

**BEFORE THE CENTRAL GOVT. INDUSTRIAL TRIBUNAL -CUM- LABOUR COURT,
GUWAHATI**

PRESENT: Shri Ananda Kumar Mukherjee,
Presiding Officer / Link Officer,
C.G.I.T-cum-L.C., Guwahati.

REFERENCE CASE NO. 11 OF 2020

PARTIES: Indrajit Sarma.
Vs.
Management of Archeological Survey of India, Guwahati Circle.

REPRESENTATIVES:


For the Workman: Mr. Indrajit Sarma (in person).
For the Management of ASI: Dr. N.K. Swain (for Superintending Archeologist, Guwahati).

INDUSTRY: Archeological Survey of India (Ministry of Culture).

STATE: Assam.

DATED: 25.10.2024.

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A W A R D

In exercise of powers conferred under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), the Ministry of Labour, Government of India through the Office of the Deputy Chief Labour Commissioner (Central), Guwahati, vide its Order **No. F. G/R. 8(05)/2020-Dy.CLC(C)/ID** dated 19.10.2020 has been pleased to refer the following dispute between the employer, that is the Management of Archeological Survey of India, Guwahati Circle and Indrajit Sarma, their workman for adjudication by this Tribunal.

THE SCHEDULE

"Whether the action of the management of Archeological Survey of India, Guwahati Circle, 5th Floor, West End Building, Housefed, Beltola – Basistha Road, Guwahati 781006 (a) in terminating the services of Sh. Indrajit Sarma, Workman, C/o Ramesh Ch. Sarma, H. No -02 Bishnu Rabha Path, Behind Dona Residency, Chachal, Six Mile, Guwahati 781022 w.e.f. 20.05.2020 is justified without complying the provision of Sec. 25F of the I.D Act, 1947? (b) Whether the demand of the workman for non-payment of wages during February to May, 2020 is justified? If not, what relief Sh. Indrajit Sarma, Workman, Guwahati is entitled to?"

1. On receiving Order **No. F. G/R. 8(05)/2020-Dy.CLC(C)/ID** dated 19.10.2020 from the Office of the Deputy Chief Labour Commissioner (Central), Guwahati, Ministry of Labour, Government of India, for adjudication of the dispute, **Reference case No. 11 of 2020** was registered on 22.10.2020 and an

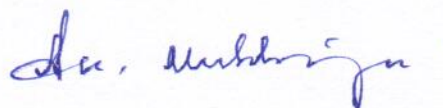
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order was passed for issuing notice to the parties through registered post, directing them to appear and submit their written statements along with relevant documents in support of their claims and a list of witnesses.

2. By order dated 22.12.2020, the Tribunal, on the basis of an objection raised by the workman, passed an order that the management shall not engage any advocate in this matter. Indrajit Sarma, the aggrieved workman filed a claim statement on 25.11.2020, disclosing that he is working under the Archeological Survey of India, Guwahati Circle (hereinafter referred to as ASI) from 03.11.2024 as a skilled casual worker on consolidated pay. He discharged work of various nature in the office of the Superintending Archeologist, ASI on verbal and written order issued from time to time. A few of which has been produced by him and admitted in evidence as Exhibit 1A, 1B and 8A to 8J. On 19.05.2020 when the workman approached the Superintending Archeologist, ASI for payment of his pending salary for the month of February, 2020, he was verbally informed that his engagement in the office of ASI will not be continued further and cited some administrative reasons. On 26.05.2020, once again he requested the Head of the Office for reconsidering the decision of his disengagement from service but no heed was paid and the concerned authority terminated his service during the period of widespread pandemic, COVID-19. According to the workman he has not received the salary from February, 2020 to May, 2020. For the last time he received his consolidated pay of Rs. 18,000/- (Rupees eighteen thousand only) for month of January, 2020. According to the workman the management has violated the provision of Labour Law of retrenchment provided under Section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred to as the I.D. Act, 1947), which provides that no workman employed who has been in continuous service for not

