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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Reserved on: 09.11.2022
Pronounced on: 21.12.2022

+ **W.P.(C) 3374/2001**
BHARTIYA CHIKITSA KENDRIYA
PARISHAD

..... Petitioner

Through: Ms. Archana Pathak Dave,
Mr. Parmod Kumar Vishnoi
and Mr. Avnish Dave,
Advocates

versus

P.O. INDUSTRIAL TRIBUNAL
NO-III & ANR.

..... Respondents

Through: Mr. Thakur Sumit, Advocate
for R-2

CORAM:

HON'BLE MR. JUSTICE GAURANG KANTH

J U D G M E N T

GAURANG KANTH, J.

1. The case at hand is a Writ Petition preferred under Article 226 of the Constitution of India. The Petitioner/Bhartiya Chikitsa Kendriya Parishad/Central Council of Indian Medicine (hereinafter referred to as the “**Council**”) in the present case is aggrieved by the Award dated 02.03.2001 passed by the Industrial Tribunal No. III in I.D. No. 109/87 titled as *In the matter of Industrial Dispute: between the Management of M/s Bhartiya Chikitsa Kendriya Parishad and Its Workman Sh. Satpal* (hereinafter referred to as “**impugned award**”).

2. In the impugned award, the learned Labour Court has held that the services of Respondent No. 2/workman were terminated illegally and unjustifiably and therefore he was entitled to be reinstated with full back wages with effect from the date of termination and continuity of services as there was no evidence on the part of the Management of the gainful employment of the Workman. Being aggrieved by the said decision, the Petitioner has prayed for issuance of a writ in the nature of Certiorari or any other appropriate writ thereby setting aside the impugned award.

THE FACTS GERMANE FOR THE ADJUDICATION OF THE PRESENT WRIT PETITION ARE AS FOLLOWS:

3. The Petitioner is a statutory body constituted by the Government of India, Ministry of Health & Family Welfare, under provisions of Section 3 of the Indian Medicine Central Council Act, 1970. It is a body corporate by the name of Central Council of Indian Medicine having perpetual succession and a common seal. It is the case of the Petitioner that it is an advisory body to the Ministry of Health in the field of medical education in the branches of Ayurveda, Unani and Siddha.
4. It is the case of Respondent No. 2 that he was appointed as peon-cum chowkidar with the Petitioner with effect from 17.07.1980 on probation for a period of two years. During his employment as a probationer, Respondent No. 2 was appointed on the post of Lower Division Clerk ("LDC") on ad-hoc basis

with effect from 09.06.1981. Later on, vide Office Order dated 03.08.1982, Respondent No. 2 was reverted to the post of Peon-cum-Chowkidar with immediate effect.

5. On account of the work of Respondent No. 2 not being satisfactory, his probation period was retrospectively extended for another year with effect from 17.07.1982. During this extended probation period, the services of Respondent No.2 were terminated with immediate effect vide Memorandum dated 02.03.1983.
6. Aggrieved by his termination, Respondent No. 2 approached the Secretary (Labour), Delhi Administration and a reference was made under Sections 10 (1)(c) and 12(5) of the Industrial Disputes Act, 1947 for adjudication before the learned Labour Court, New Delhi in following terms:

"Whether the termination of service of Sh. Satpal is illegal and unjustified and if so, to what relief is he entitled and what directions are necessary in this respect?"

7. Learned Labour Court, after appreciating the rival contentions, evidence lead and submissions advanced by the parties, framed the following issues:

- i. *"Whether the management is not an industry within the domain of Section 2(j) of the I.D. Act as alleged in para 1 of the W.S. (preliminary objections)?"*
- ii. *Whether the reference is bad in law for the reasons stated in para 2 of the Written Statement (preliminary objections)?"*
- iii. *As per term of reference?"*

8. Upon perusing the material facts and evidence on record, the learned Labour Court vide impugned Award dated 02.03.2001

answered the issues in favour of Respondent No. 2 and against the Petitioner. The terms of the reference were answered in the affirmative and the learned Labour Court held that the services of Respondent No. 2 were terminated illegally and unjustifiably. Respondent No. 2 was held entitled to be reinstated with full back wages with effect from the date of termination of services.

