

50/100

**CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05**

(DESTRUCTION OF RECORD RULES, 1990)

RA 3/2006 order ~~prop 1~~ **INDEX**
Final order/Judgment ~~prop 1~~ + 8
Dismissed
20/12/06

O.A/T.A No. 292/2005
R.A/C.P No.....
E.P/M.A No.....

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3. Judgment & Order dtd.....Received from H.C/Supreme Court
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SECTION OFFICER (Judl.)

FORM NO. @
 (See Rule 42)
 CENTRAL ADMINISTRATIVE TRIBUNAL
 GUWAHATI BENCH.

ORDER SHEET

Original Application No. 292/2005
 Misc. Petition No. _____
 Contempt Petition No. _____
 Review Application No. _____

Applicant(s) Smt. Amarjeet Kaur

Respondent(S) (10/1/2005)

Advocate for the Applicants Mr K.K. Biswas

Advocate for the Respondent(S) _____

CGSC

Rly St. Counsel

Notes of the Registry | Date | Order of the Tribunal

29.11.05

Heard Mr.K.K.Biswas, learned couns for the applicant and Mr.G.Baishya, learned Sr.C.G.S.C. appearing for the respondents.

Admit. Issue notice to the respondents. Written statement, if any, within six weeks. Post on 12.1.2006.

[Signature]
 Vice-Chairman

bb

206.1164/3

29.11.05

[Signature]
 D. Registrar

Steps taken. *[Signature]* 29/11/05
 fl. comply order dated
 29.11.05
 NB
 29.11.05

Notice & order sent to D/section for issuing to resp. Nos. 1 to 3 by

(by) regd. A/D post.
 1/12/05. D/No = 1657 to 1659
 Dt = 5/12/05.

→ Contd.

20.01.2006 Present : Hon'ble Sri K.V. Sachidanandan, Vice-Chairman.

Mr. G. Baishya, learned Sr. C.G.S.C. for the respondents wanted to file reply statement. Let it be done. Four weeks time is granted.

Post on 23.2.2006.

Vice-Chairman

mb

23.02.06. When the matter came up for hearing Mr.G.Baishya, learned Sr. C.G.S.C. for the Respondents wanted to file reply statement. Let it be done. Post the matter on 10.3.06.

Vice-Chairman

lm

~~20.02.2006~~

~~20.02.2006~~

10.3.2006 Mr.K.K.Biswas, learned counsel for the applicant requests for time to file rejoinder. Let it be done. Post on 10.4.2006.

Vice-Chairman(J)

Vice-Chairman(A)

bb

3.5.2006 Post the matter on 26.5.2006 alongwith M.P.

Vice-Chairman

bb

26.05.2006 Post on 21.06.2006.

Vice-Chairman

mb

Notice duly served on resp. No-2

.....bjnoD

19-2-06

No D/S filed.
lm

22-2-06

No. W/S has been filed.

my

9-3-06

No W/S has been filed
.....bjnoD

my

13.3.06

W/S filed by the Respondents.

my

Rejoinder has been filed by the applicant

NZ
21/5/06

The case is ready for hearing.

my
25.5.06

G.A 292/2005

3

Notes of the Registry	Date	Order of the Tribunal
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1.6.06
 An amended petition has been filed by the counsel for the Applicant for submission for documents.

21.6.2006

post the matter for hearing before the next Division Bench. Respondents are directed to produce the records by their next date of hearing.

Vice-Chairman

bb

21
20.6.06
 The case is ready for hearing.

31.7.2006

Heard Mr.K.K.Biswas, learned counsel for the applicant and Mr.G.Baishya, learned Sr.C.G.S.C. for the respondents.
 Hearing concludes. Reserved for orders.


 Member (A)

Vice-Chairman

bb

22
20.6.06
28.7.06
 Ready for hearing.

10.08.2006

Judgment pronounced in open Court, kept in separate sheets. The application is dismissed in terms of the order. No order as to costs.


 Member

Vice-Chairman

mb

18.8.06
 Copy of the order has been sent to the office for review. The same to the applicant by post and a copy of the order has been handed over to the A/Adv. for the Registry.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH, GUWAHATI

O.A. No. 292 of 2005

DATE OF DECISION 10.08.2006

Smti A. Kaur

.....Applicant/s

Shri K. K. Biswas.

.....Advocate for the
Applicant/s.

- Versus -

U.O.I. & Ors.

.....Respondent/s

Mr.G.Baishya, Sr.C.G.S.C.

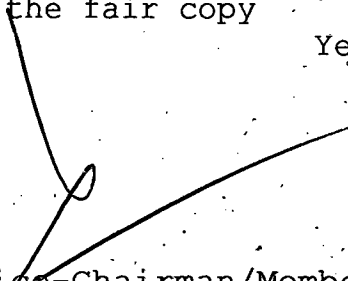
.....Advocate for the
Respondents

CORAM

THE HON'BLE MR. K.V. SACHIDANANDAN, VICE CHAIRMAN

THE HON'BLE MR. GAUTAM RAY, ADMINISTRATIVE MEMBER

1. Whether reporters of local newspapers may be allowed to see the Judgment? Yes/No
2. Whether to be referred to the Reporter or not? Yes/No
3. Whether to be forwarded for including in the Digest Being compiled at Jodhpur Bench? Yes/No
4. Whether their Lordships wish to see the fair copy of the Judgment? Yes/No


Vice-Chairman/Member (A)

b

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No. 292 of 2005.

Date of Order: This, the 10~~th~~ day of August, 2006.

THE HON'BLE MR. K.V.SACHIDANANDAN, VICE CHAIRMAN

THE HON'BLE MR. GAUTAM RAY, ADMINISTRATIVE MEMBER

Smti. Amarjit Kaur
Ex. Sweeper/Safaiwala under
Geological Survey of India
Mineral Physics Division
North Eastern Region
Lower New Colony
Shillong.

..... Applicant.

By Advocate Mr.K.K.Biswas.


- Versus -

1. Union of India represented by
The Director General of India
Geological Survey of India
Chowranghee Lane
Kolkata 700 001.
2. Dy. Director General
Geological Survey of India
North Eastern Region
Shillong - 793 001.
3. Regional Administrative Officer
Geological Survey of India
North Eastern Region
Shillong - 793 003.

.....Respondents.

By Mr.G.Baishya, Sr. C.G.S.C.

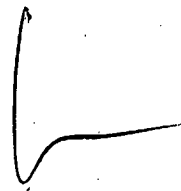
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O R D E R

SACHIDANANDAN, K.V., (V.C.):


The case of the applicant is that she was engaged as Sweeper/Safaiwala under the second respondent right from 1985 and all of a sudden her services were terminated with effect from August 2001 afternoon without serving any notice of termination and without observing provisions of law. She approached the respondents for reinstatement in service since she had rendered more than 15 years of service in the same establishment continuously without any break though artificial break were shown by the respondents and maximum period of her life she spent in the Organisation loosing all hopes and aspirations to get any appointment in other establishments. Though the respondents had all along assured her absorption in the establishment of the Geological Survey of India (GSI in short) in regular Group-D employment, they did not comply with the promise. She, through her union, placed the issue before the Labour Commissioner and the matter was referred to the Ministry of Labours and finally to the Industrial Tribunal for adjudication. The Industrial Tribunal rejected the claim on the question of jurisdiction. The respondents have caused labour exploitation, and therefore, committed offences in not paying the minimum pay during her service of 15 years right from 1985 till



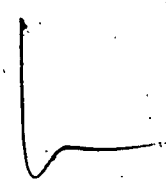
termination from service. Being aggrieved, the applicant has filed this Original Application seeking the following reliefs:-

- "(i) Quashing the miscarriage of justice caused by the Opposite Parties/Respondents by terminating her services abruptly after 15 years without issuing any notice of termination and giving her any reasonable opportunity as ought to have been given to a "temporary employee" under Article 311(2) of the Constitution of India.
- (ii) For reinstatement in service with the existing pay scale, capacity, allowances, seniority and other benefits admissible with all back wages as per extant Rules from the date of termination.
- (iii) For absorbing the Applicant in a regular Cadre of Group-D establishment of the Opposite Parties as per extant Rules and prevailing system.
- (iv) Any other relief(s) as this Hon'ble Tribunal may deem fit and proper."

2. The respondents have filed a detailed reply statement contending that no assurance for absorption in the department was given to the applicant as per records available. She was engaged as Sweeper/Safaiwala in the Mineral Physics Division of GSI purely on contract basis only during the absence of regular Safaiwalas going on earned leave etc. and a lump sum amount was offered to her, which she accepted. Any person, thus appointed, will have no right to claim for further employment in GSI. No

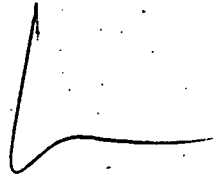


appointment order was issued to her for the contract work. The contract work automatically ended on expiry of the period agreed upon and also as soon as regular Safaiwala joined duty. Hence, the question of termination of her service without observing provisions of law does not arise. When the union raised the dispute before the Industrial Tribunal, the Tribunal gave a finding that GSI is not an industry as per definition given under Section 2(J) of the Industrial Dispute Act, 1947. A written statement was filed by them before the Industrial Tribunal raising non-applicability of Industrial Dispute Act, which is having no jurisdiction to arbitrate the matter, which is purely a service matter of Central Government and the Central Administrative Tribunal, Guwahati Bench is having the jurisdiction. The ban on engagement of contingent workers on continuous basis provides for purely temporary engagement of Mazdoors (unskilled) for short duration to meet the exigencies of work in public interest. Applicant's engagement purely on contract basis on payment of lump sum amount is evident from the vouchers. In para 9 of the reply statement the respondents have mentioned four names of regular Safaiwalas and in their absence going on leave the applicant was given the duty to clean the laboratory, toilets in the Mineral Physics Division. At the most her job was required for about 1 hour only before the office opens and her whole day's presence was not



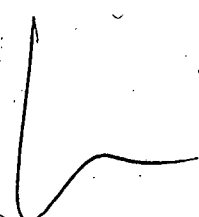
required. The wages were paid as per the rate prescribed by the Govt. of Meghalaya to other workers whose hours of work was 8 hours per day. But in the present case, the wages were paid to the applicant on lump sum basis as the duration of work is about 1 hour only and thus, the Govt. rate notified by the Govt. of Meghalaya could not be applied in her case. Moreover, no wage rate has been prescribed by the Govt. of Meghalaya for the Safaiwalas. Therefore, the applicant has no right claiming the benefits.

3. The applicant has filed a rejoinder reiterating the contentions made in the O.A and further added that her non-regularisation is clear violation of principles of natural justice. We have heard Mr. K.K.Biswas, learned counsel for the applicant and Mr.G.Baishya, learned Sr.C.G.S.C. for the respondents. Counsel for the applicant argued that applicant has put in more than 15 years of service and she was getting Rs.450/- P.M. and all of a sudden, her services were terminated which is against natural justice and hence she is entitled for reinstatement, regularisation and absorption in Group-D post since she had already completed 240 days of service in a year. The Sr.C.G.S.C., on the other hand, submitted that she was intermediately engaged as substitute casual labour in the place of regular Safaiwalas going on earned leave, maternity leave etc. and she is having no




indubitable right to claim for regularisation or engagement.

4. We have given due consideration to the arguments advanced by the counsel for the parties and the materials and evidence placed on record. Counsel for the respondents has submitted that this case has been filed before this Tribunal after five year's of delay and hence the same is hopelessly barred by limitation. He also took our attention to a decision of the Hon'ble Supreme Court of India in the case of **Life Insurance Corporation of India vs. J.C. Biswas 2006 SCC 562**. We are in respectful agreement with the dictum laid down in the said decision. But according to us, the facts of that case do not suit the present case. The applicant agitated her case before the Industrial Tribunal and only after four years the Industrial Tribunal gave its verdict rejecting her claim for want of jurisdiction and that too on the strength of the written statement filed by the respondents that jurisdiction lies with Central Administrative Tribunal. The said Industrial Dispute was initiated on strength of the union, and therefore, the applicant cannot be faulted in not projecting the case before the appropriate forum. The delay that has been caused in filing the present O.A. has been taken note of at the admission stage of the case and the O.A. was admitted. Therefore, after having admitted the matter when it came up for final hearing, the



respondents are not justified in raising the technical plea and hence their contention that the Original Application is barred by limitation will not hold good and cannot be sustained.

5. On going through the merits of the case it is apparent that admittedly no appointment order was issued to the applicant. The case of the applicant is that she had worked for more than 15 years right from 1985 till his termination in August 2001, and therefore, she is entitled for regularisation as she had already completed 240 days of service in a year. The specific case of the respondents is that the applicant was only engaged as a substitute casual labourer in place of regular Safaiwalas going on leave and she was given a lumpsum amount of Rs.450/- p.m. since her required work was only for an hour per day. However, though the respondents stated that the vouchers are available the same were not produced. The facts always remains that the applicant had worked for 15 years whether as a substitute casual labourer or as a casual labourer. The contention of the respondents is that in the present situation all the labour laws completely permit disengagement of contract labourer on the wish of the respondents. Mr. Biswas, on the other hand, had taken our attention to a decision of the Hon'ble Supreme Court in the case of **Steel Authority of India Ltd and Others vs. National Union Waterfront Workers and Others** reported in




(2001) 7 SCC 1 relevant paragraphs of which are quoted below:-

"8 Before taking up these points, it needs to be noticed that the history of exploitation of labour is as old as the history of civilization itself. There has been an ongoing struggle by labourers and their organizations against such exploitation but it continues in one form or the other. The Industrial Disputes Act, 1947 is an important legislation in the direction of attaining fair treatment to labour and industrial peace which are the sine qua non for sustained economic growth of any country. The best description of that Act is given by Krishna Iyer, J., speaking for a three-Judge Bench of this Court in *LIC of India V. D.J. Bahadur*³ thus: (SCC P.334, para 22)

22. The Industrial Disputes Act is a benign measure which seeks to pre-empt industrial tensions, provide the mechanics of dispute resolutions and set up the necessary infrastructure so that the energies of partners in production may not be dissipated in counterproductive battles and assurance of industrial justice may create a climate of goodwill.

102. In *Gujarat Electricity Board case*³¹ a two-Judge Bench of this Court has held that if there is a genuine labour contract between the principal employer and the contractor, the authority to abolish the contract labour vests in the appropriate Government and not in any court including industrial adjudicator. If the appropriate Government abolishes the contract labour system in respect of an establishment, the industrial adjudicator would, after giving opportunity to the parties to place material before it, decide whether the workmen be absorbed by the principal employer, if so, how many of them and what terms, but if the appropriate Government declines to abolish the contract labour the industrial adjudicator has to reject the reference. If, however, the so-called contract is not




genuine but is a sham and camouflage to hide the reality, Section 10 would not apply and the workmen can raise an industrial dispute for relief that they should be deemed to be the employees of the principal employer. The court or the industrial adjudicator would have jurisdiction to entertain such a dispute and grant necessary relief.

104. For reasons we have given above, with due respect to the learned Judges, we are unable to agree with their reasoning or conclusions.

106. We have gone through the decisions of this Court in *VST Industries case*⁴⁰, *G.B.Pant University case*⁴². All of them relate to statutory liability to maintain the canteen by the principal employer in the factory establishment. That is why in those cases, as in *Saraspur Mills case*²⁹ the contract labour working in the canteen were treated as workers of the principal employer. These cases stand on a different footing and it is not possible to deduce from them the broad principle of law that on the contract labour system being abolished under sub-section (1) of Section 10 of the CLRA Act the contract labour working in the establishment of the principal employer have to be absorbed as regular employees of the establishment.

111. In *Shivnandan Sharma case*²⁷ the respondent Bank entrusted its Cash Department under a contract to the Treasurers who appointed Cashiers, including the appellant Head Cashier. The question before the three-Judge Bench of the Court was: was the appellant an employee of the Bank? On the construction of the agreement entered into between the Bank and the Treasurers, it was held that the Treasurers were under the employment of the Bank on a monthly basis for an indefinite term as they were under the complete control and direction of the Bank through its Manager or other functionaries and, therefore, the appointees including the appellant (nominees) of the Treasurers, were also the employees of the Bank. This Court laid down: (AIR p.411, para14)



If a master employs a servant and authorizes him to employ a number of persons to do a particular job and to guarantee their fidelity and efficiency for a cash consideration, the employees thus appointed by the servant would be equally with the employer, servants of the master.

121. The leftover contention of Ms Indira Jaising may be dealt with here. The contention of Ms India Jaising that the principles of contract law stricto sensu do not apply to the labour and management is too broad to merit acceptance.

144. This appeal arises from the judgment and order dated 19-8-1999 of the High Court of Patna, Ranchi Bench, in LPA No.214 of 1999 (R). The Division Bench declined to interfere with the order of the learned Single Judge dismissing the writ petition filed by the appellant.

145. The case arose out of the award dated 3-10-1996 passed by the Central Government Industrial Tribunal I directing the appellant to absorb the contract labour. The Tribunal, on appreciation of the evidence, found that the contract labourers were not regularised to deprive them from the due wages and other benefits, on a par with the regular employees under sham paperwork by virtue of the sham transaction. It was also pointed out that the workmen on order coal washery were regularised. The claim of the appellant that the washery was given to the purchaser was not accepted as being a sham transaction to camouflage the real facts. The learned Single Judge on consideration of the entire material confirmed the award and the Division Bench declined to interfere in the LPA. We find no reason to interfere with the order under challenge. The appeal is, therefore, dismissed with costs."

But going through the aforesaid decision we found that the main dispute in that case is with regard to the principal


employer and the intermediary who engages the contract labour. The Hon'ble Supreme Court held that in such cases, the principal employer has got nexus with employment and they can be directed to regularise the service of the labourers in the establishment concerned subject to fulfillment of other conditions. A broad proposition of law as to the contractual obligation between the principal employer and the labourer has been discussed which is not germane in the present case.

6. The labour laws regarding regularisation of contract labourer have taken changes in legislation and that of judicial pronouncements. Counsel for the respondents has taken our attention to the celebrated decision of the Hon'ble Supreme Court in the case of **Secretary, State of Karnataka and Others vs. Umadevi (3) and Others reported in (2006) 4 SCC 1** in which it is declared that casual labourer/temporary employee do not have any right to regular or permanent public employment and further it is held that temporary, contractual, casual, adhoc or daily-wage public employment must be deemed to be accepted by the employee concerned fully knowing the nature of it and the consequences flowing from it. Interpreting provisions of the Constitution of India the Supreme Court observed as under:-

16. In *B.N.Nagarajan V. State of Karnataka*⁸ this Court clearly held that the words

"regular" or "regularisation" do not connote permanence and cannot be construed so as to convey an idea of the nature of tenure of appointments. They are terms calculated to condone any procedural irregularities and are meant to cure only such defects as are attributable to methodology followed in making the appointments. This Court emphasised that when rules framed under Article 309 of the Constitution are in force, no regularisation is permissible in exercise of the executive powers of the Government under Article 162 of the Constitution in contravention of the rules. These decisions and the principles recognized therein have not been dissented to by this Court and on principle, we see no reason to accept the proposition as enunciated in the above decisions. We have, therefore, to keep this distinction in mind and proceed on the basis that only something that is irregular for want of compliance with one of the elements in the process of selection which does not go to the root of the process, can be regularised and that it alone can be regularised and granting permanence of employment is a totally different concept and cannot be equated with regularisation.


19. One aspect arises. Obviously, the State is also controlled by economic considerations and financial implications of any public employment. The viability of the department of the instrumentality of the project is also of equal concern for the State. The State works out of the scheme taking into consideration the financial implications and the economic aspects. Can the court impose on the State a financial burden of this nature by insisting on regularisation or permanence in employment, when those employed temporarily are not needed permanently or regularly? As an example, we can envisage a direction to give permanent employment to all those who are being temporarily or casually employed in a public sector undertaking. The burden may become so heavy by such a direction that the undertaking itself may collapse under its own weight. It is not as if this had not happened. So, the court ought not to impose



a financial burden on the State by such directions, as such directions may turn counterproductive.

26. With respect, why should the State be allowed to depart from the normal rule and indulge in temporary employment in permanent posts? This Court, in our view, is bound to insist on the State making regular and proper recruitments and is bound not to encourage or shut its eyes to the persistent transgression of the rules of regular recruitment. The direction to make permanent - the distinction between regularisation and making permanent, was not emphasised here. - can only encourage the State, the model employer, to flout its own rules and would confer undue benefits on a few at the cost of many waiting to compete. With respect, the direction made in para 50 (of SCC) of *Piara Singh*⁵ is to some extent inconsistent with the conclusion in para 45 (of SCC) therein. With great respect, it appears to us that the last of the directions clearly runs counter to the constitutional scheme of employment recognized in the earlier part of the decision. Really, it cannot be said that this decision has laid down the law that all ad hoc, temporary or casual employees engaged without following the regular recruitment procedure should be made permanent.

47. When a person enters a temporary employment or gets engagement as a contractual or casual worker and the engagement is not based on a proper selection as recognized by the relevant rules or procedure, he is aware of the consequences of the appointment being temporary, casual or contractual in nature. Such a person cannot invoke the theory of legitimate expectation for being confirmed in the post when an appointment to the post could be made only by following a proper procedure for selection and in cases concerned, in consultation with the Public Service Commission. Therefore, the theory of legitimate expectation cannot be successfully advanced by temporary, contractual or casual employees. It cannot also be held that the State has held out any



promise while engaging these persons either to continue them where they are or to make them permanent. The State cannot constitutionally make such a promise. It is also obvious that the theory cannot be invoked to seek a positive relief or being made permanent in the post."

The above celebrated decision declares that casual labourer/temporary employee/contract labourer does not have any right to regularisation or permanent public employment. The said issue is also discussed in another decision in the case of **Avas Vikas Sansthan And Another vs. Avas Vikas Sansthan engineers Association & Others reported in 2006 SCC (L&S) 613** in which the Hon'ble Supreme Court of India discussing various earlier decisions and legal points declared that casual labourer/temporary employee/daily wages employee has no parity with regular employees and they cannot, by any stretch of imagination, be put on a par with regular employees. In para 57 of the said decision the Apex Court hold as under:-

"With regard to the appointment of 46 daily-wage employees after the dissolution of the Society, we hold that, in the facts the circumstances of this case there is no right on the part of any employee to be re-employed. Also daily-wage employees cannot, by any stretch of imagination, be put on a par with regular employees under any law prevalent as of date. The finding of the Division Bench that they can be treated on a par with regular employees and be given various reliefs is wrong and erroneous under law. Therefore, we are not granting any relief to the daily-wage employees as their



claim is not justified under law. However, the Government of Rajasthan may sympathetically consider absorption of these employees in the vacancy available if any in future by giving them preference over other new applicants in any of their local bodies."


7. It is clear from the above, that casual labourers/substitute casual labourers or contract labourers have no fixity of employment, and therefore, the reliefs that have been prayed by the present applicant cannot be granted by this Tribunal. We place on record our appreciation for Mr.G.Baishya, learned Sr. C.G.S.C. for the respondents for the good arguments advanced by him.

8. In the conspectus facts and circumstances of the case and the legal position as discussed above, we are of the considered opinion that the applicant cannot have the legal right for regularisation as claimed in this case, and therefore, the reliefs claimed in the Original Application cannot be granted to the applicant and hence the same is liable to be dismissed.

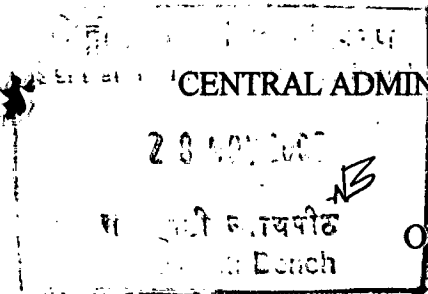
Accordingly, the present Original Application is dismissed. In the circumstances, there is no order as to costs.


(GAUTAM RAY)

ADMINISTRATIVE MEMBER


(K.V.SACHIDANANDAN)

VICE CHAIRMAN



CENTRAL ADMINISTRATIVE TRIBUNAL :: GUWAHATI BENCH ::
GUWAHATI

O. A. NO. 292 of 2005.

Smt. Amarjeet Kaur,
Shillong.

..... Applicant.

- Vs -

Union of India
represented by
Director General,
Geological Survey of India
and others.

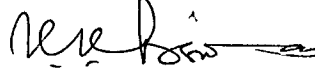
..... Respondents/Opposite Parties.

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Filed on 28 -11-2005.

Filed thro:


(K. K. BISWAS)

Advocate

22

CENTRAL ADMINISTRATIVE TRIBUNAL :: GUWAHATI BENCH ::
GUWAHATI

O. A. NO. 292 of 2005.

Smt. Amarjeet Kaur,
Shillong.

..... Applicant.

- Vs -

Union of India
represented by
Director General,
Geological Survey of India
and others.

..... Respondents/Opposite Parties.

SYNOPSIS


S. N.	Chronological Dates / years	Particulars of Subject matter	Annexure	Page
1.	1985	Applicant was appointed as Sweeper/Safaiwala under Dy. Director, Geological Survey of India, N.E.Region, Shillong, Respdt. No. 2.	-	-
2.	August/2001	O.P., Respdt. No. 2, terminated the service of the Applicant abruptly and without serving any Notice of termination	-	-
3.	-	Failing to get any susceptible response from O.P. regarding her re-instatement in service Applicant approached to Cantonment Employees Union, Shillong	-	-
4.	2-11-2001	The Cantonment Employee's Union approached the Regional Labour Commissioner (Central), Guwahati for redressal of the Applicant for her illegal termination & reinstatement in service	A	11
5.	10-10-2002	Regional Labour Commissioner made reference to Ministry of Labour/New Delhi regarding failure of the conciliation of the dispute between the Applicant and the O.P.	B	12-13
6.	17-4-2003	Ministry of Labour/New Delhi referred the dispute to the Presiding Officer, Industrial Tribunal, Guwahati for adjudication and AWARD.	C	14-15
7.	May/2003 to February/2005	The Presiding Officer, Industrial Tribunal, allowed proceedings of the case, fixed so many dates almost in every month & both the Parties contested the case according to their own line of defence	-	-
8.	29-3-2005	O.P.'s witness adduced evidence before the Tribunal and deposed that there was no written agreement with the workman-Applicant and she was paid as per provisions of the Minimum Wages Act, and asserted the documents of performance of work by the Workman-Applicant from July/1991 to July/2001 and statements of wages paid to the workman-Applicant.	R & E to Q	31-32 & 18-30

Contd.....

