



புதுச்சேரி மாநில அரசிதழ்

La Gazette de L'État de Poudouchéry

The Gazette of Puducherry

அதிகாரம் பெற்ற வெளியீடு

Publiée par Autorité

Published by Authority

விலை : ₹ 32-00

Prix : ₹ 32-00

Price : ₹ 32-00

எண்	புதுச்சேரி	செவ்வாய்க்கிழமை	2018 ஆகஸ்ட் 7	ஆகஸ்ட் 7	2018 (16 Sravana 1940)
No.	32 Poudouchéry	Mardi	7	Août	2018 (16 Sravana 1940)
No.	Puducherry	Tuesday	7th	August	2018

பொருளடக்கம்

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GOVERNMENT OF PUDUCHERRY
LABOUR DEPARTMENT

(G.O. Rt. No. 66/Lab./AIL/T/2018,
Puducherry, dated 11th April 2018)

NOTIFICATION

Whereas, an award in I.D. (L) No. 01/2007, dated 28-02-2018 of the Labour Court, Puducherry in respect of the industrial dispute between the management of M/s. Somkan Marine Foods Limited, Yanam and Thiru K.S.B.S. Ramalingam, Yanam, over non-employment Award of the Labour Court, Puducherry 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 28th day of February 2018.

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

K.S.B.S. Ramalingam,
(Maintenance Asst.),
S/o. K. Nageswararoa,
Kalla Lane, Yanam-533 464. Petitioner

Versus

1. The Managing Director,
M/s. Somkan Marine Foods Limited,
Adavipolam, Yanam.
2. Kotak Mahindra Bank Limited,
Represented by its Authorised
Signatory, Mumbai.
3. The Standard Chartered Bank,
Represented by its Authorised
Signatory, Mumbai-400 001.

4. The Managing Partner,
M/s. Image Feeds,
D. No. 5-1-063, Adavipolam,
Yanam.

. . . Respondent

This industrial dispute coming on 30-01-2018 before me for final hearing in the presence of Thiru R.S. Zivanandam, Advocate for the petitioner and Thiruvalargal L. Sathish, S. Ulaganathan, S. Velmurugan, V. Veeraragavan and E. Karthik, Advocates for the respondents, 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. 5/2007/Lab./AIL/J, dated 08-01-2007 for adjudicating the following:-

(i) Whether the non-employment of Thiru K.S.B.S. Ramalingam by the management of M/s. Somkan Marine Foods Limited, Yanam is justified or not ?

(ii) If not, to what relief he is entitled to ?

(iii) 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:*

The petitioner worked from 19-05-2001 as a Maintenance Assistant at the first respondent factory. As the petitioner questioned the respondent for his unfair labour practice the first respondent having developed animosity against the petitioner and is awaiting for an opportunity to cause irreparable loss to this petitioner. From 9th June to 11th June 2005, the petitioner not attend for his regular duties for three days and on 4th day *i.e.*, 12th June 2005 was Sunday his weekly holiday due to fever after duly informed the same to the Management. In the line of achieving their malicious goal of wreak vengeance on 13th June, the petitioner stopped by the Security personnel while he is prepared for joining duty and avoid meeting the management cleverly. Then the petitioner sends one representation by Certificate of posting on 14th June stating the reason for his absent and for reinstatement. There was no reply from the management. At a last resort the petitioner raised one industrial dispute before the Conciliation Officer at Yanam which was ended in failure. The petitioner have not been informed that he was a Causal labour or Contract labour

of the respondent Company. However, the discharge of work carried by the petitioner to the satisfaction of the Management. The petitioner was removed from service on 13-06-2005 without any rhyme or reason which is against natural justice. Therefore, the petitioner has to be reinstated with back wages. The contention made by the management in their representations, dated 28-12-2005, 08-02-2006 that the worker absents himself since 09-06-2005 to establish a Hotel and did not report for work for 167 days hereby denied. The worker was detained by the Security personnel on 13th June 2005, while he prepared for joining duty. He also submitted one representation dated 14-06-2005 in this regard. Therefore, the contention of the management in contrary to weight of evidence. The management has taken two different strategies before Conciliation Officer through their representations, dated 28-12-2005, 08-2-2006 that the worker was Causal worker and in their representation dated 03-03-2006 that the worker was Casual workman on a temporary causal basis under contractor. However, the management did not produced any evidence to prove in this respect of the above-contention even asked to produce such records for verification by the Conciliation Officer through his letters dated 21-02-2006, 17-04-2006, 29-05-2006, 03-07-2006 of 2006. Therefore, the contention of the management does not merit acceptance. All the considerations specified in clauses (a) to (d) of sub-section (2) of the section 10 of the Contract Labour Act, 1970 prevents the management to engage contract labour. Therefore, the petitioner was the regular employee of the respondent company. The management issued one service certificate on 18-07-2005 stating that K.S.B.S. Ramalingam was working as maintenance in their organization since 19-05-2001. Therefore, the petitioner was regular employee of the first respondent company and cannot be simply terminated. The certificate issued by the Management proves the fact that the petitioner was not a casual workman and he worked continuously under the status of permanent workman u/s. 25(B) of I.D. Act 1947. The worker submitted representation on 14-06-2006 for his reinstatement. Instead of replying to his representation the management with deliberate intention kept mum to destroy the employment that the worker kept dark by the management. If, the contention of the first respondent that the petitioner was absent from duty since, 09-06-2005 till date was correct the management ought to have calling for an explanation for his absent. No charges were framed in this regard. No enquiry was initiated. The acts of the Management arbitrary, illegal and *void ab initio* and liable to be set aside.

