

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 24.04.2019

DELIVERED ON: 29.04.2019

CORAM

THE HONOURABLE MR.JUSTICE V. PARTHIBAN

W.P.No.14998 of 2011 and

M.P.No.1 of 2011 and

M.P.No.1 of 2015

The Management,  
Cheyyar Coop.Sugar Mills Ltd.,  
represented by its Administrator,  
Anakkavur,  
Thiruvannamalai District. .... Petitioner

Vs.

1. The Presiding Officer,  
Additional Labour Court,  
Vellore District.  
Vellore.
2. The Dhina Kooli Thozhilalar Sangam,  
represented by the Secretary, J.Ravindran,  
Cheyyar Coop.Sugar Mill, Anakkavur,  
Thiruvannamalai District. .... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of certiorari, calling for the records culminating in the award dated 08.09.2009 in I.D.No.70 of 2004 on the file of the first respondent and to quash the same.

For Petitioner : Mrs.G.Thilakavathi  
Senior Counsel for  
Mr.R.Gophinath

For Respondent-2 : Mrs.D.Geetha

For Respondent-1 : Court

## O R D E R

The writ petition is directed against the award dated 08.09.2009, passed in I.D.No.70 of 2004, by the Additional Labour Court, Vellore, Vellore District.

2.The petitioner herein is the Management of the Sugar Mill and the members of the second respondent Workers' Union were the employees of the petitioner Management.

3.The first respondent Labour Court was called upon to decide two terms of reference by the Government which are stated herein:

(i)Whether the demands that the occupational wages should be paid to the (Dinakooli Thozhilalar) casual Labourers as per the clause 9 of the Section 12(3) agreement dated 28.09.1989 entered into between the Management of all the sugar Mills and the workmen represented by various unions are justified? If not so, give appropriate directions.

(ii)Whether the demand that, the seniority list for casual Labourers should be prepared, and the casual Labourers should be absorbed in the permanent vacancies as per the seniority list and according to the staffing pattern is justified? If not so, give appropriate directions.

4.As per the above terms, the first respondent Labour Court was entrusted with the task of adjudicating the dispute as to whether the members of the second respondent Sangam are entitled to 'Occupational Wages' from 1989 in terms of 12(3) settlement, dated 28.09.1989 and also whether they are entitled to be absorbed as permanent workers in the petitioner Management.

5.The first respondent Labour Court, after adverting to various materials placed on record and also the evidence let in on behalf of both the workmen as well as the Management, had answered both the references in favour of the workmen. The first respondent Labour court passed an award holding that the members of the second respondent Sangam were entitled to occupational wages in accordance with Clause 9 of 12(3) settlement, dated 28.09.1989, and further held that the members of the second respondent Sangam were entitled to have seniority list drawn in accordance with the records available with the petitioner Management and were also entitled to be absorbed in their particular areas of skill. The said award, answering the terms of reference in favour of the workmen, is put to challenge in the present writ petition.

6.Mrs.G.Thilagavathi, learned Senior Advocate, appearing for the petitioner Management would assail the award on the following grounds:

(1)The petitioner Sugar Mill was established only in the year 1991 and therefore, the 12(3) settlement entered into between the various Managements and the workmen on 28.09.1989, under the provisions of the ID Act, cannot be made applicable to the petitioner establishment.

(2)The members of the second respondent Sangam, who were employed on daily wage basis, on the basis of exigencies of work, were not entitled to occupational wages, as applicable to other employees. The members of the second respondent Sangam were seasonal workers, engaged on and off by the Management and hence, the benefit of 12(3) settlement cannot be made applicable to them.

(3)In any event, the question of granting occupational wages, as per the award of the Labour Court, from 1989 would not arise in this case, since, the petitioner Mill itself was established only in the year 1991.

(4)The direction of the Labour Court for drawing up of seniority list of Casual employees for the purpose of their absorption is unsustainable for the reasons that the regular appointment of employees in the petitioner Management is governed by Special By-Laws applicable to the Mill and also governed by various Government Orders issued on the subject matter from time to time for regularizing Casual employees.

(5)The members of the second respondent Sangam were not appointed through Employment Exchange and they were recruited through back door and therefore, they are not entitled to be absorbed in the petitioner Management.

(6)The members of the second respondent Sangam were recruited and employed on the basis of exigencies of work as seasonal workers and therefore, they cannot stake any claim for regular employment with the petitioner Management.

(7)In any case, approval of the Government is required for absorption of the Casual employees and unless or until such approval is granted, the petitioner Management, on its own, cannot absorb the Casual employees, as directed by the first respondent Labour Court in its impugned award.

