

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 23.12.2014

CORAM:

THE HON'BLE MR.JUSTICE S.VAIDYANATHAN

W.P.Nos.21656 of 2011 and 16285 of 2012

And M.P.Nos.1 and 1 of 2013

W.P.NO.21656 OF 2011

1 THE MANAGEMENT
M/S.FLORAM SHOES (INDIA) PVT. LTD M.C.ROAD
AGARAMCHERRY POST MADHANUR VIA VELLORE
DISTRICT REP. BY ITS MANAGING DIRECTOR. . . PETITIONER

Vs

1 THE PRESIDING OFFICER
ADDITIONAL LABOUR COURT VELLORE.
2 MOHAMMED RAQEEF

3 E.SAMSATHBEGUM

4 S.SAANBABBI

5 Y.RASEEYA

6 A.BAIRVEEN

7 S.SABIRA

8 A.ABDUL SHUOOR

9 C.ANWAR

10 K.VASANTHI

11 T.GANESAN

12 A.USMAN

13 D.K.SANKAR (SOC)

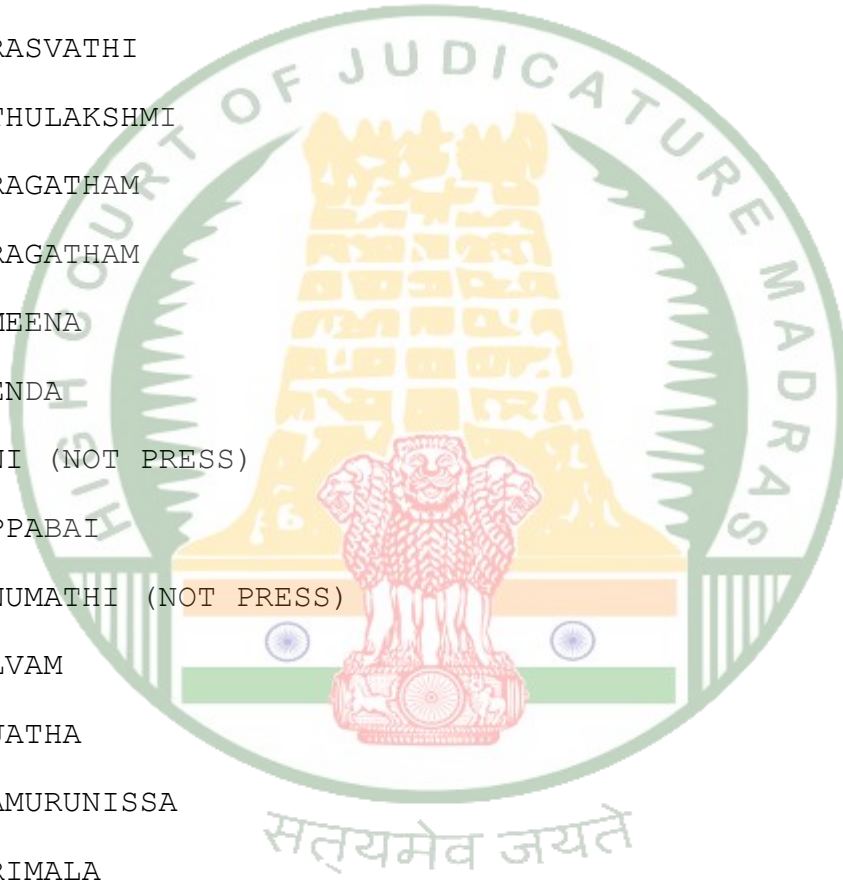
14 K.DILSHATHI

15 A.TAJEEDEN

16 A.AZHAMUDIN

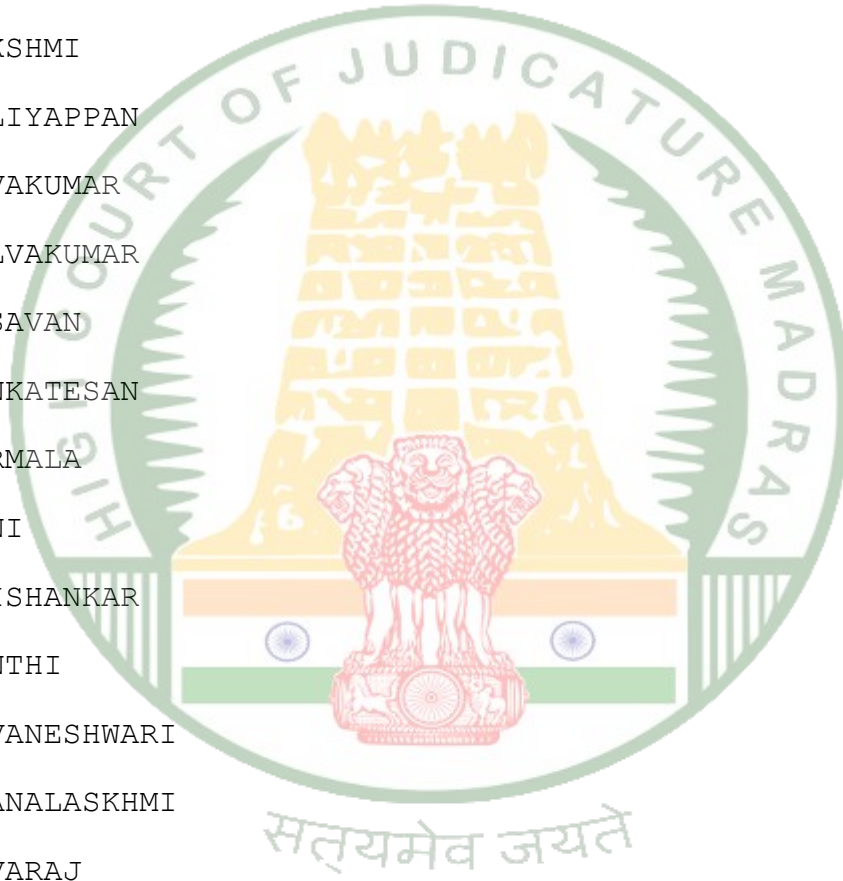
WEB COPY

17 G.SARGUNAM
18 G.SIVAKUMAR
19 D.DAIDASS
20 B.MANIMEGALAI
21 R.MARTEEN
22 P.BALAN
23 P.SARASVATHI
24 P.MUTHULAKSHMI
25 R.MARAGATHAM
26 S.MARAGATHAM
27 M.SAMEENA
28 M.VEENDA
29 S.RANI (NOT PRESS)
30 G.KUPPABAI
31 M.BANUMATHI (NOT PRESS)
32 P.SELVAM
33 J.SUJATHA
34 S.KHAMURUNISSA
35 S.PARIMALA
36 A.JAYA
37 P.LATHA
38 J.JANBASHA
39 C.SIVANANTHAM
40 JAZIR
41 KANTHA



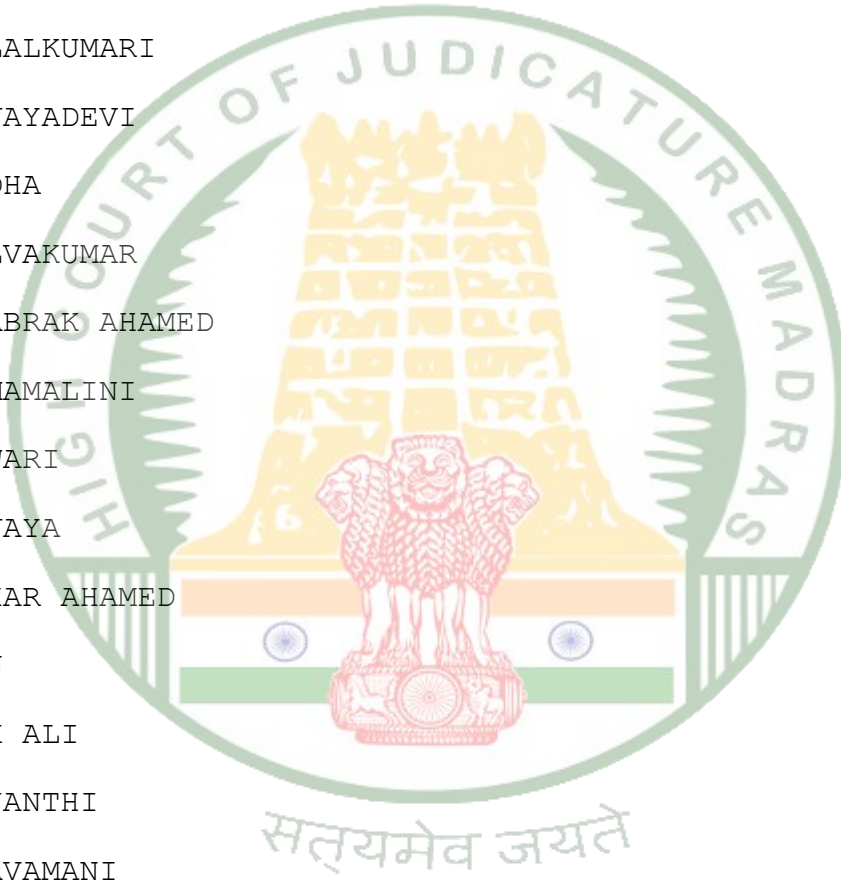
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42 C.WILLIYAMS
43 V.S.GOVINDARAJ
44 N.BASKARAN
45 N.YUVARAJ
46 K.DHASITHAZIR
47 C.VALLI
48 A.LAKSHMI
49 B.KALIYAPPAN
50 B.SIVAKUMAR
51 V.SELVAKUMAR
52 J.KESAVAN
53 S.VENKATESAN
54 M.NIRMALA
55 V.RANI
56 M.JAISHANKAR
57 B.SANTHI
58 T.BUVANESHWARI
59 M.DHANALASKHMI
60 V.SIVARAJ
61 G.KUMARI
62 S.GANDHI
63 N.GANESAN
64 V.MUNUSAMY
65 S.VENKATESAN
66 D.THIRUMURUGAN



