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**GOVERNMENT OF PUDUCHERRY
LABOUR DEPARTMENT**

(G.O. Rt. No. 15/Lab./AIL/T/2018,
Puducherry, dated 5th February 2018)

NOTIFICATION

Whereas, an Award in I.D (L) No.10/2012, dated 08-12-2017 of the Labour Court, Puducherry in respect of the Industrial Dispute between the management of M/s. DXN Herbal Manufacturing (India) Pvt. Ltd., Puducherry, over non-employment of 17 employees 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**

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

Friday, the 8th day of December, 2017

I.D. (L) No. 10/2012

The Secretary,
DXN Labour Union,
No. 471, First floor,
Bharathi Street,
Puducherry-605 001.

.. Petitioner

Versus

The Managing Director,
M/s. DXN Herbal Manufacturing
(India) Pvt. Ltd.,
R.S. No. 141/4 & 142/5,
Whirlpool Road,
Thiruvandarkoil,
Mannadipet Commune,
Puducherry-605 102.

.. Respondent

This industrial dispute coming on 05-12-2017 before Pre-negotiation sitting for hearing in the presence of Thiru M. Ganapthy, Advocate for the petitioner and Tmt. Indra Josephine Shakila, 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. 42/AIL/Lab.J/2012, dated 19-3-2012 for adjudicating the following:-

(a) Whether the dispute raised by DXN Labour Union against the management of M/s. DXN Herbal Manufacturing (India) Pvt. Ltd., Puducherry over non-employment of 17 employees viz., (1) R. Pugazendy, (2) N. Vettrivel, (3) A. Raja, (4) D. Dayalan, (5) D. Mahalatchumy, (6) R. Sarala, (7) R. Umadevi, (8) V. Rajeshwari, (9) S. Banu, (10) K. Hemamalini, (11) P. Sudha, (12) P. Latcumy, (13) R. Devaki, (14) V. Vani, (15) P. Maheswari, (16) N. Malathi and (17) J. Omsakthi is justified?

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

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

2. *The averments in the Claim Statement and additional claim statement filed by the petitioner are as follows:-*

The petitioner union and the management entered into a settlement under section 12(3) of the Industrial Disputes Act regarding the production of the goods. As per this settlement, total 28 employees have to produce 3500 bottles of finished goods per day. The production may vary according to the total number of workers employed on a particular day. The production of 3500 bottles of finished goods per day is a collective work of all the employees. The management without following this aspect issued individual charge to a section of the employees alleging that each of the employees has not produced 3500 bottles of finished goods. The management infact alleged nil production also for some of the working days without proper verification of records. Some of the employees were dismissed on the false allegation and without following any procedure. The alleged domestic enquiry has also not been conducted in a fair manner and no opportunity

was given to the employees in this regard during the alleged enquiry. The Enquiry Officer has simply accepted the version of the management and handed over a report to the management and there are gross violations in this regard. On the date of dismissal the conciliation proceedings were pending against all these dismissed employees and the respondent without following the provisions of the Industrial Disputes Act dismissed all the employees. The petitioner union requested the respondent to furnish audited balance sheet of the company for the year 2009-2010 for arriving a just bonus to the employees by way of a letter, dated 17-09-2010 for which the respondent neither replied nor furnished the balance sheet for the year 2009-2010. Hence, the petitioners have sent another letter on 14-10-2010 demanding 20% bonus and 20% *ex-gratia* since, there was a huge profit to the respondent in the said financial year. For getting the balance sheet they have submitted an application before the Labour Officer (Conciliation) also and even before the Conciliation Officer, the respondent had not produced the balance sheet inspite of repeated demands of the Conciliation Officer. On the contrary, the respondent disputed the very authority of the Conciliation Officer for furnishing the copy of the balance sheet in a very arbitrary manner. The respondent had sent a letter on 14-10-2010 stating that they will furnish the balance sheet in due course but, till date they have not furnished the balance sheet. The respondent is behaving in an authoritative manner with its employees without respecting the beneficial labour legislations. The respondent is not following the provisions of the Payment of Bonus Act and acting to their whims and fancies. The employees has worked to their best and produced maximum quantity of production and this can be verified by perusing the work sheet of the company. Obviously for this reason only the respondent is willfully and wantonly refusing to furnish the balance sheet as requested by the petitioners. Since, there was surplus profit over and above the ceiling limit of bonus, the petitioners have demanded 20% bonus and 20% *ex-gratia*. This is the usual practice followed in all companies where there was surplus profit over the bonus limit. The respondent by their letter, dated 18-11-2010 has made a false representation before the Labour Officer, Conciliation that the bonus was paid to all its employees as per rules and this is an utter false statement and virtually this will amount to unfair labour practice by the respondent. The management has followed different methods for

each employee and paid the bonus to them by making difference among them. The management without following any rule deducted the salary of the employees. Therefore, the petitioner union prayed this Court to pay an Award for the payment of bonus at 20% and *ex-gratia* at 20% to the employees and to direct the management to pay the deducted wages to the employees and to pass an Award for the reinstatement of the dismissed employees as per the reference with back wages with continuity of service and other attendant benefits.