9.	4-6-2005	O.P. submitted petition objecting the Jurisdiction of the I.T. & maintainability of the case.	-	33-35
10.	2-7-2005	Workman-Applicant submitted reply to the Management-O.P. refuting their objection and produced Pay-structures for the un-skilled, semi-skilled & skilled labours given by the Meghalaya Govt. to prove that minimum wages were not paid by O.P./Management to workman-Applicant.	T, U & V	36-48
11.	18-7-2005	Presiding Officer, Industrial Tribunal, Guwahati gave order upholding the O.P.'s contention and quashed the Reference made by Ministry of Labour.	W	49-54
12.	-	Being aggrieved and finding the Hon'ble CAT to be efficacious for redressal of the grievances for the present case, the Applicant has come to this Tribunal & filed the instant O.A. for justice.	-	-

Filed on : 28-11-2005.

Filed thro:


(K. K. BISWAS)
Advocate

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH,
AT GUWAHATI.

(An Application u/s 19 of the Administrative Tribunal Act, 1985).

Original Application No. 292/2005.

Smti. Amarjit Kaur,
Ex. Sweeper/Safaiwala under
Geological Survey of India,
Mineral Physics Division,
North Eastern Region,
Lower New Colony,
Shillong. Applicant.

- Vrs -

1. Union of India, represented by
The Director General of India,
Geological Survey of India,
Chowranghee Lane,
Kolkata - 700 001.
2. Dy. Director General,
Geological Survey of India,
North Eastern Region,
Shillong - 793 001.
3. Regional Administrative Officer,
Geological Survey of India,
North Eastern Region,
Shillong - 793 003. Respondents/Opposite Parties.

DETAILS OF APPLICATION :

1. Particulars against which the Application is made :

Arbitrary Termination of service of the Applicant after her 15 years of continuous service under the Respondents in their Regional Office at Shillong.

Contd.....p/2.....Jurisdiction.

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Filed by:
N.K. Kaur
28.11.05
Advocate.

A. J. KAUR

2. **Jurisdiction.**

The Applicant declares that the subject matter of the Application is within the jurisdiction of this Hon'ble Tribunal.

3. **Limitation.**

The Applicant submits that the Application has been filed within the limitation period prescribed under Section 21 of the Administrative Tribunal Act, 1985.

4. **Facts of the Case.:**

4.1. That the Applicant is the citizen of India and is, therefore, entitled to all the rights and privileges guaranteed to the citizen of India under the Constitution and all other laws of the land.

4.2. That the Applicant in the instant O.A. was engaged as Sweeper/Safaiwala under the Dy. Director General, Geological Survey of India, North Eastern Region, Shillong, the Respondent No.2, right from 1985 and all on a sudden her services were terminated with effect from August, 2001 afternoon without serving any Notice of termination to the Applicant for the proposed termination of her services from the establishment of the Respondent No.2 and also without observing the provisions of law.

4.3. That following her abrupt termination of service she approached the Opposite Parties for her reinstatement in service who had rendered more than 15 years of service for the same establishment continuously without any break, though the artificial break in services were shown by the Opposite Parties, more particularly the Respondent No.2, which the Applicant came to know afterwards, and thus the prime period of her life she spent in the said organization and thus her all further hopes and aspirations in getting a new assignment of employment in anywhere else were gone.

4.4. That it is humbly submitted that the Opposite parties all along assured the Applicant for her absorption in their establishment of Geological Survey of India as regular employee of Group-D employment and she needed not to be bothered anything

25
N. K. Kaur
28/11/05
Advocate

A. J. KAUR

for her future, the Applicant did not try anywhere else culminated her sterling services at the cause of the Opposite Parties, more particularly the Respondent No.2 in this O.A., without any adverse thought for her future to be taken by her employer in the said establishment.

NR. f. 28/11/05
Advocate

4.5. That having failed to receive any susceptible response from the concerned authorities of the Geological Survey of India about the series of her representations and personal approaches to all level, in respect of her re-instatement in service the applicant came to the Union of Cantonment Employees Union, Shillong, Cantonment Colony for taking up the matter with the Management/Administrative authorities for her redress of the grievances in regard to arbitrary termination of her service and denial of reinstatement in service after prolong 15 years' dedication of service in the same establishment of the Opposite Parties.

4.6. That upon the request of the Applicant the Union raised the issue before the Regional Labour Commissioner (Central), Guwahati for his kind intervention and settle the matter.

4.7. That the discussion/conciliation proceedings before the Assistant Labour Commissioner (Central), Guwahati failed to arrive at a conclusion in resolving the issue for setting aside the termination and reinstatement in services of the Applicant, the matter was referred to the Ministry of Labour, New Delhi and the concerned Ministry referred the matter to the Presiding Officer, Industrial Tribunal, Guwahati for adjudication of the case and make an Award on the merits of the case as per Industrial Dispute Act, 1947.

A. J. KAUR

4.8. That in the Industrial Tribunal the Management have submitted their Written Statement denying the claim of the Workman Applicant for setting aside the termination order of her service and reinstatement of her in the service by the Opposite Parties and contested the case almost 3 years there by filing their documents and deposing and adducing of evidences by their representatives and steps taken for final Hearing by both the parties and the case was ready to be fixed for Argument..

4.9. That at the fag end of the case in the Industrial Tribunal when almost the case was fixed for argument/final hearing the Management/Respondents Nos. 1 to 3 most

astonishingly challenged the jurisdiction of the said Industrial Tribunal and submitted a copy of Circular issued by the Dy. Director General Personnel, Geological Survey of India, Kolkata, vide letter No.3/I(1643)/Law-59/2002 dated 24.3.2005 enclosing a copy of Memorandum No. 1855 N-80N/A 12031/CW/1/83-85/17D, Volume-II dated 12.4.88 regarding "ban on engagement of contingent workers on continuous basis". It is really astonishing that though the aforementioned memorandum was dated 12.4.88, was to be effected prospectively, the Applicant was engaged in the service of the opposite Parties in 1985 and continued to be in service till July, 2001 as per their production and deposition of documents in the Industrial Tribunal vide Annexures ~~A, B, C, D, E, F, G, H, I, J, K, L, M, N~~. It is also a matter of suspicion that a Memorandum dated 12.4.88, the Opposite Parties is now contemplating to impose and enforce upon the Applicant who was engaged by the Opposite Parties and kept in their service for more than 15 years and now at the fag end of the case in the Industrial Tribunal after lapse of complete 17 years they are agitating the matter afresh with the "after thought" to disentitle the claim of the Applicant who was given all along unfair play and miscarriage of justice with blatant discrimination and arbitrary action by the Opposite Parties in giving her the minimum Pay & allowances as per Minimum wages Act. 1948. Even in case the retrospective effect was to be considered for any reasons, the Applicant should not have been appointed/engaged at all and should not have given assurance of her absorption in regular cadre of Group-D establishment in their establishment..

W. K. Joshi
28/11/05
Advocate

A. J. KAUR

4.10. That the challenge of the jurisdiction by the Opposite Parties at the fag end of the case in the Industrial Tribunal was entertained by the Presiding Officer of the said Tribunal despite ^{his admitting & continuing} violating all procedural laws and Rules and repeated protests by the Applicant and ^{her} submission of objection petition.

A copy of the said petition is submitted as Annexure-R for kind perusal of this Hon'ble Tribunal.

4.11. That the Presiding Officer of the Industrial Tribunal was not kind enough to accept the said objection petition, rather, fixed the case on 18.7.05 for Hearing of the case on the point of JURISDICTION as raised by the Management/Opposite Parties, 1 to 3.

4.12. In the argument of jurisdiction point also the Applicant's Counsel vehemently but with suave and placid submission before the Hon'ble Tribunal contested the case and

cited different Rulings that the jurisdiction as challenged by the Opposite Parties is not tenable in the eye of law on the face of the glaring judgments given by the Hon'ble Apex Court in different celebrated cases.

Mr. Jain 28/11/05
Advocate

4.13. That during pendency of the case the Opposite Party's representative deposed and adduced evidences in the Hon'ble Tribunal which are far from the fact and not corroborating with the Rules. As on being asked whether the Applicant/Workman was given the pay and scale according to the provisions of the Minimum Wages Act, the witness deposed in an affirmative way that they ^{had} paid the pay scale to her according to the pay structure of the Meghalaya Government during the material time. But on verification from the Meghalaya Government it is evinced that the statement of the witness was far from the truth as the pay given to the workman/Applicant was not corroborating with the pay structure given to the unskilled, semiskilled, and skilled labourers of the Meghalaya Government during the material time. Thus the Opposite Parties has caused the unfair labour practice and thereby committed offence for unfair practice for not paying to the Minimum Pay to the Applicant/Workman during the material period of her service for all 15 years right from her appointment till termination of service.

The certified true copy of the deposition of witness and the photo copy of the Meghalaya Government regarding the pay structure as mentioned above are produced as Annexures-S, T, U, V.

AJKAUR

4.14. That for the cause of justice the Applicant/Workman prayed before the Industrial Tribunal to direct the Opposite Parties/Management to produce some vital and inevitable documents in regard to the claim of the Workman/Applicant and decide the matter for disseminating justice, but the Opposite Parties could not produce any of those documents before the Industrial Tribunal save and except the Memorandum as mentioned above under Annexures-D and a photo copy of Message from DDG(P), Kolkata to DG,GSI, Shillong and the period of working days showing the artificial break in service of the Applicant and the statement showing the details of wages in the Tribunal.

The photo copies of those statements and the ^{Memorandum} and the details of working period are submitted as Annexures-D to Q. 5.

4.15. That it is humbly submitted that without attaching any importance to the humble submission by the Workman/Applicant the Presiding Officer of the Industrial Tribunal decided the matter in a fashion which was not in accordance with law and to the tune of

the decided cases of the Hon'ble Apex Court as cited by the Applicant in the Argument/hearing stage and issued order in a negative way stating that the reference made by the Ministry of Law for adjudicating and award was not maintainable and the same was quashed, and that too, at the fag end of the case i.e. on final hearing in the Industrial Tribunal after expiry of almost 3 years.

The certified true copy of the order dated by 18.7.2005 issued by the Presiding officer, Industrial Tribunal, Guwahati is annexed as Annexure-~~N~~ N.

4.16. That it is humbly submitted that even if the reference made by the Ministry of Labour to the Industrial Tribunal u/s. 10.A.II.A of the Industrial Dispute Act¹⁹⁴⁷ for adjudication of the matter and giving an award, the Opposite Parties could have been raised the objection of jurisdiction initially and at the preliminary stage of the case in the Industrial Tribunal and the Hon'ble Presiding Officer could have settled the matter instantly/ as per prevailing procedure and system of the law, without keeping the matter pending and thereby causing physical, mental and economical strains to the workman, this Applicant, for the ends of justice. Thus, it is humbly submitted that the learned Presiding Officer erred both in law and in facts in the matter and decided the case in a fashion which is not only violative of the procedural laws but also denial of the Principles of Natural Justice and causing harassment and countless sufferings to the workman, this Applicant.

4.17. That the case was pending before the said Industrial Tribunal upto the date of issue of order i.e. on 18.7.05 and the Applicant being illiterate and without having any knowledge of the system waited for industrial Tribunal's decision and now after disposal of the said case by the Industrial Tribunal, the Applicant has come to this Hon'ble Tribunal, which, according to her present Counsel is the proper Forum in agitating the matter for redressal of her grievances as explained above, and hence, finding the filing of this Application before this Hon'ble Tribunal as efficacious this humble Applicant most humbly and placidly placed before this Hon'ble Tribunal that this Hon'ble Tribunal would be pleased to consider the matter to admit this original Application and call for the relevant papers and give justice to this Applicant who has been suffering for all these years.

4.18. That this Applicant once again most humbly and placidly submits that the action taken by the Opposite Parties in the case of the Applicant was completely unfair,

N. K. Kaur
28/11/05
Advocate

AJ-KAUR

unlawful, arbitrary and violation of all statutory Rules and laws and therefore infringement of Constitutional provisions under Articles 14,16,32,39(D),309 and 311 (2) of the Constitution of India has been caused.

Neeraj Singh
28/11/05
Advocate

4.19. That it is also submitted by this humble Applicant that in addition to the flouting of the statutory Rules and infringement of Constitutional safeguards for the rightful claim of an employee, the opposite parties have denied "Natural Justice" to this employee for causing illegal termination of service and keeping silence in reinstating her in service after getting long 15 years of dedication and service by the Applicant to their establishment.

4.20. That it is also humbly submitted that the Applicant belongs to the Schedule Caste category and as per Constitutional amended provisions of the Amending Act, 2001 the rights and privileges enjoyed by all the employees belonging to the "reserved quotas" was not to be curtailed under any circumstances and the Opposite parties knowing fully well such Constitutional directions of amended provisions violated the employment safeguard of this employee and therefore caused ultra vires to the Constitution of India.

4.21. That it is humbly submitted that the Opposite Parties have made breach of Contract and violation of contract Rules u/s 12 and 25 of the Contract Act.

4.22. That it is submitted that the employment of contractual agreement, as contemplated by the Opposite parties/Management in the Industrial Tribunal at the time of their adducing evidence at the fag end any of the case, is highly discouraged by the welfare State like India and that is why the Contract Labour (Regulation and Abolition) Act, 1970 has been enacted. But the Opposite Parties/Management have knowing fully well of the same wanted to take the shelter of it only to shadow their lapses and flaws and injustice and miscarriage of justice caused to this humble Applicant.

AJKAUR

4.23. That the Applicant craves leave of Hon'ble Tribunal in filing Additional Written Statement, Re-joinder, if necessary for the ends of justice.

5. Grounds for relief :

5.1. For that the Applicant's (has) case been examined by the Opposite Parties and the Presiding Officer, Industrial Tribunal, without proper application of mind and care and thus caused miscarriage of justice.

Contd.....p/8.....For that....

Mr. J. Kaur
Advocate

5.2. For that the Opposite Parties have flouted their own set of Rules and system in respect of employing/engaging and termination of the service of the employee on the face of the memorandum issued by the Dy. Director General (Personnel), Geological Survey of India, Kolkata mentioned above.

5.3. For that the termination of service of the Applicant by the Opposite Parties was perverse on the face of the aforementioned Memorandum and violation of all statutory Rules and therefore unreasonable, arbitrary and/or malafide.

5.4. For that the Opposite Parties violated the Provisions of competency and sufficiency of law of the "temporary Mazdoor" in regard to termination of service in the case of Applicant.

5.5. For that the authority violated the provisions of the Minimum Wages Act, 1948, for not making the payment as is required and envisaged by the provisions in the said Act and thereby caused violation for not making payment as shown under Annexures-B to M.

5.6. For that the authorities could not produce any Master Roll/Acquaintance Roll showing "present or absent" of the Applicant during her appointment/engagement by the Opposite Parties, more particularly, the opposite party No.2, for all those years of service, and, hence, the making of the artificial break in service as shown under Annexure-B in their document is not tenable in the eye of law.

5.7. For that the reason for not producing the records of payment to the Applicant all these years in respect of her repeated requests to the Opposite Parties though she was engaged by them right from 1985 and continued in service till July, 2001.

5.8. For that the actions of the Opposite Parties have violated the Fundamental Rights guaranteed under Articles 14, 16, 21, 39(d), 309 and 311 of the Constitution of India and denied the Cardinal Principles of Natural Justice.

6. Details of remedy exhausted

The Applicant declares that she has come to this Hon'ble Tribunal as her case in the Industrial Tribunal was disposed of on the ground of "jurisdiction" and she seems it

Contd.....p/9.....to be.....

AJ.KAUR

to be efficacious under Article 21 of the Constitution of India to come to this Hon'ble Tribunal for having justice for her grievances caused by the Opposite Parties.

Handwritten signature and date: 28/11/05 Advocate

7. Matters not pending with any other Court.

The Applicant most humbly submits that at the moment she has not filed any other Application, Writ petition or Suit regarding the matter in respect of which this application has been made before any Court or any other authority or any other Bench of the Tribunal nor any such application, Writ Petition or Suit is pending before any Tribunal or Court in respect of the subject matter of this Applicant.

8. Relief sought.

In the circumstances stated the Applicant humbly prays that the Lordships of this Hon'ble Tribunal may be pleased to administer justice by calling upon the records and witnesses, if necessary, and issue orders for :

(i). Quashing the miscarriage of justice caused by the Opposite Parties/Respondents by terminating her services abruptly after 15 years without issuing any notice of termination and giving her any reasonable opportunity as ought to have been given to a "temporary employee" under Article 311(2) of the Constitution of India.

(ii) For reinstatement in service with the existing pay scale, capacity, allowances, seniority and other benefits admissible with all back wages as per extant Rules from the date of termination.

(iii) For absorbing the Applicant in a regular Cadre of Group-D establishment of the Opposite Parties as per extant Rules and prevailing system.

(iv). Any other relief(s) as this Hon'ble Tribunal may deem fit and proper.

9. Interim Relief:

Pending finalization of this Application your Lordships may be pleased to pass orders for early release of all the grievances and benefits in the event of the Applicant's re-instatement in service with immediate effect and/or such order as deem fit and proper by this Hon'ble Tribunal.

Handwritten signature: A.J. KAUR

10. **Particulars of Application fees:**

Indian Postal Order No. 20G116413 dated 28.2.2005 amounting to Rs.50/- (Rupees fifty) only to be drawn in H.P.O, Guwahati, is enclosed herewith

28/11/05
Advocate

11. **Details of Index:**

An Index in duplicate containing the details of the documents to be relied upon is enclosed.

12. **List of Annexures:**

Annexures : A,B,C,D,E,F,G,H,I,J,K,L,M,N,O,P,Q,R,S,T, U, V, W.

-VERIFICATION-

I, Smti Amarjit Kaur, wife of Sri Mangal Singh, aged about 40 years, a resident of Shillong Cantonment Colony, near Anjali Cinema Hall, do hereby solemnly affirm and verify that the contents of paras-4.1 to 4.15 are true to my knowledge, belief and faith and I have not suppressed any material facts and Paras-4.16 to 4.23 are my respectful submission before this Hon'ble Tribunal .

And I sign this VERIFICATION on this 28th day of November, 2005.

Place : Guwahati.

Date: 28-11-05

AJKAUR

SIGNATURE OF THE APPLICANT.

To
The Deputy Registrar,
Central Administrative Tribunal,
Guwahati.

= 11 =

ANNEXURE - A

GENERAL SECRETARY

CANTONMENT BOARD EMPLOYEE UNION
SHILLONG, MEGHALAYA
REGD. NO.: 85

34

Ref. No.

12th Nov. 2001..

To
The Regional Labour Commissioner (Central)
Rajgarh Road, Guwahati-3,
Assam.



Sub:- Illegal termination.

Respected Sir,

With due respect I have the honour to draw your kind attention and intervention on the facts and circumstances mentioned below :-

That Sir, as per the records subkitted by Smti. Amarjeet Kaur, a resident of Dozen Line, Shillong before this Union that she had been working as a Sweeper in the Department of Geological Survey of India under Administrative Officer, Mineral Division, Shillong since 1985 without break.

That Sir, sometime on August 2001 her service was terminated by the Department without any satisfactory reason and as a result of such termination Smti. Amarjeet Kaur has been facing tremendous trouble to maintain her family.

So Sir, I, therefore, requesting you to take necessary step to safeguard the interest of the worker and your kind cooperation will highly appreciable.

Thanking you.

Yours faithfully,
[Signature]
General Secretary,
Shillong Cantonment Board Employee Union, Shillong.



[Handwritten signature]
28/11/05
Advocate

ANNEXURE-B

FAILURE OF CONCILIATION

PART - I

Government of India
Ministry of Labour
Office of the Assistant Labour Commissioner(C)
Rajgarh Road, Chandmari, Guwahati-1

No.0(2)/2002-G/A

Dated the

To

The Secretary
Government of India
Ministry of Labour
Shram Shakti Bhawan
Rafi Marg, New Delhi

10 OCT 2002

Subject:- Industrial Dispute over termination from service of Smt. Amarjeet Kour, Ex. Sweeper by the Management of Geological Survey of India, NH, Shillong.

Sir,

The General Secretary, Shillong Cantonment Board Employees Union, Shillong raised an Industrial Dispute vide his letter No. Nil dated 02.11.02 (Copy enclosed in Annexure I) stating that Smt. Kour had been working as Sweeper in the Department of Geological Survey of India under Administrative Officer, Mineral Division, Shillong since 1985 without break and Smt. Kour has been terminated in the month of August, 2001 without any reason. After that the Union took up the matter with the Management on several occasions but no positive result came out which prompted them to raise the dispute.

On receipt of the dispute the matter was taken up with the Management and advised them to attend this office for joint discussion/conciliation and various dates viz. 22.2.02, 13.5.02, 31.5.02, 18.6.02, 27.7.02, 8.8.02 and lastly 23.8.02 joint discussion held but no break through could be achieved out of discussions and subsequently on 11.9.02 the dispute stayed in conciliation and recorded failure.

The Management instead of answering the material fact of termination of Smt. Kour simply pointed out vide letter No. 6081/S/1/Contg/NH-87 dated 22.3.02 (copy enclosed in Annexure-II) the non applicability of Industrial Dispute Act, 1947 upon the establishment and as such the Management felt that such case of termination cannot be handled under I.D. Act and request to discontinue the position.

However, time to time the representative of Management attended the conciliation and stated that Smt. Kour was employed part time on contract basis at a rate of Rs. 600/- per month - on a copy of the official order

Contd. p-2/

allied
Advocate
28/11/05

dated 11.2.02 enclosed (Annexure-III). The Management never the fact of employment of Smt. Kour for the period since 1985 to August, 2001. The Management did not at any point of term contradicted the contention of the Union regarding the employment/deployment of Smt. Kour. More so, on 5.8.2002 the Management representative was in a mood to concede the demands of the Union to deploy Smt. Kour for not exceeding 119 days in a year i.e. 8-10 days approximately as casual contract basis and there had been a ray of hope of a amicable settlement after 15 days from 5.8.2002 but lastly on 11.9.02 the Management threw the cold water on the ~~aggressive~~ point and again roll back to their contention of non-applicability of the I.D. Act '47 upon the Geological Survey of India. Naturally the all out effort to resolve the dispute even after going much ahead towards settlement to entire exercise went on astray as because the Management refuse to re-instate Smt. Kour in to service. As such, the entire dispute ~~stringent~~ affect put by the conciliation officer did not find the face of success, rather it was failed.

Agreed

despite

Yours faithfully,

AM

AM 8/10/02

(Asst. Chakrobarty)
 Asstt. Labour Commissioner (C)
 Government of India, Guwahati

Copy to the following for information.

1. The R.L.C. (C), Guwahati
2. The Deputy Director General, Geological Survey of India, North Eastern Region, Shillong.
3. The General Secretary, Shillong Cantonment Board Employees Union, Shillong.

AM

AM 8/10/02

Asstt. Labour Commissioner (C)
 Government of India, Guwahati

ISSUED
 11/10/02
 SIGN.....
[Signature]

AM
Advocate
29/11/05

Ret No. 9(1)/13
d. 15-7-03

= 14 =

ANNEXURE-C

NO - L-42012/240/2002 - IR(CM-II)
Government of India// Bharat Sarkar
Ministry of Labour/Shram Mantralaya

New Delhi, Dated: 17/04/2003

ORDER

NO.. L-42012/240/2002 (IR(CM-II)) : WHEREAS the Central Government is of the opinion that an industrial dispute exists between the employers in relation to the management of *Geological Survey of India*, and their workmen in respect of the matters specified in the Schedule hereto annexed ;

AND WHEREAS the Central Government considers it desirable to refer the said dispute for adjudication;

NOW THEREFORE , in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) the Central Government hereby refers the said dispute for adjudication to the *Industrial Tribunal, GUWAHATI* . The said Tribunal shall give its award within a period of three months.

The Schedule

"Whether the action of the management of Deputy Director General, Geological Survey of India (NER) Shillong in terminating the services of Smt. Amarjeet Kaur, Sweeper w.e.f. August 01 without observing the provisions of law and also denying for reinstatement is legal and justified? If not, to what relief she is entitled to?"

(Kuldip Rai Verma)

DESK OFFICER

T. No.-23001145

EMail-irdu@lisd.delhi.nic.in

Copy forwarded for necessary action to :

1. The Presiding Officer
Industrial Tribunal
Ambari (bye lane),
Near Jor Pukhuri,
Uzanbazar
GUWAHATI-781001
- * 2. The Deputy Director General,
Geological Survey of India,
North Eastern Region, Shillong
SHILLONG(MEGHALAYA) -

attested
mehta
29/11/05
Advocate

* 3. The General Secretary,
Shillong Cantonment Board Employees Union,
Shillong
SHILLONG(MEGHALAYA) -

The parties raising the dispute shall file a statement of claim complete with relevant documents, list of reliance and witnesses with the Tribunal within fifteen days of the receipt of this order of reference and also forward a copy of such a statement to each one of the opposite parties involved in this dispute under rule 10(B) of the industrial disputes (Central), Rules, 1957.

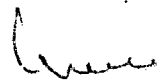
4. Ministry of Mines,
New Delhi
Pincode - 110001

5. The Regional Labour Commissioner(Central), GUWAHATI

6. The Assistant Labour Commissioner(Central), GUWAHATI w.r.t .his FOC Report
No. 8(2)/2002-G/A Dated 10/10/2002

7. Adjudication Folder.

8. CR Section.,


(Kuldip Rai Verma)
DESK OFFICER
T. No.-23001145
EMail-irdu@lisd.delhi.nic.in

* BY REGISTERED POST

allied
ref
28/11/05
Advocate

= 16 =

GOVERNMENT OF INDIA



e-mail : gsi@gem.ernet.in
Telegram : GSI
Fax : 22521874 / 2249656
Telephone : 22527242

No. /3/1(1643)/Law-59/2002

DATED: 24 MAR 2005

FROM:
THE DY. DIRECTOR GENERAL (PERSONNEL)
GEOLOGICAL SURVEY OF INDIA
27, J. L. NEHRU ROAD
KOLKATA - 700 016.

To:
The Dy. Director General
North-Eastern Regional
Geological Survey of India,
Shillong.