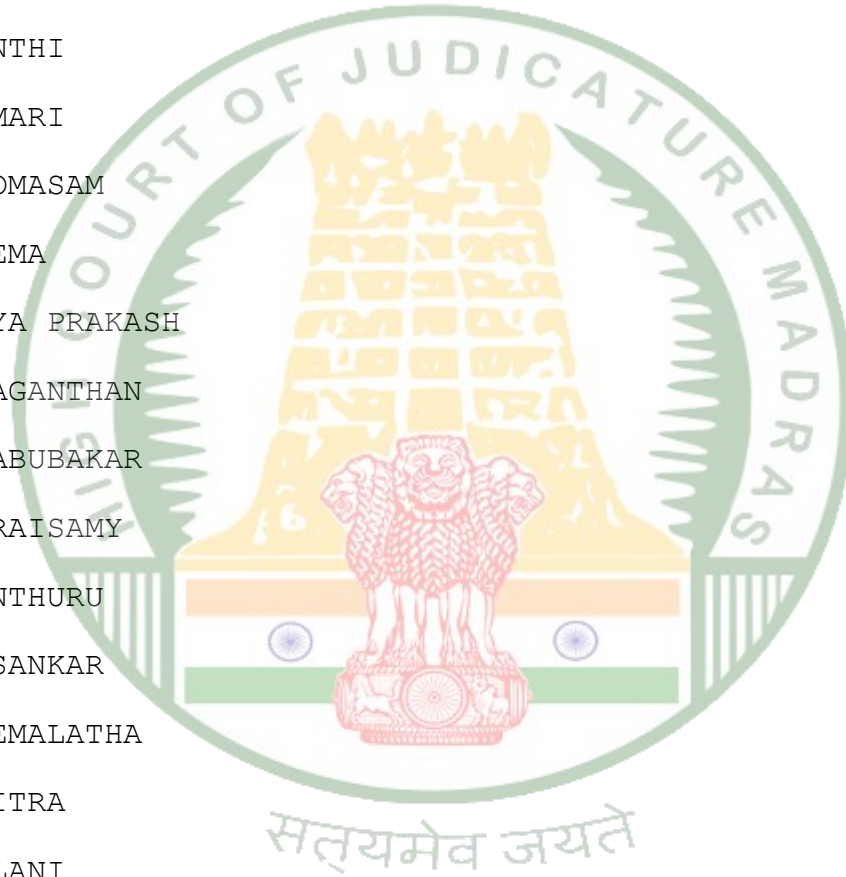
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67 T.AZHILARASI
68 V.RAMESH
69 G.SIVAKUMAR
70 G.SRINIVASAN
71 G.SARATHI
72 SYED KARIMULLA
73 S.KALALKUMARI
74 B.K.JAYADEVI
75 S.RADHA
76 B.SELVAKUMAR
77 N.K.ABRAK AHAMED
78 R.HEMAMALINI
79 S.ESWARI
80 V.VIJAYA
81 S.NIHAR AHAMED
82 USMAN
83 MURAK ALI
84 M.JAYANTHI
85 R.THAVAMANI
86 G.VIJI
87 MEENAKSHI
88 I.SHEELA
89 T.TAMILARASI
90 M.MURUNNISA
91 P.AMUTHAVALLI



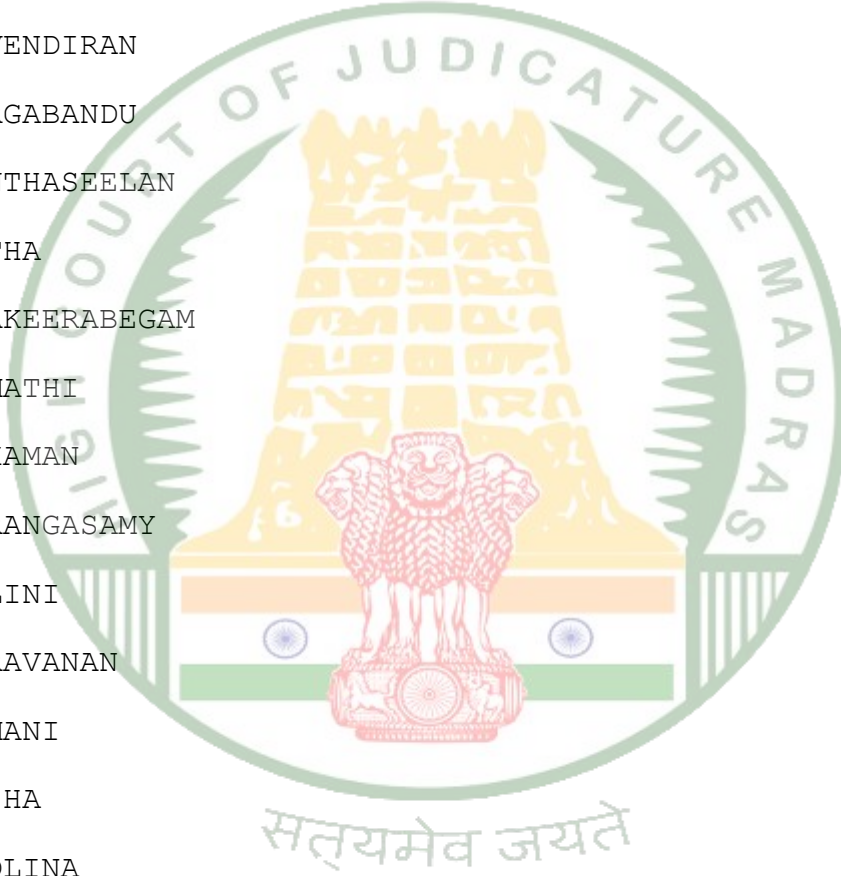
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92 V.VANNAMAIYIL
93 K.SHEELADEVI
94 G.REVATHI
95 T.M.ASHAFF ALI
96 J.M.ASKAR BASHA
97 V.S.VENKATESAN
98 K.SANTHI
99 K.KUMARI
100 A.THOMASAM
101 C.PREMA
102 SURIYA PRAKASH
103 K.ULAGANTHAN
104 M.H.ABUBAKAR
105 K.DURAISAMY
106 N.SANTHURU
107 K.S.SANKAR
108 K.PREMALATHA
109 P.CHITRA
110 C.PALANI
111 V.KUMAR
112 G.PADMA
113 R.SANTHI
114 S.SHAMIYULLA
115 B.MANIMEGALAI
116 S.MEGALA



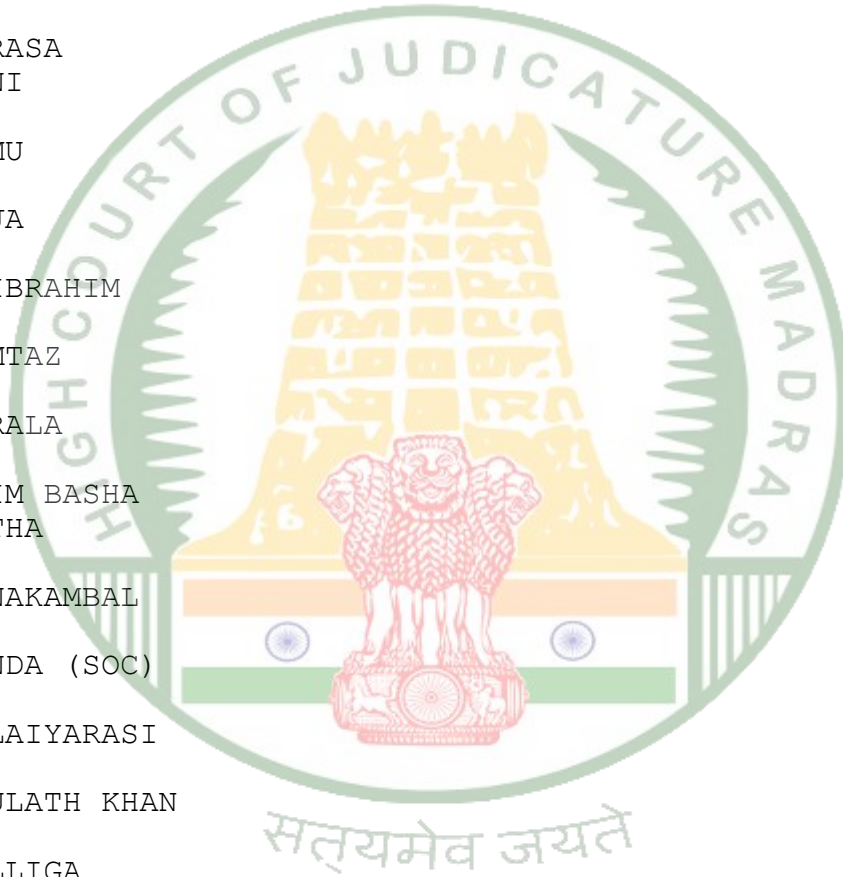
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117 G.MALATHI
118 S.SANTHI
119 S.PREMA
120 S.GOWRI
121 SENTHILKUMAR
122 G.SATHISHKUMAR
123 M.DEVENDIRAN
124 P.MARGABANDU
125 T.SANTHASEELAN
126 P.LATHA
127 J.SHAKEERABEGAM
128 B.SUMATHI
129 L.RAHAMAN
130 V.S.RANGASAMY
131 R.NALINI
132 K.SARAVANAN
133 T.RAMANI
134 A.BASHA
135 P.KROLINA
136 G.ANJALI
137 G.MERRY
138 K.SAVITHRI
139 A.S.SURIYAKALA
140 S.SANTHA
141 A.LOGAMBIGAI



WEB COPY

142 D.MUNUSAMY
143 J.RAMESH
144 R.GUHASELVI
145 K.PENNARASI
146 C.E.MOHAMED ISMAIL
147 C.N.THAIYUFF
148 V.SARASA
149 K.RANI
150 M.AMMU
151 D.RAJA
152 Z.M.IBRAHIM
153 M.MUMTAZ
154 D.SARALA
155 H.ALIM BASHA
156 J.LATHA
157 M.KANAKAMBAL
158 C.VENDA (SOC)
159 R.KALAIYARASI
160 S.DOULATH KHAN
161 K.MALLIGA
162 G.JAMUNA
163 A.ALLIRANI (SOC)
164 S.SHAKERA
165 N.FARHANA
166 K.SIVAGAMI
167 C.LILLY
168 M.SAKTHIVEL
169 M.SIVAGAMI



