



புதுச்சேரி மாநில அரசிதழ்

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பொருளடக்கம்

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GOVERNMENT OF PUDUCHERRY
LABOUR DEPARTMENT

(G.O. Rt. No. 176/AIL/Lab./T/2022,
Puducherry, dated 15th December 2022)

NOTIFICATION

Whereas, an Award in I.D (L) No. 20/2019, dated 07-09-2022 of the Industrial Tribunal-cum-Labour Court, Puducherry in respect of dispute between the management of Anheuser Busch InBev India Limited (Formerly called SABMiller India Limited), Puducherry and Thiru K. Gunasekaran, Puducherry, over reinstatement with wages from 15-05-2013 till his construed date of retirement that is, 03-11-2014 with all monetary and service benefits.

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947), read with the notification issued in Labour Department's G.O. Ms. No. 20/9/Lab./L, dated 23-05-1991, it is hereby directed by the Secretary to Government (Labour) that the said Award shall be published in the Official Gazette, Puducherry.

(By order)

P. RAGINI,
Under Secretary to Government (Labour).

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

Present : Tmt. V. Sofana Devi, M.L.
Presiding Officer.

Monday, the 07th day of September, 2022.

I.D. (L) No. 20/2019
C.N.R. No. PYPY06-000026-2019

K. Gunasekaran,
No. 4, Main Road, S.V. Nagar,
Sokkanathanpet,
Puducherry-605 009. . . Petitioner

Vs.

The Managing Director,
M/s. Anheuser Busch InBev India Limited,
(Formerly called SAB Miller Limited),
Ayyankuttipalayam,
Puducherry-605 009. . . Respondent

This Industrial dispute coming on 29-08-2022 before me for final hearing in the presence of Thiru R. Soupramanien, Counsel for the Petitioner and Tvl. R. Thirumavalavan and R. Ramachandiran, 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. 45/AIL/LAB/T/2019, dated 18-03-2019 for adjudicating whether the industrial dispute raised by the Petitioner Thiru K. Gunasekaran, Puducherry against the Management of M/s. Anheuser Busch InBev India Limited (Formerly called SAB Miller India Limited), Puducherry, over reinstatement with wages from 15-05-2013 till his construed date of retirement that is, 03-11-2014 with all monetary and service benefits is justified or not? 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 are as follows:*

(i) The petitioner raised an industrial dispute before the Labour Officer (Conciliation) on 11-5-2018 against the respondent management. The Conciliation was ended in failure and the Conciliation Officer submitted his failure report 06-12-2018 to Government of Puducherry. Considering the failure report, the Government of Puducherry referred the above dispute before this Hon'ble Court for adjudication under the Government Order *vide* G.O. 45/AIL/LAB/T/2019, dated 18-03-2019 with reference:

(ii) The petitioner was joined as Process Operator in the respondent factory on 13-01-1979 and inadvertently his date of birth was recorded as 15-05-1955. Later the petitioner came to know that his actual date of birth was registered as 04-11-1956. Hence, made a representation to the respondent management through a letter, dated 15-10-2012 with a request to rectify the date of birth based on his birth certificate as 04-11-1956 and requested the respondent company to revise the date of retirement as 03-11-2014 according to the actual date of birth dated 04-11-1956.

(iii) The Management has rejected the representation seeking correction in his date of birth in the service records and corresponding date of retirement as 03-11-2014.

(iv) The petitioner approached the Hon'ble I Additional District Munsif, Puducherry seeking a relief declaration and mandatory injunction wherein, he sought the relief to declare that his date of birth is 04-11-1956 as per birth certificate and mandatory

injunction directing the respondent management to provide continuation of service or in the alternative to grant back wages, increments, arrears as permissible from 01-06-2013 till the date of decree.

(v) Though the Hon'ble I Additional District Munsif, Puducherry granted the declaration of date of birth is 04-11-1956, however, declined to grant other reliefs with an observation that the petitioner has right to approach before Labour Court.

(vi) The petitioner has continuously demanding for reinstatement as per his actual date of birth in the respondent's company and the respondent company has refused to issue the order of reinstatement of his service. Therefore, the petitioner raised an industrial dispute in this regard before Labour Conciliation to intervene and pass an order reemployment retrospectively from 14-05-2013 with back wages. However, the respondent refused for reemployment retrospectively towards service for the remaining period.

Grounds

(a) The petitioner was joined as Process Operator in the respondent factory on 13-01-1979 and the date of birth was inadvertently recorded as 15-05-1955 instead of 04-11-1956. The respondent factory failed to note that date of birth is the primary document would be the fundamental evidence for deciding the date of retirement for an employee irrespective of the fact that he is working any private concern or Government employee or Government Undertaking *etc.*

(b) The respondent failed to consider that on gaining of knowledge of actual date of birth by obtaining birth certificate from Cuddalore District, the petitioner has brought to the notice of the respondent factory that his date of birth was erroneously entered in the service records by letter, dated 15-10-2012 to rectify the same by extending the date of retirement as per his birth certificate. The respondent factory failed to revise the date of retirement based upon his actual date of birth and deliberately refused to consider his request by its reply, dated 05-11-2012.

(c) The petitioner approached the Hon'ble I Additional District Munsif, Puducherry even while he was in service approached Court seeking relief for declaration and mandatory injunction wherein, Hon'ble Judge has confirmed his date of birth is 04-11-1956, however, made an observation that the petitioner shall workout remedy with Labour Court, as such, the petitioner referred the dispute before office of the Labour Office (Conciliation), but, the conciliation got failed.

(d) The respondent factory even during pendency of the proceedings the management has discharged him from service on 14-05-2013 wherein, the petitioner made endorsement with objection indicating the pendency of the case before Civil Court on 23-04-2013.

(e) The respondent management failed to note that the date of birth is 04-11-1956 and corresponding date of retirement falls only on 03-11-2014. Hence, the petitioner ought to have provided employment for the period from 15-05-2013 till 03-11-2014 with salaries dues and other benefits which are entitled for the petitioner. The denial of reinstatement would amount to violation of Industrial Dispute, Act. Hence, this petition.

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

(i) The Petitioner had totally suppressed the material facts with sole intention to harass the Respondent/Management and to get enriched dishonestly and has not come with clean hands and is not entitled to seek an relief much less the relief claimed in the petition. The petitioner joined duty with the Respondent on 13-01-1979 and at the time of filing up the application he had mentioned only as 15-05-1955. The petitioner had done his education in S.S.L.C. in the Government High School, Panruti and had done his PUC in the Government Arts College, Cuddalore but, had not chosen to produce his study certificates which creates doubt in the petitioner's correct date of birth.

(ii) The petitioner had not mentioned any details, on what documentary evidence, the alleged birth certificate was obtained and only on 15-10-2012, just 6 months before his retirement the alleged birth certificate was obtained such belatedly and the Municipal Administration, Cuddalore is not added as party before the Civil Court.

(iii) The claim of the petitioner to reinstate him in service is unwarranted and in the view of the findings of the various High Court and Supreme Court that even assuming that the date of birth of the plaintiff is 14-11-1956, the application has to be made within reasonable time.

(iv) That even if, the service rules are silent in this aspect, notwithstanding the same an application made after 33 years of service and almost within 6 months of his retirement his plea that he came to know only very recently is not tenable when his date of birth is mentioned as 15-05-1955 in his application form for joining duty, when he submitted his nomination and

declaration form under ESI pension scheme on 23-12-1996 and in all his monthly salary slip till date, the birth date of the petitioner is mentioned as 15-05-1955.

(v) When the petitioner had taken an LIC policy in policy No.732010946, his date of birth is mentioned as 15-05-1955, and for all the reasons mention supra the above claim of the petitioner directing the Respondent/Management to reinstate him with back wages with such increments, arrears as permissible on 01-06-2013 is devoid of merits and liable to be dismissed.

(vi) That in O.S. No. 154/2013, the Honourable Court was pleased to observe that "this Court comes to the conclusion that the jurisdiction of this Court is barred for the reliefs of reinstatement, and mandatory injunction to correct the date of birth in the service records and also for the relief of back wages as claimed". Hence, no relief had been granted to petitioner with regard to the service condition of the petitioner with the respondent and the petitioner retired from service on his superannuation as per his service records.

(vii) The petitioner preferred appeal against the order of the I Additional District Munsif, Puducherry in A.S. No. 77/2018 but, at the very last minute chose to withdraw the same on 07-03-2019 after several hearings for arguments and the appeal was dismissed as withdrawn. Hence, prayed to dismiss the claim petition.

4. *The Points for consideration are:*

1. Whether the Petitioner is entitled for reinstatement with wages from 15-05-2013 till his construed date of retirement, *i.e.*, 03-11-2014 with all monetary and service benefits as prayed for ?

2. To what relief the Petitioner is entitled?

5. *On Points:*

On the Petitioner side, Mr. K. Gunasekaran/the Petitioner himself was examined as PW1 and Exs. P1 to P9 were marked. On the respondent side, Mr. Ramamoorthy, Assistant Manager (HR) of the respondent company was examined as RW1 and Ex. R1 was marked.

6. *On the Points :*

On the petitioner side, it is argued that the petitioner was joined as Process Operator in the respondent factory on 13-01-1979 and the date of birth was inadvertently recorded as 15-05-1955 instead of 04-11-1956. On gaining of knowledge of actual

date of birth by obtaining birth certificate from Cuddalore District, the petitioner has brought to the notice of the respondent factory that his date of birth was erroneously entered in the service records by letter, dated 15-10-2012 to rectify the same by extending the date of retirement as per his birth certificate. But, management failed to revise the date of retirement based upon his actual date of birth and deliberately refused to consider his request by its reply, dated 05-11-2012. Thus, the Petitioner had approached the Hon'ble I Additional District Munsif, Puducherry even while he was in service seeking relief for declaration and mandatory injunction wherein, Hon'ble Judge has confirmed his date of birth is 04-11-1956, however, made an observation that the petitioner shall workout remedy with Labour Court. Even during pendency of the proceedings the Management has discharged him from service on 14-05-2013 wherein, the petitioner made endorsement with objection indicating the pendency of the case before Civil Court on 23-04-2013. The date of birth is 04-11-1956 and corresponding date of retirement falls only on 03-11-2014. Hence, the petitioner ought to have provided employment for the period from 15-05-2013 till 03-11-2014 with salaries dues and other benefits which are entitled for the petitioner. The denial of reinstatement would amount to violation of Industrial Disputes Act.

7. The learned Counsel for the Petitioner has in that regard relied on the decision in Writ Appeal No.781 of 2019 and C.M.P. No. 6179 of 2019 reported in CDJ 2020 MHC 3979, Where, the case of the petitioner therein is that his mother who is an illiterate and therefore at the time when he joined S.S.L.C. during the year 1978, with the assistance of someone else, she had filled up the application form and furnished his date of birth as 20-10-1961, instead of 10-10-1962. This case law is not applicable to the facts of the case in hand.

