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# புதுச்சேரி மாநில அரசிதழ்

## La Gazette de L'État de Poudouchéry The Gazette of Puducherry

அதிகாரம் பெற்ற வெளியீடு

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SOMMAIRES

CONTENTS

|                                  | பக்கம் |   | Page   |                              | Page |
|----------------------------------|--------|---|--------|------------------------------|------|
| தொழில் நீதிமன்றத் தீர்ப்புகள் .. | 762    | Sentence arbitral du travail de tribunal. | .. 762 | Award of the Labour Court .. | 762  |
| அரசு அறிவிப்புகள் ..             | 773    | Notifications du Gouvernement             | .. 773 | Government Notifications ..  | 773  |
| ஒப்ப அறிவிப்புகள் ..             | 780    | Avis d'Adjudications                      | .. 780 | Tender notices ..            | 780  |
| ஆபத்தான நிறுவனங்கள் ..           | 781    | Etablissements dangereux                  | .. 781 | Dangerous Establishments ..  | 781  |
| சாற்றறிக்கைகள் ..                | 782    | Annonces                                  | .. 782 | Announcements ..             | 782  |

GOVERNMENT OF PUDUCHERRY  
LABOUR DEPARTMENT

(G.O. Rt. No. 96/Lab./AIL/T/2017,  
Puducherry, dated 16th June 2017)

NOTIFICATION

Whereas, the Award in I.D (T) No. 01/2012, dated 18-4-2017 of the Labour Court, Puducherry in respect of the industrial dispute between the management of M/s. Sri Bharathi Mills, Mudaliarpeta, Puducherry and Thiru V. Devanathan, Puducherry 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,**  
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 18th day of April, 2017*

**I.D.(T) No. 01/2012**

V. Devanathan,  
Representative, by K. Mohandass,  
Authorized Representative,  
No. 26, 1st Floor, New Street,  
Coundanpalayam, Puducherry. . . Petitioner

*Versus*

The Managing Director,  
M/s. Sri Bharathi Mills,  
Mudaliarpeta, Puducherry. . . Respondent.

This industrial dispute coming up before me for final hearing on 24-3-2017 in the presence of Thiru K. Velmurugan, Counsel for the petitioner, Thiru K. Ravikumar, 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 by the Government of Puducherry as per the G. O. Rt. No. 22/AIL/Lab./J/2012, dated 29-2-2012 for adjudicating the following:-

(a) Whether the dispute raised by the petitioner Thiru V. Devanathan against the management of M/s. Sri Bharathi Mills, Puducherry over promotion is justified?

(b) If justified, what relief the petitioner is entitled to?

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

2. *The brief averments of the claim statement filed by the petitioner are as follows:*

(i) The petitioner Devanathan had joined in the respondent management on 15-6-1976 and had discharged his duties in a sincere and honest manner without any sort of blackmark whatsoever and from 31-12-2000 onwards he was working as acting Jobber in the 'C' shift in the speed frame Department for one Subramanian who was also working in the same 'C' shift. The said Subramanian retired from the service on 6-8-2011 and thereby the jobber post in the 'C' shift was remained vacant. In the 'C' shift, the petitioner Devanathan is the senior most workmen and he alone is eligible for the said post according to the customary practices followed by the mill. Though the petitioner had given representation, dated 26-7-2011 to the management and several oral representations for giving promotion to him to the post of jobber, the respondent management has not responded to the representation of the petitioner and remained silent and hence, the petitioner had raised an industrial dispute before the Labour Officer (Conciliation) *vide* letter, dated 30-9-2011 as against the respondent management and he had given another representation, dated 1-10-2011 to the respondent management for giving him promotion and during the pendency of the above conciliation proceedings, the management had arbitrarily granted promotion to one Karunakaran for the jobber post lying vacant with effect from 5-10-2011, which is prejudice to the petitioner Devanathan and hence, the petitioner through his union had given representation, dated 8-10-2011 to the respondent for cancelling the order of promotion issued to the workmen Karunakaran and keep the jobber post as vacant till the final disposal of the industrial dispute pending before the Labour Officer (Conciliation).

(ii) The management had filed its counter, dated 24-10-2011 before the Labour Officer (Conciliation) stating that the respondent management is not following the shift seniority but following overall seniority procedures in promotion matters. The respondent management as well as the Swadeshi Cotton Mills are units under the National Textile Corporation and thus the rules and regulations governing both the mills are one and the same and in the Swadeshi Cotton Mills, the promotions were granted to its workmen purely based on shift category and not overall category. The respondent management cannot formulate a new rule with regard to promotion since it is a unit of National Textile Corporation and thus the promotion given to the said Karunakaran is invalid and void and prayed this Court to pass an award directing the respondent to pay the petitioner all the monetary benefits including the arrears of wages, difference of bonus paid and to fix the last drawn wage for calculating the gratuity and pension on that basis and all other attendant benefits which the petitioner was entitled in the post of jobber, if promotion is granted to him as early on 7-8-2011.

*3. The brief averments of the counter and additional counter filed by the respondent are as follows:*

There is no customary practice of giving promotion on the basis of shift seniority followed in the respondent mill and that the promotions are based only overall seniority and the promotion would be given only to the persons who is having overall seniority and the respondent mill has never followed the shift seniority from time immemorial in giving the promotion and that the respondent mill giving promotions only on the basis of category seniority and if, there is two or more workmen in the same category, then the worker who has seniority will be given priority in promotion and the petitioner Devanathan is a Junior to Karunakaran who has been promoted to the post of jobber and he has entered into service on 7-2-1976 but the petitioner Devanathan entered into service on 15-6-1976 and furthermore, the petitioner Devanathan was superannuated from service on 8-11-2013 and on the date of amended claim statement, the petitioner was not in service of the respondent mill and therefore, the petition is liable to be dismissed.

