



புதுச்சேரி மாநில அரசிதழ்

La Gazette de L'État de Poudouchéry The Gazette of Puducherry

அதிகாரம் பெற்ற வெளியீடு

Publiée par Autorité

Published by Authority

எண்	} 34	புதுச்சேரி	செவ்வாய்க்கிழமை	2022 லு ^{ம்}	ஆகஸ்ட் ம ^{ம்}	23 உ
No.		Poudouchéry	Mardi	23	Août	2022 (1 Bhadra 1944)
No.		Puducherry	Tuesday	23rd	August	2022

பொருளடக்கம்

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**GOVERNMENT OF PUDUCHERRY
LABOUR DEPARTMENT**

(G.O. Rt. No. 123/Lab./AIL/T/2022, dated 29th July 2022)

NOTIFICATION

Whereas, an Award in I.D (L) No. 28/2018, dated 23-03-2022 of the Industrial Tribunal-Cum-Labour Court, Puducherry, in respect of the industrial dispute between Thiru K. Rangarajan, S/o. Kaliyaperumal, No. 30, Masthan Palli Street, Karaikal, against the management of M/s. Karaikal Market Committee, Thirunallar Road, Karaikal, over reinstate the petitioner with back wages and attendant benefits 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. 20/9/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)

P. MUTHU MEENA,
Under Secretary to Government (Labour).

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

Present :Thiru R. BHARANIDHARAN, M.L.,
Presiding Officer.

Wednesday, the 23rd day of March, 2022

**I.D. (L) No. 28/2018
CNR. No. PYPY06-000054-2018**

K. Rengarajan,
S/o. Kaliyaperumal,
No. 30, Masthan Pillai Street,
Karaikal. . . Petitioner

Versus

The Secretary,
Karaikal Market Committee,
Thirunallar Road,
Karaikal. . . Respondent

This industrial dispute coming on 17-03-2022 before me for final hearing in the presence of Thiru N. Ramar, Representative for the petitioner and Thiru M. Nakkeeran, Counsel, for the respondent, upon

hearing both sides, perusing the case records, after having stood over for consideration till this day, this Court delivered the following:

AWARD

The Industrial Dispute has been filed by the petitioner represented by Thiru N. Ramar, Secretary of CITU, State Union, Karaikal, for adjudication of the industrial dispute raised by the petitioner Thiru K. Rangarajan against the Managing Director, Market Committee, Karaikal, over reinstatement of the petitioner with back wages along with other attendant benefits is justified? If, justify what relief the petitioner is entitled to?

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

2. *Brief averments made in the petition of the petitioner :*

The petitioner was joined as worker in the respondent Market Committee on voucher payment. He received ₹ 7,000 as monthly salary. The Karaikal Market Committee has established for the welfare of farmers in that area. The Market Committee procure the yield from the farmers and kept in its safe custody till the yields get fair price. The respondent has also established Uzhavar Sandhai for selling the fruits and vegetables directly by the farmers. In the year 2005 about 32 persons were employed by the Chairman as voucher employees and they were promoted as CLR Casual Labours during 2010 to 2015. They were again promoted as daily rated employees during the year 2015-2016. They were further promoted as Multi Task Service workmen from the year 2016. The petitioner was also engaged on the same basis during the year 2009. The petitioner was utilised for cleaning and packing the agricultural products and safeguarding the same from cattles and rats, maintaining the farm in the Market Committee. The petitioner was also worked as Driver for the LMV and HVM vehicles. The petitioner was also served as office boy continuously.

On 23-08-2016 the respondent administration refused employment to the petitioner. Hence, the petitioner has raised industrial dispute on 28-11-2017 before the Labour Officer and no conciliation steps were taken. The petitioner has continuously worked for seven years. His service was terminated by the respondent without any notice or charges which is against the provisions of section 25(F) of Industrial Dispute Act. The respondent is .duty bound to reinstate the petitioner with back wages and attendant benefits.