3. The averments in the counter and 2 additional counter statements filed by the respondent are as follows :-

The respondent denied all the averments except those which are specifically admitted by them and stated that the respondent management was running a drug unit called DXN Herbal manufacturing Co. (India) Ltd., and that there was a subsisting settlement between the union and the management under section 12(3) of Industrial Disputes Act concluded in the presence of Labour Officer (Conciliation) and under clause 2.2 of the said settlement, dated 09-03-2009 it was agreed between the parties that 3500 bottles of finished goods per shift as production norms and also under clause 18.4, it was agreed that workman shall not resort to any direct action to settle their grievances but, only seek remedy under negotiations and it was also agreed under clause 11.1 and 11.2 of the said settlement that the payment of annual Bonus shall be as per payment of Bonus Act and it was categorically agreed that the workman shall work in a disciplined manner and produce 3500 bottles of finished goods per shift. However, the workman resorted to 'go slow' from April 2010 and the respondent advised the workmen to return to normalcy by way of notices which was refused to listen by the petitioner union and without understanding the reality the workmen aggravated their illegal acts by way of illegal strike, which resulted the unbearable loss to the company for which the respondent company issued several warning notices to the reference mentioned 17 employees and the explanation submitted by the said 17 employees are not true to the circumstances and so an interim suspension order was issued against R. Pugazhenthay for damaging the company properties, N. Vetrivel for allegation of several misconducts, A. Raja for threatening the supervisor and co-worker, regarding D. Dhayalan, D. Sarala, N. Malathy, G. Maheswari, P. Sudha, J. Omsakthi, V. Rajeswari, R. Devagi, S. Banu, V. Vani, R. Umadevi, P. Lakshmi, D. Mahalakshmi, K. Hemamalini for go slow and during

the period of suspension due subsisting allowances were given to them and that the matter was raised before the Labour Officer (Conciliation), Puducherry and that the explanation so given by the above 17 employees were not satisfied, a domestic enquiry was conducted as against these 17 employees and after due enquiry, the Enquiry Officer submitted their report and that the management concurred with the findings of the Enquiry Officer and after issuance of II show cause notice dismissed the workmen for their proved misconduct of 'go slow' and that in pursuance of the termination all the benefits were indented for the workmen were given, whereas, they refused to receive the same and that the bonus for the period of 2009-2010 were given to all the employees @ bonus 8.33%, *ex-gratia* 11.67% that is totally 20% as per the Bonus Act and that the respondent company has given all the benefits in accordance with the Bonus Act and as per the Industrial Disputes Act and that the respondent company has not done any injustices to workmen in the name of deduction of wages or otherwise and that the respondent company has acted based upon the Payment of Wages Act, 1963 and no injustice was caused and that the respondent company has not done any contravention under section 33 (1)(b) of the Industrial Disputes Act and hence, the claim made by the claimant are virtually untenable and illegal in nature and therefore, prayed to dismiss the claim petition.

4. In the course of the enquiry on the side of the petitioner, PW1 was examined, and EX. P1 to Ex. P6 were marked and on the side of the respondent RW1 was examined and Ex.R1 to Ex.P35 were marked.

5. *The point for consideration is:*

Whether the dispute raised by the petitioner union against the respondent management over non-employment 17 reference mentioned employees is justified or not and if justified, what is the relief entitled to the abovesaid employees?.

6. Argument heard. In order to prove their case, the petitioner union has examined PW1 and PW2 and marked Ex.P1 to Ex.P6. On the other hand, the respondent management has examined RW1 and marked Ex.R1 to Ex.R35. While the matter was posted for cross examination of RW1, this case has been referred to the Lok Adalat for amicable settlement wherein, the parties have amicably settled the matter and that they have entered into the memorandum of settlement under

section 12(3) of the Act in which the respondent management has agreed to reinstate all the reference mentioned employees of the petitioner union into service at their establishment and as per the terms and conditions of memorandum of settlement under section 12(3) of the Act arrived at between the parties, the respondent management has also agreed to pay Rs.40,000 as one time compensation amount for all the past service of the reference mentioned employees of the petitioner union and also agreed to reinstate all the reference mentioned employees of the petitioner union who agreed the memorandum of settlement under section 12(3) of the Act and thereafter, the petitioner union and the respondent management has filed a Joint Compromise Memo along with memorandum of settlement, wherein, it is stated that the matter has been settled out of the Court and they have sought this Tribunal to pass an award on the basis of Joint Compromise Memo and therefore, it is just and necessary to record the joint compromise memo and the Award is to be passed in terms of memorandum of settlement and the memorandum of settlement is to be attached as part and parcel of the Award.

7. In the result, the petition is allowed by holding that the industrial dispute raised by the petitioner union against the respondent management over non-employment of 17 reference mentioned employees is justified and Award is passed in terms of the Memorandum of settlement arrived at between the parties on 04-12-2017 and the same is recorded and the respondent management is directed to reinstate all the reference mentioned employees into service as per the terms and conditions of the memorandum of settlement entered between them and the said memorandum of settlement shall be attached as part and parcel of the Award. No cost.

Dictated to Stenographer, transcribed by her, corrected and pronounced by me in the open Court on this the 8th day of December, 2017.

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

List of petitioner's witnesses:

PW.1 — 13-06-2013 — Pugazhenthay

PW.2 — 22-05-2017 — Balasubramanian

List of petitioner's exhibits:

- Ex.P1 — 17-09-2010 — Copy of the letter given by the petitioner union to the respondent management.
- Ex.P2 — 01-10-2010 — Copy of the industrial dispute by the petitioner union before Labour Officer (Conciliation).
- Ex.P3 — 14-10-2010 — Copy of the letter given by the petitioner union to the respondent management.
- Ex.P4 — 14-10-2010 — Copy of the letter given by the respondent management to the Labour Officer (Conciliation).
- Ex.P5 — 18-11-2010 — Copy of the letter given by the respondent management to the Labour Officer (Conciliation).
- Ex.P6 — 24-04-2012 — Copy of Conciliation failure report.

