

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.09.2020.

C O R A M

THE HONOURABLE MR.JUSTICE M. GOVINDARAJ

C.M.A NO.1921 of 2016

1. Pondicherry Hindustan Limited
Thozhilalar Sangham
Reg No.970/RTU/95
represented by its President
S.Pnnirdasse,
Registered office at No.207
LIG Housing Board, Kurumbapet
Muthirayarpalayam (post)
Puducherry-9

2.S.Pannirdasse

3.V.Valarmathi

4.T.Govindhan

5.N.Kathirvel

6.P.Rajasekar

7.S,Sangaiyan

8.B.Shyamala

9.P.Meenatchi Sundaram

10.S.Shankar

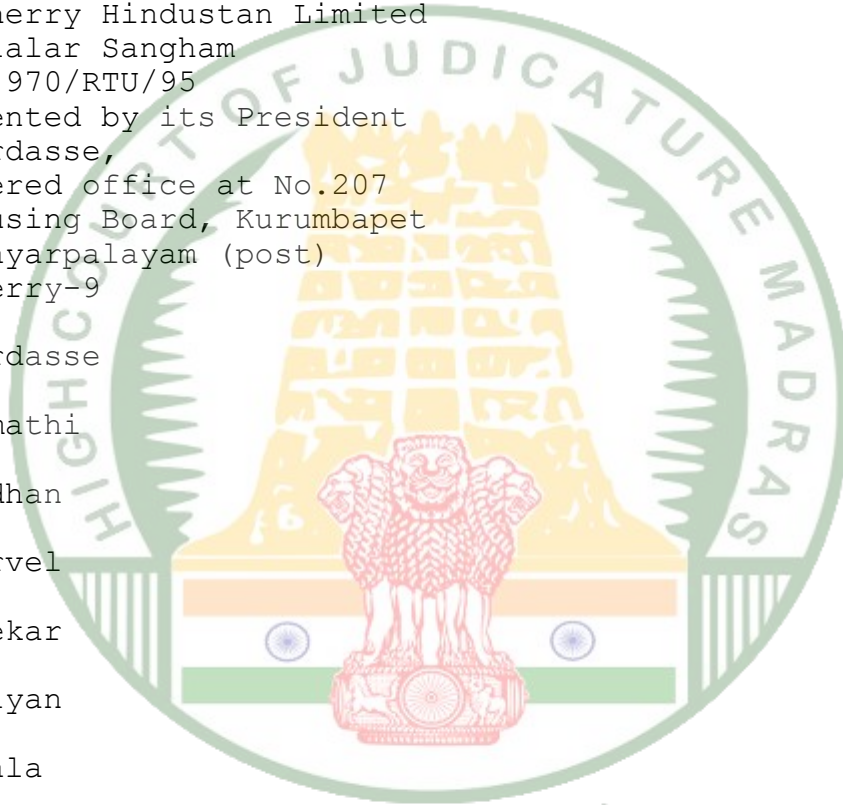
11.P.Balamurugan

12.R.Gnanasrinivasan

13.S.Saravanan

14.S.Dhandapani

15.B.Mohanraj



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16.M.R.Saravanan

17.R.Vasantha

18.A.Susila

19.P.Parameswari

20.K.Shakthivel

21.M.Jayalakshmi

22.R.Anbu

23.D.Shanmugasundaram

24.R.Devanathan

25.N.Kamalakannan

26.I.Baskaran

27.J.Palanirajan

28.M.Saraswathy

29.K.P.Saravanan

30.V.Gnanavel

31.P.Mummurthy

32.K.Ganesan

33.R.Annamalai

34.A.Arokiadass

35.K.Dhayanathi

36.J.Jeganathan

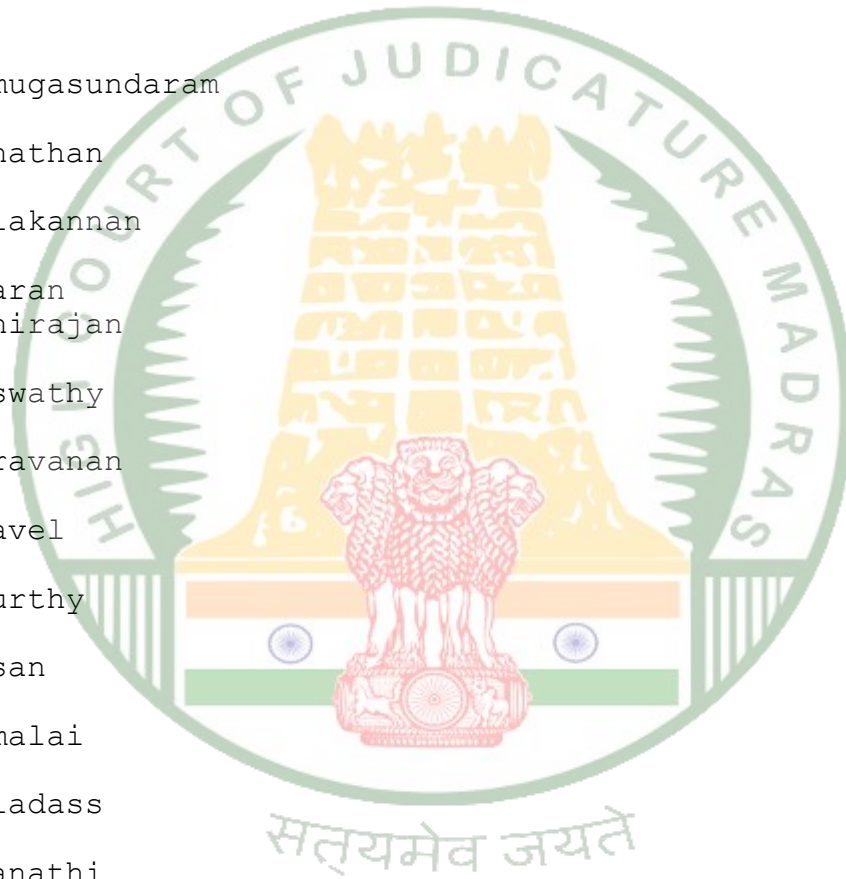
37.S.Balaraman

38.S.Murali

39.A.Vasu

40.S.Annamalai

41.G.Kathiravan



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42.P.Krishnamurthy

43.P.Sivaprakasam

44.R.Selvam

45.G.Bashyam

