



புதுச்சேரி மாநில அரசிதழ்

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பொருளடக்கம்

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**GOVERNMENT OF PUDUCHERRY
LABOUR DEPARTMENT**

(G.O. Rt. No. 10/Lab./AIL/T/2018
Puducherry, dated 5th February 2018)

NOTIFICATION

Whereas, an Award in Industrial Dispute (L) No. 23/2014, dated 28-12-2017 of the Labour Court, Puducherry in respect of the Industrial Dispute between the Management of M/s. Supreme Automech (India) Private Limited, Puducherry, R. Vijayaragavan, M/s. Supreme Automech (India) Private Limited, Puducherry and R. Natesan, Cuddalore over non-employment has been received;

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

(By order)

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

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

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

Thursday, the 28th day of December, 2017.

I.D. (L) No. 23/2014

R. Natesan,
No. 40, Mariamman Koil Street,
Thukanampakkam Post,
Cuddalore-607 402. . . Petitioner

Versus

The Managing Director,
M/s. Supreme Automech (India) Pvt. Ltd.
R.S. No. 74/2B, Madukarai Road,
Villianur Commune,
Mangalam Post, Puducherry.

R. Vijayaragavan,
S/o. Ramalingam,
M/s. Supreme Automech (India) Pvt. Ltd.
Puducherry. . . Respondent

This Industrial Dispute coming on 30-11-2017 before me for final hearing in the presence of Thiru A. Sakthivel, Advocate for the petitioner and M/s. Law Solvers, Advocates for the 1st respondent, Thiru S. Balaji, Advocate for the 2nd respondent on record and subsequently, the 2nd respondent called absent and set *ex parte*, 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. 65/AIL/Lab./J/2014, dated 21-04-2014 for adjudicating the following:-

(i) Whether the dispute raised by Thiru R. Natesan against the management of M/s. Supreme Automech (India) Pvt. Ltd., Puducherry over his non-employment is justified? If justified, what relief, he is entitled to?

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

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

The petitioner is working with the respondent company as a contract labourer for the last 2 years with utmost sincerity. The petitioner had done his level best in the course of his employment. The respondent has not obtained any proper permission from the Government authorities to give employment to the contract labourers. The respondent did not give any right of ESIC and PF. The respondent failed to provide necessary equipment for the welfare of the labourers. In the respondent's factory totally 80 labourers are working this includes both permanent and contract labourers. On 06-02-2013 during the course of the petitioner's job, his right hand was injured and the respondent did not made any arrangement to take the petitioner to the Hospital, but, only after 3 hours, the petitioner was taken to the Hospital. Due to the long delay in giving treatment to the petitioner, the petitioner's middle finger was totally removed. In the ring finger plate was fixed. Soon when the petitioner was injured the respondent did not even cared for least. The respondent acted as if, they do not know the petitioner. In connection to this the petitioner approached the Labour Officer and the Labour Officer found that the petitioner worked in the respondent factory. After that the respondent has given a sum of ₹ 64,000 before the Commissioner, Labour towards compensation for the petitioner. For the medical

treatment itself, the petitioner has spent ₹ 24,000. In this situation the respondent's pittance amount could not help any way to the petitioner. Hence, the petitioner preferred a complaint before the Commissioner, Labour Officer and the same is pending. Since, the petitioner preferred a complaint against the respondent the respondent did not permit the petitioner to continue with the job. The act of the respondent is highly illegal and not followed the principles as laid down in law. Due to this, the petitioner had suffered a lot both mentally and financially. Hence, the petitioner request this Court to intervene in the issue and direct the respondent to take the petitioner for work and also direct the respondent to pay all the backwages and other benefits. On 02-04-2013, the petitioner filed a petition before the Labour Officer and the respondent filed the counter denying the allegations and the counter containing several allegations but, there are no documents to show and prove for the purpose and wantonly filed the counter. The counter filed by the respondent is not valid in the eye of law. The Labour Officer conducted the enquiry and issued the failure report on 07-03-2012. The petitioner prayed this Court to set aside the report on failure of conciliation No. 714/LO(C)/AIL/2013 Government of Puducherry, Office of the Labour Officer (Conciliation), dated 10-03-2014 and also direct the respondent management to reinstate the petitioner into service with all back wages, attendance benefits and monetary benefits from 06-02-2013.

