

श्रेणी : II
SERIES : II

Daman 30th October, 2020 08 Kartika, 1942 (Saka)

सं. : 37
No.

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. DSC/DMN/2020/
District and Session Court,
Daman.

Dated : 26.10.2020

Subject : Publishing the order in Official Gazette.
(IDR – 18/2011-decided on 23/10/2020
M/s. Montex Writing Instruments-ii
V/s Vishwajit Kumar (Mahendra Kumar)

With reference to the above cited subject, the copy of judgment (IDR-18/2011 M/s. Montex Writing Instruments-ii V/s Vishwajit Kumar (Mahendra Kumar) is hereby publish in the official gazette of this U.T. Administration of Dadra & Nagar Haveli and Daman & Diu for general information.

Sd/–
Superintendent,
District Court,
Daman

SERIES II No. : 37
DATED : 30 TH OCTOBER, 2020.

I.D.R. No. 18/2011 (J)

Presented on : 15.09.2011
Registered on : 15.09.2011
Decided on : 23.10.2020
Duration : 9Y.1M.9D

**BEFORE THE INDUSTRIAL DISPUTES ADJUDICATION TRIBUNAL
DAMAN**

(Presided over by V.P. Patkar)

Industrial Dispute Reference No.18/2011

EXH. 18

CNR No.UTDD010003432011

First Party-Company : M/S Montex Writing Instrument-II
R/o 257-1(2), GDDIDC, Somnath Road,
Near Fire Brigade, Nani Daman,
Tahasil and District Daman.

VERSUS

Second Party-Claimant Vishwajit Kumar (Mahendra Kumar)
R/o. Gulabbhai ki Chawl, Room No. 63,
Behind Fire Station, Nani Daman,
Tahasil and District Daman.
:APPEARANCE:

Shri S.S. Modasia, Advocate for the first party.

Shri. K.B. Patel, Advocate for the second party.

**REFERENCE UNDER SECTION 10(1) (d) READ WITH SECTION 12(5) OF
THE INDUSTRIAL DISPUTES ACT.**

**JUDGMENT
(Delivered on 23rd October. 2020)**

1. The Government -Administration of U.T. Daman and Diu through Joint Secretary, Department of Labour and Employment, Daman has been referred the present reference of industrial dispute in between the first party and the second party regarding Overtime, Leave Wages, New Wages, Retrenchment Allowance and Bonus etc. total amounting Rs. 94,523/- of the second party which is due as a legal dues against the first party falls in third schedule of the Industrial Disputes Act under section 10(1) (d) read with section 12(5) of the Industrial Disputes Act to this Industrial Disputes Adjudication Tribunal for adjudication and submit award with vide its order No. LE/LI/DMN/FACT-4(7)/2021/564 dated 14.09.2011 due to Conciliation Officer submitted conciliation failure report dated 15.07.2011 under section

12(4) of the Industrial Disputes Act thereby no settlement is arrived regarding industrial dispute between both the parties.

2. The facts in brief to lead of the present industrial dispute between both the parties are that the first party-company is private limited company and was employer of the second party. The second party-claimant was workman and employed with the first party. The second party joined service on 01.11.2006 as a Filling Operator and fixed salary of Rs. 2,400 per month with the first party. The second party was doing regular work with the first party from 01.11.2006 till the month of December, 2009. The second party went on leave with the permission of the first party in the month of January for two months. The second party went to join service with the first party after completing leave period. But the first party did not join back on duty to the second party. Thereafter, the second party had given resignation of service to the first party in the month of March, 2010. After the second party giving resignation amount of the second party was due against the first party regarding Overtime, Leave Wages, New Wages, Retrenchment Allowance and Bonus etc. total amounting Rs. 94,523/- Therefore, the second party made a claimed of that amount for these heads to the first party. But the first party did not pay that claimed amount to the second party. Accordingly, there was dispute caused between the first party and the second party. That dispute could not settle between both the parties.

