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IN THE HIGH COURT OF JUDICATURE AT MADRAS

ORDERS RESERVED ON : 10.01.2025

ORDERS DELIVERED ON : 22.01.2025

Coram:

THE HONOURABLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

**W.P. No.4868 of 2010
and M.P.Nos.3 of 2010 and 1 of 2015**

M/s Nitya Packaging Pvt Ltd.,
Odiampet Village, Villianur,
Pondicherry – 110.
Represented by its
Director P.Thamodharan

... Petitioner

Vs.

1.The Presiding Officer,
Labour Court,
Pondicherry.

2.The President
Packaging Industries Democratic
Workers Union, 471, Bharathi Street
Pondicherry – 1.

3.V.Sumathi
4.R.Manammal
5.A.Vadivel
6.I.Magavalli
7.H.Nazeer

... Respondents



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Prayer: Writ Petition is filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari, to call for the records pertaining to I.D.No.24 of 2001 and quash the award dated 07.12.2009 passed therein by the 1st respondent and pass such further or other orders.

For Petitioner : Mr.T.P.Manoharan
Senior Counsel
for Mr.T.M.Naveen
For Respondents : Ms.Ramapriya Gopalakrishnan
for RR2 to 7
R1 – Labour Court

ORDER

A. The Petition:

This writ petition is filed challenging the award of the Labour Court, *Puducherry*, dated 07/12/2009 made in I.D. No.24 of 2001, which was filed by the Management, namely, *Nithya* Packaging Private Limited. By the said award, the reinstatement of 25 workmen with back wages and consequential benefits was ordered.



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B. The Case of the Workmen:

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2. The case of the workmen is that they were in the services of the Management right from its inception in the year 1997. However, when they formed a Trade Union in November 2000, the Management refused employment to 19 workmen and refused payment of wages to 6 workmen. The Union addressed a letter on 07/12/2000 and issued a strike notice on 11/12/2000, on the premise that the action of the Management amounted to unfair labour practice. Conciliation failed and thereafter the matter was referred for adjudication by the Government of *Puducherry*, vide G.O. Rt. No.108/2001/AII./I dated 12/06/2003 referred the matter for adjudication on the following terms:

“1. Whether the demand of the union that the workmen mentioned hereunder should be reinstated by the management of M/s Nithya Packaging Pvt. Limited, Pondicherry is justified ? If so, to what relief they are entitled to ?

Tvl./Tmt./Selvi.

1.Senthamizh	11.Vadivel	21.Nazir
2.Mathavan	12.Mannammal	22.Rukumani
3.Usha	13.Chandra	23.Sumitra
4.Santhi	14.Tamilselvi	24.Selvanathan
5.Megavalli	15.Mahendran	25.Vadivel
6.Devi	16.Vettrivel	
7.Sumathi	17.Prakash	
8.Kanniappan	18.Manimala	



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9.Velavan 19.Malar
10.Veerappan 20.Selvam

2. Whether the demand of the union that the management should revise the wages and other allowances paid to the workmen is justified ?. If so, to give appropriate directions.

3. To what other relief the union is entitled to ?

4. To compute the relief, if any, awarded in terms of money if it can be so computed.”

3. The workmen thereafter filed a claim petition. While repeating the above facts, it is the further case of the workmen that when they issued strike notice, the Management filed a civil suit and obtained an interim injunction from conducting demonstration, gheraoing etc., within 100 meters of the entrance of the unit. A case in Cr. No. 56 of 2001 was also registered against 11 workmen. The injunction was subsequently vacated. Even then the Management refused employment and in turn started employing contract labourers. It was paying only Rs. 15/- to Rs. 30/- as salary. The action amounts to unfair labour practice. It was therefore prayed that the workmen should be reinstated with back wages and the wages should be revised.

C. The Case of the Management:

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4. The claim was resisted by the Management by filing a counter affidavit.

It is pleaded that the Union has no *locus standi*. Of the 25 workmen, only 6 were the casual employees under the Management. In the conciliation itself it was informed that in respect of the other 19 workmen, the Management has no personal knowledge about them and the matter of non-employment has to be settled only through the respective contractors. Of the 6 workmen, 5 were not willing to work on the wages paid by the Management and remained absent from 01/12/2000 and thus their names are struck off from the muster rolls. The sixth employee - *Mahendran* was found preventing the other workers in support of these five workmen and therefore, he was suspended on 12/01/2001. He did not give any reply nor attended the domestic enquiry. No unfair labour practice was committed by the Management. Only the workmen indulged in an illegal strike when the conciliation was pending. The activity of the Management was producing boxes which can be manufactured in cottage industries. The wages are paid on par with the industry norms. Therefore, the fixation of wages was not necessitated.

D. Enquiry & Findings of the Labour Court:

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5. The Labour Court proceeded with the enquiry. No oral evidence was let in on both sides. On behalf of the workmen, Exs.A1 to A8 were marked. On behalf of the Management Exs. B1 to B5 were marked. The Labour Court considered the case of the parties. The labour court considered the plea of the Management that 19 workmen were only contract labour. It considered Ex.B3 and B4 which were attendance registers from August 2000 onwards and found that the Management did not produce the attendance register or muster rolls from 1997 onwards and as such, held that all the workmen are employed under the Management.

6. The Labour Court found that in respect of the six admitted workmen, no proper domestic enquiry was conducted. In respect of others also, it abruptly stopped them from working only because they formed a trade union. It amounts to unfair labour practice. No other statutory benefits such as Provident Fund, ESI etc., were also extended to them. The Management had acted high-handedly, therefore, the workmen are entitled to be reinstated with full back wages. The labour court found that the wages were paltry and directed the Management to fix proper scales of pay as wages to the workmen and accordingly granted the



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relief of reinstatement with back wages and consequential benefits, with a further direction to revise the wages and other allowances to the workmen. Aggrieved, the Management has filed the writ petition.

