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GOVERNMENT OF PUDUCHERRY

LABOUR DEPARTMENT

(*G.O. Rt. No. 61/Lab./AIL/T/2017, Puducherry, dated 13th July 2017)*

NOTIFICATION

Whereas, the Award in I.D.(L)No.40/2013, dated 27-3-2017 of the Industrial Tribunal-cum-Labour Court, Puducherry in respect of the industrial dispute between Thiru D. Baskar, S/o. Dhandapani, Puducherry against the management of M/s. MRF Limited, Eripakkam Village, Puducherry over to reinstate the petitioner with back wages, 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 23-5-1991, 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 27th day of March 2017

I.D. (L) No. 40/2013

D. Baskar,
S/o Dhandapani,
Bharathidasan Street,
Puducherry. .. Petitioner

Versus

The Management of MRF Limited,
Eripakkam Village,
Nettapakkam Commune,
Puducherry. .. Respondent.

This industrial dispute coming on 21-2-2017 before me for final hearing in the presence of Thiru P. Chandrasekar, Counsel for the petitioner and Thiruvalargal K. Babu and C. Arivajagne, Advocates for the respondent, upon hearing both sides, upon perusing the case records, after having stood over for consideration till this day, this Court passed the following:

AWARD

1. This is a petition filed by the petitioner under section 2-A(2) of the Industrial Disputes Act praying to direct the Respondent/Management to reinstate the petitioner with backwages, continuity of service and all other attendant benefits.

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

(i) The petitioner is constrained to raise this dispute against the illegal termination of his service by the respondent management with effect from 17-10-2001. He was a workman, employed by the respondent management and the said management is a company registered under the Companies Act and engaged in the business of manufacture and sale of car and truck and redial tyres and the Pondicherry factory commenced the production activity in the year 1998, apart from its factory in Pondicherry, the respondent management also having its factories at Thiruvottriyur, Arakonam, Medak, Goa and Kottayam and the petitioner joined the service of the respondent management *vide* an apprenticeship dated 1-5-2000 and in the above order, it was stated that his apprenticeship period was for six months. Though he was appointed as an "Apprentice" no training was imparted to him and he was directed to work, which involved in production activities of the respondent factory and the respondent management again issued order dated 1-11-2000, appointing the petitioner as " Apprentice" and his so-called apprenticeship period was for six months and as per order of apprenticeship, dated 1-5-2001, the petitioner so called apprenticeship period came to an end with effect from 17-10-2001, and even after the expiry of the said period, the respondent management continued to engage the petitioner in the production activities, he had been rendering services continuously and to the utmost satisfaction of his superior officer.

(ii) The workers engaged in regular manufacturing activity were designated as Apprentices and probationer and many of them without any designation but said to be 'under observation' and the respondent management adopted such a practice in a bid to evade the application of the Labour Welfare Legislations and was in fact not complying with the Labour Laws and since the workers were denied various benefits under labour welfare legislations, they decided to

form a trade union to raise voice for their grievances. In the above circumstances, majority workers of the respondent management formed a trade union namely "MRF Thozhilalar Sangam" and the petitioner was an active member of the said union and the respondent management was duly informed about the information of the aforesaid trade union *vide* its communication dated 29-9-2001 and immediately after knowing about the information of the trade union, the respondent got furious and commenced its victimization program against the workers belonging to the "MRF Thozhilalar Sangam" and the management terminated all the 218 members of the trade union without following any procedures laid down under the Industrial Disputes Act and the petitioner was issued an order of termination dated 17-10-2001, alleging that his apprenticeship period come to automatic end by efflux of time and his apprenticeship stand declared as ceased with effect from close of work on 17-10-2001.

(iii) The "MRF Thozhilalar Sangam'' filed W.P. No.20591 of 2001 before the Hon'ble High Court, Madras and in the meanwhile, the respondent management started engaging outsiders to do the work hitherto done by the petitioner and other terminated workers and on behalf of the petitioner and other terminated workers, his union filed another writ petition *viz.*, W.P. No.19 of 2002 before the Hon'ble High Court, Madras seeking direction to the respondent management not to engage outsiders without providing employment to the members of the petitioner's union and in the meanwhile, with an ulterior motive, the respondent started its own puppet union under the name "MRF Employees Union" which closely resembled the petitioner union namely "MRF Thozhilalar Sangam" and that while this being so, the Hon'ble High Court was pleased to pass common order in W.P. No. 20561 of 2001 and 19 of 2002, in which, it was observed that situation created by the management was most unconscionable, monstrous and deplorable and the Hon'ble High Court was further pleased to hold that the fact of there not being single permanent worker on rolls of the factory betrays the glaring unfair labour practices of the respondent management and the Hon'ble High Court was further pleased to hold that it is the formation of the union that had triggered the spree of terminations. Both the writ petitions filed by his union *viz.*, W.P. No. 20591 of 2001 allowed by the Hon'ble High Court and directed the respondent management to reinstated the workmen with full backwages. As against the said order, the respondent management, preferred W.A. Nos. 2043 and 2044 of 2002 and during the pendency of the aforesaid appeal, the management had reinstated 49 workers including the petitioner in service.

(iv) It is further stated that in W.A. No. 2043 of 2002 the management had taken a stand that on reconsideration, out of 49 workers who were terminated from service, the management agreed for taking 10 persons who can be reinstated as probationer for one year but the respondent had not preferred to reinstate the petitioner and 38 workmen in service and on 4-1-2008, the Hon'ble High Court was pleased to pass orders in W.A. No. 2043 and 2044 of 2002 and W.A.M.P. No. 3454 of 2002 and W.P. Nos. 24183 of 2005 and W.P.M.P. No. 26395 of 2005 and in that order, the Division Bench of the Hon'ble High Court was pleased to state that the management has been allowed to reinstate the aforesaid ten workmen as probationers for one year and they may confirm them after one year, if there are vacancies and their performance is satisfactory and so far as rest of 39 workers, including petitioner, they raise an industrial disputes in respect of termination of their services, which may be adjudicated before the Labour Court/ Industrial Tribunal Court and hence, the petitioner is raising this industrial dispute against the termination of his services by the respondent management with effect from 17-10-2001.

(v) The termination of his services by the respondent management is unsustainable in law. The termination of petitioner service is unfair, unreasonable and unfair labour practice on the part of respondent management. The petitioner submits that from the date of his appointment in service, he had been performing his work, which is that of a permanent and perennial nature. Though the petitioner was designated as an apprentice, he was not given any training at all and was doing the same work as performed by the permanent workman. Hence the petitioner is not an Apprentice as defined in section 2(aa) of the apprentices Act. The petitioner is a workman within the meaning of section 2(s) of the Industrial Dispute Act 1947 and the termination of the petitioner without following procedures laid down under the Industrial Dispute Act, 1947 is unsustainable in law. The petitioner and other workers were victimized for their formation of the genuine trade union namely "MRF Thozhilalar Sangam". Though the petitioner and other workers were engaged in the manufacturing process in the factory of the respondent management by designating them as Apprentice and probationers, they were very

sincere and hard workers and they have contributed more for the respondent management for higher production. The act on the part of the respondent management in terminating the petitioner's services is vindictive and the colourable exercise of powers on the part of the respondent management. The attitude for the respondent management in terminating the petitioner's service is unjust and unfair labour practice adopted by the management.

(vi) The termination of his service by the respondent / management is "retrenchment" within the meaning of section 2 (aa) of the Industrial Disputes Act. The termination of the petitioner's services by the respondent management without following the provisions laid down under section 25 N of the Industrial Dispute Act and in any event section 25F of the Industrial Dispute Act, 1947 is unfair and unsustainable in law. Hence the impugned order of termination is void in law. There was no valid contract of apprenticeship between the petitioner and respondent management. The petitioner had been working under the respondent management continuously without any break from the date of his appointment in service and had worked continuously for about 1½ year. By virtue of his permanent and perennial nature of work the petitioner was entitled to be appointed as permanent workman. The petitioner is the sole breadwinner of his family and due to his termination from service, the petitioner and his family have been facing undue mental and economic hardship.

(vii) It is further stated that the petitioner was terminated from service *vide* order of the respondent dated 17-10-2001, he did not raise any industrial dispute immediately due to the reasons that on behalf of him and other terminated workers, his union had taken up the issue by way of filing writ petitions before the Hon'ble High Court, Madras and against the order passed in the writ petition, the respondent management preferred writ appeal and after the disposal of the above writ appeal, the petitioner union preferred Special Leave petition before the Hon'ble Supreme Court and the same was dismissed on 22-5-2009 and that thereafter petitioner union dispute and subsequently on legal advice, the petitioner raised dispute under section 2-A of the Industrial Dispute Act on 30-4-2012 against the termination of his services and the conciliation proceedings ended in failure on 24-6-2013 hence some delay has been caused in raising the dispute and such delay are neither willful nor wanton. He has not been gainfully employed anywhere and prayed this court to direct the respondent/ management to reinstate the petitioner with backwages, continuity of service and all other attendant benefits and award costs.

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

(i) The claim of the petitioner are baseless, vexatious, devoid of merits and is not maintainable either in law or on facts and hence liable to be dismissed in limini and the petitioner has no locus standi to raise any industrial dispute as against this respondent, since he was only a trainee and not a workman of the respondent management and the extraordinary delay in approaching this Court by the petitioner cannot be condoned as the reason given by him is not a satisfying or substantial reason for not approaching this Hon'ble Court or the Conciliation Authority at the right time and that even the previous petition filed by the "MRF Thozhilalar Sangam" before the Conciliation Authority was filed at a highly belated stage and knowing well that they cannot succeed in the said dispute, they had withdrawn the same and the contention rose by the petitioner before the Hon'ble court are devoid of merit and concocted with reference to the facts alleged and that the factory at Puducherry commenced trial production in the year 1998 and manufactures various radial tyres which is highly technical and is a complicated one and uses logistic control and the workers are given in-depth training on various machines, so that each workman is able to operate all machines and is not merely specializing on a particular machine. Besides that the technology involved is totally indigenous and it takes for the workmen time in learn the various skills on each machine and the workers have been inducted in a pleased manner over the past years and that the practice followed in the factory in Puducherry is of recruiting persons from nearby villages of Puducherry who mostly do not posses qualification beyond 12th standard, this has been done, so that people of the local villages would be able to benefit from the new factory that has come up in their vicinity and there are no Trade Apprentices for Tyre Industry and these individuals were taken as apprentices to examine their suitability to learn and assimilate the highly skilled process of manufacture of radial tyres and as a policy in all the factories only raw hands are recruited and the present factory started with 12 numbers of machines and now the number of

machines installed slowly progressed and the numbers of apprentices taken were also gradually increased keeping pace with the number of machines that were newly installed and that these types of machine are the most advanced version which was not used in any other factory of the respondent management and therefore that was an added reason as to why the training had to be imparted carefully and meticulously over a period of time in a phased manner.

