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புதுச்சேரி மாநில அரசிதழ்

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

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GOVERNMENT OF PUDUCHERRY

LABOUR DEPARTMENT

(*G.O. Rt. No. 94/Lab./AIL/T/2017, Puducherry, dated 15th June 2017)*

NOTIFICATION

Whereas, the Award in I.D.(T) No. 07/2013, dated 24-4-2017 of the Labour Court, Puducherry in respect of the Industrial Dispute between the Management of M/s. Larsen & Toubro Limited, ECC Division, Sederapet, Puducherry and Larsen & Toubro Employees Union, Puducherry over non-payment of an additional increase of @ ₹ 3,000 in One-Time Lump Sum Amount paid during the year 2010-2011 to the employees of all Grades 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 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.

Monday, the 24th day of April 2017

I.D. (T) No. 07/2013

R.Karthikeyan, President,
Larsen & Toubro Employees Union,
(RTU 1627/2010),
No. 14, Kurinji Street,
Kamarajar Nagar, Gorimedu,
Puducherry. . . Petitioner

Versus

Works Manager,
Larsen & Toubro Limited,
Sederapet,
Puducherry. . . Respondent

This industrial dispute coming up before me for final hearing on 27-3-2017 in the presence of Thiru Durai Arumugam, Representative of the petitioner and Thiruvalargal M.Vaikunth, R.Vikneshraj and R. Elamparudhi, Counsels 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. 226/AIL/Lab./J/2012, dated 20-12-2012 for adjudicating the following:-

(i) Whether, the dispute raised by Larsen & Toubro Employees Union against the management of M/s. Larsen & Toubro Limited, ECC Division, Puducherry over non-payment of an additional increase @ ₹ 3,000 in One-Time Lump Sum Amount paid during the year 2010-2011 to the employees of all Grades is justified?

(ii) If justified, to what relief the union workmen are entitled to?

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

2. The fact of the case as follows:

The petitioner is a union and the members of the union are working in the respondent establishment of Larsen & Toubro Limited and they have raised the industrial dispute before the Conciliation Officer for One-Time Lump Sum Amount for the year 2010-2011 and the respondent establishment had been paying 20% bonus along with One-Time Lump Sum Amount to the employees for every year from 2005 and it was paid by the company to the workmen of the respondent establishment from 2005-2006 to 2009-2010 and the respondent has paid One-Time Lump Sum Amount of ₹ 1,000 for the year 2005-2006, ₹ 1,500 for the year 2006-2007, ₹ 2,000 and ₹ 2,100 for grade I to III and grade IV respectively for the year 2007-2008, ₹ 2 ,000 for the year 2008-09 and ₹ 2,500 for the year 2009-2010. But, for the year 2010-2011, the company has not paid the One-Time Lump Sum Amount without giving any notice u/s 9-A of the Industrial Dispute Act. Though the One-Time Lump Sum Amount has been paid by the respondent company for every year continuously for six years the respondent management has not paid the One-Time Lump Sum Amount for the year 2010-2011 without giving any notice and without negotiating with the Trade Union and has violated the provision u/s 9-A of the Industrial Dispute Act and hence, it is the

customary right of the employees to get One-Time Lump Sum Amount from the respondent establishment and whenever, the respondent has effect any change in the condition of service of the employees *i.e.,* to stop the payment of One-Time Lump Sum Amount, a notice has to be issued to the employees u/s 9-A of the Industrial Dispute Act and that therefore, the non-payment of One-Time Lump Sum Amount for the period of 2010-2011 is in violation of section 9-A of the Industrial Dispute Act and is illegal and therefore, the employees of the union are entitled for One-Time Lump Sum Amount for the year 2010-2011.

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

(i) The petition filed by the petitioner is not true or just and the petitioner is not entitled to any relief and that every year, particularly before Diwali Festival'. One-Time Lump Sum Amount has been paid to the employees under the Payment of Bonus Act without any reference to the profit or loss to the respondent company, with regard to the quantum of One-Time Lump Sum Amount, every year the Trade Union demanded increase after negotiation the respondent every year announced a reasonable hike in the One-Time Lump Sum Amount.

(ii) For the year 2006-2007 after the demand of the petitioner union the respondent negotiated with the petitioner union, and then announced an increase a sum of ₹ 1,500 from the last year, likewise till 2009, the respondent considered the demand of the petitioner trade union and gave increase reasonable amount in the One-Time Lump Sum Amount, the details of payment of One-Time Lump Sum Amount and its year-wise increase all given below in Tabular column.

