



புதுச்சேரி மாநில அரசிதழ்

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GOVERNMENT OF PUDUCHERRY
LABOUR DEPARTMENT

(G.O. Rt. No. 11/AIL/Lab./T/2021,
Puducherry, dated 4th February 2022)

NOTIFICATION

Whereas, an Award in I.D. (T) No. 01/2017, dated dated 23-12-2021 of the Industrial Tribunal-cum-Labour Court, Puducherry, in respect of the Industrial Dispute between the management of M/s. Hindustan Unilever Limited, Tea Factory, Kirumampakkam, Puducherry and HLL Tea Worker's Welfare Union, over charter of demands such as to increase the basic wages every year by 10%, HRA by 40%, Conveyance Allowance by ₹ 3,000 and other allowances, *etc.*, 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).

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

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

Thursday, the 23rd day of December 2021.

I.D. (T) No. 01/2017
in
C.N.R. No. PYPY06000082017

The General Secretary,
HLL Tea Worker's Welfare Union,
No. 34, Madha Kovil Street,
Korukkumedu, Thavalakuppam,
Kattupalayam Post,
Puducherry. . . Petitioner

Versus

The Managing Director,
M/s. Hindustan Unilever Limited (Tea Factory),
No. 9 (3) Cuddalore Road,
Kirumampakkam,
Puducherry. . . Respondent

This Industrial Dispute coming on 15-12-2021 before me for final hearing in the presence of Thiruvalargal P.R. Thiruneelakandan, R. Harinath and A. Mithun Chakravarthy, Counsels for the petitioner and Thiruvalargal L. Sathish, S. Ulaganathan, T. Pravin, S. Velmurugan, V. Veeraragavan and E. Karthik, 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 Industrial Dispute has been referred by the Government as per the G.O. Rt. No. 123/AIL/Lab./T/2016, dated 26-12-2016 for adjudicating whether the industrial dispute raised by HLL Tea Worker's Welfare Union, against the management of M/s. Hindustan Unilever Limited, Tea Factory, Kirumampakkam, Puducherry, over charter of demands such as to increase the basic wages every year by 10%, HRA by 40%, conveyance Allowance by ₹ 3,000 and other allowances, *etc.*, is justified or not? If justified, what relief the petitioner Union 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 claim Statement of the petitioner:*

The respondent is a multi-national company carrying on business in India and the same is registered under Indian Companies Act. The members of the petitioner Union are being given monthly wage of ₹ 6,000 while so the petitioner union has submitted a charter of demand for revision of wage for a period from 2015 to 2019. The respondent management has not considered the request of the petitioner's union and the union was constrained to approach the Labour Officer (Conciliation) for Conciliation. The Conciliation proceedings since, ended in failure the dispute was referred to the Tribunal for adjudication as per Government Order, dated 26-12-2016.

(ii) The respondent management in order to suppress the wage demand has posed the counter demand to increase the machine speed from 29 units to 39 units with the existing work force and also demanded workers to accept the proposed erection of auto machine which would likely to lead retrenchment of existing workers. On 14-12-2015 the petitioner union raised industrial dispute over the wage revision before the Labour Officer (Conciliation), Puducherry. The industrial dispute over the charter of demand for wage revision and other allowances

for the period covering from 19-08-2015 under 40 heads. The respondent management has followed the delaying tactics and attempted to form puppet union to support the management and simultaneously negotiated with the petitioner. The respondent management by letter, dated 29-08-2011 offered a some ₹ 2,806 per month and final amount of wage increase inclusive of all wage component since, the wage revision offered by the respondent management was not in accepted terms, the Labour Officer (Conciliation) has given a failure report on 21-09-2016. The members of the petitioner union are permanent workers and they are working in the respondent factory for more 15 years of continuous service.

(iii) At present the respondent is following method in fixing the basic wage of the W-1 category worker in entry level is ₹ 15 per day, the same was restricted maximum ceiling of ₹ 64 per day. In the last wage settlement, dated 07-05-2007 entry level in W-1 category workman was given increase of ₹ 2 per day in basic wage which comes in a month of 26 working days a sum of ₹ 442 (No. of days 26 X Basic pay ₹ 15 per day = ₹ 390 + (No. of days 26 X Increase Basic by ₹ 2 per day = ₹ 52). The remaining portion of wage has been paid by way of fixed DA up to 576 points ₹ 1,350 per month, and ₹ 1,365 as allowance which includes HRA, Conveyance allowance, Canteen, Night shift Education allowance, Medical allowances, Performance allowance, Attendance allowances. In totaling basic plus other allowance for the workers in Grade W-1 has been paid ₹ 2,975 per month and worker Grade W-3 has been paid ₹ 3,230 per month, which could not even meet the requirement of statutory minimum wages fixed to the Industries in Puducherry Union Territory. The major portion of the meager wage of the workers has been paid by way of allowances, particularly by way of production incentive linked with the production which might vary individual to individual, efficiency, diligent, some time season to season and also it vary with variation in the rate of supply of raw material or with the assistance obtainable from machinery or vary by nature interference.

