



புதுச்சேரி மாநில அரசிதழ்

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SOMMAIRES

CONTENTS

	பக்கம்		Page		Page
தொழில் நீதிமன்றத் தீர்ப்புகள் ..	334	Sentence arbitral du travail de tribunal.	.. 334	Award of the Labour Court ..	334
அரசு அறிவிப்புகள் ..	342	Notifications du Gouvernement ..	342	Government Notifications ..	342
ஒப்ப அறிவிப்புகள் ..	350	Avis d'Adjudications ..	350	Tender notices ..	350
ஆபத்தான நிறுவனங்கள் ..	357	Etablissements dangereux ..	357	Dangerous Establishments ..	357
சாற்றறிக்கைகள் ..	362	Annonces ..	362	Announcements ..	362
திருத்தம் ..	368	Corrigendum ..	368	Corrigendum ..	368

GOVERNMENT OF PUDUCHERRY
LABOUR DEPARTMENT

(G.O. Rt. No. 47/Lab./AIL/T/2017,
Puducherry, dated 6th April 2017)

NOTIFICATION

Whereas, the Award in I.D.(L)No. 02/2015, dated 15-2-2017 of the Labour Court, Puducherry in respect of the industrial dispute between the Management of M/s. AVA Cholayil Health Care (Pvt.) Limited, Puducherry and Thiru S. Anbazhagan, Villianur, Puducherry over non-employment has been received;

Now, therefore, 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. 20/91/Lab./L, dated 23-5-1991, it is hereby directed by the Secretary to Government (Labour) that the said Award shall be published in the Official Gazette, Puducherry.

(By order)

E. VALLAVAN,
Commissioner of Labour-cum-
Additional 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 15th day of February 2017

I.D.(L) No. 02/2015

S. Anbazhagan,
Employee No.141900143,
No. 4, Vinayagar Koil Street,
SMV puram, Villianur,
Puducherry-605 110. . . Petitioner

Vs.

The Managing Director,
M/s. AVA Cholayil Health Care
Private Limited,
Puducherry. . . Respondent

This industrial dispute coming on this day for hearing before me in the presence of Thiruvalargal A. Sakthivel and A. Govindh, Advocates for the petitioner, Thiru B. Mohandoss, Advocate 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

This industrial dispute arises out of the reference made by the Government of Puducherry *vide* G.O. Rt. No. 4/AIL/Lab./J/2015, dated 30-1-2015 of the Labour Department, Puducherry to resolve the following dispute between the petitioner and the respondent *viz.*,

(1) Whether the dispute raised by the petitioner Thiru S. Anbazhagan against the management of M/s. AVA Cholayil Health Care Private Limited, Puducherry over non-employment is justified ? If justified, what relief he is entitled to ?

(2) Whether the management adopted unfair practice against the union office bearers ? If so, what relief the petitioner is entitled to ?

(3) To compute the relief if any, awarded in terms of money if, it can be so computed?

2. The petitioner, in his claim statement, has averred as follows:

It is the case of the petitioner that he is the Secretary of the Medimix Labour union which was bearing No.1593/RTU 2009 situated at SMV puram, Villianur, Puducherry and AVA Cholayil Health Care Private Limited, is also functioning at Odiyampet, Villianur, Puducherry and wherein, 88 employees were working, out of which 60 employees are the members of the petitioner union and another union in the name of Labour Welfare Association is also functioning in the respondent industry which is functioning in support of the management, wherein, 23 employees are the subscribers of the union and that the respondent management has not adopted the Industrial Disputes Act for the past 28 years and conciliation were taken place before the Assistant Commissioner of Labour and an appeal is pending before the Assistant Commissioner of Labour and on the compel of the management that there was an 18(1) settlement existed between the employer and the employees, and the petitioner union has given application on 1-1-2010 for the revision of wages without any proper meeting conducted between the employees and employer for negotiation and they have compelled and obtained the signatures of the employees and 18(1) settlement was amended and the respondent management has also terminated one Iyyappan, the President of the union, from his service and which was challenged before the Conciliation Officer and the same is pending before the Court, and with the intention to retrench the union members by lodging several false complaint and memo was issued on 8-2-2012 against the petitioner by the respondent management and that

he has been terminated from service since he has been doing against the respondent for the unfair labour practice and foisting of false complaint and that respondent management has not issued show cause notice to the 18 employees and no action has been taken on other 15 employees except three. No charge-sheet has been issued which shows that revenge of the management taking against the petitioner and it is the further case of the petitioner that he has not been given opportunity to cross examine one Ramu, PW.2 on 14-7-2012 and no adjournment were granted to petitioner also on 26-7-2012, which is against natural justice and the request of the petitioner to examine the Manager is also rejected by the respondent establishment and that therefore, he prays to set aside the termination order and pass an order to directing the respondent to reinstate him with backwages from 12-12-2013 till disposal of this case.