4. In the course of enquiry, on the side of the petitioner PW.1 was examined and Ex.P1 to Ex.P9 were marked and on the side of the respondent RW.1 was examined and Ex.R1 to Ex.R4 were marked.

5. The point for consideration is that whether the petitioner is entitled for the order he prayed for?

6. Both side arguments were heard. From the pleading and evidence of both the parties, it is clear that the both parties have admitted the fact that the petitioner was working in the respondent mill from 15-6-1976 and from 31-12-2000 onwards he was working as acting jobber in the 'C' shift in the Speed frame Department for one Subramanian who was also working in the same 'C' shift and the said Subramanian was retired from service on 6-8-2011 and the management has promoted one Karunakaran as jobber instead of giving promotion to the petitioner Devanathan and though the petitioner has made representation to the respondent management, the respondent management has not responded and therefore the petitioner has raised the industrial dispute before the Conciliation Officer on 30-9-2011 and that the conciliation was failed and therefore, the reference has been made to this Court.

7. The main contention of the petitioner is that he was working as acting jobber for one Subramanian in the 'C' shift in the Speed Frame Department and while the said Subramanian had retired from service on 6-8-2011 in the 'C' shift, the promotion should have to be given to the petitioner Devanathan as he is the senior most workmen in the 'C' shift and he alone is eligible for the said post according to the customary practices followed by the mill but instead of promoting him, the respondent management arbitrarily granted promotion to Karunakaran for the jobber post.

8. On the other hand, it is contended by the respondent management that the respondent mill has never followed the shift seniority but, following only the overall seniority procedure in the promotion matters and that they are following only seniority in over all category and not based on the shift seniority in promotions and as such the promotion given to one Karunakaran who is having over all seniority in the category seniority and as he entered into the service earlier to the petitioner Devanathan and hence, the promotion given to the said Karunakaran is valid.

9. From the above, it is to be decided whether the respondent mill was following the procedure of shift seniority in giving promotions to its workers or on the basis of overall seniority in the same category and it is also to be seen whether the petitioner has established and proved that the respondent mill was only considering the shift seniority in promotion as stated by him. Apart from the oral evidence, the petitioner

has exhibited the copy of the Pay Slip of the petitioner Devanathan for the month of May, 2011 as Ex.P1, the copy of the representation given by the petitioner Devanathan on 30-9-2011 to the respondent mill as Ex.P2, the copy of the another representation given by the petitioner Devanathan on 8-10-2011 to the respondent mill as Ex.P3, the copy of the letter given by the petitioner to the Labour Officer (Conciliation), Puducherry as Ex.P4, the copy of the counter filed by the respondent in the conciliation proceedings as Ex.P5, the copy of conciliation failure report as Ex.P6, the copy of the 12(3) settlement entered between the petitioner's union and the respondent as Ex.P7, the copy of the Tamil Nadu Government Gazette Notification as Ex.P8 and the copy of the Award passed by the Special Industrial Tribunal, Puducherry as Ex.P9.

10. The respondent management has examined RW.1 and RW.1 has deposed before this Court that they are following only the line of seniority in the same category while promoting the workers and in support of his version, RW.1 has exhibited the copy of the promotion order of Karunakaran as Ex.R1, the copy of the 12(3) settlement as Ex.R2, the copy of the notice of remarks issued by the conciliation officer as Ex.R3 and the copy of the superannuation order of the petitioner as Ex.R4 and therefore, it is just and necessary to decide whether the respondent management has followed the procedure of shift seniority or line of overall seniority in the same category while giving promotion to the workers.

11. On this aspect, the evidence of the petitioner and the exhibits marked by him were considered. The evidence of PW.1 runs as follows:

“தேவநாதன் என்ற தொழிலாளி ஆக்டிங் ஜாபர் என்ற பதவியில் பணிபுரிந்து வந்தார். அதற்கான ஆதாரம் அவருடைய சம்பள ரசீது தாக்கல் செய்துள்ளதில் உள்ளது. மே. 2011 சம்பள ரசீதில் கண்டுள்ளது. அது பி.1 ஆகும். பி.1 சம்பள ரசீதில் இரண்டாவது கட்டத்தில் ஆக்டிங் ஜாபர் என்ற ஆச்சிடப்பட்டுள்ளதில். உள்ள அந்த கட்டத்தில் எந்தக் குறிப்பும் எழுதப்படவில்லை. அந்தக் கட்டத்தில் அடிப்படைச் சம்பளத்திற்கு மேலாக ரூபாய் 110 என்று குறிப்பிடப்பட்டிருக்கும். 2000 வருடம் முதல் தேவநாதன் ஆக்டிங் ஜாபராக பணிபுரிந்து 2010 வரை ஆக்டிங் ஜாபராக பணிபுரிந்து வந்ததற்கான ஆதாரம் எதுவும் தாக்கல் செய்யவில்லை. ஆகஸ்ட், 2011 வரை சுப்பிரமணி என்பவர் ஜாபராக பணிபுரிந்தார். தற்போது இன்றைய தேதியில் கருணாகரன் என்பவர் பதவி உயர்வு பெற்று ஜாபராக பணி செய்கிறார். அவர் வேறு ஒரு ஷிப்டில் பணிபுரிந்தவர் ஆவார். 24-2-1011-க்கு பிறகு கருணாகரன் என்பவர் பதவி உயர்வு பெற்று ஜாபராக பணிபுரிகிறார். சமரச அலுவலர்