(iv) Considering the volume of production turn over and profit the wages payable to the members of the petitioner's union is very meager and the conditions of the workers is pathetic and the wage paid to the workers cannot meet the present cost of living. About 99% of the workmen are married and have children and parent to who required their support. In order to quit the cost of living the wage has to be increase under all the heads, so as to commensurate the present cost of living. The

petitioner prayed for passing of an Award revising the wages of the petitioner's in terms of charter of demand, dated 19-08-2015 with retrospective effect from 06-05-2015 with other benefits.

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

The petitioner union is a minority union represent only 40 workers has absolutely no *locus standi* to rack up the issue particularly when the respondent has entered into 18(1) settlement with the majority union. The present industrial dispute and the claim petition filed by the petitioner union is nothing but, an adjudication of claim petition in I.D (T) 04/2012 between the petitioner and respondent except some superficial changes. In reply to the claim statement filed in I.D. (T) 04/2012 the respondent has specifically pleaded the wage structure and other attendant benefits claimed in I.D. (T) 04/2012 was resolved between the management and the majority of the workers *vide* a comprehensive settlement under section 18(1) of the Industrial Dispute Act, dated 04-03-2013. The validity of the settlement, dated 04-03-2013 is for a period of 4 years, *i.e.*, until 03-03-2017. It is only 14 workers who did not accept the settlement and sought for separate wage structure when the settlement, dated 04-03-2013 is in force. The settlement, dated 04-03-2013 was ratified by 110 workers out of 124 workers the present dispute is raised for wage fixation from 06-05-2015 which is comprehensively covered under the settlement, dated 04-03-2013.

(ii) The settlement, dated 04-03-2013 is now, superseded by a fresh 18(1) settlement, dated 20-12-2016 between the respondent and three out of 4 unions in the factory. The said settlement was ratified by 92 workers out of 122 workers. The petitioner claim for wage revision in the present industrial dispute is fully covered under the settlement, dated 04-03-2013 and 20-12-2016. On expiry of settlement dated 04-03-2013 three unions out of 4 unions in the respondent company has started new wage settlement negotiations on 03-03-2017 and they have also formed a joint negotiations committee. The respondent has signed a comprehensive 18(1) settlement with the majority of workers from three out of 4 unions with full concurrence of the respective members which is binding on all the workers of the respective three unions. The settlement signed between the respondent and unions on 04-03-2013 and 20-01-2016 are absolutely fair and those who have accepted both the settlement have benefited immensely.

The 14 workers who have not accepted the 18(1) settlement, dated 04-03-2013 cannot claim any benefits under the said settlement which was expired and superseded by a fresh settlement, dated 20-12-2016. Giving wages in terms of 18(1) settlement, dated 04-03-2013 to the 14 workers who did not accept the said settlement and who did not give production in terms of the said settlement for more than 4 years would be a grave injustice to the other majority workers who has accepted the settlement. The respondent denies that the nearby industries such as Godrej Consumer products Limited and NCR Limited have given wage revision to the tune of ₹ 32,471.

(iii) The factory was established in November 1997. Employees were recruited and confirmed in service post completing their training period around 1999. Post confirmation they were given standard wages, for Assistant Operators – the basic started with ₹15 per day and for Operators the basic started with ₹ 25 per day. In addition to this FDA and VDA are part of their PF wages. The average basic of Assistant Operator (unskilled worker as mentioned by petitioners union) as on August 2012 are ₹ 2,036 in addition to this they are paid ₹ 2,114 as FDA and ₹ 1,675 as VDA and hence, the total PF wages paid was around ₹ 6,815. Hence, the petitioner union's claim that the basic pay was ₹ 1,000 to ₹ 1,800, mentioning about FDA and VDA was equally important as it forms the part of PF wages. The respondent submit that the claim settlement lacks *bona fide* and the same is liable to be dismissed.

4. On the petitioner side Mr. Rajendirane was examined as PW.1 and through him proof affidavit was filed, Ex.P1 to Ex.P14 were marked. On the respondent side no oral or documentary evidence has been produced.

5. Points for consideration:

Whether the charter of demands raised by the HLL Tea Workers Welfare Union against the M/s. Hindustan Unilever Limited, Tea Factory, Puducherry, to increase the basic wages every year by 10%, HRA by 40%, conveyance allowance by ₹ 3,000 and other allowances is justified and what relief available to the members of the petitioner union?

6. On the petitioner side Thiru Radjendirane, son of Sadhasivam who is the Secretary of the petitioner union was examined as PW.1 and through him chief affidavit of PW.1 is filed and Ex.P1 to P14 were marked. In the evidence of PW.1 by way of chief affidavit he has

stated that the petitioner union raised the abovesaid industrial dispute in I.D. No. 01/2017 for revision of wage in terms of charter of demands, dated 19-08-2015 with retrospective effect from 06-05-2015. The petitioner union filed claim statement in the abovesaid industrial dispute in the averments made in the claim statement of the said industrial dispute may be read as part and parcel of the proof affidavit to avoid repetition. PW.1 extensively cross-examined by the respondent management since, this Court has already discussed the brief averments of the claim statement it will be a futile attempt to once again repeat the contents of the claim statements.