3. In the counter statement, the respondent has stated as follows:-

(i) The petitioner has canvassed several facts and issues which have no nexus with the claim made by the petitioner in the above industrial dispute and hence, it is an abuse of process of law and unnecessarily the petitioner has raised the issues relating to the claim made by the Medimix Thozilalar Sangam in ID(T).9/2012 pending on the file of this Court for disposal and similarly, the petitioner has raised the issue relating to termination of the services of Thiru Iyyappan, President of Medimix Thozilalar Sangam in a vexatious manner and that the petitioner has suppressed the fact of ID(T).32/2012 (in which the dismissal of Iyyappan was challenged) was dismissed by this Court through Award, dated 18-7-2014 and that the petitioner has no right or justification, simply to attract sympathy of this Court, to bring those issues into the present claim and admitted that the petitioner is the Secretary of the Medimix Thozilalar Sangam and denied the allegation that out of about 88 permanent workmen employed by the respondent, 60 are members of the above trade union and stated that the petitioner has raised this industrial dispute in his individual capacity and the above trade union is not the petitioner in the present industrial dispute and denied the allegation that Thozilalar Nala Sangam, the other trade union formed by the workmen of the respondent establishment is favouring the management and stated that based on the merits and demerits of the issues raised by the workmen, the said union takes the stand either to support or not to support

the management and denied the allegation that the respondent management has not followed the laws like Standing orders Act, Industrial Disputes Act, *etc.*, despite the passing of 28 years after the formation of the factory and denied that the respondent dismissed the petitioner on false grounds and stated that the petitioner requested the respondent to declare him as a protected workman and as it was rejected by the respondent he has taken up the matter with the Labour Officer (Conciliation) and pointed out that the claim made by the petitioner for recognizing him as a protected workman is not lawful one and accordingly, it was rightly rejected by the respondent and stated that the provisions of section 33(1)(b) of the ID Act, 1947 are not applicable to the claim made by the petitioner and hence, the approval of the Labour Officer (Conciliation) and of the Hon'ble Labour Court before imposing punishment of dismissal on the petitioner is not required as per law and that the petitioner is guilty of submitting distorted version of facts and suppression of material facts relating to his dismissal from service by the respondent and the petitioner has conveniently omitted to state the necessary facts and circumstances attending to the disciplinary proceedings initiated by the respondent for misconduct and that the petitioner has not even pointed out the actual charges framed against him, the explanation submitted by him for the charges, the evidence adduced in the enquiry, the report of the Enquiry Officer, *etc.*,

(ii) The respondent further stated that through charge-sheet, dated 18-2-2012 the petitioner was alleged to have committed the following misconducts on 8-2-2012 : (1) refusal to discharge the duties entrusted to him by the making supervisor Mr. Sunil, (2) Not satisfying the production target of 50 moulds along with 17 other workmen, (3) refusal to follow the instructions of the management in discharging the duties by stating (jointly along with workmen A. Pandi and V. Sivakumar) only 40 moulds could be done and finishing the works according to your will and pleasure, (4) stopping the work abruptly even when the shift working time was not over and the production target was not completed and leaving the place of work without obtaining prior permission of the supervisor, (5) Performing the work for less than 8 hours and the petitioner submitted the explanation, dated 8-3-2012 denying the charges of misconduct by stating that he and the other 17 workmen produced 40 moulds which was in excess by 4 moulds, as per the practice followed for the past 1 year and the petitioner

further stated that the management has followed the victimizing attitude against him and other workmen who are trade union members and hence to find out the truth regarding the charges framed against the petitioner, the respondent made arrangement for a domestic enquiry and in the enquiry, adequate opportunity was granted to the petitioner to defend the charges in the proper manner and the enquiry was conducted in accordance with law and principles of natural justice and the charges framed against the petitioner were proved in the enquiry in accordance with law through reliable evidence and that the petitioner was granted opportunity to submit objections/explanation for the enquiry report, dated 12-6-2013 through letter of the respondent, dated 23-8-2013 in which the respondent accepted the report, the Enquiry Officer holding the petitioner guilty of the charges and that the petitioner submitted his explanation, dated 4-9-2013 in which the petitioner had stated untrue facts and alleged unwarranted charges against learned Enquiry Officer and also against management and therefore, the respondent sent the 2nd show-cause notice of proposed penalty of dismissal, dated 8-11-2013 and the punishment of the dismissal was imposed after taking into consideration the past record of service of the petitioner which is not free blemish, through order dated 12-12-2013.

