



புதுச்சேரி மாநில அரசிதழ்

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பொருளடக்கம்

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GOVERNMENT OF PUDUCHERRY
LABOUR DEPARTMENT

(G.O. Rt. No. 18/AIL/Lab./T/2021,
Puducherry, dated 7th February 2022)

NOTIFICATION

Whereas, an Award in I.D (L) No. 01/2018, dated 17-12-2021 of the Industrial Tribunal-cum-Labour Court, Puducherry, in respect of the Industrial Dispute between the management of M/s. A & F Overseas Trade Limited, Uruvaiyar and Tmt. K. Sundari, Uruvaiyar, over non-employment due to shifting of factory 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.

Friday, the 17th day of December 2021.

I.D. (L) No. 01/2018
in
C.N.R. No. PYPY060000972018

1. Sundari (Died)
Rep. by her next friend/legal heir
2. Karthikeyan
3. Suganthi
4. Sugumar . . . Petitioners

Amended as per order, dated 09-09-2021 passed in I.A.No. 02/2021.

Versus

The Managing Director,
M/s. A & F Overseas Trade Limited,
Puducherry. . . Respondent

This Industrial dispute coming on 22-11-2021 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 Thiru S. Sankaralingam, Counsel for the respondent, upon hearing both sides, perusing the case records, after having stood over for consideration till this day, this Court delivered the following:

AWARD

This Industrial Dispute has been referred by the Government as per the G.O. Rt. No. 189/AIL/Lab./T/2017, dated 30-11-2017 for adjudicating whether the industrial dispute raised by the petitioner Tmt. K. Sundari, w/o. Karthikeyan, Uruvaiyar against the management of M/s. A & F Overseas Trade Limited, Uruvaiyar Puducherry, over non-employment due to shifting of factory is justified 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 working as an operator in the respondent company since, 1992 and her last drawn wages is ₹ 5,850 per month. The petitioner was served in the respondent management in processing of leather using chemicals for the past 25 years, due to which she was suffered by chronic diseases she has served in the respondent management in the past 25 years with a meager salary as ₹ 5,850 per month. When petitioner was taking treatment for her ill health the respondent management closed the factory on 07-05-2016 and shifted to a new place without prior approval of the Government of Puducherry, which is violative of sections 25-N and 25-A of the Industrial Disputes Act. Due to the illegal closure of the respondent company the petitioner lost her employment and she was not in a position to continue her employment. The petitioner raised dispute before the Conciliation Officer, Labour Department Puducherry, but, the same was ended in failure and hence, the matter was referred to this Court for adjudication. The closure of the respondent factory and shifting the same somewhere else resulted in closure of industrial undertaking which involves termination of employment of the petitioner. The petitioner pray for direction to the respondent management to pay the closure compensation entitled to the petitioner and also to pay the full and final settlement for her 25 years of service amounting to ₹ 10,00,000 (Rupees ten lakhs only).

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

The respondent company M/s. A & F Overseas Trade limited is a registered company engaged in manufacturing shoe uppers of job work basis for large manufacturers. Due to heavy competition in the market and global recession, the respondent company could not perform well and became a sick industrial undertaking. The respondent company has declared as a sick unit under section 22(1) of the Sick Industrial Companies (Special Provisions) Act, 1985. The respondent company continued its operation in spite of sickness and the respondent company never thought of topping his manufacturing activity in the interest of the workmen.

(ii) The respondent company was constrained to repay the secured creditors and through sale of the land and superstructure of the factory owned by the company. In the said circumstances, the respondent company was constrained to move its factory to another premises in the same locality. After finding the suitable location in the same locality and after informing the workman well in advance on 07-05-2016 and 05-07-2016. On the said date circulars were issued to all workmen informing the shifting of the factory to the nearest place. All the workmen except the petitioner has fully cooperated with the management and peacefully continued their job. There is neither retrenchment of workers nor closure of the factory. All the workers are continued to be employed in the respondent company on the same terms and conditions with continuity of service and attendant benefits. The interest of the workmen were totally protected with no reduction of wages and there is no financial burden on the workmen. There is no transfer, dismissal, retrenchment and there is no transfer of employer also. Free transportation to factory and thereafter, to workers residences has been continued in the new location also. The petitioner along with an ulterior motive has approached the Conciliation Authority with false allegations. The Conciliation Authority without dismissing the false claim of the petitioner had chosen to issue a failure report. The petitioners case is purely a grievance of an individual and that too an imaginary grievance about her non-employment.

