



भारत सरकार / Government of India

सरकारी राजपत्र OFFICIAL GAZETTE

संघ प्रदेश दादरा एवं नगर हवेली तथा दमण एवं दीव प्रशासन
U.T. ADMINISTRATION OF DADRA AND NAGAR HAVELI AND
DAMAN AND DIU

श्रेणी - २
SERIES - II

प्राधिकरण द्वारा प्रकाशित / PUBLISHED BY AUTHORITY

Daman **29th January, 2024** **9 Magha, 1945 (Saka)** **No. : 03**

प्रशासन / Administration of

संघ प्रदेश दादरा एवं नगर हवेली और दमण एवं दीव /

UT of Dadra & Nagar Haveli and Daman & Diu

समाहर्तालय, पहली मंजिल, जिला सचिवालय, सिलवासा /

Collectorate, First Floor, District Secretariat, Silvassa

No. ADM/LAW/264/Pond Deepening/2023/88

Date: 12/01/2024

NOTIFICATION

In pursuance to the Notification No. ADM/LAW/Pond Deepening/DNH/191/ 2021/822 Dated 06/05/2022, issued by the Joint Secretary (Mines), UT of DNH & DD, the following Survey Numbers located in the Jurisdiction of Dadra & Nagar Haveli District are hereby notified for the purpose of carrying out the activities of desilting and deepening of ponds/ lakes and water bodies and for extraction of Murum, Kankar, Sand and Stone for the said purpose.

Sr. No.	Name of Villages	Survey Nos.
1	Khanvel	48/1
2	Pati	86 (New 167)
3	Khadoli	108/1p2

The rate of Royalty has been declared as "NIL." for the purpose of carrying out the work of desilting/ digging and deepening of ponds/ lakes and water bodies and the extraction of Murum, Kankar, Sand and Stone for the purpose of being used in Government Works, Public Works shall be as per the provision of Rule 56 of the Dadra & Nagar Haveli Minor Mineral Rules, 2013.

The above provisions shall be subject to the following conditions :

1. Prior permission/consent for the deepening the pond / lake should be taken from the Collector, Dadra & Nagar Haveli District before the deepening and ensure, that no damage to be caused to clay wall/other structure works/ structure, of pond, as well as ensure that deepening be done so as to maximize and efficient use of storage of water.
2. During the excavation, if other minerals except plain soil/slit/murum are found, the Collector of Dadra & Nagar Haveli District concerned should be informed and to move minerals. Transport or storage of such minerals will be considered unauthorized.
3. Soil, Murum received due to deepening of ponds/ reservoirs cannot be sold and to be used as per provision only.
4. If any of the conditions of the Permit are violated, strict action as per the Rules shall be taken.
5. The concerned Mamlatdar are directed to demarcate exact area in which deepening other activities may be carried out.

Sd/–
(Priyank Kishore)
Collector, DNH

संघ प्रदेश दादरा एवं नगर हवेली तथा दमण एवं दीव प्रशासन,
U.T. of Administration of Dadra & Nagar Haveli and Daman & Diu,
श्रम एवं रोजगार, विभाग, दमण
Department of the Labour & Employment, Daman
दूसरी मंजिल, उद्योग भवन, भेंसलोर, नानी दमण
2nd Floor, Udyog Bhavan, Bhenslore, Nani Daman

No. LE/LI/DMN/Fact-4(7)/2015/2023/698

Date: 18.01.2024

Subject: Publication of Award in IDR in the Official Gazette.

With reference to the above cited subject, the Award dated 20.07.2023 issued by the Hon'ble Chairman, Industrial Tribunal, Daman in IDR No. 07/2015 in the matter of K. G. Sadanand V/s. M/s. Sakshi Agency is here by published in the Official Gazette of this UT Administration of Dadra & Nagar Haveli and Daman & Diu for general information.

Sd/–
(Priyanshu Singh)
Director-cum-Deputy Secretary (Labour)
DNH & DD

UTDD010009962015

Ref.(IDA) No.07/2015 (A)



Filed on : 06.11.2015
Decided on : 20.07.2023
Period : Y M D
07 11 14

Exhibit No : 3/C**BEFORE THE INDUSTRIAL TRIBUNAL, DAMAN****(Presided over by Shridhar M. Bhosale)****Reference (IDA) No. 07 of 2015**

K.G. Sadanand Employee of
M/s. Sakshi Agency
Srv. No. 376/2,
Zari Causeway Road,
Opp. Modern Indl. Estate,
Kachigam, Nani Daman

.... Party No.2

V/s.

The Director/ Manager
M/s. Sakshi Agency
Srv. No. 376/2,
Zari Causeway Road,
Opp. Modern Indl. Estate,
Kachigam, Nani Daman

.... Part y No.1

REFERENCE UNDER THE INDUSTRIAL DISPUTES ACT, 1947**Appearances:** None for the party No.1.

None for the party No.2

A W A R D

(Passed on 20/07/2023)

- 1) This reference is received from Dy. Secretary (Lab & Emp.), Daman vide his order dated 23/10/2015 under Section 10 (1) (d) of Industrial Dispute Act (here-in-after referred to as IT Act').
- 2) After receipt of the reference, notices were issued to both the parties. Thus, no one appeared. Whereas first party despite of service of notice not appeared. The second party is also absent since last number of dates. Thus, the second party failed to file statement of claim to raise a claim and substantiate his contention in support of reference. Therefore, for want of statement of claim the reference has to be answer in the negative. Accordingly, I pass following order.

ORDER

- 1) The reference is answered in the negative.
- 2) The copy of the award be sent to the Dy. Secretary (Lab & Emp.), Daman for publication.

Place: Daman
Date: 20/07/2023

Sd/–
[Shridhar M. Bhosale]
Chairman, Industrial Tribunal,
Daman.

संघ प्रदेश दादरा एवं नगर हवेली तथा दमण एवं दीव प्रशासन,
U.T. of Administration of Dadra & Nagar Haveli and Daman & Diu,
श्रम एवं रोजगार, विभाग, दमण
Department of the Labour & Employment, Daman
दूसरी मंजिल, उद्योग भवन, भेंसलोर, नानी दमण
2nd Floor, Udyog Bhavan, Bhenslore, Nani Daman

No. LE/LI/Daman/Fct. 141/2017/2023/699

Date: 18.01.2024

Subject: Publication of Award in IDR in the Official Gazette.

With reference to the above cited subject, the Award dated 14.07.2023 issued by the Hon'ble Chairman, Industrial Tribunal, Daman in IDR No. 11/2018 in the matter of Amir Chaudhary V/s. M/s. Sun Security Agency is here by published in the Official Gazette of this UT Administration of Dadra & Nagar Haveli and Daman & Diu for general information.

Sd/–
(Priyanshu Singh)
Director-cum-Deputy Secretary (Labour)
DNH & DD

UTDD010005802018



Filed on : 11.07.2015
Decided on : 14.07.2023
Period : Y M D
05 00 03

Exhibit No : 2/C

BEFORE THE INDUSTRIAL TRIBUNAL, DAMAN

(Presided over by Shridhar M. Bhosale)

Reference (IDA) No. 11 of 2018

Amir Chaudhary,
Bharatbhai Ki Chawl,
Room No.18,
Near Atitihi Bar,
Dabhel, Nani Daman

.... Party No.2

V/s.

The Director/ Manager,
M/s. Sun Security Agency,
279, Amidhara Complex,
Nr. CNG Petrol Pump, N.H.No.8
Char Rasta, GIDC, Vapi,

.... Party No.1

REFERENCE UNDER THE INDUSTRIAL DISPUTES ACT, 1947

Appearances: None for the party No.1.

None for the party No.2

A W A R D

(Passed on 14/07/2023)

2) This reference is received from Labour Commissioner, Daman vide his order dated 06/07/2018 under Section 10 (1) (d) of Industrial Dispute Act (here-in-after referred to as 'IT Act').

