



புதுச்சேரி மாநில அரசிதழ்

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GOVERNMENT OF PUDUCHERRY
LABOUR DEPARTMENT

(G.O. Rt. No. 86/AIL/Lab./T/2018,
Puducherry, dated 6th June 2018)

NOTIFICATION

Whereas, an Award in I.D. (L) No. 26/2014, dated 23-4-2018 of the Industrial Tribunal-cum-Labour Court, Puducherry, in respect of the Industrial Dispute between the management of M/s. Jayaprakash Narayanan Co-operative Spinning Mill, Karaikal and Thiru K. Madhavan, Karaikal, over non-employment has been received;

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

(By order)

S. MOUTTOULINGAM,
Deputy Labour Commissioner.

BEFORE THE INDUSTRIAL TRIBUNAL-
CUM-LABOUR COURT AT PUDUCHERRY

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

Monday day, the 23rd day of April, 2018

I.D. (L) No. 26/2014

K. Madhavan,
S/o. Kaliyaperumal,
No. 40, Kattunayakan Street,
Karaikal. Petitioner

Versus

The Managing Director,
Jayaprakash Narayanan
Co-operative Spinning Mill,
Keezhamanni, Neravy,
Karaikal-609 604. Respondent

This Industrial Dispute coming on 13-03-2018 before me for final hearing in the presence of Thiru N. Ramar, Representative for the petitioner and Thiru C. Balasubramaniayan, Advocate for the respondent, upon hearing both sides, upon perusing the case records, after having stood over for consideration till this day, this Court passed the following:

AWARD

1. This Industrial Dispute has been referred by the Government as per the G.O. Rt. No.74/AIL/Lab./J/2014, dated 22-04-2014 for adjudicating the following:-

(a) Whether the dispute raised by Thiru K. Madhavan against the management of Jayaprakash Narayan Co-operative Spinning Mill, Karaikal, over non-employment is justified ?

(b) If justified, to what relief the workman is entitled to ?

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

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

The petitioner was joined as trainee at the respondent Mill on 30-12-1996. Subsequently, he was regularized in the spinning department as Cone Paker with effect from 21-04-2000. He was paid ₹ 7,000 as monthly salary. While so, since from 08-05-2007, the petitioner was affected by jaundice and was under medical treatment till 21-11-2008 he was not able to attend the work and the same was intimated to the respondent management through his co-worker. When the petitioner returned to duty after cure of disease with medical certificates, the management refused to offer work stating that he was terminated from service on 17-11-2008. The petitioner came to know that he was terminated from service only on the said date. The petitioner made several requests to the respondent management for his employment. But, the management refused to offer employment without any valid reasons. Hence, the petitioner raised the industrial dispute before the Labour Officer (Conciliation) on 27-03-2011 for which the respondent management has filed the reply stating that since petitioner was unauthorizedly absent from 08-05-2007 he been removed from service on 17-03-2008. The conciliation was failed and the matter has been referred to this Court. No enquiry has been conducted by the management as per clause 20, 21 and 22 of the certified standing order of the respondent establishment. The alleged termination without giving any opportunity and without conducting any enquiry against the petitioner is against the principles of natural justice. The petitioner has prayed for reinstatement with back wages.

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

The respondent Mill is a Society and its main object is "no gain no loss" and it has been runs under the control of Puducherry Government. The petitioner had joined the respondent Society in the year 1996 and the

respondent Society had permanent the employee on 21-04-2000. The petitioner work is Cone Paker. The petitioner was always a chronic absentee and was taking leave without any permission. The respondent issued a warning notice on 18-07-2003 to the petitioner that he takes leave without got proper permission. On 13-08-2003, the respondent issued a warning notice to the petitioner that he is not measure the cone in proper weight. The respondent issued warning notice on 17-09-2003, 12-11-2003, 11-01-2004, 19-07-2004, 21-08-2004 to the petitioner that he takes leave without got proper permission. On 18-04-2006, the respondent issued a show cause notice to the petitioner, the petitioner duly received the notice give apology and again rejoined the employment. The petitioner again taking leave without gets any proper permission to the respondent. On 30-12-2006, the respondent Society again issued another show cause notice to the petitioner to join the respondent with some condition. After that incident also the petitioner did not turn his ears. The petitioner again taking leave without get proper permission to the respondent. On 28-02-2007, the respondent issued another warning notice to the petitioner the petitioner also received the letter and again joined the respondent with some condition. After that incident also the petitioner did not turn his ears. Finally the petitioner does not co-operate the respondent on 17-11-2008 the respondent society terminated the petitioner and also sends the termination letter to post. The allegation stated in the petitioner in his petition is false. The petitioner did not produce any medical certificate or any medical record for his long absence. The petitioner has not come with clean hands before this Court. The petitioner's unauthorized absence affected the respondent society a huge loss. The issue of chronic absenteeism has become a very serious in respondent's society, the production activities and disturbing its work schedules and man power allotments. The high percentage of unauthorized absenteeism clearly indicated that the workers of respondent society were taking their employment casually and the leniency shown by the respondent in the past in not taking stringent disciplinary action was an encouraging factor. Apart from financial loss, it was also leading to frustration amongst the regular employees as the absenteeism was causing additional burden of work on those employees. The claim petition is devoid of merits, lacks *bona fide* and the same is liable to be dismissed.

4. In the course of enquiry on the side of the petitioner no oral evidence has been adduced and Ex.P1 to Ex.P7 were marked on consent and on the side of the respondent RW.1 was examined and Ex.R1 to Ex.R13 were marked. Both sides are heard.

5. *The point for consideration is:*

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

6. *On the point:*

The pleadings of the parties, the evidence adduced by the respondent and the exhibits marked on both sides are carefully considered. On both sides, written arguments were filed and the same was carefully considered. In support of his case, the representative for the petitioner relied upon the Judgment reported in 1996(1) LLJ 1/96 Pg.No.152 and CDJ 1996 SC 180. The learned Counsel for the respondent also in support of his case has relied upon the Judgment of Hon'ble Supreme Court of India in Appeal (Civil).No. 463-464 of 2005-West Bengal State Electricity Vs. Chandernath Banerji and also relied upon the order, dated 22-03-2004 of the Hon'ble Madras High Court in Anglo French Textiles A Unit Vs. The Presiding Officer, Labour Court. In order to prove his case the petitioner has exhibited Ex.P1 to Ex.P7. Ex.P1 is the copy of offer of appointment to the petitioner as a trainee dated 30-12-1996. Ex.P2 is the copy of appointment order of the petitioner on regular basis, dated 21-04-2000. Ex.P3 is the copy of medical certificates of the petitioner for the period 08-05-2007 to 21-08-2008. Ex.P4 is the copy of industrial dispute raised by the petitioner on 27-03-2011. Ex.P5 is the copy of letter given by the respondent management to the Labour Department on 13-10-2011. Ex.P6 is the copy of failure report dated 28-02-2014. Ex.P7 is the copy of standing order of the respondent company. These documents would go to show that the petitioner was appointed as trainee at the respondent establishment on 30-12-1996 and his service became permanent on 21-04-2000 and he was suffering with Jaundice and he has taken medical treatment for the period from 08-05-2007 to 21-08-2008 and he had been given several prescriptions and thereafter, he has raised the industrial dispute for his non-employment on 27-03-2011 before the Conciliation Officer and conciliation proceedings were taken place and the management has appeared before the conciliation proceedings and the conciliation was failed and the matter has been referred to this Court and the respondent establishment is having certified standing order.

7. On the other hand, it is contended by the respondent management that the petitioner was a chronic absentee and was taking leave without any permission and he was issued with several memos and notices for his unauthorized absence *i.e.*, taking leave without got proper permission on 18-07-2003, 13-08-2003,

17-09-2003, 12-11-2003, 11-01-2004, 19-07-2004, 21-08-2004 and a show cause notice was issued to the petitioner on 18-04-2006 for which the petitioner gave an apology and again rejoined the employment and on 30-12-2006 the respondent Society again issued another show cause notice to the petitioner to join the respondent establishment with some conditions and however, the petitioner did not turn up for his duty and lastly on 28-02-2007 the respondent issued another warning notice to the petitioner and the same was received by him, wherein, it was stated that the petitioner was permitted to join duty with some condition and even after receipt of the same the petitioner did not turn up for duty and hence, on 17-11-2008 he was terminated by the management. In order to prove their contention, the respondent management has examined RW.1 and RW.1 has stated all the facts which are stated in the counter statement.

