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No. 10410



Registered No. SSP/PY/44/2015-17
WPP No. TN/PMG(CCR)/WPP-88/2015-17
Dated : 14-11-2017
Price : ₹ 21-00

புதுச்சேரி மாநில அரசிதழ்

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

அதிகாரம் பெற்ற வெளியீடு

Publiée par Autorité

Published by Authority

விலை : ₹ 21-00

Prix : ₹ 21-00

Price : ₹ 21-00

எண் } No. } No. }	புதுச்சேரி Poudouchéry Puducherry	செவ்வாய்க்கிழமை Mardi Tuesday	2017 ல் 14 14th	நவம்பர் மீ Novembre November	14 உ 2017 (23 Kartika 1939) 2017
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GOVERNMENT OF PUDUCHERRY
LABOUR DEPARTMENT

(G. O. Rt. No. 148/Lab./AIL/T/2017,
Puducherry, dated 5th October 2017)

NOTIFICATION

Whereas, the Award in I.D. (T) No. 09/2012, dated 24-8-2017 of the Industrial Tribunal, Puducherry in respect of the industrial dispute between the management of M/s. AVA Cholayil Health Care Private Limited, Puducherry and Medimix Thozhilalargal Sangam, over charter of demands such as (i) revision of Basic Pay @ ₹ 6,000 (ii) annual increment @ ₹ 1,500 (iii) HRA @ ₹ 1,500 (iv) Conveyance and Educational Allowance, etc., during the pendency of 18(1) settlement and to negotiate with the union when there is change in production process and production targets, etc., has been received;

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

(By order)

S. MOUTTOULINGAM,

Under Secretary to Government (Labour).

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

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

Thursday, the 24th day of August 2017

I.D. (T) No. 09/2012

The President,
M/s. Medimix Thozhilalargal Sangam,
No. 4, Vinayagar Koil Street,
S.M.V. Puram, Villianur,
Puducherry. . . Petitioner

Versus

The Managing Director,
M/s. AVA Cholayil Health Care
Private Limited,
No. 283/1, Othiyampet, Villianur Post,
Puducherry. . . Respondent.

This industrial dispute coming on 11-08-2017 before me for final hearing in the presence of Tvl. S. Asokkumar, A. Sakthivel and A. Govindh, Advocates for the petitioner, Thiru. B. Mohandoss, Counsel for the respondent, upon hearing both sides, upon perusing the case records, after having stood over for consideration till this day, this Court passed the following:

AWARD

1. This industrial dispute has been referred by the Government as per the G. O. Rt. No. 78/AIL/Lab./J/2012, dated 10-05-2012 for adjudicating the following:-

(a) Whether the dispute raised by the union workmen Medimix Thozhilalargal Sangam, (Reg. No. 1593/RTU/2009), against the management of M/s. AVA Cholayil Health Care Private Limited, Puducherry over charter of demands such as (i) revision of Basic Pay @ ₹ 6,000 (ii) annual increment @ ₹ 1,500 (iii) HRA @ ₹ 1,500 (iv) Conveyance and Educational Allowance, etc., during the pendency of 18(1) settlement and to negotiate with the union when there is change in production process and production targets, etc., are justified?

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

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

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

(i) The petitioner union is the largest sangam of the employees of the respondent's company. The petitioner union has been rendering best service to the respondent company and the members of the petitioner union have been cooperating with the management for the proper and best management of the company. The members of the petitioner union are dedicated employees, who toiled tirelessly for the improvement of the company and further stated that the company began to act against the interests of its employee and in furtherance of the respondent move to ameliorate their wealth the respondent company had adopted unfair labour practice and without consultation and talks with the union, the respondent has obtained the signature of the employees alleged to be a settlement under section 18 (1) of Industrial Disputes Act. The employees were tempted and made to sign in the alleged settlement. The petitioner's union Office Bearers

were ignored and finally without any alternative the petitioner union members have also constrained to sign in the alleged agreement which is not valid. But, immediately on 23-03-2010, the petitioner union sent a representation to the Labour Officer (Conciliation), Puducherry setting forth their objections to the validity of the alleged settlement. Hence, the petitioner union has not consented to the alleged settlement, dated 18-03-2010. So, it is not valid and enforceable. However, the members of the petitioner union have been cooperating for the smooth management of the company.

(ii) It is further stated that the respondent company had been operating with the production of 414 kgs. (103.05 x 4) and it continued till August, 2011. Suddenly, without having any talks with the employees and without appraising the employees a new production scheme was introduced under the pretext that the price of oil has been increased and wanted to supply low quality oil. So, the workers were burdened with much hard work and they are unable to reach the goal. The respondent realised the same and added three more workers and the production level was also reduced to 207 kgs. This process had been going with the hard work and labour of the workers. But, suddenly unmindful of the workers difficulty, the respondent company pressurised the workers to produce the quantity in the old system that is 414 kgs. The employees expressed their inability and impossibility of the respondent unfair expectation with the poor quality of raw materials. Hence, the petitioner union represented and requested the management to have a talk with them to arrive at an amicable settlement for which the respondent was not willing. Even before that, the petitioner union has been giving representations to the respondent setting forth the problems in the process of production and requested for rectification. But, the respondent has not heeded to the demands made by the petitioner union. The petitioner union's several efforts to rectify the defects went in vain. The petitioner union has vehemently opposed the new system of production process introduced by the management. So, without calling for any conciliatory talks, the respondent has levelled unfair charges against the union president Mr. Ayyappan and initiated disciplinary action against other Office Bearers also when the conciliation proceeding was pending before the Labour Officer, Puducherry. Hence, the petitioner union protested against the

vindictive attitude and victimisation of the Office Bearers and other employees on false charges and issued a notice to the respondent for a strike on 04-05-2012 that they are going on strike on 21-05-2012. But, there was no strike on that day, hoping that the management will rectify the defects and concede to the demands of the petitioner union. But, the respondent was very adamant and did not heed to the request of the petitioner union.

(iii) It is further stated that the employees have been working in the company for the past 20 years. But, the respondent has been contending that the company was started only about 17 years. It is not correct. Previously the company was functioning in the name of Padra Integrated Pharmaceuticals Company Limited, at G.N. Palayam, Puducherry and the present employees had been working there also and then the company's name was changed in the name of the respondent. It does not make any difference. The respondent had previously produced three variants of Medimix soaps and thereafter, producing one variant only. The respondent has not appraised the employees about the terms contained in the alleged 18(1) settlement. The respondent has its own union in the name of "Cholayil Thozhilalargal Nala Sangam" and the members in the said sangam are pro-management and they tempted and brain-washed the other employees to sign. But, most of the employees signatures were obtained only in blank papers. The Office Bearers of the petitioner union have always in their mind the general welfare of the workers and in order to avoid any disturbance at that point of time and with the view to work out their remedy by raising a dispute later have merely signed in the blank paper. The alleged settlement was the result of threat, coercion and undue influence and by luring the employees with attractive words. However, all the terms included in the alleged settlement are unilaterally incorporated by the respondent without any consultation with the petitioner union which has got the majority of employees as its members. The petitioner union members have not voluntarily signed in the alleged settlement. Though the respondent agreed to increase the wage at ₹ 750 per month, it was not given effect to for the first one year and the alleged settlement remained as dead letter. However, the petitioner has been raising objections even from 23-03-2010 and thereafter, series of representations have been made asking for wage revision and fixing productivity

norms. But, the respondent has not come forward to have talks with the petitioner union. In fact, the respondent did not consider the petitioner as a union at all eventhough, the petitioner union is having majority of the employees as its members. Previously there has been production of 414 kgs. all along till August, 2011. From September, 2011, the respondent has supplied low quality oil and also reduced the quantity of oil by stating that the oil price has been increased. In such circumstances, the employees were put to much hard work and productivity was also naturally reduced in view of supply of sub-standard oil and the work consumes lot of manual work and consumes time. The petitioner union brought this fact to the notice of the respondent and it was realised by the respondent and the respondent has added three more workers and also reduced the production to 207 kgs. The petitioner union has been formed to advance the cause and interest of workers and infurtherance of their objective they have raised the issues of wage revision and fixing productivity norms and also the partiality attitude adopted by the respondent in advancing loans to members of the respondent's promoted union referred to above and other benefits. In view of the dispute raised by the petitioner under the representation, dated 24-05-2011 the matter was referred to the Labour Officer (Conciliation), Labour Department, Puducherry.