WEB COPY

170 L.USHA (NOT PRESS AS PER MEMO)
171 M.KARUNANIDHI

172 R.AKILABANU
173 Y.AMEEN
174 R.INDRANI

.. RESPONDENTS

Prayer: This Writ Petition is filed under Article 226 of the Constitution of India, praying for the issuance of Writ of Certiorari, to call for the records pertaining to the common order, dated 28.7.2011 passed in C.P. Nos. 164/2005 165/2005 166/2005 167/2005 168/2005 169/2005 170/2005 207/2005 233/2005 244/2005 245/2005 246/2005 247/2005 248/2005 249/2005 349/2005 369/2005 86/2006 87/2006 88/2006 254/2006 67/2007 106/2007 107/2007 114/2007 and 115 of 2007 by the 1st respondent Presiding Officer Additional Labour Court Vellore

W.P.No.16285 of 2012:

1 THE MANAGEMENT
M/S. FLORAM SHOES (INDIA) PVT. LTD. M.C.
ROAD AGARAMCHERRY POST MADHANUR VIA
VELLORE DISTRICT-635804
REP. BY ITS
MANAGING DIRECTOR.

...PETITIONER

Vs

- 1 THE PRESIDING OFFICER
PRINCIPAL LABOUR COURT VELLORE.
- 2 M.DEVINDRAN
S/O.G.MUNISAMY NO.2/40 OLAKASI VILLAGE
VEPPUR POST GUDIYATHAM TALUK VELLORE
DISTRICT.
- 3 A.MOHAMED RAFIQUE
S/O.ABDUL AJIZ MAJID STREET AGARAMCHERRY
VILLAGE & POST VELLORE DISTRICT.
- 4 I.SAMSHAD BEGUM
W/O.IQBAL MAJID STREET AGARAMCHERRY
VILLAGE & POST VELLORE DISTRICT.
- 5 S.SAMBA BEE
W/O.SAYED BASHA MAJID STREET AGARAMCHERRY
VILLAGE & POST VELLORE DISTRICT.
- 6 Y.RAZIA
W/O.SAYED BASHA MAJID STREET AGARAMCHERRY
VILLAGE & POST VELLORE DISTRICT.
- 7 A.PARVEEN
W/O.SAYED BASHA MAJID STREET AGARAMCHERRY
VILLAGE & POST VELLORE DISTRICT.

- 8 S.SABIRA
W/O.ABDUL SUKUR MAJID STREET AGARAMCHERRY
VILLAGE & POST VELLORE DISTRICT.
- 9 ABDUL SUKUR
S/O.ABDUL SUBAN MAJID STREET AGARAMCHERRY
VILLAGE & POST VELLORE DISTRICT.
- 10 C.A.ANWAR
S/O.SATHUR SAIBU MAJID STREET AGARAMCHERRY
VILLAGE & POST VELLORE DISTRICT.
- 11 K.VASANTHI
W/O.KASINATHAN EDA STREET AGARAMCHERRY
VILLAGE & POST VELLORE DISTRICT.
- 12 T.GANESAN
S/O.THANGARAJ KUTHAMPAKKAM VILLAGE
VADAKATHIPATTI POST VELLORE DISTRICT.
- 13 A.USMAN
S/O.AFFIZ PALUR VILLAGE AND POST MADANUR
VIA VELLORE DISTRICT.
- 14 K.DILSHATH
W/O.KADHAR BASHA PALUR VILLAGE AND POST
MADANUR VIA VELLORE DISTRICT.
- 15 A.THAJUDEEN
S/O.ABDUL SALAM PALUR VILLAGE AND POST
MADANUR VIA VELLORE DISTRICT.
- 16 A.AJIMUDEEN
S/O.ABDUL SALAM PALUR VILLAGE AND POST
MADANUR VIA VELLORE DISTRICT.
- 17 G.SARGUNA
W/O.KANNAN PALUR VILLAGE AND POST MADANUR
VIA VELLORE DISTRICT.
- 18 G.SIVAKUMAR
S/O.GAJENDRAN RANGAPURAM VILLAGE PALUR
VILLAGE AND POST MADANUR VIA VELLORE
DISTRICT.
- 19 D.TITUS
S/O.DURAISAMY PALUR VILLAGE AND POST
MADANUR VIA VELLORE DISTRICT.
- 20 R.MARTIN
S/O.RAMAN PERIYATHOTALAM VILLAGE AND POST
MADANUR VIA VELLORE DISTRICT.
- 21 P.BALAN
S/O.PERUMAL PERUMAL KOIL STREET
ALINCHIKUPPAM VILLAGE RAJAKAL POST
GUDIYATHAM TALUK VELLORE DISTRICT.
- 22 P.SARASWATHI
W/O.PARASURAMAN MARIYAMMAN KOIL STREET
MELMONUR VELLORE DISTRICT.

- 23 P.MUTHULAKSHMI
W/O.PARASURAMAN NO.99 THAMARAIKULAM
PALLIKONDA VELLORE DISTRICT.
- 24 R.MARAGATHAM
W/O.M.JAGANNATHAN 96/2 TKS STREET
PALLIKONDA VELLORE DISTRICT.
- 25 S.MARAGATHAM
W/O.GOPAL BAZAR STREET VETTUVANAM VILLAGE
AND POST PALLIKONDA VELLORE DISTRICT.
- 26 M.SAMEENA
D/O.MEHAYUB JOHN SAIBU AGARAMCHERRY VILLAGE
AND POST MADANUR VIA VELLORE DISTRICT.
- 27 M.VENDA
W/O.GOVINDARAJ NAIDU STREET AGARAMCHERRY
VILLAGE AND POST MADANUR VIA VELLORE
DISTRICT.
- 28 G.KUPPA BAI
W/O.SARAVANAN AMMAN NAGAR AGARAMCHERRY
VILLAGE AND POST MADANUR VIA VELLORE
DISTRICT.
- 29 J.SUJATHA
W/O.NANTHAGOPAL THANGAL VILLAGE OTHIYATHUR
POST PALLIKONDA VELLORE DISTRICT.
- 30 S.KAMARUNIZA
W/O.JOHN BASHA MAJITH STREET AGARAMCHERRY
VILLAGE AND POST VELLORE DISTRICT.
- 31 S.PARIMALA
D/O.SAMPATH 104 PALUR VILLAGE & POST
MADANUR VELLORE DISTRICT.
- 32 A.JAYA
W/O.ANUMUTHU BHARATHI NAGAR MADANUR
VELLORE DISTRICT.
- 33 P.LATHA
W/O.J.KESAVAN 109 PALUR VILLAGE MADANUR
VIA VELLORE DISTRICT.
- 34 J.CHAN BASHA
S/O.JAYANULLAH MAJITH STREET AGARAMCHERRY
VILLAGE AND POST VELLORE DISTRICT.
- 35 C.SIVANATHAM
S/O.CHINNARAJ BHARATHI NAGAR MADANUR
VELLORE DISTRICT.
- 36 A.JAGIR
S/O.ABDUL RAKEEN MAJITH STREET
AGARAMCHERRY VILLAGE AND POST VELLORE
DISTRICT.
- 37 K.KANTHA
W/O.KARUNAKARAN PERIYATHOTTALAM MADANUR
POST VELLORE DISTRICT.