8. On Petitioner-workman side, following documents exhibited in support of his contentions: The Photocopy of the Representation of the Petitioner to the HR of the respondent company for rectification of his date of birth in service records, dated 15-10-2012 (EX.P1); Photocopy of the Reply given by the respondent to EX.P1, dated 05-11-2012 (EX.P2); Photocopy of the Retirement order issued by the respondent to the Petitioner, dated 23-04-2013 (EX.P3); Photocopy of the birth certificate issued by the Department of Municipal Administration and Water Supply, Government of Tamil Nadu, dated 08-10-2012 (EX.P4); Photocopy of Judgment passed in O.S.No.154/2013, dated 25-01-2018 by the I Additional District Munsif, Puducherry (EX.P5); Photocopy of the Petition under Section 2(A) of Industrial Disputes Act,1947, dated 15-06-2018 (EX.P6); Photocopy of the

Reply of the Petitioner workman to the Labour Officer (Conciliation), Government of Puducherry, dated 29-08-2018 (EX.P7); Photocopy of the Failure report of the Labour Officer (Conciliation), Government of Puducherry, dated 06-12-2018 (EX.P8); Photocopy of the Notification of Failure report in G.O. Rt. No. 45/AIL/LAB/T/2019, dated 18-03-2019 (EX.P9).

9. On the Respondent side, it is argued that the Petitioner joined duty with the Respondent on 13-01-1979 and at the time of filing up the application he had mentioned his date of birth only as 15-05-1955. The petitioner had done his education in SSLC in the Government High School, Panruti and had done his PUC in the Government Arts college, Cuddalore but, had not chosen to produce his study certificates which creates doubt in the petitioner's correct date of birth. The petitioner had not mentioned any details, on what documentary evidence the alleged birth certificate was obtained and only on 15-10-2012, just 6 months before his retirement. The alleged birth certificate was obtained such belatedly and the Municipal Administration, Cuddalore is not added as party before the Civil Court. Even if, the service rules are silent in this aspect, notwithstanding the same an application made after 33 years of service and almost within 6 months of his retirement his plea that he came to know only very recently is not tenable when his date of birth is mentioned as 15-05-1955 in his application form for joining duty, when he submitted his nomination and declaration form under ESI pension scheme on 23-12-1996 and in all his monthly salary slip till date, the birth date of the petitioner is mentioned as 15-05-1955. When, the petitioner had taken an LIC policy in policy No.732010946, his date of birth is mentioned as 15-05-1955. Hence, prayed to dismiss the claim petition.

10. The learned Counsel for the Respondent has in this regard relied on the decision of the Hon'ble Supreme Court of India (i) in the case of Factory Manager Kirloskar Brithers Limited vs Laxman [Civil Appeal No(s)4387/2019 arising fro SLP(C) Nos. 2592-2593/2018]; (ii) U.P. Madhyamik Shiksha Parishad and ors vs Rajkumar Agnihotri - date of judgement - 21-04-2005; and (iii) AIR 2011 Supreme Court 3418 and (iv) 1995-II-LLJ659;

11. Heard Both. Perused the case records.

12. The fact that the Petitioner had joined the services of the respondent on 13-01-1979, at the time of filing up the application he had mentioned his date of birth only as 15-05-1955 and the fact that the Petitioner through his representation made in the year 2012 that is, on 15-10-2012, just 6 months before his retirement was seeking for change of the entry relating to date of birth, are the accepted positions. EX.P1 to EX.P3 substantiate the same.

13. According to the Respondent, the Petitioner had done his education in SSLC in the Government High School, Panruti and had done his PUC in the Government Arts College, Cuddalore but, had not chosen to produce his study certificates which creates doubt in the petitioner's correct date of birth. Though the Petitioner relies on the birth certificate, copy of it marked as EX.P4 to indicate that the date of birth stated therein is 04-11-1956, it is an admitted fact that the said document had not been produced before the employer at the time of joining employment. In that background, the service record maintained by the respondent will disclose that the date of birth indicated as 15-05-1955 which had been furnished by the Petitioner himself as the relevant forms under his signature contain the said date at the time of his joining and on various occasions thereafter. The very fact that the Petitioner through his representation made in the year 2012 that is, only on 15-10-2012, just 6 months before his retirement was seeking for change of the entry relating to date of birth will indicate that what was contained in the service records is 15-05-1955, which was the position from 13-01-1979, when he initially joined as Process Operator in the respondent factory.

14. *PW1, the Petitioner himself deposed as follows:*

என்னுடைய PUC and SSLC சான்றிதழ்களில் பிறந்த தேதி 15-05-1955 என உள்ளது. என்னுடைய PUC and S.S.L.C. சான்றிதழ்களில் உள்ள எனது பிறந்த தேதி 15-05-1955 என இருப்பது. இதுவரையிலும் மாற்றம் செய்யவில்லை என்றால் சரிதான். 13-01-1979 தேதியில் நான் எதிர்மனுதாரர் நிர்வாகத்தில் வேலைக்குச் சேர்ந்தேன். நான் எதிர்மனுதாரர் நிர்வாகத்தில் வேலைக்குச் சேர்ந்தபோது என்னுடைய SSLC-யின் மாற்று சான்றிதழ் ஒப்படைத்தேன். நான் எதிர்மனுதாரர் நிர்வாகத்தில் வழங்கிய அந்த மாற்று சான்றிதழ்படி எனது பிறந்த தேதி 15-05-1955 தான். எதிர்மனுதாரர் நிர்வாகத்தில் நான் தாக்கால் செய்த ஆவணத்தின்படி என்னுடைய பிறந்த தேதி 15-05-1955 என்பதால் என்னுடைய retirement தேதி என்னவென்றால் அதனுடைய 58 வயதை கூட்டுவதால் ஏற்படும் தேதியே எனது retirement தேதியாகும். 03-11-2013ல் நான் retire ஆகிவிட்டேன். எதிர்மனுதாரர் நிர்வாகத்திடம் உள்ள என்னுடைய Service Register-யில் ஏதேனும் திருத்தம் செய்ய வேண்டும் என சிவில் வழக்கிலோ மற்றும் இந்த தொழிற்சாலாவிலோ கோரிக்கை எழுப்பியுள்ளேனா என்றால் கேட்டுள்ளேன். நான் அவ்வாறு எவ்விதமான கோரிக்கையும் எழுப்பிவில்லை என்று 15-05-2013 முதல் 03-11-2014 வரை எனக்கு பின் தேதியிட்ட சம்பளமும் அதற்குண்டான பலன்களும் வேண்டும் என கேட்டுள்ளேனே தவிர, வேறு இதர கோரிக்கைகளும் எழுப்பவில்லை என்று சொன்னால் சரிதான். என்னுடைய Service Record படியும் நான் எதிர்மனுதாரர் நிர்வாகத்தில் வழங்கிய ஆவணத்தின்படியும் சரியான தேதியில் ஓய்வு பெற்றுள்ளேன் என்று சொன்னால் மறுக்கிறேன். எனக்கு சம்பள இரசீதுகளிலும் எனது பிறந்த தேதி 15-05-1955 என்று உள்ளது என்றால் சரிதான். நான் பணி ஓய்வு பெறுவதற்கு முன்பு என்னுடைய பிறந்த தேதி

தவறாக உள்ளது என்பது குறித்த கடிக்கத்தை நிர்வாகத்திற்கு 15-10-2012ல் கொடுத்தேன். எனக்கு என்னுடைய பிறந்த தேதி குறித்த மனுவை என்னுடைய 32 வருட service முடிந்த பிறகு, 33 வது வருட service முடிவதற்கு முன்பாக எனக்கு தெரியவந்தபோது. இந்த மனு போட்டேன். OS. No. 154/2013 என்ற அந்த சீவில் வழக்கில் நிர்வாகத்தின் சார்பில் தாக்கல் செய்யப்பட்ட எதிர் வழக்குரையில் என்னுடைய தொழிலாளர் சம்மந்தமான கோரிக்கைகளை சீவில் நீதிமன்றத்தில் எழுப்ப முடியாது என்றும் தொழிலாளர் நீதிமன்றத்தைத்தான் நாட முடியும் என்றும் சொல்லிிருந்தது என்றால் சரிதான். அவ்வாறு எதிர் வழக்குரை தாக்கல் செய்த உடனேயே நான் தொழிலாளர் நீதிமன்றத்தை 2013-னிலேயே அனுக்கினேன் என்றால் நேரடியாக வரவில்லை. சமரச அதிகாரி முன்பு போய்விட்டு வந்தேன். 2018ம் ஆண்டு சமரச அதிகாரியை நாடினேன் OS. No. 154/2013 என்ற தீர்ப்பிற்கு எதிராக நான் AS.No. 77/2018 என்ற மேல்முறையீட்டு வழக்கை தாக்கல் செய்தேன் என்றால் தாக்கல் செய்தேன். பின்னர் வாபஸ் வாங்கிவிட்டேன். மேற்படி அப்பீல் வழக்கில் தீர்ப்பு தேதி நிர்ணயிக்கப்பட்ட பிறகுதான். அந்த தீர்ப்பு எனக்கு எதிராக வரும் என முன்கூட்டியே உணர்ந்துகொண்டு. நான் அதை வாபஸ் வாங்கினேன் என்று சொன்னால் மறுக்கிறேன்.

15. Many a times our Hon'ble Apex Court and various Hon'ble High Courts have consistently held that the request for change of the date of birth in the service records at the fag end of service is not sustainable. In State of Maharashtra and Anr. vs. Gorakhnath Sitaram Kamble & Ors. (2010) 14 SCC 423 wherein, a series of the earlier decisions of Hon'ble Apex Court were taken note and was held as hereunder:

“Para 16. The learned Counsel for the appellant has placed reliance on the judgment of this Court in U.P. Madhyamik Shiksha Parishad vs. Raj Kumar Agnihotri [(2005) 11 SCC 465 : 2006 SCC (L&S) 96]. In this case, the Hon'ble Apex Court has considered a number of judgments of this Court and observed that the grievance as to the date of birth in the service record should not be permitted at the fag end of the service career”.

16. In another judgment in State of Uttaranchal V. Pitamber Dutt Semwal [(2005) 11 SCC 477 : 2006 SCC (L&S) 106] relief was denied to the government employee on the ground that he sought correction in the service record after nearly 30 years of service. While setting aside the judgment of the High Court, the Hon'ble Apex Court observed that the High Court ought not to have interfered with the decision after almost three decades. These decisions lead to a different dimension of the case that correction at the fag end would be at the cost of a large number of employees, therefore, any correction at the fag end must be discouraged by the Court.

17. The Hon'ble Apex Court in fact has also held that even if, there is good evidence to establish that the recorded date of birth is erroneous, the correction cannot

be claimed as a matter of right. In that regard, in State of M.P. vs. Premal Shrivastava, (2011) 9 SCC 664 it is held as hereunder;

8. “It needs to be emphasised that in matters involving correction of date of birth of a government servant, particularly on the eve of his superannuation or at the fag end of his career, the Court or the Tribunal has to be circumspect, cautious and careful while issuing direction for correction of date of birth, recorded in the service book at the time of entry into any government service. Unless the Court or the Tribunal is fully satisfied on the basis of the irrefutable proof relating to his date of birth and that such a claim is made in accordance with the procedure prescribed or as per the consistent procedure adopted by the Department concerned, as the case may be, and a real injustice has been caused to the person concerned, the Court or the Tribunal should be loath to issue a direction for correction of the service book. Time and again this Court has expressed the view that if, a government servant makes a request for correction of the recorded date of birth after lapse of a long time of his induction into the service, particularly beyond the time fixed by his employer, he cannot claim, as a matter of right, the correction of his date of birth, even if, he has good evidence to establish that the recorded date of birth is clearly erroneous. No Court or the Tribunal can come to the aid of those who sleep over their rights (see Union of India vs. Harnam Singh [(1993) 2 SCC 162 : 1993 SCC (L&S) 375 : (1993) 24 ATC 92])”.