(8)On the whole, the award passed by the Labour Court is unsustainable both on Law and on facts and hence, liable to be interfered with.

7.The learned Senior Counsel elaborately made submissions as above. She would also submit that the staffing pattern of the petitioner establishment is revised from time to time, depending on the availability of work in each category of employment. She

would draw the attention of this Court to the communication issued by the Commissioner of Sugar and Registrar of Cooperative Societies, Cooperative Sugar Mills, dated 10.11.1999, approving various categories of posts, numbering about 500. She would also draw the attention of this Court to yet another communication dated 01.10.2005, wherein it was mentioned that the total strength of the Mill employees, as per the staffing pattern of 2005, was 496. These communications were shown to this Court in order to contend that the absorption of Casual employees is not possible, since the staffing pattern has to be followed as per the Government directives.

8.The learned Senior Counsel would also draw the attention of this Court to the communication dated 17.03.2011, addressed to the Commissioner of Sugar Mills, regarding regularization of the Casual employees. In the communication, the petitioner Management has sought approval for absorption, after the award was passed by the first respondent/Labour Court. In fact, according to the learned Senior Counsel, unless the Government accepts the proposal for absorption, the petitioner Management, on its own, cannot take any initiative towards absorption of the Casual employees, who are members of the second respondent Sangam. While making submissions, the learned Senior Counsel has also fairly admitted that the members of the Sangam have been employed continuously since 1991 on the basis of exigency of work. She would particularly rely on Special By-Law 6 of the petitioner Mill, which would run thus:

"6.No appointment by direct recruitment to the post under several categories of service of the society except those who are employed on the basis of daily or weekly wages shall be made without notifying the vacancies to the Employment Exchange concerned and if suitable persons are not sponsored by the Employment Exchange by inviting application by advertisement in atleast one leading daily newspaper.

9.According to the learned Senior Counsel, admittedly the members of the second respondent Sangam were not sponsored by the Employment Exchange and therefore, the question of regularizing their services would not arise at all. According to her, the Labour Court has not considered this aspect in the right perspective and in the said circumstances, the ultimate award passed by the Labour Court, directing absorption of the members of the second respondent Sangam, is untenable and cannot be countenanced in law.

10.The learned Senior Counsel would further submit that the Special By Laws provide for various categories of staff and also prescribe minimum qualification and experience. The Casual employees cannot be fitted into those categories of staffing pattern, as provided under the Special By Laws and in such circumstances, the question of absorption of Casual employees, cannot be considered at all to be feasible of compliance.

11.On the other hand, Mrs.D.Geetha, the learned counsel appearing for the second respondent Sangam would submit that the award passed by the Labour Court is well founded and directions were issued by the Labour Court on the basis of concrete materials which came up for consideration before it. The Labour Court has adverted to all the materials and evidence placed on record and has come to a definite conclusion that the claims of the members of the second respondent Sangam were fully justified. She would in fact draw the attention of this Court to several passages of the award passed by the Labour Court, wherein the Labour Court has appreciated every material produced which were germane to the terms of reference and allowed the claim of the workmen. She would submit that the Labour Court has come to the conclusion on the basis of the admitted facts that there was 12(3) settlement, which was entered into in 1989, as per which, the workmen were entitled to be granted occupational wages. Since, 12(3) settlement has been entered into between the Management and the workmen, it is binding on all parties and the same cannot be denied to the members of the second respondent Sangam. The ultimate answer in favour of the employees of their entitlement of occupational wages cannot be faulted at all. According to her, it is more than well established before the Labour Court that the members of the Sangam are entitled to the occupational wages on par with other workmen if not from 1989, or at least from 1991 when the petitioner Mill was established. In any event according to the learned counsel, the Government has passed an order in G.O.Ms.No.151, dated 30.10.2010, granting occupational wages to all NMRs and Casual Labourers and the benefit had been extended to all the workmen including the members of the second respondent Sangam. However, she would submit that by virtue of 12(3) settlement entered into between the Management and the Workmen, in 1989, all the workmen are entitled to be granted occupational wages not from 2010, but the date they were originally engaged by the first respondent Management.

