



# புதுச்சேரி மாநில அரசிதழ்

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GOVERNMENT OF PUDUCHERRY  
LABOUR DEPARTMENT

(G. O. Rt. No. 144/Lab./AIL/T/2017,  
Puducherry, dated 4th October 2017)

NOTIFICATION

Whereas, the Award in I.D.(L)No.47/2012, dated 20-7-2017 of the Labour Court, Puducherry in respect of the industrial dispute between the Management of Thirunallar Commune Panchayat, Thirunallar, Karaikal and Thiru P. Selvaraj, Karaikal over non-employment has been received;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947), read with the notification issued in Labour Department's G. O. Ms. No. 20/91/Lab./L, dated 23-5-1991, it is hereby directed by the Secretary to Government (Labour) that the said Award shall be published in the Official Gazette, Puducherry.

**S. MOUTTOULINGAM,**  
Under Secretary to Government  
(Labour).

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

**(Camp Court sitting at Karaikal)**

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

*Tuesday, the 20th day of July, 2017*

**I.D. (L) No. 47/2012**

P. Selvaraj,  
S/o. Pakkiri,  
No. 2, Colony pet,  
Colony Street,  
Ambagarathur,  
Karaikal.

.. Petitioner

*Versus*

The Management,  
Thirunallar Commune Panchayat,  
Thirunallar.

.. Respondent

This industrial dispute coming on 23-2-2017 before me for hearing, Thiruvalargal. V. Govindasamy, M. Uma Maheswari and J.Senthil Raghavan, Advocates for the petitioner and Thiru R. Thambiraj, Counsel for the

respondent, both remained absent and no representation having been made on their behalf, upon perusing the case records, after having stood over for consideration till this day, this Court passed the following:

AWARD

1. This industrial dispute has been referred by the Government as per the G. O. Rt. No. 58/AIL/Lab./J/2010, dated 23-3-2010 for adjudicating the following:-

(a) Whether the dispute raised by Thiru Selvaraj against the management of M/s. Thirunallar Commune Panchayat, Thirunallar, over non-employment is justified or not?

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

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

The above reference originally taken on file by the District Court at Karaikal which was being functioned as Labour Court in industrial dispute No. 2/2010 and subsequently when this Industrial Tribunal-cum-Labour Court established in the year 2012, the case has been transferred to this Court and this case was taken on file by renumbering it as industrial didpute (L). No. 47/2012.

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

The petitioner was initially appointed by the respondent as a sweeper and has been continuously working as Sweeper for more than 240 days per year since 5-12-2006 till 3-12-2008 and his monthly salary was ₹ 1,650 and subsequently he was directed to clean the Village Panchayat Office building at Nallambal everyday and to keep the drinking water in important places and then he was directed to go to the graveyard maintained by Commune Panchayat at Ambagarathur for the purpose of rearing and watering trees and it is specific order issued by the Commune Panchayat, Thirunallar, order dated 5-12-2006 *vide* No. 6/3/Administration/TCP/2006 and eventhough the petitioner was working at Village Panchayat Office at Nallambal, his salary was paid only by the respondent management and the respondent has maintained an attendance register at Nallambal Village Panchayat Office and he has also paid salary on receiving the signature in the salary register book and both the documents has been under the custody of respondent and the petitioner was not given salary for the months of September, October and November, 2008 and when it was demanded by the petitioner the respondent simply

refused to pay the salary without any justifiable reason and also directed him not to attend the duty from the month of December, 2008 onwards and the petitioner therefore denied employment from December, 2008 onwards without any justifiable reason and also not permitted to sign in the attendance register.

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

It is stated by the respondent that the respondent Commune Panchayat is designed as M/s.Thirunallar Commune Panchayat to attract the Industrial Disputes Act and that the Commune Panchayats in the Union territory of Pondicherry are constituted under the self contained Act namely "The Pondicherry Village and Commune Panchayat Act, 1973" and therefore, the very claim of Industrial Dispute does not arise in this matter and further stated that the petitioner was never been appointed as Commune Panchayat Employee and he was only a casual labourer engaged for day-to-day works and this type of employment was seasonal one according to the requirement of the Sanitary Maistry and the man power taken by the Maistry and found in the Muster Roll will be an employee in the Commune Panchayat Service and further stated that the petitioner was working less than 240 days in a calendar year and the payment of wages was for 172 days in the year 2007, 130 days only in the year 2008 till 29-11-2008 and that the petitioner never worked in the Commune Panchayat or even under the supervision of the Maistry continuously for 240 days in any calendar year and therefore, the petitioner cannot claim that he was an employee of the Commune Pachayat and as there was no Employer and Employee relationship between the respondent and the petitioner.