46.R.Desigan

47.Kalaivani

48.P.Dhanasekaran

49.K.Ilangovan

50.D.Sivakumar

51.M.Boobalan

52.R.Krishnamoorthy

53.B.Venkatesan

54.A.Aruldoss

55.A.Paul Mairya George

56.K.Santhika

57.A.Sivamoorthy

58.S.Kandasamy

59.J.Jeyaraman

60.P.Thirumal

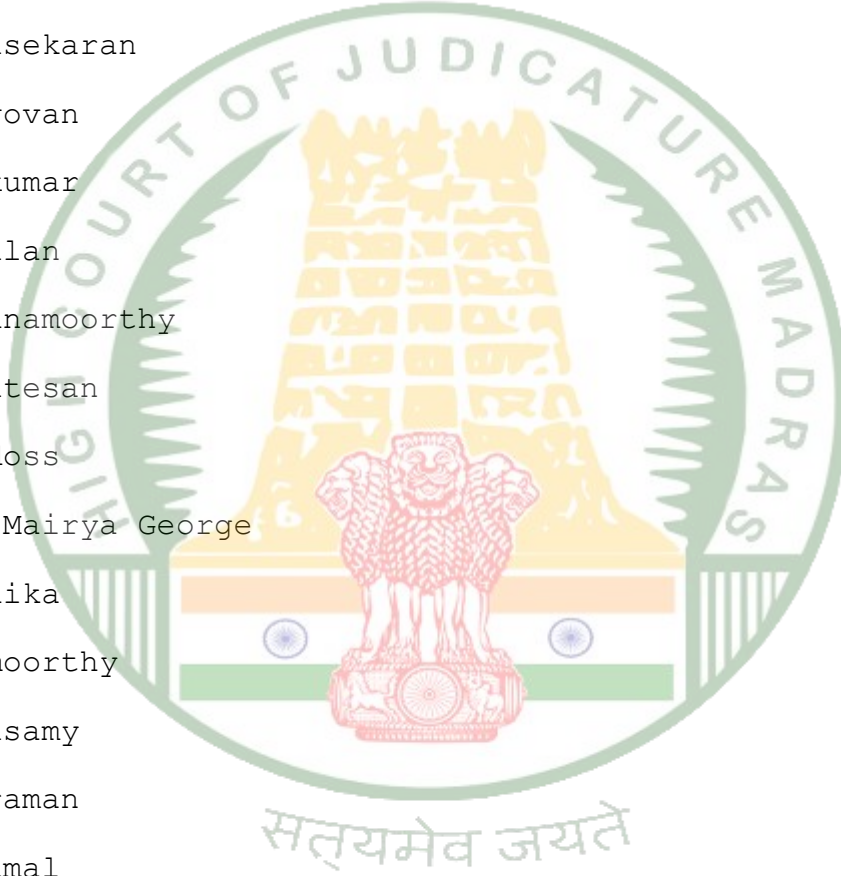
61.R.Ramalingam

62.V.Sundaramoorthy

63.S.Muthulingam

64.V.Vijayashankar

65.S.Arokiyaraju



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66.B.Balaraman
Cause title accepted vide
order of Court dated 22.06.2016 by
TMJ made in M.P.No.1 of 2015 in
C.M.A.SR.73054/2015

...Appellants/Petitioners

Vs.

The Regional Director
Employees State Insurance Corporation
ESI Complex
Bouvankare Street
Mudaliarpet
Pondicherry-605004

...Respondent/Respondent

Prayer: Civil Miscellaneous Appeal under Section 82(2) of the Employees State Insurance Act, praying to set-aside the order dated 16.04.2015 on the file of Employees Insurance Court, Puducherry and allow the appeal.

For Appellants : Mr.P.R.Thiruneelakandan
For Respondent : Mr.C.V.Ramachandra murthy

J U D G M E N T

Challenging the order of dismissal of their original petition with regard to the rejection of claim by the respondent E.S.I Corporation with regard to unemployment allowance, Workers of Ponds Export Limited Foot Wear Factory, Pondicherry, have preferred the above appeal.

2. The appellants are workers in Ponds Export Limited Foot Wear Factory, Pondicherry. They were in insurable employment, as such they are insured persons under E.S.I Act. E.S.I contributions were deducted from their wages and remitted to respondent Corporation till illegal closure of the said factory till November 2008. In the year 2007, the Union submitted a charter of demand for wage revision, but the management unilaterally announced Voluntary Retirement Scheme (VRS) on 21.07.2008. Out of 168 workers 97 of them opted for VRS and left service. Remaining 66 workers did not opt for VRS, hence from 01-11-2008 the factory was closed, which resulted in unemployment of appellants.

3. The appellants approached the respondent for unemployment allowance under Rajiv Gandhi Sharamik Kalyan Yojana Scheme framed under E.S.I Act. The claim was rejected on the grounds that unemployment was not established and that the

applications were submitted beyond 6 months period fixed by the scheme. Challenging the same, the appellants filed E.S.I.O.P.No.8 of 2010, which was dismissed by the Tribunal by its order dated 16.04.2015. Aggrieved over the same they have preferred the appeal.