12.On the aspect of regularisation or absorption of service, the learned counsel would submit that it is an admitted fact that the members of the second respondent Sangam have been

continuously employed from 1991 i.e. from day one of the Establishment of the petitioner Mill. Since admittedly these members have been working from 1991 and they having gained vast experience in their respective field of job, the first respondent/Labour Court felt that their claim for absorption was fully justified and therefore directed absorption of the members of the second respondent Sangam. When the award was passed in 2009, the members of the second respondent Sangam had put in nearly 19 years of service continuously and therefore, in all fairness, the members of the second respondent Sangam are entitled to be considered for absorption. The learned counsel would submit that after having extracted work from the members for nearly 30 years, now it is no more open to the petitioner Management insists on the application of Special By-Law.6 i.e. the members of the second respondent Sangam were not sponsored by the Employment Exchange.

13.The learned counsel would also submit that once the workmen were employed for nearly 30 years, the Management cannot turn around and would deny the benefit of absorption only on the ground that they were not originally sponsored by the Employment Exchange. After all, these workers were also responsible for operational success of the petitioner Management for all these years.

14.The learned counsel would draw the attention of this Court to the observations of the Labour Court in favour of the workers in Paragraph No.88, which is extracted hereunder:-

"88.I must state that the issue should have been resolved through an In-house committee which should have drawn up the seniority list at the earliest and engaged workers in accordance with rules. Having permitted ay to day Labour with the sole objective to cutting down on wage payment and to avoid payment of statutory benefits payable to regular workers, the respondent cannot now turn around and lay the blame on the very workers who have helped the respondent mill to survive all these years"

15.The learned counsel for the workmen would also refer to two documents, a Letter of the Government, dated 10.11.2014 and G.O.Ms.No.250, dated 24.12.2014, wherein the Government had taken a decision to grant relaxation towards absorption of the NMR employees, employed in the Sugar Mill.

16. In the first letter dated 10.11.2014, a decision was taken to grant relaxation to the NMR employees, who were not sponsored by the Employment Exchange. In the second G.O.Ms.No.250, dated 24.12.2014, relaxation of Educational qualification was recommended for promotion as one time measure. She would therefore submit that such relaxation and approval can be given for absorbing these members also on the same analogy. According to the learned counsel, by granting the benefit of absorption to the members of the second respondent Sangam, who have been employed for nearly 30 years, only the petitioner Mill would be benefited by the vast experience of the members. In fact, public interest is better served if the services of the existing workers are to be utilised, as their experience could come in handy for effective functioning of the Sugar Mill, instead of recruiting any fresh hands from the open market, who would have no experience at all.

17. As regards the sponsorship through Employment Exchange, the learned counsel would rely on the decision of this Court in 1. Hindustan Petroleum Corporation Ltd., rep. by its Chairman cum Managing Director and another vs. 1. The Presiding Officer, Central Government Labour Court cum Industrial Tribunal, Shastri Bhavan, Chennai and another [2008 (4) CTC 819]. She would refer to Paragraph No.34 of the decision, wherein, the learned Judge of this Court has held that for unskilled work, an exemption is available under Section 3 of the Employment Exchange (Compulsory Notification of Vacancies) Act, 1959. Paragraph No.34 of the order is reproduced hereunder:

"34. Admittedly, the workmen were all either sweepers or scavengers or cleaners. Under Section 3 of the Employment Exchanges (Compulsory Notification of Vacancies) Act, 1959, any employment to do unskilled officer work has been exempted from the purview of the said Act. It is also not shown that the workmen were not appointed by the Appropriate Authority."

Therefore, the learned counsel for the second respondent Sangam would submit that the members of the second respondent Sangam were only being unskilled workers and therefore, the Employment Exchange sponsorship was not required at all. She would, therefore, submit that the Labour Court, after considering all the relevant materials and the justifiable basis for the claim of the workmen, had answered both the terms of reference in favour of the workmen. The finding of the Labour Court is well founded and does not call for any interference by this Court.

18. By reply, the learned Senior counsel appearing for the

petitioner Management would submit that if absorption is granted to all the Casual employees, the same would create serious financial implications and the petitioner Mill would be unable to bare such burden. Therefore, she would submit that the Labour Court failed to take note of the financial burden, which would be cast on the Management if the absorption is to take place in respect of all the members of the second respondent Sangam.