2) After receipt of the reference, notices were issued to both the parties. Thus, no one appeared. Whereas first party despite of service of notice not appeared. The second party is also absent since last number of dates. Thus, the second party failed to file statement of claim to raise a claim and substantiate his contention in support of reference. Therefore, for want of statement of claim the reference has to be answer in the negative. Accordingly, I pass following order.

O R D E R

1) The reference is answered in the negative.

2) The copy of the award be sent to the Labour Commissioner, Daman for publication.

Place: Daman
Date: 14/07/2023

Sd/–
[Shridhar M. Bhosale]
Chairman, Industrial Tribunal,
Daman.

संघ प्रदेश दादरा एवं नगर हवेली तथा दमण एवं दीव प्रशासन,
U.T. of Administration of Dadra & Nagar Haveli and Daman & Diu,
श्रम एवं रोजगार, विभाग, दमण
Department of the Labour & Employment, Daman
दूसरी मंजिल, उद्योग भवन, भेंसलोर, नानी दमण
2nd Floor, Udyog Bhavan, Bhenslore, Nani Daman

No. LE/LI/DMN/Fact-4 (37)/2015/2023/700

Date: 18/01/2024

Subject: Publication of Award in IDR in the Official Gazette.

With reference to the above cited subject, the Award dated 12.10.2023 issued by the Hon'ble Chairman, Industrial Tribunal, Daman in IDR No. 01/2018 in the matter of Rakesh Pardhi V/s. M/s. Konark Herbal & Healthcare is here by published in the Official Gazette of this UT Administration of Dadra & Nagar Haveli and Daman & Diu for general information.

Sd/-
(Priyanshu Singh)
Director-cum-Deputy Secretary (Labour)
DNH & DD

UTDD010001272018



Filed on :
12.02.2018
Decided on : 12.10.2023
Period : Y M D
05 08 00

BEFORE THE CHAIRMAN, INDUSTRIAL TRIBUNAL, DAMAN,

(Presided over by Shridhar M. Bhosale)

Reference (IDA) No. 01 of 2018

Exh. No.40

Rakesh Pardhi,
Age: 51 yrs.,
R/o. Gaikwad Mill Chawl,
Room No.6, Billimora,
District. Gujarat

..... Second Party.

V/s.

M/s. Konark Herbal & Health Care,
Plot No.481/3B,
Near Dabhel Check Post,
Dabhel, Nani Daman

..... First Party.

Appearances:

Adv. Shri. Rishipal Singh for second party.

Shri. P. K. Jadia, Representative for the first party.

A W A R D

(Passed on 12/10/2023)

1. This reference was forwarded by Labour Commissioner under clause (d) of Sub-Sec. (1) of Sec.10 of Industrial Dispute Act (in short ID Act), in terms whether transfer of servant of second party is justified. After receipt of reference the notices were issued to both parties. The second party workman appeared and filed statement of claim Ex.6.

2. In short, the second party workman is an office boy and was doing his duties peacefully. However, he was served a letter dtd. 27.08.2015 written in English alleging that he has misbehaved very rudely with his supervisor in spite of numerous verbal warning and the management has a right to terminate employment without even serving notice period. Thereafter, again he was served a letter dtd. 07.09.2015 in English language alleging that he is not doing his duties as per his superiors directions, performing his work carelessly and warned to terminate his service without notice period. Then, he was served internal transfer letter dtd. 15.09.2015. As per transfer letter, he was transferred from first party company to some company by name Utkal Fans Pvt. Ltd. However, the address of the said company was not mentioned. Therefore, he by letter dtd. 05.10.2015 he requested to transfer to other company. Then, by letter dtd. 07.10.2015 first party informed to second party to report next day in the transferred company, otherwise disciplinary action including termination from employment with immediate effect will be taken. Then on 13.10.2015 he was served with termination letter. Then the second party approached to the Labour Commissioner, Daman raising his dispute and the conciliation was failed. Then the reference is forwarded to this tribunal.

3. It is contended that the said termination is illegal and amount to unfair labour practice as per the item No.7 of the Fifth Schedule of ID Act. It is further contended that action of first party to mala fide terminate without conducting amounts to unfair labour practice as contemplated under item 5 (b) (f) of the Fifth Schedule of ID Act. On this count it is prayed to held his service continuous with back wages and order to initiate action under Sec. 25 U of ID Act.

4. The first party has filed reply Ex.13 and strongly resisted the claim. It is contended that the first party provides direct employment around 130 workmen and 5 number of Indirect beneficiaries. The first party has other units namely Konark Herbals & Health Care Pvt. Ltd. Khaara No.227/1 Moginand Talab, Near Khera Mandir, Nahan Road, Dist. Sirmour, Himachal Pradesh, Konark group has other factories as Konark Products. Further, one of the such group company is M/s. Utkal Fans Pvt. Ltd, at Bhoisar Maharashtra. The balance sheet of each company under income tax act are different but for operational purpose all group companies take support from each other and includes utilization of man power as per needs. It is contended that the reference which has been made by the appropriate Government, and the Labour Commissioner is by a subordinate officer to the Administrator. First party has denied all other contention raised in the statement of claim.

Ref.(IDA) No.01.2018 (A)

5. It is further contended that the second party was appointed on the establishment of first party on 01.10.2015 as office work. Due to administrative requirement, one of the Konark group company M/s.. Utkal Fans required one experience office boy from the first party company. Accordingly service of second party were transferred by order dtd. 12.09.2015. However, he did not comply the said order and remain absent in office. Therefore, by letter dtd. 13.09.2015 and 12.10.2015, for his absence without permission of superior officer his services came to be terminated. It is further contended that his pass conduct was also found blemish and was also considered. It is contended that second party was willing to take transfer but not at Bhoisar as he was willing to work at Shaligram. It is submitted that there are no any material shown by the second party that first party have any material against him for transfer. It is further contended that the question of termination has to be decided by the Labour Court and not by this Tribunal. Further, it is contended that in conciliation proceeding by letter to second party made claim of amount and in alternative to reinstate with back wages and he was ready to give away demand of reinstatement. On this count it is prayed to dismiss the reference.

6. Then my Ld. predecessor has framed the issues at Ex.35. My finding thereon, followed by reason, thereof are as under;

ISSUES**FINDINGS**

- | | |
|---|-----------------------------------|
| 1. Whether transfer of service of the applicant is justified? | Yes, but not entitled for relief. |
| If yes, what relief the applicant is entitled to? | |
| 2. What order and award ? | As per final order |

--: REASONS :-**AS TO ISSUE NO.1 :-**

7. To prove the claim, the second party filed affidavit in lieu of examination-in-chief and offer to cross-examine by other side. Whereas to rebut the claim, the first party filed affidavit of Hari Krishna Shukla, Commercial Head of first party.

8. Heard Ld. Adv. Shri. S.S. Modasia for the second party and Shri. Shukla representative for first party.

9. Ld. advocate for the second party has vehemently submitted that the second party was illegally transferred to another unit without conducting disciplinary inquiry or following principle of natural justice. He submitted that from the evidence it could be seen that the said termination was with mala fide intention to take action. He further submitted that even in the letter no address of the company was provided where he has been transferred with only intention that second party could not join the transferred place and management can take the action. He submitted that thereafter as desired he was illegally terminated. He submitted further that the request was made by making representative by second

party to transfer to another place as there was no facility of transport available to join duty at Boisar on right time from his residence at Daman.

10. The second party in support of his argument has placed reliance in the case of M/s. Kundan Sugar Mills V/s. Ziyauddin & Ors AIR 1960 SC 650 wherein it has been held that;

‘That apart from any statutory provision, the right of an employee and an employer are governed by the terms of contracts between them or by the terms necessarily implied therefrom; but in the absence of an express agreement between the employer and employees it cannot necessarily be implied that the employer has the right to transfer the employee to any of its concerns in any place, and that the employee has a duty to join the concern to which he may be transferred.’