38 C.WILLIAMS
S/O.CHRISTUDOSS MV KUPPAM VILLAGE MELPATTI
POST VELLORE DISTRICT.

39 V.S.GOVINDARAJ
S/O.SAMINATHAN 2/123 MUPAR STREET VENKILI
VILLAGE AND POST VELLORE DISTRICT.

40 N.BASKARAN
S/O.NATARAJAN JAMIN KULITHIGAI VILLAGE
VENKILI POST VELLORE DISTRICT.

41 N.YUVARAJ
S/O.NATARAJAN JAMIN KULITHIGAI VILLAGE
VENKILI POST VELLORE DISTRICT.

42 K.DHASTHAGIR
S/O.KALEEL PADE SAIBU STREET THALAYATHAM
GUDIYATHAM TALUK VELLORE DISTRICT.

43 C.VALLI
W/O.BALAKRISHNAN RANGAPURAM PALUR VILLAGE
AND POST MADANUR VIA VELLORE DISTRICT.

44 A.LAKSHMI
W/O.NATARAJAN ANANGANALLUR VILLAGE AND POST
GUDIYATHAM TALUK VELLORE DISTRICT.

45 K.KALIYAPPAN
S/O.R.KRISHNAN BATTAI STREET SERPADI
VILLAGE AND POST ODUKATHUR VELLORE
DISTRICT.

46 B.SIVAKUMAR
S/O.K.BALARAMAN RN KUPPAM POST GR PALAYAM
VIA MADANUR VELLORE DISTRICT.

47 V.SELVAKUMAR
S/O.M.VELU AGARAM VILLAGE & POST MADANUR
VIA VELLORE DISTRICT.

48 J.KESAVAN
S/O.JAYARAMAN PALUR VILLAGE & POST
MADANUR VIA VELLORE DISTRICT.

49 S.VENKATESAN
S/O.SETTU PALUR VILLAGE & POST MADANUR
VIA VELLORE DISTRICT.

50 M.NIRMALA
D/O.MATHIAZHAGAN PALUR VILLAGE & POST
MADANUR VIA VELLORE DISTRICT.

51 V.RANI
D/O.LOGANATHAN RANGAPURAM VILLAGE PALUR
POST VELLORE DISTRICT.

52 M.JAISANKAR
S/O.MURUGESAN 32/36 AMMANI NAGAR
PALLIKONDA POST VELLORE DISTRICT.

53 B.SHANTHI
W/O.BASKAR 97 KADAI STREET AGARAM POST
VELLORE DISTRICT.

- 54 BUVANESWARI
 W/O.NANTHAKUMAR THIRUVALLUVAR NAGAR OPP.
 HOLY ANGELS SCHOOL PALLIKONDA VELLORE
 DISTRICT.
- 55 M.DHANALAKSHMI
 W/O.VELAN AMMAIYAPPAN STREET SANRORKUPPAM
 AMBUR.
- 56 V.SIVARAJ
 S/O.VEERASAMI PATCHAIYAMMAN KOIL STREET
 ALINCHIKUPPAM VILLAGE RAJAKAL POST VELLORE
 DISTRICT.
- 57 G.KUMARI
 W/O.MUNIRATHINAM SAMINATHAPURAM PALUR POST
 MADANUR VIA VELLORE DISTRICT.
- 58 G.GANDHI
 S/O.A.GOVINDAN VADAKATHIPATTI VILLAGE &
 POST VELLORE DISTRICT.
- 59 N.GANESAN
 S/O.NAARAYANAN 549 TNHB PHASE-I
 KRISHNAGIRI ROAD THIRUPATTUR.
- 60 S.VENKATESAN
 S/O.SEENU NAIDU 119 SCHOOL STREET
 KOMMALAM KUTTAI POST OTHIYATHUR VELLORE
 DISTRICT.
- 61 D.THIRUMURUGAN
 S/O.DURAISAMI 110 BAJANAI KOIL STREET
 VADAKATHIPATTI VILLAGE & POST VELLORE
 DISTRICT.
- 62 T.EZHILARASI
 W/O.THIRUMURUGAN 110 BAJANAI KOIL STREET
 VADAKATHIPATTI VILLAGE & POST VELLORE
 DISTRICT.
- 63 V.RAMESH
 S/O.VINAYAGAM VADAKATHIPATTI VILLAGE & POST
 VELLORE DISTRICT.
- 64 G.SIVAKUMAR
 S/O.GANESAN 1/143 VADAKATHIPATTI VILLAGE &
 POST VELLORE DISTRICT.
- 65 G.SRINIVASAN
 S/O.GANESAN 1/143 VADAKATHIPATTI VILLAGE &
 POST VELLORE DISTRICT.
- 66 G.SARATHI
 VADAKATHIPATTI VILLAGE & POST VELLORE
 DISTRICT.
- 67 S.SAYED KARIMULLAH
 S/O.AMEEN 5/150 5TH STREET BEERAN NAGAR
 MOSAN PETTAI GUDIYATHAM VELLORE DISTRICT.
- 68 S.KALAIKUMARI
 W/O.SOUNDARAPANDI 1/29 AGARAMCHERRY
 VILLAGE AND POST VELLORE DISTRICT.

- 69 B.K.JALADEVI
W/O.BALASUNDARAM NO.9 METTU STREET
VETTUVANAM VILLAGE & POST VELLORE DISTRICT.
- 70 S.RADHA
W/O.KANNAN EYEL ROAD STREET VETTUVANAM
VILLAGE & POST VELLORE DISTRICT.
- 71 B.SELVAKUMAR
S/O.BULLAN MADANUR VIA VELLORE DISTRICT.
- 72 N.K.ABRAR AHAMED
S/O.KHALEEL AHAMED NO.50/1 KANAR STREET
PALLIKONDA VELLORE DISTRICT.
- 73 R.HEMAMALINI
D/O.RAMACHANDRAN NO.12 BUDHAR NAGAR
PALLIKONDA VELLORE DISTRICT.
- 74 S.ESWARI
W/O.VENUGOPAL OPP. RAJESWARI MILL
RAGAVENDRA STREET R.S.ROAD GUDIYATHAM.
- 75 V.VIJIYA
W/O.BABU NO.56 KOTTAI STREET PALLIKONDA
VELLORE DISTRICT.
- 76 S.NIKAR AHAMED
S/O.SALEEM SAIBU 43 MILLATH STREET
PALLIKONDA VELLORE DISTRICT.
- 77 K.USMAN
S/O.KHADAR USAIN MUSLEEM STREET
PERIYACHETTY KUPPAM GUDIYATHAM TALUK
VELLORE DISTRICT.
- 78 Z.MUBARAM
S/O.ZEEYAUDEEN 52/49 KANAR STREET
PALLIKONDA.
- 79 M.JAYANTHI
W/O.RAMESH 21/61 GOVINDAPADI STREET
PALLIKONDA VIA VELLORE DISTRICT.
- 80 R.THAVAMANI
D/O.RAMAN KONNAIYATHAM VILLAGE MELALATHUR
POST GUDIYATHAM TALUK VELLORE DISTRICT.
- 81 G.VIJI
D/O.T.GANESAN CHENNACHERRY VILLAGE
AGARAMCHERRY POST MADANUR VIA VELLORE
DISTRICT.
- 82 D.MEENAKSHI
W/O.JAISANKAR 32/36 AMMANI NAGAR
PALLIKONDA VIA VELLORE DISTRICT.
- 83 I.SHEELA
W/O.RAJAMANICKAM 286 BAJANAI KOIL STREET
VIRINCHEPURAM VELLORE DISTRICT.
- 84 T.TAMILARASI
S/O.VISWANATHAN 25 VEERASAMY STREET
MULLIPALAYAM VELLORE DISTRICT.

- 85 M.MUNIRUZA
D/O.ESSAC AHAMED 58A/30 AMMANI NAGAR
PALLIKONDA VELLORE DISTRICT.
- 86 V.VANAMAYEL
W/O.VENKATESAN 73 KOTHAKUPPAM 42 INDRA
KUDIYIRUPPU PUDHUMANAI MELALATHUR POST
VELLORE DISTRICT.
- 87 K.SHEELA DEVI
W/O.SAMIVEL 73 KOTHAKUPPAM 42 INDRA
KUDIYIRUPPU PUDHUMANAI MELALATHUR POST
VELLORE DISTRICT.
- 88 G.REVATHI
W/O.DAYALAN MARIYAMMAN KOIL STREET
GUDIYATHAM VILLAGE VELLORE DISTRICT.
- 89 T.M.ASRAF ALI
S/O.T.M.SAIYATHULLAH 55/25 HAR STREET
PALLIKONDA VELLORE DISTRICT.
- 90 J.M.ASKAR BASHA
S/O.AHMED BASHA 32 MILLATH STREET
PALLIKONDA VELLORE DISTRICT.
- 91 V.S.VENKATESAN
S/O.SAMIVEL 28/15 NEW KANAR STREET AYYAYU
NAGAR PALLIKONDA VELLORE DISTRICT.
- 92 K.SANTHI
D/O.KANNAN 92 SAMINATHAPURAM PALUR
VILLAGE & POST VELLORE DISTRICT.
- 93 K.KUMARI
D/O.KANNAN 92 SAMINATHAPURAM PALUR
VILLAGE & POST VELLORE DISTRICT.
- 94 A.THAMSAM
W/O.KANNAN 92 SAMINATHAPURAM PALUR
VILLAGE & POST VELLORE DISTRICT.
- 95 C.PREMA
W/O.D.ANBASHAGAN KONNAIYATHAM VILLAGE
MELALATHUR POST GUDIYATHAM TALUK VELLORE
DISTRICT.
- 96 K.DURAISAMI
S/O.KANNAPPAN 36 RAIL ROAD STREET
VETTUVANAM VILLAGE & POST VELLORE DISTRICT.
- 97 C.PALANI
S/O.CHINNADURAI BHRAMANA MANGALAM
VETTUVANAM POST PALLIKONDA VELLORE
DISTRICT.
- 98 V.KUMAR
S/O.GOPAL 9 KANNADHASAN NAGAR
SANRORKUPPAM AMBUR VELLORE DISTRICT.
- 99 G.PADMA
W/O.GOVINDASAMY AGARAMCHERRY VILLAGE & POST
MADANUR VIA VELLORE DISTRICT.

- 100 R.SHANTHI
D/O.PANNIRSELVAM 187 RS ROAD SETHUKARAI
POST GUDIYATHAM TALUK VELLORE DISTRICT.
- 101 S.SAMIULLAH
D/O.SAMEER AHAMED NO.29 MILLATH STREET
PALLIKONDA VELLORE DISTRICT.
- 102 P.MANIMEGALAI
W/O.VENKATESAN 6/4 KASTHURIBAI STREET
KEMARANIPET PALLIKONDA VELLORE DISTRICT.
- 103 S.MEGALA
W/O.LAKSHMANAN KOLLAMANGALAM VILLAGE & POST
MADANUR VIA VELLORE DISTRICT.
- 104 G.MALATHI
W/O.BHAGAVANDOSS 57/140 PUDUMANAI
MELALATHUR VILLAGE AND POST VELLORE
DISTRICT.
- 105 S.SHANTHI
W/O.ARUMUGAM OM SAKTHI KOIL STREET AGARAM
POST MADANUR VIA VELLORE DISTRICT.
- 106 S.PREMA
W/O.ANNADURAI OM SAKTHI KOIL STREET AGARAM
POST MADANUR VIA VELLORE DISTRICT.
- 107 S.GOWRI
W/O.YESSU MALAIYAMODU STREET AGARAM POST
MADANUR VIA VELLORE DISTRICT.
- 108 R.SENTHIL KUMAR
S/O.RANGANATHAN SN PALAYAM AGARAM POST
MADANUR VIA VELLORE DISTRICT.
- 109 P.MARGABANDU
S/O.PANNIRSELVAM NO.9 AVVAYAR STREET
PALLIKONDA VELLORE DISTRICT.
- 110 T.SANTHASEELAN
S/O.A.THANGARAJ SOUTH COLONY AGARAM
VILLAGE & POST VELLORE DISTRICT.
- 111 V.S.RANGASAMY
S/O.SUBRAMANI THEERTHANATHIPURAM
VETTUVANAM VILLAGE & POST PALLIKONDA
VELLORE DISTRICT.
- 112 R.NALINI
W/O.G.RAJASEKAR SN PALAYAM AGARAM POST
MADANUR VIA VELLORE DISTRICT.
- 113 K.SARAVANAN
S/O.KRISHNAN PILLAYAR KOIL STREET
VETTUVANAM VILLAGE & POST PALLIKONDA
VELLORE DISTRICT.
- 114 T.RAMANI
W/O.SATHIYARAJ AVVAI NAGAR SERUVANKI
GUDIYATHAM VELLORE DISTRICT.

