



# புதுச்சேரி மாநில அரசிதழ்

## La Gazette de L'État de Poudouchéry

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#### பொருளடக்கம்

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The workman V. Selvaraj entered service under the respondent on 14-03-1988 and he continuously worked under the respondent with efficiently, sincerely and to the satisfaction of his superiors. On 14-02-2003, the respondent has separately constituted a Society in the name of Texpro without any legal entity created an agreement on 18-02-2003 without obtaining willingness and consent from workman V. Selvaraj and by an act of compulsion, deputed him and 16 other employees of respondent to Texpro with effect from 01-04-2003 *vide* order, dated 28-03-2003. E.P.F amount, other deductions and all the records related to his service were maintained by this respondent for more than 24 years without any break. The respondent did not settle his account or paying gratuity and other benefits when he transferred to Texpro or till now and it reveals that workman V. Selvaraj is all along employee of this respondent. Being an illiterate, the workman is not having any knowledge of English, the respondent with *mala fide* intention getting signature using as if, he is agreeing for transfer, membership in Texpro, and offer of fresh entrant, *etc.*, Though, the workman made several letter and series of

representations to the respondent authorities regarding the unwillingness and requested the respondent not to transfer to Texpro, the respondent did not heed his request. Finally, the respondent take back him and fix the proper scale of pay. After knowing that some of juniors to V. Selvaraj filed a W.P.No.43480 of 2006 sought equal pay on par with him and hence without any enquiry, the respondent reduced his basic scale of pay from ₹ 4,930 to ₹ 3,600 illegally and deducted the amount from his salary in equal 24 installments. The salary of the workman was illegally demoted below the junior scale of pay. The Writ Petition filed by workman in W.P. No. 5110/2010 sought for seniority and W.P. No. 43480/2006 filed by his juniors for equal pay were dismissed by the Hon'ble High Court on the ground of jurisdiction as if, Co-operative Society employee cannot filed Writ Petition. Thereafter, on 10-01-2007, 23-02-2010, the respondent periodically issuing seniority list in which all his juniors were given seniority, promotion and revision illegally which is nothing but illegal and unfair labour practice. Though, the workman gave various representations, the respondent did not give any response. Hence, the petitioner union raised a dispute on behalf of his member V. Selvaraj before the Labour Officer (Conciliation) and on failure of the Conciliation the Government has referred this matter to this Tribunal. The petitioner union prayed to nullify the orders, dated 10-01-2007 and 23-02-2010 of the respondent and to give continuity of service, seniority, promotion, revision of wages on the ground that the workman V. Selvaraj was transferred to Texpro without obtaining his willingness and consent is highly illegal and that the workman Selvaraj was not at all relieved from the respondent and he was asked by the respondent to go to Texpro as deputation and hence that the respondent herein keeping all the statutory benefits and documents. Since, some juniors to Selvaraj went to Court the management should not curtail his rights and reduce his scale of pay. Admittedly the workman Selvaraj EPF No. TN/PC/120/194 account if, continuously maintained by the respondent for the past 23 years without any break. The EPF amount has also not been transferred to Texpro. Hence, he is deemed to be an employee of this respondent from the date of joining. Admittedly, at the time of transferring to Texpro or till now this management did not settling any service benefits, legal dues and all other benefits for the period of 1988 to 2003 when he worked under this management. Hence, it clearly shows that he is having

continuity of service under this respondent from 1988 to till date. The service condition of the Selvaraj was adversely affected and the management without adopting legal provision changed his service conditions without any notice is highly illegal. The petitioner union prayed this Court to set aside the orders, dated 10-01-2007 and 23-02-2010 passed by the respondent consequently direct the respondent to give continuity of service, seniority, promotion, revision of wages and all other attendant benefits with 12% interest based on the seniority taking for all the aspects from 14-03-1988 and Payment of deducted wages to V. Selvaraj.

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

The respondent denied all the averments made by the petitioner union in their claim statement and stated that the respondent management had entered an agreement on 18-02.2003 and as per the terms and conditions of the said agreement 17 employees from Pontex were sent to the new Society Texpro with effect from 01-04-2003 *vide* order, dated 28-03-2003 and the workman V. Selvaraj was one of the 17 employees. Member admission register printed by PIC press and sold to all the Co-operative Societies in Pondicherry. The Society's name will be written on the front page of the admission register by manually. Therefore, the Society name will not be found in each and every page. It is only a Xerox copy of the member admission register maintained by Texpro. In the offer of appointment letter given to the workman Selvaraj on 19-05-2005 by Pontex, the workman Selvaraj signed stating that the terms and conditions mentioned in the offer of appointment are accepted by him. The said Selvaraj worked in Pondicherry Co-operative Textile and Processing Society as dye house worker and came to Pontex and accepted the post of Helper in the Pontex, in the scale of pay fixed for the post. The joining report was properly signed by the workman Selvaraj and filed in Pontex files. The workman Selvaraj is still working in the Pontex since 23rd May, 2005. The enclosure R2 was issued to workman Selvaraj along with other employees and after that only he himself enrolled as a member in the Texpro Society as a member of the Society. The enclosure R4 was accepted by the workman Selvaraj and signed himself accepting the terms and conditions found in the offer of appointment. The workman Selvaraj was relieved from the respondent Society and joined in the Texpro and after some time as a fresh recruit an offer of