18. As Rightly referred and relied on the side of the respondent that in the case of Factory Manager Kirloskar Brothers Limited vs. Laxman in SLP (C) Nos.25922593/2018, dated 25-04-2019 wherein, the belated claim was not entertained. Further, in the case of M/s Eastern Coalfields Limited & Ors. vs. Ram Samugh Yadav & Ors. in C.A.No. 7724 of 2011, dated 27-05-2019 wherein, the Honble Supreme Court of India has held as hereunder:

Page 12 of 16 “....Only one year prior to his superannuation, Respondent No. 1 raised the dispute which can be said to be belated dispute and therefore, the learned Single Judge as well as the employer was justified in refusing to accept such an issue. The Division Bench of the High Court has, therefore, committed a grave error in directing the appellant to correct the date of birth of Respondent No. 1 in the service record after number of years and that too when the issue was raised only one year prior to his superannuation and as observed hereinabove no dispute was raised earlier”.

19. In the above background it is to be noticed as to whether the representation made by the Petitioner in the year 2012 that is, only on 15-10-2012, just 6 months before his retirement can be taken for consideration? Though such reference is made, in my opinion, the same was not appropriate in the present facts when more than three decades had elapsed from the date of employment. The position is well established that if, a particular date of birth is entered in the service register, a change sought cannot be entertained at the fag end of service after accepting the same to be correct during entire service. In the instant facts, the position is that the Petitioner entered service on 13-01-1979. The date of birth entered as 15-05-1955 has remained on record from the said date. Admittedly, his date of birth is mentioned as 15-05-1955 in his application form for joining duty, when he submitted his nomination and declaration form under ESI pension scheme on 23-12-1996 and in all his monthly salary slip till date the birth date of the petitioner is mentioned as 15-05-1955. When the petitioner had taken an LIC policy in policy No. 732010946, his date of birth is mentioned as 15-05-1955. In all the said Forms/Applications, the date of birth of the employee was required to be mentioned, wherein, the Petitioner on his own has indicated the date of birth as 15-05-1955.

20. In the instant case, as on the date of joining and as also in the year 1979, when the Petitioner had an opportunity to fill up the Nomination Form and rectify the defect if any, he had indicated the date of birth as 15-05-1955 and had further reiterated the same when Provident Fund Nomination Form was filled in 1998. It is only after more than 33 years from the date of his joining service, for the first time in the year 2012, he had made the representation. Further, the Petitioner did not avail the judicial remedy immediately thereafter, before retirement. Instead, the Petitioner retired from service on 14-05-2013 and even thereafter the industrial dispute was filed only in the year 2019, after five years from the date of his retirement. In that circumstance also, no indulgence can be shown to the Petitioner by this Court.

21. Be that as it may, in my opinion, the delay of over three decades in applying for the correction of date of birth is *ex facie fatal* to the case of the Petitioner notwithstanding the fact that there was no specific rule or order, framed or made, prescribing the period within which such application could be filed. It is trite that even in such a situation such an application should be filed which can be held to be reasonable. The application filed by the Petitioner 33 years after his induction into service, by no standards, can be held to be reasonable. Further, his claim for reinstatement with wages from 15-05-2013 till 03-11-2014 with all monetary benefits and service benefits cannot be granted and thus rejected.

22. Therefore, in that circumstance, when the Petitioner himself in his nomination and declaration form under ESI pension scheme on 23-12-1996 and when the petitioner had taken an LIC policy in policy No. 732010946, his date of birth is mentioned as 15-05-1955 had indicated the date of birth as 15-05-1955 which corresponds to the date of birth entered in the service register as on the date of commencement of the employment, merely because a verification was made on the birth certificate recently obtained by him and even if, it was confirmed that the date of birth was 04-11-1956 such change at that stage was not permissible. Thus, the points for consideration decided as against the claim Petitioner and he is not entitled for any relief under this Reference.

In the result, the Reference is unjustified and the Petitioner is not entitled for any relief. The industrial dispute as raised by the Petitioner is dismissed. There is no order as to costs.

Dictated to the Stenographer, directly typed by her, corrected and pronounced by me in open Court on this the 07th day of September, 2022.

V. SOFANA DEVI,
Presiding Officer,
Industrial Tribunal-cum-
Labour Court, Puducherry.

List of petitioner witness:

PW1 — 20-01-2020 Mr. K. Gunasekaran

List of Petitioner Side Exhibits:

Ex.P1 — 15-10-2012 Photocopy of the Representation of the Petitioner to the HR of the respondent company for rectification of his date of birth in service records.

Ex.P2 — 05-11-2012 Photocopy of the Reply given by the respondent to EX.P1.

Ex.P3 — 23-04-2013 Photocopy of the Retirement order issued by the respondent to the Petitioner.

Ex.P4 — 08-10-2012 Photocopy of the birth certificate issued by the Department of Municipal Administration and Water Supply, Government of Tamil Nadu.

- Ex.P5 — 25-01-2018 Photocopy of Judgment passed in O.S.No. 154/2013, dated 25-01-2018 by the I Additional District Munsif, Puducherry.
- Ex.P6 — 15-06-2018 Photocopy of the Petition under sec 2(A) of Industrial Disputes Act, 1947.
- Ex.P7 — 29-08-2018 Photocopy of the Reply of the Petitioner workman to the the Labour Officer (Conciliation), Government of Puducherry.
- Ex.P8 — 06-12-2018 Photocopy of the Failure report of the Labour Officer (Conciliation), Government of Puducherry.
- Ex.P9 — 18-03-2019 Photocopy of the Notification of Failure report in G.O. Rt. No. 45/AIL/LAB/T/2019.

List of Respondent's Witness:

- Rw1 — 15-06-2022 Mr. Ramamoorthy, Assistant Manager (HR) of the Respondent Company.

List of Respondent Side Exhibits:

- Ex.R1 — 21-09-2021 Authorization (POWER OF ATTORENY) Letter given by the Respondents to RW1.

V. SOFANA DEVI,
Presiding Officer,
Industrial Tribunal-cum-
Labour Court, Puducherry.

GOVERNMENT OF PUDUCHERRY
LABOUR DEPARTMENT

(G.O. Rt. No. 177/AIL/Lab./T/2022,
Puducherry, dated 15th December 2022)

NOTIFICATION

Whereas, an Award in I.D. (T) No. 15/2018, dated 19-10-2022 of the Industrial Tribunal-cum-Labour Court, Puducherry, in respect of Dispute between Thiru M.L. Muthukrishnan, Cashier (*Retd.*) Ex-employee of M/s. Daily Thanthi, Puducherry, towards Dearness Allowance in terms of the Majithia Wage Board Award;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947), read with the notification issued in Labour Department's G.O. Ms. No. 20/9/Lab./L, dated 23-05-1991, it is hereby directed by the Secretary to Government (Labour) that the said Award shall be published in the Official Gazette, Puducherry.

(By order)

P. RAGINI,
Under Secretary to Government (Labour).

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

Present : Tmt. V. SOFANA DEVI, M.L.,
Presiding Officer.

Wednesday, the 19th day of October 2022.

I.D. (T) No. 15/2018

in

CNR. No. PYPY06-000064-2018

M.L. Muthukrishnan,
Cashier (*Retd.*),
No. 18, 11th Cross, Periyar Nagar,
Puducherry. . . Petitioner

Versus

The Employer/Manager,
M/s. Daily Thanthi,
No. 23, Cuddalore Road,
Puducherry. . . Respondent

This Industrial dispute coming on 05-09-2022 before me for final hearing in the presence of the Petitioner (in person) and Thiruvalargal D. Abdullah and Yuvaraj, 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. 110/AIL/Lab./G/2018, dated 09-07-2018 of the Labour Department, Puducherry, to resolve the following dispute between the Petitioner and the Respondent, *viz.*,

- (a) Whether any amount is due to Thiru M.L. Muthukrishnan, Cashier (*Retd.*), Ex-employee of M/s. Daily Thanthi, Puducherry, towards Dearness Allowance in terms of the Majithia Wage Board Award?

(b) If so, give appropriate directions.

(c) Whether any amount is due to Thiru M.L. Muthukrishnan, Ex-employee of M/s. Daily Thanthi, towards Assured Career Development in terms of para 20 (f) of the Majithia Wage Board Award ?

(d) If so, give appropriate directions.

(e) 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 M/s. The Daily Thanthi is a leading Tamil Daily having its Head Office at Chennai and a several editions in Tamilnadu, Karnataka, Mumbai and Pondicherry, where in the Petitioner employed as Advertisement Clerk, Managerial Cashier, etc., for the past 36 years from 02-05-1977 to 30.04.2013 in various branches.

(ii) The Petitioner retired from the Respondent's establishment on 30-04-2013 while the Petitioner was in the position of "Cashier" in Pondicherry branch. The Petitioner work history details are given here under.

| | |
|---|---|
| Date of joining at Tirunelveli (Tamil Nadu) | : 02-05-1977 |
| Date of retirement at Pondicherry | : 30-04-2013 |
| Total years of service completed | : 36 years |
| (a) Tirunelveli | : May 1977 to December 1979 |
| (b) Bangalore | : January 1980 to April 1982 |
| (c) Tirunelveli | : May 1982 to April 1994 |
| (d) Bangalore | : May 1994 to April 2004 |
| (e) Pondicherry | : May 2004 to April 2013 |
| As Advertisement/Managerial Clerk | : May 1977 to April 1994 – 17 years |
| As Cashier | : May 1994 to April 2013 – 19 years. (Promoted: but, without any order/benefits) |

(iii) Any of the Employee of the Respondent's establishment has not been issued with any Job Offer letter or Appointment Order while joining duty, by the management. So the Petitioner could not produce any evidence or authenticated document to produce. The Petitioner had been paid a sum of ₹ 1,59,360 on 1st October 2015 towards Wage Board arrears, for which the Petitioner had not been provided any salary break up details for the abovesaid amount. Without knowing whether the amount disbursed to the Petitioner was correct or not, the Petitioner had been forced to submit one written statement stating that the Wage Board arrears amount had been received by him in full and final. If, the Respondent provide the salary work sheet for the said amount ₹ 1,59,360, then only it could be known whether the disbursement of amount ₹ 1,59,360 is calculated in a proper way or not.

(iv) When the Petitioner came across the Gazette Notification the Petitioner realized that he had been paid a very low arrear amount by fixing very low salary. When the Petitioner had taken up this matter to 'Under Secretary to the Government, Minister of Labour and Employment, New Delhi' the Petitioner received another amount vide one Indian Bank cheque bearing No. 863337, dated 15-03-2016 for ₹ 7,37,479.80, which is said to be full and final towards the followings, for which the Petitioner received his salary breakup details. Copy of the Statement is submitted. (Annexure II).

| | |
|---------------------------|----------------------|
| Gratuity arrears | : ₹ 3,93,963.00 |
| EL Salary arrears | : ₹ 24,659.20 |
| Wage Board Salary arrears | : ₹ 3,18,857.60 |
| Total | ₹ 7,37,479.80 |

Therefore, the Petitioner received two cheques *i.e.*, (i) On 1 October, 2015 the Petitioner received a sum of ₹ 1,59,360; (ii) On 15th March, 2016 the Petitioner received an amount of ₹ 7,37,479.80.