- 115 VALLI
W/O.SINGARAM 262 KUDANAGARAM VILLAGE &
POST 2ND BLOCK GUDIYATHAM TALUK VELLORE
DISTRICT.
- 116 M.JAYANTHI
W/O.THENNARASU 2/124 ANNA NAGAR
KUDANAGARAM VILLAGE & POST GUDIYATHAM TALUK
VELLORE DISTRICT.
- 117 K.SELVI
WO.MUNISAMI MALAYAMODU CHURCH STREET
AGARAMCHERRY POST MADANUR VIA VELLORE
DISTRICT.
- 118 S.VIJIYA
W/O.DHAYANEETHI ANNA NAGAR KUDANAGARAM
VILLAGE & POST GUDIYATHAM TALUK VELLORE
DISTRICT.
- 119 S.CHITRA
W/O.MAGESAN KEELMURUNGAI VILLAGE
VADAPUTHUPET POST AMBEDKAR NAGAR AMBUR
VELLORE DISTRICT.
- 120 A.BASHA
S/O.ANWAR 17/6 CHITTOR ROAD MUNAB TIPPO
GUDIYATHAM TALUK VELLORE DISTRICT.
- 121 G.MERRY
W/O.E.KUPPUSAMY SOUTH COLONY AGARAMCHERRY
POST MADANUR VIA VELLORE DISTRICT.
- 122 K.SAVITHRI
W/O.ANANTHAN 234 POOKAR STREET
BHRAMANGAMANGALAM VILLAGE VETTUVANAM POST
PALLIKONDA VELLORE DISTRICT.
- 123 A.S.SURIYAKALA
W/O.ARULMOZHI SAMUEL 73 KOTHAKUPPAM
MELALATHUR POST GUDIYATHAM TALUK VELLORE
DISTRICT.
- 124 G.LOGAMBIGAI
D/O.GANESH UDAYAR ARUMBAKKAM MOOTUR
VILLAGE THONDA THOLASI POST LATHERI
KATPADI TALUK VELLORE DISTRICT.
- 125 D.MUNUSAMY
S/O.DUR AISAMI KOTHAMPAKKAM VILLAGE
VADAKATHIPETTI POST MADANUR VIA VELLORE
DISTRICT.
- 126 J.RAMESH
S/O.JOSEPH KOTHAMPAKKAM VILLAGE
VADAKATHIPETTI POST MADANUR VIA VELLORE
DISTRICT.
- 127 R.GUNASELVI
W/O.THIRUGANAM MC COLONY MADANUR VELLORE
DISTRICT.

- 128 K.PENNARASI
W/O.SATHIK DEVICHETTIKUPPAM POST
THEEPABATH VILLAGE GURUVARAJAPALAYAM VIA
VELLORE DISTRICT.
- 129 C.E.MOHAMED ISMAIL
S/O.MOHAMED IBRAHIM 7/63 KAMARAJ NAGAR
PALLIKONDA.
- 130 K.RANI
D/O.KRISHNASAMI OLD POLICE STATION STREET
LATHERI VILLAGE AND POST KATPADI TALUK
VELLORE DISTRICT.
- 131 C.N.THAYUB
S/O.ABDUL MAJITH 45 KANAR STREET
PALLIKONDA VELLORE DISTRICT.
- 132 M.AMMU
W/O.MANOHRAN PUDUMANAI AGARAMCHERRY POST
MADANUR VIA AMBUR TALUK VELLORE DISTRICT.
- 133 D.RAJA
S/O.DURASAMI AYYAYU NAGAR PALLIKONDA
VELLORE DISTRICT.
- 134 Z.M.IBRAHIM
S/O.ZAKKRIAH SAHIB 22/45 HRA STREET NEW
MEHILLAH PALLIKONDA VELLORE DISTRICT.
- 135 M.MUMTHAJ
D/O.YAKUB NO.60 KANAR STREET NEW MEHILLAH
PALLIKONDA VELLORE DISTRICT.
- 136 D.SARALA
W/O.BABU MARIYAMMAN KOIL STREET MC ROAD
AGARAMCHERRY VILLAGE AND POST VELLORE
DISTRICT.
- 137 H.ALEEM BASHA
S/O.MOHAMED ANIF 3 HAR STREET NEW
MEHILLAH PALLIKONDA VELLORE DISTRICT.
- 138 J.LATHA
W/O.MURALI 57 THIPPASAMUDRAM VILLAGE &
POST PALLIKONDA VELLORE DISTRICT.
- 139 M.KANAGAMBAL
D/O.MANICKAM 75 KATTUPUDI VILLAGE
VETTUVANAM POST PALLIKONDA VELLORE
DISTRICT.
- 140 R.KALAIARASI
W/O.RAJIDRAN NO.121 MARIYAMMAN KOIL STREET
AGARAMCHERRY VILLAGE AND POST MADANUR VIA
VELLORE DISTRICT.
- 141 S.DOULATHKHAN
S/O.SARTHAR KHAN 55 NEW KANAR STREET
PALLIKONDA VELLORE DISTRICT.

- 142 K.MALLIGA
W/O.KUPPUSAMI MARIYAMMAN KOIL STREET
AGARAMCHERRY VILLAGE AND POST MADANUR VIA
VELLORE DISTRICT.
- 143 G.JAMUNA
W/O.EKAMBARAM 37/7 KOTHAVAL STREET
KEELACHUR VILLAGE PALLIKONDA VELLORE
DISTRICT.
- 144 S.SHAKIRA
W/O.YUNUS MAJITH STREET AGARAMCHERRY
VILLAGE AND POST VELLORE DISTRICT.
- 145 N.FARHANAN
S/O.S.DOULATHKHAN 55 NEW KANAR STREET
PALLIKONDA VELLORE DISTRICT.
- 146 K.SIVAGAMI
W/O.VELU KANNAMANGALAM POST 20/24 KAVARAI
STREET ARNI POST.
- 147 C.LILLY
W/O.ASHOK PUDUMANAI ASHOK NAGAR
AGARAMCHERRY VILLAGE AND POST MADANUR VIA
VELLORE DISTRICT.
- 148 M.SAKTHIVEL
S/O.MURUGESAN 28 RAIL ROAD VETTUVANAM
VILLAGE AND POST PALLIKONDA VELLORE
DISTRICT.
- 149 M.SIVAGAMI
D/O.MANOHRAN KOTHAMPAKKAM VILLAGE
VADAKATHIPATI MADHANUR VIA AMBUR TALUK
VELLORE DISTRICT.
- 150 M.KARUNANEETHI
S/O.MUNISAMY KOLLAMANGALAM VILLAGE & POST
AMBUR TALUK VELLORE DISTRICT.
- 151 R.AKILA BANU
W/O.MOHAMED IMRAN INDRA NAGAR SETHUVALAI
VELLORE DISTRICT.
- 152 V.MUNISAMY
S/O.K.VENKATESAN CHINNAMALAIYAMPET
KARAPATTU VANIYAMBADI TK. VELLORE DISTRICT.
- 153 R.INDRANI
W/O.GOVINDASAMY RAGAVENDRA STREET LENIN
NAGAR KODASAMUDRAM GUDIYATHAM VELLORE
DISTRICT.
- ... RESPONDENTS

Prayer: This Writ Petition is filed under Article 226 of the Constitution of India, praying for the issuance of Writ of Certiorari, to call for the records pertaining to the Order dated 22.05.2012 passed in the unnumbered I.A. of 2012 in C.P.230 of 2011 by the 1st Respondent Presiding Officer Principal Labour Court Vellore and quash the same.

For Petitioners in both W.Ps. : Mr.Gupta for
M/s.Gupta and Ravi

For Respondents in both WPs : Mr.V.Prakash, SC for
Mr.E.Srinivasan

COMMON ORDER

The petitioner is a company engaged in the manufacture of shoes, meant for export. There were as many as 482 workers engaged in the company and due to certain constraints, the said company suspended its operation from 12.11.2004 and thereafter, it was suspended its operation with effect from 12.11.2004. The Floram Shoes Employees Union, which is a recognized one, took up the matter before the Joint Commissioner of Labour, Chennai. During the pendency of the same, bilateral talks were held with the said Union representing all 482 workmen. In the meanwhile, two other unions, namely, Leather & Leather Goods Democratic Labour Union (affiliated to AICCTU) and Desiya Podu Thozhilalar Sangam (affiliated to INTUC) raised a dispute under Section 2K of the Industrial Disputes Act, 1947 (hereinafter, referred to 'the Act') before the Joint Commissioner of Labour on the issue of 'closure'. In the meantime, a settlement between the petitioner Management and the Floram Shoes Employees Union was entered on 2.3.2005 under Section 18(1) of the Act, in and by which, as many as 472 workers who were the members of the said Union got the benefit and out of them, about 164 workmen were reengaged on restructured wages in the petitioner company in terms of the settlement while the remaining 318 workers accepted the compensation in lieu of agreeing cessation of employment with effect from 12.11.2004. However, the disputes raised by the other Unions came to be dismissed on 27.8.2008 for non-prosecution since the said Unions had not participated in the proceedings. The remaining 173 workers, who accepted the terms of settlement, however, disputing the closure of the petitioner company on and from 10.11.2004 as illegal, since the petitioner management without obtaining any permission from the Government of Tamil Nadu as provided under Section 25-O of the Act and it was not a lock-out as contended by the petitioner management, filed computation petitions in CP NOs.164 of 2005, etc., before the Addl.Labour Court, Vellore, claiming wages and other benefits from the date of alleged closure, i.e.10.11.2004.