appointment was given to him and after accepting the offer of appointment to work as helper in the respondent Society Pontex he joined in the helper post. If, the workman V. Selvaraj given any objection at the time of fixation of pay, at the time of acceptance of promotion or at the time of revision of scale of pay as per the directions given by the Registrar of Co-operative Societies, *etc.*, the objections were considered and based on merits decisions were taken. All the representations submitted were considered now and then by the respondent and replies were given to the workman, now and then was disposed off on merits. The workman Selvaraj joined in the Pontex only as a fresh appointment as Helper from Texpro by accepting offer of appointment issued to him. The petitioner has got other alternative remedy to file a petition and get redressal before the Registrar of Co-operative Societies under Section 84 of the Puducherry Civil Services Act, 1972 in the service matters, except the disciplinary action. Therefore, the respondent prayed to dismissed the claim petition.

4. In the course of enquiry on the side of the petitioner WW1 was examined and Ex.W1 to Ex.W23 were marked and on the side of the respondent RW1 was examined and Ex.R1 to Ex.R25 were marked. Though, several opportunities were given, the respondent has not turned up before this Court to putforth their argument. Hence, the the argument of the respondent was closed and the case was posted for orders.

5. *The point for consideration is:*

Whether the dispute raised by the petitioner union against the respondent management over the continuity of service, seniority, promotion, revision of wages, and payment of deducted wages etc and also to nullify the orders, dated 10-01-2007 and 23-10-2010 issued against the petitioner Thiru V. Selvaraj is justified or not and if justified, what is the relief entitled to the petitioner union?

6. Heard.

The pleadings of the parties, the evidence let in by either sides and the exhibits marked on both sides are carefully considered. On the side of the petitioner, written argument was filed and the same is carefully considered. From the pleadings of the parties, it is clear that following facts are admitted by them that the workman V.Selvaraj for whom the petitioner union has raised this dispute was working at the respondent establishment and on 18-02-2003 an agreement was

entered by the respondent management and Society in the name of Texpro was created and the said V. Selvaraj along with 16 other employees were shifted to the Texpro with effect from 01-04-2003 and subsequently, the said workman V. Selvaraj was taken back by the respondent establishment and proper scale of pay was fixed and it is also an admitted fact that the respondent management has reduced his basic scale of pay from ₹ 4,930 to ₹ 3,600 and thereafter, the respondent management has passed an seniority list periodically on 10-01-2007 and 23-02-2010 and the union has raised the industrial dispute on behalf of workman V. Selvaraj for seniority and promotion before the Labour Conciliation Officer wherein, the enquiry was conducted and on failure of conciliation, the failure report was submitted by the Labour Conciliation Officer and the case has been referred to this Court.

7. It is the main contention of the petitioner that he has not given any consent or willingness to depute him from respondent establishment to Texpro and without his consent and willingness he was deputed to Texpro and he made several letters with requests to transfer once again to Pontex since the E.P.F amount, other deductions and all the records of the workman V.Selvaraj related to his service were maintained by the respondent management and his request was accepted by the respondent management at the end and once again he has been taken to the respondent establishment and his salary was fixed at the rate of basic scale of pay of ₹ 4,930 and subsequently it was reduced to ₹ 3,600 and that his juniors were given seniority by the respondent establishment by passing of an order periodically on 10-01-2007 and 23-02-2010 in which all his juniors were given seniority, promotion and revision of wagos and hence, the petitioner union has raised the industrial dispute on behalf of workman V. Selvaraj for fixation of proper scale of pay with subsequent consequential benefits.

8. On the other hand, it is the contention of the respondent management that only on the consent and willingness of the workman V. Selvaraj and as per 12(3) settlement entered on 18-02-2003, 17 employees including the workman Selvaraj of the Pontex were relieved from their duties from Pontex and sent to new Society Texpro with effect from 01-04-2003 *vide* office order, dated 28-03-2003 and the petitioner has joined at, the Texpro and he had been in service and subsequently, the workman Selvaraj was taken back by Pontex by giving an offer of appointment on 19-05-2005 wherein, the workman signed stating that terms and conditions mentioned in the offer of appointment are

accepted by him and he has accepted the post of helper in the Pontex in the scale of pay fixed for the post and that the workman after accepting the terms and conditions found in the offer of appointment given to him on 19-05-2005 joined in the Pontex and submitted his joining report and the workman Selvaraj was working at Pontex since 23-05-2005 and the said workman had worked at Texpro for the period from 28-03-2003 to 23-05-2005 and the said workman Selvaraj signed himself accepting the terms and conditions found on the offer of appointment. On this aspect, the evidence let in and exhibits marked on either side are carefully perused.