7. During pendency of the trial the respondent management has filed a memo stating that the industrial dispute raised by the petitioner union over wage revision and for other reliefs against the respondent management. The petitioner union and the respondent management have entered into settlement under section 18(1) of Industrial Disputes Act on 03-07-2020 and they have settled all their dispute and demands in the present Industrial Dispute as well as in C.P.13/2018 pending before this Court. The memo filed by the respondent management for which the petitioner union filed as objections. In the said memo of objection the petitioner has stated that the petitioner Trade Union has filed industrial dispute for wage revision and commutating of arrears of wage increment for 14 members including the workers Mr. S. Radjendirane. The respondent management has come forward to settle the issue by way of 18(1) settlement, dated 03-07-2020 and thereby settle the workers dispute and demands made in I.D.(T) 01/2017 as well as in C.P.13/2018 except the worker Mr. S. Radjendirane. The claim and the dispute is not settled in respect of worker S. Radjendirane. In respect of other 13 workers are concerned the Award may be passed in the said industrial dispute and C.P in terms of said 18(1) settlement. Since, the industrial dispute and C.P. were not completely settled between the parties. This Hon'ble Court may be pleased to adjudicate the aforesaid I.D.No. 01/2017 and C.P.13/2018 and disposed of the same on merit as far as the worker Mr. Radjendirane is concerned.

8. This Court has perused the memorandum of settlement arrived between the petitioner Trade Union and the respondent management entered between themselves on 03-07-2020. Wherein, full and final settlement of all the demands of the Union and the employees in connection with the matters specified in the charter of demands, dated 11-02-2011 and 18-10-2016, the 2013 long term settlement, the 2016 long

term settlement and the industrial disputes. Upon execution of settlement each of the employees shall indicate their acceptance of the terms of settlement by duly signed in the letter of acceptance in the Annexure-B. Both sides learned Counsel has accepted except Mr. Radjendirane all other 13 employees were signed in the letter of acceptance.

9. Both sides learned Counsel has vehemently contended when the Court has to pass Award in respect of 13 workers who has accepted the 18(1) settlement and signed the letter of acceptance. The learned Counsel for the petitioner union submit since, the dispute raised by the petitioner union was not fully settled, the dispute in respect of Mr. Radjendirane may be continued for adjudication after trial.

10. This Court is bound to answer the dispute in respect of Mr. Radjendirane, who is not a party to the 18(1) settlement. At the same time, the majority of the employees are waiting for the Award of this Court in terms of 18(1) settlement. Both side learned Counsel has reminded that this Court can order for separate trial in respect of worker Mr. Radjendirane, under order II Rule 6 of C.P.C. This Court is empowered to order for separate trial when it appears to the Court, when the joinder of cause of action in suit may embrass or delay the trial or other order as may be expedient in the interest of justice. The 18(1) settlement was entered into between the parties on 03-07-2020 and all the 13 workers are waiting for the Award. At the same time, the reference in respect of Mr. Radjendirane has to be answered. In the above circumstances, this Court is of the considered opinion to pass Award in respect of 13 workers and separate trial to be conducted in respect of worker Mr. Radjendirane, by assigning new case number. Since, the case is under trial stage the separated case of Mr. Radjendirane shall be continued from the stage in which it was separated and thereby no prejudice will be caused to the contesting worker Mr. Radjendirane. The Office is required to assign fresh case number in respect of Mr. Radjendirane. In the interest of justice and by considering the welfare of 13 employee, this Court has decided to separate cause of Mr. Radjendirane from the other employees.

11. In the result, this Court conclude that all the 13 workers of the petitioner union are entitled to get the relief under section 18(1) settlement and the respondent management is directed to extend the benefits under 18(1) settlement, dated 03-07-2020 to all the 13 employees within a period of 8 weeks from the date of this Award and the reference is answered accordingly. No costs.

Dictated to Stenographer, transcribed by him, corrected and pronounced by me in the Open Court on this 23th day of December 2021.

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

List of petitioner's witness:

PW.1 — 23-10-2019 Rajendirane.

List of petitioner's exhibits:

Ex.P1 — 19-08-2015 Copy of the Charter of Demands submitted to the Factory Manager, HUL Tea Factory.

Ex.P2 — 21-09-2016 Copy of the Failure Report issued by the Labour Officer (Conciliation), Puducherry.

Ex.P3 — 26-12-2016 Copy of the Reference issued by the Government.

Ex.P4 — 15-09-2015 Copy of the letter given to the Factory Manager, HUL Tea Factory, by the President of the Trade Union.

Ex.P5 — 06-03-2017 Copy of the Regisration Certificate of the Trade Union.

Ex.P6 — Copy of the list of the Union members.

Ex.P7 — 25-09-2015 Copy of the reply letter by the respondent Manager to the President of the Trade Union.

Ex.P8 — October 2017 Copy of the Pay Slip of Employee by name Murugan issued by Godrej Consumer Products Limted, (Puducherry and Karaikal).

Ex.P9 — 02-08-2017 Copy of the Memorandum of Settlement under section 12(B) (page 7 to 50).

Ex.P10 — 14-12-2015 Copy of the petition filed under section 2K before the Labour Officer (Conciliation), Puducherry.

