**THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT DELHI No.1 NEW DELHI.**

**ID. No. 244/2015**

Shri. Pradeep Kumar, S/o Sh. Shyam Lal
C/o All India Central PWD (MRM)
Karamchari Sangathan (Regd),
House No. 4823, Gali No. 13,
Balbir Nagar Extension, Shahdara,
Delhi-110032. Workman……

Versus

The Executive Engineer,
Dehradun Central Division-1
CPWD, 20, Subhash Road, Dehradun.

Management…

*Shri Satish Kumar Sharma, A/R for the claimant.*
*Shri Atul Bhardwaj, A/R for the management.*

**Justice Vikas Kunvar Srivastava (Retd.)**
(Presiding Officer)

1. The Present Industrial Dispute is registered in this Central Government Industrial Tribunal on the application moved by the claimant/workman Sh. Pradeep Kumar under section 2A of the Industrial Dispute Act 1947, which shall herein after be called 'The ID Act' only. Opposite parties to the dispute is Executive Engineer Dehradun Central Division-2 CPWD, 20, Subhash Road Dehradun.

## FACTUAL MATRIX

2. The workman's claim as emerges from the statement of claim filed on his behalf before this tribunal is that he was initially appointed as Plumber with effect from 07.07.1995 on direct work order for day to day work at ARC Sarsawa site by the management (CPWD). Some issues on differences with management were raised by the workman before conciliation officer, of the Labour Department Dehradun who fixed several dates for their settlement but the management remained adamant and reluctant to cooperate. The union of the workman has given an application to the Conciliation Officer to discontinue running conciliation process and permit the workman to take up the case with Central Government Industrial Tribunal directly under sub section 2 and 3 of section 2A of the ID Act, which was allowed and consequent thereupon the Conciliation Officer issued certificate in that regard. It is stated in the claim that the management has been in usual practice to utilize services of the workmen through several contractors engaged by them from time to time keeping continued the same workman working the same work at the same work place. The service of the workman was illegally terminated with effect from 25.09.2014. Till date of the termination, the workman had already rendered services for a continuous period of much more than 240 days in each year with effect from his initial date of joining. He was issued throughout his continuous service identity card by the contractor forwarded by Junior Engineer concerned which are evidence of his continuity in service as stated above. CPWD and his contractor both have not paid minimum wages to the workman though he was legally entitled for regular pay scale of post of Plumber in relation to the work performed and duties discharged by him at par with regular Plumber. This is also claimed that regular sanctioned posts of Plumbers were available in his division and regular workmen are posted qua sanctioned posts under other divisions of CPWD all over India, who are enjoying the benefits of regular pay scale and allowances. This act of non-payment of regular pay scale is violative of the provisions of Contract Labour (Regulation and Abolition) Act, 1970 (CLRA Act)

3. The workman further claims that he fulfills the qualification/eligibility criteria of recruitment rules for the post of Plumber and was performing his duties continuously under the direct control and supervision of principal employer w.e.f. 07.07.1995 till 24.09.2014, therefore, he is entitled for regularization and to receive

the consequential benefits of pay and allowances equivalent to regular counterparts in CPWD in observance of the principal of equal pay for equal work. It is further stated that in the matter of **All India CPWD (MRM) Karamchari Sanganthan Vs. Union of India and Ors.** Vide order dated 26.05.2000 The High Court of Delhi in CWP No. 4817/99 directed the Ministry of Labour for constitution of a board to look into the aspect of contract system prevalent in the CPWD under section 10 of the Contract Labour (Abolition & Regulation) Act, 1970 (CLRA Act). The said board was constituted and recommended for abolishing contract system for 15 posts including the post of Plumber and Helper also. The Ministry of Labour issued the notification u/s 10 of CLRA Act, dated 31.07.2002 in accordance with the recommendation. The same was circulated to all concerned for implementation. The workman complains that the said notification had not been implemented in the CPWD at the level of Executive Engineer Division in violation of labour laws, the workmen were being adversely affected due to non-implementation of that prohibition notification. The matter of non-implementation had been brought to the notice of management by the Union of workman namely, "All India CPWD (MRM) Karamchari Saganthan" raised the issue but the same remained in vain. The purpose of keeping the concerned workman on contract basis and also use of the contractors was with intention to avoid payment of their wages as per Minimum Wages Act. The workman was working directly under the control of the principal employer CPWD and even was unable to know who was his contractor and when the new contract came into force. The reason behind this unawareness was simple as only the concerned JE/AE were issuing directions to workman for doing works assigned to him as well as supplying materials for completing the day to day maintenance works. JE/AE concerned were the only authority to employ a workman and even to terminate his employment by restraining them from entering physically into premises for any work. The work which was being performed by him is of perennial nature under the principal employer. The contract entered into between the management and contractor is a sham and camouflage. High Court of Delhi in CWP No. 4817/99 (Supra) in its order dated 26.05.2000 had also issued direction for not substituting/terminating the service of such workman even after change of contractor. On the basis of above gamut of facts, the workman claims themselves entitled to be reinstated in service w.e.f. the date of illegal termination with full back wages and regularization in

service w.e.f. the date of initial employment under the CPWD. He further claims right to receive benefits of pay at par with the regular counterparts in the CPWD as per the provision of CLRA Act, 1970.

4. The claimant in support of his pleadings has submitted documents in evidence viz. letter of conciliation officer certifying that the workman Sh. Pradeep Kumar raised an industrial Dispute under section 2 A of the ID Act which was taken up by conciliation officer on 15.12.2014. As the mandatory 45 days of raising dispute before the conciliation officer has been completed on 02.01.2015 but conciliation could not be arrived at, certificate for filing industrial dispute case was issued (Annexure-1). Further representation of workman Sh. Pradeep Kumar dated 09.09.2014 through his union against the action of management stopping the workman from discharging his duties on 25.09.2014 with the prayer for reinstating him in service (Annexure no. 2). Annexure no. 3 (Colly) are the photocopy of identity card and copy of certificate issued by establishment management in favour of the workman. Authority letter executed by the workman in favour of General Secretary of the Union Sh. Satish Kumar, Narender Dev & Sunil Dutt Assistant Secretary of the Union of All India CPWD (MRM) Karamchari Sangathan New Delhi, with signature of their acceptance. (Annexure 9) along with letter of espousal of dispute by the Labour Union. Circular letter issued by under secretary to the Ministry of Labour Union of India communicating minutes of the meeting of the Central Advisory Contract Labour Board held on 22.11.2001 with recommendation of the Board on the basis of majority view that, "the contract workers employed in 22 categories of job enumerated therein including the posts of plumber and helper are such jobs which satisfy the criteria laid down in sub section 2 of section 10 of the CLRA Act, 1970 because they are incidental to and necessary in terms of the responsibility entrusted to the CPWD for maintenance of buildings, plants and equipment under the control of the Central Government. All these are perennial in nature regular workers have been required on the jobs and nature and duration of the job is such the reasonable plumber of old-time workers can be employed accordingly". The aforesaid communication of meeting with recommendation is annexure 5. The notification issued by the Central Government in official gazette regarding recommendation for abolishing the contract in the services of 15 categories as also made annexure with the statement of claim and

affidavit in support which consists of 15 categories of job including the post of plumber and helper.

5. The workman has prayed the tribunal on the basis of above facts and benefits following relief:

*(i) To pass an award for reinstatement of service of Sh. Pradeep Kumar, Plumber w.e.f. the date of his illegal termination with full back wages.*

*(ii) To pass an award for regularization of services of the workman Sh. Pradeep Kumar under the CPWD w.e.f. the date of his initial employment with regular pay and allowances at par with the other regular counterpart workmen.*

*(iii) Any other relief which may kindly be deemed fit and proper to meet the end of justice.*

**Defense set forth by the management**

6. The management on the other hand in their written statement have contested the claim with preliminary objection to the effect that, there is no relationship of employer and employee and that of a master and servant existing or otherwise exists between claimant and management. Claimant is labour of contractor to whom contract has been awarded by competent authority of CPWD in due course of procedure prescribed by law. Workman had never been appointed nor recruited in the employment by management of the CPWD. If any contract is in between the workman and his contractor the same would abide the contractor, the CPWD authorities are not responsible. The workman along with other workmen was working under the contractor's control and supervision, and even wages were being paid by the said contractor. The claim is not maintainable in view of the judgment passed by Supreme Court in cases v.i.z. **State of Karnataka Vs. Uma Devi & Ors. (2006) 4 SCC 1, Surender Prasad Tiwari Vs. U.P. Rajya Krishi Utpadan Mandi Parisad (Appeal Civil 3981 of 2006.** Management vehemently pleads that in view of para 34 and 36 of the judgment in **Uma Devi case (Supra).** Unless the appointment is in terms of relevant rules and after the proper competition amongst qualified persons, the same would not confer any right on the appointee. If it is a contractual appointment, the appointments come to an end at the end of the contract, if it were an engagement or appointment on daily wages of casual basis the same would come to an end when it is discontinued. It is further impressed that the workman who had accepted the employment with open eyes,

one has to proceed on the basis of that the employment was accepted fully knowing the nature of it and the consequences flowing from it, his claim is not maintainable. The management denies that one who has been working for some time on any post he will have right not to be discontinued.