11. Per contra, the representative for first party submitted that the transfer cannot be a subject matter under Sec.2A of ID Act. He submitted that this reference is not maintainable as it was by single workman. He referred Sec.2 (k) of the definition of 'industrial dispute' and by referring Sec.10 (1) (a) of ID Act vehemently submitted that the transfer of reference by individual workman is not tenable. He further submitted that the transfer is not with mala fide intention but only an administrative measure. Further, the said transfer is not stigmatic. He submitted that by his transfer there is no any change of nature of work of second party nor any change in his payment/wages. He submitted that the employees cannot claim to work at a particular place and merely because address was not mentioned, it would not have caused any prejudice to other side as subsequently the same was provided to him. He further by referring the provision of Industrial Employee Standing Order submitted that the first party company employ more than 100 workmen and therefore, there is implied contract to transfer the workmen. He submitted that the second party workmen cannot claim to transfer him to his convenience and deny to join the duty.

12. The representative for the first party in support of his argument has placed reliance in the case of the Bombay Union of Journalists and Ors. V/s. The Hindu, Bombay & Anr. AIR 1963 SC 318 and case of Rajneesh Khajuria V/s. Wockhardt Ltd. & Ors. AIR 2020 1973. He further placed reliance in a judgment dtd 05.07.2017 in Writ Petition No.29304/2017 in case of B.G. Arasaraju V/s. The Managing Director KPTCL & Ors. by Hon'ble High Court Karnataka, Bangalore.

13. First, I would deal with the objection raised by first party. Ld. representative for first party strongly contended that the reference is not tenable as it was by single a workman. He submitted that the said dispute would not fall within the scope of 'industrial dispute'. Sec. 2 (k) define 'industrial dispute' as, industrial dispute means any dispute or difference between employers and employees, 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 labor, or any person. Thus, it could be gathered from the definition of industrial dispute that it is between not a single

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workman and employer. However, Section 2A of ID Act further elaborate that the discharge, dismissal and otherwise termination of service of individual workman, any dispute or difference between that workman or his employer, connected with or arising out of such discharge, dismissal infringement or termination shall to be deemed to be industrial dispute notwithstanding that no other workman nor any union of workmen but the party to the dispute. Thus, it could be gathered that in respect of the question of discharge, dismissal or termination or difference between that workman and his employer connected with it or arising out of it, is also industrial dispute which can be referred under Sec. 10 of ID Act.

14. Sec.10 is about reference of dispute by the appropriate Government is of opinion that any industrial dispute exists or is apprehended. In the judgment of Bombay Union and Journalist Supra, the Hon'ble Apex Court has held that;

"The Hindu", Bombay, challenged the competence of the State Government to refer this dispute' on three grounds: (1) that there was no industrial establishment, of "The Hindu" in Bombay and, therefore, the Industrial Tribunal had no jurisdiction in the matter; (2) that Salivateeswaran was not a working journalist within the meaning of the Act and was not employed as such by "The Hindu", and there being no relationship of employer and employee between "The Hindu", and Salivateeswaran, the Industrial Tribunal had no jurisdiction to adjudicate upon the dispute and (3) that there was no dispute between the Working Journalists of "The Hindu", Bombay, on the one hand and the Management on the other and the dispute raised by Salivateeswaran was merely an individual dispute which was not supported by an appreciable number of employees of "The Hindu" Bombay. The Tribunal rejected the first and the second grounds but upheld the third, and holding that the dispute was merely an individual dispute between Salivateeswaran and "The Hindu", Bombay, which had not been supported by an appreciable number of employees of "The Hindu", Bombay, the Government of Bombay had no jurisdiction to refer the dispute to the Tribunal. The terms of reference by the Government of Bombay under s. 12(2) indicate that the dispute was primarily between "The Hindu" Bombay, and the appellant a single employee relating to his individual claim in which the other employees of "The Hindu", Bombay, were, not directly interested. In *Central Provinces Transport Services Ltd. V. Raghunath Gopal Patwardhan* (1956) S. C. R. 956, this Court after setting out the three possible views on the question whether a dispute by an individual workman may be regarded as an industrial dispute within the meaning of s.2(k) of the Industrial Disputes Act, 1947 observed. "The preponderance of judicial opinion is clearly in favour of the last of the three views, stated above (i. e. a dispute between an employer and a single employee cannot per se be an industrial dispute, but it may become one if it is taken up by the Union or a number of workmen and there is considerable reason behind it. Notwithstanding that the language of s.2(k) is wide

enough to cover a dispute between an employer and a single employee, the scheme of the Industrial Dispute Act does appear to contemplate that the machinery provided therein should be set in motion, to settle only disputes which involve the rights of workmen as a class and that a dispute touching the individual right, % of a workman was not intended to be the subject of an adjudication under the Act, when the same had not been taken up by the Union or a number of workmen. This view was reiterated in *The Newspapers Ltd. v. The State Industrial Tribunal. U. P., [1957] S. C. R. 75*. Therefore, the applicability of the industrial Disputes Act to an individual dispute as distinguished from a dispute involving a group of workmen is excluded, unless the workmen as a body or a considerable section of them make common cause with individual workman. The dispute, in the present case, being prima facie, an individual dispute, in order that it may become an industrial dispute it had to be established that it had been taken up by the Union of employees of "The Hindu", Bombay, or by an appreciable number of employees of "The Hindu", Bombay. Counsel for the appellant contended that the dispute was supported by the Bombay Union of Journalists of which Salivateeswaran was a member and that, in any event, it was supported by Venkateswaran and Tiwari, who were the only other employees in this establishment. He also contended that in any event the dispute having been taken up by the Indian Federation of Working Journalists after it was referred to the Tribunal, it had become an industrial dispute. By its constitution the Bombay Union of Journalists is a Union not of employees of one employer, but of all employees in the industry of journalism in Bombay. Support of the cause, by the Union, will not in our judgment convert the individual dispute of one of its members into an industrial dispute'. The dispute between "The Hindu", Bombay, and Salivateeswaran was in respect of alleged wrongful termination of employment; it could acquire the character of an industrial dispute only if it was proved that it was, before it was, referred, supported by the Union of the employees of "The Hindu", Bombay, or by an appreciable number of its employees. In *Workmen of Dimakuchi Tea Estate V. The Management of Dimakuchi Tea Estate (1)*. This Court held by a majority that the two tests of an industrial dispute as defined by sub-s. (k) of s.2 of the Industrial Disputes Act, 1947, must, therefore be-(1) the dispute must be a real dispute capable of being settled by relief given by one party to the other and (2) the person in respect of whom the dispute is raised must be one in whose employment, non-employment, terms of employment, or conditions of labour (as the case may be), the parties to the dispute have a direct or substantial interest, and this must depend on the facts and circumstances of each case. In that case, certain employees sought to raise a dispute about a person who was not a workman. In the present case members of the Union who were not workmen of the employer against whom the dispute was sought to be raised, seek by supporting the

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dispute to convert what is prima facie an individual dispute into an industrial dispute. The principle that the persons who seek to support the cause of a workman must themselves be directly and substantially interested in the dispute in our, view applies to this class of cases also: persons who are not employees of the the, same employer cannot be regarded as so interested, that by their support they may convert an individual dispute into an industrial dispute. The mere support to his cause by the Bombay Union of Journalists cannot therefore assist the claim of Salivateeswaran so as to convert it into an industrial dispute."

15. Thus, for industrial dispute to be considered it must be supported by union or group of worker where there is no trade union. Moreover, it could be seen from the statement of claim, the second party contended that the first party has committed unfair labour practice as specific under column 5 (a) (b) (f) and item no.7 of the Fifth Schedule of ID Act. The item no.5 and 7 of Fifth Schedule which has been referred by the second party to declare that first party has committed 'unfair labour practice' as defined under Sec.2 (ra) of ID Act is from the part I of Fifth Schedule. Part I of the Fifth Schedule is related to unfair labour practice on the part of the employer and trade union of employer and not deal with single employee. Therefore, at the very outset as the said reference was in respect of industrial dispute raised by individual workman and not by union or group of workman, it is not tenable under Sec.10 A of ID Act.