Last 5 years OTLS amount details:

Year	Grade	Existing	OTLS increase	Total OTLS amount
(1)	(2)	(3)	(4)	(5)
2005-2006	Grade-I to III	10,400	1,000	11,400
	Grade-IV	11,000	1,000	12,000
2006-2007	Grade-I to III	11,400	1,500	12,900
	Grade-IV	12,000	1,500	13,500
2007-2008	Grade-I to III	12,900	2,000	14,900
	Grade-IV	13,500	2,100	15,600
2008-2009	Grade-I to III	14,900	2,000	16,900
	Grade-IV	15,600	2,000	17,600
2009-2010	Grade-I to III	16,900	2,500	19,400
	Grade-IV	17,600	2,500	20,100
2010-2011	Grade-I to III	19,400	No increase	
	Grade-IV	20,100	No increase	

(iii) The respondent paid One-Time Lump Sum Amount for the year 2010-2011 and also credited the same to the petitioner union members bank account, in that regard, the petitioner trade union. At the time petitioner kept quiet and take the amount and spend the same without any objection. In addition to that petitioner not disclosed the amount maximum bonus 20% *i.e.,* ₹ 8,400 paid every year to petitioner by the management, it is handful amount to meet the festival requirement.

(iv) It is clearly admitted by the petitioner by himself the payment of One-Time Lump Sum Amount is only goodwill gesture not a statutory requirement or any rules governed by a State/The Bonus payable under the Bonus Act, 1965 management or giving One-Time Lump Sum Amount and not under any provisions of law in force. So, giving a One-Time Lump Sum Amount payment is only based on discretion of the company and not under any law, since it is clear that the petitioner cannot ask for prayer which totally question of policy of the company and in other way putting the company under threat and trying to get the means by illegal method which is not permissible under any law. So, on that grounds itself, the petition deserves dismissal without any consideration.

(v) The fact setforth in the application are merely repetition of pleading without any legal base. But, the averments in the petition clearly claim the prayer to pay One-Time Lump Sum for the year 2010-2011 with an increase from the payment made in the previous year 2009-2010 for ₹ 2,500 for all grades from the period 2010-2011 interest is totally unknown to law. Hence, the petition should be dismissed with limine.

4. On the side of the petitioner, P.W.l was examined and Ex.P1 to Ex.P6 were marked. On the side of the respondent, R.W1 was examined and no exhibit was marked.

5. The point for consideration is that whether the petitioner union members being the employees of all cadres of the respondent establishment are entitled for the One-Time Lump Sum Amount of ₹ 3,000 for the financial year 2010-2011.

6. Both sides are heard. Records are perused. The petitioner has filed a written argument, wherein, they have stated that the respondent management has failed to pay the One-Time Lump Sum Amount of ₹ 3,000 for the year 2010-2011 while they have paid the One-Time Lump Sum Amount for every year from 2005-2006 till 2009-2010 apart from bonus. Since, the respondent management has paid the One-Time Lump Sum Amount from the year 2005-2006 till 2009-2010 it cannot be stopped without giving notice under section 9-A of the Industrial Disputes Act or made any negotiation with the union and as the One-Time Lump Sum Amount are paid for about-six years, it is the customary right of the employees to get the One-Time Lump Sum Amount and as such if, there is any change of service condition, a notice u/s. 9A of the Industrial Disputes Act must be sent to the workers of the establishment and therefore, they are entitled for the full One-Time Lump Sum Amount of ₹ 3,000 for the period 2010-2011.

7. In support of his contention, the representative of the labour union has relied upon the Judgment reported in 2003-III-LLJ, High Court of Rajasthan in Director, State Farms Corporation of India Limited *Vs.* Judge, Industrial Tribunal and Labour Court, Bikaner and others. The learned Counsel for the respondent has argued that One-Time Lump Sum Amount is not a wage and it is paid in addition to the bonus and it is the discretion of the management to grant such an One-Time Lump Sum Amount and hence, no notice u/s. 9-A of the Industrial Disputes Act is required to stop the payment of One-Time Lump Sum Amount.

8. From the averment of the claim petition and the averment of the counter, it is clear that both the parties have admitted the fact that the workers of the respondent management have been granted One-Time Lump Sum Amount of ₹ 1,000 for the year 2005-2006 to all the cadre of workmen, ₹ 1,500 was granted for the year 2006-2007, ₹ 2,000 and ₹ 2,100 was given to the grade 1 to III & grade IV respectively for the year 2007-2008 and ₹ 2,000 was granted for the year 2008-2009 and ₹ 2,500 was granted for the year 2009-2010 and the respondent management has failed to pay the amount for the year 2010 - 2011 and it is not disputed by the respondent that One-Time Lump Sum Amount was given in addition to the bonus to the workers for the period 2005-2006 to 2009-2010 at the above stated rates and admittedly in the year 2010-2011, no such One-Time Lump Sum Amount was given to the workers by the respondent management and it is also an admitted fact that the respondent management has not given any notice to the workers or the union members that they are going to stop the payment of lump sum amount for the period 2010-2011 u/s. 9A of the Act as required under the fourth Schedule of the Act while change of service condition of the workmen and the decision of stopping the One-Time Lump Sum Amount for the period 2010 to 2011 was taken by the management without negotiating the same with the union members and the decision of the management in stopping the One-Time Lump Sum Amount is unilateral. To prove his contention, the petitioner has exhibited the copy of the circular for the year 2005-2006 as Ex.P1 which would evident that the respondent management has paid One-Time Lump Sum Amount to the permanent workmen of the respondent establishment. Ex.P2 and Ex.P3 are the minutes of the meeting held by the respondent management for increase in giving One-Time Lump Sum Amount for the period 2006-2007 and 2007-2008. Ex.P4 is the letter given by the respondent management for the payment of One-Time Lump Sum Amount for the financial year 2008-2009. Ex.P5 would reveal the fact that the respondent management has given One-Time Lump Sum Amount to the employees for the period 2009-2010 to the tune of increase of ₹ 2,500 than the last year. Ex.P6 is the letter given by the respondent management that they have deposited the respective bonus amount in the account of the petitioner union members which would reveal the fact that the management has not paid the One-Time Lump Sum Amount of ₹ 3,000 and instead of that the management deposited only the previous year amount without any increase of One Time Lump Sum Amount. These documents would go to show that the respondent management has been paid the One-Time Lump sum Amount for the period from 2005-2006 to 2009-2010 with some increase.