7. In addition to the above preliminary objections and the maintainability of claim. The management has further denied that the workman has put in 240 days regular service in each year w.e.f. his initial date of joining till illegal termination as alleged. According to the management the workman was not their employee hence the question of working 240 days in their establishment does not arise. They have specific pleading that neither the management of CPWD nor the contractors engaged for hiring the services of the workman have paid wages lessor than minimum wages to the workman and he is not entitled to regular pay scale of the post of Plumber as alleged. According to them the workman never complained about the payment of wages below minimum wages rates to the office of the management. They further denied that the workman was performing his duties continuously under the principal employer w.e.f. 07.07.1995 till 24.09.2014 therefore, entitled for regularization in services as alleged.

8. The management further submits that they have well defined procedure with regard to the selection of contractors through whom thousands of employees work for the establishment. They have selected genuine contractor, entered with him agreement genuinely and overall performance of the contractor is monitored by a team of engineers and the executive engineer concerned. The workman had also been fired by the contractor directly for any fault in his duties, if any, the true fact is that the official of answering management has no control over the workers of the contractor. Moreover, the management CPWD cannot force the contractor to retain the same worker who were engaged by the earlier contractor. They further have specifically denied that workman is entitled to be reinstated in service w.e.f. the date of initial employment under the CPWD. It is stated that workman is not unemployed as alleged and that since the workman was never engaged by the department the question of regularization does not arise and he is not entitled for any relief.

**Issues framed for adjudication**

9. On the basis of above facts pleaded by the contesting parties of the present industrial dispute on 27.05.2016 following issues were framed.

*(i) Whether services of the claimant has been wrongly and illegally terminated by the claimant and is entitled for reinstatement?*

*(ii) Whether the services of the claimant is liable to be regularized from the date of his initial employment, as alleged?*

*(iii) Whether there is no relationship of employer/employee between the claimant and the management?*

*(iv) Whether the petition is not maintainable in view of preliminary objections?*

10. In view of the issues framed by the tribunal the first point of determination in the present industrial dispute, prior to adjudicate dispute relating to termination of service, if illegal and other consequential reliefs thereto, would be the question as to the maintainability of the workman's claim which is raised in issue no. 3 & 4. Unless there exists relation between the claimant and the opposite party (management) of workman-employer this tribunal will have no jurisdiction to entertain the claim for the purpose of adjudication under the ID Act. The pivotal question in present industrial dispute is legality of termination of service of the workman by the management. If termination of services in the facts found illegal, then his entitlement to be reinstated may be considered, likewise on positive answer to the question of reinstatement next question whether with or without back wages may be answered. The determination of the right of workman for regularization is contingent upon his reinstatement in services of the management. Tribunal has to look into not only pleadings of the parties to the industrial dispute but also evidences oral and documentary adduced before it.

11. Perused the documentary evidence placed on record by the litigating parties to the industrial dispute in hand. Perused the oral evidences of witnesses of claimant and management. Heard the arguments. Parties have filed their written argument also.

12. In oral evidence the concerned workman has submitted himself as claimant/witness WW1 and placed on record his affidavit in examination in chief as Ex. WW1/A. He is subjected to cross examination on September 25, 2017 and cross examined. He reiterated his averment in claim statement and stood firm and

consistent thereon in cross examination which shall be discussed in forth coming paras wherever required.

**Relationship of employee (workman) and the employer (Management) in the present case.**

13. The claimant claims himself that he has been throughout his employment as contractual workman doing the work, discharging his duties under the control and supervision of CPWD through its authorities. It is also stated by the workman that the management has been in usual practice to utilize services of the workman through several contractors engaged by them from time to time keeping continued the same work at the same work place. He states that with effect from the initial date of his employment i.e. 07.07.1995 his services were utilized as contractual workman of CPWD till date of his termination w.e.f. 25.09.2014. In their pleading, management though has denied existence of employer and employee relationship with the concerned workman but his engagement as contractual labour is not denied. Management pleads that claimant is labour of contractor to whom contract had been awarded by the competent authority of CPWD in due course of procedure prescribed by the law. Further the management has stated that the claimant has never been appointed or recruited in the employment by the management of CPWD and if any contract between the workman and the contractor exists, the same is not binding upon CPWD authorities. The management in explicit and unequivocal terms has admitted in written statement that concerned workman along with other workmen was working under the direct control and supervision of the contractor and even wages to them was also paid by the said contractor. Vehemence is placed on Para 34 & 36 of the judgment of Hon'ble Apex Court in the **State of Karnataka Vs. Uma Devi & Ors. (Supra)** highlighting the pleading in written statement that in the absence of appointment and recruitment the management the concerned workman on the basis of his contractual appointment does not have any right as workman of the CPWD.

14. When deployment of the concerned workman in the premises of the management though as contractual labour since 07.07.1995 till the end of his disengagement on 25.09.2014 is not denied and even admitted fact that the management has been in usual practice throughout in aforesaid period to engage

workmen through several contractors engaged by them from time to time. It is also not specifically denied that work used to be done continuing the same workman working the same work at the same workplace, the tribunal has to examine whether utilization of claimant's labour and services by the management throughout the aforesaid period of his employment as contractual labour shall create relationship between him and the management as employee-employer. The Industrial Dispute Act defines 'workman' in following terms of section 2(s):

*2 (s) "workman" means <u>any person</u> (including an apprentice) <u>employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied</u>, and for the purposes includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person-*

*(i) Who is subject to the Air force Act, 1950 (45 of 1950), or the Army Act, 1950 (46(of 1950), or the Navy Act, 1957 (62 of 1957); or*

*(ii) Who is employed in the police service of as an officer or other employee of a prison; or*

*(iii) Who is employed mainly in a managerial or administrative capacity; or*

*(iv) who, being employed in a supervisory capacity, draws wages exceeding [ten thousand rupees] per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature.*

15. According to the definition of workman 'any person' employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward shall be treated as workman for the purposes of any proceeding under the ID Act in relation to an industrial dispute like dismissal, discharge or retrenchment which had held that dispute provided such person does not fall in any exceptional category specified in definition from (i) to (iv) under section 2(s) of the ID Act.

16. In the "Contract Labour (Abolition and Regularization) Act", 1970 (the CLRA Act) definition of workman is also inclusive of contractual labours.

17. In Section 2(1) (b) of the CLRA Act, 1970 *"a workman shall be deemed to be employed 'as contract labour' in or in connection with the work of an establishment when he is hired in or in connection with such work by or through a contractor, with or without the knowledge of principal employer".*

Thus, in accordance with the aforesaid definition the claimant whose services is admittedly hired by the management of CPWD through a contractor the CPWD shall be treated as employer in relation to the claimant a workman.

Section 2(1) (c) defines 'contractor' also as under.

*Sec 2 (1) (c)'Contractor "in relation to an establishment, means a person who undertakes to produce a given result for the establishment, other than a mere supply of goods or articles of manufacture to such establishment, through contract labour or who supplies contract labour for any work of the establishment and includes a sub-contractor".*

18. Admittedly, the workman/claimant is contract labour whose services is hired by the CPWD through the contractor therefore, CPWD shall be treated as principal employer in relation to the claimant/workman.

The CLRA Act further defines the "Principal employer" in section 2 (1) (g) which runs as under-

*Section 2(1) 'Principal employer' (g) means (i). in relation to any office or department of the Government or a local authority, the head of that officer or department or such other officer as the government or the local authority, as the case may be, may specify in this behalf,*

*(ii)…….*

*(iii)…….*

*(iv)…….*

19. There are oral and documentary evidences also in addition to the admitted fact of the claimant/workman working as contract labour in the establishment of management CPWD. The claimant/workman Sh. Pradeep Kumar deposed on oath before the tribunal as witness and submitted on oath in the affidavit that, he acted on day to day labour basis as plumber in the campus of the management under direct control and supervision of one junior engineer of CPWD who used to take

his attendance also. The witness was subjected to cross-examination by the management who did not carved out anything against the above statement on oath. He specifically denied the suggestion during cross examination that he was working through the contractor. In cross-examination he stands firm and reasserted that his wages were paid by the JE of the CPWD. He proved Ex. WW1/3 the entry pass issued to him as contract labour for entry in the premises of the CPWD where he was posted to work. He further denied that he was paid his wages by the contractor in cash and his work was supervised by him only. MW1 the management witness Sh. Prashant Singh admits in cross examination dated 20.02.2019 that Ex WW1/3 was issued by CPWD to the claimant on receiving the letter from contractor to make deployment of the workers and issuance of the gate pass.