19.However, the learned counsel appearing for the second respondent Sangam would submit that once the right of the workmen is established for absorption, the financial implications cannot be the reason for denying such right, as stated by the Hon'ble Supreme Court of India. She would rely on a decision of the Hon'ble Supreme Court in the case in South Malabar Gramin Bank vs. Coordination Committee of South Malabar Gramin Bank Employees' Union and South Malabar Gramin Bank Officers' Federation and others [(2001) 4 SCC 101]. She would particularly draw reference to the observation of the Hon'ble Supreme Court on the above aspect in Paragraph No.12, which would run thus:

"12.The next question that arises for consideration is whether the financial condition of the Regional Rural Banks could be a vital consideration for the Central Government in determining the pay structure of the employees of the Regional Rural Banks? Both Mr. Rao, appearing for the bank as well as Mr. Salve, appearing for the Union of India had vehemently urged before us that the financial condition of the Regional Rural Banks is such that it would not be possible for the Union of India to give them the pay structure of the employees of the Nationalised Commercial Banks. In support of this contention, several decisions of this Court had been placed before us. In Express Newspapers (Private) Ltd., and anr. Vs. The Union of India and Ors., 1959 S.C.R. Page 12, while deciding the Constitutional validity of the Working Journalists (Conditions of Service) and Miscellaneous Provisions Act, 1955 and the legality of the decision of the Wage Board constituted thereunder purporting to act under Section 9 of the Act, no doubt construed Section 9(1) of the said Act and held that it was incumbent on the Wage Board to take into consideration the capacity of the newspaper industry to pay the rates and scales of wages recommended by it. The observation of this Court was in the context of construing Section 9(1) of the Act and the language used therein, which indicated the

prevalent rate of wages for comparable employment. Under the Regional Rural Banks Act, while conferring power upon the Central Government to determine the pay structure of the employees of the Regional Rural Banks, there has been no whisper that the financial condition of the bank or capacity of the employer to pay, would be a germane consideration. The aforesaid decision, therefore is of no assistance to the appellant. In the case of Standard Vacuum Refining Co. of India vs. Its Workmen and anr., , the question for consideration was whether the employees were entitled to Bonus? In that case the Industrial Tribunal, in a dispute held that the wages paid were fair but there was still a gap between the actual wage and the living wage and as such awarded bonus equivalent to five months' basic wage. When that award was assailed before the Supreme Court and a plea was raised that no bonus could be payable when the employees are being paid the living wage standard, the Court had observed while proceeding to examine the merits of the contention that the employees are being paid a living wage:

"Considerations of the financial position of the employer and the state of national economy have their say, and the requirements of a workman living in a civilised and progressive society also come to be recognised."

But the aforesaid observations bereft of the context in which the observations have been made, will be of no universal application and at any time would have no application to the case in hand, where the aforesaid contention raised on behalf of the employer was considered and negatived by the tribunal, appointed to decide the dispute between the parties and that award of the tribunal instead of being challenged, has already been implemented. In The Hindustan Times Ltd., New Delhi Vs. Their Workmen, , again an award of an Industrial Tribunal was subject matter of challenge before the Court. The dispute before the tribunal was in relation to the pay, dearness allowance, adjustments, leave rules, gratuity as well as the working hours and age of retirement. In considering the legality of the award and after referring to the earlier decision of the Court in Standard Vacuum Refining Co., which we have already noticed, this Court had observed the difference between the minimum basic

wage and the fair wage and above the same, the living wage and it is in that context, the Court, no doubt had made the observations that their exist need of considering the problem on an industry-cum-region basis and on giving careful consideration to the ability of the industry to pay. But the aforesaid observations cannot be pressed into service in the case in hand, where the award of Justice Obul Reddi tribunal, unhesitatingly negatived the aforesaid stand of the employer and came to the positive conclusion after elaborate discussions of the purpose for which these banks were established and how a case of very special nature concerning the employees of a banking industry, claiming parity with the salary structure of the employees of a sister banking industry is being considered and ultimately, the tribunal had observed that the Act has been enacted in fulfilment of the hopes and aspirations aroused in the preamble and the Directive Principles of the Constitution and, therefore, the performance of such institutions in furtherance of those principles is not required to be judged from the curved angle of viability or from the point of view of a private money lender or businessman or from mere profit and loss statement. At any rate, the aforesaid decision of the tribunal in the form of an award was implemented by the Central Government and, therefore, having implemented the same, it would not be permissible for the employer-bank or the Union of India to take such a plea in the present proceedings. In Jacob M. Puthuparambil and Ors. Vs. Kerala Water Authority and Ors., , the Court was considering the regularisation of employees serving for a reasonably long period having requisite qualification for the job. While indicating what the preamble of the Constitution obligates the State to secure to all citizens and while stating how the Directive Principles of State Policy engrafted in Part IV of the Constitution, reflect the hopes and aspirations of the people, the Court had observed:-

"This part, therefore, mandates that the State shall strive to promote the welfare of the people by minimising the inequalities in income and eliminating inequalities in status, facilities and opportunities; by directing its policy towards securing, amongst others, the distribution of the material resources of the community to

subserve the common good; by so operating the economic system as not to result in concentration of wealth; and by making effective provision for securing the right to work as also to public assistance in cases of unemployment, albeit within the limits of its economic capacities."

