

GOVERNMENT OF PONDICHERRY
ABSTRACT

ACTS - Industrial Disputes Act, 1947 - Dispute between Management of M/s Soundararaja Mills Limited, Nedungadu, Karaikal and Thiru S. Sagayaraj over non-employment - Award of the Labour Court, Puducherry - Published.

LABOUR DEPARTMENT

G.O.Rt.No. ^{S&T} /LAB/AIL/T/2018

Puducherry, the 9 APR 2018

- READ: 1. G.O.Rt.No.72/2006/LAB/AIL/J dated 12.05.2006 of the Labour Department, Puducherry.
2. Letter No.114/JUD/IT-CUM-LC/PDY/2018 dated 19.03.2018 enclosing the copy of the Award in I.D (L) No.38/2012 dated 08.02.2018 received from the Presiding Officer, Industrial Tribunal -Cum- Labour Court , Puducherry.

ORDER :

The following Notification and the attached Award of the Labour Court, Puducherry shall be published in the next issue of the Official Gazette.

NOTIFICATION

WHEREAS, an Award in I.D (L) No.38/2012 dated 08.02.2018 of the Labour Court, Puducherry in respect of the Industrial Dispute between Management of M/s Soundararaja Mills Limited, Nedungadu, Karaikal and Thiru S. Sagayaraj over non-employment - Award of the Labour Court, Puducherry has been received.

NOW, THEREFORE, in exercise of the powers conferred by sub-section (1) of Section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947) read with the Notification issued in Labour Department's G.O.Ms.No.20/91/LAB/L dated 23.5.1991, it is hereby directed by the Secretary to Government (Labour) that the said Award shall be published in the Official Gazette, Puducherry.

(S. MOUTTOULINGAM)

UNDER SECRETARY TO GOVERNMENT
(LABOUR)

To

The Director of Stationery & Printing,
Puducherry.

- With a request to supply 10 copies of the
Official Gazette to this Department.

Copy to:

1. The Presiding Officer, Labour Court, Karaikal
2. The Labour Officer, Karaikal
3. The Employer,
M/s Soundararaja Mills Ltd.,
Nedungadu.
4. The Secretary, CITU,
No.14, Thennur,
Surakudy Post, Thirunallar.
5. G.O. Copy. 6. Spare.

9/4/18
DESPATCHED

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

PRESENT: THIRU. G. THANENDRAN, B.Com., M.L.,
PRESIDING OFFICER

Thursday, the 08th day of February, 2018

I.D(L).No.38/2012

The Secretary, CITU,
No.14, Thennur,
Surakudy Post,
Thirunallar.

... Petitioner

Vs.

The Employer,
M/s. Soundaraja Mills Ltd.,
Nedungadu.

... Respondent

This industrial dispute coming on 05.01.2018 before me for final hearing in the presence of Thiru. N. Ramar, Representative for the petitioner and Thiru.G. Jagadharaj, Advocate for the respondent, upon hearing both sides, upon perusing the case records, after having stood over for consideration till this day, this Court passed the following:

A W A R D

1. This Industrial Dispute has been referred by the Government as per the G.O.Rt.No.72/2006/Lab/AIL/J, dated 12.05.2006 for adjudicating the following:-

- i. Whether the termination of Thiru.S. Sagayaraj by the management of M/s. Soundararaja Mills Limited, Nedungadu, Karaikal, is justified or not?
- ii. If not, what relief, he is entitled to ?
- iii. To compute the relief, if any awarded in terms of money, if it can be so computed?

2. The petitioner union has filed a claim statement stating that the delinquent employee S. Sagayaraj was working as doffer in the respondent establishment from 1987 and he had been receiving Rs.6,000/- per month as wage as a permanent worker and the management has announced the Voluntary Retirement Scheme without consulting with the labourers and that the respondent threatened, foisted false case against the permanent workers and introduced Voluntary Retirement Scheme and only Rs.40 was given to female employees who working as daily wages and that the delinquent employee who belonged the INTUC union against these practices of the respondent and has taken all the steps against the respondent management and as the said union failed to take any steps against the respondent, he joined in the petitioner union and acted not only against the respondent management and also taken steps against the Vice President of the respondent for misappropriating Rs.60 lakhs from the Employees Cooperative Society by filing a writ petition before the Hon'ble High Court, Chennai through his trade union and that the respondent asked and compelled the delinquent to resign from the petitioner union otherwise he should be terminated from service, but the delinquent worker failed to heed the words of the respondent, and that the respondent awaited to take action against the delinquent by way of victimization and that the delinquent was on medical leave and while he went to the