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

The respondent emphatically denied the averments in the claim petition and stated that the petitioner never raised any demands with this respondent. The alleged letter, dated 14-06-2005 was never sent by petitioner and was neither received by respondent. The respondent came to know about the dispute only when it received notice from the Conciliation Officer regarding industrial dispute. It was premature for the petitioner to have approached the Conciliation Officer without raising an industrial dispute with the respondent. Hence, the entire conciliation proceedings, the reference made by Government of Puducherry and the present claim are liable to be rejected and answered in favour of the respondent. The petitioner was not a permanent employee of the first respondent. The certificate, dated 18-07-2005, which is very heavily relied on by the Petitioner to claim status of regular employee, appears to have been fabricated and forged by the petitioner for the purpose of this case. The petitioner has not whispered any thing about the certificate in conciliation proceedings and has not produced the same, which raise strong suspicion about the genuineness of the certificate. The incumbent who has allegedly signed the said certificate has no authority to issue any certificate of the nature claimed to have been executed. Only the Managing Director/ Factory Manager of the company has the right and powers to issue employment/conduct certificate and therefore, the alleged certificate, dated 18-07-2005 cannot confer any right to the petitioner to claim any status of regular employee. The petitioner was engaged by its company as a casual worker on temporary basis from 19-05-2005 to 09-06-2005. The petitioner never completed 240 days in any year. In the month of June 2005, the petitioner had informed the officers of respondent that he is starting a hotel by name Lakshmi Ganapathy Vegetarian Hotel near Durga Temple, Thyagaraya Street, Yanam and therefore, will leave the job by the 2nd week of June 2005. Accordingly, he left the job since 09-06-2005 out of his own volition to concentrate on his hotel business and subsequently, his water servicing business in Padma Balaji complex near new bus stand, Yanam. Since he had left the job for better prospects and since he was only a temporary workmen the respondent did not insist on his resignation letter. However, the petitioner was never prevented from reporting to duty as is claimed by him. Since, the petitioner never turned back for job and had actually started a hotel, the respondent discharged his services with effect from 09-06-2005. The petitioner lost his lien over the job not only

because of his long abstinence but, was also because, of the fact that he had actually left the services of respondent for better prospects. Though the petitioner claims that he was prevented from joining the duty on 13-06-2005, he had approached the Conciliation Officer only on 23-11-2005, *i.e.*, after a period of 167 days. The petitioner left the job of respondent for starting a hotel but, since he burnt his fingers in the business he thought it fit to claim back his job albeit through the judicial forums with an avarice to claim back wages also which cannot be entertained. The petitioner has admitted in categorical terms in his letter, dated 23-11-2005 addressed to the Conciliation Officer that he was only a temporary worker and his services were not made regular (permanent). By application of section 9 and 13 of Sarfasi Act, 2002 as well as section 529 (A) of the Companies Act 1956, it is the duty of the secured creditor to address to the grievances of the workers of Debtor Company. Therefore, the Banks *i.e.*, Kotak Mahindra Bank Limited and the Standard Chartered Bank are added as necessary parties as 2nd and 3rd respondents for the disputes raised by the petitioner and no obligations can be cast upon this respondent. Therefore, prayed this Court to dismiss the claim petition against this respondent.

4. The petitioner has raised the industrial dispute before the Conciliation Officer only against the first respondent management and as the said establishment was taken over by Kotak Mahindra Bank Limited and The Standard Chartered Bank, they have been added as second and third respondent in their claim petition and the fourth respondent M/s. Image Feeds has purchased the first respondent in auction held at the Debt Recovery Tribunal and thereafter, the fourth respondent was impleaded as party to the proceedings and subsequently the case against the second and third respondent was exonerated by the petitioner and the fourth respondent was impleaded as party and amended claim petition was filed by the petitioner.

5. *The brief averments in the counter filed by the 4th respondent are as follows:*

The fourth respondent denied all the averments contained in the claim petition except those that are specifically admitted and stated that the contents of the counter statement and additional counter statement filed by the 1st respondent may be treated as part and parcel of this counter statement and further stated that it is a partnership firm engaged in the business of sea food and other allied products. The petitioner cannot claim reinstatement or back wages against the fourth

respondent because the first respondent company was never directly purchased by this respondent. The factory and the other movable and immovable assets of the first respondent at Yanam had been taken in possession by consortium of Kotak Mahindra Bank Limited and the Standard Chartered Bank and all the assets belonging to first respondent were brought for auction sale under the Sarfaesi Act. The fourth respondent purchased only the land, the building and the machinery of first respondent's factory at Yanam as a non-functional and inoperative. A sale certificate to that effect is issued by Kotak Mahindra Bank Limited on 25-02-2015. Therefore, at the time when this respondent purchased the first respondent's factory asset, it was a closed and non-functional unit without any workers, staffs or any manpower. The fourth respondent never had any agreement with the first respondent or any other person to employ the workers of first respondent. The fourth respondent, after purchasing the land, building and machineries of first respondent had spent over 1.5 - 2 crores in upgrading the equipment and machinery and making the factory functional. It started its factory operations only from 1st May, 2015. The fourth respondent was and is under no legal or moral obligation to employ any of the workers of the erstwhile owners of the factory purchased by it as this respondent is free to employ its own manpower and run the factory upon its terms and conditions. The fourth respondent had therefore, selected its own workforce, including some workers who were engaged by first respondent. But, such employment was purely based on this respondent's fresh terms and conditions and as fresh recruiters and not in continuity of their employment with the first respondent. It is a completely new and independent entity and it has purchased only the land, building and machineries of the first respondent and that too from the Banks, which had taken over possession of the said assets from the first respondent for non-payment of their debts under the Sarfaesi Act. The petitioner, who claims to be the worker under the erstwhile first respondent management, has no *locus standi* to make any claims of employment or even monetary compensations with the fourth respondent under any statute, rules, regulations or contract. Therefore, prayed this Court to dismiss the claim petition against the fourth respondent.

