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La Gazette de L' État de Poudouchéry

The Gazette of Puducherry

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GOVERNMENT OF PUDUCHERRY

LABOUR DEPARTMENT

(*G.O. Rt. No. 6/Lab./AIL/T/2021, Puducherry, dated 07th January 2022)*

NOTIFICATION

Whereas, an Award in I.D (L) No. 03/2018, dated 26-11-2021 of the Industrial Tribunal-*cum*-Labour Court, Puducherry, in respect of the Industrial Dispute between Tmt. Sarala, Nirmala, Vasanthi and Kowsalya against management of M/s. Rane (Madras) Limited, Thirubuvanai, Puducherry, over reinstate the petitioners with full back wages, continuity of service and all other 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. 20/91/Lab./L, dated 23-05-1991, it is hereby directed by the Secretary to Government (Labour) that the said Award shall be published in the Official Gazette, Puducherry.

(By order)

D. Mohan Kumar,
Under Secretary to Government (Labour).

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

Present : Thiru R. Bharanidharan, m.l.
Presiding Officer.

Friday, the 26th day of November 2021.

I.D. (L) No. 03/2018
in
C.N.R. No. PYPY060001002018

Tmt.

1. Sarala
No. 4/66A, Thiroupathiamman Koil Street,
Pallicheri, Lingareddipalayam,
Villupuram, Tamil Nadu.

2. Nirmala,
Mettu Street, Rampakkam and Post,
Villuppuram, Tamil Nadu.

3. Vasanthi,
Thirukkanur Salai,
Kalitheerthalkuppam,
Puducherry.

4. Kowsalya,
No. 7, Punithavathi Nagar,
Nettapakkam and Post,
Puducherry. . . Petitioners

Versus

The Managing Director,
M/s. Rane (Madras) Limited,
No. 77, Thirubuvanai Main Road,
Thirubuvanai,
Puducherry. . . Respondent

This Industrial Dispute coming on 16-11-2021 before me for final hearing in the presence of Thiruvalargal R.T. Shankar, A. Ashok Kumar, L.K. Saravanan, B. Balamurugan and P. Suresh, Counsels for the petitioners and Thiruvalargal K. Babu and S. Karthikeyan, Counsels 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

This petition is filed by the petitioners under section 2-(A) of the Industrial Disputes Act praying to pass an Award to direct the respondent management to reinstate the petitioners with full back wages, continuity of service and all other attendant benefits.

2. *Brief averments made in the claim statement of the petitioner:*

The petitioners namely, Tmt. Sarala, Nirmala, Vasanthi and Kowsalya, were joined with the respondent company on 04-11-2005, 01-01-2008, 04-06-2010 and 20-11-2007 respectively and continued their work with the respondent management without any remarks. The respondent Rane Madras Limited, is a Public Limited Company, in which 750 employees are working. However, only 85 employees are permanent employees. The respondent management involved in the manufacturing of gear and steering for Automobile industry and running profitably. On 10-09-2015, the respondent management has not permitted the petitioner to do their normal work and stopped them at the main gate with ulterior motive without issuing any statutory notice or termination order. All the petitioners are working with the respondent management for more than 5 years with lesser wages. The petitioners were doing full time work *i.e.,* 8 hours per day in all working days in a month and the petitioners have been directly working in the production Department as an operator and was doing perennial in nature of work. The respondent

management has extended the benefits of ESI and EPF to the petitioners on par with permanent employees and the petitioners workmen were having requisite experience and qualification since, they are working for a long period from the year 2005. The petitioners have been directly working in the production Department of OBJ and IBJ section as an operator and doing the perennial in nature of work along with other permanent workers and the respondent instruct, manage and control the petitioners and control extent to all stages of operation from the beginning to end. All the petitioners have worked more than 240 days within a period of 12 calendar months and they are deemed to be permanent workmen and their services has to be regularized by the respondent management. The respondent management instead of regularization the services of the petitioners has orally terminated the services which is against the principle, of natural justice and violation of section 25-F of the Industrial Disputes Act. The petitioners are not gainfully employed in any establishment and their family are facing untold hardships without employment and earnings. The respondent has not paid any money from the date of illegal termination till pending disposal of the proceedings before the Labour Court. The petitioners prays for reinstatement with continuity of service, back wages and other attendant benefits.