8. In support of their oral evidence the respondent management has exhibited Ex.R1 to Ex.R13. Ex.R1 is the copy of memo., dated 18-07-2003. Ex.R2 is the copy of warning notice, dated 13-08-2003. Ex.R3 is the copy of memo., dated 17-09-2003. Ex.R4 is the copy of memo., dated 12-11-2003. Ex.R5 is the copy of warning notice dated 11-01-2004. Ex.R6 is the copy of warning notice, dated 19-07-2004. Ex.R7 is the copy of warning notice dated 21-08-2004. Ex.R8 is the copy of explanation notice, dated 11-01-2005. Ex.R9 is the copy of final warning notice, dated 18-04-2006. Ex.R10 is the copy of office order, dated 30-12-2006. Ex.R11 is the copy of warning notice, dated 28-02-2007. Ex.R12 is the copy of termination order, dated 17-11-2008. Ex.R13 is the office order, dated 22-01-2017. These documents would go to show that the petitioner was given various memos for his unauthorized absence and office order was passed directing the petitioner to join on or before 07-01-2004 and thereafter, he was terminated from service on 17-11-2008 for his unauthorized absence.

9. From the evidence of RW.1 and the documents marked on either sides it is clear that following facts are admitted by either side that the petitioner has joined at the respondent establishment as apprentice in the year 1996 and that the respondent management has given permanent status to the petitioner on 21-04-2000 and the petitioner was working as Cone Paker and he was unauthorizedly absent for some time from the year 2006 and he was given several memos and without conducting domestic enquiry, the petitioner was terminated from service. Further, it is clear that no charges has been framed against the petitioner for his

unauthorized absence and no opportunity was given to the petitioner and though several memos has been issued by the management to the petitioner for the unauthorized absence, no domestic enquiry was conducted by appointing an Enquiry Officer and no charge has been framed against the petitioner.

10. Further, the petitioner has exhibited the standing order of the respondent mill under Ex.P7 which would reveal the fact that clause 20 of the standing order deals with the misconduct of the employee and clause 21 deals with the Enquiries by Officer *i.e.*, a neutral person appointed by the factory Manager in this behalf and the factory Manager shall have powers to award punishment and clause 22 deals with the punishment for misconduct and particularly no order of punishment shall be made unless the workman concerned is informed in writing of the alleged misconduct against him and the enquiry in accordance with the principles of natural justice is conducted.

11. In this case, admittedly, no such domestic enquiry proceedings were conducted by the management by appointing Enquiry Officer and no opportunity was given to the petitioner in accordance with the standing order of the respondent Mill and that therefore, it is clear that the respondent management has not followed the standing order and the petitioner has also not been given sufficient opportunities to putforth his case by giving an opportunity of an enquiry which would be conducted by a neutral person and to find the truth of the charges levelled against him and that therefore, the order of termination of the petitioner is against the principles of natural justice and also against the provisions of the standing order of the respondent Mill and that therefore, the alleged termination order passed against the petitioner is absolutely illegal and is liable to be set aside and therefore, it is to be held that the industrial dispute raised by the petitioner against the respondent management, over non-employment is justified and the petitioner is entitled for the order of reinstatement as claimed by him.

12. As this Court has decided that the industrial dispute raised by the petitioner against the respondent management, over non-employment is justified, it is to be decided whether the petitioner is entitled for back wages as claimed by him. There is no evidence that the petitioner is working so far in any other industry and that there is no proof exhibited before this Court that he is working anywhere else. The respondent has not proved the fact that the petitioner has been working in any other establishment after his termination. However, the petitioner could have served at any other industry

after his termination. Further, it is clearly established by the respondent management that they have given number of memo to the petitioner for his unauthorized absence and he was permitted to join duty by giving pardon to him and furthermore, he was absent from duty from the year 2007 and he has raised the industrial dispute only on 27-03-2011 and that the petitioner was given 7 memos for his unauthorized absence. These facts would go to show that the petitioner has committed unauthorized absence and has not turned for duty even he was permitted to join at the respondent establishment by giving intimation to him by the management and that therefore, considering the above facts and circumstances of this case, this Court decides that the petitioner is not entitled for any back-wages as claimed by him and hence, no back-wages can be awarded in favour of the petitioner.

13. In the result, the petition is partly allowed and the industrial dispute raised by the petitioner against the respondent management, over non-employment is justified and Award is passed directing the respondent management to reinstate the petitioner in service with continuity of service and other attendant benefits within one month from the date of this Award and the claim petition is partly dismissed in respect of back wages claimed against the respondent. No cost.

Dictated to the Stenographer, transcribed by her, corrected and pronounced by me in the open Court on this the 23rd day of April, 2018.

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

List of petitioner's witnesses: Nil

List of petitioner's exhibits:

- Ex.P1 — 30-12-1996 — Copy of offer of appointment for trainee.
- Ex.P2 — 21-04-2000 — Copy of appointment on regular basis.
- Ex.P3 — 08-05-2007 — Copy of medical certificate of the petitioner.
to
21-08-2008
- Ex.P4 — 27-03-2011 — Copy of industrial dispute to raised by the petitioner.
- Ex.P5 — 13-10-2011 — Copy of letter given by the respondent management to the Labour Department.
- Ex.P6 — 28-02-2014 — Copy of failure report.

Ex.P7 — 23-03-2003 — Copy of standing order of the respondent company.

List of respondent's witness:

RW.1 — 20-07-2017 — Kumaresan

List of respondent's exhibits:

- Ex.R1 — 18-07-2003 — Copy of memo.
- Ex.R2 — 13-08-2003 — Copy of warning notice.
- Ex.R3 — 17-09-2003 — Copy of memo.
- Ex.R4 — 12-11-2003 — Copy of memo.
- Ex.R5 — 11-01-2004 — Copy of warning notice.
- Ex.R6 — 19-07-2004 — Copy of warning notice.
- Ex.R7 — 21-08-2004 — Copy of warning notice.
- Ex.R8 — 11-01-2005 — Copy of explanation notice.
- Ex.R9 — 18-04-2006 — Copy of final warning notice.
- Ex.R10 — 30-12-2006 — Copy of office order.
- Ex.R11 — 28-02-2007 — Copy of warning notice.
- Ex.R12 — 17-11-2008 — Copy of termination order.
- Ex.R13 — 22-01-2017 — Office order.

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

GOVERNMENT OF PUDUCHERRY
LABOUR DEPARTMENT

(G.O. Rt. No. 87/AIL/Lab./T/2018,
Puducherry, dated 7th June 2018)

NOTIFICATION

Whereas, an Award in I.D (T) No. 08/2012, dated 12-4-2018 of the Industrial Tribunal-cum-Labour Court, Puducherry, in respect of the Industrial Dispute between the management of M/s. Puducherry Power Corporation Ltd., Karaikal and Puducherry Power Corporation Employees Social Welfare Union, over revision of pay scale on par with 5th Central Pay Commission 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,
Deputy Labour Commissioner.

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

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

Monday day, the 12th day of April, 2018

I.D. (T) No. 08/2012

Puducherry Power Corporation Employees
Social Welfare Union,
No. 6/B, Nagalakshmi Colony,
Mudukku Theru,
Thirumalairayan Pattinam,
Karaikal-609 606. Petitioner

Versus

The Executive Engineer,
M/s. Puducherry Power Corporation Ltd.,
Polagam,
Thirumalairayan Pattinam,
Karaikal. Respondent

This Industrial Dispute coming on 29-03-2018 before me for final hearing in the presence of M/s. Law Solvers, Counsel for the petitioner and Thiru B. Mohandoss, Advocate for the respondent, upon hearing both sides, upon perusing the case records, after having stood over for consideration till this day, this Court passed the following;

AWARD

1. This Industrial Dispute has been referred by the Government as per the G.O. Rt. No.77/AIL/Lab./J/2012, dated 10-05-2012 for adjudicating the following:-

(i) Whether the dispute raised by Puducherry Power Corporation Employees Social Welfare Union against the management of M/s. Puducherry Power Corporation Limited, Karaikal, over revision of pay scales for the post of Line Inspector, Tester Gr.1, Draughtsman, Boiler Attendant and junior Chemist on par with 5th Central Pay Commission are justified ?