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less than one year under an employer shall be retrenched by that employer until – (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment; (b) the workman has been paid wages for the notice period in lieu of Notice; (c) the workman has been paid the retrenchment compensation. It is the case of the workman that the management is liable to pay him retrenchment compensation and reinstate him in service along with back wages. The workman inter-alia contended that due to sudden termination from service without any prior notice he is facing financial distress and mental agony. The workman has also claimed for bonus under Section 8 of the Payment of Bonus Act, 1965 for the entire period of his service. The workman lodged a complaint before the Deputy Central Labour Commissioner (Central), Guwahati on 14.06.2020 and the matter for conciliation was fixed on four dates but management representative remained absent on three dates, resulting in its failure. On reference being made the workman has prayed for necessary relief as per law.

3. The management of ASI, Guwahati Circle contested the Industrial Dispute by filing their written statement / counter affidavit on 19.01.2021 through the Superintending Archeologist, ASI. The first and foremost objection raised by Archeological Survey of India is that it is neither an industry nor an industrial establishment, so the provisions of the I.D. Act, 1947 does not apply to it. According to the employer establishment, the Archeological Survey of India looks after the centrally protected monuments of National importance, spread over the entire length and breadth of the country and the I.D. Act, 1947 does not apply to the employees or the daily waged casual workers engaged on muster rolls. Citing the decision of the Central Government Industrial Tribunal -cum- Labour Court (hereinafter referred to as the CGIT-cum-LC), Jaipur in the matter of **Bhagirath**

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Sharma S/o Radheshyam Sharma Vs. Superintending Archaeologist, Archaeological Survey of India, Jaipur Circle [CGIT/B-18/97], it is contended that the I.D. Act, 1947 is not attracted to the Archeological Survey of India and urged that the present dispute raised by the claimant is liable to be dismissed.

4. Responding to the factual matrix of the case, it is submitted that the applicant was engaged by ASI as a casual worker on daily wages and his name appeared in the muster roll, prepared up to May, 2017. The applicant was thereafter engaged on a consolidated monthly remuneration, purely on need basis at different period, on the availability of the funds with ASI. No letter of engagement was issued to the workman. The payment was made to him by issuing hand receipts from time to time, as per their period of engagement. It is further stated that the applicant worked at ASI from 2014 to January, 2020 for which the payment has already been made and there is no outstanding due payable to the workman. It is the specific case of the employer establishment that since no letter of engagement was ever issued, the applicant was verbally informed about his disengagement in January, 2020, as there was no requirement of work. The employer establishment urged that ASI has paid all the dues to the workman till January, 2020, prior to his disengagement and no employer – employee relationship exists between the establishment and applicant. It is contended that the Industrial Dispute raised by the petitioner is not maintainable and the same is liable to be dismissed in law and fact.

5. The points for consideration before this Tribunal are (a) whether the I.D. Act, 1947 is applicable to the present case involving ASI, (b) whether the action of the management of ASI, in terminating the services of Indrajit Sarma, the workman w.e.f. 20.05.2020 is justified without complying the provisions of

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Section 25-F of the I.D. Act, 1947, and (c) whether the demand of the workman for payment of wages from February, 2020 to May, 2020 is justified. If not, what relief the workman is entitled to.

6. In order to substantiate his case Indrajit Sarma has filed an affidavit-in-chief along with some documents. In his affidavit-in-chief he has stated that he worked at ASI from 03.11.2014, as a skilled casual worker on consolidated pay. In support of his claim, he has placed Experience Certificate dated 14.05.2018 and 19.11.2019 which have been admitted in evidence as Exhibit 1A and 1B. It is also stated by him that ASI does not have any special law or Act governing the casual workers in their establishment. Thus, in absence of any exclusive Act or Law for governing casual workers of ASI, the I.D. Act, 1947 would apply to him. In support of his contention the workman placed reliance upon a judgement of the Hon'ble High Court of Allahabad in the Writ (C) No. 20486 of 2013, which held that the Garden / Horticulture department of the Archeological Survey of India is an industry. The workman asserted in his affidavit-in-chief that during his period of continuous work from 03.11.2014 to 19.05.2020, he discharged various types of work in the office of the Superintending Archeologist, ASI, as per verbal and written orders of the Head of the Office. Copies of which have been produced and exhibited in the evidence as Exhibit 8A to 8J. It is claimed that the nature of work performed by him qualifies the test of industrial activity and the dispute raised by him would be governed by the I.D. Act, 1947. On 19.05.2020 when he approached the Head of the Office at ASI for his salary for the month of February, 2020, he was verbally informed about his disengagement, citing administrative reasons. The workman alleged that there has been gross violation of provisions of Section 25-F of the I.D. Act, 1947, by terminating him without Notice. The

