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GOVERNMENT OF PUDUCHERRY
LABOUR DEPARTMENT

(G.O. Rt. No. 30/Lab./AIL/T/2017,
Puducherry, dated 15th March 2017)

NOTIFICATION

Whereas, the Award in I.D. No. 37/2013, dated 4-1-2017 of the Industrial Tribunal-Cum-Labour Court, Puducherry in respect of the Industrial Dispute between the management of M/s. Pondicherry Industrial Promotion Development and Investment Corporation Limited, Puducherry and Thiruvallargal T. Gopu and B. Arul Jothy over regularisation has been received;

Now, in exercise of the powers conferred by sub-section (1) of section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947), read with the Notification issued in Labour Department's G.O. Ms. No. 20/9/Lab/L, dated, 23-5-91, it is hereby directed by Secretary to Government (Labour) that the said Award shall be published in the Official Gazette, Puducherry.

(By order)

R.DJEAUCOMAR,

Under Secretary to Government (Labour).

**BEFORE THE INDUSTRIAL TRIBUNAL -CUM-
LABOUR COURT AT PUDUCHERRY**

Present :Thiru G. THANENDRAN, B.COM., M.L.,
Presiding Officer.

Wednesday, the 4th day of January 2017.

I.D. No. 37/2013

1. T. Gopu
2. B. Arul Jothy . . Petitioners

Versus

The Managing Director,
Pondicherry Industrial Promotion
Development and Investment
Corporation Limited,
No. 60, Romain Rolland Street,
Pondicherry. . . Respondent

This industrial dispute coming on 16-12-2016 for final hearing before me in the presence of Thiruvallargal T. Gunasekaran, B. Baskaran and A. Arokia Dass,

Advocates for the petitioners, Thiruvallargal A. Kanniappan and K. Balaji, Advocates for the respondent, upon hearing both sides, upon perusing the case records, after having stood over for consideration till this day, this Court passed the following:-

AWARD

1. The petitioners have filed the petition u/s.33 of Industrial Disputes Act, praying to reinstate them with backwages, unpaid wages from August 2012 till date, to direct the respondent to regularize them and also to direct the respondent not to commit such kind of unfair labour practice in future.

2. The petitioners in their petition have stated as follows:-

The petitioners have joined as Daily Rated Casual Labour in the respondent office on 1-6-2005 for the emolument as per the revision of pay maintained by the Government of Puducherry. The nature of work assigned to the petitioners is assistance for the land survey, serving notices, data entry works in the office, preparation of section 30 reference notices in the land acquisition proceedings, general civil election duties, census and related works, cyclone relief works, etc.,

The petitioners further stated that the 1st petitioner has served from 1-6-2005 to 18-9-2012 and the 2nd petitioner has served from 1-6-2015 to 209-10-2012 in the respondent office without any break. The petitioners gave representations to the respondent office for regularization in several dates *i.e.*, dated, 19-9-2007, 26-8-2008, 15-12-2008, 23-7-2009, 31-5-2010, 2-2-2011, 2-3-2012 and 21-6-2012. But, there was no response from the respondent office. However, in the RTI answer, the respondent office replied that they have not taken any action.

The petitioners further stated that they got their pay at ₹ 316 per day for 30 days per month from 1-6-2005 to 1-7-2012. While so in the month of August, 2012, Thiru. Murugesan, Senior Manager, PIPDIC (Administrator) demanded a sum of ₹ 1,50,000 as bribe for regularization of the petitioners. The petitioners refused to give the said amount. Hence, the said Murugesan stopped the salary of the petitioners from the month of August, 2012. Further, the said Murugesan shouted on the petitioners in filthy language and instructed that the petitioners will not be permitted to work and then orally intimated to the petitioners that they were terminated from their service.

The respondent office is required the human resources (Personnel) for the recovery divisions and other works. Though they are in need of the manpower services, they are refused to pay the salaries of the petitioner and to regularize the petitioners. The PIPDIC is extracted services from the petitioners from the past eight years and they are trying to throw away the petitioners in overnight. The petitioners cannot be thrown away or terminate as per the G.O. Ms. No. 22/2009 dated 27-2-2009 issued by, the Department of Personnel and Administrative Reforms (Personnel Wing) for framed a scheme called "The Government of Puducherry Casual Labourers (Engagement and Regularisation) Scheme 2009". The respondent has terminated the petitioners without any notice, which is illegal and unlawful against the labour policy. The PIPDIC management started retrenchment without just cause and failed to comply the principles of natural justice.

The petitioners further stated that they have filed representations before the Labour Conciliation Officer, Puducherry on 24-10-2012 and 1-11-2012 respectively and on 21-1-2013, the PIPDIC Management has filed their counter statement stating that they will not give the job. Based on the said version, on 8-5-2013, the Labour Conciliation Officer issued a failure report. Hence, the petitioners pray before this Court to reinstate them with backwages, unpaid wages from August 2012 till date, to direct the respondent to regularize them and also to direct the respondent not to commit such kind of unfair labour practice in future.