(v) Without any doubt it can be ascertained that Wage Board Awards has not been implemented by Respondent till date fully. In this connection the Petitioner submitted his representation vide his letter 28th September 2016. But till this time the Petitioner have not received any clarification on this queries raised by him.

(vi) Honourable Justice G.R. Majithia has given clear guide lines with regards of D.A. calculation. In Gazette Notification, it states in P.Nos. 16 and 17, Section III, 4, "The Dearness Allowance in respect

of the period preceding the date of implementation of the Award shall be given at the existing rates". The Petitioner received arrear amount which is said to be full and final on 15th March 2016. D.A. was calculated to the tune of ₹ 3,754.30 which is calculated on the basis of AICPI average of July 2010 to June 2011. The details here under which shows clear picture how M/s. The Daily Thanthi have arrived the low D.A. to the tune of ₹ 3,754.30.

- (1) July 2010-June 2011 average of AICPI number is 184.
- (2) DA to be calculated to $184 - 167 = 17/167 = 0.101796$ points.
- (3) DA was calculated as $0.101796 * \text{Basic Salary of November 2011 i.e., } 0.101796 * 36881 = 3,754.30$ (The Basic salary constitutes Basic Pay + Variable Pay 35%).

(vii) Thus, ₹ 3,754.30 was the actual DA disbursed to him as per the Wage Board Arrear statement of M/s. The Daily Thanthi as on November, 2011. But, the Petitioner received the amount said to be full and final on 15-03-2016. Therefore, it is needless to say that AICPI pertains to the period March 2015 to February 2016 should be taken in to account. But, it is not followed, purportedly to fix very low salary. The Petitioner here under provides the exact D.A. calculation to be taken into account as per Justice G.R. Majithia wage board recommendations.

1. March 2015 to February 2016 average AICPI number 264.
2. DA to be calculated to $264 - 167 = 97/167 = 0.580838$ points.
3. DA was calculated as $0.580388 * \text{Basic Salary of November 2011 i.e., } 0.580388 * 37988 = 22065$. (The Basic salary constitutes Basic Pay + Variable Pay 35%).

(viii) Hence, it is clearly proved that D.A. was thus calculated wrongly in order to pay very low amount. Thus, salary was fixed very low. Thus, arrear amount was also paid low. In Daily Thanthi all the staff and workers are under designated, without considering their Nature of Work, Years of Service, etc. This is purportedly done to pay them very low salary. Justice G.R.Majithia in the Wage Board Award clearly states that each and every employee should be given maximum of 3 promotions once in 10 years during their service time. As such during his service period the Petitioner worked as Clerk and Cashier, as detailed below.

- (a) May 1977 to April 1994 - worked as Clerk - 17 years.
- (b) May 1994 to April 2013 - worked as Cashier without benefits - 19 years.

(ix) Therefore, the Petitioner should be designated as "Chief Cashier" after completion of first 10 years i.e., after 2003 i.e., before fixing his salary as per Justice G.R. Majithia Wage Board Award. But it was not followed. At the time of his retirement the Petitioner was the only Senior most Man having such long years of service as Cashier. As, M/s. the Daily Thanthi has not taken up the Wage Board Awards recommendation with regards of Promotion Criteria, his salary is fixed under Group 4 in Schedule II, instead of under Group 3 in Schedule II. A letter dt. 27-10-2017 addressed to Labour Officer (Enforcement) Labour Department, Pondicherry, wherein, the Petitioner informed M/s. The Daily Thanthi, to submit any such promotion order issued to him as it was informed to the Labour Officer (Enforcement) that the Petitioner had been awarded promotions. Thus, the Respondent is not implementing Justice G.R. Majithia Wage Board Award's recommendations fully. In all aspects such as fixing new wages, 35% variable pay, calculating DA and in assured career development they followed wrong methods/wrong calculations. In all the nine meetings the Petitioner submitted his representations in written, requesting to provide, whether his demands are a valid one or not. Till this time the Petitioner did not receive any opinion either from the Labour to the Officer (Enforcement) or from the Daily Thanthi.

(x) The Under Secretary to the Govt. of India, Delhi in his letter dated 4th August, 2016, directing the Secretary (Labour), Labour Department, Chief Secretariat, Pudducherry, that "The primary responsibility of the implementation of the recommendations of the Wage Board Awards lies with the State Governments/Union Territories. Respective Newspaper Establishment may be issued the suitable instruction for implementation of the recommendation of the Wage Board. They directed the concerned to give priority. Under Secretary to the Govt. of India, Delhi also wrote several reminders. Hence the petition.

3. *The brief averments in the Counter filed by the Respondent are as follows:*

The Respondent is a newspaper establishment. It has got its Head Office at Chennai and one of its branches at Pondicherry. From 01-03-2013 the Respondent did not have any printing facility at Pondicherry. During the relevant period of time there

were only 42 employees in Pondicherry. The Petitioner retired from Pondicherry on 30-04-2013. As on date of retirement of the Petitioner there was one Branch Manager, the Petitioner worked as Cashier. The nature of establishment of the Respondent did not permit more than one Cashier at Pondicherry branch and the question of either the Petitioner being designated as Senior Cashier or discharging duties of the Senior Cashier did not arise. As such the Petitioner cannot claim any monetary or any other benefits on the ground that he should have been a Senior Cashier. The hierarchy of employment does not have any employment or designation as Senior Cashier. The Petitioner cannot ask for a designation that was never in vogue.

(ii) The wage revision for journalists and non-journalists are determined by way of wage board awards constituted by the Central Government. The last of such recommendation was made by Justice G.R. Majithia Wage Board and the award was duly notified by the Central Government by Notification, dated 11-11-2011. The Wage Board Award for revision of wage in respect of the Petitioner is applicable for the period 11-11-2011 to 30-04-2013.

(iii) The newspaper establishments across India questioned the validity of Justice G.R. Majithia wage board recommendation which culminated in the order of Supreme Court, dated 07-02-2014 in W.P (Civil) No. 246/ 2011 batch of cases. The Hon'ble Supreme Court upheld the validity of the Justice G.R. Majithia Wage Board recommendations and also held that the revision of wages as per the Award were payable from 11-11-2011 *viz.*, the date of notification of the Wage Board Award. Prior to the constitution of Justice G.R. Majithia Wage Board, a Wage Board under auspice of Justice Manisana was constituted and the said Wage Board submitted its recommendation on 05-12-2000. However, the recommendations of the said Wage Board were struck down by Karnataka and Delhi High Courts. However, the benefits given to the Newspaper employees under the Manisana Wage Board award were not adjusted against the future payments.

(iv) The Petitioner joined the employment of the Respondent on 02-08-1977 as Clerk Trainee and the Petitioner was lastly working as Cashier from 01-10-1996 till his retirement. At the time of retirement the Petitioner was reporting to the Branch Manager. There were no employees supervised by the Petitioner and none reported to the Petitioner. The Petitioner's employment if taken into consideration the Petitioner can only be included under the category of Cashier, as per Justice G.R. Majithia Wage Board Award. Further the Petitioner

was only a non-journalist newspaper employee who can be grouped under the administrative staff category under Group IV of Schedule II of the Award. Hence, at any circumstances the category as Senior Cashier does not arise and the post of Senior Cashier is non-existent in the Respondent establishment. Therefore, the Petitioners' employment does not fall under the category of Senior Cashier or Chief Cashier and the Petitioner was not entitled to revision of wages to the said category of employment.

(v) Further, notes to Schedule II of the Justice G.R. Majithia Wage Board Award also sets out that in the event of redesignation of employees the same can be only under mutual and bilateral agreement with the management. In the present case there was never such agreement and as such the Petitioner does not get any right to ask for a classification that was never agreed upon between the management and the workmen.

(vi) The Respondent's liability to implement the Wage Board Award is applicable only for the period 11-11-2011 to 30-04-2013 and the Petitioner gets no right to claim any benefit out of the Justice G.R. Majithia Wage Board Award for the period subsequent to 30-04-2013. The issue raised by the Petitioner whether the Respondent had implemented the Justice G.R. Majithia Wage Board Award in full is concerned, the said issue raised is not supported by any facts by the Petitioner. The Petitioner has very vaguely and baldly stated that the payment of arrears were not implemented fully by the Respondent as per the Wage Board recommendations. The matter referred to Annexure-II in relation to the said issue also does not disclose any facts or proof to show that there was either a short payment or non implementation of the Wage Board Award. The matter stated in the Annexure-II to the petition were already answered by the Respondent before the Labour Enforcement Officer, Pondicherry, by its reply, dated 01-09-2019 and 27-09-2016 enclosing the statement of calculation showing the basis of the payment of arrears as per the Wage Board Award.

(vii) With regard to the issue whether the Dearness Allowance was calculated as per the Justice G.R. Majithia Wage Board Award is concerned, the Dearness Allowance was calculated as applicable from 11-11-2011, *viz.*, the date of notification of Award. The Petitioners' calculation relating to the computation of Dearness Allowance and basis of calculation of Dearness Allowance by the Respondent for the periods November 2011 upto 30-04-2013 had already been admitted by the

Petitioner to be correct. However, the Petitioner is seeking computation of Dearness Allowance on the basis of All India Consumer Price Index applicable for the period March 2015 to February 2016 for the mere reason that the Petitioner was paid the arrears on 15-02-2016. The claim is vexatious and without any basis. The Petitioner's entitlement for arrears is valid only from 11-11-2011 to 30-04-2013, *viz.*, upto the date of superannuation.

(viii) With regard to the third issue whether the wages were fixed as per the nature of duty of Petitioner by providing proper designation is concerned the award of the Justice G.R. Majithia Wage Board only suggest the designations in Schedule I, II and III are general designations and notes to the schedules also set out that any appropriate nomenclature used by a newspaper establishment can be continued and as such the same is not violation of Award. The award also further sets out that a change in designation if sought, is only on certain conditions *viz.*, the change can happen only on mutual and bilateral agreements for redesignation under the present Award.

(ix) The fixation of Pay Scales applicable to employees in the Group-IV categorized under Schedule-II is commensurate to the nature of work discharged by the Petitioner and the wage revision was done as per the Wage Board Award applicable to nature of work done by the Petitioner. The Petitioner cannot seek for a classification under Group-III to Schedule-II as the said category is applicable to people who are Officers or Sectional in-charge.

(x) With regard to the averments made in the claim statement regarding the various jobs done by the Petitioner are concerned, the Petitioner is put to strict proof of the same. The Petitioner's claim that he was a Managerial Cashier is a mischievous statement and there is no designation as Managerial Cashier in the Respondent establishment. With regard to the averments made in the claim statement regarding the payment of benefits to the Petitioner are concerned, though the Respondent paid the amounts in two stages, the total entitlement of the Petitioner as per the prevailing Wage Board Award including terminal benefits was only to the tune of ₹ 15,84,859.90, The Petitioner does not have legal right to claim any further amounts from the Respondent.