(iii) The respondent further stated that the petitioner has made unwanted allegations against the Enquiry Officer and as per law even the legal advisor of an establishment can conduct domestic enquiry and in this case only the Junior Advocate Mrs. Devasundari attached to the office of the Senior Counsel of the establishment conducted the enquiry, but, the abovesaid Enquiry Officer is not appearing for the establishment in the present case or any other case against the petitioner and that the petitioner is stopped from canvassing new facts and taking new pleas which were not raised in the explanation for the charges and the 2nd show-cause notice to attack the disciplinary proceedings and pointed out that the punishment of dismissal is in tune with the gravity of the misconducts committed by the petitioner and as pointed out in the 2nd show-cause notice, dated 8-11-2013, his past performance was not clean and noted that under the charge-sheet, dated 31-12-2008 charges of misconduct were framed by the respondent against the petitioner and in the enquiry conducted by the Enquiry Officer-Advocate Thiru K. Velmurugan, the petitioner admitted the charges on 11-1-2010 and

the petitioner was also supplied the Enquiry Officer's report, dated 26-2-2010 and the respondent further stated that the domestic enquiry proceedings are quasi-judicial in nature and cannot be equated to the judicial proceedings of a Court and the nature of evidence required to sustain the charges and the mode of proof in the enquiry proceedings are not similar to the ones related to the Courts and that as per the sound principles of Labour Jurisprudence, it is enough if, there is some evidence to prove the charges of misconduct which is distinguished from the case of no evidence and similarly, the nature of proof is not the proof beyond shadow of doubt but, when a reasonable man believes it to be true from the facts and circumstances then that alone is required and in this case the charges of misconduct levelled against the petitioner have been proved as required by law and the respondent further stated that in the enquiry proceedings, the petitioner participated with his defence assistant and was permitted to adduce evidence and to cross examine witnesses and as such this is not an *ex parte* enquiry and as per the correct legal position even the *ex parte* enquiry proceedings can be the basis for imposing punishment on the delinquent employee, unless the findings of the Enquiry Officer are perverse, no interference can be made so as to set aside the findings of the Enquiry Officer and on the same reasoning the punishment imposed on the employee based on the findings of the Enquiry Officer cannot be set aside.

(iv) The respondent further stated that for the sake of inventing ground for justifying his misconduct, the petitioner has referred to change in the production process, as an afterthought and in that attempt he is interpreting the terms and conditions of settlement under section 18(1) of the ID Act according to which every employee in the making section has to give production of 4 moulds and that the petitioner has admitted the above production yardstick in para 36 of the claim statement, but, he is not justified in reading between the lines, the settlement regarding change in the production process and that the production process includes utilization of raw material and hence, change in the production process automatically includes change in the utilization of raw material and under such circumstances it is highly unreasonable on the part of the petitioner to contend that the change in the oil content [by replacing coconut oil by palm oil (palm bio-tech)] is not warranted under the settlement and the respondent further stated that the petitioner along

with co-workmen A. Pandi and V. Sivakumar (petitioner in ID(L).8/2015 where the main cause for stopping the production by arguing that only 40 moulds could be produced on 8-2-2012 and against the said Pandi, former Secretary of the Medimix Thozhilalar Sangam, also charges were framed under the charge-sheet, dated 18-2-2012 and enquiry was conducted by the very same Enquiry Officer, Advocate Mrs. Devasundari and pointed out that Thiru A. Pandi admitted the charges and settled his accounts with the respondent management, after submitting resignation and as such the false contentions made against the respondent in respect of the very same misconduct do not hold water and the respondent denied all the allegations made by the petitioner except the facts that are specifically admitted in the counter and hence, they pray for dismissal of the industrial dispute.

4. On the side of the petitioner, WW.1 was examined and Ex.W1 to Ex.W19 were marked. On the side of the respondent, no oral or documentary evidence has been adduced.

5. *The point for determination is:*

Whether the industrial dispute can be allowed?

6. Heard. The contention of the petitioner is that to direct the respondent management to withdraw the Termination order passed by them and to reinstate him with full back-wages, allowance, bonus and all other benefits.

7. *Per contra*, the contention of the respondent is that the claim of the petitioner is not maintainable in law or on facts and hence prays for dismissal of the petition.