3. The respondent in his counter has stated as follows:-

The respondent corporation has been incorporated under the Companies Act with the main object to acquire lands in the Union territory of Puducherry and convert the same into Industrial Plots and allot the same to the needy entrepreneurs and extending financial assistance. The corporation accorded approval to create a Land Acquisition Cell to acquire land for SEZ projects at Sedarapet and Karasur village, on the basis of the requisition of the Additional Secretary (Revenue), Revenue Department, Government of Puducherry *vide* its order No.1-11017/5/2003-INDIA dated, 13-6-2003. Accordingly, the Land Acquisition Cell, after having acquired the land, has to hand over the same to PIPDIC without encumbrances within a period of three months. The employees of the cell have been deputed from the

Revenue Department on deputation basis and expenditure like pay and allowances to those employees are to be met from the funds created for the development of SEZ projects and the Corporation was solemnized only as Nodal agency for the project.

The respondent further states that six officials from the Revenue Department, who were sent on deputation for Land Acquisition Cell were utilized and three casual labourers including the petitioners were engaged by the Revenue Department itself *suo moto* due to urgency and need basis. The pay and allowance were disbursed by PIPDIC from the project fund to all the deputation staff and casual labourers engaged on daily rated basis based on attendance certified by the Revenue Department from the inception of the Cell till the date of winding-up of the Land Acquisition Cell. After winding-up of the cell, the staff, who worked on deputation, were sent back to the parent department and the service of the petitioners, who are only casual labourers engaged by the Revenue Department exclusively for the purpose of land acquisition for SEZ projects came to an end in view of the closing of the project. Therefore, in the light of the said facts, the petitioners are not entitled under law to claim continuity of service as they are not the employees of the respondent corporation. Further, they are also not entitled under law to claim for reinstatement as sought for in the petition.

It is an admitted fact that the project namely the SEZ Cell has been extended periodically. It is also an admitted fact that the said SEZ project which has been created for the particular purpose of fulfilling the project has come to an end and they had been working on temporary basis under the said projects on deputation from the Revenue Department. Since, the project has been wound up' in March 2012, the petitioners are not entitled under law to claim the regularization of their alleged services as the same is contrary to the settled law declared by the Hon'ble Supreme Court.

The respondent further stated that after winding up of the project, the petitioners were engaged as CLR's in this corporation from 13-8-2012 only on humanitarian ground. But, the petitioners have not turned up to work as CLR after 30-9-2012 and have not even turned up to collect the wages for one month period during which they worked. Since, the petitioners have not at all worked more than 240 days in the respondent corporation as alleged by them, they are not falling within the definition of workmen and are

not entitled to claim any relief as sought for by them in the petition. Hence, the respondent prays for dismissal of the petition with costs.

4. On the side of the petitioners, PW1 & PW2 were examined and Ex.P1 to Ex.P29 were marked. On the side of the respondent, RW1 was examined and Ex.R1 to Ex.R6 were marked.

5. *The point for consideration is::*

(1) Whether the petitioners are the workmen under the respondent?

(2) Whether the termination of the petitioners are invalid?

(3) Whether the petitioners are entitled to the relief of reinstatement, continuous of service and backwages?

6. Both side arguments were heard. On the side of both sides, written arguments were filed and the same is carefully considered. In support of his case, the learned Counsel for the petitioners relied upon the following decisions:-

(2003) 0 Supreme (SC) 376):

S.M. Nilajkar Vs. Telecom District Manager, Kamataka:

“Industrial Disputes Act 1947-section 2(oo) r/w 25F, 25FFF or 2(bb)-Retrenchment or termination of service as result of non-renewal of contract of employment after its expiry-Status of project or scheme employees in telecom circle-Whether the workmen recruited for discharging temporary job under a project insist on compliance of section 25F of ID Act if, their services are dispensed with on the project coming to an end-Single Judge holding section 25F is attracted-D.B holding to the contrary Appeal to Supreme Court- Whether termination of service of appellants amounted to retrenchment? (Yes) which provision will govern their case section 25F or section 25FFF (the later) ~ Appeal allowed accordingly.

(2015) 6 Supreme Court cases 321:

Ajaypal Singh Vs. Haryana Warehousing Corporation:

“Labour Law-Industrial Disputes Act 1947-Ss.25-F, 25-7”, 11-A and Sch. V Item 5- Retrenchment-Condition precedent is compliance with S. 25-F-Non-compliance-Unfair labour practice by employer-

Relief-Reinstatement-Public Sector employment-Ground of initial appointment being in violation of Arts. 14 and 16 of Constitution-Stage at which to be raised”.

(2015) 0 Supreme (SC) 432:

Prem Ram Vs. Managing Director, Uttarakhand Pey Jal & Nirman Niqam, Dehradun and ors:-

“Service law-Daily wagger employee and work-charged employee-No qualitative difference except that wages of work-charged employees borne from out of the allocation for the concerned project while in case of daily wagers there is no such specific allocation of funds-No criteria for engaging a person as work-charged or daily wagger-Authorities having absolute discretion-Classification wholly unsatisfactory- Court treating daily-wagers and work-charge employees on the same footing in the matter of granting regularization.