20. The above pleadings and evidences when taken cumulatively they show and establish that there exist unambiguous relationship of workman and principal employer, between the claimant/ workman and the management CPWD and they have a relation of employer-employee in terms of the Industrial Dispute Act section 2(s) as well as with the deeming effect under section 2 (1) (b) of the CLRA Act 1970.

21. The recommendation of Central Advisory Board of the Appropriate Government made before issuance of notification under section 10 of the CLRA Act and other evidences of the management itself show that they had post of the helper/plumber vacant for a considerably long period of 10 years. The claimant has established through evidence that during the entire period he was working as contract labour on the above vacant post without having been issued any letter of appointment.

22. Formally, the appointments are made through prescribed recruitment agencies but exigencies of work may sometimes call for making appointments on adhoc or temporary basis. In the present case the claimant has pleaded that he possessed at the time of his initial engagement the requisite qualification and eligibility required for the post of plumber/helper. This is not explained and clarified by the management that what exigencies occurred before them not to fill up the post by regular appointment and to continue utilizing the service of the

concerned workman as contract labour on the vacant post. In the **State of Haryana Vs. Piara Singh AIR 1992 Supreme Court 2130** The Supreme Court held that though the normal rule is recruitment through the prescribed agencies but due to administrative exigencies an adhoc or temporary appointment may be made. If casual or temporary or adhoc appointment were made against sanctioned posts and the policy is fell vacant for a long period without filling up those post on a regular basis then the Courts has reason to interfere. In **Rattan Lal vs. State of Haryana AIR 1987 Supreme Court 478** Hon'ble Supreme Court held that such situation cannot be permitted to last any longer.

23. The case of Uma Devi (Supra) which lays down that there should be no back door entry and every post should be filled by regular employment with terms of relevant service rules does not apply to the facts of present industrial dispute because it has severally been judicially noticed that in spite rigor of Uma Devi case (Supra) the same was being ignored and conveniently overlooked by various states by making appointments on contract/daily wage basis without due payment of salary. In **Shiv Narain Nagar and Ors. Vs. State of U.P and Ors. (2018) 13 SCC 432** the Apex Court held that since the management themselves have conferred temporary status to the employees even when there was requirement of work and availability of post, consequently there was no case of back door entry since there were no recruitment rules governing such situation then their appointment cannot be said to be illegal or in contravention of rules.

24. In the present matter where the workman is engaged directly or through a contractor as contract labour by an employer and the services is discharged, terminated or retrenched against the provision of Industrial Dispute Act the matter shall be governed under the provisions of Industrial Dispute Act, 1947 and other legislations connected therewith.

25. The present industrial dispute is brought before the tribunal for the purpose adjudicating disputes as to claim of workman for regularization in services of the management who have completed the required period of continuous services 240 days in every year prior to the termination of his services and for reinstatement of his services. Therefore, the present dispute comes within the definition of 'Industrial Dispute' as define in section 2 (k) of the Act.

2 (k); "*industrial dispute" means any dispute or difference between employers and employers, or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person".*

26. On the basis of discussions, made hereinabove the issue no 3 & 4 are positively decided in favour of the workman/claimant and against the management. The workman/claimant and the management were in relation of employee and employer. The present industrial dispute is maintainable before the Central Government Industrial Tribunal under the industrial dispute act for adjudication of the claim of the workman.

**Discussion on issue no 1 & 2**

**Contractual workman through the contractor in continuous services**

27. The claimant's case of initial date of employment 07.07.1995 as daily wager on contract basis in the services of management CPWD as Helper/Mali in their premises is not specifically denied in written statement. Likewise, the fact of termination of claimant's services w.e.f. 25.09.2014 is also evasively replied on the pretext of want of knowledge as he was employed by contractor. Moreover, it is admitted that the concerned workman was employee of contractor from whom his labour and services were hired by the management.

**Want of specific denial, instead vague denial and consequence**

28. General rule of pleading requires the burden of proof on the party to a his who pleaded a fact as ground of claim or defense as the case may be, but such burden arise when that fact is specifically denied by opponent. Failure of the management to specifically deny the fact of initial date of employment with CPWD would make the allegation in this regard made in the statement of claim as admitted against management. Principle of pleadings propounded in Civil Procedure Code, 1908 equally applicable to pleadings in all legal proceedings whether judicial or quasi-judicial. Order VIII R 3 & 5 of Civil procedure Code 1908 clearly provides for specific admission and denial of the pleading in the plaint. A General and evasive denial amounts deemed admission of the fact. In such an event the admission itself being proof, no other proof is necessary. (**Supreme Court in Jaspal Kaur Chema**

**and Another V. Industrial Trade Links and Others (2017) 8 SCC 592** of which Para 7 is quoted below:

*Para 7 In terms of Order 8 Rule 3 of the Code of Civil Procedure, 1908 (for short "the Code"), a defendant is required to deny or dispute the statements made in the plaint categorically, as evasive denial would amount to an admission of the allegation made in the plaint in terms of Order 8 Rule 5 of the Code. In other words, the written statement must specifically deal with each of the allegations of fact made in the plaint. The failure to make specific denial amounts to an admission. This position is clear from the decisions of this Court in Badat and Co. v. East India Trading Co. [Badat and Co. v. East India Trading Co., (1964) 4 SCR 19: AIR 1964 SC 538], Sushil Kumar v. Rakesh Kumar [Sushil Kumar v. Rakesh Kumar, (2003) 8 SCC 673] and M. Venkataramana Hebbar v. M. Rajagopal Hebbar [M. Venkataramana Hebbar v. M. Rajagopal Hebbar, (2007) 6 SCC 401]*

29. The MW1 (management's witness) during his oral examination stated on oath when cross examined that, the post against which claimant asserts to have worked remained vacant for last 10 years without regular appointment. He further states that CPWD's competent authorities used to enter into contract with Contract Labour providers to do works in the department. Thus, in the absence of specific denial and presence of direct admissions on record with deemed admissions by virtue of evasive denial of the fact coupled with evidence of MW1 as to the availability of concerned post and work qua which the claimant claims his employment as contractual labour and utilization of his services by the management as such since 07.07.1995 till 24.09.2014 it is found established. This is importantly noteworthy that management has not denied eligibility and qualification which the claimant pleaded to possess at the time of his initial engagement with CPWD in their premises through a contractor.

30. The management in their pleading asserted the contract with concerned contractor who provided them contractual workmen including the claimant genuinely entered into following all prescribed procedures by competent authorities. This makes the employment of claimant as contractual workman legal emanating benevolence of the protective provisions of the Industrial Dispute Act relating to regularization in and termination from service. Section 25 B under the chapter V.A. of Industrial Dispute Act which governs retrenchment defines the continuous service as under Section 25 B

Section 25B. Definition of continuous service for the purpose of this chapter -

*1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorized leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;*

*(2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer —*

*(a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than —*

*(i) one hundred and ninety days in the case of a workman employed below ground in a mine; and*

*(ii) two hundred and forty days, in any other case;*

*(b) for a period of six months, if the workman, during a period of six calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than —*

*(i) ninety-five days, in the case of a workman employed below ground in a mine; and*

*(ii) one hundred and twenty days, in any other case. Explanation—For the purposes of clause*

*(2), the number of days on which a workman has actually worked under an employer shall include the days on which —*

*(i)He has been laid-off under an agreement or as permitted by standing orders made under the Industrial Employment (Standing Orders) Act, 1946 (20 of 1946), or under this Act or under any other law applicable to the industrial establishment;*

*(ii) he has been on leave with full wages, earned in the previous years;*

*(iii) he has been absent due to temporary disablement caused by accident arising out of and in the course of his employment; and*

*(iv) in the case of a female, she has been on maternity leave; so, however, that the total period of such maternity leave does not exceed twelve weeks.*

31. Since nothing is pleaded by the management in their written statement against the uninterrupted utilization of claimant' services except the specific plea

of his being employee of the contractor has no right to be treated as employee of the management therefore, it is held that claimant had been in Continuous service of the management as contractual workman since 07.07.1995 to 24.09.2014. This would be noteworthy here that claimant has successfully discharged his burden to establish his relation with employer on the basis of number of days he has served as held by the Apex Court in state of **Uttrakhand Vs. Suresh wati 2021(168) FLR 488 (SC) and Bengal Nagpur Cotton Mills, Rajnand Gaon Vs. Bharat Lala and Ors. (2011) 1 SCC 635.**

## Prohibition of employment of contract Labour

32. Before proceeding to discuss the prohibition of employment of contract Labour it would be pertinent to quote section 10 of The CLRA Act which is under

**Section-10 Prohibition of employment of contract labour-**

(*1) Notwithstanding anything contained in this Act, the appropriate Government may, after consultation with the Central Board or, as the case may be, a State Board, prohibit, by notification in the Official Gazette, employment of contract labour in any process, operation or other work in any establishment.*