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

The petitioners were appointed as temporary operators by order, dated 04-11-2005. The petitioner Sarala was clearly put on notice that her temporary employment will not confer any right or entitlement for claiming absorption against an regular vacancy. The petitioners were informed that they are temporary employee and not entitled for any benefits or privileges extended to the regular employees of the organisation. All the petitioners has accepted the terms and conditions in the appointment order without any dispute. Considering the fact that the petitioners were temporary and did not have any Lien over the employment. The respondent management was under the *bona fide* impression that the petitioners were not interested in offering their temporary services any more. However, the petitioners falsely raised a dispute stating that their services were terminated without issue of any charge-sheet and conducting enquiry are by paying retrenchment compensation. The petitioners stopped offering the services from 10-09-2015 on the own volition. Hence, the question of paying retrenchment compensation will not arise. The petitioners have not approached the Conciliation Officer immediately to get relief there was undue delay in approaching the Conciliation Officer. All the petitioners stopped reporting for duty on their own and there is no overt Act of termination on the part of the respondent management. The respondent denied that the petitioners were working in full time and working in a perennial natural of job. The claim of the petitioners that they have been directly working in the production Department as operators and doing permanent job is totally false. The ESI and EPF benefits are mandatory given for temporary employees. The respondent management denied that the petitioners are working in the production Department of OBJ and IBJ section operators. The respondent management denied the allegations that the petitioners have worked for more than 240 days in a period of 12 months and therefore, they are deemed to be permanent employees on par with regular employees. The respondent management denied the allegation that the respondent stopped the petitioner at the main gate on 10-09-2015 without any termination order and without any statutory notice. The respondent management denied the allegation that they have committed an act in violation of provisions of section 25-F of the Industrial Disputes Act. The respondent reiterates that the petitioners on their own stopped offering their services. The respondent prays for dismissal of the petition.

4. On the petitioner side Vasanthi was examined as PW1 and through her proof affidavit was filed, Ex.P1 to Ex.P14 were marked. On the respondent side it is represented that there is no oral evidence.

5. *Points for consideration:*

Whether the petitioners are entitled for reinstatement with full back wages, continuity of service and all other attendant benefits in the respondent management?

6. In the evidence of PW1, she has deposed herself and other petitioners were employed by the respondent management from the year 2005 to 2010 and they continued to work with the respondent management to the entire satisfaction of the management. They have worked in full time *i.e.,* 8 hours in a day and their work is perennial nature. The petitioners were working in the production Department as an operators and was doing perennial nature of work along with other permanent workers. The respondent management is extended the ESI and EPF benefits to the petitioners on par with

permanent employees. The petitioners have been directly working in the production Department of OBJ and IBJ section as operators. The respondent instruct, manage and control the petitioners and their supervision and control extend to all stages of the operations from beginning to end. The petitioners have worked more than 240 days of service within a period of 12 calendar months and hence, the petitioners are deem to be permanent workman. The petitioners were in the service of the respondent management for more than 5 years and they have done the same work which was done by the permanent employees and the petitioners are entitled for regularization. The respondent management without considering to regularize the petitioners has stopped them at main gate on 10-09-2015 without issuing any statutory notice or termination order. The respondent management has acted in violation of section 25-F of the Industrial Disputes Act and also against the principles of natural justice. The respondent management has utilized the service of the petitioners for a long time and has not considered the welfare of the employees and extended the benefits enumerated under the labour laws. The petitioners are not gainfully employed in any establishment and their families are facing untold hardships without any employment and earnings. The petitioners are prays for reinstatement with back wages and other attendant benefits.

7. The learned Counsel for the petitioner submitted that the petitioners were employed by the respondent management in the services of the Rane Madras Limited. The DGM (operations) of the respondent management has issued Ex.P4, P7 and P14 appointment orders to the petitioners. The petitioners were also provided with ESI and EPF benefits on par with other permanent employees. In the appointment order issued by the respondent management it is mentioned that they were appointed as temporary operator trainee. It is further stated in the appointment orders that after the completion of training period, the employment will automatically comes to an end. All the petitioners were given monthly salary slips and the salary slips were marked as Ex.P5, P8, P10 and P13. All the petitioners were worked for 8 hours per day in all working days and they have completed 240 days of work in each year ever Since, the date of their appointment. All the petitioners were put in more than ten years of service in the respondent management and they were working in the production Department of OBJ and IBJ section as operator and doing the perennial nature of work. The respondent management has continuously engaged them even after the initial period of training and they were engaged in doing the routine work as done by the permanent employees. The respondent management is in effective control of the petitioners work from the beginning till the end and their exists employer and employee relationship.