4. In the course of the enquiry on the side of the petitioner, PW1 was examined, and EX. P1 to Ex. P3 were marked and on the side of the respondent no oral evidence was let in and no documents were exhibited.

5. *The point for consideration is:*

Whether the dispute raised by the petitioner over non-employment against the respondent panchayat is justified or not and whether the petitioner is entitled for any relief as claimed by him?

6. In this case, after the examination of the petitioner PW1 in the enquiry he was fully cross-examined by the respondent panchayat and subsequently the respondent panchayat has not produced any witness on their side even after granting several opportunities by this Court and hence, this court has closed the

evidence of the respondent side and posted the case for arguments and even after giving sufficient opportunities both the parties have not appeared before this Court to put-forth their arguments and that therefore, this court has closed the arguments and posted the case for orders with a liberty to file written argument if any, but, even then no argument was filed by either side.

7. It is the evidence of the petitioner PW1 that he was initially appointed as a Sweeper at the respondent Thirunallar Commune Panchayat on 5-12-2006 and he was working till 3-12-2008 for more than 240 days per year and subsequently he was directed to go to the graveyard maintained by Commune Panchayat at Ambagarathur for the purpose of rearing and watering trees and on 5-12-2006, the Thirunallar Commune Panchayat has ordered him to do work at Village Panchayat Office at Nallambal and the payment was made by the respondent Thirunallar Commune Panchayat and the respondent has also maintained an attendance register in the Panchayat Office at Nallambal Village and that they have paid the salary and getting signature of the petitioner in the salary register book and the documents even under the custody of the respondent and subsequently for the months of September, October and November, 2008 the salary was not given to the petitioner and when it was demanded by the petitioner the respondent simply refused to pay the salary without any reason and also directed him not to attend the duty from December, 2008 and the petitioner was also not permitted to sign in the attendance register.

8. In support of his evidence the petitioner PW1 has exhibited Ex. P1 to Ex. P3. The copy of the notification issued by Thirunallar Commune Panchayat, dated 5-12-2006 was exhibited as Ex. P1 which would go to show that the petitioner Selvaraj was appointed as a Sweeper and he was directed to work at Nallambal Village Panchayat Office and he was also directed to clean the office in the morning and to provide water and to do the usual work allotted to him and the said notification would also go to show that several persons including the petitioner was working at Ambagarathur Village Panchayat Office, Nallambal Village Panchayat Office, Sethur Village Panchayat Office, Sellur Village Panchayat Office, Karukadkudi Village Panchayat Office, Surakudi Village Panchayat Office, Thirunallar North Village Panchayat Office, Thirunallar South Village Panchayat Office, Pettai Village Panchayat Office wherein, the petitioner was directed to do the work at Nallambal Village Panchayat Office Ex.P2 is the copy of the letter sent by the petitioner on

10.12.2008 which would reveal the fact that the petitioner has sent a requisition on 10.12.2008 to the District Legal Services Authority at Karaikal to appoint an Advocate to file a case before the Labour Court. Ex. P3 is the copy of the letter sent by the Legal Services Authority on 16-4-2009 to the Commissioner, Thirunallar Commune Panchayat which would go to show that the Taluk Legal Services Authority has sent a notice to the Thirunallar Commune Panchayat asking him to appear before the Conciliation Committee along with the related documents.

9. On the other hand, the respondent has not let any evidence on their side but, it is stated by the respondent panchayat in their counter statement that the petitioner was never been appointed as a employee by the respondent and he was only a casual labourer engaged for day to day works and he was working less than 240 days in a calendar year and the payment of wages was for 172 days in the year 2007, 130 days only in the year 2008 till 29-11-2008 and that therefore, it is to be decided whether the petitioner is the employee of the respondent and whether he has completed 240 days in a calendar year at the respondent preceding to his termination. On this aspect, records are perused.