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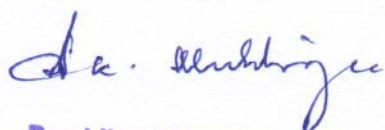
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workman prayed for payment of his unpaid wages @ Rs. 18,000/- per month from February, 2020 to May, 2020, retrenchment compensation and reinstatement in service with back wages. The workman also claimed that he is entitled to Bonus under Section 8 of the Payment of Bonus Act, 1965 for the entire period.

7. In course of his cross-examination by ASI the workman witness admitted that he was a casual employee of ASI and his name was maintained in the muster roll from 11/2014 to May, 2017, thereafter he was engaged on consolidated pay per month. The workman also admitted that no formal letter of appointment was issued to him and denied that his job was terminated due to non-approval by the Competent Authority or that he is not entitled to the Bonus. In course of his evidence of the workman, the material document which have been admitted in the evidence are as follows :

- (i) Copy of the work experience certificates dated 14.05.2018 and 19.11.2019 issued by the Superintending Archeologist, ASI in favour of Indrajit Sarma have been produced as Exhibit - 1A and 1B respectively.
- (ii) Copy of the office orders passed by the Superintending Archeologist, ASI, allotting work to is and other have been produced as Exhibit - 8A to 8J.
- (iii) Copy of the Bank Account statement of the workman with the State Bank of India, Guwahati, showing credit of consolidated pay to his account by ASI, as Exhibit - 11.
- (iv) Copy of the application submitted by three skilled casual workers to the Regional Labour Commissioner (Central), Guwahati, disputing their discontinuation of service with ASI, as Exhibit - 15.

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- (v) Copies of the four minutes of meetings held by the Regional Labour Commissioner (Central), Guwahati dated 24.08.2020, 10.09.2020, 23.09.2020 and 13.10.2020 have been produced as Exhibit – 16A, 16B, 16C and 16D respectively.
- (vi) Copy of the application dated 15.10.2020 submitted by the workman addressed to the Labour Enforcement Officer (Central), Guwahati, praying for initiating action for payment of pending salaries, as Exhibit -17.
- (vii) Copy of the letter date 15.10.2020 issued by Labour Enforcement Officer (Central) addressed to the Superintending Archeologist, ASI for his explanation regarding non-payment of salaries from February, 2020 to May, 2020, as Exhibit – 18.

8. The workman was recalled for re-examination on 19.12.2022 and proved Attendance Register, maintained by ASI in respect of casual workers. Facsimile signatures on the Register for the month of February, 2020, March, 2020 and May, 2020 up to 19.05.2020 were identified. The Attendance Register was collectively marked as Exhibit W-19. A copy of the Note Sheet regarding Sanction Order for payment of remuneration to casual workers for the month of February, 2020 has been produced as Exhibit W-20. Cross-examination of the workman's witness was declined and no objection was raised against admission of the documents which has been produced by the management of ASI.