16. In the present case at hand, one of the contention that the termination is illegal and relief is also sought accordingly. In view of Sec.7A r/w.10 (1) (d) and Second Schedule, this tribunal, have power to decide the illegality of the termination of the employee by the employer, had it been the reference was referred for decision of legality of termination of the workman. First party is also not disputing that second party has been terminated by order dated 27.08.2015. Had it been the reference was made to this Court to decide the legality of the said termination which was in consequences to the act of transfer by the first party, this tribunal would have considered it as a consequence of alleged illegal or mala fide transfer. However, it is well settled law that this tribunal cannot go beyond the matter of reference though there is admitted fact of termination which has been challenged in this tribunal have unable to answer and decide the same as referred by reference dtd.26.05.2017. Though in view of forgoing discussion there would be no question to answer reference as it is not tenable by a single workman as parties have already adduced their evidence, it is proper to consider the same.

17. Second party workman in his affidavit in lieu of examination-in-chief has reiterated all the fact which has been averred by him in his statement of claim. Further, during his cross-examination it has been brought on record that during his tenor of ten years service prior to 2013 he had not made any complaint against the company before authority nor he was served with notice or warning or charge-sheet by the company. Further, he asserted that he has not made complaint against the manager at any time since joining till his transfer, and there was no any dispute between him and the company before

Ref.(IDA) No.01.2018 (A)

the transfer. Needless to state that the employee cannot claim the place of work as per his convenience and it is prerogative of the employer to transfer employee from one unit to another unit subject to agreement or law applicable to the party to dispute.

18. Whereas during the cross-examination of Hari Krishna Shukla, Commercial Head of the first party. He asserted that Utkal Fans Pvt. Ltd. is situated at Tarapur, Bhoisar. There is no much difference to travel from Vapi to Daman and Palghar to Bhoisar which is 3-4 k.m. from Bhoisar. Further, it could be seen that before transfer a notice was issued for breach of code of conduct on 27.08.2015 and 07.09.2015. Much has been harmed by representative of first party that it is an implied condition of service which provide right to the employer to transfer these employees.

19. Apart from any statutory provision, the rights of an employer and an employee are governed by the terms of contracts between them or by the terms necessarily implied therefrom. Admittedly, in the present case, there is no express agreement between second party and first party wherein the first party has right to transfer second party to any of his sister concern in any place and second party workman is bound to join duty. Moreover, there is no any such material has been brought on record which could disclose that second party was well aware at the time of joining of the service or before giving transfer order at any time that the first party is a group of Konark Herbals & Health Care Pvt. Ltd. First party in his written statement contended that Konark Pvt.Ltd. required one experience office boy of first party company and accordingly services of second party were transferred. However, except bare statement in written statement there is no any material to show that any such request was made by Utkal Fans Pvt. Ltd company to first party. Moreover there is also no material placed on record that before second party was transfered, there were transfer inter state between first party company and Utkal Fans Pvt. Ltd or to other sister concern.

20. By referring the Industrial Employment (Standing Order) Industrial Rule 1946, it has been submitted that first party has right to transfer workman according to efficiency of work of job of department to another or from one station to another or one establishment to another need from employee. At the cost of repetition, I would like to state that there is no any material to show that all the companies were control under one management and there is policy of internal transfer of employee. Moreover, the provision which he had referred provide further that workman is transfer from one job to another which is capable of doing, provided also involving, moving from one state to another state, such transfer shall be with the consent of the workman or where there is no specific provision to that effect in the letter of appointment, notice be given to such workman and reasonable time of joining in case of transfer from that place to another. Admittedly, the place where second party has been transfered is in the state of Maharashtra, and thus it is from one state to another state. Moreover, before transfer no any notice was given to second party but he was directly given a notice to join the service after one day. Further, the memo for breach of misconduct issued prior to it on 07.09.2015 and 27.08.2018 speaks in between the line and can be concluded that only on that count he has been transferred as there is no

Ref.(IDA) No.01.2018 (A)

material place on record that there was any request from Utkal Fans company from administrative side. Thus from the over all material it could be seen that transfer of second party is mala fide and not justifiable. The case of B.G. Arasaraju Supra on fact would not be helpful to the first party.

21. However as observed herein above the reference is not tenable this tribunal hands are tied to grant any relief to the second party. Accordingly, I pass following order.

ORDER

1. The transfer is not justified but for want of proper reference relief is not granted by this tribunal.
2. The copy of the award be sent to the Joint Secretary (Lab & Emp.), Daman for publication.

Place: Daman
Date: 12/10/2023

Sd/–
[Shridhar M. Bhosale]
Chairman,
Industrial Tribunal,
Daman.

संघ प्रदेश दादरा एवं नगर हवेली तथा दमण एवं दीव प्रशासन,
U.T. of Administration of Dadra & Nagar Haveli and Daman & Diu,
श्रम एवं रोजगार, विभाग, दमण
Department of the Labour & Employment, Daman
दूसरी मंजिल, उद्योग भवन, भेंसलोर, नानी दमण
2nd Floor, Udyog Bhavan, Bhenslore, Nani Daman

No. LE/LI/DMN/Fact-4(7)/2011/176/2023/701

Date: 18/01/2024

Subject: Publication of Award in IDR in the Official Gazette.

With reference to the above cited subject, the Award dated 14.12.2023 issued by the Hon'ble Chairman, Industrial Tribunal, Daman in IDR No. 09/2018 in the matter of Jay Prakash Yadav V/s. M/s. Supreme Embroidery (P) Ltd. is here by published in the Official Gazette of this UT Administration of Dadra & Nagar Haveli and Daman & Diu for general information.

Sd/–
(Priyanshu Singh)
Director-cum-Deputy Secretary (Labour)
DNH & DD

UTDD010005742018



Filed on : 01.06.2018
Decided on : 14.12.2023
Period : Y M D
05 02 24

BEFORE THE INDUSTRIAL TRIBUNAL, DAMAN

(Presided over by Shridhar M. Bhosale)

Reference (IDA) No. 09 of 2018

Exh. No. 2

Party No.2

Jay Prakash Yadav,
R/o. Amratbhai Ki Chawl, Room No.3,
Near Cricket Ground, Dabhel, Nani Daman

V/s.

Party No.1

The Director/Manager,
M/s. Supreme Embroidery (P) Ltd.,
Plot No.143, Amaliya Village, Dabhel,
Dabhel, Nani Daman

REFERENCE UNDER THE INDUSTRIAL DISPUTES ACT, 1947**Appearances:**

None for the party No.2.

None for the party No.1.

AWARD

(Passed on 14/12/2023)

- 1) This reference is received from Labour Commissioner, Daman vide his order dated 29/05/2018 under Section 10 (1) (d) of Industrial Dispute Act (here-in- after referred to as 'IT Act').
- 2) After receipt of the reference, notices were issued to both the parties. Thus, second has not appeared. Whereas first party despite of service of notice not appeared. The second party is also absent since last number of dates. Thus, the second party failed to file statement of claim to raise a claim and substantiate his contention in support of reference. Therefore, for want of statement of claim the reference has to be answer in the negative. Accordingly, I pass following order.

ORDER

- 1) The reference is answered in the negative.
- 2) The copy of the award be sent to the Labour Commissioner, Daman for publication.

Place: Daman
Date: 14/12/2023

Sd/–
[Shridhar M. Bhosale]
Chairman, Industrial Tribunal,
Daman.

U.T. of Administration of Dadra & Nagar Haveli and Daman & Diu,
संघ प्रदेश दादरा एवं नगर हवेली तथा दमण एवं दीव प्रशासन,
Department of the Labour & Employment, Daman
श्रम एवं रोजगार, विभाग, दमण
2nd Floor, Udyog Bhavan, Bhenslore, Nani Daman
दूसरी मंजिल, उद्योग भवन, भेंसलोर, नानी दमण

No. LE/LI/DMN/Fact-63/2023/702

Date: 18.01.2024

Subject: Publication of Award in IDR in the Official Gazette.