3. *The brief averments in the counter filed by the 1st respondent are as follows :*

The 1st respondent denied all the allegations contained in the claim petition except those that are specifically admitted and stated that the 1st respondent company is engaged in manufacturing automobile components and for its day to day manufacturing activities recruited employees directly in the pay rolls of the company. While it was so, during the month of January 2013 the 1st respondent had given drilling work by way of job work contract to the 2nd respondent and the 2nd respondent had engaged the petitioner as his helper to carry out the aforesaid job work within the factory premises of the 1st respondent. In this circumstance, the petitioner met with an accident inside the premises of the 1st respondent management on 06-02-2013 at about 09.30 a.m., the injured petitioner was immediately given medical treatment at Government General Hospital and later PIMS, Kalapet and inspite of best efforts to save, petitioner lost two phalanges and was amputated and

ring finger was fractured and thereby the petitioner had suffered partial permanent disablement and the 2nd respondent had taken care of petitioner and paid a sum of ₹ 5,000 towards food and medical expenses and also borne the total medical expenses of ₹13,600. The 2nd respondent informed the 1st respondent that 2nd respondent had deposited compensation for partial disablement benefit of ₹ 65,326 before the Additional Commissioner for Employee's Compensation by way of Demand Draft as provided under Employee's Compensation Act. The petitioner after recovering from the injury without any basis raised an industrial dispute before the Labour Officer (Conciliation) and the 1st respondent filed its objection and sought for impleading the contractor in the conciliation, the conciliation authority did not considered the prayer of this 1st respondent forwarded failure report to the appropriate Government which had culminated into a reference for adjudication of the Industrial Dispute before this Court.

It is further stated that the 1st respondent thereafter moved an application in I.A. No. 216/2014 for impleading the contractor R. Vijayaragavan and this Court was pleased to allow the aforesaid application and the contractor R. Vijayaragavan, the 2nd respondent was impleaded as a necessary party as Immediate employer in the above proceedings for proper adjudication of the industrial dispute. The concept of master and servant relationship never existed between the petitioner and the 1st respondent and the 2nd respondent had undertaken to provide job work to the 1st respondent for drilling as and when required in the premises of the 1st respondent. The petitioner has not filed any documentary proof to establish the claim that the petitioner was engaged by the 1st respondent as contract labour. The petitioner was only engaged by the 2nd respondent as his helper for few days for the job work undertaken by the 2nd respondent. The 1st respondent had covered its work force under the social security legislations like ESI and EPF and complying with all the statutory formalities. Hence, the claim of the petitioner for reinstatement with full back wages and other benefits does not arise. There is absolutely no master and servant relationship between the petitioner and the 1st respondent and the petitioner is not at all entitled to any relief as against the 1st respondent and therefore, prayed to dismiss the claim petition.

4. In the course of enquiry on the side of the petitioner PW.1 was examined and Ex.P1 to Ex.P13 were marked and on the side of the respondent RW.1 was examined and Ex.R1 to Ex.R4 were marked.

5. *The point for consideration is:*

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

6. Both sides are heard. The submission of both the parties, the evidence let in by either sides and the exhibits marked on both sides are carefully considered. On both sides, written arguments were filed and the same were carefully considered. In order to prove his case the petitioner 'has examined himself as PW.1 and he has deposed that he was working with the 1st respondent company as a contract labourer for about 2 years and while he was working there the 1st respondent has not paid ESI and PF and also has not provided necessary equipment for the welfare of the labourers and that on 06-02-2013 during the course of his employment his right hand was injured and both the respondents have not made any arrangement to take him to the Hospital and only after 3 hours he was taken to the Hospital and due to the delay in giving treatment his middle finger was totally removed and his ring finger was fractured for which plate was fixed and since the respondents did not take care of the petitioner while he sustained injuries and therefore, the petitioner approached the Labour Officer (Conciliation) and after that the 1st respondent paid ₹ 64,000 before the Commissioner of Labour towards compensation for him and out of which ₹ 24,000 has been spent for medical expenses and that therefore, he preferred a complaint before the Commissioner of Labour Office for which the 1st respondent did not permit him to continue with the employment and that therefore, he raised the industrial dispute before the Conciliation Officer on 02-04-2013 and on failure of conciliation, the case has been referred to this Court for adjudication and he prayed for reinstatement with all back wages, attendance benefits and monetary benefits.

