-2 and there is nothing in this letter indicating that Party I was given forcible promotion or that he had accepted it under protest. Thus, Party I has failed to make out a case that he was promoted forcibly to remove him from service. As regards victimization, no acts of victimization are specified in his pleadings/evidence by Party I which is so required in terms of the observations in the judgement in the case of **M/s. Bharat Iron Works v/s Bhagubhai Balubhai Patel and Ors. AIR 1976 SC 98**. It is therefore clear that Party I has also failed to prove "victimization" at the hands of Party II. Consequently, it follows that punishment of termination of service of Party I, does not suggest victimization and hence my findings.

38. *Issue No. 3:* In view of discussion in issue No. 2 above, Party I is not entitled to any relief.

39. In the result, I pass the following:

ORDER

1. It is hereby held that the action of the management of M/s. Whispering Palms Beach Resort, Candolim, Bardez-Goa, in terminating the services of Shri Sanjeev N. Sawant, 'Carpentry-in-charge', with effect from 18-2-1997, is legal and justified.
2. Party I/Workman is therefore not entitled to any relief.
3. No order as to costs.

Inform the Government accordingly.

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

Department of Law & Judiciary

Law (Establishment) Division

Order

No. 11/2/2011-LD-(Estt)-2/787

Sub.: Constitution of State Empowered Committee.
Ref.: Order No. 11/2/2011-LD/EST(2) dated 29-4-2013.

Shri Dattaprasad Lawande, Advocate, High Court is hereby appointed as Member on the State

Empowered Committee replacing Advocate Mahesh Sonak at Sr. No. 4 of the above Order in view of his elevation to the post of Hon'ble Judge of the Bombay High Court.

Rest of the contents of the above order shall remain unchanged.

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

Vasanti H. Parvatkar, Under Secretary (Law-Estt.).
Porvorim, 3rd April, 2014.

Order

No. 22-3-2009-LD(Estt.)/L.C./612

Read: Order No. 22-3-2009-LD-Estt./L.C./712 dated 28-05-2012.

Government is pleased to accept the resignations tendered by Adv. Joaquim G. A. de Souza and Adv. Jayant P. Mulgaonkar as Members of the Law Commission for the State of Goa with immediate effect.

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

Vasanti H. Parvatkar, Under Secretary (Law-Estt.).
Porvorim, 10th March, 2014.

Order

File No. 6-1-2014-LD(Estt)/743

- Read: 1) Government Order No. 8/8/2011-LD (Estt)/1333 dated 08-08-2011.
2) Government Order No. 8/8/2011-LD (Estt)/297 dated 22-02-2013.
3) Government Order No. 8/8/2011-LD (Estt)/1861 dated 24-10-2013.

On recommendation of Goa Public Service Commission vide their letter No. COM/II/11/58(1)/2011/2273 dated 27-02-2014, ex post facto approval of Government is hereby accorded for extension of ad hoc promotion to Shri Vassudev T. Hadkonkar, District Registrar, for a period of one year w.e.f. 08-08-2013 to 07-08-2014, on the same terms and conditions cited in Order No. (1) referred to in the preamble.

This is issued with the approval of Chief Electoral Officer, Goa, vide their letter No. 5-17-2014/ELEC/(Part II) 203/2762 dated 28-03-2014.

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

Vasanti H. Parvatkar, Under Secretary (Law-Estt.).
Porvorim, 28th March, 2014.

Order

No. 1/7/2014-LD(Estt.)/747

Government of Goa is pleased to appoint the following two advocates as Additional Government Advocate attached to the Office of the Ld. Advocate General, Altinho, Panaji to appear and defend the interest of the Government in the matters before the High Court of Bombay at Goa, Panaji with immediate effect and until further orders.

1. Adv. Salvador Santosh Rebello.
2. Adv. Amogh V. Prabhudesai.

They shall be paid fees as per the existing terms and conditions laid down by the Government, applicable to Additional Government Advocates, amended from time to time, on submission of bills (in duplicate) alongwith the attendance certificate, issued by the Registrar of the High Court of Bombay, Panaji-Goa. They should comply with the instructions contained in the Government Circular No. 4-43-99/LD dated 04-05-2000. They will appear in those matters, which would be allotted to them by the Ld. Advocate General.

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

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

Notification

File No. 8-7-2014-LD (Estt)(109)/733

In exercise of the powers conferred by Section 3 of the Notaries Act, 1952 (Central Act 53 of 1952) read with rule 8 of the Notaries Rules, 1956, the Government of Goa hereby appoints Shri Raghvendra Namdev Kalangutkar, Advocate, Mercas, Tiswadi, Goa as a Notary for a period of five years with effect from 28th March, 2014 for the area of Tiswadi Taluka.

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

Vasanti H. Parvatkar, Under Secretary (Law-Estt.).
Porvorim, 28th March, 2014.

Notification

File No. 8-7-2014-LD (Estt)(110)/734

In exercise of the powers conferred by Section 3 of the Notaries Act, 1952 (Central Act 53 of 1952) read with rule 8 of the Notaries Rules, 1956, the Government of Goa hereby appoints Shri Raghuvir

Dattaram Bagkar, Advocate, Moira, Bardez-Goa as a Notary for a period of five years with effect from 28th March, 2014 for the area of Bardez Taluka.