(Attens: Shri K. Kharmalki, Adan, Officer, Gr. I)

Sub: Industrial dispute in respect of Smt. Amarjoti Kaur regarding contingent workers.

Ref: Telephonic discussion of Shri K. Kharmalki with the undersigned on 23.3.2005.

Sir,

With reference to the above mentioned discussion, clarification regarding latest circular on ban on engagement of Contingent Workers was sought from the concerned establishment of this office. It has been indicated that the circular dated 12th April, 1988 was the latest and copy of the same is enclosed for perusal and ready reference.

This is for information and necessary action, if any.

Yours faithfully,
(Signature)
(N.N. CHAUDHARI)
Law Officer
for Dy. Director General(P)

Asst (Law Secy) to
(Signature) 28/3/05

404 28/3/05

(Signature)
Advocate
28/3/05

2011
20
Encl. (1)
20
Enclosing Officer,
Industrial Personnel,
GSI, Kolkata.

ANNEXURE - D/1

1855N-280N

GOVERNMENT OF INDIA
GEOLOGICAL SURVEY OF INDIA
4, CHOWRINGHEE LANE
CALCUTTA - 16.

No. _____/A-12031/CW/1/83-85/17D. Vol. II Dated, the ^{12th} April, 1988

MEMORANDUM

Sub :- Ban on engagement of contingent workers on continuous basis.

After the Ministry's instructions contained in their letter No. A-12031/10/80 M. II dt. 3.8.87 that engagement of further contingent employees should not be resorted to in Geological Survey of India were communicated to all concerned demi officially under D.O. No. A-12031/CW/83-85/17D dt. 21.10.87 clarifications have been asked for from certain quarters with regard to strict implementation of such orders.

The fact is that ban on continuous engagement of contingent workers in Geological Survey of India already exists since 1.11.1971. The strict implementation of ban orders have been emphasized through instructions issued from time to time, specifically stating that any violation thereof will be viewed seriously. The latest communication under reference is, one in the series, coming from the Government.

In this connection attention is invited to this office circular No. 28(4)/77-78/17A (Ban) dt. 9.6.78 on the subject, a copy of which is enclosed for convenience of ready reference. The instructions contained therein provide for purely temporary engagement of mazdoors (unskilled) for short durations to meet the exigencies of work in public interest, and the procedure to be followed in this regard. The exigencies are being met in terms of those orders which are still in existence. It is however, reiterated that any violation of these orders and any engagement of contingent workers for regular types of jobs on continuous basis will be reviewed seriously.

Jagdish Lall

(Jagdish Lall)
Director (Administration)
for Director General
Geological Survey of India.

To
All Sr.DDG/DDG/Director/
Regions/Divisions.

allotted
28/11/05
Advocate

p.g.dcy

(13) = 18 =

Annexure - III

41

ANNEXURE - E

THE DETAILS OF CONTRACTUAL WORK PERFORMED BY SMT. AMARJEET KAUR

- 1991 : July- 1 month.
- 1992 : January- 1 month, 10 February to 10 March - 1 month
- 1993 : October - 15 days, 1 to 5th November- 5 days, 15-30 November- 9 days, December- 20 days.
- 1994 : February- 20 days, March- 20 days, April- 20 days, November- 19 days, December- 20 days.
- 1995 : January- 20 days, February- 11 days, April -16 days, May-20 days, June- 20 days; July- 24 days, August- 24 days, September-24 days, October- 24 days, December-24 days.
- 1996 : January- 24 days, February- 24 days, March- 24 days, April- 24 days, May- 24 days, July- 24 days, August -24 days, September- 24 days, October- 24 days, November- 24 days, December- 24 days.
- 1997: April- 1 month, May- 22 days, June- 22 days, July, 22 days, August - 1 month, September - 22 days, October-22 days, November-22 days, December - 22 days.
- 1998 - March- 22 days, April- 22 days, May - 22 days, June- 1 month, July- 1 month, August- 1 month, September- 1 month, October- 1 month, November- 1 month.
- 1999- January- 1 Month, February- 1 month, March - 1 month, April- 1 month, May- 1 month, June- 1 month, September- 1 month, October- 1 month, November- 1 month.
- 2000: January- 1 month, February- 1 month, March- 1 month, April- 1 month, 11 July to 10 August-- 1 month, 11 August to 10 September- 1 month.
- 2001: 22 May to 21 July- 2 months.

Few of the vouchers are enclosed for payment on contract basis only.

ANNEXURE-F

Statement showing details of wages for the Month of July 1991, of Mineral Physics Division, G.S.I., N.E.R., Shillong.

Sl. No.	Name and work.	Total days	Rate.	Amount.
1.	Smti - Amarjit Kaur. (Sweeper)	1 Month.	150.00 (P.M)	150.00.
Total Amount-				150.00.

Rupees One hundred fifty only.

1, Above worker has been engaged as per the approval obtained in - file no 23/C.

Ande 12/8/91

Dr - A.K.De.
Mineralogist (Jr) In-charge.

Mineralogist (Jr) In-Charge
Geological Survey of India
Mineral Physics Division
North Eastern Region
Lower New Colony
Shillong-793003

Passed for Rs. 150/- only
R 19/8

D.D.O.
G.S.I., N.E.R.
Shillong

o/c

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re to
28/11/05
Adivrate

Statement showing details of wages for the Month of January 1992, of Mineral Physics Division, G.S.I., N.E.R. Shillong.

Sl. No.	Name and work.	Total days	Rate	Amount
1.	Smti- Amarjit Kaur. Safaiwalla Contract-basis.	1 Month	Rs 425.00	425.00

Total rupees --- 425.00
Rupees four hundred twenty five only.

Certified that,

Above worker has been engaged as per the approval obtained in file no 23/C.

4959
At 14/1/92

S.K. Bhattacharya
10/1/92

Passed for Rs. 425/- only

Mineralogist (Sr) in Charge
Geological Survey of India
Mineral Physics Division
North Eastern Region
Lower New Colony
Shillong 793002

DDO.
G.S.I. N.E.R.
Shillong

AO
13/1/92

Red.
15/1/92

Advocate
28/1/05

ANNEXURE-H

44

Statement showing details of wages for the month of February 10th to March 10 1992, of Mineral Physics Division, G.S.I. N.E.R. Shillong.

Sl. No.	Name and work	Total days	Rate	Amount
Ia	Smti. Amarjit Kaur (Sweeper contract - Basis)	I Month	425.00 (P.M)	425.00

Total Amount Rupees 425.00

Rupees four hundred twenty five only.

Certified that :-

Above worker has been engaged as per the approval obtained in file No. 23/C.

Safai for Rs. 425/- only
Passed
[Signature]

5349 DI 13/2/92
G.S.I. N.E.R.

Dr. A. K. De.
Mineralogist (Jr) - In-Charge.

Dr. ADRIK KANTI DE
Mineralogist

Mineral Physics Division
Geological Survey of India
N.E.R. Shillong 793003

AO AC(II) P
1/103/52

Recd on 1/3 at 4 p.m.

Advocate
[Signature]
29/1/92

= 222 (A)

Signature: *[Handwritten Signature]*

Statement showing details of wages for the Month of October, and November 1993, of Mineral Physics Division, G.S.I.N.E.R. Shillong.

SL No.	Name and category.	Total Days.	Rate.	Amount.
31, 2	Smti:- Amarjit Kaur.	20.	10.00.	200.00

He worked for 25 days in the month of October. Total amount Rs- 200.00. Rupees two hundred only.

Certified that:-

The worker's Apporval has been obtained from competent authority in contingent sanction file No 23, for 5 days.

Dr:- D.K.Sen. 17.11.93

Mineralogist (Sr) In-Charge.
Geological Survey of India
Mineral Physics Division
North Eastern Region
Lunglei New C...
Shillong 781001

8th
11th - 15th - 1st - 5th
18th - 21st
25th - 29th
Ben
17.11.93

Passed for Rs...

D.D.G.
G.S.I. N.E.R.
Shillong

[Handwritten Signature]
29/11/05
Advocate

= 23 = (18)

~~Statement for III~~

46

Statement showing details of wages for the Month of November 1993 (15.11.93 - 30.11.93) of Mineral Physics Division, G.S.I, N.E. R, Shillong. (Contract)

No.	Name and work.	Days.	Rate.	Amount
1.	Smti:- Amarjit Kaur. (Sweeper Contract-basis)	9(Nine)	10.00.	90.00

Rupees ninety only.

Total Rupees:- 90.00

Dr:- D.K.Sen. 3.12.93
Mineralogist (sr) In-Charge.

Certified that:

Apporval has been obtained from competent authority in Contigent sanction file no 23.

Copy of the sanction in duplicate is enclosed

Dr:- D.K.Sen. 3.12.93
Mineralogist (sr) In-Charge.
Mineralogical Survey of India
Mineral Physics Division
North Eastern Region
Lower New Colony
Shillong-793002

issued for Rs. 90/-

D.D.A.
G.S.I, N.E.R.
Shillong.

*also
referred to
29/11/05
Advocate*

2.4 =

Statement showing details of wages for the Month of April, 1994, of Mineral Physics Division, GSI/NER/ Shillong.

Sl. No.	Name and work.	Days.	Rate.	Amount.
1.	Smti:- Anarjit kaur. (Sweeper Contract basis)	20.	10.00.	200.00.

Total rupees:- 200.00.

Rupees two hundred only.

Certified that:-

Approval has been obtained from competent authority in Contingent Sanction file No 23.

Dr:- K. Roy Choudhury...
Mineralogist (sr) in-charge.

Mineralogist (Sr)
Mineral Physics Division,
Geological Survey of India,
North Eastern Region,
Shillong - 793002.

Passed for Rs. 200/-

Admitted
29/4/05
Advocate

ofc

25

Annexure-III

ANNEXURE - L

No. /230/Wages-Contg/MPHD/NER/95.

Statement showing details of wages in respect of Safaiwala contract-basis for the Month of August 1995 of Mineral Physics Division, GSI, NER, Shillong.

Sl No.	Name and work.	Days	Rate	Amount.
1.	Smti:- Amarjit Kaur.	24.	10.00	240.00

Total rupees: 240.00

Rupees two hundred forty only.

S. Mukherjee
 Dn (Mrs) S. Mukherjee
 Mineralogist (Sr) In-Charge.

Mineralogist (Sr) In-Charge
 Geological Survey of India
 Mineral Physics Division
 North Eastern Region
 Lower New Colony
 Shillong-793004

Checked
28/11/05
Advocate

Statement showing details of wages in respect of Sweeper Contract basis for the month of September 96, of Mineral Physics Division, EST, NER, Shillong.

Sl. No.	Name & Work	DAYS	RATE	Amount
1,	Smilin Amaryjit Kaur (Sweeper Contract basis)	24;	10.00	240.00

Total Rupees: — 240.00

Rupees two hundred forty only.

Part of F. a. 240/-
etc
Drawing & Disbursing Officer
Geological Survey of India
North Eastern Region
Shillong

S.K. Bhattacharya
8/10/96
(S.K. Bhattacharya chargee)
S.T.A. (G/W)
For Officer in-charge

N.K. Das
25/11/05
Advocate

MINERAL PHYSICS DIVISION
GEOLOGICAL SURVEY OF INDIA
NORTH EASTERN REGION
SHILLONG - 793003.

27 =

ANNEXURE - N

Ann-III

Statement showing the details of wages in respect of sweeper on contract basis for the month of November, 1997, of Mineral Physics Division, GSI, NER, Shillong.

Sl. No.	Name and work	Days	Rate	Amount
1.	Smti A. Kaur Sweeper on contract basis	22	Rs. 240/-	Rs. 240/-

Total :- Rs. 240/-
(Rupees Two hundred forty) only

*Passed for Rs. 240/-
o/c*

Drawing & Disbursing Officer
Geological Survey of India
North Eastern Region
Shillong

hgh
28/11/97
(A. GHOSE)
Asstt. Geophysicist (Insttn)
Officer-In-Charge
Mineral Physics Division
GSI, NER, Shillong

allotted
M. K. Das
28/11/97
Advocate

26/MR/NER/651

HANNOVER

Statement showing details of wages in respect of Sweeper Contract basis for the month of October 1998 of Mineral Physics Division, GSI, NER, Shillong.

Sr. No.	Name & Work.	Days	Rate	Amount
1	Mrs. - Anasjit Kaur Sweeper Contract basis	1 month	Rs. 400.00 (Per Month)	400.00

Total Rs. - 400.00
Rupees Four hundred only

Passed for Rs. 400/-
d/c
Drawing & Disbursement Officer
Geological Survey of India
North Eastern Region
Shillong

Dr. - Anwar Raus
Mineralogist (Sr) In-Charge

Officer-In-Charge
Mineral Physics Division
GSI, NER, Shillong

Advocate
28/11/05

and circumstances on the rule provision as under:

134/26/MP/NER/GSI

ANNEXURE - T

= 29 =

(24)

Statement showing details of wages in respect of sweeper contract basis for the month of January 1999 of Mineral Physics Divn, GSI, NER, Shillong.

Sl. No.	Name & work.	Days	Rate.	Amount
1,	Smti. - Amarjit Kaur. (Sweeper contract basis)	1 Month	400.00 (P.M)	400.00

Total Rupees: → 400.00

Rupees Four hundred only.

Passed & Disbursing Officer
Geological Survey of India
North Eastern Region
Shillong

Dr. - ANWAR RAIS
Mineralogist (Sr) In-charge.
Officer-In-Charge
Mineral Physics Division
GSI, NER, Shillong

28/1/99
Advocate

No. 401/2FA/MP/NER/GSI.

MINERAL PHYSICS DIVISION
NORTH EASTERN REGION
GEOLOGICAL SURVEY OF INDIA
SHILLONG 793003

Dated... 03.4.2000 ... 197

Statement showing details of wages in respect of
Sweeper on Contract basis for the month of
March, 2000 of Mineral physics Divn,
GSI, NER, Shillong.

S.L. No.	Name and Work.	Days.	Rate.	Amount.
1,	Smti- Anarjit Kaur. (Sweeper Contract-basis)	1 Month	600.00	600.00

Rupees Six hundred only. Rupees-- 600.00

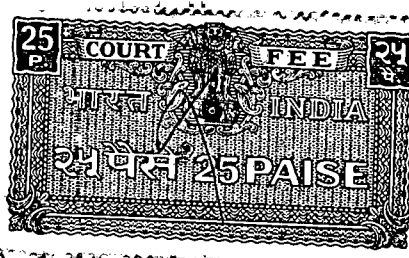
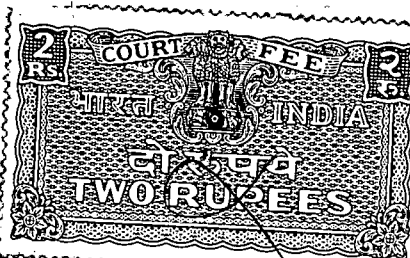
Dr- Anwar Rais

Mineralogist (Sr) In-Charge

Office In-Charge
Mineral Physics Divn.
GSI, NER, Shillong

Drawing & Disbursing Officer
Geological Survey of India
North Eastern Region
Shillong

allied
K. K. Saha
29/11/05
Advocate



ANNEXURE-R

- 34/54

Date of application for the copy.	Date of making the copy.	Number of stamps & folios,	Date of delivery of the copy ready for delivery.	Date of making over the copy to the applicant.
26-9-05	26-9-05		26-9-05	28-9-05

IN THE INDUSTRIAL TRIBUNAL: GUWAHATI.
REFERENCE NO. 9(C)003

Present : Shri B. Borah,
 Presiding Officer,
 Industrial Tribunal, Guwahati.

~~In the case of~~
 Deposition of witness No. 1 for the Management taken on oath/solemn affirmation on the 29-3-05 .

My name : K. Kharmalki, S/O. Lt. Sawkmie
 My age is 50 years, Residence at Shilling- Kharmalki Road
 My occupation is - Administrative officer, Grade - 1
 Geological Survey of India, Shillong.

Witness

On S.A. I have serving in the Geological Survey of India at the Shillong for the last 28 years at present I am serving the Administrative Officer, Grade-I. I do not know the workman. From the office records it reveals that the workman was engaged in our office as sweeper during leave vacancies on several occasions. She was neither a regular employee nor a casual employee. She was paid on daily wage basis. The workman was never given any appointment letter. The Deputy Director General of our office is the appointing authority. Ext. 1 is a circular barring appointment of contingent workers. Ext. 2 is a letter of Director (Personal) Geological Survey of India to the DDG Shillong. Ext. 3 is relevant provision of the I.D. Act. Ext. 4 is the relevant Provision of Administration Tribunal. Ext. 5 the details of engagement of the workman along with the payment vouchers.

X X X X X



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X X X

I do not know ~~xxx~~ if any appointment letter was issued to the workman or not. She was paid on daily basis as per the rate prescribed by the Govt. of Meghalaya. She was never paid any time scale. She was given ~~no~~ status of a temporary or casual employee. I do not know as to whether the workman belongs to S.C category. No notice of termination was given to the workman before her termination. I can not say what the Mineral Physics Deptt. does. I do not know whether any regular sweeper was engaged during 91-92. She was engaged on contract basis. There is ~~is~~ no provision of Part time work in our establishment. The workman was a worker on contract ~~xxx~~ basis. There was no written agreement between the workman and our establishment. I think the workman was paid as per provisions of the Minimum Wages Act.

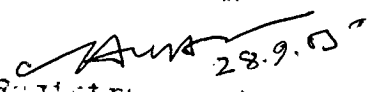
Sd/- K.Khormalki
29-3-05

Sd/- B.Borah,
29-3-05

Type by : 

Compared with : K.N.H.

Certified to be true copy


28.9.05
Registrar,

Mineral Physics Deptt.,

Shillong, Meghalaya

IN THE INDUSTRIAL TRIBUNAL: GUWAHATI: ASSAM.

REFERENCE NO. 9 (C) 2003.

In the matter of an Industrial Dispute between:

Smti. Amarjeet Kaur,
Represented by the General Secretary Shillong
Cantonment Board Employees Union,
Shillong Workman.

AND

The Dy. Director General,
Geological Survey of India,
North Eastern Region,
Shillong Management.

The humble petition on behalf
of the management above named.

Most Respectfully Sheweth :-

1. That the petitioner/Management begs to state that the 'petition for objection' filed by the workmen is not maintainable.

2. That the petition management begs to state that the petitioner management filed its written statement on ground of maintainability of the instant case/dispute pending before this Hon'ble Tribunal- that this Tribunal has no jurisdiction to adjudicate the instant case on the following ground amongst others.

(a) For that the Geological Survey of India is a Central Govt. Department and does not come under the purview of Industrial Dispute Act, 1947 as per Section 2(A) of Industrial Dispute Act, 1947 as such this Tribunal has no jurisdiction.

Advocate
28/11/05
Contd....2/-

(b) For that since the Geological Survey of India being an independent and sovereign functioning Department of Govt. of India, the activities carried out by this Deptt. are therefore not covered by the Industrial Dispute Act, 1947 as such this Tribunal has no jurisdiction.

(c) For that under section 14 of the Central Administrative Tribunal Act, 1985, the Central Administrative Tribunal shall exercise all the jurisdiction, power and authority in relation to recruitment and matters relating to recruitment to all India Services to any Civil Service of the Union or Civil Post under the Union etc. as such this Tribunal has no jurisdiction in the instant case.

(d) For that the GSI is a department under the Central Govt., the subject matter in the schedule, being matters relating to the termination of the service of Smti. Amarjeet Kaur, the matter does not fall under the jurisdiction of Industrial Tribunal to arbitrate the service matter under the Central Govt.

(e) For that since the GSI is an independent department of Govt. of India, the question of termination and reinstatement of Smti. Amarjeet Kaur can not be arbitrate by this Tribunal.

3. That the petitioner management begs to state that the management submitted all the documents as annexures while filing the written statement before this Hon'ble Tribunal in support of the stand taken in the instant case.

4. That the petitioner/management begs to state that the reference is bad in law as it has been made

Attested
M. K. Bhatnagar
 29/11/05
 Advocate

without applying its mind for the Industrial Tribunal is not the appropriate forum to adjudicate the same.

5. That the management/petitioner begs to state that the Hon'ble Tribunal should decide the question of adjudication first before going to arbitrate the dispute in question.

6. That the petitioner/management begs to state that the petitioner may be made bonafide and for the ends of justice.

In view of the above circumstances, it is most respectfully prayed that the Hon'ble member of the Industrial Tribunal would be pleased to decide the question of adjudication and also to decide whether the instant case is an Industrial Dispute or not to be arbitrated by this Hon'ble Tribunal for the ends of justice.

VERIFICATION

I, Shri Khilainbor Khamalki, Administrative Officer, Grade I & Head of Office, Son of Late S. Sanku being authorised to sign this petition by the Deputy Director General, Geological Survey of India, North Eastern Region, East Khasi Hills District Shillong, Meghalaya do hereby, solemnly declare that the contents of the above petitions made are true to my knowledge, belief and information. And I sign this petition on this the 4th day of June 2005.

Attested
28/6/05
Advocate

[Signature]
DEPONENT 27/6/2005

BEFORE THE PRESIDING OFFICER, INDUSTRIAL TRIBUNAL, GUWAHATI.

Ref. Case No. 9 (C) /2003.

The President,
Cantonment Employees Union,
Shillong, representing,
Smti Amarjit Kaur, Workman,
Terminated from Geological Survey of India,
Shillong.

..... Petitioner/Workman.

-Vrs-

Union of India ,representing by
The Dy. Director General, Geological Survey
of India, North Eastern Region, Shillong
and others.

..... Management.

IN THE MATTER OF :

A REPLY TO THE PETITION OF THE MANAGEMENT CHALLENGING THE JURISDICTION OF THE INDUSTRIAL TRIBUNAL AND THE MAINTAINABILITY OF THE SUBJECT REFERRED CASE.

The petition of the Petitioner most respectfully sheweth :

1. That the Petitioner begs to state that the petition of the Management dated 4.6.05 mentioned above is an afterthought appearance after completion of their witness evidence and exhibiting of records on adducing evidence and, that too, on the face of the Objection Petition filed by the Petitioner detailing the irregular, unlawful, whimsical, arbitrary and unconstitutional activities of the Management and to produce certain essential and vital documents as prayed for thereunder so as to establish the action committed by the Management in terminating the workman's employment after getting her faithful, sincere and continuous service of 15 years right from 1985. However for brevity and clarity of the case, as ordered by the Hon'ble Tribunal, the submission of the Petitioner is as under :-

1.1. That the JURISDICTION- According to Concise Oxford Dictionary means- the administration of justice, legal or other authority, the Territory it extends over.

According to Wharton's Law Lexicon- it means- legal authority, extend of power, declaration of law. Jurisdiction may be limited either legal, as that of

Contd.....p/2..... County.....

Advocate
28/11/05
N. P. Singh

~~227/05~~

292/05

Daily saved -

Indul Daspora, Jaid

Financial Services

21 July 2001

in agreement letter

Contract basis

ill trace

expected

Replay ... delay

Contract delay

After 5 years

Page 4 (a) WS

substitute

Page 66
Quote

2006 (H) See

~~7 agents~~
2001 (V) See 16

other relatives of the deceased such as parents and siblings. So far as relatives other than spouse and children are concerned there is a condition that they are dependent on the deceased employee for support has to be established by adducing reasonable proof to claim pension. Further the scheme of grant of pension is by way of exclusion of a relative mentioned in the earlier category with reference to the one mentioned in the latter category. In the first place it is to be established that there was no nomination in respect of any one of them and that such person was a dependant of the deceased employee at the time of the death. In the absence of such proof family pension cannot be granted. Indeed whether a widowed sister, as in the present case, has her own source of income or was not dependent upon the deceased is a matter to be established by adducing appropriate proof. However, none of the courts have adverted their attention to this aspect of the matter, though the defence raised by the appellants has been noticed. Thus we have no option but to set aside the decree passed by the trial court as affirmed by the first appellate court and the High Court in second appeal to the extent indicated above insofar as it relates to direction for payment of family pension.

7. This appeal is thus allowed to the extent indicated above setting aside the decree insofar as it relates to the direction to grant of family pension and in other respects remains undisturbed and the matter is remitted to the trial court for fresh consideration on the question as to whether the respondent is a dependant of the deceased employee so as to claim pension in terms of the Rules which we have adverted to. Appeal is allowed in part. No costs.

(2000) 6 Supreme Court Cases 562

(BEFORE S. RAJENDRA BABU AND SHIVARAJ V. PATIL, JJ.)

LIFE INSURANCE CORPORATION OF INDIA
AND OTHERS

Appellants;

Versus

JYOTISH CHANDRA BISWAS

Respondent.