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

The Karaikal Market Committee is an Autonomous Body to do service to the farmers of Karaikal District, established under Pondicherry Agricultural Produce Markets Act, 1973. There are 10 regular staffs and 32 numbers of full-time casual labourers working in the Market Committee. There were another 32 casual labourers who were temporarily engaged by the organization based on demand of work and their employment was approved by the Government of Puducherry as per the "Casual Labourers Engagement and Regulation Scheme 2009". But, the engagement of petitioner was purely on temporary basis to do menial work such as paddy procurement for Food Corporation of India and paid ₹ 200 as daily wages. Now, the procurement of Food Corporation of India is discontinued. Their engagement is without the approval of the General Body and the same is illegal because, they have been engaged without reference to employment exchange. The petitioner was engaged as wage labourer and there is no question of termination of services. The work of the organization is seasonal in nature and engaging the petitioners permanently is not at all feasible. The respondent is not making any profit and struggling to pay monthly salary to the regular employee.

4. On the petitioner side Thiru Rengarajan was examined as PW.1 and through him proof affidavit was filed, Ex. P1 & Ex. P2 were marked. On the respondent side R. Ganesan was examined as RW1 and Mohammad Dasir was examined as RW.2, Ex. R1 to R3 were marked.

5. *Points for consideration:*

Whether the petitioner is entitled for reinstatement with back wages, continuity of service and other attendant benefits in the respondent organization?

6. On the petitioner side Mr. Rengarajan petitioner was examined as PW.1 and the chief affidavit was filed. In the evidence of PW.1, he has deposed that he has joined in the Karaikal Market Committee on 01-09-2009. He has worked in the regulated Market Committee, the Uzhavar Sandhai and weigh bridge. He has also served as Driver for the Chairman and the Secretary, and received monthly salary of ₹ 7,000 per month. The 32 daily wage labourers were employed by the Chairman in the year 2005. On the same basis, the petitioner was also appointed by the Chairman in the year 2009 and continuously working for seven years. On 23-08-2016,

when the petitioner went to the respondent organization to attend his regular work. He was prevented by the management from attending his work. The petitioner has made several request to the respondent for the consideration of his reinstatement. The same was not considered by the respondent management. Left with no other alternative the petitioner has raised industrial dispute on 28-11-2017 before the Labour Department, Puducherry. Since, there was no action taken by the Labour Officer within 45 days, the petitioner has filed the petition under section 2(A) of Industrial Disputes Act. The averments made in the counter is not at all acceptable and the respondent has denied employment to the petitioner since, there was no approval granted by the General Body. Moreover, the respondent cannot deny employment to the petitioner side stating the financial crisis. The respondent has retrenched the petitioner without issuing any notice and without framing any charges. The unemployment of the petitioner is against the principles of natural justice and also the principles laid down under section 25(F) of the Industrial Disputes Act. The petitioner is suffering without any work and without any salary and is suffering to run his family. The petitioner prayed for reinstatement with back wages and other attendant benefits.

7. On the respondent side Thiruvalar Ganesan, the Secretary of Karaikal Market Committee was examined as RW.1 and through him chief affidavit of RW 1 was filed. The respondent committee has a strength of 10 regular staffs and 32 full-time casual labourers. The 32 casual labourers are regularized with the approval of the Government as prescribed under the Casual Labourers Engagement and Regulation Scheme 2009. The petitioner was engaged through menial works for a daily wage of ₹ 200 by the Chairman. The services of the petitioner was discontinued since, the services of the petitioner is no more required. Even at the time of engagement it was made without considering the financial position of the Committee and without actual requirement at all. The petitioner was engaged against the frame work of the Scheme 2009 and without the approval of the Government, the same is illegal. The petitioner engagement requires no termination and there is no need to follow the provisions of section 25(F) of the Industrial Disputes Act and pray for dismissal of the petition.

8. RW. 2 Thiru P. Mohammad Dasir who was retired as Deputy Agricultural Director has deposed that based on the resolution passed by General Body of the Market Committee. The employee will be engaged by the respondent organization. Such resolution was sent to the Revenue Department of the Puducherry Government

for consent in the year 2008 to 2010. The 32 employees were in the services of the Karaikal Market Committee. Thiruvallargal Sudhakaran, Rangaraj and Vijayakumar were worked as voucher payment casual labourers from 01-09-2009 based on the recommendation of the Member of Legislative Assembly. The said absorption was made by the Chairman of the Market Committee. The Principal Secretary of Agriculture Department of Puducherry, has ordered to relieve the petitioner and other two persons. On the basis of the order of the Principal Secretary they were relieved from the services on 23-08-2016 and pray for dismissal of the complaint.