(ii) It is further stated that in order to impart training to these persons, the respondent company had engaged about 79 supervisors, drawn from its other factories as they had experience, under whose immediate supervision the apprentices learn how to work on various machines installed and obviously conscious of the need to learn how to operate all these highly sophisticated technically advanced machines that involved electronic operations as well, the apprentices had no objection whatsoever to learn the trade and that the petitioner is not a workman/ employee of the respondent management and he was an Apprentice, as stated above who was given training under the Company's scheme on and from 1-5-2000 and was paid stipend during the period of his training as per the terms and conditions of apprenticeship order issued to him and his apprenticeship was discontinued in accordance with the said contract *vide* order, dated 17-10-2001 and that from the date of his joining he had been rendering his service continuously and to the utmost satisfaction of his superior officer is vehemently denied. The MRF Thozhilalar Sangam (with whom the petitioner alleges to be a member) in order to gain support, instigated the workmen and Apprentices to go slow and also had created a serious industrial unrest in the factory and from 3-10-2001 the workmen and Apprentices including the petitioner had started to involve in go slow activities and they had also boycotted the canteen facilities and refused to have lunch and indulged in anti-management activities. Therefore, a notice was issued on 10-10-2001 that the preparation of food would be stopped on and from 13-10-2001 if such an attitude continued and as they refused to cooperate, the management stopped preparing food and the production of tyres at the rate of 1877 as on 30-9-2001 had become reduced day by day, ultimately coming down to 112 tyres as on 20-10-2001. The apprenticeship of 43 Apprentices including the petitioner were discontinued in accordance with the contract, as there was no work and therefore consequently no training could be imparted to them as production had totally stopped from 22-10-2001 and besides, as there was no work, the casuals were also dispensed with and in the meantime, there had been various acts of indiscipline and unlawful activities indulged by the workmen and they also indulged in atrocities creating law and order situation and caused loss and damage to the properties of the company and on 9-10-2001 they prevented the movement of a loaded lorry and on 24-10-2001 they came to the factory gate shouting slogans and threatened the management staff and blocked and management staff from leaving after the first shift and on the intervention by the police they were let out and on 25-10-2001 they entered in to the canteen and thrown the plates and upset the Bain marie system and on 27-10-2001 they entered the Godown where the finished products were stored and pulled down the shutters in the Godown Supervision and Production Supervisor and on 11-10-2001 they refused to leave the premises and only after the intervention of Police, the workmen left the premises.

(iii) The contentions of the petitioner that 218 members of the MRF Thozhilalar Sangam without following any procedures laid down under the Industrial Disputes Act and that the respondent management is having the practice of victimizing its own workmen if they indulge in trade union activities and that the respondent is having the practice of evading application of labour welfare legislations are total falsehood and are vehemently denied by the respondent. As the trial production was a time consuming process, after commissioning of the factory, only persons who have been trained and found suitable can be absorbed into permanent post and therefore the formation of union had nothing to do with terminating the workers and as such it is stoutly denied that the workers were victimized for the formation of trade union and as admitted by the petitioner, the respondent has factories in other places where there are unions and there can be no accusation of the management trying to curtail the legitimate union activities.

(iv) It is further stated that the respondent started engaging outsider to do the work hitherto done by the petitioner and other terminated workers and that the respondent started its own puppet union under the name "MRF Employees Union" with ulterior motive and that the respondent has reinstated 49 workers including the petitioner during the pendency of Writ Appeal before the Hon'ble High Court are

emphatically denied by this respondent and submits that there is no iota of truth in the same and only 10 persons were taken back as probationers *vide* Probation orders dated 22-2-2008 and were subsequently confirmed in service as per the judgment passed by the Hon'ble High Court of judicature at Madras in Writ Appeal Nos. 2043 and 2044 of 2002 modifying the orders in W.P. No. 20591 of 2001 and W.P. No.19 of 2002 and as per the said judgment in the said writ appeals the Hon'ble High Court has observed that 'on behalf of the rest of the 39 workmen the union may raise an industrial dispute in regard to their dismissal/termination' but had not specifically stated that the individuals may prefer industrial dispute as they were not workmen but were only Apprentices and though the petitioner has admitted that the union has raised an industrial dispute with reference to the said 39 persons, later it had withdrawn the said dispute for the reasons best known to the petitioner and further the petitioner has not given any clear reason as to why the union has withdrawn the industrial dispute raised earlier on behalf of 39 persons and why the petitioner is now again belatedly preferring this dispute individually as against the order of the Hon'ble High Court and further in the same judgment the Hon'ble High Court has directed the MRF Thozhilalar Sangam to approach the appropriate forum for appropriate relief in respect of genuineness of the union and as on date the union has not done anything with reference to the same.

(v) It is further stated that the respondent management had not involved/indulged in any sort of unfair labour practice, much less and alleged by the petitioner at any point of time and further as the petitioner was only an Apprentice, hence section 25 F and 25 N of the Industrial Dispute Act will not attract and further, the appointment of the petitioner as an Apprentice cannot be termed as unfair labour practice under Schedule V of the Industrial Dispute Act and the discontinuance of the apprenticeship of the petitioner is as per the terms of the apprentice order issued to him and the terms and conditions of which was admitted and accepted by him and hence the said discontinuance is fair, just and proper and that this is a case of discontinuance of apprenticeship governed by the terms and conditions of his apprenticeship order and hence the petitioner's claim of alleged non-employment does not arise and are devoid of merits and prayed for dismissal of the petition.

4. In the course of enquiry PW. l was examined and Ex. P1 to Ex. P 11 were marked and on the side of the respondent RW. 1 was examined and Ex.Rl was 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 side arguments were heard. Written arguments were filed by both sides. In support of his case, the learned counsel for the petitioner has relied upon the Judgment reported in 2006 (1) L.L.N. Ps. No. 554, Telecom District Manager, Valsad *Vs.* Namlabai Ranchhodbhai Patel, Wherein, the Hon'ble High Court, Gujarat has held as follows:

> "4. Industrial Disputes Act, 1947, S.25-F, Non-compliance with effect - held, where pre-requisite for valid retrenchment as laid down in section 25-F has not been complied with retrenchment bringing about termination of service is ab-initio void-Workman is entitled to reinstatement"

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

(i) National Small Industries Corporationn *Vs.* Lakshminarayanan (Supreme Court dated 10-11-2006)

(ii) Vijayalakshmi Insecticides and Pesticides Ltd., Hyderabad *Vs.* Chairman, Industrial Tribunal-*cum*-Labour Court, Visakapatnam and others (2004 L1R 387-A.P. High Court).

(iii) Ram Babu Gupta *Vs.* Presiding Officer, Labour Court, Allahabad and another (2005 LLR 241-Alahabad High Court).

(iv) Management of Otis Elevator Co. *Vs.* Presiding Officer, Industrial (Delhi High Court dated 22-4-2003).

(v) Kamal Kumar Vs. J.P.S Malik Presiding Officer, Labour Officer (Delhi High Court dated 18-5-1998).

(vi) Kartik Ramachandran. R. *Vs.* P.O. Labour Court and Anr. (Delhi High Court dated 19-10-2006).

(vii) Raj Kumar Rastogi *Vs.* P.O. Labour Court-X and Anr (Delhi High Court, dated 18-5-2015).

(viii) Gujarat Electricity Board *Vs.* Balkhan D. Joya (Gujarat High Court, dated 29-2-2000).

8. This application is filed against the termination of the petitioner from service by the respondent management seeking an award directing the respondent to reinstate the petitioner into service and all other attendant benefits.

9. It is the evidence of PW. l that the petitioner joined in the service of the respondent management as an Apprentice as per the order issued by the respondent

on 1-5-2000 and after the apprentice period of six months the petitioner was appointed for the production activities of the respondent factory and again apprentice order was issued on 1-11-2000 and apprentice period came to an end with effect from 30-4-2001 and even after the expiry of the said period the respondent management engaged the petitioner in the production activities and the petitioner was designated as an "Apprentice" and he was engaged directly for the manufacturing activities of the respondent management and many of the apprentice and probationers were not given any designation and the respondent management adopted such a practice to evade the application of the Labour Welfare Legislations and avoid the Labour Laws and the union workers were denied various benefits under Labour Welfare Legislations and that therefore the trade union namely MRF Thozhilalar Sangam was formed by the workers and the respondent management was also informed about the formation of the trade union under their communication dated 29-9-2001 and therefore the respondent management has got furious and commenced its victimization program against the workers belonging to the union and the management terminated all the 218 members of the trade union without following any procedures laid down under the Industrial Disputes Act and this petitioner was issued an order of termination on 17-10.2001 alleging -that the apprenticeship period comes to an end and on behalf of the terminated workers MRF Thozhilalar Sangam has filed a writ petition in W.P. No. 20591 of 2001 and on behalf of the petitioner and other terminated workers the union has filed a writ petition in W.P. No. 19 of 2002 seeking the direction against the respondent not to engage out siders without first providing employment to the members of the petitioner's union and that respondent started its own puppet union in the name of MRF Employees Union and the Hon'ble High Court was pleased to pass common order in W.P. No. 20591 of 2001 and 19 of 2002 allowing the writ petition and directed the respondent management to reinstate the workmen with full backwages and against the said order the respondent management preferred Writ Appeal No.2043 and 2044 of 2002 and during the pendency of the Appeal, the Court has directed the management to reinstate the 49 workers including the petitioner in service and in the Appeal the management had taken stand that on consideration out of 49 workers who were terminated from service, the management has agreed for taking 10 persons and reinstated as probationers for one year but the respondent had not preferred to reinstate the petitioner and 38 workmen in service and on 4-1-2008, the Hon'ble High Court was pleased to pass order to reinstate the above said 10 workmen as probationers for one year and they may confirm them after one year, if there are vacancies and their performance is satisfactory and therefore the rest of 39 workers including the petitioner raised an industrial dispute in respect of termination of the service and the petitioner is raising the industrial dispute against the termination of his service by the respondent management with effect from 17-10-2001.

10. In support of his claim statement and evidence, the petitioner has exhibited the copy of the Apprenticeship order issued by the respondent on 1-5-2000 as Ex. P1, the copy of another Apprenticeship order issued by the respondent on 1-11-2000 as Ex. P2, the copy of another Apprenticeship order issued by the respondent on 1-5-2001 as Ex.P3, the copy of the advance notice dated 29-9-2001 given by the petitioner union to the respondent as Ex. P4, the copy of the memo. dated 9-10-2001 issued by the respondent as Ex. P5, the copy of the order passed in W.P. No. 20270, 20591 and 19/2002 on 10-6-2002 as Ex. P6, the copy of the order passed in W.P. No. 2043/02 and 2044/02 on 4-1-2008 as Ex. P7, the copy of the 2-A petition filed by the petitioner on 30-4-2012 as Ex.P8, the copy of the counter statement of the respondent dated 16-7-2012 as Ex. P9, the copy of the rejoinder filed by the petitioner, dated 22-8-2012 as Ex. P10, the copy of the conciliation failure report dated 24-6-2013 as Ex. P11. The above documents and oral evidence of PW 1 would go to show that petitioner has joined in the respondent establishment on 1-5-2000 as an apprentice and he has served till 17-10-2001 and thereafter, he was terminated from service in the year on 17-10-2001 against which the union has filed the writ petition before the Hon'ble High Court in W.P. No. 20591/2001 and another writ petition was filed in W.P. No. 19/2002 and the Hon'ble High Court was pleased to direct the respondent to reinstate 218 workmen against which the respondent management filed writ Appeal in W.A. No. 2043 and 2044/ 2002 in which the Hon'ble High Court was pleased to direct the respondent to reinstate the 49 workmen but the respondent management has only reinstated 10 workmen and including the petitioner 39 workmen have been denied employment and on 4-1-2008 an Appeal was ordered by the Hon'ble High Court and directed the respondent management to confirm the appointment of the 10 workmen and directed the petitioner and other 38 employees to raise industrial dispute before the Conciliation Officer and at the Conciliation all the other labourers have been settled by the respondent management and this petitioner had been denied employment and that therefore he has filed this application for reinstatement.