2. While analysing the evidence available before it coupled with the facts and contentions raised, the Labour Court framed the issues for consideration, viz.,, Whether it was a lock-out (suspension of operation) as contended by the petitioner management or closure as contended by the workers and whether the termination of the workers amounts to illegal retrenchment and in violation of Section 33(2)(b) of the Act?

3. The Labour Court, having considered the rival contentions in the light of the evidence, has held that it was an illegal closure and not lockout as contended by the petitioner management and as such, the petitioner company has not followed the mandatory provisions as laid down in the Act and thereby, the so-called settlement though accepted by the majority of the workmen, cannot bind on the workers and hence, the termination of the workers amounts to illegal retrenchment and contrary to Section 25(o), 25(N) and 33 (i)(b) of the Act and thereby, the workers are entitled to invoke Section 33(C)(2) of the Act to compute the benefits and claim wages and consequential benefits from the date of alleged closure. While holding so, the Labour Court has allowed all the computation petitions filed by the workers and directed the petitioner company to pay monetary value as prayed for by them, after deducting the money if any paid to them.

4. Questioning the above, the petitioner management has come forward with a writ petition in W.P.No.16285 of 2011.

5. While so, the workers who filed CP Nos.164 of 2005 and got the favourable order, has also subsequently filed another computation petition in CP No.230 of 2011 before the Labour Court, claiming wages for the subsequent period, i.e. from 01.04.2005 to 31.7.2011 based on the same contentions raised in the earlier writ petition mentioned above. Pending disposal of the said CP No.230 of 2011, the petitioner management filed an interlocutory application (unnumbered), invoking Section 11 of the Act, questioning the maintainability of the said CP and prayed the Labour Court to decide the same as preliminary issue.

6. According to the petitioner management, already in earlier Computation Petitions, the Labour Court erroneously passed the award and it has been under challenge in W.P.No.21656 of 2011 and when the matter is seized of by this Court and until the same is decided by this Court, it cannot be considered that the orders passed in CP No.164 of 2005 has attained finality and thereby, the workers can maintain similar computation petition for the subsequent period. Hence, the petitioner management prayed the Labour Court, to decide the maintainability of the said CP as preliminary issue. By order, dated 22.5.2012, the Labour Court, rejected the said interlocutory application with costs of Rs.3000/-, holding that the said application filed by the petitioner management is not maintainable since in earlier CP No.164 of 2005, etc., it had already decided the issue that the retrenchment was in violation of Section 25(N) of the Act while rejecting the version of the petitioner management 'lockout' and it was a closure, for which, no prior permission of the government as required under Section 25(O) of the Act was

obtained and passed the award, again forwarding with the interlocutory application questioning the maintainability of the Computation Petition by the petitioner management would clearly amount to abuse of process of Court with mala fide intention to cause delay and harass the workmen. Questioning the said order of the Labour Court, the petitioner management has come forward with the present writ petition in WP No.16285 of 2012.

7. A counter affidavit has been filed by the respondents/workers in W.P.No.21656, inter alia, stating that the petitioner management illegally closed the factory w.e.f.10.11.2004 and before such closure, no notice as contemplated under Section 25(o) of the Act was issued and since the closure is illegal, the workers are deemed to be in service and they are entitled to get wages under Section 25(o)(6) of the Act. The Union had raised a dispute on 12.11.2004 alleging that the petitioner management had illegally locked out the factory in the name of suspension of operation w.e.f.12.11.2004. However, the said Union colluded with the petitioner management and raised the dispute with mala fide intention to save the management from the illegal closure. Though the petitioner management entered into a settlement with the Union, the respondents/workers had not authorized the Union to terminate their service nor accepted the settlement and therefore, it amounts to illegal retrenchment. Before terminating all the workers, the petitioner management did not issue notice and got permission from the Government as contemplated under Section 25(N) of the Act. The management witness RW.1 in cross examination, has stated that the settlement was not concluded in accordance with the provisions of the Act or standing orders. The petitioner management sent cheques to the workers by post towards compensation in lieu of employment the same were refused by the workers, however, due to sudden non-employment, as the workers were suffering in economical crisis, the workers were forced to receive the cheques. After closure of the factory, the petitioner newly opened the factory in the year 2005 and engaged new workers and re-engaged some of the old workers without continuity of service and with new service conditions. Invoking Section 33(C)(2) of the Act, the workers filed computation petitions before the Labour Court, which were rightly dealt with the Labour Court in a perspective manner and passed the award, which requires no interference, but confirmation. Therefore, the workers sought for dismissal of the writ petitions.

8. Since the subject matter of the writ petitions as well as the issue involved therein, is one and the same, both of these writ petitions are taken up together and disposed of by this common order.

9. Challenging the award passed by the Labour Court, Mr.Gupta, learned counsel appearing for the petitioner management would contend that it is not fair on the part of the respondents workmen in questioning the suspension of operation under the guise of closure

and claiming the wages for their non-employment once having accepted and derived the benefits of the Settlement entered between the Union and the petitioner management on 2.3.2005 and despite bringing the existence of the said settlement to its knowledge, the first respondent Labour Court, has erroneously passed the award. He relied upon a decision reported in "Tata Engineering and Locomotive Co.Ltd. versus Workmen" reported in (1981) 4 SCC 627, wherein, the Hon'ble Supreme Court, has held that the settlement, accepted by majority of the workmen, must be presumed to be fair and just. In para 10, it has been held as under:

"If the Settlement had been arrived at by a vast majority of the concerned workers with their eyes open and was also accepted by them in its totality, it must be presumed to be just and fair and not liable to be ignored while deciding the reference merely because a small number of workers (in this case 71 i.e. 11.18 per cent) were not parties to it or refused to accept it, or because the Tribunal was of the opinion that the workers deserved marginally higher emoluments than they themselves thought they did. A settlement cannot be weighed in any golden scales and the question whether it is just and fair has to be answered on the basis of principles different from those which come into play when an industrial dispute is under adjudication. In this connection we cannot do better than quote extensively from *Herbertsons Ltd. v. Workmen* wherein Goswami, J., speaking for the Court observed: (SCC pp. 743-45, paras 21, 24-25 and 27)

"Besides, the settlement has to be considered in the light of the conditions that were in force at the time of the reference. It will not be correct to judge the settlement merely in the light of the award which was pending appeal before this Court. So far as the parties are concerned there will always be uncertainty with regard to the result of the litigation in a court proceeding. When, therefore, negotiations take place which have to be encouraged, particularly between labour and employer, in the interest of general peace and well being there is always give and take. Having regard to the nature of the dispute, which was raised as far back as 1968, the very fact of the existence of a litigation with regard to the same matter which was bound to take some time must have influenced both the parties to come to some settlement. The settlement has to be taken as a package deal and when labour has gained in the matter of wages and if there is some reduction in the matter of dearness allowance so far as the award is concerned, it cannot be said that the settlement as a whole is unfair and unjust."

10. He would also contend that when a recognized Union, representing the workers, negotiates with the employer and entered into settlement, which is collective bargaining, and having accepted same and having gained thereof, the claims made by the workers in individual capacity contrary to the terms of the settlement, cannot be maintained. In this regard, he relied upon a decision reported in "Herbertsons Ltd. & Others versus Workmen" reported in (1976) 4 SCC 736, wherein, the Hon'ble Supreme Court has held as under "in para 18:

"18. When a recognised union negotiates with an employer the workers as individuals do not come into the picture. It is not necessary that each individual worker should know the implications of the settlement since a recognised union, which is expected to protect the legitimate interests of labour, enters into a settlement in the best interests of labour. This would be the normal rule. ..."

11. The learned counsel would contend that in order to maintain a claim petition under Section 33(c) (2) of the Act, there should be a pre-existing right in favour of the employee against the employer and admittedly, in the case on hand, admittedly, there was no adjudication in respect of the disputed questions of facts inasmuch as the dispute raised by two unrecognized unions regarding the illegal closure of the factory, was subsequently ended in non-prosecution and hence, without there being any pre-existing right, the workers cannot maintain the claim petitions. He relied upon a decision of a Division Bench of this Court, reported in "The Management of M/s.R.S.L. 'B'Tannery, Vellore versus the Presiding Officer, Vellore & Others" reported in CDJ 2012 MHC 4495, wherein, having following the various rulings of the Hon'ble Supreme Court, viz., AIR 1974 SC 1604, 1995 1 LLJ 395, 2001 (1) LLN 58 and 2009(1) LLN 340, it has been held as under in para 25 and 26:

"25. At this juncture, we deem it appropriate to pertinently point out that Section 33C of the Industrial Disputes Act, 1947 provides not only a form but also a procedure in regard to the computation of monetary, as well as non-monetary benefits in terms of money. Also, it speaks of a machinery for effecting the recovery of such claims. As such, the workmen can claim not only a benefit which could be computed in terms of money, but also any monetary sum due from their employer, like arrears of wages, salary or other allowances which were withheld. Persons falling within the definition of Section 2 (s) 'Workman' of the Industrial Disputes Act, 1947 viz., workmen are entitled to maintain an application under Section 33C (2) of the I.D. Act read with necessary rules.

"26. However, in Section 33C (2) proceedings of the Industrial Disputes Act, if the rights of workmen were denied by an employer, the same would not oust the jurisdiction of the Labour Court, in our considered opinion. In this connection, it is to be noted that if the foundation of the claim is in

serious doubt and the matter is hotly contested between the parties, then, the core issue will have to be determined in an elaborate fashion and admittedly, when the main dispute is pending with the Industrial Tribunal, the 1st Respondent/ Labour Court, in our opinion, is not competent to decide the matter even incidentally as regards the computation of benefits. To put it precisely, a pre-existing right or benefit will squarely attract the jurisdiction of the Labour Court exercising its powers as per Section 33C (2) of the Industrial Disputes Act."

12. The learned counsel also contended that there was no closure of the factory, but it was declared only suspension of operation with effect from 12.11.2004 due to certain constraints and as such, notice as contemplated under Sections 25 N and 25(O) does not arise and that the petitioner management never resorted to any retrenchment of the workers at any point of time and therefore, the respondents workers have no legal right either to raise the dispute under Section 2A or to file any claim petition under Section 33(C)(2) of the Act and the findings of the Labour Court on these issues, are perverse and liable to be set aside.

