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பொருளடக்கம்

SOMMAIRES

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GOVERNMENT OF PUDUCHERRY
LABOUR DEPARTMENT

(G.O. Rt. No. 51/AIL/Lab./S/2024,
Puducherry, dated 23rd April 2024)

NOTIFICATION

Whereas, an Award in I.D. (T) No. 13/2023, dated 31-01-2024 of the Industrial Tribunal, Puducherry, in respect of the industrial dispute between the management of M/s. Bahadur Security Force, Puducherry and Thiruvallargal M. Sengeni and K. Durai, over payment of pending wage increase, bonus and other benefits has been received;

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

(By order)

S. SANDIRAKUMARAN,
Under Secretary to Government (Labour).

BEFORE THE INDUSTRIAL TRIBUNAL-CUM-
LABOUR COURT AT PUDUCHERRY

Present : Tmt. G.T. AMBIKA, M.L., PGDCLCF.,
Presiding Officer.

Wednesday, the 31st day of January, 2024

I.D. (T) No. 13/2023
CNR. No. PYPY06-000056-2023

President/Secretary,
All India United Trade Union Centre
(AIUTUC), Puducherry. . . Petitioner

Versus

M/s. Bahadur Security Force,
Represented by Partners T. Lakshmi
and A. Ravi, Puducherry. . . Respondent

This Industrial Dispute coming on 25-01-2024 before me for final hearing in the presence of Thiruvallargal S. Sivakumar, Secretary of Petitioner Union, Respondent remained *ex parte* and after hearing the Petitioner side and perusing the case records, this Court delivered the following:

AWARD

This Industrial Dispute arises out of the reference made by the Government of Puducherry *vide* G.O. Rt. No. 48/Lab./AIL/T/2023, dated 30-03-2023 of the Labour Department, Puducherry, to resolve the following dispute between the Petitioner and the Respondent, *viz.*

(a) Whether the dispute raised by the Petitioner All India United Trade Union against the management of M/s. Bahadur Security Force, Puducherry, over payment of pending wage increase, bonus and other benefits to Thiruvallargal Sengeni and K. Durai from the year 01-01-2006 to 21-03-2018 (12 years of service) and 01-01-2006 to 02-03-2019 (13 years of service) amounting to ₹ 1,20,000 and ₹ 1,30,000 respectively, totalling ₹ 2,50,000 along with 12% interest is legal and justified? If justified, what relief they are entitled to?

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

2. *The averments set forth in the petition is as follows:*

That in the respondent establishment there are more than 150 workmen, but, the said establishment did not provide proper allowances and benefits as adumbrated under Labour laws to the workers and in the said establishment one Thiru M. Sengeni and Thiru K. Durai joined on 01-01-2006 and worked as security, and later resigned the job on 21-03-2018 and 02-03-2019 respectively. Thiru M. Sengeni and Thiru K. Durai should have been not provided with bonus @ ₹ 8,000 per year from the date of joining till the date of resignation nearly for 12 and 13 years respectively, which comes to ₹ 96,000 and ₹ 1,04,000 respectively, with 12% interest and also with salary increment @ ₹ 2,000 per year for 12 and 13 years respectively, which comes to ₹ 24,000 and ₹ 26,000 respectively, with 12% interest, totalling ₹ 1,20,000 and ₹ 1,30,000 respectively, but, the respondent establishment failed to provide necessary benefits and allowances to the said workmen and their attempt to settle the issues before Labour Officer, Conciliation also ended in failure and therefore, the present dispute has been raised.

3. Notice served to both the Petitioner and Respondent. The Secretary of the Petitioner's Union appeared and filed Claim Statement but, the Respondent in spite of receipt of notice has remained absent and hence, the Respondent Management was set *ex parte* on 21-08-2023.

4. *Point for determination:*

Whether the Petitioner Workmen are entitled for the relief as prayed in the claim petition?

5. *On Point:*

Respondent remained *ex parte* and the Petitioner filed Proof Affidavit and examined himself as P.W.1 and Exs.P1 to P8 were marked.

6. *On the point:*

The contention of the petitioner Union is that in the respondent establishment there are more than 150 workmen but, the said establishment did not provide proper allowances and benefits as adumbrated under Labour Laws to the workers and in the said establishment one Thiru M. Sengeni and Thiru K. Durai joined on 01-01-2006 and worked as security and later resigned the job on 21-03-2018 and 02-03-2019 respectively, but, the respondent establishment failed to provide necessary benefits and allowances to the said workmen and their attempt to settle the issues before Labour Officer, Conciliation also ended in failure and therefore, the present dispute has been raised.