(iv) It is further stated that the petitioner union has given a charter of demands to the respondent to be complied with. But, the respondent has not accorded to the demands made by the petitioner union. The charter of demands is annexed herewith/ It certainly raises an industrial dispute as contemplated under section 2(k) of Industrial disputes Act. All the demands made by the petitioner union pertain to the conditions of service, labour and employment. So, the respondent's contentions that there exists no industrial dispute is untenable. The demands were communicated to the respondent. Even before, the Conciliation Officer, the respondent has not come forward with any settlement but, all along raised the maintainability of the settlement without considering the demands made by the petitioner and therefore, the petitioner prayed this Court to declare that the alleged 18(1) settlement, dated 18-01-2010 is invalid and unenforceable and to direct the respondent to effect wage revision, productivity norms and other demands made by the petitioner in their representation, dated 24-05-2011 and to grant appropriate reliefs.

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

The respondent denied all the allegations made by the petitioner union against the respondent management and stated that the claim for the declaration that the settlement, dated 18-03-2010 which was wrongly stated as 18-01-2010 in the claim petition by the petitioner entered under section 18(1) of the Industrial Disputes Act, 1947 can't be granted by this Tribunal as per the provisions of the Industrial Disputes Act and the matters coming within the jurisdiction of the Tribunal as specified in the 3rd Schedule of the Industrial Disputes Act, 1947 and there are 11 items enumerated there on and none of them refers to the validity of a settlement between the employer and workmen and that the settlement, dated 18-03-2010 was arrived at between the management of the AVA cholayil Health care Private Limited and its workmen individually and the petitioner union is not a party to the settlement and the petitioner union has no *locus standi* to challenge the settlement, dated 18-03-2010 and further stated that the declaration of invalidity of 18(1) settlement, dated 18-03-2010 does not find a place in the terms of reference and hence, it cannot be taken up for adjudication and the petitioner has not made out any justification for the demands and further stated that consequent to the expiry of the period fixed for the settlement, dated 18-03-2010 expired on 31-12-2012, a fresh settlement was entered into between the permanent workers and the management of the respondent company under sec.18(1) of the Industrial Disputes Act, 1947 for the period from 01-01-2013 to 31-12-2015 and further, a fresh settlement was entered into between the workmen and management of the respondent under section 18(1) of the Industrial Dispute Act, 1947 for further period of 3 years starting from 01-01-2016 and ending with 31-12-2018 and both the above settlements have exhaustively covered the demands of the workmen relating to wage revision, productivity norms and other demands and under such circumstances, the petitioner union prayer for effecting wage revision, productivity norms and other demands as per the petitioners representation, dated 24-05-2011 is not maintainable and further stated that any consideration of the reliefs claimed by the petitioner union for wage revision, productivity norms and other demands so as to affect the settlement referred to above will cause prejudice to the individual

workmen who are parties to the settlement as they are real beneficiaries and the petitioner union has no representative capacity to make a claim in respect of demands of the workmen of the respondent without their consent and prayed to dismiss the claim petition.

4. In the course of enquiry on the side of the petitioner PW.1 was examined and Ex.P1 to Ex.P7 were marked and on the side of the respondent RW.1 to RW.4 was examined and Ex.R1 and Ex.R2 were marked.

5. *The point for consideration is:*

Whether the dispute raised by the petitioner against the respondent management over charter of demands is justified or not and if justified, what relief the petitioners are entitled to?

6. Both sides are heard. The submission of both the parties, the evidence let in by either sides and the exhibits marked on both sides are carefully considered. On both sides written argument was filed and the same is carefully considered.

7. It is clear from the pleadings of both the parties that both the parties have admitted the fact that the petitioner union is formed by the workers of the respondent management and that they have made some charter of demands by representation and subsequently a memorandum of settlement was arrived at between the permanent workers of the respondent establishment and some of the workers have entered into the settlement and these petitioners have not exhibited the same and that they have raised the industrial dispute before the Conciliation Officer wherein, the conciliation was failed and on the intimation of the Conciliation Officer the Government has referred this matter to this Court and it is also an admitted fact that the petitioners have claimed for wage revision, productivity norms and other demands made by the petitioner in their representation, dated 24-05-2011 and for other reliefs.

8. In order to prove the claim of the petitioner union the President of the union was examined as PW.1 and he has stated in his evidence that they have employed in the respondent establishment and the management of the respondent establishment had adopted unfair labour practice and instead of negotiating with the union regarding the service condition of the work they have entered 18(1) settlement containing unfair cause regarding their service condition and unilaterally fixed the productivity norms and the respondent management

is not interested in collective bargaining and the respondent management has also created own union in the name of "Cholayil Thozhilalargal Nala Sangam" and the members of the said Sangam tempted and brainwashed the other employees to sign in the alleged settlement and the members of the petitioner union have also constrained to sign in the alleged agreement and most of the employees signatures were obtained by the management only in blank papers and that therefore, the representation was made by the petitioner union to the Labour Conciliation on 23-03-2010 for conciliation and the respondent management has taken action against the members of the union and dismissed the Office Bearers as well as the other employees who were in the forefront supporting the union and therefore, the petitioner union has forced to raise the dispute which was referred to this Court since the conciliation was failed in which the petitioner union has claimed the revision of Basic Pay at ₹ 6,000, Annual increment of ₹ 1,500, House Rent Allowance ₹ 1,500 along with Conveyance and Educational Allowance during the pendency of 18(1) settlement and to negotiate with the union when there is a change in production process and production targets, etc., and for other reliefs. PW.1 has further deposed that the settlement in new discipline by fixing the production norms without discussing with the majority union as entered with the intention to break the union which is certainly unfair labour practice which would affect earnings of the workmen in the form of wages which would be paid by the management based on the production norms.

9. It is the main contention of the respondent management that there is no settlement on 18-01-2010 under section 18(1) of the Industrial Disputes Act and actually the settlement was arrived at between the respondent management and the workers of the establishment on 18-03-2010 under section 18(1) of the Industrial Disputes Act and the Tribunal has no jurisdiction to grant any relief as specified in the 3rd Schedule of the Industrial Disputes Act, and there are 11 items enumerated thereon and none of them refers to the validity of the settlement between the employer and workmen and this matter can be decided only by the Labour Court under 2nd Schedule of the Industrial Disputes Act and further, contention of the respondent is that the settlement was arrived at between the individual workman with the respondent and the union is not the party to the settlement and that therefore, the petitioner union has no *locus standi* to challenge

the settlement, dated 18-03-2010 since all the workers have been enjoyed all the benefits under the said settlement and that therefore, the said workers have to be necessary parties to the claim petition.

10. Admittedly, the alleged settlement which was challenged by the petitioner union has been executed by the individual workman with the respondent management. As rightly stated by the respondent management, the workmen who have entered the settlement with the respondent management have been enjoying the benefits of the settlement executed under section 18(1) of the Industrial Disputes Act and in such circumstances, without hearing the individual workers of the respondent management who are enjoyed the benefits of the settlement the validity of the settlement cannot be decided. Furthermore, though the petitioners have filed the claim statement, nowhere in the claim statement they have mentioned the claim of Basic Pay of ₹ 6,000, increment of ₹1,500 and other claims. But, it was mentioned by them that they have claimed only to direct the respondent to effect wage revision, productivity norms and other demands made by the petitioner union in their representation, dated 24-05-2011. However, on perusal of documents, the petitioner union has not at all filed any such representation which was alleged to have been given by them either to the respondent management or to the Conciliation Officer on 24-05-2011 before this Court for consideration. Without filing the said representation, dated 24-05-2011 how this Tribunal could pass such an Award directing the respondent to effect wage revision, productivity norms and other demands made in the representation alleged to have been made by them on 24-05-2011 as claimed by the petitioner.

11. Though the petitioner have exhibited Ex.P1 to Ex.P7, the representation, dated 24-05-2011 has not been exhibited before this Court. Further in this case, the individual workers who have entered settlement under section 18(1) of the Industrial Disputes Act with the respondent management have not been added parties to the proceedings. Furthermore, the petitioners have claimed in the claim statement for revision of wages on the foot of the alleged representation, dated 24-05-2011. But, it is the case of the petitioner that even prior to the settlement, dated 18-01-2010 they have made representation before the respondent management for the wage revision. However, they have claimed in the claim statement that they have made representation only on 24-05-2011

which is totally contrary to the pleadings and the said representation also is not exhibited before this Court. In such circumstances, this Court cannot pass any such Award as claimed by the petitioner in the claim statement.