respondent mill for submitting the ESI certificate the management has refused to accept the leave letter of the delinquent and threatened him to withdraw the complaint from police which was given by his brother and that the delinquent has not accepted for the same and that to prevent him from action of the respondent the delinquent has sent letters to various Government officers, respondent management and also to trade union leaders and that while attending duty on 15.11.2003 the respondent management has without giving any written order has refused to permit the delinquent to enter into the industry and that therefore, the delinquent has sent a telegram to the labour officer and that on 17.11.2003 the delinquent has submitted a application to the labour officer conciliation and the same was taken on file on 23.11.2003 by the conciliation officer and that the respondent management as a measure of self defence foisted a false case that the delinquent made baseless and false allegations against the officers of the respondent mill and suspended him pending enquiry by foisting false charge and that one Advocate Elanchezhian was appointed as enquiry officer to conduct the domestic enquiry against the delinquent for which the delinquent has sent a letter stating that since he has raised a industrial dispute before the conciliation and is pending the enquiry officer should not conduct domestic enquiry and instead of the letter the enquiry officer proceeded with the enquiry and that the

respondent without considering his past record of service issued the dismissal order which is against the principles of natural justice and disproportionate to the misconduct committed by the delinquent.

3. On the other hand, the respondent management has filed a counter statement stating that the petitioner union has not followed the statutory and mandatory legal procedure to raise the present dispute and has not conducted a general body meeting and passed any resolution authorizing the Secretary N. Ramar to raise the present dispute against the management and that therefore the claim statement has to be rejected on that ground and it is also stated by them that the delinquent Sagayaraj has sent a letter stating false allegations against the Vice President of the respondent as well as the respondent mill and its officers in the public to the Vice Present (Technical) of the respondent under copy to 18 others and that the show cause notice was issued with suspension on 14.11.2003 and as the explanation submitted by the delinquent was not at all satisfactory and unacceptable, the respondent decided to hold full fledged domestic enquiry and accordingly he has been served enquiry notices in advance and after receiving the enquiry notice the delinquent sent letters making baseless and false allegations against the respondent and the enquiry officer instead of attending the domestic enquiry proceedings and that the delinquent failed to attend the enquiry

and that therefore he was set exparte and the enquiry officer has no other option except proceeded with enquiry proceedings and recorded oral and documentary evidence on the side of the management and closed the domestic enquiry on 07.02.2004 and submitted his report and findings on 01.03.2004 in which he found the delinquent Sagayaraj guilty of the charges leveled against him and thereafter the notice was issued to the delinquent on 19.03.2004 enclosing with the report of the enquiry officer and that the explanation given by the delinquent on 02.04.2004 was contrary to the facts, quite unsatisfactory and unacceptable and that therefore, the delinquent was dismissed from service by order dated 02.04.2005 in the large interest of industry.

4. After filing of the counter this court has decided the issue that whether the respondent management has conducted the domestic enquiry fairly and in accordance with the principles of natural justice. In the course of enquiry to decide the preliminary issue, on the side of the management witness was examined and some of the documents were marked and during the cross examination of management witness some of the documents were marked on the side of the petitioner and after hearing both sides this court has held on 12.10.2011 that the domestic enquiry conducted by the respondent management is not valid and is in violation of principles of natural justice, and thereafter no oral evidence has been let in and no exhibits has been marked by

either sides in the further enquiry. Both side arguments were heard. On both sides written arguments were filed and the same were carefully considered. In support of his case the learned counsel for the respondent has relied upon the Judgment reported in 1967-68 Vol.33 FJR 151(SC) - Firestone Tyre & Rubber Co. Private Ltd., Vs. their workmen and AIR 1972 SC 2452.

5. **The point for consideration is:**

Whether the termination of S. Sagayaraj by the respondent management is justified or not and industrial dispute raised by the petitioner union against the respondent management over termination of S. Sagayaraj from service is justified or not and if justified what is the relief entitled to the worker S. Sagayaraj.