9. It is the evidence of the W.W.1 that workman V. Selvaraj entered service under the respondent establishment on 14-03-1988 and he continuously worked under the respondent with efficiently, sincerely and to the satisfaction of his superiors and on 14-02-2003 the respondent has separately constituted a Society in the name of Texpro entered settlement on 26-03-2003 and the respondent management has deputed the workman V.Selvaraj without obtaining willingness and consent and by an act of compulsion to the said Texpro along with 16 others with effect from 01-04-2003 *vide* order, dated 28-03-2003 and however, E.P.F amount, other deductions and all the records of the workman V.Selvaraj related to his service were maintained by this respondent for more than 24 years without any break and that the workman V. Selvaraj is not having any knowledge of English, the respondent with *mala fide* intention getting signature using as if, he is agreeing for transfer, membership in Texpro, and offer of fresh entrant, *etc.*, and that though the workman made several letters and representations to the respondent authorities, the respondent did not heed his request and that finally, the respondent take back him and fix the proper scale of pay and that some of juniors to V. Selvaraj filed a W.P. No. 43480 of 2006 sought equal pay on par with him and while so, the basic scale of pay of the workman V. Selvaraj was reduced from ₹ 4,930 to ₹ 3,600 by the respondent management illegally and deducted the amount from his salary in equal 24 installments and hence, the Writ Petition was filed by workman V.Selvaraj in W.P. No. 5110/2010 sought for seniority and the W.P. No. 43480/2006 filed by his juniors for equal pay were dismissed by the Hon'ble High Court, on the ground of jurisdiction as if, Co-operative Society employee cannot file Writ Petition and that on 10-01-2017, 23-02-2010, the respondent periodically issuing seniority list in which all his juniors were given

seniority, promotion and revision illegally which is nothing but illegal and unfair labour practice and hence, the petitioner union raised a dispute on behalf of its member V. Selvaraj before the Labour Officer (Conciliation) and on failure of the conciliation, the Government has referred this matter to this Tribunal.

10. In support of their case, the petitioner union has exhibited Ex.W1 to Ex.W23. Ex.W1 is the copy of the objection letter written by the workman for deputation to Texpro on 26-02-2003. Ex.W2 is the copy of 12(3) settlement, dated 26-03-2003. Ex.W3 is the copy of the objection letter written by the workman for deputation to Texpro on 22-04-2003. Ex.W4 is the copy of the objection letter written by the workman for deputation to Texpro on 04-07-2003. Ex.W5 is the copy of the objection letter written by the workman for deputation to Texpro on 27-12-2003. Ex.W6 is the copy of the objection letter written by the workman for deputation to Texpro on 31-01-2004. Ex.W7 is the copy of the objection letter written by the workman for deputation to Texpro on 25-02-2004. Ex.W8 is the copy of the objection letter written by the workman for deputation to Texpro on 17-12-2007. Ex.W9 is the copy of letter by workman seeking promotion in the respondent concern, dated 26-12-2005. Ex.W10 is the copy of letter by workman seeking increment and promotion in the respondent concern, dated 28-01-2006. Ex.W11 is the copy of letter by workman seeking increment and promotion in the respondent concern, dated 16-03-2006. Ex.W12 is the copy of representation to declare seniority list, dated 25-05-2006. Ex.W13 is the copy of legal notice, dated 03-12-2006. Ex.W14 is the copy of order of respondent for denial of revised scale of pay and recovery on 10.01.2007. Ex.W15 is the copy of salary received with protest, dated 07-03-2007. Ex.W16 is the copy of objection to the provisional common seniority list on 13-02-2009. Ex.W17 is the copy of letter by workman taking seniority from the date of appointment *i.e.*, 14-03-1988 on 02-12-2009. Ex.W18 is the copy of petition under RTI Act, dated 17-02-2010. Ex.W19 is the copy of respondent denying seniority, dated 23-02-2010. Ex.W20 is the copy of 2K petition, dated 21-08-2012. Ex.W21 is the copy of rejoinder filed by the petitioner, dated 06-06-2013. Ex.W22 is the copy of 2nd rejoinder filed by the petitioner, dated 25-09-2013. Ex.W23 is the copy of failure report issued by the Labour Officer on 04-03-2014.

11. On the other hand, to disapprove the case of the petitioner the respondent management has examined one V. Selvaraj as RW1 and he has deposed that the respondent management had entered an agreement on

18-02-2003 and as per the terms and conditions of the said agreement 17 employees were relieved from Pontex and sent to the new Society Texpro with effect from 01-04-2003 *vide* order, dated 28-03-2003 and the workman V. Selvaraj was one among them and that only he himself enrolled as a member in the Texpro Society as a member of the Society and however, the payment was given by the respondent management to the workman V. Selvaraj and that the workman V. Selvaraj signed stating that the terms and conditions mentioned in the offer of appointment are accepted by him and he accepted the post of Helper in the Pontex, in the scale of pay fixed for the post and after accepting the terms and conditions in the offer of appointment, dated 19-05-2005 given to him the workman V. Selvaraj joined at the Pontex and submitted his joining report and that the workman V. Selvaraj is still working in the Pontex from 23-05-2005 and that the respondent Society has relieved the workman V. Selvaraj from duty and he joined in the Texpro and after some time as a fresh recruit an offer of appointment was given to him and after accepting the offer of appointment to work as Helper in the respondent Society Pontex, he joined in the Helper post and that all the representations submitted by the workman V. Selvaraj were seriously considered by the respondent management and replies were given to the workman, now and then and that the workman V. Selvaraj joined in the Pontex only as a fresh appointment as Helper from Texpro by accepting offer of appointment issued to him by the respondent management.