8. In order to prove his case, the petitioner was examined as WW.1 and through him, Ex.W1 to Ex.W19 were marked. On the side of the respondent, no oral or documentary evidence has been adduced. While the matter was posted for cross examination of WW.1, the petitioner and the respondent-Company filed a Joint Compromise Memo, wherein, it is stated that the matter has been settled out of the Court of law and they have sought this Tribunal to pass an Award on the basis of Joint Compromise Memo and therefore, it is just and necessary to record the joint compromise memo and the industrial dispute raised by the petitioner through reference is closed.

9. In the result, the joint compromise memo is recorded and the industrial dispute raised by the petitioner through reference is closed. No costs.

Dictated to the stenographer, transcribed by her, corrected and pronounced by me in the Open Court on this the 15th day of February, 2017.

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

List of witness examined for the petitioner:

WW.1— 15-2-2016— Anbazhagan

List of exhibits marked for the petitioner:

Ex.W1— Call for explanation letter by the respondent management to the petitioner, dated 18-2-2012.

Ex.W2— Copy of reply letter by the petitioner to the respondent management, dated 8-3-2012.

Ex.W3— Letter regarding Departments enquiry sent by the respondent management to the petitioner, dated 12-4-2012.

Ex.W4— Suspension order with constitution of enquiry sent by the respondent management to the petitioner, dated 2-5-2012.

Ex.W5— Copy of letter sent by the petitioner regarding violation of natural justice by Enquiry Officer, dated 20-10-2012.

Ex.W6— Copy of letters alleging that Enquiry Officer moved in favour of the respondent management, sent by the petitioner to the Enquiry Officer, dated 17-11-2012 and 15-12-2012.

Ex.W7— Copy of final written report by the petitioner to the Enquiry Officer, dated 28-1-2013.

Ex.W8— Copy of file relating Departmental enquiry, dated 14-5-2012 to 26-12-2012.

Ex.W9— Copy of the report of the Enquiry Officer, dated 12-6-2013.

Ex.W10— Copy of call for second explanation letter by the Disciplinary Authority to the petitioner, dated 23-8-2013.

Ex.W11— Copy of reply letter to the letter, dated 23-8-2013 by the petitioner, dated 3-9-2013.

- Ex.W12—Copy of reply by the petitioner to the proposed penalty letter of the Disciplinary Authority, dated 18-11-2013.
- Ex.W13—Copy of Termination letter by the Disciplinary Authority to the petitioner, dated 12-12-2013.
- Ex.W14—Copy of requisition letter of the petitioner to withdraw the termination order by the respondent management, dated 19-12-2013.
- Ex.W15—Copy of letter to the Conciliation Officer by the petitioner, dated 14-2-2014.
- Ex.W16—Copy of letter to the Conciliation Officer by the respondent management, dated 16-5-2014.
- Ex.W17—Copy of conciliation failure report, dated 8-12-2014.
- Ex.W18—Copy of the petitioner process clearance certificate, dated 8-2-2013.
- Ex.W19—Copy of the Making report, dated 12-11-2014.

List of witnesses examined for the respondent: Nil

List of exhibits marked for the respondent: Nil

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

**GOVERNMENT OF PUDUCHERRY
LABOUR DEPARTMENT**

*(G.O. Rt. No. 48/Lab./AIL/T/2017,
Puducherry, dated 10th April 2017)*

NOTIFICATION

Whereas, the Award in I.D. (T) No. 5/2011, dated 28-2-2017 of the Industrial Tribunal-cum-Labour Court, Puducherry in respect of the industrial dispute between the Managing Director, M/s. Tamil Nadu State Transport Corporation Limited, Puducherry and Pudukai Pradesa Pokkuvarathu Thozhilalar Sangam, Puducherry over charter of demands such as fixing of working hours, intervals, KMPL (Kilometre per litre) and shifts has been received;

Now, therefore, 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. 20/91/Lab./L, dated 23-5-1991, it is hereby directed by the Secretary to Government (Labour) that the said Award shall be published in the Official Gazette, Puducherry.

(By order)

E. VALLAVAN,
Commissioner of Labour-cum-
Additional Secretary to Government (Labour).

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

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

Tuesday, the 28th day of February 2017

I.D (T) No. 5/2011

Pudukai Pradesa Pokkuvarathu
Thozhilalar Sangam, Puducherry. . . Petitioner

Vs.