6. In the course of enquiry on the side of the petitioner PW.1 was examined and Ex.P1 to Ex.P16 were marked and on the side of the respondent RW.1 and RW.2 were examined and Ex.R1 to Ex.R28 were marked. Both sides are heard. The pleadings of the parties, the evidence let in by either sides and the

exhibits marked on both sides are carefully considered. On both sides written arguments were filed and the same were also carefully considered. In support of his contention the learned Counsel for the respondent has relied upon the Judgments reported in CDJ 2008 SC 218, CDJ 2006 SC 958, CDJ 2005 SC 604, CDJ 2002 SC 162, CDJ 1963 SC 212, CDJ 2008 MHC 3631, CDJ 2009 Kar HC 442, CDJ 1990 Kar HC 368, CDJ 2016 Raj HC 380, CDJ 1974 SC 277, CDJ 2009 SC 1839 and CDJ 2007 MHC 1328.

7. The learned Counsel appearing for the petitioner has relied upon the Judgment reported in 2013 LAN I.C Page No.2073 wherein, it was stated that section 25.FF comes in to play only in case of transfer of ownership or management of an undertaking to a new employer and not limited to some activities of the undertaking. The learned Counsel appearing for the respondent managements has filed a written argument stating that the petitioner is the temporary employee of the first respondent establishment and the names of the said worker does not find in the muster roll of the first respondent establishment and that it is not established by the petitioner that he had been in service for more than 240 days in a year though he is having burden to prove the same the petitioner has failed to prove the same and the claim has to be rejected.

8. *The point for consideration is:*

Whether the industrial dispute raised by the petitioner over his non-employment against the first respondent management is justified or not and if justified, what is the relief entitled to him.

9. It is the case of the petitioner that he was working at the first respondent establishment from 19-05-2001 as Maintenance Assistant and all the workers of the first respondent establishment had complained to the Regional Provident Fund Commissioner against the first respondent management on 20-01-2006 over the non-enrolment with the Provident Fund account and he was also one of the signatories of the complaint given by the workers of the first respondent establishment and the Commissioner of Provident Fund found fault with the first respondent management and ordered the first respondent management to pay the Provident Fund amount and hence, the first respondent management has stopped him from attending his duty on 13-06-2005 and he has been terminated from service without any charge-sheet and without conducting any due enquiry and therefore, he raised the industrial dispute on 23-11-2005 before the Conciliation Officer and conciliation was initiated and ended in failure and meanwhile the first

respondent establishment has been purchased by the fourth respondent management in a auction held at Debt Recovery Tribunal and the purchaser of the first respondent establishment the fourth respondent management is liable to reinstate the petitioner and to pay back wages from the date of termination.

10. In support of his case the petitioner has examined himself as PW.1 and exhibited Ex.P1 to Ex.P16. Ex.P1 is the representation in Telugu made by the petitioner along with postal receipt and translation, dated 04-10-2005. Ex.P2 is the copy of representation to Conciliation Officer, dated 23-11-2005. Ex.P3 is the notice of Conciliation Officer, dated 24-11-2005. Ex.P4 is the notice of Conciliation Officer, dated 23-12-2005. Ex.P5 is the copy of representation submitted by the management, dated 28-12-2005. Ex.P6 is the copy of representation submitted by worker, dated 25-01-2006. Ex.P7 is the copy of service certificate issued by the management on 18-07-2005. Ex.P8 is the notice of Conciliation Officer, dated 03-02-2006. Ex.P9 is the copy of representation by the management on 08-02-2006. Ex.P10 is the notice of the Conciliation Officer on 21-02-2006. Ex.P11 is the copy of representation made by the management on 03-03-2006. Ex.P12 is the notice of the Conciliation Officer, dated 17-04-2006. Ex.P13 is the notice of the Conciliation Officer, dated 29-05-2006. Ex.P14 is the notice of the Conciliation Officer, dated 03-07-2006. Ex.P15 is the failure report, dated 14-07-2006. Ex.P16 is the notification, dated 08-01-2006. These documents would go to show that the workers of the first respondent establishment including this petitioner had made a complaint against the first respondent management for the non-enrolment of the Provident Fund account to the workers and on the complaint the Commissioner of the Provident Fund has taken action against the first respondent management and the petitioner has raised the industrial dispute for his non-employment before the Labour Conciliation Officer and the conciliation was initiated and ended in failure. Further, Ex.P7 would go to show that the management has certified that the petitioner was working as a Maintenance Assistant in the first respondent organization from 19-05-2001 and further it is evident from Ex.P11 that in the conciliation it was stated by the respondent management that the petitioner was casual worker on a temporary casual basis and he voluntarily left employment to start a full-time business of his own therefore, it is clear that the petitioner had been working at first respondent establishment and he had been in service at first respondent establishment for about five years.