8. The learned Counsel for the petitioner submit that the petitioners were stopped at the main gate without issuance of statutory notice or without conducting any domestic enquiry. It is further contended that the respondent management has falsely alleged that the petitioners on their own volition has left the services of the respondent management and hence, the respondent management has not issued any statutory notice or domestic enquiry. Moreover, according to the respondent the petitioners are only temporary employee. The learned Counsel for the petitioner has invited this Court attention to the definition of workman under section 2(s) of the Industrial Disputes Act "workman" means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of that dispute, or whose dismissal, discharge or retrenchment has led to that dispute.

9. In S.K. Mani *vs.* Corona Sahu Company Limited and other our Hon'ble Apex Court held "the designation of an employee is not of much importance and what is important is the nature of duties being performed by him. The above Judgment of Hon'ble Apex Court was confirmed by the later Judgments of Hon'ble Apex Court in Ananda Bazaar case "If we accept the contention of the Learned Senior Counsel for the appellant that once a persons accepts an appointment order he cannot challenge the designation mentioned in that order then the employer can always exploit the workers by giving them designation as apprentice though in fact taking regular work from them. This would be contrary to the whole approach of Industrial Law and hence, we cannot accept this submission".

10. The learned Counsel for the petitioner further submit that whether employee is a permanent employee or temporary employee has to be decided by the nature of duty performed by such employee. It is submitted by the learned Counsel for the petitioner that the petitioners are engaged in production Department and their work was managed and supervised by the respondent from beginning to end.

11. The learned Counsel for the petitioner submit that there was no training imparted to the petitioners in their long services with the respondent. There was also no Trade Apprentices Training available in the respondent factory. It is further contended that the respondent management has not given licence or permission to impart training to the non-technical worker who are not possessing adequate technical qualification. Whether, an employee is a worker or a trainee has to be determined by the nature of works attended by the employee as well as from the control of the employer from time to time over the work of the employee. In this respect the learned Counsel for the petitioner has invited the attention of this Court to the Judgment of Hon'ble High Court, Gujarat reported in 2002 (1) LLN 1090 in which the Hon'ble Gujarat High Court held "if the agreement of the apprentice of lineman as contract of apprenticeship was not registered and no training was obtained by the apprentice, then he has been considered as the workman within the meaning of section 2 (s) of the I.D. Act, 1947 and non-observance of the mandatory provisions of section 25-F of the Act makes the termination illegal. She also submitted that the Labour Court has rightly held that section 25-F has not been complied with by the petitioner and therefore, the workman entitled to benefits under section 25-F and that is how the order, of termination rightly held to be illegal and void *ab initio* and therefore, the Labour Court has not committed error and hence, no interference of this Court is called for the interest of justice".

12. The learned Counsel for the petitioner submit that the employees are not equal bargaining position that the employer and the employees are unable to withstand to the various tactics adopted by the management. The learned Counsel for the petitioner has invited this Court attention to the Judgment of Hon'ble Supreme Court of India reported in CDJ 2011 SC 832 "Labour statutes were meant to protect the employees/ workmen because, it was realized that the employers and the employees are not on an equal bargaining position. Hence, protection of employees was required so that they may not be exploited. However, this new technique of subterfuge has been adopted by some employers in recent years in order to deny the rights of the workmen under various labour statues by showing that the concerned workmen are not their employees, but, are the employees/workmen of a contractor, or that they are merely daily wage or short term or casual employees when in fact they are doing the work of regular employees".

13. All the petitioners were unanimously contended that they were stopped at the main gate by the respondent management without issuance of statutory notice and without following the principles of natural justice. On the other hand, the respondent has contended that the petitioners left the services of the company and their own and the respondent is nothing to do with the absence of the petitioners, the petitioners were served in the respondent company for more than 5 years. In such a situation it is duty of the respondent to prove abandonment. In this respect, the learned Counsel for the petitioner has invited the attention of this Court to the Judgment of Hon'ble High Court of Bombay reported in CDJ 1987 Bombay High Court 472 held "what strikes us more is the reasoning of the Labour Court. Since, it is the case of the respondent No. 1 company that the workman had abandoned the service, it was for the company to prove that there was such abandonment. However, the Labour Court has argued that since, the workman had not given any notice to the company after his alleged removal, it should be held that it was he who had refused to join the service, and that he had no intention to worh in the factory. We have therefore, no hesitation in holding that the finding recorded by the Labour Court is *prima-facie* bad in law and the order of the Labour Court should be set aside".