11. It is the evidence of the respondent RW 1 that the petitioner has no locus standi to raise industrial dispute as against the respondent since he was only a Trainee/Apprentice and not a workman of the respondent management and that the petitioner has raised this industrial dispute with the extraordinary delay before this court and before the Conciliation authority and the respondent factory commenced production in the year 1998 and manufactures various radial tyres which is highly technical and is a complicated one and uses logistic control and that the workmen are given in-depth training on various machines so that each workmen is able to operate all machines and is not merely specializing on a particular machine and to give benefit to the people of the local villages the persons who are having qualification of 12th standard were appointed as Apprentices and examine their suitability to learn and assimilate the highly skilled process of manufacture of radial tyres and the present factory started with 12 number of machines and number of apprentices taken were also gradually increased keeping pace with the number of machines that were newly installed and the training had to be imparted carefully and meticulously over a period of time in a phased manner and that in order to impart training to these persons the respondent management had engaged about 79 supervisors appointed from its other factories as they had experience, under whose immediate supervision the apprentices learn how to work on various machines installed and the apprentices who were appointed on 1-5-2000 and the petitioner who are appointed as apprentice was paid stipend during the period of his training as per the terms and conditions of Apprenticeship order issued to him and his apprenticeship was discontinued in accordance with the said contract *vide* order, dated 17-10-2001 and that therefore the petitioner was not a workmen employed by the respondent management and no training was imparted to him.

12. It is the further evidence of the respondent that the workmen by way of go-slow working, boycotting canteen facilities, preventing movement of the management staffs, raising slogans against the management staffs and threatened them from 3-1-2001 and therefore the production of the factory was seriously diminished and this industrial unrest scenario, the probationary period of about 6 probationers were brought to an end as the same had come to an end by efflux of time and the apprenticeship of 43 apprentices including the petitioner were discontinued in accordance with the contract, as there was no work and therefore consequently no training could be imparted to them as production had totally stopped from 22-10-2001 and that they have not having any practice of victimization of workmen since indulged in trade union activities and that only the persons who have been trained and found suitable can be absorbed into permanent post and that therefore formation of union had nothing to do with the termination, of the workers and the respondent management never tried to curtail the legitimate union activities.

13. It is the further evidence of the respondent RW.1 that they have never reinstated 49 workers at any time and only 10 persons were taken back as probationers *vide* Probation Order dated 22-2-2008 and subsequently they were confirmed as per the Judgment passed by the Hon'ble High Court of Judicature at Madras in Writ Appeal Nos.2043 and 2044 of 2002 modifying the orders in W.P. No .20591 of 2001 and W.P. No. 19 of 2002 and in the Writ Appeals the Hon'ble High Court was observed that the rest of the workmen of the union may raise the industrial dispute in regard to their dismissal/ termination and that petitioner was not clear why the union has withdrawn the industrial dispute raised on behalf of the 39 persons and that the respondent management has not indulged in any sort of unfair labour practice as alleged by the petitioner and since the petitioner is not a workmen and only he is an apprentice, Section 25 F and 25 N of the Industrial Dispute Act would not attract and in support of his case, the respondent has exhibited Ex.R1 Apprenticeship order issued to the petitioner by the respondent management on 1-5-2000.

14. From the evidence of the petitioner and the respondent, it is found that the following factors are admitted by both the parties that the petitioner has joined as an Apprentice in the respondent factory on 1-5-2000 and he had served till 9-10-2001 as an apprentice and against which the petitioner union has filed writ petition before the Hon'ble High Court in W.P. No. 20591 of 2001 and 19 of 2002 in which the Hon'ble High Court was pleased to direct the respondent management to reinstate the petitioner and other employees against which the respondent management has filed a Writ Appeal in W.A. No. 2043 and 2044 of 2002 in which the Hon'ble High Court was pleased to set aside the order of the Hon'ble High Court and directed to confirm the appointment of the 10 employees as permanent employees and directed the 39 employees including the petitioner to raise the industrial dispute before the Conciliation authority and the petitioner and his union raised the industrial dispute before the Conciliation Officer and subsequently the

union has withdrawn the industrial dispute raised before the Conciliation officer and since the dispute raised by the petitioner before the Conciliation officer was failed, he filed this application before this court under section 2-A (2) of the Industrial Disputes Act for reinstatement with backwages, continuity of service and all other attendant benefits.

15. The main contention of the respondent management is that the petitioner is not a workmen and he was working only as an Apprentice and the workers in the respondent factory requires skill and the petitioner has only served as an apprentice and never worked as an workmen, he was only a trainee. On the other hand, it is denied by the petitioner that he is only the trainee apprentice and not the workmen of the respondent factory and only as he involved in union activities, he and other employees has been victimized by the respondent management and that he is entitled for order of reinstatement as a workmen of the factory.

16. On this aspect, the evidence and pleadings of both the parties are carefully considered. The evidence of PW.1 runs as follows;

"எதிர்மனுதாரர் நிர்வாகத்தில் 1-5-2000-ம் தேதியில் நான் பயிற்சியாளராக சேர்ந்தேன் என்று சொன்னால் சரிதான். மேற்படி பயிற்சியாளர் உத்தரவுபடி எனக்கு தினம் உதவி தொகையாக ரூபாய் 45.00 கொடுப்பார்கள் என்று சொன்னால் சரிதான். நான் அந்த உத்தரவில் கண்ட ஷரத்துக்களை ஒப்புக்கொண்டு கையொப்பமிட்டு கொடுத்த கடிதம் தான் ExR1 ஆகும். மீண்டும் 1-11-2000-ம் தேதியின் உத்தரவுபடி பயிற்சியாளராக தொடர்ந்தேன், அதற்கு ரூபாய் 55.00-ஆக தின உதவித் தொகையாக கொடுத்தார்கள் என்றால் சரிதான். மீண்டும் 1-5-2001-ம் தேதி உத்தரவுபடி பயிற்சியாளராக சேர்ந்தேன், அதற்கு ரூபாய் 65.00-ஆக தின உதவித் தொகையாக கொடுத்தார்கள் என்றால் சரிதான். MRF Company 1998-ல் ஆரம்பிக்கப்பட்டது என்று சொன்னால் சரிதான். MRF Company-ல் சேருவதற்கு முன்பு நான் 10-ம் வகுப்பு தேர்ச்சி பெற்றவன் என்று சொன்னால் சரிதான். பணியில் சேர்வதற்கு முன்பு நான் வேறு எங்கும் tyre குறித்து படிப்போ, பயிற்சியோ பெறவில்லை என்று சொன்னால் சரிதான். புதுச்சேரியில் MRF Company-யை தவிர வேறு tyre கம்பெனி இல்லை என்று சொன்னால் சரிதான். MRF Company-ன் அருகில் வசிப்பவன் தான் நான் என்று சொன்னால் சரிதான். என்னை மாதிரி தான் மற்றவர்களையும் பயிற்சியாளராக சேர்த்துக்கொண்டனர் என்று சொன்னால் சரிதான். தொழிற்சாலையில் அப்போது மேற்பார்வையாளர்கள் இருந்தனர். அவர்களின் கண்காணிப்பின் பேரில் தான் நான் பயிற்சி பெற்றேன் என்று சொன்னால் சரிதான். நான் MRF தொழிலாளர் சங்கத்தில் உறுப்பினராக இருந்தேன். 2000-ம் ஆண்டு மேற்படி சங்கம் ஆரம்பிக்கப்பட்டது. நான் எனது உறுப்பினர் அட்டை எதுவும் தாக்கல் செய்யவில்லை. நான் 2000-ம் ஆண்டு தான் உறுப்பனராக சேர்ந்தேன். எதிர் மனுதாரர் நிர்வாகத்தில் நான் மேற்படி சங்க உறுப்பினர் என்று தெரிவித்துள்ளேன். அதற்குரிய ஆவணத்தை நான் நீதிமன்றத்தில் எதுவும் தாக்கல் செய்யவில்லை. 2000-ஆம் ஆண்டு நான் மேற்படி சங்கத்தில் உறுப்பினராக இல்லை என்றும் நான் மேற்படி உறுப்பினர் என்று பொய் சாட்சி சொல்கிறேன் என்றால் சரியல்ல. EX. P5-ல் எனது பயிற்சி காலம் 2001-ல் முடிவடைந்துவிட்டது என்று உள்ளது என்று சொன்னால் சரிதான். எதிர்மனுதாரர் நிர்வாகத்திலிருந்து என்னை மேற்படி தொழிலாளராக நியமித்த உத்தரவு எதுவும் இல்லை. எனக்கு மாத சம்பளம் எதுவும் வழங்கப்படவில்லை Stipend மட்டுமே கொடுத்தார்கள் என்றால் சரிதான்.

From the above evidence, it is clear that the petitioner has admitted the fact that he has joined in the respondent factory as a apprentice trainee along with the others from 1-5-2000 till 2001 and the documents produced by the petitioner also disclose that he has joined as an apprentice on 1-5-2000 and subject to the terms and conditions mentioned in the Apprentice order which would reveal the fact that the respondent, management does not grant any automatic confirmation in service at the end of the apprenticeship period. Though the petitioner has stated in the evidence that he has served in the respondent factory after completion of training till 17-10-2001 in the production activities, nothing is before this court to prove the said contention of the petitioner. On the other hand, it is stated by the petitioner that he was terminated from service on 17-10-2001 and therefore the contention raised by the petitioner that he was utilized for production activities by the respondent management till 17-10-2001 is not established by him and except the oral evidence of the petitioner, no piece of paper is before this court that he was utilized for production activities by the respondent management till 17-10-2001.