11. It is the main contention of the first respondent that petitioner is not a permanent employee of the first respondent company and he is only a temporary worker and his service was not made regular and he has not been victimized and the certificate, dated 18-07-2005 filed by the petitioner that he was working for about five years is a fabricated and forged one for the purpose of this case and the same was not produced before the Conciliation Officer and he has not been stopped by the management on 13-06-2005 and it is the further contention that the first respondent establishment has become sick and unviable and it is reeling under the debt borrowed from the second and third respondent Banks who have purchased credit outstanding of the first respondent company and taken over symbolical possession of the factory under the Sarfaesi Act and it was sold by the second and third respondent in an auction held and the said property was sold through Debt Recovery Tribunal in which the first respondent factory was purchased by the fourth respondent.

12. It is the contention of the fourth respondent that movable and immovable assets of the first respondent company alone have been taken by the fourth respondent management and that the fourth respondent never had any agreement with the first respondent or any other person to employ the workers of the first respondent and that the fourth respondent started factory operation from 01-05-2015 and that no legal or moral obligation to employ any of the workers of the erstwhile owners of the factory purchased by it as the fourth respondent is free to employ its own man power and run the factory upon its terms and the fourth respondent had therefore, selected its own workforce, including some workers who were engaged by the first respondent and such employment was purely based on the fourth respondent's fresh terms and conditions and not in continuity of their employment with the first respondent and it is the further contention of the fourth respondent that their factory is completely new and independent entity and it has purchased only the land, building and machineries of the first respondent and that too from the Banks which had taken over possession of the said assets from the first respondent for non-payment of their debts under the Sarfaesi Act and that therefore, they are not liable to engage the workers who were in service at the first respondent establishment after purchasing the same from Debt Recovery Tribunal *i.e.*, they have no legal or moral obligation to engage the workers of the first respondent establishment and not having any liability on the workers of the first respondent establishment.

13. The RW.1 the Personnel Officer of the first respondent establishment has stated in his evidence that the petitioner never raised any demands with the first respondent management and that the petitioner in his letter, dated 23-11-2005 to the Conciliation Officer had admitted that he was only a temporary worker and his service was not made permanent and that the alleged certificate dated 18-07-2005 is fabricated and concocted by the petitioner for the purpose of this case and that the petitioner was engaged as a casual worker on temporary basis by the first respondent management and he has not served about 5 years as stated by him and he never completed 240 days of continuous services in any of the year he worked and that the petitioner has not been terminated from service and the petitioner has voluntarily left the job of the first respondent establishment for starting a hotel and hence, the petitioner is not entitle for any reinstatement or back wages as claimed by him since he was only a casual worker on temporary basis under contract and was never completed 240 days of service.

14. In support of their evidence the first respondent management has exhibited Ex.R1 to Ex.R17. Ex.R1 is the copy of letter of authorization given to Mr. Arjuna Babu, Personnel Officer of first respondent company on 30-04-2014. Ex.R2 is the original pamphlet issued by petitioner for starting his hotel on 01-07-2005. Ex.R3 is the letter given by the petitioner to the Assistant Labour Inspector, Yanam on 23-11-2005. Ex.R4 is the original newspaper sheet of Eenaadu newspaper in which the respondent has given advertisement against P.V. Acharyulu and D. Rajendrakumar on 02-05-2006. Ex.R5 is the xerox copy of the letter issued by the Assistant Director District Industries Centre, Yanam to Somkam Marine Foods Limited, on 19-10-2009. Ex.R6 is the xerox copy of the Possession notices given by Kotak Mahindra Bank Limited and Standard Chartered Bank. Ex.R7 is the xerox copy of the sale notice of Kotak Mahindra Bank in the local newspaper. Ex.R8 is the xerox copy of the order in WP. No. 2499/2011 issued by the Hon'ble High Court of Andhra Pradesh, dated 27-05-2011. Ex.R9 is the xerox copy of the letter given by IARC to the Kotak Mahindra Bank intimating about the taking over of liabilities of first respondent to Standard Chartered Bank on 06-06-2012. Ex.R10 is the xerox copy of the wire notice sent by the Registrar of the Hon'ble High Court at Andhra Pradesh. Ex.R11 is the xerox copy of the letter given by IARC to the first respondent intimating about the taking over of liabilities of 1st respondent to Standard Chartered Bank on 06-12-2011. Ex.R12 is the xerox copy of the order in WP. No. 14506/2006 before the Hon'ble Andhra Pradesh

High Court, dated 17-07-2006. Ex.R13 is the xerox copy of the Interim order in WP.No.17714/2006 before the Hon'ble Andhra Pradesh High Court, dated 25-08-2006. Ex.R14 is the xerox copy of the order in WP. No.17714/2006 before the Hon'ble Andhra Pradesh High Court, dated 11-09-2007. Ex.R15 is the xerox copy of the order in WP. No. 8115/2009 before the Hon'ble Andhra Pradesh High Court, dated 21-04-2009. Ex.R16 is the copy of the orders passed by EPF Appellate Tribunal New Delhi, dated 17-09-2009. Ex.R17 is the xerox copy of the orders passed in WP. No. 22615/2009 by Andhra Pradesh High Court, dated 22-10-2009.