9. In support of their contention ASI has examined Dr. N. K. Swain, Superintending Archeologist attached to the ASI as Management Witness - 1. An affidavit-in-chief has been filed on 18.01.2023, stating that the claim of the workman is not maintainable as Archeological Survey of India is not an industry


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nor industrial establishment undertaking to attract the provisions of the I.D. Act, 1947. Further assertion of ASI is that the workman was engaged as a casual worker on daily wages and he was in the muster rolls prepared up to May, 2017. He was engaged at different period for work between 2014 to January, 2020. According to the management witness payment has been made to the applicant on issuing hand receipts from time to time as per the period of his engagement. The work rendered by the workman was need based and on availability of fund with ASI. Their specific case is that the workman was disengaged after January, 2020 and no work was assigned to him. It is admitted that Indrajit Sarma was engaged with ASI on 03.11.2014 as daily waged worker and his attendance was recorded in the muster roll up to May, 2017. Thereafter he was engaged on consolidated pay from June, 2017. As no sanction was accorded by the Competent Authority from February, 2020 no further payment could be made and the services of the workman was discontinued. It is the case of the management of ASI that due to lockdown imposed from 24.03.2020, no further sanction was accorded thereafter w.e.f. 01.02.2020. In his examination-in-chief the management witness deposed that Indrajit Sarma was engaged as a skilled casual labour at ASI, directly by the Superintending Archeologist, ASI and he continued to serve till June, 2017. The witness further deposed that thereafter from July, 2017 to January, 2020 he was engaged as a casual labour on consolidated pay. The witness admitted that no Notice of termination or discontinuation was issued by the management. Copy of the Sanctioned order for engagement of Indrajit Sarma, Bishaya Roy and Arsabhanta Singh for the month of January, 2020 has been produced as Exhibit M-1 and Order dated 28.02.2020 a proposal for sanction of remuneration of the said three casual workers on consolidated remuneration of Rs. 18,000/- per month for February, 2020, which was not sanctioned by the authority in March, 2020, as Exhibit M-2.

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10. In course of cross-examination the management witness conceded the fact that Indrajit Sarma was engaged at ASI from 03.11.2014 to 31.01.2020 and went further to state that it was not possible for him to state the period of absence of the workman from duty during the said period. The workman also admitted that a Certificate dated 19.11.2019 was issued by Mr. K. Amarnath Ramakrishna, Superintending Archeologist, Head of the Office, which has been marked as Exhibit 1B, wherein it has been certified that Indrajit Sarma was engaged on purely temporary basis on consolidated pay from 03.11.2014 and he rendered different types of work stated therein. The witness deposed that the Note Sheets from 18.02.2020 to 14.05.2020 bear the signature of Indrajit Sarma as well as signature of the Competent Authority, who approved the same. The Note Sheets consisting of eight sheets have been produced as Exhibit M-3. On a perusal of Note Sheets dated 18.02.2020, 24.02.2020, 04.03.2020, 06.03.2020, 11.03.2020, 16.03.2020, 18.03.2020, 19.03.2020, 05.05.2020, 12.05.2020, 14.05.2020 and 18.05.2020 bearing the signatures of Indrajit Sarma, suggest that he had participated and was engaged in the work of the employer, even in the month of February, 2020, March, 2020 and May, 2020. The witness in his cross-examination stated that the proposal for sanction in respect of continuation of work for February, 2020 was placed before the Competent Authority in March, 2020 and disclosed that no prior Notice of Termination from service under Section 25-F of the I.D. Act, 1947 was issued to the workman and no retrenchment compensation was paid to him.

11. It is to be borne in mind that an order under Section 36 (4) of the ID Act, 1947 was passed by the Tribunal on 22.12.2020, directing that the management shall not engage any advocate in this proceeding as the workman has not engaged any advocate and raised objection to the engagement of any lawyer by the management.

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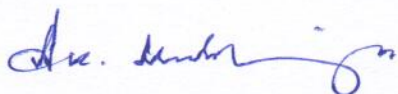
12. Indrajit Sarma, the aggrieved workman in person argued that his case is well within the bounds of Industrial Dispute act and having served at ASI, continuously from 03.11.2014 till 19.05.2020, the management committed illegality by terminating his service without any prior Notice and thereby is liable to pay him the wages for the month from February, 2020 to May, 2020 and also pay the retrenchment compensation as no notice of retrenchment was issued to him. The workman further submitted that though he has claimed for his reinstatement in service he is not pressing upon such claim to work under the establishment of ASI in the capacity of a casual worker. The other claim of the workman is that an Experience Certificate covering the whole period of his service may be issued by ASI.