With reference to the above cited subject, the Award dated 19.10.2023 issued by the Hon'ble Chairman, Industrial Tribunal, Daman in IDR No. 01/2019 in the matter of Sitaram Singh V/s. M/s. Della Technica Office Systems Pvt Ltd. is here by published in the Official Gazette of this UT Administration of Dadra & Nagar Haveli and Daman & Diu for general information.

Sd/–

(Priyanshu Singh)

Director-cum-Deputy Secretary (Labour)
DNH & DD

UTDD01000372019



Filed on : 02.01.2019
Decided on : 19.10.2023
Period : Y M D
04 09 17

BEFORE THE CHAIRMAN, INDUSTRIAL TRIBUNAL, DAMAN

(Presided over by S. M. Bhosale)

Reference (IDA) No. 01 of 2019**Party No.2**

Shri Sitaram Singh
C/o. Lal Bahadur Rai,
H.No.B-205, Madhanpur Khadan,
New Delhi

V/s.**Party No.1**

The Director/Manager,
M/s. Della Technica Office Systems Pvt. Ltd.,
23, Somnath Industrial Estate,
Kachigam Road, Dabhel, Nani Daman

REFERENCE UNDER THE INDUSTRIAL DISPUTES ACT, 1947**Appearances:**

None for the party No.1.

Adv. Chintan Modasia for the party No. 2.

A W A R D

(Passed on 19/10/2023)

1. This reference is received from Labour Commissioner Daman vide his order dated 28/12/2018 under clause (d) of Sub-Sec.1 of Sec. 10 of Industrial Dispute Act (here-in-after referred to as 'IT Act') for adjudication whether demand/use of employee are justified, if yes, what relief the workman is entitled to?
2. After the notices were served to both second party and first party, the statement of claim Ex.8 came to be filed by the legal heirs of second party workman as before reference is sent to this tribunal, workman Sitaram Singh expired on 26.12.2018. However, despite of service first party employer did not appear.
3. In short, the second party was working in first party company since April, 1997 till June 2011. AT the time of his termination in the year 2011 he was working as production and fabrication supervisor. In the month of June 2011 deceased Sitaram took the leave of 30 days to visit his native place from department incharge and Dy. General Manager. But did not return back from the leave, he was informed that there is no requirement of his service as he has asked salary rise before proceeding on leave. It is contended that deceased Sitaram was not paid any legal dues at the time of termination. However, subsequently made several request to first party but they used to give threat to involve him in case of theft. Thereafter, deceased sent a legal notice on 22.11.2017 demanding his legal dues. Thereafter, again a correspondence was made and first party failed to pay his legal dues, he was compelled to raise dispute before Labour Court. However, as matter was not resolved and conciliation failed, dispute is forwarded to this tribunal for adjudication. However, during the said period Sitaram sing expired and hence his legal heirs filed the present claim.
4. It is contended that deceased Sitaram drawn last salary of Rs. 16,000/- per month, therefore he is entitled for legal due amount Rs.3,61,900/- i.e. towards two months notice pay, 42 days leave payment, retrenchment compensation, gratuity and bonus.
5. I reiterate that despite service of notice Ex.7 first party remain absent, and hence a order was passed on 08.01.2020 by then Ld. Chairman of this tribunal.
6. To prove the claim Rai Prabhakar Sitaram Singh one of the legal heir and representative of second party workman deceased Sitaram Singh filed his affidavit Ex.8 in lieu of examination in chief. He has produced various documents such as notices, letters, pay slip etc. which I would like to refer at appropriate stage. Heard Ld. Adv. Chintan Modasia for the second party.
7. Following points arose for my determination my findings thereon followed by reasons are as under;

Points	Findings
1. Whether reference is tenable for demand/dues as claimed	No
2. Whether legal representative of second party workman are entitled for claim as prayed for?	No
3. What order and award ?	As per final order

-:: REASONS ::-

AS TO POINT NO.1 AND 2

8. The Rai Prabhakar Sitaram Singh a son of second party workman deceased Sitaram in his affidavit Ex.10 reiterated all the contents raised in the claim.

9. On consideration of conciliation failure report sent alongwith the reference it could be well concluded that second party workman who had submitted the written statement has not challenged in any manner his alleged termination. Whereas he has only claim that his legal dues not paid at the time of termination of service. It is well settled law that this Court cannot decide the reference beyond the dispute referred to this Court for adjudication. No doubt, as per Sub-Sec. (4) of Sec. 10 this tribunal can decide incidental matter thereto in respect of adjudication of issue referred to this tribunal. However, even on consideration on the statement of claim as well as affidavit Ex.10 in lieu of examination-in-chief no any ground has averred to challenge the alleged termination.

10. Though first party is not present before the Court, the duty cast upon the Court to decide the reference within the four corners of law. As per clause of Sub-Sec (1) of Sec.10 of ID Act, the appropriate Government can refer the dispute or any matter appearing to be connected with, or relevant to the dispute, whether it relates to any matter specified in the second schedule or to the third schedule, to a tribunal for adjudication. As per third Schedule the matter which can be decided on reference to the Industrial Tribunal are not related to a individual workman but as the dispute between single employee and his employer should have been taken up by union to which the employees belong or number of employees. For the purpose of third schedule a reference in regards to the dispute between employer and single employee cannot be itself as a single dispute. Therefore, on this count also the reference should failed.

11. It is proper to state that n either in before conciliation proceeding n or in a statement of claim Ex.8 the ground of his illegal termination has been agitated. Therefore, the question of consideration of retrenchment compensation or notice pay would also not arise. Moreover, for the purpose of claim related to gratuity, bonus there are statute which provides the remedy. Otherwise also when there is a dispute about the legal dues as can be gathered from the conciliation report, the employee of his legal representative has to follow provisions of Sec. 33-C (2) of ID Act. Thus, the second party workman

failed to show maintainability of the claim as well as their entitlement under this reference. In result I answer, point no.1 and 2 in the negative and pass following order.

ORDER

1. The reference is answered in the negative.
2. The copy of the award be sent to the Labour Commissioner, Daman for publication.

Place: Daman
Date: 19/10/2023

Sd/–
[Shridhar M. Bhosale]
Chairman, Industrial Tribunal,
Daman.

संघ प्रदेश दादरा एवं नगर हवेली तथा दमण एवं दीव प्रशासन,
U.T. of Administration of Dadra & Nagar Haveli and Daman & Diu,
श्रम एवं रोजगार, विभाग, दमण
Department of the Labour & Employment, Daman
दूसरी मंजिल, उद्योग भवन, भेंसलोर, नानी दमण
2nd Floor, Udyog Bhavan, Bhenslore, Nani Daman

No. LE/LI/DMN/Fact-4(7)/12/2023/703

Dated: 18.01.2024

Subject: Publication of Award in IDR in the Official Gazette.

With reference to the above cited subject, the Award dated 03.08.2023 issued by the Hon'ble Chairman, Industrial Tribunal, Daman in IDR No. 08/2014 in the matter of Gajubhai Jadav Mistry & 1 Anr V/s. M/s. Kanchan International Ltd. is here by published in the Official Gazette of this UT Administration of Dadra & Nagar Haveli and Daman & Diu for general information.

Sd/–
(Priyanshu Singh)
Director-cum-Deputy Secretary (Labour)
DNH & DD

UTDD010000902014



Filed on : 21.01.2014
Decided on : 03.08.2023
Period : Y M D
09 06 13

BEFORE THE INDUSTRIAL TRIBUNAL, DAMAN**(Presided over by Shridhar M. Bhosale)****Reference (IDA) No. 08 of 2014**

1. Gajubhai Jadav Mistry,
Age : Adult, occu, Labour,
R/o. Post Salvav, Desaiwad,
Taluka Pardi, Dist. Valsad,
 2. Shubhash M. Roy,
R/o. Plot No. 9/10,
Somnath Industrial Estate,
Somnath Road, Dabhel, Daman
- Party No.2

V/s.

M/s. Kanchan International Ltd.
Ground Floor, 9-10,
Somnath indl. Estate,
Dabhel, Nani Daman,

..... First Party.