3. Therefore the Government -Administration of U.T. Daman and Diu opined that industrial dispute is existed between both the parties. Accordingly, Deputy Collector, Daman as a Conciliation Officer appointed for conciliation proceeding regarding dispute caused between both the parties. Thereafter, that dispute between both the parties referred to Conciliation Officer, Daman for conciliation. After that Conciliation Officer called both the parties to give due opportunity of hearing. Conciliation Officer gave due opportunity of hearing to both the parties and held conciliation proceeding as well as made enquiry.

4. In the enquiry, both the parties submitted their claims in writing respectively. The second party stated that the second party had worked as a Filling Operator with the first party for more than 3 years. When the second party was on leave from 27.12.2009 and came back from home town on 19.03.2010 the first party refused to take the second party back on duty and so the second party had given resignation of service to the first party in the month of March, 2010. After the second party giving resignation of service to the first party amount of the second party was due against the first party regarding Overtime, Leave

Wages, New Wages, Retrenchment Allowance and Bonus etc. total amounting Rs. 94,523/- But the first party did not pay the said legal dues to the second party after demanding the same to the first party. Therefore, the first party has to pay these legal dues to the second party. The first party stated that the second party remained absent on duty without information to the first party and thereafter the second party had given resignation of service to the first party. The amount claimed by the second party is not due against the first party. The first party is ready to pay Rs. 25,428/- to the second party for 3 years service. The first party was not ready to pay Rs. 94,523/- to the second party. The second party was not ready to accept Rs. 25,428/- from the first party. Therefore, dispute could not settle between both the parties.

5. In Conciliation proceeding dispute could not settle between both the parties. There was no settlement arrived between both the parties. Therefore, Conciliation Officer submitted conciliation failure report dated 15.07.2011 under section 12(4) of the Industrial Disputes Act to the Government -Administration of U.T. Daman and Diu. Accordingly, the Government -Administration of U.T. Daman and Diu referred the present reference of industrial dispute in between the first party and second party regarding Overtime, Leave Wages, New Wages, Retrenchment Allowance and Bonus etc. total amounting Rs. 94,523/- of the second party which is due as a legal dues against the first party falls in third schedule of the Industrial Disputes Act under section 10(1) (d) read with section 12(5) of the Industrial Disputes Act to this Industrial Disputes Adjudication Tribunal for adjudication and submit award.

6. After receiving the reference of industrial dispute, notices were issued to both the parties and notices served on them. Thereafter, they appeared in the Tribunal through advocates respectively.

7. The second party filed the statement of claim Exh.5 and thereby submitted that the second party joined service on 01.11.2006 as a Filling Operator and fixed salary of Rs. 2,400 per month with the first party. The second party was doing regular work with the first party from 01.11.2006 till the month of December, 2009. The second party went on leave with the permission of the first party in the month of January, 2010 for two months. The second party went on 04.03.2010 to join service with the first party after completing leave period. But the first party did not join back on duty to the second party even though the second

party from time to time for 10 days went to join service with the first party. Thereafter, the second party had given resignation of service to the first party in the month of March, 2010.

8. It is further submitted that after the second joining service with the first party the second party executed agreement with the first party for overtime payment that the first party would be paid overtime payment to the second party before the second party leaving service. Therefore, in view of this agreement Rs. 94,523/- of the second party is due against the first party for overtime service for the year 2007, 2008 and 2009. The last salary of the second party was Rs. 3,380/- per month. Hence, after the second party giving resignation amount of the second party was due against the first party regarding Overtime, Leave Wages, New Wages, Retrenchment Allowance and Bonus etc. total amounting Rs. 1,15,223/- as for notice pay salary Rs. 3,380/-, not paid 14 days salary Rs. 1,820/-, overtime payment Rs. 94,520/- for 3 years service means from joining service, leave salary Rs. 5,460/- and retrenchment compensation Rs. 10,040/- for 3 months as a legal dues. Therefore, the second party made a claimed of that amount for these heads to the first party. But the first party did not pay that claimed amount to the second party. Hence, directions may be given to the first party to give this amount to the second party with interest @ of 18% per annum from the date of discharge of duty i.e. from 06.03.2010.

