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The Gazette of Puducherry

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GOVERNMENT OF PUDUCHERRY

LABOUR DEPARTMENT

(*G.O. Rt. No. 46/Lab./AIL/T/2018, Puducherry, dated 22nd March 2018)*

NOTIFICATION

Whereas, an Award in I.D (T) No. 04/2012 and No. 07/2014, dated 12-01-2018 of the Industrial Tribunal-*cum*-Labour Court, Puducherry in respect of the Industrial Dispute [I.D (T) No. 04/2012] between the management of M/s Hindustan Unilever Limted, Tea Factory, Puducherry and HLL Tea Workers Welfare Union, over charter of demands such as wage revision, annual increment, HRA, Educational allowance, HBA and other allowances, *etc.*, and Industrial Dispute [I.D (T) No. 07/2014] between the management of M/s. Hindustan Unilever Limted, Tea Factory, Puducherry and HLL Tea Workers Welfare Union and Hindustan Unilever Tea Unit Employees Union, over disparity in wages and incentives 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).

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

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

Friday, the 18th day of January 2018

I.D(T). No. 04/2012 and I.D (T). No. 07/2014

I.D(T). No. 04/2012

HLL Tea Workers Welfare Union,
Reg. No. 1483/RTU/2007,
No. 29, A.V. Dhandapani Nagar,
Kanniyakoil, Bahoor,
Pondicherry,
Rep., by its Secretary,
Mr. S. Rajendirane. .. Petitioner

I.D(T). No. 07/2014

1. HLL Tea Workers' Welfare Union,
Reg. No. 1483/RTU/2007,
No. 34, Madha Koil Street,
Thavalakuppam, Kattupalayam Post,
Puducherry-605 007,
Rep. by its Secretary,
Mr.S. Rajendirane.

2. Hindustan Unilever Tea Unit
Employees Union,
Reg. No. 1648/RTU/2010,
Rep. by its President,
No. 44, Ellaiamman Kovil Street,
Korkadu Post, Villianur,
Puducherry-605 110. .. Petitioners

Versus

I.D(L). No. 04/2012 & I.D(L). No. 07/2014

M/s. Hindustan Unilever Limited,
Tea Factory, Rep. by its Factory Manager,
No. 3, Cuddalore Main Road,
Kirumampakkam,
Puducherry-607 402 .. Respondent

These industrial disputes coming on 04-12-2017 before me for final hearing in the presence of Thiruvalargal P.R. Thiruneelakandan and A.Mithun Chakaravarthy, Advocates for the petitioners and Thiruvalargal L. Sathish, T. Pravin, S. Velmurugan, V. Veeraragavan, Advocates 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:

COMMON AWARD

L.D(T). No. 04/2012

1. This Industrial Dispute has been referred by the Government as per the G.O. Rt. No. 61/AIL/Lab./J/2012, dated 29-03-2012 for adjudicating the following:-

(i) Whether the dispute raised by HLL Tea Workers Welfare Union against the management of M/s. Hindustan Unilever Private Limited, Tea Factory, Puducherry, over charter of demands such as wage revision, annual increment, HRA, educational allowance, HBA and other allowances, *etc.*, is justified?

(ii) If justified, what relief the workers are entitled to?

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

I.D(T). No. 04/2014

1. This Industrial Dispute has been referred by the Government as per the G.O. Rt. No. 83/AIL/Lab./J/2014, dated 12-05-2014 for adjudicating the following:-

(a) Whether the dispute raised by the HLL Tea Workers' Welfare Union and Hindustan Unilever Tea Unit Employees Union against the management of M/s. Hindustan Unilever Private Limited, Tea Factory, over the 18(1) settlement, dated 04-03-2013 entered with another union during the pendency of the industrial dispute before the industrial Tribunal, Puducherry is justified ?

(b) Whether the act of the said management in showing disparity in wages and incentives among the workmen who have signed and not signed the 18(1) settlement and individual Bond are justified?

(c) Whether the claim of the union workmen for equal wages and incentive on par with the other workmen and to extend the benefits of 12(3) settlement, dated 07-05-2007 till a new wage settlement is entered is justified?

(d) Whether the management has adopted any unfair labour practice among the union workmen under section 25(T) of the Industrial Disputes Act, 1947? If so, what remedy the workmen are entitled to

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

2. The brief averments of the claim statement in L.D(T). No. 04/2012 filed by the petitioner is as follows:

The respondent is a multinational company of unilever group, U.K carrying on business through the Indian entity Hindustan Unilever Limited, a company registered under the Indian companies Act. The respondent company deals in variety of consumer goods and has established brand name for various products. Since, the Government of Puducherry with intent, object to promote Industrialization in the Union Territory, announced substantial Sales tax concession, power concession and substantial subsidies to attract industrial investment from leading player. The respondent availing aforesaid benefits, concession in the year 1997 set up Tea unit at Kirumapakkam, Bahour Commune, Puducherry, similarly the respondent set up several other factory *viz.*, HUL Personal Products at Vadamangalam, HUL Detergent, Vadamangalam, HUL Footwear, *etc.*, at Puducherry. The petitioner union members arc permanent workers of the HUL Tea unit situated at No. 9, Cuddalore Road, Kirumampakkam, Puducherry. The petitioner union was formed for welfare, betterment of the workers. The wage and other allowance of the workers of the Tea factory are determined by the wage settlement time to time entered between the petitioner union and the respondent management. The petitioner trade union representing majority workers, recognized by the respondent management, entered into last wage settlement, dated 07-05-2007 for 4 years period, the same was expired on 06-05-2011 before expiry of the said wage settlement, the petitioner union by its letter of demand, dated 11-02-2011 raised the demand of wage revision before the respondent management. The respondent management did not consider the wage demand of the petitioner union, on the other hand with an intent to threaten the workers and suppress their wage demand posed a counter demand to increase the machine speed from 29 units to 39 units with the existing workforce, and also demanded the workers to accept the proposed erection of auto machine which was likely to lead retrenchment of existing workers. The petitioner union objected the counter demand. There are several sitting of negotiation talk between the petitioner and the respondent over the demand and counter demand. Since, the respondent offer very lesser wage increase and persisted the petitioner to concede the counter demand, in the negotiation talk no amicable settlement was arrived and the negotiation talk was ended in vain. Thereafter, on 15-06-2011, the petitioner union raised industrial dispute over the wage revision before the Labour Officer (Conciliation), Puducherry. The petitioner union raised the industrial dispute over the charter of demand for wage revision and other allowances, for the period covering from 07-05-2011 under basic wages, annual increment, fixed dearness allowance, variable dearness allowances, house rent allowance, education allowance, conveyance allowance, social security and medical assistance, house building advance, sanction of personal loan, provision of food tiffin/lunch, excursion allowance, life insurance facility, death benefit, grades, profit sharing, festival advance and gifts, co-operative society, sick leave, casual leave, annual leave, marriage leave, encashment of earned leave, rest room, birth day gift, supply of soap, biscuit and towel, *etc.*, festival holiday benefit, rain coat, family day and sports day, social security for punished workers, gift for completion of 15 years

service, voluntarily retirement scheme, factory shifting, transfer for employee, transfer of employee, half day leave, recreation club, factory closure, retrospective effect and supply of agreement and copies of agreement. While pending the said dispute before the Conciliation Officer, several Indian companies in Pondicherry region like NCR Limted, Godrej Consumer Product, in their wage settlement with the trade union increased the wage revision to their workers average of more than ₹ 6,000 per month. Though the petitioner union produced the said wage settlement and demanded wage increase at least on par with the abovesaid Indian companies on Industry-*cum*-regional basis, the respondent did not shown any interest to negotiate with the petitioner union before the Conciliation Officer, on the other hand, in order to undermine the effort collective bargaining of the petitioner union, followed delay tactics and attempted to form management, puppet union, and simultaneously negotiated with the rival union which had no majority strength of workers. But, fortunately all the efforts of management ended in vain. The petitioner union understood the delay tactics of the respondent management insisted failure report, then the respondent management by written letter, dated 29-08-2011 offered a sum of ₹ 2,806 per month as a final amount of wage increase inclusive of all wage component. Since, the said wage increase offered by the respondent not even equated with the wage increase given by the other industries, namely, NCR Private Limited, Godrej Consumer Products, the petitioner union did not accepted it. Eventually, the conciliation was ended in vain. The petitioner union members are permanent workers of the respondent factory working for more than 10 to 15 years continuous length of service. Initially they were appointed at ₹ 10 basic pay per clay and gross monthly salary was ₹ 600 to 1,000, after 15 years length of continuous service, and after several negotiation, wage settlement now they are getting basic pay ₹ 1,000 to ₹ 1,800 per month for unskilled workers. At present the respondent is following method in fixing the basic wage of the W-1 category worker in entry level is ₹ 15 per day, the same was restricted maximum ceiling of ₹ 64 per day. In the last wage settlement, dated 07-05-2007 entry level in W-1 category workman was given increase of ₹ 2 per day in basic wage which comes in a month of 26 working days a sum of ₹ 442 No. of days 26 X Basic pay ₹ 15 per day = ₹ 390) + (No. of days 26 X increase Basic Pay ₹ 2 per day = ₹ 52). The remaining portion of wage has been paid by wage of fixed DA up to 576 points ₹ 1,350 per month and ₹ 1,365 as allowance which includes HRA, conveyance allowance, canteen, nightshift, education allowance, medical allowances, performance allowance, attendance allowances. In totaling basic plus other allowance for he workers in Grade W-1 has paid ₹ 2,975 per month and worker Grade W-3 has been paid ₹ 3,230 per month which could not even meet the requirement of statutory minimum wages fixed to the industries in Puducherry Union Territory. The major portion of the meager wage of the workers has been paid by way of allowances, particularly by way of production, incentive linked with the production which might vary individual to individual, efficiency, diligent, some time season to season and also it vary with variation in the rate of supply of raw material or with the Assistance obtainable from machinery or vary by nature interference. The abovesaid variation normally do not even ensure the minimum wage to the individual workers, the petitioner union members are poor workers, though they have been employed in multinational company, they have been paid very meager wage. In comparing other Indian companies who engaged in manufacturing of consumer products like Godrej consumer. The petitioner union member are paid very meager wage, which is not even sufficient to maintain their substance, the workers of the respondent had not even owned house even after putting 15 years of length of service in the respondent management. The workers have been exploited by the respondent by paying very meager wage. Comparing the workers condition of the respondent factory, with the other companies in the Puducherry factory, the workers condition is very pathetic and they have not paid wage to meet the present cost of living. Even a very small amount offered by the respondent as wage increase, they had not added the same in the basic pay and they have been paying it as allowance. Though the petitioner union workers rendered 15 years of service in comparing their basic pay with workers of the other companies in the Pondicherry region it reflects vast difference, the workers has been paid very low basic pay. Since the basic wage is taken to calculation for determining the statutory benefits the respondent deliberated, intentionally following one or other method has not increased the basic pay of the workers. The other multinational companies in India paying better wage and other allowances to

