श्रेणी
SERIES : II

Daman 20th March, 2020 30 Phalguna, 1941 (Saka) सं. No. : 12

सरकारी राजपत्र
OFFICIAL GAZETTE

भारत सरकार
Government of India

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

प्राधिकरण द्वारा प्रकाशित
PUBLISHED BY AUTHORITY

No. JUD/DNH/IDR/2020/42
Industrial Tribunal,
Dadra & Nagar Haveli,
Silvassa.

Date : 04/01/2020

Subject : Award in I.D.R. (No. 1/2010) for publication in Official Gazette.

With reference to the above cited subject the copy of Award No. 1/2010, passed by Industrial Tribunal, Dadra & Nagar Haveli is hereby published in the Official Gazette of this U.T. Administration of Dadra & Nagar Haveli and Daman & Diu for general information.

Sd/-
Bench Clerk,
Industrial Tribunal,
Dadra & Nagar Haveli,
Silvassa.

SERIES II No. : 12
DATED : 20th MARCH, 2020.

Presented on : 13.08.2010
Registered on : 01.12.2010
Decided on : 30.11.2019
Duration : Y M D
09 03 17

BEFORE THE INDUSTRIAL TRIBUNAL DADRA AND
NAGAR HAVELI AT SILVASSA
(Presided over by Dinesh P. Surana, Presiding Officer)

I.D.R. No.01/2010
CNR No.UTDN-01-000603-2010
Exh.113

M/s. Global Health Care Products,]
Survey No.134, Silvassa-Khanvel Main road,
Dapada, U.T. of D. & N.H.] **First Party Company**
]

V/s.

Krantikari Kamgar Union]
180-C, 1st Floor, Dharavi Koliwada,]
J.J. Keni Lane, Dharavi Road, Mumbai.] **Second Party Workmen**

A W A R D
(Delivered on 30.11.2019)

The present dispute was referred to this tribunal by the Labour Commissioner u/sec.10 of the Industrial Disputes Act, 1947 (in short 'Act'), in view of his order LEO/GHCP/Closure/758/2010/Silvassa, dated 03.07.2010 / 03.08.2010. The basis for reference of dispute to this tribunal was application dated 05.10.2009 given by the employee of M/s. Global Health Care (Dapada), U.T. of D. &N.H. (in short 'first party'), complaining that the management of the first party has affected closure of their Industrial Establishment w.e.f. 12.10.2009 without clearing their legal dues following closure. The employees requested that they be first paid salary for the month of September'2009, bonus for 2008-2009 and thereafter their legal closure dues. The Labour Enforcement Officer (in short 'LEO'), who is also Conciliation Officer in conciliation, tried to settle the dispute between the parties amicably. As per the reference, total 108 employees filed claim application in prescribed manner on 09.10.2009 seeking directions against the first party for the payment of their delayed wages for the month of September'2009 and also compensation as penalty. On hearing of said application,

the L.E.O. passed an order on 14.10.2009 directing the management to pay the salary of the employees for the month of September'2009 to the employees and also compensation of Rs.1500/- to each employee in addition to the wages for the month of September'2009. The second demand of the employees was for the payment of bonus for the year 2008-2009, which the L.E.O. directed the first party to pay. The employees also claimed that there are in all 171 workers in the first party company and the closure is without prior permission of the appropriate government / authority u/sec.25O r/w. Chapter V-B of the Act.

2] In response to the show cause notice dated 22.10.2009, the first party by their letter dated 10.11.2009 contended that, the company was engaged in manufacturing toothpaste on the job work received from the Hindustan Unilever Ltd. (in short 'H.U.L.'). From the month of August'2009, the H.U.L. stopped giving such orders forcing the management to take painful decision of closing down the factory. That, there were 112 employees in the establishment preceding 12 months of closure out of which, 83 were workers, 16 were Supervisors, 12 were Security Guards and 1 office boy. That, the Supervisors supervising the work of operators/helpers were not the workmen within the meaning of 2(s) of the Act. That, the Security Guards and Office boy are also not workman within the meaning of the Act. As such, there were only 83 workers falling under the definition of 'workman' u/sec.2(s) of the Act. That, as there were less than 100 employees, permission of closure was not requires from the appropriate government as per sec.25O of the Act, which is not applicable. The first party company also contended that, they have already paid 2 months notice pay in lieu of 60 days notice u/sec.25-FFF of the Act, for which no prior 60 days notice is required to be given. That, they have complied with the provision of sec.25-FFA of the Act too. Meanwhile, the Krantikari Kamgar Union (in short 'second party') made several communication after the closure of the Dapada factory by the first party, stating that the workers of the said first party company have become ordinary members of their Union and they be called for conciliation and the workmen be reinstate in service with full back wages.

3] In-spite of the efforts made by the L.E.O., the conciliation proceeding broke down for the reasons mentioned in the order of reference. As such, the present matter was referred to this Industrial tribunal for adjudication by formulating the dispute in following terms :

> 'Whether the action of the Management of M/s. Global Health Care, Dapada in allegedly closing down its undertaking without observing the provisions of the Industrial Disputes Act, 1947 and subsequently refusing to concede the demands

of workers, who have not accepted dues in full, for reinstatement with full back wages and dues of Rs.2.00 Lakhs each for every completed year of service in lieu of reinstatement as per details contained in Annexure 'A' is legal and justified?'

4] Here itself, I will like to mention that, during the adjudication proceeding before this tribunal, by way of pursis Exh.31, the second party union has waived the relief of claim of dues of Rs.2 Lacs each for every completed year of service in lieu of reinstatement as per details contained in Annexure-A.

5] I will also like to mention Annexure-A which was sent by L.E.O. alongwith the order of reference.

Annexure-A

Sr. No.	**List of Workmen**
01.	Chitra Vishal Rai - **Deleted**
02.	Sanjeev C. Pandey
03.	Puspendu Maity
04.	Pradeep Samanta
05.	Animesh S. Samanta
06.	Pijushkanti Tripathi – **Deleted**
07.	Bimal Pradhan
08.	Sk. Enamul
09.	Sukhendu Mahapatra
10.	Dipankar Bera
11.	Uttam Kar
12.	Sankar P. Gudade – **Deleted**
13.	Sanjay Ranga Poundage - **Deleted**
14.	Vijay Mali
15.	Mahadu D. Bhoye – **Deleted**
16.	Ramu Ratan Kurkute – **Deleted**
17.	Bhikhla V. Hadal – **Deleted**
18.	Manoj L. Javlia – **Deleted**
19.	Sravan D. Gimbhal – **Deleted**
20.	Raman J. Vadu – **Deleted**
21.	Nagin Ramji Tumda – **Deleted**

22.	Amrat Gopji Tumda – **Deleted**
23.	Rameshbhai Namkudia – **Deleted**
24.	Jayhind B. Singh
25.	Rampal Raikwar

	List of Supervisors
01.	Asho Kumar Sharma
02.	Ashok M. Pujari
03.	Shambhu Sharat
04.	Sanjay Manna
05.	Shyam Sunder
06.	Nirmal Pradhan
07.	Sagar Dinda
08.	Shankar Santra
	Office Boy
01.	Khandu B. Chaudhari – **Deleted**

6] Pending adjudication of the dispute between the parties, corrigendum to the earlier order of reference was also sent to this tribunal by the L.E.O. The said corrigendum to the order of reference was caused in view of the representation made by second party union to the L.E.O. In the said corrigendum, the following added disputes were referred for adjudication by this tribunal.

'Whether M/s. Global Health Care Products has restarted manufacturing activities in the undertaking in which the workmen concerned with the Reference was employed ?

If so, whether the workmen concerned with the Reference should have been given an opportunity to the workmen whose services were terminated on the closure to offer themselves for re-employment have preference over other persons ?

If so, to what reliefs are the workmen entitled ?'