17. On this aspect, the Learned Counsel for the respondent relied upon the following decisions :

(i) National Small Industries Corporation. Vs. Lakshminarayanan (Supreme Court dated 10-11-2006) Wherein,it has been held that,

"from the aforesaid documents it would be evident that even if the respondent had been working on a daily-wage basis prior to his appointment as Apprentice Trainee (Shop Assistant), at least from 3rd May, 1990 till 2nd May, 1992, he was working as an apprentice on a consolidated salary and the respondent himself was conscious of such fact since he had requested the corporation and its authorities to absorb his services on a permanent basis purportedly on the basis of a promise held out at the time when he was interviewed for appointment to the post of Apprentice Trainee (Shop Assistant). Other

than the assertion made on behalf of the respondent that the appellant had agreed to absorb the respondent in Group 'D' Category as Peon/Shop Assistant after completion of apprenticeship and the recommendation said to have been made by the General Manager indicating that the respondent could be appointed and taken as a permanent worker, there is no other, material on record to support the case made out by the respondent. In the absence of any such material, it is difficult to understand the reasoning of the Labour Court that the respondent was not an "apprentice trainee" but a "workman" who was made to perform a full-time job under the guise of an Apprentice Trainee. The High Court appears to have been impressed by the reasoning of the Labour Court with regard to the finding that although designated as an apprentice, the respondent was not undergoing training, but was an employee doing full time work in the establishment. Such a view, in our judgment, is not supported by the materials on record and. is completely contrary to the appointment letter issued to the respondent on 26th April, 1990 and the respondent's own letter dated 29th April, 1992, in admission of such fact. Had such a letter of appointment not been available, the Labour Court and/or the High Court could justifiably have embarked on an exercise as to whether the respondent was in effect a "trainee" under the Apprentices Act, 1961, or a "workman" within the meaning of Section 2 (s) of the 1947 Act. There is nothing on record to indicate that the respondent's services had ever been regularised or that he was brought on the rolls of the permanent establishment".

(ii) Vijayalakshmi Insecticides and Pesticides Ltd., Hyderabad Vs. Chairman, Industrial Tribunal - cum - Labour Court, Visakapatnam and others (2004 L1R 387-A.P. High Court) wherein, it has been held that,

"A. Trainee-Termination made for his unsatisfactory work even during extended period of training - Industrial Tribunal held, it illegal and passed awards for reinstatement - Management being aggrieved, have filed these petitions - Challenging awards - High Court set aside the award - The termination of a trainee not being a workman under the Industrial Dispute Act, 1947 is neither retrenchment, nor illegal.

B. Industrial Dispute Act, 1947 - Sections 2A, 2(s) - Workman - Trainees terminated for unsatisfactory work even during extended period of training - Held that trainee not a workman under 2A of the Act - Dispute not maintainable - Award being illegal, quashed.

A trainee will not be a workman under the Industrial Disputes Act and, as such, he cannot challenge his termination as made by the employer for his unsatisfactory work even during the extended period of training.

Termination of a trainee, who is not a workman, will neither be retrenchment nor illegal.

(iii) (Ram Babu Gupta Vs. Presiding Officer, Labour Court, Allahabad & another (2005 LLR 241 - Alahabad High Court) wherein, it has been held that

"High Court will not interfere with the finding of facts by the Labour Court holding that the petitioner being an apprentice and not a workman was not entitled to any relief since his termination did not amount to retrenchment under the purview of Industrial Disputes Act.

Merely because an agreement for apprenticeship, though entered between the parties, has not been registered under the Apprentices Act, it will not change the status of the apprentice to a 'workman' under the Industrial Disputes Act and his termination sans retrenchment compensation will not be illegal".

(iv) Management of Otis Elevator Co. Vs. Presiding Officer, Industrial (Delhi High Court dated 22-4-2003) wherein, it has been held that

"Similar contention of the petitioner that a trainee cannot be called a workman as envisaged under Section 2(s) of the Industrial Disputes Act was also urged- in Kamal Kumar. V, J.P.S. Malih, P.O., Labour Court and Ors. In the said decision it was held that although Section 2(s) of the Act uses the expression 'apprentice', but merely using the word 'apprentice' within the definition of 'workman' would not confer a right on a trainee to be called a 'workman' within the meaning of Section 2(s) of the Industrial Disputes Act, The said decision also related to a person who was similarly engaged as that of the respondent No. 2 herein. There the petitioner was appointed by the company as a trade trainee and the relationship of the petitioner therein and the management was also governed by similar terms and conditions as stipulated in the present contract between the petitioner and the respondent No.2. Considering the various cases this court held that as the petitioner therein had failed to prove and establish that he was employed in the respondent company

to do any skilled or unskilled manual, supervisory or clerical work for hire or reward, therefore he was a trainee and not a workman and the writ petition was disposed of in terms of the aforesaid observations".

(v) Kamal Kumar Vs. J.P.S Malik Presiding Officer Labour Officer (Delhi High Court, dated 18-5-1998) wherein, it has been held that

"Admittedly in the present case the provisions of Apprenticeship Act is not applicable. During the period of training the petitioner was given a stipend of ₹ 350 A close examination of the terms and conditions of the contract entered into between the petitioner and the respondents leads to the conclusion that the principal object with which the parties entered into the agreement of training was an offer by the employer to the petitioner to have an opportunity to learn trade or craft to acquire such knowledge that may be obtained in the course of training. From the aforesaid terms of the agreement, it is clear that the petitioner was a mere trainee for a particular period and for a distinct purpose and the respondent was not bound to employ him in their works after the period of training is over. It, therefore, cannot be said that the petitioner was a workman of the respondent company, in as much as, the purpose of engagement of the petitioner was only to offer him training under the terms and conditions stipulated above. No wage was paid to the petitioner as defined within the meaning of wages under the Industrial Disputes Act. Merely because some amount was paid to the petitioner as Provident Fund, it cannot be said that he had become a workman of the Respondent Company".

From the above observations of the Hon'ble High Court and the Hon'ble Supreme Court, it is clear that an apprentice or trainee cannot fall under definition of workmen and that therefore the petitioner being the trainee apprentice cannot raise any industrial, dispute and therefore he is not entitled for the relief of reinstatement.

18. Furthermore, though the petitioner has received a stipend from the respondent management even if it is termed as daily wages, he is also failed to establish that he had been in service continuously for 240 days in the respondent management as a workmen. In the light of the Judgment reported in 2015-III-LLJ-337 (P&H), LNIND 2015 PNH 8216, Wherein it has been held that

"Daily Wager - Reinstatement - Industrial Disputes Act, 1947 (Act 1947), Sections 25-G and 25-H -Industrial Tribunal ordered reinstatement of respondent No. 2 - petitioner contends respondent daily wager cannot be reinstated for failing to complete requisite number of working days - Whether Sunday can also be included to calculate days of employment in case of daily-wager and whether daily-wager is entitled to reinstatement-Held, in a case of a daily-wager, Sunday and other holidays arc not to be counted because he is not paid any salary for that day - Workman has not worked for requisite days and his service is terminated in violation of Section 25-G and 25-H of Act 1947 - Since workman/respondent No. 2 has not completed requisite days, therefore, he is not entitled to any compensation as well as reinstatement - Petition allowed''.

From the above observation of the Hon'ble High Court, it is clear that the petitioner has not established that he has completed requisite number of working days and therefore he is not entitled to any order of reinstatement as claimed by the petitioner and therefore it is held that the petitioner has failed to establish his case and he is not entitled for any relief as prayed for and therefore, the application filed by the petitioner is liable to be dismissed.

19. 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 27th day of March, 2017.

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

List of petitioner's witnesses:

PW.1 — 3-11-2014 D. Baskar

List of petitioner's exhibits:

Ex.P1 — 1-5-2000	Copy of the Apprenticeship order.
Ex.P2 — 1-11-2000	Copy of the Apprenticeship order.
Ex.P3 — 1-5-2001	Copy of the Apprenticeship order.
Ex. P4 — 29-9-2001	Copy of the advocate notice
Ex. P5 —17-10-2001	Copy of the memo issued to pettitioner.
Ex. P6 — 10-6-2002	Copy of the order passed in W.P. No. 20270, 20591 and 19/2002.

Ex. P7 —	4-1-2008	Copy of the order passed in W.P. No.2043/02 & 2044/02.
Ex. P8 —	30-4-2012	Copy of the 2-A petition field by the petitioner.
Ex. P9 —	16-7-2012	Copy of the counter statement of the repondent.
Ex. P10 —	22-8-2012	Copy of the rejointer statement of the petitioner..
Ex. P11—	24-6-2013	Copy of the concilation failure report issued to petitioner.

List of Respondent's witness:

RW1 —	6-1-2016	C. Rajadurai

List of Respondent's exhibits:

Ex.R1 —	1-5-2000	Apprenticeship order

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

GOVERNMENT OF PUDUCHERRY

LABOUR DEPARTMENT

(*G.O. Rt. No. 62/Lab./AIL/T/2017, Puducherry, dated 24th April 2017)*

NOTIFICATION

Whereas, the Award in I.D.(L) No. 41/2013, dated 27-3-2017 of the Industrial Tribunal-*cum*-Labour Court, Puducherry in respect of the industrial dispute between Thiru K.S. Karthikeyan S/o.V. Subramanian, Puducherry against the management of M/s. MRF Limited, Eripakkam Village, Puduchcrry over to reinstate the petitioner with back wages, 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 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 27th day of March 2017.

I.D. (L) No. 41/2013

K.S. Karthikeyan, . . Petitioner
S/o. V. Subramanian,
Pillayarkoil Street,
Kariamanikkam,
Puducherry.

Versus

The Management of MRF Limited,
Eripakkam Village,
Nettapakkam Commune,
Puducherry-605 106. . . Respondent

This industrial dispute coming on 21-2-2017 before me for final hearing in the presence of Thiru P. Chandrasekar, Counsel for the petitioner and Thiruvalargal K. Babu and C. Arivajagne, Advocates for the respondent, upon hearing both sides, upon perusing the case records, after having stood over for consideration till this day, this Court passed the following:

AWARD

1. This is a petition filed by the petitioner under section 2-A(2) of the Industrial Disputes Act praying to, direct the respondent/Management to reinstate the petitioner with back wages, continuity of service and all other attendant benefits.

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

(i) The petitioner is constrained to raise this dispute against the illegal termination of his service by the respondent management with effect from 9-10-2001. He was a workman, employed by the respondent management and the said management is a company registered under the Companies Act and engaged in the business of manufacture and sale of car and truck and redial tyres and the Pondicherry factory commenced the production activity in the year 1998, apart from its factory in Puducherry, the respondent management also having its factories at Thiruvottriyur, Arakonam, Medak, Goa and Kottayam and the petitioner joined the service of the respondent

management *vide* an apprenticeship order, dated 1-5-2000 and in the above order, it was stated that his apprenticeship period was for six months. Though, he was appointed as an "Apprentice" no training was imparted to him and he was directed to work, which involved in production activities of the respondent factory and the respondent management again issued order, dated 1-11-2000, appointing the petitioner as "Apprentice" and his so-called apprenticeship period was for six months and as per order of apprenticeship, dated 1-11-2001, petitioner so called apprenticeship period came to an end with effect from 30-4-2001, and even after the expiry of the said period, the respondent management continued to engage the petitioner in the production activities and from the date of his joining in service, he had been rendering service continuously and to the utmost satisfaction of his superior officer.