முன்னிலையில் 12(3) ஒப்பந்தம் போடப்படாத தேதி 24-2-2011 ஆகும். நடைமுறையில் வேலை செய்யும் நபரை மாற்றி வேறு ஒரு ஷிப்டில் உள்ள நபரை மாற்றிப் போடலாம் என்று அந்த ஒப்பந்தத்தில் இல்லை. ஆலை சீனியாரிடடி அடிப்படையில் அந்த இடத்தில் போட வேண்டும். 24-2-2011 முதல் அந்த ஒப்பந்தம் நடைமுறையில் உள்ளது. அந்த 12(3) ஒப்பந்தம் இவ்வழக்கில் தாக்கல் செய்துள்ளேன். பி.7 அந்த ஒப்பந்த நகல் ஆகும். பி.7 ஒப்பந்தம் 1-10-2010 முதல் அமலுக்கு வருவதாக பக்கம் 5-ல் பத்தி 14-ல் கண்டுள்ளது. 24-2-2011 முதல் அந்த ஒப்பந்தம் நடைபெறும் என்று பி.7-ல் குறிப்பிடவில்லை. அந்த ஒப்பந்தத்திற்கு பிறகு தான் சுப்ரமணி என்பவர் பணிமூப்பு பெற்றார். பி.7-ல் பணிஉயர்வு மில் சீனியாரிடடி அடிப்படையில்தான் ஒதுக்கப்படவேண்டும் என்று எங்கும் குறிப்பிடவில்லை. பி.7-ல் தொழிற்சங்கத் தலைவர் என்ற முறையில் நானும் கையெழுத்திட்டுள்ளேன். சுப்ரமணி பணிமூப்பு பெற்று சென்றுவிட்ட பிறகு தேவநாதன் என்பவர் ஜாபராக வேலை செய்தார் என்பதற்கு ஆதாரம் தாக்கல் செய்யவில்லை. கஸ்டமரி பிரக்டீஸ் என்று எனது முதலுறையில் கூறியிருப்பது பி.7-ல் குறிப்பிடப்பட்டுள்ளது வைத்துதான் பி.7-ல் கஸ்டமரி பிரக்டீஸ் இதுதான் என்று எங்கும் குறிப்பிடப்படவில்லை. 12(3) ஒப்பந்தத்தில் சீனியாரிடடி பட்டியலும் கண்டிருக்கவில்லை..... கருணாகரன் என்பவர் எங்கள் தொழிற்சங்கத்தை சேர்ந்தவர் அல்ல. மில்லில் கேட்டகரி சீனியாரிடடி தான் பதவி உயர்வுக்கு பின்பற்றப்படுகிறது என்றால் சரிதான். ஆனால், அந்த கேட்டகரிக்குள்ளும் ஷிப்டு சீனியாரிடடியை தான் பின்பற்ற வேண்டும். 12(3) ஒப்பந்தத்தை தவிர ஷிப்டுக்குள் சீனியாரிடடியை பின்பற்ற வேண்டும் என்ற வேறு ஆதாரம் இல்லை. சமரச அலுவலர் முன் எதிர்மனுதாரர் கொடுத்த பதில் பி.5 ஆகும். அதில் கருணாகரன் மற்றும் தேவநாதன் என்ற பதவியில் சேர்ந்தார்கள் என்றும் மேலும், சிம்பலக்ஸ் கேட்டகரியில் சேர்ந்தார்கள் என்று குறிப்பிடப்பட்டுள்ளது.

From the above evidence, it is clear that it is admitted by the petitioner that petitioner has not filed any document to prove that he was working as acting jobber after the retirement of the said Subramanian as a jobber and furthermore, as stated by the petitioner in Ex.P1 the Pay Slip does not contain any averment that the petitioner Devanathan was working as acting jobber and there is no such endorsement in Ex.P1 that he was working as acting jobber. Admittedly, except Ex.P1, no document was filed by the petitioner to prove the contention that he was working as acting jobber from 2000 to 2011, but Ex.P1 Pay Slip does not speak about it and the fact that the said Subramanian was working as jobber till August 2011 and thereafter the said Karunakaran was promoted as jobber and it is also admitted by the petitioner in his evidence that in the Ex.P7 settlement arrived under section 12(3) of the

act also would reveal that promotion should be given in the line of seniority not under the shift seniority and it is also not disputed by the petitioner that Karunakaran who has been promoted as jobber is senior to him in the same category of service.

12. It is the only contention of the petitioner that the respondent mill has followed the customary practice and promotion should be given only in the shift seniority basis but nothing is proved before this Court that the respondent have followed such shift seniority in the past promotions given by the respondent mill to any workmen of the respondent mill and therefore, the petitioner has failed to prove the contention that some customary practice was followed by the mill in giving promotions in the shift seniority.

13. On the other hand, the respondent even in the counter objection filed before the Conciliation Officer has stated that they are not following any shift seniority and they are following only overall seniority in the same category which would be evident from the petitioner side evidence Ex.P7 settlement arrived at between the employees of the mill and the management and the respondent has exhibited the office order of promotion as Ex.R1, which would reveal the fact that they have promoted the said Karunakaran only on the basis of seniority in the same category and they have also exhibited the settlement as Ex.R2 which was also exhibited by the petitioner as Ex.P7, which would evident that they have agreed to grant promotion under line of seniority to all the categories and para 10 of the settlement would reveal that respondent management are following the said line of seniority in promotion and they have granted promotions in the line of seniority even prior to 2010 and therefore, it is clear that the respondent has not followed the customary practice in giving promotion and they are giving promotion only on the basis of line of seniority and that they are not giving promotion on the basis of shift seniority.

14. Furthermore, the Hon'ble Supreme Court, in *Syed Khalid Rizvi and others etc., and Union of India and other, etc., reported in 1993 I LLJ 887 has observed that-*

"Service Law - Promotion - Chances of promotion not condition of service - No employee has right to promotion, but only right to be considered for promotion as per rules - Chances of promotion are not conditions of service."

and the Apex Court in *State Bank of India and others and Mohd. Mynuddin* reported in 1988 I LLJ 142, has observed that -

"Court is not competent to decide merit, ability and competence for promotion - only in cases where bias or *mala fides* are proved Court can direct the management to reconsider the case for promotion and cannot straightaway direct promotion".