9. Aggrieved by the aforesaid award, the Petitioner has challenged the same in the present Writ Petition and sought setting aside of the impugned award.

SUBMISSIONS ON BEHALF OF THE PETITIONER

10. Ms. Archana Pathak Dave, learned counsel on behalf of the Petitioner submitted that the impugned award was bad in law in view of the fact that the learned Labour Court had exercised jurisdiction which it did not possess. To further her submission, learned counsel submitted that the Petitioner Council was not an “Industry” under Section 2 (j) of the I.D. Act in view of the settled law in the case of *Bangalore Water Supply & Sewerage Board v. A. Rajappa & Ors.* reported in *(1978) 2 SCC 213*. To further her contention, learned counsel submitted that in the present case the Petitioner was an ‘authority’ within the meaning of Article 12 of the Constitution of India and was thus engaged in performing a sovereign governmental function as an advisory body to the Ministry of Health & Family Welfare, Government of India. Learned counsel for the Petitioner further submitted that the Petitioner was not engaged in any

Commercial Activity and received 100% grant in aid from the Central Government to meet its expenses. In view of the aforesaid, learned counsel submitted that the provisions of the I.D. Act were not applicable in the present case.

11. Learned counsel for the Petitioner averred a grave irregularity in the procedure adopted in making the reference of dispute by submitting that the Petitioner was a Statutory Council under the Central Government and the appropriate Government to decide the dispute was the Central Government and not the State Government.
12. Learned counsel further submitted that Respondent No. 2 was not a workman within the definition of Section 2 (s) of the Industrial Disputes Act, 1947 (hereinafter referred to as “**the I.D. Act**”) as he was on probation and was governed by the terms of his contract of appointment at the time his services were dispensed with. Having submitted thus, learned counsel argued that the act of termination of the services of Respondent No. 2 was as per his appointment letter and his services could be terminated at any time without any notice. Learned counsel placed reliance on the judgment of this Court in *M/S Deccan Charters Private Limited v. Sarita Tiwari* in *W.P. (C) 3422/2014 decided on 27.08.2019* to submit that the probationer continued to be on probation until a positive act was done by the employer confirming him. Learned counsel furthered his argument by submitting that the appointment of Respondent No. 2 had not been confirmed and he was still on probation at

the time his contract was terminated. This argument was further buttressed by the learned counsel by placing reliance on *State of U.P. v. Rajendra Kumar Singh* reported as (1997) 10 SCC 682.

13. It was further submitted by learned counsel that the service of the probationer could be terminated after making an overall assessment of his performance and no notice was required to be given before termination of such service as laid down by the Hon'ble Supreme Court in *Venu Gopal v. Divisional Manager* reported as AIR 1994 SC 1343.
14. Learned counsel on behalf of the Petitioner further submitted that neither the Petitioner was an industrial establishment nor its employees were workmen. Learned counsel further submitted that Respondent No. 2 was governed by the Central Council of Indian Medicine Standing Orders and the provisions of Central Civil Services Conduct Rules and the Civil Services (Classification, Control & Appeal) Rules and same had been accepted by Respondent no. 2 through his appointment letter.
15. It was further submitted by the learned counsel for the Petitioner that holding of an enquiry before making the termination order in case of a probationer was not mandatory. The learned counsel placed reliance on *Reliance State Road Transport Corporation and Ors. v. Zakir Hussain* reported as (2005) 7 SCC 447 to bolster her contention.
16. Learned counsel further argued that where an employer failed to make an enquiry before dismissal or discharge of a

workman, it is open for him to justify the action before the learned Labour Court by leading evidence before it. Learned counsel further submitted that in such cases, the entire matter would be open before the learned Labour Court, which would have the jurisdiction to satisfy itself on the evidence adduced by the parties whether the dismissal or discharge was justified. Drawing strength from the aforementioned case, learned counsel mounted a challenge on the award by submitting that the impugned award had nowhere discussed the unsatisfactory conduct of Respondent No. 2 and various memos served upon him which led to the termination of his services.