(ii) The workers engaged in regular manufacturing activity were designated as Apprentices and probationer and many of them without any designation but said to be 'under observation' and the respondent management adopted such a practice in a bid to evade the application of the Labour Welfare Legislations and was in fact not complying with the Labour Laws and since the workers were denied various benefits under labour welfare legislations, they decided to form a trade union to raise voice for their grievances and in the above circumstances, majority workers of the respondent management formed a trade union namely "MRF Thozhilalar Sangam" and the petitioner was an active member of the said union and the respondent management was duly informed about the information of the aforesaid trade union *vide* its communication, dated 29-9-2001 and immediately after knowing about the information of the trade union, the respondent got furious and commenced its victimization program against the workers belonging to the "MRF Thozhilalar Sangam" and the management terminated all the 218 members of the trade union without following any procedures laid down under the Industrial Disputes Act and the petitioner was issued an order of termination, dated 9-10-2001, alleging that his apprenticeship period come to automatic end by efflux of time and his apprenticeship stand declared as ceased with effect from close of work on 9-10-2001.

(iii) The "MRF Thozhilalar Sangam" filed W.P. No. 20591 of 2001 before the Hon'ble High Court, Madras and in the meanwhile, the respondent management started engaging outsiders to do the work hitherto done by the petitioner and other terminated workers and on behalf of the petitioner and other terminated workers, his union filed another writ petition *viz.*, W.P. No. 19 of 2002 before the Hon'ble High Court, Madras seeking direction to the respondent management net to engage outsiders without providing employment to the members of the petitioner's union and in the meanwhile, with an ulterior motive, the respondent started its own puppet union under the name "MRF Employees Union" which closely resembled the petitioner union namely "MRF Thozhilalar Sangam" and that while this being so, the Hon'ble High Court was pleased to pass common order in W.P.No.20591 of 2001 and 19 of 2002, in which, it was observed that situation created by the management was most unconscionable, monstrous and deplorable and the Hon'ble High Court was further pleased to hold that the fact of there not being single permanent worker on rolls of the factory betrays the glaring unfair labour practices of the respondent management and the Hon'ble High Court was further pleased to hold that it is the formation of the union that had triggered the spree of terminations and both the writ petitions filed by his union *viz.*, W.P. No. 20591 of 2001 allowed by the Hon'ble High Court and directed the respondent management to reinstated the workmen with full back wages and as against the said order, the respondent management, preferred W.A. Nos. 2043 and 2044 of 2002 and during the pendency of the aforesaid appeal, the management had reinstated 49 workers including the petitioner in service.

(iv) It is further stated that in W.A. No. 2043 of 2002 the management had taken a stand that on reconsideration, out of 49 workers who were terminated from service, the management agreed for taking 10 persons who can be reinstated as probationer for one year but the respondent had not preferred to reinstate the petitioner and 38 workmen in service and on 4-1-2008, the Hon'ble High Court was pleased to pass orders in W.A. No. 2043 and 2044 of 2002 and W.A. M.P. No. 3454 of 2002 and W.P. Nos. 24183 of 2005 and W.P. M.P. No. 26395 of 2005 and in that order, the Division Bench of the Hon'ble High Court was pleased to state that the management has been allowed to reinstate the aforesaid ten workmen as probationers for one year and they may confirm them after one year, if there are vacancies and their performance is satisfactory and so far as rest of 39 workers, including petitioner, they raise an industrial disputes in respect of termination of their services, which may be adjudicated before the Labour Court/ Industrial Tribunal Court and hence, the petitioner is raising this industrial dispute against the termination of his services by the respondent management with effect from 9-10-2001.

(v) The termination of his services by the respondent management is unsustainable in law. The termination of petitioner service is unfair, unreasonable and unfair labour practice on the part of respondent management. The petitioner submits that from the date of his appointment in service, he had been performing his work, which is that of a permanent and perennial nature. Though the petitioner was designated as an apprentice he was not given any training at all and was doing the same work as performed by the permanent workman. Hence, the petitioner is not an Apprentice as defined in section 2(aa) of the Apprentices Act. The petitioner is a workman within the meaning of section 2(s) of the Industrial Dispute Act, 1947 and the termination of the petitioner without following procedures laid down under the Industrial Dispute Act, 1947 is unsustainable in law. The petitioner and other workers were victimized for their formation of the genuine trade union namely "MRF Thozhilalar Sangam". Though the petitioner and other workers were engaged in the manufacturing process in the\factory of the respondent management by designating them as Apprentice and probationers, they were very sincere and hard workers and they have contributed more for the respondent management for higher production. The act on the part of the respondent management in terminating the petitioner's services is vindictive and the colourable excercise of powers on the part of the respondent management. The attitude of the respondent management in terminating the petitioner's service is unjust and unfair labour practice adopted by the management.

(vi) The termination of his service by the respondent/ management is 'retrenchment' within the meaning of section 2(aa) of the Industrial Disputes Act. The termination of the petitioner's services by the respondent management without following the provisions laid down under section 25 N of the Industrial Dispute Act and in any event section 25F of the Industrial Disputes Act, 1947 is unfair and unsustainable in law. Hence the impugned order of termination is void in law. There was no valid contract of apprenticeship between the petitioner and respondent management. The petitioner had been working under the respondent management continuously without any break from the date of his appointment in service and had worked continuously for about 1½ year. By virtue of his permanent and perennial nature of work the petitioner was entitled to be appointed as permanent workman. The petitioner is the sole breadwinner of his family and due to his termination from service, the petitioner and his family have been facing undue mental and economic hardship.

(vii) The petitioner was terminated from service *vide* order of the respondent, dated 9-10-2001, he did not raise any industrial dispute immediately due to the reasons that on behalf of him and other terminated workers, his union had taken up the issue by way of filing writ petitions before the Hon'ble High Court, Madras and against the order passed in the writ petition, the respondent management preferred Writ Appeal and after the disposal of the above writ appeal, the petitioner union preferred Special Leave petition before the Hon'ble Supreme Court and the same was dismissed on 22-5-2009 and thereafter petitioner union dispute and subsequently on legal advice, the petitioner raised dispute under section 2-A of the Industrial Dispute Act on 30-4-2012 against the termination of his services and the conciliation proceedings ended in failure on 24-6-2013 hence, some delay has been caused in raising his dispute and such delay are neither willful nor wanton. He has not been gainfully employed anywhere and prayed this Court to direct the respondent/management to reinstate the petitioner with back wages, continuity of service and all other attendant benefits.

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

(i) The claim of the petition are baseless, vexatious, devoid of merits and is not maintainable either in law or on facts and the petitioner has no locus standi to raise any industrial dispute as against this respondent, since he was only a trainee and not a workman of the respondent management and the extraordinary delay in approaching this Court cannot be condoned as the reason given by him is not a satisfying or substantial reason for not approaching this court or the Conciliation Authority at the right time and that even the previous petition filed by the "MRF Thozhilalar Sangam" before the Conciliation Authority was filed at a highly belated stage and knowing well that they cannot succeed in the said dispute, they had withdrawn the same and the contention rose by the petitioner before the Hon'ble Court are devoid of merit and concocted with reference to the facts alleged and that the factory at Puducherry commenced trial production in the year 1998 and manufactures various radial tyres which is highly technical and is a complicated one and uses logistic control and the workers are given in-depth training on various machines, so that each workman is able to operate all machines and is not merely specializing on a particular machine. Besides that the technology involved is totally indigenous and it takes

for the workmen time in learn the various skills on each machine and the workers have been inducted in a pleased manner over the past years and that the practice followed in the factory in Puducherry is of recruiting persons from nearby villages of Puducherry who mostly do not-posses qualification beyond 12th standard, this has been done, so that people of the local villages would be able to benefit from the new factory that has come up in their vicinity and there are no Trade Apprentices for Tyre industry and these individuals were taken as apprentices to examine their suitability to learn and assimilate the highly skilled process of manufacture of radial tyres and as a policy in all the factories only raw hands are recruited and the present factory started with 12 numbers of machines and now the number of machines installed slowly progressed and The numbers of apprentices taken were also gradually increased keeping pace with the number of machines that were newly installed and that these types of machine are the most advanced version which were not used in any other factory of the respondent management and therefore that was an added reason as to why the training had to be imparted carefully and meticulously over a period of time in a phased manner.

(ii) It is further stated that in order to impart training to these persons, the respondent company had engaged about 79 supervisors, drawn from its other factories as they had experience, under whose immediate supervision the apprentices learn how to work on various machines installed and obviously conscious of the need to learn how to operate all these highly sophisticated technically advanced machines that involved electronic operations as well, the apprentices had no objection whatsoever to learn the trade and that the petitioner is not a workman/ employee of the respondent management and he was an Apprentice, as stated above who was given training under the Company's scheme on and from 1-5-2000 and was paid stipend during the period of his training as per the terms and conditions of apprenticeship order issued to him and his apprenticeship was discontinued in accordance with the said contract *vide* order, dated 9-10-2001 and that from the date of hie joining the petitioner had been rendering his service continuously and to the utmost satisfaction of his superior officer is vehemently denied. The MRF Thozhilalar Sangam (with whom the petitioner alleges to be a member) in order to gain support, instigated the workmen and Apprentices to go slow and also had created a serious industrial unrest in the factory and from 3-10-2001 the workmen and Apprentices including the petitioner had started to involve in go slow activities and they had also boycotted the canteen facilities and refused to have lunch and indulged in anti-management activities. Therefore, a notice was issued on 10-10-2001 that the preparation of food would be stopped on and from 13-10-2001 if such an attitude continued and as they refused to cooperate, the management stopped preparing food and the production of tyres at the rate of 1877 as on 30-9-2001 had become reduced day by day, ultimately coming down to 112 tyres as on 20-10-2001. The apprenticeship of 43 Apprentices including the petitioner were discontinued in accordance with the contract, as there was no work and therefore consequently no training could be imparted to them as production had totally stopped from 22-10-2001 and besides, as there was no work, the casuals were also dispensed with and in the meantime, there had been various acts of indiscipline and unlawful activities indulged by the workmen and they also indulged in atrocities creating law and order situation and caused loss and damage to the properties of the company and on 9-10-2001 they prevented the movement of a loaded lorry and on 24-10-2001 they came to the factory gate shouting slogans and threatened the management staff and blocked and management staff from leaving after the first shift and on the intervention by the police they were let out and on 25-10-2001 they entered in to the canteen and thrown the plates and upset the Bain marie system and on 27-10-2001 they entered the Godown where the finished products were stored and pulled down the shutters in the Godown Supervision and Production Supervisor and on 11-10-2001 they refused to leave the premises and only after the intervention of Police, the workmen left the premises.

(iii) The contentions of the petitioner that 218 members of the MRF Thozhilalar Sangam without following any procedures laid down under the Industrial Disputes Act and that the respondent management is having the practice of victimizing its own workmen if they indulge in trade union activities and that the respondent is having the practice of evading application of labour welfare legislations are total falsehood and are vehemently denied by the respondent. As the trial production was a time consuming process, after commissioning of the factory, only persons who have been trained and found suitable can be absorbed into permanent post and therefore the formation of union had nothing to do with terminating the workers and as such it is stoutly denied that the workers were victimized for the formation of trade union and as admitted by the

petitioner, the respondent has factories in other places where there are unions and there can be no accusation of the management trying to curtail the legitimate union activities.