- Ex.P11 — 28-12-2015 Copy of the reply by the Management to the Labour Officer (Conciliation), Puducherry.
- Ex.P12 — 28-03-2017 Copy of the reply given by the Trade Union before the Labour Officer (Conciliation), Puducherry.
- Ex.P13 — 17-04-2017 Copy of the reply given by the Management to the President of the Trade Union.
- Ex.P14 — 20-12-2016 Copy of the letter from the Trade Union to the Labour Officer (Conciliation), Puducherry.

List of respondent's witness: NIL

List of respondent's exhibits: NIL

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

GOVERNMENT OF PUDUCHERRY
LABOUR DEPARTMENT

(G.O. Rt. No. 16/AIL/Lab./T/2021,
Puducherry, dated 4th February 2022)

NOTIFICATION

Whereas, an Award in I.D (T) No. 23/2017, dated 30-12-2021 of the Industrial Tribunal-cum-Labour Court, Puducherry, in respect of the Industrial Dispute between the management of M/s. Jyothi Laboratories Limited, Thethampakkam, Puducherry and its workman Thiru R. Arumugam, Vice-President of Jyothi Laboratories Thozhilalargal Sangam PMTUC, Puducherry 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).

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

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

Thursday, the 30th day of December 2021.

I.D. (T) No. 23/2017

in

C.N.R. No. PYPY060000942017

R. Arumugam,
Workman and the Vice-President
of Jyothi Laboratories Thozhilalargal
Sangam PMTUC,
No. 76, Vysial Street,
Puducherry. . . Petitioner

Versus

The Managing Director,
M/s. Jyothi Laboratories Limited,
Thethampakkam,
Puducherry. . . Respondent

This Industrial dispute coming on 21-12-2021 before me for final hearing in the presence of Thiruvalargal M. Nakkeeran, L. Sairaja Chandiran, M. Manjini and A. Prabakaran, Counsels for the petitioners and Thiruvalargal R. Ilanchezhian and S. Geetha, 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 Industrial Dispute has been referred by the Government as per the G.O. Rt. No. 166/AIL/Lab./T/2017, dated 03-11-2017 for adjudicating whether the industrial dispute raised by the petitioner Thiru Arumugam, Workman, Vice-President of Jyothi Laboratories Thozhilalargal Sangam PMTUC, No. 76, Vysial Street, Puducherry, against the management of M/s. Jyothi Laboratories Limited, Thethampakkam, Puducherry, over transfer to Karaikal Factory is justified or not and if justified, 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 claim Statement of the petitioner:*

The petitioner is employed as a workman in Jyothi Laboratories Limited, since, 07-08-1998. He become regular employee on 09-09-2009. The petitioner was

discharging his duties as a load man in the respondent company. The petitioner is also the Vice-President of Jyothi Laboratories Thozhilalargal Sangam. The petitioner was striving hard for the upliftment of the company and welfare of the workman. In order to restrict the activities of the petitioner Trade Unions the respondent management intentionally avoided the petitioner union to participate in the negotiation for the revision of salary held during April 2015. To put an end to the functioning of the Trade Union activities the petitioner was transferred to Karaikal unit by transfer order, dated 03-04-2017. Anticipating the transfer the petitioner gave representation to the Labour Officer (Conciliation), Puducherry, to resolve the issue amicably. The petitioner has to manage his family with two school going children with his meager income. The petitioners daughter is a Cardiac Patient who underwent surgery recently. The petitioner was not allowed to enter into a company since, 1st week of April 2017. The petitioner was transferred as his services are required to train the employees at Karaikal. The petitioner was transferred to Karaikal unit on the exigency basis to train up the recently absorbed workers. The petitioner is only a loadman and does not hold any technical qualification to give training. The respondent has filed Form-I, dated 13-07-2017 stating that the transfer of petitioner to Karaikal, is purely on exigency and not with ulterior motive and requested for initiation of disciplinary proceedings against the petitioner. The petitioner pray for the revocation of his transfer order with effect from 10-04-2017.

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

The petitioner was transferred from Pondicherry factory to Karaikal factory out of exigency of work with effect from 10-04-2017. The terms of appointment of the workman contemplates transferred to any factory or any of its branches and also the certified standing orders of the company provides and permit for such transfer. The transfer is purely on exigency of work and does not have any ulterior motive. It is a general practice of the respondent management to transfer its workman on need basis to various places in India. The time of refusal of employment does not arise. The act of the petitioner is purely voluntary abatement without obeying the transfer order of the respondent. The respondent denies that the petitioner had been victimized for his Trade Union activities. There are three unions recognized by the respondent management. There is not even a single

activity of victimization for any Trade Union activities. The respondent management contributed substantial amount to take care of the petitioner's child for undergoing a surgery. The respondent management took over a factory at Karaikal from M/s. Henkel India Limited and about 250 contract workers were taken as company employee. To train up those contract workers the services of some trained workers was felt necessary and only on that basis the petitioner was transferred. Since, the petitioner was transferred only with the Pondicherry Union Territory. There is no justification for the petitioner not accepting the transfer. Transfer of the petitioner cannot be coloured as punishment or victimization. The history of the petitioner shows that he used to be an undisciplined worker. The respondent pray for dismissal of the petition.

4. On the petitioner side Arumugam was examined as PW.1, one Pushpa was examined as PW.2 and through them proof affidavit was filed. Ex.P1 to Ex.P8 were marked through PW.1. On the respondent side Sivaraman was examined as RW.1 and Ex.R1 to Ex.R11 were marked.