REFERENCE UNDER THE INDUSTRIAL DISPUTES ACT, 1947

Appearances: None for the party No.2.
None for the party No.1

AWARD

(Passed on 03/ 08/2023)

1. This reference is received from Deputy Secretary Daman vide his order dated 21/01/2014 under Section 10 (1) (d) of Industrial Dispute Act (here-in-after referred to as 'IT Act').

2 After receipt of the reference, notices were issued to both the parties. Thus, no one appeared. Whereas first party despite of service of notice not appeared. The second party is also absent since last number of dates. Thus, the second party failed to file statement of claim to raise a claim and substantiate his contention in support of reference. Therefore, for want of statement of claim the reference has to be answer in the negative. Accordingly, I pass following order.

ORDER

- 1) The reference is answered in the negative.
- 2) The copy of the award be sent to the Labour Commissioner, Daman for publication.

Place: Daman
Date: 03/08/2023

Sd/–
[Shridhar M. Bhosale]
Chairman, Industrial Tribunal,
Daman.

U.T. of Administration of Dadra & Nagar Haveli and Daman & Diu,
संघ प्रदेश दादरा एवं नगर हवेली तथा दमण एवं दीव प्रशासन,
Department of the Labour & Employment, Daman
श्रम एवं रोजगार, विभाग, दमण
2nd Floor, Udyog Bhavan, Bhenslore, Nani Daman
दूसरी मंजिल, उद्योग भवन, भेंसलोर, नानी दमण

No. LE/LI/DMN/Fact-4(7)/2012/2023/704

Dated: 18.01.2024

Subject: Publication of Award in IDR in the Official Gazette.

With reference to the above cited subject, the Award dated 02.11.2023 issued by the Hon'ble Chairman, Industrial Tribunal, Daman in IDR No. 03/2012 in the matter of Rajesh K.V & Ors V/s. M/s. Perfect Filaments is here by published in the Official Gazette of this UT Administration of Dadra & Nagar Haveli and Daman & Diu for general information.

Sd/–
(Priyanshu Singh)
Director-cum-Deputy Secretary (Labour)
DNH & DD

UTDD010001702012



Filed on : 21.02.2012
Decided on : 02.11.2023
Period : Y M D
11 08 10

BEFORE THE CHAIRMAN, INDUSTRIAL TRIBUNAL, DAMAN**(Presided over by Shridhar M. Bhosale)****Reference (IDA) No. 03 of 2012****Exh. No.36**

1. Rajesh K. V.
Age : 45 yrs.,
R/o. Room No. 27,
Jawed Manjil Raza Masjid,
Ghanchiwad, Nani Daman,
2. Jai Rawani,
3. Munnalal

..... Second Party.

V/s.

M/s. Parfect Filaments Pvt. Ltd,
Plot No. 96-A,
Panchal Udyog Nagar,
Bhimpore, Daman

..... First Party.

Appearances:

Adv. Shri S.S. Modasia for second party.

Shri. P. K. Jadia, Representative for the first party.

A W A R D

(Passed on 02/11/2023)

1. This reference was forwarded by Labour Commissioner under clause (d) of Sub-Sec. (1) of Sec. 10 of Industrial Dispute Act (in short ID Act), in respect of dispute of wages including the period mentioned in the conciliation report and mode of payment. After receipt of reference the notices were issued second party workman Rajesh K.V., Jain Ravani and Munnalal filed their statement of claim Ex.6, 7 and 8 respectively.
2. The sum and substance of the claim of second party workman are, they joined the first party on 16.10.2004, 16.03.2004, 26.02.2002 respectively. The first party engaging in business of manufacturing Yarn. All second party workmen were working as quality checker of the product of being yarn, having experience more than 10 years of checking finish yarn. According to them, it was the policy of the company that manufacturing would continue for 24 hrs., but the quality checking would be from 09.00 am to 07.00 p.m. However the job time of second party workmen were 09.00 to 05.00 p.m. and there was compulsory working two hrs as a over time. It is contended that at the time

Ref.(IDA) No.03.2012 (A)

of appointment of second party workman, it was assumed by them that they will get over time for two hours as they were asked to work compulsory for 10 hours.

3. It is further contended by all the second party workmen that on 10.04.2007, 24.07.2007 and 27.03.2007 respectively they reported to the duty but they were not allowed to enter in the company premises and it was informed that the management do not require their services. Thus, their services were forcefully and illegally terminated without giving an opportunity of hearing. Therefore, they approached to the Labour Inspector, Daman and filed the complaint for their illegal termination. The said complaint was forwarded to the completion officer but the first party was not responded their demand and refer this matter for adjudication before this Court.

4. It is contended that the second party workmen were not given before their termination and their services were terminated without any reason. It is contended that the second party workmen were not given relieve for the period they work and it was informed them that they accumulated their leave and therefore they are entitled for accumulated leave in their account. Further, they also claim amount in lieu of two months notice as well as amount of retrenchment. Further they claim bonus and amount towards their overtime wages. Further they also claiming a compensation towards back wages. On these counts they have given detail schedule in plaint and claim the amount of Rs.74,057/-, Rs.76,262/- and Rs.1,25,823/- respectively.

5. the first party filed a written statement Ex.11 to the statement of claim and strongly resisted the reference. First party has denied that second party work for 10 hours shift basis. Further it has been denied that their services Were terminated. Whereas it is a contention of first party that second party workmen themselves stop from coming for work on their own and thus there is no any question of termination. It is further contended that the statement of claim is not tenable before th is Court in respect of recovery of leave with wages, over time wages etc.

6. 6 on the basis of the pleading the Ld. Chairman of this tribunal framed Ex.14. My finding thereon, followed by reason, thereof are as under;

ISSUES**FINDINGS**

- | | |
|--|--|
| 1. Do the claimants prove that they were illegally terminated from the service by the respondent. | Issue cannot be decided as it is beyond the dispute referred for adjudication. |
| 2. Do the claimants prove that they are entitled for legal due as mentioned in their respective claim with 18% interest from 01.12.2010 till its final realization ? | Issue cannot be decided as it is not within the scope of Third Schedule of ID Act. |
| 3. What order and award | As per final order. |

-:: REASONS:-**AS TO ISSUE NO.1 AND 2 :-**

7. To prove the claim, only the second party workmen Rajesh K.V has filed his affidavit Ex.21 in lieu of examination-in- chief and offer to cross-examine by other side. Whereas to rebut the claim, the first party filed affidavit of Sunilkumar Mishra, Commercial Manager of first party company.

8. Heard Ld. Adv. Shri. S.S. Modasia for the second party and Shri. Jadia representative for first party.

9. Ld. advocate for the second party workmen by referring the oral evidence vehemently submitted that the services of second party workmen were illegally terminated. He further submitted that it is incumbent on the part of first party to maintain attendance register and other register. However, those register are not maintained and come with a false case of fire in the plant. He submitted that fire took place on 28.10.2011 whereas the dispute was raised long back in the year 2007 as per the completion failure report. However, even before the Conciliator those documents were not produced and thus an adverse inference has to be drawn that though workmen work for more than 8 hours they were not provided with over time wages and further due to their demand they were not allowed to resume their duty on the mentioning of their statement of claim and thus their services were orally without giving notice illegal terminated. He submitted that as per the provisions of Labour Laws the second party workmen were entitled for leave or encashment in lieu of leave as well as bonus. However, no time it were paid and no any documents is produced to show that the amount was paid.

10. Per contra Ld. representative for first party strongly objected to the reference and submitted that the reference is not tenable as it is not by group of workmen union. He further submitted that the second party workmen were able to examine co-worker to prove their contention that they were working for more than 8 hours. He submitted that even on the conciliation report it could be gathered that there was no any demand of reinstatement or demand of back wages before conciliation officer and only to grab the money the complaint came to be filed. Further it is submitted that only one person amongst the second party workmen had completed the five years service and they were agree to pay legal dues before conciliation officer also. However, the second party workmen were not ready. The representative for the first party in support of his argument has placed reliance in the case of the Workmen of Dharmapal Premchand (Saughanandi) V/s. Dharampal Premchand AIR 1966 SC 182.