(iii) In fact, the petitioner has been willfully and wantonly absenting herself to duty from 29-07-2016. The respondent has informed all the Government Authorities regarding to the proposed shifting of the factory as early as an 07-07-2016. Thus, there is not closure of the respondent factory and what had been

done for the respondent is only legal shifting of the factory premises, the other employees of the respondent management continued their employment with the respondent factory with all benefit. The transportation bills for the period June 2016 to September 2016 would clearly reveal that the workmen were carried out from their residences to the factory and from the factory to the residences at free of cost. The occupational disease has stated by the petitioner is only hypothetical and there is no medical proof. In fact, the petitioner on her own volition has willfully and wantonly absented herself in the respondent factory and the respondent neither closed the factory nor retrenchment. Since, the petitioner was neither dismissed nor refused to give employment by the respondent, she is not entitled for any compensation and prayed for dismissal of the petition.

4. On the petitioner side, Sundari was examined as PW.1 and through her proof affidavit was filed, Ex.P1 to Ex.P8 were marked. On the respondent side RW.1 Xavier Albin was examined, Ex.R1 to R11 were marked.

5. *Points for consideration:*

Whether the non-employment of petitioner Tmt. K. Sundari in the respondent management is justified? If so, what are the relief entitled to the petitioner?

6. In the evidence of PW.1, Tmt. Sundari, she has deposed that she was working as an operator in the respondent company from the year 1992 for a meager salary of ₹ 5,850 per month. Since, the petitioner worked for more than 25 years, she was affected by disease and she has approached the ESI hospital. The respondent management closed the factory on 07-05-2016 and shifted the same to some other place without previous permission of the Government. The petitioner therefore, was constrained to raise the dispute before the Labour Officer (Conciliation) for arriving at amicable settlement, but, there was no conclusion reached before the Labour Officer (Conciliation) and he has filed a failure report. The petitioners served with the respondent management for more than 25 years. The respondent management closed the factory and shifted to somewhere else, as a result, the closure of an industrial undertaking involve the termination of the employment of the petitioner. The petitioner prayed for closure compensation under section 25 FFF(1) of the Industrial Disputes Act and also prayed for full and final settlement of the monetary relief.

7. Thiru Xavier Albin, Commercial Manager of the respondent management was examined as RW1. In his evidence he has deposed that the respondent

management is a company registered under the Indian Companies Act and having factory at Puducherry. The company engaged in manufacturing shoe uppers on a job work basis, for the large scale manufacturers. Due to heavy market competition and global recession, the respondent company was not able to perform well and became a sick industrial undertaking. The Board for Industrial and Financial Reconstruction (BIFR) has also declared the respondent company as a sick industrial unit. The respondent company was struggling to pay the secured creditors for safeguard the assets of the respondent company. The respondent left with no other alternative was constrained to move the factory to another premises in the same locality. The company ensure that none of the workman suffer loss of wages due to shifting of the company. The company has also issued circulars, dated 07-05-2016 and 05-07-2016. After gaining total confidence from the workers side the company was shifted to the neighborhood. All workmen except the petitioner has fully cooperated for the shifting of the factory and they are continued to serve with the respondent management. There was neither retrenchment of workers nor closure or sale of factory and all the workers are continued to be employed in the factory on the same terms and conditions and moreover of the interest all the workers are totally protected with continuity of service and there is no reduction of wages or allowances. The petitioner alone on imaginary motive has approached the Conciliation Authority with imaginary allegations and claims. It is unfortunate on the part of the Conciliation Authority by dismissing the false claim of the petitioner has chosen to issue a failure report for adjudication before the Court. The respondent has also informed all Governmental Authorities about the proposed shifting of the factory.

8. RW.1 further deposed that local shifting of the factory would not amount to closure of the factory. What has been done is only a local shifting of the factory and entire workmen were informed well in advance. It is not correct to say that the respondent does not obtained prior approval of the Government. Moreover, the claim of the petitioner regarding occupational disease is only hypothetical in the absence of medical evidence. Even in the case of occupational disease she is fully protected under the ESI Scheme by virtue of the coverage of Insurance, hence, the respondent prayed for dismissal of the petition.