Civil Appeal No. 4445 of 2000[†], decided on August 9, 2000

A. Constitution of India — Art. 226 — Maintainability — Delay/Laches — Pursuant to departmental enquiry, Development Officer of LIC found guilty of unauthorised absence from duty for a long period (61 days in this case) and consequently dismissed from service — Five years later, he unsuccessfully seeking re-employment in LIC — One year later, without any explanation for the inordinate delay of six years, he filing a writ petition to challenge the termination of his service — In such circumstances, the Single Judge rightly dismissed the writ petition — Division Bench erred in terming the Single Judge's order to be laconic and on that ground reversing the same — Service Law — Life Insurance Corporation of India (Staff)

[†] From the Judgment and Order dated 8-10-1999 of the Calcutta High Court in FMA No. 37 of

a Regulations, 1960, Regn. 12— Dismissal from service — Writ petition against — Effect of delay/laches — Service Law — Writ petition (Para 6)

b B. Constitution of India — Art. 226 — Pleadings — Non-existent plea — Omission to consider — Effect if any — Single Judge of High Court upholding the order of dismissal of the writ petitioner from service — Division Bench reversing the said order and holding that the writ petition ought to have been allowed only on the ground that the order of dismissal having been passed by the appellate authority, the writ petitioner was deprived of the right to appeal — Such a ground not having been taken in the writ petition or in arguments, such order of the Division Bench, held, bad — Service Law — Dismissal from service — Life Insurance Corporation of India (Staff) Regulations, 1960, Regns. 39 & 40 (Para 6)

c C. Constitution of India — Art. 136 — Costs — Circumstances warranting award of, to the losing party — Writ petition of the respondent dismissed Development Officer of LIC dismissed by Single Judge but, in appeal, allowed by Division Bench — During the pendency of proceedings before High Court, respondent superannuating — In such circumstances, and also keeping in view that the respondent was dismissed 31 long years ago and was also deprived of other benefits, Supreme Court although allowing LIC's appeal, awarding Rs 25,000 as costs to the respondent — Practice and procedure (Paras 7 and 8)

d Appeal allowed

H-M/22919/Corr-39/CL

Advocates who appeared in this case :

Harish N. Salve, Solicitor General (K.K. Sharma, R. Rahim and Kailash Vasdev, Advocates, with him) for the Appellants;
A.K. Ganguli, Senior Advocate (Pradyut K. Saha, Chanchal K. Ganguli and Asis Mathew, Advocates, with him) for the Respondent.

e The Judgment of the Court was delivered by

SHIVARAJ V. PATIL, J.— Leave sought for is granted.

f 2. Life Insurance Corporation of India and its officers have brought this appeal to this Court aggrieved by the judgment dated 8-10-1999, passed by the Division Bench of the High Court of Calcutta. The relevant facts, which are necessary for the disposal of this appeal, are the following:

g While the respondent was working as a Development Officer in Life Insurance Corporation of India at Calcutta (for short "the Corporation"), a charge-sheet was issued to him on 15-2-1968 alleging that he remained unauthorisedly absent from his duties for a total number of 61 days between the period 18-10-1967 to 13-2-1968 and that he remained absent from his station at Calcutta during the said period without prior permission of the authorities. He was directed to submit his written statement to the said charges. Accordingly, he submitted his reply in writing. Thereafter, the Divisional Manager, Calcutta of the Corporation was appointed as enquiry officer to inquire into the said charges levelled against the respondent. The enquiry officer, on the basis of evidence, found the respondent guilty of the charges. The Zonal Manager being the disciplinary authority cc

with the findings recorded by the enquiry officer issued a communication dated 15-11-1968 to the respondent stating that he proposed to dismiss him from service and directing him to show cause within 21 days as to why the proposed punishment should not be imposed. The respondent made a further representation dated 11-1-1969. The Zonal Manager having considered the representation passed the order dated 28-1-1969 dismissing the respondent from service of the Corporation with immediate effect finding that there was nothing new in the said representation of the respondent dated 11-1-1969. The respondent having kept quiet for a period of about five years, however, by his letter dated 9-1-1974 in addition to other contentions requested for his re-employment in the Corporation. The Corporation by letter dated 15-2-1974 (Annexure P-5) informed the respondent that as per Regulation 12 of the Life Insurance Corporation of India (Staff) Regulations, 1960 (for short "the Regulations") no person, who has been dismissed from the service of the Corporation, shall be re-employed. Thereafter, the respondent filed the writ petition in the High Court on 25-3-1975 questioning the validity and correctness of the order of termination of his services and for consequential reliefs. The learned Single Judge dismissed the said writ petition observing that:

"On a careful consideration of the records and proceedings in the instant case, it appears to me that the impugned order and the proceedings in which it was passed do not *ex facie* suffer from any defect. It also does not appear that the said order was passed in violation of the principles of natural justice. On the contrary, it appears that the petitioner was given an opportunity at every stage of the inquiry to make his representation. The allegations of mala fide and erroneous procedure followed, urged by the petitioner in his application, in my view, have little force. In any event, it appears that the petitioner is guilty of unreasonable delay and laches inasmuch as he has sought to impugn the order of dismissal passed in January 1969, in March 1975. There is no explanation for this delay."

3. The respondent took up the matter in appeal before the Division Bench of the High Court, which was allowed. The Division Bench noticed that the respondent in the meanwhile had superannuated and directed that he should be deemed to have continued in service till his age of superannuation and would be entitled to the terminal benefits together with compensation of Rs 25,000. In the order the Division Bench has stated thus:

"The learned trial Judge by a laconic order dismissed the application, *inter alia*, holding that the petitioner is guilty of unreasonable delay without explaining the same. As regards the other findings, no reason has at all been assigned nor the contention of the appellant to the effect that the Zonal Manager being the appellate authority, he could not have acted as a disciplinary authority had been taken into consideration."

The Division Bench also observed that...

disciplinary authority as a result whereof the appellant had been deprived of a right to appeal.

4. It was pointed out to us that the respondent had not raised this ground before the learned Single Judge and as such no fault could be found with the order of the learned Single Judge. It was further urged on behalf of the appellants that the learned Single Judge was right and justified in dismissing the writ petition on the ground of delay and laches when there was absolutely no explanation whatsoever for inordinate delay of about six years in filing the writ petition; the respondent either had accepted or reconciled with the order of termination of his services by keeping quiet for a period of five years and thereafter seeking for his re-employment in the Corporation.

5. Submissions were made on behalf of the respondent supporting the judgment under appeal. Further our attention was specifically drawn to Regulations 39 and 40 and Schedule I to contend that the Zonal Manager being the appellate authority ought not to have passed the order of termination of services of the respondent, depriving him of a right to appeal.

6. The order terminating the services of the respondent was passed on 28-1-1969. The writ petition was filed challenging the said order on 25-3-1975, almost after a period of six years. There was no explanation in the writ petition whatsoever for this inordinate delay. The respondent sought for his re-employment in the Corporation by his letter dated 9-1-1974 almost after a period of five years from the date of termination of his services. It only indicated that he accepted the order of termination of his services, if not expressly but impliedly. In the writ petition no ground was raised as to deprivation of a right of appeal to the respondent against the order of the termination of his services. It is not the case of the respondent that he was denied any opportunity offending principles of natural justice. An inquiry was held pursuant to the charge-sheet; witnesses were examined; and even the respondent examined three witnesses on his behalf. The enquiry officer looking to the evidence brought on record found the respondent guilty of the charges. It was also not shown that any prejudice was caused to him in the inquiry. The disciplinary authority concurring with the findings recorded by the enquiry officer, after giving further opportunity to the respondent, passed the order terminating the services of the respondent. These being the facts and circumstances of the case, in our opinion the learned Single Judge was right in dismissing the writ petition. We find that the order of the learned Single Judge is a detailed and considered one. We find it difficult to accept the observations made by the Division Bench of the High Court extracted above that the order passed by the learned Single Judge was laconic. When there was no explanation whatsoever given by the respondent in the writ petition for delay of about six years, the learned Single Judge was right in saying so and dismissing it. When the ground that the respondent...

whatsoever in support of his judgment in this regard. We fail to understand how such a non-existing ground could be considered by the learned Single Judge.

7. The respondent having attained the age of superannuation retired during the pendency of proceedings before the High Court and had succeeded before the Division Bench of the High Court. Having regard to the facts and circumstances of the case and that he was dismissed from services as early as in 1969 and was also deprived of other benefits, we think it is just and appropriate to award costs to him.

8. Thus viewed from any angle the judgment of the Division Bench under appeal cannot be sustained. Hence the appeal is allowed, the judgment under appeal is set aside and the appellants shall pay costs to the respondent quantified at Rs 25,000.

(2000) 6 Supreme Court Cases 566

(BEFORE V.N. KHARE AND S.N. VARIAVA, JJ.)

AJAIB SINGH AND OTHERS

Appellants;

Versus

TULSI DEVI (SMT)

Respondent.

Civil Appeal No. 11941 of 1995[†], decided on August 2, 2000

A. Specific Relief Act, 1963 — S. 16(c) — Readiness and willingness to perform obligations under agreement — Held, on facts, could not be said to have been proved where the record clearly showed that respondent-plaintiff had not made all the necessary instalment payments under the agreement — More so, when respondent-plaintiff had made averments without regard to the truth — Agreement in this case (i) was for transfer to respondent of one part of suit property, which was originally allotted to appellant by Govt.; transfer to be carried out after full payment to Govt. from funds supplied by respondent; (ii) provided for loan to appellant to pay for the second part of the property; and (iii) included a condition that second part of property would also be transferred to respondent in case loan or any instalment not repaid — The fact that Govt. did not terminate the contract on account of non-payment, held, would have no bearing on the fact of respondent not having performed her obligations under the agreement — High Court erred in affirming the decree for specific performance awarded by trial court to the respondent

B. Equity — Equitable Relief — Person making averments as per convenience without regard for truth, held, would be precluded from getting equitable relief

The predecessor-in-interest of the appellants, S, a displaced person from Pakistan had been allotted two properties (Nos. M-67-A and M-67-B) in New Delhi by the Govt. in 1955. The Govt. offered to sell the properties to S fixing the purchase price at Rs 8080, which was to be paid in a lump sum or in

instalments. In 1959 the Govt. issued a final demand notice seeking payment. As S did not have enough money to make the payment, he entered into an agreement with the respondent, T, under which: (i) T was to purchase No. 67-B for Rs 5000 plus arrears of rent due to the Govt.; ownership was to be transferred to T immediately after it was transferred to S, upon payment of the price to the Govt.; (ii) S was given Rs 3000 to enable him to pay the first instalment; (iii) the amount of Rs 3000 was to be treated as a loan repayable in 5 yearly instalments; (iv) in case S failed to repay the loan of Rs 3000 or any instalment remained due after 30 days' RAD, the entire amount or the balance due would become payable at once; and (v) if within 15 days the amount or such balance was not paid Property No. M-67-A had to be transferred to the respondent, T.

S then entered into an agreement with the Govt. on 30-12-1959 in which the mode of payment and the amounts due, for the two properties, including interest were set out. S was to pay a sum of Rs 8108.70 with interest in 7 yearly instalments; the first instalment was due on 22-6-1960. On 20-12-1964 S died, survived by the appellants.

In 1968 the respondent filed a suit for specific performance claiming the transfer of Property No. M-67-A, contending that S had not repaid the loan to her. The plaint clearly stated that the respondent would become entitled to the transfer "on payment of the money due to the Govt." The respondent-plaintiff averred that she had made all the necessary payments and also that she had made the last payment on 2-12-1965.

The appellant-defendants contended in their written statement that the respondent had not made any payment since the death of S; that since then the wife of S had made all the necessary payments. At the trial the appellants clearly established, on the basis of the testimony of a clerk from the appropriate gov. department that a sum of Rs 2221.10 had been paid on 25-3-1968.

The trial court however decreed the suit for specific performance. The High Court dismissed the first appeal, even though the appellants had produced the receipt for the payment made on 25-3-1968.

Allowing the appeal with costs throughout, the Supreme Court

Held:

The evidence coupled with the admitted position that the last payment was made by the respondent-plaintiff on 2-12-1965 and the evidence of the respondent's husband clearly established that the respondent-plaintiff had not performed her obligation and had not made all payments as was required to be done under the agreement. Under the circumstances it could never have been said that they were always ready and willing to perform their part of the agreement. (Para 6)

It is clear that the respondent-plaintiff is making averments as are convenient to her without any regard for truth. This conduct would preclude the respondent from getting any equitable relief. However in this case even otherwise it is clear that the respondent had not performed her part of the agreement. Thus there never was any readiness and willingness. She could thus not get specific performance. (Para 9)

If there is non-payment then it could not be said that the respondent had

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disclose all primary facts so as to enable the assessing officer to effectively make the assessment and to highlight that mere production of account books and records without drawing the attention of the assessing authority to the relevant primary facts would not amount to full and true disclosure of all material facts necessary for assessment. The case involved Section 34 of the Income Tax, 1922, the language of the explanation thereof, however, being in parimeteria with the explanation under the third proviso to Section 18(1) in the instant case. The Apex Court, however, held that the explanation did not cast only duty on the assessee to disclose an inference drawable by the Income tax officer from the material facts furnished.

31. As noticed hereinabove, it has not been the stand of the Revenue at any stage of the proceeding that the petitioners had omitted to disclose fully and truly the primary facts bearing on the sales turnover involved. Though, there is no dispute with regard to the legal principles enunciated in the above decision, the same in my view, has no application in the facts of the instant case to further the case of the Revenue.

32. The expression "reason to believe" as appearing in Section 147 of the Income Tax Act, 1961 was analyzed by the Apex Court in the Income Tax Officer, Calcutta and Others, (supra). The legal exposition articulated in the above decision is contained in the following extract therefrom:

.....As stated earlier, the reasons for the formation of the belief must have a rational connection with or relevant bearing on the formation of the belief. Rational connection postu-

between the material coming to the notice of the Income Tax Officer on the formation of his belief that there has been escapement of the income of the assessee from assessment in the particular year because of his failure to disclose fully and truly all material facts. It is no doubt true that the court cannot go into the sufficiency or adequacy of the material and substitute its own opinion for that of the Income Tax Officer on the point as to whether action should be initiated for reopening assessment. As the same time we have to bear in mind that it is not any and every material, howsoever vague and indefinite or distant, remote and ar-fetched, which would warrant the formation of the belief relating to escapement of the income of the assessee from assessment."

33. Applying the above test in the present setting of facts, I am of the considered opinion that the purported basis of reopening the assessment of the petitioners under Section 17(4) of the Act could not have generated the belief that the petitioners' turnover pertaining to sale of onion during the assessment year in question, had escaped assessment to tax. No rational connection between the average whole sale market price on the basis of the data furnished by the Chambers of commerce and the Whole Sale Onion Dealer Association and the petitioners' sale transactions is discernible for the purpose of computing their tax liability. The average whole sale market price so gathered cannot in the facts of the present case conclusively displace the petitioners accounts/records in support of the sale transactions during the relevant period. The respondent authorities in my view failed to discharge their burden to justify re-assessment of the petitioners tax liability in the touchstone of the directions of Section 18(1)(a) in my view proceeded

wrong premises, legal as well as factus vitiating the impugned orders of re-ment by an incurable illegality. The statutory appellate authorities also were unmindful of the true purport of the taxing provisions of the Act and proceeded on the basis that the petitioners' sales turnover were computable on the average whole sale market price structured on the materials furnished by the Chambers of Commerce and the Whole Sale Onion dealers Association without reference to the actual sale transactions effected during the relevant period.

34. In the above view of the matter, the impugned assessment orders as well as the orders of the statutory appellate authorities referred to above being in contravention of the letter and spirit of the Act and the Rules are unsustainable in law and are hereby set aside and quashed. Consequently, the petitioners are allowed. No costs.

2005 (4) GLT 29
(BEFORE B.P. KATAKEY, J.)

AIZAWL BENCH

B. LALZAWMLIANA & ANR.

...PETITIONERS

-VS-

MIZORAM PUBLIC SERVICE COMMISSION & ORS. ...RESPONDENTS

W.P. (C) No. 84 of 2003

Decided on 27. 6. 2005

(A) Service Law—Promotion—Selection to the post of Assistant Director in Food & Civil Supplies Department—Memorandum dated 17.7.96 requiring

method of assessment—PSC assessing the suitability on the basis of the service records by giving its own grading on the basis of ACRs—Gradings given in ACRs are not binding on the PSC and it is to make its independent assessment on the basis of the ACRs—Gradings given by PSC are not open to judicial review unless the same are arbitrary, malafide or in violation of service rules.

Mizoram Food & Civil Supplies Department (Group 'A' posts) Recruitment Rules, 1991—Selection to the post of Assistant Director—Petitioners who were senior to respondent No. 6 in the feeder cadre were superceded by him as he was given higher gradings by the PSC than the petitioners—Petitioners challenging the selection of R6 over them on the ground that the gradings of the ACRs were not allowed to prevail—Held, PSC is to make its own independent assessment on the basis of ACRs and the gradings in the ACRs are not binding on the PSC. ...Para 16, 17, 18

In the selection post like the post of Asstt. Director/Sub-divisional Food & Civil Supplies Officer, the MPSC is to make independent assessment of the suitability of the candidates on the basis of the service records. The grading given by the department in the ACRs is not the deciding factor. The MPSC has to give its own grading on the basis of the ACRs of the officers for the relevant years. The grading given by the MPSC is not open to the judicial review by a writ Court in exercise of its jurisdiction under Article 226 of the Constitution as writ Court can not sit on appeal over the decision of the MPSC, which is a Constitutional authority, unless such decisions are arbitrary or malafide or in violation of the relevant Service Rules. The writ peti-

respondent No. 6 on the ground of arbitrariness or malafide or violation of Rules. That being the position selection by MPSC is not open to judicial review by a writ Court under Article 226 of the Constitution of India. ...Para 17

(B) Constitution of India—Art. 226—Delay—Petitioners challenging the promotion of R6 to the post of Assistant Director, Food & Civil Supplies after a delay of four years—Meanwhile petitioners also getting promoted as Assistant Director—Main purpose of challenge being seniority over R6—Delay of four years held fatal.

2001(3) GLT 134 followed.

...Para 19, 23

- | Cases referred : Chronological | Paras |
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| 1. 1983 (3) SCC 284 : Y.V. Rangaiah & Ors. Vs. J. Sreenivasa Rao & Ors. | ...5 |
| 2. 1997 (2) GLT 213 : M/s. Apollo Machinery Mart & Ors. Vs. State of Assam & Ors. | ...4 |
| 3. 1997 (2) GLT 301 : Md. Momin Ali Vs. Commissioner, Gauhati Municipal Corporation & Ors.; | ...4 |
| 4. 1997 (10) SCC 419 : State of Rajasthan Vs. R. Dayal & Ors. | ...5 |
| 5. 1998 (2) SCC 523 : B.S. Bajwa & Anr. Vs. State of Punjab & Ors. | ...6 |
| 6. 2001(2) SCC 259 : K.Thimmappa & Ors. Vs. Chairman, Central Board of Directors, State Bank of India & Ors. | ...4 |
| 7. 2001(3) GLT 134 : Dhiren Dutta Vs. NEEPCO & Ors. | ...23 |

Advocates appeared for the Petitioners :
Mr. C. Lalramzauva, Mr. A.R. Malhotra & Mrs. R. Lalduhami

Advocates appeared for the Respondents :
Mr. S. Pradhan, Mr. N. Sailo & Mr. M. Zothankhuma.

JUDGMENT & ORDER

B. P. KATAKEY, J.—

plies Department, have filed the present writ petition praying for setting aside the recommendation dated 25.01.1999 issued by Mizoram Public Service Commission, notification dated 10.2.1999 issued by the Commissioner to the Government of Mizoram Food & Civil Supplies Department promoting the respondent No. 6 to the post of Sub-divisional Food & Civil Supply Officer, the final seniority list of Assistant Director/Sub-divisional Food & Civil Supply Officer dated 29.6.1999 and the communication dated 5.5.03 issued by Deputy Secretary Mizoram Public Service Commission to the under Secretary Government of Mizoram, Department of Personal and Administrative Reforms, rejecting the proposal submitted by the Department to review the matter and also claiming retrospective promotion to the post of Asstt. Director/Sub-divisional Food & Civil Supply Officer from the date of promotion of respondent No. 6 and fixation of their seniority over the respondent No. 6.

2. The fact in brief is that on 31.1.98 and 31.3.98 two posts of the Asstt. Director/Sub-divisional Food & Civil Supply Officers fell vacant. The Government in terms of the provision of Mizoram Food & Civil Supplies Department (Group 'A' Posts) Recruitment Rules, 1991 (hereinafter referred to as 1991 Rules) forwarded names of 7 Inspectors of Food & Civil Supplies including the present petitioners and respondent No. 6 to the Public Service Commission for the purpose of selection to the said posts. The said posts are selection post and to be selected by the Public Service Commission. Though at the rel-

ing was pending against the writ petitioner No.1, the Public Service Commission without following the sealed cover procedure has considered the cases of all such Inspectors, including the petitioner No. 1, for promotion to the promotional post of Asstt. Director/Sub-divisional Food and Civil Supply Officer and recommended the names of the respondent No. 6 and one Rochungnunga for the purpose of promotion vide communication dated 25.1.1999. Accordingly orders of promotion was issued on 10.2.1999 promoting the said two persons, which includes the respondent No. 6. Thereafter final seniority list of the Asstt. Director/Sub-divisional Food & Civil Supplies Officer were published by the Department on 29.6.1999 placing the respondent No. 6 at serial No. 10 and in the said list the names of the petitioners did not find place as they were not promoted to the said rank till then. The petitioners were promoted to the said post of Asstt. Director/Sub-divisional Food & Civil Supplies Officer vide order dated 12.9.2002 on the recommendation of the Public Service Commission. The petitioner along with another on 9.2.1999 filed a representation before the Director Food & Civil Supplies questioning the recommendation of the Public Service Commission Dated 25.1.1999 and the same was forwarded by the Director to the Secretary vide Communication dated 24.2.1999 and ultimately to the Public Service Commission vide Communication dated 19.3.1999. The petitioner No. 1 after lapse of more than three years from the date his earlier representation, submitted another representation date his earlier repre-

dated 12.11.2002, after his promotion to the rank of Asstt. Director, again questioning the order of promotion of the respondent No. 6 dated 10.2.1999 on the ground that his case for promotion was not considered by the D.P.C. and the sealed cover procedure was not adopted as the departmental proceeding was pending against him at the relevant point of time and also claiming seniority to the post of Asstt. Director over the respondent No. 6. Similar representation was filed by the other petitioner along with another on 27.11.2002 questioning the recommendation dated 25.1.1999 and the promotion of the respondent and others dated 10.2.1999. The Under Secretary Government of Mizoram, Food and Civil Supplies Department, thereafter on 31.1.2003, after lapse of almost four years from the date of promotion of the respondent No. 6 submitted a note to the Under Secretary DP & AR (G.S.W.) who vide Communication dated 5.2.03 forwarded the said note to the Public Commission. In the said note it was mentioned that the M.P.S.C. has failed to follow the procedure prescribed by the Government of Mizoram vide office memorandum dated 3.9.1998 while making the selection and recommendation on 25.1.1999. The M.P.S.C. vide communication dated 5.5.03 rejected the proposal submitted by the department requesting review of the recommendation for the promotion dated 25.1.1999 and hence the present petition.

3. I have heard Mr. C. Lalramzauva, learned counsel for the petitioners, Mr. S. Pradhan learned counsel appearing on behalf of respondent No. 1. M.P.S.C. Mr. N. Sailo

respondent No. 2 and Mr. M. Zothankhuma learned counsel appearing on behalf of respondent No. 6.

4. Mr. C. Lalramzauva, learned counsel for the petitioner has submitted that the Government of Mizoram has issued the office memorandum dated 3.9.1998 laying down the procedure to be followed by the Departmental promotion Committee (D.P.C.) while considering the cases of the officers for promotion to the next higher rank and also giving the guide lines as to how the objective assessment of suitability is to be judged by the D.P.C. According to the learned counsel the said guidelines having come into force with immediate effect, the DPC is required to follow the same in respect of the selection made by it after 3.9.1998. Mr. Lalramzauva relying on the guide line 3.5 (ii) has submitted that since the post of Asstt. Director/Sub-divisional Food & Civil Supplies Officer is in the level of Rs. 2200-4000 and as, for the purpose of promotion from the post of Inspector to the said post of Asstt. Director the required qualifying length of service is ten years, the DPC is required to take into consideration the ACRs of ten years and only, if out of the said ten years a junior Officer is graded by the DPC, as very good in eight years including the last one, then only he can supersede his senior Officer in the matter of promotion, otherwise the seniority will prevail. According to the learned counsel, it is evident from the minutes of the selection com-

the last one and therefore, though the overall grading was given as very good by the M.P.S.C., the petitioners can not be allowed to be superseded by the respondent No. 6, as he was graded very good in respect of seven years only, by virtue of guideline 3.5 (ii) and hence the selection of the respondent No. 6 over the petitioners are bad in law as the petitioners are admittedly senior in the rank of Inspector and they were graded as good by the M.P.S.C., which was the bench marks fixed as per the guidelines. According to the learned counsel though the petitioners were subsequently been promoted to the rank of Asstt. Director vide order dated 12.9.2002, the necessary directions may be issued to hold the review DPC, as M.P.S.C., while selecting the respondent No. 6 has not followed the guideline dated 3.9.1999 and also to direct respondents to fix the seniority of petitioners over the respondent No. 6. Referring to the question of delay, raised by the respondent in their affidavit, the learned counsel for the petitioner, has submitted that as their fundamental rights has been violated, delay shall not be a ground in refusing the relief to which the petitioners are entitle to. The learned counsel in support of his contention has placed reliance on a decision of the Apex Court in *K. Thimmappa & Ors. Vs. Chairman, Central Board of Directors, State Bank of India & Ors.*; reported in 2001(2) SCC 251 and the decisions of this Court in *M/s. Apollo Machinery Mart & Ors., Vs. State of Assam & 20 Ors.*; reported in 1997(2) GL

5. Mr. S. Pradhan, the learned counsel appearing on behalf of the M.P.S.C., has submitted that the office memorandum dated 3.9.98 is not applicable in the instant case as the vacancies for which the selection was conducted by the M.P.S.C. in the year 1999 occurred on 31.1.98 and 31.3.98, as the said office memorandum came into force only on 3.9.98. According to the learned counsel, the office memorandum dated 17.7.96 lying to the procedure to be observed by the DPC is applicable in the instant case as during the continuation of said office memorandum the vacancies in the rank of Asstt. Director, which were filled by vide order of promotion dated 10.2.99, occurred. Mr. Pradhan learned counsel has submitted that the MPSC is required to give its own grading by taking into account the ACRs of the relevant year, as the post is selection post and the MPSC is to select the person suitable for promotion to the post Asstt. Director. The MPSC has followed the guideline No. 3.5 (ii) of the office memorandum dated 17.7.96 were the bench marks has been fixed as 'very good' for the purpose of promotion of group B, Group A post and respondents No. 6 having been graded as 'very good' and the petitioners as 'good', respondents No. 6 was selected for the purpose of promotion, though he is junior to the petitioners. According to the learned counsel, in the selection post the petitioners cannot claim promotion on the basis of seniority as the MPSC is to select the suitable candidates on the basis of relevant ACRs and

interfered in the only such selection is made arbitrarily or malafide. There being no allegation of arbitrary action or malafide exercise of power, the writ petition challenging the selection made by the MPSC is not maintainable. The further submission of the learned counsel is that the writ petition is also liable to be dismissed on the ground of delay, as the petitioner by filing the writ in the year 2003 has sought to challenge the recommendation of the MPSC dated 25.1.99 and the consequential promotion of respondent No. 6 and also the seniority position. Mr. Pradhan in support of his contention has placed reliance on the decision of the Hon'ble Supreme Court in *Y.V. Rangaiah & Ors. Vs. J. Sreenivasa Rao & Ors.*; reported in 1983 (3) SCC 284 and *State of Rajasthan Vs. R. Dayal & Ors.*; reported in 1997 (10) SCC 419.

