



புதுச்சேரி மாநில அரசிதழ்

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GOVERNMENT OF PUDUCHERRY
LABOUR DEPARTMENT

(G.O. Rt. No. 93/AIL/Lab./T/2019,
Puducherry, dated 8th July 2019)

NOTIFICATION

Whereas, an Award in C.P.No. 09/2012, dated 06-03-2019 of the Industrial Tribunal-cum- Labour Court, Puducherry in respect of the industrial dispute between the management of M/s. Regency Ceramics Limited, Hyderabad and Thiru K.V.V. Sathyanarayanamurthy, Andhra Pradesh, over payment of back wages has been received;

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

(By order)

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

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

Present : Thiru C. KUMAR SARAVANAN, M.A., M.L.,
Presiding Officer (FAC).

Wednesday, the 06th day of March 2019

C.P. No. 09/2019

K.V.V. Sathyanarayanamurthy,
S/o. Vadapalli,
3-124, Main Road,
Injaram 533 464,
East Godavari,
Andhra Pradesh. . . Petitioner

Versus

The Managing Director,
M/S. Regency Ceramics Limited
No. 5-8-356, N.N. House,
Chirag-Ali-Lane,
Hyderabad-500 001. . . Respondent

This industrial dispute coming on 06-02-2019 before me for final hearing in the presence of Thiru R.S. Zivanandam, Advocate for the petitioner and Mr. L. Sathish for the respondent, upon hearing the petitioner and perusing the case records, this Court passed the following:

AWARD

This Industrial Dispute arises out of the reference made by the Government of Puducherry *vide* G.O. Rt. No. 186/AIL/Lab./J/ 2012, dated 25-10-2012 of the Labour Department, Puducherry. The industrial dispute was raised by Thiru K.V.V. Sathyanarayanamurthy against the management of M/s. Regency Ceramics Limited, Yanam before the Assistant Inspector of Labour-cum-Conciliation Officer, Yanam, over non-employment. The Conciliation Officer, Yanam after conducting conciliation meeting submitted a failure to the Secretary (Labour), Puducherry. After examining the failure report received from the Conciliation Officer, Yanam the matter was referred to the Labour Court, Puducherry *vide* G.O. Rt. No. 1235/1994/Lab./, dated 05-12-1994 of the Labour Department, Puducherry. Whereas, the Labour Court passed an Award in ID. No. 28/1994, dated 09-07-1998 in favour of the petitioner and the same was published in Puducherry Gazette No. 16, dated 20-04-1999 *vide* G.O. No. 128/1998/Lab./L, dated 28-12-1998 of Labour Department, Puducherry. The petitioner has stated that he has sent a letter, dated 23-12-2010, to the management, but, no response has been received from the management. And whereas, an application in Form K-1 addressed to the Secretary (Labour) was received from Thiru K.V.V. Sathyanarayanamurthy, Yanam for the recovery of money from the management of M/s. Regency Ceramics Limited, Yanam, as per the Judgment in I.D. 28.1994, dated 09-07-1998. Whereas, the petitioner has requested the Secretary (Labour), Puducherry to interfere in the matter and take appropriate action against the management under section 33 C (2) of the Industrial Disputes Act, 1947, for the recovery of the money due to him. A notice *vide* No. 9057/AIL/Lab./J/ 2011, dated 22-11-2011 was sent to the management of M/s. Regency Ceramics Limited, Yanam through registered post to pay the dues to the workman as per the award passed by the Labour Court, Puducherry and the management failed to apply the same to the workman. And the management instead of paying the amount due to the petitioner has filed their reply *vide* No. Y: 03: LAB:PUD:2011-12/278/DT 02-12-2011 wherein, they have stated that the petitioner is eligible only for ₹ 3,14,400 towards back wages and further, they have preferred an appeal towards 25% of back wages in the High Court of Chennai and the same is pending. The petitioner has given a letter, dated 09-03-2012

and detailed all the allegations made by the petitioner and prayed for early implementation of the Judgment for payment of back wages for ₹ 12,33,253. And now, therefore, by virtue of the authority delegated *vide* G.O. Ms. No. 20/91/Lab./dated 23-05-1991 of the Labour Department, Puducherry to exercise the powers conferred by sub-section (2) of the section 33-C of the Industrial Disputes Act, 1947, (Central Act XIV of 1947), it is hereby directed by the Secretary to Government (Labour) that the application in From-K-1, received from the petitioner be referred to the Labour Court, Puducherry for computation of amount of money towards 25% of back wages. The Labour Court, Puducherry shall submit report within 3 months from the date of issue of this reference as stipulated under sub section (2) of section 33 C of the Industrial Disputes Act, 1947.

2. The brief averments of the claim statement filed by the petitioner are as follows:

The petitioner humbly submits before this Hon'ble Court that the petitioner is an employee of this respondent factory by name M/s. Regency Ceramics Limited, Yanam. The petitioner raised the dispute, since the respondent holding industry at Yanam, one of the regions Union territory of Puducherry. The C.P. against the respondent raised before the Labour Commissioner, Government of Puducherry. The conciliation was affected and no settlement was arrived. Therefore, the Government of Puducherry referred the matter to this Hon'ble Court for an Award on the following reference No. 186/AIL/Lab./J/2012, dated 25-10-2012.

Reference:

(1) Whether the petitioner Thiru K.V.V. Sathyanarayanamurthy is entitled for the payment of back wages for ₹ 12,33,253 (Rupees twelve lakhs thirty three thousand two hundred and fifty three only).

(2) If, not to what relief the petitioner is entitled?

(3) To what other reliefs?

The petitioner is an employee of the respondent company as an operator. The respondent with arbitrary power and unfair labour practice against the workers kept this petitioner subjected to severe torture be several means of unfair labour practices and victimization. Hence, this petitioner is constrained to file the C.P. seeking for justice.

The petitioner humbly submits that this Hon'ble Labour Court duly passed an Award in I.D. No. 28/94, dated 09-07-1998 in favour of petitioner and the same was published in Government Gazette No. 16, dated

20-04-1999 directing the respondent's management to reinstate the petitioner 25% of back wages for wrongful dismiss Gazette Notification.

The petitioner further submits that the respondent voluntarily and wilfully refused to obey the orders of this Hon'ble Court and the respondent's management preferred W.P. 92181/99 before the Hon'ble Court of Judicature, Madras up on the orders of this Hon'ble Court passed its orders in I.D. 28/94. The Hon'ble High Court also duly dismissed the W.P. as per the Judgement, dated 01-07-2008.

The petitioner further submits that upon which this petitioner reinstated into service on 24-11-2010 and thereafter, the petitioner submitted his claim of back wage dues on 23-12-2010 to the management requesting the management to pay ₹ 12,33,253 mentioning all particulars to which the management did not choose to give any reply. Thereafter, inspite of repeated requests, dated 07-03-2011, 15-04-2011, 29-07-2011 by the petitioner to the management to pay the above back wages amount of ₹ 12,33,252, the management Voluntarily and wilfully dragged to pay the above amount and other hand gave evasive replies, dated 23-05-2011, 25-05-2011 and 24-06-2011.

The petitioner further submits that in those circumstances the petitioner submitted an application, dated 02-11-2011 before the Secretary to Government (Labour), Government of Puducherry and Labour Commissioner, Government of Puducherry.