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

Vasanti H. Parvatkar, Under Secretary (Law-Estt.).
Porvorim, 28th March, 2014.

Notification

No. 12/13/2014-LD(Estt.)/732

Government is pleased to transfer all cases under The Prevention of Corruption Act, 1988 presently before the District & Sessions Court North Goa and District & Sessions Court, South Goa to the newly established CBI Court at Mapusa with immediate effect for speedy disposal of the cases under the said Act.

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

Vasanti H. Parvatkar, Under Secretary (Law-Estt.).
Porvorim, 14th March, 2014.

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

No. A. 3945/G/2013/960

In exercise of the powers conferred by Section 13 of the Code of Criminal Procedure, 1973, the Hon'ble High Court is pleased to appoint Shri Santana B. Faria as Special Judicial Magistrate within and for the local areas of Salcete and Mormugao talukas, District Margao, for a period of six months from date of this notification.

The Hon'ble High Court has conferred upon him the powers to record confession, dying declaration, statements of witnesses under Section 164 of the code and holding of identification parades and all the powers of Judicial Magistrate Second Class under the said Code in respect of such cases as are punishable with imprisonment for not more than six months or with fine or with both which will be assigned to him by the Chief Judicial Magistrate in consultation with the Principal District and Sessions Judge of Margao, South Goa and also to hold the charge of matters relating to ticketless travellers under the Railways Act at Margao Junction.

High Court, Bombay

B. P. Patil

Date: 14th March, 2014.

I/c Registrar General

No. A. 1201/G/2014/782

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

Sr. No.	Name & present posting	New posting
1.	(On repatriation) Shri B. P. Deshpande, Registrar (Judicial), High Court of Bombay at Goa, Panaji-Goa	Principal District and Sessions Judge, Panaji vice Smt. Anuja Prabhudessai, elevated.
2.	Shri S. C. Chandak, District Judge-1 and Additional Sessions Judge, Majalgaon, District, Beed	Registrar (Adm.), High Court of Bombay at Goa, Panaji-Goa.

High Court, Bombay

B. P. Patil

Dated: 12th March, 2014. I/c Registrar General

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Department of Personnel

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Order

File No. 6/11/2014-PER

Shri Vassudev Shetye, Project Director, District Rural Development Agency, North, is hereby appointed as Special Officer, to carry out legal formalities, co-ordinate between several statutory authorities etc. in order to resume legal sand extraction in the State.

Shri Shetye shall hold charge in addition to his own duties, with immediate effect and until further orders.

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

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

Porvorim, 4th April, 2014.

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Order

File No. 13/6/2013-PER/2385

Read: Government Order No. 13/6/2013-PER dated 28-03-2013.

In continuation of this department's Government order of even number dated 28-03-2013 referred to above, Government is pleased to grant further extension in service to Shri Laxman V. Zalmi, Registrar on deputation in Institution of Goa Lokayukta for further period of one year

beyond the date of his superannuation w.e.f. 01-04-2014 to 31-03-2015.

The extension is subject to termination without assigning any reasons at any time during the period of extension.

This is issued with the approval of Election Commission conveyed vide their letter No. 5-17-2014/ELEC/(Part-II)/3021 dated 05-04-2014.

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

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

Porvorim, 9th April, 2014.

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Corrigendum

File No. 4/3/2011-PER/2386

Read: Government Order No. 7/5/92-PER (Vol. I) dated 29-03-2012.

In the Government Order dated 29-03-2012 referred to above, the period of probation mentioned as two years in the second para of the order shall be substituted to read as "One Year"

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

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

Porvorim, 9th April, 2014.

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Department of Planning

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Directorate of Planning, Statistics & Evaluation

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Order

No. 4-2-07-PLG/DPSE(Part file)/II/4028

Shri Jagdish N. Shirodkar, Statistical Officer of Common Statistical Cadre promoted vide Order No. 4-2-07-PLG(DPSE)Part/1039 dated 20-07-2012, in the pay scale of ₹ 9,300-34,800+4,600/- (GP) have successfully completed the probationary period of two years.

The above has concurrence of the Goa Public Service Commission vide their letter No. COM/II/12/38(1)/2000/453 dated 17-02-2014.

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

Anand Sherkhane, IES, Director & Addl. Secretary (Planning).

Panaji, 24th February, 2014.

Order

No. 4-2-07/PLG/DPSE(Part file)V/4269

Shri G. V. Gauns, Statistical Officer, promoted on ad hoc basis vide Order No. 4/14/92-PLG/DPSE (Part file)/1426 dated 31-08-2013, shall continue on ad hoc basis for a further period of 3 months w.e.f. 01-03-2014 to 31-05-2014.

The above has concurrence of Goa Public Service Commission, vide their letter No. COM/II/11/38(1)/92/2315 dated 06-03-2014.

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

Anand Sherkhane, IES, Director/ex officio Addl. Secretary (Planning).