7] The second party union filed their statement of claim vide Exh.12. In the statement of claim, the second party union contended that they are registered trade union. The workmen of the first party company who are covered by this reference are represented by them. That, the first party company engaged in manufacturing of toothpaste and closed their factory illegally on 12.10.2009. At that time, 171 permanent employees were employed in the establishment on an average per working day for 12 months preceding the closure, 194 other contract workers were also there. The closure was without following due process of law and illegal. That, the machineries with raw material of the first party company was still lying in the factory. That, after the closure, the first party company was harassing the workers to accept their legal dues. The reason for the closure, according to second party, given by the first party for closing down of the factory, was utterly false. The first party also started pressurizing workers to give signature on false and fabricated settlement. Therefore, the complaint in this regard was also made by them. That, the first party re-started manufacturing operations in the same factory from the year 2013, without giving preference to the retrenched workers and had recruited new workers. Thus, the first party has failed to comply with legal provisions of law.

8] By way of statement of claim, the second party prayed for following reliefs :-

1. So called closure of the factory should be hold illegal from the date of its closure.

2. That the workmen should be hold entitled to full back wages with the interest @ commuted rate w.e.f. 12.10.2009 (i.e. date of closure of factory of first party company).

3. That the service of the retrenched employees should be hold in continuity.

4. In alternative, it should be hold that they are entitled for the compensation in lieu of relives for Rs.2 lacs for which year of service (This relief is later on waived by the 2nd party by way of pursis Exh.31).

9] By way of re-joinder / W.S. (Exh.22) and (Exh.22A), the first party company contended that, the reference is not legal, tenable and maintainable. The second party has no legal right authority and cause of action to raise industrial dispute under reference. That, the base of reference is complaint dated 05.10.2009 of 79

signatories and not the demand dated 25.11.2009 raised by the second party union, therefore, the same is not legally tenable and maintainable. That, at the time of closure, there were not 100 workers employed in the factory. Therefore, this tribunal has no jurisdiction to adjudicate the dispute under reference. That, the second party union was not the party to the conciliation proceeding nor they represented the workers during the conciliation proceeding. As such, no industrial dispute can be said to have been raised as per the said statement of second party union. That, there is no mention about the demand dated 25.11.2009 in the schedule of the order of reference of the second party union. That, they denied that 171 permanent workers were employed on an average per working day in preceding 12 months of the closure. Therefore, the demand is illegal. They again reiterated that, provision of Chapter V-B of the Act are not applicable to the first party company and there were only 83 workers deployed for manufacturing activities. That, Supervisors are expressly excluded and therefore at the most, including security guard and one office boy, the number of workers comes to 96 only. Accordingly, the statement given by them with separate list showing the average employment of workmen on an average per working day for the preceding 12 months of closure i.e. from 13.10.2008 to 12.10.2009, which according to them comes to 83.47% per day, which includes 83 workers, 12 Security Guards and one office boy, by dividing total attendance of that period of 12 months by total working day. According to the first party company, without admitting, even 16 Supervisors are considered as workers, even then, the average employment on an average per working day for the preceding 12 months of the closure comes to 97.30% and not 100. Therefore, according to them, Chapter VB is not applicable to their Industrial Establishment. That, the closure was not intending and therefore provision of sec.25FFA of the Act are not attracted. That, the amount offered to all the workers at the time of closure included the earned wages and leave encashment, which is paid by the first party company to the workers. That, the wages and bonus have already paid by the first party to the workers. They denied that the workers are harassed or forced or pressurized to accept the legal dues or sign full and final settlement. According to them, the closure of the manufacturing activities of the first party company was legal and proper because of no work order. That, they have not affected any retrenchment of the workman, hence, they are not required to issue any notice of change as per sec.9 of the Act. According to them, as per provision of sec.25FFF of the Act, in case of closure, the workmen are entitled to compensation equivalent to 15 days average pay for every completed year of service as per sec.25F of the

Act, which is already offered to the workers by them. That, the workers have accepted full and final legal dues payable to them at the time of closure, without any protest / objection hence, the workers are stopped and refrained from challenging the legality of the closure. That, after re-start of manufacturing activities of the first party company, they have recalled all the eligible workers whose services were came to an end due to the closure, and such re-employed 10 number of workers are still working with them. That, who did not respond to such intimation of recall, could not be re- employed. That, 14 concern workers in the reference (Annexure-A) have directly and amicably settled their dispute with them and have also declared and accepted that they have been sent intimation of recall, on restarting of the company, for re-employment. However, they did not accept such offer of re- employment. Therefore, they claimed for rejection and dismissal of statement of claims of the second party union. In rejoinder (Exh.12/A) of the second party union to the reply/W.S. of the first party company to the amended statement of claim, the second party denied that any worker at any time was issued any intimation of any kind by the first party company regarding recalling them for re-employment after restarting of manufacturing activities by the first party company. According to them, their issues raised in corrigendum is part of same cause of action.

10] On the basis of reply and contentions, issues and additional issues were framed. To substantiate their respective contention, following witnesses were examined by the parties :

UNION WITNESSES (UW)		
UW-1	**Exh.72**	**Asit Kumar Samanta**
UW-2	**Exh.89**	**Jayhind Prasad Singh**
UW-3	**Exh.106**	**Sanjoy Basudev Manna**

COMPANY WITNESSES (CW)		
CW-1	**Exh.93**	**Muraleedharan Edavilangal**
CW-2	**Exh.95**	**Nirmal Kumar Upendra Barik**
CW-3	**Exh.108**	**Malay Bikash Jana**

11] UW-1 Mr. Asit Kumar Samanta testified that, the workmen of the first party company covered by this reference are represented by the second party union. That, the first party illegally and without following due process of law has closed their factory at Dapada on 12.10.2009, where they were manufacturing Close-Up and Pepsodent toothpaste. At that time, on an average 171 permanent workers and around 194 contract workers were employed in the establishment for 12 months preceding the closure. That, the company was harassing the workers to accept their legal dues. He sent the letter on dated 07.07.2010 to the Government of India, Ministry of Labour and Employment about such mental harassment. That, the statement of first party company, that due to stoppage of giving orders from the month of

August'2009 by H.U.L., they were forced to take decision of closing down factory, is false. That, all the machineries and equipments were lying in the factory premises itself. That, so called full and final settlement by the first party company with the workers are obtained by adopting pressurizing tactics.

12] UW-2 Jayhind Prasad Singh testified that, he was working with the first party company in Dapada factory since the year 2000 as an Operator. That, there were 171 permanent workers in the first party company. That, in the month of October'2009, first party company illegally declared closure of the factory at Dapada. That, the factory is still running and manufacturing toothpaste.

13] UW-3 Sanjoy Basudev Manna deposed that, since the year 2004, he was doing work with the first party company as a line quality checker in the factory at Dapada. That, said factory started manufacturing activities in the year 2013. However, the company has not issued any intimation of any kind of recalling for the working to any of the workers affected by the closure.

14] CW-1 Muraleedharan Edavilangal testified that, he is working as a Unit Head with the first party company. That, the notice dated 12.09.2009 was displayed intimating the closure of manufacturing activities to all the workers w.e.f. 12.10.2009 and accordingly, services of all the workers working with the first party company have been brought to an end. At the time of closure, average per working day in the preceding 12 months, less than 100 workers were working. He proved the attendance register and muster role register of the employees of the company vide Exh.61. He denied, that at that time there were 171 workers employed by the first party company. He deposed that, out of 112 employees, 78 had received and accepted demand of legal dues as a full and final settlement and only 34 persons have not settled, whose names have mentioned in the Annexure-A of the order of reference and the present reference is only for 34 employees, out of which 15 employees have directly settled with the first party company as per affidavit filed by them. That, the closure by the first party company of the factory at Dapada w.e.f. 12.10.2009 is legal and proper and 19 working number of employees shown in Annexure-A of the order of reference are not illegally entitled of claim reinstatement and back wages as claimed.

15] CW-2 Nirmal Kumar Upendra Barik testified that, at the time of closure of company, he was working as a Supervisor. There were other 15 Supervisors who too were

working in the first party company. That, the company displayed notice dated 12.09.2009, intimating employees about the closing down of the company w.e.f. 12.10.2009. That, at the time of closure, Executives, Assistant Managers, Managers, Shift Officers etc., whose names are not appearing in the attendance register (Exh.61) were also working with the first party company. That, as a Supervisor, he was required to assign, monitor and supervise the work of the workers, to recommend about leave of workers, to recommend regarding performance of the workers, to assign rework etc. That, the company restarted manufacturing activities in the year 2013 before which the company sent him an intimation and recalled him and accordingly he rejoined.

