



# புதுச்சேரி மாநில அரசிதழ்

## La Gazette de L'État de Poudouchéry

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**GOVERNMENT OF PUDUCHERRY  
LABOUR DEPARTMENT**

(G.O. Rt. No. 60/Lab./AIL/T/2018,  
Puducherry, dated 11th April 2018)

**NOTIFICATION**

Whereas, an award in I.D. (L) No.17/2007, 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 M. Srinivas, 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. 17/2007**

M. Srinivas,  
Packing Helper,  
C/o. K.S. Chakaravarthy, President,  
Somkan Staff Workers Union,  
No. 8/321, I Cross Road,  
Zicrianagar, 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.

. . Respondents

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 Thiruvallargal 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. 58/2007/Lab./AIL/J, dated 20-03-2007 for adjudicating the following:-

(i) Whether the non-employment of Thiru M. Srinivas, Packing Helper by the management of M/s. Somkan Marine Foods Limited, Yanam is justified?

(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 amended claim statement of the petitioner, in brief, are as follows:*

The petitioner was a member of registered union by name M/s. Somkan and Workers Union Regd. No. RTU/1444/2006 and is a worker of first respondent Factory. The first respondent with arbitrary power kept the union members at his mercy depriving all the benefits provided by the Industrial and Labour Acts. Therefore, all the members of the union had complained to the Regional Provident Fund Commissioner against the respondent on 20-01-2006 over the non-enrolment. The petitioner is one of the signatories of the complaint. An enquiry was conducted by the Commissioner, P.F. in this regard and after found fault on behalf of the management, Commissioner has ordered first respondent's factory to debt the determined due amount within 7 days of receipt of his order. This to cause a termult the first respondent and the passionate fiery respondent stopped the petitioner from joining his duty on 22-5-2006. Therefore, the petitioner raised a conciliation

of I.D. on 22-5-2006 through his representation. On receipt of the representation, the conciliation was initiated and ended in a failure. The petitioner is innocent, illiterate and poor and therefore, unconscious of his rights. He has faith in respondent but, the respondent break all the fundamental rights and principles pertaining to the Industrial and Labour Acts with impunity. However, the discharge of work carried out by the petitioner since his joining in duty i.e., 25-3-2003 as a packing helper to the satisfaction of the management. But, the respondent make him believes in him and removed on 22-5-2006 without any rhyme or reason which is against natural justice. Therefore, he has to be reinstated with back wages. The stand taken by the management before Conciliation Officer that no such named person with the given address or otherwise employed by the Company is the strategy adopted in this matter as well as the strategy adopted before Regional P.F. Commissioner is identical and similar. With malicious and willful injury the workers not were provided appointment letters and pay bills by the management. The workmen concern left with no evidence to substantiate their claim. In these circumstances Enforcement Officer EPF organisation had collected policy schedule of group JPA policies issued to respondent Factory by the National Insurance Company branch at Yanam. The schedule list was verified with list of employees supplied by the complaint and their names are shown in the policies. After confirmed the workmen authentically Enforcement Officer submitted his report to the Regional PF Commissioner. The petitioner was also shown in Enforcement Officer report. The Enforcement Officer report was positive proof so as to prove that the petitioner was employee of first respondent's factory. The first respondent Factory has failed to produce all the records before Conciliation Officer so as to prove that the complaint was not working with them. Therefore, the petitioner was the regular worker of the management and he cannot be simply terminated. The act of the management is arbitrary, illegal and liable to be set aside. The Enforcement Officer report that the employer is maintaining records of attendance to whom they have paid P.F. only.

Therefore, the petitioner had a little evidence to prove his employment with respondents factory. All this was prosterous procedure adopted by the Management on the behest of certain unscrupulous element who advising some industries in Yanam. "The doctrine of hire and fire" is the principle involved in

the strategy employed by the management. The Regional P.F. Commissioner clearly stated in his report, dated 20-07-2006 that on 30-06-2006 a copy of the list of the employees submitted by the Enforcement Officer served both the management and union. Further, the office has supplied letter, dated, 17-05-2005 given by the Somkan Staff and Workers Union along with the list of workers to whom P.F. benefits were not extended and other proofs to Sri. L. Satyanarayana, Personal Officer of the establishment. The contention of the management that the Hon'ble High Court of Andhra Pradesh has given direction to the P.F. Commissioner to furnish the above-mentioned copy to the management and conduct enquiry again was a new plea in order to suppress the real fact. The respondent did not produce any evidence in respect of the above contention. The service certificate, dated 20-11-2005 issued by the respondent factory had authenticated the employment with the first respondent factory. Therefore, the petitioner prays before this Court to reinstate him with continuity of service and pay full back wages from the date of stopped from joining his duty till the date of reinstatement.