The Managing Director,
M/s. Tamil Nadu State Transport
Corporation Limited, Puducherry. . . Respondent

This industrial dispute coming on 3-1-2017 for final hearing before me in the presence of Thiru Durai Arumugam, Representative for the petitioner, Tmt. J. Vanitha, Counsel 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. This industrial dispute has been referred as per the G.O. Rt. No.114/AIL/Lab./J/2011, dated 1-6-2011 for adjudicating the following:

(i) Whether the dispute raised by Pudukai Pradesa Pokkuvarathu Thozhilalar Sangam, Puducherry against the Management of M/s. Tamil Nadu State Transport Corporation Limited, Puducherry over charter of demands such as fixing of working hours, intervals, KMPL (Kilometre per litre) and shifts are justified ? If so, to give appropriate directions?

(ii) Whether the dispute raised by Pudukai Pradesa Pokkuvarathu Thozhilalar Sangam, against the Management of M/s. Tamil Nadu State Transport Corporation Limited, Puducherry over the following other issues are justified ?

- Illegal transfer of the petitioners *viz.*, Thiruvargal (1) V. Ramakrishnan, (2) R. Rajendiran and P. Panchanadhan from Puducherry to Tamil Nadu branches.

- Illegal demotion of the petitioner Thiru K. Muruganandham.

- Illegal reduction of wages to the petitioner Thiru M. Segar.

(iii) If so, to give appropriate directions ?

2. The petitioner filed this petition against the respondent for following reliefs:

1. To direct the respondent to implement the up and down procedures to the Driver and Conductor.

2. To direct the respondent to stop bus for every 2 ½ hours interval(for natural calls).

3. To direct the respondent to take into consideration of the bus, usage of engine, to determine the usage of diesel and travelling hours and road capacity.

4. And also to direct the respondent to implement the work on shift based on seniority.

3. In the counter, the respondent has stated as follows:

The respondent Transport Corporation is under the control of Government of Tamil Nadu with its branch office at Villupuram and respondent is the branch office of respondent Corporation at Puducherry and it is running under the control of Villupuram Branch and it is contended that the petitioner union has no power to raise any claim or dispute and the petitioner union is not registered with the respondent company and further stated that pays and work allotments of workers working in the Tamil Nadu Transport Corporation were determined by negotiation with unions and settlement made on behalf of it. The Hon'ble High Court has passed the order in W.A. No. 1425/2006, M.P. No. 2/2010 in W.A. No. 1425/2006, dated 21-9-2010 and 1-10-2010 stating that Thozhilar Munnetra Sanga Peravai was elected and subsequently the order has been passed in Government order No. 359, Transport (C1) Department, dated 8-12-2010 stating that Thozhilar Munnetra Sanga Peravai has all rights to participate in negotiations regarding workers issues. Based on that on 22-1-2011, a settlement was formed between Tamil Nadu Government Transport Corporations and Thozhilar Munnetra Sanga Peravai after negotiation. Hence, the respondent prays this Court to dismiss

the claims made in the dispute. The respondent further stated that based on the Government Order, dated 8-12-2010, the Thozhilar Munnetra Sanga Peravai has only having right to raise any claim or dispute against the respondent corporation and hence, the petitioner union has no right to raise any claim or dispute and hence, prays for dismissal of petition and further stated that the working hours of Drivers and Conductors workings at Puducherry branch were formulated and implemented based on Motor Transport Employees Act and further stated all buses which travels very far from Puducherry stops at the intermission for food break and for natural calls and subsequently, there was proper time interval between reach in and reach out of the bus at every bus station and further stated that the respondent corporation has not determined equal usage of diesel for all buses and has determined it based on the condition of the bus, service of engine, capacity of the road and the Drivers are advised to drive the bus to achieve the KMPL target fixed by the corporation and further stated that at present shift basis work were allotted to the workers and steps were taken to enhance it and further stated that petition filed by the petitioner is not acceptable and prays for dismissal.

4. On the side of petitioner, WW.1 was examined and Ex.W1 to Ex.W3 were marked. On the side of the respondent, RW.1 was examined and Ex.R1 to Ex.R4 were marked.

5. *The point for consideration is:*

(i) Whether the dispute raised by the claimant union against the management of the respondent over charter of demands are justified or not ?

(ii) Whether the dispute raised by the claimant union against the respondent management over the transfer of V. Ramakrishnan, R. Rajendiran and P. Panchanadhan from Puducherry to Tamil Nadu branches is illegal or not?

(iii) Whether the demotion of the petitioner K. Muruganandham is illegal or not ?

(iv) Whether the reduction of wages to the petitioner M. Segar is illegal or not ?