9. It is the only contention of the petitioner that the abovesaid One-Time Lump Sum Amount has to be paid as customary right and the stoppage of One-Time Lump Sum Amount in addition to the bonus is a change of service condition and it is also a customary right of the workers to get the One-Time Lump Sum Amount since, they have received it for the past 6 years from 2005-2006 till 2009-2010.

10. On the other hand, the respondent has though admitted the fact that they have paid One-Time Lump Sum Amount for the period 2005-2006 to 2009-2010, it is stated by the respondent management that this amount has been paid to the employees in addition to the bonus without any reference to the profit or loss of the respondent company and from the year 2006-2007, after the demand of the petitioner union, the respondent management negotiated with the petitioner union and announced the increase of sum of ₹2,500 till 2009-2010 but that One-Time Lump Sum has not been given under any provisions of law in force and it is paid only on the basis of discretion of the company and not under any law and the petitioner cannot ask the said Lump Sum Amount as a matter of right without any legal base.

11. Though the respondent has contended that they have not paid the One-Time Lump Sum Amount for the period 2010-2011 and that they have not increased the said amount for the period 2010-2011 to all the cadres, it is stated in the para.- 5 of the counter that,

> "The respondent paid One-Time Lump Sum Amount for the year 2010-2011 and also credited the same to the petitioner union members bank account, in that regard the petitioner trade union. At the time petitioner kept quiet and take the amount and spend same without any objection. In addition to that petitioner not disclosed the amount maximum bonus 20% *i.e.*, ₹ 8,400 paid every year to petitioner by the management, it is handful amount to meet the festival requirement."

In the above paragraph, the respondent have stated that they have credited the One-Time Lump Sum amount in the account of workmen and workers have taken the same and spend it without any objection. But, they have not stated how much amount was credited in the account of union members as a lump sum amount for the period 2010-2011 and no documents is exhibited before this Court to prove the same.

12. This Court finds that the respondent has stated contradictory contentions. One is that they have credited the lump sum amount in the Bank account of union members for the period 2010-2011 and another contention is that the petitioners are not entitled for the One-Time Lump Sum Amount and they have not paid the same to the workers for the period 2010-2011. As stated by the respondent in para 5 of the counter if, the amount is credited in the account of the members of the union, the respondent has to produce the sufficient proof with documents before this Court to establish that they have paid the One-Time Lump Sum Amount for the period 2010-2011. The RW.l also has stated in the cross examination, that they have paid One-Time Lump Sum Amount for the period 2010-2011 and that they have some documents to prove the same but no document is filed by the respondent management to prove that they have paid such One-Time Lump Sum Amount for the period of 2010-2011.

13. The proviso of section 9A of the Industrial Disputes Act runs as follows :

> Notice of change. - No, employer, who proposes to effect any change in the conditions of service applicable to any workman in respect of any matter specified in the Fourth Schedule, shall effect such change,-
>
> (a) without giving to the workmen likely to be affected by such change a notice in the prescribed manner of the nature of the change proposed to be effect; or
>
> (b) within twenty-one days of giving such notice :

Provided that no notice shall be required for effecting any such change -

> (a) where the change is effected in pursuance of any 2[settlement or award]; or
>
> (b) where the workmen likely to be affected by the change are persons to whom the Fundamental and Supplementary Rules, Civil Services (Classification, Control and Appeal) Rules, Civil Services (Temporary Service) Rules, Revised Leave Rules, Civil Service Regulations, Civilians in Defence Services (Classification, Control and Appeal) Rules or the Indian Railway Establishment Code or any other rules or regulations that may be notified in this behalf by the appropriate Government in the Official Gazette, apply.