14. The respondent management has initially appointed the petitioners as temporary operator training for a specific period. However, the employment of the petitioners were extended beyond the period of training and they were in the services of the respondent management for more than 5 years. The learned Counsel for the petitioner contended that the termination of the petitioners is nothing but retrenchment within the meaning of section 2(oo) of the Industrial Disputes Act and the respondent ought to have followed the mandatory requirements of the section 25(F) of the Industrial Disputes Act. In this respect, it is appropriate to quote the decision of the Hon'ble Supreme Court reported in 2011 (3) LLJ (SC) 1 : 2011 (LAB (IC) 2799 (Devinder Singh *v.* Municipal Council, Sananur) "wherein, the Hon'ble Supreme Court held that the source of employment, the method of recruitment, the terms and conditions of the employment/contract of service, quantum of wage/pay and the mode of payment are not at all relevant for deciding, whether or not a person is a workman within the meaning of section 2(S) of the Act".

15. The learned Counsel for the petitioner submit that the respondent management without regularising the services of the petitioner has simply thrown away them from the services of the respondent management

without following the provisions of section 25(F) of the Industrial Disputes Act. In this respect, the learned Counsel for the petitioner has invited this Court attention to the decision reported in 2011-III-LLJ-1 (SC) (Devinder Singh *v.* Municipal Council, Sananur), 2015 (6) SCC 321 (Ajaypal Singh *v.* Haryana Warehousing Corporation) and 2009 (8) SCC 556 (Maharashtra State Road Transport Corporation and another *v.* Casteribe Rajya Parivahan Karmchari Sanghatana). The important observations, made in the later cited judgments read thus;

"The Industrial Disputes Act, 1947 is a beneficial legislation enacted with an object for settlement of industrial disputes and for a certain other purpose. If, any part of the provisions of section 25F is violated and the employer thereby, resorts to unfair trade practice with the object to deprive the workman with the privilege as provided under the Act, the employer cannot justify such an action by taking a plea that the initial appointment of the employee was in violation of Articles 14 and 16 of the Constitution of India.

"We have noticed that Industrial Disputes Act is made for settlement of industrial disputes and for certain other purposes as mentioned therein. It prohibits unfair labour practice on the part of the employer in engaging employees as casual or temporary employees for a long period without giving them the status and privileges of permanent employees".

16. All the petitioners were worked for more than 240 days in each calendar year ever since, date of entry into service hence, they have the protection under section 25-F of the Industrial Disputes Act. The learned Counsel for the petitioner has invited this Court attention to the Judgment rendered by Hon'ble Apex Court reported in 2003(4) LLN 425 SC (Uttar Pradesh Drugs and Pharmaceutical Company Limited *vs.* Ramanuj Yadav and others relied on by the Counse1 for the management is extracted hereunder:

"The decision in the case on Mohan Lal does not lay down that if, a workman had worked for more than 240 days in any number of years and if, during the year of his termination, he had worked for the said number of days, he would not be entitled to the benefit of S.25 B. The question with which we are concerned was not under consideration in Mohan Las case. If, the view-point propounded by the management is accepted, then in every year the workman would be required to complete more than 240 days. If, in anyone year the employer gives him actual work for less than 240 days, the service of the workman can be terminated without compliance of S.6N of the UP Act, despite his having worked for number of years and for more than 240 days in each year except the last. Such, an intention cannot be attributed to the UP Act."

"From the above decision, the Apex Court makes it clear that Section 25-B(2)(a) of the I.D. Act protects the workman who rendered more than 240 days of service in any of the years preceding the 12 months from the date of the termination, but, failed to render 240 days of service in the last 12 months preceding the date of termination". "I have therefore, no hesitation to hold that the termination of the petitioner is illegal and void *ab initio*. The Award of the Labour Court holding otherwise is erroneous and is liable to be set aside.

17. The learned Counsel for the petitioner has invited the Court attention to the judgment of Constitution Bench of Hon'ble Apex Court in D.K. Yadav *vs.* J.M.A. Industries Limited reported in 1993 (3) SCC 259. Para 4 of the said Judgment is extracted hereunder:

4. In Punjab Land Development and Reclamation Corporation Limited *vs.* Presiding Officer, Labour Court the Constitution Bench considered the scope of the word "retrenchrnent" defined by Section 2(oo) and held in para 71 at page 716 that "analysing the definition of retrenchment in Section 2(00) we find that termination by the employer of the service of a workman would not otherwise have covered the cases excluded in clauses (a) and (b) namely, voluntary retirement and retirement on reaching the stipulated age of retirement or on the grounds of continued ill health. There would be no violational element of the employer. Their express exclusion implies that those would otherwise have been included". In para 77 at page 719 it was further held that right of the employer and the contract of employment has been effected by introducing Section 2(oo). The contention of the management to terminate the service of an employee under the certified standing orders and under the contracts of employment was negatived holding that the right of the management has been affected by introduction of Section 2 (oo) and Section 25-F of the Act. The second view was that the right as such has not been affected or taken away, but, only an additional social obligation has been imposed on the employer to abide by the mandate of Section 25-F of the Act to tide over the financial difficulty which subseres the social policy. This Court relied on the maxim-Stat pro ratione valuntas populi; the will of the people stands in place of a reason. In paragraph 82

at page 722 this Court concluded that the definition in Section 2 (00) of the Act of retrenchment means "the termination by the employer of the service of a workman for any reason whatsoever except those expressly excluded in the section". Same view was taken by three Benches of three Judges of this Court in State Bank of India *v.* Shri N. Sundara Money; Delhi Cloth & General Mills Limited *v.* Shamblu Nath Mukherjee and Hindustan Steel Ltd. V. Presing Officer, Labour Court and two Benches of two Judges in L. Robert D'Souza *v.* Executive Engineer, Souther Railway and H.D. Singh *v.* Reserve Bank of India took the same view. Therefore, we find force in the contention of Shri R.K. Jain, the learned Senior Counsel for the appellant that the definition "retrenchmen" in Section 2 (oo) is a comprehensive one intended to cover any action of the management to put an end to the employment of an employee for any reason whatsoever".

18. The learned Counsel for the respondent submit that the petitioners were all temporary workers of the respondent management. The petitioners working in the respondent management for a long period of time would not entitled them for confirmation of their employment. It was the contention of the petitioners that the petitioner has terminated the services of the petitioners but, in fact the petitioners left the services of the respondent on their own. The petitioners contended that the respondent orally terminated the services on 10-09-2015, but, they have filed petitioner for conciliation before the Labour Officer (Conciliation) on 07-08-2017 which is almost after 2 years. The petitioners failed to file the failure report submitted by the Labour Officer (Conciliation), since, the same was not favour of them. In the appointment order of the petitioners it is clearly stated that the nature of appointment is temporarily in nature and the same did not confer any right or entitlement for claiming absorption against any regular vacancy. All the petitioners stopped offering the temporary service from 10-09-2015. The respondent has not initiated any disciplinary action against the petitioners since, they are only temporary workers. After 10-09-2015 for the first time, the petitioner traight away raised the dispute before the Labour Officer (Conciliation) on 07-08-2017 after the delay of 2 years.

19. The learned Counsel for the respondent argued that the petitioners have not produced any material before this Court to substantiate in the claim of regularization. The petitioners were only appointed as temporary worker and they possess no right of reinstatement. In this respect, the Learned Counsel for the respondent has invited the attention to the Court in the judgment of Hon'ble Apex Court reported in 2005 (11) SCC Page 229-Chief Engineer (Construction) and Keshava Rao (Dead) by Legal Representatives and relevant portions are Para No. 15 and 16 is as follows:

"We are of the view that this appeal should be allowed. The Labour Court recorded two crucial findings of fact namely, that the respondent was engaged as a casual labourer in connection with project work and secondly, that he had abandoned his services and the allegation that he was prevented from joining his duties on 01-11-1977 was not true. These were findings of fact recorded by the Tribunal on the basis of evidence on record. The muster-roll, no doubt, supported the case of the appellant that after 01-11-1977 he did not report for duty. We cannot lose sight of the fact that thereafter till 04-04-1979 the respondent did nothing to assert his right of reinstatement. The delay of a year and 5 months in issuing a notice appears to us to be significant. Apart from this no evidence was led by the respondent-workman that he had made any effort to seek reinstatement that he had made any effort to seek reinstatement or complained against the action of the management to anyone. There is no material whatsoever to suggest that he had made a grievance about it before any authority or before the workers Union".

20. The learned Counsel for the respondent submit that the petitioners miserably failed to prove that the respondent orally terminated their services on 10-09-2015. The petitioners has not written any letter seeking regularization by the management. Only legal contention of the petitioners are that they have put in 240 days of services in a year and therefore, they are deemed to be permanent as per the provisions of Industrial Disputes Act any person who completed the 240 days in a year is only entitled for retrenchment compensation as mentioned in section 25(F) of the Industrial Disputes Act. Since, the petitioners stopped reporting duty from 10-09-2015, the question of regularization of their services and paying retrenchment compensation does not arise.