6. Mr. N. Sailo, learned State counsel appearing on behalf of the respondent No. 2 to 5, has submitted that the respondent No. 6 was promoted to the rank of Asstt. Director vide order dated 10.2.99 in terms of the recommendation of the MPSC dated 25.1.99 and therefore, the promotion of the respondent No. 6 may not be interfered with by this court at the instance of such belated petition filed by the petitioner. The further submission of the learned counsel is that MPSC has to make an independent assessment of the ACRs of the candidates who come within the zone of consideration and has to judge the suitability of the candidate for the purpose of promotion to the said group A post of Asstt.

dents No. 6 unless such action is arbitrary or malafide. According to the learned counsel since the writ petitioner has not alleged any arbitrariness or malafide in the selection, the writ court may not interfere with selection made by MPSC and that too after lapse of four years. The learned counsel in support of his contention has placed reliance on a decision of the Apex Court in *B.S. Bajwa & Anr. Vs. State of Punjab & Ors.*, reported in 1998 (2) SCC 523.

7. Mr. M. Zothankhuma, learned counsel appearing on behalf of the respondents No. 6 supporting the arguments put forwarded by the learned counsel by the respondents No. 1 and respondents No. 2 to 5, has also submitted that office memorandum dated 17.7.96 is applicable in the instant case, which was followed by the MPSC, as the vacancies which were filled up, occurred prior to the instance of office memorandum dated 3.9.98. According to the learned counsel as the respondent No. 6 was graded as 'very good' and the petitioners were graded as 'good', the respondent No. 6 was rightly recommended for promotion by the MPSC, though he was junior to the petitioners in the rank of inspector. The further submission of the learned counsel is that the present joint writ petition on behalf of the petitioners is not maintainable as the petitioners have challenged the appointment of the respondents No. 6 only and each of them are claiming promotion against the said post hold by the respondents No. 6 and therefore, there are

tioners prior to the issuance of order of promotion of the respondents No. 6 dated 10.2.99 has filed a representation challenging his selection, the petitioners kept silent for more than three years thereafter and only after they were promoted to the rank of Asstt. Director vide order dated 12.9.02, they raised the question again by filing representations dated 12.11.02 and 27.11.02 and thereafter filed the writ petition on 5.6.2003 and as such the writ petition deserves to be dismissed on the ground of delay. The writ petitioners having slept over their right, if any are not entitled to any equitable relief from this court as the delay defeats equity. The further submission of the learned counsel is that the petitioner cannot challenge the seniority list published on 29.6.99, claiming seniority over the respondents No. 6, as on 29.6.99, when the final seniority list was published, the petitioners were not born in the cadre of Asstt. Director, they having been promoted to the said rank only on 12.9.02 and therefore, the petitioners claim of seniority over the respondent No. 6 cannot be entertained.

8. I have considered the submissions of the learned counsel for the parties and also perused the pleadings including the annexure appended thereto.

9. It is an admitted position of fact that two vacancies in the rank of Asstt. Director having the pay scale of Rs. 2200-4000/- was occurred on 31.1.98 and on 31.3.98. Under 1991 Rules the post of Asstt. Director/Sub-divisional Food & Civil Supplies Officer is a

then ten years of regular service is eligible for the purpose of consideration for promotion to the rank of Asstt. Director. The Government of Mizoram issued the office memorandum dated 17.7.96 laying down the procedure to be observed by the DPC. According to the said procedure, the DPCs should decide its own method and procedure for objective assessment of the suitability of the candidates. The said guidelines also provide that the DPC should not be guided merely by the overall grading, if any, that may be recorded in the confidential reports, but should make its own assessment on the basis of the entries in the confidential reports. The Govt. of Mizoram thereafter on 3.9.98 issued another office memorandum laying down the public procedure to be observed by the DPC. In the said office memorandum also it has been stipulated that the DPC should decide its own method and procedure for objecting assessment of suitability of the candidates who come within the zone of consideration. As per the said deadline the confidential reports are the basic inputs, on the basis of which assessment is to be made by the DPC and the DPC should assess the suitability of the officers for promotion on the basis of the service reports and should not be guided merely by the overall grading, if any, that may be recorded in the confidential reports but should make its own assessment on the basis of the entries in the confidential reports.

10. It is therefore, evident from the said office memorandums dated 17.7.1996 and 3.9.98 that the MPSC is required to make

post, on the basis of the ACRs, but is not bound by the grading given in the said ACRs by the department and has to give its own grading on the basis of the ACRs of the officers concern. In the instant case there is no dispute that both the petitioners and respondent No. 6 came within the zone of consideration. The petitioners have also not disputed the overall grading of 'very good' given by the MPSC to the respondent No. 6 and also has not challenged the overall grading of 'good' given to them by the MPSC. The petitioners have challenged the selection on the ground that the MPSC while making selection has not followed the office memorandum dated 3.9.98 and has followed the office memorandum dated 17.7.96. According to the petitioners, since the selection was after issuance of the office memorandum dated 3.9.98 MPSC is to follow the said office memorandum, irrespective of whether the vacancies arose prior to issuance of the said office memorandum or not.

11. The office memorandum dated 17.7.96 was issued by the government laying down the procedure to be followed in making selection by the DPC. The said office memorandum was in force till the issuance of another office memorandum dated 3.2.98, which was superseded vide office memorandum dated 3.9.98. Clause 3.5 (ii) of the office memorandum dated 17.7.96, reads as follows :

"ii. In respect all group 'A' posts, the bench mark grade should be 'very good'. Similarly, for promotion from group 'B' post to group 'A' post the bench mark grade will be 'very good'. However, officers who are graded as 'outstand-

lect panel accordingly. Up to the number of vacancies, officers with some grading maintaining their inter se seniority in the feeder post.

12. The said guideline stipulates that for the purpose of promotion to the group 'A' post the benchmark grade should be 'very good' and officers who are graded as 'outstanding' would rank en bloc senior to those who are graded as 'very good'.

13. Clause 3.5 (ii) of office memorandum dated 3.9.98 provides as under:

"3.5 (ii) In respect of all posts which are in the level of Rs. 3700-5000/- and above, the bench-mark should be 'VERY GOOD' and for all the post which are in the level of Rs. 2200-4000/- and above but less than Rs. 3700-5000/- the bench mark should be 'Good'. However, officers who are graded as outstanding would rank en bloc senior to those who are graded as 'VERY GOOD' and placed in the select panel accordingly up to the number of vacancies, officers with some grading maintaining their inter se seniority in the Feeder post. Further, supersession of the officer with lower grading by those with higher grading shall be permitted in the following manner only. To supersede those graded 'VERY GOOD' officer graded 'OUTSTANDING' should have at least 4 (four) of his ACRs graded as 'OUTSTANDING' including the last ACRs when the minimum length of service required at the feeder grade for promotion is 5 (five) years, 5 (five) including the last one when the required length of service for promotion at the feeder grade is 7 (seven) years and 6 (six) including the last one when the minimum length of the service required at the Feeder grade for promotion is 8 (eight) and 8 (eight) including the last one when required length of service is the feeder grade is 10 (ten) years. The same yardstick will apply for suppression of the officers graded 'GOOD' by the officer graded 'very Good'."

promotion in the level of Rs. 2200-4000/- should be 'Good' and in case an officer junior in the feeder post gets eight 'very good' including last one (since ten year qualifying service is required for promotion to the post of Asstt. Director as per 1991 rules) he will march over the person who is senior in the feeder post, otherwise the seniority will prevail.

15. In the instant case the question to be decided is whether the office memorandum dated 17.7.96 or office memorandum dated 3.9.98 is applicable, keeping in view the date when the vacancies arose as well as the date of selection. The Apex Court in *Y.V. Rangappa (Supra)* has held that vacancy in the promotional post occurring prior to the amendment of relevant service rules have to be filled up in accordance with the provisions of the unamended rules. The similar view has also been taken by the Apex Court in *State of Rajasthan Vs. R. Dayal (supra)*. In the instant case the vacancies which were filled on the basis of the recommendation dated 25.1.1999, occurred on 31.1.98 and 31.3.98. The authority having decided to fill up the said post is required to make necessary selection through the MPSC in terms of the provision of the 1991 rules. The authority has in fact initiated the process for selection prior to coming into force of the office memorandum dated 3.9.98. That being the position the office memorandum dated 3.9.98 cannot be made applicable for the purpose of selection to the post of Asstt. Director of vacancies of which occurred on 31.1.98.

therefore, rightly followed the office memorandum issued by the government on 17.7.96 which prevailed on the date when vacancies occurred.

16. As per the memorandum dated 17.7.96, the DPC is required to decide its own procedure and method of assessment of the suitability of the candidates and is to assess the suitability on the basis of the service records by giving its own grading on the basis of the ACRs. The bench mark for promotion to the group 'A' post being 'VERY GOOD' as stipulated in clause 3.5 (ii), the respondents No. 6, who was graded as 'very good' was rightly recommended for promotion by the MPSC, though he is junior to the petitioners, who were graded as 'good' by the MPSC. Therefore, no illegality has been committed by the MPSC in recommending name of respondents No. 6 for the post of promotion.

Moreover in the selection post like that of Asstt. Director/Sub-divisional Food and Supplies Officer, the MPSC is to make independent assessment of the suitability of candidates on the basis of the service records. The grading given by the deponent in the ACRs is not the deciding factor. The MPSC has to give its own grading on the basis of the ACRs of the concern of the deponent in relevant years. The grading given by the deponent is not open to the judicial review of the Court in exercise of its jurisdiction under Article 226 of the Constitution. The writ Court can not sit on appeal against the decision of the MPSC, which is a

relevant Service Rules. The writ petitioners have not challenged the selection of the respondent No. 6 on the ground of arbitrariness or mala fide or violation of Rules. That being the position selection by MPSC is not open to judicial review by a writ Court under Article 226 of the Constitution of India.

18. In *Md. Momin Ali (Supra)* a single bench of this court has held that the power under Article 226 of the Constitution of India is a methodology by which the High Court controls the exercise of the power of the executive. The object is to oversee that the administrative authority exercising its statutory power exercise their power in a lawful manner and the judicial review is designed that the public bodies while exercising its power acts lawfully. The power under Article 226 of the Constitution of India is concerned with the legality of the decision making process and not with the merits of the particular decision. There is no dispute to the said legal proposition. In the instant case, as already held the MPSC has not violated the office memorandum issued by the government and said authority has not committed any illegality in the decision making process, requiring interference by this Court in exercise of the power under Article 226 of the Constitution of India.

19. Let me now take up the point of delay raised by the respondents in filing the present writ petition. The petitioners along with respondents No. 6 and others, in all seven officers, who came within the zone of consideration were considered for promotion by the

31.3.98. The MPSC upon selection has recommended the name of the respondents No. 6 and another, for promotion against those posts vide communication dated 25.1.1999. The petitioner though; after the said recommendation, submitted representation dated 9.2.1999, challenging the recommendation of the respondents No. 6 for promotion, they did nothing thereafter for more than three and half years and only after the petitioners were promoted to the rank of Asstt. Director vide order, dated 12.9.2002, they filed two other representations, on 12.11.2002 and 27.11.2002. Thereafter also the petitioners did not approach this court immediately and after lapse about six months they filed writ petition on 5.6.03. The petitioners for the period from 9.2.1999, to 12.11.2002 have slept over their right, if any, and thereby allowing the respondent No. 6 to continue in the promotional post without raising any objection. The petitioners, are stated above, have raised that objection again, regarding the selection of respondent No. 6, after their promotion, on 12.9.2002 with view to get the seniority over the respondent No.6. The writ court being the court of equity will definitely refuse to grant relief, even if the petitioners are entitled to the same, on the ground of delay, as delay defeats equity.

20. In K. Thimmappa (Supra), the Apex Court has held that a writ petition under Article 226 of the Constitution of India cannot be rejected solely on the ground of laches, when the question of violation of the fundamental right is involved in it. In the instant case the petitioners were considered for promotion along with respondents No. 6 and other

by the MPSC and they were found not suitable for promotion as they were graded as 'good' and the respondents No. 6 was recommended for promotion as he was graded as 'very good'. The right to be considered as the officers for promotion, who comes within the zone of consideration is a fundamental right; which is not been violated by the respondents in the instant case, as the petitioners were considered for promotion. There before the question of delay in filing the writ petition can not be ignored in the instant case as the petitioners did not approach this court expeditiously for relief and they allowed things to happen and then approach this court to put forwarded their claims and try to settle the settle position by challenging the recommendation of the MPSC dated 25.1.1999 and promotion of respondent No. 6 dated 10.2.1999 by filing a writ petition on 5.6.2003.

21. In M/s. Apollo Machinery Mart (Supra) a division bench of this court while dealing with an order passed under Section 5 of Cr.P.C. has held that there is no statutory time limit prescribed for filing of a writ petition, although ordinarily the provisions of limitation act provides guidance but not and fast rule can be laid down in that behalf. In the said case as writ petition was dismissed after more than five years of filing same on the ground of inordinate delay and laches it was held that the dismissal of the writ petition on that ground was not sustainable when such plea was not raised at the time of admission stage. In the instant case matter relates to the promotion and the seniority of the respondents No. 6 in the

grade and writ petition is not pending for a long period before this court. Hence the decision in M/s. Appolo Machinery Mart is not applicable in the facts and circumstances of the instant case.

22. The Apex Court in B.S. Bajwa and another (Supra) while dealing with a matter relating to the seniority in service has held that the question of seniority should not be reopened after a lapse of reasonable period as that would result in disturbing the settled position, which is not justifiable.

23. In *Dhiren Dutta Vs. NEEPCO & Ors.*, reported in 2001(3) GLT 134, a single bench of this court by taking into consideration the fact that the recommendation of the DPCs which met in the year 1994 and 1996 were challenged in the year 1999, has held that as the writ petition was filed belatedly challenging such recommendations, no relief cannot be granted as it would not be a sound exercise of discretion by the Court under Article 226 of the Constitution of India to interfere with the recommendation of the DPC on the basis of such belated writ petition. In the instant case also as observed above, the recommendation of the MPSC was though initially objected by the petitioner No. 1 by filing a representation dated 9.2.1999, the petitioner kept silent for more than three years only after their promotion on 12.9.2002 raised the question of legality and validity of the recommendation, by filing representation in the month of November 2002 only with view to get seniority over the respondent No. 6, though he was promoted on 12.9.1999, and ultimately filed the writ petition on 5.6.03 thereby causing inordinate de-

lay in challenging the such recommendations and promotion of respondent No. 6. Therefore, it would not be a sound exercise of discretion by this court under Article 226 of the Constitution of India to interfere with the recommendation and promotion of the respondent No. 6 on the basis of such belated writ petition. Hence writ petitioner is not also entitled to any relief on such writ petition.

24. In view of the above I do not find any merit in the writ petition and hence the same is dismissed. No cost.

2005 (4) GLT 39
(BEFORE H. N. SARMA, J.)
ITANAGAR BENCH
PHUKAN TECHI & ORS.
PETITIONERS
VS.
STATE OF ARUNACHAL PRADESH & ORS.

...RESPONDENTS
W.P. (C) No. 136 (AP) of 2004
Decided on 15. 6. 2005
Service Law—Promotion—Prescribing higher qualification for promotional post—Validity—Petitioners were under graduates and promoted to the rank of Assistant Director of Industries—Promotion to next higher post of Deputy Director of Industries—Recruitment Rules of 1985 being silent about educational qualification for promotion to the post of Deputy Director—Government bringing in Recruitment Rules of 1999 by repealing 1985 rules—1999 Rules providing for higher qualification

County Court, or personally, as where a Court has a quorum or has to amount, or as to the character of the questions to be determined.

- 1.2. That the question of Jurisdiction and maintainability of the referred case, as question raised by the Management now at the ripeness of the case, and that too, after completion of their evidence and production of records, is now bad in the eye of law. The Management before adducing evidence of their witness could have asked for the leave of the Hon'ble Tribunal for preliminary objections and hearing on the above issue before entering into main case instead of asking now and wasting valuable time of the Tribunal and to create a barrier in the process of advancement of law in the subject referred case when it is at its fag end of completion.
- 1.3. That it is submitted that the Industrial Dispute Act, 1947, itself by its powers enumerated u/ss 7(a), 10(iv), 11, 15, 33 and 33(a) has authorized the Labour Court, Industrial Tribunal, National Tribunal for adjudication and give justice to any matter entitled for the protection of the employee and as such this Tribunal has got the absolute powers and jurisdiction to do complete justice between the parties to the dispute with regard to the aforementioned case, and overact do not or purported to be done " shall be deem to be a judicial proceeding within the meaning of Sections 193 and 228 of the Indian Penal Code (45 of 1860)" as enunciated u/s 11(3) of the Industrial Dispute Act, 1947.
- 1.4. That the same appropriate Industrial Government under whose ambiance the Management's root is, by its sister Ministry of Labour have referred the subject mentioned case to the Industrial Tribunal for adjudication of the dispute mentioned in the written statement of the Petitioner/Workman as per Ministry of Labour, Government of India's letter No.L-42012/240/2002/IR(CM-II) dated 17.4.03 upon which the subject referred case has been registered in the present Hon'ble Industrial Tribunal and both the parties have submitted their written statements.

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1.5. That a conciliation proceeding between the Management and the workman under the Industrial Dispute Act, 1947, before the Regional Labour Commissioner (Central), Guwahati-3 "went on astray" and the matter referred to the Ministry of Labour, New Delhi vide their letter No.8(2)/2002-G/A dated 10.10.2002 and finally the subject case has been referred to this Hon'ble Tribunal for adjudication and rendering justice.

Photo copy of which is annexed as Exhibit-1.

1.6. That knowing fully well about the cause of action and the said case itself it is not understood as to why the Management has exasperated the issue by raising the objection of the JURISDICTION of this Hon'ble Tribunal to try the case under the full protection of the Industrial Dispute Act, 1947, and thereby administer justice.

1.7. That it is submitted that in the SECOND SCHEDULE of the Industrial Dispute Act, 1947 under Serial No.6 it has been clearly and categorically mentioned that "all matters other than those specified in the THIRD SCHEDULE shall be tried and adjudicated under the Industrial Dispute Act by any Labour Court or Industrial Tribunal. Under Serial No.11 of the THIRD SCHEDULE of the said Act it is also been mentioned that "any other matter that may be transcribed" are the "the matters within the jurisdiction of Industrial Tribunal". Hence, the subject mentioned case is very much covered by the said Act and, therefore, shall be tried and adjudicated by any Industrial Tribunal or Labour Court as deem fit and proper by the appropriate Government.

1.8. That it is submitted that the Management in their petition mentioned above has not clarified in the Para-1 as to why workman's Petition for Objection is not maintainable.

1.9. That in reply to Para-2 of the Management's said petition this is submitted that in this referred case the Management should have raised objection at its initial stage and sought for preliminary hearing on the issue before proceeding further. Now it is an afterthought matter, and that too, on production of their

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evidence and records by exhibiting, adducing and deposing witness and, hence, is bad in the eye of law.

1.10. That in reply to Para-2(a) of the petition of the Management it is humbly submitted that the matter as raised by the Management has long been settled in a number of cases by the Hon'ble Supreme Court of India and other Courts and held that the subject nature of case comes also within the ambience of Industrial Dispute Act, 1947, and is triable and to be adjudicated under its umbrella. The Hon'ble Gauhati High Court in a case of Principal, Kendriya Vidyalaya, New Bongaigaon-Vs- Uttam Bose, as reported in 2003 (3) GLT 184 opined- *"I fully agree with the view taken by the Tribunal that the petitioner No.1 being an Educational Institution is an Industry relying on the decision of Apex Court reported in (1998(3) SCC 259 (Coir Board, Earnakulam, Cochin and another -Vs- Indira Devi P.S. and other. In the above referred case the Apex Court dealing with the scope of definition of Industry u/s 2(J) of the Act, doubted the correctness of the test written in Bangalore Water Supply and Sewerage Board's case reported in (1978 2 SCC 213 (Bangalore Water Supply and Sewerage Board -vs- A. Rajappa) wherein the Hon'ble Supreme Court, while widening the scope of definition of Industry under the Act held that the definition of Industry would cover of profession, clubs, Educational Institutions, Co-operative, Research Institution, Charitable project and anything else which could be looked upon as organization activity where there was a relationship of employer and employee and goods were produced or service was rendered, The Supreme Court also held that such sweeping test was not contemporary by the act and other organization which did the useful service and employed people could not be levelled as Industry and accordingly, the entire matter was directed to be placed before Hon'ble the Chief Justice of India for consideration where a Larger Bench should be constituted to reconsider the decision in Bangalore Water Supply and Swerage Board's case (Supra). The Apex Court by its decision reported in (2000) 1 SCC 224 (Coir Board, Earnakulam, Kerala State and another -Vs- Indira Devi P.S and others) came to hold that no reconsideration of the said case was necessary. The Hon'ble Supreme Court observed as follows :-*

1. *" We have considered the order made in Civil Appeal Nos. 1720-21 of 1990. The judgment in Bangalore Water Supply and Sewerage Board-Vs A.Rajappa was delivered almost 2 decades ago and the Law has since been amended pursuant to that judgment though the date of enforcement of the amendment*

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has not been notified.

- 2. *The judgment delivered by the 7 learned Judges of this Court in Bangalore Water Supply case does not, in our opinion, require any reconsideration on a reference being made by a 2-Judges Bench of this Court, which is bound by the judgment of the Larger Bench.*
- 3. *The Appeal shall, therefore be listed before the appropriate Bench for further proceedings”.*

In view of the above decision the law is now settled that the Educational Institution is also an Industry within the meaning of ‘Industry u/s 2(j) of the Act. Once the person is accepted to be workman he is entitled to the benefits of Section 25(F) of the Act which reads as follows :-

“25(F)-Conditions precedent to retrenchment of workman-no workman employed in any Industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

- (a) *The workman has been given one months’ notice in writing indicating the reasons for retrenchment and the period of notice has expired or the workman has been paid in lieu of such notice, wages for the period of the notices;*
- (b) *The workman has been paid at the time of retrenchment, compensation which shall be equivalent to 15 days’ average pay (for every completed year of continuous service) or any part thereof in excess of 6 months; and*
- (c) *Notice in the prescribed manner is served on the appropriate government(for such authority as may be specified by the appropriate government by Notification in the Official Gazette)”.*

1.11. In another celebrated case named Gujarat Agricultural University-Vs-Rathod Lalhu Bechar and others, reported in (2001)3 SCC 574 wherein in addition to Bangalore Sewerage case, the reference of 17 other cases have been cited and their Lordships in the Hon’ble Supreme Court opined-“*The Appellant is an Educational Institution fully aided by the state Government and is engaged in the Educational activity in Agricultural and allied Science and Humanities and is also prosecuting research in agricultural and other allied sciences. It performs its duties and functioning under the Statutory provision and in doing*

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so it engages daily rated labour for various activities. According to the Appellant these laboures are being paid their wages as per the minimum wages fixed by the State Government from time to time under the minimum wages Act. They were engaged due to exigencies of work, without consideration of relevant factors about their educational qualification which-they may and other relevant requirement for the purpose of regular appointment under the recruitment Rules. There are different agricultural research Industries at different places with different projects and these dail rated workers and unskilled, semiskilled, skilled and field labourers of different categories. Since the University is a grant-in-aid Institution fully affiliated by the State Government, it requires prior permission/sanction of the State Government for appointment of its employees. In fact, all the posts are sanctioned by the State Government and thereafter they are filled by the University, as per the Recruitment Rules. The present case pertains to daily - wage workers who are plumbers, carpenters, sweepers, Pump operators, Helpers and mason etc." After discussing at length their Lordships came to the conclusion and the opinion in the said case is as under:-

"We hope and trust, the government who is the guardian of the people and is obliged under Article 38 of the Constitution, to eliminate inequalities in status will endeavor to give maximum posts even at the first stage of absorption and do the same in the same spirit for creating additional posts after enquiry and where indicating hereunder. It is necessary that the State Government sets up an enquiry to find what further number of additional posts are required in regularizing such other daily-rated workers, and after assessing it, to create such additional posts for their absorption. This exercise should be done by the State Government within a period of 6 months..... "Workmen are not claiming for equal pay for equal work but they are claiming permanent status as Class-IV employees as they are working and have gained more than sufficient experience in their work." "In the present case after absorption of employees in Class-I, we have already directed the State Government what they have to do in coordination with the Appellant University, assess and find the additional regular posts required by the University. In doing so, they shall keep in mind the continuous work which the workers are doing for long number of years and after fixing the number it should further create such additional posts as necessary and absorb them. This exercise is to be undertaken, as aforesaid, within 6 months .So for this reason we would like to distribute the proposed scheme accept the extent we have observed above. We are sure no selection should be exercised both by the appellant and the State in completing this exercises within the

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said period. Apart from what we have observed, we do not find any infirmity in the scheme.

Accordingly, we approved the aforesaid scheme framed by the University and approved by the State Government, subject to the modification which we have recorded above. In terms of the said modified scheme, the judgment of the High Court stands modified. As the Respondents/Workmen have suffered for a long duration of time it is appropriate that the aforesaid scheme is implemented expeditiously at an early date. The first phase of absorption is to be completed within 3 months. The appeals are accordingly disposed of in the aforesaid terms. Cost on the parties".

- 1.12. Under the aforementioned decision, absorption, judgment and orders of the Hon'ble Supreme Court the contention of the Management as reflected in Para-2(a) is not sustainable at all and, hence, is to be rebutted and rejected in limine.
- 1.13. That in respect of Para-2(b) of the management's above petition it is submitted that the contention of the Management is an absurd and utopian idea as no department of the Government of India is "independent and sovereign functioning" as contemplated by the Management in the said para. The Management is challenged to submit the strictest proof of their contention.
- 1.14. That the Petitioner begs to submit in reply to the Para-2 (C) of the Management's statement that the service of a temporary sweeper whose employment has not been regularized even after 15 years of her continuous service how can she falls under the All India transfer liability as contemplated by the Management. Moreover, Power, function and jurisdiction of the Industrial Tribunal is not at all overlapping the provisions of the Central Administrative Tribunal Act, 1985 and therefore, when the subject case has been referred by the Central Government itself to this Hon'ble Industrial Tribunal, this Tribunal have the full powers and jurisdiction to try the case and administer justice.
- 1.15. That it is submitted that the contents of the Para-2(d) and (e) of the Management's above petition are the repetition of their earlier submission and the Petitioner has already clarified the points under the foregoing paras and,

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and therefore need not further add anything more than what has been cited above.