The petitioner further submits that in furtherance of the evil motions of the management, the management with fraudulent, dishonest intention to file a false case upon the petitioner and thereby threatening and coercions this petitioner to obey the unlawful dictums of the management, and thereby to cause wrong full loss to the petitioner, the management got manage the Yanam Police, misled the Police got filed false case in F.I.R. No. 139/2011 and thereby got remanded to judicial custody from 09-09-2011 to 15-09-2011. In continuation of management's unfair labour practices and victimization, this petitioner humbly submits that this petitioner is innocent and this petitioner has not committed any offence much less the alleged the above offence. The said is pending as C.C. 16/2013 before Hon'ble Judicial Magistrate Court at Yanam. The petitioner further submits that thereafter the respondent appeared before the Commissioner of Labour, Puducherry and submitted a reply, dated 02-12-2011 with all false, baseless, concocted and misleading allegations in continuation of management's unfair labour practices and victimization. Thereupon, the petitioner submits a rejoinder, dated 09-03-2012 with all true and correct facts. It is duly admitted by the management that the

petitioner was paid two months salary after his reinstatement, by paying wages of ₹ 20,969 (Rupees twenty thousand nine hundred and sixty nine only) for the months of January and February 2011. So, in those circumstances, the Labour Department referred the same to this Hon'ble Court for settling the dispute.

Particulars of the petitioner's claim statement for payment of back wages of ₹ 12,33,253 (Rupees twelve lakhs thirty three thousand two hundred and fifty three only) from 01-07-1994 to the Hon'ble Court's award, 09-07-1998.

Sl. No.	Year	Existing Wages/ Month	Particulars	Wages Due/ Annum
(1)	(2)	(3)	(4)	(5)
1	1994	₹ 1,700	Unsettled wages for 4 days (July 1-4)	₹ 261
2	1994	1,700	Wages from July 5-31; 27 days @ 25%	441
3	1994	1,700	Wages from August-December (5 months) @ 25%	2,125
4	1995-1996	2,450	12 months @ 25%	7,350
5	1996-1997	3,350	12 months @ 25%	10,050
6	1997-1998	3,350	12 months @ 25%	10,050
7	1998-1999	3,800	Wages for January-June & 8 days in July @ 25%	5,992
				36,269

This Statement shows the particulars after the order of the Hon'ble Labour Court to the date of Joining:

Sl. No.	Year	Wages/ per Month	Particulars	Wages/ annum	Wages paid/ Annum as per Hon'ble HC orders	Wages to be paid/ Annum
(1)	(2)	(3)	(4)	(5)	(6)	(7)
1	1998	₹ 3,800	July (9-31) 26 days August-December (5 months)	₹ 22,796	₹ 8,160=	₹ 14,636
2	1999-2000	4,600	-Do-	55,200	16,320=	38,880
3	2000-2001	5,300	-Do-	63,600	16,320=	472,580
4	2001-2002	5,900	-Do-	70,800	16,320=	54,480
5	2002-2003	7,330	-Do-	70,800	16,320=	54,480
6	2003-2004	8,450	-Do-	87,960	16,320=	71,640
7	2004-2005	9,780	-Do-	1,01,400	16,320=	85,080
8	2005-2006	9,780	-Do-	1,17,360	16,320=	1,01,040
9	2006-2007	9,780	-Do-	1,17,360	16,320=	1,01,040
10	2007-2008	9,780	-Do-	1,17,360	16,320=	1,01,040
11	2008-2009	9,780	-Do-	1,53,360	16,320=	1,37,040
12	2009-2010	14,280	-Do-	1,71,360	16,320=	1,55,040
13	2010-2011	20,969	-Do-	25,168	16,320=	2,35,308
					Total :	1,19,86,984

Grand Total ₹ 36,269+11,96,984= ₹ 12,33,253 (Rupees twelve lakhs thirty three thousand two hundred and fifty three only).

The petitioner therefore, prays this Hon'ble Court be pleased to pass all just and necessary orders for directing the respondent's management to pay the stipulated back wages of ₹ 12,33,253 with accrued interest @ 24% p.a. with cost to this petitioner with a stipulated time and pass such other further orders which are deemed to be just and necessary in circumstances of the case and in the interest of justice.

The counter statement filed by the respondent are as follows:

The respondent does not admit any of the averments/allegations contained in the petition save and except those that are specifically admitted hereunder and the petitioner is put to strict proof of such of those allegations which are not specifically admitted herein by the respondent.

1. The respondent states that the present claim petition is liable to be dismissed with exemplary cost as the same ought not to have been numbered as claim petition at all. It is submitted that Government of Puducherry has made reference to the Hon'ble Court *vide* Reference No. 183/AIL/Lab./I/2012, dated 25-10-2012, which is in the form of the adjudication of industrial dispute under section 10 of Industrial Disputes Act. The reference of Government, is clearly to adjudicate the entitlement of petitioner for his claim of ₹ 12,33,253 made by him in conciliation proceedings. Therefore, what has been referred by Government of Puducherry to this Hon'ble Court under reference is only an industrial dispute under second Schedule of the Industrial Disputes Act and it is not a claim petition as is numbered by this Hon'ble Court. In fact, a claim petition need not/cannot be referred by Government as it is for the parties to approach this Court directly. The petitioner himself filed claim petition in CP No. 2/2012 making similar claim for a different period which is pending adjudication in this Court. Under these numbered and adjudicated only as a industrial dispute. Hence, the claim petition is liable to be rejected in limine.

2. The respondent further states that the petitioner has already filed a similar claim petition in CP No. 02/2012 on the file of this Hon'ble Court claiming similar reliefs from November 2010 to September 2011 and other allowances. Thus, the reliefs claimed in present claim petition as well as in CP No. 2/2012 are identical except for the different in period. There cannot be two claim petitions seeking similar reliefs for different in period. The petitioner must consolidate his claims only in one

claim petition. Since trial in CP2/2012 has already commenced, the petitioner must ideally withdraw the present CP and contest CP 2/2012 on its merits, wherein, he is free to seek the reliefs for the period covered under the present CP also by making suitable amendments to this claim petition.

3. Without prejudice to the aforementioned contention, the respondent states that the entire claim of the petitioner is based on erroneous and deliberately mischievous interpretation of the Award in ID (L) 28/1994 passed by this Hon'ble Court on 09-07-1998. The respondent submits that the petitioner was engaged as Assistant Operator in the respondent company at Yanam and he was dismissed from the service from 05-07-19954 for his proven misconduct. The petitioner approached the Labour Court challenging his dismissal in ID (L) 28/1994 where in the Hon'ble Labour Court directed reinstatement of petitioner with 25% of back wages.

4. The Award of the Labour Court, dated 09-07-1998 is specific as it states "The respondent is directed to reinstate in the same employment as operator of LPG which he was doing at the time of passing dismissal order and pay his 25 percent of back wages for wrongfull dismissal. The period from the date of dismissal to the date of reinstatement must be treated as on service only for the purpose of retirement and retrenchment for computing terminal benefits".

5. The said Award was challenged by respondent before Hon'ble High Court in W.P. No. 9128/1999. During pendency of the said writ petition, the petitioner was given full monthly wages under section 17(B) of Industrial Disputes Act as per the direction of the Hon'ble High Court with effect from 01-07-1999 to 11-07-2008.

6. The respondent further states that the W.P. No. 9128/1999 was dismissed by Hon'ble High Court *vide* its order, dated 11-07-2008 as against which the respondent has preferred a Writ Appeal in W.A. No. 302/2009 which is still pending adjudication. Therefore, the entitlement of the petitioner to make any claims based on the Award in ID (L) 28/1994 is entirely depending on the final outcome of the Writ Appeal No. 302/2009 and hence, the present claim petition cannot be adjudicated on merits till the disposal of the Writ Appeal No. 302/2009.

7. The respondent further submit that therefore, the claim of the petitioner for 25% back wages from the year 1998-1999 to 2008-2009 must be out-rightly rejected as he has received full wages during that period in compliance of section 17(B) of Industrial Disputes Act, which is also recorded in the order of Hon'ble High Court in W.P. No. 9128/1999, dated 11-07-2008.