21. The learned Counsel for the respondent invited the attention of this Court to the Judgment of Hon'ble Apex Court in Employees' State Insurance Corporation *v.* Tata Engg. & Co. reported in 1976-I-LLJ-81 wherein, the Hon'ble Apex Court held "The heart of the matter in apprenticeship is therefore, the dominant object and intent to impart on the part of the employer and to accept on the part of the other person learning under certain agreed terms. That certain payment is made during the apprenticeship, by whatever name called, and that the apprentice has to be under certain rules of

discipline do not convert the apprentice, to a regular employee under the employer. Such a person remains a learner and is not an employee.

To my mind, the aforesaid observations, clearly lay down the foundation of the relationship between the parties. In my view, whether the trainee is a mere trainee under the personal contract (de hors the Apprentices Act) or is an apprentice within the meaning of the said Act, makes no difference. So long as a trainee is engaged by the employer for the purpose of imparting training, this dominant purpose and object, and the basis intention behind such an engagement, cannot be frustrated by refusal of registration of a contract under the said Act".

22. The learned Counsel for the respondent has invited this Court attention to the Judgment of Hon'ble Apex Court reported in (2008) 2 Supreme Court Cases 552 Chandra Shekhar Azad Krishi Evam Prodyogiki Vishwavidyalaya *vs.* United Trades Congress and Another held "A feeble attempt, however, was made by the Learned Counsel appearing on behalf of respondent 2 to state that he had been appointed against a permanent vacancy. In his written statement, he did not raise any such contention. It does not also appear from the records that any offer of appointment was given to him. It is inconceivable that an employee appointed on a regular basis would not be given an offer of appointment or shall not be placed on a scale of pay. We therefore, have no hesitation in proceeding on the premise that Respondent-2 was appointed on daily wages. The Industrial Court in passing the impugned Award proceeded on the premise that Respondent-2 had been working for more than 240 days continuously from the date of his engagement. It is now trite that the same by itself does not confer any right upon a workman to be regularized in service. Working for more than 240 days in a year was relevant only for the purpose of application of Section 6-N of the U.P. Industrial Disputes Act, 1947 providing for conditions precedent to retrench the workmen. It does not speak of acquisition of a right by the workman to be regularized in service".

23. The learned Counsel for the respondent submit that the petitioners were abandoned the services of the respondent without any intimation. The respondent need not issue statutory notice nor proceed with domestic enquiry since, the services are purely temporary in nature. In this respect the learned Counsel for the respondent has invited this Court attention to the judgment of Hon'ble Delhi High Court in 2000 (3) L.L.N. 960 Kanda Swamy and another *vs.* Presiding Officer, Industrial Tribunal III, and another held "In so far as the question of abandonment is concerned, the workmen alleged that their services were terminated. On the other hand, it was stated by the management witness that after a particular date, as mentioned above, these workmen did not report for duties. It is also stated by him that these workmen did not submit any leave application nor medical certificate on the dates on which they remained absent and their names are not entered into the muster-rolls prepared by the management. Their names, according to witness, do not appear in the muster-roll with effect from 14 November 1988 and 14 October 1988 respectively. It is stated by him in his evidence that as per the practice on a date when a particular daily-rated muster-roll employee does not turn up, his name is not entered into muster-roll when the muster-roll is commenced. After discussing the respective evidence of both the parties in the impugned Award, the Labour Court has accepted the version of the MCD. There is no reason to hold that the finding of the Labour Court in this respect is perverse. Although, it was not required to do so strictly, still I summoned the record and went through the evidence. I, observed that the view taken by the learned Labour Court is a possible view which could be taken after analysing the evidence of both the parties".

24. This Court has carefully considered the rival submissions. The petitioners worked with the respondent management for more than 5 years. Though initially the were employed as temporary operator trainee for a limited period, their services were periodically extended upto the date of termination. Since, the nature of job is a perennial nature. The claim of the petitioners that they were worked in the production Department and engaged in production work along with other permanent employees was not negatived by the management by production of relevant records. There was no records produced by the respondent management for offering training to all the petitioners who were not technically qualified. The petitioners have contended that the work was monitored and supervised by the respondent management from the beginning till the end and one can easily understand the existing relationship of employer and employee between the respondent and the petitioners.