From the above provision, it is clear that if, any employer propose to any change in service of condition applicable to any workmen in respect of any matter specified in Fourth Schedule would not give such change without giving any notice to the workmen in the prescribed manner of the nature of change proposed to be affected and whenever, an employer unilaterally proposes to effect any change in respect of any of the matters specified in the Fourth Schedule he ought to give notice to the workmen as mandated by this section. The provision safeguards the interest of the employees; in that it prohibits an employer from taking any action in the specified matters without giving due notice u/s. 9 of the Act.

14. The main contention of the respondent management is that no notice u/s. 9 A of the Act is required to stop the payment of One-Time Lump Sum Amount for the period 2010-2011 since, the said amount is not wages and there is no change of service condition as stated in the Fourth Schedule of the Act and it is also a further contention of the respondent that though they have paid the One-Time Lump Sum Amount for the period from 2005-2006 to 2009-2010, the petitioner cannot claim the said One-Time Lump Sum Amount as a customary right. On this aspect, it is to be decided whether the petitioner's claim of One-Time Lump Sum Amount as a customary right is sustainable or not and it is also to be decided whether the stoppage of One-Time Lump Sum Amount for the period 2010-2011 required any notice u/s.A of the Industrial Disputes Act and.

15. The fourth schedule of the Act requires that a notice is to be given to the employee for change of service condition wages and withdrawal of any compensatory allowance or any allowances or any contribution payable by the employer to any provident fund or pension fund or for the benefit of the workmen under any law for the time being in force and particularly withdrawal of any customary concession or privilege or change in usage.

16. It is to be decided whether the petitioner union has established that they have got a customary right to get such One-Time Lump Sum Amount from the respondent management. They have received the One-Time Lump Sum Amount from the respondent management for the past 6 years from the year 2005-2006 till 2009-2010 apart from the bonus. Admittedly, the respondent management has paid the One-Time Lump Sum Amount for the period 2005-2006 to 2009-2010 with gradual increase at the rate of ₹ 1,000 to ₹ 2,500 apart from bonus. On this aspect, the Supreme Court of India in Workmen of Kettlewell Bullen and Co. Limited *Versus* Kottiewell Bullen and Co. Limited, has held that,

> "On the basis of payment during 1965 to 1973 at the uniform rate of 10.5% of the salary or wages, it could be said, ignoring the first few years that the payment-was made at a uniform rate for an unbroken period of nine years from 1965 to 1973 which was a sufficiently long period and the Tribunal could have reasonably drawn as inference that the said payment was customary or traditional bonus on the occasion of Pooja festival".

From the above observation, it is clear that whenever an amount is being paid by the employer to the employees for some years it can be treated as customary right. In this case, admittedly the petitioner has been paid the One-Time Lump Sum Amount from the period 2005-2006 till 2009-2010 with gradual increase at the rate apart from bonus and hence, it is held by this Court that the petitioners are having the customary right of getting One-Time Lump Sum Amount from the respondent management apart from bonus. In the light of the Judgment reported in AIR 1975, SC 1856 in Management of Indian Oil Corporation Limited *Versus* Workmen, the Hon'ble High Court has held that concession of paying allowance to workmen may become an implied condition of service so as to attract the mandatory provisions of section 9-A of the Act. Once the payment of allowance becomes a part of the conditions of service of workmen, it cannot be withdrawn at the will of the employer, even if, the payment is made voluntarily and as a temporary measure out of sympathy for workers. It is needless to state that unilateral withdrawal of voluntary payment as a concession in the condition of service would materially and adversely affect the workmen for all time to come. It amounts to a change in the conditions of service and the management is bound to follow the procedure in section 9-A of the Act.

17. The petitioner has contended in its application since the employer has paid the lump sum amount from the year 2005-2006 to 2009-2010 for about six years and to stop such customary right, the employer has to give notice u/s. A of the Act but, they have not given any notice to stop the One-Time Lump Sum Amount and has violated, the provision of act and therefore, they cannot stop the One-Time Lump Sum payment for the period 2010-2011 and the members of the union sought for the order of granting such One-Time Lump Sum Amount in the application and in support of his case, the representative of the petitioner has relied upon a judgment reported in 2003-III-LLJ(Pg.No.81) of High Court of Rajasthan pronounced in Director, State Farms Corporation of India Limited *Versus* Judge, Industrial Tribunal and Labour Court, Bikaner and others, wherein, it has been held that,

> "Moreover we are informed by the learned Counsel for the parties that amenities extended to workmen, which is now used as shield to defend the action of management in unilateral reduction of project allowance from 10% to 8%, had already come into existence long before the unilateral

reduction of the allowance and for long workmen were receiving project allowance at 10% in addition to amenities made available to them. Thus, no nexus between the reductions in project allowance as quid *pro quo* for extending additional benefits in lieu thereof is discernible. The reduction in project allowance undoubtedly results in reduction of wages as defined in section 2(rr) of the Industrial Disputes Act, 1947 and falls within 'conditions of service for change of which notice is to be given' under items 1 and 3 of Schedule IV appended to the Act which attracted operation of section 9-A of the said Act, which has been held to be mandatory requirement before any such alteration can be effected. For the foregoing reasons, we hold that the view of the learned single Judge that the change in the rate of project allowance adversely affected the conditions of service of the employees working in project and they were required to be given notice under section 9-A of the Act, which the appellant failed to do cannot be faulted and must be sustained. We order accordingly. The appeal, therefore, fails and is hereby dismissed."