5. Points for consideration:

Whether the dispute raised by the petitioner Thiru Arumugam, workman, Jyothi Laboratories, Puducherry against the respondent management M/s. Jyothi Laboratories Limited, Thethampakkam, Puducherry, over transfer to Karaikal factory is justifiable?

6. The petitioner Thiru Arumugam was examined as PW.1 and his chief examination affidavit was filed before this Court. Through Ex.P1 to P8 were marked. In the evidence of PW1 he has deposed that he was transfer by transfer order, dated 03-04-2017 from Puducherry Joythi Laboratories to Karaikal unit. The petitioner was appointed as a workmen since, 07-08-1998 and become a regular employee on 09-09-2009. The petitioner is a Vice-President of Joythi Laboratories Thozhilalar Sangam (PMTUC). In order to restrict the activities of the Trade Union, the respondent management intentionally avoided the petitioner's union from participating in the negotiations for revision of salary and other benefits in April 2015. The transfer order issued to the petitioner is against the law and unfair trade practice. The petitioner daughter is a Cardiac patient undergone surgery recently and she required utmost attention and care all the times. In the first week April 2017 the petitioner was not allowed to enter to the respondent company the petitioner was employed as a load man and he does not poses any technical

qualification so as to train the employees at Karaikal unit. Anticipating transfer the petitioner has approached the Labour Officer (Conciliation), Puducherry by representation, dated 13-07-2017. The respondent filed a report before the Labour Office (Conciliation), Puducherry that the petitioner had been transfer the Karaikal unit to train up the newly absorbed workers. The petitioner stated that the transfer is with an ulterior motive to curtail the Trade Union activities. The petitioner is jobless since, April 2017 and their family is suffering for their livelihood.

7. PW.2 Tmt. Pushpa is the workmen working in the respondent management since, 1998. The service condition applicable to the workmen in the respondent unit does not contemplate transfer from one station to another. There is no precedent of transfer of workmen from respondent unit at Puducherry to any other station. PW.2 further deposed that there is no clause in the appointment order contemplating transfer of an employee from Puducherry who were transfer to Guwahati, Karaikal and Silvasa were not joined in the respective station even after the receipt of transfer order. The petitioner was victimized by the order of transfer.

8. RW.1 Thiru P. Sivaraman, Officer (H.R) in the Respondent Company has deposed that the petitioner was transferred from Puducherry factory to Karaikal factory out of exigency. However, the petitioner instead of reporting for work at Karaikal factory he has raised an Industrial Dispute alleging flimsy reasons. The terms of appointment of the workmen and also the clause of the certified standing orders contemplates transfer to any factory in India or any of its branches. The transfer of petitioner is within the parameter of law. The respondent management does not have any ulterior motive but, the transfer is a routine one. It is effected on need basis. The workmen who are all transferred are entitled for additional benefits as per the policy of the management and they are being paid out-station allowances, TA, DA, *etc.*, The respondent management denied that the petitioner was victimized due to his Trade Union activities. There are three unions recognized by the respondent management and from the year 2007. The respondent management engaged in negotiations to resolve the issues directly with the union and was in the habit of entering into settlement from time to time. The respondent management has even contributed a substantial amount to the petitioner child who underwent surgery. The respondent factory at Karaikal was took over from M/s. Henkel India Limited along with 250 contract workers. To train up those

contract workers the service of the experienced workers is required to transfer of an employee from one place to another place is only an incidence of an employment and cannot be coloured as punishment or victimization as alleged by the petitioner. In the past the petitioner exhibits undisciplined both in his behaviour and attitude.

9. There is no single case of victimization for any Trade Union activities. The refusal of employment by the respondent management does not arise as contended by the petitioner. The act of the petitioner is a purely a case of voluntary abatement of duty without obeying the lawful orders of the respondent management. The question of re-employment with back wages or any other service of pecuniary benefits does not arise in this case. On the respondent side the appointment order issued to the petitioner, dated 03-11-1999 was marked as Ex.R11. After the completion of his training period the petitioner was made permanent.

10. The learned Counsel for the petitioner in his vibrant argument submit that the petitioner Thiru Arumugam was appointed in the respondent company on 07-08-1998 and his services was regularized by the management on 09-09-2009. Ever since, the date of his appoint he was worked as a load man he is also the Vice-President of Jyothi Laboratories Thozhilalar Sangam (PMTUC). The learned Counsel for the petitioner submit that there are two other Trade Unions functioning in the respondent management. The respondent management always exhibits step mother treatment to the petitioner Trade Union. The petitioners Trade Union was not consulted for negotiations regarding salary hike and other service conditions of the employee. The learned Counsel for the petitioner further submit that the petitioner was transferred from Puducherry factory to Karaikal unit with effect from 10-04-2017. Moreover, the petitioner was not allowed to enter into the company premises from 01-04-2017. The learned Counsel for the petitioner further submit that the petitioner's daughter underwent a heart surgery in the year of 2006 and the petitioner has to take care of her daughter constantly and the presence of the petitioner at Puducherry is essential for the well being of his daughter.