7. In support of his evidence the petitioner PW.1 has exhibited Ex.P1 to Ex.P13. Ex.P1 is the copy of the discharge summary issued by Puducherry Institute of Medical Sciences. Ex.P2 is the copy of out patient record. Ex.P3 is the copy of medical receipts. Ex.P4 is the copy of the letter issued to the Head of the Department by the Government of Puducherry, Office of the Assistant Director. Ex.P5 is the copy of the letter issued to the Additional Commissioner for Employees compensation by the Govt. of Puducherry, Office of the Assistant Director. Ex.P6 is the copy of the petition before the Labour Officer. Ex.P7 is the copy of the reply issued by the respondent management to

the Labour Officer (Conciliation). Ex.P8 is the copy of the letter sent by the petitioner before the Labour Officer, Puducherry. Ex.P9 is the copy of the letter sent by the petitioner before the Labour Officer, Puducherry. Ex.P10 is the letter sent by the petitioner before the Labour Officer, Puducherry. Ex.P11 is the copy of petition preferred before the Labour Officer by the petitioner. Ex.P12 is the copy of medical bills. Ex.P13 is the copy of report on failure of conciliation. These documents would go to show that the petitioner Natesan has sustained injuries at his right hand in an accident and admitted at the PIMS Hospital on 06-02-2013 and his right hand middle finger was totally amputated and sustained commuted fracture middle phalanx ring finger and he was discharged on 09-02-2013 and he was referred to Indira Gandhi Government General Hospital, Puducherry to assess the percentage of disability and the Hospital authorities also has sent a medical report to the Additional Commissioner for Employee's Compensation, Labour Department and that the petitioner has raised the industrial dispute before the Labour Officer (Conciliation) against the respondent management that he has not been given employment after the accident for which the respondent establishment has given a reply to the Conciliation Officer stating that he has been engaged only by the 2nd respondent Vijayaragavan, Contractor who was doing the job work of drilling operations at their factory and wherein, it is admitted by the respondent management that on 06-02-2013 at about 09.30 a.m., the employee Natesan met with an accident at their premises in the course of his employment and it is stated by them that 2nd respondent Vijayaragavan has deposited the compensation amount of ₹ 65,000 to the employee as provided the Employee's Compensation Act and it is also stated by them that there is no relationship of master and servant between the petitioner and the 1st respondent management.

8. On the other hand, in order to prove their case, the 1st respondent has examined RW.1 and he has deposed that the petitioner has been engaged only by the 2nd respondent as his helper to carry out the job work within the factory premises of the 1st respondent and that the petitioner met with an accident inside the premises of the 1st respondent management on 06-02-2013 at about 09.30 a.m., and sustained injuries and that immediately he was taken to Government General Hospital for treatment and later he was taken to PIMS, Kalapet and inspite of best efforts to save, petitioner lost two phalanges and was amputated and ring finger was fractured and thereby, the petitioner had suffered partial permanent disablement and the

2nd respondent had taken care of petitioner and paid a sum of ₹ 5,000 towards food and medical expenses and also borne the total medical expenses of ₹ 13,600 and that the 2nd respondent had also informed the 1st respondent that he had deposited compensation for partial disablement benefit of ₹ 65,326 before the Additional Commissioner for Employee's Compensation by way of Demand Draft as provided under Employee's Compensation Act and that without any basis the petitioner has raised the industrial dispute before the Labour Officer (Conciliation) against the 1st respondent management and that there is no relationship of master and servant existed between the petitioner and the 1st respondent at any time and that the 2nd respondent alone had undertaken to provide job work to the 1st respondent for drilling as and when required in the premises of the 1st respondent and that the petitioner has not filed any documentary proof to establish the claim that the petitioner was engaged by the 1st respondent as contract labour and that the petitioner was only engaged by the 2nd respondent as his helper for few days for the job work undertaken by the 2nd respondent and that therefore, they have not paid ESI and EPF to the petitioner and that the claim of the petitioner for reinstatement with full back wages and other benefits does not arise.

9. In support of their contention the respondent has exhibited Ex.R1 to Ex.R4. Ex.R1 is the copy of the letter sent by the respondent management to the Inspector of Factories. Ex.R2 is the copy of the letter sent by the respondent management to the Labour Officer (Conciliation). Ex.R3 is the copy of the letter sent by the 2nd respondent to the Deputy Commissioner of Labour-cum-Additional Commissioner for Employees' Compensation. Ex.R4 is the copy of few job work invoices, goods receipt note and job work challan by respondent management to the 2nd respondent for the period from 2011 to 2015.

10. From the evidence of both sides and documents exhibited by them it can be noticed that the following facts are admitted by either sides that the petitioner was working as a labour on 06-02-2013 and he met with an accident at 09.30 a.m. in the premises of the 1st respondent establishment and he sustained injuries wherein, his right hand middle finger was amputated and ring finger was sustained fracture and he was taken to Hospital and treatment was given till 09-02-2013 at PIMS Hospital and thereafter, he has been discharged and he has raised the industrial dispute before the Labour Officer (Conciliation) against the 1st respondent management stating that he is the

contractual labour working at the 1st respondent establishment for about 2 years and he sustained injuries and he was refused employment and the conciliation was failed and the matter has been referred to this Court.