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

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

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

The dispute raised by the union traversed only the scale of pay prescribed for the posts of Junior Chemist and Boiler Attendant. There are four Boiler Attendants and five Junior Chemists who are only covered by the scope of the above industrial dispute. The workmen namely, K. Lakshmirayanan has joined as Junior Chemist on 29-10-1999, K. Manikanan has joined as Junior Chemist on 21-10-1999, K. Ashok Kumar has joined as Junior Chemist on 30-12-1999, R. Kumaravel has joined as Junior Chemist on 07-03-2000, T. Lavanya has joined as Junior Chemist on 21-01-2008, K. Palvannan has joined as Boiler Attendant on 06-10-1999, K. Vengadesan has joined as Boiler Attendant on 29-10-1999, A. Kathiravan has joined as Boiler Attendant on 09-12-1999 and S. Srinivasan has joined as Boiler Attendant on 11-08-2010 in the respondent corporation. The respondent corporation by a resolution dated 08-12-1997 numbered as item No. 28.4 resolved that the employees of the corporation shall be granted the scales of pay applied to the corresponding employees of the Government of Puducherry. The corporation recommended and the board approved a scale of ₹ 4,000-100-6,000 for both the posts of Boiler Attendant and Junior Chemist. The members of the petitioner union who were appointed to their respective posts in 1999 were granted the above scale. There was no posts corresponding to or having parity to the post of Boiler Attendant and Junior Chemist in the Government of Puducherry. The adoption of the above scale to Boiler Attendant and Junior Chemist was therefore *prima facie* whimsical and arbitrary. According to the recruitment rule for the post of Boiler Attendant in the respondent corporation the qualification prescribed is Diploma in mechanical engineering with boiler competency certificate, class-I and II with 2 years of relevant experience. The method of recruitment is only direct recruitment. As regards the post of Junior Chemist the qualification prescribed for direct recruitment is a Degree of B.Sc., (Chemistry) or equivalent with 2 years experience. Here also the method of recruitment is only by direct recruitment. The duties and responsibilities prescribed for Boiler Attendant and Junior Chemist are highly technical and these workmen definitely come under the category of technicians and entitled for wage fixation as applicable to the technicians. After considering fixation of specific scales for various categories of employees, the fifth pay commission in chapter XXI (A and B) under para 52.111 considered the cases of technicians with either a degree

in science or diploma in engineering and recommended a scale of ₹5,000-150-8,000. This was approved by the Central Government and the Government of Puducherry by G.O.Ms.No. 55/97/F3 dated 15-10-1997 published in Extraordinary Gazette No. 103 dated 15-10-1997. The petitioner union has been hammering home to the respondent management the patent anomaly that has crept in the prescription of scale of pay to the posts of Boiler Attendant and Junior Chemist and has been praying for re-fixation of the scale of ₹ 4,000-6,000 as ₹5,000-8,000 to the Boiler Attendant and Junior Chemist. The respondent corporation has been dragging its feet without reaching final conclusion notwithstanding the fact that there were expert Committees and consultants appointed by the respondent corporation who have also recommended removal of the anomaly in the scale of pay of the post of Boiler Attendant and Junior Chemist. The prescription of a scale ₹4,000-5,000 lower than the appropriate scale ₹ 5,000 to 8,000 under the fifth Pay Commission recommendations, the petitioners have been deprived of the appropriate replacement scales under the recommendation of the sixth Pay Commission. The respondent management by resolution No. 28.4 dated 08-12-1997 took a conscious decision to apply the recommendations of the fifth Pay Commission for revision of scales of the posts under the corporation. However, while creating the posts following the decisions in item No. 31/3, the corporation created the post of Boiler Attendant and Junior Chemist in the scale of ₹4,000-6,000 which created anomalous situation which deserves rectification on merits. The recommendations of the fifth Pay Commission as accepted by the Government in chapter 52.111 recommending the scale of ₹ 5,000 to ₹ 8,000 to technicians with either a degree in science or diploma in engineering in unambiguous. Admittedly, the qualification prescribed for the Boiler Attendant and Junior Chemist in the respondent corporation are at par with if, not more than the qualifications recommended by the fifth Pay Commission. There is therefore absolutely no ground for the respondent management to demure to grant the demanded scale to the Boiler Attendant and Junior Chemists. In a successive meeting which the petitioner association had with the Government and the respondent management, the authorities were convinced of the anomaly. However, for reasons best known to the management the just demand of the petitioner has not been conceded. The recommendations of the fifth Pay Commission adumbrated in chapter 52.111 and accepted by the Government of Puducherry as per G.O. Ms. 55/97/F3, dated 15-10-1997 has got national application and denial of the same to

the workmen locked up with the management in the above industrial dispute is discriminatory and violative of Article 14 and 16 of the constitution. Therefore, the petitioner union prayed this Court to pass an Award holding as justified the claim of the petitioner union for revision of the scale of pay of the Boiler Attendant and Junior Chemist in the respondent corporation as ₹ 5,000-₹ 8,000 with effect from their respective dates of initial appointment at par with the scale recommended for the posts by the fifth Central Pay Commission and awarding the consequential financial and other benefits pursuant to such revisions of scales and also awarding the corresponding replacement scale to ₹ 5,000 to 8,000 as per the recommendations of the Sixth Central Pay Commission.

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

The respondent denied all the averments in the claim petition except those that are specifically admitted by them in the counter and stated that the petitioner union finds fault with the appropriate Government for widening the scope of reference beyond the matters in dispute in the above industrial dispute and traversed in the conciliation proceedings. The jurisdiction of this Tribunal is determined by the terms of reference by the appropriate Government as contemplated by section 10 of the Industrial Disputes Act, 1947. In such a case, unless the terms of reference are amended, the industrial Tribunal has to decide all the matters in question referred to it by the appropriate Government. In the case on hand the petitioner union has confined its claim to the revision of pay scale for the posts of Boiler Attendant and Junior Chemist in the respondent Corporation. The petitioner union has confined itself to the above aspects of the dispute, this Tribunal is empowered to decide all the matters in dispute covered by the terms of reference. Under such circumstances there is an obligation on the part of the petitioner union to open its mouth and to put black and white on all the questions covered by the reference and on failure to do so, this Tribunal is entitled to draw adverse inference against the petitioner union in respect of the matters in dispute not dealt with by the petitioner union in the claim statement. The petitioner union cannot ignore the jurisdiction of the Industrial Tribunal to decide the matters in dispute which are incidental to the main matters covered by the terms of reference. The reference mentioned Boiler Attendants and junior chemists were appointed in the pay scale of ₹4,000-100-6,000. The petitioner union has given distorted version of facts with suppression of material facts for its claim of higher pay scales on the ground of parity in employment. The

respondent *vide* Board resolution No. 28.4 on 08-12-1997 has considered and approved the extending the benefits of the 5th Pay Commission as applicable to the employees of the corporation decided that corresponding replacement scales be given with effect from 01-01-1996. The scale of pay of the posts of Junior Chemist and Boiler Attendant were created subsequently *vide* Board resolution No. 31.3 on 18th September, 1998 and the scales of pay has been fixed as ₹ 4,000-100-6,000. The respondent corporation cannot be equated to the Government Department. Under Government Departments, it is coming under the purview of the manufacturing Industrial unit and governed by the provisions of the Factories Act, 1948 and other labour enactments.

It is further stated that the petitioner is not justified in blowing hot and cold. On the one hand, it contends that there was no post corresponding to or having the parity to the posts of Boiler Attendant and Junior Chemist in the Government of Puducherry. On the other hand, it contends that the pay scale recommended for the Government Departments should be adopted for the employees of the corporation who are not Government servants. The petitioner cannot compare the posts of Boiler Attendant and Junior Chemist to similar posts in any other Government undertaking and claim parity pay scale, provide the well recognized principles relating to parity in pay scales like nature of employment, qualification in terms of education and experience, terms and conditions of employment, duties and responsibilities and other relevant considerations. The reference mentioned workers can be considered as technicians, the petitioner union has to establish the factors that are necessary for claiming parity in pay scales. The parity or equality in pay scale is based on the principle of equality in the matter of employment. The petitioner union has made reference to Articles 14 and 16 of the Constitution in this regard. It is a basic principle of law that "equality of equals" alone can be claimed and unequal can not be treated equally. The "equality in pay scale" is not an abstract doctrine. The petitioner should identify a particular post with particular scales of pay applicable to the post and claim for adopting the same to a similar post. No post similar to the post of Boiler Attendant and Junior Chemist with pay scale of ₹ 5,000-8,000 have been identified by the petitioner. The term 'technician' is common term and reach several post carrying several pay scale can be grouped. The petitioner has miserably failed to establish its case relating to parity in pay scales. The pay scale for the posts of Boiler Attendant and Junior Chemist have been fixed in the Board Resolution