8. The respondent further submits that as regards the other claim of unsettled wages from 1994, the last drawn wages of the petitioner was only ₹ 5,000. Hence, the petitioner can make a claim only 25% of last drawn wages of ₹ 5,000. The respondent states that though the High Court dismissed the Writ Petition of the respondent on 11-07-2008, the petitioner did not turn up for employment for the next two years. He gave his representations for back wages only on 23/12/2010 making a claim of ₹ 12,33,253. However, it transpires that the petitioner was in touch with one A.V.V. Kumar, who joined the services of the respondent as Deputy General Manager (HR) from 03-08-2010. It appears that the petitioner and the said A.V.V. Kumar were having negotiations on the ostensible ground of setting the differences in a comprehensive manner and the said A.V.V. Kumar (as is claimed by petitioner, who seems to be in custody of some documents purportedly signed by A.V.V. Kumar) has given letters and correspondences to the petitioner fixing a fictitious rate of wages to the petitioner at a rate far higher than the rate of wages applicable to similar category workmen working in the Plant in November 2010.

9. The said A.V.V. Kumar made the respondent believe that a sum of ₹ 3,14,400 was payable to the petitioner colluded and materially altered the same Cheque No. 3336555 for ₹ 24,66,656 and the date was altered as 09-04-2011. Fortunately, before the cheque could be encashed, it came to the knowledge of the respondent, who prevented the Bank from making the payment against the said cheque. In other words, both the petitioner and A.V.V. Kumar had conspired to play a fraud on the respondent on 29-07-2011, a Police complaint was lodged and the petitioner was even arrested. The said A.V.V. Kumar is missing since 30-06-2011. When once the fraud came to light on 30-09-2011, the petitioner was placed under suspension pending enquiry. The petitioner was paid suspension allowances and in a free and fair enquiry, the heinous misconduct of the petitioner was proved. The petitioner was given a 2nd show cause notice, dated 31-07-2012 along with enquiry report, dated 26-12-2011.

10. The respondent submits that there was a labour unrest in the factory of the respondent from December 2011. In January 2012 also, there was chaos and confusion. Following the death of one M. Murali Mohan in the Police custody on 27-01-2012, the workmen resorted to violence on 27-01-2012 in which the President (Operations) of the respondent, Mr. Chandrasekhar was butchered by the striking workmen and he succumbed to the injuries. Following the violent incident, a lock out was declared on 31-01-2012. In view of the lock out on 31-01-2012, there is no question of payment of wages to the petitioner from 31-01-2012. The lock out by the respondent has also been declared as *bona fide* by Hon'ble High Court in W.P. No. 12613/2013, dated 15-07-2015.

11. The respondent submits that the reinstatement of the petitioner on 24-11-2010 was only on paper. Even accordingly to the petitioner, he was asked to be on leave with pay, even though he was reinstated on 24-11-2010. In other words, he had not even worked between 24-11-2010 and 30-09-2011 when he was placed under suspension. Hence, no wage is payable.

12. The respondent repudiates its liability for the amounts claimed in the petition. The petitioner is put to strict proof if, his entitlement as well as the correctness of the amount claimed by him.

13. The petitioner is put to strict proof of the averments made in Para-1 on Page-2 of the claim petition.

14. The respondent further denies its liability for each of the amounts mentioned in the claim petition.

15. The respondent further submit that in the event of the Award of this Hon'ble Court, dated 09-07-1998 in ID No. 28/1994 is set aside or quashed in the Writ Appeal preferred by respondent in Writ Appeal 302/2009, then all these claims will automatically fall to the ground. It is but appropriate that the claim petition is taken up for hearing after the disposal of the Writ Appeal.

16. The petitioner himself if has filed another claim petition in CP No. 2/2012 for substantially similar reliefs. Therefore, he cannot maintain the present application which is vexatious and cynical, and therefore, the same is liable to be dismissed with exemplary cost.

17. The respondent reserves its right to file any additional counter statement.

18. There are no merits in the application and it lacks *bona fide* and is liable to be dismissed with cost.

Hence, it is prayed that this Hon'ble Court may be pleased to dismiss the present application with exemplary costs in the interests of justice.

5. *The point for consideration is:*

“Whether the petitioner is entitled for the payment of back wages for ₹ 12,33,253 with accrued interest @ 24% per annum with cost to the petitioner with stipulated time”?

6. In the course of enquiry on both sides no evidence has been let in and on the side of the petitioner, the petitioner himself was examined as PW.1 and documents Exs.P1 to Ex.P11 were marked on the petitioner side. And on the side of the respondent RW.1 examined and Exs.R1 to Ex.R13 were marked consent. Heard both sides arguments and case records perused.

Point:

7. It is the case of the petitioner that the respondent has to pay the back wages for a sum of ₹ 12,33,353 and directing the respondent with stipulated time with accrued interest at 24 % per annum with cost of the petitioner since the petitioner is an employee as an operator in the respondent's management factory by name M/s. Regency Ceramics Limited, Yanam. Further, it is contended that the management acted arbitrary and unfair labour practice against the workers subject to severe torture and vevil motions of the management , the management with fraudulent practice dishonest intention to file false case upon the petitioner and thereby threatening and coercions to obey the unlawful dictums of the management and committing to cause wrongful loss giant to the management and got manage the Yanam Police mislead the Police got false case in FIR N. 139/2011 and remanded the petitioner for judicial custody from 09-09-2011 to 15-09-2011 and the criminal case; in No. C.C.No. 16/2013 is pending before the Judicial Magistrate Court, Yanam. Further, it is contended that inspite repeated request of the petitioner, the respondent management wilfully and voluntarily dragged to pay the wages for a sum of ₹ 12,33,353 and they gave erasive reply and the matter referred to Labour Conciliation Officer and it was ended vain and the Labour Department referred the issue to the Labour Court for adjudication.

8. *Per contra*, the respondent management denied the all averments made in the claim petition filed by the petitioner. Further, it is contended by the respondent that the management was lock out the factory on 31-01-2012 and the petitioner was under suspension

pending enquiry and the petitioner was given show cause notice, dated 31-07-2012 along with enquiry report, dated 26-12-2012. The respondent factory was declared lock out the company due to following death of one Mr. M. Murali Mohan in the Police custody and the workman restored to violence on 21-01-2012 by striking the workman and the respondent Mr. Chandrasekar was butchered by strike and he succumbed to the injuries. Due to lock out it has been declared as *bona fide* by the Hon'ble High Court in W.P.No. 12613/2013 is pending and Award passed by the Labour Court in I.D. No. 28/1994, is set aside and Writ Appeal preferred by the respondent in Writ Appeal No. 302/2009 then these all claims would automatically fall on the ground .There is no liability on the respondent as mentioned in the claim petition, since the reinstatement of the petitioner on 24-11-2010 is on only in paper eventhough he was asked to leave with pay and he was reinstated on 24-11-2010 he had not even worked between 24-11-2011 and 30-09-2011 when he was under suspension and there is no question of payment of wages. According to the respondent that the petitioner is not entitled for any claim and substantially there is no relief claimed as alleged by the petitioner, since once the fraud committed and came in to the light on 30-09-2011 and the heinous misconduct of the petitioner is proved and there is no liability to pay any amount to the petitioner towards back wages.