(xi) The Petitioner is maintaining this petition merely to get break up of figures paid to him. It is submitted that be the case, the Petitioner was furnished with the details of payment even before

the Conciliation officer/Labour officer *vide* reply, dated 01-09-2016 and letter, dated 27-09-2016. In the above manner the Petitioner's doubts were duly clarified. The present petition is vexatious and devoid of any merits With regard to the averments made in the claim statement that the Respondent did not implement the G.R. Majithia Wage Board Award is not correct. The payment initially made was done on an erroneous calculation and the said payment was due to clerical error and that missed the attention of the Respondent. On receiving the Petition copy the Respondent realized that error had happened in the calculation, paid off the balance to the Petitioner. The payment of ₹ 1,59,360 paid on 15-10-2015 was also made in keeping with G.R. Majithia Wage Board Award, however, there was a clerical error in the calculation which was rectified subsequent. There is no further liability to pay any amount under the subsisting Wage Board Award after discharging the balance payment of ₹ 7,37,47 on 15-03-2016. Further, the clarifications raised by the Petitioner *vide* his letter, dated 28-09-2016 were repetitive and the said clarifications were already answered by the Respondent and also *vide* letters, dated 27-09-2016 and 02-01-2018 even before the Labour officer.

(xii) With regard to the averments made in the claim statement that the Respondent had calculated the amount as per the AICPI for the period 2010-11 and not for period 2015-16 being the period of payment is concerned the calculation provided therein and in the Annexure are incorrect. The Petitioner retired on 30-04-2013. His entitlement to claim any arrears on the basis of subsisting Wage Board Award is only up to 30-04-2013. The Petitioner cannot claim wage revision as per AICPI prevailing for the period 2015-16 which is much after his retirement as the employer employee relationship ceased on 30-04-2013. The basis of calculation adopted by the Respondent is not legally valid.

(xiii) The Wage Board recommendation relating to the promotion is not unconditional. Further, the Award itself states that the designations mentioned are only indicative and the newspaper establishment can follow the designations used by it. Hence, the question of the Respondent not promoting an employee or under designating an employee for the purpose of avoiding the legal obligations under the Award is not true and the said allegations made by the Petitioner are false.

(xiv) Even as per the Wage Board Award the Petitioner is not entitled to any unilateral right to for redesignation as Senior Cashier. The wage board award clearly states that redesignation can happen

only bilaterally when the employer and employee agrees. Further, the redesignation can be only in respect to a category existing. In the entire industry of the Respondent there is no designation as Senior Cashier. Even on this ground the claim for redesignation and the ensuing claims of the Petitioner are not sustainable in law and on facts. With regard to the averments made in the claim statement that the Respondent did not implement the Wage Board Award is not correct. It is the admitted case of the Petitioner that he was promoted over a period of time and lastly worked as Cashier. It is also equally incorrect and without basis on the part of the Petitioner to state that as per the Wage Board Award the Petitioner should be categorized only in Group-III employees and not Group-IV as was done by the Respondent. The Petitioner does not fall under any of the categories of employment mentioned in Group-III. By the nature of work done the Petitioner falls only under Group-IV and the said categorization is proper and legal. The subsisting Wage Board Award has been duly implemented and the Petitioner was paid terminal benefits as per statute and the arrears as per the Wage Board Award. The Petitioner has no right under law to claim any other amounts than that were paid. Hence prayed for dismissal.

4. Reply to the counter statement filed by the Petitioner:

The Respondent in his statement claims that nature of establishment of the Respondent did not permit more than one Cashier at Pondicherry branch and the question of either the Petitioner being designated as Senior Cashier or discharging duties of the Senior Cashier did not arise. The Government of India, Ministry of Labour and Employment Gazette Notification Order, dated 11-11-2011 says in "Section III under caption 'Revised Scale of Wages and Allowances' Clause 20(f) "As regard to Assured Career Development, Every Employee shall be given at least three promotions during his entire service career, *i.e.*, First to next higher grade after satisfactorily completion of ten years of service, Second to next higher grade after satisfactorily completion of twenty years of service, Third to next higher grade after satisfactorily completion of thirty years of service", Therefore, if the Respondent engaged one Cashier or two, it is not the question; but as per the Justice G.R. Majithia Wage Board's recommendation, Cashier shall be given at least three promotions during his entire service career. As such, as the Petitioner completed 36 years of service, (in fact he is eligible of 3 promotions), Petitioner would become eligible to claim all the monetary benefits on

this ground. But, the Petitioner now is struggling for only one promotion from Cashier to next higher grade *i.e.*, To Chief Cashier grade.

(ii) Justice G.R. Majithia Wage Board Award in Schedule II (Grouping of Non Journalist Employees - Administrative Staff) "Cashiers" are classified under Group 4. As per Wage Board's recommendation "If, a Cashier completed first 10 years of service satisfactorily, he shall be given next higher grade" *i.e.*, "Cashier" to next higher grade "Chief Cashier" which is falling under Group 3. But, the Respondent without considering these facts, arguing that the hierarchy of employment does not have any employment or designation as Senior Cashier and that the Petitioner cannot ask for a designation that was never in vogue.

(iii) The Respondent in his statement pointed out that to Schedule II of the justice G.R. Majithia Wage Board Award also set out that in the event of redesignation of employees the same can be only under mutual and bilateral agreement with the management. In fact in the Respondent establishment no any mutual and bilateral agreement is in force and no one have signed or enrolled under mutual and bilateral agreement with the management. Not only that the Respondent establishment does not admit any such "Mutual and Bilateral Agreement".

(iv) With regard of Respondent's statement that Petitioner cannot claim any benefits beyond the period 30-04-2013. But, the Respondent failed to perform their responsibilities while settling superannuation benefits to the Petitioner. It is the responsibility of the Respondent to settle all the legal liabilities pertain to the Petitioner as soon as after his retirement. But, they made the justice Majithia Wage Board Award benefits only by 1st October 2015 to the tune of ₹ 1,59,360 and 15 March 2016 to the tune of ₹ 7,37,479 beyond his retirement only. This delay was intentionally created by the Respondent. This Court should not consider this Respondent's irresponsible reply.

(v) Justice G.R. Majithia Wage Board Award gives following explanation in respect of calculating "Dearness Allowance". "Dearness Allowance in respect the period preceding the date of amendment of the Award shall be given at the existing rate". Very specifically this explanation has been given only for Dearness Allowance and not for any other emoluments such as Basic Salary, Variable Pay and other applicable allowances. Therefore while concluding the recommendations, giving such explanation very clearly with regards of Dearness Allowance alone.

(vi) If, the Wage Board benefits implemented on 11th November 2011 in the Respondent establishment, namely, The Daily Thanthi it could be agreed with the Dearness Allowance granted to the Petitioner at the rate as on 11th November 2011 to the tune of ₹ 3,754 as per their break up statement issued to him is correct. But, the Wage Board benefits were disbursed to the Petitioner on 15th March 2016. Therefore 15th March 2016 should be actually considered to be the date of amendment of the award to the Petitioner. So, it is needless to explain that the Dearness Allowance alone should be calculated as on March 2016 on the basis of the average of All India Consumer Price Index related to the period March 2015 to February 2016 and should be given accordingly. This is the exact recommendations awarded by the Justice G.R. Majithia Wage Board. But, at the same time Basic Salary, Variable Pay and other applicable allowances should be calculated and given as on 30th April 2013. But, the Respondent on his own created a law and forced others too, to abide with. This Court should not admit this illegal statement.

(vii) The Respondent's statement that the arrear amount ₹ 1,59,360 which was paid to him on 01-10-2015 (not on 15-10-2015 as stated by the Respondent) in the first instance just mere on erroneous calculation occurred due to clerical error, could not be acceptable and which is evasive.

(viii) His superannuation benefits which includes Justice G.R. Majithia Wage Board Award arrear amount should be settled soon after his retirement. *i.e.*, by 30th April 2013. But, it was not done as such and intentionally this payment was delayed and paid to him despite his repeated requests and demands, right from the very first time. Thus, it was paid by 1st October 2015 and 15th March 2016. Therefore, it is also not correct to pay the arrear amount which was paid to him during 2015-16 with very old Dearness Allowance which in fact related to the Period 11th November 2011. This was done against the Justice G.R. Majithia Wage Board Award's recommendation. The Respondent has to calculate the Dearness Allowance from the All India Consumer Price Index number average of 2015-16 instead of 2010-11 and the Wage Board's recommendations also insist to pay the Dearness Allowance on the following explanation "Dearness Allowance in respect the period preceding the date of amendment of the Award shall be given at the existing rate". Thus, the Respondent violating the Wage Board Award recommendation and blaming the Petitioner as he made his claim beyond his retirement date 30th April 2013.

(ix) Therefore, the Petitioner pray this Court to issue orders to pay the pending salary arrears amount, Gratuity Arrears and EL salary arrears as per the calculation submitted *via* the statement of his salary account Annexure XIV(1,2) which the Petitioner submitted along with his Petition, with reasonable Interest @ 24% per annum.

5. Points for consideration:

1. Whether any amount is due to Thiru M.L. Muthukrishnan, Cashier (Retd.), Ex-employee of M/s. Daily Thanthi, Puducherry towards Dearness Allowance in terms of the Majithia Wage Board Award?

2. Whether any amount is due to Thiru M.L. Muthukrishnan, Ex-Employee of M/s. Daily Thanthi, towards Assured Career Development in terms of para 20 (f) of the Majithia Wage Board Award?

3. If so, whether the reference made is justified and for what reliefs the Petitioner is entitled to?

6. On Point:

On Petitioner Ex-employee side, PW.1 Chief and Additional Chief examination affidavit filed. Through him Ex.P1 to Ex.P21 marked. Respondent marked Ex.R1 to R5 through PW1 during Cross-Examination of PW.1. On Respondent side. RW.1 Mr. H. Anil Laksham, Assistant in Human Resources Department of the Respondent Establishment examined. Through him Ex.R6 to R15 marked. Written arguments filed by the Petitioner. Oral arguments made on both sides.

7. On the Point No. 1:

The reference has been made with regard to whether any amount is due to the Petitioner/ Ex-employee towards Dearness Allowance in terms of the G.R. Majithia Wage Board Award?

8. Dearness Allowance

According to the Petitioner who appeared in person and represented his case before this Court has submitted that he joined the Respondent management on 02-05-1977 and retired on 30-04-2013 as Cashier from the Respondent establishment. The employees of the Respondent's establishment had never issued any job offer/appointment order while joining duty by the management. Therefore, he could not able to produce any document to that effect.

9. The Petitioner was an ex-employee of the Respondent Establishment, his date of joining, his date of superannuation and his designation at the time of superannuation as Cashier are the admitted facts.

Respondent has paid the sum of ₹ 1,59,360 on 01-10-2015 towards Wage Board Arrears and the Respondent establishment had paid another amount to the Petitioner vide a Cheque, dated 15-03-2016 for ₹ 7,37,479.80 with the break up details are also admitted positions in this case.

