

THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL,
JABALPUR [M.P.]

NO. CGIT/LC/R/68/2020

Present: P.K.Srivastava

H.J.S..(Retd)

**Shri Zuber Malik,
 B.B.P.S., N.T.P.C., Selda
 Khargone (M.P.)- 451113**

Workman

V/s

**1. The Chief General Manager,
 N.T.P.C.,
 Kharone, Madhya Pradesh-451113**

**2. The Principal,
 Bal Bharti Public School, N.T.P.C.,
 Kharone, Madhya Pradesh-451113**

Management

(JUDGMENT)

(Passed on this 14th day of July, 2026)

As per letter dated **15/10/2020** by the Government of India, Ministry of Labour, New Delhi, the reference is made to this Tribunal under Section-10 of Industrial Disputes Act, 1947 (in short the 'Act') as per Notification **No. J-1(1-42)/2020-IR** dt. **15/10/2020**. The dispute under reference relates to:

- 1. "Whether Mr. Zuber Malik, Assistant Teacher, working with Bal Bharti Public School, N.T.P.C., Kharone is an employee u/s 2(s) of the I.D. Act, 1947?**
- 2. Whether Bal Bharti Public School is employer of Mr. Zuber Malik or the NTPC, Khargone also falls within the definition of employer u/s 2(g) of the I.D. Act, 1947?**

3. Whether the action of the management of Principal, Bal Bharti Public School, N.T.P.C., Kharone in terminating the services of Mr. Zuber Malik, (Assistant Teacher/Under Probation) w.e.f. 23 March, 2020 is just and legal?

If not, what relief Mr. Malik is entitled to and from which date?"

After registering the case on the basis of reference, notices were issued to the parties. They appeared and filed their respective statement of claim in defense.

Case of the Workman, taken by him in his statement of claim, is mainly that, he was first appointed with the management on 12.04.2018 as Assistant Teacher on the pay scale of Rs. 35,400/- per month and was kept on probation for one year under various conditions mentioned in his offer of appointment, his probation was extended for another one year by the school management. During the extended period of extension, he was issued letter dated 27.02.2020 stating that he had not completed his course. He replied the said letter vide his reply dated 28.02.2020 stating that he was given only one class daily for a week which was not enough to complete the whole syllabus. Regarding another charge that he did not submit his diary, stated further that due to his bad health, he could not submit the diary in time. Annual examinations of the school were to be held from 02.03.2020, the timetable was continuously kept changing every week but the management ignored his reply, terminated his probation vide its order dated 23.03.2020. In spite of the fact that it was COVID period and there was an advisory from the Ministry of Labour & Employment to the employers to avoid termination of their employees. According to the workman, this action of the management was unjust, illegal and arbitrary. He raised a dispute in this respect. After violation of failure of conciliation, the dispute was referred to this Tribunal for adjudication. The workman has thus prayed that set aside his termination order dated 23.03.2020, he be reinstated with all back wages and benefits.

Case of the Management School, as taken in by them in their written submission of defense is that *firstly*, they are not an 'Industry' as defined under the Act. *Secondly*, the workman, who is teacher, is not a 'Workman' as defined u/s 2(s) of the Act, hence the reference itself is bad in law and the dispute is not cognizable by this Tribunal. It

is further the case of the management that the workman was appointed in the year 2018 as Assistant Teacher, his probation was for one year, his performance during the probation period was not up to the mark, hence it was extended for another one year. During the two years of probation period, he took as many as 21 days leave including 7 days leave without pay in 2018 and 50 days leave including 32 days leave without pay in 2019 as well 21 days leave from January to March, 2020 including 19 days leave without pay. Hence, his total absence from work/leave was 92 days in two years of his probation. He could not complete his course and could not submit his diary for which he was issued notice and his reply was found not sufficient hence, his probation was terminated. According to the management, the reference needs to be answered against the workman.

No rejoinder has been filed from the side of workman.

In evidence, the workman has filed his affidavit as his Examination-in-chief, he has filed and proved his appointment order, Extension of probation letter dated 28.03.2019, Notice dated 27.02.2020, Termination order dated 23.03.2020 and Letter of Ministry of Labour & Employment advising the employers not to disengage employees during the COVID period which are marked as Ex-W/1 to Ex-W/4. He has admitted two documents i.e. Notice dated 03.08.2018 issued by management and Notice dated 25.09.2018 issued by management which are related to improper set of question paper and late attendance in the school, marked as Ex-M/1 and Ex-M/2. Management has filed affidavit of its witness as his Examination-in-chief, it has been cross-examined by workman side.