9. The representative appeared on behalf of the petitioner submitted that the petitioner was employed in the respondent's Regulated Market Committee from 01-09-2009 for the monthly salary of ₹ 7,000. The Regulated Market Committee was established to procure and protect the agricultural produces of the fanners of Karaikal region. The petitioner was engaged in cleaning, maintenance and also sales division. He was also served as Office Assistant as well as Driver for the LMV and HMV vehicles.

10. It was further submitted that there are yet another 32 voucher employees engaged by the Chairman in the year 2005. The said 32 voucher payment employees were regularised by the respondent. The petitioner initially received ₹85 as wage per day and subsequently, he has received ₹150, ₹200 and ₹270 per day and finally received a sum of ₹7,000 per month, when he was retrenched from the services on 23-08-2016. The representative of the petitioner has further argued the petitioner was employed by the Chairman of the regulated Market Committee and his services were continuously utilised by the respondent from 01.09.2009. Evidence of PW.2 categorically established that the petitioner was employed by Thiruvallargal Sathiyaseelan, Chairman-cum-Managing Director. It was further submitted that the respondent has not served any notice, not conducted any enquiry against the petitioner. The termination of the petitioner was not even informed to him by letter. It was further argued on the petitioner side that the other employee by name Thiruvallargal Manikandan, Ramkumar were already reinstated by the respondent consequent to the Award passed by this Court. The representative of the petitioner has invited this Court attention to the Judgment of Hon'ble Patna High Court reported in 1995 (1) LLJ 973 and submit, the petitioner has served for 240 days in each year from the date of his engagement and hence, his removal from service would come under section 2(00) of the Industrial Disputes Act. Since, the respondent has not followed the procedure contemplated under section 25(F) of Industrial Disputes Act, the order of removal from service is not at all maintainable. He has further referred to order of the

Hon'ble High Court of Madras in W.A. No.183/1996 & C.M. No. 2734/1996, dated 15-03-1996 and submit that even if, the appointment of a workman is not in accordance with law, the management cannot refuse to follow the provisions of 25(F) of Industrial Disputes Act.

11. On the petitioner side, it was further contented that the petitioner was served in the respondent organization till 23-08-2016. The services of the petitioner is of perennial nature and the petitioner has received salary from the Market Committee and the relationship of employer and employee was proved. In the evidence of PW.1, he has categorically deposed that the subsequent to his termination of employment he was not in gainful service in any other establishment. Even, the respondent has not pleaded and proved that the petitioner was in gainful employment. In the circumstances the petitioner being a workman and the respondent is entitled for reinstatement along with back wages and other attendant benefits.

12. The learned Counsel for the respondent submit that the 32 voucher paid employees were regularised by the Government of Puducherry, as per the casual labours engagement and Regulation Scheme 2009. But, the engagement of the petitioner was purely on temporary basis to do menial work such as procurement of paddy for Food Corporation of India which is a seasonal work. Now, the procurement by the Food Corporation of India stands discontinued. The engagement of the petitioner is without the approval of the General Body of the respondent organisation. The petitioner was not engaged through Employment Exchange. He is only a casual labour not engaged on regular basis and the respondent is not duty bound to follow the procedure contemplated under section 25(F) of the Industrial Disputes Act.

13. The learned Counsel for the respondent submit that the Government of Puducherry has issued a Gazette Notification, dated 27-02-2009 wherein, it is stated with "all other designation *e.g.*: Daily Wager, CLR *etc.*, will be discontinued from the date of notification of the scheme". In the said Gazette, it is further notified the no casual labourer will be engaged for attending to work of the regular nature, for which a regular post exist or can be created.

14. The learned Counsel for the respondent submit that the petitioner was engaged on 1-09-2009 and his engagement is against the Gazette Notification of the Government of Puducherry.