9. The learned Counsel for the petitioner submit that the petitioner joined the respondent company in the year 1992 and worked as a machine operator. Ever since, the date of her appointment, she was working well to

the satisfaction of the respondent management. The petitioner has completed 25 years of service with the respondent management and has suffered due to occupational chronic diseases for which she has regularly got treatment. The petitioner all along worked for a meagre salary of ₹ 5,850 per month. When the petitioner was attending the hospital for medical checkup the respondent management has closed the factory on 07-05-2016 without getting prior approval from the Government. The respondent management with an ulterior motive has shifted the factory address in order to create the situation that the employees themselves come forward to relinquish their job.

10. The learned Counsel for the petitioner further submit that the closure of factory without permission of the Government would be violative of section 25-N and 25-O of the Industrial Disputes Act. The respondent management has never issued any circular individually to the employees about the intended shifting of the company. Moreover, the respondent management has not consulted the employees who are about 250 in numbers. The learned Counsel for the petitioner further submit that the attendance register for the months of June 2016 to October 2016 marked as Ex.R9 would go to show that the large number of employees were found absent in those three months due to uncertain condition prevail in the company. The learned Counsel for the petitioner further submit that the order of Board of Industrial for Financial Reconstruction (BIFR) was, dated 30-01-2001 stating that the petitioner company is a sick industrial unit where as the respondent has taken initiative for the shifting of the premises only in the year 2016. The learned Counsel for the petitioner further submit that Ex.R6 and R7 documents are no way connected with the permission sanctioned by the Government of Puducherry for shifting of the factory.

11. The learned Counsel for the petitioner submit that the respondent management has not cooperated before the Labour Officer (Conciliation) to reach a amicable settlement. In Ex.R4 failure report, dated 14 -09-2017 the Labour Officer (Conciliation) made an observation that there was no cooperation from the management to proceed, further, the matter was referred for adjudication. The failure report of the Labour Officer (Conciliation) has made it clear that the respondent management never intended to give a solution to the dispute. The learned Counsel for the petitioner further submit that the respondent management of their own has shifted the factory and there was no individual communication to any of the employees. The respondent management has not considering the legitimate right of the employees has acted in a lethargic manner and has shifted the factory in violation to the principles laid down in Industrial Diaputes Act.

12. The learned Counsel for the petitioner submitted that there is no mention in the appointment order of the petitioner that the nature of her job is transferable. There is no rules in the company standing orders that the employees employed in the company are liable to be transferred from one place to another. The respondent management has failed to produce the company standing orders since, the same is against their case. The petitioner and other employees were compelled to be absent from duty due to the inhuman act of the respondent management. The non-employment of the petitioner is not the choice of the petitioner and she has not relieved from the service of the company on her own volition. The non-employment of the petitioner is nothing but retrenchment as defined under section 2(oo) of Industrial Disputes Act. All the petitioners are entitled for retrenchment compensation under section 25F of the Industrial Disputes Act and also the petitioner is entitled for full and final settlement for her 25 long years of service in the respondent management.

13. The learned Counsel for the respondent management submit that the respondent company has faced heavy competition in the business and due to global recession they could not perform well and there was a production loss. Since, the secured creditors of the respondent company has moved for liquidation proceedings. The respondent management tried for viable option to settle the issue. Since, there was no other alternative to settle the issue, the respondent ultimately decided to sell the properties and to shift the factory to Poraiyur, Puducherry in order to ensure that all the employees are safeguarded and their interest is protected. The learned Counsel for the respondent management further submit that before effecting such local shifting all the employees were informed through Ex.R2 and R3 circulars, dated 07-05-2016 and 05-07-2016 respectively. All the employees except the petitioner understood the difficult situation faced by the respondent company and agreed to continue to work in the new factory premises which is only 2.5 kilometers away from the existing premises.

14. The petitioner even before the shifting of the factory has absented herself from attending the company from 29-07-2016. The petitioner has not filed any documents to show that she was suffering from chronic diseases which are occupational in nature. If, at all the petitioner was suffered due to occupational disease she would have got treatment in the ESI hospital since, he was issued with ESI card Ex.R11. The learned Counsel for the respondent management further submit that when all the employees has accepted for

the shifting of the premises, the petitioner has approached the Labour Officer (Conciliation) for Conciliation. Even before the Labour Officer (Conciliation) she has not accepted to continue her job, but, want full and final settlement which itself show that the petitioner is not intended to continue further as an employee.