then-workers, the respondent had not come forward to pay the wage on par with the Indian companies which is running the business in the very some Puducherry Union Territory and present formula followed by the respondent in revising the wage is unacceptable. About 99% of the workforce are married and have children and also parents to support. Therefore, for a family of four, to support itself in Puducherry is preset cost of living the following would be the cost. Rent: ₹ 5,000, Provision: ₹ 4,500, Milk ₹ 750, Education: ₹ 4,000, Vegetables: ₹ 2,000, Cooking gas: ₹ 400, Electricity: ₹ 700, Transport ₹ 2,000, Medical Expenses ₹ 5,000, Cloth: ₹ 800, Festival expenses: ₹ 2,500, Entertainment expenses: ₹ 1,500, Social activities: ₹ 2,500, Total: ₹ 31,650. In order to equate the said cost, the wage has to he increased under all heads so as to commensurate the present cost of living. In Godrej Consumer Products Limited, Puducherry the workers are being paid gross salary of ₹ 32,471.58 considering the present cost of living and need of the workers. In comparing the said industry the respondent having sound financial position, paying capacity and it can accommodate the demand of the worker to lead their decent life in the present cost of living. The standard that should guide the quantum of wage revision and facilities are Industry-*cum*-region basis, financial capacity of the employer and the following standard also to be considered which are under the needs of the workman and his dependents, the wage level of the Supervisory, Executive and Managerial staff and upwards, the overall expenditure pattern of the respondent management on various counts, the part history of how the workmen were exploited and having to survive with exploited wages. The respondent company's yardstick for paying wages to the production workforce is exploitative. The salary structure of the chairman, Vice-Chairman, Executive Company Staff, will show the paying capacity of the respondent, and it justify the demand of the workers who are engaged in direct production activity. Before the Labour Officer (Conciliation), the respondent management by his letter, dated 29-08-2009 agreed to increase wage to a sum of ₹ 2,806 per month, which inclusive all wage component as initial payout. After the expiry of last wage settlement on 06-05-2011 for the past one year, the petitioner union members are suffering untold hardship without wage increase. Since, the respondent themselves agreed to increase the said amount as initial payout in existing wage, the said amount announced by the respondent may be provided as interim relief of wage increase, pending disposal of this dispute and no prejudice will cause to the respondent or anyone. The petitioner has strong case to succeed in their demand wage increase and in any event the respondent cannot dispute their paying capacity in paying the admitted increase of wage before Labour Officer (Conciliation). Since, the respondent himself agreed to pay the said amount as initial payout in the existing wage, it can be awarded as interim relief. Therefore, the petitioner prayed this Court to pass an Award revising the wages in terms of the charter of demands, dated 10-02-2011 with retrospective effect from 07-05-2011.

3. The brief averments of the counter in I.D(T). No. 04/2012 filed by the respondent is as follows:

The respondent denied all the averments contained in the claim petition except those that are specifically admitted and stated that on 04-03-2013 it entered into a Long-term settlement for a period of 4 years with the National Employee Trade union (NETU) under section 18 (1) of Industrial Disputes Act, wherein, all issues relating to increment of wages and all other incidental privileges have been mutually agreed upon between respondent and the said union. The respondent widely circulated 18(1) settlement, dated 04-03-2013 amongst all its workers by placing said settlement in the notice-board. Respondent took all the pain and efforts to explain the benefits under 18(1) settlement, dated 04-03-2013 to each of the workers who had approached it with details. Each of the worker was given full freedom to accept or to avoid the 18(1) settlement. Slowly but, steadily, the workers started realizing the benefits of 18(1) settlement and they started giving individual acceptance to 18(1) settlement, irrespective of their union affiliation. Respondent extended benefits of 18(1) settlement to all those workers who had given written letters to it accepting the said settlement. There was absolutely no force, inducements, threat, coercion or enticement to any workers to accept the settlement. The workers had voluntarily come forward to accept the settlement and enjoy its benefits. On this date 110 workers out of 124 workers have given written consent accepting and ratifying the terms and conditions of 18(1) settlement, dated 04-03-2013. The 110 workers had relinquished right to contest the present ID and have agreed to individually withdraw their claim. Based on such individual request, the terms of

settlement, dated 04-03-2013 was extended to every signatory and all the benefits under the said settlement are given to them. All the members and office bearers of the other union namely, Hindustan Unilever Tea Employees Union (HULTEA) has also accepted 18(1) settlement, dated 04-03-2013. The 18(1) settlement shall be extended only on the date of its acceptance, on specific demands from individual workers for *ex gratia* for the differential period between the date of 18(1) settlement and date of acceptance, respondent agreed for the same and respondent paid *ex gratia* amount of ₹ 84,950 to each of the individual workers accepting terms of settlement subject to the deduction made for their absence. All the amount are credited to the accounts of individual works and they have also utilized those benefits. Respondent has also paid revised wages as per the new settlement, dated 04-03-2013 with effect from 01-04-2013, 89% of the entire work force in respondent's factory have accepted and ratified the 18(1) settlement, dated 04-03-2013. Only the few disgruntled office bearers of the petitioner and their loyalists, who are numbering few have refused to accept the 18(1) settlement and are continuing to litigate the matter. Once a wage structure is accepted by a majority of workers in a factory and such wage structure is successfully implemented for more than 2 years 9 months and benefits have been given to majority of workers based on such wage structure, there cannot be a different wage fixation for a miniscule minority workers as what is good and applicable to majority is also good and applicable to minority workers. The petitioner who represents only a miniscule of workers cannot insist on a separate wage structure on the basis of the Charter of demand, dated 10-02-2011. The increments under the 18(1) settlement, dated 04-03-2013 on wage is closely linked to two important components which are (a) Performance Linked Incentive Scheme [PLIS] annexed as Annexure-K in the said settlement, and (b) increased machine speed and manning as given in Annexure-K of the said settlement. As per the new 18(1) settlement, there is an average increase of 11% in productivity than what was agreed under previous settlement, dated 07-05-2007. This increase in productivity is strictly within the statutory period of 8 hours of work and any extra work is being suitably compensated by way of OT as per statutory provisions. The workers could achieve increase in productivity because of (a) their zeal to earn more, (b) introduction of latest state of art operating technology, (c) improving the quality and efficiency of machines, (d) the excellent maintenance of machines, (e) improvement in blending and processing techniques and packing patterns, (g) effective management of time and manpower, (h) reduction in wastages, (i) Raw material, packing material and (j) start up and shut down time. The workers who have signed 18(1) settlement are achieving approximately 11% more production within the statutory time of 8 hours of work and without any additional discomforts and are thus earning handsomely. The average gross salary of workers who have singed the new 18(1) settlement is to the tune of ₹ 17,049 excluding retrials. However, the workers who have not signed said 18(1) settlement continue to give production as per old settlement, dated 07-05-2007 and draw wages according to the said old settlement. The petitioner union which is fighting for wage increase is not advising its workers to earn such increase by producing more within the statutory period. The workers who have not, signed the new settlement are able to reach the maximum level of productivity as per 12(3) settlement, dated 12-05-2007 within 5 to 6 hours of their employment and once they reach such maximum level, they withdraw from the machines and spend the remaining time idling in the factory. The respondent has specific data in the form of log book which shows the exact amount of time each worker spends on the machine. Inspite of being capable of producing more than what was agreed under previous settlement, dated 07-05-2007 due to various factors, petitioner is instigating the workers to deliberately refuse increase production and is demanding wage revision without any value addition to respondent. Such negative mindset of petitioner union is the primary reason for failure of all negotiations regarding wage revision. The petitioner is not willing to accept PLIS but, is only demanding wage increment which is neither legal nor moral. The said settlement is open to petitioner union who are hardly 14 workers even as on this date and if, they are willing to sign the same with all the benefits, privileges, liabilities and responsibilities attached to the said settlement, the respondent is willing to extend the said settlement with immediate effect. Since, the issue of wage revision is fully and finally settled and majority of the individual workers have accepted the terms of settlement, dated 04-03-2013, the present dispute has become infructuous and hence, the same is liable

to be dismissed. Petitioner has not justified with any semblance of evidence as to how they are eligible for wage revision. Minimum wages for respondent's industry or any tea blending and manufacturing industry is not fixed by Government of Puducherry. As on 10-02-2011 when the charter of demand for wage revision was submitted by petitioner union, the minimum floor level wages in Puducherry was ₹ 115 per day. But, the minimum gross wages drawn by workers in lowest grade in May, 2011 was more than ₹ 10,000 which was substantially higher than minimum floor level wages on that date. The petitioners are bound to prove their case regarding entitlement of wage revision and cannot demand it as a matter of right without proving their eligibility to such wage revision. None of the industries that are being quoted by petitioner manufactures, the product that is produced by the respondent. The fundamental principle of wage revision is industry-*cum*-region basis, where the wage structure prevailing in the similar industries in the region is taken as a bench mark for deciding the wage revision issue. Hence, the very comparison of wages settlement of such industries to respondent company is incorrect. The petitioner is not comparing wage details of other manufacturing giants in Puducherry like Asian Paints, MRF Ltd., Whirlpool India Limited, TVS Lucas, Sundaram Fasteners, TTK Limited, *etc.*, which are also located in Puducherry. Before fixing wages, this Court will have to be appraised of the existing wage patterns in all these industries in Puducherry which can give a broader indication of wages paid by these similar sized industries. The respondent unit was established during November 1997. Employees were recruited and confirmed in service post completing their training period around 1999. After post confirmation, they were given standard wages, for Assistant Operators - the basic started with ₹ 15 per day and for Operators, the basic started with ₹ 25 per day. In addition to this, FDA and VDA are part of their PF wages. The average basic of Assistant Operator unskilled worker as mentioned by petitioner union as on August 2012 is ₹ 2,036. In addition to this, they are paid ₹ 2,114 as FDA and ₹ 1,675 as VDA and hence, the total PF wages paid is around ₹ 6,815. During 2007 LTS, the Pay Scale slab of Wl was increased to ₹ 97. The per day increment was increased from ₹ 2 to ₹ 5.50. During 2007 LTS the Pay Scale for W1 was increased from ₹ 64 to ₹ 97 per day. Similarly for W3 the Pay Scale was increased from ₹ 95 to ₹ 143 per clay. The respondent is paying FDA for 588 points and not 576 points which is ₹ 2,114 per month. In addition to this VDA is paid for points above 588 at the rate of ₹ 5 per point. Currently VDA is ₹ 3,040 per month. The total allowances for Wl worker is ₹ 2,975 per month and for W3 worker it is ₹ 3,175 per month. The average incentive earned across all grade is around ₹ 2,889 per month. Hence, per month the total gross wages for WL1 worker is around ₹ 12,679 and for W3 worker is around ₹ 13,965. Out of which PF wages amounts to ₹ 6,815 per month for Wl and ₹ 7,901 per month for W3 which is well above the minimum wages fixed to the Industries in Puducherry. The respondent is paying fair wages to its workmen and also providing them reasonable service conditions, which is far better and superior than that is prevalent in similar industries in the region. As many as three long-term settlement including the present LTS were signed between respondent and its workers including the petitioner. Even in the present 18(1) settlement, dated 4th March 2013 wages and allowances paid to the workmen of the respondent factory is fair and reasonable and compared favourably with those obtaining in similar other establishments in the region. Any wage revision cannot be viewed in isolation, ignoring the increase in productivity, especially when the respondent continues to carry out rationalization, modernization and standardization of its plants and machineries for increasing its products. Hence, the Tribunal should consider improvement in productivity and take into consideration the wages prevailing in establishments which are engaged in the manufacture of tea or other beverages of similar size as that of respondent before any relief by way of increase in wages could be considered. The claim statement is devoid of merits, hicks *bona fides* and is liable to be dismissed.