*(2) Before issuing any notification under sub-section (1) in relation to an establishment, the appropriate Government shall have regard to the conditions of work and benefits provided for the contract labour that establishment and other relevant factors, such as-*

*(a) whether the process, operation or other work is incidental to, or necessary for the industry, trade, business, manufacture or occupation that is carried on in the establishment;*

*(b) whether it is of perennial nature, that is to say, it is so of sufficient duration having regard to the nature of industry, trade, business, manufacture or occupation carried on in that establishment;*

*(c) whether it is done ordinarily through regular workmen in that establishment or an establishment similar thereto;*

*(d) whether it is sufficient to employ considerable number of whole-time workmen.*

*Explanation. - If a question arises whether any process or operation or other work is of perennial nature, the decision of the appropriate Government thereon shall be final.*

33. Exhibit WW1/9 (Colly), filed and proved by the claimant and admitted also by the management, is minutes of the meeting of the Central Advisory Contract Labour Board constituted by the Appropriate Government in terms of the section 10. The CLRA Act published on 18.12.2001 which recommends twenty number of posts for abolition of contract labour system in the establishment of CPWD which are-

1. AC Mechanic.
2. AC Operator.
3. AC Khalasi/helper.
4. Electrician.
5. Wireman.
6. Khalasi (Electrical).
7. DG Set Operators.
8. Pump Operators.
9. Fire Pump/fire alarm Operator.
10. Carpenter.
11. Mason.
12. Fitter.
13. Plumber.
14. Enquiry Clerk.
15. Helper/Beldar.
16. Mechanic.
17. Sewerman.
18. Sweeper.
19. Foreman.
20. Lift Operator.

34. As the board reached at opinion that the jobs under consideration are of perennial nature and must go from day to day. Further the board has opined in its recommendation, “CPWD wing of the Central Government has been created to undertake construction and maintenance of buildings, equipment’s and plants within such buildings complex of the central government. In the majority of cases

they are engaged in the business of maintenance of building of regular establishment of the central government on continuous basis. In effect the function of the owner of these buildings relating to maintenance has been assigned to CPWD". The board has further recorded in its aforesaid recommendation that, CPWD have admitted that the works are being done through contractors for regular man power did not available due to non-recruitment and have also not denied that regular workers have been deployed in the jobs. It is also recorded that the volume and duration of work is not insufficient. No instances have been cited by the CPWD wherein the yearly contracts have not been renewed and the work therefore, is of uncertain nature to employ considerable number of workmen.

35. Exhibit WW1/10 (Colly) includes the notification dated 31.07.2002 in the official gazette of India and prohibited employment of contract labours in the process, operation or work specified in the scheduled appended therewith in exercise of powers conferred by sub section (1) of section 10 of the CLRA Act. The schedule consists of following 14 categories of work-

1. Air conditioner Operator.
2. Air conditioner khalasi/helper.
3. Electrician.
4. Wireman.
5. Khalasi (Electrical).
6. Carpenter.
7. Mason.
8. Fitter.
9. Plumber.
10. Helper/Beldar.
11. Mechanic.
12. Sewerman.
13. Sweeper.
14. Foreman.

**Employment of contract labour by CPWD opposed to law**

36. The claimant in his statement of claim has clearly stated that he was initially appointed as plumber w.e.f. 07.07.1995 through contractor for day to day work at **A.R.C. Sarsawa, Service Centre**, and the contractors engaged for hiring the services of contractual workmen were being replaced from time to time by the management of CPWD. The workman was continuously working the same work at the same place prior to termination of his services till 25.09.2014. The notification dated 31.07.2002 has been circulated by the Ministry of Urban Development/ Director General of works CPWD for implementation which is Ex. WW1/10 proved by the claimant and also admitted by the management. In his statement the workman further states, the work which was being performed by him is of perennial nature under the principal employer. And that contract entered into between the management and the contactor is sham and camouflage. In written statement the said notification of the central government issued for prohibition of contract labour in aforesaid categories of work not denied but is admitted in evidence. Likewise, the fact of entering into contract for supply of hiring of labours (workman) including the present workman is not justified despite the fact they were squarely covered from the notification of prohibition of contract labour. It is also not explained in pleading and evidence that why the CPWD had not implemented the said notification for abolition of contract labour on 15 posts though brought into notice of the CPWD by Union of Workmen nothing was done by the CPWD. It is pleaded, impressed in affidavit of evidence that contractors were being used only for the purpose of getting payment of remuneration from them payable to the workman and the workman was engaged directly under the control of the principal employer and most of the time the workman was not aware of the contractor and when the new contract came into force. These facts are not denied specifically are by necessary implication in the written statement of the management. The claimant in his affidavit submitted in examination in chief before the tribunal deposed the above facts but in cross examination nothing could be elicited to the contrary by the management. In his cross-examination dated 25.09.2017 the claimant/workman has very clearly stated that he was terminated by the management, he was appointed on 07.07.1995 and terminated from service on 25.09.2014.

37. Explaining the expression "Control and Supervision" the Apex Court in the case of ***International Airport Authority of India V. International Air Cargo***

***workers and another (2009) 13 SCC 374*** in Para 38 & 39 of the judgement laid down the tests to find out that in fact there is a direct employment. It has further been observed in Para 38 & 39 as under: -

***"38"*** *The tests that are applied to find out whether a person is an employee or an independent contractor may not automatically apply in finding out whether the contract labour agreement is a sham, nominal and is a mere camouflage. For example, if the contract is for supply of labour, necessarily, the labour supplied by the contractor will work under the directions, supervision and control of the principal employer, if the salary is paid by a contractor, if the right to regulate the employment is with the contractor, and the ultimate supervision and control lies with the contractor.*

***"39"*** *The principal employer only controls and directs the work to be done by a contract labour, when such labour is assigned/allotted/sent to him. But it is the contractor as employer, who chooses whether the worker is to be assigned/allotted to the principal employer or used otherwise. In short, worker being the employee of the contractor, the ultimate supervision and control lies with the contractor as he decides where the employee will work and how long he will work and subject to what conditions. Only when the contractor assigns/sends the worker to work under the principal employer, the worker works under the supervision and control of the principal employer but this is secondary control. The primary control is with the contractor.*

**Management (CPWD) whether principal employer in relation to the claimant**

38. CPWD is undisputedly a department of Central Government Section 2(g) of The Contract Labour (Regulation and Abolition) Act, 1970, in brief CLRA Act defines, principal employer means in relation to any office or department of government any person responsible for the supervision and control of the establishment. Further, in the context of present industrial dispute the "contractor" as defined in section 2(1) (c) of the CLRA Act, means and includes a person who supplies contract Labour for any work of the establishment. The case of the management is that claimant was hired under a contract duly entered with contractor for supply of contract Labour.

39. It is not the case of the management that they entered in contract with any person who undertakes to produce a given result for the establishment. Though, management had burden of proof but did not discharge the same by adducing

evidence as to the terms of contract, neither the deed of contract entered with contractor itself is produced and proved, nor any contractor is examined in support of the control and supervision over the work to be done by a contract Labour supplied by him who is deployed in the premises of management in connection with their work. The claimant in his statement in chief examination as well in cross examination has stated consistently that he was issued entry pass in premises of the management, his attendance was checked and works to be done were instructed and supervised in daily routine by a junior engineer of the establishment. Payment of wages were also made by the establishment accordingly. The management being in possession of the best evidence like book of account entering payment of wages to contractual workmen whether directly or through the contractor failed and more properly to say skipped to produce and prove before the tribunal. An adverse inference therefore, in the above context may be drawn against the management that they were in direct control, supervision and in payment of wages of contract laborers working in the establishment.

40. In **Nil Giri Co-op. Marketing Society Ltd V. State of Tamil Nadu 2004 last suit (SC) 142** where the facts were similar as in the present case the Apex Court has observed as under.