4. The learned counsel for appellants would contend that the factory was illegally closed on 01.11.2008 and they have submitted the application on 18.02.2009. Since it was not considered, they filed a Writ Petition in W.P.No.5840/2009, wherein a direction was given to the respondent to consider the representation dated 18.02.2009 submitted by the Union along with individual representation of the workers dated 01.05.2009. In compliance with order of the High Court dated 18.09.2009, the workers made further representation on 30.09.2009. But, the claim was dismissed as time barred, as there is limitation of six months prescribed in the scheme. According to him there is no limitation specified in the Act. The limitation specified in the scheme is only directory and not mandatory. Hence rejection of representation on the ground of limitation is bad in law. In support of his contention, he would rely on the judgment of High Court of Kerala reported in CDJ 2012 Ker HC 735, Thiruvepathi Mills Labour Union (Intuc), represented by its Secretary & Others Vs. Employees State Insurance Corporation, represented by its Director General & Others, wherein it is held that the period prescribed for submitting the application is directory and not mandatory.

5. It is his further contention that P.W.1 and P.W.2 clearly deposed that the factory was illegally closed and a new factory was started at Poothurai Village in the name and style of "Ponds Exports Limited Upper Division" and that they were not offered with employment. But the E.S.I Court without appreciation of evidence, has dismissed their case wrongly relying on a portion of evidence and on misunderstanding the answer given by P.W.1 in cross-examination. In support of his contention that the evidentiary value of a statement shall normally appreciated in its correct prospective, attendant circumstances and the context in which the statement was made. For this proposition, he would rely on the judgment of the Hon'ble Supreme Court in Nand Kishore Vs. State of Madhya Pradesh, CDJ 2011 SC 646, wherein it is held the Court may not be in a correct position to arrives at any final conclusion while reading or relying upon a sentence in the statement of a witness that too by reading it out of context. Therefore, he would contend that the reliance placed on the single sentence of the deposition of witness by the Tribunal is erroneous. Further, the pendency of Industrial dispute before the Industrial Tribunal will no way affect the claim. The Tribunal also failed to consider the report of Inspector of Factories

dated 18.11.2008 and 20.06.2009 marked as Exs.P9 and P10, which clearly shows that the factory was illegally closed. Further whether the issue was lock out or closure was considered in W.P.Nos.26180 of 2009 and 22319 of 2009 and 399 of 2010, this Court in its order dated 01.12.2010 held that the factory was closed and directed to adjudicate the legality of the closure. Pursuant to the judgment, the Government amended the reference, which is marked as Ex.P14, as whether the closure is legal or illegal. In spite of the admission made by R.W.1, that the Inspector of the factories is the authority to certify closure and unemployment and that he has issued a certificate in favour of the appellants, the order passed by the Tribunal holding unemployment was not established is perverse and illegal and on these grounds, he would pray to set aside the impugned order.

6. Per contra, the learned counsel appearing for the respondents would contend that the Union has no locus standi to maintain the claim as it is individual to the worker and E.S.I Act does not contemplate any provision for collective representation by Union. Secondly, the claims are admittedly time barred, for, as per the scheme, the application shall be submitted within 6 months. Third, the appellant have no where produced any evidence as to closure of the factory and the said dispute is subjudice before the Hon'ble Labour Court, Pondicherry. Without any evidence as to closure the respondents are not in a position to pay unemployment allowance on the time barred claims. The Tribunal has rightly concluded that the closure of the factory was not established and as such, the petition is not maintainable.

7. I have considered the rival submissions.

8. Fulcrum of the dispute revolves around the illegal closure claimed by the appellants, resulting in their unemployment. It is imperative to decide as to whether they have established that the factory in which they worked was illegally closed or not?. From the materials placed before the Court, it is noted that dispute originated by the demand raised by the first appellant union for revision of wages. They made a representation dated 29.10.2008, which was not marked as a document by either parties. But, we have references of the representation dated 29.10.2008, from the judgment of this Court in W.P.No.26180 of 2008 etc., dated 01.12.2010 marked as Ex.P13. This Court on perusal of records had observed that:

"the appellant union raised allegations against the management that the management has been threatening the employees who refused to accept VRS to drive them out by declaring lock out and by transferring them to northern states. It is also

further stated therein, that the management has been indulging in unfair labour practise only with an intention to declare lock out. The next representation dated 06.11.2008 also contains the same allegations."