12. In support of his case, the respondent management has exhibited Ex.R1 to Ex.R25. Ex.R1 is the copy of authorisation letter, dated 12-04-2017. Ex.R2 is the copy of III-Pay Committee report implemented by the Committee Consisted by the Registrar of Co-operative Society (RCS) for Co-operative Societies, dated 18-05-1998. Ex.R3 is the copy of 12(3) agreement between management and labour, dated 18-02-2003. Ex.R4 is the copy of relieving order of Thiru V. Selvaraj and other to Texpro Society, dated 28-03-2003. Ex.R5 is the copy of member admission register of V. Selvaraj in Texpro, dated 21-04-2004. Ex.R6 is the copy of offer of appointment order in respect of V. Selvaraj in Texpro, dated 19-05-2005. Ex.R7 is the copy of joining report of Thiru V. Selvaraj in Texpro, dated 23-05-2005. Ex. R8 is the copy of W.P. No. 43480/2006, dated Nil. of 09.2006. Ex.R9 is the copy of IV-Pay Committee report implemented by the committee consisted by the Registrar of Co-operative

Society (RCS) for Co-operative societies, dated 28-02-2006. Ex.R10 is the copy of the memorandum issued to Thiru.V. Selvaraj, in connection with the pay disparity, dated 15-12-2006. Ex.R11 is the copy of explanation submitted by Thiru V. Selvaraj, dated 20-12-2006. Ex.R12 is the copy of speaking order issued to Thiru V. Selvaraj issued by the management of the Society, dated 10-01-2007. Ex.R13 is the copy of tentative common seniority list issued by the management to Thiru V. Selvaraj, dated 13-11-2009. Ex.R14 is the copy of objection letter submitted by Thiru V. Selvaraj against his seniority list, dated 01-12-2009. Ex.R15 is the copy of final common seniority list issued by the management to Thiru V. Selvaraj, dated 23-02-2010. Ex.R16 is the copy of the counter affidavit filed by the respondent in W.P. No.43480/2006. Ex.R17 is the copy of affidavit filed by the petitioner in W.P. No. 5110/2010 on 26-02-2010. Ex.R18 is the copy of counter affidavit filed by the respondent in W.P. No. 5110/2010 on 23-03-2010. Ex.R19 is the copy of the common order in W.P. Nos. 43480/2006 and 5110/2010 and M.P.No.1/2010, dated 06-04-2010. Ex.R20 is the copy of Promotion order to Thiru V. Selvaraj, dated 22-11-2010. Ex.R21 is the copy of joining report of Thiru V. Selvaraj in Pontex, dated 22-11-2010. Ex.R22 is the copy of counter filed by respondent to Labour Officer (Conciliation), Puducherry on 23-02-2011. Ex.R23 is the copy of V Pay Committee report implemented by the Committee constituted by the Registrar of Co-operative Society (RCS) for Co-operative Societies, dated 12-01-2012. Ex.R24 is the copy of pay option letter submitted to Pontex by Thiru V. Selvaraj on 18-02-2012. Ex.R25 is the copy of counter filed by the respondent before the Labour Officer (Conciliation) on 19-11-2012.

13. The documents exhibited by the petitioner would go to show that the workman V. Selvaraj had been in service from 14-03-1988 and subsequently he has been deputed to Texpro in the year 2003 along with 16 others and that the workman V. Selvaraj has submitted several applications seeking promotion at the respondent establishment and also he has submitted requisition seeking increment and promotion on various dates from 2003 to 2006 and that the respondent management has reduced the basic scale of pay of workman V. Selvaraj and therefore, he has received salary with protest from the respondent establishment and made an objection to the provisional common seniority list and further Ex.W17 would reveal that the workman V. Selvaraj has submitted an application to the Registrar of Societies on 02-12-2009 stating all the facts with the request to direct the management to

reconsider the seniority list from the date of appointment and further Ex.W18 would also reveal the fact that the workman V. Selvaraj has submitted an application to the Conciliation Officer against the reduction of wages and he has sent a letter to the respondent management on 02-12-2009 sought for seniority from the date of appointment *i.e.*, 14-03-1988 and however, the respondent management has denied the seniority by an order dated 23-02-2010 which was exhibited as Ex.W19 which reveals the fact that the respondent management has denied seniority to workman V. Selvaraj stating that he has taken as fresh employee and seniority from 01-01-1991 cannot be acceded and Ex.W20 also would evident that petitioner union has submitted an application to the management of Pontex with the request to give proper seniority and promotion with proper basic pay to workman Selvaraj and that the petitioner union has raised the industrial dispute on behalf of workman V. Selvaraj before the Conciliation Officer and on failure of the conciliation the failure report was submitted by the Conciliation Officer.

14. Furthermore, on perusal of documents exhibited by the respondent management, it is clear from Ex.R4 that the respondent Society has relieved the 17 employees including the workman V. Selvaraj from the respondent Society Pontex and sent them to new Society with effect from 01-04-2003 wherein, it has been stated that GPF, EPF and gratuity will be transferred to the newly formed Society and this order has been passed as an office order of the respondent establishment. Further, it is noticed from the Ex.R.6-offer of appointment given by the respondent establishment to the said workman V. Selvaraj on 19-05-2005 that there was some terms and conditions mentioned by the respondent establishment and it is also revealed from Ex.R7 that the workman has reported duty as per the order of the respondent management on 23-05-2005.