17. With these submissions, learned counsel for the Petitioner prays for the setting aside of the impugned Award.

SUBMISSIONS ON BEHALF OF RESPONDENT NO. 2

18. Mr. Thakur Sumit, learned counsel on behalf of Respondent No. 2, submitted that the Petitioner was covered under the definition of “industry” under Section 2 (j) of the I.D. Act. Learned counsel submitted that the findings returned by the learned Labour Court on this issue were correct as there was deep and pervasive control of the Central Government over the Petitioner Council and it had been admitted by the Petitioner during cross-examination that they had 25 employees. Learned counsel furthered his argument by submitting that this case was covered under Clause (8) of the definition of “industry” under Section 2(j)(ii)(b) of the I.D. Act and it fell beyond the exclusionary pale of having ten employees. To buttress his

contention, learned counsel placed reliance on *Indraprastha Medical Corpn. Ltd. v. Government of NCT of Delhi and Anr.* reported as **94 (2001) Delhi Law Times 337** to submit that a hospital has been held to be an industry and would therefore be construed as “industrial establishment.” It was further submitted by Respondent No. 2 that following the reasoning laid down by the Hon’ble Supreme Court, the Petitioner Council would also qualify as an “industrial establishment.”

19. On the issue of the reference being bad in law as it was not made by the appropriate government, learned counsel placed reliance on *Municipal Corporation of Delhi & Ors. v. Mahavir & Ors.* reported as **2002 (65) DRJ 553 (DB)** and submitted that the Petitioner Council was operating in Delhi and Respondent No. 2/workman had been performing his duties in Delhi. These two factors place the Petitioner under the administrative control of the Delhi government. Lieutenant Governor was an agent of the President and for all purposes held to be Central Government. Thus, reference by Delhi Government was essentially a reference by the President of India and was thus a reference by appropriate authority.
20. It was further argued that the subject-matter of ‘probation’ did not find a mention in the Standing Orders of the Petitioner Council and consequently, the same was to be governed by the Rules framed by the Central Government regarding the same.
21. It was further contended by the learned counsel that the Standing Orders of the Petitioner Council had not been

produced before the learned Labour Court and this led to an inference that the said Standing Order either did not exist or it did not govern the termination of service. It was further submitted by learned counsel that in the absence of the Standing Orders by the Petitioner Council, the said subject-matter was to be governed by the Model Standing Orders as mandated by Section 12A of The Industrial Employment (Standing Orders) Act, 1946 (hereinafter, “**Standing Orders Act**”). Mr. Sumit, learned counsel for Respondent No. 2 furthered his contention by arguing that it had rightly been held by the learned Labour Court that subject-matter of Probation was to be governed by the Model Standing Orders which provided for an automatic confirmation in employment after the probationer having undergone probation for a period of three months. Drawing strength from the above arguments, it was submitted by learned counsel that upon the confirmation of his service, Respondent No. 2 acquired the status of a permanent workman and became entitled to due process of law being observed before relieving him of his duties.

22. Learned counsel for Respondent No. 2 further submitted that the probation period of two years was in the teeth of the Model Standing Orders which provided for an automatic confirmation in services after the passage of three months. It was submitted by the learned counsel that these Standing Orders had the force of law and in view of this fact, the contract of appointment was contrary to law, and therefore, void.

23. Learned counsel further placed reliance on *State of U.P. v. Kaushal Kishore Shukla* reported as (1991) 1 SCC 691 and argued that in the aforementioned case, a preliminary enquiry was held even in the case of a probationer. Learned counsel distinguished this case from the case at hand and submitted that in the instance case, the service of Respondent No. 2 had been summarily terminated without any enquiry whatsoever.
24. With these submissions, learned counsel for Respondent No. 2 prays for the dismissal of the present Writ Petition.