The pleadings of both the parties, the evidence let in by either sides and exhibits marked on the side of the petitioner are carefully considered. In order to prove the case, the petitioner has examined himself as PW.1 and he has stated in his evidence that he has joined in the respondent establishment as Operator and he was under suspension by the respondent. Further, PW.1 stated that the Labour Court has passed Award in I.D.No. 28/1994, dated 09-07-1994 in favour of the petitioner and the same was published in the Official Gazette, dated 20-04-1999 directed the management to reinstatement of the petitioner in same employment as an Operator and pay to him at 25% of the back wages for wrongful dismiss Gazette Notification. Ex.P1 is the Official Gazette, dated 20-04-1999. Further, PW.1 stated that One Mr. M. Chandrasekar was then the President of the registered trade union by name Regency Ceramics Workers Union and he was suspended by the management with a view to suppress the workers rights and also victimize him and ultimately terminated from service and the matter was referred by the Government to the Labour Court *vide* I.D.No. 28/1994 in which the Labour Court has passed an Award on 09-07-1998 in favour of the petitioner with a direction to the respondent to reinstate him with 25% back wages

against which the management filed a Writ Petition before the Hon'ble High Court in W.P.No. 9128/1999 wherein, the Hon'ble High Court passed an order on 11-07-2008 up holding the Award passed by the Labour Court. It is admitted that the petitioner being the President of the Workers Union and he was prosecuting in I.D. 1/1994 on behalf of the other workers. Ex.P2 is the Order in W.P.No. 9128/1999 and the same was informed to the petitioner by his Counsel through Award copy on 10-11-2010 and after that he moved an application on 24-11-2010 for his reinstatement and joined duty on 25-11-2010. Ex.P3 is the Joining report of the petitioner dated 24-11-2010. Further, PW.1 deposed that he was put in on duty without allowing to do work and hence, he submitted one claim regarding back wages for the period on 23-12-2010 and it is evidence from Ex.P4. PW.1 further, deposed that he is entitled for back wages for his dismissal period order, dated 05-07-1994 and the details of calculations due are made in the Ex.P4. The petitioner PW.1 further, stated in his evidence that for the fixation of present salary and after consideration of the same, the petitioner was paid salary for the month of January 2011 and February 2011 as ₹ 20,969 per month on 08-03-2011. The copy of the wages receipts for the month of January and February 2011 is as Ex.P5, dated 08-03-2011. PW.1 stated that inspite repeated demands made by the petitioner for the due claim and on 07-03-2011, the petitioner has given request to the management for his claim and it is evidenced from Ex.P6. Under Ex.P7 the respondent management had given reply, dated 23-05-2011, to the petitioner. It is stated that the petitioner was submitted application before the Secretary to Government (Labour) Government of Puducherry is Ex.P8 and Labour Commissioner, Government of Puducherry, dated 02-11-2011 under Ex.P9. Ex.P10 is the copy of the reply of management to the petitioner with Cheque for ₹ 3,14,400 in Number 333655 of State Bank of India, Yanam as back wages from the date of dismissal to the date of commencement of wages under section 17B and full wages from commencement from section 17B to 31-12-2010 and stated that the petitioner paid a sum of ₹ 4,760 per month for the month of January and February 2011 on 02-03-2011 by cash. The copy of Notification of Labour Department, dated 25-10-2012 under Ex.P11. PW.1 deposed that he was paid for a sum of ₹ 20,969 for the months of January 2011 and February 2011 and he is entitled arrears of back wages from 01-07-1994 as per order passed by the Labour Court *i.e.*, 09-07-1998 and due wages as ₹ 36,269 and the arrears of back wages from 1998 to 2010-2011 for a sum of ₹ 11,96,984 and the C.P.272012 was filed for the arrears of wages

from the joining date and from the 2nd time of his suspension order made by the respondent management, dated 13-09-2011 and even now the petitioner was under suspension.

8. On the other hand in order to prove the case of the respondent, on behalf of the respondent management, the Marketing Officer of the respondent Mr. Arun Prakash was examined as RW.1. He has deposed that the respondent is having a factory in Yanam, Puducherry where it used to manufacture ceramic tiles and in the year 1986 the petitioner was appointed as an Assistant Operator and that the petitioner was proceed *per contra*, and Ex.R1 to Ex.R13 are marked. The industrial disputes has been arised by the petitioner for his arrears of back wages from 01-07-1994 for his 1st suspension period and the petitioner cannot claim similar reliefs as alleged in C.P. 272012 for the period from November 2010 to September 2011 and other allowances. RW.1 stated that the petitioner's claim is liable to be dismissed because, the Court has decides the issue and industrial dispute under section 10 of the Industrial Dispute Act, and the reference by Government KS clearly to adjudicate the entitlement of the petitioner for his claim made for ₹ 12,33,353 in conciliation proceedings and therefore, what has been referred by the Government of Puducherry under reference only an industrial dispute under the Schedule of Industrial Disputes Act, and it is not a claim petition directly. Further, RW.1 deposed that the Labour Court has passed an Award in I.D. 28/1994, dated 09-07-1998 and the petitioner was an worker as LPG Operator in the management company and the petitioner was suspended from the service from 05-07-1994 for his misconduct and he had approached the Labour Court challenging the dismissal order in I.D.No. 28/1994 and the Labour Court has awarded and directed reinstatement of the petitioner with 25% of back wages to the petitioner. It is and admitted by the respondent/RW.1 in his evidence that the above Award passed in I.D. 28 of 1994 of Labour Court, dated 09-07-1998, the management was challenged the Award before the Hon'blo High Court of Madras in W.P.No. 9128/1999 and the WP was dismissed by Hon'ble High Court in Order, dated 11-07-2008 and further, the management has preferred an appeal in W.P.No. 302/2009 as against the order passed by the High Court and the W.P.No. 302/2009 is pending for adjudication. It is evidenced from Ex.R1, *i.e.*, the copy of the order in W.P.No. 302/2009. Ex.R2 is the Authorization letter given to Mr.Arun Prakash to represent the case by Chairman and Managing Director for M/s. Regency Ceramics Limited, Yanam, dated 08-11-2017. Further, it is stated by RW.1 that during the pendency of the W.P.No. 9128/

1999, the petitioner was given full monthly wages under section 17B of the Industrial Dispute Act, 1947, as per the direction of the Hon'ble High Court of Madras for the period from 01-07-1999 to 11-07-2008 and it is evidenced from Ex.R3, *i.e.*, the copy of cheque for ₹ 3,14,400, dated 12-01-2011 bearing No. 333655, as full and final settlement of the petitioner's all claims. Further, the petitioner and then Deputy General Manager (HR.) of M/s. Regency Ceramics Limited, Yanam, Mr. A.V.V. Kumar are colluded and they have materially altered the same cheque No. 333655 for ₹ 24,66,506 and the cheque, dated 09-04-2011, both the petitioner and Mr. A.V.V. Kumar, had conspired to play fraud and the management company had lodged a Police complaint against the petitioner and the said Mr. A.V.V. Kumar on 29-07-2011 and they are arrested and remanded to judicial custody and the petitioner was under suspension pending enquiry. The above altered cheque for ₹ 24,66,506 is as Ex.R4, dated 09-04-2011. Ex.R5 is the copy of Police complaint, dated 29-07-2011. And Ex.R6 is the copy of Final Form report under sec. 173 of CRPC in FIR No. 139/2011, dated 17-08-2011. That on 04-10-2011, the respondent management has sent a letter to the petitioner along with a cheque for ₹ 16,211 and they have calculated the monthly salary for ₹ 5,385 as per the order of the Labour Court, Puducherry, from the date of reinstatement till the date of suspension is ₹ 44,449 out of which an amount of ₹ 28,238 has already been paid to the petitioner and enclosing a Demand Draft for ₹ 16,211 *vide* No. 002282 towards full and final settlement of salary till the date of the petitioner's suspension and it is evidenced from Ex.R7. Ex.P8 is the xerox copy of the letter given by the respondent to the petitioner along with enquiry report, dated 26-12-2011. Again the respondent has issued a show cause notice to the petitioner, dated 04-11-2013 by stating that the Enquiry Officer in his findings, confirmed the charges levelled against the petitioner are proved and the management proposes for dismissal of the petitioner from his service and it is produced under Ex.P9. Further, the petitioner has issued a letter to the respondent management, dated 16-11-2013, for the reference of latter, dated 04-11-2013 under Ex.P9, by mentioning the reason for proving his claim and stated that the Enquiry Officer voluntarily and wilfully violated the labour laws and procedures and he proceeded with illegal enquiry and this facts are contained under Ex.P10. The petitioner has raised the dispute before the Labour Department, Government of Puducherry and referred for adjudication to the Industrial Tribunal under orders under section 10(3) of the Industrial Disputes Act, 1947 and issued G.O. Rt. No. 50/AIL/Lab./J/2016,