according to its requirements, after taking note of the relevant facts and circumstances and so it is not arbitrary. The 4 Boiler Attendants and 5 Junior Chemist referred in the claim petition have consciously accepted their terms and conditions of employments including the pay scale and now, they are estopped from contending that the pay scales are unfair one, as an after thought. The recommendations of the fifth Pay Commission in chapter 52.111 recommending the scale of ₹ 5,000-8,000 to technicians with either a Degree in Science or Diploma in Engineering is not taken or considered by the Corporation for the post of Junior Chemists and Boiler Attendant as the nature of work is different in the Corporation as it is a manufacturing Industrial Unit governed by the provisions of Factories Act and the scale of pay ₹ 4,000-100-6,000 for the posts of Junior Chemist and Boiler Attendant have been fixed as per the Board resolution No. 31.3. The scales of pay of the post of Junior Chemist and Boner Attendant is in accordance with the Board resolution as applicable to Puducherry Power Corporation Ltd., *vide* GO. Ms. No. 55/97/F3, dated 15-10-1997 and G.O Ms. No. 66/F3/2008, dated 24-10-2008 issued by the Finance Department of Government of Puducherry and subsequent Board decision No. 28.4 dated 08-12-1997 and 83.1, dated 19-11-2008 respectively. Regarding the revision of the scales of pay and anomalies, *i.e.*, Office Memorandum No.A. 12017/10/2012/DPAR/CCD(1), dated 26-11-2012 of Chief Secretary, Government of Puducherry, Department of Personnel and administrative Reforms (Personnel Wing) has issued directions which clarifies that the ratificatory orders are awaited from Government of India. The respondent corporation is an undertaking of Government of Puducherry and it can not take an independent decision without the approval of the Government authorities concerned. Unless approval by competent authority is granted for pay scale of ₹5,000-8,000 for posts Boiler Attendant and Junior Chemist, the respondent can not accept the claim made by the petitioner union. The respondent corporation is ready to take up the matter further and the claim of the petitioner union can be considered in the light of decision of the Government. The issue relating to implementation of pay scales is an administrative act falling under the exclusive consideration of the employer and the Court and Tribunals do not interfere with the same unless there is a clear violation of any legal provision.

It is further stated that on account of pressure given by the petitioner union and in good faith the respondent corporation took steps to revise the pay scales of the Boiler Attendants and Junior Chemists at ₹5,000-8,000 and the proposal for the same was discussed in the

Board Meeting of the Corporation. As per the decision of the Board, the Corporation decided to revise the pay scales of the Boiler Attendants and Junior Chemists at ₹5,000- 8,000 with prospective effect and with no arrears, subject to the approval of the Government. The resolution contained in the Board resolution No.110.15 was communicated through Letter No. 1177/PPCL/TRP/SE/2014/dated 06-08-2014 of the Superintendent Engineer, Puducherry Power Corporation Limited, Karaikal. The Finance Department, Government of Puducherry has disapproved the proposal of the respondent corporation to revise the pay scales of the Boiler Attendants and Junior Chemists at ₹ 5,000 to 8,000 as the Ministry of Home Affairs has not ratified the revision of pay done in the Electricity Department. The decision of the Government is binding on the management of the respondent corporation, it being a Government of Puducherry undertaking.

4. *The averments in the reply to additional counter filed by the petitioner, is as follows :*

The petitioner union denied all the allegations made in the additional counter except those which have been specifically admitted by them. The claim statement is confined to the revision of pay scale for the posts of Boiler Attendant and Junior Chemist in the respondent corporation. The unions PPCL gave a strike notice on 16-07-2009 and 20-07-2009 for implementation of revision of pay scale as per the Board resolution 75.10 which is based on the Electricity Department. As per the aforesaid Board resolution the pay scale revision was approved by the respondent corporation for 12 categories of posts, in which the aforesaid post of Boiler Attendant and Junior Chemist forms part which is subject to the approval of the Government of Puducherry Electricity Department. The post of Boiler Attendant and Junior Chemist never existed in the Electricity Department, hence, the averment that the Finance Department, Government of Puducherry has disapproved the proposal of the respondent corporation to revise the pay scales of the Boiler Attendant and Junior Chemist at ₹5,000 - 8,000 as the Ministry of Home Affairs has not ratified the revision of pay done in the Electricity Department is irrelevant and does not apply to the case on hand pending on the file of this Tribunal in respect of Boiler Attendant and Junior Chemist. The respondent management had taken a conscious decision while passing resolution No. 34.6, dated 08-03-1999 that no telescopic pay scales be given for the posts and the scales fixed in accordance with the rules of the Government of Puducherry. The respondent management is violating their own decision

which against the articles of association of the respondent corporation. The respondent management under RTI application communicated *vide* its reply, dated 25-04-2012 that only certain post namely Helper, Wireman and Line Inspector have been revised scale of pay as per Electricity Department after obtaining approval from the Government of Puducherry and that other categories which is inclusive of Boiler Attendant and Junior Chemist of posts were revised as per 5th and 6th Central Pay Commission.

5. In the course of enquiry on the side of the petitioner PW.1 was examined and Ex.P1 to Ex.P42 were marked and on the side of the respondent RW.1 was examined and Ex.R1 to Ex.R9 were marked. Both side arguments were heard.

6. *The point for consideration:*

The Government has made this reference to this Tribunal to decide whether the industrial dispute raised by the petitioner union against the respondent corporation over revision of pay scales for the post of Line Inspector, Tester Gr.I, Draughtsman, Boiler Attendant and Junior Chemist on par with 5th Central Pay Commission is justified or not. But, the petitioner union has restricted their claim only with regard to the revision of pay scales for the post of Boiler Attendant and Junior Chemist on par with 5th Central Pay Commission. Hence, the point for consideration in this case is that whether the industrial dispute raised by the petitioner union against the respondent corporation over revision of pay scales for the post of Boiler Attendant and Junior Chemist on par with 5th Central Pay Commission is justified or not and if, justified, what is the relief can be granted to the said Boiler Attendants and Junior Chemists.

7. *On the point:*

The pleadings of the parties, the evidence let in by either sides and the exhibits marked on both sides are carefully considered. On the side of the petitioner union written argument was filed and the same was carefully considered. The learned Counsel for the petitioner in support of his contention has relied upon the decision of Hon'ble Supreme Court of India in Appeal (Civil). Nos. 26005-26006/2011 between L.Ganesh and others Vs. Pondicherry Public Works Department, Work Assistant Association and others and also relied upon the order passed by the Hon'ble High Court in W.P. No. 20377 of 2009, order in G.O. Ms. No. 13, dated 28-03-2013 issued by the Government of Puducherry, order passed by the Hon'ble Delhi High Court in W.P(C). No. 4033/2001, order passed by the Hon'ble

Delhi High Court in W.P(C).No.421357-59/2005, order passed by the Hon'ble Delhi High Court in W.P(C).No.10688-90/2005 and Para No. 43.15, 55.111, 55.149, 56.56, 63.87, 64.10, 69.63, 71.25 and 71.60/61 of the 5th Central Pay Commission recommendations, Para No. 43.15, 50.23, 50.24 and 52.111 of the 5th Central Pay Commission recommendations, Para No.168.3 of the 5th Central Pay Commission recommendations, Para No.126.5 of the 5th Central Pay Commission recommendations. The learned Counsel for the respondent has also in support of his case relied upon the Judgment reported in (2017) 1 SCC (L & S)1 and (2017) 2 SCC (L & S) 645.

8. In order to prove the case of the petitioner union, the Secretary of the petitioner union was examined as PW.1 and he has stated all the facts which are stated in the claim statement and he has deposed that the members of the petitioner union particularly who are working as Boiler Attendant and Junior Chemist have joined in their establishment and they have been in service since from 1999 and they have claimed the revision of pay scale for the post of Boiler Attendant and Junior Chemist to the respondent corporation and the corporation recommended and the board has approved a scale of ₹4,000-100-6,000 for both the posts of Boiler Attendant and Junior Chemist and that there was no posts corresponding to the post of Boiler Attendant and Junior Chemist in the Government of Puducherry and they have been appointed under the method of direct recruitment as per rules and that they are having academic qualification required for the post and that after considering fixation of specific scales for various categories of employees, the Fifth Pay Commission considered the cases of technicians with either a degree in science or diploma in engineering and recommended a scale of ₹ 5000-150-8000 and the same was approved by the Central Government and the Government of Puducherry by Government order, dated 15-10-1997 published in Extraordinary Gazette and that there was a pay anomaly that has crept in the prescription of scale of pay to the posts of Boiler Attendant and Junior Chemist and that the petitioner union has asked the respondent corporation regarding pay anomaly and asking them to re-fix the scale of pay from ₹ 4,000-6,000 as ₹ 5,000-8,000 to the Boiler Attendant and Junior Chemist and thereafter the respondent corporation also has recommended removal of the anomaly in the scale of pay of the post of Boiler Attendant and Junior Chemist and that as per the fifth pay commission recommendations, the petitioners have been deprived of the appropriate replacement scales under the recommendation of the sixth pay commission and that therefore, the petitioner union has asking for

revision of pay scales for the post of Boiler Attendant and Junior Chemist on par with the fifth Central Pay Commission scales and that the respondent corporation has passed a resolution on 08-12-1997 and took a conscious decision to apply the recommendations of the 5th Pay Commission for revision of scales of the posts under the corporation and while creating the posts of Boiler Attendant and Junior Chemist in the scale of ₹ 4,000-6,000 which created anomalous situation which deserves rectification on merits and as per the recommendations of the 5th Pay Commission to technicians with either a degree in science or diploma in engineering in unambiguous and the qualification prescribed for the posts of Boiler Attendant and Junior Chemist respectively are Diploma in Mechanical Engineering with boiler competency certificate, class-I and II with 2 years of relevant experience and the qualification for Junior Chemist is a Degree of B.Sc., (Chemistry) or equivalent with 2 years experience and though anomaly is known to the respondent management and the Government of Puducherry the reasons best known to the management the just demand of the petitioner union has not been conceded and the recommendations of the 5th Pay Commission accepted by the Government of Pondicherry as per Government Order, dated 15-10-1997 has got national application and denial of the same to the workmen locked up with the management in the above industrial dispute is discriminatory and violative of Article 14 and 16 of the constitution.