7. In this case, the respondent inspite of receipt of notice has remained *ex parte*. This Court on perusal of evidence of P.W.1 finds that it is the case of the petitioner that the petitioner workmen are entitled for bonus at ₹ 8,000 per year and ₹ 2,000 towards yearly increment and therefore, as the workman Sengeni worked for the period from 01-01-2006 to 21-03-2018 and workman K. Durai worked for the period from 01-01-2006 to 02-03-2019 they are entitled for the bonus arrears for the said period which totals at ₹ 96,000 and ₹ 1,04,000 and increment arrears at ₹ 24,000 and ₹ 26,000 respectively.

8. This Court on perusal of evidence of P.W.1 and exhibits relied by the petitioner holds that the petitioner has proved the claim and further, the evidence of P.W.1 remains unchallenged and rebutted by the respondent. Hence, this Court holds that the petitioner workmen are entitled for the bonus arrears and wage increment arrears as claimed in the petition. Similarly, as the respondent establishment has failed to pay the claimed amount in time, this Court holds that the petitioner is entitled to claim the said amount with interest at the rate of 9% p.a. Thus, the dispute raised by the petitioner is held to be justified.

In the result, this industrial dispute petition is allowed with modification and the respondent management is directed to pay bonus and wage

increment arrears for the period from 01-01-2006 to 21-03-2018 at ₹ 96,000 and ₹ 24,000 respectively, to workman Thiru M. Sengeni and to pay bonus and wage increment arrears for the period from 01-01-2006 to 02-03-2019 at ₹ 1,04,000 and ₹ 26,000 respectively, to workman Thiru K. Durai with interest at 9% p.a. There is no order as to costs.

Partly typed by the Stenographer, partly typed by me in my laptop, corrected and pronounced by me in open Court on this 31st day of January, 2024.

G.T. AMBIKA,
Presiding Officer,
Industrial Tribunal-cum-
Labour Court, Puducherry.

List of petitioner's witness :

P.W.1 — 13-12-2023 Thiru S. Sivakumaran

List of petitioner's exhibits :

Ex.P1 — 23-12-2021 Photocopy of the Form-L

Ex.P2 — 20-07-2020 Photocopy of the Letter from the Registrar of companies (7 pages).

Ex.P3 — 25-04-2022 Photocopy of the Letter to Labour Officer, Conciliation by petitioner Union.

Ex.P4 — 04-07-2022 Photocopy of the letter to Labour Officer, Conciliation by petitioner Union.

Ex.P5 — 30-08-2022 Photocopy of the letter to Labour Officer, Conciliation by petitioner Union.

Ex.P6 — 17-11-2022 Photocopy of the letter to Labour Officer, Conciliation by petitioner Union.

Ex.P7 — 30-01-2023 Photocopy of the Failure Report.

Ex.P8 — 30-03-2023 Photocopy of the Notification.

List of respondent's witnesses : Nil

List of respondent's exhibits : Nil

G.T. AMBIKA,
Presiding Officer,
Industrial Tribunal-cum-
Labour Court, Puducherry.

GOVERNMENT OF PUDUCHERRY
LABOUR DEPARTMENT

(G.O. Rt. No. 52/AIL/Lab./T/2024,
Puducherry, dated 23rd April 2024)

NOTIFICATION

Whereas, an Award in I.D. (L) No. 26/2022, dated 18-01-2024 of the Labour Court, Puducherry, in respect of the industrial dispute between the management of M/s. Siva Valli Vilas Jewellers, Bharathi Street, Puducherry and Thiru G. Murugan, Saram, Puducherry, over to reinstate the petitioner with his usual employment of appraiser with full back wages and all the benefits has been received;

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

(By order)

S. SANDIRAKUMARAN,
Under Secretary to Government (Labour).

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

Present : Tmt. G.T. AMBIKA, M.L., PGDCLCF.,
Presiding Officer.