LEGAL ANALYSIS BASED ON THE FACTS OF THE CASE

25. This Court has heard the learned counsel for the parties and also examined the evidence placed on record and the judgments relied upon by the parties.
26. Before entering into the thickets of the controversy regarding the termination of Respondent No. 2, this Court deems it appropriate to satisfy itself as to the maintainability of the present Writ Petition.
27. At the outset, this Court notes that the learned counsel on behalf of the Petitioner Council has submitted that the Petitioner Council was not an “industry” under Section 2(j) of the I.D. Act in view of the fact that it had an advisory role and the activities performed by it were not commercial in nature. On the other hand, learned counsel for Respondent No. 2 submitted that the case at hand was covered under Clause (8) of the definition of “industry” under Section 2(j)(ii)(b) of the I.D.

Act and it fell beyond the exclusionary pale of having ten employees.

28. Before proceeding further with the issue, it will be pertinent to discuss the legal position pertaining to the definition of “industry” under the I.D. Act.
29. The term “industry” finds its mention in Section 2(j) of the I.D. Act. The same is being reproduced hereinbelow:

“(j) " industry" means any systematic activity carried on by co- operation between an employer and his workmen (whether such workmen are employed by such employer directly or by or through any agency, including a contractor) for the production, supply or distribution of goods or services with a view to satisfy human wants or wishes (not being wants or wishes which are merely spiritual or religious in nature), whether or not, –

(i) any capital has been invested for the purpose of carrying on such activity; or

(ii) such activity is carried on with a motive to make any gain or profit, and includes--

(a) any activity of the Dock Labour Board established under section 5A of the Dock Workers (Regulation of Employment) Act, 1948 (9 of 1948);

(b) any activity relating to the promotion of sales or business or both carried on by an establishment. but does not include--

(1) any agricultural operation except where such agricultural operation is carried on in an integrated manner with any other activity (being any such activity as is referred to in the foregoing provisions of this clause) and such other activity is the predominant one.

Explanation.-- For the purposes of this sub-clause," agricultural operation" does not include any activity carried on in a plantation as defined in clause (f) of section 2 of the Plantations Labour Act, 1951 (69 of 1951); or

(2) hospitals or dispensaries; or

(3) educational, scientific, research or training institutions; or

(4) institutions owned or managed by organisations wholly or substantially engaged in any charitable, social or philanthropic service; or

(5) khadi or village industries; or

(6) any activity of the Government relatable to the sovereign functions of the Government including all the activities carried on by the departments of the Central Government dealing with defence research, atomic energy and space; or

(7) any domestic service; or

(8) any activity, being a profession practised by an individual or body or individuals, if the number of persons employed by the individual or body of individuals in relation to such profession is less than ten; or

(9) any activity, being an activity carried on by a co-operative society or a club or any other like body of individuals, if the number of persons employed by the co-operative society, club or other like body of individuals in relation to such activity is less than ten;

30. The long and winding journey of interpretation of the term “industry” experienced a sense of calm after the celebrated decision of the Hon’ble Supreme Court in **Bangalore Water Supply & Sewerage Board (supra)**. The relevant portions of the judgment are being reproduced below:

“13. A look at the definition, dictionary in hand, decisions in head and Constitution at heart, leads to some sure characteristics of an 'industry', narrowing down the twilit zone of turbid controversy. An industry is a continuity, is an organized activity, is a purposeful pursuit - not any isolated adventure, desultory excursion or casual, fleeting engagement motivelessly undertaken. Such is the common feature of a trade, business, calling, manufacture – mechanical or handicraft based– service, employment, industrial occupation or avocation. For those who know English and are not given to the luxury of splitting semantic hairs, this conclusion argues itself. The expression 'Undertaking' cannot be torn off the words

whose company it keeps. If birds of a feather flock together and noscitur a sociis is a commonsense guide to construction, 'undertaking' must be read down to conform to the restrictive characteristic shared by the society of words before and after. Nobody will torture 'undertaking' in Section 2(j) to mean meditation or musheira which are spiritual and aesthetic undertakings. Wide meanings must fall in line and discordance must be excluded from a sound system. From Banerjee (supra) to Safdarjung (supra) and beyond, this limited criterion has passed muster and we see no reason, after all the marathon of argument, to shift from this position.