It is this expression "within the limits of its economic capacities" in the aforesaid case on which Mr. Rao, the learned senior counsel for the bank strongly relied upon in support of his contention that the financial capacity must be held to be a vital factor in determining the wage structure of the employees of the Regional Rural Banks. We are afraid, this decision is also of no assistance to the contentions raised inasmuch as in the dispute between the employer and the employees which stood resolved by an award of the tribunal (Justice Obul Reddi), one of the contentions was whether the financial viability would be the sole criterion in deciding the wage structure of the RRB employees, which was point No. 10 for consideration before the tribunal and after an elaborate consideration of the relevant stand point as well as the evidence laid by the parties on the point, the tribunal ultimately observed:

"4.239. Now we are dealing with a case of special nature concerning the employees of a banking industry claiming parity with the salary structure of employees of a sister banking industry, which alone is comparable in terms of duties, functions and responsibilities. The RRB Act places special emphasis on the development of rural economy by providing credit and other facilities to productive activities in the rural areas, particularly to small and marginal farmers, agricultural labourers, artisans and small entrepreneurs, and for matters connected therewith and incidental thereto. The reasons and objects of the Act provide a highway for the social welfare and common good of the rural poor living in the priority sector. The preamble of the Constitution envisages to all citizens social, economic and political justice. Article 38 in Part IV enjoins on the State to promote the welfare of the people and to bring about a social order where social, economic and political justice prevail in

all the institutions of national life. In particular, the State is asked to strive to minimise the inequalities in income and eliminate inequalities in status. The RRBs have brought about socio-economic revolution in the hitherto-Unbanked under-developed priority sector by ameliorating the poverty conditions of the under-privileged, SC/ST and other weaker sections of the society. That is the paramount objective of the Act. It should not be lost sight of the fact that the total losses suffered by rural branches of commercial banks is undeniably more than the total losses suffered by the RRBs. But the losses of the rural branches of commercial banks are made up by the other branches in semi-urban and urban areas and the RRBs unfortunately for them cannot transfer the losses to their sponsor banks. The object and purpose is the economic development of the target groups and the achievements in that field certainly outweigh considerations of viability or losses. When the losses are on the increase even in the rural branches of commercial banks, the RRBs alone cannot be signled out to bear the cross. I can find no better authority than the Chairman of the NABARD who categorically stated that the "ghost of profitability" should not haunt us in judging the performance of the RRBs. Establishment of RRBs is a national commitment in the direction of ushering in a welfare State, and that is a mandate of the Constitution. It is in fulfilment of the hopes and aspirations aroused in the preamble and the Directive Principles of the Constitution that the RRB Act has been enacted and the performance of such institutions in furtherance of those principles, shall not be judged from the curved angle of viability or from the point of view of a private money lender or businessman or from mere profit and loss statements."

This conclusion of the tribunal has become final, the award in question not having been assailed and on the other hand having been implemented. In the aforesaid premises, it is a futile attempt on the part of the employer as well as the Union of India to re-agitate the dispute, which has already been resolved and has been given effect to. In our considered opinion, therefore, the aforesaid contention on behalf

of the appellant cannot be sustained and it would no longer be open, either for the bank or the Union of India to raise a contention that in determining the wage structure of the employees of the RRBs, the financial condition would be a relevant factor."

20. The learned counsel would also cite another decision of the Hon'ble Supreme Court in the case in All India Regional Rural Bank Officers Federation and others vs. Government of India and Others [(2002)3 SCC 554], wherein, the Hon'ble Supreme Court of India would make similar observation in paragraph No.4, which is also extracted hereunder:

"4. Mr. Mukul Rohtagi, the learned Additional Solicitor General, however tried to impress upon us the circumstances under which the notification had been issued, the same being severe financial crisis and the learned Additional Solicitor General further urged that the monetary benefits of the employees of the bank will have to be so modulated so that the banks should not ultimately be closed down by merely paying the salary of the employees. Even though the financial position of the banks may not be disputed, but having regard to the directions issued by this Court, while disposing of the civil appeal and having regard to the circumstances under which such directions had been given, it would be difficult for us to sustain the plea of the Union Government that the Notification is in compliance with the judgment and directions of this Court. The financial capacity of the Government cannot be pleaded as a ground for non-implementation of the directions of the Court inasmuch as even in the matter of determination of the pay-scale of the employees of the Regional Rural Banks and maintenance of parity with their counterparts, serving under the sponsorer commercial banks, Justice Obul Reddi had not accepted the said plea and that award reached its finality. Since the financial capacity of the employer cannot be held to be a germane consideration for determination of the wage structure of the employees and the Parliament enacted the Act for bringing into existence these regional rural banks with the idea of helping the rural mass of the country, the employees of such rural banks cannot suffer on account of financial incapacity of the employer. We have no hesitation in coming to the conclusion that the issuance of notification dated 1.4.2001, by the Government of India cannot be held to

be in compliance with the judgment and directions of this Court in Civil Appeal No. 2218 of 1999. But at the same time, we are of the opinion that the appropriate authority need not be punished under the provisions of the Contempt of Courts Act, even if the notification is in direct contravention of the judgment of this Court, as we do not find a case of deliberate violation. While, therefore, we do not propose to take any action against the alleged contemnors, we direct that the employees of the Regional Rural Banks should be paid their current salaries on the basis of determination made under the notification dated 11.4.2001, the new basic pay having arrived at, as on 1.4.2000 forthwith Paragraph (i) of the aforesaid notification dated 11.4.2001 should be immediately implemented and the employees should be paid accordingly. Paragraphs (ii) and (iii) of the notification are quashed and the Central Government is directed to issue a fresh notification for proper implementation of the Judgment of this Court. We make it clear that the period of moratorium with regard to the payment of arrears, since is going to be over on 31.3.2002, the arrear salary accruing to the employees be paid to them in three equal annual installments, the first being on 30th of April, 2002, the second on 30th of April, 2003 and the third on 30th April, 2004. This payment has to be made as aforesaid without being any way dependant upon any other considerations and there cannot be any distinction between the regional rural banks incurring loss and the regional rural banks, making profit. Further, the question of anticipated cash out-flow on account of increase in salary if exceeds 50% of the operating profit, then the current payment would be restricted only upto 50% is absolutely of no relevance, which was indicated in the impugned notification dated 11.4.2001. Having regard to the financial condition of the Government as well as these banks, the installment to be paid on 30.4.2002, pursuant to this order of ours, the same may be deposited in the employees' provident fund account. But all other installments will have to be paid in cash."

21. The learned counsel for the second respondent Sangam would therefore submit that the financial implications can never be the consideration for resisting the otherwise legitimate right of the workmen for their entitlement either for payment of 'occupational wages' or for 'absorption' in regular service.

22. Heard the learned Senior Counsel for the petitioner Management and the learned counsel appearing for the second respondent Sangam. Perused the materials placed on record.

23. After perusing the award passed by the Labour Court and the answers to the terms of reference, this Court finds at the outset that the first respondent/Labour Court has given elaborate and extraordinary finding on each aspect of the issue raised for adjudication. It is in fact well written award by the first respondent/Labour Court considering the claims of the workmen on the basis of concrete materials and the evidence made available before it. The award of the Labour Court is extremely sound in terms of factual and legal application on the basis of the claim of the workmen, which leaves no scope for any interference at all by this Court.

24. In any event, this Court independently has to take into consideration the submissions made on behalf of both the Management as well as on behalf of the workmen. Admittedly, the members of the second respondent Sangam have been working since 1991 when the Petitioner Mill was established and although the members were described as 'Seasonal and Casual employees', yet for nearly 30 years, the members have been employed.

25. As regards the main issue of absorption is concerned, the bone of contention from the Management side is that the Mill is governed by Special by-Laws, which provide for recruitment of regular employees only through Employment Exchange. Further, the recruitment of regular employees can be done only on the basis of approval granted by the Government and the communal roster has to be followed in making regular recruitment. The members of the second respondent Sangam, who were recruited through back door, cannot seek absorption, as their initial recruitment itself was not as per Rules.

26. Further, the contention of the Management is that the direction for absorption cannot be implemented for the reason that the the Special By-Laws provide for various qualifications and skills for various categories of employment and the Casual employees, who have been engaged on the basis of exigencies of service, cannot be fitted into the regular posts.

27. The above submissions made on behalf of the Management appear to be legitimate at a first blush. But, when the same is juxtaposed to the facts of this case, it could be seen that the said contention and objection raised on behalf of the Management cannot be a tenable basis for interfering with the award or denying the just claim of the workmen. The workmen have

been employed admittedly for nearly 30 years and by virtue of their long employment, they have gained vast and immense experience in the respective fields of work and such experience gained by the workmen would only enure to the operational success of the petitioner Mill and would ultimately serve public purpose.