4. The brief averments of the claim statement in I.D.(T). No. 07/2014 filed by the petitioner is as follows:

The 1st petitioner is a registered trade union, registered under the Trade Union Act, 1926 and its Registration No. l483/RTU/2007. The members of the 1st petitioner union are permanent workers working in the respondent factory. The 1st petitioner having 96 members out of 121 total permanent workers. As such the 1st petitioner is a majority trade union representing majority permanent workers of the respondent factory. Till 2013 there were only two trade union namely HLL Tea Workers

welfare union and Hindustan Unilever Tea Unit employees union which represent the cause of entire workers of the respondent factory. The service condition of the workers and their wage are determined, revised time to time based on the long-term wage settlement signed between the respondent management and the workers' representative *i.e.*, Majority trade union. As such, the 1st petitioner being majority trade union in the past addressed the grievance of the workers negotiated the revision of wages and other service condition of the workers with the respondent management signed a just and fair long-term settlement. The last long-term settlement, dated 07-05-2007 for four years period was signed between the 1st petitioner and the respondent management in the presence of Labour Officer (Conciliation) under section 12(3) of the Industrial Dispute Act. This settlement was come to expire in the month of May, 2011. In the said settlement itself, the 1st petitioner and respondent had agreed to extent the said settlement till the new settlement signed between the parties to the said settlement. Accordingly, the said 12(3) settlement is still in force binding all the parties to the settlement as well as other workers, other minority trade union. The 1st petitioner, on expiry of 4 years duration as agreed in the said 12(3) settlement, dated 07-05-2007 submitted a fresh charter of demand for revision of wage and other allowances of the workers working in the respondent factory. The respondent did not consider the demand of the 1st petitioner. Hence, the 1st petitioner raised the said issue of revision of wage as an industrial dispute before the Labour Officer (Conciliation). While pending the said Industrial dispute the respondent with help of eight workers formed a management puppet union in the name and style of National Employees Trade Union and got registered the same and thereafter, the respondent themselves drafted the terms and conditions of long-term settlement and got signed with the management newly formed trade union which had only eight members. After signing such a 18(1) settlement with a National Employees Trade Union the respondent threatened all the individual workers and used all sort of unfair labour practice against them to adopt and accept the terms and conditions of the said 18(1) settlement. Further, the persons who had signed 18(1) settlement were given wage increase and all other benefits. On the other hand the workers who had not signed or adopted the terms of said 18(1) settlement were denied wage increase and they were discriminated from the workers who signed 18(1) settlement. In this regard the petitioner union preferred a complaint before the Conciliation Officer. The Conciliation Officer advised the respondent not to show any discrimination among the workers in payment of wage and follow the terms of 12(3) - settlement till the wage dispute pending before the Industrial Tribunal is resolved between the parties and further advised the respondent management not to obtain any signature in the 18(1) settlement or obtain any Bond from the workers against the interest of petitioner union workers. The respondent did not pay any heed on the advice of the Conciliation Officer and they continued their illegal activity and obtained a Bond, signature from the individual workers to adopt the said 18(1) settlement against them. The respondent formed the management puppet union in order to undermine the petitioner union activities and their collective bargaining power. The settlement signed with NETU trade union without any negotiation or discussion with the majority workers or their representative is illegal, unfair and it is against the interest of the larger working class of the respondent factory. The said settlement deprives the workers right which already accrued under the 12(3) settlement. The wage structure fixed in the 18(1) settlement is very meager in compare to the other industries in that region. The wage increase was given unilaterally without consultation or negotiation with the individual works or their representative. The wage increase offered by the respondent in the said 18(1) settlement is not sufficient to the workers to meet the present escalated cost of living. The said 18(1) settlement is unfair and illegal and it will not bind the petitioner union workers and therefore, prayed this Court to pass an Award holding that 18(1) settlement, dated 04-03-2013 signed between the respondent and NETU trade union while pending the industrial dispute I.D. No. 4 of 2012 is unfair, illegal and it will not bind the petitioners unions' members, the act of the management showing disparity in wages and incentive among the workers who have signed and not signed 18(1) settlement and obtained an individual Bond are illegal and against the terms of Equal Remuneration Act and against industrial principles of equal work equal pay, the petitioner union workers are entitled equal wages and incentive on par with the other workers and the service condition of the workers agreed in the 12(3) settlement, dated 07-05-2007 shall be extended, adhered by both parties to the said

settlement till the wage dispute I.D. No. 4 of 2012 pending before this Tribunal is resolved and the respondent committed unfair labour practice under Schedule V part I clause l(c), 2 (a), 2 (b), 3, 13 of the Industrial Dispute Act.

5. The brief averments of the counter in I.D(T). No. 07/2014 filed by the respondent is as follows:

The respondent denied all the averments contained in the claim petition except those that are specifically admitted and stated that disputes referred by the Government of Puducherry, especially the 1st and 4th references regarding justification of 18(1) settlement, dated 04-03-2013 and unfair labour practice is beyond the jurisdiction of this Tribunal. Neither the validity or justification of 18(1) settlement nor the issue of unfair labour practice are enumerated under Third Schedule and therefore, they cannot be a subject matter of dispute that could be adjudicated by Industrial Tribunal under section 7 (A), read with Third Schedule of the Industrial Disputes Act. Claim of unfair labour practice, the Industrial Disputes Act provides a special and specific procedure under section 25(T) and 25(U) of Chapter 5(C) of the Industrial Dispute Tribunal. It is purely a matter of determination by the Executive Officers of the Labour Department and the Labour Department can only initiate criminal prosecution under section 34 of the ID Act. Petitioners have not chosen to implead the other signatory of the 18(1) settlement, dated 04-03-2013 namely National Employees Trade union even before the Labour Officer (Conciliation). Petitioners have no locus standi and privity to challenge 18(1) settlement, dated 04-03-2013 as they are not parties to the said settlement, therefore, they cannot question its validity, genuineness or justification of said settlement on any grounds before any Forum. Records clearly reveal that the 1st petitioner union represents only a minuscule of workmen. There is no legal impediment in signing 18(1) settlement with another consenting trade union during pendency of present dispute. section 18(2) of the I.D. Act makes it clear that an agreement under 18(1) is enforceable through Court of law. Therefore, respondent was well within our legal rights to enter into an 18(1) settlement with a registered union and the same cannot become unjust, unfair or unreasonable by any means. All the members and office bearers of the 2nd petitioner have accepted the 18(1) settlement. Only a hand full of 14 workers, who are the office bearers of the 1st petitioner union are adamant and have not accepted the said settlement. There was absolutely no force, inducements, threat, coercion or enticement to workers signing individual consent, letter accepting 18(1) settlement. The individual workers in their individual wisdom have understood the benefits that flow from 18(1) settlement, dated 04-03-2013 and have volunteered to claim the benefits of the said settlement out of their own will and volition and they have received all the monetary benefits under the said settlement. They continue to receive the benefits, and perform the corresponding obligation under 18(1) settlement, dated 04-03-2013 even after expiry of two years from the date when the said settlement was signed. None of the workers accepting 18(1) settlement, dated 04-03-2013 and receiving the benefits there under have lodged any protest or objections with respect to extension of the said settlement to them or regarding change in service conditions. Even the office bearers of 2nd petitioners union namely, R. Anandhu, President, A. Vengadesan, Secretary and V. Ruthramurthy, Teasurer have also given individual consent letters for extension of the benefits of 18(1) settlement, dated 04-03-2012 and they too continue receive full benefits under the said settlement. The 18(1) settlement is binding on the unsigned members of the petitioner unions because the same is accepted by overwhelming majority of 89% of the workers including the office bearers of the 2nd petitioner and only a miniscule of 14 out of 121 workers are objecting to the same. The disparity in wages between the workers who have not accepted 18(1) settlement and those who have accepted is only by virtue of application of specific terms and conditions of 18(1) settlement, dated 04-03-2013 and not otherwise. When the said settlement is not binding on the petitioners, even the benefits flowing out of such settlement will not be payable to them. The 18(1) settlement, dated 04-03-2013 has brought in change in service conditions of the signatories and they earn more because they produce more either collectively or individually. Those who have not signed the 18(1) settlement, dated 04-03-2013 are not obliged by the production and productivity parameters agreed under 18(1) settlement, dated 04-03-2013 and their service conditions are continued to be regulated by the earlier settlement, dated 07-05-2007. The petitioners demand for equal pay on par with those who have signed the 18(1) settlement, dated 04-08-2013 without a corresponding obligations of equality in

service condition as per 18(1) settlement, dated 04-03-2013 would be unfair, unjust and against the ethos of industrial jurisprudence and Indian Constitution. There is absolutely no unfair labour practice by the respondent. The petitioners have no locus to seek a declaration on unfair labour practice. None of the provisions enlisted by petitioners are applicable to the facts and circumstances of the case. The claim petition filed by petitioners is devoid of merits, lacks *bona fides* and is liable to be dismissed.

6. As per order in I.A. No. 162/2014 the enquiry was conducted jointly in I.D. (T). No. 04/2012 along with other I.D. (T). No. 07/2014 and in the course of enquiry, on the side of the petitioner PW.1 was examined and Ex.P1 to Ex.P53 were marked and on the side of the respondent management RW.1 was examined and Ex.R1 to Ex.R20 were marked.

7. The point for consideration is:

I.D(T). No. 4/2012 :

Whether the industrial dispute raised by the petitioner union in I.D(T). No. 4/2012 against the respondent management over charter of demands such as wage revision, annual increment, HRA, educational allowance, HBA and other allowances, *etc.,* is justified or not and if, justified what is the relief entitled to the petitioner union?.

I.D(T). No. 7/2014:

Whether the industrial dispute raised by 1st and 2nd petitioner unions against the respondent management over the 18(1) settlement arrived at between the management and another union on 04-03-2013 during the pendency of the industrial dispute before the Industrial Tribunal, Puducherry and the claim of the union workmen for equal wages and incentive on par with the other workmen and to extend the benefits of 12(3) settlement, dated 07-05-2007 till a new wage settlement is entered are justified or not and whether there is disparity in wages and incentives among the workmen who have signed and not signed the 18(1) settlement and individual Bond and whether there was any unfair labour practice adopted by the management among the union workmen under section 25(T) of the Industrial Disputes Act, 1947 or not.

8. Both sides are heard. The pleadings of the parties, the evidence let in by either sides and the exhibits marked on by either side are carefully considered. The learned Counsel for the petitioner argued that, the industrial dispute raised by the petitioner is reasonable and the petitioners are entitled for wage revision and other attendance benefits as claimed by them and also entitled for equal wages and incentives on par with the other workmen and to extend the benefits of 12(3) settlement, dated 07-05-2007 and the Tribunal has to justify the industrial dispute raised by the petitioners for charter of demand and for equal wages as claimed in the claim petitions. On other hand, the learned Counsel for the respondent argued that the petitioners are not entitled for any relief as claimed by them and the industrial dispute raised by the petitioners are unjustified and the petitioners are not entitled for any benefits as claimed in the charter of demand. On the side of the respondent written argument was filed and the same was carefully considered. In support of his case the learned Counsel for the respondent relied upon the Judgments reported in CDJ 1976 SC 099, CDJ 2005 Kar HC 403, CDJ 2005 SC 843, CDJ 2005 BHC 334, CDJ 2001 BHC 326, CDJ 1981 SC 130, CDJ 2002 BHC 1320, CDJ 2011 MHC 1435, CDJ 1996 SC 240, CDJ 1978 SC 028, CDJ 2011 BHC 611, CDJ 2004 BHC 2013, AIR 1978 SC 982, CDJ 1993 MHC 276, CDJ 1997 BHC 017, 1969 (1) LLJ 61 Kerala.