6. This reference has been made to this Tribunal to decide whether the termination of S. Sagayaraj by the respondent management is justified or not. The first contention of the respondent management is that the petitioner union has not followed the statutory and mandatory legal procedure to raise the present dispute and the union has not conducted the general body meeting to raise the industrial dispute and the Secretary who raise the industrial dispute has not been authorized by the union. But on perusal of records, it is learnt to this court that the Secretary of the CITU union Ramar has raised the industrial dispute for the members of the union. The officer bearer of the

union can raise the industrial dispute. It is not disputed by the respondent management that the said Ramar is not the Secretary of the union and they have not raised the such plea before the conciliation officer and that therefore, the contention raised by the respondent management that the Secretary has no locus standi to represent the union and has no right to raise the industrial dispute is not sustainable.

7. The second contention of the respondent management is that the domestic enquiry conducted by the management is valid. However, as this court has already held that on 12.10.2011 that the alleged domestic enquiry conducted by the respondent management against the worker Sagayaraj as invalid and not in accordance with the principles of natural justice and the same was not challenged before the Hon'ble High Court and no further evidence was taken by the respondent management to establish and to prove that the domestic enquiry was conducted in accordance with the principles of natural justice and is valid in law, no further discussion is necessary to held that the termination on the foot of the said invalid domestic enquiry which was not conducted in accordance with the principles of natural justice is invalid and totally in violation of the labour laws and that therefore, as this court has already held that the domestic enquiry conducted by the respondent management is invalid one and the further action taken by the respondent management on


the foot of the said invalid domestic enquiry by which the petitioner was terminated is totally not acceptable and also not sustainable and that therefore, it is held that the respondent management has failed to establish that the domestic enquiry was conducted fairly without any bias and in accordance with the principles of natural justice and hence, it is to be held that the termination of S. Sagayaraj by the respondent management is not justified and the industrial dispute raised by the petitioner union over termination of service of S. Sagayaraj by the respondent management is justified and as such the worker S. Sagayaraj is entitled for order of reinstatement as claimed by the petitioner union.

8. As this court has decided that termination of S. Sagayaraj by the respondent management is not justified and the industrial dispute raised by the petitioner union against the respondent management over termination of S. Sagayaraj from service is justified, it is to be decided whether the petitioner is entitled for back wages as claimed by him. There is no evidence that the said workman is working so far in any other industry and that there is no proof exhibited before this court that he is working anywhere else. The respondent has not proved the fact that the petitioner has been working in any other establishment after his termination. However the petitioner workman could have served at any other industry after his termination. Further, as the

worker S.Sagayaraj is having 16 years of service and has been illegally terminated by respondent management, he is entitled for backwages. Considering the above facts and circumstances, this court decides that the petitioner is entitled only for 30% back wages with continuity of service and other attendant benefits.

9. In the result, the petition is allowed and the termination of service of S. Sagayaraj by the respondent management is not justified and the industrial dispute raised by the petitioner union against the respondent management over termination of service of S.Sagayaraj is justified and Award is passed directing the respondent management to reinstate the petitioner in service within one month from the date of this Award and further directed the respondent management to pay 30% back wages from the date of termination till the date of reinstatement with continuity of service and other attendant benefits. No cost.

Dictated to the stenographer, transcribed by her, corrected and pronounced by me in the open court on this the 08th day of February, 2018.


(G. THANENDRAN)
PRESIDING OFFICER
INDUSTRIAL TRIBUNAL
CUM LABOUR COURT
PUDUCHERRY

LIST OF PETITIONER'S WITNESSES:-

Nil

LIST OF PETITIONER'S EXHIBITS:-

Nil

LIST OF RESPONDENT'S WITNESSES:

Nil

LIST OF RESPONDENT'S EXHIBITS:

Nil

TRUE COPY

[Signature]
HEAD SARISHTADAR
LABOUR / ESI COURT
PUDUCHERRY

[Handwritten mark]

[Signature]
8/2/10

(G. THANENDRAN)
PRESIDING OFFICER
INDUSTRIAL TRIBUNAL
CUM LABOUR COURT
PUDUCHERRY