9. In support of their oral evidence the petitioner union has exhibited Ex.P1 to Ex.P42. Ex.P1 is the copy of representation by the petitioner, dated 03-12-2011. Ex.P2 is the copy of rejoinder by the petitioner, dated 16-02-2012. Ex.P3 is the copy of reply by the respondent, dated 01-02-2012. Ex.P4 is the copy of reply by the respondent, dated 15-03-2011. Ex.P5 is the copy of recruitment rules for the post of Boiler Attendant. Ex.P6 is the copy of recruitment rules for the post of Junior Chemist. Ex.P7 is the copy of duties and responsibilities assigned to Boiler Attendant issued by the respondent corporation. Ex.P8 is the copy of duties and responsibilities assigned to Junior Chemist issued by the respondent corporation. Ex.P9 is the copy of failure report, dated 09-04-2012. Ex.P10 is the copy of abstract of the reference issued *vide* G.O. Rt. No. 77/ AIL/Lab./J/2012, dated 10-05-2012. Ex.P11 is the copy of board resolution No.31.3 issued by the respondent corporation. Ex.P12 is the copy of board resolution No. 28.4 issued by the respondent corporation. Ex.P13 is the copy of Gazette Notification No.103 issued by Government of Puducherry, dated 15-10-1997. Ex.P14

is the copy of reply by respondent, dated 01-03-2012. Ex.P15 to Ex.P23 are the copy of appointment orders issued by the respondent corporation to Mr. K. Lakshminarayanan, Mr. K. Manikandan, Mr. K. Ashok Kumar, Mr. R. Kumaravel, Mr. T. Lavanya, Mr. K. Palvannan, Mr. K. Vengadesan, Mr. A. Kathiravan and Mr. S. Srinivasan respectively. Ex.P24 is the copy of board agenda and resolution No.75.10 by the respondent corporation. Ex.P25 is the copy of form-L of the unions along with the charter of demands by petitioner, dated 16-07-2009 and 20-07-2009. Ex.P26 is the copy of minutes of meeting held with the Secretary (Power) by the respondent, dated 30-07-2009. Ex.P27 is the copy of union letter with reference No.conf/83/2009 by petitioner, dated 31-07-2009. Ex.P28 is the copy of the conciliation proceedings before DCL-cum-Conciliation Officer, Puducherry, dated 31-07-2009 and 04-08-2009. Ex.P29 is the copy of minutes of meeting held in the chamber of Chief Minister by the respondent, dated 12-08-2009. Ex.P30 is the copy of board agenda and resolution No. 87.6 by the respondent, dated 22-09-2009. Ex.P31 is the copy of board agenda and resolution No. 89.3 by the respondent, dated 26-02-2010. Ex.P32 is the copy of board agenda and resolution No. 90.3 by the respondent, dated 30-06-2010. Ex.P33 is the copy of letter of Industrial Development (Power) Department with reference No. 881/ID(P)/D/10/P5, dated 05-07-2010. Ex.P34 is the copy of RTI reply by respondent, dated 12-01-2011. Ex.P35 is the copy of RTI reply by respondent, dated 25-04-2012. Ex.P36 is the copy of RTI reply by respondent dated 23-05-2012. Ex.P37 is the copy of board agenda and resolution No.39.6 by respondent, dated 13-12-1999. Ex.P38 is the copy of G.O. Ms. No.22 of Industrial Development (Power) Department dated 06-10-1999. Ex.P39 is the copy of board agenda and resolution No.34.6 by respondent, dated 08-03-1999. Ex.P40 is the copy of letter of appointment of consultant under the chairmanship of Thiru H.Dasarathan, Under Secretary to Government (Rtd.,) by respondent. Ex.P41 is the copy of relevant page No. 16 and 17 of the report of consultant under the chairmanship of Thiru H. Dasarathan, Under Secretary to Government (Rtd.,) by respondent. Ex.P42 is the copy of board agenda and resolution no.110.15 passed on 27-06-2014 by the respondent.

10. On the other hand, to disprove the case of the petitioner union the Superintendent Engineer of the respondent corporation was examined as RW.1 and RW.1 has deposed that the claim made by the petitioner union is not maintainable and that the reference mentioned Boiler Attendants and Junior Chemists were appointed in the pay scale of ₹ 4,000-100-6000 and they have claimed higher Pay Scales on the ground of

parity in employment and that the respondent corporation under board resolution on 08-12-1997 has considered and approved the extending benefits of the 5th pay commission as applicable to the employees of the corporation decided that corresponding replacement scales be given with effect from 01-01-1996 and that the scale of pay of the posts of Junior Chemist and Boiler Attendant were created subsequently *vide* board resolution and the scale of pay has been fixed as ₹ 4,000-100-6000 and the respondent corporation can not be equated to the Government Department and the respondent is a manufacturing Industrial unit and governed under the Factories Act and other labour laws and that the term 'technician' is common term under which several post carrying several Pay Scale can be grouped and that the pay scale for the posts of Boiler Attendant and Junior Chemist have been fixed in the Board Resolution according to its requirements and after taking note of the relevant facts and circumstances and that they have accepted the Pay Scale at the time of their appointment and now, they are estopped from contending that the pay scales are unfair one and the recommendations of the fifth Pay Commission recommending the Pay Scale of ₹ 5,000-8,000 to technicians with either a Degree in Science or Diploma in Engineering is not taken or considered by the corporation for the post of Junior Chemists and Boiler Attendant as the nature of work is different in the corporation and the posts of Junior Chemist and Boiler Attendant have been fixed as per the Board Resolution and that the scales of pay of the post of Junior Chemist and Boiler Attendant is in accordance with the Board Resolution as applicable to Puducherry Power Corporation Ltd., *vide* GO.Ms.No. 55/97/F3, dated 15-10-1997 and G.O Ms. No. 66/F3/2008, dated 24-10-2008 issued by the Finance Department of Government of Puducherry and subsequent Board decision taken on 08-12-1997 and 09-11-2008 respectively regarding the revision of the scales of pay and anomalies and that the respondent corporation is an undertaking of Government of Puducherry and it can not take an independent decision without the approval of the Government authorities concerned and unless approval by competent authority is granted for Pay Scale of ₹5,000-8,000 for the posts of Boiler Attendant and Junior Chemist, the respondent cannot accept the claim made by the petitioner union and that the issue relating to implementation of Pay Scales is an administrative act falling under the exclusive consideration of the employer and the Court or Tribunals cannot interfere with the same unless there is a clear violation of any legal provision.

11. It is the further evidence of RW.1 that after filing of the claim statement the petitioner union insisted on the revision of Pay Scale of the Boiler Attendant and Junior Chemist and that on account of pressure given by the petitioner union and in good faith the respondent corporation took steps to revise the Pay Scales of the Boiler Attendants and Junior Chemists at ₹5,000- ₹8,000 and the proposal for the same was discussed in the Board Meeting of the Corporation and as per the decision of the Board, the Corporation has decided to revise the Pay Scales of the Boiler Attendants and Junior Chemists at ₹ 5,000-₹ 8,000 with prospective effect and with no arrears, subject to the approval of the Government and that the resolution contained in the Board resolution was communicated through letter on 06-08-2014 of the Superintendent Engineer of the respondent corporation and that the Finance Department, Government of Puducherry has not approved the proposal of the respondent corporation to revise the Pay Scales of the Boiler Attendants and Junior Chemists at ₹ 5,000-8,000 as the Ministry of Home Affairs has not ratified the revision of pay done in the Electricity Department. In support of their evidence the respondent corporation has exhibited Ex.R1 to Ex.R9. Ex.R1 is the copy of the board resolution No.31.3 regarding fixing of scales of pay for the posts of Junior Chemists and Boiler Attendants, dated 18-09-1998. Ex.R2 is the copy of the GOMS 55/97/F3 issued by the Finance Department, Government of Puducherry, dated 15-10-1997. Ex.R3 is the copy of G.O. Ms. 66/F3/2008 issued by the Finance Department, Government of Puducherry, dated 24-10-2008. Ex.R4 is the copy of the Board resolution No. 28.4, dated 08-12-1997. Ex.R5 is the copy of the Board resolution No. 83.1, dated 19-11-2008. Ex.R6 is the copy of the Office Memorandum No. A. 12017/10/2012/DPAR/CCD(1) of Chief Secretary, Government of Puducherry, dated 26-11-2013. Ex.R7 is the copy of the board resolution No.110.15 communicated through letter No.1177/PPCL/TRP/SE/2014, dated 06-08-2014. Ex.R8 is the copy of the Office Memorandum No. 55011/07/2016/PPCL/P5 of the Department of Industrial Development (Power) Department, Puducherry, dated 03-05-2017. Ex.R9 is the copy of extract of the minutes of the 129th meeting of the Board of Directors of the Corporation.