- 1.16. That in respect of Para-3 of the Management's petition it is submitted that the submission of the documents by the Management does not cover the requirement of the workman as prayed for in her Objection Petition dated 2.5.2005. The Petitioner/Workman is reiterating her humble submission to the Hon'ble Tribunal and the Tribunal may be pleased to direct the Management for producing the documents as prayed for by the workman for proper examining the merits of the case, adjudication, decision, and disseminating justice.
- 1.17. That in respect of the statements made in para-4,5 and 6 of the Management's above petition, it is humbly submitted and again reiterated that the Management should have challenged their present issue before the Regional Labour Commissioner and the concerned Ministry of Labour, Government of India, when the matter was referred by the Assistant Labour Commissioner (C), Guwahati vide his letter mentioned above,(Ext.1).
- 1.18. That as per Central Civil Services (Temporary Services), Rules,1965, the petitioner begs to submit that every employee of temporary status in nature shall be guided by the said Rules and violation of which shall be the infringement of the said Rules in addition to violation of Section 25-T of the Industrial Dispute Act,1947 and Constitutional safeguards in respect of right to Fundamental and Directive principles.
- 1.19. That it is submitted that vide A.K.Kraipak's case, reported in AIR,1970 SC 150 the Hon'ble Supreme Court opined that the Rules of Natural Justice are applicable to all Administrative decision if they adversely affected the rights of a new or of a corporate or other body to prevent "miscarriage of justice," even where "the Rules operate in the areas not covered by any law validly made. No other words they do not supplant the law, but supplement it."
- 1.20. That in this connection it is humbly submitted that His Lordship Justice Krishna Ayer speaking for a 3- Judges- Bench of the Hon'ble Supreme Court

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in L.I. C of India -Vs-D.J.Bahadur's case exhaustively and magnificently pronounced-"The Industrial Dispute Act is a benign measure which seeks to pre-empt industrial tension, provide the mechanic of dispute resolution and set up the necessary infrastructure so that the energies of personally in production may not be dissipated in counter-productive battle and assurance of Natural Justice may create a climate of goodwill." The Petitioner in this connection most humbly prays that instead of pending over the matter so long by this way and or that the management could have settled the matter by amicable settlement to provide the Petitioner, a workman in their regular employment as a Group-D employee, in accordance with the Constitutional Provision of Article 21 of the Constitution of India.

1.21. That the Petitioner humbly submits that "arbitrariness is an antithesis of the Rule of law, equity, fair play and justice. Even after a contract of employee can not be devoid of basic principle of Natural Justice." Justice oriented project which is the present trend in Indian Jurisprudence shall have to be read as in-built requirement of the basic of justice to weightt the doctrine of Natural justice, fairness, equality and Rule of Law" and thus the magnificent provision of the Article 38 of the Constitution of India is honoured.

1.22. That the Petitioner most humbly submits that in accordance with the observation made by their Lordships in the Hon'ble Supreme Court in the case of Anil Sood-Vs- Presiding Officer, Labour Court-II, reported in 2001 10 SCC, 534 that " when the matters are referred to the Tribunal or Court they have to be decided objectively and the Tribunal/Courts have to exercise their discretion in a judicial manner by following the general principle of law and Rules of Natural Justice"and, hence, this Hon'ble Tribunal has the absolute JURISDICTION for trying this referred case which has also the maintainability under the Industrial Dispute Act..

In the premises above, this humble Petitioner most humbly and respectfully prays that your magnanimity be pleased to disseminate justice after hearing the parties and examining the records and witnesses and thereby redress the longstanding grievances of the workman-

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And for this act of your kindness, as in duty-bound, your humble Petitioner shall ever pray.

-VERIFICATION-

I, Sri Jigir Singh, son of Late Indar Singh, aged about 39 years, residing at Cantonment Colony, Near Anjali Cinema Hall, Shillong being the President of the Cantonment Employees Union/Shillong, do hereby solemnly affirm and verify that the contents of this petition are true to my knowledge, information and belief and are my respectful submission before this Hon'ble Tribunal.

And I sign this VERIFICATION on this th day of July, 2005.

Place :Guwahati.

Dated: .06.2005.

SIGNATURE OF THE PETITIONER.

attested
Mr. Jigir Singh
28/7/05
Advocate

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ANNEXURE - U

90

GOVERNMENT OF MEGHALAYA:
LABOUR DEPARTMENT.

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NOTIFICATION

Dated Shillong, the 16th. March. 1994.

No. LABOUR.21/93/52- In exercise of the powers conferred by the Sub-Section (2) of Section 5 of the Minimum Wages Act 1948

(Act XI of 1948) as amended, the Governor of Meghalaya is pleased to revised the minimum rates of wages in respect of

Employees employed in the following schedule employments:-

1) Agriculture (2) Construction and Maintenance of Roads and Building operations including Public Health Engineering etc.

(3) Stone crushing and stone breaking operations. (4) Construction Generation and distribution of Power, Water supply, land develop-

ment excavation and reclamation (5) Sericulture and Weaving

(6) Fruit preservation (7) Soil conservation (Workers engaged in plantation reclamation jungle clearance etc. (8) Forest

operations not covered by Agriculture such as weeding, jungle clearance etc and (9) Local Authority be revised as under:-

Sl.No.	Categories of Workers/Employees	Rates
1.	Un-skilled labour	Rs. 35/- per day
2.	Semi-skilled labour	Rs. 40/- " "
3.	Skilled labour	Rs. 45/- " "

The above rates are inclusive of dearness allowance but exclusive of other concessions if any, enjoyed by the employees. The existing task and hours of work i.e. 8 (eight hours) a day, 48 hours a week shall continue until further orders

The minimum rates of wages proposed are all inclusive rates including the basic rates the cost of living allowance and the cash values of concessional supply if any of essential commodities. The same rates of wages of overtime work shall be double the ordinary rate of wages.

The revised rates take effect from the 1st January, 1994.

(J. Tayeng)

Commissioner & Secy. to the Govt. of Megh
Labour Department. alya

gates
ref
29/1/05
Advocate

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ANNEXURE-V

**GOVERNMENT OF MEGHALAYA
LABOUR DEPARTMENT.**

**NOTIFICATION
DATED SHILLONG, THE 10TH JULY, 1996.**

NO. LBT, 21/93/239 :- In exercise of the powers conferred by the Sub-Section (2) of Section 5 of the Minimum Wages Act 1948 Act XI of 1948) as amended, the Governor of Meghalaya is pleased to revised the minimum rates of Wages in respect of Employees employed in the following schedule Employments :-

- 1) Public Motor Transport (2) Saw-Mill- Industry (3) Plywood Industry
- 4) Engineering Industry including Motor Garriage and workshops
- 5) Furniture Industry 6) Bakery Industry (7) Shops and Establishments
- 8) Printing Press (9) Sales, distribution and handling of petroleum products (10) Steel & Concrete products including brick making
- 11) Tailoring Industry and 12) Wax and Candle Industry be revised as under :-

Sl.No.	Categories of Workers/Employees	Rates
1.	Skilled Labour	- Rs. 45/- per day
2.	Semi-Skilled Labour	- Rs. 40/- per day
3.	Un-Skilled Labour	- Rs. 35/- per day

The above rates are inclusive of Dearness allowance but exclusive of other concession if any, enjoyed by the Employees. The existing task and hours of work i.e., (eight hours a day, 48 hours a week shall continue until further orders.

The minimum rates of wages proposed are all inclusive rate including the basic rates the cost of living allowance and the cash values of concessional supply if any of essential commodities. The same rates of wages will be applicable for the weekly day of rest. The same rates of wages of overtime work shall be double the ordinary rate of wages.

The revised rates shall take effect from the 1st October, 1995.

(S.K. Srivastava)
Commissioner & Secretary to the Govt. of Meghalaya
Labour Department.

Memo. No. LBG-21/93/239-A, Dt. Shillong, the 10th July, 1996.

Copy forwarded for information and necessary action to:-

- 1) The Director of printing & Stationery, Shillong for favour of publication in the next issues of the Meghalaya Gazette of Meghalaya, and supply 100 spare copies to this Department.
- 2) The Labour Commissioner, Meghalaya, Shillong.
- 3) The Agriculture Department.
- 4) The Secretary, Govt. of India, Bharat Sarkar, Ministry of Labour, Shram Mantralayaa, New Delhi-110001.

alter
Advocate
28/7/95

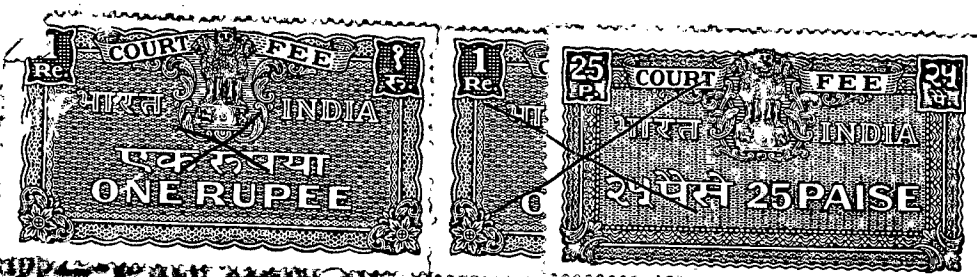
- 5) The Director of Economic & Statistic, Shillong.
- 6) The Director of Information & Public Relation for Publicity to all people concerned.
- 7) The Managing Director, Meghalaya Transport Corporation, Shillong.
- 8) The Transport Department.
- 9) The Manager, Ri Khasi Press, Umsohsun, Shillong.
- 10) The President, Shillong City Bus Syndicate, Barabazar, Shillong.
- 11) Personnel & A.R. (B) Departments.
- 12) Law (B) Department with reference to their U/O. No. 126 dated, 23-6-1991.
- 13) Guard File.
- 14) Office Copy.

By Orders etc.,

Under Secretary to the Govt. of Meghalaya
Labour Department.

....

allied
Mr. P. ...
28/1/95
Advocate



ANNEXURE-W
- 49 - 87

Date of application for the copy.	Number of stamps & folios,	of the requisite of the copy already for delivery.	Date of submission of the copy to the applicant.
2/8/05	2/8/05	2/8/05	18.8.05

IN THE INDUSTRIAL TRIBUNAL :ASSAM: GUWAHATI.

REF. NO. 9 (C) 03.

Present : Shri B. Borah,
Presiding Officer,
Industrial Tribunal, Guwahati.

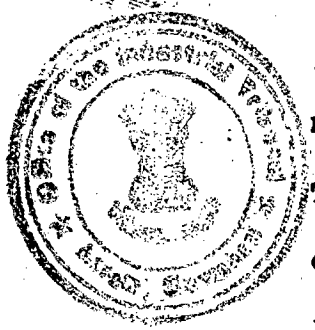
In the matter of an Industrial Dispute between:

The Management of Geological Survey of India,
North Eastern -Region, Shillong.

- vs -

The General Secretary,
Shillong Cantonment Board Employees Union,
Shillong.

COPY OF ORDER DT. 18.7.05.

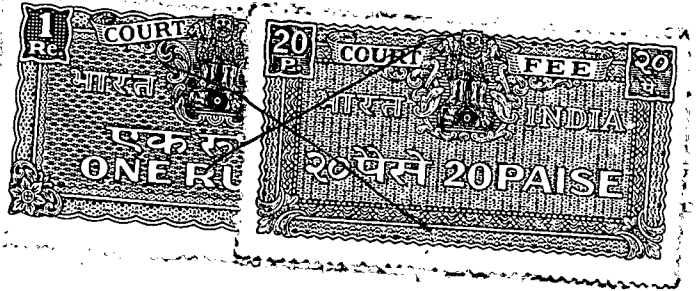


By this order I propose to dispose of the petition of the management files on 4-6-05 by which the management has challenged the Jurisdiction of this Tribunal to adjudicate the reference. The main plank of the Management is that the Geological Survey of India (herein after mentioned as G.S.I) is a sovereign Deptt. of Govt. of India and therefore, it does not come within the perview of the I.D.Act. Hence, the reference is not maintainable. This ref. is pending since 17.4.03.

The workman on the otherhand, stated that the petition dt. 4-6-05 on maintainability of the reference is an after thought and belated one and therefore, can not be tenable at this stage after completion of evidence of the parties. The workman stated that the management has filed this petition to veil its failure to produce some documents relied upon by them and applied for the copies of these documents by the workman etc etc.

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-2-

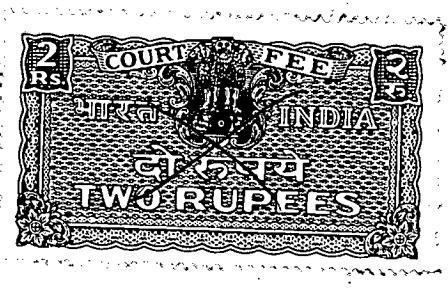
Be that as it may, let me examine the question of maintainability of the reference. The objection is raised by the Management mainly on the ground that as the G.S.I. is a Sovereign Deptt. of the Govt. of India it does not come within the purview of the definition of 'Industry' as envisaged by Section 2(J) of the Industrial Dispute Act (herein after referred to as the Act).

Section 2(J) of the Act defines 'Industry' as "Industry" means : any systematic activity carried on by co-operation between an employer and his workmen (whether such workmen are employed by such employer directly or by or through any agency, including a contractor) for the production, supply or distribution of goods or services with a view to satisfy human wants or wishes (not being wants or wishes which are merely spiritual or religious in nature) whether or not-----



But Section 2(6) ~~But Section 2(6)~~ of the Act has excluded : any activity of the Government relating to the sovereign functions of the Government including all the activities carried on by the departments of the Central Government dealing with defence research, atomic energy and space.

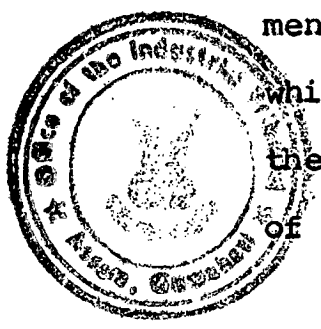
On a perusal of this provision, it transpires that "any activity of the Govt. relating to the sovereign functions of the Govt. "along with the activities carried on by the Deptt. of defence research, atomic energy and space of the Central Govt. are excluded from



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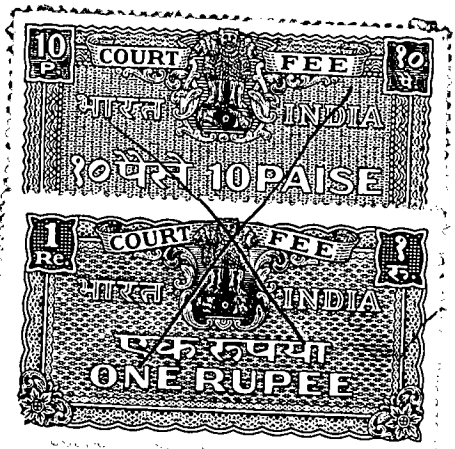
the perview of the definition of Industry.

Now, let us examine as to what are the sovereign functions' of the Govt ? The phrase Sovereign function has nowhere been defined in the Act. The dictionary meaning of the word 'Sovereign' is supreme in power; possessing supreme dominion or Jurisdiction ; royal, free of outside influence or control; etc. (The Lexicom Webster Dictonary, Vol.II Page 930) So, the Departments, which deal with the Sovereign functions' of the central Govt, have absolute control or free from outside influence. In that sense, these Deptts. of the Central Govt, are autonomous bodies i.e. subject to their own laws only. The Hon'ble Supreme Court in Bangalore Water Supply & Sewerage Board -vs- A.Rajappa (1978) 2 SCC 213 stated that even in departments discharging sovereign functions, if there are units which are industries, and they are substantially severable them they can be considered to come within Section 2(J) of the Act.



By the same decision the Hon'ble Apex Court also held that the clubs, educational institutions, co-operatives, research institutions which could be looked upon as organized activity where there was a relationship of employer and employee and goods were produced or service was rendered.

That being so, the research institutions' are also industry' if any organized activity is carried on by such institutions and there is a relation of the employers and employees and goods are produced or service is rendered.



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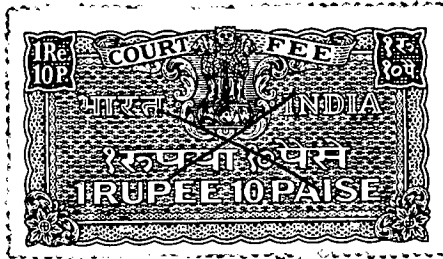
Let us look into the activities carried on by the G.S.I. The learned counsel for the management has supplied us with the "Charter Relating to the Functions and responsibilities of the G.S.I." Clause 4 of the charter states that one of the functions of the G.I.S. among other is to "To undertake systematic studies and research in all sub-disciplines of earth science and methods and techniques of exploration and sensing."

From this clause it can be seen that one of the functions of the G.S.I. is "to conduct systematic studies and research in all sub-disciplines of earth science" This function alone draws G.S.I. into a research institution". But let us examine whether the activities of the G.S.I. can be looked upon as "organized activity" or not? There can not be any scope for doubt that the activities of the G.S.I. are "organized activities" between the employer and ~~employees~~ employees. and there is a jural relation of employer and employees. But let us see as a result of the "organized activities" any "goods" is produced or service is rendered or not?



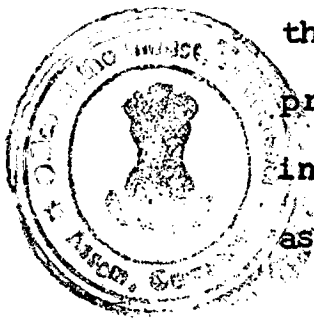
From the charter of activities of the G.I.S. it is seen that preparation of Geological, Geophysical, Geochemical maps of the whole country and the off-shore areas, to explore and assess mineral resources of the country etc. are the main functions.

These functions of the G.I.S. are of purely scientific in nature and by such activities it procures some fundamental data of earth-science which can be useful to its further research. No goods are produced or services are rendered by such research works for satisfaction of human wants or wishes.



- 5 -

In this connection we may refer to the decision of the Hon'ble Supreme Court in Physical Research Laboratory -vs- K.G.Sarmah II LLJ Supreme Court of India 1997 P. 625 wherein it was held that the appellant i.e. Physical Research Laboratory was not an industry even though it was counting on ~~the~~ the activity of research on a systematic manner with the help of its employees, as it lacked that element which would make it an organisation carrying on an activity which could be said to be analogous to the carrying on of trade or business because it was not producing goods and distributing services which were intended or meant ~~to~~ for satisfying human wants and needs as ordinarily understood.

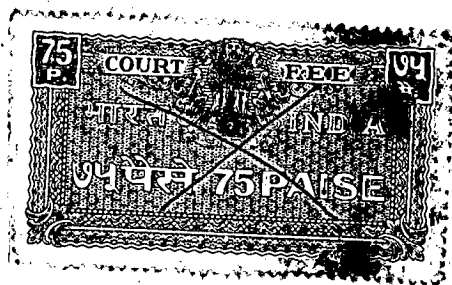


Though it was held in the Bangalore Water Supply and Sewerage Board -vs- A. Rajappa (1978 I LLJ SC 349) that research institutes and also industry if they fulfil the triple tests i.e. (i) Systematic activity, (ii) organised by co-operation between employer and employee and (iii) for the production and/or distribution of goods and services for satisfaction of human wants or wishes. In the case in hand the 3rd element is found to be absent.

Before parting with this matter in hand, let me make it clear that the G.S.E. is not performing any sovereign functions as claimed by the learned counsel for the Management, Sovereign function of a state are those functions, which the state has some constitutional obligation for performing these functions by its own

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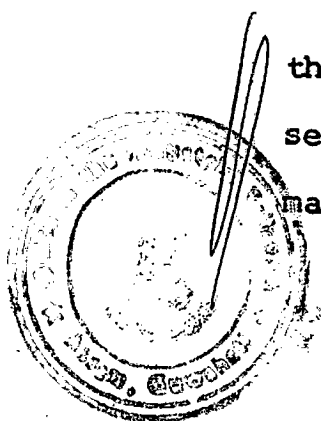
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-6-

organisation keeping the national security, integrity etc. in mind. Some functions of the State can not be allowed to be performed through private agencies. The space research, the Atomic Power the defence etc. are such functions which can be strictly said to be 'Sovereign Functions' of the state.

In the result, I am constrained to hold that the G.S.I. is not an 'industry' as defined by section 2(J) of the Act and this reference is not maintainable and the same is quashed.



Sd/- B. Borah,
Presiding Officer,
Industrial Tribunal, Guwahati.

Type By : *S. Borah*

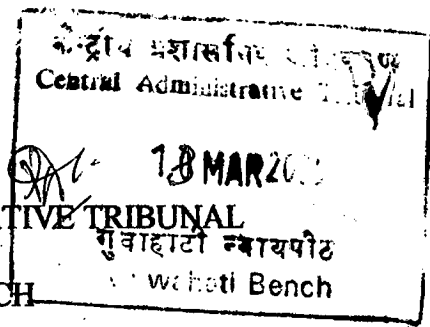
Compare with :

Certified to be true copy

Sd/-
17.8.05

Registrar,
Industrial Tribunal, Guwahati.
Enacted under Section 78 of Act 1, 1947

-55-



IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

ORIGINAL APPLICATION NO. 292/2005

Smti Amarjit Kaur
Applicant.
-VS-
Union of India & ors.
...Respondents.

Filed by

Khlauntor Khawhualai

Head of Office

GSI, NER
Shillong

through
Gopinath
Sr. C.G. S.C.

The written statement on behalf of the Respondents
abovenamed:

WRITTEN STATEMENT ON BEHALF OF THE RESPONDENTS

MOST RESPECTFULLY SHEWEHT:

1. That with regards to the statement made in paragraph 1 of the instant application, the Respondents beg to state that those are untrue, incorrect and false and hence, the same are denied by the answering Respondents.
2. That with regard to the statement made in paragraph 2 and 3 of the instant application, the Respondents have no comment.
- 2.A That with regards to para 4.1 of the Respondents beg to state that it is a matter of record.
- 2.B That with regards to paragraph 4.2, & 4.3 the Respondents beg to state that the applicants allegation that she had been working as sweeper/safaiwala under the Dy. Director General, GSI, NER, Shillong since 1985 is baseless and highly motivated to gain personal benefits. The General Secretary, Cantonment Board Employee Union, Shillong in his letter dated 02.11.2001 addressed to the Regional Labour Commissioner (Central), Rajgarh Road, Guwahati-3 quoted " That Sir, as per records submitted by Smti Amarjeet Kaur, a resident of Dozen line, Shillong before this Union that she had been working as a sweeper in the Department of Geological Survey of India under Administrative Officer, Mineral Division, Shillong since 1985 without break". Based on this letter the Assistant Labour

Commissioner (Central), Guwahati took the matter and invited both the parties for joint discussion/conciliation on different occasions . But at no stage of the joint discussion/conciliation the applicant could prove or submit any record proving and justifying this allegation . As per noting of Attending Officer on behalf of respondents, in one of such joint discussions/conciliations on 02.07.2002 in the office of Assistant Labour Commissioner, Guwahati, the representative on behalf of the applicant, on demand by the Asstt. Labour Commissioner (Central) could not produced relevant documents to justify the claim. This is evident from the Noting dated 03.07.2002 of the Attending Officer.

Smt. Amarjeet Kaur was engaged as sweeper/safaiwala in Mineral Physics Division of Geological Survey of India purely on contract basis only during the absence of regular safaiwala on Earned Leave etc. and lump sum amount was offered to the applicant which she had accepted.

In this connection, Noting dated 03.07.2002 along with a copy of letter dated 02.11.2001 from the General Secretary, Cantonment Board Employee Union, Shillong marked as **Annexure A & B** are enclosed.

3. That with regards to para 4.4, the respondents beg to state that no assurance for her absorption in the Department has been given to the applicant as per record available. Rather there is a noting dated 05.12.1991 of the Head of Office , that quotes " The person thus employed will have no right over future employment in GSI ". Thus, the allegation made by the applicant is baseless, false and misleading to gain personal benefit.

A copy of Noting dated 05.12.1991 is annexed and marked as **Annexure- C.**

4. That with regards to para 4.5 the respondents beg to state that no appointment letter was issued to the applicant for the contract work. As already stated , the applicant was engaged for the periods when regular safaiwala was on leave etc. on payment of lump sum amount. Her contract work automatically ended on expiry of the period agreed upon and also as soon as regular Safaiwala joins duty after expiry of leave. Hence the question of termination of her service without observing provision of Law does not arise.

That with regards to para 4.6, 4.7 and 4.8 the respondents beg to state that it is a matter of records.

6. That with regards to para 4.9 the respondents beg to state that since the time the Union raised the dispute before the Assistant Labour Commissioner (C), Rajgarh Road, Guwahati, the respondent/management have been stating the non applicability of Industrial Dispute Act, 1947 as Geological Survey of India (herein after as GSI) is not an industry as per definition given under Section 2 (J) of the Industrial Dispute Act, 1947. In this connection letter No. 6081/5/1/Contg/NER-87, dated 22.03.2002 written to the Assistant Labour Commissioner (C), Rajgarh Road, Guwahati stating that the Industrial Act is not applicable to the Management which is not an industry as defined in the I.D. Act, 1947 and as such the case of the applicant as raised by the Cantonment Board Employees Union can not be termed as industrial dispute. Again when the Ministry of Labour, Govt. of India refers the dispute for adjudication to the Industrial Tribunal, Guwahati, the respondents/management in the Written Statement filed in the Industrial Tribunal clearly raised the issue of non-applicability of Industrial Dispute Act which is having no jurisdiction to arbitrate the matter which is purely a service matter under the Central Govt. The Hon'ble Central Administrative Tribunal, Guwahati is having all the jurisdiction, powers and authority to exercise in relation to a) recruitment and matters concerning recruitment to all India services to any Civil service of the Union or a Civil post under the Union b) all service matters concerning civil post under the Union etc. as stated in Sl. NO. 3,4 and 5 of the Written Statement filed by the respondent in the Hon'ble Industrial Tribunal.