15. The documents exhibited by the first respondent would reveal the fact that the petitioner has made representation to the Assistant Labour Inspector on 23-11-2005 that he was not permitted to enter the gate and he was not allowed to do his duty and he has asked to do needful to get his job back and initially the petitioner has attended the training for the period from 01-11-2003 to 30-01-2004 and thereafter, the first respondent was taken by the Bank and they approached the Hon'ble High Court with regard to the same.

16. The RW.2 the Assistant Admin of the fourth respondent has stated in his evidence that they have purchased the plant and machineries of the first respondent company in a bank auction under the Sarfaesi Act and the first respondent owed huge debt to consortium of banks, and the movable and immovable assets of the first respondent company were taken in possession by consortium of banks and all the assets were brought for auction sale under the Sarfaesi Act and the fourth respondent has purchased only the land, the building and the machineries of the first respondent firm at Yanam as a non-functional and inoperative unit which remained closed before their purchase and a sale certificate to that effect was issued by second respondent Bank on 25-02-2015 and at the time when they purchased the first respondent's factory assets, the factory was closed and non-functional unit without any workers, staffs or any man power and they have not had any agreement with the first respondent or any other person to employ the workers of the first respondent establishment and that they have started work only from 01-05-2015 and that they have no legal or moral obligation to employ any of the workers of the erstwhile owners of first respondent and that they are free to employ their own manpower and run the factory upon their terms and conditions and that the fourth respondent is completely new and independent entity and they have purchased only the land, building and machineries of the first respondent and that too from the consortium of Banks,

which had taken over possession of the said assets from the first respondent and the petitioner is not in service while they purchased the factory and machineries and they have no obligations to employ him in his roll and pay monetary benefits under any statute, rules, regulations or contract.

17. In support of their evidence the fourth respondent management has exhibited Ex.R18 to Ex.R28. Ex.R18 is the copy of the acknowledgment of registration of firm certificate of M/s. Image Feeds, dated 26-09-2014. Ex.R19 is the copy of the partnership deed entered between the partners of M/s. Image Feeds, dated 22-09-2014. Ex.R20 is the copy of the purchase of moveable and immovable mortgaged properties at Yanam from Kotak Mahindra Bank by M/s. Image Feeds, dated 17-12-2014. Ex.R21 is the copy of the PAN Card of M/s. Image Feeds. Ex.R22 is the copy of the licence issued by Yanam municipality in favour of M/s. Image Feeds on 23-06-2015. Ex.R23 is the copy of the sale certificate issued by Kotak Mahindra Bank in favour of M/s. Image Feeds on 25-02-2015. Ex.R24 is the copy of factory licence of M/s. Image Feeds. Ex.R25 is the copy of the acknowledge receipt issued by the Kotak Mahindra Bank to M/s. Image Feeds for delivery of movable properties at Yanam, dated 09-03-2015. Ex.R26 is the copy of the acknowledgment receipt issued by the Kotak Mahindra Bank to M/s. Image Feeds for certifying the sale proceeds and handing over the sale property, dated 08-04-2015. Ex.R27 is the copy of no objection letter issued by Kotak Mahindra Bank to Inspector of Factories for transferring factory licence in favour of M/s. Image Feeds, dated 02-06-2015. Ex.R28 is the copy of letter of authorization given to S. Prasad, Asst. Admin of M/s. Image Feeds, dated 08-11-2017.

18. The documents filed by the fourth respondent would reveal the fact that the fourth respondent establishment is a partnership firm registered under Partnership Act and that the partnership deed was entered on 22-09-2014 and licence has been issued on 23-06-2015 by Yanam Municipality in favour of the fourth respondent and sales certificate was issued by Bank and that the fourth respondent management has purchased the first respondent establishment from the second and third respondent Banks.

19. From the above-evidence and documents, it is clear that the petitioner is the worker of the first respondent establishment and he had been in service for about five years for the period from 19-05-2001 to 13-06-2005 for that certificate was also issued by

the first respondent management under Ex.P7. The respondent stated that the certificate under Ex.P7 is the fabricated and forged one. But, to prove the same no evidence has been let in by the first respondent management. Therefore, since the petitioner had been in service for about five years it is to be taken that he is the permanent worker of the first respondent establishment. It is evident from Ex.P9 the conciliation failure report that in the conciliation the representative of the first respondent management has stated before the Conciliation Officer that the petitioner was absent from duty from 09-06-2005 on his own volition to open Hotel at Yanam and they never prevented him from reporting for duty and he only left employment to start full time business of his own.

20. As the petitioner is the worker of the first respondent establishment and it was represented by the first respondent management before the Conciliation Officer that this petitioner alone voluntarily left out the factory to start a business of his own and therefore, it is clear that no domestic enquiry was conducted against the petitioner by the first respondent management and even does not give any show cause notice for the unauthorized absence. Further, the first respondent management has not followed any procedure and not conducted any departmental enquiry before discharge him from service though he had been in service for about five years. The worker can be removed from service if, he has committed any misconduct or misbehavior only after conducting the domestic enquiry. Admittedly in this case no domestic enquiry was conducted by the first respondent management before discharging the said employee. Therefore, the first respondent management is liable to reinstate him since it has not followed the principles of natural justice in terminating the petitioner. Furthermore, at the time of raising the industrial dispute by the petitioner, over his non-employment against the first respondent management, the first respondent establishment was the existing factory and that therefore, it is to be held that the industrial dispute raised by the petitioner over his non-employment against the first respondent management is justified as the first respondent establishment has not properly terminated the petitioner in accordance with the principles of natural justice and hence, the petitioner is entitled for reinstatement at the first respondent establishment. However, the first respondent establishment was taken over by the second and third respondent Banks and sold to the fourth respondent management and hence, the petitioner cannot be reinstated in the first respondent establishment.