10. Further, he submits that though Respondent has paid the sum of ₹ 1,59,360 on 01-10-2015 towards Wage Board Arrears, but, not provided any salary break up details for the said amount. The Petitioner had been forced to submit a written statement stating that the Wage Board Arrears amount had been received by him in full and final. He further, submits that after verifying with the Gazette Notification, the Petitioner had realized that very low arrear amount paid to him by fixing very low salary. When the matter was taken up to the Under Secretary to the Government, Minister of Labour and Employment, New Delhi, the Respondent establishment had paid another amount to the Petitioner vide a Cheque, dated 15-03-2016 for ₹ 7,37,479.80 with the break up details. Thus, the Petitioner received two cheques one for ₹ 1,59,360 on 01-10-2015 and another for ₹ 7,37,479.80 on 15-03-2016 towards the arrears amount.

11. The Petitioner/Ex-employee would submit that if the first disbursement of arrear amount of ₹ 1,59,360 had been paid as full and final, why did the Respondent issue their second cheque for ₹ 7,37,479.80 towards Wage Board arrears? Therefore, his contention is that Justice Majithia Wage Board Awards has not been implemented properly.

12. According to him with regard to DA calculation, in page No.16 and 17, Section III, 4 of the Gazette Notification says that "the Dearness Allowance in respect of the period preceding the date of implementation of the Award shall be given at the existing rates". Thus, the Respondent establishment has calculated a very low DA for a tune of ₹ 3,754.35p on the basis of AICPI average of July 2010 to June 2011. The case of the Petitioner/Ex-employee is that AICPI pertains to the period of March 2015 to February 2016 should be taken into account, since he received the amount said to be full and final arrears only on 15-03-2016. Therefore, he concludes his arguments with regard to DA that Respondent establishment calculated DA wrongly in order to pay a very low amount.

13. On the other hand, the learned Counsel appearing for the Respondent has argued that Justice G.R. Majithia Wage Board Award Notification was published on 11-11-2011. Therefore, G.R. Majithia Wage Board Award for revision of wage in respect of the Petitioner is applicable for the period 11-11-2011 to 30-04-2013 *i.e.*, from the date of notification till the date

of his superannuation. Further, he argued that prior to the Constitution of Justice G.R. Majithia Wage Board, a Wage Board under Justice Manisana was constituted and submitted its recommendation on 05-12-2000. The Hon'ble Karnataka and Delhi High Courts struck down the said recommendations made by the Justice Manisana Wage Board. However, the benefits given to the newspaper employees under the Manisana Wage Board Award were not adjusted against the future payments.

14. The learned Counsel appearing for the Respondent further argued that the Respondent's liability to implement the G.R. Majithia Wage Board Award is applicable only for the period 11-11-2011 to 30-04-2013 (till his superannuation) and the Petitioner has no right to claim any benefit out of justice G.R. Majithia Wage Board Award for the period subsequent to his superannuation *i.e.*, 30-04-2013.

15. Heard both on this point and perused the available records. According to the claim Petitioner, the DA was wrongly calculated in order to pay a very low amount as arrear amount. His strong contention is that the Dearness Allowance in respect of the period preceding the date of implementation of the Award shall be given at the existing rate mentioned in the Gazette Notification should be according to AICPI pertains to the period of March 2015 to February 2016, since, the Petitioner received the amount towards DA arrear as per justice G.R. Majithia Wage Board Award only on 15-03-2016. The simple case put forth by the Petitioner ex-employee is since he received the DA arrears only on 15-03-2016, the said date (15-03-2016) should be considered to be the "date of implementation of the justice G.R. Majithia Wage Board Award to the Petitioner" and the dearness allowance to the period preceding 15-03-2016 *i.e.*, 11-11-2011 to 31-03-2013 should be given at the rate which was in force as on 15-03-2016 as per the Petitioner's Doc. No.10. Therefore, ₹ 22,065 should be given towards Dearness Allowance instead of ₹ 3,754.

16. Whereas, the learned Counsel for the Respondent stoutly denies the above arguments put forth by the Petitioner. As per the justice G.R. Majithia Wage Board Award, the Respondent liability to implement the G.R. Majithia Wage Board Award is only applicable for the period 11-11-2011 to 30-04-2013 and the Petitioner has no right to claim any benefit out of the justice G.R. Majithia Wage Board Award for the period subsequent to his superannuation, *i.e.*, 30-04-2013. Further, he would argue that Petitioner's calculation relating to computation of Dearness Allowance and basis of calculation of Dearness Allowance by the Respondent for the periods November, 2011 upto 30-04-2013 had already been admitted by Petitioner to be correct.

17. The Petitioner is seeking computation of DA on the basis of AICPI applicable for the period March 2015 to February 2016 for the mere reason that the Petitioner was paid the arrears on 15-02-2016. Whereas, it has been strongly denied by the Respondent that the Petitioner's entitlement for arrears is valid only from 11-11-2011 to 30-04-2013 *i.e.*, up to the date of his superannuation. Thus, the claim is vexatious and without any basis.

18. On perusal of the oral evidence of the Petitioner who was examined as PW.1, where this Court could find that there was a categorical admission during his cross-examination that, "he retired on 01-05-2013 and there was no relationship of employer employee between the Petitioner and the Respondent establishment". Further, he admitted that, "as per his document Ex.P7 at para No. 2 the calculation of the DA by the Respondent as ₹ 3,754.30 admitted as correct by him".

19. For better appreciation, I would like to reproduce the relevant portion of the Petitioner/Ex-Employee hereunder:- நான் எதிர்மனுதாரர் நிர்வாகத்திலிருந்து 01-05-2013-னில் பணி ஓய்வு காரணமாக விடுவிக்கப்பட்டேன். எனக்கு 2016-ஆம் ஆண்டு, Majithia Wage Board Award recommendation-படி Gratuity Arrear, E.L. Salary Arrear, Majithia Wage Board Salary Arrear கொடுத்தார்கள். Majithia Wage Board Award recommendation-க்கு எதிராக மாண்புமிகு உச்ச நீதிமன்றத்தில் வழக்கு தொடரப்பட்டு 2014-ஆம் ஆண்டு முடிவுற்றது என்றால் சரிதான். அதில் மேற்படி போர்டின் பரிந்துரைகளை 11-11-2011 முதல் அமல் படுத்தினால் போதும் என்று மாண்புமிகு உச்ச நீதிமன்றம் கூடிக்காட்டியுள்ளது என்றால் சரிதான். மே 2013-ல் நான் பணி ஓய்வு பெற்ற பின்னர், தினத்தந்தி அலுவலகத்தில் பணியாற்றினேனா என்றால் கிடையாது. மே 2013-க்கு பிறகு எனக்கு எதிர்மனுதாரர் நிர்வாகத்திற்கும் இடையே அமற்படி Wage Board Award recommendation குறித்து தொடர்பு மட்டுமே உண்டு என்றால் சரிதான்.

20. Further, the Petitioner/Ex-Employee has deposed that, "எனக்கு மார்ச் 2015 முதல் பிப்ரவரி 2016 வரையுள்ள All India Consumer Price Index number average படி DA கணக்கிடப்பட்டு வழங்கப்பட வேண்டும். நான் தாக்கல் செய்த மதசா. 7-ல் பத்தி இரண்டில், நிர்வாகம் DA-வை ரூபாய் 3,754.30 என கணக்கிட்டிருப்பது சரி என்றும் 15-03-2016-ல் Wage Board Arrears கொடுக்கப்பட்டதால், மார்ச் 2015 மற்றும் பிப்ரவரி 2016 ஆண்டிற்கான AICPI average படி DA கணக்கிடக்க வேண்டும் என உள்ளது என்றால் சரிதான். 2016 மார்ச்-ல் நான் வேலையில் இல்லை. என்னிடம் காட்டப்படும் ஆவணம், Majithia Wage Board Award என்றால் சரிதான். அது எமதசா.1 ஆகும். அந்த பரிந்துரையை மத்திய அரசு 11-11-2011 அன்று அரசாணை மூலம் அமுலுக்கு கொண்டு வந்தது என்றால் சரிதான். அது செல்லாது என்று பல்வேறு செய்தித்தாள், நிறுவனங்கள் மாண்புமிகு உச்ச நீதிமன்றம் உத்தரவு பிறப்பித்தது என்றால் சரிதான். என்னிடம் காட்டப்படுவது அதன் நகல்தான். அது எமதசா. 2 ஆகும்.

21. Further, the Petitioner/Ex-Employee has deposed that, "DA arrears, Gratuity arrears, Earned Leave arrears ஆகியவை தர வேண்டும் என கேட்டு. இந்த வழக்கை தாக்கல் செய்துள்ளேன். Gratuity Arrear பொறுத்து வழக்கை தாக்கல் செய்ய இந்த நீதிமன்றத்திற்கு அதிகாரம் இல்லை என்றும் அது குறித்து தனி அதிகாரி உள்ளார் என்றும் அவரிடம் தான் மனு தாக்கல் செய்ய வேண்டும் என்று சொன்னால் எனக்கு அது பற்றி தெரியாது. Controlling authority under payment of gratuity Act என்ற அதிகாரியிடம் Gratuity arrears மனு தாக்கல் செய்துள்ளேன் என்றால் இல்லை."

22. Further, the Petitioner/Ex-Employee has deposed that, "நான் 01-05-2013-னில் பணி ஓய்வு பெற்றேன் தற்போது எனக்கும் எதிர்மனுதாரருக்கும் இடையே தொழிலாளி-முதலாளி என்ற உறவு கிடையாது. 01-05-2013 முதல் முடிவடைந்தது. எனக்கு ஜூலை 2010-லிருந்து ஜூன் 2011 வரையுள்ள All India Consumer Price Index number படி என்னுடைய DA கணக்கிடப்பட்டு எனக்கு வழங்கப்பட்டுள்ளது. அந்த தொகை ₹ 3,754 ஆகும். அவ்வாறு எனக்கு வழங்கப்பட்ட தொகை ₹ 3,754 குறைத்து வழங்கப்பட்டுள்ளது என்பது எனது சாட்சியாகும்."

23. Further, PW.1 deposed during cross-examination that "Further, when a question was posed by the Respondent Counsel to the Petitioner during cross-examination that, "after the constitution of G.R. Majithia Wage Board Award and till its recommendation, an interim relief amount was paid monthly to him along with his salary". The Petitioner clearly admitted the same as follows in his cross examination which has been extracted as follows:-

"Majithia Wage Board recommendation constitute செய்வதற்கான பரிந்துரை 2008-ல் செய்யப்பட்டது என்றால் எனக்கு தெரியாது. எனது மாதச் சம்பளத்துடன் Interim Relief என்ற தலைப்பின் கீழ் ஒரு குறிப்பிட்ட தொகை மாதாமாதம் வழங்கப்பட்டது என்றால் சரிதான்."

24. Therefore, from the version of Petitioner during his cross-examination and from the admissions in the claim petition, this Court has able to find that the Respondent Establishment had duly paid the D.A. arrears amount as per the justice G.R. Majithia Wage Board Award by calculating on the basis of AICPI for the relevant period and arrived the arrear amount for the period November 2011 to April 2013 till the date of Petitioner's superannuation. The claim of the Petitioner that the arrears amount should have been calculated on the basis of AICPI for the period April 2015 to March 2016 since the payment of D.A. arrears were received by him only on 15-03-2016, is totally misconceived, erroneous and not maintainable in the eye of law. Since, it is admitted by the Petitioner that he already received the D.A. arrears amount from the Respondent Establishment as per the calculation made on the basis of AICPI for the period November 2011 to 30-04-2013,

i.e., till his superannuation from the Respondent establishment, he is not entitled for any further, D.A. arrears as claimed in the claim petition.