Regarding ban on engagement of contingent workers on continuous basis, it is to state that the ban exists since 01.11.1977 as mentioned in the Memorandum No. 1855N-80N/A-12031/CW/1/83-85/17 D. Vol.II, dated 12.04.1988 (para 2). But Circular No. 28 (4)/77-78/17A (Ban), dated 9.6.1978 is regarding Ban on engagement of contingent workers on continuous basis provides for purely temporary engagement of Mazdoor (unskilled) for short duration to meet the exigencies of work in public interest. The Applicant was engaged purely temporarily on contract basis on payment of lump sum amount during the absence of regular safaiwala on E.L. etc., as it is evidenced from vouchers. No assurance had been given to the applicant for regular safaiwala post.

Copy of letter No. 6081/5/1/Contg/NER-87, dated 22.03.2002 written to the Assistant Labour Commissioner (C), Rajgarh Road, Guwahati and Written Statement, filed in the Hon'ble Industrial Tribunal annexed and marked as Annexure D & E.

7. That with regard to para 4.10, the Respondents beg to state that the issue of maintainability and the jurisdiction was raised at the very beginning of the dispute and not at the fag end of the case as alleged by the applicant. Rather it was the applicant who has tried to complicate this issue for getting the case disposed off in her favour.

8. That with regard to para 4.11 & 4.12 the Respondents beg to state no comments.

9. That with regard to para 4.13, the Respondents beg to state that the following regular Safaiwalas were posted in Mineral Physics Division, GSI, NER, Shillong.

- a) Shri Sarjan Singh - Oct. 1982 to April, 1991
- b) Smt. R. Marak - April, 1991 to 23.07.1992
- c) Shri Sarjan Singh - 23.07.1992 to 28.02.1994
- d) Shri Jeet Singh - November 1995 to till date.

In the absence of regular Safaiwalas on E.L. etc. the applicant was engaged on payment of lump sum and the applicant agreed to the amount she was offered. The applicant was given the duty to clean the laboratory, toilets in the Mineral Physics Division. At the most her job was required for about 1 hour only before the office opens, her whole day's presence was not required. The wages were paid as per the rate prescribed by the Govt. of Meghalaya to other workers whose hours of work was eight hours a day. But in this case the wages was paid to the applicant on lump sum basis as the hours of work is about 1 hour only. Thus, the Govt. notified rate could not be applied in her case. Moreover, no wage rate has been notified by the Govt. of Meghalaya for the safaiwalas, vide Notification dated 10th July, 1996 (Annexure- V of the Original Application No. 292/2005).

10. With regards to para 4.14, the respondents beg to state that as mentioned in Sl. No. 2 of this Written Statement the applicant has stated that she is having the record to prove that the she had been engaged in the department since 1985 till August, 2001 without break. So the parties who is raising the dispute should prove their claim. The Ministry of Labour, Government of India, while referring the case to the Industrial Tribunal, Guwahati

directing the applicant, quoted " The parties raising the dispute shall file a statement of claim complete with relevant documents, list of reliance and witnesses with the Tribunal within fifteen days of the receipt of this order of reference and also forward a copy of such a statement to each one of the opposite parties involved in this dispute under rule 10 (B) of the Industrial Dispute (Central) Rules, 1957." But it was the respondent who first filed the Written Statement showing all the details of her engagement as per the records available. Based on the written statement filed by the management/respondent the applicant submitted her statement.

From the applicants contention it appears that she has given the responsibility on the respondents to prove that the applicant has been working since 1985 to August, 2001 without break. On the contrary the person who asserts the claim has to prove it.

Thus the allegation that the respondent/management could not produce any document is totally baseless. The applicant makes the claim but could not confirm it and instead doubt the integrity of the respondent.

In this connection copy of Ministry of Labour, Govt. of India, New Delhi Order No. L-42012/240/2002-IR (CM-II), dated 17.04.2003 is annexed and marked as Annexure-F.

11. That with regard to the para 4.15 , the respondents beg to state that the respondents are always having the highest regards and respect to the Judgement and order passed by the Hon'ble Courts of Law of the country including the Hon'ble Industrial Tribunal.
12. That with regard to para 4.16 , the Respondents beg to state that as already mentioned in Sl. No. 6 in response to Para 4.9, the respondents/management have in the preliminary stage of case raised the issue of non-applicability of Industrial Dispute Act, 1947 which is having no jurisdiction and maintainability of Industrial Tribunal to adjudicate the matter. The Learned Presiding Officer, Hon'ble Industrial Tribunal , Guwahati has reflected the objection of the respondent/management in his Judgement dated 18.07.2005. in page no. 2 line 3 , quoted " The management raised preliminary objection as to the maintainability of the reference in its present form."

Copy of the Judgement dated 18.07.2005 is annexed and marked as Annexure-G.

13. That with regards to para 4.17, the respondents beg to offer no comments.
14. That with regard to para 4.18 & 4.19, the Respondents beg to state that the allegation is baseless and is highly motivated. There were regular safaiwalas posted in Mineral Physics Divn. as stated in Sl. 9 of this written statement. Thus when the regular safaiwala was absent from duties on E.L. etc. the applicant was offered to clean the Mineral Physics Divn. as she was having easy contact with the officer of the Mineral Physics Division. There was no bias nor any malicious thinking against the applicant otherwise as to how she could be offered the jobs for all those period as shown in the statement of her engagement.
15. That with regard to para 4.20, the Respondents beg to state that the provisions stated are applicable for only regular employees and as such all the constitutional safeguards are being provided to the regular employees. But these provisions can not be applied in the case of a safaiwala engaged purely on contract basis.
16. That with regard to para 4.21 the respondents beg to state that there was no breach of contract. The proposal of cleaning the Mineral Physics Divn. on lump sum amount was made to the applicant for fixed period which the applicant accepted and after completion of the work she was paid accordingly and the contract ends automatically.
17. That with regards to para 4.22, the respondents beg to state that there are no lapses and flaws on the part of respondents. In public interest she was engaged to clean the Mineral Physics Divn. during the absence of regular safaiwalas on EL etc. No injustice was made against her.
18. That with regards to para 4.23 the respondents beg to offer no comments.
19. That, the applicant was never engaged continuously for which she can demand regularisation of her work or for permanent post or for reinstatement in service. There was no assurance given to her for absorption in service by the authority concerned. The applicant fully knows that the respondent has not violated any office procedure, provisions and rule of law for which she could demand regularisation of post or

reinstatement in service. This is evident from the page no. 2 of letter No. 8 (2)/2002-g/a, Dated 10.10.2002 of Asstt. Labour Commissioner (C), Rajgarh Road, Guwahati- 3, addressed to the Secretary, Govt. of India, Ministry of Labour, Shram Shakti Bhawan, New Delhi, quoted .. " on 05.08.2002 the Management representative was in a mood to concede the demands of the Union to deploy Smt. Kour for not exceeding 119 days in a year i.e. 8-10 days approximately as casual contract basis" Thus with the passing of time and approaching of different Hon'ble Courts the applicant's demands are also changing. But

whatever the demands of the applicant may be, the respondents most respectfully beg to state that the applicant is not entitled to any relief. In this connection the title of "Workmen lose 240 day shield " published in the Telegraph, Guwahati dated 15.02.2005 on the Judgment of Hon'ble Supreme Court has the relevance.

A copy of letter No. 8 (2)/2002-g/a, Dated 10.10.2002 of Asstt. Labour Commissioner (C), Rajgarh Road, Guwahati- 3 and copy of paper cutting " Workmen lose 240 day shield " published in the Telegraph, Guwahati dated 15.02.2005 are annexed and marked as **Annexure- H & I.**

20. That keeping in view of the facts and circumstances of the case and the provisions of law, the application is liable to be dismissed with cost as it is devoid of any merit and is without any cause of action.

.....VERIFICATION...

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reinstatement in service. This is evidence from the page No2 of letter No.8(2)/2002-g/a, dated 10/10/2002 of Asstt. Labour Commissioner, Rajgarh Road, Guwahati-3 addressed to the Secretary, Govt. of India, Ministry of Labour, Sharma Shaktii Bhawan, New Delhi, quoted "on 05/8/2002, the Management representative was in a mood concede the demands of the Union to deploy Smti Kour for not exceeding 119 days in a year i.e. 8-10 days approximately as casual contract basis " Thus with the passing of time and approaching of different Hon'ble Courts the applicant's demands are also changing. But whatever the demands of the application may be, the respondents most respectfully beg to state that the applicant is not entitled to any relief. In this connection, the title of the "Workman lose 240 day shield" published in the Telegraph Guwahati dated 15/2/2005 on the Judgement of the Hon'ble Supreme Court has the relevant.

In view of facts and circumstances cited above, the application is not entitled to any relief or interim relief prayed for and the instant application is liable to be dismissed.

A copy of letter No.8(2)/2002-G/A dated 10/10/2002 of Asstt. Labour Commissioner, Rajgarh Road, Guwahati-3 and copy of paper cutting "Workmen lose 240 day shield" published in the Telegraph, Guwahati dated 15/2/2005 are annexed and marked as ANNEXURE-H & I.

20. That the Respondents beg to state that the grounds set forth in the instant application are not at all good grounds for filling this application and hence the application is liable to be dismissed.

21. That keeping in view of the facts and circumstances of the case and the provisions of law, the application is liable to be dismissed with cost as it is devoid of any merit and is without any cause of action.

....VERIFICATION

VERIFICATION

I, Shri Khlainbor Kharmalki, Administrative Officer Gr. I & Head of Office, Geological Survey of India, North Eastern Region, Shillong, Son of (L) L.S. Sawkmie, aged about 51 years, resident of Malki, Shillong- 793001, being duly authorised and competent to sign this verification, do hereby solemnly affirm and state that the statements made in Para 1 to 20 of this Written Statement are true to my knowledge and belief.

And I sign this verification on this 28th day of February, 2006 at Guwahati.

Khlainbor Kharmalki

DEPONENT
Head of Office
GSI, NER
Shillong

The undersigned, accompanied by Shri N.K. Boudhyc called on the Asst. ^{Labour} Commissioner (Central) in his office chamber at Guwahati on 02.07.2002 to attend to the proceedings as representatives of the H.O.D., GSI, NER on the case of Smt. A.J. Kaur vs GSI, NER. The session was also represented by two representatives from Cantonment Board - Employee Union on behalf of Smt. Kaur on demand by the Asst. Labour Commissioner (Central). The documents produced by them in support of the claim of Smt. A.J. Kaur were found to be insufficient to justify the claim. After observing the pros. and cons. The Asst. Labour Commissioner (Central) opined that Smt. Kaur may be asked to work on casual basis in GSI, NER, subject to approval of the HOD to partially fulfill her financial constraints. The H.O.D.'s decision in this regard may be communicated to the Asst. Labour Commissioner (Central) by the first week of August, 2002. The official communication from his end is underway.

A

H.O. please

[Signature]
03/07/2002

A - let us wait for the official communication from the Asst. Labour Commissioner

[Signature]

[Signature]

[Signature]
T. 47/10

GENERAL SECRETARY

CANTONMENT BOARD EMPLOYEE UNION
SHILLONG, MEGHALAYA
REGD. NO.: 85

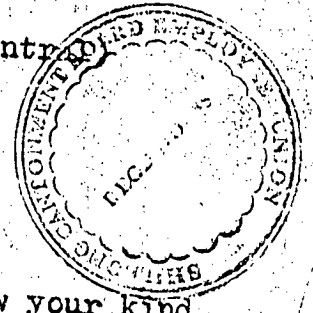
- 65 -

Ref. No.

Date
2nd Nov. 2001.

To

The Regional Labour Commissioner (Central)
Pajgarh Road, Guwahati-3,
Assam.



Sub:- Illegal termination.

Respected Sir,

With due respect I have the honour to draw your kind attention and intervention on the facts and circumstances mentioned below :-

That Sir, as per the records subkitted by Smti. Amarjeet Kaur, a resident of Dozen Line, Shillong before this Union that she had been working as a Sweeper in the Department of Geological Survey of India under Administrative Officer, Mineral Division, Shillong since 1985 without break.

That Sir, sometime on August 2001 her service was terminated by the Department without any satisfactory reason and as a result of such termination Smti. Amarjeet Kaur has been facing tremendous trouble to maintain her family.

So Sir, I, therefore, requesting you to take necessary step to safeguard the interest of the worker and your kind cooperation will highly appreciable.

Thanking you.

(General Secretary)
Cantonment Board Employee Union, Shillong
Dist No- 884

Yours/faithfully,

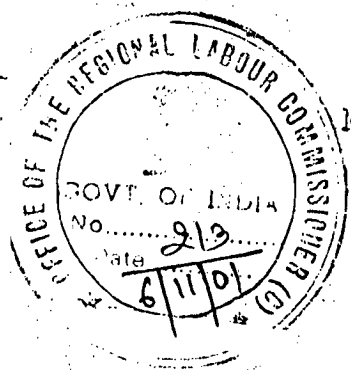
[Signature]
General Secretary,
shillong Cantonment Board Employee
Union, Shillong.

[Handwritten mark]

8
5/11

A.L.C.C.

[Signature]
5/11/2001



As Smt. P. Murali, the regular staff has gone on maternity leave for 3 months, one part time successful on contract basis may please be allowed to engage in the Mineral Physics Division immediately for a period of at least 4 months. The Director (P.R.C.) is earnestly requested to do the needful.

Director (P.R.C.) please

5/12/91

As the regular Saffairwalla has gone on maternity leave, engagement of a casual worker on contract basis may be considered to sanction pl.

5/12/91

One casual worker on contract basis for 90 days @ Rs 425/- p.m. sanctioned. The person thus engaged will attend to work as specified by O-I-C. Min. phy. Div.

The person thus employed will have no right over future employment in ASI.

Rajap
05/12/91

No. 6081 /5/1/Contg./NER-87,

Dated, 22.03.2002.

From :

To :

The Sr. Dy. Director General,
Geological Survey of India,
North Eastern Region,
Shillong.

The Assistant Labour Commissioner (Central)
Government of India,
Rajgarh Road, Chandmari,
Guwahati- 3.

Sub : Industrial dispute over illegal termination from service in respect of Smt. Amarjit Kaur,
Sweeper raised by the Cantonment Board Employees Union, Shillong.

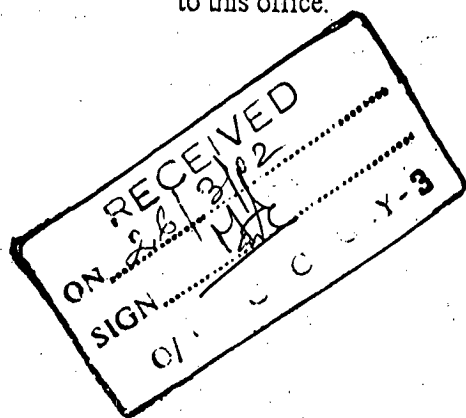
Ref : Correspondent resting with your letter No. 8(2)/2002-G/A, Dated, 01.02.2002.

Sir,

In response to your letter referred above, this office had requested for deferment of proceedings which were to be held on 22.02.2002, by one month, vide this office letter No. 5404/5/1/Contg./NER-87, dated 18.02.2002.

In this regard, it is further stated that the meaning of "Industry" as mentioned in I.D. Act, 1947 Section 2 (a) has been clarified in Section 2 (j), which clearly excludes educational, scientific, research or training institutions or any activity of the Government relating to the sovereign functions of the Government including all the activities carried on by the Central Government. The I.D. Act, 1947 is, therefore, not applicable to the Geological Survey of India which is not an industry as defined in I.D. Act, 1947 and as such the case of Smt. Amarjit Kaur, as raised by the Cantonment Board Employees Union, Shillong cannot be termed as industrial dispute.

You are therefore, requested to dismiss the case of Smt. Amarjit Kaur, under intimation to this office.



Yours faithfully,

S. C. Nagal
(S.C. NAGAL) 22/3/02
HEAD OF OFFICE

For SR. DY. DIRECTOR GENERAL

68-

IN THE INDUSTRIAL TRIBUNAL, ASSAM AT GAUHATI

Ref. No. 9 (c)/ 2003.

In the matter of an industrial dispute between---

Smti. Amarjeet Kaur
Represented by the General Secretary,
Shillong Cantonment Board Employees Union,
Shillong. Workmen

And

The Dy. Director General,
Geological Survey of India,
North Eastern Region,
Shillong. Management

WRITTEN STATEMENT OF THE MANAGEMENT

The Management above mentioned most respectfully sheweth :

1. That the reference is not maintainable.
2. That before replying to the statements made in the schedule "Whether the action of the management of Deputy Director General, Geological Survey of India, (NER) Shillong in terminating the services of Smti Amarjeet Kaur, Sweeper w.e.f. August '01 without observing the provisions of law and also denying for reinstatement is legal and justified? If not, to what relief she is entitled to?" the respondent beg to furnish the facts and circumstances on the rule provision as under:



3. Geological Survey of India is a Central Govt. department and does not come under the purview of Industrial Dispute Act 1947. Section 2(A) of the of Industrial Dispute Act 1947 is annexed herewith for your ready reference. The meaning of industry has been clarified vide section 2 (j), which clearly exclude Educational, Survey, Research or Training Institution or any activity of the government relatable to sovereign function of government including all the activities carried out by the departments of Central Government. The Industrial Dispute Act' 1947 is therefore not applicable to GSI, which is not an industry.

Copy of Section 2 (A) of Industrial Dispute Act, 1947 is annexed as Annexure-I

4. That under Section 14 of the Central Administrative Tribunal Act' 1985, the Central Administrative Tribunal shall exercise all the jurisdiction, powers and authority in relation to (a) recruitment and matters concerning recruitment to All India Services to any Civil Service of the Union or a Civil post under the Union (b) all service matters concerning Civil post under the Union etc. - Annexure II

5. That GSI is a department under the Central Government, the subject matters in the schedule, being matters relating to the termination of the service of Smti Amarjeet Kaur, the matter does not fall under the jurisdiction of Industrial Tribunal to arbitrate the service matter under the Central Government.

6. That the respondent beg to state that following regular Safaiwalas were posted in Mineral Physics, Division, NER, Shillong.

- a. Shri Sarjan Singh - Oct 82 to April'91.
- b. Smt R. Marak -- April'91 to 23/7/92
- c. Shri Sarjan Sing - 23/7/92 to 28/2/94 (expired on 1/4/94).
- d. Shri Jeet Singh - Nov'95 to till date.

7. That during the period of leave/absence of regular safaiwala, Smti. Amarjeet Kaur was engaged on contract basis for cleaning the office of Mineral Physics Division, GSI at a consolidated rate as agreed upon by the parties. She was never engaged in other divisions except Mineral Physics Division. The details of contractual work performed by Smti. Amarjeet Kaur in Mineral Physics Division, GSI is furnished in Annexure-III. Hence, the averments made by Smti Amarjeet Kaur that she was continuously engaged from 1985 are hereby denied.

8. That with regards to the SCHEDULE: "Whether the action of the management of Deputy Director General, Geological Survey of India, (NER) Shillong in terminating the services of Smti Amarjeet Kaur, Sweeper w.e.f. August '01 without observing the provisions of law and also denying for reinstatement is legal and justified? If not, to what relief she is entitled to?", the respondent beg to clarify on the question of termination from service of Smti Amarjeet Kaur without observing the provision of law and also denying reinstatement did not arise. She was engaged occasionally on contract basis for cleaning the office during the period of absence/leave of the regular Safaiwala. The period of engagement automatically ends at the end of the contract agreed between the two parties.

In the premises above, it is, therefore, prayed that your Hon'our may be pleased to dismiss the reference against the workmen.

VERIFICATION

I, Shri D. J. Sanyal, Regional Administrative Officer & Head of Office, Son of D. N. Roy being authorised to sign this Written Statement by the Deputy Director General, Geological Survey of India, North Eastern Region, East Khasi Hills District, Shillong, Meghalaya do hereby solemnly declare that the statements made are true to my knowledge, belief and information. And I sign this affidavit on this the 25th day of April 2003.

D. J. Sanyal
 DEPONENT
25/04/03
 Regional Admn. Office
 Geological Survey of India
 NER, Shillong

NO - L-42012/240/2002 - IR(CM-II)
Government of India// Bharat Sarkar
Ministry of Labour/Shram Mantralaya

New Delhi, Dated :17/04/2003

ORDER

NO.. L-42012/240/2002 (IR(CM-II)) : WHEREAS the Central Government is of the opinion that an industrial dispute exists between the employers in relation to the management of Geological Survey of India, and their workmen in respect of the matters specified in the Schedule hereto annexed ;

AND WHEREAS the Central Government considers it desirable to refer the said dispute for adjudication;

NOW THEREFORE , in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) the Central Government hereby refers the said dispute for adjudication to the Industrial Tribunal, GUWAHATI . The said Tribunal shall give its award within a period of three months

The Schedule

"Whether the action of the management of Deputy Director General, Geological Survey of India (NER) Shillong in terminating the services of Smt. Amarjeet Kaur, Sweeper w.e.f. August 01 without observing the provisions of law and also denying for reinstatement is legal and justified? If not, to what relief she is entitled to?"

(Kuldip Rai Verma)
DESK OFFICER
T. No.-23001145
EMail-irdu@lisd.delhi.nic.in

Copy forwarded for necessary action to :

- * 1. The Presiding Officer
Industrial Tribunal
Ambari (bye lane),
Near Jor Pukhuri,
Uzanbazar
GUWAHATI-781001
- 2. The Deputy Director General,
Geological Survey of India,
North Eastern Region, Shillong
SHILLONG(MEGHALAYA) -

URGENT

RAO

28/4

17/4/03

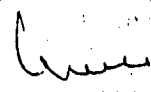
73

107

The General Secretary,
Shillong Cantonment Board Employees Union,
Shillong
SHILLONG(MEGHALAYA) -

The parties raising the dispute shall file a statement of claim complete with relevant documents, list of reliance and witnesses with the Tribunal within fifteen days of the receipt of this order of reference and also forward a copy of such a statement to each one of the opposite parties involved in this dispute under rule 10(B) of the industrial disputes (Central) Rules, 1957.

- 4. Ministry of Mines,
New Delhi
Pincode - 110001
- 5. The Regional Labour Commissioner(Central), GUWAHATI
- 6. The Assistant Labour Commissioner(Central), GUWAHATI w.r.t .his FOC Report
No. 8(2)/2002-G/A Dated 10/10/2002
- 7. Adjudication Folder.
- 8. CR Section.,


 (Kuldip Rai Verma)
 DESK OFFICER
 T.No.-23001145
 Email-irdu@lisd.delhi.nic.in

* BY REGISTERED POST

RAO

IN THE INDUSTRIAL TRIBUNAL::ASSAM::GUWAHATI.

REFERENCE NO.9(C) OF 2003.

Present : Shri B. Bora,
Presiding Officer,
Industrial Tribunal, Guwahati.

In the matter of an Industrial Dispute between:

The Management of
Geological Survey of India,
Shillong.

-Vs-

Their workman rep. by the General Secy.,
Shillong Cantonment Board Employees Union,
Shillong.

Date of Award: 18.7.05.

- A W A R D -

The Govt. of India, Ministry of Labour, New Delhi
by a notification No. L- 42012/ 240/2002 (IR(CM-II) dt.
17.4.03 referred an Industrial Dispute between the management
of Geological Survey of India, Shillong and their workman
Smt. Amarjeet Kaur, Sweeper on the following issue :

" Whether the action of the management of Deputy
Director General, Geological Survey of India (NER)
Shillong in terminating the services of Smt.
Amarjeet Kaur, Sweeper w. e. f. August '01 without
observing the provisions of law and also denying
for reinstatement is legal and justified? If
not, to what relief she is entitled to?"

On receipt of reference, a reference case^{case} was
registered and notices were issued both parties calling upon
them to file their written statements/ addl. written statements
and documents if any. In response to the notices both parties
appeared in this court and filed their written statements.

Contd.. .2/-



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109

Both parties also adduced evidences both oral and documentary in support of their respective cases.

The management raised preliminary objection as to the maintainability of the reference in its present form.

Heard the learned counsels for the parties. Gone through the record.

It is decided to hear the preliminary issue first and the issue is framed : Whether the reference in its present form is maintainable or not ?

By this Award I propose to dispose of the petition of the management files on 04-06-05 by which the management has challenged the Jurisdiction of this Tribunal to adjudicate the reference .The main plank of the Management is that the Geological Survey of India (herein after mentioned as G.S.I) is a sovereign Deptt. of Govt. of India and therefore, it does not come within the perview of the I.D.Act.Hence, the reference is not maintainable.This reference is pending since 17.4.03.

The workman on the otherhand, stated that the petition dt.04-06-05 on maintainability of the reference is an after thought and belated one and therefore, can not be tebable at this stageafter completion of evidence of the parties.The workman stated that the Management has filed this petition to veil its failure to produce some documents relied upon by them and applied for the copies of these documents by the workman etc.etc.

Be that as it may, let me examine the question of maintainability of the reference.The objection is raised by the management mainly on the ground that as the G.S.I.

.....3/-



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is a Sovereign Deptt. of the Govt. of India it does not come within the perview of the definition of 'Industry' as envisaged by Section 2(J) of the I.D.Act(hereinafter referred to as the Act).

Section 2 (J) of the Act defines 'Industry' as "Industry" means: any systematic activity carried on by co-operation between an employer and his workmen (whether such workmen are employed by such employer directly or by or through any agency, including a contractor) for the production, supply or distribution of goods or services with a view to satisfy human wants or wishes (not being wants or wishes which are merely spiritual or religious in nature) whether or not But Section 2(6) of the Act has excluded : any activity of the Government relatable to the sovereign functions of the Government including all the activities carried on by the departments of the Central Government dealing with defence research, atomic energy and space.

On a perual of this provision, it transpires that "any activity of the Govt. relatable to the sovereign functions of the Govt." along with the activities carried on by the Deptt. of defence research, atomic energy and space of the Central Govt. are excluded from the perview of the definition of Industry.

Now, let us examine as to what are the sovereign functions' of the Govt ? The phrase-Sovereign function has nowhere been defined in the Act. The dictionary meaning of the work 'Sovereign' is supreme in power ; ; possessing supreme dominion or Jurisdiction ; royal, free of outside influence or control ; etc. (The Lexicon Webster Dictionary, vol.II page 930) So, the Departments, which deal with the



nl

Sovereign functions' of the Central Govt. have absolute control of free from outside influence. In that sense, these Depts of the Central Govt. are autonomous bodies i.e. subject to their own laws only. The Hon'ble Supreme Court in Bangalore Water Supply & Sewerage Board Vs. A. Rajappa (1978) 2 SCC 213 stated that even in departments discharging sovereign functions, if there are units which are industries, and they are substantially severable then they can be considered to come within Section 2(J) of the Act.