List of respondent's witnesses:

- RW — 09-05-2014 — Thomas Arokiaraj

List of respondent's exhibits:

- Ex.R1 — — — Copy of payment of Bonus for the period 1st 2009 to 31st March, 2010.
- Ex.R2 — 25-11-2010 — Copy of termination order of S. Vani along with cheque.
- Ex.R3 — 25-11-2010 — Copy of termination order of G. Maheshwari along with cheque.
- Ex.R4 — 25-11-2010 — Copy of termination order of R. Umadevi along with cheque.
- Ex.R5 — 25-11-2010 — Copy of termination order of P. Lakshmi along with cheque.
- Ex.R6 — 25-11-2010 — Copy of termination order of P. Sudha along with cheque.

- Ex.R9 — 25-11-2010 — Copy of termination order of D. Mahalakshmi along with cheque.
- Ex.R10 — 25-11-2010 — Copy of termination order of K. Hemamalini along with cheque.
- Ex.R11 — 25-11-2010 — Copy of termination order of S. Sarala along with cheque.
- Ex.R12 — 25-11-2010 — Copy of termination order of S. Banu along with cheque.
- Ex.R13 — 25-11-2010 — Copy of termination order of N. Malathy along with cheque.
- Ex.R14 — 25-11-2010 — Copy of termination order of R. Devagi along with cheque.
- Ex.R15 — 23-11-2010 — Copy of termination order of N. Vetrivel along with cheque.
- Ex.R16 — 23-11-2010 — Copy of termination order of R. Pugazhenthay along with cheque.
- Ex.R17 — 23-11-2010 — Copy of termination order of D. Dhayalan along with cheque.
- Ex.R18 — 23-11-2010 — Copy of termination order of A. Raja along with cheque.
- Ex.R19 — 23-11-2010 — Copy of domestic enquiry report of S. Vani (6002).
- Ex.R20 — 23-11-2010 — Copy of domestic enquiry report of G. Maheshwari (6003).
- Ex.R21 — 23-11-2010 — Copy of domestic enquiry report of R. Umadevi (6004).
- Ex.R22 — 23-11-2010 — Copy of domestic enquiry report of P. Lakshmi (6006).
- Ex.R23 — 23-11-2010 — Copy of domestic enquiry report of P. Sudha (6007).

- Ex.R24 —23-11-2010 — Copy of domestic enquiry report of J. Omsakthi (6012).
- Ex.R25 —23-11-2010 — Copy of domestic enquiry report of V. Rajeswari (6014).
- Ex.R26 —23-11-2010 — Copy of domestic enquiry report of D. Mahalakshmi (6015).
- Ex.R27 —23-11-2010 — Copy of domestic enquiry report of K. Hemamalini (6017).
- Ex.R28 —23-11-2010 — Copy of domestic enquiry report of S. Sarala (6018).
- Ex.R29 —23-11-2010 — Copy of domestic enquiry of S. Banu (6019).
- Ex.R30 —23-11-2010 — Copy of domestic enquiry report of N. Malathy (6020).
- Ex.R31 —23-11-2010 — Copy of domestic enquiry report of R. Devagi (6023).
- Ex.R32 —23-11-2010 — Copy of domestic enquiry report of N. Vetrivel (6024).
- Ex.R33 —23-11-2010 — Copy of domestic enquiry report of R. Pugazhenthay (6025).
- Ex.R34 —23-11-2010 — Copy of domestic enquiry report of R. Dhayalan (6026).
- Ex.R35 —23-11-2010 — Copy of domestic enquiry report of A. Raja (6027).

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

GOVERNMENT OF PUDUCHERRY
LABOUR DEPARTMENT

(G.O. Rt. No. 16/Lab./AIL/T/2018,
Puducherry, dated 6th February 2018)

NOTIFICATION

Whereas, an award in I.D (L) No.18/2016, dated 22-12-2017 of the Labour Court, Puducherry in respect of the industrial dispute between Thiru C. Appadurai, Puducherry against the management of M/s. Hidesign India Private Limited, Puducherry, over non-employment arising out his retirement with all service and monetary benefits has been received;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947), read with the Notification issued in Labour Department's G. O. Ms. No. 20/91/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.

Friday, the 22nd day of December 2017.

I.D. (L) No. 18/2016

C. Appadurai,
No. 14, Kanagavalli Street,
Pudupettai, Lawspet,
Puducherry-605 008. . .Petitioner

Versus

The Managing Director,
M/s. Hidesign India Private Limited,
Odhiyampet Village,
Puducherry-605 110. . .Respondent

This industrial dispute coming on 23-11-2017 before me for final hearing in the presence of Thiruvalargal P. R. Thiruneelakandan and A. Mithun Chakkaravarthy and R. Harinath, Counsel for the petitioner, Thiru G. Krishnan, 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. 93/AIL/Lab./T/2016, dated 22-09-2016 for adjudicating the following:

(i) Whether the dispute raised by Thiru C. Appadurai against the management of M/s. Hidesign India Private Limited, Puducherry, over non-employment arising out his retirement on 30-11-2015 on

attaining the age of 55 years and to permit him to retire from service on 30-11-2018 on attaining the age of 58 years with all service and monetary benefits is justified or not? If justified, what relief the petitioner 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 :