15. The learned Counsel for the respondent management further submit that when the respondent has offered for employment in the newly shifted factory with the same terms and conditions. The petitioner has not opted to accept the offer given by the management from which it is clear that there was no retrenchment on the part of the respondent management. It is only a local shifting and not a transfer of a company and hence, the respondent management is not liable to pay any compensation under section 25-F of the Industrial Disputes Act. The learned Counsel for the respondent further submit that except the petitioner all other employees are still continued to work in the newly shifted premises with continuity of service and with same terms and conditions. The petitioner without understanding the fact has given a false complaint before the Labour Officer (Conciliation). The Labour Officer (Conciliation) without dismissal of the complaint preferred by the petitioner has sent a failure report which is not at all tenable. It is further submitted that the respondent got previous permission from the Director of Industries, Government of Puducherry and District Industries Centre which is evident from the Ex.R6 and R7. The learned Counsel for the respondent submit that Ex.R9 attendance for the staff members for the period June 2016 to October 2016 would goes to show that other employees were regularly present. Due to the mis-apprehension of the petitioner she has left the respondent company from 29-07-2016 and thereafter, she has not attended the duty. On the respondent management side a notice was issued on her for which there was no response from the petitioner. It is further submitted that the job security of the employees were ensured by the management and there was no loss of employment to any of the employees. The petitioner unnecessarily has approached the Labour Officer (Conciliation) without any justifiable basis and she is not entitled for the protection guaranteed under section 25 F of the Industrial Disputes Act and she is not entitled for any compensation from the respondent management.

16. This Court has carefully considered the rival submissions. The petitioner Tmt. Sundari as per the appointment order was appointed in the year 1996. In Ex.R11 ESI Card issued to the petitioner the date of appointment was mentioned as 02-07-1992. There is no dispute that the petitioner was all along worked as

machine operator. The respondent company since face severe loss due to stiff competition in the market as to settle the secured creditors hence, the respondent company has moved the BIFR and got an order that the respondent factory is a sick unit. Since, the settlement talks with the secured creditors was not fructified the respondent has initiated selling the property of the factory and settled the creditors which would ultimately safeguard the interest of the workmen by shifting the factory to nearby premises. The respondent management has issued Ex.R2 and R3 circulars, dated 07-05-2016 and 05-07-2016 intimating the idea of transferring the factory to the nearest premises. According to the respondent except the petitioner all the other employees of the respondent has agreed for the said proposal and has joined in the newly shifted factory with all benefits as they have received earlier. The terms and conditions of the employment was also same as in the earlier factory. In all the ways the respondent company has protected the interest of the workmen by arranging transport facility from the residences to the factory and from the factory to the residences.

17. The respondent has also submitted the Ex.R6 letter submitted to the Director of Industries as to the proposal to shift the company premises. Ex.R7 filed by the respondent to show that the proposal for shifting was already intimated to the District Industries Centre. The petitioner being dissatisfied with the move of the respondent company the same to some other place has filed a representation before the Labour Officer (Conciliation). The respondent management has also appeared before the Labour Officer (Conciliation) and filed the reply, dated 07-05-2016 that there was no loss of employment or retrenchment out of shifting their premises. The Conciliation proceedings was ended in failure and the matter was referred to this Court for adjudication. The petitioner has addressed Ex.P2 letter, dated 26-04-2016 to the Manager Administration for job protection and continuity of service. From the evidence of RW.1 it is clear that the company was shifted on 07-05-2016 there is no evidence available on record that the respondent has discussed or negotiated with the workmen regarding the shifting of the factory. Ex. R3 and R4 the circulars were issued only on 05-07-2016 and 14-09-2017 and the first circular was issued only on the date of shifting. This Court has perused the Ex.R6 and R7 which cannot be considered to be the permission granted by the Government for shifting of the factory premise. On perusal of Ex.R9 attendance registers the petitioner has absented from duty from 29-07-2016.

18. This Court has considered the attention of the petitioner that the proposal for shifting of the factory has create shock waves in the mind of the workman and

they got frustrate due to the sudden and untimely decision of the respondent management to shift the factory premises. The respondent has not produced the appoint order of the petitioner or the company standing order that the employment of the petitioner is subjected to transfer. Though the respondent has stated that they have issued notice to the petitioner for their absence the said notice was not filed before this Court. On the other hand, the evidence of the petitioner she has stated that the respondent intimidated her not to come to work and the petitioner has no knowledge about the circulars circulate to the workmen regarding shifting of the factory. The respondent has not issued any written order of termination.