By the same decision the Hon'ble Apex Court also held that the clubs, educational institutions, co-operatives, research institutions....., which could be looked upon as organized activity where there was a relationship of employer and employee and goods were produced or service was rendered.

That being so, the research institutions' are also ~~industry~~ 'industry' if any organized activity is carried on by such institutions and there is a relation of the employers and employees and goods are produced or service is rendered.



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Let us look into the activities carried on by the G.S.I. The learned counsel for the management has supplied us with the "Charter Relating to the Functions and responsibilities of the G.S.I." Clause 4 of the Charter states that one of the functions of the G.S.I. among others is to "To undertake systematic studies and research in all sub-disciplines of earth science and methods and techniques of exploration and sensing "

From this clause it can be seen that one of the functions of the G.S.I is " to conduct systematic studies and research in all sub-disciplines of earth science". This

function alone draws G.S.I. into a research institution." But let us examine whether the activities of the G.S.I. can be looked upon as "organized activity" or not? There can not be any scope for doubt that the activities of the G.S.I. are "organized activities" between the employer and employees and there is a jural relation of employer and employees. But let us see as a result of the "organized activities" any "goods" is produced or service is rendered or not?

From the charter of activities of the G.S.I. it is seen that preparation of Geological, Geophysical, Geochemical maps of the whole country and the off-shore areas, to explore and assess mineral resources of the country etc. are the main functions.

These functions of the G.S.I. are of purely scientific in nature and by such activities it ~~produces~~ procures some fundamental datas of earth-science which can be useful to its further reserch. No goods are produced or services are rendered by such research works for satisfaction of human wants or wishes.

In this connection we may refer to the decision of the Hon'ble Supreme Court in physical Research Labortory Vs. K.G.Sarmah II LLJ Supreme Court of India 1997 p.625 wherein it was held that the appellant i.e. Physical Research Labortory was not an industry even though it was counting on the activity of research on a systematic manner with the help of its employees, as it lacked that element which would make it an organisation carrying on an activity which could be said to be analogous to the carrying on of trade or business because it was not producing goods and distributing services which were intended or meant for satisfying human wants and needs, as ordinarily understood.



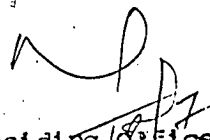
MP

Though it was held in the Bangalore Water Supply and Sewerage Board Vs. A. Rajappa (1978-1-LLJ SC 349) that research institutions are also industry if they fulfil the triple tests i.e. (i) Systematic activity, (ii) organized by Co-operation between employer and employee and (iii) for the Production and/or distribution of goods and services for satisfaction of human wants or wishes. In the case in hand the 3rd element is found to be absent.

Before parting with this matter in hand, let me make it clear that the G.S.I. is not performing any sovereign functions as claimed by the learned counsel for the management. Sovereign functions of a state are those functions, which the state has some constitutional obligation for performing these functions by its own organisation keeping the national security, integrity etc. in mind. Some functions of the state can not be allowed to be performed through private agencies. The space research, the Atomic Power the defence etc. are such functions which can be strictly said to be 'Sovereign Functions' of the state.

In the result, I am constrained to hold that the G.S.I. is not an 'industry' as defined by section 2(J) of the Act and this reference is not maintainable and the reference is answered accordingly.

Given under my hand and seal on this the 18 th day of July '2005.


Presiding Officer,
Industrial Tribunal, Guwahati.



FAILURE OF CONCILIATION

PART - I

Government of India
 Ministry of Labour
 Office of the Assistant Labour Commissioner(C)
Rajgarh Road, Chandmari, Guwahati-3

No.8(2)/2002-G/A

Dated the

10 OCT 2002

To
 The Secretary
 Government of India
 Ministry of Labour
 Shram Shakti Bhawan
Rafi Marg, New Delhi

Subject:- Industrial Dispute over termination from service of Smt. Amarjeet Kour, Ex. Sweeper by the Management of Geological Survey of India, NER, Shillong.

Sir,

The General Secretary, Shillong Cantonment Board Employees Union, Shillong raised an Industrial Dispute vide his letter No. Nil dated 02.11.01 (Copy enclosed in Annexure stated that Smt. Kour had been working as Sweeper in the B Department of Geological Survey of India under Administrative Officer, Mineral Division, Shillong since 1985 without break and Smt. Kour has been terminated in the month of August, 2001 without any reason. After that the Union took up the matter with the Management on several occasions but no positive result came out which prompted them to raised the dispute.

On receipt of the dispute the matter was taken up with the Management and advised them to attend this office for Joint discussion/conciliation and various dates viz. 22.2.02, 13.5.02, 31.5.02, 18.6.02, 27.02, 5.8.02 and lastly 23.8.02 joint discussion held but no break through could be achieved out of discussions and subsequently on 11.9.02 the dispute siezed in conciliation and recorded failure.

The Management instead of answering the material fact of termination of Smt. Kour simply pointed out vide letter No. 6081/5/1/Contg/NER-87 dated 22.3.02 (copy enclosed in Annexure-II) the non applicability of Industrial Dispute Act, 1947 upon the establishment and as such the Management felt that such case of termination cannot be handled under I.D. Act and request to dismissed the position. *petition*

However, time to time the representative of Management attended the conciliation and stated that Smt. Kour was employed Part time on contract basis at a rate of Rs. 600/= per month - on a proof a copy of the official order

Contd.p-2/

Ho. K.
 11/10/02
 11/10/02
 11/10/02



dated 11.2.02 enclosed (Annexure-III). The Management never the fact of employment of Smt.Kour for the period since 1985 to August, 2001. The Management did not at any point of term contradicted the contention of the Union regarding the employment/deployment of Smt.Kour. More so, on 5.8.2002 the Management representative was in a mood to concede the demands of the Union to deploy Smt.Kour for not exceeding 119 days in a year i.e. 8-10 days approximately as casual contract basis and there had been a ray of hope of a amicable settlement after 15 days from 5.8.2002 but lastly on 11.9.02 the Management threw the cold water on the ~~agreed~~ point and again roll back to their contention of non-applicability of the I.D.Act'47 upon the Geological Servey of India. Naturally the all out effort to resolve the dispute even after going much ahead towards settlement to entire exercise went on astray as because the Management refuse to re-instate Smt.Kour in to service. As such, the entire dispute/stringent effort put by the conciliation officer did not find the face of success, rather it was failed.

Agreed

dispute

Yours faithfully,

(A.K. Chakraborty)
 Asstt.Labour Commissioner(C)
Government of India:Guwahati

Copy to the following for information.

1. The R.L.C. (C), Guwahati.
- ✓ 2. The Deputy Director General, Geological Servey of India, North Eastern Region, Shillong.
3. The General Secretary, Shillong Cantonment Board Employees Union, Shillong.

AMh 8/11/02
 Asstt.Labour Commissioner(C)
Government of India:Guwahati

Workmen lose 240-day shield

R. VENKATARAMAN

New Delhi, Feb. 14: Services of workmen need not be regularised even after 240 days of continuous work in a year, the Supreme Court has ruled.

"It is now well known that completion of 240 days of continuous service in a year may not by itself be a ground for directing regularisation," the division bench of Justices N. Santosh Hegde and S.B. Sinha said in the judgment delivered on February 8.

The settled position was that 240 days of continuous service in a year "may be a ground" for regularisation.

The judges further ruled that a workman "shall not be ordinarily ordered to be reinstated" if he is not absorbed in a job after completing training under a government scheme.

When a workman is appointed in terms of a scheme on daily wages, he does not derive any legal right to be regularised in his service.

The case related to an Uttar Pradesh government scheme for training cane-growers.

Eleven of 45 trainees under the scheme were found to be fit and absorbed in regular service in 1986. Bhola Singh and 33 others did not qualify but continued as trainees/apprentices.

They sought to be regularised when their services were terminated on the conclusion of the government-sponsored scheme in November 1987.

The labour court ruled against the 34 but the high court directed their reinstatement and held that there was "unfair labour practice" against the workmen.

On an appeal, the Supreme Court set aside the high court verdict. It pointed out that the high court did not take notice of the fact that the workmen did not qualify for absorption.

The apex court said the workmen continued as trainees and "it was only when the scheme came to an end, the services of all trainees had been terminated".

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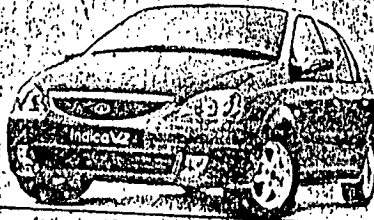
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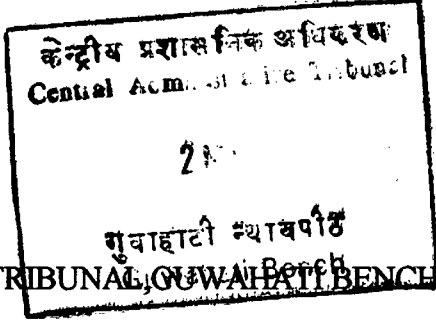
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File by: MR
M. K. K. K.
21/5/06
Advocate

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH
AT GUWAHATI.

Original Application No292 / 2005.

Smti Amarjit Kaur,

.....Applicant.

-Vrs-

Union of India and others,

.....Respondents.

RE-JOINDER TO THE WRITTEN STATEMENT SUBMITTED
BY THE RESPONDENTS.

THE APPLICANT MOST RESPECTFULLY SHWETH:

1. That the answering Respondents have not gone through the Original Application meticulously and have disowned their responsibility in their arbitrary and malafide action in terminating the service of the Applicant after completion of long 15 years while submitting their Written Statement by making a false and frivolous picture so as to camouflage the Hon'ble Tribunal and thereby safeguard their unlawful, arbitrary and unfair actions.

2. That the Applicant Smti Amarjit Kaur was engaged by the Respondents as a Group D employee for working as Sweeper/Safaiwala under the Dy. Director General of Geological Survey of India, North Eastern Region, Shillong since 1985. After terminating the service of the Applicant by the Respondent No.2 when the matter was agitated before the Regional Labour Commissioner (Central), Guwahati by the General Secretary, Cantonment Board Employees Union, Shillong in his letter dated 2.11.01, the matter which now the Respondents disagreeing, was not raised in their reply/statement before the Regional Labour Commissioner. This aspect of the contents of Para-2(b) of their Written Statement is an "after thought", concocted, false and unfair, as it appears, in Legal jurisprudence. The second and last paragraph in the Assistant Labour Commissioner (C), Government of India, Guwahati's Letter No.8(2)/2002 and G/A dated

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18.10.02 addressed and referred to the Secretary, Government of India, Ministry of Labour, Shram Shakti Bhawan, New Delhi, categorically highlighted the failure of the Management for their non-participation/submission of reply in the conciliation proceedings. In the said letter, ^{it} was nowhere mentioned that the Management/Respondent had ever raised any issue in respect of the time/date of appointment/engagement of the Applicant in their establishment. The letter postulates that the Labour Commissioner issued as many as "ten letters" to the Respondents for their participation/submission of reply in the conciliation proceedings, but in vein. The Management, however, vide their letter No.6081/5/1/Contg/NGR-83 dated 22.3.02 informed the Regional Labour Commissioner that the case was not covered by the Industrial Dispute Act, 1947. In this connection the observation of the Regional Labour Commissioner in their aforementioned letter is reproduced adverbatim "the Management never the fact of employment of Smti Kaur for the period since 1985 to August 2001. The Management did not at any point of term contradicted the contention of the Union regarding the employment/deployment of Smt Kaur. More so, on 5.8.02 the Management representative was in a mood to concede the demands of the Union to deploy Smti Kaur for not exceeding 119 days in a year i.e. 8-10 days approximately as casual contract basis and there had been a ray of hope of amicable settlement after 15 days form 5.8.02 but lastly on 11.9.02 the Management threw the cold water on the agreed point and again rolled back to their contention of non applicability of the Industrial Dispute Act, 1947 upon the Geological Survey of India ". Thus the statement of the Respondents now as made in their Written Statement under Para 2(b) mentioned above is not at all tenable in the eye of law and, hence, refuted. The concocted story which now the Respondents are reiterating before the Hon'ble Court could have been submitted in the initial point of time when the case first appeared before the Labour Commissioner for conciliation of the matter.

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A photo copy of the aforementioned letter of the Regional Labour Commissioner and the Union's letter marked as A & B at pages 11 to 13₂ of the O.A., are submitted here-with for ready reference and kind perusal of the Hon'ble Tribunal.

3. That as regards para-3 of their Written Statement this is humbly submitted that can there be any employee engaged/employed in any Government employment for months and years together without any hope of assurance from the competent authority

that his/her case would be considered for regularization of service in the event of being absorbed in their establishment. The only thing in the application was that being a illiterate person and fully dependent upon the repeated assurance of the Respondents, more particularly, of the Respondent No.2 and 3, she did not take any written documents from them to Exhibit as documentary evidence now so as to prove the veracity of her statement. The Applicant with most humbly and with respectful submission prays that if any independent enquiry is conducted to verify the official records of the Respondents definitely positive clues would be available. The Applicant is submitting a seperate petition for production of documents by the Respondents.

4. That as regards the contention of their statement under Para-4 of the Written Statement it is submitted that it was a gross lapse on the part of the Respondents. No Government work is done or purported to be done under any verbal assurance or verbal contract without keeping any records for any work, even if it ^{is} granted for the contract work as alleged by the Respondents in their W.S. For, this may give the indulgence of inviting corrupt practices of the officials involved to keep or engage as many as contracts according to their suit will. To arrest such undesired and unhappening ^{incidents,} there are system of vigil instruction to keep the record of each and every work where it was contractual, temporary or of a perennial nature. It is really astonishing that Geological Survey of India is a Central Government Establishment and without keeping or recording any written documents they engaged the Applicant and such like employee " as for the contract work" as alleged in their submission now, albeit it was never raised by any official at any point of time when agitated by the Cantonment Employees Union, Shillong, before the Regional Labour Commissioner at Guwahati mentioned in the foregoing para-2..

5. That in regard to statement made in the paragraph-6 in their Written Statement the Respondents have been repeatedly mentioning about the non-applicability of the Industrial Dispute Act, 1947 in this case but they are not agreeing and stating anything in regard to committing of their forge, false, gross lapse as highlighted in the Original Application by the Applicant, even by violating the provision of Minimum Wages Act and adducing false oral evidence before the Industrial Tribunal when the matter was referred by the Ministry of Labour for adjudication of the case. Whether the matter falls under the Industrial Dispute Act 1947 or not is a different issue but it ^{should} ~~does~~ not deprive the legitimate claim of the Applicant and as such other employees by any of the employers to

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cause and infringe their Fundamental Rights of employment. The submission made by the Respondents in their Written Statement are therefore not tenable in the eye of law at this distant date when the matter has been placed to go on altogether a different issue before this Hon'ble Tribunal and awaiting adjudication and justice.

6. That in regard to the statement made under paragraph-9 it is submitted that there is no government office which is run by any Safaiwala on leave vacancies for requiring the job by the engaged employee "for about only one hour" as they had stated. If it was so, why the appointment was not made to the Applicant on hourly basis instead of arranging payment regularly to the Applicant monthwise as stated by them in their submission before this Hon'ble Tribunal as Annexures-F to Q with the Original Application at pages-19 to 30. This is again another false statement of the Respondents to shield their lapses to deprive the Applicant of her legitimate claim. Moreover, the Respondents in the said paragraph had mentioned that they have appointed 4 regular Safaiwalas right from 1982 to November,1995. Had this been so, when the Applicant had been discharging her services under the establishment of the Respondents right from 1985 why her case was not considered by the Respondents as a matter of principle of consideration and observing Natural Justice for the employee towards regularization her service. This was a glaring example of committing violation of Principle of Natural Justice for depriving the Applicant in getting any regular employment in spite of the repeated assurances given by the Respondents from time to time right since 1985 till her abrupt termination of service in August,2001.

7. That the statement made under paragaph-10 of the Respondents is also not accepted on the ground that this point of production of documents the Respondents are now only inviting but they have not mentioned it neither in the Forum of Regional Labour Commissioner nor in the Industrial Tribunal, Guwahati, when the case was referred by the Ministry of Labour, Government of India to adjudicate the dispute under Rule 10 (B) of the Industrial Dispute (Central Rule) 1957. The Respondents there also submitted the period of service of the Applicant from 1991 to 2001 up to 21st July and a Memorandum of the Director (Administration), Geological Survey of India, Calcutta under Letter No.1855 N-80N/A-1203/1/CW/1/83-85/17D, Vol-II dated 12.4.88 as an enclosure of their forwarding letter No.3/1(1643)/Law-59/2002 dated 24.3.05 stating that the "ban on engagement of contingent workers was sought from the concerned establishment of the Office" and no categorical information was contained there, save

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and except stating in the said enclosure "that engagement of further contingent employees should not be resorted to Geological Survey of India" and " violation of this orders and any engagement of contingent workers for regular types of job on continuous basis will be review seriously". If it was so, as to for what reason the Respondents engaged the Applicant for a long span of time, even according to them more than 10 years from 1991 to 2001 (Annexure-E) violating the mandatory instructions of their higher authority. If there was a total ban for engagement about the contingent employee or temporary Mazdoor the Applicant should not have been engaged/appointed at all on any condition or contractual basis. The acts and the statements of the Respondents repeatedly showed contradictions of their actions taken in regard to attire their defence for the offence they had committed to the Applicant, firstly by not absorbing her on regular basis inspite of their repeated categorical assurance and secondly terminating her service abruptly after long span of years and, thirdly, by violating the Principle of Natural Justice and also invited the infringement of Right to employment of the Fundamental Rights of an employee.

8. That in regard to the statement of the written statement for brevity and clarity of the case the Applicant most humbly states that even before this Hon'ble Tribunal they are singing the same song which they had been singing right from the stage of Regional Labour Commissioner for all those years that this case is not covered by the Industrial Dispute Act. But they have not produced at any stage the written documentary evidences for engaging the Applicant on hourly basis as a substitute employee for the regular employee when they are "absent from duties on E.L, etc." and as to how the question of a "lump sum amount" comes in a Central Government Office for arranging payment for doing such works even on contractual basis, should it is taken into consideration for argument.

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9. In paragraph-17 of the Written Statement the Respondents committed, "in public interest she was engaged to clean Mineral Physics Division during the absence of regular Safaiwala on E.L, etc."), If it was so altogether for some "public Interest", she was not paid according to the Minimum Wages Act and given the letter of appointment/engagement for her employment, even if it was contractual as stated by the Respondents, for all those years of her employment. It was a sheer negligence and exploitation of labour and thereby caused the infringement of Fundamental Rights of one's "right to employment" and gross violation of principle of natural justice.

10. That the statements made in paragraph-19 of the Written Statement that the "Applicant was never engaged continuously" is not tenable in the eye of law as the practice shown in the employment as submitted by the Respondents and enclosed by the Applicant as Annexure-E at page-18 on O.A. it would reveal at a bird's eye view or a simple glance that the practice of her service shown right from 1991 to 2001 was motivated and fabricated in order to deprive her continuity of service. The Respondents may be directed to produce their records as to prove that during the period of service shown by them she was not needed for their service as the regular employee during that time were "on E.L," etc. as stated by them. This is sheer disgusting and a clear misrepresentation before this Hon'ble Tribunal to give a blow below the belt of an employee to deprive his/her survival of existence by earning livelihood.

11. That it is submitted that the contention made by the Respondents in their paras-19 to 21 are also not acceptable and tenable in the eye of law. The contention of newspapers publication published on 15.2.05 can not be implacable and/or inflicted upon the employee on rendering continuous 15 years of sterling service to the Respondents before publication of the Judgment of the Hon'ble Supreme Court as quoted by the Respondents. No punishment can be retrospective particularly in the case of termination of one's service where the right to employment is involved.

12. That the Applicant most humbly and with suave submission ^{states} that she was all along denied justice by the Respondents right from the stage of her employment till termination and thereafter. Whether in employment or in making payment or considering her case for regularization of service without engaging new faces and also terminating her service abruptly, the Respondents, more particularly the Respondent No.2, had all along taken malafide attitude and never applied his mind to its fullest length so as not to deprive an illiterate and needy employee at the cost of her necessity and thus the Respondents made the ~~unfair~~ ^{unfair} unfair labour practice and violated the categorical and mandatory instructions of the laws and Rules of the ~~line~~ ^{land} so as to deprive the Applicant in all respects mentioned above and even after referring the matter in the Labour Commissioner or in the Industrial Tribunal or in this Hon'ble Central Administrative Tribunal ^{without} for rectifying their wrongs done to this most humble Applicant who has been suffered ^{for} for her existence of livelihood ^{from} five years back. The Respondents instead of ^{putting} ~~paying~~ this barrier of News Papers cutting should have taken lenient views instead for considering the case of the Applicant for restoration and regularization of her service by

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arranging a minimum pay ensured by the law and thereby honour both the laws of the land and the Principle of Natural Justice.

-VERIFICATION-

I, Smti Amarjit Kaur, wife of Sri Mangal Singh, aged about 40 years, a resident of Shillong Cantonment Colony, near Anjali Cinema Hall, do hereby solemnly affirm and verify that the contents of Rejoinder submitted herewith are true to my knowledge, belief and faith and I have not suppressed any material facts in my respectful submission before this Hon'ble Tribunal .

And I sign this VERIFICATION on thisth day of April, 2006.

Place : Guwahati.

Date:

AJIT Kaur

SIGNATURE OF THE APPLICANT.

To
The Deputy Registrar,
Central Administrative Tribunal,
Guwahati.

GENERAL SECRETARY

CANTONMENT BOARD EMPLOYEE UNION
SHILLONG, MEGHALAYA
REGD. NO. 85

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12nd Nov. 2001..

To

The Regional Labour Commissioner (Central)
Rajgarh Road, Guwahati-3,
Assam.

Sub:- Illegal termination.

Respected Sir,

With due respect I have the honour to draw your kind attention and intervention on the facts and circumstances mentioned below :-

That Sir, as per the records subkitted by Smti. Amarjeet Kaur, a resident of Dozen Line, Shillong before this Union that she had been working as a Sweeper in the Department of Geological Survey of India under Administrative Officer, Mineral Division, Shillong since 1985 without break.

That Sir, sometime on August 2001 her service was terminated by the Department without any satisfactory reason and as a result of such termination Smti. Amarjeet Kaur has been facing tremendous trouble to maintain her family.

So Sir, I, therefore, requesting you to take necessary step to safeguard the interest of the worker and your kind cooperation will highly appreciable.

Thanking you.

Yours faithfully,

General Secretary,
Shillong Cantonment Board Employee
Union, Shillong.



General Secretary
Cantonment Board Employee Union Shillong

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FAILURE OF CONCILIATION
PART - I

Annexure-B

Government of India
Ministry of Labour
Office of the Assistant Labour Commissioner(C)
Rajinder Road, Chandernagore, Dibrugarh-78

No. 6(2)/2002-G/A

Dated the

To

The Secretary
Government of India
Ministry of Labour
Shram Shakti Bhawan
Rajiv Marg, New Delhi

11 OCT 2002

Subject:- Industrial Dispute over termination
from service of Smt. Amarjeet Kour,
Ex. Sweeper by the Management of
Geological Survey of India, NHN,
Shillong.

Sir,

The General Secretary, Shillong Cantonment Board Employees Union, Shillong raised an industrial Dispute vide his letter No. Nil dated 02.11.02 (Copy enclosed in Annexure I) stating that Smt. Kour had been working as Sweeper in the Department of Geological Survey of India under Administrative Officer, Mineral Division, Shillong since 1983 without break and Smt. Kour has been terminated in the month of August, 2001 without any reason. After that the Union took up the matter with the Management on several occasions but no positive result came out which prompted them to raise the dispute.

On receipt of the dispute the matter was taken up with the Management and advised them to attend this office for joint discussion/conciliation and various dates viz. 22.2.02, 13.5.02, 31.5.02, 18.6.02, 2.7.02, 5.8.02 and lastly 23.8.02 joint discussion held but not break through could be achieved out of discussions and subsequently on 11.9.02 the dispute closed in conciliation and recorded failure.

The Management instead of answering the material fact of termination of Smt. Kour simply pointed out vide letter No. 6081/5/1/Contg/NHN-87 dated 22.3.02 (copy enclosed in Annexure-II) the non applicability of Industrial Dispute Act, 1947 upon the establishment and as such the Management felt that such case of termination cannot be handled under I.D. Act and request to dismise the position.

However, time to time the representative of Management attended the conciliation and stated that Smt. Kour was employed part time on contract basis at a rate of Rs. 600/- per month - on - - - - - of a copy of the official order

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dated 11.2.02 enclosed (Annexure-III). The Management never the fact of employment of Smt. Kour for the period since 1985 to August, 2001. The Management did not at any point of time contradicted the contention of the Union regarding the employment/deployment of Smt. Kour. More so, on 5.8.2002 the Management representative was in a mood to concede the demands of the Union to deploy Smt. Kour for not exceeding 119 days in a year i.e. 8-10 days approximately on casual contract basis and there had been a ray of hope of a amicable settlement after 15 days from 5.8.2002 but lastly on 11.9.02 the Management threw the cold water on the ~~aggravate~~ point and again roll back to their contention of non-applicability of the I.D. Act '47 upon the Geological Survey of India. Naturally the all out effort to resolve the dispute even after going much ahead towards settlement to entire exercise went on astray as because the Management refuse to re-instate Smt. Kour in to service. As such, the entire dispute ~~stringent~~ affect put by the conciliation officer did not find the face of success, rather it was failed.

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Yours faithfully,

AM 8/10/02

(A.K. Chakraborty)
Asstt. Labour Commissioner (C)
Government of India, Guwahati

Copy to the following for information.

1. The H.L.C. (C), Guwahati
2. The Deputy Director General, Geological Survey of India, North Eastern Region, Shillong.
3. The General Secretary, Shillong Cantonment Board Employees Union, Shillong.

AM 8/10/02

Asstt. Labour Commissioner (C)
Government of India, Guwahati