9. The first party filed the reply Exh.9 to the statement of claim of the second party and thereby denied adverse allegations made by the second party against the first party. The first party denied that after the second joining service with the first party the second party executed agreement with the first party for overtime payment that the first party would be paid overtime payment to the second party before the second party leaving service therefore, in view of this agreement Rs. 94,523/- of the second party is due against the first party for overtime service for the year 2007, 2008 and 2009. It is denied that the second party went on leave for 2 months with the permission of the first party and after completion of leave period the second party came back to join service with the first party and the first party refused to the second party to join on service. The second party has given resignation of service to the first party. There was no last salary Rs. 3,380/- per month of the second party. Therefore, the second party is not entitled to take the amount for the heads which are mentioned in the statement of claim from the first party. However, the first party is ready to pay total Rs. 8,428/- as for unpaid salary Rs. 2,470/-, leave for 30 days

Rs. 30,900/- and bonus Rs. 2058/-. The second party is not entitled to get interest on the claimed amount from the first party.

10. Considering rival pleadings of both the parties my predecessor framed following issues below Exh.13. Thereafter, both the parties sometime appeared in the matter and sometime remained absent. The learned Advocate for the second party filed no instruction pursis Exh.14. Therefore, notices issued to both the parties. Notice Exh. 16 served on the first party. Therefore, the learned Advocate for the first party appeared in the matter. The notice Exh. 16 could not serve on the second party as the second party could not found on the given address. Therefore, the second party could not appear in the matter.

11. The second party after filing the statement of claim neither filed evidence by way of affidavit nor filed documents to support the statement of claim. The first party neither filed evidence by way of affidavit nor filed documents to support the reply. The first party filed evidence close pursis Exh. 17 that the first party does not want to adduce evidence. The matter is pending since long. The second party is not attending the matter since long even though sufficient opportunity of hearing was given. The first party did not want to adduce evidence considering the act of the second party. There is no possibility of the second party to appear ahead in the matter. Therefore, I have taken up the matter for decision on the basis of material placed on record by both the parties and on the basis of reference of industrial dispute along with conciliation failure report and documents attached with it as well as the statement of claim of the second party and reply of the first party to the statement of claim of the second party.

12. I heard learned advocate for the first party. The second party remained absent for hearing as well as the learned Advocate for the second party. I have gone through the record and proceeding as well as above mentioned documents. The following issues with my findings thereon and reasons therefor are as under.

POINTS

FINDINGS

1. Does the second party-workman prove that he was employed by the first party-employer since 01.11.2006 and he was illegally terminated by the first party? **Employment is proved but illegal termination is not proved.**
2. Does the second party-workman prove that there was an agreement about overtime with the first party-employer ? **No**
3. Does the first party-employer prove that the second party-workman joined service on 06.12.2007 and he has voluntarily resigned from the service and he is entitled for only dues of Rs. 8,428/- ? **Date of joining of service and voluntary resignation is proved but only amount of Rs. 8,428/- is due is not proved.**
4. What order and award ? **As per final order.**

REASONS

As to Point Nos. 1 to 4.

13. The evidence on the above points is common and they are related to each other. Therefore, they are taken up together for decision.

14. The learned advocate for the first party-company submitted that the first party did not terminate service of the second party-claimant but the second party had given resignation of service to the first party and it is admitted fact to the second party. The second party had worked for 3 years with the first party and there was no agreement between both the parties about overtime. The second party had given resignation of service to the first party. Only Rs. 8,428/- as a legal dues of the second party is due against the first party. Therefore, the second party is entitled to get Rs. 8,428/- from the first party regarding legal dues and not entitled to get Rs. 1,15,223/- which is claimed by the second party, in the statement of claim. Therefore, award Rs. 8,428/- may be passed in favour of the second party. The second party is not entitled to get interest @ 18% per annum on the claimed amount or Rs. 8,428/- from the first party. Because since 2011 the matter is pending due to fault of the second party. Thus, in view of the material came on record this reference of industrial dispute may be disposed off.