15. Further, it can be clearly noticed from Ex.W 23- the failure report that the service condition of the workman V. Selvaraj was adversely affected and his service condition was changed without any notice and that the respondent management has reduced the pay from ₹ 4,930 to ₹ 3,600 and hence, the union prayed for continuity of service from 14-03-1988 to till date with revised scale of pay, promotion and fixation of seniority and salary dues and repayment of deducted salary, *etc.*, to workman V. Selvaraj and further the Ex.W23 - the failure report would evident that the Conciliation Officer has advised the respondent management that it was not fair on the part of the

management regarding continuity of service and denial of seniority of the petitioner and it was also the advise of the Conciliation Officer that without obtaining willingness or consent, the service condition of the workman would not be changed without giving notice to the workman and further the change of service condition without the consent of the workman which adversely affected the seniority and promotion of the workman and which also affect the scale of pay is not fair and further, it was advised by the Conciliation Officer to the management that reduction of basic scale of pay and deduction of salary is also not fair on the part of the management for which the respondent management has showed their inability to take the advise of the Conciliation Officer. From these advise of the Conciliation Officer, it is clear that the respondent management has without getting consent and willingness, shifted 17 workmen including the workman V. Selvaraj to the Texpro and subsequently, the basic pay of V. Selvaraj also has been reduced without giving any notice required under section 9A of the Industrial Disputes Act and the service condition also has been changed without giving notice to the workers who have been shifted from the respondent establishment in the year 2003.

16. Admittedly, it is not the case of the respondent management that they have given any notice prior to the shifting of 17 employees to the newly formed Society Texpro and it is the case of the respondent management that only on the willingness and consent of the 17 employees including the workman V. Selvaraj, have been shifted to said newly formed Society Texpro with effect from 01-04-2003 and it is not in dispute that the offer of appointment was given to workman V. Selvaraj and he had been taken back to the respondent Society in the year 2005 and it is the case of the respondent management that workman V. Selvaraj has accepted the terms and conditions and hence, he has been treated as fresh appointee. But, no document was putforth by the respondent management while the workman V. Selvaraj relieved from Pontex, he has been given any gratuity or other benefits for the period of 15 years of service since the petitioner has joined the respondent Society in the year 1988. Furthermore, no document is exhibited before this Court that EPF and GPF were transferred to Texpro Society where the 17 employees have been shifted. On this aspect the evidence of RW1 was carefully considered which runs as follows:

"மனுதாரர் சோஷியலிஸ்ட் தொழிலாளர் சங்கத்தின் வழியாக வழக்கு தொடர ஆட்சேபனை தெரிவிக்கவில்லை என்றால் சரிதான். எமதசாஆ 3-ல் மனுதாரர் செல்வராஜ் கையொப்பம் இடவில்லை என்றால் சரிதான் அதில் தொழிலாளர் துறை

அதிகாரிகளோ, அரசு அதிகாரிகளோ எமதசாஆ 3. பேச்சுவார்த்தையில் கலந்துகொள்ளவில்லை என்றால் சரிதான். அந்த பேச்சுவார்த்தை எந்த தேதியின் நடந்தது என்றால் 18-2-2003ல் நடந்தது. எத்தனை நாள் நடந்தது என்ற விபரம் எனக்கு தெரியாது. எமதசாஆ 3 பேச்சுவார்த்தையில் ஒன்றரை மாதம் கழித்துதான் அதில் பங் பேற்க மூவரும் கையெழுத்திட்டனர் என்றால் சரிதான். எமதசாஆ 3 எந்த தொழிலாளியும் கையொப்பமிடவில்லை என்றால் சரிதான். பாண்டெக்ஸ்லிருந்து டெக்ஸ்புரோவிற்கு தொழிலாளர்களை மாற்றம் செய்வது தொடர்பாக தொழிலாளிகளிடம் மற்றும் மனுதாரர் செல்வராஜ் இடம் கருத்தோ, இசைவோ கேட்கப்பட்டதா என்றால் அந்த நேரத்தில் நான் பணியில் இல்லாததால் அது பற்றி எனக்கு தெரியாது. எமதசாஆ 22, பத்தி நான்கின் குறிப்பிட்டுள்ளவாறு டெக்ஸ்புரோவில் பணிபுரிய 17 சாய்ச் சாலை பணியாளர்கள் எவரிடமிருந்தும் சம்மதமோ, இசைவு கடிதமோ பெறப்படவில்லை என்றால் சரிதான். பாண்டெக்ஸ் தொழிற்சங்கம் பொதுக் குழு கூட்டி மனுதாரர் உட்பட 17 தொழிலாளர்களை டெக்ஸ்புரோவிற்கு மாற்றம் செய்வதற்கு எவ்வித தீர்மானமும் நிறைவேற்றி நிர்வாகத்திற்கு வழங்கவில்லை என்றால் சரிதான். எந்த அடிப்படையில் சாயப்பிரிவு தொழிலாளர்களை மாற்றம் செய்தோம் என்றால் சாயப்பிரிவு தொழிலாளர்களை புதிதாக சாயப்பிரிவு ஆரம்பிக்கப்பட்டதால் அங்கு அனுப்பினோம். எமதசாஆ 3-ல் குறிப்பிட்டுள்ள ஒப்பந்தத்திலும் பாண்டெக்ஸ் தொழிற்சங்கத்தின் சார்பாக தலைவர் கையொப்பமிடவில்லை என்றால் சரிதான்..”