From the above observation of the the Hon'ble High Court, it is clear that if, the employer propose bo change any condition of service applicable to any workmen, section 9A of the Act would come into operation, the moment when the employer propose to change any condition of service and to effect such a change, a notice is to be given u/s. 9A of the Act and if, such notice was not given, the withdrawal or the payment, of One-Time Lump Sum Amount cannot be stopped and furthermore, the Hon'ble High Court has observed in the case that even project allowance is part of the condition of the workmen and the notice is mandatory u/s. 9A of the Act for effecting the change of reduction of project allowance but, in this case admittedly the respondent has not arrived at any settlement with the members of the petitioner union and furthermore, the petitioners workmen have not given any consent for stoppage of payment of One- Time Lump Sum Amount to the workers.

18. As an employer, the respondent management who has admittedly stopped the payment of One-Time Lump Sum Amount for the period of 2010-2011 to the employees and changed the condition of service of the workmen by withdrawing the payment of One-Time Lump Sum Amount to the employees described in item-8 of the 4th Schedule of the Act before effecting the change, the respondent management, must have complied with the section 9A of the Act, notice has to he issued for the stoppage of payment of One-Time Lumpsum Amount to the employees under the customary right. In such circumstances, the respondent management ought to have given notice u/s. 9A of the Act for stoppage of the said amount to the workers but, the respondent management has failed to give such notice to the petitioner union and that therefore, it is clear that the petitioner union members are entitled for the One-Time Lump Sum Amount of ₹ 3,000 for the period 2010-2011 since they have received ₹ 2,500 for the year 2009-2010, with some increase in addition to the bonus given to the workmen as claimed by the petitioner and that therefore, the dispute raised by the Larsen and Toubro Employees Union against the management of Larsen and Toubro Limited, ECC Division, Puducherry over non-payment of an additional increase of One-Time Lump Sum Amount for the year 2010-2011 to the employees is justified and hence, the petition is liable to be allowed.

19. In the result, the petition is allowed and the respondent is directed to pay ₹ 3,000 as One-Time Lump Sum Amount for the period 2010-2011 to the members of the petitioner union who have been received the One-Time Lump Sum Amount till 2009-2010. No cost.

Dictated to Stenographer, transcribed by her, corrected and pronounced by me in the open Court on this the 24th day of April, 2017.

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

List of petitioner's witness:

PW1 —13-03-2015 — D. Ramesh

List of petitioner's exhibits:

Ex.Pl — Copy of the circular for the year 2005-2006, dated 16-10-2006.

Ex.P2 — Copy of the minutes of meeting for the year 2006- 2007, dated 31-10-2007.

Ex.P3 — Copy of the minutes of meeting for the year 2007-2008, dated 14-10-2008.

Ex.P4 — Copy of the bonus receipt for the year 2008-2009.

Ex.P5 — Copy of the circular for the year 2009-2010 dated 1-11-2010.

Ex.P6 — Copy of the letter by the respondent Works Manager for the year 2010-2011, dated 24-10-2011.

List of respondent's witness:

RW1— 8-1-2016 — A. Nepoliyan

List of Respondent's exhibits : Nil.

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

GOVERNMENT OF PUDUCHERRY

LABOUR DEPARTMENT

(*G.O. Rt. No. 95/Lab./AIL/T/2017, Puducherry, dated 15th June 2017)*

NOTIFICATION

Whereas, the Award in I.D. (L) No. 22/2014, dated 6-4-2017 of the Labour Court, Puducherry in respect of the Industrial Dispute between the Management of M/s. A.F.T., Puducherry and Puduvai Mill Thozhilalar Sangam over continuity of service of the petitioner Thiru.M. Chandrasekaran with effect from 5-9-1980 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 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.

Thursday, the 6th day of April 2017

I.D. (L) No. 22/2014

M. Chandrasekaran,
S/o. Manickam,
Puducherry. . . Petitioner

Versus

The Management of Anglo French Textiles,
(A.F.T-P.C), Mudaliarpet,
Puducherry. . . Respondent.

This industrial dispute coming on 22-2-2017 before me for final hearing in the presence of Thiru Durai Arumugam, Representative for the petitioner and Thiru.B. Mohandoss, Counsel for 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 arises out of the reference made by the Government of Pondicherry, *vide* G.O. Rt. No. 66/AIL/Lab./J/2014, dated 21-4-2014 of the Labour Department, Pondicherry to resolve the following dispute between the petitioner and the respondent, *viz.,*

(i) Whether the dispute raised by Puduvai Mill Thozhilalar Sangam against the management of M/s. A.F.T., Puducherry over continuity of service, of the petitioner Thiru M. Chandrasekaran with effect from 5-9-1980 is justified ? If justified, what relief, he is entitled to?