13. On the other hand, Mr.V.Prakash, learned senior counsel appearing for the workers would contend that the petitioner management closed the factory on 10.11.2004, which was proved as illegal closure by evidence since the witnesses examined on behalf of the petitioner management have not specifically denied the same and that the contention of the petitioner management that there was no closure, but suspension of operation w.e.f.12.10.2004 cannot be accepted since the suspension of lockout could be imposed only while the factory is operation, whereas, it is admitted fact that the factory was not in operation on 12.10.2004 and even if it is a lockout, the petitioner management ought to have re-inducted the workers with same service conditions when the lockout is lifted, but it is was not done when the factory was reopened on 2.5.2005. He also contended that in the case of closure, there would be cession of employee and employer relationship while during the lockout period, the employee and employer relationship would continue and therefore, since the relationship of the workers and the management is continued and as it has been proved that there was illegal closure of the factory since no notice as contemplated under Section 25(O) or 25(N) of the Act was issued nor any permission from the Government and therefore, when once the illegal closure of the factory was established, the workmen are entitled to get benefits under Section 25(O)(6) of the Act. He would also contend that the petitioner management entered into 18(1) Settlement with the trade union and terminated the service of all 482 workmen in the name of 'cession of employment' which would not fall within the categories mentioned in Section 2(oo) of the Act and therefore, it would amount to illegal

retrenchment and the non-compliance of Section 25(N) would render the termination of the workers void, illegal and inoperative. As regards the industrial dispute in I.D.No.37 of 2007 is concerned, the learned counsel would contend that the above said ID was raised by two other unions to which, the respondent workers were not the members and hence, the award passed therein, is no way connected to them. The learned counsel would contend that having issued notice, the respondent workers filed computation petitions under Chapter V-B of the Act, which were dealt with by the Labour Court in a proper perspective and passed the award, which requires no interference. He has further contended that already, earlier computation petitions were dealt with and passed award, the subsequent petitions in CP Nos.230 of 2011 filed by the respondent workers were maintainable as rightly held by the Labour Court while dismissing the interlocutory application filed by the petitioner management, is in perfectly in order and no interference is required and hence, he sought for dismissal of both the writ petitions.

14. In support of his contentions, learned senior counsel relied upon the following decisions, viz.,

i) "Management of Express Newspapers (P) Ltd. versus The Workers and others" reported in AIR 1963 SC 569, wherein, it has been held as under in para 14.

"14. ... In fact, Industrial Tribunals have been specially established in order to deal with industrial disputes in different places. That is one consideration which is relevant. The other consideration which is equally material is that a question of this complicated character cannot be satisfactorily dealt with merely on affidavits. The theoretical distinction between a closure and a lockout is well settled. In the case of a closure, the employer does not merely close down the place of business, but he closes the business itself; and so, the closure indicates the final and irrevocable termination of the business itself. Lockout, on the other hand, indicates the closure of the place of business and not the closure of business itself. Experience of Industrial Tribunals shows that the lockout is often used by the employer as a weapon in his armoury to compel the employees to accept his proposals just as a strike is a weapon in the armoury of the employees to compel the employer to accept their demands. Though the distinction between the two concepts is thus clear in theory, in actual practice it is not always easy to decide whether the act of closure really amounts to a closure properly so called, or whether it is a disguise for a lockout. In dealing with this question, industrial adjudication has to take into account several

relevant facts and these facts may be proved before the Industrial Tribunal either by oral evidence, or by documentary evidence and by evidence of conduct and circumstances. Whenever a serious dispute arises between an employer and his employees in regard to a closure which the employees allege is a lockout, the enquiry which follows is likely to be long and elaborate and the ultimate decision has always to depend on a careful examination of the whole of the relevant evidence."

ii) "General Labour Union (Red Flag) Bombay versus B.V.Chavan and others" reported in (1985) 1 SCC 312, wherein, it has been held by the Supreme Court as under:

"11. While examining whether the employer has imposed a lockout or has closed the industrial establishment, it is not necessary to approach the matter from this angle that the closure has to be irrevocable, final and permanent and that lockout is necessarily temporary or for a period. The employer may close down industrial activity bona fide on such eventualities as suffering continuous loss, no possibility of revival of business or inability for various other reasons to continue the industrial activity. There may be a closure for any of these reasons though these reasons are not exhaustive but are merely illustrative. To say that the closure must always be permanent and irrevocable is to ignore the causes which may have necessitated closure. Change of circumstances may encourage an employer to revive the industrial activity which was really intended to be closed....."

iii) "Clifton Electronics and Lt.Governor & Others" reported in "1996-II LLJ-1110", wherein, the High Court of Delhi, has held as under:

"Where the statutory requirement is making an application 90 days before the date of closure, in the instant case the closure was effect on March 31, 1993 while the application was dated April 26,1993, the closure is illegal. Section 25-O provides that workmen shall be entitled to all benefits under any law for the time being in force as if the undertaking had not been closed down. This apart of the sub-clause confers a right to the benefits. Benefits obviously include wages. If that be so, there is no need for any adjudication of the right to wages. What merely remained was the quantification of the amount for which Section 33-C(1) is applicable."

iv) "Management of Chemech Engineers (P) Ltd. Chennai versus

Presiding Officer, Principal Labour Court, Chennai" reported in 2012-LL-181, wherein, the a learned single Judge has held as under:

"Computation by Labour Court of benefits claimed by workmen upon closure of company was held valid and proper, as the factory engaging more than 100 workers was covered by chapter V-B of Industrial Disputes Act and approval for closure was not obtained by employer."

v) "Dhanalakshmi Mills Ltd. versus Presiding Officer, Labour Court, Coimbatore" reported in 2012-1-LLJ-673, wherein, a learned single Judge of this Court has held as under:

"If the claim for wages due made in application under Section 33-C(2) of the I.D.Act, was under Chapter V-A of the Act, jurisdiction of Court was not ousted merely because employer disputed the retrenchment."

vi) "Management of Sundram Fasteners Ltd. versus the Presiding Officer, Labour Court, Salem" reported in 2012-3-LLN-358, wherein, a learned single Judge of this Court has held as under:

"It is clearly pleaded that it is a factory covered by Chapter V-B of the Industrial Disputes Act and inasmuch as a prior approval under Section 25-N of the Industrial Disputes Act was not obtained, it is a clear case of illegal retrenchment and the workers are entitled to be continued in service."

vii) "Oswal Agro Furane Ltd., and another versus Oswal Agro Furane Workers Union & others" reported in (2005) 3 SCC 224, wherein, the Hon'ble Supreme Court has held as under:

"Prior permission constitutes a condition precedent for retrenchment and/or closure and is mandatory. Need for such permission is not obviated by settlement between employer and workmen under Section 18 r/w S.2(p) of the Act. Though a settlement within meaning of Section 18(3) r/w S.2(p) undoubtedly binds the workmen but this would not mean that thereby provisions contained in Ss.25-O and 25-N are not required to be complied with. An agreement which opposes public policy as laid down in Ss.25-O and 25-N would be void and of no effect, having regard to maxim ex turpi causa non oritur actio."

viii) "Sri Arunachaleswarar Mills versus Joint Secretary, Department of Industries and Labour, Chennai and others", reported in 2010-II-LLJ-783 (Mad), wherein, a learned single Judge of this Court, has held that as per Section 25-O of the Act, closure of undertaking

without prior permission was not binding on the workmen and that the settlement relied on by the management could not be upheld as it was contrary to statutory provisions and did not satisfy the tests of public policy under Section 23 of the Indian Contract Act and therefore, the workmen are entitled to benefits under Section 25-O(6) and recovery certificate under Section 33-C(1) of the Act.

15. Heard the learned counsel appearing for the petitioner management and the learned senior counsel appearing for the workmen.

16. The case of the petitioner is that due to adverse market volatile during the period 2002-2003, the order position rapidly declined progressively over a period of time, the petitioner management was not in a position to meet out the expenditure towards payment of wages to the workers who were kept idle, it was constrained for the petitioner management to suspend its manufacturing operations and accordingly, on 12.11.2004, a notice to this effect was put up on the notice board, which reads as under:

"It is a fact that this unit cannot be operated without the assistance of other companies. At the same time, when the order book position has come down, the possibility of other companies coming to the rescue of Floram has become remote. In the above circumstances, the company cannot run every month with borrowings. Hence with deep regret all the employees are informed that the operation of Floram is suspended from 12.11.2004 onwards. It is brought to the notice of the employees that on the basis of 'no work no pay', there will not be any payment or compensation during the period of suspension of operation. We wish to bring to your notice that the suspension of operations is brought about due to reasons beyond the control of the management."

17. Aggrieved over the same, the Floram Shoes Employees' Union, a recognized union, raised a dispute in conciliation before the Joint Commissioner of Labour, Chennai, who in turn, suggested the parties to resolve the dispute by negotiating themselves. While so, two other unions, viz., Leather and Leather Goods Democratic Union (affiliated to AICCTU) and Desiya Podu Thozhilalar Sangam (affiliated to INTUC) raised a dispute under Section 2K of the Act before the Joint Commissioner of Labour on the issue of 'closure'. This was resisted by the petitioner management and questioned the maintainability of the dispute on the ground that the said two unions were not recognized. However, in the mean time, on 2.3.2005, the petitioner management entered into a settlement under Section 18(1) of the Act, with the recognized union, i.e. Floram Shoes employees Union, wherein, the respondents workers are the members. The

relevant terms of the settlement are that, all workmen shall accept cessation of employment with effect from 12.11.2004, the factory would likely to be reopened on 25.2005 and if necessary arises, workers would be re-engaged on restructured wages and other monetary benefits, such as, gratuity, etc. In fact, by virtue of settlement, options were given to the workers, either to accept cessation of employment with effect from 12.11.2004 and receive monetary compensation in lieu thereof in full quit or to continue employment on restructured wages. Pursuant to the said settlement, the Union agreed not to press the issues raised before the Joint Commissioner of Labour and not to claim any other benefits for the period from 12.11.2004 when the suspension of operations was declared till the date of signing of the settlement. Out of total 482 workers of the Union, as many as 472 workers got the benefit and out of them, about 164 workmen were reengaged on restructured wages in the petitioner company in terms of the settlement while the remaining 318 workers accepted the compensation in lieu of agreeing cessation of employment with effect from 12.11.2004.