dated 10-04-2013 Notification and it is evidenced from Ex.P11. The respondent has produced the order passed in W.P.No. 12613/2013 and M.P.No. 1 to 3 of 2013 on the file of the Hon'ble High Court of Madras, dated 15-07-2015 and the same is as Ex.P12. On perusal of the above Ex.P12, it is clear that the G.O. Rt. No. 50/AIL/Lab./J/2016, dated 10-04-2013 Notification is quashed. Ex.P13 is the Order in W.P.9128/2009 of Hon'ble High Court of Madras, dated 11-07-2008 and the Writ Petition filed by the Vice Chairman and Managing Director, M/s. Regency Ceramics Limited, Yanam, is dismissed. The respondent/RW1 deposed that the event of the Award of the Labour Court-*cum*-Tribunal, dated 09-07-2008 in I.D.No. 28/1994 is set aside or quashed in the Writ Appeal No. 302/2009, then the claim of the petitioner will automatically fall into the ground. Further, it is stated by RW.1 that the management has agreed for amicable settlement all his claims of the petitioner by way of mediation and facilitated the settlement such continuous efforts made by the respondent at a lump sum of ₹ 7,00,000 including all his retirement benefits payable and the management has agreed and are always ready and willing to settle the matter with terms duly recorded by the Hon'ble High Court of Madras in W.P.No. 302/2009, dated 14-09-2016. As per Ex.R12 and the evidence of RW.1 that the said I.D. 28 of 1994 is set aside or quashed then the all claims will automatically fall on the ground and the company was lock out has been declared by the Hon'ble High Court of Madras in W.P.No. 12613/2013, dated 15-07-2015.

The evidence of PW.1 and RW.1 and pleadings, claim statement of the petitioner and the counter statement of the respondent and the documents filed by both side would reveal the fact that this Labour Court has passed an Award in I.D.No. 28/1994 in favour of the petitioner directing the respondent to reinstate the petitioner in service with 25% back wages within one month and the same was published in the Government Gazette and that the Hon'ble High Court has dismissed the Writ Petition filed by the respondent upholding the order of the Labour Court on 11-07-2008 and that the petitioner has submitted his joining report at the time of joining at the respondent establishment on 24-11-2010 and that the petitioner has submitted application before the respondent management for his back wages on 23-12-2010 and that the service of the petitioner was admitted by the respondent management and that the petitioner has submitted application for payment of wage arrears and that the petitioner has returned the cheque issued to him and that the petitioner has requested the management to pay his wages in accordance with the payment of salary and that the petitioner has been given cheque for ₹ 1,394 and the same was also returned by the petitioner and that the

respondent management has sent a letter to the petitioner stating that a criminal case has been filed against the petitioner before the Yanam Police Station and the petitioner was in judicial custody and the petitioner was suspended from the date of 13-09-2011 and that the petitioner would be paid 50% of the basic wages along with other allowances as admissible from the competent authority and that the Judicial Magistrate, Yanam has passed the order in C.C.No. 16 of 2013 holding that the petitioner was discharged from the said case.

If, the amount is disputed the same is recovered with the intervention of Labor Court and that is covered by section 33 C(2) of the Industrial Disputes Act. In the decision of "Supreme Court of India in 2010 Vijaya Bank vs Shyamal Kumar Lodh;" the Apex Court has observed as follows:

"Having said so, the next question which falls for determination is as to whether Labour Court at Dibrugarh could have entertained the application under section 10-A of Industrial Employment (Standing Orders) Act, 1946. section 10A of the Act reads as follows:

"10-A. Payment of subsistence allowance.- (1) Where any workman is suspended by the employer pending investigation or inquiry into complaints or charges of misconduct against him, the employer shall pay to such workman subsistence allowance-

(a) at the rate of fifty per cent. of the wages which workman was entitled to immediately preceding the date of such suspension, for the first ninety days of suspension; and

(b) at the rate of seventy-five per cent. of such wages for the remaining period of suspension if, the delay in the completion of disciplinary proceedings against such workman is not directly attributable to the conduct of such workman.

(2) If, any dispute arises regarding the subsistence allowance payable to a workman under sub-section (1), the workman or the employer concerned may refer the dispute to the Labour Court, constituted under the Industrial Disputes Act, 1947 (14 of 1947), within the local limits of whose jurisdiction the industrial establishment wherein, such workman is employed is situate and the Labour Court to which the dispute is so referred shall, after giving the parties an opportunity of being heard, decide the dispute and such decision shall be final and binding on the parties.

(3) Notwithstanding anything contained in the foregoing provisions of this section, where provisions relating to payment of subsistence allowance under any other law for the time being in force in any State are more beneficial than the provisions of this section, the provisions of such other law shall be applicable to the payment of subsistence allowance in that State."

From a plain reading of the section 10A(2) of the aforesaid Act it is evident that the Labour Court constituted under the Industrial Disputes Act, 1947 within the local limits of whose jurisdiction the establishment is situated, has jurisdiction to decide any dispute regarding subsistence allowance. Here in the present case undisputedly dispute pertains to subsistence allowance and the Labour Court where the workman had brought the action has been constituted under section 7 of the Industrial Disputes Act, 1947 and further the appellant bank is situated within the local limits of its jurisdiction. The workman had, though, chosen to file application under section 33C(2) of the Industrial Disputes Act, but, that in our opinion shall not denude jurisdiction to the Labour Court, if, it otherwise possesses jurisdiction. Incorrect label of the application and mentioning wrong provision neither confers jurisdiction nor denudes the Court of its jurisdiction. Relief sought for, if falls, within the jurisdiction of the Court, it cannot be thrown out on the ground of its erroneous label or wrong mentioning of provision. In the present case, the Labour Court, Dibrugarh, satisfies all the requirements to decide the dispute raised by the employee before it. It is necessary to be noted the relevant section 33 C of the Industrial Disputes Act.

Section 33C(2) and (5) of Industrial Disputes Act, as it stands today read as follows:

"33C. Recovery of money due from an employer.-

(1) Where any money is due to a workman from an employer under a settlement or an Award or under the provisions of Chapter V-A or Chapter V-B, the workman himself or any other person authorized by him in writing in this behalf, or, in the case of the death of the workman, his assignee or heirs may, without prejudice to any other mode of recovery, make an application to the appropriate Government for the recovery of the money due to him, and if, the appropriate Government is satisfied that any money is so due, it shall issue a certificate for that amount to the Collector who shall proceed to recover the same in the same manner as an arrear of land revenue: Provided that every such application

shall be made within one year from the date on which the money became due to the workman from the employer. Provided further that any such application may be entertained after the expiry of the said period of one year, if, the appropriate Government is satisfied that the applicant had sufficient cause for not making the application within the said period.

(2) Where any workman is entitled to receive from the employer any money or any benefit which is capable of being computed in terms of money and if, any question arises as to the amount of money due or as to the amount at which such benefit should be computed, then the question may, subject to any rules that may be made under this Act, be decided by such Labour Court as may be specified in this behalf by the appropriate Government within a period not exceeding three months. Provided that where the Presiding Officer of a Labour Court considers it necessary or expedient so to do, he may, for reasons to be recorded in writing, extend such period by such further period as he may think fit.