14. Likewise, an 'industry' cannot exist without co-operative endeavour between employer and employee. No employer, no industry; no employee, no industry—not as a dogmatic proposition in economics but as an articulate major premise of the definition and the schema of the Act, and as a necessary postulate of industrial disputes and statutory resolution thereof.

15. An industry is not a futility but geared to utilities in which the community has concern. And in this mundane world where law lives, now, economic utilities—material goods and services, not transcendental flights nor intangible achievements—are the functional focus of industry. Therefore, no temporal utilities, no statutory industry, is axiomatic. If society, in its advance, experiences subtler realities and assigns values to them, jurisprudence may reach out to such collective good. Today, not tomorrow, is the first charge of pragmatic law of western heritage. So we are confined to material, not ethereal end products.

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17. This much flows from a plain reading of the purpose and provision of the legislation and its western origin and the ratio of all the rulings. We hold these triple ingredients to be unexceptionable.

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36. All the indicia of 'industry' are packed into the judgment which condenses the conclusion tersely to hold that 'industries' will cover 'branches of work that can be said to be analogous to the carrying out of a trade or business'. The case, read as a whole, contributes to industrial jurisprudence, with special reference to the Act, a few positive facets and knocks down a few negative

fixations. Governments and municipal and statutory bodies may run enterprises which do not for that reason cease to be industries. Charitable activities may also be industries. Undertakings, sans profit motive, may well be industries. Professions and not ipso facto out of the pale of industries. Any operation carried on in a manner analogous to trade or business may legitimately be statutory industry. The popular limitations on the concept of industry do not amputate the ambit of legislative generosity in Sec.2 (j). Industrial peace and the smooth supply to the community are among the aims and objects the Legislature had in view, as also the nature, variety range and areas of disputes between employers and employees. These factors must inform the construction of the provision.

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50. The Court proceeded to carve out the negative factors which, notwithstanding the literal width of the language of the definition, must, for other competing reasons, be kept out of the scope of industry. For instance, sovereign functions of the State cannot be included although what such functions are has been aptly termed 'the primary and inalienable functions of a constitutional government'....

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53. Thus the nature of actual function and of the pattern of organised activity is decisive. We will revert to this aspect a little later.

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64. Two seminal guidelines of great moment flow from this decision: 1. the primary and predominant activity test; and 2, the integrated activity test. The concrete application of these two-fold tests is illustrated in the very case. We may set out in the concise words of Subba Rao J., the sum-up :

"The result of the discussion may be summarised thus (1) The definition of "industry" in the Act is very comprehensive. It is in two parts : one part defines it from the standpoint of the employer and the other from the standpoint of the employee. If an activity falls under either part of the definition, it will be an industry within the meaning of the Act. (2) The history of industrial disputes and the legislation recognizes the basic concept that the activity shall be an organised one and not that which pertains to private or personal employment. (3) The regal functions described as

primary and inalienable functions of State though statutorily delegated to a corporation are necessarily excluded from the purview of the definition. Such regal functions shall be confined to legislative power, administration of law and judicial power. (4) If a service rendered by an individual or private person would be an industry, it would equally be an industry in the hands of a Corporation. (5) If a service rendered by a corporation is an industry, the employees in the departments connected with that service, whether financial, administrative or executive, would be entitled to the benefits of the Act (6) If a department of a municipality discharged many functions, some pertaining to industry as defined in the Act and other nonindustrial activities, the predominant functions of the department shall be the criterion for the purpose of the Act."