28.As rightly contended by the learned counsel for the workmen, the petitioner Mill would stand to gain substantially if the experienced hands are made permanent, instead of rigidly sticking to the stand of recruiting persons through Employment Exchange, who would have no experience at all. In any event, it is too late in the day for the Management to apply the Employment Exchange Rule to these workmen, when the Management has continued them for nearly 30 years and extracted work from them.

29.Even otherwise, the very fact of employment of these members, even on seasonal basis, for nearly 30 years would demonstrate the fact that the petitioner Mill is in need of their employment continuously. When such is the situation, this Court is unable to comprehend or appreciate as to why the petitioner Mill is shy away from taking the claim of the workmen to its favourable end by absorbing them wherever there is employment. In fact, the Labour Court itself has observed in Paragraph No.88, which was extracted above, that the Management ought to have resolved the entire issue through In-house Committee, by drawing up of proper seniority list and by absorbing the workmen. In any case, the petitioner has pleaded that their hands are tied in view of non-approval by the Government for absorbing the Casual employees.

30.This is the fittest case, in which, the petitioner Mill has to move proposals for the absorption of the workmen to the extent possible on the basis of the seniority list to be drawn up in compliance with the directions passed by the Labour Court in the impugned award. In fact, the learned counsel for the workmen would draw the attention of this Court to number of categories of posts as per the Special By-Laws that are available like Attender, Caretaker-cum-Cook, Gardener, Sweeper, Scavenger, Orderly, Cleaner, Helper etc. The qualification prescribed for these posts is either 8<sup>th</sup> standard pass or must be a literate.

31.In the said circumstances, it cannot be gainsaid by the Management that posts are not available in order to accommodate the members of the second respondent Sangam on a regular basis. In fact, as per the staffing pattern indicated

in 2005 communication, 95 vacancies were available. In fact, the petitioner Mill itself has addressed a letter on 01.10.2005 to the Director of Sugar Mills, seeking approval of exemption for regularisation of Casual Labourers, without reference to Employment Exchange.

32.It appears that the Petitioner Mill itself has taken some initiative in this direction, but it is unfortunate that despite such initiative on the part of the petitioner Mill and also despite the fact that the claim of the workmen is fully justified, there was no action forthcoming from the Government in favour of the employees.

33.In fact, as argued by the learned counsels appearing for the parties, the Government did issue letters and orders granting relaxation of qualification etc., for absorption of NMRS and Mazdoors employed in Sugar Mills. However, such orders were not issued in favour of the Casual Employees. In fact, the learned Senior Counsel appearing for the petitioner Management would attempt to distinguish between the letter of the Government dated 10.11.2014 and G.O.Ms.No.250, dated 24.12.2014, issued by the Government granting relaxation stating that these instructions were only in respect of NMRS and Mazdoors and not Casual employees.

34.This Court is not inclined to accept such argument that Casual employees cannot be treated on par with NMRS or Mazdoors, as they are completely different category of workmen. In any event, whatever be the nomenclature, the fact remains that these members of the second respondent Sangam have been employed continuously for nearly 30 years and denied all benefits, that are admissible to other regular employees employed in the Sugar Mill.

35.This Court is in agreement with the submissions made on behalf of the workmen that the financial implication can never be the reason for resisting the claim of the employees, when otherwise they are entitled to certain benefits. In fact, the decisions relied on by the learned counsel for the workmen are directly on the point and therefore, the submission made by the learned Senior counsel in regard to the financial burden does not merit any serious consideration by this Court.

36.As regards the other issue of 'occupational wages' is concerned, the Government itself has recognised the anomaly and issued G.O.No.151, dated 30.10.2010, granting occupational wages to all NMRS and Casual Labourers. Once the anomaly was recognised by the Government itself, the claim of the workmen

for grant of occupational wages from the date when they were engaged by the petitioner establishment stands justified.

37. Admittedly, the 12(3) settlement entered into between the Management and the workmen, dated 28.09.1989, would cover all the workmen. There appears to be a dispute as to whether the members of the Sangam were entitled to occupational wages from 1989 or 1991. According to the learned Senior counsel for the petitioner Mill, the Mill itself was started only in 1991. On the other hand, the case of the workmen was that they were engaged from 1989 even earlier when the Mill was being constructed. In any event, without entering into those factual disputes, this Court is of the view that in view of the binding nature of 12(3) settlement, entered into in 1989 itself, the workmen were entitled to occupational wages from 1991 when they were initially engaged by the petitioner Mill.