12. Furthermore, though the petitioners have claimed the Basic Pay at ₹ 6,000, Annual increment of ₹ 1,500, House Rent Allowance ₹ 1,500 along with Conveyance and Educational Allowance, they have not produced any other settlement arrived at between the workers of similar nature in any other establishment within the region of Puducherry wherein, the respondent establishment is functioning. Even they have not produced Pay Slip of workers of same nature of work in any other establishment. Nothing is before this Court to decide that the petitioners are entitled for the Basic Pay at ₹ 6,000, Annual increment of ₹ 1,500, House Rent Allowance ₹ 1,500 along with Conveyance and Educational Allowance as stated by them. The petitioners have not at all filed any settlement or any other document or any Salary Slip which was received by them before their demand before this Tribunal. Even they have not summoned any documents from the respondent to prove the same. In such circumstances, the petitioner union have utterly failed to prove the fact that what was the salary being issued to them at the time of submitting charter of demands and how they are entitled for the Basic Pay at ₹ 6,000, Annual increment of ₹ 1,500, House Rent Allowance ₹ 1,500 along with Conveyance and Educational Allowance.

13. Further Ex.P4— Copy of 18 (1) settlement which was arrived at between the respondent management and other workers also would not disclose the fact how much the salary was received by the other workers of the respondent establishment and that therefore, the petitioner is utterly failed to substantiate their claim. From the foregoing reasons, this Court held that without adding the individual workers who have entered the settlement with the respondent management and without exhibited the said representation, dated 24-05-2011 the claim made by the petitioner in the claim statement to declare that the 18 (1) settlement arrived at between the respondent establishment and other individual workers is invalid and unenforceable is not sustainable and that therefore, the industrial dispute raised by the petitioner union before the Conciliation Officer over the charter of demand is not justified and therefore, these petitioners are not entitled for the claim and hence this industrial dispute is liable to be dismissed.

14. In the result, this industrial dispute is dismissed. No cost.

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

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

List of petitioner's witness:

P.W.1 — 19-01-2015 — Ayyappan

List of petitioner's exhibits:

Ex.P1 — 17-06-2009 — Copy of certificate of registration of trade union.

Ex.P2 — 02-11-2009 — Representation to the Manager.

Ex.P3 — 03-12-2009 — Representation to the Manager.

Ex.P4 — 18-03-2010 — Copy of 18(1) settlement.

Ex.P5 — 12-08-2011 — Representation to conciliation.

Ex.P6 — 11-01-2011 — Representation to Manager.

Ex.P7 — 01-08-2012 — Representation to conciliation.

List of respondent's witnesses:

RW.1 — 28-12-2016 — E.M.I.D. Lucas

RW.2 — 05-05-2017 — K. Saravanan

RW.3 — 05-05-2017 — S. Jayanthi

RW.4 — 05-05-2017 — R. Murugesan

List of respondent's exhibits :

Ex.R1 — 01-01-2013 — Copy of the settlement to under to section 18(1) 31-12-2015 of the Industrial Disputes Act, 1947 between the management of the respondent and its individual workmen.

Ex.R2 — 01-01-2016 — Copy of the settlement to under to section 18(1) 31-12-2018 of the Industrial Disputes Act, 1947 between the management of the respondent and its individual workmen.

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

**GOVERNMENT OF PUDUCHERRY
LABOUR DEPARTMENT**

(G.O. Rt. No. 149/Lab./AIL/J/2017,
Puducherry, dated 10th October 2017)

NOTIFICATION

Whereas, the Award in I.D.(L) No. 44/2014, dated 23-8-2017 of the Labour Court, Puducherry in respect of the industrial dispute between the Management of M/s. Pondicherry Institute of Medical Sciences, Puducherry and its workman Thiru L. Bhuvaneshwaran over non-employment has been received;

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

(By order)

S. MOUTTOULINGAM,

Under Secretary to Government (Labour).

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

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

Wednesday, the 23rd day of August 2017

I.D. (L) No. 44/2014

L. Bhuvaneshwaran,
Ganapthy Nagar,
(Travellers Bungalaw Back Side),
Marakkanam Post,
Tindivanam Taluk.

.. Petitioner/
Workman

Versus

The Managing Director,
M/s. Pondicherry Institute of Medical Sciences,
Ganapthichettikulam Village,
Kalapet.

.. Respondent/
Management

This industrial dispute coming on 7-8-2017 before me for final hearing in the presence of Thiru R.S. Zivanandam, Counsel for the petitioner, Thiruvalargal L. Sathish, T. Pravin, S. Velmurugan and V. Veeraragavan, 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 industrial dispute has been referred by the Government as per the G. O. Rt. No. 124/AIL/Lab./J/2014, dated 25-8-2014 for adjudicating the following:-

(i) Whether the dispute raised by the petitioner Thiru L. Bhuvaneshwaran against the management of M/s. Pondicherry Institute of Medical Sciences, Puducherry over his non-employment is justified? If justified, what relief he is entitled to?

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

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

(i) It is stated that the petitioner was appointed as a Storeman in the respondent establishment on 19-12-2012 through his appointment letter for initial period of two years and his salary was fixed at ₹ 7,000 per month as per the details mentioned in the appointment letter and he also deposited a sum of ₹ 7,000 security as required by the respondent and he discharged his service unblemishingly for the period of one year and further stated that on 12-12-2013, it was alleged by the respondent on 13-11-2013 when a stock was taken in the central store, it was found that a material of Socket 20 amps was in shortage and requested the petitioner to admit the shortage in order to deduct from the salary and he was forced to write a letter as intra-office memorandum admitting the mistake with an assurance that the cost of material will be deduct from the salary and further stated that on 18-12-2013 he was issued an order of termination without any charge-sheet or any

departmental enquiry and immediately the petitioner met the Personal Manager about the surprise termination order against him and the said Manager ordered him to file a labour dispute before the Labour Officer (Conciliation) and immediately the petitioner on 22-1-2014 raised an industrial dispute for reinstatement with backwages and upon the notice of the Labour Officer (Conciliation) the respondent appeared before the conciliation submitted the written reply on 10-3-2014 and after protracted conciliation, the Conciliation Officer submitted a failure report on 5-8-2014 and on 25-8-2014 the Government of Puducherry had issued a notification of reference to this Tribunal to resolve a dispute between the respondent and the petitioner.

(ii) It is further stated that the order of termination, dated 18-12-2013 against the petitioner is arbitrary, illegal and against the natural justice and without any basis of rhyme or reason and further stated that the petitioner was employed as storeman as alleged by the respondent on contract period of two years and therefore, within a period of one year, terminating him simply without any consciousness or reasonableness mainly based upon bias and that the order of appointment, he was employed for a period of two years on contract and if, the service of the petitioner was not satisfied by the respondent he may be removed from service with a minimum period of notice but, he was not terminated on the terms of contract and he was, terminated on allegation of his conduct when the allegation of misappropriation was made by the respondent, the respondent ought to have initiate a department enquiry and placed the charges against the petitioner and must give an opportunity to the petitioner to disprove the charges against him and if, not the removal of the service of the petitioner is simplified and it cannot be understood the terms of contract of service and therefore, the petitioner raised his demand with the respondent for re-employment for violating the natural justice of denying the right of independent enquiry and therefore, the termination is illegal and *void abinitio* and further stated that during conciliation proceedings the Labour Officer (Conciliation) advised the respondent that the allegation of the management or misconduct is not a grave in nature and it is only a mistake in making the entry in the stock register and the innocence of the petitioner

can be proved if, the enquiry initiated against him and even inspite of it, it only a mistake and the management can consider that the mistake of the petitioner is due to oversight and also advised to take back the petitioner for the employment and since, the gravity of the punishment is excessive and disproportionate to the mistake committed by him and inspite of it the management is adamant and not taking back the petitioner for employment and therefore, thwarting the advice of the Labour Officer (Conciliation) is purely an authoritative approach of the respondent and it should be deprecate through court of law.

(iii) It is further stated that after the termination, the petitioner did not gainfully employed in any other firm and any avocation in any of similar nature and that it is not a misappropriation, its only wrong entry in the stock register and no opportunity was granted to the petitioner to dissolve the wrong entry in the stock register and moreover the loss if assessed, in the wrong entry, the cost of the material is ₹ 200 and its negligible cost is not weighed by the respondent before terminating from service and however, the act of management is obituary and violating of natural justice and prayed this Court for reinstatement with back wages and continuity of service from 18-12-2013 *i.e.*, the date of termination.