(3) For the purposes of computing the money value of a benefit, the Labour Court may, if, it so thinks fit, appoint a Commissioner who shall after taking such evidence as may be necessary, submit a report to the Labour Court and the Labour Court shall determine the amount after considering the report of the Commissioner and other circumstances of the case.

(4) The decision of the Labour Court shall be forwarded by it to the appropriate Government and any amount found due by the Labour Court may be recovered in the manner provided for in sub-section (1).

(5) Where workmen employed under the same employer are entitled to receive from him any money or any benefit capable of being computed in terms of money, then subject to such rules as may be made in this behalf, a single application for the recovery of the amount due may be made on behalf of or in respect of any number of such workmen.

16. From a plain reading of section 33C(2) it is evident that money due to a workman has to be decided by such Labour Court "as may be specified in this behalf by the appropriate Government." section 7 of the Industrial Disputes Act, 1947 confers power to the appropriate Government for constitution of one or more Labour Courts for the adjudication of industrial disputes. It also prescribes qualification for appointment as Presiding Officer of a Labour Court. Explanation appended to section 33C of the Act provides to include any Court constituted under any law relating to

investigation and settlement of industrial disputes in force in any State as Labour Court. The underlying object behind inserting explanation seems to be varying qualification prescribed for appointment of Presiding Officers of Labour Court by different State enactments. The Parliament took note of the fact while inserting explanation that there are different kinds of Labour Courts constituted under Industrial Disputes Act and State Acts and a question may arise whether a Labour Court constituted under Acts, Central or State could entertain a claim made under section 33C(2) of the Act.

An explanation is appended ordinarily to a section to explain the meaning of words contained in that section. In view of the explanation aforesaid Labour Court shall include any Court constituted under any law relating to investigation and settlement of industrial disputes in force in any State. Money due to an employee under section 33C(2) is to be decided by "Labour Court as may be specified in this behalf by the appropriate Government". Therefore, the expression "Labour Court" in section 33C(2) has to be given an extended meaning so as to include Court constituted under any law relating to investigation and settlement of industrial disputes in force in any State. It widens the choice of appropriate Government and it can specify not only the Labour Courts constituted under section 7 of the Industrial Disputes Act, 1947 but, such other Courts constituted under any other law relating to investigation and settlement of industrial disputes in force in any State.

The Court have considered the arguments advanced by the parties. The fact under sec 33C (2) of the Industrial Disputes Act, 1947, the Court has relies upon the decision "2005 (8) SCC 58- State of U.P and Another vs Brijpal Singh" the Apex Court has held as follows: "The power to adjudicate money claim is to the Labour Court" as may be specified in this behalf by the appropriate Government". Every word used by the Legislature carries meaning and therefore, effort has to be made to give meaning to each and every word used by it. A construction brushing aside words in a statute is not a sound principle of construction. The Court avoids a construction, if, reasonably permissible on the language, which renders an expression or part of the statute devoid of any meaning or application. Legislature never wastes its words or says anything in vain and a construction rejecting the words of a statute is not resorted to, excepting for compelling reasons. There does not exist any reason, much less compelling reason to adopt a construction, which renders the words "as may be specified in this behalf used in

section 33C(2) of the Act as redundant. These words have to be given full meaning. These words in no uncertain terms indicate that there has to be specification by the appropriate Government that a particular Court shall have jurisdiction to decide money claim under section 33C (2) of the Act and it is that Court alone which shall have the jurisdiction. Appropriate Government can specify the Court or Courts by general or special order in its discretion. In the present case, there is nothing on record to show that the Labour Court at Dibrugarh has been specified by the appropriate Government, *i.e.*, Central Government for adjudication of the disputes under section 33C(2) of the Industrial Disputes Act. This question has squarely been answered by the Apex Court in the case of “Treogi Nath and Others vs Indian Iron and Steel Co.Ltd and Others AIR 1968 SC 205”. True it is that rendering this decision, this Court did not consider the explanation appended to section 33C of the Act, as the list pertained to period earlier to amendment, but, in view of what we have said above, excepting the widening of choice pertaining to Courts, explanation does not dispense with the requirement of specification of Court by appropriate Government”.

The provisions cannot be invoked in a case where the entitlement itself is in dispute. In *State Bank of India Vs. Ram Chandra Dubey and others* [2001 (1) L.L.N.58], the Supreme Court while considering its earlier judgments in *Municipal Corporation of Delhi Vs. Ganesh Razak* and in *Central Bank of India Vs. P.S.Rajagopalan - A.I.R.1964 S.C.743* has finally concluded as follows:

Whenever a workman is entitled to receive from his employer any money or any benefit which is capable of being computed in terms of money and which he is entitled to receive from his employer and is denied of such benefit, can approach Labour Court under S.33C(2) of the Act. The benefit sought to be enforced under S.33C(2) of the Act is necessarily a pre-existing benefit or one flowing from a pre-existing right. The difference between a pre-existing right or benefit on one hand and the right or benefit, which is considered, just and fair on the other hand is vital. The former fall within the jurisdiction of the Labour Court exercising powers under S.33C(2) of the Act while the latter does not,”

An analysis of the above law laid down by the Supreme Court would lead to the following settled positions of law, *viz.*:

(1) there must be a pre-existing right on the workman to file an application under S.33C (2) of the Act;

(2) while dealing with an application under S.33C(2) of the Act, the Labour Court is in position of an executing Court;

(3) the Labour Court is called upon to compute and consulate the monetary benefit only on the basis of pre-existing right of the workman;

(4) the Labour Court cannot entertain and adjudicate upon a petition under S.33C(2) when the entitlement itself is in dispute; and

(5) an application under S.33C(2) is not maintainable, if, the petition is filed on disputed facts which require adjudication by the Labour Court”.

Accordingly, it is well settled that the workman can proceed under section 33-C(2) only after the Tribunal has adjudicated on a complaint under section 33-A or on a reference under section 10 that the order of discharge or dismissal was not justified and has set aside that order and reinstated the workman. This Court in the case of *Punjab Beverages (P) Limited, vs. Suresh Chand* held that a proceeding under section 33-C(2) is a proceeding in the nature of execution proceeding in which the Labour Court calculates the amount of money due to a workman from the employer, or, if, the workman is entitled to any benefit which is capable of being computed in terms of money, proceeds to compute the benefit in terms of money. Proceeding further, this Court held that the right to the money which is sought to be calculated or to the benefit which is sought to be computed must be an existing one that is to say, already adjudicated upon or provided for and must arise in the course of and in relation to the relationship between the industrial workman and his employer.”

The three necessary ingredients for the application of section 17-B of the Industrial Disputes Act, 1947 are (i) the Labour Court should have directed reinstatement of the workman, (ii) the employer should have preferred proceedings against such Award in the High Court or in the Supreme Court; and (iii) the workman should not have been employed in any establishment during such period. According to section 17 (B) of the Industrial Disputes Act, an employer is bound to pay the wages (last drawn wages) every month to the workman, in the event of the Award of Labour Court or Tribunal granting relief of reinstatement to a workman, is challenged by the employer before the High Court or the Supreme Court.

It is apparent that section 17-B of the Industrial Disputes Act was introduced for the purposes of mitigating hardship faced by the workman who had been reinstated but, the reinstatement had been delayed on account of the contest laid by the employer before the

High Court or the Supreme Court. It is also clear that section 17-B of the Act, 1947 proposed to provide "payment of wages last drawn". The object of introducing section 17-B of the Act appears to ensure that a workman, in whose favour an Award for reinstatement has been passed, is at least paid his last drawn wages. The purpose of introducing section 17-B of the Act appears to be not to provide for a punitive measure or a disincentive for the employers to challenge the Award passed by the Labour Court, but, to mitigate the hardship faced by the workman on account of delays occasioned because of pendency of litigation before the High Courts and the Supreme Court. The Parliament in its wisdom, obviously thought it fit that the workman having succeeded in obtaining an Award of reinstatement ought to be paid at least last wages that were drawn by him. It is also made a condition that for purposes of obtaining wages under section 17-B of the Act, the employee should not be gainfully employed elsewhere. This object appears to be not to discourage an employer from assailing the Award but, to ensure that the workman who has prevailed before the Labour Court does not suffer for want of subsistence allowance for his sustenance.