*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 had never worked with this respondent, at any point of in any capacity much less as helper. Taking advantage of false and erroneous report given by the Enforcement Officer of the provident fund the petitioner is claiming employment with this respondent. The Enforcement Officer was suspended on corruption charges which goes to prove that the claim was filed to gain illegal gratification and employment on the strength of disgraced and unreliable report. The report of Enforcement Officer is challenged by respondent and said report is subject matter of adjudication before the Regional P.F. Commissioner. The petitioner can not claim employment on the strength of the said Enforcement Officer's order because even in the enforcement order, the name of petitioner is not substantiated . Even otherwise, the petitioner is bound to prove his employment with the first respondent by producing, clinching and cogent evidence. Apart from that, the petitioner is equally bound to prove the date till which he worked with this respondent and the day on which his service is terminated. The claim petition

does not whisper anything about these vital information required to claim reinstatement, which clearly proves that the petitioner is taking undue advantage of false report given by the Enforcement Officer of EPF. Further, it is stated that the 1st respondent management respondent company has become sick and unviable and it is reeling under the debt borrowed from the Kotak Mahindra Bank Limited and the Standard Chartered Bank. The two Banks who have purchased credit outstanding of this respondent's company from CDC and SCICI latter changed as ICICI and now the Banks have taken over symbolical possession of the factory and all the properties of this respondent under the Sarfesi Act, 2002. The said Banks have also issued publication for auction and sale of this respondent company in its "as-is-where-is" condition. The Standard Chartered Bank has since assigned the debts along with all securities pertaining to this respondent in favour of International Assets Reconstruction Company Private limited. This respondent filed an application under Debt Recovery Tribunal Visakhapatnam in S.A. 193/2010, which granted stay on sale of the factory, posting the case to be heard on 28 Jun 2011. The order of the DRT has been suspended by Debt Recovery Appellate Tribunal Chennai where an application was preferred by Kotak Mahindra Bank Limited against the said order before the Debt Recovery Appeal Tribunal, Chennai *vide* N.A. 603/2010 and the same is pending adjudication. The writ petition is also pending before the AP High Court in WP No. 4299/2011. 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 petitioners. In the unlikely event of any award being passed by this Court having monetary implications on this respondent, the shall only be satisfied by Kotak Mahindra Bank Limited and the Standard Chartered Bank as secured creditors 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 Sarfasi 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 and hence, the present industrial dispute is liable to be dismissed. 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.P8 were marked and on the side of the respondents RW.1 and RW.2 were examined and Ex.R1 to Ex.R26 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 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.

7. The learned Counsel appearing for the petitioner has relied upon the Judgment reported in 2013 LAB 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 name 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 the petitioner.

9. It is the case of the petitioner that he was working at the first respondent establishment from 25-03-2003 as Packing Helper 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 22-05-2006 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 22-05-2005 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.P8. Ex.P1 is the representation to Assistant Inspector of Labour over non-employment on 05-06-2006. Ex.P2 is the failure report, dated 25.08.2006. Ex.P3 is the copy of representation to REPC, dated 21-01-2006. Ex.P4 is the copy of Service Certificate issued by the management on 20-11-2005. Ex.P5 is the copy of E.P.F. statement report, dated 20.07.2006. Ex.P6 is the copy of representation to RPF Commissioner, dated 24-02-2006. Ex.P7 is the copy of proceedings of RPFC, dated 31-05-2006. Ex.P8 is the copy of licence issued to M/s. Image Feeds, dated, 23-06-2015. These documents would go to show that 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.P4 would go to show that the management has certified that the petitioner was working as a Packing Helper in the first respondent organization from 25-03-2003 and therefore, it is clear that the petitioner has been working at first respondent establishment and he had been in service at first respondent establishment for about four years.

11. It is the main contention of the first respondent that the petitioner had never worked with this respondent at any point of time in any capacity much less as helper and that taken advantage of false and erroneous report given by the Enforcement Officer of the Provident Fund the petitioner is claiming employment with the first respondent 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 had never worked with the first respondent establishment at any point of time in any

capacity much less as helper and that taken advantage of false and erroneous report given by the Enforcement Officer of the Provident Fund the petitioner is claiming employment with the first respondent establishment and that the petitioner is bound to prove his employment with the first respondent company and also bound to prove that he has worked continuously for 240 days in the year and hence, the petitioner is not entitle for any reinstatement or back wages at the first respondent as claimed by him since he had never worked with the first respondent establishment.