11. The learned Counsel for the petitioner submit that the respondent management has under took M/s. Henkel India Private Limited at Karaikal, which is a Multi-national Company. In order to train the contract labourers of the Karaikal unit the assistance of experienced persons was required and that is why the

petitioner was transferred to Karaikal is the reason assigned by the respondent. Where as the petitioner is not a technical person and he was all along utilized by the respondent management only for loading and unloading work. It is further submitted in the list of contract workers there are other two male persons name was present in the seniority list maintained by the respondent. If, the women workers also considered there are several other persons available in the seniority list ahead of the petitioner. The learned Counsel for the petitioner submit that the respondent management was annoyed to the active participant of the petitioner in the Trade Union activities and planned to transfer him to Karaikal factory to victimize him. The petitioner in anticipation of his transfer order has presented in an application before the Labour Officer (Conciliation), Puducherry on 07-04-2017 in Ex.P2 seeking the intervention of the Labour Officer (Conciliation), Puducherry to stop the transfer on 08-05-2017. The respondent has filed his counter statement wherein, the respondent has claimed that to give training through experienced workman they have been transferred.

12. The learned Counsel for the petitioner has invited the attention of this Court to the Judgment of Hon'ble Apex Court in K.N. Singh and another vs. G.M. (Personnel, M.M.T.C. Ltd. and others the case reported in 2011 1 LLJ 655 wherein, the Hon'ble Apex Court held "the power has to be exercised in good faith, no arbitrarily and the employer should try to accommodate the low paid employee at nearby places" in the case of B. Varadha Rao vs. State of Karnataka and others, AIR 1986 SC 1955 wherein, Hon'ble Apex Court held "One cannot, but, deprecate that frequent, unscheduled and unreasonable transfers can uproot a family, cause irreparable harm to a Government Servant and drive him to desperation. It disrupts the education of his children and leads to numerous other complications and problems and results in hardship and demoralization. It therefore, follows that the policy of transfer should be reasonable and fair and should apply to everybody equally. But, at the same time, it cannot be forgotten that so far as superior or more responsible posts are concerned, continued posting at one station or in one Department of the Government is not conductive to good administration. It creates vested interest and therefore, we find that even from the British times the general policy has been to restrict the period of posting for a definite period. We wish to add that the position of Class II and Class IV employees stand on a different footing. We trust that the Government will keep these considerations in view while making an order of transfer".

13. The learned Counsel for the petitioner has invited the attention of this Court to the judgment of Hon'ble Apex Court in 2013 1 LLJ 570 Ansal Properties and Industries Limited vs. The Presiding Officer, Industrial-cum-Tribunal Court-I, Gurgaon and Another reported in "that extension of service beyond the period for which respondent No. 2 was initially appointed would be on the basis of terms and conditions, which were agreed upon between the parties and those having not been produced on record, it cannot be claimed as a matter of right that same conditions will continue to apply, especially in the facts and circumstances of the present case where one of those terms and conditions is sought to be misused by the management by transferring a low paid employee) who was drawing salary of merely ₹ 2,825 per month Gurgaon to Mumbai. The facts of the present case in totality establish that the management in the present case had used devices somehow to dispense with the services of respondent No. 2. The Court can always lift the veil and see the circumstances behind it".

14. The learned Counsel for the petitioner further submit that the nature of transfer order seems to be arbitrary and vindictive nature the order of transfer issued by the respondent management is not at all tenable and the same has to be quashed and the petitioner needs to be reinstated in the Puducherry factory with back wages and all other attendant benefits.

15. The learned Counsel for the respondent in his strenuous argument submit that he respondent is a Public Limited Company registered under the Companies Act. The respondent is having 34 factories all over India and employing more than 5,000 employees. The respondent management is a professionally managed company and does not have any unethical approach towards its employees. The respondent management has taken over M/s. Henkel India Limited at Karaikal and all the regular employees of the Henkel India Limited were opted for voluntary retirement and therefore, the management settled their accounts by being compensation. Since, there was no regular employee at Karaikal factory the respondent has transferred some workers form various units to the Karaikal unit with a good intention of utilizing their services in the new unit. The transfer of the petitioner is purely out of exigency. In the order of appointment, dated 03-11-1999 there is a specific clause No. 3 that the petitioner is liable to be transferred from Puducherry unit to any other unit of the respondent management.

16. The learned Counsel for the respondent further submit that in clause 6.6 of the standing orders "a workman shall be liable to be transferred to any department or

section of the establishment or to any other place of business of the company subject to exigencies". The learned Counsel for the respondent has invited the Court attention to the Judgment of Hon'ble Supreme Court of India in *M/s. Kundan Sugar Mills vs. Ziyauddin and others* 1960 AIR 650 "Held, that apart from any statutory provision, the right of an employee and an employer are governed by the terms of contracts between them or by the terms necessarily implied therefrom, but, in the absence of an express agreement between the employer and employees it cannot necessarily be implied that the employer has the right to transfer the employee to any of its concerns in any place, and that the employee has a duty to join the concern to which he may be transferred. In this instant case, it was not a condition of service of employment of the concerned workmen either express or implied that the employer had the right to transfer them to a new concern started by the employment subsequent to the date of the employment".