(2004) 0 Supreme (Mad) 386:-

The Management of Tamil Nadu Civil Supplies Vs. The Presiding Officer and Another:-

The petitioner herein has terminated the services of the second respondent without holding a domestic enquiry and the Labour Court has rightly held that such termination is illegal and passed an Award reinstating the second respondent without backwages and giving liberty to the petitioner management to take disciplinary action for the unauthorized absence.”

(2005) 0 Supreme (Raj) 680:-

Block Development Officer & Anr Vs. Chhactan La/ & Anr.

“Industrial Disputes Act 1947, sec.25-F, G & H-Appointed on daily wages basis Termination of service by verbal order without serving any notice prior to termination of service and without paying any compensation - Worked for more than 240 days whether can be treated as workman-Held-Respondent was a workman as he was worked for 7-8 hours regularly - Neither notice nor salary *in lieu* of notice or retrenchment compensation was given-Reinstated with compensation of ₹ 7,500.

(2003) 0 Supreme (Raj) 500:

Chanan Ram Vs. Registrar, Rajasthan Agricultural University:

“Service matters-Termination of Services-On expiry of project terminated services after 12 years-Appointed for particular project as skilled helper on *ad hoc* basis on a fixed pay-No notice was issued-Held-If, a person possessing requisite qualifications is allowed to continue in service for fairly long period, his appointment cannot be said to be *ad hoc*-Employer cannot follow a policy of *ad hocism* for a long period-It is not a sound personnel policy and would lead to breach of Arts. 14 and 16 of the Constitution-Infringed legal right-Violation of natural justice-Directed to take back in service.

7. On the other hand, the learned Counsel for the respondent relied upon the following citations in support of his case:-

2003 (7) SBR 39:

Surendra Kumar Sharma Vs. Vikas Adhikari & Anr.

“When posts temporarily created for fulfilling the needs of a particular project or scheme limited in its duration comes to an end, person employed in such scheme cannot claim regularization of service.”

2003(5-6) SBR 366:

M.D. U.P. Land Development Corporation & Anr. Vs. Amar Singh & Ors.

“When employees are recruited for a particular project and when the project comes to an end, services of the employees also come to an end. The High Court was not right in giving the direction to regularize them.”

2004(9) SBR 511:

Municipal Corporation, Faridabad Vs. Sin Niwas:-

“Burden is upon workman to show that he had completed 240 days in work in preceding year of his alleged retrenchment.”

2002(3) SBR 148:

The Range Forest Officer Vs. S.T. Hadimani:

“Respondent claimed that he had worked for 240 days-No proof of receipt of salary or wages for 240 days or order or record of appointment or engagement for this period produced by workman-Filing of affidavit is only his own statement in his

favour-That cannot be regarded as sufficient evidence for any Court or Tribunal to come to conclusion that a workman had, in fact, worked for 240 days in a year”

(2007) 1 Supreme Court cases 257:-

State of U.P. and others Vs. Desh Raj:-

“Service Law-Regularisation-Right to regularization-Daily wager-Not recruited in terms of provisions of Recruitment Rules framed under proviso to Art. 309 of the Constitution-Held, could not have been directed to be considered for regularization under the regularization rules in question - Such appointment made in violation of the constitutional scheme of equality as enshrined under Arts. 14 and 16 of the Constitution would be illegal and, thus, *void ab initio*-Question of regularization of employees by reason of any policy decision adopted by State is impermissible in law ~ No regularization rules could have been made by State concerned in derogation of statutory or constitutional scheme - Constitution of India, Arts.16, 14, 309 proviso and 162”.

8. *Discussion and Decision on Point No.1:*

This petition has been filed u/s.33 of Industrial Disputes Act 1947 seeking for the relief of reinstatement with continuity of service and backwages instead of section 2A (2) of Industrial Disputes Act 1947. Though the petitioners have quoted a wrong provision, this alone cannot be a reason for rejecting the case of the petitioners and if, the petitioners are entitled for the relief, it can be granted u/s.2 A (2) of Industrial Disputes Act, 1947.

9. It is the case of the petitioners that they have been appointed as Daily Rated Casual Labourers by the respondent corporation on 1-6-2005 and they had been in service for about 7 years and 8 months and they had made several representations to the PIPDIC for their regularizations of service on several dates and their services have not been regularized by the respondent corporation and that they had received salary from the respondent from 1-6-2005 to 1-7-2012 and in the month of August 2012, their salary was stopped by the Senior Manager, PIPDIC, Pondicherry, who alleged to have been demanded a bribe of ₹ 1,50,000 from the petitioners and the respondent has refused to pay the salary to the petitioners and to regularize them. It is the further case of the petitioners that without giving any notice and not following the principles of natural justice, they have been terminated from service by the

respondent corporation and that this matter was taken up by the Labour Conciliation Officer, Pondicherry wherein on 21-1-2013, the respondent corporation has filed their counter statement that they will not reinstate them.