38. In fact, during the course of the arguments, the learned counsel for the workmen submitted that some of the employees have also retired and if the occupational wages is ordered from 1989 or 1991, they would be entitled to the arrears of differential wages.

39. The finding of the Labour Court with regard to the grant of occupational wages is also well founded and does not call for any interference. Even considering independently, this Court feels that the workmen have made out a case for grant of occupational wages in all force, from day one when they were engaged by the petitioner Management.

40. For the above said reasons, this Court finds that the award passed by the Labour Court does not call for any interference, as the same is well rooted and concretely founded both on facts as well as on legal aspects. While upholding the award, this Court would like to make a further direction to the Petitioner Management to approach the competent authority to initiate further action for absorption of the members of the second respondent Sangam, after drawing necessary seniority list and obtain necessary relaxation for their absorption.

41. As regards the payment of occupational wages is concerned, the workmen are entitled to be paid occupational wages from 1991, as they were originally engaged by the petitioner Management in terms of Clause 9 of 12(3) settlement dated 28.09.1989 (Ex.W1). The petitioner Management is directed to implement the award by granting both the reliefs to the petitioner i.e. occupational wages and also absorption, within a period of three months from the date of receipt of copy of this

order.

42.It is also clarified that the Management shall also disburse the differential arrears of 'occupational wages' to the existing workmen as well as to the retired workmen or to their legal heirs, as the case may be.

In fine, the writ petition stands dismissed. No costs. Connected miscellaneous petitions are closed.

-Sd/-

Assistant Registrar

// True Copy //

Sub Assistant Registrar -

To

The Additional Labour Court,  
Vellore,  
Vellore District.

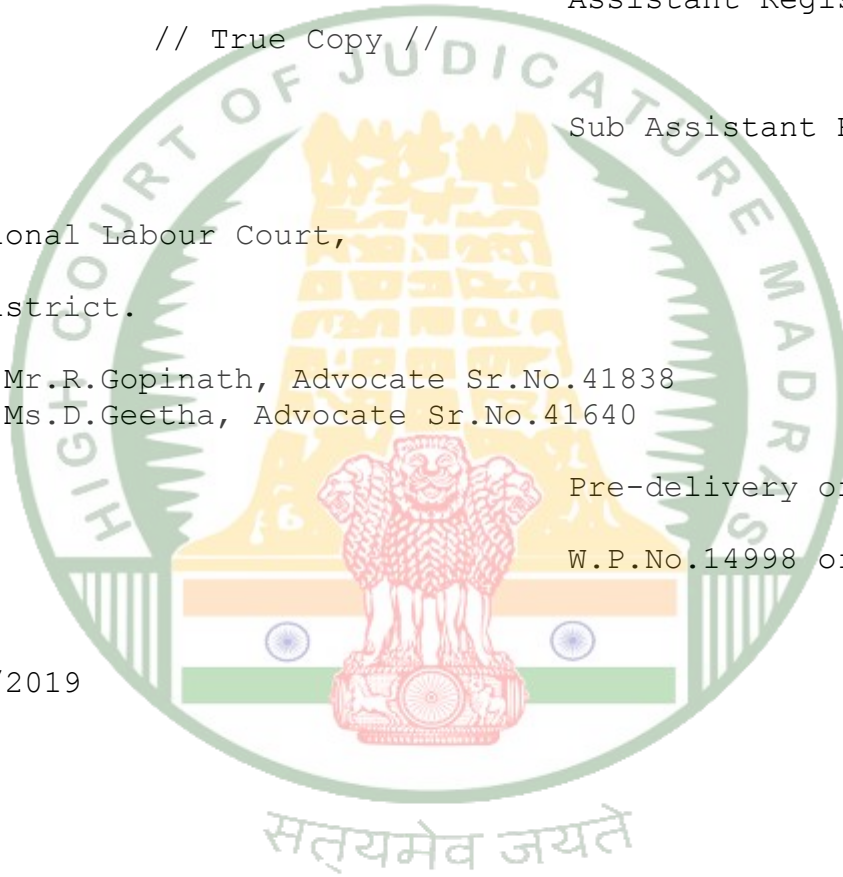
- 1 cc to Mr.R.Gopinath, Advocate Sr.No.41838
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Pre-delivery order in

W.P.No.14998 of 2011

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RRI 08/06/2019



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