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

2. It is the case of the petitioner that the workman one Chandrasekar has appointed as Fitter in the respondent mill on 5-9-1980 and he has also contributed the ESI and the management declared the closure of the mill in the year 1984 and subsequently reopened the factory in the year 1986 and provided employment to some of the workers and retrenched nearly 2000 workmen and the said Chandrasekar was also given employment by the management but, failed to provide continuity of service with effect from 1980 to 1989 and the management has refused to provide continuity of service for the period of nine years and that therefore, the petitioner has raised an individual industrial dispute and issued notice against the management on 17-7-2013 regarding the continuity of service of the petitioner.

3. The management has filed a counter denying all the allegations made against the management and has stated that the said Chandrasekar was appointed as Casual substitute with effect from June, 1986 and he was initially for three months from 28-6-1986 and thereafter, he was engaged again as Casual on 31-9-1986, after the completion of three months and

that his employment was renewed as Casual Labour with the gap of two or three days, sometimes one week depending on the availability of work every time after completion of three months and he was engaged as Casual labour till 12-5-1989 and thereafter, he was confirmed as regular substitute from 1-6-1989 as per the order of the management, dated 26-6-1989 and therefore, the date of appointment was considered as 1-6-1989 by the management similar to the other workmen of the respondent mill and that the Casuals are regularized as regular substitute depending on the regular vacancies in the mill and he was regularized as a substitute only on 1-6-1989.

4. On the side of the petitioner, WW1 was examined and Ex.W1 to Ex.W4 were marked. On the side of the respondent, RWl was examined and Ex.R1 to Ex.R3 were marked.

5. The point for consideration is that whether the dispute raised by Puduvai Mill Thozhilalar Sangam against the respondent management over continuity of service of the petitioner with effect from 5-9-1980 is justified?

6. From the pleading of the claimant and the respondent, it is clear that both the parties have admitted that the petitioner was in service at the respondent mill as a workman and has initially appointed on 5-9-1980 and the mill was closed in the year 1983 by the earlier management and it was reopened in the year 1986 by the new management under the Anglo French Textiles Limited (Acquisition and Transfer of Textiles undertaking) Act, 1986 and the petitioner was once again appointed in the year 1986 when it was reopened and the management was refused to give regularization from 1980 to the petitioner.

7. It is the case of the petitioner that he has served as a workman from 1980 to 1984 and the respondent factory has retrenched 2000 workmen including the petitioner since, it was closed from 1984 to 1985 and subsequently, he was once again appointed as a workman when the respondent establishment was reopened in the year 1986 and that therefore, he has asked for the regularization from 1980 to 1989 and the refusal of the management to regularize the petitioner which is against the provisions laid down under the 11(1) of the Anglo French Textiles Limited (Acquisition and Transfer of Textiles undertaking) Act, 1986.

8. On the other hand, the respondent has stated that the petitioner was initially appointed on 5-9-1980 as casual substitute labour and the mill was closed in the year 1983 by the earlier management and it was reopened in the year 1986 by the new management under the Anglo French Textiles Limited (Acquisition and Transfer of Textiles undertaking) Act, 1986 and the petitioner was initially appointed for three months from 28-6-1986 and he was engaged again as Casual substitute on 31-9-1986 and after the completion of three months and his employment was renewed as casual substitute with the gap of two or three days sometimes one week depending on the availability of work every time after completion of three months and he was engaged as Casual substitute labour till 12-5-1989 and the employment given to the petitioner as Casual Labour did not give the right to hold the post and the daily rated Casuals would be engaged only based on needs and their engagements is on day to day basis without any assurance for continuity of employment and that therefore, it is to be decided whether the petitioner has established that he was working as a regular employee from 1980 or he was working as Casual Labour from 1980 till 1-6-1989.

9. The respondent management has stated that the petitioner workman was confirmed as regular substitute only from 1-6-1989 by virtue of office order, dated 26-6-1989 and he was engaged only as a Casual substitute Labour till 12-5-1989 and his employment was renewed as a Casual with the gap of two or three days, sometimes one week depending on the availability of the work every time after completion of three months and the petitioner never worked as regular substitute till the period of 12-5-1989.

10. On this aspect, the evidence of both the parties and exhibits marked on their side are carefully considered. The petitioner has exhibited the copy of the ESI card as Ex.Wl which would evident that the petitioner has entered into employment on 5-9-1980. Ex.W2 is the National Trade Certificate issued by the Government of India in favour of the petitioner. Ex.W3 is the letter given by the petitioner to the respondent management asking the respondent management to add the service period from 1980 to 1989 as a continuous service and he has also exhibited the reference sent by the Government to this Court as Ex.W4. While so, the respondent has exhibited the copy of the petition given by the union on 17-7-2013 to the Labour Officer as Ex.Rl, the reply given by the management, dated 7-10-2013 as Ex.R2, the failure report of the Conciliation as Ex.R3. These documents would go to indicate that the petitioner was in service from 1980 and he was regularized only on 12-5-1989 and he was asked for regularization for the period from 1980 to 1989 with the respondent management which was refused by the management from 1980.

