

BEFORE THE AUTHORITY APPOINTED UNDER THE PAYMENT OF WAGES ACT, 1936, PUDUCHERRY

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Present: Thiru. S. MOUTTOULINGAM
 Authority under the Payment of Wages Act, 1936,
 Labour Department Complex, (II Floor),
 Vazhudavur Road, Gandhi Nagar,
 Puducherry.

Between

P.W.A.NO.10/2013

Thiru. G. Sridharan and 8 others,
 No.37, Bahour Road,
 Uruvaiyar, Villianur, Puducherry.

Date: 1 FEB 2018

... Applicants

Vs

The General Manager,
 M/s. Superfil Products Ltd.,
 Mangalam Road,
 Puducherry – 605 110.

... Opposite Party

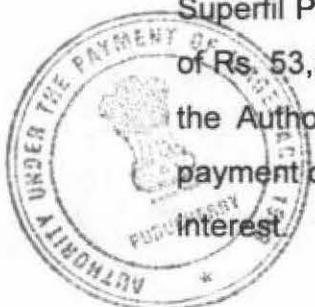
Record of Order or Direction

- | | | | |
|----|---|---|---|
| 1. | Serial Number | : | 10/2013 |
| 2. | Date of Application | : | 02.07.2013 |
| 3. | Name or names, parentage,
Address or addresses of the applicants,
or some, or all of the applicants belonging
to the same unpaid group | : | Thiru.G. Sridharan & 8 others,
No.37, Bahour Road,
Uruvaiyar, Villianur,
Puducherry. |
| 4. | Name and address of the Employer | : | The General Manager,
M/s. Superfil Products Ltd.,
Mangalam Road,
Puducherry – 605 110. |
| 5. | Amount claimed | | |
| | (a) As delayed wages | : | Rs. 53,525/- |
| | (b) As deducted from wages | : | - |
| 6. | Plea of the employer and his
Examination (If any) | : | - |

7. The factual matrix that stood exposed from the claim application filed by the applicant run thus:

The petitioner union represented by Thiru. G. Sridharan, Secretary of Superfil Products Workers Union filed a Group application in Form-B dated 22.07.2013 before the Authority appointed under the Payment of Wages Act, 1936, claiming wage due for a period of 15 days i.e. from 29.05.2012 to 12.06.2012 from the management of M/s. Superfil Product Ltd., Puducherry. They have estimated the value of the relief to a sum of Rs. 53,525/ and compensation @ 18% interest. Hence, the petitioners prayed before the Authority under the Payment of Wages Act, 1936 to direct the management for payment of the delayed wages for an amount of Rs. 53,525/- and compensation @ 18% interest.

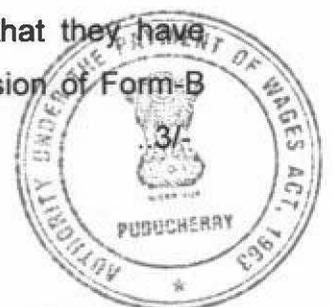
..2/-



8. The crux of the reply of the management is as follows:

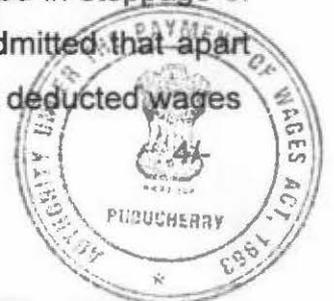
The management in their reply letter has denied all the allegations made by the applicants in their claim application and has stated that the Opposite party is a reputed Manufacturing company at Mangalam and is always in all cares to all Employees by several welfare including voluntary payments for overtime incentive, ESI & PF etc., to all labourers including applicants. Further, they have stated that the petitioner union Superfil Products Workers Union had made a representation on 8.3.2012 on demands for huge hike in Basic pay, DA, HRA, Annual increment, Gratuity, allowances for conveyance, washing, canteen, night shift, leave travel & for attendance. In response, the company had meeting with the said union on 21st & 29th of May, 2012. But, the said union had suddenly stopped work by illegal strike and thus crippled production. The management had advised the members of the union to settle the issues by negotiations as per law and that stoppage of works and absence from duty is illegal as per law. The management also intimated such facts in notice board on lawful deductions for refusal & absence in work hours & days and for loss of production. But, the members of the said union had deliberately continued stoppage of works and had made unauthorized absence from duty for the period from 29.05.2012 to 12.06.2012 and the unauthorised absence of the union workmen and stoppage of works caused huge losses of production to the company. Thus, the management was forced to deduct salary of said absentees/illegal strikers for their unauthorized absence & stoppage of works and for consequent losses. The opposite party humbly submits that the said deductions for the said reasons are legally permissible as per the provisions of the Payment of Wages Act, 1936. Therefore, the opposite party/management prayed before this Hon'ble Authority to dismiss or reject the present application with observations & directions to the applicants to do work & duties as per law and render justice.