9. It is the case of the petitioner in I.D(T). No. 4/2012 that the members of the petitioner union are working at the respondent establishment and that there was a settlement between the management and the workers from time to time and that the petitioner union is the majority union recognized by the respondent management, entered into last wage settlement, dated 07-05-2007 for 4 years period and the same was expired on 06-05-2011 and therefore, the petitioner union has sent a letter of demand to the respondent management on 11-02-2011 and demanded for wage revision which was not considered by the respondent management with an intention to threaten the workers, and suppress the demand of the workers posed a counter demand to increase the machine speed from 29 units to 39 units with the existing workforce, and also demanded the workers to accept the proposed erection of auto machine which was likely to lead retrenchment of existing workers for which the petitioner union objected and the respondent management has not offered wage increase and hence, no amicable settlement was arrived in the negotiation talk and that therefore, the industrial dispute was raised by the petitioner union on 15-06-2011 before the Labour Officer (Conciliation), Puducherry for wage revision and other allowances, for the period covering from 07.05.2011 and when the said industrial dispute

was pending before the Conciliation Officer, some other companies have entered their wage settlement with the trade union and the wage was revised to their workers average of more than ₹ 6,000 per month and even though the same was produced before the respondent management to increase the wage at least on par with the abovesaid Indian companies on Industry-*cum*-regional basis the respondent management did not shown any interest to negotiate with the petitioner union before the Conciliation Officer and subsequently, the management has negotiated with the rival union which had no majority strength of workers and offered a sum of ₹ 2,806 per month as a final amount of wage increase inclusive of all wage component which is not even equated with the wage increase given by the other industries and the petitioner union did not accepted it.

10. It is the further case of the petitioner union that petitioner union members are in service for more than 10 to 15 years continuous length of service and their gross monthly salary was ₹ 600 to 1,000 and even after 15 years length of continuous service and after several negotiation their salary was raised to ₹ 1,000 to ₹ 1800 per month for unskilled workers and that in the last wage settlement entered on 07-05-2007 entry level in W-1 category workmen were given increase of ₹ 2 per day in basic wage and that therefore, they have been paid only ₹ 2,975 per month and Grade W-3 workers have been paid ₹ 3,230 per month which could not even meet the requirement of statutory minimum wages fixed to the industries in Puducherry Union Territory and the major portion of the meager wage of the workers have been paid by way of allowances, particularly by way of production incentive in comparing other Indian companies who engaged in manufacturing of consumer products and, the petitioner union member are paid very meager wage, which is not even sufficient to maintain their substance and the workers of the respondent establishment cannot even owned house even after putting 15 years of length of service in the respondent management.

11. It is the further case of the petitioner union that the respondent management has exploited the workers by paying very meager wage and that though the petitioner union workers rendered 15 years of service in the respondent establishment the workers have been paid very low basic pay since the basic wage is taken to calculation for determining the statutory benefits and other companies are paying better wage and other allowances to their workers and the respondent management had not come forward to pay the wage on par with the other companies which is running the business in the very same Puducherry Union Territory and that therefore, the present formula followed by the respondent in revising the wage is unacceptable and as per the cost of living the workers are required ₹ 31,650 to run their family and that therefore, the wages has to be increased under all heads so as to commensurate the present cost of living and the company in the name of Godrej Consumer Products Limited, Puducherry is paying the salary of ₹ 32,471.58 to their workers and though the respondent management is having sound financial position and, paying capacity the demand of the worker can be given and wage can be revised and that the respondent management has agreed to increase wage to a sum of ₹ 2,806 per month, which inclusive all wage component and therefore, prayed this Court to pass an Award revising the wages in terms of the charter of demands, dated 10-02-2011 with retrospective effect from 07-05-2011.

12. Further, the petitioner union along with 2nd petitioner union in I.D(T). No. 07/2014 has raised the industrial dispute before the Conciliation Officer over the 18(1) settlement which was entered on 04-03-2018 with another union by the respondent management during the pendency of the industrial dispute for wage revision wherein, the conciliation was failed and the reierence has been sent to this Tribunal to decide the said dispute and the 1st petitioner union has filed the claim statement praying to declare that the 18(1) settlement arrived at, between the respondent management and National Employees Trade Union (NETU) on 04-03-2013 while pending dispute in I.D.(T). No. 04/2012 is unfair and illegal and it would not bind the petitioner union members and to declare that there was some disparity in wages and incentives among the'workers who have singed and not signed the settlement and obtained an individual Bond are illegal and against the terms of Equal Remuneration Act and against industrial principles of equal work equal pay and to declare that members of the petitioner union are entitled for equal wages and incentive on par with the other workers and the service condition of the workers agreed in the 12(3) settlement, dated 07-05-2007 and to declare that the respondent management has committed unfair labour practice under schedule V part I clause 1(c), 2 (a), 2 (b), 3, 13 of the Industrial Dispute Act stating that the 1st petitioner union is a registered trade union having 96 members out of 121 total permanent workers and it is a majority trade

union representing majority permanent workers of the respondent factory and that till 2013 there were only two trade unions namely, HLL Tea Workers Welfare Union and Hindustan Unilever Tea Unit Employees Union which represent the cause of entire workers of the respondent factory and that the service condition of the workers and their wage are determined, revised time to time based on the long-term wage settlement signed between the respondent management and the workers' representative of the majority trade union and that the last long-term settlement arrived at between them on 07-05-2007 for four years period before the Labour Officer (Conciliation) under section 12(3) of the Industrial Dispute Act which came to expire in the month of May, 2011 and that the 1st petitioner union and the respondent management had agreed to extend the said settlement till the new settlement, arrived between them.

13. It is further stated by the petitioner union that after the expiry of 4 years duration as agreed in the said 12(3) settlement the union has submitted a fresh charter of demand for revision of wage and other allowances of the workers working in the respondent factory and that the respondent did not consider the demand of the 1st petitioner union and that therefore, the union has raised the industrial dispute before the Labour Officer (Conciliation) regarding revision of wages and while so with the help of eight workers the respondent has formed a management puppet union in the name and style of National Employees Trade Union and got registered the same and thereafter, the respondent themselves entered the settlement between them under section 18(1) settlement of the Act and threatened all the individual workers by using all sort of unfair labour practice against them to adopt and accept the terms and conditions of the said 18(1) settlement and that the workers who had not signed or adopted the terms of said 18(1) settlement were denied wage increase and they were discriminated from the workers who signed 18(1) settlement and that therefore, a complaint was preferred before the Conciliation Officer who has advised the respondent that to avoid discrimination among the workers in payment of wage and follow the terms of 12(3) settlement till the wage dispute pending before the Industrial Tribunal is resolved between the parties and further advised the respondent management not to obtain any signature in the 18(1) settlement or obtain any Bond from the workers against the interest of petitioner union workers and that the respondent did not pay any heed on the advice of the Conciliation Officer and that the respondent management has formed the management puppet union in order to undermine the petitioner union activities and their collective bargaining power and that the settlement arrived at between the NETU trade union with the management without any negotiation or discussion with the majority workers or their representative is illegal unfair and against the interest of the larger working class of the respondent factory and that the wage structure fixed in the 18(1) settlement is very meager in compare to the other industries in that region and that the wage increase was given unilaterally without consultation or negotiation with the individual workers or their representative and the wage increase offered by the respondent under 18(1) settlement is not sufficient to the workers to meet the present escalated cost of living and hence, the settlement under section 18(1) is illegal and it will not bind the petitioner union workers.

14. To establish the case of the petitioner unions in joint trial PW.l was examined and he has stated that the averment made in the claim statement in this case as part and parcel of the evidence and in support of their case the petitioner unions has exhibited Ex.P1 to Ex.P53. Ex.P1 is the copy of petitioner's union Registration Certificate. Ex.P2 is the copy of petitioner's union members list. Ex.P3 is the copy of charter of demand submitted by the petitioner union on 10-02-2011 and its covering letter. Ex.P4 is the copy of respondent letter for receipt of the petitioner charter of demand. Ex.P5 is the copy of claim statement filed by the petitioner's union before the Labour Officer (Conciliation) over the dispute of charter of demand of wage revision and other allowances. Ex.P6 is the copy of Conciliation Officer. notice over the dispute of charter of demand raised by the petitioner union. Ex.P7 is the copy of respondent reply to the Conciliation Officer. Ex.P8 is the copy of respondent reply to the Conciliation Officer. Ex.P9 is the copy of petitioner's union memo filed by the Conciliation Officer. Ex.P10 is the copy of petitioner's union complaint to Commissioner of Labour. Ex.P11 is the copy of petitioner's union complaint to Labour Officer (Conciliation). Ex.P12 is the copy of petitioner's union complaint to respondent management. Ex.P13 is the copy of respondent's letter to the Conciliation Officer. Ex.P14 is the copy of petitioner union letter to the Conciliation Officer. Ex.P15 is the copy of failure report issued by the Conciliation Officer. Ex.P16 is the copy of petitioner's union letter to the Conciliation Officer. Ex.P17 is the copy of

Government notification. Ex.P18 is the copy of Court notice in ID. No. 4 of 2012. Ex.P19 is the copy of financial performance (10 years record performance). Ex.P20 is the copy of wage settlement arrived between NCR Corporation India Limited (*Vs.*) and its workman. Ex.P21 is the copy of revised pay structure of the employees of NCR for October, 2011. Ex.P22 is the copy of Pay Slip of the employees of the respondent namely, V. Sivasakthi. Ex.P23 is the copy of pay slip of the employees of the respondent namely, V. Ayyanar. Ex.P24 is the copy of wage settlement entered between the MRF Limited, Puducherry and its workman during 2011-2015. Ex.P25 is the copy of wage settlement entered between the Godrej Consumer Products, Puducherry and its workman during 2010-2012. Ex.P26 is the copy of pay structure of employees of Godrej. Ex.P27 is the copy of wage settlement LUCKAS TVS, Puducherry, Ex.P28 is the copy of petitioner union raised an industrial dispute ID. No. 819 of 2013. Ex.P29 is the copy of petitioner union raised an industrial dispute ID. No. 1706 of 2013 before Labour Officer (Conciliation). Ex.P30 is the copy of conciliation notice - ID. No. 819 of 2013. Ex.P31 is the copy of petitioner union letter to the Conciliation Officer, Ex.P32 is the copy of petitioner union letter to the Conciliation Officer. Ex.P33 is the copy of conciliation notice - ID. No. 1706 of 2013. Ex.P34 is the copy of petitioner union letter to the Conciliation Officer. Ex.P35 is the copy of petitioner union letter to the Conciliation Officer. Ex.P36 is the copy of petitioner union letter to the Factory Manager. Ex.P37 is the copy of petitioner union letter, to the Conciliation Officer. Ex.P38 is the copy of petitioner union letter to the Chief Inspector of Factories. Ex.P39 is the copy of the petitioner union letter to the Commissioner, Labour Department. Ex.B40 is the copy of show cause notice to the E. Devarasu. Ex.P41 is the copy of Devarasu letter to the respondent, Conciliation Officer. Ex.P42 is the copy of S. Murugan letter to the Commissioner of Labour. Ex.P43 is the copy of V. Venketesan letter to the Commissioner of Labour. Ex.P44 is the copy of V. Venketesan Medical Certificate. Ex.P45 is the copy of respondent management letter to V. Venketesan, Token No. 29. Ex.P46 is the copy of K. Aathinarayanan letter to the Commissioner of Labour. Ex.P47 is the copy of show cause notice to the T.N. Rajendra Kumar. Ex.P48 is the copy of T.N. Rajendra Kumar reply to show cause notice, dated 05-11-2014. Ex.P49 is the copy of show cause notice to the R. Sakthimurugan. Ex.P50 is the copy of Sakthi Murugan reply to show cause notice, dated 05-11-2014. Ex.P51 is the copy of conciliation failure report. Ex.P52 is the Government reference. Ex.P53 is the copy of Court notice in ID. No. 7 of 2014 raised by the petitioner union.