16] CW-3 Malay Bikash Jana testified that, he was working as a Production Chemist with the first party company since the year 2000 till the closure. That, the company has sent an intimation to him recalling him for re- employment for the post and accordingly he is working as a Manager – Manufacturing and Production. That, there were 13-14 workers, who were recalled and accepted and still working. He gave the names of those 12 workers. According to him, 14 workers have settled their claim with the company and therefore, though they were recalled but did not come forward for reappointment.

17] Apart from the oral testimony, both the parties also relied on the documentary evidence.

Exhibit	**Document**
Exh.12	Statement of claim of second party
Exh.12/A	Rejoinder of Second party to the reply of first party
Exh.22 & Exh.22A	Reply filed by first party
Exh.105	Appln. filed by second party for amendment to statement of claim
Annexure – A	List of employees
Exh.61	Attendance Register
Exh.104	Closure Notice dated 12.09.2009

18] After hearing Mr. Nair, Representative of the second party union, and Adv. M.N. Parekh, for first party company, and on the basis of material on record, I record my findings on the issues at Exh.39 for the reasons discussed there under :-

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DATED : 20th MARCH, 2020.

Sr.No.	ISSUES	FINDINGS
1.	Is the establishment of the first party company closed in the eyes of law ?	In the negative In
2.	If there is a closure in fact did the first party company employee 100 or more workers on an average during the 12 months preceding its closure ?	the affirmative
3.	Whether the said closure is in breach of the provisions of sec.25O of the Industrial Act, 1947 ?	In the affirmative
4.	If not whether the said closure is in breach of the provisions of sec.25FFA of the Industrial Disputes Act, 1947 ?	In the affirmative but redundant
4A]	Whether M/s. Global Health Care Products has started manufacturing activities in the undertaking in which the workmen concern in the reference were employees ?	In the affirmative
4B]	Whether the workmen concern with the reference were required to give an opportunity for re-employment in preference ? And if yes, whether they were given such preference ?	**Yes. But not given such preference**
5.	What relief are the workers entitled to ?	**As per final order**

R E A S O N S

As to issue no.2:-

19] Adv. Parekh contended that, there were in all 110 employees in the establishment preceding 12 months of closure. That, out of those 112 employees, 83 were workers, 16 were Supervisors, 12 Security Guards and 1 was office boy. He has filed charts showing month vise attendance of the workers (which is kept with Exh.61). According to him, 16 Supervisors, 12 Security Guards and 1 office boy cannot be said to be workmen. Therefore, the total number of employees comes to 83 only. Adv. Parekh further contended that, even considering that 12 Security Guards and 1 office boy are covered under the definition of workmen, even then, the total of number of workmen come to 96 only. He further contended that, even assuming that all 112 persons are workmen, even then, the total physical attendance of all 112 employees comes to 95.81% for preceding 12 months from the date of closure.

20] As against this, Mr. Nair contended that, total number of permanent employees were 171 on an average per working day in the preceding 12 months of the closure. That, there were other contractual employees too, who were working in the company. He too filed 4 charts showing that in any case, the number of employees in the preceding 12 months of the closure comes to more than 100 (Such charts are also kept with Exh.61).

21] The definition of 'workmen' is defined u/sec.2(s) of the Act, which is reproduced herein below :

> '**Section 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, dischasrge 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.]'

22] The first party company has filed the muster book / register (Exh.61) showing the number of employees in the company. From the plain reading of sec.2(s) of the Act i.e. definition of 'workmen', it is but natural that persons employed in any industry to do clerical or supervisory work are also 'workmen' included in the definition. Who are not included in the definition of 'workmen' are the employee mostly doing managerial or working in administrative capacity or who is employed in supervisory capacity but does not draw wages exceeding Rs.6500/- (which is now Rs.10,000/- w.e.f. 15.09.2010). In the case in hand, alongwith the order of reference, the names of 8 Supervisors are given by the Labour Commissioner. The second party union has examined 2 persons UW-1 and UW-3, whose names are shown in the list of Supervisor in Annexure-A, filed by the L.E.O. alongwith the order of reference. Whereas, the first party company has filed the evidence affidavit of Nirmal Kumar (CW-2) at Exh.95, whose

name is not reflected in the list of Supervisor in Annexure-A. However, his name is reflected in the muster register (Exh.61) at serial no.57 of Exh.79.

23] UW-3 Sanjoy Basudev Manna testified that, since the year 2004, he was working with the first party company as a Line Quality Checker. In his cross examination he denied that he was working as a Quality Supervisor. As against this, CW-2 Nirmal Kumar testified that, as a Supervisor, his duties were – assigning work to the workers, supervising and monitoring the work of the workers, to recommend about leave of the workers, to recommend regarding performance of workers and to assign re-work, if there is a reaction from the quality / quantity point of view, to check and verify the use of PPE by the workmen, to monitor about the GMP by the workmen etc. In his cross examination by second party, he was repeatedly asked whether his work was quality control checking, to which he deliberately avoided to answer. But after being warned by the Court, he, at the first instance, again stated that, he was Supervisor, but subsequently admitted that he was also looking after the quality control checking. Admittedly, in the Muster Roll (Exh.61), nowhere it is mentioned that what is the post, designation or the work assigned to the persons mentioned therein. Even assuming that what CW-2 Nirmal Kumar testified is true, that he was also looking after the quality control checking alongwith other the works which was assigned to him, his work, as stated by him, cannot be said to be in managerial or administrative capacity. His work squarely falls under the category of workmen. Therefore, from the evidence of UW-3 Malay Jana and CW-2 Nirmal Kumar, it is crystal clear that the work of the 2 Supervisors examined one each by both the sides, may be of Supervisory work, but cannot be said to be of any managerial or administrative capacity or supervisory capacity. On the contrary, from the evidence of both, if read together, it seems that, their work was not of Supervisory capacity but they were employed in the first party company as a workman to do technical, operational, clerical or supervisory work. Therefore, I am not in agreement with the contention of Adv. Parekh that 16 Supervisors are excluded from the definition of workmen. So also, the office boy and the Security Guard are also not excluded from the definition of sec.2(s) of the Act, but they are inclusive therein. Even assuming, that what the first party company is contending about 102 employees were employed is correct, their work, as demonstrated by the evidence laid by them cannot be said to be not inclusive within the definition of workmen as defined u/sec.2(s) of the Act.

24] Chapter VA and Chapter VB provides for 2 different parameters and procedure to be adopted by the different company for closing down of their undertaking. For applying Chapter VB to a particular industrial establishment, there are certain conditions. Section 25K of the Act is reproduced herein below:-

25K. Application of Chapter V-B.-

(1) The provisions of this Chapter shall apply to an industrial establishment (not being an establishment of a seasonal character or in which work is performed only intermittently) in which not less than [2] one hundred] workmen were employed on an average per working day for the preceding twelve months.

(2) If a question arises whether an industrial establishment is of a seasonal character or whether work is performed therein only intermittently, the decision of the appropriate Government thereon shall be final.'

25] On the Muster Role / Register (Exh.61) and even as per the case of the first party company, there were 171 workmen working in the Dapada factory. On careful scrutiny of the chart which is given by the Adv. Parekh (kept with Exh.61), it seems that, Adv. Parekh has calculated average number of workmen employed on an average per working day. Whereas, sec.25K of the Act provides for 100 workers employed on an average working day. Therefore, average workmen are not required to be taken into consideration to see whether there are 100 workmen employed in an industrial establishment. What is required to be taken into consideration in average is only working days. I am in agreement with the contention raised by Mr. Nair, that if a workman is on leave, he cannot be said to be not a workman who is not employed. He remains to be a workman employed in industrial establishment. Therefore, calculation in the chart given by Adv. Parekh, excluding the days of the leave of the workman or only taking into consideration the days which they have worked is against the spirit of sec.25K of the Act. On the contrary, the 4 charts which are cited by Mr. Nair seems to be on correct footing. Therefore, in my view, even considering the number of employees in the muster roll (Exh.61), the number of workmen which were employed by the first party company comes to more than 100 on an average per working day for preceding 12 months of closure. As such, my answer to issue no.2 is in the affirmative.