18. The dispute over the closure, raised by the Leather and Leather Goods Democratic Labour Union and INTUC was referred to adjudication by the Government of Tamil Nadu vide G.O.D.No.219 dated 14.3.2007 to the Industrial Tribunal, Chennai, which was taken on file as I.D.No.37 of 2007, which was subsequently dismissed for non-prosecution since the above said Unions had not participated in the proceedings.

19. While so, some of the workers (respondent-workers herein), who, in fact, accepted the terms of settlement dated 2.3.2005 have approached the Labour Court by way of computation petitions in C.P.Nos.164 of 2005, etc., alleging the closure of the petitioner company on and from 10.11.2004 as illegal, since the petitioner management without obtaining any permission from the Government of Tamil Nadu as provided under Section 25-N of the Act and it was not a lock-out as contended by the petitioner management, and claimed wages and other benefits from the date of alleged closure, i.e.10.11.2004. By order, dated 28.7.2011, the Labour Court has passed the award, which is impugned in the writ petition.

20. The main contention of the petitioner management is that they never resorted to any closure, but due to certain constraints as the management was not a position to run the factory, declared suspension of operation w.e.f. 12.11.2004 and it would not amount to closure.

21. Section 2(cc) of the Act defines "Closure", meaning, the permanent closing down of a place of employment or part thereof.

22. Section 2(1) of the Act defines "lock-out", means the temporary closing of a place of employment or the suspension of work, or the refusal by an employer to continue to employ any number of persons employed by him.

23. A reading of the above, it is clear that lock-out means a temporary suspension of work, whereas, closure means, permanent closing down of the place of employment. It is not in dispute that the petitioner management had issued notice of lock-out, on 12.11.2004 declaring the suspension of manufacturing operations and questioning the same, the recognized Floram Shoes Employees' Union raised a dispute in conciliation before the Joint Commissioner of Labour, Chennai. It is also pertinent to note that two other unions, viz., Leather and Leather Goods Democratic Labour Union and INTUC have also raised dispute under Section 2(k) of the Act. While pending the same, the petitioner management and the recognized Union had entered into Settlement under Section 18(1) of the Act on 2.3.2005. Consequent to the same, the dispute raised by the recognized union came to be withdrawn, while the disputes raised by two other unions came to be dismissed for non-prosecution. As on the date of filing of the computation petitions by the respondent/workers, already there was a settlement and no individual worker has questioned or raised the dispute regarding the validity of the settlement and further, there was no award or finding that the workmen are entitled to receive from the petitioner management any money or benefit which is capable of being computed in terms of money to enable the workmen to invoke Section 33(C) (2) of the Act.

24. The Labour Court is of the view that since the mandatory requirements under Sections 25-N and 25-O of the Act were not complied with by the petitioner management while resorting to suspension of operation, it cannot be construed as lockout, but it is a closure and there was illegal retrenchment of the respondent/workers.

25. The theoretical distinction between a closure and a lockout is well settled. In the case of a closure, the employer does not merely close down the place of business, but he opposes the business itself; and so, the closure indicates the final and irrevocable termination of the business itself. Lockout, on the other hand, indicates the closure of the place of business and not the closure of business itself. It is to be noted that 'closure' is a matter of policy of the employer, whether to run his business or not. The employer may close down an industrial activity bona fide on such eventualities as suffering continuous loss, no possibility of a revival of the business or an inability for various other reasons.

The word 'closure' means, perpetual, i.e. business can under no circumstances be revived till eternity.

26. In the present case, the petitioner management declared suspension of operation on 12.11.2004 and admittedly, the petitioner management has not resorted to termination of its employees. However, even presuming that there was a 'closure' as contended by the respondent/workers, it is relevant to determine whether such closure was a device or a pretence to terminate the services of the workmen or whether it is bona fide and far beyond the control of the employer, has to be decided on the evidence produced before the Court. On a perusal of the entire material and evidence as well as the award passed by the Labour Court, this Court finds that the Labour Court has not given any cogent reasons that the alleged closure resorted to by the petitioner management is not bona fide and tainted with mala fide intention to terminate the services of the workmen and the respondent/workers have not alleged that the so-called closure is not genuine one and merely alleging that the closure is illegal without assigning any reasons, it cannot be construed that it is illegal closure when the employer has proved that the suspension of operation was for bona fide reasons. On overall consideration of the facts and evidence available on record, this Court could analyse that in order to wriggle out the financial constraints and adverse market conditions which were prevailing during the material period due to which, the petitioner management was not in a position to continue the business operation, has genuinely resorted to 'suspension of operation' and a notice to that effect was put on board on 12.11.2004. Therefore, this Court is of the considered view that the petitioner Management has resorted to only 'suspension of operation' and not 'closure' as contended by the learned counsel for the respondent/workmen. The decision relied upon by the learned counsel for the respondents/workmen in "Sri Arunachaleswarar Mills" (cited supra), cannot be made applicable to the facts of the present case in view of the fact that in the present case, the petitioner management has only resorted to 'suspension of operation' and not closure, whereas, the above said decision deals with the 'closure' and since the management therein had resorted to 'closure' without prior permission, this Court held that the same was not binding on the workmen and the settlement relied on by the management could not be upheld as it was contrary to the statutory provisions. It is well settled law that the closure or stoppage of the whole or part of the business is the function of the management which is entirely in the discretion of the employer carrying on the business. The industrial adjudication cannot interfere with the discretion exercised by the employer in such a matter and it has no power to direct the employer to continue the whole or part of the business which the employer has decided to shut down. However, it is no doubt true and settled that if the employer resorted to closure, it is mandatory on his part to comply with all the requirements as envisaged under the Act.

27. It may be true that the petitioner management has declared suspension of operation in order to negotiate with the respondent/workers and as expected by it, the Union, representing the workers has come forward to settle the disputes by entering into the settlement which was arrived at amicably on 2.3.2005. It is to be noted that if the settlement was not arrived at and the industrial dispute regarding the so-called 'closure' was persuaded, the matter altogether would have been different and the consequences arose thereof, have to be borne by the petitioner management. It is reported that by way of settlement, the petitioner management has borne out more than Rs.3,12,30,000/- towards compensation of the claims of the workmen. It is not in dispute that the said settlement was accepted by majority, i.e. 479 workers out of 482 and thereby, it is held that the settlement is a valid one. It is settled law that the workmen, having received the amounts in full, quit all their claims, cannot question the same later and once an agreement under Section 18(1) was entered into which provided compensation in lieu of the claims of the workmen and the said agreement was acted upon, the parties to it, cannot turn round and say that it was not an agreement within the meaning of the provision of the Act and not binding on them. Therefore, once the agreement is acted upon, there was a performance of the terms and once it is so performed, even in part, would attract the principle of equitable estoppel.

28. In an establishment, wherein, more than 100 workmen are employed, falling within the meaning of the Act, it is mandatory on the part of the employer to get prior permission for laying off, retrenchment or closing down the establishment as contemplated under Sections 25-M, 25-N and 25-O of the Act and there is no need for the employee to raise an industrial dispute to claim wages or getting the said action of the employer bad in law by competent Court as contemplated by the Hon'ble Apex Court in "Jaipur Zila Sahakari Bhoomi Vikas Bank Limited versus Ram Gopal Sarma" reported in (2002) 2 SCC 244. But if it does not fall under the above said sections, the remedy is only to raise an industrial dispute except in case wherein, industrial dispute is pending and the employer do not take prior approval or permission of his action. It is to be noted that none of the conditions applied to the facts of the present case. In this case, in order to bring it within the ambit of retrench and closure, the respondent/workers have converted the original dispute, namely, 'suspension of work' into one of closure/retrenchment, which is condemnable. In this case, it is not in dispute that the recognized Union to which, the respondent/workers were the members, has ostensibly represented all the workers and finalized the settlement and having received the compensation by entering into settlement, the respondent/workers again came forward with the computation petitions, contending that there was illegal closure and that they were illegally terminated, which was erroneously allowed by the Labour Court, holding that the so-called settlement is not valid

in the light of non-compliance of Sections 25-N and 25-O of the Act, which in fact, relate to illegal retrenchment and closure of the establishment and as already held by this Court, the petitioner management has resorted only lock-out and there was no retrenchment of the workers and therefore, the finding of the Labour Court that the settlement is not valid and not binding upon, cannot be sustained. If the award of the Labour Court impugned in the writ petition is implemented, it would be nothing but amount to double jeopardy and cause great prejudice to the petitioner management since the petitioner has to bear more than Rs.5 Crores for implementation of the impugned award and in such event, there would be 'permanent closure' of the establishment.

29. For the all the fore going reasons, this Court is of the considered view that the award dated 28.7.2011 impugned in the writ petition in W.P.No.21656 of 2011 cannot be sustained and it is liable to be set aside and accordingly set side.

30. In the light of the main award itself is set aside, consequently, the order, dated 22.5.2012 impugned in the writ petition in W.P.No.16285 of 2012 is also liable to be set aside and accordingly, it is set aside.

In the result, both the Writ Petitions are allowed as prayed for. No costs. Consequently, connected MPs are closed.

Sd/-

Assistant Registrar

Dated:12.1.15

True Copy

Sub Assistant Registrar

To

1.The Presiding Officer, Principal Labour Court, Vellore.

2.The presiding Officer, Additional Labour Court, Vellore.

+1 cc to M/s.Gupta & Ravi, Advocate,SR.63381.

ksj(co)

krd 21/1

PRE DELIVERY COMMON ORDER
IN W.P.NOS.21656 OF 2011 AND
W.P.NO.16285 OF 2012