15. On the other hand, on the side of the respondent the Senior Executive HR of the respondent company was examined as RW.1 who has been authorized by the respondent management to give evidence on behalf of the respondent Factory and he has stated in his evidence that the respondent management entered into a long-term settlement for a period of 4 years with the National Employee Trade Union (NETU) on 04-03-2013 under section 18 (1) of Industrial Disputes Act in which all issues relating to increment of wages and all other incidental privileges have been mutually agreed upon between respondent management and the members of the said union and the said settlement was circulated amongst all its workers by placing it in the notice-board and all the workers have realized the benefits of 18(1) settlement and they have given individual acceptance to 18(1) settlement, irrespective of their union affiliation and they have voluntarily come forward to accept the settlement and they have enjoyed its benefits and all the members of the union including the office bearers of the union were offered their acceptance and obtaining the benefits of the settlement and the benefits of the 18(1) settlement was given to every individual who have signed the settlement and all the members and office bearers of Hindustan Unilever Tea Employees Union have also accepted 18(1) settlement which was entered on 04-03-2013 and benefits were extended to person who have accepted the said settlement from the date of their acceptance and the respondent management has the paid *ex gratia* amount of ₹ 84,950 to each of the individual workers, who have accepted the terms of settlement and amount were credited to the accounts of individual worker and they are receiving revised wages as per 18(1) settlement, dated 04-03-2013 with effect from 01-04-2013 and that 89% of the entire work force in respondent's factory have accepted and ratified the 18(1) settlement and only the few disgruntled office bearers of the petitioner and their loyalists have refused to accept the 18(1) settlement and are continuing to litigate the matter.

16. It is the further evidence of RW.1 that majority have accepted the wage structure and the said of workers in a factory settlement arrived at under section 18(1) was implemented for more than 4 years and benefits were given as per new settlement and as per the new 18(1) settlement, there is an average increase of 11%

in productivity than the earlier settlement and the workers who have signed the settlement have achieved approximately 11% more production within the statutory time of 8 hours of work and the members of the petitioner union gave their letters on 06-08-2013 and they have categorically refused to increase the production in terms of settlement executed under section 18(l) of the Act and that they have been fighting for wage increase and petitioner union has instructed the workers to deliberately refuse to increase the production and the respondent management has already offered ₹ 2,806 as an initial payment of wages and that the 18(1) settlement was always open to the petitioner union members who are hardly 14 members accepted the same with all the benefits, privileges, liabilities and responsibilities attached to the said settlement and that the respondent was willing to extend the said settlement and that therefore, the workers who have not, accepted the 18(1) settlement are not given the benefits of the said settlement because the said settlement was expired and another wage settlement was entered between the majority union and since the earlier settlement was lapsed.

17. It is the further evidence of RW.l that the petitioner has not justified with any semblance of evidence as to how they are eligible for wage revision and the wages being paid by the respondent is substantially higher than the minimum floor level wages and the petitioners are bound to prove their case regarding entitlement of wage revision and cannot demand it as a matter of right without proving their eligibility to such wage revision and that the similar companies are not giving the wage revision to the tune of ₹ 6,000 and the said companies are manufacturing the products that are not produced by the respondent factory and hence, the wage revision where the wage structure prevailing in the similar industries in the region is taken as a bench mark for deciding the wage revision issue and the other allegations of the petitioner union are denied by him.

18. Further, RW.l has deposed with regard to the industrial dispute in I.D(T). No.7/2014 that references regarding justification of 18(1) settlement, dated 04-03-2013 and unfair labour practice is beyond the jurisdiction of this Tribunal and the disputes enumerated under Third Schedule alone can be adjudicated by this Tribunal and that validity of justification of 18(1) settlement are not enumerated under Third Schedule and therefore, it cannot be a subject matter of dispute that could be adjudicated by the Tribunal under section 7(A), read with Third Schedule of the Industrial Disputes Act and that Tribunal has no power to decide the claim under section 25(T) and 25(U) of chapter 5(C) of the Industrial Dispute Tribunal and it can direct only remedial measures for such unfair labour practice initiate criminal prosecution under section 34 of the ID Act and that the petitioners has not added the union who have signed the 18(1) settlement in the present dispute and hence, it cannot be challenged without adding them as a party to the proceedings and this dispute is not maintainable for misjoinder of necessary party since the petitioners have not impleaded the signatory of the said settlement namely, National Employees Trade Union and that the petitioners have no privity to challenge 18(1) settlement since they are not parties to the said settlement and it cannot be questioned by any other parties who are not signatory of the said settlement and the Judicial forum have encouraged the settlement of dispute between the parties even after passing of Award with intention to permit and that 18(1) settlement is fair and the petitioners cannot blame the respondent management and the union and presently there are 4 registered trade union in the factory and the workers welfare union alone submitted a charter of demands and another union Hindustan Unilever Employees Tea Union employees did even submitted their charter of demand and the respondent management also have submitted their own charter of demand which was essential on productivity improvement, balance and other issues and bilateral negotiations were held between the respondent management and Hindustan Unilever Employees Tea union employees on various dates and the majority of the workers of the respondent factory and the office bearers of the Hindustan Unilever Employees Tea Union and that there is no unfair labour practice committed by the respondent management and 18(1) settlement is not applicable to the petitioner since the petitioner union are not doing production in terms of the settlement as per own letters, dated 07-08-2013 and they are not entitled to claim the benefits flowing out of such settlement and that therefore, prayed to dismiss the claim petition.

19. In support of their evidence, the respondent management has exhibited Ex.R1 to Ex.R20. Ex.R1 is the letter of authorization of Mr.Karthik. Ex.R2 is the copy of 18(1) settlement signed between the respondent and National Employee Trade Union (NETU). Ex.R3 is the copy of letter given by 110 workers accepting the 18(1) settlement, and assuring to withdraw the case

ID. Nos. 4/2012 and 25/2012. Ex.R4 is the copy of tabular column showing, the details of revised salary structure and *ex gratia* paid to individual workers post signing of LTS declaration by individual workers in terms of settlement. Ex.R5 is the copy of salary receipts of 4 workers who have accepted the 18(1) settlement as proof of *ex gratia* paid. Ex.R6 is the copy of the letter given by the petitioner's union informing the management that they shall produce only as per 12(3) settlement, dated 07-05-2007. Ex.R7 is the copy of letter given by the Hindustan Unilever Tea Division Employees Union informing the management that they shall produce only as per 12(3) settlement, dated 07-05-2007. Ex.R8 is the copy of 18(1) settlement signed between the respondent and three union namely, National Employee Trade Union (NETU), Hindustan Unilever Tea Unit Employees Union, and Hindustan Unilever Tea Development Union. Ex.R9 is the copy of the letters given by 92 workers accepting the 18(1) settlement. Ex.R10 is the excel sheet showing the machine speeds, its capacity and the comparative statements of workers who signed the 12(3) settlement in the year 2007 and 18(1) settlement in the year 2013. Ex.R11 is the copy of Pay Slip of Mr. Veerabuthiran, (W-l) (Token No. 014) for the month of January 2014 who has signed the 18(1) settlement, dated 04-03-2013. Ex.R12 is the copy of Pay Slip of Mr. Murugaperumal, (W-2) (Token No. 42) for the month of January 2014 who has signed the 18(1) settlement, dated 04-03-2013. Ex.R13 is the copy of Pay Slip of Mr. Palani, (W-3)(Token No. 113) for the month of January 2014 who has signed the 18(1) settlement, dated 04-03-2013. Ex.R14 is the copy of Pay Slip of Mr. C. Veloudham, (W-4)(Token No. 11) for the month of January 2014 who has signed the 18(1) settlement, dated 04-03-2013. Ex.R15 is the copy of Pay Slip of Mr. T.S. Karthikeyan, (W-l)(Token No. 77) for the month of January 2014 who has signed the 18(1) settlement, dated 04-03-2013. Ex.R16 is the copy of Pay Slip of Mr. R. Murugan, (W-2) (Token No. 16) for the month of January 2014 who has signed the 18(1) settlement, dated 04-03-2013. Ex.R17 is the copy of Pay Slip of Mr. S. Murugan, (W-3) (Token No. 07) for the month of January 2014 who has signed the 18(1) settlement, dated 04-03-2013. Ex.Rl8 is the copy ot Pay Slip of Mr. Duraisamy, (W-4)(Token No.04) for the month of January 2014 who has signed the 18(1) settlement, dated 04-03-2013. Ex.Rl9 is the copy of details of rationalization and modernization done from 2009 to 2013. Ex.R20 is the copy of the details of cushions given; in calculating OEE.

20. *Discussion on I.D(T). No. 4/2012:*

From the pleadings and evidence of both the parties and the exhibits marked on either sides it is clear that following facts are admitted by either side that the members of the petitioner union are the workers of the respondent, establishment and already they have entered 12(3) wage settlement on 07-05-2007 for 4 years period and thereafter, the petitioner union has sent a letter demanding the respondent management for wage revision and negotiations were done between them and the matter has not been amicably settled and that therefore, the petitioner union has raised the industrial dispute before the Conciliation Officer over charter of demands and on failure of conciliation the reference has been sent to this Court by the Government. It is also an admitted fact that while the industrial dispute is pending before this Tribunal the respondent management has entered another settlement under section 18(1) of the Act on 04-03-2013 with another union and so far the petitioner union has not accepted the said 18(1) settlement and the petitioner union along with another union has raised the industrial dispute before the Conciliation Officer challenging the said 18(1) settlement executed between the respondent management and another union of the respondent factory and the said industrial dispute in I.D.(T). No. 7/2014 also pending before this Court for disposal. It is not in dispute that the respondent management has entered wage settlement on 07-05-2007 for the period of 4 years under section 12(3) of the Industrial Disputes Act and after expiry of the period of 4 years the management has to revise the wage by entering the another settlement and it is also not disputed that the petitioner union has submitted charter of demands before the respondent management and the same has not been accepted by the respondent management and thereafter, the industrial dispute was raised by the petitioner union over charter of demand for revision of wages and during the pendency of the said industrial dispute before this Tribunal the respondent management has entered settlement, under section 18(1) of the Act which was also challenged by the petitioner union along with another union. Hence, it is to be decided by this Tribunal, whether the industrial dispute raised by the petitioner union against the respondent management over charter of demands such as wage revision, annual increment, HRA, Educational allowance, HBA and other allowances, *etc.*, is justified or not.