10. On perusal of documents except Ex.PI-notification issued by the respondent Thirunallar Commune Panchayat appointing the petitioner as a Sweeper to do the work at Nallambal Village Panchayat Office, no document is before this Court to prove the fact that the petitioner was working at the respondent Thirunallar Commune Panchayat as per the notification issued by the respondent Commune Panchayat and furthermore, no document is filed before this Court by the petitioner to establish the fact that he had been in service for about 240 days in the year at the respondent Thirunallar Commune Panchayat preceding to his termination. The petitioner has not at all filed any document in support of his case to establish that he has attended the work till 2008 as stated in the claim petition and furthermore, it is the case of the petitioner that he was initially appointed at Thirunallar Commune Panchayat as a Sweeper and he has been continuously working from 5-12-2006 to 3-12-2008 at the monthly salary of ₹ 1,650. But, nothing is before this Court to prove the fact that he was working at Thirunallar Commune Panchayat for the period from 5-12-2006 to 3-12-2008 at the salary of ₹ 1,650 and furthermore, the petitioner has stated in his claim petition that the respondent Commune Panchayat has not paid the salary for the months of September, October and November, 2008 but, no document is filed

before this Court to prove the fact that he had been in service for the said months at the respondent Commune Panchayat and furthermore, the petitioner has not at all established that he had been in service even for a month at the respondent establishment by filing the document.

11. In Judgment reported in AIR 2004 SC 1639-Workmen of Nilgiri Co-op. Market Society Limited, Vs. State of Tamil Nadu and others, the Hon'ble Supreme Court has held that,

“.....It is a well-settled principle of law that the person who sets up a plea of existence of relationship of employer and employee, the burden would be upon him....”.

and the Judgment in Gopal Vs. Bharat Sanchar Nigam Limited, the Hon'ble Delhi High Court has held that,

“.....We agree with the respondent that the onus to prove the relationship of employer-employee was on the appellant as held by the Supreme Court in Workmen of Nilgiri Co-operative Market Society Limited. Vs. State of Tamil Nadu (Supre). The appellant could not produce appointment letter or any other document to show the relationship of employer and employee....”

and also the Judgment reported in 2015-III-LLJ-337 (P&H), LNIND 2015 PNH 8216, Wherein, Hon'ble High Court 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 observations of the Hon'ble Supreme Court and the Hon'ble High Court, it is clear that the onus to prove the relationship of employer-employee and completion of requisite number of working days is only on the petitioner who has pleaded that he is the

employee of the respondent establishment and has been working more than 240 days per year. But, in this case, the petitioner has not exhibited any documents to prove the fact that he is working at the respondent Commune Panchayat for about 240 days in a year as an employee and nothing is before this Court to prove the fact that the petitioner was working at the respondent Panchayat for about 240 days in a year as an employee. Furthermore, the petitioner has not stated in his claim statement whether he was appointed as a permanent workman or temporary or casual labour and therefore, the petitioner has utterly failed to establish that he had been in service at the respondent Commune Panchayat for about 240 days in a year as an employee.

12. Furthermore, though the petitioner has exhibited Ex. P1 to Ex. P3 he has utterly failed to establish the fact that he was working at the respondent Commune Panchayat for about 240 days in a year as an employee. As already discussed by this Court that the onus to prove the relationship of employee-employer and completion of requisite number of days is on the petitioner who has claimed the relief and has pleaded that he was the employee of the respondent establishment and was working more than 240 days per year. Since, the petitioner has failed to prove the *prima facie* case that he has served at the respondent management and worked as a employee for about 240 days in the year preceding his termination to infer that he is the employee of the respondent Commune Panchayat for about 240 days and therefore, the petitioner has totally failed to establish that he is the employee of the respondent Panchayat and has completed requisite number of working days and therefore, he is not entitled for any order of reinstatement as claimed by him and therefore, the industrial dispute raised by the petitioner before the Conciliation Officer over the non-employment is to be declared as unjustified and no relief can be granted to the petitioner and hence, the claim petition filed by the petitioner is liable to be dismissed.