25. In Mcleod and Co. *v.* Sixth Industrial Tribunal, West Bengal. 1958 AIR Calcutta 273 wherein, the Hon'ble Calcutta High Court held "whether a person was a workman within the definition of the Industrial Disputes Act would be the very foundation of the jurisdiction of the Industrial Tribunal. The Court further observed that in order to determined the categories of service indicated by the use of different words like 'supervisor',

'managerial' and 'administrative', it was not necessary to import the notions of one into the interpretation of the other. The words such as 'supervisory', 'managerial' and 'administrative' are advisedly loose expressions with no rigid frontiers and too much subtlety should not be used in trying to precisely define where supervision ends and management begins or administration starts. For that would be theoretical and not practical. It has to be broadly interpreted from a common sense point of view where tests will be simple both in theory and in their application. The learned Judge further observed that a supervisor need not be a manager or an administrator and a supervisor can be a workman so long as he did not exceed the monetary limitation indicated in the section and a supervisor irrespective of his salary is not a workman who has to discharge function mainly of managerial nature by reasons of the duties attached to his office or of the powers vested in him".

26. A perusal of definition workman shows that it makes no difference between permanent employee and a temporary employee or a casual employee. The said view has gain support from the Judgment, Chief Engineer (Irrigation) Chepauk *vs.* N. Nadesan, 1973 II LLJ 446 and Management of Crompton Engineering & Co. *vs.* Presiding Officer, Additional Labour Court, reported in 1974 I LLJ 459 (Madras). It is clear that even if a person is a casual employee they will be entitled to the benefit of the provision of section 25F of the Industrial Disputes Act, 1947, if he satisfies the requirements of this provision.

27. All the petitioners were worked for more than 240 days in a year ever since, their date of appointment and their work is perennial in nature. Hence, all the petitioners are entitled to be protected as per the mandatory provisions of section 25(F) of the Industrial Disputes Act. All the petitioners concretely come under the purview of workmen as defined under section 2 (S) of the Industrial Disputes Act as such the termination of the petitioners without following the principles of natural justice and the mandatory provisions of section 25(F) of the Industrial Disputes Act, is contrary to law. The evidence of PW.1 make clear that the petitioners are not in gainful employment in any other establishment from the date of termination till date.

28. From the discussion above made, this Court is of the considered opinion that the non-employment of the petitioners in the respondent management is not justified. The petitioners were not in gainful employment from the date of their termination till this date. This Court deem it fit to direct the respondent to reinstate the petitioners with 50% of back wages from the date of their termination till date of their reinstatement.

29. In the result, the petition is partly allowed. The respondent is directed to reinstate the petitioners within a period of 6 weeks from the date of this Award. The respondent is further directed to pay 50% of the back wages with other attendant benefits to the petitioners within a period of 6 weeks from the date of this Award. No costs.

Dictated to Stenographer, transcribed by him, corrected and pronounced by me in the open Court, on this 26th day of November, 2021.

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

List of petitioner's witness:

PW.1 — 01-10-2019 Vasanthi

List of petitioner's exhibits:

Ex.P1	—	07-08-2017	Xerox copy of the letter submitted by the petitioners before the Labour Officer Conciliation.
Ex.P2	—	01-04-2010	Xerox copy of the Identity Card issued by the respondent to the 1st petitioner valid till 01-04-2010.
Ex.P3		—	Xerox copy of the identity card issued by the ESIC to the 1st petitioner *vide* I.P. No. 5517500264.
Ex.P4	—	04-11-2005	Xerox copy of the Appointment order issued by the respondent management to the 1st petitioner.
Ex.P5		—	Xerox copy of the various Salary Bills (4 Nos.) issued by the respondent management to the 1st petitioner.
Ex.P6		—	Xerox copy of the Identity Card issued by the respondent to the 2nd petitioner valid till 30-12-2010.
Ex.P7	—	01-06-2011	Xerox copy of the Appointment Order issued by the respondent management to the 2nd petitioner.

Ex.P8	—	Xerox copy of the Salary Bill issued by the respondent management to the 2nd petitioner.
Ex.P9	—	Xerox copy of the Identity Card issued by the ESIC to the 3rd petitioner *vide* I.P. No. 5518706682.
Ex.P10	—	Xerox copy of the Salary Bill issued by the respondent management to the 3rd petitioner.
Ex.P11	—	Xerox copy of the Identity Card issued by the respondent to the 4th petitioner valid till 19-11-2008.
Ex.P12	—	Xerox copy of the Identity Card issued by the ESIC to the 4th petitioner *vide* I.P. No. 5517501713.
Ex.P13	—	Xerox copy of the various Salary Bills (2 Nos.) issued by the respondent management to the 4th petitioner.
Ex.P14	— 01-06-2011	Xerox copy of the Appointment Order issued by the respondent management to the 4th petitioner.