It is stated that the petitioner is a workman employed in respondent factory at Puducherry, he had completed 26 years of continuous service in the respondent factory. While so, the respondent *vide* letter, dated 04-11-2015 terminated the petitioner's service with effect from 30-11-2015 as he had reached superannuation at his age of 55 on 16-09-2015. Aggrieved by the same he had raised an industrial dispute. It is further stated that at the time of the petitioner's initial appointment, he was not issued any written Appointment Order and further at the time of his initial engagement there was no certified standing order in the respondent establishment and the model standing order framed under the Industrial Employment Standing Order (Central) Rules applicable to the respondent establishment and accordingly, as stated in Schedule 1-B of the Industrial Employment Standing Order (Central) Rules, the age of retirement of workmen is 58 years unless contrary agreed between the workmen and the employer under agreement or settlement or Award. As far as superannuation of employee is concerned there was no agreement or settlement or Award between the respondent and his workers or their Trade Union representative or petitioner. In the absence of such arrangement stipulating the age of retirement was followed as 58 years as stated in the Industrial Employment Model Standing Order. It is well settled legal position that the certified standing order shall be in conformity with the Industrial Employment Standing Order Act and the Rules made thereunder and considering Sec.(2)g and Sec.3(2) of the Industrial Employment Standing Order Act, the certified standing order should be relating to the matter set out in the Schedule of the Industrial Employment Standing Orders Act. The Schedule contains only 11 items which does not includes matter relating to superannuation or retirement age of the workers. Therefore, the additional item provided in the model standing orders namely, clause 3 age of retirement applicable to all

industrial Establishment. Accordingly, the age of superannuation of workers is 58, unless contrary is agreed between the employer and the workmen by way of an agreement or settlement or otherwise the age of the retirement is settled by way of industrial Award. Therefore, the respondent is barred from submitting any draft standing order not in conformity with the Industrial Employment Standing Order Act, Rules and further the Certifying Officer also have no authority or jurisdiction to certify any standing order not in conformity with the model standing order or contrary to the model standing order and that if, any standing order certified not in conformity with the model standing order or in contrary with the Industrial Employment Standing Order Act, Rules, the model standing order, the Act and the Rules prevail over the certified standing order and the employer and employees are bound by the model standing order and the certified standing order not in conformity with the model standing order would not be existence in the eye of law. The respondent reduced the age of retirement from 58 to 55 stating that they have obtained permission from the Commissioner of Labour. Hence, the objection was made before the Commissioner to restore the age of retirement. Pursuant to which the commissioner *vide* its proceeding reference No. 3812/AIL/Lab./S/2014, dated 29-10-2015, the age of retirement of the workers of the respondent establishment to 58 years. The respondent relying the alleged certified standing order and denied employment to the petitioner is arbitrary, illegal and against the provision of Industrial Employment Standing Order Act, Rules, model standing order and further stated that the due age of the superannuation of the petitioner is 58 years which will fall on 30-11-2018 and the termination of petitioner's service at 55 years of age is illegal and therefore, the petitioner is entitled to reinstatement of service with full back wages, continuity in service and all other attendant benefits. The petitioner's last drawn was ₹ 9,839 per month. After he was illegally denied employment he has not been gainfully employed anywhere in any establishment. Therefore, prayed this Court to pass an Award holding that the denial of employment to the petitioner from 01-12-2015 is illegal as the age of retirement is 58 years and direct the respondent to reinstate the petitioner in his service with effect from 01-12-2015 with continuity of service with full back wages and all other attendant benefits till he reaches superannuation.

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

The claim statement filed by the petitioner is false and vexatious and do not deserve any consideration either legally or factually. The workmen employed by the respondent are governed by the Certified standing orders which was certified by the Commissioner of Labour and Certifying Officer for the Union territory of Puducherry as early as on 31st October, 1993 after giving due notice to the Hidesign Labour Union, Puducherry which is trade union registered under the Trade Unions Act with Registration No.RTU/657/89. The management and the said union participated in the enquiry and after following the procedure as contemplated under section 5(2) of the Act the draft standing order submitted by the management was certified after making necessary modifications therein. The union in which the petitioner was also a member had participated in the proceedings for the initial certification however, did not prefer any appeal as against the certification of the existing standing orders which was certified on 31-10-1993 though, an appeal was contempt under the Act. The standing orders of the respondent duly certified under the Industrial Employment (Standing Orders) Act dealt *inter alia* with the provisions relating to retirement of workers. The retirement age of 55 was fixed taking into account of the nature of job performed by the workers which required good eyesight, nimbleness of the fingers, good memory and speed and as one gets older, the above attributes begin to diminish and this affects the efficiency of the workers and the workmen above the age of 55 would not be capable of performing their duties in the expected manner owing to problems in eye vision and other physical in capabilities and the union which actively participated in the enquiry taking into consideration of these factors had also agreed for fixing the age of 55 as retirement age. It is settled law that every amendment to the model standing orders does not, perse, become applicable to an industrial establishment, which has certified standing orders. The retirement age of 55 as per the provisions of the existing certified standing order would continue unless certification of amendment as contemplated under the Industrial Employment (Standing Orders) Act is made and until then the workmen of the respondent units including the petitioner herein would continue to be governed by their certified standing orders. The existing certified standing orders of the respondent in respect of retirement, till modified in the manner provided by

law, is binding on the petitioner and therefore, the retirement of the petitioner in terms of the existing certified standing orders of the respondent units is valid in law. The existing standing orders came into operation from 1993 and since then many workmen were superannuated on completion of 55 years of age without any discrimination and the petitioner employed subsequent to the certification was thus governed by the age of superannuation as fixed under the certified standing orders and therefore, he was rightly retired with effect from 30-11-2015 and the petitioner is not entitled for any relief as sought by him in the claim statement. Further, he can not also take advantage of the modification in the retirement age done at the instance of the union since the order of the Certifying Officer was challenged by the management in S.O. A.No. 2 of 2015 before the Hon'ble Appellate Authority under the Industrial Employment (Standing Orders) Act and the same is pending. The question of denial of employment would not arise since the petitioner was relieved from the services on superannuation in terms of the existing certified standing orders of the respondent company.