13. Dr. N. K. Swain, Superintending Archeologist, who is the authorized representative of ASI argued that the workman is not entitled to any relief for payment of wages for the period from February, 2020 to May, 2020, as continuation of his service was not approved by the Competent Authority and the proposal for continuation of his service for the month of February, 2020 was not sanctioned. No argument was advanced in the matter of non-application of the I.D. Act, 1947 in the present case.

14. I have considered the rival contention of the parties in the light of facts and circumstances of the case, their pleadings, evidences and arguments advanced.

15. Before considering the merit of the case on factual aspects, it is necessary to advert to the objection raised by the ASI in their pleading and affidavit-in-chief relating to the non-application of I.D. Act, 1947 to the Archeological Survey of India, which is a Central Government Organization, established for protecting

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monuments of national importance spread over the entire length and breadth of the country. In support of such contention ASI placed reliance upon the case of **Bhagirath Sharma S/o Radheshyam Sharma Vs. Superintending Archaeologist, Archaeological Survey of India, Jaipur Circle [CGIT/B-18/97]**, where the CGIT-cum-LC, Jaipur held that Archeological Survey of India does not attract I.D. Act, 1947. In order to meet this assertion, it would be worthwhile to consider the judgement of the Hon'ble Supreme Court of India in the case of **Bangalore Water-Supply & Sewerage Board, Etc. Vs. R. Rajappa & Others [(1978) 2 SCC 213]** where a seven Judges Bench laid down a comprehensive guideline for courts while interpreting 'industry', where there existed a unanimous viewpoint that sovereign functions strictly understood alone qualify for exemption. It was observed by the Hon'ble Supreme Court of India as follows:

"..... I would also like to make a few observations about the so-called "sovereign" functions which have been placed outside the field of industry. I do not feel happy about the use of the term "sovereign" here. I think that the term 'sovereign' should be reserved, technically and more correctly, for the sphere of ultimate decisions. Sovereignty operates on a sovereign plane of its own as I suggested in Kesavananda Bharati Sripadagalvaru case - supported by a quotation from Ernest Barker's Social and Political Theory. Again, the term "Regal", from which the term "sovereign" functions appear to be derived, seems to be a misfit in a Republic where the citizen shares the political sovereignty in which he has even a legal share, however small, inasmuch as he exercises the right to vote. What is meant by the use of the term "sovereign", in relation to the activities of the State, is more accurately brought out by using the term "governmental" functions although there are difficulties here also inasmuch as the Government has entered largely new fields of industry. Therefore, only those services which are governed by separate rules and constitutional provisions, such as Articles 310 and 311 should, strictly speaking, be excluded from the sphere of industry by necessary implication."

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16. In the case of **Chief Conservator of Forests v. Jagannath Maruti Kondhare** [(1996) 2 SCC 293] the Hon'ble Supreme Court of India held that :

" in the aforesaid case according to which except the strictly understood sovereign function, welfare activities of the State would come within the purview of the definition of industry; and, not only this, even within the wider circle of sovereign function, there may be an inner circle encompassing some units which could be considered as 'industry' if substantially severable."

17. It would be rewarding to refer to the law laid down by the Hon'ble Supreme Court of India in the case of **Agricultural Produce Market Committee v. Ashok Harikuni**, [(2000) 8 SCC 61], wherein it was held that :

"..... every governmental function need not be "sovereign". State activities are multifarious. From the primal sovereign power, which exclusively inalienably could be exercised by the Sovereign alone, which is not subject to challenge in any civil court to all the welfare activities, which would be undertaken by any private person. So merely one is employee of statutory bodies would not take it outside the Central Act. If that be then Section 2(a) of the Central Act read with Schedule I gives large number of statutory bodies should have been excluded, which is not. Even if a statute confers on any statutory body, any function which could be construed to be "sovereign" in nature would not mean every other function under the same statute to be also sovereign. The court should examine the statute to sever one from the other by comprehensively examining various provisions of that statute. In interpreting any statute to find it is "industry" or not we have to find its pith and substance. The Central Act is enacted to maintain harmony between employer and employee which brings peace and amity in its functioning. This peace and amity should be the objective in the functioning of all enterprises. This is to the benefit of both, employer and employee. Misuse of rights and obligations by either or stretching it beyond permissible limits have to be dealt with within the frame work

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of the law but endeavor should not be in all circumstances to exclude any enterprise from its ambit. That is why courts have been defining "industry" in the widest permissible limits and "sovereign" functioning within its limited orbit."