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

The respondent denied the averments made by the petitioner in the claim petition except those that are specifically admitted by them in the counter statement and stated that the cause title in the claim petition is wrong as there is no Managing Director in the respondent institution and the respondent is headed by Director - Principal and therefore, the cause title in the claim petition needs to be suitably amended and further stated that the petitioner L. Bhuvaneshwaran Employee No. 5220 joined in the respondent establishment on 19-12-2012 as Storeman on two years contract *vide* appointment order No. 298/PO/2012, dated 19-12-2012 which was duly signed and accepted by him and as per clause 3 and 5 speaks the rights of management for discontinuations of service in respect of the assessment and termination shall be made by giving one month notice by letter on both sides and further stated that it was reported that discrepancies were

noted in the Engineering section of the general stores which was handled by the petitioner and it was found that in the departmental issue note specifying items issued from general stores to Engineering Department (Issue No. 18713D05461, dated 19-10-2013) prepared by the petitioner under Sl. No. 2, Code No. E002957, 4 Nos" 20 A 1 way switch (RO) was issued and it also been noted that in the indent Form (Sl. No. 57043) for issue No. 18713D05461, dated 19-10-2013 issued by the Engineering Department to general stores, the quantity of above two items has been subsequently corrected from 4 to 14 in order to facilitate the pilferage of 10 items and it was noticed during audit and audit report, dated 28-11-2013 was submitted showing the shortage of the items and it was also noticed that subsequent department issue note No. 18713D06141, dated 4-12-2013 was prepared by the petitioner referring to the earlier indent no. 57043 including the 10 Nos of 20 A1 way switch (RO) and 10 Nos of 20 A socket (RO) in order to correlate with the tampered indent Form Sl. No. 57043, dated 19-10-2013 and on verification of records in the Electrical section it was only 4 Nos' each of 20 A socket (RO) and 20A 1 way switch (RO) and the balance 10 Nos' was not received by the management and further stated that the petitioner *vide* letter, dated 12-12-2013 accepted that he had made an additional departmental issue note on 4-12-2013 without informing the stores in-charge and corrected the indent Form and since the conduct of petitioner and more importantly his integrity and honesty was doubtful, the respondent management invoked clause 3 of the terms of appointment and issued order of discontinued from his contract of service with effect from 19-12-2013 as the management not satisfied with the performance of the petitioner and prayed this Court to dismiss the claim petition.

4. In the course of enquiry on the side of the petitioner PW1 was examined and Ex.P1 to Ex.P10 were marked and on the side of the respondent RW1 was examined and Ex.R1 to Ex.R7 were marked.

5. *The point for consideration is:*

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

6. Both sides are heard. The submission of both the parties, the evidence let in by either sides and the exhibits marked on both sides are carefully considered. In support of his case the learned Counsel appearing for the petitioner has relied upon the citation in AIR 1999 SC 983. The learned Counsel for the respondent has filed a written argument and relied upon the following citations : CDJ 2011 SC 622, CDJ 2007 SC 139, CDJ 2007 SC 1312, CDJ 2006 SC 611, CDJ 2006 SC 1238, CDJ 2005 SC 604, 2000 AIR SCW 3439, CDJ 2001 SC 363, CDJ 1999 SC 470, CDJ 1992 SC 118, CDJ 1961 SC 097, CDJ 2008 MHC 327, CDJ 2016 BHC 1370, CDJ 2014 GHC 080, CDJ 2013 DHC 1750, CDJ 2012 DHC 2073, CDJ 2010 BHC 2177, CDJ 2008 APHC 690, CDJ 2008 PHC 075, CDJ 2001 GHC 481, 2000 2 LLJ 493, 1995 2 LLJ 492 AP HC, (1994) II LLJ 423 Ker, India Tourism Development Corporation Vs. Poonam Rai (DEL) and Mahesh Kumar Vs. M/s. Fruit and Vegetable Projects.

7. It is clear from the pleadings of both the parties that both the parties have admitted the fact that the petitioner Bhuvaneshwaran was appointed at the respondent establishment as a Storeman on 19-12-2012 under an appointment letter for the contract period of two years and his monthly salary was fixed at ₹ 7,000 and on 13-11-2013 audit was conducted by the respondent management at central store and it was found that material of socket of 20 Amps was in shortage and without conducting any enquiry the petitioner Bhuvaneshwaran was terminated from service on 18-12-2013 and that he has raised the industrial dispute before the Conciliation Officer on 22-1-2014 and on failure of the conciliation the matter has been referred to this Court.

8. It is the main contention of the petitioner that only on the instigation and request and assurance of the management that the cost of the material will be deducted from the salary the petitioner has admitted the shortage of socket of 20 Amps and the petitioner was terminated without any charge-sheet or any departmental enquiry on 18-10-2013 and that therefore, the order of termination, dated 18-10-2013 is arbitrary, illegal and against the natural justice and though the petitioner was employed as a Storeman on contract period of two years in the respondent establishment the termination of his service within the period of one year simply without any consciousness or reasonableness and that the petitioner was not terminated on the terms of the contract but, he was

terminated on the allegation of his conduct of misappropriation, for which the domestic enquiry is required after placing charge against the petitioner and the petitioner has to be given an opportunity to dispose the charges levelled against him.

9. On the other hand, it is the contention of the respondent that the respondent establishment is a Multi-Speciality Hospital and Trauma Care centre, providing plethora of medical facilities and treatments to people in and around Puducherry region and also the respondent runs a Medical College and Nursing College within its premises and this petitioner was appointed on 19-12-2012 as a Storeman on contract period of two years and it only for the period of two years from the date of employment and the appointment to the petitioner also with specific terms and conditions duly signed and accepted by the petitioner in which it is accepted by the petitioner that if, his conduct and performance are required to be excelled ordinarily and after a period of six months he will be evaluated and in case of any lapses in his performance institutional rules will apply for his assessment and discontinuation of his service and clause 5 of the said appointment order would also permitting the respondent management to terminate the employee by giving one month notice or one month pay in view of notice by either sides and his employment was strictly only for period of two years and his services were subject to contract monitoring and scrutiny by the respondent and in the event of petitioner found to be wanting in performance or his conduct the contract of employment was terminable and in audit report, dated 28-11-2013 it was found that there is some discrepancy and showing shortage of 20 sockets.

10. From the contention of both the parties, it is clear that the main issue to be decided in this case is that whether the employee who appointed on contract basis could be terminated without conducting domestic enquiry and without serving charges for the reason of low performance of the petitioner workman and that to for the misconduct by causing shortage while working as a Storeman. On this aspect, the records and documents are perused. Admittedly, in this case the petitioner is a contractual labour appointed for 2 years under a contract and according to the appointment the petitioner can be terminated by giving one month notice. The petitioner has exhibited the appointment order, dated 19-12-2012 as Ex.P1. The 3rd and 5th terms and conditions of the appointment order runs as follows:

“3. Your conduct and performance are required to be excellent ordinarily. We suggest that you cooperate with our monitoring of your performance regularly and after a period of six months you will be evaluated and in case of any lapses in your performance the institutional rules will apply for your assessment and discontinuation of your service..... 4. The employment can be terminated by giving one month's notice or one month's pay in lieu of notice, by either side.”

From Ex.P1 - Appointment letter it is clear that the petitioner was appointed as Storeman for a period of two years on contract, and the abovesaid terms and conditions would go to show that if, the management found that there is any lapses in the performance it can be discontinuation of the services of the petitioner and furthermore, it is clear from the term 5 of the contract that the petitioner can be terminated by giving one month notice or one month pay in view of the notice by either sides.

11. Even according to the case of the petitioner that there was some shortage of socket of 20 Amps and it was found in the audit conducted by the management and this petitioner also gave a letter admitting the shortage to the management and such circumstances the petitioner has terminated from service under Ex.P4-Termination order issued by the respondent establishment to the petitioner, in which last four lines would runs as follows :

“The Management is not satisfied with the conduct and performance of Mr. L. Bhuvaneshwaran and is constrained to invoke clause 3 of his terms of appointment and he is hereby discontinued from his contract of service with effect from 19-12-2013.

He may approach the Finance/Personnel Department for settlement of dues. He will also be paid one month salary in lieu of notice board”.

The abovesaid termination order would go to show that the management has not satisfied with the conduct and performance of the petitioner and that therefore, as per the terms of the appointment his service was discontinued from the contract of service with effect from 9-12-2013 and he has also been given one month salary in view of the notice period and that therefore, it is clear from the Ex.P4 - termination order that the respondent management has terminated the petitioner as per the terms and conditions of the contract.

12. The learned Counsel for the petitioner argued that the petitioner was appointed as contractual employee and though he has committed shortage by over sight he cannot be terminated without issuing charge memo and without conducting domestic enquiry and without giving any opportunity to disprove the charges since the petitioner was terminated on the allegation of the conduct of misappropriation made by the respondent management and in support of his case the learned Counsel appearing for the petitioner has relied upon the Judgment reported in AIR 1999 SC 983 -Dipti Prakash Banerjee Vs. Satvendra Nath Bose National Centre for Basic Sciences, Calcutta and others, wherein, the Hon'ble Supreme Court has observed that,

(C) Constitution of India, Art.311 - Termination of probationer - Stigmatic words - Need not be contained in order of termination itself - Documents referred to in order may also contain material which may amounts to stigma and would vitiate order.