11. On perusal of those documents, it can be noted from Ex.W3 – the letter given by the petitioner to the management that he was working from 1980 as a daily rated employee initially for the wage of ₹ 5 per day and subsequently at ₹ 8 per day and ₹ 10 per day and he was permitted to work for a period of ninety days and he has served upto 1½ years and subsequently, the mill was closed for three years and it was reopened after three years and he was given regularization only from 1989. The evidence of the petitioner in his cross examination runs as follows:

> பழைய நிர்வாகம், 1983-ல் மூடப்பட்டு, புதிய நிர்வாகம் 1986-ல் ஆலையை நடத்தியது என்றால் சரிதான். புதிய நிர்வாகம், 1986-ம் வருடம், Casual substitute என்ற நிலையில் தான் June 1986-ல் என்னை பணியில் நியமித்தது என்றால் சரிதான். 26-8-1986 புதிய நிர்வாகத்தின் மூலமாக 3 மாதத்திற்கு Casual substitute-லிருந்து card system-த்தில் நியமிக்கப்பட்டேன் என்றால் அதை மறுக்கிறேன். அதற்கு பிறகு இடைவெளி விட்டு,31-9-1986 வரை Casual substitute-ஆக நியமிக்கப்பட்டேன் என்றால் மறுக்கிறேன். புதிய நிர்வாகத்தில் Casual substitute-ஆக நியமிக்கப்பட்டு, பின்னர் 3 மாதத்திற்கு பிறகு இடைவெளி விட்டு Card system-ஆக நியமிக்கப்பட்டு, பின்னர் Regular substitute-ஆக நியமிப்பார்கள் ஆனால், அவ்வாறு என் விஷயத்தில் நடக்கவில்லை. என்னை புதிய நிர்வாகம் 1986-ல் Casual substitute-ஆக நியமித்து பின்னர் இடைவெளி விட்டு Card system-த்தில் நியமித்தது என்றால் சரியல்ல, 1989 வரை நான் அவ்வாறு இடைவெளி விட்டு Card system-த்தில் பணி புரிந்தேன் என்றால் சரியல்ல. அதற்கு பிறகு Regular substitute-ஆக 1-6-1989 முதல் 26-6-1989 தேதியிட்ட அலுவலகத்ததின் உத்தரவு படி நான் regular ஆனேன் என்றால் அவ்வாறு உத்தரவு எதுவும் பிறப்பிக்கப்படவில்லை. என்னடைய மில்லில் Casual substitute-க்கும் Regular substitute-க்கும் வித்தியாசம் உண்டு, ஆனால் Regular செய்ய, service கணக்கிடும் போது Regular substitute-டை தான் கணக்கில் எடுப்பார்கள், ஆனால் என்னுடைய விஷயத்தில் அவ்வாறு நடக்கவில்லை. மில்லில் Regular vacancy-யை பொருத்து தான் Casual substitute-டை Regular substitute-ஆக நியமிப்பார்கள் என்றால் சரிதான்.

From the above evidence, it is clear that it was admitted by the petitioner that the factory was closed in the year 1983 by the earlier management and it was reopened in the year 1986 by the new management and it is also admitted by the petitioner that when the factory was reopened in the year 1986, he has been given employment as Casual substitute during June, 1986 and he has further admitted that while calculating the period for regularization of service, the period of casual substitute will not be considered and only the period of regular substitute alone has been considered by the management and therefore, from the evidence of the petitioner, it is also clear that the management has to considered in the regularization of employment, the period of service as a Casual substitute will not be counted and only the period of regular substitute can be taken into consideration for regularization.

12. Section 11 (1) of the Anglo French Textiles Limited (Acquisition and Transfer of Textiles undertaking) Act, 1986 runs as follows :

> "Where services of a person who is a workman within the meaning of the Industrial Disputes Act, 1947, and who has been immediately before the appointed day, employed in the textile undertaking, are in the opinion of the Corporation necessary having regard to the requirements of the units of the Corporation formed as a result of reorganization and reconstruction of the textile undertaking, he shall become, from the date of his appointment by the Corporation, an employee of the Corporation and shall hold office or service in the Corporation with the same rights and privileges as to pension, gratuity and other matters as would have been admissible to him if, the rights in relation to such textile undertaking had not been transferred to, and vested in the Corporation, and continue to do so unless and until his employment in such Corporation is duly terminated or until his remuneration and terms and conditions of employment are duly altered by the Corporation :
>
> (a) the Government or the Corporation shall not be liable to any person who has become an employee of the Corporation under this sub-section for payment of any gratuity or any arrears of wages for the period commencing from the day on which the textile undertaking in which he was employed was closed and ending on the day on which he becomes an employee of the Corporation, irrespective of whether such closure was in accordance with the provisions of the Industrial Disputes Act, 1947 (Central Act 14 of 1947) or not,