18. The Hon'ble High Court of Allahabad in the case of **Union of India v. Surendra Singh Rashtriya Adhayaksha [2019 SCC OnLine All 4671]**, dealt with a similar issue wherein services of 41 workmen employed in Garden branch of Archeological Survey of India were terminated without complying with Section 25-F of I.D. Act, 1947. In the said case it was contended that organization is not an industry and none of the workmen had completed 240 days continuous service in a calendar year. The Hon'ble court while declaring the Petitioner organization to be an industry under Section 2(j) of the I.D. Act observed that whether Garden/Horticulture Department of the Archeological Survey of India falls within the definition of "Industry" as defined in Section 2(j) of the Act, the Supreme Court in the case of A Rajappa (supra) has held as under:

"Where there is (i) systematic activity, (ii) organized by co-operation between employer and employee (the direct and substantial element is chimerical), and (iii) for the production and/or distribution of goods and services calculated to satisfy human wants and wishes (not spiritual or religious but inclusive of material things or services geared to celestial bliss e.g. making on a large scale Prasad or food), prima facie, there is an 'industry' in that enterprise."

19. The Hon'ble High Court of Delhi in the case of **Archaeological Survey of India Vs. Presiding Officer, CGIT and Others [W.P.(C) 8154/2005 and C.M. No. 5958/2005]**, relying upon the decision of the Hon'ble High Court of Allahabad in the case of **Union of India v. Surendra Singh Rashtriya Adhayaksha (Supra.)**, concluded that the petitioner satisfies the requisites of an industry as per Section 2(j) of the I. D. Act, 1947. The functions that were

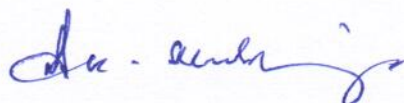
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performed by workers of Archeological Survey of India such as maintenance of gardens, removal of vegetation, repair works in ancient monuments etc. cannot be said to be the sole function of government. It can be performed by an external agency other than the Government which need not to be an instrumentality of state, and hence cannot be termed as sovereign functions. The decision of the CGIT-cum-LC, Jaipur in the case of **Bhagirath Sharma S/o Radheshyam Sharma (Supra.)** relied by the respondent establishment was overruled in that said case.

20. Considering the nature of work rendered by the workman at ASI and the purpose for which the person was employed by ASI from 03.11.2014, it would appear from Exhibit 1A and 1B, Certificates dated 14.05.2018 and 19.11.2019 issued by the Superintending Archaeologist, ASI that Indrajit Sarma was working as a skilled casual worker on consolidated pay on temporary basis and he has assisted in Technical and Monument Sections for putting up various files regarding different issues. Beside these he also attended documentation work, report writing, participated in exhibitions and workshops organized by the office. In Exhibit 8A to 8J, which are office orders issued by the Head of the Office from time to time, it transpires that the workman attended workshop at the Indian Institute of Technology (IIT), Guwahati for use of Global Positioning System (GPS) in preparation of Contour and its use in Geographic Information System (GIS). He was engaged at Dimapur, Nagaland for smooth compilation of competitions at inaugural function and workshop on 20.11.2016, to participate in the World Heritage Week celebration and to submit report to the office regarding participating of candidates in the penal discussion, to set up exhibition in North-East Expo at Annual Cultural Festival at IIT, Guwahati organized awareness programme on the fundamental duties of citizen, to organize a programme for celebration of International Museum Day. For execution of work and survey of

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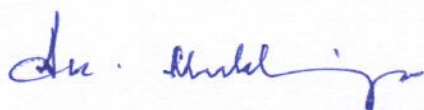