12. On careful consideration of pleadings of both the parties, the evidence let in and exhibits marked on both sides it is noticed that following facts are admitted by either side that the members of the petitioner union are working at the respondent corporation and 4 Boiler Attendants and 5 Junior Chemists are working at the respondent corporation in the Pay Scale of ₹ 4,000-6,000

and after the recommendations of the 5th pay commission the respondent corporation board has also resolved to revise the salary of the petitioners at the rate of ₹ 5,000 - 8,000 and the respondent corporation has also accepted to revise the Pay Scale of the employees of the respondent corporation on par with the 5th Pay Commission recommendations and resolution has also sent to the Government of Puducherry for the approval which was rejected by the Government stating that in the 5th Pay Commission no pay has been revised in the category of Boiler Attendants and Junior Chemists and except these Boiler Attendants and Junior Chemists all other employees of the respondent corporation have been given the benefits of the 5th Pay Commission and these Boiler Attendants and Junior Chemists were also recommended for the revision of wages as the Government employee of Puducherry and to revise the salary under the 5th Pay Commission recommendations. Further, it can be noticed from the pleadings that both the parties have not disputed the fact that since the Government has not approved to raise the pay scale these Boiler Attendants and Junior Chemists have not been given revised pay and that therefore, they have raised the industrial dispute through the petitioner union and as the conciliation was failed this matter has been referred to this Court.

13. It is the first contention of the respondent corporation that the jurisdiction of the Tribunal is determined by the terms of reference by the appropriate Government as contemplated by section 10 of the Industrial Disputes Act and hence, unless the terms of reference are amended, the Industrial Tribunal has to decide all the matters in question referred to it by the appropriate Government and in the case on hand the petitioner union has confined its claim to the revision of pay scale for the posts of Boiler Attendant and Junior Chemist in the respondent Corporation and that therefore, this Tribunal has no jurisdiction to decide the reference with regard to scale of pay of Boiler Attendant and Junior Chemist. It is true that the reference has been made by the Government to decide the dispute raised by the petitioner union over revision of pay scales for the post of Line Inspector, Tester Gr.I, Draughtsman, Boiler Attendant and Junior Chemist and it is also true that the claim petition filed by the union is confined only with regard to the revision of pay scale for the post of Boiler Attendant and Junior Chemist in the respondent corporation. Though the reference has been made by the Government to decide the pay scale of various categories of the workmen of the respondent corporation it is the right of the petitioner union to

restrict their claim as their wish and that alone cannot cease the jurisdiction of this Tribunal to decide the reference in respect of pay scale of Boiler Attendant and Junior Chemist of the respondent corporation and that therefore, the contention raised by the respondent corporation that this Tribunal has no jurisdiction to decide the reference only with regard to the pay scale of Boiler Attendant and Junior Chemist is not sustainable.

14. It is the second contention of the respondent corporation that since the Government has disapproved the proposal of the respondent corporation the Boiler Attendants and Junior Chemists are not entitled for revision of pay scale on par with 5th Pay Commission. On this aspect the evidence and documents are perused. The documents exhibited by the petitioner union would go to show that on 03-12-2011 the petitioner union has submitted the letter to the Labour Officer (Conciliation) with regard to the Pay Scale revision for the cadres of Junior Chemist and Boiler Attendant as per the 5th Central Pay Commission and the said letter would further reveal the fact that the petitioner union has represented that the Pay Scale of the Junior Chemist and Boiler Attendant was not properly fixed by the respondent corporation on par with the 5th Central Pay Commission and the union has also submitted the charter of demands with the respondent corporation regarding the issue of pay revision and the respondent corporation has also passed a resolution on 08-12-1997 and approved the grant of Pay Scale on par with the 5th Central Pay Commission and the respondent corporation has given reply to the Labour Officer regarding revision of Pay Scales stating that they were awaiting for the outcome of the proposal sent by them to the Government of India with regard to the revision of scales of pay for certain categories of posts of Electricity Department, Puducherry and that has to be yet to receive and they have assured that further action will be taken after getting direction from the Government of Puducherry and the respondent management has given another reply on 15-03-2011 to the Labour Commissioner stating that the respondent management has agreed for the revision as per the scale of pay for the Group C and Group D of the corporation and it would be in accordance with the recommendation of the 5th and 6th Pay Commission and subsequently board decision, dated 08-12-1997 and 19-11-2008 for the revision of the scale of pay in respect of Group C and Group D employees of the corporation and in the board meeting held on 25-09-1997 the respondent management has approved in extending the benefit of the 5th Pay Commission as approved by the Government of Puducherry.

15. The documents would further reveal the fact that the petitioner union and the respondent management has conducted the meeting in the month of December, 2006 to consider the demands of the employees regarding the revision of scales of pay of different cadres in accordance with the Pay Scales of the Electricity Department, Government of Puducherry and that the petitioner union has given a strike notice on 20-07-2009 to the respondent management regarding charter of demands of the employees of the respondent corporation and on 31-07-2009 the Confederation of Puducherry Government Employees' Association has submitted the letter to the Chief Secretary to Government with regard to the petitioner union's charter of demands and strike notice and negotiations were held between the Chairman-cum-Managing Director of the respondent corporation and with the petitioner union on 30-07-2009 wherein, the respondent management has agreed to clear all the proposals for revision of Pay Scales covered by the 5th Central Pay Commission recommendations and the Government of India and the Government of Puducherry which includes the posts of Line Inspector, Tester, Draughtsman (Civil)/(Mechanical)/Boiler Attendants which requires diploma in relevant field engineering as the minimum qualification, and Junior Chemist which requires qualification of graduate in science under the 5th Pay Commission in para No. 52.111 5th Central Pay Commission which call for the fitment of Pay Scale of ₹5,000-150-8,000 from 01-01-1996 or from the date on which the said workers have been appointed to the posts and that there was a conciliation proceedings between the management of the respondent establishment and the petitioner union and thereafter the meeting was held at the chamber of Chief Minister with regard to the benefits of the 5th Central Pay Commission to the employees of the respondent corporation and board meeting was held on 12-08-2009, 22-08-2009, 26-02-2010 and 30-06-2010 and a resolution was passed for ratification of pay anomalies as per Pay Commission Recommendations and that there was a meeting held on 13-12-1999 in the chamber of Chief Secretary, Chief Secretariat, Puducherry to consider the decision and approved the revision of scale of pay for the post of Junior Chemist and Boiler Attendant and G.O. has been passed by the Government of Puducherry on 06-10-1999 with regard to the fixation of salary for the employees of the Electricity Department, Puducherry and that the respondent corporation has given an appointment to one Dasarathan, the Secretary to Government (Retired) to review, amendment, alteration, modification of the

existing recruitment rules of the respondent corporation and review of the scale of pay of certain posts which have not been considered as per the 5th Pay Commission and Mr. Dasarathan has submitted the report recommending revision of scale of ₹ 5,000-₹ 8,000 for Boiler Attendants and Junior Chemist along with Tester -II and Line Inspector and board meeting of the respondent corporation conducted on 27-06-2014 to consider the decision of implementation of revision of Pay Scale of the following 12 number of cadres as per the recommendations of the 5th Pay Commission was under consideration for the long time and has recommended the revised Pay Scale at ₹ 5,000-150-₹8,000 as per 5th Pay Commission to Junior Chemist and Boiler Attendant.

16. The respondent management witness RW.1 has stated in his cross examination as follows :

“.....I am not aware that the Government of Pondicherry has obtained approval from Central Government for implementation of 5th CPC. Since there is no similar post of Boiler Attendant and Junior Chemist in any other Department of Government of Puducherry. We revised the salary on the basis of 5th CPC recommendations. The Board approved the Pay Scale revision of ₹5,000-8,000 for the post of Boiler Attendant and Junior Chemist paid with effect from the date of joining of the members of the petitioner union without arrears for the 12 categories has not been paid arrears out of 52 categories.”.