19. The petitioner is a protected workmen under section 33 (3) of the Industrial Disputes Act and the non-employment of the petitioner in the circumstances discussed above would certainly amount dismissal from service. The petitioner being a protected workmen is entitled for compensation under section 25FFF of the Industrial Disputes Act "Compensation to workmen in case of closing down of undertakings: where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure shall, subject to the provisions of sub-section (20) be entitled to notice and compensation in accordance with the provisions of section 25F, as if the workman had been retrenched.

Provided that where the undertaking is closed down on account of unavoidable circumstances beyond the control of the employer, the compensation to be paid to the workman under clause (b) of section 25F, shall not exceed his average pay for three months.

- (i) financial difficulties (including financial losses); or
- (ii) accumulation of indisposed stocks; or
- (iii) the expire of the period of the lease or licence granted to it; or
- (iv) in case where the undertaking is engaged in mining operations, exhaustion of the minerals in the the area in which such operations are carried on,

shall not be deemed to be closed down on account of unavoidable circumstances beyond the control of the employer within the meaning of the proviso to this sub-section".

20. From the discussions made supra, this Court come to the conclusion that the petitioner is entitled for notice and compensation which was not done so in the present case. During the course of trial the petitioner Tmt. Sundari, expired and her legal heirs were brought on record. Being the legal heirs of the petitioner they are entitled to receive the compensation.

21. From the evidence of both sides and the documents filed in support of both sides, it is clear that the service of the petitioner ends abruptly. The petitioner having served for about 25 years her service should not be deprived without holding proper enquiry.

22. In support of fixing compensation to the petitioner the learned Counsel for the petitioner has invited this Court attention to the Judgment of Division Bench of Our Hon'ble High Court in Meenakshi Sundaram vs. The Presiding Officer and another reported in 2020 LLR 1003 wherein, Hon'ble High Court held "since, the services of the appellants had been terminated, without there being any valid termination order, we find that interest of justice would be served by further increasing the compensation from ₹ 1,25,000 to ₹ 2,00,000".

23. The learned Counsel for the petitioner has also invited this Court attention to the Judgment of Hon'ble Apex Court in Shetty vs. Bharat Nidhi Ltd. case reported in 1957 II LLJ 696 "that computation has relation only to the date from which reinstatement of the workman has been ordered under the award and the Industrial Tribunal will have to take into account the terms and conditions of the employment, the tenure of service, the possibility of termination of employment at the instance of either party, the possibility of retrenchment by the employer or resignation or retirement by the workman and even of the employer himself ceasing to exist". In yet another case our Hon'ble High Court in the Management of DCM Hyundai Limited vs. The Presiding Officer, Principal Labour Court, Chennai and others considering the workmen who has serviced for more than 5 years of their tenure has come to an end abruptly as directed the management to pay a sum of ₹ 2,00,000. In the present case, the petitioner has claimed ₹ 10,00,000. This Court is of the considered opinion that there is no justification for claiming monetary relief of ₹ 10,00,000 as full and final settlement.

24. This Court has carefully considered that the petitioner was worked in the leather unit of the respondent management for about 25 years and her services come to an end abruptly which has to be necessarily compensated, this Court have guided by the case laws discussed above and in the facts and circumstances of the case deem it fit to award just

compensation of ₹ 2,00,000 to the petitioners *i.e.*, legal heirs of the petitioner Tmt. Sundari.

25. In the result, the petition is partly allowed. The respondent management is directed to pay compensation of ₹ 2,00,000 (Rupees two lakh only) to the petitioners within a period of 8 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 17th day of December 2021.

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

List of petitioner's witness:

PW.1 — 02-01-2019 Sundari

List of petitioner's exhibits:

Ex.P1 — 14-09-2017 Photocopy of the Failure Report.

Ex.P2 — 26-04-2016 Photocopy of the letter sent by the petitioner.

Ex.P3 — Photocopy of the ESIC Card.

Ex.P4 — 28-04-2016 Photocopy of the letter sent by the petitioner.