Further the Patna High Court in *management of Bihar State Super Phosphate Factory, Sindri Vs. The Presiding Officer. Labour Court and others*, reported in 1996 I LLJ 931, has held that-

"Promotion is the matter for management. Court can interfere only in case of malicious consideration and unfair labour practice. In the absence of *mala fides*, it is for the management to decide. Labour Court cannot order promotion."

and Allahabad High Court in *In U.P. State Cement Corporation Limited, Vs. Industrial Tribunal I U.P. Allahabad and another*, reported in 1996 II LLJ 953 has observed that-

"A promotion cannot be claimed as of right and person claiming promotion to the higher post must hold necessary qualification and eligibility for promotion."

and furthermore, the Apex Court has held in several cases that chance of promotion is not a condition of service and no employee has right to promotion but only right to be considered for promotion as per rules and chance of promotion are not condition of service. From the above judgments, it is clear that this Court is not competent to decide the case for promotion and no employee has right to promotion but only right to be considered for promotion. As per rules, chances of promotion are not conditions of services and the promotion is the matter for management and in the absence of *mala fides*, it is for the management to decide the promotion particularly the Labour Court cannot order for promotion.

15. As the petitioner has failed to establish their contention that the respondent mill has followed the customary practice of giving promotion under the shift seniority as stated by him in the claim statement and since, the petitioner has failed to establish the same, he is not entitled for any order in favour of him and it cannot be declared that promotion given to Karunakaran as invalid and as null void and that therefore, the petitioner employee could not claim the promotion as a matter of right and hence, the petitioner is not entitled for the monetary benefits and all other attendant benefits and therefore, the petition is liable to be dismissed.

16. In the result, the petition is dismissed. No cost.

Dictated to the stenographer, transcribed by her, corrected and pronounced by me in the open Court on this the 18th day of April, 2017.

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

*List of petitioner's witness:*

PW. 1— 29-07-2013 — Mohandass

*List of petitioner's exhibits:*

- |       |            |  |
|-------|------------|--|
| Ex.P1 | May, 2011  | Copy of the Pay Slip of the petitioner Devanathan issued by the respondent mill.   |
| Ex.P2 | 30-09-2011 | Copy of the representation given by the petitioner to the respondent.  |
| Ex.P3 | 08-10-2011 | Copy of the representation given by the petitioner to the respondent.  |
| Ex.P4 | —          | Copy of the letter given by the petitioner to the Labour Officer (Conciliation), Puducherry.   |
| Ex.P5 | 24-10-2011 | Copy of the counter filed by the respondent in the Conciliation proceedings held before the Labour Officer (Conciliation), Puducherry. |
| Ex.P6 | 26-12-2011 | Conciliation Failure report issued by the Labour Officer (Conciliation), Puducherry.   |
| Ex.P7 | 24-02-2012 | Copy of the 12(3) settlement entered between the petitioner's union and the respondent.  |
| Ex.P8 | 18-03-1987 | Copy of Tamil Nadu Government Gazette.   |
| Ex.P9 | 13-06-1994 | Copy of the Award passed by the Special Industrial Tribunal, Puducherry.   |

*List of respondent's witness:*

RW. 1— 20-11-2015 — Sugumaran

*List of respondent's exhibits:*

- |       |            |   |
|-------|------------|---|
| Ex.R1 | 03-10-2011 | Copy of the order for promoting Karunakaran.                      |
| Ex.R2 | 24-10-2011 | Copy of the 12(3) settlement                                      |
| Ex.R3 | 03-10-2011 | Copy of the notice of remarks issued by the Conciliation Officer. |
| Ex.R4 | 04-10-2013 | Copy of the office order for superannuating the petitioner.       |

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

GOVERNMENT OF PUDUCHERRY

**LABOUR DEPARTMENT**

(G.O. Rt. No. 106/Lab./AIL/T/2017,  
Puducherry, dated 4th July 2017)

NOTIFICATION

Whereas, the award in I.D.(L)No. 12/2014, dated 12-5-2017 of the Industrial Tribunal-cum-Labour Court, Puducherry in respect of the industrial dispute between Thiru K. Santhalingam, son of Krishnan, Kalithirampattu, Villupuram District against the management of M/s. Pentagon Inorganics Private Limited, PIPDIC Industrial Estate, Mettupalayam, Puducherry over to reinstate the petitioner in service with backwages, continuity of service and all other attendant benefits 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. 20/9/Lab./L., dated 23-5-91, 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.

*Friday, the 12th day of May 2017.*

**I.D. (L) No. 12/2014**

K. Santhalingam,  
S/o. Krishnan,  
No. 2/310, Thiruvannamalai Road,  
Kalithirampattu,  
Chellipattu Post,  
Villupuram District,  
Pincode-605 102.

.. Petitioner/  
workman.

*Versus*

Pentagon Inorganics Private Limited,  
Rep. by its Managing Director,  
No. A-120 and 121, PIPDIC Industrial Estate,  
Mettupalayam,  
Puducherry-605 004.

.. Respondent/  
Management.

This industrial dispute coming up before me for final hearing on 2-5-2017 in the presence of P.R. Thiruneelakandan and A. Mithun Chakkaravarthy, Counsel 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**

1. This is a petition filed by the petitioner under section 2-(A) of the Industrial Disputes Act praying to pass an Award holding that the termination of service of the petitioner, dated 7-2-2013 is illegal, and to direct the respondent to reinstate the petitioner in service with effect from 7-2-2013 as a workman in the respondent's factory with continuity of service, backwages and all other attendant benefits.