21. It is contended by the petitioner union that the respondent management has not considered the demands of the petitioner union for wage revision and the management with an intention to threaten the workers and suppress their wage demand posed a counter demand to increase the machine speed from 29 units to 39 units with the existing workforce and also demanded the workers to accept the proposed erection of auto machine which was likely to lead retrenchment of existing workers and the respondent management has not offered wage increase and therefore, there is industrial dispute before the conciliation since the some other companies have entered wage settlement with the trade union and wage was revised to their workers average of more than ₹ 6,000 per month and even the same was produced before the respondent management to increase the wage at least on par with the abovesaid Indian companies on Industry-*cum*-regional basis, the respondent did not shown any interest to negotiate with the petitioner union.

22. In order to establish their contention the petitioner union has submitted Ex.P1 to Ex.P53. The documents Ex.P1 to Ex.P14 would go to show that the petitioner union has submitted a charter of demands to the respondent management on 10-02-2011 wherein, they have demanded revision of basic wages, annual increment, fixed dearness allowance, variable dearness allowances, house rent allowance, education allowance, conveyance allowance, social security and medical assistance, house building advance, sanction of personal loan, provision of food, tiffin/lunch, excursion allowance, life insurance facility, death benefit, *etc.*, and thereafter, the petitioner union has raised an industrial dispute wherein the conciliation proceedings were done by the Conciliation Officer by sending notices over the dispute regarding charter of demands to the respondent, management wherein, the respondent management has also submitted a reply to the Conciliation Officer and the petitioner union has submitted a complaint to the Commissioner of Labour as well as to the Conciliation Officer and to the respondent and the conciliation was failed and the conciliation failure report was submitted on 04-10-2011 and the said conciliation failure report was exhibited under Ex.P15 which would go to show that the respondent management has not accepted the charter of demand for wage revision and the respondent management has discussed the complete productivity details withi the union and the management has accepted for wage increase of ₹ 2,806 as final amount inclusive of all wage component and hence, the conciliation authority has advised the union to hold the talks with the union and though repeated advises were given, the union did not yield to consider the authority's advise and the union insisted the Conciliation Officer to sent failure report as the management failed to consider the claim of the petitioner union. The other documents exhibited by the petitioner union would go to show that NCR Corporation India Limited, MRF Limited, Godrej Consumer Products, LUCKAS TVS has entered wage settlement with its workers which reveals that there was a wage settlement increasing the pay of the workers within the region of Puducherry and that the respondent management has issued various memos to the employees and some of the workers have given letter to the Labour Commissioner that the respondent management has threatened them to accept the 18(1) settlement executed with another union.

23. On the other hand, it is the main contention of the respondent management that they have entered 18(1) settlement with the majority of workers and the said settlement was accepted by 110 workers out of total 124 workers and only 14 workers the office bearers of the petitioner union alone have not accepted the 18(1) settlement and as the majority union has accepted the 18(1) settlement and they are getting the revised wage as agreed in the settlement and also they are giving the productivity as agreed in the settlement, this petitioner union cannot sought for another wage revision as claimed by them. In support of their contention the respondent management has exhibited Ex.R1 to Ex.R20. The documents Ex.R1 to Ex.R20 would go to show that the respondent management has entered settlement in the year 2007 and thereafter, they have entered settlement under section 18(1) of the Act with National Employees Trade Union on 04-03-2013 and that the respondent management has 124 permanent workers and the undertaking given by the individual employees under Ex.R3 would reveal the fact that each and every employee has given letter of undertaking to accept the 18(1) settlement and they have received the copy of the above settlement entered on 04-03-2013 and that they have decided to withdraw the dispute raised by them in I.D.(T). No. 4/2012 and I.D.(T). No. 25/2012 and the said undertaking were given by 110 workers out of 124 permanent workers and the respondent management has exhibited the Salary Slip of the workers who have accepted the 18(1) settlement as the proof for *ex gratia* paid and the document Ex.R8 would go to show that on 20-12-2016 the 18(1) settlement was signed with three union. National Employee Trade Union, Hindustan Unilever Tea Unit Employees Union and Hindustan Unilever Tea Development Union for revision of wages and the office

bearers of the union have also accepted the settlement, dated 20-12-2016 after the expiry of earlier settlement entered on 04-03-2013 which expires on 03-02-2017 by the respondent management.

24. The main contention of the petitioner union is that they are the majority union. Admittedly, in this case there are 3 union while the industrial dispute was raised by the petitioner union and it is established before this Court that most of the employees *i.e.*, 110 out of 124 have accepted the settlement entered under section 18(1) of the Act on 04-03-2013 while this industrial dispute is pending. On this aspect the evidence of PW.1 is carefully considered which runs as follows :

".....4-3-2013 தேதியில் எங்கள் தொழிற்சாலையின் மொத்த தொழிலாளர்கள் 122 பேர்கள் தான். அதில் 108 பேர் அதை ஒப்புக் கொண்டு சம்பளம் பெற்றார்கள் என்றால் சரியல்ல. வழக்கிற்காக சரியல்ல என்று சொன்னால் அது சரியல்ல. 4-3-2013 தேதியிட்ட 18 (1) ஒப்பந்தம் எங்கள் சங்கத்தை கட்டுப்படுத்ததாது. அதிலுள்ள எந்த அம்சங்களும் எங்களுக்கு பொருந்தாது. அதில் குறிப்பிட்டுள்ள விவரப்படி உற்பத்தி கொடுக்க நாங்கள் தயாராக இல்லை. அந்த ஒப்பந்தத்தை நாங்கள் படித்து பார்க்கவில்லை ஏனென்றால் எங்களிடம் கொடுக்கவில்லை. 4-3-2013 வரை எல்லா தொழிலாளர்களுக்கும் ஒரே சம்பளம் வழங்கப்பட்டு வந்தது. ஒப்பந்தத்தில் கையெழுத்து போட்டவர்களுக்கு புது சம்பளமும் போடாதவர்களுக்கு பழைய சம்பளமும் வழங்கப்பட்டது. ஒப்பந்தம் 12 படி எங்களுக்கு சம்பளம் வழங்கப்பட்டது. இருவரும் ஒரே வேலையை செய்து வந்தோம். 12 ஒப்பந்தப்படி தான் வேலை செய்து வந்தோம் என்றும் 18 (1) செட்டில்மெண்ட் படி நாங்கள் வேலை செய்யவில்லை. 18 (1) ஒப்பந்தம் எங்களுக்கு செல்லாது என்று கூறிவிட்டு அந்த சம்பளம் கேட்பது சரியல்ல. 18 (1) ஒப்பந்தம் எல்லா தொழிலாளர்களும் அதை ஏற்றுக்கொள்ளலாம் என்று தொழிற்சாலை கூறியது என்றால் எனக்கு அது பற்றி தெரியாது. எங்கள் சங்கத்தில் 4-3-2013-ல் 75 பேர் இருந்தார்கள். எங்கள் சங்கத்தில் உள்ள உறுப்பினர்கள் யாரும் அந்த ஒப்பந்தத்தை நாங்கள் ஏற்றுக் கொள்ளவில்லை. எங்கள் சங்கத்தை சேர்ந்த யாரும் 18 (1) ஒப்பந்தத்தை தற்போது வரை ஏற்றுக்கொள்ளவில்லை. எங்கள் சங்கத்தில் தற்போது உறுப்பினர்கள் பற்றி நீதிமன்றத்தில் தாக்கல் செய்திருக்கிறோமா என்றால் அதற்குறிய ஆதாரம் ஏதும் நீதிமன்றதில் தாக்கல் செய்யவில்லை....."

From the above evidence it is clear that PW.l has admitted the fact that in the respondent establishment the permanent workers are only 122 as on 04-03-2013, It is also clear from Ex.R3 that 110 employees have accepted the 18(1) settlement and they have also given undertaking to withdraw the dispute. Further, it is clear from the above evidence that the petitioner union has not exhibited the 18(1) settlement and PW.l has admitted that the members of the petitioner union have not exhibited the 18(1) settlement and they have not received any wages as per the 18(1) settlement and they are receiving the salary only under earlier 12(3) settlement and it is also admitted by PW.l that no proof of membership list was filed before this Court to establish that how many workers are the members of the petitioner union since 110 workers have accepted the 18(1) settlement while the industrial dispute is pending.

25. In support of his contention the learned Counsel for the respondent has relied upon the Judgment reported in CDJ 1976 SC 099, wherein, the Hon'ble Supreme Court has held that,

> ".....The settlement has to be accepted or rejected as a whole and we are unable to reject it as a whole as unfair or unjust. Even before this Court the 3rd respondent representing admittedly, the large majority of the workmen has stood by this settlement and that is a strong factor which it is difficult to ignore. As stated elsewhere in the judgment, we cannot also be oblivious of the fact that all workmen of the company have accepted the settlement. Besides, the period of settlement has since expired and we are informed that the employer and the 3rd respondent are negotiating another settlement with further improvement. These factors, apart from what has been stated above and the need for industrial peace and harmony when a union backed by a large majority of workmen has accepted a settlement in the course of collective bargaining have impelled us not to interfere with this settlement....."

Further, the learned Counsel for the respondent has also relied upon the Judgment reported in CDJ 2005 Kar HC 403, wherein, the Hon'ble Karnataka High Court hasiheld that,

> ".....It is clear a unrecognized union will not have right to participate in the process of collective bargaining with the management/employer over the issues concerning the workmen in general. The Supreme Court has further pointed out, in essence, the distinction between the two categories of trade unions is that while the recognized union has the right to participate in the discussions/negotiations regarding general issues affecting all workmen/ employees and settlement if any, arrived at as a result of such discussion/negotiations is binding on all workmen/employees, whereas, a non-recognized union cannot claim such a right, but, it has the right to meet and discuss with the management/employer about the grievances of any individual member in domestic inquiry or departmental enquiry and proceedings before the Conciliation Officer and adjudicator....."

and also relied upon the Judgment repotted in CDJ 2005 SC 843, wherein, the Hon'ble Supreme Court has held that,

> "Industrial Disputes Act, 1947 - section 2(K) section 10 and section 18 - Settlement - A plain reading of the reference made by the Central Government would show that it does not refer to any dispute or apprehended dispute between the Bank and the Federation (second respondent). It does not refer to any demand or claim made by the Federation or alleged refusal thereof by the Bank. In such circumstances, it is not possible to hold that on account of the settlement, dated 18-08-1996 arrived at between the Bank and the Association (third respondent), any dispute or apprehended dispute has come into existence between the Bank and the Federation (second respondent). The action of the Bank in asking for a receipt from those employees, who are not members of the Association (third respondent) but, wanted to avail of the benefit of the settlement, again does not give rise to any kind of dispute between the Bank and Federation (second respondent). Thus, the reference made by the Central Government by the order, dated 29-12-1997 for adjudication by the Industrial Tribunal is wholly redundant and uncalled for - There is no industrial dispute in existence nor there is any apprehended dispute between the appellant - Bank and the Federation (second respondent) and as such there is absolutely no occasion for making any reference for adjudication by the Industrial Tribunal. The reference being wholly futile, the same deserved to be quashed....."