Panaji, 6th March, 2014.

Order

No. 4-2-07/PLG/DPSE(Part file)VI/4270

Shri D. V. Pednekar, Statistical Officer, promoted on ad hoc basis vide Order No. 4/14/92-PLG/DPSE (Part file)/342 dated 05-02-2013, shall continue on ad hoc basis for a further period of 6 months w.e.f. 05-02-2014 to 04-08-2014.

The above has concurrence of Goa Public Service Commission, vide their letter No. COM/II/11/38(1)/92/2316 dated 06-03-2014.

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

Anand Sherkhane, IES, Director/ex officio Addl. Secretary (Planning).

Panaji, 6th March, 2014.

Order

No. 4-2-07/PLG/DPSE/Ext.RA/14/4330

The following Officers promoted on ad hoc basis vide Orders No. 4/14/92-PLG/DPSE(Part file)/1427 dated 31-08-2012, No. 4/14/92-PLG/DPSE(Part file)/343 dated 05-02-2013, No. 4/14/92-PLG/DPSE(Part file) dated 04-04-2013, shall continue on ad hoc basis for a further period as mentioned against their names or till the post is filled on regular basis whichever is earlier.

Sr. No.	Name of the Officers	Date of Extension
1	2	3
1.	Kum. Bernadina Ida Araujo	w.e.f. 03-09-2013 to 02-09-2014.

1	2	3
2.	Smt. Deepti L. Korgaonkar	w.e.f. 31-08-2013 to 30-08-2014.
3.	Shri V. R. Naik	w.e.f. 04-09-2013 to 03-09-2014.
4.	Shri S. V. Prabhudessai	w.e.f. 18-09-2013 to 17-09-2014.
5.	Shri Shankar B. Dessai	w.e.f. 02-05-2014 to 01-05-2015.
6.	Shri P. G. Vernekar	w.e.f. 12-02-2014 to 11-02-2015.
7.	Smt. Fatima Rebello	w.e.f. 08-02-2014 to 07-02-2015.
8.	Shri Laximan G. Amonkar	w.e.f. 04-04-2014 to 03-04-2015.

The above has concurrence of Goa Public Service Commission, vide their letter No. COM/II/11/38(1)/2014/2420 dated 26-03-2014.

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

Anand Sherkhane, IES, Director/ex officio Addl. Secretary (Planning).

Panaji, 27th March, 2014.

Order

No. 4-2-07/PLG/DPSE/Ext.DD/14/4329

Shri J. N. Shirodkar, Dy. Director, promoted on ad hoc basis vide Order No. 4/14/92-PLG/DPSE(Part file)/1039 dated 20-07-2012, shall continue on ad hoc basis for a further period of one year w.e.f. 23-07-2013 to 22-07-2014 or till the post is filled on regular basis whichever is earlier.

The above has concurrence of Goa Public Service Commission, vide their letter No. COM/II/11/38(1)/2014/2421 dated 26-03-2014.

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

Anand Sherkhane, IES, Director/ex officio Addl. Secretary (Planning).

Panaji, 27th March, 2014.

Department of Revenue

Notification

No. 19/1/2014-RD

Read: Notification No. 19-1-2014/RD dated 10-01-2014.

Whereas, the Government has appointed a three Member Commission of Inquiry into the collapse of Building "Ruby Residence" at Chavadi, Canacona, vide above referred notification.

And whereas the Government has approved the proposal forwarded by the said Commission of Inquiry, to grant extension of time of three months to the said Commission to complete the inquiry.

Now, therefore in exercise of powers conferred by Section 3 of Commission of Inquiry Act, 1952, the Government of Goa, hereby grant extension of time of three months w.e.f. 10-4-2014, to the Commission of Inquiry.

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

R. K. Srivastava, IAS Pr. Secretary (Revenue).

Porvorim, 8th April, 2014.



Department of Transport

Directorate of Transport

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Order

Ref. No. D.Tpt/EST/244 (Part)/2014/1288

Read: Order No. D.Tpt/EST/244 (Part)/2013/3240 dated 30-08-2013.

Ex-post facto approval of the Government is granted for the extension of the ad hoc promotion

of Shri Laxmikant S. Kundaikar to the post of Deputy Director of Transport for a further period of six months i.e. upto 29-08-2014.

This is issued with the approval of the Joint Chief Electoral Officer vide letter No. 5-17-2014/ /ELEC/(Part II) 310/3140 dated 09-04-2014.

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

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

Panaji, 15th April, 2014.

Order

Ref. No. D.Tpt/EST/285-II/2014/1289

Read: Order No. D.Tpt/EST/285-II/2013/3241 dated 30-08-2013.

Ex-post facto approval of the Government is granted for the extension of the ad hoc promotion of Shri Rajesh alias Ramkrishna B. Naik to the post of Assistant Director of Transport for a further period of six months i.e. upto 29-08-2014.

This is issued with the approval of the Joint Chief Electoral Officer vide letter No. 5-17-2014/ /ELEC/(Part II) 310/3140 dated 09-04-2014.

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

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

Panaji, 15th April, 2014.

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