The learned Counsel for the respondent would submit that the petitioner was not complied the Section 17B of the Act, before the filed the claim petition and ought to have been filed only after reference under Section 10 of the Industrial Disputes Act, section 17B of the Industrial Disputes Act reads as quoted below:-

"Wherein, any case, a Labour Court, Tribunal or National Tribunal by its Award directs reinstatement of any workman and the employer prefers any proceedings against such Award in a High Court or the Supreme Court, the employer shall be liable to pay such workman, during the period of pendency of such proceedings in the High Court or the Supreme Court, full wages last drawn by him, inclusive of any maintenance allowance admissible to him under any rule if, the workman had not been employed in any establishment during such period and an affidavit by such workman had been filed to that effect in such Court.

Provided that where it is proved to the satisfaction of the High Court or the Supreme Court that such workman had been employed and had been receiving adequate remuneration during any such period or part thereof, the Court shall order that no wages shall be payable under this section for such period or part, as the case may be".

Further, it appears from the said section 17B that the workman is required to prove by affidavit that he had not been employed in any establishment. Thereafter, the employer may prove the contrary. In other words, if, the workmen has discharged his onus by affirming an affidavit that he is not employed in any establishment then the claim of the workman may be resisted by the employer by proving to the satisfaction of the Court that the workman has been employed in any establishment and has been receiving adequate remuneration so as to deny to him the benefits of section 17B.

The objective of the said section 17B may be found in the following observation of the Hon'ble Supreme Court in the case of "Dena Bank vs. Kirtikumar - AIR 1998 SC 511," which reads as thus-

"Section 17-B has been enacted by Parliament with a view to give relief to a workman who has been ordered to be reinstated under the Award of a Labour Court or the Industrial Tribunal during the pendency of proceedings in which the said Award is under challenge before the High Court or the Supreme Court. The object underlying the provision is to relieve to a certain extent the hardship that is caused to the workman due to delay in the implementation of the Award. The payment which is required to be made by the employer to the workman is in the nature of subsistence allowance which would not be refundable or recoverable from the workman even if, the Award is set aside by the High Court or this Court. Since the payment is of such a character Parliament thought it proper to limit it to the extent of the wages which were drawn by the workman when he was in service and when his services were terminated and therefore, used the words "full wages last drawn".

From the documents exhibited by the respondent management nothing is established by the respondent management that they have paid salary or suspension allowance for the period of service and suspension period. Further, it is not disputed by both the parties that the petitioner was initially joined at the respondent establishment in the year 1986 and he was appointed as an Assistant Operator and he was in the Union and the disciplinary action was taken against which the petitioner has raised the industrial dispute before the Labour Court in I.D.No. 28/1994 wherein, the Award was passed by the Labour Court in favour of the petitioner directing the respondent to reinstate the petitioner with 25% back wages against which the respondent has filed a Writ Petition in W.P.No. 9128 of 1999 before the Hon'ble High Court which was also disposed of by the Hon'ble High Court upholding the Award passed by the Labour Court and that the petitioner has joined duty at the respondent establishment on 25-11-2010 and the pay

was fixed and he was paid salary for the month of January and February-2011 and thereafter, the petitioner was once again suspended on 13-09-2011. In view of the judgment passed by the Supreme Court in the case titled as "GM, Haryana Roadways *versus* Pawan Kumar reported in 2006 SCC (L&S) 702" respondent is entitled for back wages from the date of demand notice.

In the case of "State Bank of India *vs.* Ram Chandra Dubey & Ors., (2001) 1 SCC 73", the Apex Court held as under: "When a reference is made to an Industrial Tribunal to adjudicate the question not only as to whether the termination of a workman is justified or not but, to grant appropriate relief, it would consist of examination of the question whether the reinstatement should be with full or partial back wages or none. Such a question is one of fact depending upon the evidence to be produced before the Tribunal. If, after the termination of the employment, the workman is gainfully employed elsewhere, it is one of the factors to be considered in determining whether or not reinstatement should be with full back wages or with continuity of employment. Such questions can be appropriately examined only in a reference. When a reference is made under section 10 of the Act, all incidental questions arising thereto can be determined by the Tribunal and in this particular case, a specific question has been referred to the Tribunal as to the nature of relief to be granted to the workmen.

The law relating to the calculation and payment of back wages to workers has been discussed at length by the SC in various cases. In U.P State Brassware Corporation Ltd., *vs.* Uday Narain Pandey, it was laid down that there was no precise formula to determine the circumstances under which a worker is entitled to back wages. In "(2013) 10 SCC 324-Deepali Gundu Surwase *vs.* Kranti Junior Adhyapak Mahavidyalaya (D. Ed.) and Ors"., the Hon'ble Supreme Court has held that in the case of wrongful termination of a worker, reinstatement with continuity of service and back wages was a normal rule. However, the payment of back wages has to be determined as per the facts and circumstances of each case and cannot be automatically granted on an order of reinstatement of the worker. The worker has to specifically raise the claim for back wages, as well as present supporting evidence demonstrating his unemployment. The Court also set out various factors for calculating the back wages, which include, among others: (a) the length of service of a worker; (b) the nature of misconduct, if any, proved against a worker; and (c) the financial condition of an employer.

It is a well known fact that the Industrial Disputes Act is a welfare legislation. The intention behind the enactment of this Act was to protect the employees from arbitrary retrenchments. For this reason only, in a case of retrenchment of an employee who has worked for a year or more, section 25F provides a safeguard in the form of giving one month's prior notice indicating the reasons for retrenchment to the employee and also provides for wages for the period of notice. section 25B of the Act provides that when a person can be said to have worked for one year and the very reading of the said provisions makes it clear that if, a person has worked for a period of 240 days in the last preceding year, he is deemed to have worked for a year. The theory of 240 days for continuous service is that a workman is deemed to be in continuous service for a period of one year, if, he during the period of twelve calendar months preceding the date of retrenchment has actually worked under the employer for not less than 240 days. In Surendra Kumar Verma and Others *vs.* Central Government Industrial Tribunal-cum-Labour Court, New Delhi and Another (1980) 4 SCC 443;" wherein, the Supreme Court has very categorically dealt with the theory of 240 days as contemplated under section 25B of the Act. When nobody can claim wages for the period of his absence to the employment, without leave or any justification, the principle 'no work no wages' will apply. Therefore, it is clear that for payment of wages for the unauthorised absence of the worker for long years is not justified.