6. *On the points 1 to 4:*

Both side arguments were heard. In order to prove its case, the petitioner union has examined one Panjanathan as WW.1 and WW.1 has stated in his evidence that he is working at Puducherry Uppalam Workshop and that they have raised industrial dispute regarding Drivers and Conductors for fixation of

working hours, intervals, kilometre per litre and shifts of the Drivers. In support of its case, they have exhibited copy of the demand made by the workmen as Ex.W1, Conciliation failure report is exhibited as Ex.W2, settlement for pay revision is exhibited as Ex.W3. The petitioner union has filed a claim statement stating that up and down system to the Drivers and Conductors of the respondent corporation is to be implemented to avoid the accident since the Drivers are driving the vehicle about 24 hours and also asked for intervals to attend the natural calls for every 2 ½ hours while they are driving the buses and also to modify the kilometre per litre and to allot shift system to the Drivers in the respondent corporation.

7. On the other hand, it is contended by the respondent transport corporation that the petitioner union is not recognized at the respondent corporation and already the pay and the work allotment of the workers working in the respondent corporation were determined by negotiation with unions and settlement was arrived and as per the direction of Hon'ble High Court, Thozhilalar Munnetra Sanga Peravai was elected and subsequently, as per the Government Order, dated 8-12-2010 Thozhilalar Munnetra Sanga Peravai has only all rights to participate in the negotiation regarding workers issues and based on that on 22-1-2011, a settlement was formed between Tamil Nadu Government Transport Corporation and Thozhilalar Munnetra Sanga Peravai, after negotiation and therefore, as per the order of the Government, dated 8-12-2010, Thozhilalar Munnetra Sanga Peravai alone having the right to raise any claim or dispute against the respondent corporation and that therefore, the petitioner union has no any right to claim or dispute and only under the Motor Transport Employees Act the working hours of the Drivers and Conductors of Puducherry Branch were formulated and implemented and all the buses which travels very far from Puducherry stops at intermission for food break and for natural calls and that the corporation has not determined equal usage of diesel for all buses and it determined based on the condition of the bus, service of engine, capacity of the road and the Drivers are advised to drive the bus to achieve the target fixed by the corporation and only shift basis works were allotted to the workers.

8. In support of the counter, V. Baskaran, Assistant Engineer, Puducherry Branch, Tamil Nadu Transport Corporation was examined as RW.1 who has deposed that petitioner union has no right to raise any dispute against the respondent corporation and the resolution passed by the petitioner union has been filed before

this Court to raise such dispute is not sustainable and petitioner union is not a registered union, and also not recognized by the respondent and that therefore, the dispute raised by the petitioner union is not sustainable and he has deposed all the averments in the counter statement, particularly he has stated that as per the order of the Hon'ble High Court in W.A. No. 1425/2006, M.P. No. 2/2010 in W.A. No. 1425/2006, dated 21-9-2010 and 1-10-2010, the Thozhilalar Munnetra Sanga Peravai has been elected by obtaining 57.31% of votes in the election held between the Trade unions and as per the Order of the Hon'ble High Court on 28-11-2010, the Thozhilalar Munnetra Sanga Peravai was elected and as per the Government Order, passed on 8-12-2010 negotiation was held between the recognized trade union and the respondent and under section 12(3) of the Industrial Disputes Act, a settlement was arrived on 22-1-2011 and wherein, the recognized trade union have participated and signed the settlement and that therefore, it is to be decided whether the dispute raised by the petitioner union is sustainable or not.

9. On this aspect, the records and evidence of the petitioner were perused. WW.1 has exhibited the copy of the petition of the employees as Ex.W1 which discloses that they have asked for implementation of up and down system. Ex.W2 is the failure report of the Conciliation Officer sent to the Government. Ex.W3 is the settlement arrived under section 12(3) of the Industrial Disputes Act between the recognized trade union and the respondent management on 6-2-2008. It is learnt from the Ex.W2 that industrial dispute raised by the petitioner union to revise the present pattern and to bring the old pattern into existence as regards the working hours of the workers and to provide daily intervals for rest at 2 ½ hours between the plying hours *i.e.*, from starting place till the destination place in order to sustain the good reputation of the corporation and fixation of kilometre per litre is to be done based on the condition of the vehicle, its usage, time and distance and it varies depending upon the vehicle and therefore, the kilometre fixed by the corporation at 6 km per litre is not justified by them and it is one of the dispute raised by the petitioner union to provide shift method based on the clause 32 of the 10th wage settlement entered on 1-9-2007. It is the main contention of the respondent corporation that petitioner union is not a recognized union of the management and the union was not elected on secret pooling made by the management and the union had not raised the issue of charter of demands based on the minutes of the union by way of calling

of electoral body or general body. In the light of the above discussion, it is to be noted that the Hon'ble Karnataka High Court in the President Labour Organization of HAL Vs. the Management of Hindustan Aeronautics Limited, reported in CDJ 2005 Kar H.C. 403 has held thus:

“ 15, In the instant case it is not in dispute that in the industrial establishment, there is another registered trade union which admittedly has membership of more than 80% of the employees. The management has recognized the said union. In so far as the petitioner union is concerned till today they are not able to give list of the members of the union. They are unable to state how many members are there in their union. Though, in the counter statement it was specifically stated that the union is not duly authorized to espouse the dispute and they have no *locus standi* to represent the workers of the establishment except producing the certificate of registration, bye-laws and a copy of the resolution passed by the Executive Committee nothing is placed on record to show the membership of the union and the number of persons it represent. In fact, the respondents have filed along with the statement of objections, an affidavit stating that seven members who have subscribed to the memorandum of association to the petitioner union since have retired on reaching; the age of superannuation and all of them earlier were members of the recognized union and, therefore, it is contended that this union is not a representative union of the employees of the industrial establishment and, therefore, they have no *locus standi* to espouse the dispute. In an establishment where there are more than 14,300 employees. 7 of them can form a trade union, get it registered, have their own bye-laws and negotiate with the management and also espouse the cause of an individual workman, assist a workman in a departmental enquiry and give all assistance but, they cannot represent the entire body of the workmen. The dispute which is now raised is for payment of 20% bonus to all the employees and appointment of persons on compassionate grounds. This dispute pertains to the entire labour force. The recognized union has not raised the dispute. Under these circumstances, as rightly held by the Industrial Tribunal, the petitioner is not a representative union of the entire employees of the establishment, they have no *locus standi* to raise this industrial dispute and the Government was in total error even in making the reference to the Industrial Tribunal for adjudication, though this objection was raised by the

management at the earliest point of time, at the conciliation. I do not find any merit in this petition. Accordingly, it is dismissed. No costs ” and that the Patna High Court in M/s. Bharati Bhawan (P&D), Patna Vs. The State of Bihar and Ors on 29 July, 2015-Civil Writ Jurisdiction Case No. 9645 of 2007 has held thus:

“..... It is well settled principle of law that an unrecognized union cannot raise the demands of general nature and at best, an unrecognized union can only negotiate, discuss and raise the individual problems of its members of individual nature ”

From the above citation, it is clear that it is well settled principle of law that an unrecognized union cannot raise the demands of general nature and an unrecognized union can only negotiate, discuss and raise the individual problems of its members of individual nature and this objection is also been raised by the management in the Conciliation proceedings and therefore, the charter of demands claimed by the petitioner union even without the resolution passed by the union is not sustainable.

10. Furthermore, the evidence of RW.1 would go to show that already the settlement was arrived between the union which was elected in the secret pool and a settlement was arrived on 22-1-2011 wherein, the representatives of the majority union which was elected and was recognized have signed the settlement agreeing the terms of settlement and through RW1, Ex.R1 to Ex.R4 were marked. Ex.P4 is the application submitted by the Tamil Nadu Government Transport Corporation Thozhilalar Munnetra Sangam to the Managing Director wherein, all the Drivers and Conductors have signed agreeing to continue the existing system for allotment of workers, fixing of hours and shift basis wherein, 134 employees have signed the application. From this document filed by the respondent, it is clear that the majority union and the respondent corporation have entered into the settlement under Industrial Disputes Act and thereupon all the settlement was being implemented by them. Meanwhile, this application has been filed by the petitioner union with the Conciliation Officer which goes to show that when the settlement entered by the majority union with the respondent corporation is in force, this dispute has been raised by the petitioner union with the respondent corporation. Ex.R4 discloses that all the members of the union of the Drivers and Conductors have accepted the settlement and implementation made by the respondent corporation to continue the existing system for allotment of workers, fixing of hours and shift basis and therefore, this union has no right to raise the said dispute.

11. In the result, the industrial dispute raised by the petitioner union is not justified and furthermore, other reliefs raised on this dispute is also failed and that therefore, the petitioner union is not entitled for any relief as prayed for and consequently, the industrial dispute stands dismissed.

Dictated to the Stenographer, transcribed by her, corrected and pronounced by me in the Open Court on this the 28th day of February, 2017.