15. The second party has only filed the statement of claim and therein claimed total amount of Rs. 1,15,223/- as a legal dues for the heads which are mentioned in the statement of claim as mentioned above from the first party. The second party neither filed evidence by way of affidavit nor filed documents including documents agreement of overtime executed between the first party and the second party in support of claim to show that in view of these documentary evidence the second party is entitled to get Rs. 1,15,223/- as a legal dues from the first party. The first party filed the reply to the statement of claim of the second party and therein submitted that Rs. 8,428/- as legal dues is due against the first party and the first party is ready to give this amount to the second party. However, the second party is not entitled to get Rs. 1,15,223/- as a legal dues from the first party. The first party neither filed evidence by way of affidavit nor filed documents in support of claim to show that in view of these documentary evidence the second party is entitled to get Rs. 8,428/- as a legal dues from the first party. Both the parties did not file oral and documentary evidence in support of their claims. Therefore, there is no documentary evidence on record to consider claimed amount by both the sides respectively.

16. The second party has submitted in the statement of claim that the second party joined service as a Filing Operator with the first party on 01.11.2006 with fixed salary Rs. 2,400/-. Thereafter, the second party used to go on duty with the first party till the month of December, 2009. The second party in the month of January, 2010 went on leave with the permission of the first party. Thereafter, when the second party went to the first party to join back service on 04.03.2010, the first party refused to join on duty. Thereafter, the second party had given resignation of service to the first party. The first party submitted in the reply to the statement of claim of the second party that the first party did not terminate service of the second party. But the second party voluntarily remained absent on job and left the job. The second party had done job for 3 years with the first party. Therefore, considering above submission by way of pleading of the first party and second party it can be said that the second party was employed by the first party since 01.11.2006 to January, 2010 and the second party had given resignation of service to the first party and the first party did not illegally terminate service of the second party. There is no evidence on record to show that there was agreement between both the parties about overtime. The second party has not produced the said agreement of overtime with the statement of claim. Therefore, it cannot be said that there was an agreement about overtime in between the first party and the second party.

17. The second party claimed total amount Rs. 94,523/- as a legal dues regarding Overtime, Leave Wages, New Wages, Retrenchment Allowance and Bonus by writing before Conciliation Officer. Thereafter, the second party by way of the statement of claim in the Tribunal claimed amount regarding Overtime, Leave, Wages, New Wages, Retrenchment Allowance and Bonus etc. total amounting Rs. 1,15,223/- as for notice pay salary Rs. 3,380/- not paid 14 days salary Rs. 1,820/-, overtime payment Rs. 94,520/- for 3 years service means from joining service, leave salary Rs. 5,460/- and retrenchment compensation Rs. 10,040/- for 3 months. The first party submitted by writing before Conciliation Officer that Rs. 25,428/- is due as a legal dues of the second party regarding Overtime, Leave Wages, New Wages, Retrenchment Allowance and Bonus etc. against the first party. The first party is ready to give such amount to the second party.

18. The first party by way of the reply to the statement of claim of the second party in the Tribunal submitted that the amount Rs. 8,428/- is due as a legal dues of the second party as for unpaid salary Rs. 2,470/-, leave for 30 days Rs. 30,900/- and bonus Rs. 2058/- against the first party. Therefore, considering submission of both the parties about claimed amount before Conciliation Officer and the Tribunal it can be said that their statements are not consistent. But it can be said that amount of legal dues of the second party is due against the first party for the heads which are mentioned in reference of industrial dispute or in the statement of claim. Therefore, the second party is entitled to get amount regarding legal dues for the heads which are mentioned in reference of industrial dispute or in the statement of claim from the first party. Considering amount claimed by both the parties, before Conciliation Officer and the Tribunal, the second party has not produced documentary evidence in support of the statement of claim and taking into consideration period from which amount of the second party is due against the second party I am of the view that Rs. 30,000/- is sufficient amount regarding legal dues amount of the second party which is due against the first party. Therefore, the second party is entitled to get this amount from the first party with interest @ 8% per annum from the date of award till actual realization of the amount. Therefore, I am not inclined to accept the claimed amount by both the sides which is mentioned in their pleading respectively. Hence, It can be said that the second party is entitled to take this amount from the first party and not entitled to get amount Rs. 1,15,223/-. Furthermore, it can be said that the first party is liable to pay Rs. 30,000/- instead of Rs. 8,428/- regarding legal dues for the heads which are mentioned in reference of industrial dispute or the statement of claim to the second party. The matter is pending since 2011 due to fault of the second party. Therefore, the second party is not

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entitled to get interest on the awarded amount from the date of discharge of duty or from the date of reference of industrial dispute till the date of passing award. Hence, I answer the above points accordingly. Thus, I proceed to pass the following order.