11. The contention of the petitioner is that he was working with the 1st respondent establishment for about 2 years and he met with an accident on 06-02-2013 at about 09.30 a.m. at the premises of the 1st respondent establishment and the 1st respondent did not take immediate steps to take him to the Hospital and he was taken to Hospital only after 3 hours of the accident and he had no relationship with the 2nd respondent Vijayaragavan and the relationship of master and servant is existing only between the 1st respondent and the petitioner. On the other hand, it is contended by the 1st respondent that they have a contractor for doing job work with regard to drilling and the same was given to the 2nd respondent contractor and that contractor Vijayaragavan has engaged the petitioner as a helper to his job work which was done at the 1st respondent premises and that there is no relationship of master and servant between the 1st respondent and the petitioner.

12. On this aspect evidence and records are carefully considered. Though, the petitioner has stated that he was working in the 1st respondent establishment for about 2 years, no document is exhibited before this Court to prove the fact that the petitioner was working at the 1st respondent establishment for about 2 years. However, it is an admitted fact that he was working at the premises of the 1st respondent establishment on 06-02-2013 and he met with an accident in the course of his employment on the same day at 09.30 a.m. and thereafter, he was taken to the Hospital and he sustained injuries wherein, his right hand middle finger was amputated and ring finger was sustained fracture and the petitioner has raised the industrial dispute before the Labour Officer (Conciliation) against the 1st respondent management. In such circumstances, it is established by the petitioner that he was working with the 1st respondent establishment on 06-02-2013 and he sustained injuries in the course of his employment.

13. The main contention of the 1st respondent is that the petitioner was working only under the 2nd respondent. But, the 1st respondent has not filed any document regarding the contract executed between the 1st respondent management and the 2nd respondent. They have exhibited the copy of the letter sent by the respondent management to the Inspector of Factories as Ex.R1, the copy of the letter sent by the respondent

management to the Labour Officer (Conciliation) as Ex.R2, the copy of the letter sent by the 2nd respondent to the Deputy Commissioner of Labour-cum-Additional Commissioner for Employees Compensation as Ex.R3, the copy of few job work invoices, goods receipt note and job work challan by respondent management to the 2nd respondent for the period from 2011 to 2015 as Ex.R4. These documents does not disclose the fact that when the contract is entered between the 1st respondent management and the 2nd respondent and whether the 2nd respondent is a licensed member and whether the contract is approved by the Labour Department or not and whether the engagement of contract labourers has been permitted by the Government or not. It is the only contention of the 1st respondent management that Ex.R4 - series of documents would reveal the fact that the 2nd respondent had undertaken job work of drilling to carry out the job work in the 1st respondent premises. The said Ex.R4, would go to show that various job work vouchers have been given by Vijay Fabrics. But, the said Vijay Fabrics is not added party to the proceedings. Further to prove the reliability of vouchers exhibited under Ex.R4 the 1st respondent has not filed account statement to establish that the said vouchers has been paid by 1st respondent management on the respective dates. Since, such account statement are not exhibited, this self serving documents cannot be relied upon and these documents can be prepared by anybody else and further the said Ex.R4 would also not establish the facts that the 2nd respondent is the owner of the said Vijay Fabrics and the allegation of the 1st respondent that there is a contract existed between 1st respondent and 2nd respondent.

14. Furthermore, except the abovesaid documents, no document is exhibited before this Court by the 1st respondent management to establish that the 2nd respondent engaged the petitioner as his employee and to prove the fact that there was contract entered between the 1st respondent and 2nd respondent to do the job work. On the other hand, it is established by the petitioner and it is admitted by the 1st respondent that petitioner was doing work at the 1st respondent premises and accident was occurred in the course of his employment. This fact itself would speak that the petitioner was working at the 1st respondent establishment and it is to be presumed that he was in service at the 1st respondent establishment. Further, it is learnt from Ex.P13 - the conciliation failure report that the Conciliation Officer has advised the 1st respondent management and insisted them to produce registration