4. In the course of enquiry on the side of the petitioner PW.1 was examined and Ex.P1 to Ex.P8 were marked and on the side of the respondent RW.1 was examined and Ex.R1 to Ex.R8 were marked.

5. The point for consideration is:

Whether the dispute raised by the petitioner against the respondent management over non-employment arising out his retirement on 30-11-2015 on attaining the age of 55 years and to permit him to retire from service on 30-11-2018 on attaining the age of 58 years with all service and monetary benefits is justified or not and whether the petitioner is entitled for order of reinstatement at the respondent establishment or not?

6. Both sides are heard. The submission of both the parties, the evidence let in by either sides and the exhibits marked on both sides are carefully considered. On the side of the respondent written argument was filed and the same is carefully considered. In support of his argument, the learned Counsel for the respondent has relied upon the Judgment reported in CDJ 1969 SC 210 and CDJ 2009 Ker HC 905.

7. It is the case of the petitioner that he had completed 26 years of continuous service at the respondent factory and on 04-11-2015, he received a letter that he had been terminated from service with effect from 30-11-2015 as he had reached superannuation at his age of 55 on 16-09-2015 against

which he has raised an industrial dispute before the Labour Officer (Conciliation) on 07-12-2015 and while pending dispute, the respondent management has denied employment without approval of the Labour Officer (Conciliation) and the dispute raised by the petitioner before the Labour Officer (Conciliation) was failed and the failure report was submitted to the Government of Puducherry and the Government has referred the said dispute to this Court and that he is entitled for service up to 58 years as per Industrial Employment Standing Order (Central) Rules applicable to the respondent establishment and further, while at the time of appointment, no Appointment Order was given to him and that there was no agreement entered between the respondent management and workmen regarding the age of retirement and in the absence of such arrangement stipulating the age of retirement, the age of retirement was followed as 58 years as per Industrial Employment model standing order and therefore, the petitioner has to be given service up to 30-11-2018 for 58 years and hence, the termination of petitioner's service at 55 years of age is illegal and the respondent management cannot deny the right of the petitioner and hence, he has to be reinstated with back wages and he has to be permitted to serve till 30-11-2018 at the respondent factory.

8. In order to prove the case of the petitioner, the petitioner has examined himself as PW.1 and he has deposed that he was illegally denied employment with effect from 30-11-2015 and that he has filed the claim statement before this Court and that has been treated as part and parcel of the evidence and prayed to reinstate him in service at the respondent establishment with effect from 30-11-2015 as prayed for in the claim statement. In support of his evidence the petitioner has exhibited Ex.P1 to Ex.P8. Ex.P1 is the copy of petitioner's EPF details. Ex.P2 is the copy of petitioner's Pay Slip for the month of June, 2014. Ex.P3 is the copy of petitioner's ESI card. Ex.P4 is the copy of petitioner's relieving order. Ex.P5 is the copy of the letter sent by the petitioner to the respondent management. Ex.P6 is the copy of the letter by the respondent to the petitioner. Ex.P7 is the copy of the industrial dispute raised by the petitioner before the Conciliation Officer. Ex.P8 is the copy of the order passed by Commissioner of Labour-cum-Certifying Officer regarding age of retirement. These documents would reveal the fact that the petitioner had been in service at the respondent establishment up to November 2015 and the information regarding the order of retirement was served to him on 04-11-2015 and the petitioner has raised the industrial dispute

before the Labour Conciliation Officer on 07-12-2015 and the Commissioner of Labour-cum-Certifying Officer has passed an order enhancing the age of retirement from 55 years to 58 years on 29-10-2015 in the standing order of the respondent establishment.

9. On the other hand, to prove their case the respondent management has examined RW.1 and he has deposed that he is the authorized representative of the respondent management and that on 31-10-1993 the standing order of the respondent establishment was certified by the Commissioner of Labour, wherein, it is stated that he passed the said order after giving reasonable opportunity to the union as well as the management and he certified the same after making necessary modifications therein in accordance with section 5(3) of the Industrial Employment (Standing Order) Act and the retirement age was fixed as 55 years and that the nature of job performed by the workers in the respondent company requires good eyesight, nimbleness of the fingers, good memory and speed and as one gets older, the above attributes begin to diminish and this affects the efficiency of the workers and the workmen above the age of 55 would not be capable of performing their duties in the effective manner owing to problems in eye vision and other physical in capabilities and the union which actively participated in the enquiry taking into consideration all these factors had also agreed for fixing the age of 55 as retirement age and that from 1993 many workmen were superannuated on completion of 55 years of age without any discrimination and the petitioner also employed subsequent to the certification and that therefore, the petitioner was rightly retired with effect from 30-11-2015 and the petitioner is not entitled for any reinstatement as claimed by him and that he cannot take advantage of the modification in the retirement age done at the instance of the union since the order of Certifying Officer was challenged by the management in S.O.A. No. 02 of 2015.