9. From the above observation it can be seen that pressure appeared to have been exerted by the management to accept 'VRS' or to go on transfer. The management marked the transfer order copy as Ex.R10. As observed by the Hon'ble High Court, there were negotiations between the Union and Management and it ended in failure due to the divergent views before the Conciliation officer. Since the conciliation officer submitted a failure report, reference was made in G.O.Ms.No.30 of 2009 dated 24.03.2009 by the Government to the Tribunal to adjudicate the dispute as to whether the lock out by the management is illegal and if so what relief the petitioners are entitled to .

10. This reference which was challenged resulted in the above said judgment of the High Court vide Ex.P13, wherein a direction was issued to the Government to reconsider and to make appropriate reference about the actual dispute within a period of two months. Thereafter, the Government made a reference, inter alia as to whether the closure is legal or illegal, the said reference is pending adjudication before Industrial Tribunal. The appellants based on this reference and with the support of Exs.P9 to P11 contend that the factory was illegally closed. But a reading of the entire materials go to show that the actual dispute between the parties, as observed in the beginning whether it is a closure or lock out. The management from the beginning allege that they were compelled to stop the work at the factory and do the manufacturing by out sourcing it to third parties. They have moved the machineries to some other place with the strength of an order of the Civil Court. According to them majority of the workers' accepted VRS and others were provided with employment in other units of the factory by issuing transfer.

11. The appellants contend that they cannot be transferred and that they have not accepted the transfer. Since they were not permitted to work in the factory or offered employment in the Ponds Export Limited - Upper Division, the new factory, it amounts to illegal closure and unemployment. At this juncture, it has to be seen how far Exs.P9 and P10, the certificate issued by the Inspector of Factories will have a bearing in the present dispute. The certificate dated 08.11.2008 and 26.06.2009 states that during his inspection the factory was found closed and no manufacturing activity had taken place. It is not clear as to whom the certificate was issued and whether the management was put on notice or not? Mere obtaining a certificate and marking, it as a document is not enough. It has

to be proved by the author of the document. As per Sec.25(o) of Industrial Dispute Act, 1947, a procedure is laid down for effecting closure. The legality or illegality of the closure can be determined by the conduct of parties. That matter is subjudice before the Tribunal. Insofar as, there is no evidence by the competent authority, it cannot be decided that the factory was illegally closed. Merely because, a reference was made on the basis of demands made by the union, it will not become illegal closure, resulting in unemployment of the appellants. There are probabilities to declare it as a lock-out and not closure. Unfortunately neither the Government nor the management were impleaded as parties to ascertain the factual issue. As stated supra, the matter is subjudice. Till finality is reached as to whether the appellants were unemployed by illegal closure or it is only a lock out and the appellants continue as insured persons on deduction of contribution for the period covered in the claim it cannot be held that the appellants are unemployed and entitled to unemployment allowance. Insofar as, the issue of locus standi is concerned, all the parties have submitted their claim and as such that issue need not be addressed to. On the aspect of delay, the judgment of Kerala High Court reported in CDJ 2012 Ker HC 735, Thiruvepathi Mills Labour Union (Intuc), represented by its Secretary & Others Vs. Employees State Insurance Corporation, represented by its Director General & Others, has laid down the correct proposals. When the main object is to provide assistance to the unemployed workers, the procedures followed therein can be construed only as directory and the delayed submission shall not defeat the objects.

12. Thus, the wholesome reading of evidence of P.W.1 and P.W.2 and the evidence of R.W.1 does not categorically ascertain that the appellants are unemployed. In the absence of any office communication or declaration from the management or the Government or by Court, the respondent Corporation cannot take a decision that the factory was closed resulting in unemployment of workers. The Tribunal weighed the evidence of the parties and arrived at a correct conclusion.

13. I do not find any reason to interfere with the same. Accordingly, the Civil Miscellaneous Appeal is dismissed. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

kpr

To

1. The Regional Director
Employees State Insurance Corporation
ESI Complex, Bouvankare Street
Mudaliarpeth, Pondicherry-605 004.
2. The Presiding Officer,
Employees Insurance Court,
Puducherry.

C.M.A No.1921 of 2016

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