As to issue no.3 :-

26] The fact of closure of the first party company at Dapada on 12.10.2009 is not disputed by either of the parties. As already said, that there are too procedures, parameters and consideration for an industrial establishment for closing down of their undertaking. As in the case in hand, as already stated, that there were more than 100 workmen employed on an average per working day for preceding 12 months before the closure of the industrial establishment, Chapter VB of the Act is applicable. Sec.25O of the Act falls in Chapter V-B of the Act. Section 25O of the Act provides for the procedure for closing down and undertaking. Section 25O of the Act is reproduced herein below :-

SERIES II No. : 12
DATED : 20th MARCH, 2020.

'25-O. Procedure for closing down an undertaking -

(1) An employer who intends to close down an undertaking of an industrial establishment to which this Chapter applies shall, in the prescribed manner, apply, for prior permission at least ninety days before the date on which the intended closure is to become effective, to the appropriate Government, stating clearly the reasons for the intended closure of the undertaking and a copy of such application shall also be served simultaneously on the representatives of the workmen in the prescribed manner :

Provided that nothing in this sub-section shall apply to an undertaking set up for the construction of buildings, bridges, roads, canals, dams or for other construction work.

(2) Where an application for permission has been made under sub- section (1) the appropriate Government, after making such enquiry as it thinks fit and after giving a reasonable opportunity of being heard to the employer, the workmen and the persons interested in such closure may, having regard to the genuineness and adequacy of the reasons stated by the employer, the interests of the general public and all other relevant factors, by order and for reasons to be recorded in writing, grant or refuse to grant such permission and a copy of such order shall be communicated to the employer and the workmen.

(3) Where an application has been made under sub-section (1) and the appropriate Government does not communicate the order granting or refusing to grant permission to the employer within a period of sixty days from the date on which such application is made, the permission applied for shall be deemed to have been granted on the expiration of the said period of sixty days.

(4) An order of the appropriate Government granting or refusing to grant permission shall, subject to the provisions of sub-section (5), be final and binding on all the parties and shall remain in force for one year from the date of such order.

(5) The appropriate Government may, either on its own motion or on the application made by the employer or any workman, review its order granting or refusing to grant permission under sub-section (2) or refer the matter to a tribunal for adjudication :

Provided that where a reference has been made to a Tribunal under this sub-section, it shall pass an award within a period of thirty days from the date of such reference.

(6) Where no application for permission under sub-section (1) is made within the period specified therein, or where the permission for closure has been refused, the closure of the undertaking shall be deemed to be illegal from the date of closure and the workmen shall be entitled to all the benefits under any law for the time being in force as if the undertaking had not been closed down.

(7) Notwithstanding anything contained in the foregoing provisions of this section, the appropriate Government may, if it is satisfied that owing to such exceptional circumstances as accident in the undertaking or death of the employer or the like, it is

necessary so to do, by order, direct that the provisions of sub-section (1) shall not apply in relation to such undertaking for such period as may be specified in the order.

(8) Where an undertaking is permitted to be closed down under sub- section (2) or where permission for closure is deemed to be granted under sub-section (3), every workman who is employed in that undertaking immediately before the date of application for permission under this section, shall be entitled to receive 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.]'

27] It is not disputed by Adv. Parekh, that the Notice dated 12.10.2009 of the closure (Exh.104) was issued to the employees on roll informing that they will be retrenched after the expiry of the Notice period of 30 days i.e. from 12.10.2009 (closing hours).

28] It is not disputed by Adv. Parekh nor there is any oral or documentary evidence on record laid by first party company that the first party company has obtained any prior permissions of the appropriate Government at least 90 days before the date on which the intended closure became effective. Adv. Parekh also admitted and there is no evidence by second party union that the appropriate Government has given any such permission of closure of the undertaking to the first party company. Therefore, admittedly, there is breach of the legal provisions of the Act by the first party company for closing down their industrial establishment without following the due procedure for closing down as provided u/sec.25O (Chapter V-B) of the Act. Therefore, my answer to issue no.3 is in the affirmative.

As to issue no.4 :-

29] Assuming for the sake of argument and without concluding the same, that Chapter V-B of the act is not applicable to the first party company, then, Chapter VA will apply. Section 25FFA and sec.25FFF of the Act provides for the procedure in the case of closing down of an undertaking to whom Chapter-VA and not Chapter V-B will be applicable. Therefore, it is necessary to see whether sec.25FFA of the Act and sec.25FFF of the Act are complied by the first party company or not. Section 25FFA and sec.25FFF of the Act are reproduced herein below :-

25FFA. Sixty days notice to be given of intention to close down any undertaking.-

(1) An employer who intends to close down an undertaking shall serve, at least sixty days before the date on which the intended closure is to become effective, a notice, in the prescribed manner, on the appropriate Government stating clearly the reasons for the intended closure of the undertaking:

Provided that nothing in this section shall apply to--

(a) an undertaking in which--
(i) less than fifty workmen are employed, or
(ii) less than fifty workmen were employed on an average per working day in the preceding twelve months,

(b) an undertaking set up for the construction of buildings, bridges, roads, canals, dams or for other construction work or project.

(2) Notwithstanding anything contained in sub- section (1), the appropriate Government may, if it is satisfied that owing to such exceptional circumstances as accident in the undertaking or death of the employer or the like it is necessary so to do, by order, direct that provisions of sub- section (1) shall not apply in relation to such undertaking for such period as may be specified in the order.]

25FFF. Compensation to workmen in case of closing down of undertakings.-

(1) Where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure shall, subject to the provisions of sub- section (2), be entitled to notice and compensation in accordance with the provisions of section 25F, as if the workman had been retrenched:

Provided that where the undertaking is closed down on account of unavoidable circumstances beyond the control of the employer, the compensation to be paid to the workman under clause (b) of section 25F shall not exceed his average pay for three months.

[Explanation.-- An undertaking which is closed down by reason merely of--
(i) financial difficulties (including financial losses); or
(ii) accumulation of undisposed of stocks; or
(iii) the expiry of the period of the lease or licence granted to it; or
(iv) in a case where the undertaking is engaged in mining operations, exhaustion of the minerals in the area in which such operations are carried on,
shall not be deemed to be closed down on account of unavoidable circumstances beyond the control of the employer within the meaning of the proviso to this sub-section.]

(1-A) Notwithstanding anything contained in sub- section (1), where an undertaking engaged in mining operations is closed down by reason merely of exhaustion of the minerals in the area in which such operations are carried on, no workman referred to in that sub- section shall be entitled to any notice or compensation in accordance with the provisions of section 25F, if--

(a) the employer provides the workman with alternative employment with effect from the date of closure at the same remuneration as he was entitled to receive, and on the same terms and conditions of service as were applicable to him, immediately before the closure;

(b) the service of the workman has not been interrupted by such alternative employment; and

(c) the employer is, under the terms of such alternative employment or otherwise, legally liable to pay to the workman, in the event of his retrenchment, compensation on the basis that his service has been continuous and has not been interrupted by such alternative employment.

(1-B) For the purposes of sub- sections (1) and (1A), the expressions" minerals" and" mining operations" shall have the meanings respectively assigned to them in clauses (a) and (d) of section 3 of the Mines and Minerals (Regulation and Development) Act, 1957 (67 of 1957).]

(2) Where any undertaking set- up for the construction of buildings, bridges, roads, canals, dams or other construction work is closed down on account of the completion of the work within two years from the date on which the undertaking had been set- up, no workman employed therein shall be entitled to any compensation under clause (b) of section 25F, but if the construction work is not so completed within two years, he shall be entitled to notice and compensation under that section for every [1] completed year of continuous service] or any part thereof in excess of six months.]