(D) Constitution of India, Art.311 - Termination of probationer - Whether stigmatic - Order stating that conduct, performance, during whole period not satisfactory - Letter issued earlier to probationer from management stated that he had prepared “false bills” and “misbehaved with women academic staff members” - Contents of letter form foundation of termination order and not a case of mere notice - other three letters referred to in termination order contained not only certain allegations but, clear adverse Endings by Director as well as by informal Inquiry Committee - Said findings arrived at in non-departmental inquiry are ‘foundation’ for termination - order vitiated on ground of stigma - Probationer not gainfully employed elsewhere - Entitled to reinstatement and backwages”

and the learned Counsel for the petitioner has also relied upon the Judgment reported in 1993 LAB.I.C.913 of Delhi High Court, wherein it has been observed that,

(B) Industrial Disputes Act (1947), Sch.2 Item 3, Ss.2(00), 25F - Termination of Service - Misconduct - Neither charge-sheet was issued to employee nor inquiry was held - Memorandum of termination amounting to retrenchment - Provisions of S.25F not complied with - Award setting aside order of termination of service by Labour Court - Not illegal.

From the above observation of the Hon'ble Supreme Court and the Hon'ble Delhi High Court, it is clear that if, no workman is terminated from service on certain allegation of any stigmatic words in termination order that he has committed any misbehavior, misconduct, or misappropriation without any domestic enquiry by giving sufficient opportunity to disapprove the charges leveled against him. But, on perusal of Ex.P4 - termination order passed by the respondent management to the petitioner does not contain any allegation against the petitioner workman except that his performance and conduct are not satisfied to the management and that too, agreed by the petitioner workman as per the terms and conditions of the contract of the appointment since the petitioner himself has accepted and read down the terms and conditions under Ex.P1 - Appointment order.

13. Furthermore, the petitioner himself has admitted the mistake of stock deficit by writing a letter as intra office memorandum. While mistake of stock deficit was admitted by him no further domestic enquiry is required to prove the same and that therefore, the domestic enquiry is not required to terminate the petitioner from service. Admittedly, the petitioner is a contract labour only for the term of 2 years and he is not a permanent employee which is also evident from Ex.P1 and in such a case the question of reinstatement would not arise and that therefore, this Court after considering all the facts and circumstances come to the conclusion that the petitioner is not entitle for any relief of reinstatement and backwages claimed by him and as such, it is to be held by this Court that the Industrial tribunal raised by the petitioner before the Conciliation Officer is not justified and as such the claim petition is liable to be dismissed.

14. 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 23rd day of August, 2017.

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

List of petitioner's witnesses :

PW1 —18-04-2015— Bhuvaneshwaran

List of petitioner's exhibits :

Ex.P1 —19-12-2012 Appointment order issued by the respondent to the petitioner.

Ex.P2—24-01-2013 ESI Temporary identity card registration.

Ex.P3—12-12-2013 Intra office memo.

Ex.P4—18-12-2013 Termination order issued by the respondent to the petitioner.

Ex.P5—December, 2013 Copy of the pay slip.

Ex.P6—01-04-2014 Letter sent by the petitioner to the Conciliation Officer.

Ex.P7—10-03-2014 Reply letter sent by the respondent to the Labour Officer (Conciliation).

Ex.P8—08-04-2014 Reply letter sent by the respondent to the Labour Officer (Conciliation).

Ex.P9—05-08-2014 Failure report sent by the Labour Officer (Conciliation).

Ex.P10—25-08-2014 Notification of Labour Department.

List of respondent's witness :

RW1 —02-03-2016 Karmel Reetha

List of respondent's exhibits :

Ex.R1—19-10-2014 Copy of Indent Form.

Ex.R2—24-10-2013 Departmental Issue note.

Ex.R3— October, 2013 Copy of Indent Register.

Ex.R4—29-02-2016 Letter of authorization.

Ex.R5—04-12-2013 Computer generated Departmental issue note fabricated by the petitioner.

Ex.R6—11-12-2013 Copy of the internal correspondences in respondent's institution on the incident relation to petitioner.

Ex.R7—22-01-2014 Copy of the letter given by the petitioner.

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

GOVERNMENT OF PUDUCHERRY
LABOUR DEPARTMENT

(G.O. Rt. No. 150/Lab./AIL/T/2017,
Puducherry, dated 10th October 2017)

NOTIFICATION

Whereas, Award in I.D.(T)No. 01/2007, dated 22-8-2017 of the Industrial Tribunal, Puducherry in respect of the Industrial Dispute between the Management of M/s. Vasavi Modern Raw and Boiled Rice Mill, Yanam and M/s. Bhargavi Agro Tech., Adavipolam, Yanam and Sri Vigneswara Rice Mill Operators and Workers Union, Yanam over revision of wages and other allied matters has been received;

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

(By order)

S. MOUTTOULINGAM,
Additional Secretary to Government (Labour).

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

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

Tuesday, the 22nd day of August 2017.

I.D. (T) No. 01/2007

The President,
Sri Vigneswara Rice Mill Operators
and Workers Union,
(Regd. No. 1197/RTU/2000),
2-2, Golaghabathulla Street,
Yanam.

.. Petitioner

Versus

1. The Managing Director,
M/s. Vasavi Modern Raw and
Boiled Rice Mill, Adavipolam,
Yanam.
2. The Managing Director,
M/s. Bhargavi Agro Tech,
Adavipolam,
Yanam.

.. Respondents

This industrial dispute coming on 21-7-2017 before me for final hearing in the presence of Thiru R.S. Zivanandam, Advocate for the petitioner, Thiru L. Sathish, Advocate for the respondent, upon hearing both sides, upon perusing the case records, after having stood over for consideration till this day, this Court passed the following:

AWARD

1. This Industrial Dispute has been referred by the Government as per the G.O. Rt. No. 187/2006/LAB/AIL/J, dated 29-12-2006 for adjudicating the following:-

(i) Whether the demand by Sri Vigneswara Rice Mill Operators and Workers Union, Yanam for revision of wages and other allied matters made against the management of M/s. Bhargavi Agro Tech, Adavipolam, and M/s. Sri Vasavi Modern Raw and Boiled Rice Mill (P) Ltd., Yanam is justified?

(ii) If so, to give appropriate direction?

(iii) To what other relief workers are entitled to?

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

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

It is stated that the petitioner union is a workers' union functioning at Yanam-one of the Region of Union territory of Puducherry and the union consists of workers belong to various rice mills of Yanam region and that the 1st respondent Mill is functioning since 1985 and its work force is 69 Nos. in various categories and the 2nd respondent Mill is functioning since 1984 and it is having 108 workers in various categories and further stated that the petitioner union raised an industrial dispute for revision of wages for both the mills by their representation, dated 9-6-2004 and their main demands are revision of wages of ₹ 1,000 per head per month and overtime wages as per the Act are to be paid and every completed 24 hours of duty, 8 hours of wages to be paid as bata, night shift work, every worker who discharge 2 workers' duty is eligible to get 1 day bata and National festival holidays to be implemented and the implementation of the wage revision for every worker will be from 9-6-2004. On 16-11-2004, a representation was submitted to the Regional Administrator, Yanam, marking a copy to the Assistant Inspector of Labour to resolve the dispute and another letter was also submitted on 1-12-2004.

On the basis of the letters, the protractive Conciliation was held before the Assistant Inspector of Labour at Yanam who is the designated authority under the Industrial Disputes Act. The conciliation ended in failure after several sittings and hence a failure report was sent by the Asst. Inspector of Labour, Yanam on 19-12-2005 to the Labour Department and based on the same, the Labour Department of Government of Puducherry issued a notification on 29-12-2006 by making a reference of this Labour Tribunal to resolve the dispute under section 10(1)(d) of the Industrial Disputes Act.

It is further stated that the wages paid to the workers are not in accordance to law or Minimum Wages Act and there is no categorisation of workers and some workers are paid piece rated and some are paid daily wages and some monthly wages and there is discrimination between male and female workers and there is justification in seeking monthly wages for all categories of workers and that the respondents are dealing with 1500 bags of paddy and are earning ₹ 50,000 per day and only 15% is paid as wages and the wages are not paid according to Minimum wages Act applicable to Pondicherry and the existing wages of workers for an Operator/Mill driver is far below the minimum wages and there is exploitation of workers and that the demand for increase of ₹ 1,000 per month, an increment of ₹ 500 a month every year is justified and that the respondents are calculating rice-mill allowance and conveyance allowance in calculating the wage and it is contrary to basic structure of minimum wages and the revision of wages on basic wages, D.A., H.R.A., rice-mill allowance and conveyance shall be on par for all the workers and prayed to dissolve their issue according to the demands.