17. The learned Counsel for the respondent further submit that "transfer of an employee in the circumstances of that case from one post to another was held not to be an alteration of any service condition within the meaning of section 33 of the Industrial Disputes Act". The case law was reported in (1956) 1 LLJ 343. The learned Counsel for the respondent has also invited this Court attention to the judgment of Hon'ble Calcutta High Court Susmiti Das and others vs. Basumati Corporation Limited, the case law reported in (1994) 1 LLJ 26 Calcutta reiterate the position of law in respect of transfer of an employee.

18. The respondent has maintaining cordial relationship with three Trade Unions to maintaining industrial harmony and peace. The respondent does not have any *mala fide* intention to transfer the petitioner and the transfer order was issued purely due to business exigency. The learned Counsel for the respondent further submit that the order of transfer was not issued to victimize the petitioner. In this respect, the learned Counsel for the respondent has invited this court attention to the judgment of Hon'ble Apex Court in *State of Bihar and Another vs. P.P. Sharma, I.A.S and Another* case law reported in 1992 Supp (1) scc 222 held "this Court held that *mala fide* means want of good faith, personal bias, grudge, oblique or improper motive or ulterior purpose. The plea of *mala fide* involves two questions, namely, (i) whether there is a personal bias or an oblique motive, and (ii) whether the administrative action is contrary to the objects, requirements and conditions of a valid exercise of administrative power. As far as second aspect is concerned, there is a power of transfer vested in the employer in terms of letter of appointment. Even in terms of the provisions in terms

of Act, the transfer by itself cannot be said to be an Act of unfair labour practice unless it is actuated by *mala fide*. Therefore, to sustain a plea of *mala fide*, there has to be an element of personal bias or an oblique motive".

19. The learned Counsel for the respondent further submit that if, an employee employed a person it was exploited in the appointment order and employee can be transferred to any place depends upon the requirement of the employer. It is further submitted that the transfer is an incident of service and an administrative function. The employer is the best judge about the requirement and posting of its employees. The learned Counsel for the respondent further submit that the petitioner having voluntarily abetting his duty from the date of his transfer is not entitle for any back wages and any other benefits applying the principles of "No work, No pay" and prayed for dismissal of the petition.

20. This Court has carefully considered the rival submissions and exhibits marked on both sides and written arguments filed by the respondent side. The petitioner was working in the respondent management from the year 1998. From the year 2000 onwards he acted as the Vice-President of Jyothi Laboratories Limited (PMTUC). According to the petitioner the respondent management has a grudge over his active involvement in the Trade Union and for the welfare of the workers of the respondent management and has issued the transfer order with a vindictive motive and to victimize the petitioner. But, on the respondent side the contention of the petitioner was denied and submitted that even though the petitioner was Vice-President of the alleged Association the transfer order were issued only in the year of 2017 are facts which can establish that the respondent has no ulterior motive or *mala fide* intention as against the petitioner.

21. The respondent management has contended that they have spent a sum of ₹ 55,000 for heart surgery of the petitioner's daughter in the year 2006 and the respondent is always taken care of the well being of the worker as well as their family members. It was further contended on the respondent side that the respondent always maintained the healthy relationship and sort out the differences by way of negotiations with Trade Union. Ever since establishment of the respondent management there was no industrial unrest for whatever reasons.

22. On the petitioner side it was contended that there was no condition prescribed in the appointment order that the respondent is entitled to transfer to any

other factories managed by the respondent. Further on the respondent side they have produced Ex.R1 which is the copy of the transfer order wherein the petitioner has put his signature for the receipt of the order of transfer. However, it was vehemently denied by the petitioner that the signature found in Ex.R11 was not made by the petitioner and the same was not his signature. When the signature of the petitioner is denied the onus is that respondent to prove the genuineness of the appointment order. Further the respondent has not taken any further steps to prove the Ex.R11 appointment order which was allegedly issued by the management and allegedly received by the petitioner. Though the respondent is contended that as per clause 6.6 of the certified standing orders of the employee is liable to be a transfer to any other unit. However the certified standing orders were not marked by the respondent during trial. However, a copy of the certified standing orders was submitted by the respondent side during arguments. On the respondent side genuineness of the Ex.R11 was questioned. In this respect, the learned Counsel for the petitioner submit that Ex.R11 is a created document for the purpose of this Court case and that is why Ex.R11 was not produced during earlier stages of trial.

23. RW.1 Sivaraman the Officer (H.R.) during cross-examination admitted that there are about 340 permanent workers and 129 unskilled workers employed with the respondent management. RW.1 further admitted the petitioner is a general worker and he is in the 3rd place of the seniority list maintained by the respondent management. Ex.R5 to R.10 are the transfer orders issued to Sivakumar (Technician), Annamalai (Engineering Section Officer), Thulasi (Welder), Manivannan (Office Staff), Rajagopal (Fabricator), Manickam (Electrical Technician).