*It is submitted by the Respondents- Unions that, the documents executed between petitioner and the Contractors are bogus, sham, concocted, fraudulent and inadmissible in evidence. The same have been prepared to avoid the statutory liability to give permanency benefits to these workmen and to deprive them of their legitimate rights of equal work equal pay at par with the permanent employees of the petitioner. They submitted that, many alleged contractors have come and gone in last 20 years but the concerned workmen involved in the Reference have been continued in service. Had these concerned workmen been the employees of somebody else, their service would have been terminated at the time of changing the contractor and or terminating the earlier alleged contracts with the contractors.*

*The learned counsel for the Unions contended that though the notification dated 9th December, 1976 may have been abolished, however the notification dated 30th January, 1996 is very much in existence. The said notification is in respect of the Petitioner Company. The said notification covers the workers in this petition who are working in the establishment of the Petitioner. Though, the members of the Respondents are covered by the notification dated 30th January,1996, however, in breach of this notification, the*

*petitioner continues to employ contract labour including the workmen concerned with this petition. Out of the 37 employees, 21 are working as a valve operator, 13 are working in housekeeping in plant area and 3 are working as helpers (Maintenance), all of which as per the 1996 notification are prohibited jobs. The employment of contract labour in specified jobs was prohibited as per the notification w.e.f. 01st March, 1996, yet the Petitioner continues to treat the workmen concerned as contract labour. The learned counsel for the Respondents submitted that nowhere in the evidence, the petitioner has denied that the workmen concerned are not squarely covered by the notification dt. 30th January, 1996.*

> The Apex Court has held that question whether employee of principal employer of contractor is pure question of fact deserve to be decided by tribunal on the basis of evidence on record. Likewise, question whether the contract was a sham a camouflage is also a question of fact, to be decided by tribunal by piercing the veil, having regard to the provision of the Act when a definite plea is raised.

41. Notification issued by the central government on 04.07.2002 produced in evidence by the claimant, nothing is said against that by the management in their pleading hence the tribunal has taken judicial notice of prohibition of contract Labour in categories of work mentioned therein. Nowhere in their pleading and evidence the management has denied that the workman concerned is squarely covered with the notification under section 10 of the CLRA Act. The post of helper and plumber both are enumerated at serial no. 9 and 10 in the notification of prohibition issued under section 10 of CLRA Act dated 31.07.2002 as category of work where upon contract labour is prohibited. It is not denied that as contract labour the concerned workman's services were utilized by the CPWD. The workman has also proved in his statement before the tribunal in evidence that his services were utilized as helper/mali and with plumber also. He further states that his services were utilized day to day by the junior engineer who after taking attendance used to send him with either plumber, mason, carpenter etc. to redress complaints as helper and eventually work of Mali was also done by him on being deployed as such. He has completed in each and every year since the date of his initial engagement till termination of service that is to say 07.07.1995 to 24.09.2014 continuous service of more than 240 days. He had stated on oath that he was paid the salary by the junior engineer getting his signature on blank

voucher in cash. In cross-examination the management has not elicited and carved out anything in rebuttal and contradiction of the said facts. Even, in cross-examination dated 25.09.2017 the claimant witness denied the suggestion by saying that it is wrong that I had never worked 240 days in a calendar year. It is wrong to suggest that I was working through the contractor. My wages were paid by JE of the management. Management had not produced documentary evidence in support of their pleading and arguments despite opportunity afforded.

**Documents relevant to the issues summoned from the management- Not produced**

42. The workman, before parties enter into the stage of leading evidence moved an application on 27.05.2016 para 2 whereof contains eight numbers of documents to be summoned from the management for production before the tribunal. For the purpose of easy reference, the said para 2 along with the details of documents sought to be summoned for production by the management are given here under: -

1. Copies of work orders dated 7.7.95 to 6.9.95.
2. Copies of agreements since 7.7.95 till date (ARC- Sarsawa site).
3. Copies of Task Registers since 7.7.95 till date (ARC – Sarsawa site).
4. Copies of Complaint Registers since 7.7.95 till date (ARC – Sarsawa site).
5. Copies of Worker's Diary since 7.7.95 till date (ARC – Sarsawa site).
6. Copies of Attendance Registers since 7.7.95 till date (ARC – Sarsawa site).
7. Copies of Salary Register maintained by the Contractors since 7.7.95 till date (ARC – Sarsawa site).
8. Copies of Overtime Registers since 7.7.95 till date (ARC – Sarsawa site).
9. Copies of Appointment letter issued by the contractors to the workmen (ARC – Sarsawa site).
10. Copies of Wage Card/ Slips issued by the contractors to the workmen (ARC – Sarsawa site).
11. Copies of License obtained by the Department as well as Contractors from the Labour Department (ARC – Sarsawa site).
12. Copies of Gate Passes issued to the workmen/contractors by the department of CPWD (ARC – Sarsawa site).

43. In the case of **Chintaman Rao, 1958 (II) LLJ 252** the Apex Court ruled that the concept of employment involves three ingredients:

*(i) Employer*
*(ii) Employee*
*(iii) The contract of employment.*

44. The employer is one who employs, that is one who engages the services of other persons. The employee is one who works for another for hire. The employment is the contract of services between the employer and employee where under the employee agrees to serve the employer subject to his control and supervision. In **Food Corporation of India 1985 (II) LLJ 4** the Apex Court held that a contract of employment discloses a relationship of command and obedience between them. Where a Contractor employs a workman to do the work which he contracted with a third person to accomplish, the workman of the contractor would not without something more become the workman of third person. The Apex Court further in the case of **Dharangadhara Chemical Works Ltd., 1957 (1) LLJ 477** 'Case of supervision and control' may be taken as the prima facie case for determining the relationship of employment it was further laid that existence of the right in master to supervise and control the work to be done by the servant, not only matter of directing that work the servant is to do but also the manner in which he shall do his work with the prima facie test for determining the existence of master and servant relationship.

45. **In the Case of Steel Authority of India Ltd. (SAIL) case, (2001) 7 SCC 1** the Apex Court ruled that there cannot be automatic absorption of contract labour by principal employer on issuance of notification by the Appropriate Government on abolition of contract labour system. Consequently, the principal employer cannot be required to order for absorption of the contract labour working in the establishment concerned. The Apex Court in the steel Authority of India (Supra) has made it clear that where workman is hired in or in connection with the work of an establishment by the principal employer through a contractor, he merely acts as an agent so there will be master and servant relationship between the principal employer and the workman. But when workman is hired in or in connection with the work of an establishment by a contractor, either because he has undertaken to produce a given result for the establishment or because he supplies workmen for any work of the establishment, a question might arise whether the contractor is a mere camouflage in Husain Bhai Case and in Indian Petrochemicals Corporation

Case, 1999 (6) SCC 439, if the answer is in affirmative the workman will be in fact an employee of the principal employer.

46. In the present matter the management failed to prove the deed of contract entered with its contractor to supply the contract labour. Even term of the contract is not made clear in the pleading and explained in the evidence also. The argument of the management that the contractor might have engaged the workman on the work assigned to him by the department does not seem to be true in the wake of evidences placed on record.

47. The tribunal tends to record its finding on the basis of discussions made herein above that concerned workman was under the direct control and supervision of the principal employer namely the CPWD in the present industrial dispute. The contract under which contract labours were hired for the works and prohibited under the notification dated 31.07.2002 section 10 of the CLRA Act was sham and camouflage, had a nullity.

**Effect of engagement of contract labour even after the notification prohibiting the contract labour for the work on 15 posts in the CPWD.**

48. Undoubtedly the management was not just and rightful to engage contract labour on those 15 posts enumerated in the notification of prohibition issued under section 10 of the CLRA Act dated 31.07.2002. The present workman if continued working as contract labour even after the issuance of notification of prohibition under section 10 of the CLRA Act does not give him the right to be automatically absorbed in the CPWD establishment. In **SAIL case (Supra)** explained the position of workman engaged even after the issuance of notification of prohibition under section 10 of the CLRA Act in the case of **Kirloshkar Brothers Limited Vs. Ramcharan and Ors. (Civil Appeal No. 8446-8447 of 2022)** Justice M.R. Shah. Has summarised it relying on SAIL case Para 125. The Para 4.4 and 4.5 of the judgement in kirloshkar Brothers Limited (Supra) is being quoted here:

Para 4.4 After considering various decision of this court on the point, in paragraph 125. It was concluded as under: -

"125. *The upshot of the above discussion is outlined thus:*

*(1)(a) Before 28-1-1986, the determination of the question whether the Central Government or the State Government is the appropriate Government in relation to an establishment, will depend, in view of the definition of the expression "appropriate Government" as stood in the CLRA Act, on the answer to a further question, is the industry under consideration carried on by or under the authority of the Central Government or does it pertain to any specified controlled industry, or the establishment of any railway, cantonment board, major port, mine or oilfield or the establishment of banking or insurance company? If the answer is in the affirmative, the Central Government will be the appropriate Government; otherwise in relation to any other establishment the Government of the State in which the establishment was situated, would be the appropriate Government;*

*(b) After the said date in view of the new definition of that expression, the answer to the question referred to above, has to be found in clause*

*(a) of Section 2 of the Industrial Disputes Act; if*
*(i) the Central Government company/undertaking concerned or any undertaking concerned is included therein eo nomine, or*
*(ii) any industry is carried on*

*(a) by or under the authority of the Central Government, or*

*(b) by a railway company; or*

*(c) by a specified controlled industry, then the Central Government will be the appropriate Government;*

*otherwise in relation to any other establishment, the Government of the State in which that other establishment is situated, will be the appropriate Government.*