2. The averments in the claim statement of the petitioner, in brief, are as follows:

(i) The petitioner was appointed as workman in the respondent management in the year 1996 but he was not given any written appointment order and has rendered 17 years of service under the said management and he was paid ₹ 5,885 as monthly wages and that the management follows unfair

labour practice and not allowed their workman to form a trade union and they extracted work for more than 8 hours per day for which the workers were not paid overtime wages and that there is no annual wage increment and other increment and the management exploits the weaker section by paying them very meager wage and for the workers who had been in service for more than 15 years were only given ₹ 3,000 to ₹ 5,000 as monthly wage and while the petitioner who had been in service for more than 17 years asked for a wage increment, he was denied entry into the factory gate on 6-2-2013 stating as late entry and subsequently again on 7-2-2013 he was not allowed to enter into the factory informing that he was terminated from service. The petitioner made many requests to the respondent management to provide him employment but he was denied and that the termination of service is illegal as the management not provided sufficient reason for the termination and it is an unfair labour practice under schedule-V (1) 5 of the Industrial Dispute Act and prayed for reinstatement of service with backwages and all legal benefits.

3. The brief averments in the counter filed by the respondent are as follows:

(i) The respondent denied all the averments of the petition and it is true that the petitioner was appointed as workmen in the respondent factory on 5-11-1995 for which he was not given any appointment order and the petitioner was paid ₹ 5,885 per month as wage and he discharged his duty till 3-12-1998 and thereafter, the petitioner did not turn up for duty for about 21 months without seeking leave or giving any information about his long and continued absence and only on 1-9-2000 the petitioner came to the factory seeking employment and only on soft corner, the petitioner was re-employed by the respondent management on 1-9-2000 with a condition that he should report to duties properly without any black mark and that the performance of the petitioner was not good and free from blemish and he was in the habit of coming late for duty for at least 10 days in a month and on many occasions, the petitioner used to quarrel with co-employees and hurt them by using abusive words against them and on 5-2-2013, the petitioner came very late for work and when the management asked the petitioner for his late, the petitioner stated that he could come only in that manner and proceeded further and requested to settle his accounts by pointing out his inability to attend to duty properly in

the presence of his co-employees and therefore, the management accepted his request and decided to settle his accounts and accordingly on that day evening itself *i.e.*, 5-2-2013, the management paid the wages for the month of January, 2013 to the petitioner and the petitioner was directed to come on 9-2-2013 for settling his accounts and that the petitioner accepted the above proposal whole-heartedly and left the factory and that therefore, the claim made by the petitioner that declaration of termination as illegal and seeking reinstatement are not at all sustainable and liable to be dismissed.

4. In the course of enquiry PW.1 was examined and Ex.P1 to Ex.P6 were marked and on the side of the respondent RW.1 to RW.3 was examined and Ex.R1 to Ex.R3 were marked.

5. *The point for consideration is:*

Whether the petitioner is entitled for the order of reinstatement with backwages, continuity of service and all other attendant benefits or not ?

6. Both sides are heard. The submission of both the parties, the evidence let in by either sides and the exhibits marked on both sides are carefully considered.

7. It is clear from the pleadings of both the parties that both the parties have admitted the fact that the petitioner has joined as workmen in the respondent factory on 5-11-1995 and for which no appointment order was given to him and he was in service till 2013 and he has lastly received the salary of ₹ 5,885 per month and it is also admitted by both the parties that now the petitioner was not in service and no domestic enquiry was conducted against him by the respondent and so far no compensation was given to him.

8. In order to prove the case, the petitioner has examined himself as PW.1 and exhibited the copy of the ESI Identity Card of the petitioner as Ex.P1, the copy of the Identity Card issued by the respondent to the petitioner as Ex.P2. the petition filed before the Labour Officer (Conciliation) as Ex.P3, the copy of the Conciliation notice as Ex.P4, the copy of the letter sent by the respondent management to the Labour Officer (Conciliation), Puducherry as Ex.P5 and the copy of the Conciliation failure report as Ex.P6. These documents would go to show that the petitioner was worked as workmen for about 17 years at the respondent factory and he was given Identity Card and

the respondent management has contributed ESI to the petitioner and this petitioner has submitted the application for conciliation before the Conciliation Officer on 1-5-2013 and the conciliation proceedings was taken by the Conciliation Officer wherein the respondent management has sent a letter to the Conciliation Officer admitting the service of the petitioner and denied all other averments alleged by the petitioner and also has admitted the fact that the petitioner was informed to receive the settlement service benefits on 9-2-2013 and that the petitioner himself has not turned up to the work voluntarily and the conciliation failure report would evident that the petitioner has raised a dispute on 1-5-2013 before the Conciliation Officer regarding his non-employment and in the conciliation proceedings, the management has also stated that the petitioner has joined as a employee in the year 1995 and rendered 17 years of service under the said management and the management paid ₹ 5,885 as monthly wages to the petitioner and that the workmen committed several mis-conducts during his employment and he was a habitually leave taker and he will often quarrel with the co-workers and on 5-2-2013, the petitioner came to duty very lately and when the management questioned the petitioner, the petitioner openly asked the management to settle the benefits and he was not interested to continue the service in his employment and hence, the management stopped his service and decided to settle his legal dues.

9. On the other hand, in order to prove the case of the respondent, RW.1 to RW.3 were examined RW.1 A. Nandakumar is the Managing Director of the respondent establishment, RW.2 - M. Dharmalingam is the workmen who is working as operator in the respondent establishment and RW.3- S. Vijayakanth is the workmen who is working as operator in the respondent establishment and all of them have stated in their evidence that the petitioner workmen was in the habit of coming late for duty for atleast 10 days in a month and the respondent management has orally warned him to improve his performance and on many occasions, the petitioner used to quarrel with the co-workers and hurt them by using abusive words and the respondent factory severely warned the petitioner orally but even then the petitioner did not show any improvement in his behaviour and in his employment and came late for employment on 5-2-2013 and the Managing Director chided the petitioner for his irresponsible behaviour and habitual mis-conducts and

the petitioner himself has stated that he could come for employment only in that manner and requested the management orally to settle his account by pointing out his inability to attend the duty properly and subsequently the respondent came forward to settle his accounts but the petitioner did not attend the work thereafter and the respondent management also has exhibited the copy of the complaint submitted by M. Dharmalingam to the respondent management on 5-11-2013 as Ex.R1 wherein the said Dharmalingam has filed a complaint against the petitioner, the copy of the reply given by the respondent to the Labour Officer (Conciliation), Puducherry as Ex.R2, the copy of the attendance register of Muster roll of respondent from January, 2013 to December, 2014 as Ex.R3.