(iv) It is further stated that the allegation of the petitioner that the respondent started engaging outsiders to do the work hitherto done by the petitioner and other terminated workers and that the respondent started its own puppet union under the name "MRF Employees Union" with ulterior motive and that the respondent has reinstated 49 workers including the petitioner during the pendency of Writ Appeal before the Hon'ble High Court are emphatically denied by this respondent and submits that there is no iota of truth in the same and only 10 persons were taken back as probationers *vide* Probation Orders dated 22-2-2008 and were subsequently confirmed in service as per the judgment passed by the Hon'ble High Court of judicature at Madras in Writ Appeal Nos.2043 and 2044 of 2002 modifying the orders in W.P. No. 20591 of 2001 and W.P. No. 19 of 2002 and as per the said judgment in the said writ appeals the Hon'ble High Court has observed that 'on behalf of the rest of the 39 workmen the union may raise an industrial dispute in regard to their dismissal/termination but had not specifically stated that the individuals may prefer industrial dispute as they were not workmen but were only Apprentices and though the petitioner has admitted that the union has raised an industrial dispute with reference to the said 39 persons, later it had withdrawn the said dispute for the reasons best known to the petitioner and further the petitioner has not given any clear reason as to why the union has withdrawn the industrial dispute raised earlier on behalf of 39 persons and why the petitioner is now again belatedly preferring this dispute individually as against the order of the Hon'ble High Court and further in the same judgment the Hon'ble High Court has directed the MRF Thozhilalar Sangam to approach the appropriate forum for appropriate relief in respect of genuineness of the union and as on date the union has not done anything with reference to the same.

(v) It is further stated that respondent management had not involved/indulged in any sort of unfair labour practice, much less and alleged by the petitioner at any point of time and further as the petitioner was only an Apprentice, hence, section 25 F and 25 N of the Industrial Dispute Act will not attract and that the appointment of the petitioner as an Apprentice cannot be termed as unfair labour practice under schedule V of the Industrial Disputes Act and the discontinuance of the apprenticeship of the petitioner is as per the terms of the apprentice order issued to him and the terms and conditions of which was admitted and accepted by him and hence the said discontinuance is fair, just and proper and that this is a case of discontinuance of apprenticeship governed by the terms and conditions of his apprenticeship order and hence the petitioner's claim of alleged non-employment does not arise and are devoid of merits and prayed for dismissal of the petition.

4. In the course of enquiry PWl. was examined and Ex.PI to Ex.P9 were marked and on the side of the respondent RW.l was examined and Ex.Rl was marked.

5. *The point for consideration is:*

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

6. Both side arguments were heard. Written arguments were filed by both sides. In support of his case, the learned counsel for the petitioner has relied upon Judgment reported in 2006 (1) L.L.N. PS.No.554, Telecom District Manager, Valsad *Vs*. Namlabai Ranchhodbhai Patel. Wherein, the Hon'ble High Court, Gujarat has held as follows:

"4. Industrial Disputes Act, 1947, S.25-F, Non-compliance with Effect - Held, where pre-requisite for valid retrenchment as laid down in section 25-F has not been complied with, retrenchment bringing about termination of service is *ab-initio* void - Workman is entitled to reinstatement".

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

i. National Small Industries Corpn. *Vs*. Lakshminarayanan (Supreme Court, dated 10-11-2006)

ii. Vijayalakshmi Insecticides and Pesticides Limited, Hyderabad Vs. Chairman, Industrial Tribunal-*cum*-Labour Court, Visakapatnam and others (2004 L1R 387-A.P. High Court).

iii. Ram Babu Gupta *Vs.* Presiding Officer, Labour Court, Allahabad and another (2005 LLR 241-Alahabad High Court).

iv. Management of Otis Elevator Co. *Vs.* Presiding Officer, Industrial (Delhi High Court, dated 22-4-2003) .

V. Kamal Kumar *Vs.* J.P.S Malik, Presiding Officer Labour Officer (Delhi High Court, dated 18-5-1998).

vi. Kartik Ramachandran R. *Vs.* P.O. Labour Court and Anr. (Delhi High Court, dated 19-10-2006).

vii. Raj Kumar Rastogi *Vs.* P.O. Labour Court-X and Anr (Delhi High Court, dated 18-5-2015).

viii. Gujarat Electricity Board *Vs.* Balkhan D. Joya (Gujarat High Court, dated 29-2-2000).

8. This application is filed against the termination of the petitioner from service by the respondent management seeking an award directing the respondent to reinstate the petitioner into service and all other attendant benefits. It is the evidence of PW.l that the petitioner joined in the service of the respondent management as an Apprentice as per the order issued by the respondent on 1-5-2000 and after the apprentice period of six months the petitioner was appointed for the production activities of the respondent factory and again apprentice order was issued on 1-11-2000 and apprentice period came to an end with effect from 30-4-2001 and even after the expiry of the said period the respondent management engaged the petitioner in the production activities and the petitioner was designated as an "apprentice" and he was engaged directly for the manufacturing activities of the respondent management and many of the apprentice and probationers were not given any designation and the respondent management adopted such a practice to evade the application of the Labour Welfare Legislations and avoid the Labour Laws and the union workers were denied various benefits under Labour Welfare Legislations and that therefore the trade union namely MRF Thozhilalar Sangam was formed by the workers and the respondent management was also informed about the formation of the trade union under their communication, dated 29-9-2001 and therefore the respondent management has got furious and commenced its victimization program against the workers belonging to the union and the management terminated all the 218 members of the trade union without following any procedures laid down under the Industrial Disputes Act and this petitioner was issued an order of termination on 9-10-2001 alleging that the apprenticeship period comes to an end and on behalf of the terminated workers MRF Thozhilalar Sangam has filed a writ petition in W.P. No. 20591 of 2001 and on behalf of the petitioner and other terminated workers the union has filed a writ petition in W.P. No. 19 of 2002 seeking the direction against the respondent not to engage out siders without first providing employment to the members of the petitioner's union and that respondent started its own puppet union in the name of MRF Employees Union and the Hon'ble High Court was pleased to pass common order in W.P. No. 20591 of 2001 and 19 of 2002 allowing the writ petition and directed the respondent management to reinstate the workmen with full back wages and against the said order the respondent management preferred Writ Appeal No. 2043 and 2044 of 2002 and during the pendency of the Appeal, the Court has directed the management to reinstate the 49 workers including the petitioner in service and in the Appeal the management had taken stand that on consideration out of 49 workers who were terminated from service, the management has agreed for taking 10 persons and reinstated as probationers for one year but the respondent had not preferred to reinstate the petitioner and 38 workmen in service and on 4-1-2008, the Hon'ble High Court was pleased to pass order to reinstate the abovesaid 10 workmen as probationers for one year and they may confirm them after one year, if there are vacancies and their performance is satisfactory and therefore the rest of 39 workers including the petitioner raised an industrial dispute in respect of termination of the service and the petitioner is raising the industrial dispute against the termination of his service by the respondent management with effect from 9-10-2001.

9. In support of his claim statement and evidence, the petitioner has exhibited the copy of the Apprenticeship order issued by the respondent on 1-5-2000 as Ex.Pl, the copy of another Apprenticeship order issued by the respondent on 1-11-2000 as Ex.P2, the copy of the advance notice, dated 29-9-2001 given by the petitioner union to the respondent as Ex.P3, the copy of the Memo, dated 9-10-2001 issued by the respondent as Ex.P4, the copy of the order passed in W.P. No. 20270, 20591 and 19/2002 on 10-6-2002 as Ex.P5, the copy of the order passed in W.P. No. 2043/02 and 2044/02 on 4-1-2008 as Ex.P6, the copy of the 2-A petition filed by the petitioner on 30-4-2012 as Ex.P7, the copy of the rejoinder filed by the petitioner, dated 22-8-2012 as Ex.P8, the copy of the conciliation failure report, dated 24-6-2013 as Ex.P9.

10. The above documents and oral evidence of PW.1 would go to show that petitioner has joined in the respondent establishment on 1-5-2000 as an apprentice and he has served till 2001 and thereafter he was terminated from service in the year on 17-10-2001 against which the union has filed the writ petition before the Hon'ble High Court in W.P. No. 20591/2001 and another writ petition was filed in W.P. No. 19/2002 and the Hon'sble High Court was pleased to direct the respondent to reinstate 218 workmen against which the respondent management filed writ Appeal in

W.A. No. 2043 and 2044/2002 in which the Hon'ble High Court was pleased to direct the respondent to reinstate the 49 workmen but the respondent management has only reinstated 10 workmen and including the petitioner 39 workmen have been denied employment and on 4-1-2008 an Appeal was ordered by the Hon'ble High Court and directed the respondent management to confirm the appointment of the 10 workmen and directed the petitioner and other 38 employees to raise industrial dispute before the Conciliation Officer and at the Conciliation all the other labourers have been settled by the respondent management and this petitioner had been denied employment and that therefore he has filed this application for reinstatement.

11. It is the evidence of the respondent RW.l that the petitioner has no locus standi to raise industrial dispute as against the respondent since he was only a Trainee/Apprentice and not a workman of the respondent management and that the petitioner has raised this industrial dispute with the extraordinary delay before this court and before the Conciliation authority and the respondent factory commenced production in the year 1998 and manufactures various radial tyres which is highly technical and is a complicated one and uses logistic control and that the workmen, are given in depth training on various machines so that each workmen is able to operate all machines and is not merely specializing on a particular machine and to give benefit to the people of the local villages the persons who are having qualification of 12th standard were appointed as Apprentices and examine their suitability to learn and assimilate the highly skilled process of manufacture of radial tyres and the present factory started with 12 number of machines and number of apprentices taken were also gradually increased keeping pace with the number of machines that were newly installed and the training had to be imparted carefully and meticulously over a period of time in a phased manner and that in order to impart training to these persons the respondent management had engaged about 79 supervisors appointed from its other factories as they had experience, under whose immediate supervision the apprentices learn how to work on various machines installed and the apprentices who were appointed on 1-5-2000 and the petitioner who are appointed as apprentice was paid stipend during the period of his training as per the terms and conditions of Apprenticeship Order issued to him and his apprenticeship was discontinued in accordance with the said contract *vide* order dated 9-10-2001 and that therefore the petitioner was not a workmen employed by the respondent management and no training was imparted to him.

12. It is the further evidence of the respondent that the workmen by way of go-slow working, boycotting canteen facilities, preventing movement of the management staffs, raising slogans against the management staffs and threatened them from 3-10-2001 and therefore the production of the factory was seriously diminished and this industrial unrest scenario, the probationary period of about 6 probationers were brought to an end as the same had come to an end by efflux of time and the apprenticeship of 43 apprentices including the petitioner were discontinued in accordance with the contract, as there was no work and therefore consequently no training could be imparted to them as production had totally stopped from 22-10-2001 and that they have not having any practice of victimization of workmen since indulged in trade union activities and that only the persons who have been trained and found suitable can be absorbed into permanent post and that therefore formation of union had nothing to do with the termination of the workers and the respondent management never tried to curtail the legitimate union activities.