30] It is not the case of the first party company that, there were less than 50 workers employed with them at the relevant time. Even from the chart of calculation, of the average workman employed on an average per working day in the preceding 12 months, given by the first party company (kept with Exh.61), it is apparently seen that there were more than 50 workmen which are calculated by them to have been employed in their establishment on an average per working day in the preceding 12 months before the closure. Sec.25FFA of the Act provides that, employer (i.e. first party company in the case in hand) who intends to close down an undertaking shall serve a Notice at least 60 days before the date on which the intended closure is to become effective. Section 25FFA of the Act also provide that such Notice should be in prescribed manner. Sec.25FFA(1) of the Act also provides that, such Notice is to be given to the appropriate Government stating clearly the reason for the intended closure of the undertaking. Admittedly, the Notice (Exh.104) is not issued to appropriate Government. The Notice (Exh.104) is issued to the workmen. There is no Notice filed on record by first party company nor it is their case that any Notice u/sec.25FFA(1) of the Act was issued by them at least 60 days before the intend closure to the appropriate Government giving reason for the intended closure. Therefore, there is also breach of sec.25FFA of the Act by the first party company, assuming for the sake of argument and subject to cost of repetition that Chapter - VA and not Chapter V-B is applicable to their Industrial Establishment and Industrial Dispute.

31] Adv. Parekh submitted that, in the order of reference, there is no ground raised by the second party union about the closure of the undertaking in violation of Chapter - VA of the Act. However, on perusal of the order of reference, it seems that, the first party company themselves have contended that, they are ready to pay 2 months Notice pay in lieu of sec.25FFA of the Act, for which, no prior 60 days Notice is required to be given. They have further contended that, the payment of 2 months wages, in lieu of 60 days Notice u/sec.25FFA of the Act, is made to every workmen. On being confronted, statement was made by the second party, that most of the workmen have received their compensation u/sec.25FFF of the Act and those, who have not received, were issued the cheques of such compensation by the first party. Therefore, even assuming that, there is compliance of sec.25FFF of the Act by the first party, the

fact remains, that the closure is in violation of sec.25FFA of the Act. Reliance is placed on the ratio laid down by the Hon'ble Apex Court in the case of ***Machinnon Mackenzie And Company Limited Versus Machinnon Employees Union [(2015) 4 Supreme Court Cases 544] Decided on February 25, 2015***, relied by the second party union. The Hon'ble Apex Court in para no.44 has held,

> '**44.**The statutory provisions contained in Section 25FFA of the I.D. Act mandate that the Company should have issued the intended closure notice to the appropriate Government should be served notice at least 60 days before the date on which it intended to close down the concerned department/unit of the Company. As could be seen from the pleadings and the findings recorded by the Industrial Court, there is a categorical finding of fact recorded that there is no such mandatory notice served on the State Government by the appellant Company. The object of serving of such notice on the State Government is to see that the it can find out whether or not it is feasible for the company to close down a department/unit of the company and whether the workmen concerned ought to be retrenched from their service, made unemployed and to mitigate the hardship of the workmen and their family members. Further, the said provision of the ID Act is the statutory protection given to the workmen concerned which prevents the appellant Company from retrenching the workmen arbitrarily and unreasonably and in an unfair manner.'

32] Therefore, in the case in hand, admittedly, there is non- compliance of mandatory provisions of sec.25FFA of the Act by the first party company in closing down the establishment i.e. factory at Dapada. As such, my answer to issue no.4 is in the affirmative. But, having regard to the fact that my findings to issue no.3 is also in the affirmative and Chapter V-B of the Act is applicable to the Industrial Establishment i.e. first party company and not Chapter - VA of the Act, wherein sec.25FFA of the Act falls, otherwise the issue no.4 becomes redundant.

As to issue no.1:-

33] The effect of closure of an industrial estate without following procedure contemplated u/sec.25O of the Act is already provided under sub clause 6 of the sec.25O of the Act, which is reproduced above. Sec.25O(6) of the Act provides, that where no application for permission u/sec.25O(1) of the Act is made, the closure of undertaking shall be deemed to be illegal from the date of closure. Subject to cost of repetition, it is already held that, the closure of an industrial establishment by the first party is in violation of sec.25O of the Act. Therefore, the effect of such illegal closure, as per sec.25O(6) of the Act, is such, that such closure became illegal from the date of closure. Therefore, such closure cannot be said to be legal closure. Hence, it is to be considered that such factory or industrial establishment was never legally closed. As such, I am of the view, that the statutory effect of illegal closure of undertaking of an industrial

establishment in violation of sec.25O of the Act is that, it should be treated as if it was never closed down. As such, my answer to issue no.1 is accordingly. I am of the view, that in the eye of law, such establishment cannot be said to be legally closed and therefore, shall be deemed to be not closed and presumed to be continued. As such, it cannot be said that the establishment of first party was closed in the eye of law, as the closure itself is illegal in violation of mandatory provision of sec.25O or alternative sec.25F, sec.25FFF and sec.25FFA of the Act. As such, my answer to issue no.1 is in the negative.

As to issue no.4A] :-

34] The fact is not disputed but admitted by the first party that they have re-started manufacturing activities in Dapada factory in the year 2013. As such, my answer to issue no.4A is in the affirmative.

As to issue no.4B] :-

35] Section 25H of the Act provides for re-employment for retrenched workmen. Section 25H of the Act is reproduced herein below :-

> **'25H. Re- employment of retrenched workmen.-** Where any workmen are retrenched, and the employer proposes to take into his employ any persons, he shall, in such manner as may be prescribed, give an opportunity [2] to the retrenched workmen who are citizens of India to offer themselves for re- employment and such retrenched workman] who offer themselves for re- employment shall have preference over other persons.'

36] Adv. Parekh vehemently contended that, the effect of closure of an undertaking on the workmen is not retrenchment, and therefore, provision of sec.25H of the Act will not be applicable for such workmen.

37] Mr.Nair contended that, the effect of closure on the employees/workmen is nothing but retrenchment.

38] Retrenchment is defined u/sec.2(oo) of the Act. Sec.2(oo) of the Act is reproduced herein below :-

> **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 a stipulation in that behalf; or

[(bb) [2] termination of the service of the workman as a result of the non- renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein; or]

(c) termination of the service of a workman on the ground of continued ill- health;]

39] On plain reading of definition of retrenchment, it is but natural that the termination by the employer of the service of employee for any reason whatsoever except as a punishment inflicted by way of disciplinary action is a retrenchment. So also, Voluntary Retirement, retirement on superannuation, termination of services as a result of non renewal of contract, termination of services on the ground of continued ill-health are also not included in the definition of retrenchment. All other termination of services of workmen, therefore are retrenchment. Even the Hon'ble Apex Court in the case of ***Oswal Agro Furane Ltd. and another Vs. Oswal Agro Furane Workers Union and others [(2005) 3 Supreme Court Cases 224] decided on February 14, 2005*** (cited by the second party union) has held such closure of the industrial establishment without prior permission constitutes a condition precedent for retrenchment and/or closure and is mandatory. – [para no.14] "A bare perusal of the provisions contained in Sections 25-N and 25-O of the Act leaves no manner of doubt that the employer who intends to close down the undertaking and/or effect retrenchment of workmen working in such industrial establishment, is bound to apply for prior permission at least ninety days before the date on which the intended closure is to take place." Therefore, even the Hon'ble Apex Court has treated the effect of closure of an industrial establishment on the workmen as a retrenchment and not otherwise. Therefore, I am not in agreement with the argument advanced by Adv. Parekh that in the case in hand, the effect of closure on the workmen is not retrenchment.

40] On plain reading of sec.25H of the Act, it is mandatory on the employer who has retrenched the workmen to give an opportunity and offer them re-employment to the preference over other persons. Section 25H of the Act, in my view, is also applicable to the workmen who are retrenched due to the closure of an industrial establishment, which subsequently starts their industrial activities or manufactures in such closed industrial establishment.

41] CW-3 Malay Jana was examined by the first party company only on the point that after first party restarted its manufacturing activities in the year 2013, he and other were sent an intimation and recalled for re- employment. As per CW-3 Malay Jana, other than him, other 13-

14 employees who were working before the closure were also recalled and are still working with him. According to him, he has received such intimation by post from the first party company. However, CW-3 Malay Jana has not filed such letter issued to him or to the other employees. Suggestion was put to him in his cross examination by second party, though he denied the same, that, no such letters were issued to him or the other employees. CW-2 Nirmal Kumar in his cross examination has shown his lack of knowledge as to first party has published any such notice calling upon them to rejoin. Therefore, admittedly, except for the bare words of CW-3 Malay Jana, there is no documentary evidence to show that such notices were issued.