*(2)(a) A notification under Section 10(1) of the CLRA Act prohibiting employment of contract labour in any process, operation or other work in any establishment has to be issued by the appropriate Government:*

*(1) after consulting with the Central Advisory Board or the State Advisory Board, as the case may be, and (2) having regard to*

*(i) conditions of work and benefits provided for the contract labour in the establishment in question, and*

*(ii) other relevant factors including those mentioned in sub-section (2) of Section 10;*

*(b) In as much as the impugned notification issued by the Central Government on 9-12-1976 does not satisfy the aforesaid requirements of Section 10, it is quashed but we do so prospectively i.e. from the date of this judgment and subject to the clarification that on the basis of this judgment no order passed or no action taken giving effect to the said notification on or before the date of this judgment, shall be called in question in any tribunal or court including a High Court if it has otherwise attained finality and/or it has been implemented.*

*(3) Neither Section 10 of the CLRA Act nor any other provision in the Act, whether expressly or by necessary implication, provides for automatic absorption of contract labour on issuing a notification by the appropriate Government under sub-section (1) of Section 10, prohibiting employment of contract labour, in any process, operation or other work in any establishment.*

*Consequently the principal employer cannot be required to order absorption of the contract labour working in the establishment concerned.*

*(4) We overrule the judgment of this Court in Air India case [(1997) 9 SCC 377] prospectively and declare that any direction issued by any industrial adjudicator/any court including the High Court, for absorption of contract labour following the judgment in Air India case [(1997) 9 SCC 377] shall hold good and that the same shall not be set aside, altered or modified on the basis of this judgment in cases where such a direction has been given effect to and it has become final.*

*(5) On issuance of prohibition notification under Section 10(1) of the CLRA Act prohibiting employment of contract labour or otherwise, in an industrial dispute brought before it by any contract labour in regard to conditions of service, the industrial adjudicator will have to consider the question whether the contractor has been interposed either on the ground of having undertaken to produce any given result for the establishment or for supply of contract labour for work of the establishment under a genuine contract or is a mere ruse/camouflage to evade compliance with various beneficial legislations so as to deprive the workers of the benefit thereunder. If the contract is found to be not genuine but a mere camouflage, the so-called contract labour will have to be treated as employees of the principal employer who shall be directed to regularise the services of the contract labour in the establishment concerned subject to the conditions as may be specified by it for that purpose in the light of para 6 hereunder.*
*(6) If the contract is found to be genuine and prohibition notification under Section 10(1) of the CLRA Act in respect of the establishment concerned has been issued by the appropriate Government, prohibiting employment of contract labour in any process, operation or other work of any establishment and where in such process, operation or other work of the establishment the principal employer intends to employ regular workmen, he shall give preference to the erstwhile contract labour, if otherwise found suitable and, if necessary, by relaxing the condition as to maximum age appropriately, taking into consideration the age of the workers at the time of their initial employment by*

*the contractor and also relaxing the condition as to academic qualifications other than technical qualifications.*

*4.5 Thus, as observed and held by this Court, neither Section 10 of the CLRA Act nor any other provision in the Act, expressly or by necessary implication, provides for automatic absorption of contract labour on issuing a notification by the appropriate Government under sub-section (1) of Section 10, prohibiting employment of contract labour, in any process, operation or any other work in any establishment and consequently, the principal employer cannot be required to order absorption of the contract labour working in the establishment concerned. It has further been observed and held by this Court in the aforesaid decision that on issuance of prohibition notification under Section 10(1) of the CLRA Act, prohibiting employment of contract labour or otherwise, in case of an industrial dispute brought before it by any contract labour in regard to conditions of service, the industrial adjudicator will have to consider the question whether the contractor has been interposed either on the ground of having undertaken to produce any given result for the establishment or for supply of contract labour for work of the establishment under a genuine contract or is a mere ruse/camouflage to evade compliance with various beneficial legislations so as to deprive the workers of the benefits there under.*

49. Despite the order of the Delhi High Court and even after the recommendation of notification under section 10 of the CLRA Act 31.07.2002 for abolishing contract system for 15 posts including the post of helper contract labour was employed for the work of helper by the CPWD. Helper seems to be a comprehensive term which signifies those workmen who work in assistance to the skilled labour like Plumber, Mali, Mason etc., though the workman employed as helper may be unskilled. In the present case the workman states himself in pleading and evidence a 'helper' with plumber or mason wherever he was deployed. When the Appropriate Government notified and prohibited the employment of contract labour in the category of work of helper what would be the status of the contract labour such a question arose before the Apex Court SAIL case (Supra). The apex Court ruled therein that there cannot be automatic absorption of contract labour by principal employer on issuance of notification by the appropriate government on abolition of contract labour system under sub section 1 of section 10 of the CLRA Act.

50. There is no explanation in pleadings of the management that how and why the management opted to terminate the services of workman who have stated in his statement of claim that in CWP No.4817/99 in the matter of All India CPWD (MRM) Karamchari Sangathan Vs, Union of India and Ors. Dated 26.05.2000 the Hon'ble High Court of Delhi directed the Ministry of Labour for constitution of a

board to look into the aspect of contract system prevalent in the CPWD under the section 10 of the Contract labour in para 4 and 5 of the said order of Hon'ble Delhi High Court on record and quoted here under for easy reference

*Para 4. If the decision is taken to abolish the contract labour in particular job/work process in any of the offices/establishments of CPWD (as per the terms of reference contained in Resolution dated 30th march, 2000), as per the judgement of the Supreme Court in All India Statuary Corporation (Supra) such Contract workers would be entitled to be absorbed with CPWD and would be entitled to claim the benefits in terms of aforesaid judgment. In case the decision of the "appropriate government" is not to abolish contract labour system in any of the works/jobs process in any offices/establishments of CPWD the effect of that would be that contract labour system is permissible and, in that eventuality, CPWD shall have the right to deal with these contract workers in any manner it deems fit.*

*Para 5. Such contract labours who are still working shall be paid their wages regularly as per the provision of section 21 of the Act and in those cases where the contractors fail to make payment of wages, it shall be the responsibility of the CPWD as principal employer to make the payment of wages.*

51. The claimant rendered continuous service of more than ten years to the management on the date when his services were illegally retrenched he had to be given retrenchment compensation in accordance with section 25F of the Industrial Dispute Act if the retrenchment is made abruptly. Claimant sustained loss of means of livelihood without any just and proper cause the salient fact which the tribunal considered is that the workman who has been retrenched is a workman under section 2 (s) in an industry defined under section 2 (j) who has been in continuous service for more than one year could be retrenched provided the employer complies with the twin conditions provided under clauses (a) & (b) section 25F of the Act 1947 before the retrenchment is given effect to Section 25F of the act 1947 is reproduced here under for easy reference:

*Section 25F. **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 on 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.]*

**Termination of service if illegal - consequence of illegal termination**

52. It is proved in evidence by claimant/workman that his services were terminated by CPWD on 25.09.2014

The management has not rebutted the said fact of 'termination' by aforesaid assistant director of the CPWD through it's own witness. It remained on it's stand that claimant was employee of contractor therefore, it had no concern with his termination, but this argument has no legs to stand as against the evidence on record brought before the tribunal. This is also proved that claimant was in continuous employment as contract labour on 07.07.1995. Though he acquired legal right to be regularized in services of the CPWD, keeping him as daily wager contractual workman in the establishment was not just and legal under the provisions and prohibition contained in Industrial Dispute Act. Question to be decided by this tribunal is that whether the services of the claimant terminated by the management wrongfully and illegally? As such, to what relief the claimant is entitled will be a prime question for grant of relief. It is also proved that the workman was working as helper since the initial date of joining, discharged duties as such workman associated with and in assistance to plumber, electrician, mason, etc. as and when and wherever he was deployed. There is no evidence to contradict and repudiate the claim of workman that he has completed more than 240 days in every year of his employment. The termination of service in other word is called retrenchment under the Industrial Dispute Act Section 2 (oo) defines the retrenchment as under:

***Section 2(oo)*** *"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 s stipulation in that behalf; or*

*(bb) termination of 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.*

53. **In *K.V. Anil Mithra & Another V. Sree Sankaracharya University of Sanskrit & Another (2021 SCC online SC 982)*** the Apex Court in Para 22, held as under: -

***22:-*** *The term 'retrenchment' leaves no manner of doubt that the termination of the workman for any reason whatsoever, otherwise than as punishment inflicted by way of disciplinary action are being termed as retrenchment with certain exceptions and it is not dependent upon the nature of employment and the procedure pursuant to which the workman has entered into service. In continuation thereof, the condition precedent for retrenchment has been defined under Section 25F of the Act 1947 which postulates that workman employed in any industry who has been in continuous service for not less than one year can be retrenched by the employer after clauses (a) and (b) of Section 25F have been complied with and both the clauses (a) and (b) of Section 25F have been held by this Court to be mandatory and its non-observance is held to be void ab initio bad and what is being the continuous service has been defined under Section 25B of the Act 1947.*