13. It is the further evidence of the respondent RW.1 that they have never reinstated 49 workers at any time and only 10 persons were taken back as probationers *vide* Probation Order dated 22-2-2008 and subsequently they were confirmed as per the Judgment passed by the Hon'ble High Court of Judicature at Madras in Writ Appeal Nos. 2043 and 2044 of 2002 modifying the orders in W.P. No. 20591 of 2001 and W.P. No. 19 of 2002 and in the Writ Appeals the Hon'ble High Court was observed that the rest of the workmen of the union may raise the industrial dispute in regard to their dismissal/termination and that petitioner was not clear why the union has withdrawn the industrial dispute raised on behalf of the 39 persons and that the respondent management has not indulged in any sort of unfair labour practice as alleged by the petitioner and since the petitioner is not a workmen and only he is an apprentice, section 25 F and 25 N of the Industrial Dispute Act would not attract and in support of his case, the respondent has exhibited Ex.Rl Apprenticeship order issued to the petitioner by the respondent management on 1-5-2000.

14. From the evidence of the petitioner and the respondent, it is found that the following factors are admitted by both the parties that the petitioner has joined as an Apprentice in the respondent factory on 1-5-2000 and he had served till 9-10-2001 as an apprentice and against which the petitioner union has

filed writ petition before the Hon'ble High Court in W.P. No. 20591 of 2001 and 19 of 2002 in which the Hon'ble High Court was pleased to direct the respondent management to reinstate the petitioner and other employees against which the respondent management has filed a Writ Appeal in W.A. No. 2043 and 2044 of 2002 in which the Hon'ble High Court was pleased to set aside the order of the Hon'ble High Court and directed to confirm the appointment of the 10 employees as permanent employees and directed the 39 employees including the petitioner to raise the industrial dispute before the Conciliation authority and the petitioner and his union raised the industrial dispute before the Conciliation Officer and subsequently the union has withdrawn the industrial dispute raised before the Conciliation officer and since the dispute raised by the petitioner before the Conciliation officer was failed, he filed this application before this Court under section 2-A (2) of the Industrial Disputes Act for reinstatement with back wages, continuity of service and all other attendant benefits.

15. The main contention of the respondent management is that the petitioner is not a workmen and he was working only as an Apprentice and the workers in the respondent factory requires skill and the petitioner has only served as an apprentice and never worked as an workmen, he was only a trainee. On the other hand, it is denied by the petitioner that he is only the trainee apprentice and not the workmen of the respondent factory and only as he involved in union activities, he and other employees has been victimized by the respondent management and that he is entitled for order of reinstatement as a workmen of the factory.

16. On this aspect, the evidence and pleadings of both the parties are carefully considered. The evidence of PW.1 runs as follows:

"எதிர்மனுதாரர் நிர்வாகத்தில் 1-5-2000-ம் தேதியில் நான் பயிற்சியாளராக சேர்ந்தேன் என்று சொன்னால் சரிதான். மேற்படி, பயிற்சியாளர் உத்தரவுபடி எனக்கு தினம் உதவி தொகையாக ரூபாய் 45.00 கொடுப்பார்கள் என்று சொன்னால் சரிதான். நான் எதிர்மனுதாரர் நிர்வாகத்தில் பயிற்சியாளராக சேர்த்ததற்குரிய உத்தரவு பெற்று தான் பயிற்சியாளராக சேர்ந்தேன் என்று சொன்னால் சரிதான். நான் அந்த உத்தரவில் கண்ட ஷரத்துக்களை ஒப்புக்கொண்டு கையொப்பமிட்டு கொடுத்தேன். மீண்டும் 1-11-2000-ம் தேதியின் உத்தரவுபடி பயிற்சியாளராக தொடர்ந்தேன், அதற்கு ரூபாய் 55.00-ஆக தின உதவி தொகையாக கொடுத்தார்கள் என்றால் சரிதான். MRF Company 1998-ல் ஆரம்பிக்கப்பட்டது என்று சொன்னால் சரிதான். MRF Company-ல் சேருவதற்கு முன்பு நான் 12-ம் வகுப்பு தேர்ச்சி பெற்றவன் என்று சொன்னால் சரிதான். பணியில் சேர்வதற்கு முன்பு நான் வேறு எங்கும் tyre குறித்து படிப்போ, பயிற்சியோ பெறவில்லை என்று சொன்னால் சரியல்ல. நான் ஒப்பந்த தொழிலாளியாக ஒரு வருடம் பணி புரிந்துள்ளேன். புதுச்சேரியில் MRF Company-யை தவிர வேறு tyre கம்பெனி இல்லை என்று சொன்னால் சரிதான். MRF Company-ன் அருகில் வசிப்பவன் தான் நான் என்று சொன்னால் சரிதான். என்னை மாதிரி தான் மற்றவர்களையும் பயிற்சியாளராக சேர்த்துக்கொண்டனர் என்று சொன்னால் சரிதான். தொழிற்சாலையில் அப்போது மேற்பார்வையாளர்கள் இருந்தனர். அவர்களின் கண்காணிப்பின் பேரில் தான் நான் பயிற்சி பெற்றேன்.....Write Appeal-ல் சென்னை உயர்நீதிமன்றம், 10 நபர்களை Probation-னாக திருப்திகரமாக பணி புரிந்தால் பணியிடம் காலியாக இருந்தால் அவர்களை பணியில் அமர்த்திக் கொள்ளலாம் என்று இருந்தது என்று சொன்னால் சரிதான். மீதம் உள்ள 39 நபர்களை சம்பந்த பட்ட சமரச அதிகாரியை சந்தித்து உத்தரவு பெற வேண்டும் என்று இருந்தது என்று சொன்னால் சரிதான். மேற்படி Write Appeal-லில் சென்னை உயர்நீதிமன்றம், மீதம் உள்ள 39 நபர்களை தொழிலாளர்களாக நியமிக்கவில்லை என்று சொன்னால் சரிதான். சமரச அதிகாரி முன்பு எங்கள் சங்கம் தாவா எழுப்பியது என்று சொன்னால் சரிதான். மேற்படி, தாவா சமரச அதிகாரியிடமிருந்து திரும்ப பெறப்பட்டது 4-1-2008-ம் தேதி மேற்படி, Write Appeal உத்தரவு பிறப்பிக்கப்பட்டது என்று சொன்னால் சரிதான். 2012-ல் நான் தனிப்பட்ட முறையில் நான் சமரச அதிகாரி முன்பு தாவா எழப்பினேன்..... 2000 மற்றும் 2001 காலத்தில் என்னுடன் பணி புரிந்தவர்கள், பயிற்சியாளர்கள் என்று சொன்னால் சரிதான். பயிற்சியாளர் காலம் முடிந்த பின்பு மனுக்கள் தாக்கல் செய்து பணியில் அமர்த்தப்பட்டவர்களும் உள்ளனர்.

From the above evidence, it is clear that the petitioner has admitted the fact that he has joined in the respondent factory as a apprentice trainee along with the others from 1-5-2000 till 2001 and the documents produced by the petitioner also disclose that he has joined as an apprentice on 1-5-2000 and subject to the terms and conditions mentioned in the Apprentice order which would reveal the fact that the respondent management does not grant any automatic confirmation in service at the end of the apprenticeship period. Though the petitioner has stated in the evidence that he has served in the respondent factory after completion of training till 17-10-2001 in the production activities, nothing is before this Court to prove the said contention of the petitioner. On the other hand, it is stated by the petitioner that he was terminated from service on 17-10-2001 and therefore the contention raised by the petitioner that he was utilized for production activities by the respondent management till 17-10-2001 is not established by him and except the oral evidence of the petitioner, no piece of paper is before this Court that he was utilized for production activities by the respondent management till 17-10-2001.

17. On this aspect, the Learned Counsel for the respondent relied upon the following decisions :

(i) National Small Industries Corpn. Vs. Lakshminarayanan (Supreme Court, dated 10-11-2006) Wherein, it has been held that,

"from the aforesaid documents it would be evident that even if the respondent had been working on a daily-wage basis prior to his appointment as Apprentice Trainee (Shop Assistant), at least from 3rd May, 1990 till 2nd May, 1992, he was working as an apprentice on a consolidated salary and the respondent himself was conscious of such fact since he had requested the corporation and its authorities to absorb his services on a permanent basis purportedly on the basis of a promise held out at the time when he was interviewed for appointment to the post of Apprentice Trainee (Shop Assistant). Other than the assertion made on behalf of the respondent that the appellant had agreed to absorb the respondent in Group 'D' Category as Peon/Shop Assistant after completion of apprenticeship and the recommendation said to have been made by the General Manager indicating that the respondent could be appointed and taken as a permanent worker, there is no other material on record to support the case made out by the respondent. In the absence of any such material, it is difficult to understand the reasoning of the Labour Court that the respondent was not an "apprentice trainee" but a "workman" who was made to perform a full-time job under the guise of an Apprentice Trainee. The High Court appears to have been impressed by the reasoning of the Labour Court with regard to the finding that although designated, as an apprentice, the respondent was not undergoing training, but was an employee doing full time work in the establishment. Such a view in our judgment, is not supported by the materials on record and is completely contrary to the appointment letter issued to the respondent on 26th April, 1990 and the respondent's own letter dated 29th April, 1992, in admission of such fact. Had such a letter of appointment not been available, the Labour Court, and/or the High Court could justifiably have embarked on an exercise as to whether the respondent was in effect a "trainee" under the Apprentices Act, 1961, or a-"workman" within the meaning of section 2 (s) of the 1947 Act. There is nothing on record to indicate that the respondent's services had ever been regularized or that he was brought on the rolls of the permanent establishment".

(ii) Vijayalakshmi Insecticides and Pesticides Limited, Hyderabad Vs. Chairman, Industrial Tribunal-cum- Labour Court, Visakapatnam and others (2004 L1R 387-A.P. High Court) wherein, it has been held that,

"A. TRAINEE-Termination made for his unsatisfactory work even during extended period of training-Industrial Tribunal held it illegal and passed awards for reinstatement-Management being aggrieved, have filed these petitions-Challenging awards-High Court set aside the award-The termination of a trainee not being a workman under the Industrial Dispute Act, 1947 is neither retrenchment, nor illegal.

B. INDUSTRIAL DISPUTES ACT, 1947-sections 2A, 2(s)-Workman-Trainees terminated for unsatisfactory work even during extended period of training-Held that trainee not a workman under 2A of the Act-Dispute not maintainable - Award being illegal, quashed. A trainee will not be a workman under the Industrial Disputes Act and, as such, he cannot challenge his termination as made by the employer for his unsatisfactory work even during the extended period of training. Termination of a trainee, who is not a workman, will neither be retrenchment nor illegal.