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Manipur Memorial at Shillong, Meghalaya, to make arrangement for setting up exhibition in the Arya Vidyapeeth College, Guwahati as a part of year-long Diamond Jubilee celebration. For conducting archeological exploration from village to village at Ribhoi District and Saipung areas of West Jaintia Hills of Meghalaya. It would appear from such Office Order that concerned workman was deployed to perform multifarious work which satisfies the triple test (i) systemic activity, (ii) organized by co-operation between employer and employee, (iii) production, supply or distribution of goods or services with a view to satisfy human wants or wishes. It cannot be said that the work assigned to the workman were sovereign work of the state. Under the facts and circumstances and legal principles laid down in the referred decisions, I hold that the activities in which Indrajit Sarma was engaged by ASI qualify the test of 'industry' and I hold that the I.D. Act, 1947 is applicable in the matter of dispute raised by the workman.

21. The workman has claimed that he performed continuous service under ASI from 03.11.2014 as a skilled casual worker up to 19.05.2020. The workman has not been paid his wages from February, 2020 and that on 19.05.2020 he was verbally informed by the management of ASI that he would not be paid the salary from February, 2020 and was disengaged from his employment. It is undisputed that the workman has received his consolidated pay up to the month of January, 2020. The management witness in his cross-examination has stated that the period of engagement of Indrajit Sarma at the office of ASI was from 03.11.2014 to 31.01.2020 and it was not possible for him to state the period of absence of the workman from duty during the said period. The workman claims to have performed continuous service for ASI during the said period. Since management did not prove to the contrary, a presumption would arise in favour of the workman that he rendered continuous service to ASI for the entire period. It is also admitted by the management witness that no Notice of termination or

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disengagement of service was issued to Indrajit Sarma. It therefore transpires from the factual materials of this case that the workman who had been in continuous service for not less than one year and to be more specific from 03.11.2014 to May, 2020 under ASI was retrenched by the employer without any Notice, in writing, indicating the reason for retrenchment and no compensation for retrenchment was paid to the workman.

22. It may be gathered from the definition of "retrenchment" provided in Section 2 (oo) of the I.D. Act, 1947 that :

"retrenchment means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include -

- (a) voluntary retirement of the workman; or*
- (b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; or*
- (bb) termination of the service of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein; or*
- (c) termination of the service of a workman on the ground of continued ill-health. "*

In the instant case we find that the termination of workman was not for any punishment inflicted upon him.

23. Section 25-F of the I.D. Act, 1947 lays down the conditions precedent to retrenchment of workmen :

"No workman employed in any industry who has been in continuous service for

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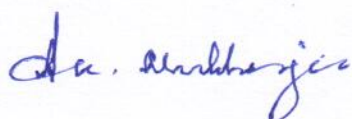
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not less than one year under an employer shall be retrenched by that employer until-

- (a) the workman has been given one month's 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 notice:
- (b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and
- (c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette. ”

24. Applying the facts to the legal provisions of retrenchment, I hold that the workman is entitled to the retrenchment benefit, which is an amount equivalent to one month's pay in lieu of Notice. He is also entitled to the payment of retrenchment compensation, which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months. It is appropriate to point out that the workman worked as a skilled casual labour from 03.11.2014 to May, 2017 on daily wages and from June, 2017 to 19.05.2020 on consolidated pay, except for the month of April, 2020. Therefore, he is entitled to retrenchment compensation for every completed year of continuous service or any part thereof in excess of six months for the entire period. From the Note Sheet dated 28.02.2020 (Exhibit W-20), which has been produced by the management, it appears that a proposal was placed before the Competent Authority for payment of remuneration the workman for the month of February, 2020 but the proposal was regretted by the Competent Authority only

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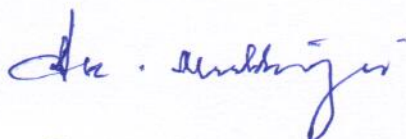