25. The reference in this ID was made *vide* G.O. Rt. No. 110/AIL/Lab./G/2018, dated 09-07-2018 before this Court to find out whether any amount is due to the Petitioner towards Dearness Allowance and Assured Carrier Development in terms of Majithia Wage Board Award. Whereas, the Petitioner in this claim petition sought for the prayer with the following reliefs: (1) Salary arrears after having calculated the Dearness Allowance at the existing rate, (2) Gratuity Arrears thereafter, calculating the DA at the existing rate, (3) Earned Leave salary arrears also after calculating the DA at the existing rate and other retired benefits arrear if any and (4) Promotion benefits. The learned Counsel appearing for the Respondent would argue in this regard that Petitioner cannot make a claim regarding Gratuity arrears before this Court when a statutory authority specifically constituted under the statute *i.e.*, the Controlling Authority under the Payment of Gratuity Act is empowered to decide those issues on Gratuity. When a specific question was posed before the Petitioner PW.1, he conveniently deposed that he did not know about the above exclusive forum namely, the Controlling Authority under the Payment of Gratuity Act, so he did not approach the same forum for his relief. The relevant portion is reproduced hereunder for better appreciation "DA arrears, Gratuity arrears, Earned Leave arrears ஆகியவை தர வேண்டும் என கேட்டு, இந்த வழக்கை தாக்கல் செய்துள்ளேன். Gratuity Arrear பொறுத்து வழக்கை தாக்கல் செய்ய இந்த நீதிமன்றத்திற்கு அதிகாரம் இல்லை என்றும் அது குறித்து தனி அதிகாரி உள்ளார் என்றும் அவரிடம் தான் மனு தாக்கல் செய்ய வேண்டும் என்று சொன்னால் எனக்கு அது பற்றி தெரியாது. Controlling authority under Payment of Gratuity Act என்ற அதிகாரியிடம் Gratuity arrears குறித்து மனு தாக்கல் செய்துள்ளேனா என்றால் இல்லை".

26. As decided above that Dearness Allowance arrears were calculated by applying AICPI for the relevant period by the Respondent establishment and arrived the arrear amount for the period from November 2011 to April 2013 *i.e.*, till the date of the Petitioner's superannuation and same is decided as correct by this Court. Hence, the claim of the Gratuity Arrear amount as claimed in the claim petition by the Petitioner that, "Gratuity Arrears after calculating the DA at existing rate" does not arise at all and furthermore since, there is a special forum to decide the question of eligibility of any Gratuity Arrear, would not stand even for a while before this Court.

27. *On the Point No.2: Assured Carrier Development:*

The second limb of argument made by the Petitioner/ex-employee is that according to Justice Majithia Wage Board Award, each and every

employee should be given maximum of three promotions once in ten years during their service time. As such during his service period, the Petitioner worked as Clerk and Cashier. The Petitioner should be designated as Chief Cashier after completion of first ten years *i.e.*, after 2003, before fixing his salary as per justice G.R. Majithia Wage Board Award. But, it was not followed. The Respondent establishment has not taken up the G.R. Majithia Wage Board Award's recommendation with regards of promotion criteria, his salary is fixed under Group 4 in Schedule-II, instead of under Group 3 in Schedule-II.

28. In the reply filed by the Petitioner to the Respondent's counter it has been pleaded that the Respondent in his statement claims that nature of establishment of the Respondent did not permit more than one Cashier at Pondicherry Branch and the question of either the Petitioner being designated as Senior Cashier or discharging duties of the Senior Cashier did not arise. Whereas, the Government of India, Ministry of Labour and Employment Gazette Notification Order, dated 11-11-2011 says in "Section III under caption "Revised Scale of Wages and Allowances" Clause 20(f) "As regard to Assured Career Development, Every Employee shall be given at least three promotions during his entire service career, *i.e.*, First to next higher grade after satisfactorily completion of ten years of service, Second to next higher grade after satisfactorily completion of twenty years of service, Third to next higher grade after satisfactorily completion of thirty years of service". Therefore, if, the Respondent engaged one Cashier or two, it is not the question; but, as per the Justice G.R. Majithia Wage Board's recommendation, Cashier shall be given at least three promotions during his entire service career. As such, as the Petitioner completed 36 years of service, (in fact he is eligible of 3 promotions), Petitioner would become eligible to claim all the monetary benefits on this ground. But, the Petitioner now is struggling for only one promotion from Cashier to next higher grade *i.e.* To Chief Cashier grade." But, the Respondent without considering these facts, arguing that the hierarchy of employment does not have any employment or designation as Senior Cashier and that the Petitioner cannot ask for a designation that was never in vogue. Thus, he concluded his arguments that Respondent is not implementing justice G.R. Majithia Wage Board Award's recommendations such as fixing new wages, 35% variable, calculating DA and in Assured Carrier Development and the calculations made by the Respondent are totally wrong by following wrong methods.

29. The Respondent in his statement claims that nature of establishment of the Respondent did not permit more than one Cashier at Pondicherry branch and the question of either the Petitioner being designated as Senior Cashier or discharging duties of the Senior Cashier did not arise.

30. Further, on this point, it is urged on the side of the Respondent that the post of Senior Cashier is non-existence in the Respondent establishment. The Petitioner was only a non-journalists newspaper employee who can be grouped under the administration staff category under Group-IV of Schedule-II of the Award. Therefore, the Petitioner was not entitled to revision of wages under the category of Senior Cashier or Chief Cashier. Developing his arguments, the learned Counsel for the Respondent would argue that, "as per the notes to Schedule-II of the justice G.R. Majithia Wage Board Award, in the event of redesignation of employees the same can be only under mutual and bilateral agreement with the management. There was never such agreement and as such the Petitioner does not get any right to ask for a classification that was never agreed upon between the management and workmen".

31. For which as a way of reply, the Petitioner would say that, "In fact in the Respondent establishment no mutual and bilateral agreement is in force and no one have signed or enrolled under mutual and bilateral agreement with the management. Not only that, the Respondent establishment does not admit any such Mutual and Bilateral Agreement."

32. The learned Counsel for the Respondent also argued that the Petitioner cannot seek for a classification under Group-III of Schedule-II as the said category is applicable to people who are officers of Sectional in-charge. The fixation of pay scales applicable to employees in Group-IV under Schedule-II is commensurate to the nature of work discharged by the Petitioner and the wage revision was done as per the Wage Board Award applicable to nature of work done by the Petitioner. The Petitioner's claim that he was a managerial Cashier is a mischievous statement and there is no designation as such in the Respondent establishment.

33. The learned Counsel appearing for the Respondent has admitted that the payment initially made was done on an erroneous calculation and the said payment was due to clerical error and that missed the attention of the Respondent. On receiving the petition copy, the Respondent realized its error in calculation and paid the balance amount of ₹ 7,37,479.80 on 15-03-2016. Further, the Petitioner employee was furnished with the details of the payment even before the Conciliation Officer/Labour Officer *vide* reply dated 01-09-2016 and 27-09-2016.

34. The learned Counsel appearing for the Respondent argued further that Wage Board Award itself states that the designations mentioned in the Award are only indicated and the newspaper establishment can follow the designations used by it. Even as per the Wage Board Award the Petitioner is not entitled to any unilateral right for redesignation as Senior Cashier. In the entire industry of the Respondent there is no such designation as Senior Cashier. He also referred Ex.P1 Wage Board Award and argued that the Wage Board Award clearly states that redesignation can only happened bilaterally when the employer and employee agrees. Therefore, the claim for redesignation by the Petitioner is not sustainable. Thus, the learned Counsel has concluded his arguments that the Petitioner was promoted over the period of time and lastly worked as Cashier. The Petitioner does not fall under any of the categories of employment mentioned in Group-III. By the nature of work done, the Petitioner falls only under the Group-IV and the said categorization is proper and legal. The subsisting Wage Board Award has been duly implemented and the Petitioner was paid terminal benefits as per statute and arrears as per the Wage Board Award. Hence, prayed for dismissal of the claim made by the Petitioner.

35. Heard both. Perused the case records on this point. During cross-examination the Petitioner himself has admitted that nobody employed or occupied as Chief Cashier in the Respondent establishment. But, he conveniently answered that he did not know whether any such post as Chief Cashier in the Respondent establishment. On careful perusal of his evidence, this Court could find that the Petitioner did not deny to the question put by the Respondent Counsel that there was/is no such post as Chief Cashier in the Respondent establishment at any point of time. The relevant portion of PW.1 admission during cross-examination is as follows: எதிர்மனுதாரர் நிர்வாகத்தில் Chief Cashier என்ற ஒரு post இல்லை என்றால் தெரியாது. Chief Cashier என்ற பதவி இதுவரையிலும் யாரும் வகித்ததில்லை என்றால் சரிதான்.

36. Further, PW.1 during his cross-examination clearly admitted that he did not give any representation to the Respondent establishment seeking for any promotions at any point of time. The relevant portion of PW.1 admission during cross examination is as follows: நான் இந்த காலக்கட்டத்திலும் எனக்கு பதவி உயர்வு வழங்குமாறு கேட்டு கடிதம் எழுதவில்லை என்றால் சரிதான். நான் அவ்வாறு கேட்க முடியாது.

37. Further, in his cross-examination the Petitioner himself admitted that he worked under the Branch Manager of Pondicherry, Respondent Branch. The deposition of PW1 in this regard is extracted below; மேனேஜர் பணிக்கு வராத காலத்தில். அந்த பொறுப்பை நான்

பார்த்து வந்த காலத்தில். நான் அவரை தொடர்பு கொண்டு, அவரின் அறிவுரைப்படி செயல்படுவேன் என்று சொன்னால் சரியல்ல. நான் தலைமை அலுவலகத்தை தொடர்புக் கொண்டு செயல்படுவேன். நான் பாண்டிச்சேரி கிளையில் உள்ள அலுவலக மேலாளரின் கீழ் நாங்கள் அனைவரும் பணியாற்றி வந்தோம்..... பாண்டிச்சேரியில் பணியாற்றுவதற்கு முன்பாக பெங்களூரில் பணியாற்றினேன். பெங்களூரில் Cashier-ராக பணியாற்றிய காலத்தில் நான் செய்த தவறுகளை ஒப்புக்கொண்டு, ஒரு கடிதம் கொடுத்திருந்தேன் என்றால் சரிதான். அதன் நகல்தான் என்னிடம் காட்டப்பட்டுள்ளது. அது எமதசாஆ.3 ஆகும். பெங்களூரில் பணியாற்றிய போது நான் எமதசாஆ.3-னில் உள்ள தொகை சரிக்கட்டுவதற்காக நான் நிர்வாகத்திடம் ₹ 24,000 கடன் கேட்டு, கடிதம் கொடுத்தேன். அதன் நகல் என்னிடம் காட்டப்படுவதுதான். அது எமதசாஆ.4 ஆகும். அதனை தொடர்ந்து எனக்கு ஒரு வருட increment, cut செய்யப்பட்டது. நான் பாண்டிச்சேரியில் பணியாற்றிய போது பணி ஓய்விற்கு முன்பாக, பணி நீட்டிப்பு கேட்டு, 23-04-2013 அன்று ஒரு கடிதம் கொடுத்தேன். அந்த கடிதம் எமதசாஆ.5 ஆகும். அந்த வேண்டுகோளை ஏற்று நிர்வாகம் பணி நீட்டிப்பு எதுவும் வழங்கவில்லை”.