and also relied upon the Judgment reported in CDJ 1981 SC 130, wherein, the Hon'ble Supreme Court has held that,

> ".....If, the settlement had been arrived at by a vast majority of the concerned workers with their eyes open and was also accepted by them in its totality, it must be presumed to be just and fair and not liable to be ignored while deciding the reference merely because a small number of workers (in this case 71, *i.e.*, 11.18 per cent) were not parties to it or refused to accept it, or because the Tribunal was of the opinion that the workers deserved marginally higher emoluments than they themselves thought they did. A settlement cannot be weighed in any golden scales and the question whether it is just and fair has to be answered on the base is of principles different from those which come into play when an industrial dispute in under adjudication. In this connection we cannot do better then quote extensively from Herbertson Limited *Vs.* Workmen of the Herbsertson Limited and Others, (Wherein, Goswami, J. speaking for the Court observed. "Besides, the settlement has to be considered in the light of the conditions that were in force at the time of the reference. It will not be correct to judge the settlement merely in the light of the Award which was pending appeal before this Court. So far as, the parties are concerned there will always be uncertainly with regard to the result of the litigation in a Court proceeding. When, therefore, negotiations take place which have to be encouraged, particularly between labour and employer, in the interest of general peace and well being there is always give and take. Having regard to the nature of the dispute, which have to he encouraged, particularly between labour and employer, in the interest of general peace and well being there is always give and take. Having regard to the nature of the dispute, which was raised as far back as 1968, the very fact of the existence of litigation with regard to the same matter which was bound to take some time must have influenced both the parties to come to some settlement. The settlement has to be taken as a package deal and when labour has gained in the matter of wages and if, there is some reduction in the matter of dearness allowance so far as the Award is concerned, it cannot be said, that the settlement as a whole is unfair and unjust. ....."

and also relied upon the Judgment reported in CDJ 2002 BHC 1320, wherein, the Hon'ble Bombay High Court has held that,

> ".....No doubt, it was contended that under Clause 6 of the settlement, the company was required to take action. It such action not taken, it is open to the Appellant to take appropriate proceedings in accordance with law. The fact, however, remains that the settlement which was arrived at between the parties, which has been relied upon by the Tribunal as well as by the learned Single Judge, is a settlement under sub-sec.(1) of S.18 of the Act. Obviously, therefore, the employees covered by such settlement under sub-sec.(1) of S.18 is an independent class and if certain benefits have been granted in favour of those employees, no complaint can be made by the members of the other union and on that basis, no relief can be granted....."

and also relied upon the Judgment reported in CDJ 2011 MHC 1435, wherein, the Hon'ble Madras High Court has held that,

".....The observation made by the learned Single Judge that the Management could not enforce section 18(1) Settlement against non-signatories, correspondingly, the workmen unless sign the settlement could not seek enforcement of the same, is the proposition of law as laid down by the Honourable Supreme Court. Hence, this contention of the learned Senior Counsel for the Appellants lacks merit and cannot be accepted. ....."

From the above observations of the Hon'ble Supreme Court and the Hon'ble High Court it is clear that if, the large majority of the workmen have accepted the settlement and if, the period of settlement has also expired and also executed any other further settlement and if, the majority of the workmen have executed the settlement in the course of collective bargaining, then the Court cannot interfere with other settlement and it is also clear from the above observations that when there are multiple unions in an industry if the settlement have arrived at by the vast majority of the workers and the same was also accepted by them in its totality and it must be presumed that to be just and fair and not liable to be ignored while deciding the reference merely because a small number of workers were not added to it and refused to accept it. In this case, it is also admitted by the respondent management that they have entered 18(l) settlement with the majority of the permanent workers *i.e.,* 110 workers have accepted the settlement out of 124 permanent workers and that therefore, the petitioner union cannot seek for any further wage revision than the 18(1) settlement which was accepted by the majority of workers.

26. It is learnt from records that this industrial dispute has been raised even earlier to the 18(1) settlement. At the time of raising the industrial dispute no settlement was arrived at between any of its members though the earlier 2007 settlement was ended in the year 2011. Further, the workers have right to raise the dispute before the respondent management as well as before the Conciliation Officer for wage revision. In this case the petitioner union has raised the charter of demand before the Conciliation Officer for wage revision and that therefore, the industrial dispute raised by the petitioner union on the said date cannot be rejected as unjustified and it is the right of the workers of the respondent establishment to raise the industrial dispute before the Conciliation Officer for wage revision as it was agreed by the management in the earlier 2007 settlement that the wage has to be increased and revised from 2011. But, the workers of the respondent Industry cannot seek further wage revision than the 18(1) settlement since it was accepted by the majority of the workers of respondent establishment.

27. It is the main contention of the .respondent management that members of the petitioner union could not be given benefits of the 18(1) settlement since they have not accepted the same. Further, the settlement provides the clause that benefits of the settlement would be given only after acceptance of 18(1) Settlement. It cannot be accepted that the members of the petitioner union who raised the industrial dispute are not entitled for the benefits of 18(1) settlement since even prior to the 18(1) settlement arrived between the respondent management with another union the petitioner union has raised the said industrial dispute for wage revision and that therefore, the contention raised by the respondent management that the petitioner union are not entitle for benefits of the 18(1) settlement cannot be accepted. Furthermore, it is learnt from records that the Hon'ble High Court has granted interim relief of ₹ 2,806 per month to the 13 workers who have not accepted the 18(1) settlement and therefore, as the majority of the workers have accepted the 18(1) settlement, the members of the petitioner union are also entitled for benefits of 18(1) settlement though they have not accented. Considering the above facts and circumstances of this case, it is to be held that the industrial dispute raised by the petitioner union against the respondent management over charter of demands such as wage revision, annual increment, HRA, educational allowance, HBA and other allowances, *etc.*, is justified and Award has to be passed by directing the respondent management to give all the benefits of the 18(1) settlement to all the 13 members of the petitioner; union who have not so far accepted the 18(1) settlement.

28. *Discussion on I.D(T). No. 7/2014:*

In this case, it is to be decided whether the dispute raised by the 1st and 2nd petitioner union against the respondent management over the 18(1) settlement, dated 04-03-2013 entered with another union during the pendency of the industrial dispute, before the industrial Tribunal, Puducherry, the act of the management in showing disparity in wages and incentives among the workmen who have signed and not signed the 18(1) settlement and individual bond are justified and the claim of the union workmen for equal wages and incentive on par with the other workmen and to extend the benefits of 12(3) settlement, dated 07-05-2007 till a new wage settlement is entered are justified or not and whether there has been any unfair labour practice among the union workmen under section 25(T) of the Industrial Disputes Act, 1947 has been adopted by the respondent management.

29. It is the main contention of the petitioner unions that they have raised the industrial dispute before the Conciliation Officer and on failure the dispute has been referred before this Tribunal by the Government and is pending and while so, the respondent management has created a puppet union and entered the 18(1) settlement under section 18(1) of the Act with National Employees Trade Union and the respondent management threatened all the individual workers and used all sort of unfair labour practice against them to adopt and accept the terms and conditions of the said 18(1) settlement and the respondent management has given wage increase and other benefits only to the workers who have signed the 18(1) settlement and the workers who have not signed or adopted the 18(1) settlement were denied wage increase and they were discriminated from the workers who signed the 18(1) settlement and the respondent management has formed the management puppet union in order to undermine the petitioner union activities and their collective bargaining.

30. It is the contention of the respondent management that this Tribunal has no jurisdiction to decide neither the validity of the 18(1) settlement nor the issue of unfair labour practice and under section 25(T) and 25(U) of Chapter 5(C) of the industrial dispute the claim of unfair labour practice could be a matter of determination by the Executive Officers of the Labour Department and the petitioners have not add or implead the other signatory of the 18(1) settlement namely, National Employees Trade Union for seeking declaration that the 18(1) settlement as invalid and since the majority of the workers have accepted the 18(1) settlement the petitioners have no *locus standi* to challenge the 18(1) settlement and they could not questioned the validity or genuineness of the settlement. The members of the petitioner union and even some of the office bearers of the second petitioner union had accepted the 18(1) settlement and rectified the settlement and that therefore, the claim of the petitioner is unsustainable.

31. In support of their contention the learned Counsel for the respondent has also relied upon the Judgment reported in CDJ 2005 BHC 334, wherein, the Hon'ble Bombay High Court has held that,

> "..... A settlement between the management and Union would be binding on the parties unless terminated. An Industrial Tribunal definitely cannot go into the issue of the validity of the settlement in the absence of parties to the settlement. The Award on that count is liable to be set aside. Normally, when a settlement has been entered into and another union disputes the said settlement on whatsoever ground the normal test that the Industrial Tribunal must apply is whether the settlement can be said to be unfair and answer the same accordingly. If, it so holds then it can pass an Award in terms of the reference. It cannot set aside a binding settlement. If, the Tribunal proposes to by pass a settlement and if, it has such jurisdiction then the least that has to be done is to notice the union which entered into the settlement and thereafter, give an opportunity to the said Union before making an award which according to it to be just and equitable. That has not been done in the case. The interest of justice would be met if, the impugned Award is set aside and the matter is remanded back to the Industrial Tribunal for reconsiderations. If, the Industrial Tribunal proposes to answer the issues on the matter of settlement entered into Coordination Committee and the respondent No.l and/or to issue directions that the said settlement is not fair and, therefore, not binding or is constitutionally impermissible it would be bound to issue notice to the parties which entered, into the settlement according to law. ....."

and the learned Counsel for the respondent has also relied upon the Judgment reported in CDJ 2001 BHC 326, wherein, the Hon'ble Bombay High Court has held that,

> ".....Another argument of Mrs. Doshi is that nothing would survive if, the settlement are held to be fair and proper. Since, there is no challenge on any ground, I fail to understand, how the union can question the fairness and propriety of these settlement. As far as the union is conceded, it is a third party and a stranger. The fairness and propriety of the settlement can be adjudged between the signatories of such settlement. It would be open to any of the Field Force employees to say that the said settlements were not fair and just to him. The union cannot say that such settlements were not fair and just. More so, there is no even a whisper of any ground on which such a settlement can be said to be not fair and just. Mrs. Doshi has further submitted that the settlements are contrary to the 1957 agreement and therefore, these settlements are not permissible. I have perused the terms of the 1957 agreement, which is a letter written by the company to the union. I do not see any clause in the said letter which prohibits the parties from arriving at such a settlement. Besides, the Field Force employees have accepted the validity of the termination of 1957 agreement and it does not come in their way to have an amicable settlement with the company....."

From the above observations of the Hon'ble High Court, it is clear that Tribunal cannot go into the issue of validity of the settlement in the absence of the parties to the settlement. Admittedly, in this case, the union which entered into the 18(1) settlement with the respondent management namely, National Employees Trade Union has not been added as the party to the proceedings and furthermore, these petitioners are not the signatories of the 18(1) settlement and they have also not accepted the same though, the majority of the workers have entered and executed individual Bond by giving undertaking which are exhibited as Ex.R3. From the above observations it is also clear that the petitioners are the 3rd party to the said settlement and the fairness and propriety of the settlement can be adjudged between the signatories of such settlement *i.e.,* who signed the settlement. In this case the signatories of the 18(1) settlement have not been impleaded and added to this proceeding and as such the reference made by the Government without adding or impleading the National Employees Trade Union who have entered the 18(1) settlement with the respondent management is not sustainable.