From the evidence of RW.1 it is clear that with regard to scale of pay of Boiler Attendant and Junior Chemist steps were taken by the management and the proposal for the same was discussed and as per the decision of the Board, the Corporation decided to revise the Pay Scales of the Boiler Attendants and Junior Chemists at ₹5,000 - 8,000 with prospective effect subject to the approval of the Government and the same was communicated on 06-08-2014 to the Superintendent Engineer of the respondent corporation and that the Finance Department of Government of Puducherry has not approved the proposal of the management corporation to revise the Pay Scale of Boiler Attendant and Junior Chemist as the Ministry of Home Affairs has not ratified the revision of pay done in the Electricity Department.

17. From the evidence of PW1 and the exhibits marked on the side of the petitioner it is clearly established by the petitioner union that the respondent management has accepted the above revision of the Pay

Scale of the Boiler Attendants and Junior Chemists at ₹ 5,000-150-8,000 and the Government of Puducherry alone has not accepted the proposal of the respondent management stating that the Ministry of Home Affairs has not ratified the revision of pay done in the Electricity Department and that therefore, it is clear that the Government of Puducherry alone has not approved the proposal of the respondent corporation to revise the Pay Scales of Boiler Attendants and Junior Chemists.

18. The main case of the petitioner union is that as per the G.O. issued by the Government of Puducherry in G.O.Ms.No.55/97/F3, dated 15-10-1997 and G. O. Ms. No. 66/F3/2008, dated 24-10-2008 the recommendations of the 5th Pay Commission was accepted by the Government of Puducherry which has got national application and denial of the same to the workmen locked up with the management in the above industrial dispute is discriminatory and violative of Article 14 and 16 of the constitution. On the other hand, it is stated by the respondent corporation that the respondent management has in good faith taken steps to revise the Pay Scales of the Boiler Attendants and Junior Chemists at ₹5,000-150-8,000 and the proposal for the same was discussed in the Board Meeting of the respondent corporation and the respondent corporation has also decided to revise the Pay Scales of the Boiler Attendants and Junior Chemists at ₹5,000-150-8,000 with prospective effect subject to the approval of the Government and the Finance Department, Government of Puducherry has disapproved the proposal of the respondent corporation to revise the Pay Scales of the Boiler Attendants and Junior Chemists at ₹ 5,000-150-8,000 as the Ministry of Home Affairs has not ratified the revision of pay done in the Electricity Department and that the decision of the Government is binding on the management of the respondent corporation.

19. On this aspect the Government orders, dated 15-10-1997 and 24-10-2008 which were exhibited as Ex.R2 and Ex.R3 respectively are carefully perused. The G.O., under Ex.R2 would reveal the fact that the Government of Puducherry has revised the Pay Scales for the common categories of staffs as per the recommendations of the Pay Commission and such scales have necessarily to be given with perspective effect and that the staffs working in an organization outside the Secretariat in the cadre of Assistants, Head Clerical Staffs, Superintendents level -2 and Upper Division Clerks, Draughtsman - II, Operation theatre Technicians, Radiographers, Technicians with either a degree in science or diploma in engineering were given pay revision at ₹5,000-150-8,000. The G.O. under

Ex.R3 would reveal the fact that the Government of Puducherry has ordered the implementation cell to examine the feasibility of extending the 6th Pay Commission Recommendations to the employees of the Organizations, Corporations, Societies, Boards, Local Bodies under the Government of Puducherry and after getting the report from the committee of the implementation cell and based on the decision of the Counsel of Ministers, the Lieutenant-Governor has approved the recommendations to the employees of the Organizations, Corporations, Societies, Boards, Local Bodies under the Government of Puducherry.

20. Further, it is learnt from the evidence and records that the recommendations of the 5th Pay Commission was accepted by the Government of Puducherry and recommended the scale of pay at ₹ 5,000-150-8,000 to technicians with either a degree in science or diploma in engineering and as per the recruitment rules the qualification prescribed for the post of Boiler Attendant is Diploma in Mechanical engineering with boiler competency certificate, class-I and II with 2 years of relevant experience and the qualification prescribed for the post of Junior Chemist is a Degree of B.Sc., (Chemistry) or equivalent with 2 years experience and that therefore, admittedly the qualifications prescribed for the posts of Boiler Attendant and Junior Chemist in the respondent management are on par with the qualification recommended by the Government of Puducherry under G.O. which was exhibited as Ex.R2.

21. Further, on this aspect, the learned Counsel appearing for the petitioner has relied upon the order passed by the Hon'ble High Court of Madras in W.P.No.20377/2009, wherein the Hon'ble High Court has observed that,

“.....When the matter is taken up for consideration learned Government Pleader (Pondicherry) submitted that considering the claim of similarly situated persons, the Department has submitted a proposal to the Government of Pondicherry including the cadre of Work Assistants as a feeder category to the post of Junior Engineers and also the subsequent revision of pay as has been prayed for in this writ petition.

Considering the aforesaid subsequent development, it is clear that the Department itself has clarified the position that the petitioners are entitled to the Pay Scale as has been claimed in this writ petition. Hence, the petitioners are entitled for the revised pay scale of ₹ 5,000-8,000 as was Draughtsman from the date of regularization *i.e.*, 23-10-2003. This exercise has to be completed within a period of six weeks from the date of receipt of a copy of this order. The Writ Petition stands allowed. Consequently, the connected M.P. is closed. No costs.”

From the above observation it is clear that the Draughtsman were given Pay Scale of ₹5,000-8,000 from the date of their regularization considering the fact the Department has submitted a proposal for pay revision to the cadre of Work Assistant. Likewise, in this case also the respondent corporation has passed a resolution and submitted a proposal to raise the Pay Scale of the Junior Chemists and Boiler Attendants. Further, the learned Counsel for the petitioner has also relied upon the order passed by the Hon'ble Delhi High Court in W.P(C).No.21357-59/2005, wherein the Hon'ble High Court has observed that,

“.....Based thereon, the Ministry of Finance gave concurrence to a request sent by the Department of Science and Technology to grant said two scales of pay to Junior Technical Assistants and Technical Assistants and passed an order to said effect on August 18, 2000, relevant part whereof reads as under:-

5th Pay Commission had recommended that for (i) a post having qualifications of B.Sc./Diploma in Engineering as essential eligibility condition at the entry level and in the pre-revised Pay Scale of ₹1,400-2,300, a higher replacement scale of pay of ₹5,000-8,000 may be allowed and (ii) a post having prescribed qualification of an Engineering Degree.....”

From the above observation it is clear that 5th Pay Commission has recommended the increase of Pay Scale to the employees who is having the qualification of B.Sc., Degree or Diploma in Engineering as essential eligibility and has raised the Pay Scale at ₹ 5,000-8,000. In this case also the qualification for Junior Chemist is Degree of B.Sc., (Chemistry) or equivalent with 2 years experience and qualification for Boiler Attendant is Diploma in Mechanical Engineering with boiler competency certificate, class-I and II with 2 years of relevant experience as per recruitment rules. Further, the learned Counsel for the petitioner has also relied upon the order passed by the Hon'ble Delhi High Court in W.P(C).No.4033/2001, wherein, the Hon'ble High Court has observed that,

“.....Therefore, it has been rightly held by the Tribunal that the Commission clearly made provisions for grant of the pay scale of ₹ 5,000-8,000 (pre-revised ₹1600-2660) to Diploma Holder Engineers across the Board. As the notification of the 5th Pay Commission came into being on 30-11-1997, the respondents shall be granted the Pay Scale of ₹ 5000-8000/- *w.e.f.* 1-1-1996 in pursuance of the Commission's recommendations in para 50.23 and 50.24.”

From the above observation it is clear that the Pay Scale of the Diploma Holder Engineers were revised at ₹5,000-8,000 with effect from 01-01-1996 in pursuance of the Commission's recommendations in para 50.23 and 50.24 and hence, if any, employees required a qualification of degree of B.Sc., or Diploma in Engineering must have to be paid revised Pay Scale of ₹ 5,000-150-8,000 as per 5th Pay Commission.

22. Furthermore, it is not disputed by the respondent management that the qualification prescribed for the post of Junior Chemist is a Degree of B.Sc.,(Chemistry) or equivalent with 2 years experience and the qualification prescribed for the post of Boiler Attendant is Diploma in Mechanical Engineering with boiler competency certificate, class-I and II with 2 years of relevant experience and that therefore, it can be inferred that the Boiler Attendants are the Engineering Diploma holders and the Junior Chemists are the degree holders in B.Sc (Chemistry). As per the recommendation of the 5th Pay Commission and as per the G.O., issued by the Government of Puducherry the technicians who are having either degree in science or diploma in engineering have to be given revised scale of pay at ₹ 5,000-150-8,000 and that the Boiler Attendants and Junior Chemists are also have to be given revision of scale of pay as per the 5th Pay Commission recommendations. Further, as the Government has already passed the G.O., giving pay scale of ₹ 5,000-150-8,000 to the technicians it cannot disapprove the proposal of the respondent corporation stating that the Ministry of Home Affairs has not approved the revision of Pay Scale of the workers in the Electricity Department and therefore, the second contention raised by the respondent corporation is also untenable and not sustainable and that therefore, it is to be held that the industrial dispute raised by the petitioner union against the respondent corporation over revision of Pay Scales for the post of Boiler Attendant and junior Chemist on par with 5th Central Pay Commission is justified and the petitioners are entitled for the revision of scales of pay at ₹5,000-150-8,000 from the date of raising this industrial dispute.