13. In the result, the industrial dispute raised by the petitioner is dismissed. No cost.

Dictated to the Stenographer, transcribed by her, corrected and pronounced by me in the open Court on this the 20th day of July, 2017.

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

*List of petitioner's witness:*

PW.1—29-6-2011 P. Selvaraj

*List of petitioner's exhibits:*

Ex.P1 — Copy of the notification issued by the Thirunallar Commune Panchayat, dated 5-12-2006.

Ex.P2 — Copy of the letter sent by the petitioner to the Free Legal Aid Cell, dated 10-12-2008.

Ex.P3 — Copy of the letter sent by the Legal Services authority to the Commissioner, Thirunallar Commune Panchayat, dated 16-4-2009.

*List of respondent's witnesses: Nil.*

*List of respondent's exhibits: Nil.*

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

GOVERNMENT OF PUDUCHERRY  
**LABOUR DEPARTMENT**

(G.O. Rt. No. 146/Lab./AIL/T/2017,  
Puducherry, dated 5th October 2017)

NOTIFICATION

Whereas, the Award in I.D.(L)No.77/2012, dated 20-7-2017 of the Labour Court, Puducherry in respect of the industrial dispute between the Management of M/s. Midas Group of Retread Company, Karaikal and the Secretary, Midas Group of Retread Tyre Company Oozhiyargal Sangam, Karaikal, over illegal lock-out has been received;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947), read with the notification issued in Labour Department's G.O. Ms. No. 20/91/Lab./L, dated 23-5-1991, it is hereby directed by the Secretary to Government (Labour) that the said Award shall be published in the Official Gazette, Puducherry.

**S. MOUTTOULINGAM,**  
Under Secretary to Government (Labour).

**BEFORE THE INDUSTRIAL TRIBUNAL-CUM-  
LABOUR COURT AT PUDUCHERRY  
(Camp Court sitting at Karaikal)**

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

*Thursday, the 20th day of July, 2017*

**I.D. (L) No. 77/2012**

The Secretary,  
Midas Group of Retread Tyre Company  
Oozhiyargal Sangam,  
North Vanjore, T.R. Pattinam,  
Karaikal. . . Petitioner

*Versus*

The Management,  
Midas Group of Retread Company,  
Kizhavanjore,  
T.R. Pattinam, Karaikal. . . Respondent

This industrial dispute coming on 23-2-2017 before me for hearing in the presence of Thiru N. Ramar, representative for the petitioner union and Thiruvallargal L. Swaminathan and I. Ilankumar, Counsels, for the respondent and subsequently the respondent being called absent and set *ex parte*, upon hearing the petitioner and after perusing the records, after having stood over till this day, this Court passed the following:

**AWARD**

1. This industrial dispute has been referred by the Government as per the G. O. Rt. No.152/AIL/Lab./J/2012, dated 30-08-2012 for adjudicating the following:-

(a) Whether the dispute raised by the Midas Group of Retread Tyre Company Oozhiyargal Sangam against the management of M/s. Group of Midas Retread Tyre Company, Keezhavanjore, Karaikal regarding the lock-out declared by the management is illegal is justified? If so to give appropriate direction?

(b) To what other relief the workmen represented by the union are entitled to?

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

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

The petitioner union members were working at the respondent establishment and about 120 workers were employed in the respondent establishment and that the respondent management and the members

of the petitioner union had entered into an agreement on 11-2-2009 under section 18(1) of the Industrial Disputes Act for the period of three years and the agreement extended for one more year till 31-12-2012 and that the respondent management has wantonly allotted the security work to the 13 permanent labourers against the provision of the said agreement and hence, the petitioner union raised their objection against the respondent management and that on 12-4-2012, the respondent management issued a show cause notice to 13 labourers and though the petitioner union have given a suitable reply for the same the respondent management have not at all taken any steps and the matter was taken to the Labour Department wherein, the settlement talks were going on, the respondent management has declared lay-off on 20-4-2012 and that therefore, the petitioner union has raised the industrial dispute before the Conciliation Officer against the lock out on 25-4-2012 and that the respondent management has to victimize the workers allotted the work of security to 13 labourers and has declared lock out of the factory stating that the workers have not accepted the said job allotted to them and the engagement of the said 13 labourers as a security is a violation of provision of settlement arrived under section 18(1) of the Industrial Disputes Act entered between the respondent management and the workers and that therefore, the lock out declared by the respondent management is against the law and that therefore, the members of the union are entitled for the compensation for the illegal lock out.