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

List of petitioner's witness:

WW.1— 10-12-2015—Panjanathan

List of petitioner's exhibits :

Ex.W1— Copy of the petition of the 105 employees.

Ex.W2— Copy of Report on failure of Conciliation, dated 12-1-2011.

Ex.W3— Copy of the settlement under section 12(3) of Industrial Disputes Act,1947, dated 6-2-2008.

List of respondent's witness :

RW.1 —15-2-2016 — V. Baskaran

List of respondent's exhibits :

Ex.R1 — Copy of the settlement under section 12(3) of Industrial Disputes Act, 1947, dated 6-2-2008.

Ex.R2 — Copy of letter sent by the General Secretary, Pudukkottai Pradesa Pokkuvarathu Thozhilar Sangam to Labour Officer (Conciliation).

Ex.R3 — Copy of the settlement under section 12(3) of Industrial Disputes Act, 1947, dated 22-1-2011.

Ex.R4 — Copy of letter sent by General Secretary, Pudukkottai Pradesa Pokkuvarathu Thozhilar Sangam to the Managing Director, Tamil Nadu Government Transport Corporation Limited, Villupuram.

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

புதுச்சேரி அரசு

இந்து சமய நிறுவனங்கள் மற்றும் வக்ஃபு துறை

(அரசு ஆணை பலவகை எண் 60/இசநி./கோ.2/2017
புதுச்சேரி, நாள் 2017 *வரலாறு* மார்ச் மீ 28 *உ.*)

ஆணை

புதுச்சேரி மாநிலம். காரைக்கால் வட்டாரம், திருமலையான்பட்டினம், அருள்மிகு காமாட்சி அம்மன் சமேத ஏகாம்பரேஸ்வரர் தேவஸ்தானம், அரசு ஆணை பலவகை எண் 9/இசநி./கோ.2/2006-07, நாள் 23-10-2006-ன் மூலம் நியமிக்கப்பட்ட திரு. கோ. இராஜேந்திரன் (காரைக்கால், தாலுக்கா அலுவலகத்தில் கிராம நிர்வாக அதிகாரி) அவர்களால் சிறப்பு அதிகாரி என்கிற நிலையில் நிர்வகிக்கப்பட்டு வருகிறது.

2. மேலும், ஆலயத்தை செம்மையாக நிர்வகிக்கும் பொருட்டு இச்சிறப்பு அதிகாரிக்குப் பதிலாக, ஒரு அறங்காவலர் வாரியம் அமைத்து நிர்வகிப்பது இன்றியமையாதது என்று அரசால் கருதப்படுகிறது.

3. எனவே, 1972-ஆம் ஆண்டு புதுச்சேரி இந்து சமய நிறுவனங்கள் சட்டம் 4(1)-ஆம் பிரிவின்கீழ் வழங்கப்பட்டுள்ள அதிகாரங்களைச் செலுத்தி, புதுச்சேரி மாநிலம், காரைக்கால் வட்டாரம், திருமலையான்பட்டினம், அருள்மிகு காமாட்சி அம்மன் சமேத ஏகாம்பரேஸ்வரர் தேவஸ்தானத்திற்கு, பின்வரும் ஐந்து நபர்களைக் கொண்ட ஓர் அறங்காவலர் வாரியத்தை அரசு உடனடியாக அமைக்கிறது.

திருவாளர்கள் :

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| (1) சி. சிவக்குமார்,
த/பெ. சிதம்பரம்,
எண் 6, வெங்கடேசப் பெருமாள்,
வடக்குத் தெரு,
திருமலையான்பட்டினம்,
காரைக்கால். | .. தலைவர் |
| (2) அ. வெங்கடேஷ்,
த/பெ. அமிர்தலிங்கம்,
எண் 28, திட்டச்சேரி சாலை,
திருமலையான்பட்டினம்,
காரைக்கால். | .. துணைத்
தலைவர் |
| (3) ந. பக்கிரிசாமி,
த/பெ. நடராஜன்,
எண் 51/3, கருடபாளையத் தெரு,
திருமலையான்பட்டினம்,
காரைக்கால். | .. செயலாளர் |
| (4) சி. அமிர்தலிங்கம்,
த/பெ. சின்னையன்,
எண் 4, தட்டாரத் தெரு,
திருமலையான்பட்டினம்,
காரைக்கால். | .. பொருளாளர் |
| (5) அ. ராஜ்குமார்,
த/பெ. அம்மாசி,
எண் 67, மாதா கோயில் வீதி,
திருமலையான்பட்டினம்,
காரைக்கால். | .. உறுப்பினர் |