42] The corrigendum to the order of reference shows that first party company has stated before the L.E.O., that the records pertaining intimation to the intimations recalling the workers for re-employment are destroyed by the white ant (termite) and the company is not able to produce the record. The first party company has not laid any evidence that really such documents were destroyed as alleged, so that, the oral testimony of CW-3 Malay Jana can be considered as secondary evidence. CW-1 Muraleedharan has not made any whisper in his examination about destruction of such documents, though, he filed evidence affidavit in August' 2019.

43] As it is a statutory requirement of law (See sec.25H of the Act) that, opportunity is to be given by offer of re-employment to the earlier retrenched workmen and such retrenched workers will have preference over the other persons to be newly appointed, it was for the first party company to substantiate and probabalized that really such procedure was adopted, which they have failed to substantiate or probabalized.

44] It is apparent from the evidence on record that the first party has taken two stands for their reason for the closure : 1. That, the Hindustan Unilever Ltd. has stopped giving work orders to them of manufacturing of Toothpaste from the month of August'2009 (see order of reference) and 2. That about 2 months of clsorue the job work from the Hindustan Unilever Ltd. has reduced (see para no.3 of CW-2 Exh.95). From the evidence on record, it is apparent that, the closure of the manufacture activities of the first party company was w.e.f. 12.10.2009. The company restarted its manufacturing activities in the year 2012. There is evidence on record that, all the machineries and equipments were lying in the factory premises of the company at Dapada. As such, within short span of 3+ years, the first party company with the same machineries started manufacturing activities for supply to Hindustan Unilever Ltd. only. As such, in my view, it was more incumbent on the first party company to give preference to the

retrenched employees after restarting of their manufacturing activities, which they have failed to prove.

45] Under such circumstances, it cannot be said that, the first party company has complied with the provision of sec.25H of the Act and thereby have given the preference to the retrenched workmen at the closure for their re-employment, that too, to the preference over the others. As such, my answer to Issue no.4B, as to the first part of giving preference is in the affirmative, being a statutory obligation, and the second part in the negative, that no such preference was given by the first party company.

As to issue no.5]

46] Adv. Parekh has argued that this tribunal cannot extend his scope beyond the order of reference. He placed his reliance by the Hon'ble Gujarat High Court in the case of ***Divisional Controller Versus Anjana B. Pandya [S.C.A. No.11198 of 2012 11th October, 2012]*** wherein, in para. no.9, it is held that, "the Labour Court derived its jurisdiction from the terms in the reference. It ought to have exercised its jurisdiction within the four corners thereof." Para no.9 of the said Judgment is reproduced herein below :-

> "9. It is a settled position of law that the Labour Court/Tribunal has power and authority to adjudicate a dispute that has been referred to it by the appropriate Government under Section 10(1) of the Act. However, the Labour Court/Tribunal cannot go beyond the terms of Reference but has to decide within the four corners thereof. In the present case, the terms of Reference were only regarding the penalty of stoppage of two increments with future effect. That penalty had already been modified by the Second Appellate Authority by imposing the penalty of stoppage of one increment with future effect. It is not disputed by learned counsel for the respondent that the penalty of stoppage of one increment with future effect did not fall within the terms of Reference before the Tribunal. However, this penalty has also been quashed and set aside by the Tribunal even though it was never referred to it for adjudication at all."

47] Adv. Parekh further also placed his reliance on the ratio laid down by the Hon'ble Andhra Pradesh High Court in the case of ***Management of Divisional Engineer, Telecommunications, Mahaboobnagar District and Venkataiah and another [2007 (2) L.L.N.298] Decided on 07.07.2006*** wherein, it is held that, "industrial tribunal or Labour Court to confine its adjudication to points of dispute specified for adjudication and matters incidental thereto but not to exceed scope of order of reference." He pointed out the dispute mentioned by the L.E.O. in his order of reference and corrigendum thereto. The dispute sent for

adjudication by the L.E.O. in the order of reference and corrigendum to it are already reproduced.

48] Adv. Parekh further submitted that, the L.E.O. has confined its dispute to the employees mentioned in Annexure-A, the list of which is already reproduced above. Without prejudice to his contention, he submitted, that therefore, this Court cannot go beyond by giving relief to the other workmen than Annexure-A. He further submitted that, 14 employees have settled their dispute with the first party company. According to him, they have accepted an amount of Rs.50,000/- towards full and final settlement of their claim. Therefore, he submitted that in respect of those employees, this Labour Court / Tribunal cannot pass any orders.

49] As against this, Mr. Nair submitted that, the settlement arrived by and between the employer and workers are against the public policy and will not prevail the statutory relief u/sec.25H and sec.25O of the Act. He placed his reliance on the ratio laid down by the Hon'ble Apex Court in the case of Oswal Agro Furane Ltd. and Another Vs. Oswal Agro Furane Workers Union and Others (Cited supra).

50] In this regard, I will like to mention here that, the L.E.O. has formulated the entire dispute in one sentence. The dispute which is referred by the L.E.O. for adjudication to this tribunal is required to be seen in the brake ups, so that, it will be convenient to see what are the disputes which are referred. The referred dispute by the L.E.O. for adjudication to this tribunal in the order of first reference dated 03.07.2010 in brake up will be as under :-

1. Whether the action of Management of M/s. Global Health Care Products, Dapada, in alleged closing down its undertaking without observing provisions of the Industrial Disputed Act, 1947 is legal and justified ?

2. Whether the action of Management of M/s. Global Heath Care Products, Dapada, in subsequently refusing to concede the demands of workers, who have not accepted the dues in full and final settlement for reinstatement with full wages is legal and justified ?

3. Whether the action of Management of M/s. Global Health Care Products, Dapada, in refusing to concede the demand of workers who have not accepted dues of Rs.2 Lacs each for every completed year of service in lieu of reinstatement as per details contained in Annexure-A is legal and justified ?

If not, to what relief the workmen are entitled ?

51] It seems that, due to clubbing of several disputes by using conjunctions, the L.E.O. has formulated one sentence of several disputes and referred the same to this Industrial Tribunal for adjudication. Therefore, it is apparent that, the list of workmen in Annexure-A to the order of reference is restricted to the relief and referred dispute of refusal by the first party company to the demand of workers for accepting the dues in full and final settlement as against reinstatement for Rs.2 Lacs each for every completed year of services in lieu of reinstatement. Therefore, it seems that, the first party company wants to take disadvantage of such clubbing of several disputes / reliefs in one sentence by the L.E.O. in his order of reference. Moreover, by pursis (Exh.31), the second party has waived their right to claim the relief of Rs.2 Lacs each for the workmen for every completed year of services in lieu of reinstatement. Though, Adv. Parekh has submitted that, the second party workmen in their letter to L.E.O. dated 26.09.2019, with reference of rejoinder to reply dated 23.09.2018 filed by the first party, to the corrigendum application, has mentioned in para no.7 that,- "It is accepted and clarified that the Reference IDR 1/2010, and the Corrigendum Application, are being prosecuted only on behalf of the 20 workmen whose names remain in the Reference, and not on behalf of the 14 workmen who have settled their claims directly with the Company (and whose names have already been deleted from the Reference)." By referring para no.7 as above, Adv. Parekh submitted that, the admission on the part of second party is sufficient to show, that now, the adjudication of dispute under order of reference and corrigendum to it are being prosecuted only for 20 workmen from the list Annexure-A.

52] However, I am of the view, that when the law provides for certain benefits to be extended to a particular persons, it is required to be extend to all of them irrespective of fact that, whether, for them, such dispute is prosecuted or not. As per sub section 6 of sec.25O of the Act, the effect of illegal closure extends to the workmen and for the all the benefits under the law for the time being in force. Therefore, I am not in agreement with the contention of Adv. Parekh that, the dispute under reference can be adjudicated only in reference of 20 workmen from Annexure-A to the order of reference. As already held, that there were more than 100 workmen found to have employed by the first party company on an average per working day for the preceding 12 months of the closure, whereas, Annexure-A to the order of reference is showing 34 number of workmen only.