10. From the evidence and exhibits marked on the side of the respondent, it is clear that it is the contention of the respondent that they have not terminated the petitioner from service and the petitioner himself did not appear for work voluntarily. But, it is the case of the petitioner that the respondent management has refused to give work when the petitioner attend the work on 6-2-2013 and 7-2-2013. However, it is an admitted fact that the respondent management has not framed any charge against the petitioner workmen or conducted domestic enquiry for the mis-conduct of the petitioner and has not given termination order and it is also an admitted fact even a memo or show cause notice has not been issued to the petitioner for his absence as alleged by the respondent. Even for the sake of argument, if the workmen has not voluntarily attended the work it is the duty of the respondent management to issue a notice calling upon him to explain for his absence and to give a memo or show cause notice, that why an action should not be taken against him for his absence. But, in this case, though the respondent has stated that the petitioner did not appear voluntarily for work on 6-2-2013 and 7-2-2013 and has committed several mis-conducts, no document is filed before this Court to establish that the respondent management has issued any show cause notice or conducted enquiry or issued any memo to the petitioner after his absence and that therefore, it is clear from the evidence and documents, that the respondent management has not established that they have followed a procedure laid down under the Industrial Disputes Act for the absence of the workmen and no opportunities was given to the petitioner workmen to speak about his voluntary absence.

11. The Hon'ble Supreme Court of India in *D.K.Yadav Vs. J.M.A. Industries Ltd.*, has observed that

“It is thus well settled law that right to life enshrined under Art 21 of the Constitution would include right to livelihood. The order of termination of the service of an employee/workman visits with civil consequences of jeopardising not only his/her livelihood but also career and livelihood of dependents. Therefore, before taking any action putting an end to the tenure of an employee/workman fair play requires that a reasonable opportunity to put forth his case is given and domestic enquiry conducted complying with the principles of natural justice. In *D. 7. C. V. D. T. C. Mazdoor Congress and Ors.* (supra) the constitution bench, per majority, held that termination of the service of a workman giving one month's notice or pay *in lieu* thereof without enquiry offended Art. 14. The order termination the service of the employees was set aside. In this case admittedly no opportunity was given to the appellant and no enquiry was held. The appellant's plea put forth at the earliest was that despite his reporting to duty on December 3, 1980 and on all subsequent days and readiness to join duty he was prevented to report to duty, nor he be permitted to sign the attendance register. The Tribunal did not record any conclusive finding in this behalf. It concluded that the management had power under CL. 13 of the certified Standing Order to terminate with the service of the appellant. Therefore, we hold that the principles of natural justice must be read into the Standing Order No.13(2)(iv). Otherwise it would become arbitrary, unjust and unfair violating Arts.14, When so read the impugned action is violative of the principles of natural justice. This conclusion leads us to the question as to what relief the appellant is entitled to. The management did not conduct any domestic enquiry nor given the appellant any opportunity to put forth his case. Equally the appellant is to blame himself for the impugned action. Under those circumstances 50 per cent of the backwages would meet the ends of justice. The appeal is accordingly allowed”

From the above observation of the Hon'ble Supreme Court of India, it is clear that an employee cannot be terminated without conducting any domestic enquiry or without giving any opportunities to putforth his explanation and without giving any show cause notice. Now in this case, Admittedly no domestic enquiry was conducted and no show cause notice was issued to him

and no opportunity was given to the petitioner workmen and that therefore, the non-employment of the petitioner workmen without giving such opportunities is against law and in violation of the natural justice.

12. It is established by the petitioner that the employment of the petitioner workmen has not been properly terminated by the respondent management after giving due opportunities to the petitioner for giving explanation and that therefore, the termination of the petitioner workmen can be declared as unlawful and hence, it is held by this Court that the termination of employment of the petitioner workmen by the respondent management is unlawful and the petitioner is entitled for reinstatement with continuity of service. However, it is to be decided whether the petitioner is entitled for backwages. On this aspect, the evidence of the petitioner is perused. Nowhere in the evidence the petitioner has stated that after the termination he has joined in any other establishment. Considering the nature of the job and the age of the petitioner and other circumstances in this case and as the petitioner has not stated that he has not joined in any other establishment, this Court is inclined to tentatively fix the backwages at 30%.

13. In the result, the petition is partly allowed and the termination of the services of the petitioner by the respondent on 7-2-2013 is declared as illegal and the respondent management is directed to reinstate the petitioner in service with continuity of service from 7-2-2013 and further directed to pay 30% of backwages to the petitioner from the date of termination till the reinstatement with other attendant benefits. No cost.

Dictated to the stenographer, transcribed by her, corrected and pronounced by me in the open Court on this the 12th day of May, 2017.

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

*List of petitioner's witnesses:*

PW.1 — 16-3-2015—Santhalingam

*List of petitioner's exhibits:*

Ex.P1 — — — Copy of the ESI Identity Card of the petitioner.

Ex.P2 — — — Copy of the Identity Card issued by the respondent management to the petitioner.

Ex.P3 — 1-5-2013 — Copy of the petition filed by the petitioner before the Labour Officer (conciliation), Puducherry.

Ex.P4 — 20-6-2012 — Copy of the conciliation notice sent by the Labour officer (conciliation), Puducherry to the petitioner and to the respondent.