certificate under, Contract Labour Act and the list of contractor. But, the management has not produced the same which would go to show that the 2nd respondent is not the contractor and therefore, the registration certificate of the contractor has not been produced and no contract agreement entered between the 1st respondent management and 2nd respondent. Further, it is also learnt from Ex.P13 that the 1st respondent management has not obtained licence to engage contract labour in the factory and licence has also not been produced. Non-production of alleged contract entered between the 1st respondent management and the 2nd respondent and non-production of licence to engage contract labourers before this Court by the 1st respondent management would go to show that there could not be any contract and the 2nd respondent has not engaged this petitioner as his worker to do his job work at the 1st respondent establishment. While facts are so, it can be inferred from the facts and circumstances of this case that this petitioner is working at the 1st respondent establishment and while in the course of employment on 06-02-2013 he met with an accident and sustained injuries. Hence, it is clear that only with an intention to escape from the clutches of law, the petitioner has not given due receipt of payment and due order of appointment to engage him in the factory and that therefore, it is held that the petitioner is an employee of the 1st respondent establishment and he sustained injuries in the course of his employment and he has taken treatment for some time and that therefore, it can be held that the industrial dispute raised by the petitioner against the 1st respondent management over his non-employment is justified and as such the petitioner is entitled for reinstatement as claimed by him.

15. As this Court has decided that industrial dispute raised by the petitioner against the 1st respondent over non-employment is justified, it is to be decided whether the petitioner is entitled for back wages as claimed by him. There is no evidence that the said workman is working so far in any other industry and that there is no proof exhibited before this Court that he is working anywhere else. The 1st respondent has not proved the fact that the petitioner has been working in any other establishment after the refusal of employment. However, the petitioner workman could have served at any other industry after the refusal of employment. Considering the above-facts and circumstances, this Court decides that the petitioner is entitled only for 30% back wages with continuity of service and other attendant benefits.

16. In the result, the petition is allowed and the industrial dispute raised by the petitioner against the 1st respondent management over his non-employment is justified and Award is passed directing the 1st respondent management to reinstate the petitioner in service within one month from the date of this order and further directed the 1st respondent management to pay 30% back wages from the date of industrial dispute raised by the petitioner before the Labour Conciliation Officer with continuity of service and other attendant benefits. No cost.

Dictated to the Stenographer, transcribed by her, corrected and pronounced by me in the open Court on this the 28th day of December, 2017.

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

List of petitioner's witness:

PW.1 —12-05-2017— R. Natesan

List of petitioner's exhibits:

Ex.P1 —09-02-2013 — Copy of the discharge summary issued by Puducherry Institute of Medical Sciences.

Ex.P2 —22-08-2013 — Copy of out patient record.

Ex.P3 —22-08-2013 — Copy of medical receipts.

Ex.P4 —26-12-2013 — Copy of the letter issued to the Head of the Department by the Government of Puducherry, Office of the Assistant Director.

Ex.P5 —12-02-2014 — Copy of the letter issued to the Additional Commissioner for Employees Compensation by the Govt. of Puducherry Office of the Assistant Director.

Ex.P6 —02-04-2013 — Copy of the petition before the Labour Officer.

Ex.P7 —12-08-2013 — Copy of the reply, issued by the respondent management to the Labour Officer (Conciliation).

Ex.P8 —18-02-2013 — Copy of the letter sent by the petitioner before the Labour Officer, Puducherry.

Ex.P9 —17-09-2013 — Copy of the letter sent by the petitioner before the Labour Officer, Puducherry.

Ex.P10 —25-09-2013 — Letter sent by the petitioner before the Labour Officer, Puducherry.

Ex.P11—25-10-2013 — Copy of petition preferred before the Labour Officer by the petitioner.

Ex.P12— 09-02-2013 — Copy of medical bills.

Ex.P13—10-03-2014 — Copy of report on failure of conciliation.

List of respondent's witness:

RW.1 —07-11-2017 — S. Anbu

List of respondent's exhibits:

Ex.R1 —26-04-2013 — Copy of the letter sent by the respondent management to the Inspector of Factories.

Ex.R2 —12-08-2013 — Copy of the letter sent by the respondent management to the Labour Officer (Conciliation).

Ex.R3—06-03-2013 — Copy of the letter sent by the 2nd respondent to the Deputy Commissioner of Labour-cum-Additional Commissioner for Employees' Compensation.

Ex.R4 — Various dates — Copy of few job work invoices, goods receipt note and job work challan by respondent management to the 2nd respondent for the period from 2011 to 2015.