Admittedly, the pay was fixed by the respondent management and paid to the petitioner for the month of January and February-2011 for ₹ 20,969 respectively. But, the fact has been denied by the evidence of RW1 during his cross examination. To prove the same, the petitioner has produced the salary receipt as Ex.P5, which is form of receipts for payment of salary to the petitioner and the signature of the company Manager is contains in the receipts. It is deposed that the calculation made in the claim statement for a sum of ₹ 12,33,253 from the year 1994 to 2011 is based on the salary that is received by the junior of the petitioner for the same period, which is mentioned under Ex.P4, *i.e.*, copy of claims after reinstatement, dated 23-12-2010. Furthermore, from the perusal of the case records it is found that there is no stay in the Second Appeal filed by the respondent management staying the operation of the Award and for the payment of subsequent wages. The respondent/RW1 stated that the petitioner was given full monthly wages under section 17B of the Industrial Disputes Act, 1947 as per the direction of the Hon'ble High Court of Madras with effect from 01-07-1999 to 11-07-2008. But, the respondent has not

produced relevant and sufficient documents to prove that the petitioner was paid entire full wages for the period covering from 01-07-1999 to 11-07-2008. Admittedly, the petitioner's claim of unsettled wages from 1994 the last drawn wages was only ₹ 5,000 and it is contended that the petitioner can make a claim only 25% of wages of ₹ 5,000, since, the reinstatement of the petitioner on 24-11-2010 was only on paper and the petitioner was not worked between 24-11-2010 and 30-09-2011, when he was placed under suspension and the management was lock out the company on 31-01-2012 and the respondent contended that there was no question of payment of back wages or any wages as alleged by the petitioner in his claim petition.

Though, the respondent has stated that they have not liable to pay for lock out period, but, no document is exhibited to prove the same. The respondent contended that the full wages has been paid to the petitioner in compliance of section 17 B of the Industrial Disputes Act, 1947, which is recorded in view of the order of the Hon'ble High Court of Madras in W.P.No. 9128/2009, dated 11-07-2008. Here, there is no documentary evidence to shows that the payment of wages fully paid to the petitioner as alleged by the respondent. The respondent ought to have been produced the salary or pay receipts for the workers during the company working period. It is to be proved by the respondent that the above reinstatement of the petitioner on 24-11-2010 was only on paper and the petitioner asked to be on leave with pay eventhough he was reinstated on 24-11-2010 and the petitioner had not worked between 24-11-2010 and 30-09-2011. But, it is clear from the available records and evidence of PW1 and RW1, it would clear that the petitioner has not received full wages in view of the section 17B of the Industrial Disputes Act. As seen from the records, there is no relevant documents has been produced by the respondent to disprove the claim of the petitioner. It is clear from the claim statement and evidence of PW1 that the petitioner is claiming in C.P.No. 2 of 2012 for the arrears of wages from the date of joining *i.e.*, from 23-11-2010 and from 2nd suspension order made by the management respondent on 30-09-2011 and it is proved that the petitioner was under suspension till date. It is the categorical admission made by the petitioner/PW1 during his cross examination that he was suspended second time on 13-09-2011 on allegations of forging cheque for ₹ 24,66,506. It is admitted facts that the petitioner was entitled for back wages 25%, with reinstatement into the service as per the order in W.A.No. 302 /2009 of the Hon'ble High Court of Madras, which was still pending for adjudication. During the pendency of the above W.A.No. 302 of 2009, the matter was referred for mediation before the High Court of

Madras for amicable settlement between the parties and the respondent management was agreed for a sum of ₹ 7,00,000 with full retirement benefits payable of the petitioner, but, the petitioner has not consented for the above settlement and the same has been admitted by the petitioner and the respondent.

From the facts and circumstances and based on evidence of the parties, therefore, the claim made by the petitioner for the year 1994 for July to 1998 -1999 in July 8 days @ 25% of wages for a sum of ₹ 36,269 and for the period from 1998 for 26 days in July 1998 and from 1999-2000 to 2010-2011 for a sum of ₹ 16,22,284 and totally a sum of ₹ 36,269 + 16,22,284 = 16,58,553 towards back wages for the suspension allowance *i.e.*, half of the pay is absolutely correct and the wages paid already as per the Hon'ble High Court's Order is as ₹ 2,04,000 and the respondent is liable to pay a sum of ₹ 14,54,553 and as such, the claim petition filed by the petitioner workmen employed under the same employer are entitled to receive from him any money or any benefit capable of being computed in terms of money, then subject to such rules as may be made in this behalf under section 33C(2) of the Industrial Disputes Act, is deserves to be allowed.

In the result, the claim petition is allowed and it is hereby directed the respondent to pay ₹ 14,54, 553 (Rupees fourteen lakhs fifty-four thousand five hundred and fifty-three) only to the petitioner claimed as per the claim petition within three month, failing which the amount should be paid by the respondent with 9% interest from the date of the order till the date of realization of the amount. The parties are hereby directed to bear their respective cost of the petition.

The Order typed by me in laptop, corrected and pronounced by me in the Open Court on this the 6th day of March, 2019.

C. KUMAR SARAVANAN,
Presiding Officer (FAC),
Industrial Tribunal-cum-
Labour Court, Puducherry.

List of petitioner's witness:

PW.1 — 01-03-2016 Sathyanarayanamurthy
(Petitioner)

List of petitioner's exhibits:

Ex.P1 — 20-04-1999 Copy of Labour Court
Award Gazette publication.
Ex.P2 — 11-07-2008 Copy of order passed in
W.P.No. 9128 of 1999.

Ex.P3	— 24-11-2010	Copy of joining report of the petitioner.
Ex.P4	— 23-12-2010	Copy of claim statement submitted by the petitioner to the respondent management for dues after reinstatement of the petitioner.
Ex.P5	— —	Copy of wages receipt for the month of January and February, 2011.
Ex.P6	— 07-03-2011 15-04-2011 29-07-2011	Copy of representations given by the petitioner to the management.
Ex.P7	— 23-05-2011 25-05-2011	Copy of management replies.
Ex.P8	— 02-11-2011	Copy of application submitted to the Secretary to Government (Labour), Commissioner of Labour, Government of Puducherry.
Ex.P9	— 02-12-2011	Copy of reply of respondent's management to Commissioner of Labour, Puducherry.
Ex.P10	— 16-04-2011	Copy of reply of management with cheque, dated 14-04-2011.
Ex.P11	— 25-10-2012	Copy of notification of Labour Department.

List of respondent's witness:

RW1	— 13-11-2017	Arun Prakash (Marketing Officer of respondent's company)
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List of respondent's exhibits:

Ex.R1	— 14-09-2016	Copy of the order passed in W.A.No. 302 of 2009.
Ex.R2	— 08-11-2017	Letter of authorization to Arun Prakash.
Ex.R3	— 12-01-2011	Copy of cheque bearing No. 333655 drawn on State Bank of India given by one A.V.V. Kumar of respondent company to the petitioner containing the figure as ₹ 3,14,400.

Ex.R4	— 09-04-2011	Copy of cheque bearing No. 333655 drawn on State Bank of India, which is tempered by petitioner in connivance with A.V.V. Kumar for a sum of ₹ 24,66,506.
Ex.R5	— 29-07-2011	Copy of complaint given by the respondent to Sub-Inspector of Police, Yanam against the petitioner.
Ex.R6	— 17-08-2011	Copy of Final/Form report No. 99/2012 registered by Station House Officer, Yanam in FIR. No. 139/2011 against the petitioner.
Ex.R7	— 04-10-2011	Copy of letter along with cheque bearing Sr No. 475811 drawn on State Bank of India, Yanam given by respondent to petitioner for ₹ 16,211.
Ex.R8	— 31-07-2012	Copy of letter given by respondent to petitioner along with enquiry report, dated 26-12-2011.
Ex.R9	— 04-11-2013	Copy of the show cause notice given by the respondent to petitioner.
Ex.R10	— 16-11-2013	Copy of reply letter given by the petitioner to respondent.
Ex.R11	— 10-04-2013	Copy of reference made by the Government of Puducherry in reference NO.G.O.R.No. 50/AIL/Lab./J2013 over the lock out respondent's company.
Ex.R12	— 15-07-2015	Copy of the order passed by the Hon'ble High Court in W.P.No. 12613/2013.
Ex.R13	— 11-07-2008	Copy of order of Hon'ble High Court in W.P.No. 9128/1999.

C. KUMAR SARAVANAN,
Presiding Officer (FAC),
Industrial Tribunal-cum-
Labour Court, Puducherry.