ORDER

1. The claim of the second party -claimant is partly allowed against the first party-company with no order as to costs.
2. The first party -company is hereby directed to pay amount Rs. 30,000/- (Rs.Thirty Thousand Only) to the second party-claimant with interest @ of 8% per annum from the date of award till actual realization of the amount.
3. Award be drawn up accordingly.
4. Copy of award be sent to the concerned office for publication of award in the Government official gazette as per the provisions of law.

The judgment and award is pronounced in the open Tribunal in presence of the learned Advocate for the first party-company and in absence of the second party-claimant and his Advocate on

Place : Daman
Date : 23.10.2020

Sd/-
(V. P. Patkar)
Presiding Officer
Industrial Tribunal
Daman

SERIES II No. : 37
DATED : 30 TH OCTOBER, 2020.

**No. DSC/DMN/2020/555
District and Session Court,
Daman.**

Dated : 26.10.2020

**Subject : Publishing the order in Official Gazette.
(IDR 03/2013-decided on 20/10/2020
M/s Supreme Embroidery Private Limited
V/s Sushilkumar Ramprit Shah and 95 ors..)**

With reference to the above cited subject, the copy of judgment (IDR-03/2013-decided on 20/10/2020 M/s Supreme Embroidery Private Limited V/s Sushilkumar Ramprit Shah 95 ors.) is hereby publish in the official gazette of this U.T. Administration of Dadra & Nagar Haveli and Daman & Diu for general information.

Sd/-
Superintendent,
District Court,
Daman

SERIES II No. : 37
DATED : 30 TH OCTOBER, 2020.

I.D.R. No. 03/2013 (A)

Presented on : 03.09.2013
Registered on : 03.09.2013
Decided on : 20.10.2020
Duration : 7Y.1M.18D

**BEFORE THE INDUSTRIAL DISPUTES ADJUDICATION TRIBUNAL
DAMAN**

(Presided over by V.P. Patkar)

Industrial Dispute Reference No. 03/2013

EXH. 9

CNR No.UTDD010009642013

First Party-Company : M/S Supreme Embroidery Private Limited,
Through Production In-charge.
R/o Survey No. 143 E/F/G/H, Village Dabhel,
Nani Daman, Tahasil and District Daman.

VERSUS

Second Party-Claimant Sushilkumar Ramprit Shah and 95 others,
R/o. Rajubhai Ki Chawl, Room No.97,
Atiyawad, Char Rasta, Dabhel, Nani Daman,
Tahasil and District Daman.

:APPEARANCE:

Shri S.S. Modasia, Advocate for the first party.

Nobody appeared for the second party

**REFERENCE UNDER SECTION 10(1) (d) READ WITH SECTION 12(5) OF
THE INDUSTRIAL DISPUTES ACT.**

A W A R D
(Delivered on 23th October, 2020)

1. The Government -Administration of U.T. Daman and Diu through Joint Secretary, Department of Labour and Employment, Daman has been referred the present reference of industrial dispute in between the first party and the second party regarding not paid salary for the month of October and not paid the bonus for the year 2012 falls in third schedule of the Industrial Disputes Act under section 10(1) (d) read with section 12(5) of the Industrial Disputes Act to this Industrial Disputes Adjudication Tribunal for adjudication and submit award with vide its order dated 25.02.2013 No. LE/LI/DMN/FACT-4(7)/2012/1132 due to

Conciliation Officer submitted conciliation failure report dated 23.11.2012 under section 12(4) of the Industrial Disputes Act whereby no settlement is arrived regarding industrial dispute between both the parties.

2. The facts in brief to lead of the present industrial dispute between both the parties are that the first party-company is private limited company and was employer of the second party. The second party-claimants who are total 96 were employees-workmen and employed with the first party. The first party-company has not paid salary for the month of October and also not paid the bonus for the year 2012 to the second party-claimants. Therefore, the second party stopped to do work with the first party. The second party demanded their legal dues means amount towards not paid salary for the month of October and not paid the bonus for the year 2012 to the first party. But the first party did not pay that claimed amount to the second party. Accordingly, there was dispute caused between both the parties. That dispute could not settle between both the parties.