Thursday, the 18th day of January, 2024

I.D. (L) No. 26/2022
CNR. No. PYPY06-000089-2022

Thiru G. Murugan,
S/o. Govindasamy,
Hindu aged 50 years,
Residing at No. 234, Naveena Garden,
Kuyavarpalayam, Saram,
Puducherry. .. Petitioner

Versus

The Branch Manager,
Siva Valli Vilas Jewellers,
Having business at No. 157,
Bharathi Street,
Puducherry. .. Respondent

This Industrial Dispute coming on this day before me for hearing in the presence of Thiru J. Mayakrishnan, Counsel for the Petitioner, Thiruvallargal V. Govindaradjou, Counsel for the Respondent and upon hearing both sides and perusing the entire records and having stood over for consideration till this date, this Court delivered the following:

AWARD

This Petition filed under section 10 of the Industrial Disputes Act, 1947 to pass an award to direct the respondent to reinstate the petitioner with his usual employment of appraiser with full back wages and all the benefits and without any absence towards his service for the said refusal period of the employment and for the costs.

2. *The averments in the claim petition filed by the petitioner is as follows:*

The petitioner was appointed by the respondent concern as Appraiser on 07-07-2012 and on, and from the date of appointment he was serving at the said concern without any remark at all and towards his employment he was given Employee Code number as 11234 and he is also member of the Association under No. 731 and in the said Association he was acting for the past 15 years as one of the members. The respondent management to curtail the continuation of employment, has suddenly dismissed the petitioner on 18-10-2021 for the reasons as if, he valued the gold without any notice in written.

(ii) In fact, the petitioner has not committed any fault or defect towards the employment, but, due to continuation of job for more than 10 years the management had suddenly and surprisingly dismissed the petitioner from the employment purposely. The act of the management is against the Labours Act and natural justice and therefore, the said management has to answer for the same. Right from the oral refusal of the petitioner from the employment the petitioner had approached the respondent and they has also assured to make arrangements for reinstatement, but, they are prolonging the same for the reasons best known to them.

(iii) The petitioner issued legal notice to the respondent on 05-05-2022 and the same was acknowledged by the respondent, but they have not come forward to reinstate the petitioner, whereas issued reply, dated 24-06-2022 with false allegations and invented story and therefore, after issuance of said notice, the petitioner had also issued notice to

the Conciliation Officer, Labour Department, Puducherry, on 30-05-2022 but, there was no response, Hence, the petition.

3. *The averments in the counter filed by the Respondent is as follows:*

The respondent submits that the present petition filed by the Petitioner praying to reinstate him as an appraiser in the respondent's shop with full back wages with all benefits with continuity of service is liable to be dismissed in limine. The Petitioner is not a workman as defined under section 2 of the Industrial Disputes Act, 1947 and further, the respondent's Jewellery Shop is not an industry as defined under section 2 of the Industrial Dispute Act. In the absence of such relationship the application filed by the Petitioner under section 10 of the Industrial Disputes Act is not maintainable in Law. If, at all the Petitioner has got any grievance he has to approach the concerned authority appointed by the Government of Puducherry under Pondicherry Shops and Establishment Act and not by way of raising a dispute before this Court.

(ii) The respondent submits that "Siva Valli Vilas Jewellers" is a company registered under the provisions of the Companies Act, 1956 and doing business like making, selling jewels and diamonds. The petitioner served only on a contract basis and not a regular employee, as alleged by the petitioner. On many occasions the petitioner has abruptly sent the customers by valuing their jewels at low costs, who are approaching the shop, for exchanging their old jewels with new ones. While receiving the old jewels the respondent has instructed the Petitioner to send those customers to the respondent for negotiation, however, the petitioner has failed to do the same for the reasons best known to him and because of the act of the petitioner, the respondent's business was much affected resulting loss of customers.

(iii) On 17-10-2021 by the act of the petitioner failed to consider the request of the customer for enhancement of amount for his old jewels and further, the petitioner has also failed to inform the customer to approach the respondent for enhancement and due to the said act, the customer has left the shop abruptly. That after seeing the customer leaving the shop, the respondent questioned the act of the petitioner with regard to the customer who has left the shop in this regard, but, the petitioner has kept quiet and from the next day onwards the petitioner has not turned up for work. Therefore, the allegations made by the petitioner are incorrect, false and mischievous without any iota of truth. Hence, prays for dismissal of the claim petition.

4. *Points for determination:*

1. Whether the petitioner is a workman of respondent?

2. Whether the respondent shop is an Industry as defined under section 2 of the Industrial Disputes Act?

3. Whether the petitioner was employed on contract basis?

4. Whether the dispute raised by petitioner over his non-employment is justified?

5. Whether the petitioner is entitled for the reliefs as claimed in the claim petition?

5. Mr. Murugan was examined as P.W.1 and Exs.P1 to P7 were marked. On the Respondent side Mr. Ganesan, Manager, of the Respondent Jewellery Shop was examined as R.W.1 and Exs. R1 to R5 were marked through him.