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

The respondents denied all the averments made by the petitioner union and stated that the petitioner union is not a registered trade union and the union had not been functioning for the last several years and the union does not have the requisite membership and has become completely defunct and is an unregistered, unrecognised minority union. They are representing only six workers, who are participants before the conciliation proceedings. Only for the benefit of those six workers the present industrial dispute has been raised by the petitioner and that the combined strength of the two respondents being 105 workers and the petitioner union does not even represent 10% of the total workforce of the respondents and further stated

that the petitioner union has not been authorised by its General Body to raise the present dispute or to contest the issue of wage revision before this Court and has no mandate to represent the cause of workers who are not its members and therefore, they cannot seek for the wage revision on behalf of all the workers of the respondents.

The respondents further stated that there is a clear categorisation of workers in its mills by the distinct nature of work allotted to each of the workers in its mills and they assign specific duty to all its employees be it, paddy hullers, paddy boilers, sweepers, helpers, bag carriers or bag stretchers and except for the 6 workers who participated in the conciliation proceedings no other workman have any affiliation with the petitioner union and all the six workman who participated in the conciliation proceedings are either paddy hullers or paddy boilers who performed the specific nature of job allotted to them and that the six workers of petitioner union were never asked to do any work other than paddy boiling or paddy hulling and similarly a worker who is engaged as a helper or a sweeper is never asked to do paddy hulling or paddy boiling and further stated that by law, the respondents are entitled to engage daily rated workers, jattu workers or casual workers to whom the wages can be paid on a daily rated basis and to demand monthly wages to jattu workers or daily rated workers is absurd and unsustainable more particularly in a seasonal industrial activity like rice milling and further stated that they are paying more than the wages prescribed under the Minimum Wages Act and each of six representative of the union are drawing salaries between ₹ 2,200 to ₹ 2,850 depending upon their grade, which is exclusive of the batta of ₹ 450 and none of the workers of the petitioner union are drawing a salary as low as what has been claimed in the claim petition and further stated that they have implemented the minimum wages prescribed under the Act and that the Labour Officer, Conciliation has stated in the report dated 29-5-2007 that the workmen representatives request the Conciliation Officer to enhance wages ₹ 350 on present wages that is ₹ 2,750 + ₹ 350 and it shows that the workers were drawing ₹ 2,750 as salary which is way beyond what is prescribed under Minimum Wages Act and during the conciliation proceedings the respondents have magnanimously agreed to give a flat high of ₹ 170 as against the demand of ₹ 350 which was not acceptable to the representatives of petitioner union and that the petition filed by the petitioner union is clear abuse of Trade union powers, is vexatious and is liable to be dismissed.

4. In the course of enquiry on the side of the petitioner PW1 was examined and Ex.A1 to Ex.A10 were marked and on the side of the respondent RW1 was examined and Ex.R1 to Ex.R31 were marked.

5. The point for consideration is:

Whether the demand made by the petitioner union for revision of wages and other allied matters against the respondents is justified or not?

6. Heard. The submission of both the parties, the evidence let in by either sides and the exhibits marked on both sides, the written argument filed by the petitioner are carefully considered.

7. The petitioner union have raised the industrial dispute by giving their representation for the revision of wages for R1 and R2 mills. They have sought for enhancement of wages of ₹ 1,000 per head per month and overtime wages as per the Act and for every completed 24 hours of duty, 8 hours of wages to be paid as bata and in the night shift work every worker who discharge 2 workers' duty is eligible to get one day bata and further demand is that the national festival holidays to be implemented and implementation of wage revision for every worker would be from 9-6-2004 and they have raised the industrial dispute on 16-11-2001 by giving representation to the Regional Administrator, Yanam and the copy has been sent to the Assistant Inspector of Labour to resolve the dispute. Since, the conciliation was failed, the Government has made this reference to decide the revision of wages and other allied matters made against the management of M/s. Bhargavi Agro Tech. Adavipolam and M/s. Sri Vasavi Modern Raw and Boiled Rice Mill (P) Ltd., Yanam is justified or not.

8. It is the case of the petitioner union that the respondent's mill have different categories of workers like Drivers/Operators, Assistant Operators, Clerks, Sweepers, Bag carriers or bag waiters and bag stitchers and Sweepers and bag stitchers/waiters are piece-rated with daily wages and others are treated as monthly earners and that therefore, the union claimed that all are to be treated as monthly wages and that their main contention is that the respondent managements have not paid the minimum wages to the workers who are entitled to a maximum of ₹ 86 per day and minimum of ₹ 77 for every category of workers and they have asked to enhance the minimum of ₹ 1,000 from existing wages.

9. On the other hand, it is contended by the respondent managements that the petitioner union has become defunct as many of its members have either formed their own unions or have joined the other union

and even some of the office bearers of the union have ceased to act as union leaders owing to their joining avocations unconnected with the Rice-mills and the union had not been functioning for the last several years and the union is unregistered and unrecognised minority union and the petitioner union does not even represent 10% of the total workforce of the respondents and the union has not been authorised by its General Body to raise the present dispute or to contest the wage revision before this Court and that the respondent mills are entitled to engage daily rated workers, jattu workers or casual workers to whom the wages can be paid on a daily rate basis and the representatives of the union are drawing salaries between ₹ 2,200 to ₹ 2,850 depending upon their grade, which is exclusive of the bata of ₹ 450 and the respondents are implementing the minimum wages prescribed under the Act and during the conciliation proceedings, the respondents have magnanimously agreed to give a flat high of ₹ 170 as against the demand of ₹ 350 per month.

10. From the pleadings of both the parties it is clear that the following facts are admitted by them that the petitioner union members and executives are working at the respondent mills and the petitioner union has raised the industrial dispute before the Conciliation Officer over charter of demands such as wage revision for ₹ 1,000 per month and also for other benefits as claimed in the claim statement and the conciliation was failed and subsequently the case was referred to this Tribunal to decide the fact that whether the industrial dispute raised by the petitioner union over charter of demands is justified or not and whether the petitioners are entitled for any other relief.

11. To establish the case, the petitioner union has exhibited Ex.A1 to E.A10. The charter of demands is exhibited as Ex.A1 wherein, the petitioner has claimed the demands from the management of both the mills R1 and R2 that the monthly salary will be enhanced to ₹ 1,000 per month to every operator, overtime wages shall be executed as per Act, one day wage shall be paid as bata for 24 hours duty and two batas shall be paid if, a workers may have perform dual work at night and festival holidays shall be executed as per Act. From the above Ex.A1, it is clear that the petitioners have made a representation over charter of demands on 9-6-2004 to both the mill for the above demands. Ex.A2- Reminder to the charter of demands would evident that the union has made a representation before the Assistant Inspector of Labour-cum-Conciliation Officer on 1-12-2004 regarding the

charter of demands which was claimed by them from the managements on 9-6-2004 and wherein, it is stated by the union that the management had agreed for 8 hours work per day and to pay over time wages twice to the wage. Ex.A3 and Ex.A4 are the reply of the respondent management R1 and R2 to the Assistant Inspector of Labour-cum-Conciliation Officer on 22-4-2005 which would evident that there was a conciliation proceedings before the Assistant Inspector of Labour-cum-Conciliation Officer on 22-4-2005 and in the conciliation the managements have stated that the petitioners are paid more than the D.A. included minimum wages and the management is ready to pay the statutory minimum wages and statutory minimum bonus as revised periodically. Ex.A5 is a letter sent by the petitioner union on 6-6-2005 to the Assistant Inspector of Labour-cum-Conciliation Officer regarding the charter of demands submitted by them which would evident that the conciliation meeting was held on 28th April and 10th May, 2005. Ex.A6 is the representation given by the union members to the Regional Executive Officer, Yanam on 16-11-2004 regarding the charter of demands submitted by them before the Conciliation Officer. Ex.A7 is the failure report submitted by the Conciliation Officer, the Assistant Inspector of Labour, Yanam to the Government. Ex.A8 is the reference made by the Government to this Tribunal to adjudicate the dispute over the charter of demands raised by the petitioner union. Ex.A9 is the salary slips which reveals that some of the employees have received Rice mill allowance ₹ 400 and Conveyance allowance ₹ 240 and some of the employees have received rice mill allowance ₹ 562 and conveyance allowance ₹ 338 in the year 2005 for the month of August, 2005 and further some of the employees have received rice mill allowance ₹ 62 Conveyance allowance ₹ 375 in the month of May, 2005 and in the month of January, 2005 some of the employees have received rice mill allowance ₹ 566 and Conveyance allowance ₹ 340 and further the basic pay of ₹ 960, ₹ 1,350, ₹ 1,500 and ₹ 1359 were paid to the employees in the year 2005 for various categories of employees. Ex.A10 is the notification of the Government of Puducherry passed in the year 2005 which reveals that the Government of Puducherry has fixed the minimum rate of wages payable to each category of employees engaged in the rice mills, Flour mills and Dhal mills of the Union Territory of Puducherry and ₹ 77 was fixed as minimum rate of wages per day 8 hours work to the rice mills paddy driver, millers, sweepers, shellerman, winnowers, paddy soakers, water carriers,