15. The learned Counsel for the respondent invited this Court attention to the G.O. Ms. No. 66/F3/2008 dated 24-10-2008 issued by the Finance Department marked as Ex. R2 wherein, it is specifically notified

“no daily rated posts should henceforth, be created by the institutions without the specific written approval of the Government”. The engagement of the petitioner is not in accordance with Ex. R1 and R2 and he was removed from services on 23-08-2016 as per the order of Secretary of Agriculture since, his employment would found to be illegal.

16. The learned Counsel further submit that the petitioner was not regularly absorbed by the respondent and he never worked for more than 240 days in each year. The petitioner is only a casual labour engaged on daily rated basis according to the needs and at no stretch of imagination he can be termed as “workmen” as defined at the section 2(S) of Industrial Disputes Act. The petitioner has not proved that he has received monthly salary of ₹ 7,000 per month and he failed to prove the employer and employee relationship. In the circumstances, the petitioner is not entitled to claim the benefits under section 25(F) of the Industrial Disputes Act. The petitioner is not entitled for reinstatement with back wages along with other attendant benefits. Since, the Market Committee is not a profit making organization and the respondent is struggling to pay the monthly salary to its regular employee.

17. This Court has carefully considered the rival submission made by both sides and perused to the documents marked on either side.

18. The petitioner was engaged as voucher paid employee on 01-09-2009 by the then Chairman of the Market Committee. The petitioner was utilized for cleaning, maintenance, procurement of paddy and also as Driver. According to the petitioner, he was initially paid ₹ 85, ₹150, ₹200 and ₹270 as daily wages and finally he has received a sum of ₹ 7,000 a monthly salary. Since, the petitioner was denied employment without any justifiable reason, he has raised industrial dispute before the Labour Officer Conciliation on 28-11-2017 for conciliation. Since, the conciliation proceedings were not commenced within 45 days, the petitioner has proceeded to file this petition under section 2(A) of the Industrial Disputes Act. The petitioner has served with the respondent organization for about 7 years without any break except the permitted holidays. The petitioner was utilised by the respondent for driving the vehicle of the Chairman and the Managing Director.

19. A set of 32 employees who were engaged by the then Chairman in the year 2005 as voucher paid employee were specifically given promotions and finally regularized as per the Scheme formulated in the year 2009. The respondent denied employment to the petitioner and two others who are employed

on 01-09-2009 by the Chairman of the respondent organization on the basis that their engagement is against. Ex. R1 and R2. RW.2 in the evidence deposed that in the absence of the Chairman, the Managing Director of the Market Committee who is the District Collector of Karaikal will hold additional charge. All along from the date of his engagement the petitioner was paid salary by the Market Committee after getting proper permission of the Agricultural Director.

20. The RW.2 has also admitted the petitioner was worked in the respondent organization till 23-08-2016. The respondent has furnished information, dated 09-11-2016 under RTI wherein, the respondent has admitted that the petitioner was appointed based on the permission granted by the Chairman. In Ex. P1 para 203 which is office note submitted by the Secretary to the Chairman-cum-Director of Agriculture, it is stated that “The continuous engagement of the persons is essential during the samba harvest season and further they may be deployed in Karaikal Market Committee premises for house helping and maintenance of Rural Godowns, hence, the engagement of abovesaid persons on voucher payment basis may be approved, besides it is proposed to increase their wages from ₹ 100 to ₹ 150 for 29 days from July 2010”. The above stated statement would go to show that the continuous engagement of the petitioner and other two persons is essential during samba harvest season. The petitioner was utilised for the procurement of paddy, cleaning and maintenance of godowns protection of the agricultural producers from the cattles and insects, served as a Office Boy and also as a Driver. The nature of employment does not require special skill, however, the nature of work has not seasonal but, perennial in nature. No doubt, the petitioner has received his salary from the respondent after the approval of the Director of Agriculture and he has worked for about 7 years continuously without break from 01-09-2009 to 23-08-2016 except permitted holidays. The petitioner can be well fit in within the definition of “workmen” under section 2(S) of the Industrial Disputes Act.