14. In support of their evidence the first respondent management has exhibited Ex.R1 to Ex.R14. Ex.R1 is the xerox copy of muster roll of respondent for the period from January-2006 to August-2006. Ex.R2 is the copy of the reply letter given by the first respondent to Assistant Inspector of Labour-cum-Conciliation Officer, Yanam on 03-07-2006. Ex.R3 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.R4 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.R5 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.R6 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.R7 is the copy of the orders passed by EPF Appellate Tribunal, New Delhi, dated 17-09-2009. Ex.R8 is the xerox copy of the orders passed in WP. No. 22615/2009 by Andhra Pradesh High Court, dated 22-10-2009. Ex.R9 is the xerox copy of possession notice given by second and third respondent's company, dated 14-05-2010. Ex.R10 is the xerox copy of the sale notice published by second respondent in the local newspaper, dated 09-08-2010. Ex.R11 is the xerox copy of the order in writ petition No. 4299/2011 issued by the Hon'ble High Court of Andhra Pradesh, dated 18-05-2011. Ex.R12 is the xerox copy of the letter given by IARC to the second respondent intimating about the taking over of liabilities of first respondent to third respondent on 06-07-2012. Ex.R13 is the xerox copy of the writ notice sent by the Registrar in the Hon'ble High Court at Andhra Pradesh. Ex.R14 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.

15. The documents exhibited by the first respondent would reveal the fact that the petitioner has made representation to the Assistant Labour Inspector and the first respondent management has given reply to the Assistant Labour Inspector for the representation of the petitioner stating that no such named person with the given address or otherwise was employed by the company at any time 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.R15 to Ex.R26. Ex.R15 is the copy of the letter of authorisation of Mr. S. Prasad, dated 08-11-2017. Ex.R16

is the copy of the acknowledgment of registration of firm certificate of M/s. Image Feeds, dated 26-09-2014. Ex.R17 is the copy of the partnership deed entered between the partners of M/s. Image Feeds, dated 22-09-2014. Ex.R18 is the copy of the purchase of movable and immovable mortgaged properties at Yanam from Kotak Mahindra Bank by M/s. Image Feeds, dated 17-12-2014. Ex.R19 is the copy of the PAN Card of M/s. Image Feeds. Ex.R20 is the copy of the licence issued by Yanam Municipality in favour of M/s. Image Feeds, dated 23-06-2015. Ex.R21 is the copy of the sale certificate issued by Kotak Mahindra Bank in favour of M/s. Image Feeds, dated 25-02-2015. Ex.R22 is the copy of factory licence of M/s. Image Feeds. Ex.R23 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.R24 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.R25 is the copy of no objection letter issued by Kotak Mahindra Bank to the Inspector of Factories for transferring factory licence in favour of the first respondent, dated 02-06-2015. Ex.R26 is the copy of loan application submitted by the Managing Director of the first respondent company and sale document.

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. It is learnt from Ex.P1 that the petitioner has raised industrial dispute on 05-06-2006 and the failure report Ex.P2 would evident that the management has not produced the attendance register before the Conciliation Officer. The Ex.P4 the certificate issued by the first respondent management would evident that this petitioner was working at the first respondent establishment from 25-03-2003. Though the first respondent stated that the said Ex.P4 is the forged one the same is not proved by the first respondent management that the said certificate was fabricated one and furthermore the Ex.P5 would

evident that P.F. Commissioner has conducted an enquiry wherein the first respondent management has not produced records of the factory and on verification by Enforcement Officer it was found that 99 workers including the petitioner was working at the first respondent establishment and the first respondent has not paid contribution and further the Enforcement Officer has stated that the first respondent management has not produced the records for the relevant period. From the evidence and documents, it is established by the petitioner that he is the worker of the first respondent establishment and he had been in service for about three years for the period from 25-03-2003 to 20-11-2005 for that certificate was also issued by the first respondent management under Ex.P4. However, the first respondent management has stated that they had never employed the petitioner at the first respondent establishment. 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 three years and as the first respondent management has not produced the attendance register, it has to be inferred that the petitioner has served 240 days in a year and it is to be taken that he is the permanent worker of the first respondent establishment.