Ex.P5 — 24-08-2016 Photocopy of the letter sent by the petitioner.

Ex.P6 — 03-10-2016 Photocopy of the letter sent by the petitioner.

Ex.P7 — 30-03-1996 Photocopy of the appointment order issued by the Management to the petitioner.

Ex.P8 — 07-05-2016 Photocopy of the circular issued by the Management.

List of respondent's witness:

RW.1 — 08-08-2019 Xavier Albin

List of respondent's exhibits:

Ex.R1 — 30-01-2001 Attested copy of BIFR Registration Certificate bearing Registration No. 359/2000.

Ex.R2 — 07-05-2016 Attested copy of the circular of the respondent.

- Ex.R3 — 05-07-2016 Attested copy of the circular of the respondent.
- Ex.R4 — 14-09-2017 Conciliation Authority's letter to the Government of Puducherry in Registration No. 679/LO(C).AIL/2016.
- Ex.R5 — Attested copy of the Attendance Registers for July 2016, August 2016 and September 2016.
- Ex.R6 — 07-07-2016 Attested copy of the respondent's letter to the Director of Industries, Government of Puducherry.
- Ex.R7 — 01-08-2016 Attested copy of the Endorsement of the District Industries Center, Puducherry as per Endorsement No. 26/DIC/EI/IGB-VCP/16-17.
- Ex.R8 — 23-07-2016 Attested copy of the Government of India, Ministry of MSME, Udyog Aadhaar Memo.
- Ex.R9 — Attested copy of Attendance Registers for June 2016 and October 2016.
- Ex.R10 — Transportation Bills of various transporters for the months of June 2016, July 2016 August 2016 and September 2016 (Nos. 26).
- Ex.R11 — Copy of the ESI card of the petitioner bearing Insurance No. 5511076687.

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

GOVERNMENT OF PUDUCHERRY
LABOUR DEPARTMENT

(G.O. Rt. No. 19/AIL/Lab./T/2021,
Puducherry, dated 9th February 2022)

NOTIFICATION

Whereas, an Award in I.D (L) No. 25/2019, dated 30-12-2021 of the Industrial Tribunal-cum-Labour Court, Puducherry, in respect of the Industrial Dispute between

the management of M/s. Perunthalaivar Kamaraj Krishi Vigyan Kendra, Kurumbapet, Puducherry and the union workmen represented by Puducherry State Federation NR Congress Thozhilalar Sangam, Koundarpalayam, 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. (L) No. 25/2019

in

C.N.R. No. PYPY060000412019

1. K. Sumathi
2. S. Ramesh
3. V. Subramani
4. K. Chandira
5. R. Usha
6. K. Papathiammal
7. M. Veerappan
8. A. Sasireka
9. C. Mangalatchumy
10. A. Muthulakshmi
11. E. Loganayagi
12. P. Krishnaveni
13. D. Valli @ Rani
14. J. Ilamathi
15. S. Umamaheswari
16. G. Suresh
17. R. Narayanan
18. R. Ramar
19. V. Ariraman
20. A. Malathi

21. A. Janarthanan
22. R. Sulochana
23. S. Gunavathi
24. N. Gandhimathi
25. K. Premkumari
26. T. Karnan
27. D. Datchinamoorthy
28. R. Sethuraman
29. S. Jayaganesh
30. P. Ranjith
31. M. Suresh
32. D. Arul
33. R. Murugan
34. S. Manimegalai
35. B. Babishila
36. E. Punniavalli
37. C. Ramesh
38. M. Purushothaman
39. R. Balaji
40. B. Vignesh .
41. R. Vinothkumar
42. M. Senthamarai
43. A. Santhammal
44. P. Balavinayagam
45. P. Thairiyalakshmi
46. M. Thamizhvani
47. A. Vennila
48. K. Sundaramurthy
49. K. Pazhanivel
50. S. Rasu
51. D. Kalaivani
52. R. Ammumuthammal
53. P. Janakulatchumy
54. R. Saravanan
55. A. Lingammal
56. S. Velvizhi
57. S. Saritha
58. J. Sheela
59. D. Latchumy
60. K. Devi
61. S. Sarala
62. J. Vanaja