24. The respondent management contended that the transfer of the petitioner is purely on exigency basis and need basis and there is no victimization for whatever reason. This Court has perused the transfer letter issued on 03-04-2017 by the respondent management. In the transfer letter there is no "exigency or need was mentioned". The reason stated by the respondent is that in order to train the contract labours of the Henkel India Limited, Karaikal unit which was taken over by the respondent management. The service of the experienced persons is required to give training to the inexperienced persons. The petitioner all along worked with the respondent only as a loadman and he does not possess any technical qualification. On the perusal of Ex.R5 to R.10 the persons who were transferred on 24-12-2012, 13-07-2013 and 08-05-2013. This persons who were

technically. qualified and persons worked in the administrative section were transferred from 24-12-2012 to 13-07-2013. Where as the petitioner was transferred by transfer order, dated 03-04-2017 that is three years after the Henkel India Limited was taken over by the respondent management. The transfer order issued after three year from the date of transfer of other employees create serious suspicion about the alleged exigency stated by the respondent. The respondent management has admitted that they have spent a sum of ₹ 55,000 towards heart surgery of the petitioner's daughter and it is well known to the wisdom of a common man that a child underwent a heart surgery required continuous medication and constant care. The petitioner has to travel about 250 kilometers to attend his work from Puducherry to Karaikal and returned to home from Karaikal to Puducherry. In the evidence of RW.1 he has deposed that the petitioner is in the 3rd place in the general worker category and the other persons who were stood 1st and 2nd in the seniority list were not transferred to meet out the alleged exigency. RW.1 Thiru Sivaraman during cross-examination deposed that he don't know how many unskilled labours were transferred and he further deposed that no other unskilled workers were transferred before the transfer issued to the petitioner Arumugam.

25. There is plethora of decision of the Hon'ble Apex Court and our Hon'ble High Court that the employer being the master is entitled to take decision in respect of transfer of an employee on the administrative side. At the same time the order of transfer must exhibit the *bona fide* of the employer. The reason attributed by the respondent for the transfer of the petitioner is not at all proved through cogent evidence and this Court is of the considered opinion that the respondent lack *bona fide* in issuing orders of transfer to the petitioner and on the score alone the order of transfer issued by the respondent management to the petitioner by transfer him to the Karaikal factory is liable to be quashed. Even before issuance of transfer order the petitioner has approached the Labour Officer (Conciliation), Puducherry and it is admitted by both sides that the petitioner has not attended the duty from the date of issuance of transfer order. The petitioner is without any job from the date of transfer order till date and suffering a lot without any employment and he is struggling for his livelihood. At the same time, this Court is not inclined to order for any back wages by applying the principles of "No work, No pay". From the overall discussion this Court is of the considered opinion that the transfer of the petitioner from Puducherry to Karaikal factory is not justified.

26. In the result, the petition is allowed. The respondent management is directed to give employment to the petitioner in the respondent management M/s. Joythi Laboratories Limited, Thethampakkam, Puducherry, with continuity of service within a period of six 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 the 30th day of December 2021.

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

List of petitioner's witnesses:

PW.1 — 29-08-2019 Arumugam

PW.2 — 18-12-2019 Pushpa

List of petitioner's exhibits:

Ex.P1 — March 2017 Pay Slip of the petitioner for the month of March 2017.

Ex.P2 — 07-04-2017 Letter to the Labour Officer Conciliation by the petitioner.

Ex.P3 — 08-05-2017 Letter to the Labour Officer Conciliation by the Respondent.

Ex.P4 — 02-06-2017 Letter to the Labour Officer Conciliation by the Petitioner.

Ex.P5 — 13-07-2017 Form-I submitted by the respondent to the Labour Officer Conciliation.

Ex.P6 — 02-08-2017 Reply to Form-I.

Ex.P7 — 28-11-2006 Discharge Summary issued by Department of Cardiothoracic and Vascular Surgery. Discharge Summary – Pondicherry Institute of Medical Sciences.

Ex.P8 — 04-02-2018 Certificate issued by Dr. Manimarane.

List of respondent's witness:

RW.1 — 16-03-2020 Sivaraman

List of respondent's exhibits:

Ex.R1 — 03-04-2017 Copy of the Transfer letter issued by the Respondent to the Employee by name Arumugam.

Ex.R2 — 12-04-2017 Copy of the covering letter with copy of the Conciliation letter, dated 07-07-2017 submitted to the Conciliation Officer by the employee Arumugam.

Ex.R3 — 08-05-2017 Copy of the reply letter submitted to the Conciliation Officer by the Respondent Management.

Ex.R4 — 13-07-2017 Copy of the Form-I submitted by the Respondent Management before the Labour Officer, Conciliation under section 33(1) of ID Act, 1947.

Ex.R5 — 24-12-2012 Copy of the Transfer Order issued by the Respondent Management to the employee G. Manickam.

Ex.R6 — 24-12-2012 Copy of the Transfer Order issued by the Respondent Management to the employee R. Annamalai.

Ex.R7 — 24-12-2012 Copy of the Transfer Order issued by the Respondent Management to the employee D. Manivannan.

Ex.R8 — 13-07-2013 Copy of the letter issued by the Respondent Management to the employee by name P. Thulasi.

Ex.R9 — 13-07-2013 Copy of the letter issued by the Respondent Management to the employee by name Shivakumar.

Ex.R10 — 08-05-2013 Copy of the letter issued by the Respondent Management to the employee by name K. Rajagopal.

Ex.R11 — 03-11-1999 Copy of the Appointment Order of the petitioner Arumugam issued by the Respondent Management.

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