From the above evidence it is clear that the workman V. Selvaraj has not signed the 12(3) settlement alleged to have been entered between the employees and the management. Further, Ex. RS would also reveal the fact that 15 employees mentioned in the said settlement have not signed the same. The evidence of RWI would go to show that said settlement has not been signed by workman V. Selvaraj for whom this industrial dispute has been raised and further, it reveals from above evidence that no employees have been participated in the negotiation for the said settlement and no resolution has been passed at the petitioner union and it is also admitted by RWI in his evidence that they have not issued any notice to get the consent or opinion from the employees regarding such shifting of employees to Texpro and no worker has given any letter accepting or consenting the same and it is also admitted by RW1 that no resolution has been passed by the petitioner union regarding acceptance to shift the 17 employees to Texpro and it is also admitted by RW I that these 17 employees only have been deputed as they have formed new Society in the name of Texpro.

17. The further evidence of RW1 would runs as follows :

".....மனுதாரர் தன்னை இடமாறுதல் செய்யக் கூடாது என்று எதிர்ப்பு தெரிவித்து கடிதம் கொடுத்துள்ளார் என்று சொன்னால் சரிதான். அதற்கு ஏதாவது மறுப்புக் கடிதம் தெரிவித்து பதில் கொடுக்கவில்லை என்றால் அதுபற்றி எனக்குத் தெரியாது. மனுதாரருக்கு 28-01-2006 சீனியாரிட்டி கோரி கொடுத்த மனுவிற்கு பதில் கொடுக்கவில்லை என்று சொன்னால் அது பற்றி எனக்கு தெரியாது. மேற்சொன்னவைகளுக்கு நிர்வாகம் பதில் தெரிவித்ததா என்று எனக்கு தெரியாது. எமதசாஆ 5 டெக்ஸ்புரோ என்ற கம்பெனி பெயர் குறிப்பிடவில்லை என்று சொன்னால் சரிதான். பாண்டெக்ஸ் என்று குறிப்பிடப்பட்டுள்ளது. டெக்ஸ்புரோ அதிகாரிகளின் முத்தரையோ, கையெழுத்தோ இல்லை. எமதசாஆ 6-ல் தொழிலாளர்களின் பெயர்களை நிரப்பி வேலை உத்தரவாதக் கடிதம் கொடுத்திருக்கிறோம் என்றால் சரிதான். அது ஆங்கிலத்தில் உள்ளது. தமிழில் இல்லை. எமதசாஆ 7-ல் சொல்லப்பட்டுள்ள இணைப்பு பகுதி அத்துடன் தாக்கல் செய்யப்படவில்லை என்றால் சரிதான். மனுதாரருக்கு உரிய PF தொகை எங்கள் நிறுவனத்தில்தான் உள்ளது என்று சொன்னால் 2005-ஆம் ஆண்டு மனுதாரர் பணி மாறுதலாகி டெக்ஸ்புரோவிலிருந்து பாண்டெக்ஸ்க்கு மாறி எங்களுக்கு வந்துள்ளது. தற்போது எங்கள் நிறுவனத்தில் உள்ளது. அதை மாற்றியதை காட்டக்கூடிய ஆவணம் எதையும் நான் தாக்கல் செய்யவில்லை. நாங்கள் சொன்னபடி டெக்ஸ்புரோ நிறுவனத்திற்கு மாற்றவில்லை என்றும் மனுதாரருக்கு உரிய கணக்குகள் எங்கள் நிறுவனத்தில் தான் உள்ளது என்றால் சரியல்ல. அவர் பணியில் இருப்பதால் PF Gradutty அவருக்கு கொடுக்கவில்லை. டெக்ஸ்புரோ கம்பெனி தற்போது இல்லை. எமதசாஆ 3-ன் படி பத்தி 5-ன் படி டெக்ஸ்புரோ நலிவடைந்தாலோ அல்லது மாற்றியமைக்கப்பட்டாலோ அவர்களை மீண்டும் பாண்டெக்ஸ் நிறுவனத்திற்கு பணிபாதுகாப்புடன் எடுத்துக் கொள்வோம் என்று கூறியிருந்தோம். 2005-ல் மீண்டும் டெக்ஸ்புரோவிலிருந்து பாண்டெக்ஸ் நிறுவனத்திற்கு வரும் போது அவர் பணித் தொடர்ச்சி மற்றும் இதர சலுகைகளுடன் தான் மனுதாரரை எடுத்துக் கொள்வோம் என்று சொன்னோம் என்றால் சரிதான். அவர் 1988 பணியில் சேர்ந்ததாக கருதி தான் சீனியாரிட்டி கருதி தான் அவரை எடுத்துக் கொண்டோம். மற்ற தொழிலாளிகள் நீதிமன்றத்தை அணுகியதின் காரணமாகத் தான் மனுதாரர் செல்வராஜ் குறைத்து வழங்கினோம் என்றால் சரிதான். ஒரு தொழிலாளி பணி மாறுதல் செய்யப்பட்டு திரும்பவும் வரும் போது அவருக்கு ஏற்கனவே வழங்கப்பட்ட பணித்தொடர்ச்சியை தராமல் சீனியாரிட்டி தராமல் இருப்பது சட்டவிரோதம் என்றால் சரிதான். அவருடைய பணி தன்மையை மாற்றம் செய்யும் போது பிரிவு 9-ன் கீழ் அறிவிப்பு கொடுக்கப்படவில்லை என்றால் அதுபற்றி எனக்கு தெரியாது. பாண்டெக்ஸில் உள்ள PF நம்பரில் தான் டெக்ஸ்புரோவில் பணிபுரிந்த போதும் PF செலுத்தப்பட்டது என்று சொன்னால் சரிதான்.....”