10. On the other hand, it is contended by the respondent that these petitioners have not been appointed by them and they have been deputed from the Revenue Department, Pondicherry for the specific purpose of Land Acquisition Cell for setting up of a special economic zone at Sedarapet, Pondicherry. The petitioners were working in the Land Acquisition Cell from 1-6-2005 till March 2012, when the project was closed by the Government and the salaries were paid out of fund allocated by the Government for the said project and the petitioners have not worked for more than 240 days and that the petitioners could not be treated to be the employees of the respondent corporation and therefore they cannot seek any remedy against them under the Industrial Disputes Act.

11. In order to prove the case of the petitioners, the first petitioner has been & examined as PW1 and the revenue official has been examined as PW2 and through them, Ex.P1 to Ex.P29 were marked. Ex.P1 is the Copy of G.O. 81/2005 issued by Revenue Department, Pondicherry. Ex.P2 is the Copy of letter No. 9502/REV/Estt./A1/2005 issued by Revenue Department, Pondicherry. Ex.P3 is the Copy of letter Note No. 9502/RE/Estt/A1/2007 issued by Revenue Department, Pondicherry. Ex.P4 is the Copy of letter No. Admin/2003/220G/3331 issued by PIPDIC to Secretary to Government, Revenue Department, Pondicherry. Ex.P5 is the Copy of letter No. 875/LAC/SEZ/2005 issued by Deputy Collector Revenue (South), Pondicherry. Ex.P6 is the Copy of letter Note No. 9502/REV/Estt/A1/2007 issued by Revenue Department, Pondicherry. Ex.P7 is the Copy of letter Note No. PIPDIC/BILLS/660/3576 issued by PIPDIC. Ex.P8 is the Copy of letter No.009/DCRS/SEZ/2012 issued by Deputy Collector Revenue (South), Pondicherry. Ex.P9 is the Copy of letter No.9502/REV/Estt/A1/2011 issued by Revenue Department, Pondicherry. Ex.P10 is the Copy of letter Note No. F-1-69-Admin/2003/220G/3209 issued by PIPDIC to the Secretary to Government, Revenue Department, Pondicherry. Ex.P11 is the Copy of letter No.169/Admin/2003/220/3940 issued by PIPDIC to the Special Officer, Revenue Department, Pondicherry. Ex.P12 is the Copy of letter Note No. 9502/Rev-Estt/A1/2007 issued by Revenue Department to PIPDIC, Puducherry. Ex.P13 is the Copy of representation given

by the petitioners to PIPDIC. Ex.P14 is the Copy of RTI No. F29/35/2005/Admn./248/G/8/2314 given by PIO, PIPDIC. Ex.P15 is the Copy of experience certificate issued by Dy. Collector, Revenue Department, Pondicherry. Ex.P16 is the Copy of experience certificate issued by Sub-Collector, Revenue Department, Pondicherry. Ex.P17 is the Copy of experience certificate issued by Sub-Collector, Revenue Department, Pondicherry. Ex.P18 is the Copy of experience certificate issued by Deputy Collector, Revenue Department, Pondicherry. Ex.P19 is the Copy of experience certificate issued by Deputy Collector, Revenue Department, Pondicherry. Ex.P20 is the Draft Recruitment Rules for the post of Peon of PIPDIC. Ex.P21 is the Copy of G.O. Ms. No. 22/2009 issued by Department of Personnel and Administrative Reforms. Ex.P22 is the Copy of G.O.Ms. No. 66/F3/2008 issued by Finance Department, Pondicherry. Ex.P23 is the Copy of complaint given to the Secretary Government of Puducherry by the petitioners. Ex.P24 is the Copy of reply statement filed by the PIPDIC. Ex.P25 is the Copy of failure report sent by Labour Commissioner. Ex.P26 is the Copy of Authorization letter given by Deputy Collector. (Revenue) South, Pondicherry. Ex.P27 is the Copy of the Order passed by Regional P.F. Commissioner-II. Ex.P28 is the Copy of letter in G.O. Ms. No. 94/2009/F3 issued by Under Secretary to Government Finance Department. Ex.P29 is the Copy of letter sent by Dy. Collector to Member Secretary, PIPDIC, Pondicherry. On the other hand, to disprove the case of the respondent, the respondent has been examined as RW1 and through him, Ex.R1 to Ex.R6 were marked. Ex.R1 is the Copy of order by Under Secretary to Government. Ex.R2 is the True extract of minutes. Ex.R3 is the Copy of Special Economic Zone-Creation of Land Acquisition Cell-Ratification. Ex.R4 is the Copy of ID note by Additional Secretary (Revenue). Ex.R5 is the Copy of letter by Dy. Collector (Rev) South. Ex.R6 is the Copy of letter by PIPDIC to Sub-Collector (Rev) South.