21. As it is held by this Tribunal that the petitioner is the worker of the first respondent establishment and he has not been properly terminated by the first respondent management by conducting domestic enquiry in accordance with the principles of natural justice and the industrial dispute raised by the petitioner over his non-employment against the first respondent management is absolutely justifiable one, it is the question to be decided by this Tribunal that whether the fourth respondent who have purchased the first respondent establishment at the Debt Recovery Tribunal is having any legal obligation of giving employment or giving compensation to the workers of the first respondent establishment for the service rendered by them to the first respondent establishment or not. On this aspect the evidence let in by both sides and the exhibits marked on both sides and arguments put forth by either side are carefully considered.

22. It is learnt from the records that while the industrial dispute is pending the first respondent establishment has been taken away by second and third respondents and the fourth respondent has purchased the first respondent factory in the auction sale at Debt Recovery Tribunal *i.e.*, the ownership and the management of the first respondent establishment was transferred due to the purchase and therefore, it is to be decided whether the fourth respondent management is liable to pay reinstatement and other benefits to the workers of the first respondent establishment. On this aspect the section 25FF of the Industrial Disputes Act has been referred which runs as follows :

“S.25FF . Compensation to workmen in case of transfer of undertakings . Where the ownership or management of an undertaking is transferred, whether by agreement or by operation of law, from the employer in relation to that undertaking to a new employer, every workman who has been in continuous service for not less than one year in that undertaking immediately before such transfer shall be entitled to notice and compensation in accordance with the provisions of S.25-F, as if the workman had been retrenched:

Provided that nothing in this section shall apply to a workman in any case where there has been a change of employers by reason of the transfer, if --

- (a) the service of the workman has not been interrupted by such transfer;
- (b) the terms and conditions of service applicable to the workman after such transfer are not in any way less favourable to the workman than those applicable to him immediately before the transfer; and

(c) the new employer is, under the terms of such transfer or otherwise, legally liable to pay to the workman, in the event of his retrenchment, compensation on the basis that his service has been continuous and has not been interrupted by the transfer."

From the above provision it is clear that management of an undertaking is transferred whether by agreement or by operation of law from the employer in relation to that undertaking to a new employer, every workman who has been in continuous service for not less than one year in that undertaking immediately before such transfer shall be entitled to notice and compensation in accordance with the provisions of S.25-F, as if, the workman had been retrenched. In this case the management of the undertaking was transferred by purchase *i.e.*, by operation of law from the employer of the first respondent to new employer and hence, petitioner is entitled for notice and compensation in accordance with the provisions of the Act. But, no such notice was issued by the fourth respondent and no compensation has been given to the worker as he had been in service at the time of transfer of ownership to the fourth respondent from the management of first respondent establishment.

23. It is contended by the fourth respondent that the fourth respondent cannot be compelled with the responsibility of reinstatement or payment of any benefits since, they have purchased the plant and machineries of the first respondent under an auction purchase on 17-12-2014 from the Banks and hence, the fourth respondent has no legal obligation to employ any employees of the erstwhile first respondent and therefore, the petitioner absolutely is not entitled for any reinstatement in the fourth respondent establishment or cannot seek any compensation from the fourth respondent and in support of his argument the learned counsel for the first respondent relied upon the Judgment reported in CDJ 2009 Kar HC 442-M. Shashikumar Vs. Management of BPL Limited, wherein the Hon'ble High Court has held that,

"31. In view of the above discussion, as a matter of fact, neither the first respondent nor the second respondent company was under any legal obligation to offer employment to the employees of the transferor company. In that view of the matter, the only legal claim they can have access to is retrenchment compensation....."

The learned Counsel further argued that as per the above citation the fourth respondent management has no legal obligation to offer employment to the petitioners *i.e.*, the employees of the transferor of

company and they can claim only retrenchment benefits and that the petitioners are not having any right to claim of any relief of reinstatement or compensation either from the first respondent management or from the fourth respondent management since the petitioners are the temporary workers and the first respondent establishment is not more existences as the company as it had become sick and completely closed as early as in the year 2012 and the fourth respondent has purchased only from the Banks under the Sarfaesi Act and it has purchased only the plant and machineries of the first respondent establishment without other liability and none of the petitioners are the permanent workers of the first respondent establishment to claim any right of any re-employment from the fourth respondent and that therefore, the fourth respondent has no legal obligation to reinstate the petitioners as claimed by them.