23. In the result, the petition is allowed and the industrial dispute raised by the petitioner union against the respondent corporation over revision of Pay Scales for the post of Boiler Attendant and Junior Chemist on par with 5th Central Pay Commission is justified and Award is passed directing the respondent corporation to revise the scale of pay of the Boiler Attendants and Junior Chemists of the respondent corporation at the Scale of Pay of ₹ 5,000-150-8,000 from the date of raising of this industrial dispute. No cost.

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

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

List of petitioner's witness:

PW.1 — 1-12-2015 — Lakshmi Narayanan

List of petitioner's exhibits:

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|----------------------|--|
| Ex.P1 —03-12-2011— | Copy of representation by the petitioner. |
| Ex.P2 — 16-02-2012 — | Copy of rejoinder by the petitioner. |
| Ex.P3 — 01-02-2012 — | Copy of reply by the respondent. |
| Ex.P4 — 15-03-2011 — | Copy of reply by the respondent. |
| Ex.P5 | Copy of recruitment rules for the post of Boiler Attendant. |
| Ex.P6 | Copy of recruitment rules for the post of Junior Chemist. |
| Ex.P7 | Copy of duties and responsibilities assigned to Boiler Attendant issued by the respondent corporation. |
| Ex.P8 | Copy of duties and responsibilities assigned to Junior Chemist issued by the respondent corporation. |
| Ex.P9 — 09-04-2012 — | Copy of failure report. |
| Ex.P10—10-05-2012 — | Copy of abstract of the reference issued <i>vide</i> G.O. Rt.No.77/AIL/Lab./J/2012. |
| Ex.P11 | Copy of board resolution No. 31.3 issued by the respondent corporation. |
| Ex.P12 | Copy of board resolution No. 28.4 issued by the respondent corporation. |
| Ex.P13— 15-10-1997 — | Copy of Gazette Notification No. 103 issued by Government of Puducherry. |
| Ex.P14—01-03-2012 — | Copy of reply by respondent. |

Ex.P15	Copy of Appointment Order issued to Mr. K. Lakshminarayanan, Junior Chemist by the respondent corporation.	Ex.P26—30-07-2009 —	Copy of minutes of meeting held with the Secretary (Power) by the respondent.
Ex.P16	Copy of Appointment Order issued to Mr. K. Manikandan, Junior Chemist by the respondent corporation.	Ex.P27—31-07-2009 —	Copy of union letter with Reference No.conf/83/2009 by petitioner.
Ex.P17	Copy of Appointment Order issued to Mr. K. Ashok Kumar, Junior Chemist by the respondent corporation.	Ex.P28—31-07-2009 — 04-08-2009	Copy of the conciliation proceedings before DCL-cum-Conciliation Officer, Puducherry.
Ex.P18	Copy of Appointment Order issued to Mr. R. Kumaravel, Junior Chemist by the respondent corporation.	Ex.P29—12-08-2009 —	Copy of minutes of meeting held in the chamber of Chief Minister by the respondent.
Ex.P19	Copy of Appointment Order issued to Mr. T. Lavanya, Junior Chemist by the respondent corporation.	Ex.P30—22-09-2009 —	Copy of board agenda and resolution No. 87.6 by the respondent.
Ex.P20	Copy of Appointment Order issued to Mr. K. Palvannan, Junior Chemist by the respondent corporation.	Ex.P31—26-02-2010 —	Copy of board agenda and resolution No. 89.3 by the respondent.
Ex.P21	Copy of Appointment Order issued to Mr. K. Vengadesan, Junior Chemist by the respondent corporation.	Ex.P32—30-06-2010 —	Copy of board agenda and resolution No. 90.3 by the respondent.
Ex.P22	Copy of Appointment Order issued to Mr. A. Kathiravan, Junior Chemist by the respondent corporation.	Ex.P33—05-07-2010 —	Copy of letter of Industrial Development (power) Department with reference No. 881/ID(P)/D/10/P5.
Ex.P22	Copy of Appointment Order issued to Mr. A. Kathiravan, Junior Chemist by the respondent corporation.	Ex.P34—12-01-2011 —	Copy of RTI reply by respondent.
Ex.P23	Copy of Appointment Order issued to Mr. S. Srinivasan, Junior Chemist by the respondent corporation.	Ex.P35—25-04-2012 —	Copy of RTI reply by respondent.
Ex.P24	Copy of board agenda and resolution No.75.10 by the respondent corporation.	Ex.P36—23-05-2012 —	Copy of RTI reply by respondent.
Ex.P25—16-07-2009 — 20-07-2009	Copy of form-L of the unions along with the charter of demands by petitioner.	Ex.P37—13-12-1999 —	Copy of board agenda and resolution No. 39.6 by respondent.
		Ex.P38—06-10-1999 —	Copy of G.O. Ms. No. 22 of Industrial Development (power) Department.
		Ex.P39—08-03-1999 —	Copy of board agenda and resolution No. 34.6 by respondent.
		Ex.P40	Copy of letter of appointment of consultant under the chairmanship of Thiru H. Dasarathan, Under Secretary to Government (Rtd.,) by respondent.

Ex.P41	Copy of relevant page No. 16 and 17 of the report of consultant under the chairmanship of Thiru H. Dasarathan, Under Secretary to Government (Rtd.,) by respondent.	Ex.R4— 08-12-1997 —	Copy of the Board resolution No. 28.4.
Ex.P42—27-06-2014 —	Copy of board agenda and resolution No. 110.15 by respondent.	Ex.R5— 19-11-2008 —	Copy of the Board resolution No. 83.1.
<i>List of respondent's witness:</i>		Ex.R6 — 26-11-2012 —	Copy of the office Memorandum No.A.12017/10/2012/DPAR/CCD(1) of Chief Secretary, Government of Puducherry.
RW.1— 28-08-2017 —	R. Santhosh	Ex.R7— 06-08-2014 —	Copy of the board resolution No.110.15 communicated through letter No.1177/PPCL/TRP/SE/2014.
<i>List of respondent's exhibits:</i>		Ex.R8— 03-05-2017 —	Copy of the office Memorandum No.55011/07/2016/PPCL/P5 of the Department of Industrial Development (Power) Department, Puducherry.
Ex.R1— 18-09-1998 —	Copy of the board resolution No. 31.3 regarding fixing of scales of pay for the posts of Junior Chemists and Boiler Attendants.	Ex.R9	Copy of extract of the minutes of the 129th meeting of the Board of Directors of the corporation.
Ex.R2— 15-10-1997 —	Copy of the G.O. MS. 55/97/F3 issued by the Finance Department, Government of Puducherry.		
Ex.R3— 24-10-2008 —	Copy of G.O. MS. 66/F3/2008 issued by the Finance Department, Government of Puducherry.		

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

**GOVERNMENT OF PUDUCHERRY
CHIEF SECRETARIAT (HEALTH)**

(G.O. Ms. No. 41, Puducherry, dated 7th September 2018)

ORDER

The Government of India, Ministry of Health and Family Welfare, New Delhi has introduced a Health Care Scheme namely, "Ayushman Bharat-National Health Protection Scheme" for nearly 10 crore poor and vulnerable families all over India with a premium coverage of ₹ 5.00 lakh per family per annum for secondary and tertiary care in Government and Private empanelled hospitals under this Scheme.

2. The number of beneficiaries is nearly 1.03 lakh family in the entire Union territory of Puducherry. The Scheme has been approved in-principle by the Council of Ministers and the Hon'ble Lieutenant-Governor, Puducherry. Accordingly, a Memorandum of Understanding (MoU) has been executed by the Government of Puducherry with the National Health Agency, Ministry of Health and Family Welfare, New Delhi for implementing the Scheme through Insurance Mode.

3. As per the MoU and Guidelines of the National Health Agency, the Union territory of Puducherry have to constitute a Governing Council viz., State Health Agency for implementation of the Scheme and deliver the key functions such as data sharing, verification/validation of families and members, awareness generation, monitoring, etc. The Chief Executive Officer (CEO) will look after the day-to-day operations of the State Health Agency and implementation of the Scheme in the State with his supportive team and the same is counselled and overseen by the Governing Council.