12. From these pleadings of both sides, it is clear that it is admitted by both parties that the petitioners have served as Daily Rated Labourers from 1-6-2005 to 1-7-2012 and the said posts were sanctioned by the Government by an order of Lieutenant-Governor of Pondicherry and these petitioners were working as Peon and they have received salary from the respondent corporation. It is also admitted by both parties that the petitioners have not been permitted to continue their service as Peon of PIPDIC from the month of August 2012. It is a specific case of the petitioners that the respondent has not issued any order or notice for their

termination, which has not been denied by the respondent in their counter. The petitioners have been stopped to work in the respondent corporation orally without giving any termination notice or without following the procedures as laid down in the Industrial Disputes Act. Now it is main contention of the respondent that the petitioners were not the employees of the respondent corporation and that they were working only under the Land Acquisition Cell for the purpose of setting up a special economic zone and that they have been deputed by the Revenue Department, Pondicherry and that they are not the employees of PIPDIC/Respondent corporation. On this aspect, the evidence let in either side and the documents exhibited are carefully considered.

13. Further, main contention of the respondent is that the petitioners have not been completed the period of 240 days within a period of one year preceding to their termination as contemplated under sub-section 2 of 25 of Industrial Disputes Act and that therefore, they are not falling within the purview of workmen and consequently they are not entitled to claim any relief sought by them under the industrial Disputes Act.

14. Admittedly, these petitioners have served from 1-6-2005 till the month of August 2012. The respondent though has pleaded that the petitioners have not completed 240 days in the year preceding to their termination, they have not filed any document to prove their contention that the petitioners have not worked for 240 days in the year preceding to their termination. On the other hand, it is admitted by the respondent that the petitioners were paid salary from the funds sanctioned by the Government for the purpose of creating Special Economic Zone for the period from 1-6-2005 till the month of August 2012. This admission would go to show that the petitioners have been in service for about 7 years and 8 months and they have been paid salary by the respondent corporation for the said period. The evidence of RW1 runs as follows:-

எதிர்மனுதாரர் நிறுவனத்தில் casual labour 92 தொழிலாளர்களும், நிரந்தர பணியாளர் 145 தொழிலாளர்கள் பணிபுரிகிறார்கள். Ex.A21-G.O.-வை பற்றி எனக்கு தெரியும். மனுதாரர்கள் எப்பொழுது வேலையிலிருந்து நீக்கப்பட்டார்கள் என்று எனக்கு தெரியாது. மனுதாரர்கள் சம்பள பாக்கியை பெற்றுக்கொள்ளுங்கள் என்று அறிவிப்பு அனுப்பவில்லை. மனுதாரர்கள் unauthorized absent என்று நோட்டீஸ் அனுப்பவில்லை. Casual labour 92.

என்னிடம் காட்டப்படும் G.O. Finance Department, புதுச்சேரியில் பிறப்பிக்கப்பட்டது என்றால் சரிதான். அது Ex.A28 ஆகும். இந்த அரசாணையில் ஊழியர்கள் pay commission-னின் சிபாரிசு அடிப்படையில் சம்பளம் வழங்க வேண்டும் என்று குறிப்பிடப்பட்டுள்ளது.

என்னிடம் காட்டப்படும் கடிதம் Revenue Department-லிருந்து எதிர்மனுதாரர் நிறுவனத்திற்கு அனுப்பப்பட்டது என்றால் சரிதான். அது Ex.A29 ஆகும். அந்த கடிதத்தில் மனுதாரர்களுக்கு daily wages (தினக்கூலி) கொடுக்கச் சொல்லி Deputy Collector-ரால் அனுப்பப்பட்ட கடிதம் என்றால் சரிதான். அந்த Ex.A29 கடிதத்திற்கு எதிர்மனுதாரர் நிறுவனம் பதில் அனுப்பவில்லை. Ex.A29-வில் மனுதாரர்களுக்கு, 10-4-2006 முதல் வேலை செய்த நாட்களின் அடிப்படையில், ரூபாய் 10,428 யை SEZ fund-லிருந்து கொடுக்கப்பட்டுள்ளது என்றால் சரிதான்.

Ex.A3 ஆவணத்தை Deputy Collector, PIPDIC-க்கு அனுப்பப்பட்ட கடிதம் என்றால் சரிதான். Ex.A3-ல் 2-வது para-வில் “the three posts of peon have been filled up PIPDIC by their own staff” என்று குறிப்பிடப்பட்டுள்ளது என்று சொன்னால் சரிதான். Ex.A3 கடிததின் அடிப்படையில் எதிர்மனுதாரரிடம் இல்லை என்று பதில் அனுப்பவில்லை.

15. The respondent has not disputed that these petitioners were appointed as Peon as per the order of Lieutenant-Governor, who has sanctioned the said post and subsequently, the petitioners along with one another were appointed as Peon in the respondent corporation and they have been served from 1-6-2005 till 2012 on the over all supervision of the respondent and the salary was paid by the respondent to the petitioners. Further more, RW1 has clearly admitted that the employment of the petitioners is a continuous one and their services were terminated after 7 years and the petitioners have completed 240 days in a year and that therefore, they become the permanent employees of the respondent.