3. Therefore the Government -Administration of U.T. Daman and Diu, Daman opined that industrial dispute is existed between both the parties. Accordingly, Deputy Collector, Daman appointed as a Conciliation Officer for conciliation proceeding regarding dispute caused between both the parties. Thereafter, that dispute between both the parties referred to Conciliation Officer, Daman for conciliation. After that Conciliation Officer called both the parties to give due opportunity of hearing to them. Conciliation Officer gave due opportunity of hearing to both the parties and held conciliation proceeding as well as made enquiry. In the enquiry, both the parties submitted their claims in writing respectively. The second party stated that the first party has not paid salary for the month of October and also not paid, the bonus for the year 2012 to them. Therefore, they required amount of these heads to them from the first party which is due against the first party. The second party agreed to join their duties with the first party if the next date when the first party pays their legal dues regarding these heads. The first party stated that the second party has stopped to do work without any intimation with the first party. The salary for the month of October of the second party would be paid on 15.12.2012. The first party is not in a position to give bonus and leave due to financial crisis at present to the second party. This was not acceptable by the second party. Accordingly, both the parties have requested that the matter should be referred to the Industrial Disputes Adjudication Tribunal for adjudication of dispute and passing award.

4. In Conciliation proceeding dispute could not settle between both the parties. Therefore, Conciliation Officer submitted conciliation failure report dated 23.11.2012 under section 12(4) of the Industrial Disputes Act to the Government -Administration of U.T. Daman and Diu, Daman. Accordingly, the Government -Administration of U.T. Daman and Diu, Daman referred the present reference of industrial dispute in between the first party and the second party regarding the first party not paid salary for the month of October and not paid the bonus for the year 2012 to the second party which falls in third schedule of the Industrial Disputes Act under section 10(1) (d) read with section 12(5) of the Industrial Disputes Act to this Industrial Disputes Adjudication Tribunal for adjudication and submit award.

5. After receiving the reference of industrial dispute, notices were issued to both the parties. Notice Exh. 2 served on the second party. But nobody out of 96 claimants of the second party appeared in the Tribunal in persons or through advocate. The first party appeared in the Tribunal through advocate after serving notice. Neither the second party appeared nor filed statement of claim or nor filed evidence by way of affidavit. Therefore, the first party did not file reply to the statement of claim of the second party even though appeared in the matter. The Government -Administration of U.T. Daman and Diu, Daman through Joint Secretary, Department of Labour and Employment, Daman has submitted this reference of industrial dispute with order dated 25.02.2013 along with conciliation failure report dated 23.11.2012 of Conciliation Officer and documents of both the parties etc.

6. Notice Exh.2 dated 03.10.2013 served on the second party. But since then till 11.06.2018 or update nobody out of 96 claimants of the second party appeared in the Tribunal in persons or through advocate. Therefore, the first party filed application Exh. 5 on 11.06.2018 to dismiss claim of the second party. The second party who are 96 claimants having knowledge of this matter but not appearing in the Tribunal to contest their claim respectively etc.

7. There is one letter dated 17.11.2012 of the second party which outward No. is 1135/2012 dated 19.11.2012 attached with this reference of industrial dispute. Therein it is mentioned that there are total 96 claimants. Therefore, the second party consists of 96 claimants. In this letter or any other documents attached with this reference of industrial dispute, there is no given details address of 96 claimants of the second party. Therein are mentioned only names of 96 claimants either first name or first name with surname.

Sufficient opportunity was given to the second party but nobody appeared in the Tribunal out of 96 claimants of the second party since referring this reference of industrial dispute till update. It appears in view of this fact that there is no possibility of the second party to appear in future in the Tribunal and serve notices on 96 claimants of the second party respectively due to their scanty address in the documents attached with this reference of industrial dispute. Considering date of service of notice on the second party, the matter is pending since long and the first party is attending the matter as well as sufficient opportunity of hearing of the matter was given to the second party I have taken up the matter for decision without keeping pending as no purpose will be served keeping it pending.