63. L. Indhumathi
64. S. Ambiga
65. S. Parthasarathi
66. C. Vimala
67. R. Ravisankar
68. G. Poorani
69. S. Jayagiriya
70. B. Emabin
71. N. Nithiya
72. R. Dhanalakshmi
73. V. Dinakaran
74. N. Ezhilarasan
75. K. Sudhagar
76. S. Baskaran
77. K. Manavalan
78. S. Vijaya
79. S. Sathiya
80. A. Raja
81. M. Rajakumari
82. S. Manibalan
83. M. Jayalakshmi
84. P. Sumithra
85. P. Santhi
86. N. Pushpa
87. S. Selvamani
88. A. Kavithalatchumy

Represented by The President,
Puducherry State Federation NR Congress
Thozhilalar Sangam,
No. 61/2, Vazhudavur Road
Opp. to Aswini Hospital,
First Floor, Koundarpalayam,
Puducherry. . . Petitioners

Versus

The Principal-*cum*-Programme Coordinator,
Perunthalaivar Kamaraj Krishi Vigyan Kendra,
Kurumbapet, Puducherry. . . Respondent

This industrial dispute coming on 22-12-2021 before me for final hearing in the presence of Thiruvalargal K. Velmurugan and P. Preethi Counsels for the petitioners, Thiru M. Nakeeran, Counsel for the respondent, the respondent being called absent and *set exparte*, upon hearing the petitioner and perusing the case records, this Court delivered the following:

AWARD

This Industrial Dispute arises out of the reference made by the Government of Puducherry *vide* G.O. Rt. No. 71/AIL/Lab./T/2019, dated 09-05-2019 of the Labour Department Puducherry, to resolve the following dispute between the petitioners and the respondent *viz.*,

(a) Whether the dispute raised by the Union workmen represented by Puducherry State Federation NR Congress Thozhilalar Sangam, Koundanpalayam, Puducherry, against the management of M/s. Perunthalaivar Kamaraj Krishi Vigyan Kendra, Kurumbapet, Puducherry, over regularization of 88 daily rated employees as listed in Annexure-I is Justified or not? If justified, what relief the workmen are 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 organization was established in the year 1974 and functioning under the control of Government of Puducherry. The respondent organization is having about 250 Acres of land in which they are carrying out Agricultural Research and also cultivation activities. On account of the vacancies arose in the respondent organization due to Superannuation of the senior workers and also due to establishment of new branches the 88 workers who are represented by the petitioner union was appointed by the respondent organization from the year 2008-2015. All the petitioners worked for more than 240 days in every year without any bad remarks. The respondent organization without filling up the permanent posts has employed the petitioners on daily rated basis and extracting their work for about 10 years with minimum wages. Besides several representations given by the petitioners the respondent has not regularised the services of the petitioner moreover, the respondent has not extended the benefits of ESI and EPF to the petitioners. The respondent has also not issued identity card to the petitioners hence, the petitioners union has submitted the representation, dated 29-07-2016 to the Labour Officer (Conciliation), Puducherry for suitable action. On the respondent side they have filed reply statement, dated 30-05-2017, 10-08-2018. The Conciliation ended in failure and the failure report, dated 11-11-2019 was submitted by the Labour Officer (Conciliation), to the Government of Puducherry. All the petitioners were worked with the respondent organization for more than 240 days in every year

from the date of their appointment. The respondent organization without regularising the services of the petitioners has utilized their hard work for about 10 years which is illegal and against the principle of estoppel. Hence, the petitioner pray for passing of an Award directing the respondent organization to regularization of services of the 88 workmen whose details are given in the Annexure.

3. *Points for consideration:*

(i) Whether the 88 daily rated employees working with Perunthalaivar Kamaraj Krishi Vigyan Kendra, Puducherry are entitled for regularization?

4. On the respondent side they have entered appearance and subsequently respondent was *set ex parte*. On the petitioner side Tvl. K. Mohandoss, s/o. Karunakaran, was examined in Chief and through him EX.P1 to EX.P5 were marked.

5. In the evidence of PW.1 he has deposed that all the 88 workers are appointed by the respondent management from the year 2008-2015 onwards. Ever since, the date of appointment the workers were discharged their duties honestly without any black mark whatsoever. The respondent management without taking steps who regularise the services of the petitioner as extracted work for more than 10 years with minimum wages. Aggrieved over the same the petitioner has preferred a representation, dated 29-07-2016 to the Labour Officer (Conciliation), Puducherry, but, the same was not fructified. Based on the failure report filed by the Labour Officer (Conciliation), Puducherry, the present case was referred to the Court by the Government for adjudication. The petitioner further deposed that there about 88 vacancies available with the respondent management, but, they have not chosen to regularize the services of the petitioners and still keeping them as daily wages workers which is against the established principles of Labour jurisprudence. The petitioner pray for regularising the service of the 88 workmen.