6. *On points 1 to 5:*

The contention of the petitioner is that he was appointed in the respondent shop as appraiser on 07-07-2012 and from the date of appointment he was serving without any remarks and further, he is also one of the member of the association for past 15 years and while so, the respondent has suddenly dismissed the petitioner on 18-10-2021 for the reason that the valuation of the gold made by the petitioner was improper and therefore, the petitioner has issued legal notice to the respondent on 05-05-2022 to provide job to the petitioner, but, the respondent on receipt of the said legal notice failed to provide job and issued reply notice, dated 24-06-2022 with false allegations and hence, the petitioner has raised the present industrial dispute as against the respondent.

7. *Per contra*, the contention of the respondent is that the petitioner is not a workman as defined under section 2(s) of Industrial Dispute Act and further, the respondent's Jewellery Shop is not an industry as defined under section 2(j) of Industrial Dispute Act and therefore, the present industrial dispute raised by the petitioner is not maintainable and if at all, the petitioner has any grievances, it is for the petitioner to approach the authority appointed by the Government of Puducherry under the Pondicherry Shops and Establishments Act. Further the contention of the respondent is that while the petitioner was working in the respondent shop the petitioner has abruptly sent a customer by valuing the jewels at low costs when the customer had approached for exchange of old jewels for new one and thereby the act of the petitioner has affected the respondent's business and further, on 17-10-2021 when a customer had approached for

enhancement of amount for old jewels, the petitioner has failed to inform the customer to approach the respondent and thereby, the customer was constrained to leave the shop abruptly and when the same was questioned by the respondent, the petitioner has kept quite and from the next day onwards the petitioner has not turned up for work and therefore, the contention of the petitioner that the respondent has dismissed the petitioner from service is false and incorrect one.

8. In this case, it is not in dispute that the petitioner was working in the respondent shop as appraiser, but, it is the specific case of the respondent that the petitioner is neither a workman as defined under section 2(s) of Industrial Disputes Act nor the respondent's shop is an Industry as defined under section 2(j) of Industrial Dispute Act and therefore, the very maintainability of industrial dispute as raised by the petitioner is unsustainable one. This Court, on perusal of records finds that the respondent is a Jewellery Shop and therefore, it becomes pertinent to determine whether the Jewellery shop would come within the ambit of Industry as defined under section 2(j) of Industrial Dispute Act.

9. At this juncture, it would be appropriate to extract the definition of Industry as defined under section 2(j) of Industrial Dispute Act for better appreciation.

Section 2(j) : Industry : Industry means, any business, trade, undertaking, manufacture or calling of employers and includes any calling, service, employment, handicraft, or industrial occupation or avocation of workmen.

Therefore, as per section 2(j) of Industrial Dispute Act, this Court finds that an Industry is defined as any business, trade or undertaking, manufacturing or calling of employers and includes any calling, service, employment, handicraft or industrial occupation or avocation of workmen.

10. In the present case it is admitted fact that the respondent shop is doing the business of making and selling of jewels and diamonds and the same has been admitted by R.W.1 in his chief examination affidavit where it is stated as follows:

“I submit that Siva Valli Vilas Jewellery is company registered under the provision of the Company Act, 1956 and doing business like making, selling jewels and diamonds”.

Therefore, from the evidence of R.W.1 it can be inferred that the respondent shop deals with making and selling of gold jewels and diamonds and therefore, the respondent shop is found to have been carrying the business and trade. Therefore, in the said context the respondent shop is found to fall within the ambit of section 2(j) of Industrial Dispute Act.

11. The next point that arises for consideration is whether the petitioner is a workman under the respondent. The term workman is defined under section 2(s) of Industrial Disputes Act which reads as follows:

Section 2(s) : workman : Workman means, any person (including an apprentice) employed in any industry to do any manual, unskilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implies, and for the purpose of any proceedings under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but, does not include any such person—

(i) who is subject to the Air Force Act, 1950 (45 of 1950), or the Army Act, 1950 (46 of 1950), or the Navy Act, 1957, or the Army Act 1950 (46 of 1950), or Navy Act, 1957; or

(ii) who is employed in the Police service or as an Officer or other employee of a prison; or

(iii) who is employed mainly in a managerial or administrative capacity; or

(iv) who, being employed in a supervisory capacity, draws wages exceeding (ten thousand rupees) per mensem or exercises, either by the nature of the duties attached to the Office or by reason of the powers vested in him, functions mainly of a managerial nature.