watchman and mazdoors employed in polishing. On perusal of records, Ex.A7 would evident the fact that the conciliation was held and in the conciliation the Conciliation Officer has observed that in the conciliation the respondent management has accepted for 8 hours duty and double O.T and the petitioner union has claimed only enhancement of wages at ₹ 450 in the conciliation for which the respondent management has accepted to enhance the wages to ₹ 170 instead of ₹ 450.

12. On the other hand, in order to prove the case, the respondents have exhibited the copy of the list of operators who have left the services of the respondents as Ex.R1, RTI form submitted by the respondent to the registrar of trade union as Ex.R2, the copy of certificate of Registration of the petitioner union furnished by Registrar of Trade union under RTI as Ex.R3, the copy of the returns filed by the petitioner union to Registrar of Trade union on 8-2-2006 as Ex.R4, the copy of the list of the office bearers as in the year 2006 along with the rules and regulations of petitioner trade union as furnished by the Public Information Officer as Ex.R5, the copy of the application submitted by the petitioner union for registration of the trade union along with the list of their office bearers as furnished by the Registrar of Trade Union as Ex.R6, the copy of the memorandum of 18(1) settlement between 1st respondent and Mistry and Contract Jattu Labour as Ex.R7, the copy of memorandum of settlement in Telugu under section 12(3) of Industrial Disputes Act as Ex.R8, the copy of memorandum of settlement under section 18(1) of Industrial Dispute Act as Ex.R9, the wage register of respondent's company for the months of September to October, 2013 as Ex.R10, the original affidavit executed by Siva Koti Venkatasamy as Ex.R11, the original affidavit executed by Badrajula Nageshwara Roa as Ex.R12, the original affidavit executed by Ulusukondayya as Ex.R13, the Memorandum of settlement under section 18(1) between Sri Vasavi Modern Rice Mills and the workers as Ex.R14, the original Memorandum of settlement under sec. 18(1) between Vasavi Modern V Rice Mill and the workers as Ex.R15, the copy of the memorandum of 18(1) settlement entered between 2nd respondent and (1) Koppisetty Subrahmanyam, (2) Nati Srinivasan Roa, (3) Saladi Adinaryanan, (4) Sundara Thata Roa as Ex.R16, the copy of the memorandum of 18(1) settlement entered between 2nd respondents and (1) Choday Yedukondalu, (2) Gurumella Jondayya, (3) Chavakula devadas as Ex.R17, the original receipts given by Choday Yedukondalu to 2nd respondent

towards as full and final settlement on his resignation.(3Nos.) as Ex.R18, the original receipts given by Gurumella Kondayya to 2nd respondent as full and final settlement on his resignation (3Nos.) as Ex.R19, the original receipts given by Chavakula devadas to 2nd respondent towards as full and final settlement on his resignation.(3Nos.) as Ex.R20, the original receipts given by Koppisetty Subrahmanyam to 2nd respondent towards as full and final settlement on his resignation.(5Nos.) as Ex.R21, the original receipts given by Nati Srinivasan to 2nd respondent towards as full and final settlement on his resignation.(5Nos.) as Ex.R22, the original receipts given by Saladi Adinarayanan to 2nd respondent towards as full and final settlement on his resignation.(5Nos.) as Ex.R23, the original receipts given by Sundara Thata Roa to 2nd respondent towards as full and final settlement on his resignation.(5Nos.) as Ex.R24, the original list of vouchers/receipts for payment made towards arrears of wage increase by the 1st respondent to some of its workers as Ex.R25, the original receipt given by Batrajula Nageshwara Rao to 1st respondent as full and final settlement of his resignation as Ex.R26, the original receipt given by Bara Nageshwara Rao to 1st respondent as full and final settlement of his resignation as Ex.R27, the original receipt given by A. Srinivasa Rao to 1st respondent as full and final settlement of his resignation as Ex.R28, the original receipt given by J.V.V. Sathyanarayanan to 1st respondent as full and final settlement of his resignation as Ex.R29, the original settlement arrived between 1st respondent and Chitti Raju before the Assistant Inspector of Labour, Yanam with receipt for full and final settlement as Ex.R30, the copy of the register of wages maintained by the respondents as Ex.R31.

13. On perusal of the above records, Ex.R7 to Ex.R9 are the copy of the memorandum of settlement between the respondent management and contract Jattu labours under section 18(1) & 12(3) of the Act in the year 2003 and 2005. Ex.R10 would reveal the fact that the respondent management is paying overtime wages, HRA, ESI and PF contribution in the year 2013. Ex.R11 to Ex.R13 are the affidavit of the operators of the respondent mill wherein, they have stated that they are not the members of the petitioner union and that they have resigned from the job after getting terminal benefits from the respondent mill. Ex.R14 to Ex.R17 are the memorandum of 18(1) settlement arrived at between the workers of the respondent mill and the respondent management. Ex.R18 to Ex.R30 are the original receipts given by the employees towards their

full and final settlement on their resignation which would go to show that most of the employees of the respondent mill have resigned their job after getting full and final settlement from the respondent management. These documents would go to show that most of the employees of the respondent mill have entered settlement with the respondent management under section 18(3) and 12(3) of the Act and some of the employees are also have resigned their job after getting all the benefits from the respondent management and majority of the employees are not the members of the petitioner union and the office bearers of the petitioner union only 6 members alone have raised the dispute for enhancement of wages while other employees have entered settlement under section 18(1) and 12(3) of the Act.

14. It is the main contention of the respondent management that the petitioner union is a defunct one and the union does not have atleast 10% of the workers and only these 6 petitioners have claimed the overtime wages, most of the employees resigned their job after getting full and final settlement and some of the employees have also entered into 18(1) settlement and therefore, this petitioner union is not functioning and that therefore, the petitioner union members are not entitled for any relief. It is also established by the respondent management that most of the employees have left after getting full settlement and work benefits by executing receipt for full settlement by resigning their job and most of the employees have entered into the settlement with them. Ex.A7 is the memorandum of settlement made under section 18(1) of the Industrial Disputes Act by the respondent management on 23-9-2003 which would go to show that the respondent management has agreed to increase all piece rate wages by 7% payable to jattu labour and also agreed to pay 65% extra wages for work rendered on specified factory holidays and weekly holidays and also agreed to contribute EPF and ESI.

15. It is not in dispute that the respondent management have paying minimum wages to the petitioners. There cannot be any objection to the respondent management to pay minimum wages to the petitioners according to the law. Admittedly, in the year 2005 under Ex.A10 a notification was notified by the Government of Puducherry wherein, the wages of the Rice mill employees were fixed at ₹ 77 per day for 8 hours work and that therefore the petitioner who were working in the year 2005 at the respondent Mills are entitle to get the minimum wages at the rate of ₹ 77 per day and the management have also agreed to pay

the over time wages and double wages for O.T. and the respondent management have also admitted the fact that they are ready to increase the pay at ₹ 77 from the date of charter of demands and the petitioner union have also agreed and demanded only enhancement of ₹ 450 in the wages and they have also claimed increment for every year as the petitioners are the union members and they are entitled for increment per year. The petitioner union have claimed enhancement of salary of ₹ 1,000 to its workers. As there is no contract between the petitioner union and the respondents the salary cannot be raised on the basis of their claim at the rate of ₹ 1,000 per month and furthermore, the petitioner union have claimed ₹ 450 in the conciliation proceedings and the management have also accepted to enhance the salary of ₹ 170 at the time of conciliation and furthermore, it would evident from Ex.R7-Memorandum of settlement arrived at between the jattu labours of the respondent mill and the respondent management that the respondent have agreed for rate of wages to its jattu labours and agreed to pay 65% extra wages for work rendered on specified factory holidays and weekly holidays and also agreed to pay EPF and ESI contribution apart from the bonus of 8.33% of wages and though there is no settlement arrived at between the union and the respondents, as the pay increase was given to the jattu labours under the settlement entered u/s. 8(1) of the Industrial Disputes Act on 23-9-2004 these petitioners are also entitled for the enhancement of wages. However, enhancement of ₹ 1,000 cannot be given to them since it is not stated by the petitioner workmen on what basis ₹1,000 was fixed by them for asking enhancement.