I have heard argument of Learned Counsel for the Workman, Mr. Sharad Punj, Learned Counsel for Management School, Ms. Divya Malviya, and Learned Counsel for Management of N.T.P.C., Mr. R.C. Shrivastava. The workman side has filed written submission also which are part of record. I have gone through the written submission and record as well.

On perusal of record, in light of rival submissions, following issues come up for determination:-

Issue No. 1:-

Whether Mr. Zuber Malik, Assistant Teacher working with Bal Bharti Public School, NTPC Khargone, an workman u/s 2(s) of the Industrial Disputes Act, 1947?

Main submission from the side of management is that being a teacher, the workman is not a workman as defined u/s 2(s) of the Act. Section 2(s) of the Act required to be reproduced which is as follows:-

2(s)“workman” means any person (including an apprentice) 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, and for the purposes of any proceeding under this Act in relation to an industrial dispute, 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 or 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.;***

Learned Counsel for management school has referred to judgment of ***Hon’ble Supreme Court in the case, Miss A. Sundarambal v. Government of Goa, Daman & Diu, (1988) 4 SCC 42***, in this case Hon’ble Apex Court has held that keeping in view the duty performed by the teachers, they cannot be held to be a workman u/s 2(s) of the act. This judgment has been relied upon by the ***Hon’ble Apex Court in its other judgment in the case of Raj Kumar Vs. Director of Education & Ors, Civil Appeal No. 1020/2011***. Hence, in light of above proposition of law laid down by Hon’ble Supreme Court, **applicant in this case is held not to be a workman as defined u/s 2(s) of the Act.**

Issue No. 1 is answered accordingly.

Issue No -2

Whether the Bal Bharti Public School is employer of the applicant workman or N.T.P.C.?

From the evidence on record, particularly, the appointment order, show cause notice and termination order, it is established that the employer of the applicant workman in this case is Bal Bharti Public School and not N.T.P.C., Khargone.

Issue No.-2 stands answered accordingly.

Issue No.-3

Whether the action of management of Principal, Bal Bharti Public School, N.T.P.C., Khargone in terminating the services of Mr. Zuber Malik, Assistant Teacher in probation w.e.f. 23.03.2020 is just and legal?

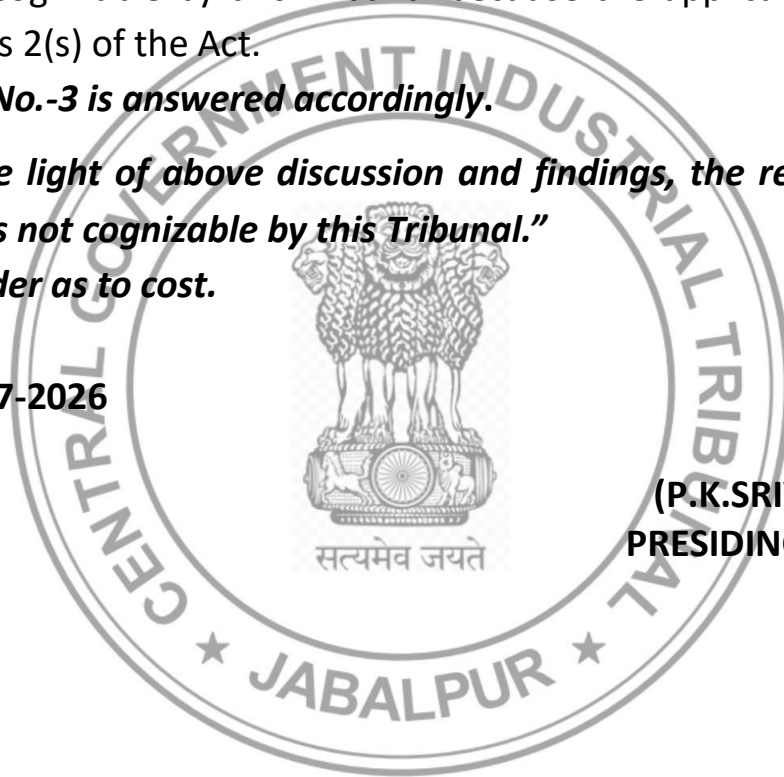
In light of above discussion and findings, this issue and reference is held not cognizable by this Tribunal because the applicant is not a workman u/s 2(s) of the Act.

Issue No.-3 is answered accordingly.

“In the light of above discussion and findings, the reference is answered as not cognizable by this Tribunal.”

No order as to cost.

DATE:- 14-07-2026



**(P.K.SRIVASTAVA)
PRESIDING OFFICER**