53] The first party company has not brought on record, that, except 14 workmen mentioned in 'Annexure-A' to order of reference, any other workmen have settled their dispute with the first party company. As such, subject to cost of repetition, the adjudication cannot be restricted only to the number of employees mentioned in 'Annexure-A' to the order of reference,

especially when it is found that, the closure itself is illegal and the law provides for the remedy to all the workmen in the case of such closure. Therefore, it cannot be said that this tribunal is expanding its scope, if the relief is granted in favour of the other workmen than who are listed in 'Annexure-A'.

54] Moreover, in the case of Anjana Pandya before the Hon'ble Gujarat High Court (cited supra by the first party company), the Tribunal quashed and set aside the penalty for stoppage which was never referred to it for adjudication. So as, in the case of Management of Divisional Engineer, Telecommunications and Venkataih and others before the Hon'ble Andhra Pradesh High Court (cited supra by the first party company), the order of reference was – as to whether the action of management in retrenchment of the workmen w.e.f. 01.04.1986 was justified or not ? whereas, the tribunal have gone beyond the scope of reference and examined his earlier retrenchment w.e.f. 30.11.1984. In the case cited supra, the relief was not provided under the statutory provisions itself. Whereas, as stated earlier, sub section 6 of the sec.25O of the Act, provides for such statutory remedy in the case the closure is found to be illegal. Adv. Parekh also placed his reliance on the ratio laid down by the Hon'ble Apex Court in the case of ***Bhogpur Co- operative Sugar Mills, Ltd. and Harmesh Kumar [2007 (1) L.L.N.95] Decided on 10.11.2006,*** wherein, the Hon'ble Apex Court has held that, the Labour Court derived its jurisdiction from the term of reference and is bound to exercise its jurisdiction within the four corners thereof. However, in the case cited supra, principal question which was referred was,- 'As to whether the termination of services of respondent was justified or not ? The Labour Court, therefore, was not required to held that the appellant was bound to take services of the respondent in all subsequent seasons or not. As such, the argument advanced by Adv. Parekh, that the Tribunal Court will extend its jurisdiction, if any relief is granted to other workmen than remaining 20, who are listed in the order of reference, is against provision and spirit of law.

55] The second aspect which is required to be looked into is,- as to what is the effect of settlement by the first party company with the 14 alleged workmen whose names are already ordered to be deleted from the list Annexure-A to the order of reference dated 03.07.2010. The fact is not disputed and is otherwise corroborates from the documents placed on record, that the said 14 employees have settled their dispute with the first party company after accepting the amount in full and final settlement. The Hon'ble Apex Court in the case of Oswal Agro Furane Ltd. (cited supra by the second party) has held the effect of settlement on the workmen or on the industrial establishment within the meaning of sec.2(p) r/w. sec.18(3) of the Act. The reference para no.14 to 17 of the Judgment cited supra are relevant and will clarify the position of law as regards such settlement. It is pertinent to note here that, in the case of Oswal Agro

Furane Ltd., the dispute was similar to the case in hand, wherein, the closure was found to be illegal. However, the settlement itself was challenged and the Hon'ble Apex Court has held the effect of such settlement. Para no.14 to 17 are reproduced herein below :-

> "14.A bare perusal of the provisions contained in Sections 25-N and 25- O of the Act leaves no manner of doubt that the employer who intends to close down the undertaking and/or effect retrenchment of workmen working in such industrial establishment, is bound to apply for prior permission at least ninety days before the date on which the intended closure is to take place. They constitute conditions precedent for effecting a valid closure, whereas the provisions of Section 25-N of the Act provides for conditions precedent to retrenchment; Section 25-O speaks of procedure for closing down an undertaking. Obtaining a prior permission from the appropriate Government, thus, must be held to be imperative in character.
>
> 15.A settlement within the meaning of Section 2(p) read with sub- section (3) of Section 18 of the Act undoubtedly binds the workmen but the question which would arise is, would it mean that thereby the provisions contained in Sections 25-N and 25-O are not required to be complied with? The answer to the said question must be rendered in the negative. A settlement can be arrived at between the employer and workmen in case of an industrial dispute. An industrial dispute may arise as regard the validity of a retrenchment or a closure or otherwise. Such a settlement, however, as regard retrenchment or closure can be arrived at provided such retrenchment or closure has been effected in accordance with law. Requirements of issuance of a notice in terms of Sections 25-N and 25-O, as the case may, and/or a decision thereupon by the appropriate Government are clearly suggestive of the fact that thereby a public policy has been laid down. The State Government before granting or refusing such permission is not only required to comply with the principles of natural justice by giving an opportunity of hearing both to the employer and the workmen but also is required to assign reasons in support thereof and is also required to pass an order having regard to the several factors laid down therein. One of the factors besides others which is required to be taken into consideration by the appropriate Government before grant or refusal of such permission is the interest of the workmen. The aforementioned provisions being imperative in character would prevail over the right of the parties to arrive at a settlement. Such a settlement must conform to the statutory conditions laying down a public policy. A contract which may otherwise be valid, however, must satisfy the tests of public policy not only in terms of the aforementioned provisions but also in terms of Section 23 of the Indian Contract Act.
>
> 16. It is trite that having regard to the maxim "ex turpi causa non oritur actio", an agreement which opposes public policy as laid down in terms of Sections 25-N and 25-O of the Act would be void and of no effect. The Parliament has acknowledged the governing factors of such public policy. Furthermore, the imperative character of the statutory requirements would also be borne out from the fact that in terms of sub- section (7) of Section 25- N and sub-section (6) of Section 25-O, a legal fiction has been created. The effect of such a legal fiction is now well- known. [See East End Dwellings Co. Ltd. V. Finsbury

Borough Council [(1951) 2 All ER 587, Om Hemrajani vs. State of U.P. and Another (2005) 1 SCC 617 and M/s Maruti Udyog Ltd. vs. Ram Lal & Ors. 2005 (1) SCALE 585].

17. The consequences flowing from such a mandatory requirements as contained in Sections 25-N and 25-O must, therefore, be given full effect. The decision of this Court in P. Virudhachalam (supra) relied upon by Mr. Puri does not advance the case of the Appellant herein. In that case, this Court was concerned with a settlement arrived at in terms of Section 25-C of the Act. The validity of such a settlement was upheld in view of the first proviso to Section 25-C of the Act. Having regard to the provisions contained in the first proviso appended to Section 25-C of the Act, this Court observed that Section 25-J thereof would not come in the way of giving effect to such settlement. However, the provisions contained in Sections 25- N and 25-O do not contain any such provision in terms whereof the employer and employees can arrive at a settlement."

56] The term 'Settlement' is defined u/sec.2(p) of the Act. On whom such settlement will be binding is provided u/sec.18 of the Act. Section 2(p) and sec.18 of the Act are reproduced herein below :

"**Section 2(p) 'Settlement'** means a settlement arrived at in the course of conciliation proceeding and includes a written agreement between the employer and workmen arrived at otherwise than in the course of conciliation proceeding where such agreement has been signed by the parties thereto in such manner as may be prescribed and a copy thereof has been sent to [an officer authorised in this behalf by] the appropriate Government and the conciliation officer;"

"Section 18. Persons on whom settlements and awards are binding. :-
(1) A settlement arrived at by agreement between the employer and workman otherwise than in the course of conciliation proceeding shall be binding on the parties to the agreement.
(2) Subject to the provisions of sub- section (3), an arbitration award] which has become enforceable shall be binding on the parties to the agreement who referred the dispute to arbitration.]
(3) A settlement arrived at in the course of conciliation proceedings under this Act [5] or an arbitration award in a case where a notification has been issued under sub- section (3A) of section 10A] or [6] an award [7] of a Labour Court, Tribunal or National Tribunal] which has become enforceable] shall be binding on –
(a) all parties to the industrial dispute;
(b) all other parties summoned to appear in the proceedings as parties to the dispute, unless the Board, [5] arbitrator,] [8] Labour Court, Tribunal or National Tribunal], as the case may be, records the opinion that they were so summoned without proper cause;
(c) where a party referred to in clause (a) or clause (b) is an employer, his heirs, successors or assigns in respect of the establishment to which the dispute relates;

(d) where a party referred to in clause (a) or clause (b) is composed of workmen, all persons who were employed in the establishment or part of the establishment, as the case may be, to which the dispute relates on the date of the dispute and all persons who subsequently become employed in that establishment or part."