16. The Hon'ble High Court held in its judgment reported in 5980 of 2004 in Lakshmi Vs. Chief Engineer, dated 3-8-2012 has held that any workman completed 240 days of continuous service, the work should be treated as permanent workman, eventhough their services were not regularized. So, this Court can rightly hold that the petitioners have worked directly under the control of the respondent and they have received their salary only from the respondent and therefore, they are deemed to be the permanent workmen of the respondent and hence, they are entitled for the statutory benefit under the Industrial Disputes Act. Further more, in the case of “Bengal Nagpur Cotton Mills” case reported in (2011) 1 SCC 635, the Hon'ble Apex Court has held as follows:-

“In this case, the industrial Adjudicator has granted relief to the first respondent in view of its finding that he should be deemed to be a direct employee of the appellant. The question for consideration is whether the said finding was justified. It is now well settled that the industrial Adjudicator finds that the contract between the principal employer and the contractor to be sham and nominal are merely camouflage to deny the employment benefits to the employee and that there was in fact a direct employment, it can grant relief to the employee by holding that the workman is a direct employee of the principal employer. Two of well recognized tests to find out whether the contract employers are the direct employees of the principal are—

- (1) Whether the principal employer pays salary instead of contractor; and
- (2) Whether the principal employer controls and supervises the work of the employee.

In this case, the Industrial Court answered the questions in the affirmation and as a consequences held that the first respondent is a direct employee of the appellant.

17. By applying the two tests as mentioned in the above citation, this Court finds that the petitioners are under the direct employment and control of the respondent and the salaries were also directly paid by the respondent to the petitioners and therefore, it can be held that the petitioners are the workmen of the respondent and they are entitled to the protection and privilege of the Industrial Disputes Act. Accordingly, this point is answered.

18. *On point No. 2:*

Next contention raised by the respondent is that the petitioner cannot claim any relief of reinstatement, since the purpose for which they have been appointed has come to an end i.e. the work of Land Acquisition Cell for creation of Special Economic Zone at Sedarapet was completed and the project was closed by the Government after March 2012 and therefore, the appointment of the Casual Labourers including the petitioners, who were appointed for the Land Acquisition Cell created for setting up of a Special Economic Zone project came to an end and the project was wound up by the government. In support of the case, the respondent has relied upon the following decision:

2003(5-6) SBR 366:

M.D. U.P. Land Development Corporation & Anr. Vs. Amar Singh & Ors.

“When employees are recruited for a particular project and when the project comes to an end, services of the employees also come to an end, The High Court was not right in giving the direction to regularize them.

19. From the above decision, it has been held that whenever the employees are recruited for a particular project and the said project comes to an end, the service of the employees also comes to an end. But, in this case, the petitioners were orally terminated and they were stopped from the work in the month of August 2012. But, on perusal of the evidence as well as the documents, the Government has extended the said project till March 2013 and that therefore, when the project is also pending till 2013, the petitioners have been terminated from service without giving notice in the month of August 2012 and that therefore, the citation relied on by the respondent would not support his case. Further more, though it is stated by the respondent that these petitioners have been appointed for the purpose of a particular project, Ex.A3 letter has been sent by the Deputy Collector to the respondent corporation mentioning that the petitioners along with one another Peon are the own staff of the respondent PIPDIC. As already stated, RW1 has admitted that the respondent has also not made representation to the Deputy Collector, who sent the said letter ExA3 Further more, the respondent corporation has paid the EPF contribution for 92 Casual Labourers including the petitioners herein. This fact has been admitted by RW1 in his cross examination. While so the petitioners have to be terminated as per the procedure laid down under Industrial Disputes Act or otherwise as per the rules framed under Government of Pondicherry Casual Labourers. (Engagement and Regularisation) Scheme 2009, which has been marked as Ex.P21. But, admittedly the respondent has not stated anything as to whether he issued notice to the petitioners or issued any written intimation for their termination. On the other hand, it is pleaded that by the petitioners that they have been orally stopped from the work by the Senior Manager of PIPDIC. Under such circumstances, the respondent has not let in any evidence or produced any document to show that the termination was properly done. Therefore, it is clear from the evidence of the petitioners that no written intimation was given to the petitioners and no payment was made to the petitioners.

20. Under 25 F of Industrial Disputes Act, the retrenchment on the employer right, who retrenched the workmen lays down that no workman employed in an industry, who has been continuous service for not less than one year under a employer shall be retrenched, until he has been given one month in writing intimating the reasons for retrenchment and the period of notice has expired or he has been paid wages for a period of notice and he has also been paid retrenchment compensation equivalent to 15 days average pay for every completed period of continuous service. In this case, no such procedure was adopted by the respondent/PIPDIC corporation and without adopting any procedure, orally instructed the petitioners to stop their work and as such it can be held that the termination of the petitioners by the respondent is invalid and illegal and the same is liable to be set aside.