8. In the conciliation failure report it is mentioned that the second party stated that the first party has not paid salary for the month of October and also not paid the bonus for the year 2012 to the second party. Hence, the second party stopped to do work with the first party. The first party stated that the second party has stopped to do work without any intimation with the first party. The salary for the month of October of the second party would be paid on 15.12.2012. The first party is not in a position to give bonus and leave due to financial crisis at present to the second party. This was not acceptable by the second party. Therefore, considering this fact it appears that there was submission of the second party that the first party has to pay to them their not paid salary for the month of October and not paid the bonus for the year 2012. The submission of the first party was that the first party is ready to pay salary for the month of October to the second party and due to financial crisis the first party cannot pay the bonus for the year 2012 to the second party. Therefore, legal dues amount for the above mentioned head of the second party was due against the first party.

9. The first party filed affidavit Exh.6 on 21.09.2020 and thereby it is mentioned that the matter settled between the first party and the second party. The first party paid amount to 68 claimants out of 96 claimants of the second party. Remaining 28 claimants out of 96 claimants of the second party never approached to the first party to take their legal dues. If they approached the first party will pay their dues as per provisions of law. Therefore, considering this affidavit of the first party which is swan by Rakeshkumar Mali who is Production In-charge of the first party, it can be said that the matter settled between the first party and 68 claimants out of 96 claimants of the second party wherein are mentioned their names and settled amount etc. Furthermore, it can be said that they received

settlement amount regarding their not paid salary for the month of October and not paid the bonus for the year 2012, which is mentioned in the affidavit from the first party. Therefore, they are not coming in the Tribunal to contest their this reference of industrial dispute. They are not before the Tribunal to say that they have received their legal dues amount from the first party which is mentioned in the affidavit. They are not prosecuting their this reference of industrial dispute even though sufficient opportunity of hearing was given to them. Hence, no option left with the Tribunal except the answer their this reference of industrial dispute in negative. Thus, their this reference of industrial dispute is dismissed with no order as to costs by answering negative.

10. It is mentioned in the affidavit Exh.6 filed by the first party that the matter settled between the first party and the second party. The first party paid amount to 68 claimants out of 96 claimants of the second party. Remaining 28 claimants out of 96 claimants of the second party never approached to the first party to take their legal dues. If they approached the first party will pay their dues as per provisions of law. 28 claimants excluding 68 claimants out of 96 claimants of the second party are not coming in the Tribunal to contest their this reference of industrial dispute even though sufficient opportunity was given to them and notice served on them. In view of affidavit Exh.6 of the first party it appears that they have knowledge the first party will pay their legal dues as per provisions of law if they approached to the first party for the same. Therefore, they are not appeared in the Tribunal to contest their this reference of industrial dispute. They are not prosecuting their this reference of industrial dispute even though sufficient opportunity was given to them. Hence, no option left with the Tribunal except the answer their this reference of industrial dispute in negative. Thus, their this reference of industrial dispute is dismissed with no order as to costs by answering negative. Therefore, in view of .the above discussions. I proceed to pass the following order.

ORDER

1. The reference of industrial dispute of 68 claimants out of 96 claimants of the second party whose names are mentioned in the affidavit Exh. 6 of the first party is dismissed with no order as to costs by answering negative as in the affidavit Exh.6 of the first party it is mentioned that the matter settled between the first party and 68 claimants out of 96 claimants of the second party and the first party paid legal dues of 68 claimants out of 96 claimants of the second party.

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2. The reference of industrial dispute of 28 claimants whose names are mentioned in letter dated 17.11.2012 which outward No. is 1135/2012 dated 19.11.2012 excluding 68 claimants whose names are mentioned in the affidavit Exh.6 of the first party out of 96 claimants of the second party is dismissed with no order as to costs by answering negative as in the affidavit Exh.6 of the first party it is mentioned that if they approached the first party will pay their dues as per provisions of law.

3. The award be published in the Government Gazette as per the provisions of law.

The award is dictated and pronounced in the open Tribunal in presence of the learned advocate for the first party and in absence of the second party on 20.10.2020.

Place : Daman
Date : 23.10.2020

Sd/-
(V. P. Patkar)
Presiding Officer
Industrial Tribunal
Daman