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

**GOVERNMENT OF PUDUCHERRY
LABOUR DEPARTMENT**

(G. O. Rt. No. 11/Lab./AIL/T/2018,
Puducherry, dated 5th February 2018)

NOTIFICATION

Whereas, an Award in I.D (T) No.17/2012, dated 08-12-2017 of the Industrial Tribunal, Puducherry in respect of the Industrial Dispute between the management of M/s. DXN Herbal Manufacturing (India) Private Limited, Puducherry and DXN Labour Union, Puducherry over non-payment of bonus @ 20% and *ex gratia* @ 20% of wages for the year 2009-10 has been received;

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

(By order)

S. MOUTTOULINGAM,

Under Secretary to Government (Labour).

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

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

Friday, the 08th day of December 2017

I.D. (T) No. 17/2012

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

.. Petitioner

Versus

The Managing Director,
M/s. DXN Herbal Manufacturing (India)
Private Limited,
R.S. Nos. 141/4 and 142/5, Whirlpool Road,
Thiruvandarkoil,
Mannadipet Commune,
Puducherry-605 102.

.. Respondent

This industrial dispute coining on 05-12-2017 before Pre-negotiation sitting for hearing in the presence of Thiru M. Ganapthy, Advocate for the petitioner and Tmt. Indra Josephine Shakila, Advocate for the respondent, upon hearing both sides, upon perusing the case records, after having stood over for consideration till this day, this Court passed the following:

AWARD

1. This Industrial Dispute has been referred by the Government as per the G.O. Rt. No. 116/AIL/Lab./J/2012, dated 17-07-2012 for adjudicating the following: -

(a) Whether the dispute raised by the DXN Labour Union against the management of M/s. DXN Herbal Manufacturing (India) Pvt. Ltd., Puducherry over non-payment of bonus @ 20% and *ex gratia* @ 20% of wages for the year 2009-10 is justified? If so, to give appropriate directions?

(b) (i) Whether the suspension of 17 employees and illegal deduction of wages is justified? If so, to give appropriate directions?

(ii) Whether the termination of 17 employees viz., (1) R. Pugazhenth, (2) N. Vettrivel, (3) A. Raja, (4) D. Dayalane, (5) D. Mahalakshmi, (6) R. Sarala, (7) R. Umadevi, (8) V. Rajeswari, (9) S. Banu, (10) K. Hemamalini, (11) P. Sudha, (12) P. Lakshmi, (13) R. Devaki, (14) V. Vani, (15) P. Maheswari, (16) N. Malathi and (17) J. Omsakthi and illegal deduction of wages is justified? If so, to give appropriate directions.

(iii) Whether the allegation of the union that the management contravened the provision of section 33(i) (b) of the Industrial Disputes Act by terminating all the 17 workmen during the pendency of conciliation is justified? If justified, to what other relief the workmen are entitled to ?

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

2. The averments in the claim statement and additional claim statement filed by the petitioner, is as follows :

The petitioner union and the management entered into a settlement under section 12(3) of the Industrial Disputes Act regarding the production of the goods. As per this settlement total 28 employees have to produce 3500 bottles of finished goods per

day. The production may vary according to the total number of workers employed on a particular day. The production of 3500 bottles of finished goods per day is a collective work of all the employees. The management without following this aspect issued individual charge to a section of the employees alleging that each of the employees has not produced 3500 bottles of finished goods. The management infact alleged nil production also for some of the working days without proper verification of records. Some of the employees were dismissed on the false allegation and without following any procedure. The alleged domestic enquiry has also not been conducted in a fair manner and no opportunity was given to the employees in this regard during the alleged enquiry. The Enquiry Officer has simply accepted the version of the management and handed over a report to the management and there are gross violations in this regard. On the date of dismissal the conciliation proceedings were pending against all these dismissed employees and the respondent without following the provisions of the Industrial Disputes Act dismissed all the employees. The petitioner union requested the respondent to furnish audited balance sheet of the company for the year 2009-2010 for arriving a just bonus to the employees by way of a letter, dated 17-09-2010 for which the respondent neither replied nor furnished the balance sheet for the year 2009-2010. Hence, the petitioners have sent another letter on 14-10-2010 demanding 20% bonus and 20% *ex gratia* since there was a huge profit to the respondent in the said financial year. For getting the balance sheet they have submitted an application before the Labour Officer (Conciliation) also and even before the Conciliation Officer, the respondent had not produced the balance sheet inspite of repeated demands of the Conciliation Officer. On the contrary, the respondent disputed the very authority of the Conciliation Officer for furnishing the copy of the balance sheet in a very arbitrary manner. The respondent had sent a letter on 14-10-2010 stating that they will furnish the balance sheet in due course but, till date they have not furnished the balance sheet. The respondent is behaving in an authoritative manner with its employees without respecting the beneficial labour legislations. The respondent is not following the provisions of the Payment of Bonus Act and acting to their whims and fancies. The employees has