21. *On point No.3:-*

As this Court has already held that the termination of the petitioners is invalid and illegal and the same is liable to be set aside, it is to be seen that whether the petitioners are entitled for the relief of reinstatement with continuity of service and back wages is the difficult question, which involves number of factors. The Hon'ble Apex Court in a case of "Assam Oil Company Ltd., Vs. its Workmen", "M/s. Hindustan Steel Limited, Rourkela Vs. A.K Roil and other", "Ruby General Insurance Limited Vs. P.T. Chopra", "Assistant Engineer, Rajasthan Vs. Geetham Singh" held that eventhough the termination was illegal and is liable to be set aside, it would not be granted an order of reinstatement. Further, the Hon'ble Apex Court in several decisions has clearly laid down that the order of retrenchment in violation of section 25 F of Industrial Disputes Act may be set aside that the Award of reinstatement should not be passed. The Hon'ble Apex Court clearly distinguishes the case between the daily rater, who does not hold their post in the permanent employee. But, in this case, the petitioners were found as permanent workmen and their work is an essential one and they have hold a post of Peon and the co-worker, who has been appointed along with the petitioners has been in service without any termination. RW1 has also admitted that the co-worker, who has been appointed along with these petitioners is still in service in the respondent corporation as a Peon and therefore, these petitioners have to be given reinstatement. Hence, it can be held that the petitioners are entitled for an order of reinstatement with continuity of service.

22. However, in this case, for the grant of relief of back wages, this court has to consider the source of employment, method of recruitment, terms and conditions of the employment, contract of service, quantum of wages, mode of payment and the period of service. In this case, it is clear that the petitioners themselves have not stated that how they have been selected and whether through employment or selected on merits after giving due advertisement by the employment or by the respondent corporation. Furthermore, the petitioners have not stated regarding their way in which they have been selected for the post of peon and also they have not stated that they have not joined in any other establishment so far even after their retrenchment. Furthermore, there is no rule of thumb that in every case where the Industrial Tribunal gives a finding that the termination service was in violation of section 25-F of the Act, entire back wages should be awarded. A host of factors like the manner and method of selection and appointment *i.e.*, whether after proper advertisement of the vacancy or inviting applications from the employment exchange, nature of appointment, namely whether *ad hoc*, short-term, daily wage, temporary or permanent in character, any special qualification required for the job and the like should be weighed and balanced in taking a decision regarding award of back wages. One of the important factors, which has to be taken into consideration, is the length of service, which the workman had rendered with the employer. If, the workman has rendered a considerable period of service and his services are wrongfully terminated, he may be awarded full or partial back wages keeping in view the fact that at his age and qualification possessed by him. Another important factor, which requires to be taken into consideration is the nature of employment. A regular service of permanent character cannot be compared to short or intermittent daily-wage employment though, it may be for 240 days in a calendar year.

23. *In Kendriya Vidyalaya Sangathan Vs. S.C. Sharma reported in 2006-I-LLJ-“753:* it has been held that

“16. When the question of determining the entitlement of a person to back wages is concerned, the employee has to show that he was not gainfully employed. The initial burden is on him. After and if, he places materials in that regard, the employer can bring on record materials to rebut the claim. In the instant case, the respondent had neither pleaded nor placed any material in that regard.”

24. In *U.P. State Brassware Corporation Ltd., Vs. UdaiNarain Pandev*, reported in 2006-a-LLJ-496 at page 506,: it has been held that

“65. It is not in dispute that the respondent did not raise any plea in his written statement that he was not gainfully employed during the said period. It is now well settled by various decisions of this Court that although earlier this Court insisted that it was for the employer to raise the aforementioned plea but, having regard to the provisions of section 106 of the Evidence Act or the provisions analogous thereto, such a plea should be raised by the workman.”

25. In this case, nothing is pleaded by the petitioners/claimants that they have not joined or worked in any other establishment or they, did not have any income for their survival and that therefore, the above citations are squarely applicable to this case and as such these petitioners are not entitled for full back wages. However, considering the facts and circumstances of the case, this Court finds that these petitioners were illegally terminated from their service by the respondent all of a sudden without giving any notice and hence, they have approached before the Labour Conciliation Officer and subsequently before this Court for challenging the termination by the respondent. On the other hand, the respondent has not proved that the petitioners have earned income after their termination from service. In the above circumstances, this Court does not find any reasonable cause to grant full back wages to the petitioners and consequently, this Court is inclined to grant partial back wages of 30% to the petitioners till their reinstatement. Accordingly, this point is answered.

26. In the result, the petition is partly allowed and the petitioners No.1 and 2 are entitled for the reinstatement with continuity of service and 30% of back wages till their reinstatement.

Dictated to the Stenographer, transcribed by him, corrected and pronounced by me in the Open Court on this the 4th day of January, 2017.