57] The settlement u/sec.2(p) of the Act not only includes written argument between the employer and workmen arrived in course of conciliation but also includes such settlement arrived between in the course of conciliation proceeding. But, for such settlement, it is necessary that the copy of such agreement is to be sent to the authorized officer and the conciliation officer. As per sec.18 of the Act, only such settlement which falls u/sec.2(p) of the Act shall be binding on the parties. As per sec.18(3) of the Act, a settlement arrived at in the course of conciliation proceedings under the Act shall be binding on all the parties mentioned in clause (a), (b), (c) & (d) of sub sec.3 of sec.18 of the Act. In the case in hand, on perusal of the R&P, it seems that, copies of original settlement are filed before this tribunal. The parties to the settlement have confirmed before the tribunal all the contents and compromise/settlement arrived in between them. Therefore, it cannot be said that the 14 settlements are the settlement u/sec.2(p) of the Act and those are binding u/sec.18(3) of the Act to all the parties to the industrial dispute. However, as per sec.18(1) of the Act, such settlement shall be binding on the parties to the agreement. In the case of Oswal Agro (cited supra by the second party), the settlement itself was under challenge. So also, the parties, who have settled their dispute in the case cited supra, have not confirmed of such settlement before the Court. Therefore, as regards 14 employees are concerned, who have settled their dispute with the first party company and have confirmed the said fact by filing the original agreement in the Court, are not covered under the Judgment cited supra. However, such settlement cannot have a binding effect on the other employees u/sec.18(3) of the Act but will have a binding effect on 14 employees, who have settled, in view of sec.18(1) of the Act. As such, said 14 employees, whose names have already circled in red ink in Annexure-A with the order of reference (shown as deleted in the Annexure-A reproduced above), in my view, are not entitled for any statutory relief. Moreover, on perusal of the award of reference and corrigendum to it, it is crystal clear, that "to what relief the workmen are entitled for?" is also a dispute which is sent to this tribunal for adjudication. Therefore, it cannot be said that this Court cannot extend the relief to the workmen employed in the first party industrial establishment other then whose names are mentioned in list Annexure-A to the order of reference. Therefore, I am not in agreement with Adv. Parekh, for first party company, that, the settlement is binding on others. Nor I am in agreement with Mr. Nair, representative of second party, that, such settlement is nonest for those also, who have entered in such settlement.

58] Moreover, Adv. Parekh also argued that, without prejudicing to his contention, if, this tribunal held that, closure is legal, then, there is no pleading or proof by the workmen that they were not employed gainful while on termination and therefore, they cannot be granted relief of full back wages. Adv. Parekh placed his reliance on the ratio laid down by the Hon'ble Bombay High Court in the case of citation of ***Glasstech Industries (India) Pvt. Limited Vs. The Workmen, rep. by Maharashtra General Kamgar Union [2013 (1) LLN 119 (Bom.)] Decided on 16.01.2012.***

59] He also submitted that, grant of full back wages to the employees without pleading and evidence will result into widening the jurisdiction by this Labour Court.

60] In this regard, I will like to mention here that, in the Judgment of Glasstech Industries (Ind.) Pvt. Ltd. Vs. The Workmen, rep. by Maharashtra General Kamgar Union (cited supra), the case was not of closure and the right of workmen to be re-employed to the preference of others. Whereas, in the case in hand u/sec.25H of the Act, such statutory rights are there with the workmen. Moreover, in the case in hand, as discussed earlier, as per sec.25H(6) of the Act, there is statutory relief for which the workmen are entitled for, and which the Industrial Tribunal is bound to give. In the case in hand, as the closure is held to be illegal, as per sec.25O of the Act, the workmen are entitled to all the benefits for the time being in force, as if, undertaking (industrial establishment) had not closed down. Therefore, the case in hand falls at different parameters than the facts of the case cited supra. So also, when the Hon'ble Apex Court in the case of Mackinnon Mackenzie And Company Limited v/s Mackinnon Employees Union (citation represented by second party) has held, that 'the action of the company was clear breach of conditions precedent for retrenchment of workmen for non compliance of sec.25H of the Act rendering retrenchment illegal and invalid.' In the case cited supra, the Industrial Court directed the first party company, after adjudicating industrial dispute, to pay arrears of all such wages to the workmen to the retrenched workmen from the date of alleged retrenchment till the date of award and also directed the appellant company to pay the future wages regularly from the date they were actually allowed to continued to work as per the award of the Industrial Court. When the matter went to the Hon'ble Apex Court, the Hon'ble Apex Court in peculiar circumstances granted following reliefs to the workmen in the concluding para no.56.'

> "56. For the foregoing reasons, the appeal is dismissed. We affirm the impugned judgment and order of the Division Bench of the High Court. The order dated 14-8-2006 extending protection to the appellant Company shall stand vacated. Since, the workmen concerned have been litigating the matter for the last 23 years, it would be appropriate for us to give direction to the appellant Company to comply with the terms and conditions of the award

passed by the Industrial Court by computing back wages on the basis of revision of pay scales of the workmen concerned and other consequential monetary benefits including terminal benefits and pay the same to the workmen within six weeks from the date of receipt of the copy of this judgment, failing which, the back wages shall be paid with an interest at the rate of 9 per cent per annum. The appellant Company shall submit the compliance report for perusal of this Court. There shall be no order as to costs."

61] In the case in hand, the closure of the first party industrial establishment is under Chapter-VB of the Act, which is at more statutory protection than provision of Chapter-VA of the Act. Moreover, the workmen concern with the reference are not only who are mentioned in Annexure-A, but the workmen concern with the reference are all those who were employed at the time of closure in the first party company. As such, I am of the view, that except for the 14 workers who have settled their dispute with the first party company and shown in red circle in list Annexure-A with the order of reference, all other employees of the first party company working in the industrial establishment at Dapada, employed at the time of closure, are entitled for re- appointment, as they are having right of preference over the others. I am also of the view, that such employees are also entitled for all the statutory benefits which they are entitled under the law for the time being in force, as if, the undertaking had not been closed. In the result, I proceed to pass following order :

O R D E R

1. It is declared that the action of management of M/s.Global Health Care Products in closing down their industrial establishment/factory at Dapada is illegal.

2. The first party company is directed to give re-employment to all the retrenched workmen employed at the time of illegal closure of the industrial establishment i.e. factory at Dapada, except 14 employees, who have settled and shown circled in red ink in Annexure-A to the order of reference.

3. The first party company is also directed to give all the benefits under the law for the time being in force including back wages till re-employment to all the employees, (except 14 employees, who have settled and shown circled in red ink in Annexure-A to the order of reference) employed at the time of closure, considering as if the undertaking had not been closed down and also with future wages regularly from the date which they are actually allowed to continue the work as per this award.

SERIES II No. : 12
DATED : 20th MARCH, 2020.

4. Said award be sent to the appropriate government through Labour Enforcement Officer, D. & N.H., Silvassa, for its publication u/sec.17 of the Industrial Disputes Act, 1947.

Sd/–
(Dinesh P. Surana)
Presiding Officer,
Industrial Tribunal,
D. & N.H., Silvassa.

Silvassa
Date : 30.11.2019.

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SERIES II No. : 12
DATED : 20th MARCH, 2020.

U.T. Administration Dadra & Nagar Haveli and Daman & Diu,
Office of the Head Master,
Government High School, Patlara,
Moti Daman - 396 220.

NO. GHSP/JJM/Change/name/2019-20/225/1916848 Dated :- 19/03/2020

O R D E R

On the basis of the birth certificate record submitted by the applicant Jaisari Jagannath Mavlanker, Assistant Teacher of this office, it is hereby ordered that the name of Smt. Jaisari Jagannath Mavlanker, Assistant Teacher in all Government records/documents may be read as "JAIASRY JAGARNATE" being her original name instead of MAVLANKAR JAISHRI J., KUM. MAVLANKER JAISHRI JAGANNATH and JAISHRI JAGANNATH MAVLANKER being presently officiating.

This is issued with the approval of the Hon'ble Administrator, Dadra & Nagar Haveli and Daman & Diu vide diary No. 577869 dated 06/02/2020.

Sd/–
(Dr. Nidhi Sarohe)
Director of Education,
Daman & Diu

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