worked to their best and produced maximum quantity of production and this can be verified by perusing the work-sheet of the company. Obviously for this reason only the respondent is willfully and wantonly refusing to furnish the balance sheet as requested by the petitioners. Since, there was surplus profit over and above the ceiling limit of bonus, the petitioners have demanded 20% bonus and 20% *ex gratia*. This is the usual practice followed in all companies where there was surplus profit over the bonus limit. The respondent by their letter, dated 18-11-2010 has made a false representation before the Labour Officer, Conciliation that the bonus was paid to all its employees as per rules and this is an utter false statement and virtually this will amount to unfair labour practice by the respondent. The management has followed different methods for each employee and paid the bonus to them by making difference among them. The management without following any rule deducted the salary of the employees. Therefore, the petitioner union prayed this Court to pay an Award for the payment of bonus at 20% and *ex gratia* at 20% to the employees and to direct the management to pay the deducted wages to the employees and to pass an Award for the reinstatement of the dismissed employees as per the reference with back wages with continuity of service and other attendant benefits.

3. The averments in the counter and additional counter filed by the respondent is as follows :

The respondent denied all the averments except which are specifically admitted by them and stated that the petitioners and the respondent management entered into a settlement under section 12(3) of the Industrial Disputes Act is true. As per the settlement total 28 employees are to produce 3500, bottles of finished goods per day is true. The production may vary according to the total number of workers employed on a particular date is not correct. It is a collective work to be done by the employees is true. Without reaching the agreed target of 3500, the employees indulged in the mal practices like gherao, go slow and adopting cunning method of preventing other employees not to reach the norms and target to be reached as agreed and caused all types of hurdles and also preventing other genuine employees not to do their work at the required rate and there by caused "Nil production" and in

consequence of it the petitioner union paralyzed the administration and kept the respondent management in stands still. Since, the atrocities caused by the petitioners went beyond control, the respondent management gave notices time and again and asked the petitioners to do the work at the agreed rate. But, the petitioners were so indifferent and indulged in the practice of causing unbearable loss to the respondent management. An independent enquiry was ordered by giving due opportunities to the petitioners and based upon the report so collected the respondent management decided to dismiss the some of the employees. Bonus for the period 2009 and 2010 required bonus at the rate of 8.33 and *ex gratia* was paid at the rate of 11.67. Due to the act of the petitioners the respondent management suffered like anything and so some of the employees were terminated, some of the employees were retrenched, some of the employees were transferred to Himachal Pradesh. So, persons were available to participate in the conciliation proceedings. The respondent management already given the bonus and *ex gratia* at the rate what the petitioners are eligible. The petitioner union entered into a settlement under section 12(3) of Industrial Disputes Act before the Labour Officer (Conciliation) on 29-03-2009 for a period of 3 years in which both the parties agreed for payment of Bonus to their employees as per provisions of the Payment of Bonus Act, 1972 and amendments made thereunder and thus the union is debarred from raising any fresh demands now and on the score also the petition is liable to be rejected. The prayer for asking payment of bonus at the rate of 20% and *ex gratia* payment at the rate of 20% to the employees is rather untenable and they do not deserve for such award of reinstatement of the dismissed employees with back wages since, the petitioners in the name of union as caused irreparable loss and taken away the life of the management beyond recovery and in the absence of the existence of the company and that the respondent company has paid the bonus as per the percentage so allowed in accordance with the Payment of Bonus Act and the suspension as well the termination of the 17 workers are done in accordance with Industrial Disputes Act, and there was no illegal deduction of wages to these 17 workers and there is no convention of section 33(1) (b) of the ID Act and hence, the claim made by the petitioner union are virtually untenable and illegal in nature and therefore, prayed to dismiss the claim petition.

4. In the course of enquiry on the side of the petitioner PW.1 was examined and Ex.W1 to Ex.W4 were marked and on the side of the respondent RW.1 was examined and Ex.R1 to Ex.R18 were marked.

5. The point for consideration is:

(i) Whether the dispute raised by the petitioner union against the respondent management over non-payment of bonus @ 20% and *ex gratia* @ 20% of wages for the year 2009-10 is justified or not.

(ii) Whether the suspension of 17 employees and illegal deduction of wages and the termination of 17 employees *viz.*, (1) R.Pugazhenth, (2) N. Vettrivel, (3) A. Raja, (4) D. Dayalane, (5) D. Mahalakshmi, (6) R. Sarala, (7) R. Umadevi, (8) V. Rajeswari, (9) S. Banu, (10) K. Hemamalini, (11) P. Sudha, (12) P. Lakshmi, (13) R. Devaki, (14) V. Vani, (15) P. Maheswari, (16) N. Malathi and (17) J. Omsakthi and illegal deduction of wages are justified or not.