38. Therefore, from his own version, the PW.1 has admitted that even at the time of superannuation he requested before the Respondent management for extension of his employment *vide* letter Ex.R5 dated 23-04-2013. On perusal of Ex.R5, I shall see that even in the document, dated 23-04-2013 the Petitioner ex-employee sought only for extension of his service as Cashier, not for any promotion.

39. The learned Counsel for the Respondent has referred the following deposition of PW.1 and argued that at no point of time the Petitioner herein approached the Respondent establishment for any promotion during his tenure of service. Even at the verge of superannuation, he requested the Respondent establishment only for extension of service as Cashier stating that he is in need of money to get some loan dues to be repaid.

40. Therefore, from the above evidence of Petitioner as PW1, this Court has able to come to the conclusion that there is no such post as Chief Cashier in the Respondent establishment and the Petitioner has failed to exhibit and prove the said fact before this Court. Further, from his evidence it is made clear to this Court that he did not work as Senior Cashier or Chief Cashier but he himself in his evidence deposed that the Respondent establishment is under the duty to designate him as Chief Cashier. The exact extract of PW.1's cross-examination reproduced hereunder :

நான் தாக்கல் செய்த மனுவில், நீண்ட காலம் Cashier பதவி வகித்து வந்தாலும், மூத்த ஊழியர் என்பதாலும், எனக்கு Chief Cashier என்ற பதவி உயர்வு தந்திருக்க வேண்டும் என்ற சொல்லியுள்ளேன் என்றால் சரிதான். மாண்புமிகு உச்ச நீதிமன்ற உத்தவின்படி நான் பதவி உயர்வு என்ற கோரிக்கையை இந்த நீதிமன்றத்தில் கோர

முடியாது என்றால் தவறு. Majithia Wage Board recommendation என்பது 2011-ல் அமலுக்கு வந்தது. நான் 01-05-2013-ல் பணி ஓய்வு பெற்றேன். Majithia Wage Board recommendation-ல் Schedule II Group III-ன் கீழ் என்னை வைத்திருக்க வேண்டும், ஆனால், என்னை Group IV-ன் கீழ் வைத்திருந்தார்கள். எந்த அடிப்படையில் அவ்வாறு செய்திருக்க வேண்டும் என்று இந்த மனுவில் சொல்லவில்லை என்றால் சரிதான். சாட்சி தானாக முன் வந்து, சொல்லியிருப்பதாக கூறுகிறார். எனக்கு உரிய arrears-ஐ 2016-ஆம் ஆண்டு வழங்கியிருந்தாலும் கூட, 2016-ம் ஆண்டு Index-ஐ follow செய்து வழங்க வேண்டிய அவசியம் இல்லை என்றும் 2010-2013-ம் ஆண்டுவரையுள்ள Index படி arrears வழங்கியிருப்பது சரிதான் என்று சொன்னால் மறுக்கிறேன்.

41. Therefore, the claim of the Petitioner that he should have been promoted as Chief Cashier which is non existent in the Respondent establishment neither holds good nor maintainable. Admittedly from the documents this Court shall see that the petitioner was keeping quite all along his tenure of service without claiming any promotion, but, now he claims promotion after his superannuation which is unknown to law. Further as per justice G.R. Majithia Wage Board Award, the redesignation can only be happen bilaterally when the employer employee agrees. As admitted by the Petitioner, there was no such bilateral agreement between the Respondent establishment and the Petitioner herein. Therefore, that he would be promoted as Chief Cashier and to be considered under the category of Group-IV is totally unacceptable and thus not maintainable.

42. From the above findings and discussions, this Court holds the points for determination 1 and 2 as against the Petitioner in favour of Respondent to the effect that Dearness Allowance already disbursed to the Petitioner by the Respondent establishment for the period November 2011 to April 2013 on the basis of AICPI of the relevant period is correct and the Petitioner is not entitled for any Assured Carrier Development reliefs as claimed in the claim petition. Consequently, all other reliefs claimed in the claim petition are also not sustainable and thereby liable to be rejected.

43. In the result, the reference made is unjustified and the Industrial Dispute is dismissed. No costs.

Dictated to the Stenographer, directly typed by him, corrected and pronounced by me in open court on this the 19th day of October 2022.

V. SOFANA DEVI,
Presiding Officer,
Industrial Tribunal-cum-
Labour Court, Puducherry.

List of petitioner's witness:

PW.1 — 20-11-2019 M.L. Muthukrishnan, the
Petitioner herein.

List of petitioner's exhibits:

Ex.P1 — 20-07-2015 Photocopy of the Justice
G.R. Majithia Wage Boards
for working Journalists and
Non-Journalist and other
newspaper employees –
arrear payment – regarding.

Ex.P2 — 30-07-2015 Photocopy of the Justice
G.R. Majithia Wage Boards
for working Journalists and
Non-Journalist and other
newspaper employees –
implement – requesting
gratuity arrear – regarding.

Ex.P3 — 08-08-2015 Photocopy of the Justice
G.R. Majithia Wage Boards
for working Journalists and
Non-Journalist and other
newspaper employees –
implement – requesting
gratuity arrear – regarding.

Ex.P4 — 01-10-2015 Photocopy of the written
statement of Petitioner
submitted to the Respondent
stating that the arrear
amount had been received in
full and final.

Ex.P5 — 22-10-2015 Photocopy of the Justice
G.R. Majithia Wage Boards
for working Journalists and
Non-Journalist and other
newspaper employees –
implement – requesting
gratuity arrear – regarding.

Ex.P6 — 25-06-2016 Photocopy of the Justice
G.R. Majithia Wage Boards
for working Journalists and
Non-Journalist and other
newspaper employees –
implement with effect from
01-07-2010 – requesting
gratuity arrear – regarding.

Ex.P7 — 27-10-2017 Photocopy of the M/s. The
Daily Thanthi, Puducherry –
Justice G.R. Majithia Wage
Board for working Journalists
and Non- Journalist and

other newspaper employees –
implementation – Variation in
DA calculation – requesting
arrear – regarding.

Ex.P8 — 07-02-2014 Photocopy of the
recommendation on Dearness
Allowance (Pg.No. 17).

Ex.P9 — — Photocopy of the
calculation memo by
Petitioner – Respondent's
DA calculation work sheet
to the tune of ₹ 3,754
calculated from the average
of AICPI from July 2010 to
June 2011.

Ex.P10 — — Photocopy of the
calculation memo by
Petitioner – Exact DA
calculation – payable to the
tune of ₹ 22,065 as per Wage
Board Award's
recommendation from the
average of AICPI from
March 2015 to February
2016.

Ex.P11 — — Photocopy of the Table
shows All India Consumer
Price Index, since 01-01-2006.

Ex.P12 — 11-11-2011 Photocopy of the justice
G.R. Majithia Wage Board
Award's recommendation on
Assured Career Development
(Page No. 19).

Ex.P13 — 11-11-2011 Photocopy of the justice
G.R. Majithia Wage Board
Award's recommendation on
Grouping of Non-Journalist
Newspaper Employees –
Administrative Staff (Page
No. 30).

Ex.P14 — 04-08-2016 Photocopy of the Letter,
Under Secretary to the
Government of India,
Ministry of Labour and
Employment, New Delhi.

Ex.P15 — 18-04-2017 Photocopy of the Letter,
Under Secretary to the
Government of India,
Ministry of Labour and
Employment, New Delhi.

| | | | |
|---------------------|---|---|--|
| Ex.P16 — 13-11-2017 | Photocopy of the Letter, Under Secretary to the Government of India, Ministry of Labour and Employment, New Delhi. | Ex.R3 — 16-04-2004 | Photocopy of the covering letter with the explanations submitted by the Petitioner Mr. M.L. Muthukrishnan to the respondent establishment. |
| Ex.P17 — 23-11-2017 | Photocopy of the Letter, Under Secretary to the Government of India, Ministry of Labour and Employment, New Delhi. | Ex.R4 — 16-04-2004 | Photocopy of the loan sanctioned letter. |
| Ex.P18 — — | Photocopy of the works sheets show the exact arrear amount payable to the Petitioner as per justice G.R. Majithia Wage Board Award's recommendation | Ex.R5 — 23-04-2013 | Photocopy of the requisition submitted by the Petitioner Mr. M.L. Muthukrishnan requesting for extension of Service. |
| Ex.P19 — 20-11-2019 | Photocopy of the justice G.R. Majithia Wage Board Award's recommendation – arrear calculation statement of M. Muthukrishnan, Ex-Cashier, Pondicherry with breakup details – issued by the Respondent – regarding. | Ex.R6 — 24-11-2021 | Original Authorization letter issued to witness. |
| Ex.P20 — — | Photocopy of the consolidated statement showing the salary and other arrears details of M.L. Muthukrishnan, Ex-Cashier, Puducherry as per justice G.R. Majithia Wage Board Award's recommendation – issued by the Respondent – regarding. | Ex.R7 — March to May 2013 | Photocopy of the Pay Register. |
| Ex.P21 — 11-11-2011 | Photocopy of the statement showing the salary details of M.L. Muthukrishnan, Cashier (Retired) from 11-11-2011 to 30-04-2013. | Ex.R8 — 01-09-2016 | Photocopy of the reply of the Respondent to Labour Enforcement Officer, Pondicherry. |
| | | Ex.R9 — 01-09-2016 | Photocopy of the calculation sheet annexed to reply. |
| | | Ex.R10 — 27-09-2016 | Photocopy of the reply of the Respondent to Labour Enforcement Officer, Pondicherry. |
| | | Ex.R11 — — | Photocopy of the All India Consumer Price Index from the Official Labour Department Website. |
| | | Ex.R12 — 2007-2008, 2008-2009 and 2009-2010 | Photocopy of the Trial Balance Sheet of the Respondent. |
| | | Ex.R13 — 14-03-2016 | Photocopy of the vouchers signed by the Petitioner. |
| | | Ex.R14 — 11-07-2017 | Photocopy of the Letter addressed by Labour Enforcement Officer to Respondent with Status Report. |
| | | Ex.R15 — 08-12-2021 | Original Certificate issued under section 65B of the Evidence Act. |

List of respondent's witness:

RW1 — 21-02-2022 H. Anil Laksham, Assistant, Human Resources Department of the Respondent establishment.

List of respondent's exhibits:

Ex.R1 — 11-11-2011 Justice G.R. Majithia Wage Board Award.

Ex.R2 — 07-02-2014 Order copy of the Hon'ble Supreme Court of India in W.P (Civil). No. 246 /2011.

V. SOFANA DEVI,
Presiding Officer,
Industrial Tribunal-cum-
Labour Court, Puducherry.