24. The learned Counsel appearing for the respondents has further argued that the fourth respondent establishment as a purchaser transferee management has no liability to pay any compensation or to give any employment to the petitioner as they have purchased the property from the second and third respondent Banks in an auction held by them and that the fourth respondent as a purchases they had no liability to re-employ the workers of the first respondent establishment and they will not pay any compensation under section 25FF of the Act, since the workers are not the employees of the fourth respondent establishment and in support of his argument the learned counsel for the respondent has relied upon the Judgment reported in CDJ 2009 Kar HC 442 wherein the Hon'ble Karnataka High Court has observed that,

".....18. That being the position in law under Section 25FF, the former employees of the company who were not absorbed by the Corporation can hardly make out a claim against the transferee Corporation either for compensation on termination of their service following the transfer or for reemployment. The claim at any rate of the employee in List II as against the Corporation under Sec.25FF was clearly misconceived.

19. The learned Counsel Sri. B.C. Prabhakar appearing for second respondent contends that the first respondent company cannot manufacture colour television any more as entire unit of colour television is transferred to the second respondent, therefore, it cannot continue any employment to its employees and had offered compensation in terms of section 25FF of the Act. He further contends that the offering of

compensation in terms of section 25FF of the Act alone was required to be complied with by the 1st respondent and nothing else. It was also submitted that 459 employees out of 496 employees of the first respondent without any grievance whatsoever have joined the second respondent company under fresh employment after receiving compensation from the first respondent.....”.

and further the learned Counsel for the respondent has relied upon the Judgment reported in CDJ 1990 Kar HC 368 wherein the Hon'ble Karnataka High Court has observed that,

“.....Section 25FF makes a reference to section 25FF for that limited purpose, and therefore, in all cases to which section 25FF applies, the only claim which the employees of the transferred concern can legitimately make is a claim for compensation against their employers. No claim can be made against their employers. No claim can be made against the transferee of the said concern. (17) The scheme of the proviso to section 25FF emphasizes the same policy. If, the three conditions specified in the proviso are satisfied, there is no termination of service either in fact or in law, and so, there is no scope for the payment of any compensation. That is the effect of the proviso. Therefore, reading section 25FF as a whole, it does appear that unless the transfer falls under the transfer falls under the proviso, the employees of the transferred concern are entitled to claim compensation against the transferor and they cannot make any claim for re-employment against the transferee of the undertaking. Thus, the effect of the enactment of section 25FF is to restore the position which the Legislature had apparently in mind when section 25FF was originally enacted on September 4, 1956. By amending section 25FF, the Legislature has made it clear that if, industrial undertakings are transferred, the employees of such transferred undertakings should be entitled to compensation, unless, of course, the continuity in their service or employment is not disturbed and that can happen if, the transfer satisfies the three requirements of the proviso. (18) In *Central Inland Water Transport Corporation Limited, Vs. The workmen* and another it is reiterated that on a transfer of ownership or management of an undertaking, the employment of workmen engaged by the said undertaking comes to an end, and compensation is made payable because of such termination. In all cases to which section 25FF applies, the only claim which the employees of the transferred concern can legitimately make is a claim for compensation against their employers. No claim can be made against the transferee of the said concern.”.

From the above-observations of the Hon'ble High Court, it is clear that the petitioners are entitled to claim only the compensation from the undertaking where they have served as workers and they cannot claim compensation or reemployment at the transferee undertaking. But, in this case the first respondent establishment was taken over by the second and third respondent Banks and subsequently, the said undertaking was sold in an auction held by them and sales certificate was issued by the Bank and that therefore, the fourth respondent cannot be compelled to pay any compensation to the employees of the first respondent establishment. However, the petitioner is entitled for compensation from the first respondent establishment and the management of the first respondent establishment has to pay retrenchment compensation to the petitioner under section 25FF of the Act.

25. Further the second and third respondent Banks have taken over the first respondent establishment for their debt and sold it to the fourth respondent and hence the petitioner also could claim the compensation from the said Banks. But, it is learnt from the records that the second and third respondent Banks have been exonerated who have sold the first respondent establishment in an auction sale and the sale amount was received by them and the excess amount if, any, is kept by the said Banks the petitioner is having liberty to receive his compensation from the said Banks by taking appropriate steps against the Banks and the first respondent management. Even though this Tribunal cannot pass any Award against the second and third respondent Banks since, they sold the first respondent establishment to the fourth respondent and received the sale consideration and therefore, an Award has to be passed in favour of the petitioner to get compensation from the first respondent establishment and the management of the first respondent establishment is liable to pay retrenchment compensation to the petitioner by calculating the period of service and the salary obtained by him from the date of joining till the date of taken over the possession of the first respondent establishment by the second and third respondent Banks and that therefore, the claim against the fourth respondent is rejected and hence, the claim petition filed against the fourth respondent is also liable to be rejected.

26. In the result, the petition is partly allowed and the industrial dispute raised by the petitioner over his non-employment against the first respondent management is justified and an Award is passed directing the first respondent management to pay compensation to the petitioner by calculating the period of service rendered by the petitioner and the

salary obtained by him from the date of joining till the date of taken over the possession of the first respondent establishment by the second and third respondent Banks and further the petitioner is at liberty to receive his compensation from the second and third respondent Banks by taking appropriate steps against the Banks and the first respondent management and in respect of claim against the fourth respondent is dismissed. No cost.

Dictated to the Stenographer, transcribed by her, corrected and pronounced by me in the open Court on this the 28th day of February, 2018.

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

List of petitioner's witness:

PW.1— 26-04-2010 — K.S.B.S. Ramalingam.