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143. IV. The dominant nature test:

(a) where a complex of activities, some of which qualify for exemption others not, involves employees on the total undertaking, some of whom are not 'workmen' as in the University of Delhi Case or some departments are not productive of goods and services if isolated, even then, the predominant nature of the services and the integrated nature of the departments as explained in the Corporation of Nagpur will be true test. The whole undertaking will be 'industry' although those who are not 'workmen' by definition may not benefit by the status.

(b) Notwithstanding the previous clauses, sovereign functions, strictly understood, alone qualify for exemption, not the welfare activities or economic adventures undertaken by government or statutory bodies.

(c) Even in departments discharging sovereign functions, if there are units which are industries and they are substantially severable, then they can be considered to come within sec. 2(j).

(d) Constitutional and competently enacted legislative provisions may well remove from the scope of the Act categories which otherwise may be covered thereby."

(emphasis supplied)

31. The Hon'ble Court in the abovementioned case has laid down the 'triple test' which has to be satisfied by an establishment for it to qualify as an industry under the I.D. Act. Any activity will be an industry if it fulfils the three-pronged test, as under:

- i. *Systematic and organized activity*
- ii. *With the cooperation between Employers and employees*
- iii. *For the production and distribution of good and services whether or not capital has been invested for this activity.*

32. Moving further, it is pertinent to note that all the seven learned Judges subscribed to the "dominant nature test". This test lays down that where a complex of activities is being performed in an establishment, the test would take into consideration the predominant or core nature of services and integrated nature of the departments. All departments integrated with an industry will also be industry. The long and short of the above discussion is that the decisive test to determine whether an establishment is an industry hinges on the nature of the activity with special emphasis on the employer-employee relations.

33. At this juncture, it will be pertinent to note the paragraphs from the impugned award where the learned Labour Court has discussed the issue of the Petitioner Council qualifying as an "industry". The relevant paragraphs are being reproduced below:

"10. From the evidence from both the sides, it is revealed that the management counsel was the employer of the workman who has employed the 25 workman like Peon, Chowkidar, Steno, UDC, LDC etc. The management is a body constituted under the Indian Medicine Council Act, 1970. The constitution is laid down in the section 3 of this Act. The status and

identity of the council is laid down by Section 6 of the Act.

It reads as under-

Section 6B- The Central Counsel shall be a body corporate by the name of the Central Counsel of Indian Medicine having perpetual succession and a common seal with the power to acquire, hold and dispose off property both moveable and immovable, and to contract and shall by said name sue and to be sued.

11. *It has been established from the above evidence that the counsel is established to advise the Central Government about the recognition of the Medical qualification acquired by Vaid, Siddha, Haqim, Physician in the Indian Medicine system and imparted training by universities, colleges or other medical institutions by collecting information through its Inspectors & visitors in order to improve the quality of Vaid, Siddha, Haqim etc. so that society is benefited and protected from unscrupulous act of such in-competent vaid, Haqims etc. It has its own organization besides the office bearer of the council and supporting staff of 25 employees like Peon, Chowkidar, LDC, UDC etc. The workman admittedly are not the employee of the Government organizations and the employee of this establishment cannot be transferred to the Government Department for the activities of the advising the Government about the level of the Educational institutions and about the certificate issued by them regarding recognition by the Government is a service to society. However, the institution is provided fund by the Government for the same. The Id. AR for the management has vehemently argued that the activities of the counsel cannot be termed as Industrial activities. Therefore, it is not the industry. On the other hand, the Id. AR for the workman contended that the activities undertaken by the management are of industrial nature. Therefore, it is industry. In support of his argument he has referred to the case of Bombay Pinjrapole, Bhuleshwar and its workmen reported as IInd LLJ, 1971 393, Sirur Municipality Vs. Workman II LLJ 1960(5C), Page 657.*