9. Answering: Section 3 of the Payment of Wages Act, 1936 casts on the employer the responsibility for payment of wages to persons employed by him. In this context, the Superfil Products Workers Union in their chief examination dated 26.11.2013 has stated that the applicants Thiru. G. Sridharan & 8 others had worked in the management of M/s. Superfil Products Limited, Puducherry for a period of 10 years. The petitioner union denied the contention of the management stated in their reply statement that they have mentioned unpaid wages and not deducted wages. They have also denied that the opposite party/management had negotiations with them on 21st and 29th of May, 2012. Further, they have denied the contention of the management that the petitioner union had indulged in stoppage of work from 29.5.2012 to 12.6.2012. As the management refused to provide the attendance particulars recorded in the CCTV Camera, it reveals that the petitioner union workmen have come for work for the said period. They have denied the contention of the management that the petitioner union submitted a time- barred application before the authority and stated that they have submitted a letter dated 16.7.2012 to the management prior to submission of Form-B dated 22.7.2013 under the Payment of Wages Act, 1936.



Further, the petitioner union in their written arguments has stated that they have submitted a letter dated 30.05.2012 to the management that their union workmen were ready to operate the machines, but the management refused to give employment to them and the fact was also informed to the Deputy Labour Commissioner and the Labour Officer (Conciliation), Puducherry vide letter dated 01.06.2012. The management in their notice board had also mentioned that on 29.05.2012, the SPL Labour Union had indulged in stoppage of work and not mentioned as the Superfil Products Works Union and hence it is clear that the petitioner union does not indulged in stoppage of work. Further, during cross examination Thiru. A. Varadharasu, HR (RW1) has admitted that they have not furnished any reply for the letter dated 30.05.2012 and 01.06.2012, which reveals that the petitioner union does not indulged in any stoppage of work for the period from 29.05.2012 to 12.06.2012. Further, on 12.09.2016, during cross examination of Thiru. R. Mahendran (OPW No. 3), he has given false evidence that their union workmen refused to do the work entrusted by the management, which means their union workmen have come for work on the said date. The management wantonly refused to give the muster roll recorded in the CCTV camera by stating that the CCTV was designed in such a way that they can preserve records and view only for 15 days and then it automatically gets overwritten. Further, Thiru. P. Murugan (OPW No. 2) during cross examination, has admitted that every events happened during the dispute period have been mentioned in the shift production report. But, for the union letter dated 30.06.2016, the management does not provide the shift production report which reveals that they wantonly hidden the evidence. EX.P11 would evident that the SPL Labour Union has given a strike notice dated 3.5.2012 regarding charter of demands, which reveals that the petitioner union had not indulged in strike or stoppage of work. Therefore, the petitioner union prayed before this Hon'ble Authority to direct the opposite party/management to pay the wage due for the period from 09.05.2012 to 12.06.2012.

On the other hand, the opposite party filed their written arguments, wherein they have admitted the fact that wages for the period of 29.05.2012 to 12.6.2012 was not paid to the Applicants & other employees as per the Doctrine of "No Work No Pay". They have further admitted that there are two unions in the factory namely (1) Superfil Products Workers Union and (2) Superfil Products Labour Union. The Superfil Products Labour Union is majority union and it went on strike from 29.05.2012 to 12.6.2012 and the other union Superfil Products Workers had also indirectly supported the other union and failed to their works. Further, during cross examination of PW1, Thiru. G. Sridharan has admitted that they had given a letter dated 8.3.2012 to the management regarding charter of demands. He had also admitted that, since they had indulged in stoppage of work, the management had deducted wages for 15 days. He also admitted that apart from the period from 29.6.2012 to 12.6.2012, the management has not deducted wages



before or after the above said period. The Opposite party/Management had also submitted attendance register for relevant months and had marked as Exhibit R1 and the said attendance itself shows clearly that the petitioners herein had not worked for the relevant period. Moreover, shift Supervisor Reports (marked as Exhibit R2) are also clearly shows that persons who had entered into premises and also refused to do work given to them by Supervisor which clearly shows that petitioner's union members had also indirectly supported strike of other union. Thus, it was clearly proved that the petitioners herein had also refused to work & indirectly supported strike of other Union on their demands and thus salary was deducted for the said period of 29.05.2012 to 12.6.2012 as per the principle of "No work No pay". As per sub-section (2) of Section 15 of the Payment of Wages Act, 1936, claim application is to be filed within 1 year from the date of deductions and the date of deduction is from 29.12.2012 to 12.6.2012. But, the said application is submitted only on 22.7.2013 which is time barred as per law. Further, the applicant had incorrectly stated that the SPL Labour Union had gone on strike on 29.05.2012 and it is falsely stated that the applicant had given any letter to management on 30.05.2016 as alleged. Thiru. Varadharasu (OPW No.1) had clearly deposed that he is not in job during the said period i.e. 29.05.2012 to 12.6.2012 and thus he is not right person to state whether applicants are ready & willing to work during that period. Thus the said statement cannot be used in support of their contention as in petition. Therefore, the opposite party/management prays this Hon'ble Authority to be kindly pleased to dismiss this application with condemning observations as per law.