From the above observation, it is clear that the workman who shall hold office or service in the Corporation with the same rights and privileges as to pension, gratuity and other matters as would have been admissible to him if, the rights in relation to such textile undertaking had not been transferred to, and vested in the Corporation, and continue to do so unless and until his employment in such Corporation is duly terminated has not been transferred. But, in this case,

the petitioner has been in service as a Casual Labour from 1980 to 1983 and the textile mill was closed in the year 1983 and subsequently, it was reopened in the year 1986 and that there was break in service for three years and furthermore, even after, the reopening of the textile mill by the new management, he had been appointed as Casual substitute and only in the year 1989, he has been appointed as a Regular substitute and that therefore, even prior to the closure of the textile and after reopening of the textile mill, he had been in service as a Casual substitute. As admitted by him in the evidence, no Casual Labour would be given regularization and that therefore, they sought for the regularization after 24 years and furthermore, the industrial dispute raised by the petitioner after 24 years is not maintainable and furthermore, being worked as a Casual substitute, he has not entitled for any order of regularization in the said period and admittedly, he was posted as a Casual substitute only in the year 1989, he cannot be granted regularization for the period 1980 to 1989 since that there was a break in service for three years and as a casual labour, he has not entitled for any order of regularization as prayed and that therefore, the petition is liable to be dismissed.

13. 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 06th day of April, 2017.

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

List of petitioner's witness:

WW1 — 19-2-2016 — M. Chandrasekaran

List of petitioner's exhibits:

Ex.Wl — Copy of the ESI Identity card of the petitioner.

Ex.W2 — Copy of Nation Trade Certificate issued by the Government of India to the petitioner.

Ex.W3 — Copy of letter given by the petitioner to the management.

Ex.W4 — Copy of reference sent by the Government to this Tribunal.

List of respondent's witness:

RWl — 25-1-2017 — B. Pragatheeswaran

List of respondent's exhibits:

Ex.Rl — Copy of the petition, dated 17-7-2013 submitted by Puduvai Mill Thozilalar Sangam to the Labour Officer (Conciliation), Puducherry.

Ex.R2 — Copy of Reply, dated 7-10-2013 submitted by the respondent management to the Labour Officer (Conciliation), Puducherry.

Ex.R3 — Copy of the failure report, dated 11-3-2014 submitted by the Labour Officer (Conciliation) to the Secretary to Government (Labour), Puducherry.

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

புதுச்சேரி அரசு

இந்து சமய நிறுவனங்கள் மற்றும் வக்ஃபு துறை

(அரசு ஆணை பலவகை எண் 13/இசநி /கோ.3/2017,
புதுச்சேரி, நாள் 2017 ஹேப மே மீ 24 உ)

ஆணை

புதுச்சேரி மாநிலம், புதுச்சேரி வட்டாரம், நெட்டப்பாக்கம் கொம்யூன், வடுவகுப்பம், அருள்மிகு பிரசன்ன வெங்கடேசப் பெருமாள் தேவஸ்தானத்திற்கு, அரசு ஆணை பலவகை எண் 11/இசநி/ கோ.3/2002, நாள் 6-3-2002-ன் மூலம் ஓர் அறங்காவலர் வாரியம் அமைக்கப்பட்டது. இவ்வறங்காவலர் வாரியத்தின் பதவிக்காலம் முடிவடைந்துவிட்டது. அரசு ஆணை பலவகை எண் 54/இசநி/ கோ.3/2002 நாள் 6-11-2002-ன், அரசு ஆணை மூலம் நியமிக்கப்பட்ட நிர்வாக அதிகாரியான நெட்டப்பாக்கம், கம்பன் அரசு மேனிலைப்பள்ளி உதவியாளர் நிலை-2-ஆக பணிபுரியும் திரு. எஸ். நந்தகுமார் அவர்களால் நிர்வகிக்கப்பட்டு வருகிறது.

2. இந்நிலையில், மேற்குறிப்பிட்ட தேவஸ்தானத்தை நிர்வகிப்பதற்கு ஒரு அறங்காவலர் வாரியம் அமைக்க வேண்டியது இன்றியமையாததாகிறது.

3. எனவே, 1972-ஆம் ஆண்டு புதுச்சேரி இந்து சமய நிறுவனங்கள் சட்டம் 4(1)-ஆம் பிரிவின்கீழ் வழங்கப்பட்டுள்ள அதிகாரங்களைச் செலுத்தி, புதுச்சேரி மாநிலம், புதுச்சேரி வட்டாரம், நெட்டப்பாக்கம் கொம்யூன், வடுவகுப்பம், அருள்மிகு பிரசன்ன வெங்கடேசப் பெருமாள் தேவஸ்தானத்திற்கு, பின்வரும் ஐந்து நபர்களைக் கொண்ட ஓர் அறங்காவலர் வாரியத்தை அரசு உடனடியாக அமைக்கிறது:-