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15. *As the management cannot deny that it is providing advise to the Government with the help of the Organisation run by the corporation of the office employees including the workman, therefore, the authorities cited by the Ld. AR for the workman are applicable to the present case and it cannot be said that the management is not an industry though it is not earning any profit. In case of 1980 Rev LR 448 (Punjab) whereas the vaccination section of Zilla Parishad was held to be an industry. In another judgement Hon'ble Supreme Court held that Council for scientific and industrial Research, that such undertaking by the Government was in discharge of the sovereign function of the state or otherwise because the consideration as to who conducts an activity which falls within the definition is irrelevant. Besides, the position of laid down law in Section 2(j) of Industrial Disputes Act, the nine activities are excluded from the definition from serial no. 1 to 9 under clause ii (b). It is mentioned at serial no. 8 that any activity being practiced by an individual or body of individuals the number of persons employed by the individual or thereby of individuals is less than 10.*
16. *This shows that in case, the number is not less than 10, it will fall within the definition of Industry. Therefore, the law is very clear and applicable to the present institution that the management council is an Industry. Therefore, the Industrial Disputes Act is applicable to it. The issue is accordingly answered in favour of the workman and against the management."*
34. The learned Labour Court has successfully applied the 'triple test' and the 'dominant nature' test as propounded in ***Bangalore Water Supply & Sewerage Board (supra)*** to uncover the true nature of the Petitioner Council. It is pertinent to note that the Central Council of Indian Medicine is a statutory body functioning under the Ministry of AYUSH, Government of India which has been entrusted with framing and implementing various regulations including the Curricula

and Syllabii in Indian Systems of Medicine viz. Ayurved, Siddha and Unani Tibb at Under-graduate and Post-graduate level. Another notable fact is that the Petitioner performs a regulatory function and prescribes the minimum standards of education, professional conduct and ethics in the Indian System of Medicine. As per the said Act, it is the duty of the Petitioner to maintain the Central Register, a register which contain the names of all the registered medical practitioners of Indian Medicine. Hence it is very much evident that the Petitioner is acting as a regulatory body which decides various aspects concerning the Indian Medicine. In order to perform the duties, there is an organizational set up which consists of many employees. There is a systematic organized activity with the cooperation of the Petitioner and its employees. Further the Petitioner is catering service to all medical practitioners, educational institutions, Central Government and public at large whosoever is connected with Indian Medicine. The work performed by the Petitioner is not the sovereign function of the Government of India. The administrative wing of the Petitioner performs like any other industrial organisation. The Petitioner satisfies all the requirements of an ‘industry’ as per ***Bangalore Water Supply & Sewerage Board (supra)***. Upon testing the functioning of the Petitioner Council on the anvil of the aforementioned tests, this Court is of the considered view that the Petitioner Council is an “industry” and is therefore amenable to the application of the I.D. Act.

35. Now the next question to be examined is whether the termination of service of Respondent No. 2/Workman is illegal or unjustified. Admittedly, Respondent No.2/Workman was appointed as a Peon-cum-Chowkidar against a temporary post vide appointment letter dated 17.07.1980. As per Clause (1) of the said appointment letter, *'the appointment will be on probation for two years which may be extended or curtailed at the discretion of the appointing authority. During this period, the appointment can be terminated at any time without notice and without assigning any reason notwithstanding the provisions under clause (ii) below.'* It is the case of the Petitioner that the performance of Respondent No.2/workman was not satisfactory during the probation period. The Petitioner issued various letters dated 17.02.1981, 22.05.1982, 22.07.1982, 13.10.1982, 22.10.1982, 19.02.1983 etc. to Respondent No. 2/Workman for his unauthorized absence, dereliction of duties, disobedience, negligence etc. In view of the unsatisfactory performance, the Petitioner extended the probation period for a further period of one year vide letter dated 12.11.1982. Later his service was terminated vide letter dated 02.03.1983.
36. The termination letter dated 02.03.1983, reads, inter alia, as follows:

"Sh.Sapal Singh Katri, Peopn-cum-Chowkidar, on probation is informed that his temporary services under the Council are terminated with immediate effect under clause (1) of the term of appointment letter No.12-24/80 dated 16.07.1980.