(iii) (Ram Babu Gupta Vs. Presiding Officer, Labour Court. Allahabad and another (2005 LLR 241- Alahabad High Court) wherein, it has been held that

"High Court will not interfere with the finding of facts by the Labour Court holding that the petitioner being an apprentice and not a workman was not entitled to any relief since his termination did not amount to retrenchment under the purview of Industrial Disputes Act. Merely because an agreement for apprenticeship, though entered between the parties, has not been registered under the Apprentices Act, it will not change the status of the apprentice to a "workman" under the Industrial Disputes Act and his termination sans retrenchment compensation will not be illegal".

(iv) Management of Otis Elevator Co. *Vs.* Presiding Officer, Industrial (Delhi High Court, dated 22-4-2003) wherein, it has been held that

"Similar contention of the petitioner that a trainee cannot be called a workman as envisaged under section 2(s) of the Industrial Disputes Act was also urged in Kamal Kumar Vs. J.P.S. Malik, P.O., Labour Court and Ors., . In the said decision it was held that although section 2(s) of the Act uses the expression 'apprentice', but merely using the word 'apprentice' within the definition of 'workman' would not confer a right on a trainee to be called a

'workman' within the meaning of section 2(s) of the Industrial Disputes Act. The said decision also related to a person who was similarly engaged as that of the respondent No.2 herein. There the petitioner was appointed by the company as a trade trainee and the relationship of the petitioner therein and the management was also governed by similar terms and conditions as stipulated in the present contract between the petitioner and the respondent No.2. Considering the various cases this Court held that as the petitioner therein had failed to prove and establish that he was employed in the respondent company to do any skilled or unskilled manual, supervisory or clerical work for hire or reward, therefore he was a trainee and not a workman and the writ petition was disposed of in terms of the aforesaid observations".

(v) Kamal Kumar *Vs.* J.P.S Malik Presiding Officer Labour Officer (Delhi High Court, dated 18-5-1998) wherein, it has been held that

"Admittedly in the present case the provisions of Apprenticeship Act is not applicable. During the period of training the petitioner was given a stipend of ₹ 350. A close examination of the terms and conditions of the contract entered into between the petitioner and the respondents leads to the conclusion that the principal object with which the parties entered into the agreement of training was an offer by the employer to the petitioner to have an opportunity to learn trade or craft to acquire such knowledge that may be obtained in the course of training. From the aforesaid terms of the agreement, it is clear that the petitioner was a mere trainee for a particular period and for a distinct purpose and the respondent was not bound to employ him in their works after the period of training is over. It, therefore, cannot be said that the petitioner was a workman of the respondent company, in as much as, the purpose of engagement of the petitioner was only to offer him training under the terms and conditions stipulated above. No wage was paid to the petitioner as defined within the meaning of wages under the Industrial Disputes Act. Merely because some amount was paid to the petitioner as Provident Fund, it cannot be said that he had become a workman of the Respondent Company".

From the above observations of the Hon'ble High Court and the Hon'ble Supreme Court, it is clear that an apprentice or trainee cannot fall under definition of workmen and that therefore the petitioner being the trainee apprentice cannot raise any industrial dispute and therefore, he is not entitled for the relief of reinstatement.

18. Furthermore, though the petitioner has received a stipend from the respondent management even if it is termed as daily wages, he is also failed to establish that he had been in service continuously for 240 days in the respondent management as a workmen. In the light of the Judgment reported in 2015-III-LLJ-337 (P&H), LNIND 2015 PNH 8216, Wherein it has been held that "Daily Wager-Reinstatement-Industrial Disputes Act, 1947 (Act 1947), sections 25-G and 25-H-Industrial Tribunal ordered reinstatement of respondent No. 2-petitioner contends respondent daily wager cannot be reinstated for failing to complete requisite number of working days-Whether Sunday can also be included to calculate days of employment in case of daily-wager and whether daily-wager is entitled to reinstatement-Held., in a case of a daily-wager, Sunday and other holidays are not to be counted because he is not paid any salary for that day-Workman has not worked for requisite days and his service is terminated in violation of section 25-G and 25-H of Act 1947- Since workman/respondent No. 2 has not completed requisite days, therefore, he is not entitled to any compensation as well as reinstatement-Petition allowed."

From the above observation of the Hon'ble High Court, it is clear that the petitioner has not established that he has completed requisite number of working days and therefore he is not entitled to any order of reinstatement as claimed by the petitioner and therefore it is held that the petitioner has failed to establish his case and he is not entitled for any relief as prayed for and therefore, the application filed by the petitioner is liable to be dismissed.

19. 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 27th day of March, 2017.

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

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List of petitioner's witness:

PW.1 — 3-11-2014—K.S. Karthikeyan

List of petitioner's exhibits:

Ex.Pl—1-5-2000 — Copy of the Apprenticeship Order.

Ex.P2—1-11-2000 — Copy of the Apprenticeship Order.

Ex.P3—29-9-2001 — Copy of the advocate notice.

Ex.P4—9-10-2001 — Copy of the memo issued to petitioner.

Ex.P5—10-6-2002 — Copy of the order passed in W.P. No. 20270, 20591 and 19/2002.

Ex.P6—4-1-2008 — Copy of the order passed in W.P. No. 2043/2002 and 2044/2002.

Ex.P7—30-4-2012 — Copy of the 2-A petition filed by the petitioner.

Ex.P8—22-8-2012— Copy of the rejoinder filed by the petitioner.

Ex.P9—24-6-2013 — Copy of the conciliation failure report.

List of respondent's witness:

RW.1 — 6-1-2016—C. Rajadurai

List of respondent's exhibit:

Ex.R1 — 1-5-2000—Apprenticeship Order.

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

புதுச்சேரி அரசு

இந்து சமய நிறுவனங்கள் மற்றும் வக்ஃபு துறை

(அரசு ஆணை பலவகை எண் 59/இசநி./கோ. 3/2017, புதுச்சேரி, நாள் 2017 ஆம் மார்ச் மீ 23உ.)

ஆணை

புதுச்சேரி மாநிலம், உழவர்கரை நகராட்சி, தட்டாஞ்சாவடி, ஸ்ரீ சுந்தரவிநாயகர், ஸ்ரீ முத்துமாரியம்மன், ஸ்ரீ கெங்கையம்மன், ஸ்ரீ பொற்கிலை பூரணி உடனுறை குண்டு தாங்கி ஐய்யனாரப்பன் தேவஸ்தானத்திற்கு அரசு ஆணை பலவகை எண் 06/இசநி/கோ.1/2001, நாள் 24-1-2001-ன் மூலம் நியமிக்கப்பட்ட திரு எல். பரமசிவம் (இடைநிலை ஆசிரியர், அரசு ஆண்கள் நடுநிலைப்பள்ளி, திலாசுப்பேட்டை, புதுச்சேரி) அவர்களால் சிறப்பு அதிகாரி என்கிற நிலையில் நிருவகிக்கப்பட்டு வருகிறது.

2. மேலும், ஆலயத்தை செம்மையாக நிர்வகிக்கும் பொருட்டு இச்சிறப்பு அதிகாரிக்குப் பதிலாக, மேற்கூறிய திருகோயிலுக்கு ஓர் அறங்காவலர் வாரியம் அமைத்து நிருவகிப்பது இன்றியமையாதது என்று அரசால் கருதப்படுகிறது.

3. எனவே, 1972-ஆம் ஆண்டு புதுச்சேரி இந்து சமய நிறுவனங்கள் சட்டம் 4(1)-ஆம் பிரிவின்கீழ் வழங்கப்பட்டுள்ள அதிகாரங்களைச் செலுத்தி, புதுச்சேரி மாநிலம், உழவர்கரை நகராட்சி, தட்டாஞ்சாவடி, ஸ்ரீ சுந்தரவிநாயகர், ஸ்ரீ முத்துமாரியம்மன், ஸ்ரீ கெங்கையம்மன், ஸ்ரீ பொற்கிலை பூரணி உடனுறை குண்டு தாங்கி ஐய்யனாரப்பன் தேவஸ்தானத்திற்கு பின்வரும் ஐந்து நபர்களைக் கொண்ட ஓர் புதிய அறங்காவலர் வாரியத்தை அரசு உடனடியாக அமைக்கிறது:-

திருவாளர்கள் :

(1) சு. அரிகிருஷ்ணன், . . தலைவர்
த/பெ. சுப்புராயன்,
எண் 75, முாரியம்மன் கோயில் தெரு,
தட்டாஞ்சாவடி, புதுச்சேரி.

(2) க. சந்திரசேகரன், . . துணைத் தலைவர்.
த/பெ. கணபதி,
எண் 23, ஐய்யனார் கோயில் தெரு,
தட்டாஞ்சாவடி, புதுச்சேரி.

(3) கே. சங்கரலிங்கம், . . செயலாளர்
த/பெ. கேசவன்,
எண் 18, கெங்கையம்மன் கோயில் தெரு,
தட்டாஞ்சாவடி, புதுச்சேரி.

(4) கோ. ஜெயமூர்த்தி, . . பொருளாளர்
த/பெ. கோவிந்தசாமி,
எண் 32, மாரியம்மன் கோயில் வீதி,
தட்டாஞ்சாவடி, புதுச்சேரி.

(5) மு. உலகநாதன், . . உறுப்பினர்
த/பெ. முருகேசன்,
எண் 13, 2-ஆவது குறுக்கு தெரு,
ஞானுதியாகு நகர்,
தட்டாஞ்சாவடி, புதுச்சேரி.

4. புதிய அறங்காவலர் வாரியத்தினர் உடனடியாக திருக்கோயிலின் பொறுப்புக்களை அதன் அசையும் அசையாச் சொத்துக்கள் மற்றும் இதர ஆவணங்களுடன் பதவி விலகும் சிறப்பு அதிகாரியிடமிருந்து ஏற்றுக்கொள்ளுமாறு அறிவுறுத்தப்படுகிறது.

5. 1972-ஆம் ஆண்டு புதுச்சேரி இந்து சமய நிறுவனங்கள் சட்டம் மற்றும் அதன்கீழ் உருவாக்கப்பட்ட விதிகளுக்குட்பட்டு அறங்காவலர் வாரியத்தினர் தேவஸ்தானத்தை நிருவகிக்கக் கடமைப்பட்டவர்களாவர்.

6. புதிய அறங்காவலர் வாரியத்தின் பதவிக்காலம் இவ்வரசாணை பிறப்பிக்கப்பட்ட தேதியிலிருந்து மூன்று ஆண்டுகள் ஆகும். இதற்கிடையில் அரசு, வாரிய உறுப்பினர்களை நீக்கினால் தவிர அல்லது தகுதி இழக்கச் செய்தால் தவிர அல்லது வாரிய உறுப்பினர்கள் தங்கள் பதவிகளை இராஜினாமா செய்யுங்கால் அவர்களின் இராஜினாமாவை அரசு ஏற்றுக்கொண்டால் தவிர, வாரியம்/வாரிய உறுப்பினர்கள் பதவியில் இருப்பதாகக் கருதப்படும்.

(துணைநிலை ஆளுநரின் ஆணைப்படி)

பா. தில்லைவேல்,
அரசு சார்புச் செயலர் (கோயில்கள்).