10. In support of their case the respondent management has exhibited Ex.R1 to Ex.R3. Ex.R1 is the certified true copy of the Extract of the resolution passed at the meeting of the Board of Directors of respondent Company. Ex.R2 is the copy of the certified standing orders of the respondent company. Ex.R3 is the copy of memorandum of appeal in S.O.A. 2/2015. From the oral evidence of RW.1 and the exhibits marked on the side of the respondent it is established by the respondent management that the respondent company has certified standing order from 31-10-1993 and that the respondent management has filed an Appeal against the order of the Commissioner of Labour who has modified the standing order.

11. From the evidence of both the parties it can be seen that the following facts are admitted by either sides. Originally, the respondent management has certified standing order from 31-10-1993 wherein, the retirement age was only 55 years to the workers of the respondent establishment and as per standing order the date of retirement of the petitioner was 30-11-2015 and subsequent to the intimation given to him, the petitioner has raised the industrial dispute before the Conciliation Officer and the union also has filed the petition before the Labour Commissioner to modify the standing order of the respondent establishment and after hearing both sides the learned Commissioner has passed an order enhancing the retirement age as 58 years against which the respondent management has filed an Appeal before this Court challenging the said order enhancing the age of retirement from 55 years to 58 years. Now, it is to be decided whether the petitioner is entitled for reinstatement as claimed by him in the claim statement and whether he is entitled to work till 58 years as claimed by him. On this aspect, the evidence and records are carefully considered.

12. The evidence of PW.1 in his cross examination is carefully considered which runs as follows;

“.....எல்லா தொழிலாளர்களையும் 55 வயதில் ஓய்வு கொடுப்பதாக சொல்லி எனக்கும் ஓய்வு கொடுத்தார்கள். இந்த நீதி மன்றத்தில் சக தொழிலாளி கருணாநிதி என்பவரும் இந்த மாதிரி வழக்கு போட்டுள்ளார். அந்த வழக்கில் நானும் சாட்சியாக இருக்கிறேன். எதிர்மனுதாரர் நிறுவனமும் எங்களது நிறுவனமும் சேர்ந்து தான் 1993 ஆம் ஆண்டு Standing order ஏற்படுத்தினார்கள் என்றால் அது பற்றி எனக்கு தெரியாது. அதில் தான் ஓய்வு வயது 55 என குறிக்கப்பட்டிருப்பதாக சொன்னால் அது பற்றி எனக்கு தெரியாது. மற்ற தொழிலாளிகளுக்கும் 55 வயதில் ஓய்வு கொடுத்தார்கள் என்று எனக்கு தெரியாது 2 அல்லது 3 தொழிலாளர்களுக்கும் ஓய்வு கொடுக்கப்பட்டது. கம்பனி Standing order படி 55 வயதில் தான் ஓய்வு கொடுக்கப்படுகிறது. அதனால் 58 வயது வரை பணி கொடுக்கப்படவில்லை. எங்கள் யூனியன் சார்பில் ஓய்வு வயதை 58 ஆக ஆக்குவதற்கு கோரிக்கை வைக்கப்பட்டது. அதற்காக 2015-ல் ஒரு வழக்கு நிலுவையில் உள்ளது. மதாசஆ 8 தான் ஓய்வு வயதை உயர்த்த சொல்லி Labour Commissioner சிபாரிசு செய்த அறிக்கை ஆகும். அந்த அறிக்கையில் உள்ள விவரங்கள் முழுவதுமாக எனக்கு தெரியாது. மதாசஆ 8 என்னிடம் தொழிற்சங்கம் என்னிடம் கொடுத்தது. 58 வயது ஓய்வு வயது என நிர்ணயம் செய்வது பற்றி அந்த உத்தரவில் இல்லை. Labour Commissioner பேட்ட உத்தரவிற்கு எதிராக நிர்வாகம் அப்பீல் போய் உள்ளது அந்த S.O.A. 02/2015 நிலுவையில் உள்ளது.....”

From the above evidence, it is clear that the Commissioner of Labour-cum-Certifying Officer has enhanced the age of retirement from 55 years to 58 years by modifying the standing order and the management has also filed an Appeal before this Court and further it is learnt from the above evidence that no one has been permitted to serve at the respondent establishment after 55 years till date.

13. Admittedly, the petitioner was not terminated by the respondent management and only he was given retirement on 30-11-2015 and the order has been passed by the Commissioner of Labour modifying the standing order to the effect that enhancing the retirement age from 55 years to 58 years on 29-10-2015. Furthermore, it is clear from the contention of the petitioner that he sought for order of reinstatement only on the foot of the order of Labour Commissioner modifying the standing order of the respondent establishment to enhance the retirement age. However, the same was challenged by the respondent management before this Court and the same is also posted for orders today wherein, this Court has also decided the Appeal today which was filed challenging the modification of the standing order in which the age of retirement was enhanced from 55 years to 58 years and the Appeal was allowed by this Tribunal and the said order of Commissioner of labour was set aside by this Court since the said modification order was passed by the Labour Commissioner in violation of the 12(3) settlement arrived at between the workers union and the respondent management on 31-01-2012 under memorandum of settlement.