From the above evidence, it is clear that RW1 has admitted that while shifting the 17 employees to Texpro, the respondent management has given an undertaking to the said 17 employees that they would take back the employees with same seniority with continuity of service and other benefits as if, the employees had been in services at Pontex and RW1 also has admitted that they had reduced salary of the said V. Selvaraj since he had approached the Court for his promotion and further, RW1 admits that the act of the respondent management not giving proper seniority to the workman V. Selvaraj while re-appointment to the same Society is against law and as illegal and further, the evidence of RW1 would reveal the fact that they have not given notice under section 9A of the Act while reducing the salary to the workman V. Selvaraj which is a clear violation of provision of Industrial Disputes Act committed by the respondent management.

18. Further, it is admitted by RW1 that the provident fund amount was contributed by the said Texpro in the same PF number only in which the respondent management has previously paid which would go to show that Texpro was also managed by the respondent management and thus, the PF amount was paid in the same number and even then, the said V. Selvaraj was working at Texpro for the short period till 2005. All these evidence would go to show that the respondent management ought to have given original seniority to the workman V. Selvaraj and he could not be given seniority on the basis of fresh appointment given to him while he returned back to Pontex and therefore, the order passed by the respondent management on 10-01-2007 to the workman V. Selvaraj with regard to reduction of his basic salary from ₹ 4,930 to ₹ 3,600/- is not sustainable and it is liable to be declared as *null* and *void* and furthermore, the order passed by the respondent management on 23-02-2010 denying seniority to workman Selvaraj is also not sustainable and hence it is also liable to be declared as *null* and *void* and that therefore, it is to be held that the industrial dispute raised by the petitioner union against the respondent management over the continuity of service, seniority, promotion, revision of wages and payment of deducted wages, *etc.*, and also to nullify the orders, dated 10-01-2007 and 23-10-2010 issued against the workman V. Selvaraj is justified and as such, the workman V. Selvaraj is entitled for the relief as claimed by the petitioner union.

19. In the result, the petition is allowed by holding that the industrial dispute raised by the petitioner union against the respondent management regarding continuity of service, seniority, promotion, revision

of wages and payment of deducted wages, *etc.*, to employee V. Selvaraj and also to nullify the orders, dated 10-01-2007 and 23-10-2010 issued against the employee V. Selvaraj is justified by declaring the order passed by the respondent management on 10-01-2007 by reducing the basic scale of pay of V. Selvaraj from ₹ 4,930 to ₹ 3,600 and order passed by the respondent management on 23-02-2010 denying seniority of the employee V. Selvaraj as *null* and *void* and Award is passed by directing the respondent management to give seniority and promotion to the employee V. Selvaraj by giving continuity of service and to revise his salary by giving such seniority and promotion as if, he had been in service at respondent Society.

No cost.

Dictated to the Stenographer, transcribed by her, corrected and pronounced by me in the open Court, on this the 29th day of November, 2017.

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

*List of petitioner's witness:*

WW1 —04-01-2016— R. Jaikumar

*List of petitioner's exhibits:*

Ex.W1 —26-02-2003— Copy of the objection letter written by the workman for deputation to Texpro.

Ex.W2 —26-03-2003— C o p y o f 1 2 ( 3 ) settlement.

Ex.W3 —22-04-2003— Copy of the objection letter written by the workman for deputation to Texpro.

Ex.W4 —04-07-2003— Copy of the objection letter written by the workman for deputation to Texpro.

Ex.W5 —27-12-2003— Copy of the objection letter written by the workman for deputation to Texpro.

Ex.W6 —31-01-2004—Copy of the objection letter written by the workman for deputation to Texpro.

Ex.W7 —25-02-2004—Copy of the objection letter written by the workman for deputation to Texpro.

Ex.W8 —17-12-2007—Copy of the objection letter written by the workman for deputation to Texpro.

Ex.W9 —26-12-2005—Copy of letter by workman seeking promotion in the respondent concern.

Ex.W10—28-01-2006—Copy of letter by workman seeking promotion in the respondent concern.

Ex.W11—16-03-2006—Copy of letter by workman seeking increment and promotion in the respondent concern.