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on 03.03.2020 i.e., after ASI availed the service of the workman. It also appears from the Attendance Sheets for the month of February, 2020, March, 2020, April, 2020 and May, 2020 that Indrajit Sarma had attended his work in the month of February, 2020, March, 2020 and up to 19.05.2020 in May, 2020. The Attendance Sheets maintained at ASI has been produced at the instance of the workman and has been collectively marked as Exhibit W-19. From the documents produced before the Tribunal there is no qualm that the workman has continued his service in February, 2020, March, 2020 and May, 2020 at ASI. No Notice, in writing, was issued to the workman to inform him about his disengagement from service. Therefore, I find and hold that Indrajit Sarma is entitled to a consolidated pay of Rs. 18,000/- per month for month of February, 2020, March, 2020 and up to 19.05.2020 in May, 2020. He cannot be denied of his entitlement only for the reason that the Competent Authority did not accord post facto sanction to the proposal for sanction. ASI should have informed the workman that his service was not required and a prior Notice ought to have been given to him.

25. The workman has also laid claim for payment of Bonus for the entire period of service from 11/2014 to May, 2020 as per provision of Section 8 of the Payment of Bonus Act, 1965. The management raised objection contending that a casual labour is eligible to ad-hoc bonus if he or she worked for at least two hundred six days in offices following five days a week in each year for three or more years. It is the case of the management that the workman did not fulfill the criteria up to May, 2017, as he was working as a casual labour on muster roll and thereafter, he was paid a lumpsum under consolidated pay. From the objection raised by the management it is evident that no Bonus was paid to the workman at any point of time and the claim for Bonus has not been admitted. On traversing the provisions of Payment of Bonus Act, 1965, it appears to me that same is not applicable to ASI. The Ministry of Finance, the Govt. of India by Office Memorandum bearing

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F. No. 7/22/2008 E-III(A) dated 26.10.2015 issued an order authorizing payment of a Non-Productivity Linked Bonus (Ad-hoc Bonus) amounting to 30 days' emoluments to the eligible central government employees, not covered by Productivity Linked Bonus Scheme. The petitioner having performed continuous work at ASI, as a casual skilled worker has fulfilled the requirement of performing at least two hundred six days in office of ASI, which follows five days a week in each year is therefore entitled to Ad-hoc Bonus at the prevailing rate during the period of his work.

26. The petitioner was a casual temporary workman and was not appointed or engaged against any sanctioned substantial post following any recognized selection process, therefore he is not entitled to be reinstated in service nor back wages. Mr. Indrajit Sarma himself has foregone his claim for reinstatement and no relief can be granted to him on such claim.

27. The workman having spent several years in association with ASI has claimed for issuance of experience certificate to the workman Indrajit Sarma. There is no adverse report against the workman, whose service has been utilized by ASI during the period. Under such circumstance it would be appropriate on the part of the authority to issue an experience certificate for the period from 03.11.2014 to 19.05.2020 along with his salary for the month of February, 2020, March, 2020 and May, 2020, commensurating with his attendance. The management of ASI is also directed to pay the retrenchment benefit to the workman within one month from the date of communication of the Award. The Industrial Dispute is decided in favour of Indrajit Sarma, against ASI on contest.

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Hence,


ORDERED

that the Industrial Dispute is decided in favour of Indrajit Sarma, on contest against the Archeological Survey of India, Guwahati Circle on contest without cost.

The Superintending Archeologist, the Archeological Survey of India, Guwahati Circle is directed to pay the consolidated monetary remuneration of Rs. 18,000/- per month to the workman for the month of February, 2020, March, 2020 and May, 2020, commensurating with his attendance. The Archeological Survey of India, Guwahati Circle is further directed to pay the retrenchment benefit of one month's pay for the notice period and retrenchment compensation equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months from 03.11.2014 to 19.05.2020 and bonus as per rules / notification and issue an Experience Certificate to the workman for the service rendered by him to Archeological Survey of India, Guwahati Circle.

Let an Award be drawn up in the light of above discussion. Let copies of the Award in duplicate be sent to the Ministry of Labour and Employment, Government of India, New Delhi for information and Notification.




(ANANDA KUMAR MUKHERJEE)
Presiding Officer / Link Officer,
C.G.I.T-cum-L.C., Guwahati.