12. Therefore, as per the definition of workman as adumbrated under section 2(s) of Industrial Dispute Act, a workman means any person employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward and does not included who is employed mainly in a managerial or administrative capacity. In this case, it is a admitted fact that the petitioner was working as an appraiser and the respondent also in the evidence as well as in the counter has stated that the petitioner worked as an appraiser. Hence, as the petitioner did not work in the managerial or administrative capacity, this Court holds that the petitioner fits under the definition of workman as defined under section 2(s) of Industrial Dispute Act.

13. The other contention of the respondent is that the petitioner was employed on contract basis but, to prove the same the respondent has not produced any documents which are required for engaging a person on contractual basis. Further more, the nature of the work

done by the petitioner is appraiser which is of perennial in nature and also of core activity of the establishment. As per the provisions of Contract Labour (Regulation and Abolition) Act, 1970, a workman cannot be employed to do any core activity of an establishment and also work of perennial in nature. In this case the nature of work done by the petitioner being an appraiser, this Court finds that the work of the petitioner is of core activity of the establishment which is very much required for running of day to day business of the respondent's shop and further, perennial one. Hence, in the said context, the contention of the respondent that the petitioner was appointed on contractual basis and not on a regular employee is found to be untenable and unsustainable one.

14. Now coming to the contention of the respondent that the petitioner has undervalued the old jewels of the customers and thereby, the act of the petitioner affected the business of the respondent and further, on 17-10-2021, the petitioner did not consider the request of the customer to enhance the amount for the old jewels and thereby, the customer has left the shop and when the same was questioned by the respondent the petitioner has kept quite and from the next day onwards the petitioner has not turned up is concerned, this Court finds that the same is unacceptable and unproved one. Had such occurrence had taken place then the respondent shop being registered under Companies Act is bound to question the employee by way of written notice or by initiating disciplinary action against the petitioner. Here, in this case, no such action is found to have been taken by the respondent. There is nothing on record to show that the petitioner himself as abandoned the job and the respondent has issued any notice calling for explanation for such conduct of the petitioner. Hence, this Court finds that the contention raised by the respondent is unsustainable one and the contention of the petitioner that the respondent failed to provide job to the petitioner without any basis is found to be acceptable one and thereby, the industrial dispute raised by the petitioner is found to be justifiable one.

In the result the industrial dispute is allowed and the respondent is directed to reinstate the petitioner with full back wages and all the benefits thereon. There is no order as to costs.

Dictated to the Stenographer, transcribed by her, corrected and pronounced by me in open Court on this 18th day of January, 2024.

G.T. AMBIKA,
Presiding Officer,
Industrial Tribunal-cum-
Labour Court, Puducherry.

List of petitioner's witness :

P.W.1 — 09-01-2023 Thiru G. Murugan

List of petitioner's side exhibits :

- Ex.P1 — 08-04-2022 Copy of the Aadhaar Card of the petitioner.
- Ex.P2 — 07-07-2022 Copy of the Identity Card of the petitioner towards his employment.
- Ex.P3 — 05-05-2022 Copy of the Legal notice by the petitioner.
- Ex.P4 — 30-05-2022 Copy of the Legal notice by the petitioner to the Labour Department, Puducherry.
- Ex.P5 — 24-06-2022 Copy of the Reply by the respondent.
- Ex.P6 — 01-06-2022 Original Acknowledgment Card.
- Ex.P7 — - Copy of the Bank Passbook of G. Murugan.

List of respondent's witness :

RW.1 — 13-10-2023 Thiru S. Ganesan

List of respondent's side exhibits :

- Ex.R1 — - Original Document of the Authorization Letter.
- Ex.R2 — - Copy of the Memorandum of Association and Articles of Association of Siva Valli Vilas Jeweller Private Limited, Puducherry.
- Ex.R3 — 21-04-2023 Copy of the Registration Certificate issued by Government of India.
- Ex.P4 — 01-03-2021 Copy of the Trade Licence issued by Pondicherry Municipality.
- Ex.P5 — 10-10-2023 Copy of the Computer printout of Petitioner's Attendance for the period April to October, 2021 along with Certificate under section 65 B of Evidence Act. (May 2021 shop closed due to COVID-19).

G.T. AMBIKA,
Presiding Officer,
Industrial Tribunal-cum-
Labour Court, Puducherry.