G. THANENDRAN,
Presiding Officer, Industrial Tribunal,
Pondicherry.

List of petitioner's witnesses:

PW.1 — 20-12-2013—Gopu

PW.2 — 21-2-2014 —H.V. Vimalan

List of petitioner's exhibits:

- Ex.P1—12-7-2005 — Copy of G.O. 81/2005 issued by Revenue Department, Pondicherry.
- Ex.P2—14-7-2005 — Copy of letter No.9502/REV/Estt./A1/2005 issued by Revenue Department, Pondicherry.
- Ex.P3—15.02.2007— Copy of letter Note No. 9502/RE/Estt/A1/2007 issued by Revenue Department, Pondicherry.
- Ex.P4—16.05.2007— Copy of letter No. Admin/2003/220G/3331 issued by PIPDIC to Secretary to Government, Revenue Department Pondicherry.
- Ex.P5—12-7-2010 — Copy of letter No. 875/LAC/SEZ/2005 issued by Deputy Collector Revenue (South), Pondicherry.
- Ex.P6—2-6-2011 — Copy of letter Note No. 9502/REV/Estt/A1/2007 issued by Revenue Department, Pondicherry.
- Ex.P7—21-7-2011 — Copy of letter Note No. PIPDIC/BILLS/660/3576 issued by PIPDIC.
- Ex.P8—3-3-2012 — Copy of letter No. 009/DCRS/SEZ/2012 issued by Deputy Collector Revenue (South), Pondicherry.
- Ex.P9—10-4-2012 — Copy of letter No. 9502/REV/Estt/A1/2011 issued by Revenue Department, Pondicherry.
- Ex.P10—14-6-2012— Copy of letter Note No. F-1-69-Admin/2003/220G/3209 issued by PIPDIC to the Secretary to Government, Revenue Department, Pondicherry.
- Ex.P11—17-7-2012— Copy of letter No.169/Admin/2003/220/3940 issued by PIPDIC to the Special Officer, Revenue Department, Pondicherry.

Ex.P12—8-8-2012 — Copy of letter Note No. 9502/Rev-Estt/A1/2007 issued by Revenue Department to PIPDIC, Puducherry.

Ex.P13—19-9-2007—Copy of representation given by the petitioners to PIPDIC.

Ex.P14—23-4-2012—Copy of RTI No. F29/35/2005/Admn./248/G/8/2314. Given by PIO, PIPDIC.

Ex.P15—10-11-2008— Copy of experience certificate issued by Deputy Collector, Revenue Department, Pondicherry.

Ex.P16—11-1-2010—Copy of experience certificate issued by Sub-Collector, Revenue Department, Pondicherry.

Ex.P17—31-5-2010—Copy of experience certificate issued by Sub-Collector, Revenue Department, Pondicherry.

Ex.P18—9-2-2012 — Copy of experience certificate issued by Deputy Collector, Revenue Department, Pondicherry.

Ex.P19—13-8-2012—Copy of experience certificate issued by Deputy Collector, Revenue Department, Pondicherry.

Ex.P20— — Draft Recruitment Rules for the post of Peon of PIPDIC.

Ex.P21—27-2-2009 — Copy of G.O. Ms. No. 22/2009 issued by Department of Personnel and Administrative Reforms.

Ex.P22—24-10-2008—Copy of G.O. Ms. No.66/F3/2008, issued by Finance Department, Pondicherry.

Ex.P23—22-10-2012— Copy of complaint given and 30-10-2012 to the Secretary to Government of Puducherry by the petitioners.

Ex.P24—21-1-2013—Copy of reply statement filed by the PIPDIC.

Ex.P25— 8-5-2013 — Copy of failure report sent by Labour Commissioner.

Ex.P26—20-2-2004—Copy of Authorization letter given by Deputy Collector (Revenue) South, Pondicherry.

Ex.P27—10-3-2014—Copy of the order passed by Regional P.F. Commissioner-II.

Ex.P28—5-5-2009 — Copy of letter in G.O. Ms. No. 94/2009/F3 issued by Under Secretary to Government Finance Department.

Ex.P29—10-4-2006—Copy of letter sent by Deputy Collector to Member Secretary PIPDIC, Pondicherry.

List of respondent's witnesses:

RW.1 — 18-12-2015—Lakshmi Narayanan, Deputy Manager (Legal), PIPDIC.

List of respondent's exhibits:

Ex.R1—13-6-2003 — Copy of order by Under Secretary to Government.

Ex.R2—15-3-1993 — True extract of minutes

Ex.R3—28-6-2005 — Copy of Special Economic Zone-Creation of Land Acquisition Cell Ratification.

Ex.R4—14-7-2005 — Copy of ID note by Additional Secretary (Revenue).

Ex.R5—28-9-2005 — Copy of letter by Deputy Collector (Revenue) South.

Ex.R6—12-3-2012 — Copy of letter by PIPDIC to Sub-Collector (Revenue) South.

G. THANENDRAN,
Presiding Officer,
Industrial Tribunal-cum-Labour Court.