He is directed to pay the dues if any against him and obtain No Due Certificate from this office.”

37. This Court examined the termination letter and is of the considered view that the same is not stigmatic. The performance of Respondent No. 2 was unsatisfactory, and he was given many Memos for improving his performance. His probation period was also extended due to unsatisfactory performance. However, the Petitioner finally decided to terminate his service. It is a well settled principle of law that the services of an employee can be terminated during his probationary period due to his unsatisfactory performance. In this regard, it is important to refer to the Judgment of the Hon'ble Supreme Court in ***Chaitanya Prakash and Ors. Vs. H. Omkarappa*** reported as **2010 (2) SCC 623**, which reads as follows:

“20. In our considered opinion, the ratio of the above-referred decisions are squarely applicable to the facts of the present case. The respondent was time and again informed during the probation period about his deficiencies and was given ample opportunities to improve them. Therefore, enough precautions were taken by the appellants to see that the respondent improved his performance and such an opportunity was provided to him. But such advices and opportunity were totally misplaced as the respondent considered the same as unnecessary encroachment and interference in his work and wrote back rudely in an intemperate language. Whether or not a person is suitable to be retained and confirmed in service could be considered and assessed by the Managing Director, namely, appellant No. 1, but he after making an appraisal submitted his report along with all other records of the respondent before the Board of Directors, who finally took the decision. The Board of Directors constituted of responsible persons and they

while deciding the suitability of the respondent not only considered the Performance Assessment Report but also considered all other records, and thereafter they took a considered and conscious decision that the respondent was not suitable for confirmation and terminate his service. The said decision of the Board of Directors appears to be in parity with the ratio of the aforesaid decisions of this Court (supra). The reasons mentioned in the letter dated 29.11.1999 - terminating the services of the respondent cannot be said to be stigmatic. The appellant had time and again specifically brought to the notice of the respondent his short comings and no misconduct as such is alleged against the respondent by the appellant and therefore the present case is a case of termination simpliciter due to unsuitability of the respondent and not a case of punishment for misconduct.”

38. In the impugned Award, learned Labour Court failed to appreciate that the performance of Respondent No.2/workman was consistently poor. Even though, the Petitioner placed on record all these Memos/show cause notices, learned Labour Court failed to consider the same. Learned Labour Court proceeded on the wrong premises that as per the Model Standing order, the probation cannot be for a period more than that of 3 months. The learned Labour Court's finding is contrary to the evidence on record. Hence this Court is of the considered view that the impugned award is based on irrelevant considerations and hence the same suffers from illegality and perversity. In light of the discussion herein above, this Court is of the considered opinion that the impugned Award is bad in law. Hence the impugned Award is hereby set aside. The action of the Petitioner in terminating the service of Respondent No.2/Workman is hereby upheld.

39. This Court vide order dated 11.12.2002 allowed the Application of Respondent No.2 under Section 17-B of the I.D. Act and Respondent No.2 is getting the payment under Section 17-B of the I.D. Act. It is clarified that in view of the law laid down by the Hon'ble Supreme Court in *Dilip Mani Dubey Vs M/s SIEL Limited & Anr* reported as **2019(4) SCC 534**, the proceedings under Section 17-B of the I.D. Act are independent proceedings in nature and not dependent upon the final order passed in the main proceedings. Therefore, in view of the aforesaid settled position of law, it is clarified that the payment already made by the Petitioner to Respondent No.2 under Section 17-B of the I.D. Act is neither recoverable nor adjustable.
40. Accordingly, the present Writ Petition is allowed. There shall be no order as to costs.

GAURANG KANTH, J.

DECEMBER 21, 2022