List of respondent's witnesses: NIL

List of respondent's exhibits: NIL

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

புதுச்சேரி அரசு

இந்து சமய நிறுவனங்கள் மற்றும் வக்ஃபு துறை

[அரசு ஆணை பலவகை எண் 05/இசநி./கோ.4/2022/662, புதுச்சேரி, நாள் 2022 (ஹேவி பிப்ரவரி மீ 02 ஏ.]

ஆணை

புதுச்சேரி மாநிலம், புதுச்சேரி வட்டாரம், அரியாங்குப்பம் கொம்யூன், காக்காயந்தோப்பு, அருள்மிகு முத்துமாரியம்மன் திருக்கோயிலுக்கு அரசு ஆணை பலவகை எண் 18/இசநி./கோ.4/2016, நாள் 14-10-2016-ன் மூலம் அமைக்கப்பட்ட அறங்காவலர் வாரியத்தால் நிர்வகிக்கப்பட்டு வருகிறது. இவ்வறங்காவலர் வாரியத்தின் பதவிக்காலம் முடிவடைந்துவிட்டது.

2. இந்நிலையில் மேற்குறிப்பிட்ட திருக்கோயிலை நிர்வகிப்பதற்கு ஓர் புதிய அறங்காவலர் வாரியம் அமைக்க வேண்டியது இன்றியமையாததாகிறது.

3. எனவே, 1972-ஆம் ஆண்டு, புதுச்சேரி, இந்து சமய நிறுவனங்கள் சட்டம் 4-ஆம் பிரிவின்கீழ் வழங்கப்பட்டுள்ள அதிகாரங்களைச் செலுத்தி, மேற்கூறிய திருக்கோயிலுக்கு கீழ்க்குறிப்பிடப்பட்டுள்ள ஐந்து நபர்களைக் கொண்ட ஓர் அறங்காவலர் வாரியத்தை அரசு உடனடியாக அமைக்கிறது.

திருவாளர்கள் :

(1)	முருகையன், த/பெ. தெய்வநாயகம், எண் 01, 2-வது தெரு, காக்காயந்தோப்பு, அரியாங்குப்பம், புதுச்சேரி.	. . தலைவர்
(2)	குணசீலன், த/பெ. குப்புசாமி, எண் 04, முதல் குறுக்குத் தெரு, காக்காயந்தோப்பு, புதுச்சேரி.	. . துணைத் தலைவர்.
(3)	பச்சையப்பன், த/பெ. சுப்ரமணியன், எண் 07, மாரியம்மன் கோயில் தெரு, காக்காயந்தோப்பு, புதுச்சேரி.	. . செயலாளர்
(4)	சரவணன், த/பெ. மாசிலாமணி, எண் 14, சின்னத்து கவுண்டர் தெரு, காக்காயந்தோப்பு, புதுச்சேரி.	. . பொருளாளர்
(5)	சகிலா, க/பெ. காண்டீபன், எண் 07, மாரியம்மன் கோயில் தெரு, காக்காயந்தோப்பு, புதுச்சேரி.	. . உறுப்பினர்

4. புதிய அறங்காவலர் வாரியத்தினர் உடனடியாக திருக்கோயிலின் பொறுப்புக்களை அதன் அசையும், அசையாச் சொத்துக்கள் மற்றும் இதர ஆவணங்களுடன் ஏற்றுக்கொள்ளுமாறு அறிவுறுத்தப்படுகிறது.

5. 1972-ஆம் ஆண்டு, புதுச்சேரி, இந்து சமய நிறுவனங்கள் சட்டம் மற்றும் அதன்கீழ் இயற்றப்பட்ட விதிகளுக்குட்பட்டு அறங்காவலர் வாரியத்தினர் திருக்கோயிலை நிர்வகிக்கக் கடமைப்பட்டவர்களாவர். மேலும், நிர்வாகத்தினர் கடைப்பிடிக்க வேண்டிய சில முக்கிய பணிகள் கீழே கொடுக்கப்பட்டுள்ளன.

(அ) கோயிலுக்குச் சொந்தமான காலி மனைகள், கோயிலை சுற்றியுள்ள இடங்கள் மற்றும் கோயில் குளங்களை தூர்வாருதல்/சுத்தம் செய்தல் இவைகளை உள்ளடக்கிய ஒரு ஆண்டறிக்கையினை சமர்பித்தல் வேண்டும்.