Ex.P5 — 7-6-2013 — Copy of the letter sent by the respondent to the Labour officer (conciliation), Puducherry.

Ex.P6 — 6-10-2013 — Copy of the Conciliation Failure report.

*List of respondent's witnesses:*

RW.1 — 10-12-2015 — A. Nanda Kumar

RW.2 — 17-3-2016 — M. Dharmalingam

RW.3 — 17-3-2016 — S. Vijayakanth

*List of respondent's exhibits:*

Ex.R1 — 5-11-2013 — Copy of the Complaint submitted by M. Dharmalinga, to the respondent management.

Ex.R2 — 7-6-2013 — Copy of the reply submitted by the respondent to the Labour Officer (Conciliation), Puducherry.

Ex.R3 — January 2013 to December 2014. — Copy of the attendance register of the Muster roll of the respondent.

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

GOVERNMENT OF PUDUCHERRY  
LABOUR DEPARTMENT

(G.O. Rt. No. 107/Lab./AIL/T/2017,  
Puducherry, dated 5th July 2017)

NOTIFICATION

Whereas, the Award in I.D(L) No. 35/2013, dated 12-5-2017 of the Labour Court, Puducherry in respect of the industrial dispute between the Management of M/s. Packaging India Private Limited, Pillaiyarkuppam Post, Puducherry and Thiru K. Narayanan, 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 23-5-91, it is hereby directed by the Secretary to Government (Labour) that the said Award shall be published in the Official Gazette, Puducherry.

**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,

*Friday, the 12th day of May, 2017*

**I.D. (L) No. 35/2013**

K. Narayanan, . . . Petitioner  
S/o. Kannan,  
Puducherry.

*Versus*

The Managing Director,  
Packaging India Private Limited,  
Kandanpet Village,  
Pillaiyarkuppam Post,  
Bahour Commune,  
Puducherry. . . Respondent

This industrial dispute coming up before me for final hearing on 29-4-2017 in the presence of Tvl. R.T. Shankar and Thamoetharan, counsel for the petitioner and Tvl. L. Swaminathan and I. Ilankumar, 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 by the Government as per the G. O. Rt. No. 104/AIL/Lab./J/2013, dated 17-7-2013 for adjudicating the following:-

(i) Whether the dispute raised by the petitioner Thiru K. Narayanan against the management of M/s. Packaging India Pvt. Ltd., Puducherry over his non-employment is justified or not ?

(ii) If justified, what relief, the petitioner is entitled to ?

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

2. *The brief averments of the petition filed by the petitioner are stated as follows:-*

(i) The petitioner has joined in the respondent establishment on 26-10-1997 as Operator Assistant in the Pro-Printing Department and his last drawn salary is ₹ 9,710 and the petitioner is also holding the post of President in Packaging India Employees Union and he had been in service without any remarks for about 13 years but on 31-10-2010 without any *prima-facie* complaint the respondent management has temporarily suspended the petitioner from his service and has issued a charge memo on 25-1-2011 and for which the petitioner has given his explanation to the charge memo on 26-1-2011 before the Manager of the respondent factory but the respondent management has not accepted his explanation and conducted domestic enquiry against him and in the domestic enquiry, no opportunity was given to the petitioner and the enquiry was conducted with the bias in favour of the management and the management threatened the workers to admit the charges and has assured the petitioner that if the petitioner admits the charges, the management will provide employment to the petitioner and believing the assurance given by the management the petitioner and his colleagues namely T. Ramesh, E. Bakthavachalam, V. Iyyanar, Alexpeter and Pragalathan endorsed the admission but no enquiry was conducted properly and the enquiry officer has submitted a report finding guilty of the petitioner as well as his colleagues on the ground of admission of the employees and on the foot of the report the management has issued a show cause notice on 12-3-2011 and the petitioner has sent a reply letter to the show cause notice on 14-3-2011 for which the respondent management has not accepted the explanation of the

petitioner and passed an order on 31-5-2011 and the respondent has wantonly terminated the services of the petitioner since he was functioning as President of the union and has taken false disciplinary action against the petitioner along with his colleagues.

(ii) Though in the enquiry, it was found all the employees are found guilty except the petitioner and one Pragalathan all others would not have been terminated from service and their temporary suspension was revoked and therefore, the refusal of employment to the petitioner and the said Pragalathan is totally against the law and is illegal and against the natural justice. Though the petitioner has approached the respondent management after his termination on 31-5-2011 in person and through letter of requisition, he has not been given employment and that therefore, the petitioner has submitted a conciliation on 31-8-2012 with the Conciliation Officer and the conciliation proceedings was taken and both the petitioner and the respondent has been summoned to appear on 18-10-2012 at about 3.00 p.m., though the petitioner has appeared on 18-10-2012 as summoned in the notice, the respondent has not appeared before the Conciliation Officer and therefore the conciliation proceedings were adjourned to 9-11-2012 and on which date also the petitioner was appeared and the respondent management has not appeared and hence, the personal hearing was adjourned to 28-11-2012 and on which date also the respondent management has not appeared and subsequently the case was adjourned to 19-2-2013 and on which date the management was appeared and filed a false objection and the conciliation was failed and that therefore, the Conciliation Officer submitted a report to the Government on 26-4-2013 and this reference has been sent before this Court and in the domestic enquiry the respondent management has not given any opportunity to the petitioner and the act of the respondent management on bias with the petitioner and the termination of the petitioner is against the law and against the natural justice and that therefore, the petitioner prayed this Court to set aside the termination order passed by the respondent management against the petitioner and to direct the respondent to reinstate the petitioner with backwages.