32. Furthermore, evenafter knowing the fact that the said 18(1) settlement has been entered only by the members of the National Employees Trade Union the petitioner unions have failed to implead them as a party to the proceedings is untenable and if any, order is passed without hearing the members of the National Employees Trade Union who have entered the 18(1) settlement and who are the signatories of the 18(1) settlement would be stood as violation of principles of natural justice and also the violation of constitutional right and therefore, the claim statement filed by the petitioner union is not sustainable for non-jointer of proper parties to the proceedings and also against the principles of natural justice since, if any, order is passed in favour of the petitioner it would automatically affects the members of the said union and therefore, it is to be held that the industrial dispute raised by the 1st and 2nd petitioner union against the respondent management over the 18(1) settlement, dated 04-03-2013 entered with another union during the pendency of the industrial dispute before the Industrial Tribunal, Puducherry is not justified.

33. Further, as it is decided by this Tribunal that the 18(1) settlement has been signed by the majority of the workers is a valid one and it has already been decided that the petitioner union members are entitled for the benefits of 18(1) settlement there could not be any disparity in wages and other claims in respect of equal wages and incentives on par with the other workmen and extention of 12(3) settlement till the execution of new settlement would not arise and further, absolutely the petitioner unions have failed to establish that there was unfair labour practice committed by the respondent management. Furthermore, as it is decided by this Tribunal that the industrial dispute raised by the petitioner union against the respondent management over the 18(1) settlement, dated 04-03-2013 entered with another union during the pendency of the industrial dispute before the Industrial Tribunal, Puducherry, is not justified, the question of disparity of wages and other claims made by the petitioner unions are not sustainable and as such, the petition is liable to be dismissed.

34. *I.D(T). No. 4/2012*

In the result, the claim petition is partly allowed and the industrial dispute raised by the petitioner union against the respondent management over charter of demands such as wage revision, annual increment, HRA, Educational allowance, HBA and other allowances, *etc.,* is justified and Award is passed directing the respondent to give all the benefits of the 18(1) settlement to all the members of th petitioner union who have not so far accepted the said settlement. No cost.

In I.D.(T). No. 7/2014

In the result, the claim petition is dismissed and the industrial dispute raised by 1st and 2nd petitioner unions against the respondent management over 18(1) settlement, dated 04-03-2013 entered with National Employees Trade Union during the pendency of the industrial dispute before this Industrial Tribunal, Puducherry and for other reliefs are not justified. No cost.

Dictated to the Stenographer, transcribed by her, corrected and pronounced by me in the open Court on this the 12th day of January, 2018.

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

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List of petitioner's witnesses:

PW.1 —09-01-2017 S. Rajendirane

List of petitioner's exhibits:

Ex.P1 —06-03-2007 Copy of the petitioner's union Registration Certificate.

Ex.P2 — Copy of the petitioner's union members list.

Ex.P3 —10-02-2011 Copy of the charter of demand submitted by the petitioner union and its covering letter.

Ex.P4 —15-02-2011 Copy of the respondent letter for receipt of the petitioner charter of demand.

Ex.P5 —15-06-2011 Copy of the claim statement filed by the petitioner's union before the Labour Officer (Conciliation) over the dispute of charter of demand of wage revision and other allowances.

Ex.P6 —20-07-2011 Copy of the Conciliation Officer notice over the dispute of charter of demand raised by the petitioner union.

Ex.P7 —04-08-2011 Copy of the respondent reply to the Conciliation Officer.

Ex.P8 —29-08-2011 Copy of the respondent reply to the Conciliation Officer.

Ex.P9 —29-08-2011 Copy of the petitioner's union memo filed by the Conciliation Officer.

Ex.P10—06-09-2011 Copy of the petitioner's union complaint to Commissioner of Labour.

Ex.P11—06-09-2011 Copy of the petitioner's union complaint to Labour Officer (Conciliation).

Ex.P12—06-09-2011 Copy of the petitioner's union complaint to respondent management.

Ex.P13—08-09-2011 Copy of the respondent's letter to the Conciliation Officer.

Ex.Pl4—22-09-2011 Copy of the petitioner union letter to the Conciliation Officer.

Ex.P15—04-10-2011 Copy of the failure report issued by the Conciliation Officer.

Ex.P16—30-11-2011 Copy of the petitioner's union letter to the Conciliation Officer.

Ex.P17—29-03-2012 Copy of the Government notification.

Ex.P18—14-05-2012 Copy of the Court notice in ID. No. 4 of 2012.

Ex.P19 — Copy of the financial performance (10 years record performance).

Ex.P20—08-12-2011 Copy of the wage settlement arrived between NCR corporation India Limited (*Vs.*) and its workman.

Ex.P21— Oct., 2011 Copy of the revised pay structure of the employees of NCR.

Ex.P22— July, 2012 Copy of the Pay Slip of the employees of the respondent namely, V. Sivasakthi.

Ex.P23— July, 2012 Copy of the Pay Slip of the employees of the respondent namely, V. Ayyanar.

Ex.P24— 2011-2015 Copy of the wage settlement entered between the MRF Limited, Puducherry and its workman.

Ex.P25—2010-2012 Copy of the wage settlement entered between the Godrej Consumer Products, Puducherry and its workman.

Ex.P26 — Copy of the pay structure of employees of Godrej.

Ex.P27 — Copy of the wage settlement LUCKAS TVS, Puducherry.

Ex.P28 —15-04-2013 Copy of, the petitioner union raised an industrial dispute ID. No. 819 of 2013.

Ex.P29—19-08-2013 Copy of the petitioner union raised an industrial dispute ID. No. 1706 of 2013 before Labour Officer (Conciliation).

Ex.P30—13-08-2013 Copy of the Conciliation Notice - ID. No. 819 of 2013.

Ex.P31—30-08-2013 Copy of the petitioner union letter to the Conciliation Officer.

Ex.P32—12-09-2013 Copy of the petitioner union letter to the Conciliation Officer.

Ex.P33—07-08-2013 Copy of the Conciliation Notice ID. No. 1706 of 2013.

Ex.P34—21-08-2013 Copy of the petitioner union letter to the Conciliation Officer.

Ex.P35—23-08-2013 Copy of the petitioner union letter to the Conciliation Officer.

Ex.P36—21-10-2013 Copy of the petitioner union letter to the Factory Manager.

Ex.P37—21-10-2013 Copy of the petitioner union letter to the Conciliation Officer.

Ex.P38—21-10-2013 Petitioner union letter to the Chief Inspector of Factories.

Ex.P39—21-10-2013 Copy of the petitioner union letter to the Commissioner, Labour Department.

Ex.P40—14-08-2013 Copy of the show cause notice to the E. Devarasu.

Ex.P41—15-08-2013 Copy of Devarasu letter to the respondent, Conciliation Officer.

Ex.P42—19-08-2013 Copy of S. Murugan letter to the Commissioner of Labour.

Ex.P43—19-08-2013 Copy of V. Venketesan letter to the Commissioner of Labour.

Ex,P44—19-08-2013 Copy of V. Venketesan Medical Certificate.

Ex.P45—04-09-2013 Copy of the respondent management letter to V. Venketesan, Token No. 29.

Ex.P46—19-08-2013 Copy of K. Aathinarayanan letter to the Commissioner of Labour.

Ex.P47—05-11-2014 Copy of the show cause notice to the T.N. Rajendra Kumar.

Ex.P48 — Copy of T.N.Rajendra Kumar reply to show cause notice, dated 05-11-2014.

Ex.P49—05-11-2014 Copy of the show cause notice to the R. Sakthimurugan,

Ex.P50 — Copy of Sakthi Murugan reply to show cause notice, dated 05-11-2014.

Ex.P51—17-12-2013 Copy of the conciliation failure report.

Ex.P52—12-05-2014 Copy of the Government reference.

Ex.P53 — Copy of the Court notice in ID. No. 7 of 2014.

List of respondent's witness:

RW.1 —22-05-2017 Karthik

List of respondent's exhibits:

Ex.1 —04-05-2017 Letter of authorization of Mr. Karthik.

Ex.R2 —04-03-2013 Copy of 18(1) settlement signed between the respondent and National Employee Trade Union (NETU).

Ex.R3 —04-03-2013 Copy of letter given by 110 workers accepting the 18(1) settlement and assuring to withdraw the case ID. Nos. 4/2012 and 25/2012.

Ex.R4 —04-03-2013 Copy of tabular column showing the details of revised salary structure and *ex gratia* paid to individual workers post signing of LTS declaration by individual workers in terms of settlement.

Ex.R5	—04-03-2013	Copy of salary receipts of 4 workers who have accepted the 18(1) settlement as proof of *ex gratia* paid.
Ex.R6	—06-08-2013	Copy of the letter given by the petitioner's union informing the management that they shall produce only as per 12(3) settlement, dated 07-05-2007.
Ex.R7	—07-08-2013	Copy of letter given by the Hindustan Unilever Tea Division Employees Union informing the management that they shall produce only as per 12(3) settlement, dated 07-05-2007.
Ex.R8	—20-12-2013	Copy of 18(1) settlement signed between the respondent and three union namely, National Employee Trade Union (NETU), Hindustan Unilever Tea Unit Employees Union, and Hindustan Unilever Tea Development Union.
Ex.R9	—20-12-2013	Copy of the letters given by 92 workers accepting the 18(1) settlement.
Ex.R10	—	Excel sheet showing the machine speeds its capacity and the comparative statements of workers who signed the 12(3) settlement in the year 2007 and 18(1) settlement in the year 2013.
Ex.R11	—	Copy of pay slip of Mr. Veerabuthiran, (W-l) (Token No. 014) for the month of January 2014 who has, signed the 18(1) settlement, dated 04-03-2013.
Ex.R12	—	Copy of pay slip of Mr. Murugaperumal, (W-2) (Token No. 42) for the month of January 20l4 who has signed the 18(1) settlement, dated 04-03-2013.
Ex.Rl3	—	Copy of pay slip of Mr. Palani. (W-3)(Token No. 113) for the month of January 2014 who has signed the 18(1) settlement, dated 04-03-2013.
Ex.Rl4	—	Copy of pay slip of Mr. C.Veloudbam, (W-4) (Token No. 11) for the month of January 2014 who has signed the 18(1) settlement, dated 04-03-2013.
Ex.R15	—	Copy of Pay Slip of Mr. T.S. Karthikeyan, (W-l) (Token No. 77) for the month of January 2014 who has signed the 18(1) settlement, dated 04-03-2013.
Ex.R16	—	Copy of pay slip of Mr. R.Murugan, (W-2) (Token No. 16) for the month of January 2014 who has signed the 18(1) settlement, dated 04-03-2013.
Ex.R17	—	Copy of pay slip of Mr. S. Murugan, (W-3) (Token No. 07) for the month of January 2014 who has signed the 18(1) settlement, dated 04-03-2013.
Ex.R18	—	Copy of pay slip of Mr. Duraisamy, (W-4) (Token No. 04) for the month of January 2014 who has signed the 18(1) settlement, dated 04-03-2013.
Ex.R19	—	Copy of details of rationalization and modernization done from 2009 to 2013.
Ex.R20	—	Copy of the details of cushions given in calculating OEE.

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