In this regard, it is stated that the meaning of "deduction from wages" has not been defined in the Payment of Wages Act, 1936. Section 7 of the Payment of Wages Act, 1936, provides for deductions that can lawfully be made from wages payable to employees. Thus, except the deductions enumerated in sub-section (2) no other deduction can be legally made. As per Section 7(2) (b) of the Payment of Wages Act, 1972, deductions can be made for absence from duty. This absence refers to voluntary absence by the employee. It cannot cover absence of the employee when he is forced by circumstances created by the employer from carrying out his duties.

In D. Balaiah Vs. Indian Detonators Ltd., (1976) 2LLN 50: 1976 Lab IC 729: (1976) 2 LLJ 247 (AP) (DB), the court held that "Notwithstanding the fact that Section 9(2) does not provide for any notice to show cause being given before a deduction is made, but, as deduction of wages is penal in its nature, principles of natural justice require that such notice should be given".

In the present case, though the petitioner union have went to the factory and conveyed their willingness for work, the management refused to entrust work to them. It does not mean that the petitioner union was absent from duty. Moreover, on perusal of the records, it was found that the opposite party/management does not issued any notice to the petitioner union, before such deduction was made, which is violation of principles of natural justice.



In Krishna S. Gokavi Vs. S.R. Doiphode, (1968) 2 LLJ 80 (Bom)., it was held that the onus to prove that the deduction of wages was covered by Section 7(2) lies on the employer.

Since, the opposite party/management in this case fails to submit any document in proof of the fact that the petitioner union indulged in strike and stoppage of work for the period from 29.05.2012 to 12.6.2012, it is found that there is no infirmity or illegality in the claim application filed by the petitioner union.

In view of the above, I hereby direct the opposite party/management to pay the 15 days deducted wages i.e. Rs. 53,525/- for the period from 29.05.2012 to 12.06.2012 to the petitioner union within 30 days from the date of this order.

- (10) Amount awarded
- | | | |
|--------------------|---|--------------|
| (a) Delayed wages | : | NIL |
| (b) Deducted wages | : | Rs. 53,525/- |
- (11) Compensation awarded : NIL
- (12) Penalty imposed : NIL
- (13) Cost awarded to:
- | | | |
|------------------------|---|-----|
| (a) Court fee charge | : | NIL |
| (b) Pleader's fee | : | NIL |
| (c) Witnesses expenses | : | NIL |
- (14) Date by which the amount
Awarded shall be paid : Within one month from the date of this order.
- (15) Substance of the evidence : -

During enquiry, the petitioner was examined as PW1 and Exhibits P1 to P11 were marked as list of documents on their side. On behalf of the opposite party their counsel filed Counter Statement and RW1 was cross examined by applicant's side. Ex.R1 to R2 was marked as list of documents on their side.

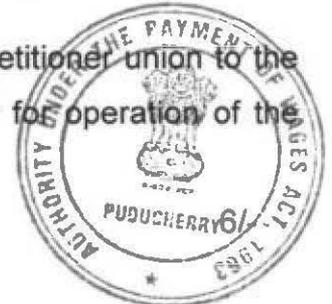
List of Witnesses examined on the applicants side

Thiru. G. Sridharan, PW-1.

List of Exhibits marked on the applicant side:

List of Documents

<u>Sl.No.</u>	<u>Date</u>	<u>Particulars</u>
Ex-P-1	30.05.2012	Photocopy of the letter addressed to the Production Manager of the company regarding non-participants of the petitioner union and requested to operate the machines.
Ex- P- 2	01.06.2012	Photocopy of the letter sent by the petitioner union to the Production Manager of the company for operation of the machines.



- Ex-P-3** 16.07.2012 Photocopy of the petition addressed to the Inspector of Factories, Puducherry regarding illegal deduction of wages.
- Ex-P-4** 01.06.2012 Photocopy of the letter addressed to the Production Manager of the company regarding non-participants of the petitioner union in the stoppage of work and requested for operation of the machines.
- Ex-P- 5** June, 2012 Photocopy of the wage slip of Thiru. S. Murugan.
- Ex-P- 6** June, 2012 Photocopy of the wage slip of Thiru. C. Murugan.
- Ex-P- 7** June, 2012 Photocopy of the wage slip of Thiru. M. Umapathy.
- Ex-P- 8** June, 2012 Photocopy of the Muster Roll of the petitioner union.
- Ex-P- 9** 07.11. 2013 Photocopy of the counter statement filed by the Management.
- Ex-P-10** June, 2012 Photocopy of the register of muster roll.
- Ex-P-11** 29.05.2012 Photocopy of the intimation regarding industrial unrest submitted by the management of M/s. Superfil Products Limited.

LIST OF EXHIBITS MARKED BY OPPOSITE PARTY

List of Documents:

- Ex-R-1** May to June, 2012 Copy of the attendance register/Form No.23
- Ex-R-2** 29.5.2012 to 12.6.2012 Copies of letter's by Production Supervisor to Production Officer, Superfil Production Limited (82 Nos.)



Signed:

Dated :

1 FEB 2018

(S. MOUTTOULINGAM)

AUTHORITY APPOINTED UNDER THE
PAYMENT OF WAGES ACT, 1936.

12/18
DESPATCHED