(iii) Whether the allegation of the union that the management contravened the provision of section 33(i) (b) of the Industrial Disputes Act, by terminating all the 17 workmen during the pendency of conciliation is justified or not.

6. Argument heard. In order to prove their case, the petitioner union has examined PW.1 and marked Ex.W1 to Ex.W4. On the other hand, the respondent management has examined RW.1 and marked Ex.R1 to Ex.R18. While the matter was posted for cross examination of RW1, this case has been referred to the Lok Adalat for amicable settlement wherein, the parties have amicably settled the matter and that they have entered into the memorandum of settlement under section 12(3) of the Act in which the respondent management has agreed to reinstate all the reference mentioned employees of the petitioner union into service at their establishment and as per the terms and conditions of memorandum of settlement under section 12(3) of the Act arrived at between the parties, the respondent management has also agreed to pay ₹ 40,000 as one-time compensation amount for all the past service of the reference mentioned employees of the petitioner union and also agreed to reinstate all the reference mentioned employees of the petitioner union who agreed the memorandum of settlement under section 12(3) of the Act and thereafter, the petitioner union and the respondent management has filed a Joint Compromise Memo, wherein, it is stated that the matter has been settled

out of the Court and they have sought this Tribunal to pass an Award on the basis of Joint Compromise Memo and therefore, it is just and necessary to record the joint compromise memo and the Award is to be passed in terms of memorandum of settlement and a copy of the memorandum of settlement is to be attached as part and parcel of the Award.

7. In the result, the petition is allowed and the Award is passed in terms of the Memorandum of settlement arrived at between the parties on 04-12-2017 and the same is recorded and the respondent management is directed to reinstate all the reference mentioned employees of the petitioner union and also directed to give ₹ 40,000 as one-time compensation amount to all the reference mentioned employees of the petitioner union as per the terms and conditions of the memorandum of settlement entered between them and the said memorandum of settlement shall be attached as part and parcel of the Award. No cost.

Dictated to the Stenographer, transcribed by her, corrected and pronounced by me in the open Court, on this the 08th day of December 2017.

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

List of petitioner's witness:

PW.1 — 28-10-2014 Pugazhenthay

List of petitioner's exhibits:

Ex.W1 — 17-09-2010 Copy of the letter given by the petitioner union to the respondent management.

Ex.W2 — 01-10-2010 Copy of the industrial dispute raised by the petitioner union before the Labour Officer (Conciliation).

Ex.W3 — 14-10-2010 Copy of the letter given by the petitioner union to the respondent management.

Ex.W4 — 18-11-2010 Copy of the reply given by the respondent management to the Labour Officer (Conciliation).

List of respondent's witness:

RW1 — 22-04-2015 Thomas Arokiaraj

List of respondent's exhibits:

Ex.R1 — Copy of bonus paid by the management to their employees for the period 2009-2010.

Ex.R2 — Copy of Domestic enquiry report of S. Vani (6002).

Ex.R3 — Copy of Domestic enquiry report of G. Maheshwari (6003).

Ex.R4 — Copy of Domestic enquiry report of R. Umadevi (6004).

Ex.R5 — Copy of Domestic enquiry report of P. Lakshmi (6006).

Ex.R6 — Copy of Domestic enquiry report of P. Sudha (6007).

Ex.R7 — Copy of Domestic enquiry report of J. Omsakthi (6012).

Ex.R8 — Copy of Domestic enquiry report of V. Rajeswari (6014).

Ex.R9 — Copy of Domestic enquiry report of D. Mahalakshmi (6015).

Ex.R10 — Copy of Domestic enquiry report of K. Hemamalini (6017).

Ex.R11 — Copy of Domestic enquiry report of S. Sarala (6018).

Ex.R12 — Copy of Domestic enquiry report of S. Banu (6019).

Ex.R13 — Copy of Domestic enquiry report of N. Malathy (6020).

Ex.R14 — Copy of Domestic enquiry report of R. Devagi (6023).

Ex.R15 — Copy of Domestic enquiry report of N. Vetrivel (6024).

Ex.R16 — Copy of Domestic enquiry report of R. Pugazhenthay (6025).

Ex.R17 — Copy of Domestic enquiry report of D. Dhyalan (6026).

Ex.R18 — Copy of Domestic enquiry report of A. Raja (6027).

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