3. *The brief averments of the counter filed by the respondent are stated as follows:-*

The petitioner was employed as the Printing operator in the management and was suspended in contemplation of disciplinary proceedings through order, dated 31-10-2010 and that the petitioner was served with a charge-sheet under Ref. No. PIPL/IR/

JAN/SUS/2011/08, dated 25-1-2011 and was directed to explain in writing within 48 hours from the receipt of the charge-sheet and for which the petitioner had submitted his written explanation on 26-1-2011 and upon inconsistent reply, the management had ordered for an enquiry through order, dated 29-1-2011 appointing Mr. G. K. Govindasamy, Advocate, Puducherry as the Enquiry Officer to enquire into the charge, sheet, dated 25-1-2011 and Mr. R.V. Sathyanarayanan, Manager - HR & Admin as the Presenting Officer in the enquiry and enquiry was conducted and upon admission of charges by the petitioner in the enquiry proceedings, the enquiry was closed and based on the enquiry report, the management had dismissed the petitioner *vide* order, dated 30-5-2011 and that the petitioner having accepted the charge, the petitioner is now making a hue and cry by shedding crocodile tears as though he is innocent and leniency should be bestowed on him and therefore, the management rejects the entire allegations of the petition by reiterating that the order of dismissal, dated 30-5-2011 holds good and cannot be re-considered by the management and prays for dismissal of claim petition filed by the petitioner.

4. On the side of the petitioner, PW.1 was examined and Ex.P1 to Ex.P11 were marked. On the side of the respondent, no oral evidence has been let in and no document has been marked. Argument heard. Records are perused.

5. *The point for consideration is:* Whether the dispute raised by the petitioner against the respondent management over his non-employment is justified or not.

6. The Government has made this reference to decide the dispute raised by the petitioner over his non-employment against the respondent management is justified or not. On this aspect, the records and evidence are carefully perused. In order to prove his case, the petitioner has examined himself as PW.1 and exhibited Ex.P1 to Ex.P11. From the evidence and exhibits marked on the side of the petitioner, it is clear that the petitioner was temporarily suspended from the respondent management on 31-10-2010 and a charge memo was given by the respondent to the petitioner on 25-1-2011 and the Enquiry Officer was appointed and the domestic enquiry was conducted by the said Enquiry Officer in which the Enquiry Officer has found misconduct of the petitioner and a show cause notice was given and

finally the petitioner was terminated from service on 31-5-2011. But, it is the evidence of petitioner PW.1 that he has not been given opportunity to putforth his case in the domestic enquiry and the enquiry was conducted in a biased manner.

7. While the case was posted for order today both the parties have field a compromise memo along with the statement arrived at between them stating that on 11-5-2017 both the parties have mutually agreed and entered a Memorandum of Settlement. The copy of the said Memorandum of settlement, dated 11-5-2017 and the copy of the receipt is also filed along with the memo which would reveal the fact that the management and the petitioner has amicably entered into the settlement on 11-5-2017 and the petitioner has received a sum of ₹ 5,35,680 for his employment benefits as one-time settlement including gratuity and therefore, the matter has been settled between the parties by entering the settlement and hence, the compromise is to be recorded and Award is to be passed in terms of settlement and the copy of the settlement is to be attached as part and parcel of the Award.

8. In the result, the petition is partly allowed and the Award is passed in terms of the Memorandum of settlement arrived at between the parties on 11-5-2017 and the same is recorded and the said Memorandum of settlement shall be attached as part and parcel of the Award. No costs.

Dictated to the stenographer, transcribed by her, corrected and pronounced by me in the Open Court on this the 12th day of May, 2017.

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

*List of petitioner's witness:*

PW. 1—7-10-2014 - K. Narayanan

*List of petitioner's exhibits:*

|       |           |   |
|-------|-----------|---|
| Ex.P1 | 25-1-2011 | Copy of the charge-sheet.                             |
| Ex.P2 | 29-1-2011 | Copy of the order for appointment of Enquiry Officer. |
| Ex.P3 | 10-2-2011 | Copy of the notice of enquiry.                        |
| Ex.P4 | 14-2-2011 | Copy of the enquiry proceedings note.                 |

|        |            |   |
|--------|------------|---|
| Ex.P5  | 9-3-2011   | Copy of the report of the Enquiry Officer.                                |
| Ex.P6  | 12-3-2011  | Copy of the show cause notice.  |
| Ex.P7  | 31-5-2011  | Copy of the termination order.  |
| Ex.P8  | 23-12-2010 | Copy of the proceedings of domestic enquiry conducted against one Ramesh. |
| Ex.P9  | 4-3-2011   | Copy of the enquiry report of one Ramesh.                                 |
| Ex.P10 | 3-5-2011   | Copy of the order passed against one Ramesh.                              |
| Ex.P11 | 26-4-2013  | Copy of the conciliation failure report.                                  |

*List of respondent's witness: Nil.*

*List of respondent's exhibits: Nil.*

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

**GOVERNMENT OF PUDUCHERRY  
CHIEF SECRETARIAT (FISHERIES)**

(G.O. Rt. No. 15/Fy.,  
Puducherry, dated 13th July 2017)

**NOTIFICATION**

In pursuance of rule 4 of the Puducherry Fishermen's Welfare and Distress Relief Society Rules and Regulations, read with the clause V(2) of the Memorandum of Association of the Puducherry Fishermen's Welfare and Distress Relief Society, the Lieutenant-Governor, Puducherry, is pleased to nominate the following fishermen representatives as Non-official Members/Special Invitees with immediate effect so as to constitute the Seventh Governing Body of the said Society, namely:

- |      |  |                                     |
|------|--|-------------------------------------|
| (i)  | Thiru Elango, S/o. Manickam,<br>No. 1, Inzanci Mastri Street,<br>Puducherry - 605 001                      | .. Non-official<br>co-opted Member. |
| (ii) | Thiru Thangavadivel,<br>S/o. Idumban Chettiar,<br>No. 51, Pillaiyar Koil Street,<br>Karaikalmedu, Karaikal | .. do                               |