21. The respondent without any give notice and without conducting proper enquiry has relieved him from the services on 23-08-2016 without affording any opportunity to the petitioner which is against the principles of natural justice and against the established principles laid down in section 25(F) of the Industrial Disputes Act.

22. In the evidence of PW.1, he has deposed that he is suffering without any employment from the date of his relieving from the respondent organisation.

The petitioner is not gainfully employed in any other establishment and the contrary was not proved by the respondent. From the discussion about made this Court is of the considered opinion that the non-employment of the petitioner is not justifiable on any grounds. Since, the petitioner is not in gainful employment is entitled for reasonable back wages and other attendant benefits.

23. In the result, the petition is partly allowed. The respondent is directed to reinstate the petitioner within 8 weeks from the date of this Award. The petitioner is entitled to receive 30% of last drawn salary as back wages from the date of his termination till the date of his reinstatement. The petitioner is also entitled to continuity of service and all other attendant benefits.

Dictated to the Stenographer, transcribed by her, corrected and pronounced by me in the open Court, on this the 23rd day of March, 2022.

R. BHARANIDHARAN,
Presiding Officer ,
Industrial Tribunal-cum-Labour Court,
Puducherry.

List of petitioner witness:

PW.1 —15-07-2018 K. Rengarajan

List of petitioner's exhibits:

Ex.P1 — 28-11-2017 Industrial dispute raised by the employee before the Labour Court.

Ex.P 2 — 09-11-2016 The information received by the employee through RTI from the respondent.

List of respondent's witnesses:

RW.1 — 18-09-2019 R. Ganesan

RW.2 — 07-01-2020 P. Mohammed Dasir

List of respondent's exhibits:

Ex.R 1 — 27-02-2009 Copy of the Gazette of Puducherry.

Ex.R 2 — 24-10-2008 Copy of the G.O. Ms. No. 66/F3/2008.

Ex.R 3 — 9-7-2010 Copy of the order of the Chairman-cum- Director of Agriculture, regarding the engagement of 3 persons.

R. BHARANIDHARAN,
Presiding Officer,
Industrial Tribunal-cum-Labour Court,
Puducherry.

GOVERNMENT OF PUDUCHERRY
LABOUR DEPARTMENT

(G.O. Rt. No. 122/Lab./AIL/T/2022,
Puducherry, dated 29th July 2022)

NOTIFICATION

Whereas, the Government is of the opinion that an industrial dispute has arisen between the management of M/s. Pondicherry Institute of Medical Sciences, Puducherry and the Joint Action Committee (JAC), PIMS Hospital and Research Institute, over charter of demands regarding wage revision for the year 2021 to 2024, in respect of the matter mentioned in the Annexure to this order;

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

Now, therefore, by virtue of the authority delegated vide G.O. Ms. No. 20/91/Lab./L, dated 23-5-1991 of the Labour Department, Puducherry, to exercise the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947), it is hereby directed by the Secretary to Government (Labour) that the said dispute be referred to the Industrial Tribunal, Puducherry, for adjudication. The Industrial Tribunal, Puducherry, shall submit the Award within 3 months from the date of issue of reference as stipulated under sub-section (2-A) of section 10 of the Industrial Disputes Act, 1947 and in accordance with rule 10-B of the Industrial Disputes (Central) Rules, 1957. The party raising the dispute shall file a statement of claim complete with relevant documents, list of reliance and witnesses to the Industrial Tribunal, Puducherry, within 15 days of the receipt of the order of reference and also forward a copy of such statement to each one of the opposite parties involved in the dispute.

ANNEXURE

(i) Whether the dispute raised by the Joint Action Committee (JAC) of PIMS Maruthuvamanai and Research Institute against the management of M/s. Pondicherry Institute of Medical Sciences, Puducherry, over charter of demands with regard to wage revision for the year from 2021 to 2024 is justified or not? If justified, to give appropriate direction?

(ii) Whether the stand taken by the management of M/s. Pondicherry Institute of Medical Sciences, Puducherry, regarding non-recognition of the PIMS Puduvai Maanila Pattali Thozhir Sangam which was duly registered under the Trade Unions Act, 1926 lacks minimum criteria of membership for negotiation is legal and justified? If justified, to give appropriate direction.