14. Furthermore, the learned Counsel has relied upon the Judgment reported in CDJ 2009 Ker HC 905, wherein, the Hon'ble High Court has observed that,

“The unions agree that during the period of operation of this settlement, they shall not raise any demand having financial burden on the Corporation other than bonus provided that this clause shall not affect the rights and obligations of the parties in regard to matters covered under section 9-A of the Industrial Disputes Act, 1947.

In that case also the Certifying Officer allowed the modification. The appellate authority affirmed the revision with a slight modification. Affirming the judgment of the High Court relying on clauses 19 and 21 of the memorandum of settlement, the Supreme Court held thus in paragraphs 9 and 10.

"9. The settlement does not make any specific mention about the age of retirement. Clause 19 of the settlement, however, provides that such terms and conditions of service as are not changed under this settlement shall remain unchanged and operative for the period of the settlement. The age of retirement prescribed by clause 20 of the Certified Standing Orders was undoubtedly a condition of service which was kept intact by clause 19 of the settlement....10.... The argument that the upward revision of the age of superannuation will not entail any financial burden cannot be accepted. The High Court rightly points out: "Workmen who remain in service for a longer period have to be paid a large amount by way of salary, bonus and gratuity than workmen who may newly join in place of retiring men". The High Court was, therefore, right in concluding that the upward revision of the age of superannuation would through an additional financial burden on the management in violation of clause 21 of the settlement. Therefore, during the operation of the settlement it was not open to the workmen to demand a change in clause 20 of the Certified Standing Orders because any upward revision of the age of superannuation would come in conflict with clauses 19 and 21 of the settlement. We are, therefore, of the opinion that the conclusion reached by the High Court is unassailable."

The clauses quoted above from Exts.P7, P8 and P9 settlements between the parties in this case are in *pari materia* with clauses 19 and considered by the Supreme Court. It is not disputed before me that the petitioner company is in dire financial straits. It is also not disputed before me that the last of the settlement was in force at the time of passing the impugned orders. Therefore, the ration of the decision of the Supreme Court in Barauni Refinery's case (Supra) squarely applies to the facts of this case on all fours. Therefore, I have no option but, to decide this case in accordance with the ration of that decision.

Therefore, following the decision of the Supreme Court, I allow this Writ Petition and set aside the impugned orders to the extent it allows the modification of clause 48 of Ex.PI Standing orders.

However, the wages paid to the employees who continued in service by virtue of the interim orders of this Court for the period subsequent to their attaining 55 years shall not be recovered from them. The extended period of service till today shall be treated as extension granted in exercise of the discretion of the management as provided in clause 48 of Ext.PI Standing orders."

From the above observation of the Hon'ble High Court, it is clear that whenever there is settlement between the employer and employees and no modifications can be made in the standing order against the clause of the settlement arrived at between the employer and employees giving additional financial burden on the management. It is clear that enhancement of retirement age of the worker in the Industry which would create financial burden to the Industry since the entire employee has to be given more wages than the new workers and if, the entire workman is in service for longer period they have to be paid large amount of wages, bonus and gratuity than the workmen who may newly joined in the place of retiring man which would give additional financial burden on the management in violation of the settlement arrived under section 12(3) of the ID Act. Furthermore, more than 50 workers have been retired from service at age of 55 as per the standing order. As per the above observation of the Hon'ble High Court, the said Appeal in S.O.A. No.02 of 2015 was allowed by this Court and the order of the Commissioner of Labour enhancing the age of retirement from 55 years to 58 years was set aside by this Court. As this Court allows the said Appeal and set aside the order of the Commissioner of Labour, this claim petition filed by the petitioner automatically become infructuous that is the petitioner would not seek any remedy on the foot of the said modification of the standing order since the age of retirement is 55 years as per the standing order of the respondent establishment and that therefore, it is to be held that the industrial dispute raised by the petitioner against the respondent management over non-employment arising out his retirement on 30-11-2015 on attaining the age of 55 years and to permit him to retire from service on 30-11-2018 on attaining the age of 58 years with all service and monetary benefits is unjustified and as such, the petitioner is not entitled for any relief as claimed by him in the claim statement and the petition is liable to be dismissed.

15. In the result, the petition is dismissed by holding that the industrial dispute raised by the petitioner against the respondent management over non-employment arising out his retirement on 30-11-2015 on attaining the age of 55 years and to permit him to retire from service on 30-11-2018 on attaining the age of 58 years with all service and monetary benefits is unjustified and the petitioner is not entitled for any order of reinstatement at the respondent establishment as claimed by him in the claim statement. No cost.

Dictated to the Stenographer, transcribed by her, corrected and pronounced by me in the open Court on this the 22nd day of December, 2017.

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

List of petitioner's witness:

PW.1— 18-07-2017 — C. Appadurai.

List of petitioner's exhibits:

- Ex.P1 — 2014-2015— Copy of petitioner's EPF details.
- Ex.P2 — June, 2014 — Copy of petitioner's pay slip.
- Ex.P3 — — — Copy of petitioner's ESI card.
- Ex.P4 — 04-11-2015—Copy of petitioner's relieving order.
- Ex.P5 — 18-11-2015—Copy of the letter sent by the petitioner to the respondent management.
- Ex.P6 — 30-11-2015—Copy of the letter by the respondent to the petitioner.
- Ex.P7 — 07-12-2015—Copy of the industrial dispute raised by the petitioner before the Conciliation Officer.
- Ex.P8 — 29-10-2015—Copy of the order passed by Commissioner of Labour-cum-Certifying Officer regarding age of retirement.