20. It is established by the petitioner through Ex.P4 the certificate issued by the first respondent that he had been in service at the first respondent establishment for about three years and it is also established by the petitioner that no domestic enquiry was conducted against the petitioner by the first respondent management and even did not give any show cause notice before refusing employment. 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 three 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 refusal of employment. 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 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 by conducting domestic enquiry 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 and hence, the petitioner is not entitled for any order of reinstatement at the first respondent establishment and hence, an Award cannot be passed against the first respondent to reinstate the petitioner into service as employee.

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 Ltd., 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 purchaser they have 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 re-employment. 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 sec.25FF of the Act. He further contends that the offering of compensation in terms of Sec.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 25f 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 re-employment 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 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, Puducherry.

*List of petitioner's witness:*

PW.1— 26-04-2010 — M. Srinivas.

*List of petitioner's exhibits:*

Ex.P1 — 05-06-2006—Representation to Assistant Inspector of Labour over non-employment.

Ex.P2 — 25-08-2006— Failure report.

Ex.P3 — 21-01-2006— Copy of representation to REPC.

Ex.P4 — 20-11-2005— Copy of Service Certificate issued by the management.

Ex.P5 — 20-07-2006— Copy of E.P.F. statement report.

Ex.P6 — 24-02-2006— Copy of representation to RPF Commissioner.

Ex.P7 — 31-05-2006— Copy of proceedings of RPFC.

Ex.P8 — 23-06-2015— Copy of licence issued to M/s. Image Feeds.

*List of respondent's witnesses:*

RW.1 — 05-12-2017— Arjuna Babu.

RW.1 — 05-12-2017— S. Prasad.

*List of respondent's exhibits:*

Ex.R1 — Jan-2006 to— Xerox copy of muster roll August-2006 of respondent.

Ex.R2 — 03-07-2006— Copy of the reply letter given by the first respondent to Assistant Inspector of Labour-cum-Conciliation Officer, Yanam.

Ex.R3 — 17-07-2006— Xerox copy of the order in WP.No.14506/2006 before the Hon'ble Andhra Pradesh High Court.

Ex.R4 — 25-08-2006— Xerox copy of the Interim order in WP. No.17714/2006 before the Hon'ble Andhra Pradesh High Court.

Ex.R5 — 11-09-2007— Xerox copy of the order in WP.No.17714/2006 before the Hon'ble Andhra Pradesh High Court.

Ex.R6 — 21-04-2009— Xerox copy of the order in WP.No. 8115/2009 before the Hon'ble Andhra Pradesh High Court.

Ex.R7 — 17-09-2009— Copy of the orders passed by EPF Appellate Tribunal New Delhi.

Ex.R8 — 22-10-2009—Xerox copy of the orders passed in WP. No. 22615/2009 by Andhra Pradesh High Court.	Ex.R18 — 17-12-2014—Copy of the purchase of movable and immovable mortgaged properties at Yanam from Kotak Mahindra Bank by M/s. Image Feeds.
Ex.R9 — 14-05-2010—Xerox copy of possession notice given by second and third respondent's company.	Ex.R19 — — — Copy of the PAN Card of M/s. Image Feeds.
Ex.R10 — 09-08-2010—Xerox copy of the sale notice published by second respondent in the local news paper.	Ex.R20 — 23-06-2015—Copy of the licence issued by Yanam Municipality in favour of M/s. Image Feeds.
Ex.R11 — 18-05-2011—Xerox copy of the order in Writ Petition No. 4299/2011 issued by the Hon'ble High Court of Andhra Pradesh.	Ex.R21 — 25-02-2015—Copy of the Sale Certificate issued by Kotak Mahindra Bank in favour of M/s. Image Feeds.
Ex.R12 — 06-07-2012—Xerox copy of the letter given by IARC to the second respondent intimating about the taking over of liabilities of first respondent to third respondent.	Ex.R22 — — — Copy of factory licence of M/s. Image Feeds.
Ex.R13 — — — Xerox copy of the Writ Notice sent by the Registrar in the Hon'ble High Court at Andhra Pradesh.	Ex.R23 — 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.R14 — 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.R24 — 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.R15 — 08-11-2017—Copy of the letter of authorization of Mr. S. Prasad.	Ex.R25 — 02-06-2015—Copy of no objection letter issued by Kotak Mahindra Bank to the Inspector of Factories for transferring factory licence in favour of the first respondent.
Ex.R16 — 26-09-2014—Copy of the acknowledgment of registration of Firm Certificate of M/s. Image Feeds.	Ex.R26 — — — Copy of loan application submitted by the Managing Director of the first respondent company and sale document.
Ex.R17 — 22-09-2014—Copy of the partnership deed entered between the partners of M/s. Image Feeds.	

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