54. **In the case of K.V Anil Mithra (Supra) the Apex Court further held-**

***23:-*** *The scheme of the Act 1947 contemplates that the workman employed even as a daily wager or in any capacity, if has worked for more than 240 days in the preceding 12 months from the alleged date of termination and if the employer wants to terminate the services of such a workman, his services could be terminated after due compliance of the twin clauses (a) and (b) of Section 25F of the Act 1947 and to its non-observance held the termination to be void ab initio bad and so far as the consequential effect of non-observance of the provisions of Section 25F of the Act 1947, may lead to grant of relief of reinstatement with full back wages and continuity of service in favour of retrenched workman, the same would not mean that the relief would be granted automatically but the*

*workman is entitled for appropriate relief for non-observance of the mandatory requirement of Section 25F of the Act, 1947 in the facts and circumstances of each case.*

***24:-*** *The salient fact which has to be considered is whether the employee who has been retrenched is a workman under Section 2(s) and is employed in an industry defined under Section 2(j) and who has been in continuous service for more than one year can be retrenched provided the employer complies with the twin conditions provided under clauses (a) and (b) of Section 25F of the Act 1947 before the retrenchment is given effect to. The nature of employment and the manner in which the workman has been employed is not significant for consideration while invoking the mandatory compliance of Section 25F of the Act 1947.*

***25:-*** *This can be noticed from the term 'retrenchment' as defined under Section 2(oo) which in unequivocal terms clearly postulates that termination of the service of a workman for any reason whatsoever provided it does not fall in any of the exception clause of Section 2(oo), every termination is a retrenchment and the employer is under an obligation to comply with the twin conditions of Section 25F of the Act 1947 before the retrenchment is given effect to obviously in reference to such termination where the workman has served for more than 240 days in the preceding 12 months from the alleged date of termination given effect to as defined under Section 25B of the Act.*

**If termination of service by the employer to save skin from their unlawful acts, opposed to status and public policy: -**

55. Though this tribunal is not kept into a state of things by the management to know and peruse the terms of the contract between the 'contractor' and 'management' due to which 'pleadings' and 'statement in evidence of the management' that, workman concerned had been an employee of the contractor only working under his control and supervision find no support from facts to the contrary proved by the workman remained a bald statement only. The admission of management to the effect that the concerned post remained vacant for approximately 10 years, regular employee was not recruited against that post in the division whereas the other division of the management has such regular appointment, the contract labour after the year 2002 prohibited on 15 posts including helper, plumber, etc., then also employing and continuing the workman as contractual labour establishes the intention of management malicious to continue with the services of workman concerned year to year. Established principal of law relating to contracts is that parties to contracts are to be allowed to regulate their rights and liabilities themselves. However, the law in some cases over rights the will of the individuals making ineffective some intention under the contract which are opposed to statuary policy the tribunal will not to extend its aid

to a party who based his cause of action or ground of defense on an immoral or illegal act. The Industrial Dispute Act and the Standing Orders Act both prohibit to keep a workman in temporary services for time infinite if he has successfully worked for a considerable length of time provided under the Industrial Dispute Act 240 days in a year (preceding 12 months).

56. Section 2 (ra) of the Industrial Dispute Act defines 'Unfair Labour Practice' means any of the practices specified in the 5th schedule of the Act. In 5th schedule there is item no. 10 which declares unlawful the practice to employ workman as "*badlis",* casuals or temporaries and to continue them as such for years, with the object of depriving them of the status and privileges of permanent workmen. Moreover, item no. 5 in the same schedule makes the practice unlawful to discharge or dismiss workmen not in good faith, but in the colourable exercise of the employer's rights. In the present case the management has repeated pleading and statement in evidence also that the workman was contractual labour and his services were terminated by the contractor to whom management had no right to compel to keep particular workman to supply but this statement and pleading of the management is not proved whereas, the workman has successfully pleaded and proved in evidence also that he was used to be employed continuously irrespective of the change of contractors. Therefore, action of the management if it be impeachable on the ground of dishonesty, or as being opposed to public policy, if it be forbidden by law the tribunal would not be just to allow itself to be made the instrument of enforcing obligations alleged to arise out of a contract for transaction which is illegal.

57. The management has not stated in its pleading or submitted any policy framed after the notification of prohibition u/s 10 of the CLRA Act. For the purposes of regularizing the services of such employees either *"badlis"* casual temporary or contract labours. Management failed to explain situations under which despite of issuance of notice of prohibition of contract labour under Section 10 of the CLRA Act, the contract labour was kept continued. They failed to rebut workman's pleading and evidence as to the continuous utilization of his services in the premises of management CPWD for the considerable long period of more than 10 years. The only provision in law upon which workman has based his claim for regularization is under Section 25 B of the Act, which defines the 'continuous

service'. The aforesaid provision of the Act entitles the workman to claim regularization being a workman who worked under the direct supervision and control of the management CPWD for continuous period as specified in Sub Section 1 & Sub Section 2 of Section 25B. But, the management wrongfully stopped him to work thereafter. Therefore, in the present case of a workman who worked under the supervision of the management Section 25 B read with section 25 F shall be applicable. Non observance of both the provision shall be treated malafide.

58. The scheme of the ID Act 1947, thus contemplates that the workman though employed as a daily wager or in any other capacity, if has worked for more than 240 days in the preceding 12 months for the alleged date of termination and if the employer wants to terminate the services of such workman he may do so after due compliance of the section 25F of the Act. In the present matter there is no pleading and evidence of such compliance of twin clause (a) & (b) of section 25F therefore, termination of the workman is held illegal and declared *void ab initio*.

59. In the facts and circumstances established and proved by evidences available on record the tribunal tends to declare that termination of services of the concerned workman Sh. Pradeep Kumar not only illegal and *void ab initio* but malafide also because same was done by the management in utter violation and non-observance of section 2 (ra) section 25 B read with section 25 F of the I.D Act, so as to defy their obligation accrued from the continuous service of the workman.

**The consequence of non-observance of the provision of section 25 F. Whether reinstatement in service?**

60. On the relief of reinstatement with or without back wages the tribunal has to consider, consequence of it's finding as to the termination of service illegal, malafide and *void ab initio*, whether the workman should be treated as continued in services of the management. The Apex Court in three judge bench decision in **Hindustan Tin Works Pvt. Ltd. V. Employees of M/s Hindustan Tin Works Pvt. Ltd. and Ors. (1979) 2 SCC 80,** where retrenchment of employees was declared illegal, held in para 9 -

"*It is no more open to debate that in the field of industrial jurisprudence a declaration can be given that the termination of service is bad and the workman continues to be in service. The spectre of common law doctrine that contract of personal service cannot be specifically enforced or the doctrine of mitigation of damages does not haunt in this branch of law. The relief of reinstatement with continuity of service can be granted where termination of service is found to be invalid. It would mean that the employer has taken away illegally the right to work of the workman contrary to the relevant law or in breach of contract and simultaneously deprived the workman of his earnings. If thus the employer is found to be in the wrong as a result of which the workman is directed to be reinstated, the employer could not shirk his responsibility of paying the wages which the workman has been deprived of by the illegal or invalid action of the employer. Speaking realistically, where termination of service is questioned as invalid or illegal and the workman has to go through the gamut of litigation, his capacity to sustain himself throughout the protracted litigation is itself such an awesome factor that he may not survive to see the day when relief is granted. More so in our system where the law's proverbial delay has become stupefying. If after such a protracted time and energy consuming litigation during which period the workman just sustains himself, ultimately he is to be told that though he will be reinstated, he will be denied the back wages which would be due to him, the workman would be subjected to a sort of penalty for no fault of his and it is wholly undeserved. Ordinarily, therefore, a workman whose service has been illegally terminated would be entitled to full back wages except to the extent he was gainfully employed during the enforced idleness. That is the normal rule. Any other view would be a premium on the unwarranted litigative activity of the employer. If the employer terminates the service illegally and the termination is motivated as in this case viz. to resist the workmen's demand for revision of wages, the termination may well amount to unfair labour practice. In such circumstances reinstatement being the normal rule, it should be followed with full back wages. Articles 41 and 43 of the Constitution would assist us in reaching a just conclusion in this respect. By a suitable legislation, to wit, the U.P. Industrial Disputes Act, 1947, the State has endeavored to secure work to the workmen. In breach of the statutory obligation the services were terminated and the termination is found to be invalid; the workmen though willing to do the assigned work and earn their livelihood, were kept away therefrom. On top of it they were forced to litigation up to the Apex Court now they are being told that something less than full back wages should be awarded to them. If the services were not terminated the workmen ordinarily would have continued to work and would have earned their wages. When it was held that the termination of services was neither proper nor justified, it would not only show that the workmen were always willing to serve but if they rendered service they would legitimately be entitled to the wages for the same. If the workmen were always ready to work but they were kept away therefrom on account of an invalid act of the employer, there is no*