Ex.W12—25-05-2006—Copy of representation to declare seniority list.

Ex.W13—03-12-2006—Copy of legal notice.

Ex.W14—10-01-2007—Copy of order of respondent for denial of revised scale of pay and recovery.

Ex.W15—07-03-2007—Copy of salary received with protest.

Ex.W16—13-02-2009—Copy of objection to the provisional common seniority list.

Ex.W17—02-12-2009—Copy of letter by workman taking seniority from the date of appointment *i.e.* 14-03-1988.

Ex.W18—17-02-2010—Copy of petition under RTI Act.

Ex.W19—23-02-2010—Copy of respondent denying seniority.

Ex.W20—21-08-2012—Copy of 2K petition.

Ex.W21—06-06-2013—Copy of rejoinder filed by the petitioner.

Ex.W22—25-09-2013—Copy of 2nd rejoinder filed by the petitioner.

Ex.W23—04-03-2014—Copy of failure report issued by the Labour Officer.

*List of respondent's witness:*

Ex.W1—17-07-2017—V. Selvaraj

*List of respondent's exhibits:*

Ex.R1 —12-04-2017—Copy of authorization letter.

Ex.R2 —18-05-1998—Copy of III-Pay Committee report implemented by the Committee consisted by the R C S for Co-operative Societies.

Ex.R3 —18-02-2003—Copy of 12(3) agreement between management and labour.

Ex.R4 —28-03-2003—Copy of relieving order of Thiru V. Selvaraj and other to Texpro Society.

Ex.R5 —21-04-2004—Copy of member admission register of V. Selvaraj in Texpro.

Ex.R6 —19-05-2005—Copy of offer of appointment order in respect of V. Selvaraj in Texpro.

Ex.R7 —23-05-2005—Copy of joining report of Thiru V. Selvaraj in Texpro.

Ex.R8 —Nil-09-2006—Copy of W.P.No.43480/2006.

Ex.R9 —28-02-2006—Copy of IV - Pay Committee report implemented by the Committee consisted by the RCS for Co-operative Societies.

Ex.R10 —15-12-2006—Copy of the memorandum disparity.

Ex.R11—20-12-2006—Copy of explanation submitted by Thiru V. Selvaraj.

Ex.R12 —10-01-2007—Copy of speaking order issued to Thiru V. Selvaraj issued by the management of the Society.

Ex.R13—13-11-2009—Copy of tentative common seniority list issued by the management to Thiru V. Selvaraj.

Ex.R14 —01-12-2009—Copy of objection letter submitted by Thiru V. Selvaraj against his seniority list.

Ex.R15 —23-02-2010—Copy of final common seniority list issued by the management to Thiru V. Selvaraj.

Ex.R16 — Copy of the counter affidavit filed by the respondent in W.P. No. 43480/2006.

Ex.R17 —26-02-2010—Copy of affidavit filed by the petitioner in W.P. No. 5110/2010.

Ex.R18 —23-03-2010 —Copy of counter affidavit filed by the respondent in W.P. No. 5110/2010.

Ex.R19 —06-04-2010—Copy of the common order in W.P. Nos. 43480/ 2006 and 5110/ 2010 and M.P. No. 1/ 2010.

Ex.R20 —22-11-2010—Copy of Promotion order Thiru V. Selvaraj.

Ex.R21 —22-11-2010—Copy of joining report of Thiru V. Selvaraj in Pontex.

Ex.R22 —23-02-2011—Copy of counter filed by respondent to Labour Officer (Conciliation), Puducherry.

Ex.R23 —12-01-2012—Copy of V-Pay Committee report implemented by the Committee constituted by the RCS for Co-operative Societies.

Ex.R24 —18-02-2012—Copy of pay option letter submitted to Pontex by Thiru V. Selvaraj.

Ex.R25 —19-11-2012—Copy of counter filed by the respondent before the Labour Officer (Conciliation).

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

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**GOVERNMENT OF PUDUCHERRY**  
**LABOUR DEPARTMENT**

*(G.O. Rt. No. 23/AIL/Lab./T/2018,  
Puducherry, dated 15th February 2018)*

**NOTIFICATION**

Whereas, the Government is of the opinion that an industrial dispute has arisen between the management of M/s. Larsen and Toubro Private Limited, Puducherry and Larsen and Toubro Employees Union, Puducherry over transfer of Thiru N. Thandapani, Technical/ Commercial Supervisor, in respect of the matter mentioned in the Annexure to this order;

And whereas, in the opinion of the Government, it is necessary to refer the said dispute for adjudication;

Now, therefore, by virtue of the authority delegated *vide* G.O. Ms. No. 20/91/Lab./L, dated 23-5-1991 of the Labour Department, Puducherry to exercise the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947), it is hereby directed by the Secretary to Government (Labour) that the said dispute be referred to the Industrial Tribunal, Puducherry for adjudication. The Industrial Tribunal, Puducherry, shall submit the Award within 3 months from the date of issue of reference as stipulated under sub-section (2-A) of section 10 of the Industrial Disputes Act, 1947 and in accordance with rule 10-B of the Industrial Disputes (Central) Rules, 1957. The party raising the dispute shall file a statement of claim complete with