6. Ex.P1, dated 29-07-2016 is the representation submitted by the Union to the Labour Officer (Conciliation), Puducherry and Ex.P2 is the counter statement filed by the respondent management wherein, they have stated that the petitioners failed to establish in the petition that there exists an Industrial Dispute between the petitioner and the respondent and the petitioners were engaged only on daily rate basis and they are seasonal labourers and not against any vacant post and therefore, they are not entitled to claim the benefit of regularization with the respondent management. Ex.P3 is the failure report, dated 11-01-2019

submitted by the Labour Officer (Conciliation), Puducherry. Ex.P4 is the Government Gazette and Ex.P5 is the details of labours engaged as casual labours after 27-02-2009. In Ex.P5 list there are about 128 names were identified. However, the petition is filed by union only in respect of 88 persons.

7. The respondent has not denied that the petitioners were engaged with respondent from the year 2008-2015 regularly till date. The learned Counsel for the petitioner submit that all the petitioners were engaged by the respondent for more than 240 days every year and they are entitled for regularization. This Court has carefully considered the submission made by the learned Counsel for the petitioners and documents filed in respect of the contention. The petitioners were engaged in the respondent management from the year 2008-2015 and they are regularly engaged for the Agricultural work which is perennial in nature.

8. 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. 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 BC (Uttar Pradesh Drugs and Pharmaceuticals Company Limited vs. Ramanuj Yadav and others relied on by the Counsel 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 Lal 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 abinitio. The Award of the Labour Court holding otherwise is erroneous and is liable to be set aside.

10. The learned Counsel for the petitioner 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".

11. From the discussions above made this Court is of the considered opinion that the petitioners were established that they are workmen as defined under section 2(s) of the Industrial Disputes Act. There is no objection raised by the respondent that the petitioners were worked for more than 240 days every year from the date of their appointment. Moreover, the nature of

work is perennial in nature and there is also regular vacancy available with the respondent management. This Court is of the considered opinion that the services of the petitioners must be regularized by the respondent management as per the provisions of the Industrial Disputes Act and as per the established principles of labour laws.

12. In the result, the petition is allowed. The respondent management is directed to regularize the services of 88 petitioners represented by Puducherry State Federation NR Congress Thozhilalar Sangam, within a period of 8 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 witness:

PW.1 — 14-12-2021 Mohandoss

List of petitioner's exhibits:

Ex.P1 — 29-07-2016 Xerox copy of the representation given by the petitioner to the Labour Officer (Conciliation), Puducherry.

Ex.P2 — 30-05-2017 Xerox copy of the reply submitted by the respondent to the Labour Officer (Conciliation) Puducherry.

Ex.P3 — 11-01-2019 Xerox copy of the failure report submitted by the Labour Officer (Conciliation), Puducherry.

Ex.P4 — 19-11-2013 Xerox copy of the Official Gazette of Puducherry publishing the Award passed by this Court in I.D. No. 32/2011.

Ex.P5 — 29-01-2015 Xerox copy of the RTI reply containing details of appointment of the petitioner workmen in respondent management issued by the respondent.

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. 23/Lab./AIL/T/2022
Puducherry, dated 18th February 2022)

NOTIFICATION

Whereas, the Government is of the opinion that an industrial dispute has arisen between the management of M/s. Tex Bond Nonwovens, R.S.No. 2/1, 2/2, Plot No. A-27-30, PIPDIC Electronic Park, Thirubuvanai, Mannadipet Commune, Puducherry-605 107 and Tmt. P. Jagathambal and 11 others, over payment of full and final settlement *in lieu of* employment in respect of the matter mentioned in the Annexure to this order;

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

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

ANNEXURE

(a) Whether the industrial dispute raised by the 12 women workers against M/s. Tex Bond Nonwovens, R.S.No. 2/1, 2/2, Plot No. A-27-30, PIPDIC Electronic Park, Thirubuvanai, Mannadipet Commune, Puducherry-605 107, over full and final