11. First, I would deal with the objection raised by first party. Ld. representative for first party strongly contended that the reference is not tenable as it was by single a workman. He submitted that the said dispute would not fall within the scope of industrial dispute. Sec.2 (k) define 'industrial dispute' as, industrial dispute means any dispute or difference between employers and employees, 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 labor, or any

person. Thus, it could be gathered from the definition of industrial dispute that it is between not a single workman and employer. However, Section 2A of ID Act further elaborate that the discharge, dismissal and otherwise termination of service of individual workman, any dispute or difference between that workman or his employer, connected with or arising out of such discharge, dismissal infringement or termination shall to be deemed to be industrial dispute notwithstanding that no other workman nor any union of workmen but the party to the dispute. Thus, it could be gathered that in respect of the question of discharge, dismissal or termination or difference between that workman and his employer connected with it or arising out of it, is also industrial dispute which can be referred under Sec. 10 of ID Act.

12. Sec.10 is about reference of dispute by the appropriate Government, in case it is of opinion that any industrial dispute exists or is apprehended. In the case of the Workmen of Dharampal Premchand (Saughanandi) Supra, the Hon'ble Apex Court has held that;

"Section 2 (k) defines an "Industrial dispute" as meaning any dispute or difference between employers and employees, 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 condition of labour, of any person. This definition shows that before any dispute raised by any person can be said to be an industrial dispute, it must be shown that it is connected with the employment or non employment of that person. This conditions is satisfied in the present case, because the dispute is in relation to the dismissal of 18 workmen, and in that sense it does relate either to their employment or non employment. The question however still remains whether it is a dispute between employers and workmen, Literally construed this definition make take within its sweep a dispute between a single workman and his employer, because the plural in the context with include the singular. Besides in the present case the dispute is in fact between 18 workmen on the one hand, and their employer on the other, and that satisfies the requirement imposed by the fact that the work "Workmen" in the context is used in the plural. But the decisions of this Court have consistently taken the view that in order that dispute between a single employee and his employer should be validity referred under S.10 of the Act, it is necessary that it should have been taken up by the Union to which the employee belongs or by a number should have been taken up by the Union to which the employee belongs or by a number of employees. On this view, a dispute between an employer and a single employee cannot, by itself be treated as an industrial dispute, unless it is sponsored or espoused by the Union of workmen or by a number of workmen. In other words, if a workmen is dismissed by his employer and the dismissed workman's case is that his dismissal is wrongful, he can legitimately have the said dispute referred for adjudication before an industrial Tribunal under S.10 (1) of the Act, provided a claim for such a reference is supported either by the Union to which he belongs or by a number of workmen, vide Central provinces Transport Services v. Raghunath Gopal Patwardhan

Ref.(IDA) No.03.2012 (A)

MANU/SC/0067/1956 : (1957) ILLJ27SC na the Nespaper Ltd v. The State Industrial Tribunal U.P.MANU/SC/0078/1957: (1957)ILLJ1SC"

13. Thus, for industrial dispute to be considered it must be supported by union or group of worker where there is no trade union. In Sub-Sec.2 (k) of Industrial Dispute has used word 'workmen' i.e. a plural of workman. There is no any specific provision either in Sec.2 (k) or Sec. 10 it mandates that particular number of workmen are required to raise the dispute. Thus, in case more than one workman where there is no union can raise a dispute. On consideration of the conciliation proceeding report dtd.07.04.2018 as well as a reference dtd.13.01.2012 Ex.1 and corrigendum dtd.30.05.2013 Ex.13, it could be concluded that the dispute was raised by three workmen i.e. Rajesh KV, Muna Lal and Jayant Ravani. Therefore, it cannot be said that a dispute was raised by a single workmen. Hence, taking into consideration the law laid down in case of Workmen of Dharmapal Premchand (Saughanandi) Supra, the submission of Ld. representative for first party hold no water in the eye of law.

14. It is well settled, as submitted by first party workmen that the Court cannot go beyond the jurisdiction of the reference. Te reference only in respect of wages including the period and mode of payment though even before conciliation proceeding they have claimed the legal dues like leave, gratuity, bonus and notice salary.

15. In the present case at hand, one of the contention that the termination is illegal and monitory relief is sought for it. In view of Sec.7A r/w.Sec. 10 (1) (d) the dispute relating to any matter referred under Second Schedule and Third Schedule of ID Act, can be entertained and decide by this Tribunal. Thus, this Tribunal have power to decide the illegality of the termination of the employee by the employer. Item 3 of schedule seven is matter related to discharge or dismissal of workmen including reinstatement of, or grant of relief to, workmen wrongfully dismiss. Thus, the tribunal can decide the grant of relief to workmen wrongfully dismiss even though he has not sought the reinstatement. But in the present case at hand on consideration of the reference it could be seen that there is no reference for deciding the grant of relief in terms of monitory relief for wrongful dismissal of second party workmen. Further, on consideration of the conciliation report it could be seen that even before the conciliator there was no demand of retrenchment except notice salary for their termination. It is well settle that the tribunal shall confine its adjudication to those points and matters incidental thereto which were referred under the reference. As there is no any reference in respect of illegal termination in my considered opinion this Court hands are tied to decide the same.

16. Admittedly, from the submission of both the parties the second party workmen are not on duty since the date of their alleged termination mentioned by them in their statement of claim. However, besides the compensation towards retrenchment, notice pay, the other amount of compensation and back wages can be decided.

Ref.(IDA) No.03.2012 (A)

17. The first party vehemently submitted that in a second schedule only matters which is related to wages including the period and mode of payment, hours of work, leave with wages and holidays, bonus, retrenchment of workmen and closer of establishment can be considered. He submitted that those matters are related to policy matters and not claimed under the reference. He further submitted that when there is dispute about the quantum of entitlement, the same has to be decided under the respective legislation i.e. payment of wages act, payment of bonus act, or under Sec.33-C (2) is the only remedy.

18. On consideration of the third schedule of the ID Act with the provisions under Sec.10, I found substance in the argument of Ld. representative of the first party. Sub-Sec.(2) of Sec. 33-C of ID Act is in respect of recovery of money dues from an employer. According to it, where any workmen entitled to receive from employer any money or any benefit which is capable of being computed in terms of money and if any question arises as to the amount of money due or as to the amount at which such benefit should be computed. Then such question subject to the rule be decided by labour Court. Further, there is specific provision in the Payment of Wages Act as well as Payment of Bonus Act for claim of money under the benefit of those Act. The dispute mentioned in schedule three is only about the policy decision of the subject matter and not decide the adjudication of money due for non payment of wages, bonus overtime wages leave encashment etc. Therefore, in my considered opinion on this count, this Tribunal cannot decide the entitlement of the claim though the first party failed to produce any document to substantiate their contention. In the result the reference would fail. Hence, I answer above accordingly and proceed to pass following order.

ORDER

1. Reference is answer in negative and accordingly disposed off.
2. The copy of the award be sent to the Joint Secretary (Lab & Emp.), Daman for publication.

Place: Daman
Date: 02/11/2023

Sd/–
[Shridhar M. Bhosale]
Chairman, Industrial Tribunal,
Daman.

U.T. of Administration of Dadra & Nagar Haveli and Daman & Diu,
संघ प्रदेश दादरा एवं नगर हवेली तथा दमण एवं दीव प्रशासन,
Department of the Labour & Employment, Daman
श्रम एवं रोजगार, विभाग, दमण
2nd Floor, Udyog Bhavan, Bhenslore, Nani Daman
दूसरी मंजिल, उद्योग भवन, भेंसलोर, नानी दमण

No. LE/LI/DMN/Fact-4(7)/2011/2023/705

Dated: 18.01.2024

Subject: Publication of Award in IDR in the Official Gazette.