List of respondent's witness:

RW.1— 12-09-2017 — T. Rajkumar.

List of respondent's exhibits:

- Ex.R1 — 16-12-2015— Certified true copy of the Extract of the resolution passed at the meeting of the Board of Directors of respondent Company.
- Ex.R2 — 31-10-1993— Copy of the certified standing orders of the respondent company.
- Ex.R3 — 17-11-2015— Copy of memorandum of appeal S.O.A. 2/2015.

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

புதுச்சேரி அரசு**இந்து சமய நிறுவனங்கள் மற்றும் வக்ஃபு துறை**

(அரசு ஆணை பலவகை எண் 48/இசநி/கோ.2/2018,
புதுச்சேரி, நாள் 2018 (வருப்) மார்ச் மீ 23 உ)

ஆணை

புதுச்சேரி மாநிலம், புதுச்சேரி வட்டாரம், மண்ணாடிப்பட்டு கொம்புன், மதகடிப்பட்டுப்பாளையம், அருள்மிகு துலுக்கான மாரியம்மன் தேவஸ்தானத்தை நிர்வகிக்கும் பொருட்டு, அரசு ஆணை பலவகை எண் 14/இசநி/கோ.2/2005-06, நாள் 09-06-2005-ன் மூலம் நியமிக்கப்பட்ட திரு. த. சக்கரவர்த்தி, (ஆரம்பப் பள்ளி ஆசிரியர், அரசு நடுநிலைப்பள்ளி, கரியமாணிக்கம், புதுச்சேரி) அவர்களால் சிறப்பு அதிகாரி என்கிற நிலையில் நிர்வகிக்கப்பட்டு வருகிறது.

2. திரு. த. சக்கரவர்த்தி அவர்கள் 09-10-2017 அன்று இயற்கை எய்தியதை முன்னிட்டு வேறு ஒரு புதிய சிறப்பு அதிகாரியை நியமனம் செய்து நிர்வகிப்பது இன்றியமையாதது என்று அரசால் கருதப்படுகிறது.

3. எனவே, 1972-ஆம் ஆண்டு புதுச்சேரி இந்து சமய நிறுவனங்கள் சட்டம் 4 (1)-ஆம் பிரிவின்கீழ் வழங்கப்பட்டுள்ள அதிகாரங்களைச் செலுத்தி, புதுச்சேரி, ஜிம்மர் ஊழியர்கள் கூட்டுறவு சிக்கன வைப்பு மற்றும் கடன் சங்கத்தில் மேலாளராகப் பணிபுரியும் திரு. சு. கோதண்டராமன், த/பெ. சுப்ரமணியன், அவர்கள், புதுச்சேரி மாநிலம் மண்ணாடிப்பட்டு கொம்புன், மதகடிப்பட்டுப் பாளையம், அருள்மிகு துலுக்கான மாரியம்மன் தேவஸ்தானத்திற்குச் சம்பளம் பெறாச் சிறப்பு அதிகாரியாக அரசால் இதன்மூலம் நியமனம் செய்யப்படுகிறார்.

4. திரு. சு. கோதண்டராமன் அவர்கள், மேற்கூறிய தேவஸ்தானத்தின் நிர்வாகத்தை, அதன் அசையும், அசையாச் சொத்துக்கள் மற்றும் இதர ஆவணங்களுடன் பொறுப்பேற்றுக்கொண்டு, அரசுத் துறையில் தான் வகிக்கும் பதவிக்குக் கூடுதலாகவும், 1972-ஆம் ஆண்டு, புதுச்சேரி இந்து சமய நிறுவனங்கள் சட்டம் மற்றும் அதன்கீழ் உருவாக்கப்பட்டுள்ள விதிகளுக்கு இணங்கவும், தேவஸ்தானத்தின் நிர்வாகத்தைக் கவனித்து வரவேண்டும்.

மேலும், கடைப்பிடிக்க வேண்டிய சில முக்கியப் பணிகள் கீழே கொடுக்கப்பட்டுள்ளன-

(i) கோயிலுக்குச் சொந்தமான காலி மனைகள், கோயிலை சுற்றியுள்ள இடங்கள் மற்றும் கோயில் குளங்களை தூர்வாருதல்/சுத்தம் செய்தல் இவைகளை உள்ளடக்கிய ஒரு ஆண்டறிக்கையினை சமர்ப்பித்தல் வேண்டும்.

(ii) நன்கொடையாளர்களால் மேற்கொள்ளப்படும் பணிகளை நிறைவேற்ற முழு மூச்சுடன் ஈடுபடுதல் வேண்டும்.

(iii) ஒவ்வொரு வருடத்திற்குமான உத்தேச வரவு செலவு கணக்குகளை மார்ச் மாத காலத்திற்குள் சமர்ப்பித்தல் வேண்டும்.

(iv) கோயில் வரவு, செலவு கணக்குகளை முறையாக பராமரித்தல் மற்றும் அக்கணக்கினை ஆண்டுக்கு ஒருமுறை கணக்கு மற்றும் கருவூலகத் துறை மூலம் தணிக்கை செய்தலை உறுதி செய்யவேண்டும்.

(v) சிறப்பு அதிகாரியின் கடமைகளையும், பொறுப்புகளையும் இந்து சமய ஆலய விதிகள், 1975-ன் பிரிவு 5-ன் படி செவ்வனே நிறைவேற்றுவதல் வேண்டும்.