16. The petitioner workmen have claimed only ₹ 450 in the conciliation proceedings for which the respondents have also accepted to grant ₹170 towards revision of wages. The petitioners have not filed any document or let any evidence that how they are entitled for the wage enhancement of ₹ 1,000 per month. Wage cannot be enhanced under statutory right without any settlement or contract between the employee and the employer. Hence, these petitioners are not entitled for any wage enhancement of ₹ 1,000 as claimed by them. However, the petitioners are entitled for the minimum wage at the rate of ₹ 77 per day (₹ 77 x 30 days ₹ 2310) and they have also entitled for the Rice mill allowance of ₹ 625, conveyance allowance of ₹ 375 and also entitled for the Dearness allowance for the said pay of ₹ 2,310. Apart from the above minimum

wages, the petitioners are also entitled for the overtime wages and the respondents have also to contribute EPF and ESI contribution in respect of their employees as claimed by the petitioners under the statutory provisions. Further, the petitioners have claimed bata and other things. But, no document is exhibited before this court to grant such relief to the workers. If, the petitioner workmen are working more than statutory period of 8 hours they are entitled for the overtime wages as claimed by them and that therefore, it is to be held that the petitioners are entitled for the minimum wages at the rate of basic pay of ₹ 2,310, rice mill allowance of ₹ 625, Conveyance allowance of ₹ 375 along with dearness allowance and hence, the dispute raised by the petitioner union against the respondents over their charter of demand is justified and the petition is liable to be partly allowed and the petitioner workmen are entitled for the relief. However, as already discussed above the petitioner workmen are not entitle for enhancement of wages of ₹ 1,000 as claimed by them and hence Award is to be passed to pay the minimum wages to the petitioners after deducting the wages already paid to them and for overtime wages and for contribution of EPF and ESI.

17. In the result, the petition is partly allowed and the industrial dispute raised by the petitioner union over the charter of demand is justified and an Award is passed by directing the respondents to pay minimum wages of ₹ 2,310 towards basic pay, ₹ 625 towards rice mill allowance, ₹ 375 towards Conveyance allowance along with proper dearness allowance and house rent allowance to these 6 members of the petitioner union for the said period i.e. from the date of raising the industrial dispute before the Conciliation Officer and further directed the respondents to pay overtime wages to these petitioners if they have served overtime and also directed to pay EPF and ESI contribution as claimed by these petitioners and this petition is partly dismissed in respect of charter of demand of wage enhancement of ₹ 1,000. No cost.

Dictated to the stenographer, transcribed by her, corrected and pronounced by me in the open Court on this the 22nd day of August, 18-6-2015 for adjudicating the following:-

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

List of petitioner's witness:

PW.1 — 21-08-2009— K. Subramanian

List of petitioner's exhibits:

Ex.A1 — 09-06-2004 —Charter of demands by the union.

Ex.A2 — 01-12-2004 —Reminder to the charter of demands.

Ex.A3 — 22-04-2005 —Reply by the 1st respondent.

Ex.A4 — 22-04-2005 —Reply by the 2nd respondent.

Ex.A5 — 06-06-2005 —Reminder to the charter of demands.

Ex.A6 — 16-11-2004 —Representation to the REO, Yanam.

Ex.A7 — 19-12-2005 —Failure report of the Conciliation Officer.

Ex.A8 — 29-12-2006 —Reference by the Government.

Ex.A9 — August, 2005 — Wage slips issued by the 1st respondent (5Nos).

Ex.A10— 24-01-2005 —Gazette Notification issued by the Government of Puducherry .

List of respondent's witness:

RW.1 — 03-01-2014— V. Sathyananda Kumar

List of respondent's Exhibits:

Ex.R1 — — — Copy of the list of operators who have left the services of the respondents.

Ex.R2 — 01-03-2012 —RTI form submitted by the respondent to the registrar of trade union.

Ex.R3 — 15-03-2000 —Copy of certificate of Registration of the petitioner union furnished by Registrar of Trade Union under RTI.

Ex.R4 — 08-02-2006 —Copy of the returns filed by the petitioner union to Registrar of Trade Union on 08-02-2006.

Ex.R5 — — — Copy of the list of the office bearers as in the year 2006 along with the rules and regulations of petitioner trade union as furnished by the Public Information Officer.

Ex.R6 — — — Copy of the application submitted by the petitioner union for registration of the trade union along with the list of their office bearers as furnished by the Registrar of Trade Union.

Ex.R7 — 23-09-2003 —Copy of the memorandum of 18(1) settlement between 1st respondent and Mistry and Contract Jattu Labour.

Ex.R8 — — — Copy of memorandum of settlement in Telugu under section 12(3) of ID Act.

Ex.R9 — 24-09-2005 —Copy of memorandum of settlement under section 18(1) of ID Act.

Ex.R10— — — Wage register of respondent's company for the months of September to October, 2013.

Ex.R11— 08-02-2007 —Original affidavit executed by Siva koti Venkatasamy.

Ex.R12— 08-02-2008— Original affidavit executed by Badrajula Nageshwara Roa.

Ex.R13— 08-02-2007— Original affidavit executed by Ulusukondayya.

Ex.R14— 24-08-2008 —Memorandum of settlement under section 18(1) between Sri Vasavi Modern Rice Mills and the workers.

Ex.R15— 28.02.2009 — Original Memorandum of settlement under section 18(1) between Vasavi Modern Rice Mill and the workers.

- Ex.R16 — 15-03-2009— Copy of the memorandum of 18(1) settlement entered between 2nd respondent and (1) Koppisetty Subrahmanyam, (2) Nati Srinivasan Roa, (3) Saladi Adinaryanan, (4) Sundara Thata Roa.
- Ex.R17— 06-08-2008— Copy of the memorandum of 18(1) settlement entered between 2nd respondents and (1) Choday Yedukondalu, (2) Gurumella Jondayya, (3) Chavakula devadas.
- Ex.R18 — 13-08-2008— Original receipts given
13-08-2008 by Choday Yedukondalu
31-08-2009 to 2nd respondent towards as full and final settlement on his resignation. (3 Nos.)
- Ex.R19— 13-08-2008— Original receipts given
13-08-2008 by Gurumella Kondayya
31-08-2009 to 2nd respondent as full and final settlement on his resignation. (3Nos.)
- Ex.R20— 13-08-2008— Original receipts given
13-08-2008 by Chavakula devadas to
31-08-2009 2nd respondent towards as full and final settlement on his resignation. (3Nos.).
- Ex.R21— 31-03-2009— Original receipts given by Koppisetty Subrahmanyam to 2nd respondent towards as full and final settlement on his resignation. (5Nos.).
- Ex.R22— 31-03-2009— Original receipts given by Nati Srinivasan to 2nd respondent towards as full and final settlement on his resignation. (5Nos.).
- Ex.R23— 31.03.2009 — Original receipts given by Saladi Adinarayanan to 2nd respondent towards as full and final settlement on his resignation. (5Nos.).
- Ex.R24— 31-03-2009— Original receipts given by Sundara Thata Roa to 2nd respondent towards as full and final settlement on his resignation.(5Nos.).
- Ex.R25— — — Original list of vouchers/receipts for payment made towards arrears of wage increase by the 1st respondent to some of its workers.
- Ex.R26 —31-08-2009— Original receipt given by Batrajula Nageshwara Rao to 1st respondent as full and final settlement of his resignation.
- Ex.R27— 14-10-2008— Original receipt given by Bara Nageshwara Rao to 1st respondent as full and final settlement of his resignation.
- Ex.R28— 09-03-2009— Original receipt given by A. Srinivasa Rao to 1st respondent as full and final settlement of his resignation.
- Ex.R29— 10-03-2009— Original receipt given by J.V.V. Sathyanarayanan to 1st respondent as full and final settlement of his resignation.
- Ex.R30— 22-04-2008 —Original settlement arrived between 1st respondent and Chitti Raju before the Assistant Inspector of Labour, Yanam with receipt for full and final settlement.
- Ex.R31— December, — Copy of the register of
2006 and and wages maintained by
January, the respondents.
2007.

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