3. Despite of due service of notice to the respondent management, they have appeared through their Counsel and even after granting sufficient opportunities, they have failed to file their counter and on 23-9-2016, the respondent management called absent and that there was no representation for the respondent management and counter is also not filed by the respondent management hence, the respondent management was set *ex parte*.

4. The point for consideration is:

Whether the dispute raised by the petitioner sangam against the respondent management regarding the lock out declared by the respondent management is illegal is justified or not and whether the petitioner sangam is entitled for the relief as claimed by them?

5. In the course of enquiry on the side of the petitioner PW1 was examined and Ex. P1 to P7 were marked. Heard.

6. From the oral evidence of the PW1 and the exhibits marked by the petitioner union Ex.P1 to P7, it is established by the petitioner that the respondent management has entered into the settlement with the workers on 11-2-2009 for the period of 3 years and the said settlement was extended for one more year till 31-12-2012 with the enhancement of salary and the respondent management has wantonly allotted the security work to the 13 labourers against the agreement provided under the settlement under section 18(1) of the Industrial Disputes Act entered between the respondent management and the workers without giving any notice to the union, the respondent management has declared the illegal lay-off from 9-4-2012 to 21-4-2012 and that therefore, the petitioner union has raised the industrial dispute before the Conciliation Officer at Karaikal and on 12-4-2012, the respondent management has given the show cause notice to 13 labourers stating that they have failed to do the work allotted to them as security and violated the provision of the settlement arrived under section 18(1) of the Industrial Disputes Act by refusing the work allotted to them, but, it is not true that the petitioner workers have refused to do the work allotted to them, actually they have ready to do the work allotted to them and though the workers have ready to do the work only to victimize the workers the respondent management has given the said show cause notice to the 13 workers and furthermore, they have declared lay-off for the period from 9-4-2012 without giving any notice to the union and thereafter, the factory was illegally closed on 20-4-2012 and that therefore, on 25-4-2012, the petitioner union raised the industrial dispute before the Conciliation Officer, Karaikal.

7. The documents Ex.P1 to Ex.P7 also would evident that the respondent management has declared lay-off of the factory on 9-4-2012 and the industrial dispute was raised by the petitioner union on 9-4-2012 and that the respondent management have illegally closed the factory without giving any notice and hence from the evidence and the documents, it is clear that the industrial dispute raised by the petitioner union against the management of the respondent regarding the lock out is justified and the lock out declared by the respondent management is held as illegal and that therefore, the members of the petitioner union are entitled for the compensation for the illegal lock out and therefore, the petition is liable to be allowed.

8. In the result, the petition is allowed and the industrial dispute raised by the petitioner union against the respondent management is justified and it is held that the lock out declared by the respondent management is illegal and hence, the members of the petitioner union are entitled for the compensation of the illegal lock out and Award is passed by directing the respondent management to pay compensation to the members of the petitioner union in accordance with the law for the illegal lock out. No cost.

Dictated to the Stenographer, transcribed by her, corrected and pronounced by me in the open Court on this the 20th day of July, 2017.

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

*List of petitioner's witness :*

PW1 — 4-11-2016 — Thangadurai

*List of petitioner's exhibits :*

Ex.P1— Copy of the Lay-off notice of the respondent management, dated 7-4-2012,

Ex.P2— Copy of the letter of the petitioner's Sangam addressed to the Labour Officer, Karaikal, dated 9-4-2012.

Ex.P3— Copy of the notice of lock out of the respondent management, dated 20-4-2012.

Ex.P4— Copy of the letter of the petitioner's Sangam addressed to the Labour Officer, Karaikal, dated 25-4-2012.

Ex.P5— Copy of the letter of the respondent management in connection with the lock out, dated 25-4-2012.

Ex.P6— Copy of the failure report of the Labour Officer, Karaikal, dated 8-8-2012.

Ex.P7— Copy of the Notification of the Labour Department, Puducherry, dated 30-8-2012.

*List of respondent's witnesses :* Nil

*List of respondent's exhibits :* Nil

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