List of petitioner's exhibits:

- Ex.P1 — 04-10-2005— Representation in Telugu made by the petitioner along with postal receipt and translation.
- Ex.P2 — 23-11-2005— Copy of representation to Conciliation Officer.
- Ex.P3 — 24-11-2005— Notice of Conciliation Officer.
- Ex.P4 — 23-12-2005— Notice of Conciliation Officer.
- Ex.P5 — 28-12-2005— Copy of representation submitted by the management.
- Ex.P6 — 25-01-2006— Copy of representation submitted by worker.
- Ex.P7 — 18-07-2005— Copy of service certificate issued by the management.
- Ex.P8 — 03-02-2006— Notice of Conciliation Officer.
- Ex.P9 — 08-02-2006— Copy of representation by the management.
- Ex.P10 — 21-02-2006— Notice of the Conciliation Officer.
- Ex.P11 — 03-03-2006— Copy of representation made by the management.

Ex.P12 — 17-04-2006— Notice of the Conciliation Officer.

Ex.P13 — 29-05-2006— Notice of the Conciliation Officer.

Ex.P14 — 03-07-2006— Notice of the Conciliation Officer.

Ex.P15 — 14-07-2006— Failure report.

Ex.P16 — 08-01-2006— Notification.

List of respondent's witnesses:

RW.1 — 20-06-2014— Arjuna Babu.

RW.1 — 08-11-2017— S. Prasad.

List of respondent's exhibits:

- Ex.R1 — 30-04-2014— Copy of letter of authorization given to Mr. Arjuna Babu, Personnel Officer of first respondent company.
- Ex.R2 — 01-07-2005— Original pamphlet issued by petitioner for starting his hotel.
- Ex.R3 — 23-11-2005— Letter given by the petitioner to the Assistant Labour Inspector, Yanam.
- Ex.R4 — 02-05-2006— Original newspaper sheet of Eenaadu newspaper in which the respondent has given advertisement against P.V. Acharyulu and D. Rajendrakumar.
- Ex.R5 — 19-10-2009— Xerox copy of the letter issued by the Assistant Director, District Industries Center, Yanam to Somkam Marine Foods Limited.
- Ex.R6 — — — Xerox copy of the Possession notices given by Kotak Mahindra Bank Limited and Standard Chartered Bank (2 Nos.).
- Ex.R7 — — — Xerox copy of the sale notice of Kotak Mahindra Bank in the local newspaper.

Ex.R8 — 27-05-2011—	Xerox copy of the order in WP. No. 2499/2011 issued by the Hon'ble High Court of Andhra Pradesh.	Ex.R19 — 22-09-2014—	Copy of the partnership deed entered between the partners of M/s. Image Feeds.
Ex.R9 — 06-06-2012—	Xerox copy of the letter given by IARC to the Kotak Mahindra Bank intimating about the taking over of liabilities of first respondent to Standard Chartered Bank.	Ex.R20 — 17-12-2014—	Copy of the purchase of moveable and immovable mortgaged properties at Yanam from Kotak Mahindra Bank by M/s. Image Feeds.
Ex.R10 — — —	Xerox copy of the wire notice sent by the Registrar of the Hon'ble High Court at Andhra Pradesh	Ex.R21 — — —	Copy of the PAN Card of M/s. Image Feeds.
Ex.R11 — 06-12-2011—	Xerox copy of the letter given by IARC to the first respondent intimating about the taking over of liabilities of 1st respondent to Standard Chartered Bank.	Ex.R22 — 23-06-2015—	Copy of the licence issued by Yanam Municipality in favour of M/s. Image Feeds.
Ex.R12— 17-07-2006—	Xerox copy of the order in WP. No. 14506/2006 before the Hon'ble Andhra Pradesh High Court.	Ex.R23 — 25-02-2015—	Copy of the sale certificate issued by Kotak Mahindra Bank in favour of M/s. Image Feeds.
Ex.R13 — 25-08-2006—	Xerox copy of the Interim order in WP.No. 17714/2006 before the Hon'ble Andhra Pradesh High Court.	Ex.R24 — — —	Copy of factory licence of M/s. Image Feeds.
Ex.R14 — 11-09-2007—	Xerox copy of the order in WP.No.17714/2006 before the Hon'ble Andhra Pradesh High Court.	Ex.R25 — 09-03-2015—	Copy of the acknowledgment receipt issued by the Kotak Mahindra Bank to M/s. Image Feeds for delivery of movable properties at Yanam.
Ex.R15 — 21-04-2009—	Xerox copy of the order in WP. No. 8115/2009 before the Hon'ble Andhra Pradesh High Court.	Ex.R26 — 08-04-2015—	Copy of the acknowledgment receipt issued by the Kotak Mahindra Bank to M/s. Image Feeds for certifying the sale proceeds and handing over the sale property.
Ex.R16 — 17-09-2009—	Copy of the orders passed by EPF Appellate Tribunal, New Delhi.	Ex.R27 — 02-06-2015—	Copy of the no objection letter issued by Kotak Mahindra Bank to Inspector of Factories for transferring factory licence in favour of M/s. Image Feeds.
Ex.R17 — 22-10-2009—	Xerox copy of the orders passed in WP. No. 22615/2009 by Andhra Pradesh High Court.	Ex.R28 — 08-11-2017—	Copy of letter of authorization given to S. Prasad, Asst. Admin. of M/s. Image Feeds.
Ex.R18 — 26-09-2014—	Copy of the acknowledgment of registration of firm certificate of M/s. Image Feeds.		

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