With reference to the above cited subject, the Award dated 17.07.2023 issued by the Hon'ble Chairman, Industrial Tribunal, Daman in IDR No. 17/2011 in the matter of Rajkumar Ram V/s. M/s. Karan polymers is here by published in the Official Gazette of this UT Administration of Dadra & Nagar Haveli and Daman & Diu for general information.

Sd/–

(Priyanshu Singh)

Director-cum-Deputy Secretary (Labour)
DNH & DD

UTDD010003422011



Filed on : 17.09.2011
Decided on : 17.07.2023
Period : Y M D
11 10 00

Exhibit : 17/C

BEFORE THE CHAIRMAN, INDUSTRIAL TRIBUNAL, DAMAN

(Presided over by Shridhar M. Bhosale)

Reference (IDA) No. 17 of 2011

1. Rajkumar Ram
R/o. Maheshbhai ki Chawl,
Bheronath Kiran Store,
Neal Cello Writing,
Ringanwada, Nani Daman,
2. Swaminath Singh Yadav,
R/o. Room No. 19.
Amrutbhai Ki Chawl,
Kachigam, Nani Daman.

..... Party No.2

V/s.

M/s. Karan Polymers,
Plot No. 4-9-111, O IDC,
Udyog Nagar,
Ringanwada, Nani Daman.

..... Party No.1

REFERENCE UNDER THE INDUSTRIAL DISPUTES ACT,1947**Appearances:**

None appeared for the party No. 1.

Adv. Shri S.S. Modasia for the party No. 2.

A W A R D

(Passed on 17/07/2023)

- 1) This reference is received from Deputy Secretary (Lab & Emp.), Daman vide his order dated 09/07/2015 under Section 10 (1) (d) of Industrial Dispute Act (here-in-after referred to as 'IT Act').
- 2) After receipt of the reference, notices were issued to both the parties. Thus, second party has filed a statement of claim. However, the first did not appear. Thereafter, second party not appeared and adduced oral evidence to substantiate the contention and claim raised in a statement of claim. Therefore, as the second party failed to lead any evidence in support of the claim, the reference has to be answer in the negative. Accordingly, I pass following order.

O R D E R

- 1) The reference is answered in the negative.
- 2) The copy of the award be sent to the Dy. Secretary (Lab & Emp.), Daman for publication.

Place: Daman
Date: 17/07/2023

Sd/–
[Shridhar M. Bhosale]
Chairman, Industrial Tribunal,
Daman.

संघ प्रदेश दादरा एवं नगर हवेली तथा दमण एवं दीव प्रशासन,
U.T. of Administration of Dadra & Nagar Haveli and Daman & Diu,
श्रम एवं रोजगार, विभाग, दमण
Department of the Labour & Employment, Daman
दूसरी मंजिल, उद्योग भवन, भेंसलोर, नानी दमण
2nd Floor, Udyog Bhavan, Bhenslore, Nani Daman

No. LE/LI/DMN/Fact-4(7)/2014/2023/706

Dated: 18.01.2024

Subject: Publication of Award in IDR in the Official Gazette.

With reference to the above cited subject, the Award dated 20.07.2023 issued by the Hon'ble Chairman, Industrial Tribunal, Daman in IDR No. 06/2015 in the matter of Bhola Yadav V/s. M/s. Spam Poly Print is here by published in the Official Gazette of this UT Administration of Dadra & Nagar Haveli and Daman & Diu for general information.

Sd/–

(Priyanshu Singh)

Director-cum-Deputy Secretary (Labour)
DNH & DD

UTDD010007562015



Filed on : 29.07.2015
Decided on : 20.07.2023
Period : Y M D
07 11 22

Exhibit : 4/C

BEFORE THE CHAIRMAN, INDUSTRIAL TRIBUNAL, DAMAN

(Presided over by Shridhar M. Bhosale)

Reference (IDA) No. 06 of 2015

Bhola Yadav,
Kalpeshbhai Ki Chawl,
Room No.3,
Near Fire Station,
Somnath, Nani Daman

..... Party No.2

V/s.

M/s. Spam Poly Print,
S.No.A-2/35,
Daman Industries Estate,
Somnath Nani Daman

..... Party No.1

REFERENCE UNDER THE INDUSTRIAL DISPUTES ACT, 1947**Appearances:** None appeared for the party No. 1.

None appeared for the party No. 1.

A W A R D

(Passed on 20/07/2023)

- 1) This reference is received from Deputy Secretary (Lab & Emp.), Daman vide his order dated 09/07/2015 under Section 10 (1) (d) of Industrial Dispute Act (here-in-after referred to as IT Act).
- 2) After receipt of the reference, notices were issued to both the parties. Thus, no one appeared. Whereas first party despite of service of notice not appeared. The second party is also absent since last number of dates. Thus, the second party failed to file statement of claim to raise a claim and substantiate his contention in support of reference. Therefore, for want of statement of claim the reference has to be answer in the negative. Accordingly, I pass following order.

O R D E R

- 1) The reference is answered in the negative.
- 2) The copy of the award be sent to the Deputy Secretary (Lab & Emp.), Daman for publication.

Place: Daman
Date: 20/07/2023

Sd/–
[Shridhar M. Bhosale]
Chairman, Industrial Tribunal,
Daman.

संघ प्रदेश दादरा एवं नगर हवेली तथा दमण एवं दीव प्रशासन,
U.T. of Administration of Dadra & Nagar Haveli and Daman & Diu,
श्रम एवं रोजगार, विभाग, दमण
Department of the Labour & Employment, Daman
दूसरी मंजिल, उद्योग भवन, भेंसलोर, नानी दमण
2nd Floor, Udyog Bhavan, Bhenslore, Nani Daman

No. LE/LI/DMN/Fact-4(7)/2011/2023/707

Dated: 18.01.2024

Subject: Publication of Award in IDR in the Official Gazette.

With reference to the above cited subject, the Award dated 17.07.2023 issued by the Hon'ble Chairman, Industrial Tribunal, Daman in IDR No. 04/2012 in the matter of Ramchandra A. Hawale V/s. M/s. Siddharth Corporation is here by published in the Official Gazette of this UT Administration of Dadra & Nagar Haveli and Daman & Diu for general information.

Sd/–

(Priyanshu Singh)

Director-cum-Deputy Secretary (Labour)
DNH & DD

UTDD010001712012



Filed on : 21.02.2012
Decided on : 17.07.2023
Period : Y M D
11 04 25

Exhibit : 12

BEFORE THE CHAIRMAN, INDUSTRIAL TRIBUNAL, DAMAN

(Presided over by Shridhar M. Bhosale)

Reference (IDA) No. 04 of 2012

Ramchandra A. Hawale,
R/o. A-1, Raj Apartment Flat,
No.G-2, Ekta Marg,
N.H.No.8 Balitha Vapi.

..... Party No.2

V/s.

The Partner/Manager,
M/s. Siddharth Corporation,
Plot No.27, Hingraj Industrial Estate,
Ddabhel, Nani Daman,

..... Party No.1

REFERENCE UNDER THE INDUSTRIAL DISPUTES ACT, 1947**Appearances:**

Adv. Shri P.J. Desai for the party No.1.

Adv. Shri S.S. Modasia for the party No.2.

A W A R D

(Passed on 17/07/2023)

- 1) This reference is received from Joint Secretary (Lab & Emp.), Daman vide his order dated 13/01/2012 under Section 10 (1) (d) of Industrial Dispute Act (here-in-after referred to as 'IT Act').
- 2) After receipt of the reference, notices were issued to both the parties. Thus, second party has filed a statement of claim. However, the first party file reply or written statement to a claim of second party. Thereafter, second party not appeared and adduced oral evidence to substantiate the contention and claim raised in a statement of claim. Therefore, as the second party failed to lead any evidence in support of the claim, the reference has to be answer in the negative. Accordingly, I pass following order.

O R D E R

- 1) The reference is answered in the negative.
- 2) The copy of the award be sent to the Dy. Secretary (Lab & Emp.), Daman for publication.

Place: Daman
Date: 17/07/2023

Sd/–
[Shridhar M. Bhosale]
Chairman, Industrial Tribunal,
Daman.