*justification for not awarding them full back wages which were very legitimately due to them. A Division Bench of the Gujarat High Court in Dhari Gram Panchayat v. SafaiKamdar Mandal [(1971) 1 LLJ 508 (Guj)] and a Division Bench of the Allahabad High Court in Postal Seals Industrial Cooperative Society Ltd. v. Labour Court II, Lucknow [(1971) 1 LLJ 327 (All)] have taken this view and we are of the opinion that the view taken therein is correct"*

61. In his cross-examination workman replying the quarry of the Learned Authorized Representatives of the management has unequivocally asserted that "I am unemployed now. This part of the cross examination is carved out from the cross-examination done by the management on 25.09.2017. Exhibit WW1/4 proved by the workman in his evidence on affidavit filed as examination in chief before the tribunal. The said letter reveals that after his employment with the management CPWD, in A.R.C. Sarswa Service Centre as contract labour right from 1.4.1996 discharged his uninterrupted and continuous services till 24.09.2014 but on 25.09.2014 he was abruptly stopped from working there. Exhibit WW1/4 aforesaid is an application addressed to the Executive Engineer Dehradun Central Circle-2 by workman praying to reinstate him in services w.e.f. the date of termination of services. Notice of the Industrial Dispute issued by Secretary of this Central Government Industrial Tribunal No.1 New Delhi issued by the Executive Engineer Dehradun Central Division and the Executive Engineer Mussorrie Central Division with regard to present industrial dispute under section 2A filed by Sh. Pradeep Kumar claimant/workman concerned on 01.12.2015. Though there is no provision in the Industrial Dispute Act and Central Rules made there under prescribing limitation for the claim of reinstatement of services setting aside termination of service of the workman but the tribunal has to consider the effect of delayed raising of dispute, over the claim of reinstatement and regularization. <u>There is no explanation justifying in such passes of time the workman in his evidence has not stated anything why he had not raised his claim regularization at any point of time after the notification u/s 31/7/2002 of u/s 10 and prior to his illegal termination from service.</u>

62. In **Deepali Gundu Surwase V. Kranti Junior Adhyapak Mahavidyalaya & Ors. (2013) 10 SCC 324** Hon'ble Apex Court highlighted the need to adopt a restitutionary approach, the court has to consider whether to

reinstate an employee and if so, the extent to which back wages is to be ordered. Para 22 judgment in the aforesaid case is being reproduced here under-

*Para 22. The very idea of restoring an employee to the position which he held dismissal or removal or termination of service implies that the employee will be put in the same position in which he would have been but for the illegal action taken by the employer. The injury suffered by a person, who is dismissed or removed or is otherwise terminated from service cannot easily be measured in terms of money. With the passing of an order which has the effect of severing the employer-employee relationship, the latter's source of income gets dried up. Not only the employee concerned, but his entire family suffers grave adversities. They are deprived of the source of sustenance. The children are deprived of nutritious food and all opportunities of education and advancement in life. At times, the family has to borrow from the relatives and other acquaintance to avoid starvation. These sufferings continue till the competent adjudicatory forum decides on the legality of the action taken by the employer. The reinstatement of such an employee, which is preceded by a finding of the competent judicial/quasi-judicial body or court that the action taken by the employer is ultra vires the relevant statutory provisions or the principles of natural justice, entitles the employee to claim full back wages. If the employer wants to deny back wages to the employee or contest his entitlement to get consequential benefits, then it is for him/her to specifically plead and prove that during the intervening period the employee was gainfully employed and was getting the same emoluments. The denial of back wages to an employee, who has suffered due to an illegal act of the employer would amount to indirectly punishing the employee concerned and rewarding the employer by relieving him of the obligation to pay back wages including the emoluments.*

63. When termination of daily wager workman is done by the management and the termination is found illegal because of procedural defect, namely, in violation of Section 25 F of the Industrial Tribunal Act, Hon'ble Apex Court has consistently taken the view that in such cases reinstatement with back wages is not automatic and instead the workman should be given monetary compensation. The aforesaid view expressed in Para 33 & 34 by the Apex Court in the case of **Bharat Sanchar Nigam Ltd. V. Bhurmal, (2014) 7 SCC 177**

*Para 33 It is clear from the reading of the aforesaid judgments that the ordinary principle of grant of reinstatement with full back wages, when the termination is found to be illegal is not applied mechanically in all cases. While that may be a position where services of a regular/permanent workman are terminated illegally and/or mala fide and/or by way of victimisation, unfair labour practice, etc. However, when it comes to the case of*

*termination of a daily-wage worker and where the termination is found illegal because of a procedural defect, namely, in violation of Section 25-F of the Industrial Disputes Act, this Court is consistent in taking the view that in such cases reinstatement with back wages is not automatic and instead the workman should be given monetary compensation which will meet the ends of justice. Rationale for shifting in this direction is obvious.*

*Para 34 the reason for denying the relief of reinstatement in such cases are obvious. It is trite law that when the termination is found to be illegal because of non-payment of retrenchment compensation and notice pay as mandatorily required under Section 25-F of the Industrial Disputes Act, even after reinstatement, it is always open to the management to terminate the services of that employee by paying him the retrenchment compensation. Since such a workman was working on daily-wage basis and even after he is reinstated, he has no right to seek regularization [see State of Karnataka v. Umadevi (3) [(2006) 4 SCC 1: 2006 SCC (L&S) 753]]. Thus when he cannot claim regularization and he has no right to continue even as a daily-wage worker, no useful purpose is going to be served in reinstating such a workman and he can be given monetary compensation by the Court itself in as much as if he is terminated again after reinstatement compensation and notice pay. In such a situation, giving the relief of reinstatement, that too after a long gap, would not serve any purpose.*

64. The contract labour whose services were terminated without observance of section 25F of the Act may be monetarily compensated rather to reinstate in services. The reason to deny the relief of reinstatement in such cases are obvious. It is well established that the opposite party management cannot be absolved of the primary responsibility in its litigated proclivity the workman has waited for approximately 9 years in getting his claim adjudicated the denial of back wages may result in punching him although the delay may be attributable to the judicial process. The litigation cost may also be given in the circumstances of the case where management made all possible twists and hassles in expeditious disposal of the claim like non-production of documents which were best evidence and in possession of the management itself.

65. In the above context, it also has been noticed from facts and evidences on record that that workman has not cited any instance where termination of his service as daily wager turned illegal because the same was resorted to in violation of principle of last come first go viz, while retrenching him daily wager junior to him were retained. It is also not pleaded and proved that person junior to him were regularized under some policy but he was terminated. It is noticed that claim of

regularization is not pleaded and proved by the concerned workman raised at any point of time at any forum of law during his continuation in service.

66. Applying the above principles as laid down by the Apex Court it is kept in mind that the claimant was working as a daily wager. Moreover, the termination took place more than 10 years ago. However, the fact remains that no direct evidence for working 10 years has been furnished and most of his documents which he could place by his efforts relatable to few years only. For all these reasons the tribunal is of the view that ends of justice would be met by granting compensation in monetary terms in lieu of "reinstatement".

67. (a) The tribunal declares termination (retrenchment) of claimant Sh. Pradeep Kumar, daily wager from his services by the management on 25.09.2014 illegal for non-observance of section 25F of the ID Act, 1947 malafide and *void ab initio.*

(b) The tribunal further declares the claimant entitled to be paid compensation by the management in terms of money in lieu of his reinstatement in services of the management to the tune of Rs.10,00,000/- (Ten Lakhs only). The management of CPWD (Opposite parties no. 1 & 2) are jointly and severally directed to pay pf the amount of compensation ordered above within 30 days from the date of order, failing which interest @ 6% per annum shall be leviable till the date of actual payment to the claimant/workman.

(c) A litigation cost of Rs. 2 Lakhs (Two lakhs only) shall be payable to the claimant/workman by the opposite parties 1 & 2 jointly and severally within 30 days from the date of award in failure to pay off same shall be leviable with interest @ 6% per annum till the date of actual payment.

(d) The opposite parties 1 & 2 are further held responsible for paying penal cost amounting to Rs. 2 Lakhs (Two lakhs only) on account of the claimant's suffering mental harassment and trauma by reason of abrupt loss of livelihood through illegal retrenchment. The above cost shall also be payable along with the amount of compensation and litigation cost as ordered above within aforesaid period of 30 days, in failure to pay within prescribed time interest shall be leviable at the rate of 6 % per annum till the date of actual payment.

(e) Office is directed to send the award in the manner as prescribed under section 17 of the I.D Act, 1947 to the appropriate government for implementation and enforcement of the Award.

**Justice Vikas Kunvar Srivastava**
Retired Judge, Allahabad High Court
Presiding Officer

Ashish 25.09.2024