E. The Arguments:

7. *Mr T.P. Manoharan*, the learned Senior Counsel appearing on behalf of the Management, would submit that in this case, without prejudice to their contentions, pending adjudication a settlement was also arrived at and the same was marked as Ex. B5, where 21 out of 25 workmen received the amount mentioned therein as full quit and as such, the labour court ought not to have granted any relief to them. As a matter of fact, even the person appearing for the workmen had filed a memo citing no instructions, inspite of which the Labour Court has proceeded to pass the award.

8. Secondly, it is the contention of the Learned Senior Counsel, that the litigation itself was conducted even without the presence of the workmen. Many of the addresses mentioned are incorrect. Even the 17B wages which are sent to



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the addresses have come back. Therefore, the litigation was conducted without any basis and without even ascertaining whether the workmen were interested.

Even their signature differs.

9. *Mr T.P. Manoharan*, would submit that on the day when the conciliation was initiated, the 2nd respondent - union was not even registered. In the Judgment of the Hon'ble Supreme Court of India in ***B. Srinivasa Reddy -Vs- Karanataka Urban Water Supply & Drainage Board Employees Association***¹ more specifically in paragraph Nos.38 & 39, it was relied upon that unregistered trade union cannot have any *locus standi*. For the same proposition, paragraph Nos.16 and 17 in the Judgment of this Court in ***All India General Insurance OBC Employees Welfare Association -Vs- United India Insurance Company Ltd.***² was also relied upon. He would rely upon paragraph No. 37 of the Judgment in ***State of Orissa and another -Vs- Mamata Mohanty***³ to contend that subsequent registration would not cure the defect.

1 (2006) 11 SCC 731

2 (2013) SCC Online Mad 711

3 (2011) 3 SCC 436



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10. The Learned Senior Counsel would contend that in this case, the workmen did not let in any oral evidence. The documentary evidence let in by them are nothing but the strike notice, conciliation notice etc. There is absolutely no proof that they were employed under the Management. When the workmen had not discharged the burden, the Labour Court shifted the onus on the Management for non production of the relevant registers and erroneously granted the relief. The learned Senior Counsel would rely upon the Judgment in ***Manager, Reserve bank of India, Bangalore -Vs- S. Mani and others***⁴ relying upon paragraph Nos.28, 30-32, 34-36, 38,39 and 41. Reliance is also made on the Judgement in ***Union of India -Vs- Ibrahim Uddin & another***⁵ specifically in paragraph No.77 to contend that the pleadings can never become proof. It was contended that the workmen should have pleaded and proved their case and paragraph 14 of the Judgment in ***Rajasthan State Road Transport Corporation and another -Vs- Bajrang Lal***⁶ was relied upon.

11. With reference to the settlement and for the fact that no evidence is on

4 (2005) 5 SCC 100

5 (2012) 8 SCC 148

6 (2014) 4 SCC 693



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record, the Learned Senior relied upon the judgment in ***International Airport***

Authority of India -Vs- International Air Cargo Workers Union and Another⁷

(paragraph Nos.52.3, 52.6). To bring home the proposition that it was incumbent on the workmen to discharge the initial burden, the learned Senior Counsel placed reliance on paragraphs 30 and 43 of the Judgment in ***Steel Authority of India Limited and another -Vs- Jaggu and others***⁸. Paragraph No.21 of the Judgment in ***Rangammal -Vs- Kuppuswamy and another***⁹ is read to point out the burden of proof is on the party who asserts the fact.

12. *Ms.Ramapriya Gopalakrishnan*, the Learned Counsel appearing on behalf of the workmen would refute the fact that the workmen are not interested. An affidavit was filed. It is mentioned that two of the 25 workmen have died. Of the balance 23, 14 workmen are very much interested and are conducting the litigation and they are sporadically employed and not gainfully employed. Some of the 17-B cheques returned only because erroneous spelling, address etc. Their identity cards and other credentials are filed as an additional typed set of papers.

7 (2009) 13 SCC 374

8 (2019) 7 SCC 658

9 (2011) 12 SCC 620



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WEB COPY 13. As for as the settlement is concerned, *Ms. Ramapriya Gopalakrishnan*

would contend that the same shows that there was employer employee relationship. She points out to the paltry sum which was mentioned in the settlement. She submits that the Management indulges in wholesale violation of all the labour welfare legislations and acts in a high handed manner. The workmen are awaiting justice all these years.

14. She would submit that when the Management admitted about their employment and pleaded that they are contract labour, it is their assertion and they should have proved the same. The very fact that criminal complaint was given against these workmen and injunction was also sought for would all prove their employment. After exploiting them without provident fund and minimum wages, only because they formed a trade union, they were non-employed and as such the labour court was right in granting employment. All these workmen belong to poor and marginalised strata of the society and were unfairly treated by the Management.



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15. *Ms Ramapriya Gopalakrishnan*, would rely upon the judgment in

Bhilwara Dudgh Utpadak Sahakari Samiti Limited -Vs- Vinod Kumar Sharma

dead by Los and others¹⁰ to contend that the plea of contract labour is taken as a subterfuge to deny all benefits and exploit the workmen. When the Labour Court has ordered proper wages considering the industrial peace, the same need not be interfered and the judgment in the ***Hindustan Construction Co.Ltd -Vs- Shri G.K. Patankar and another***¹¹ especially paragraph No. 3 is relied upon.

F. The Points for Determination:

16. Upon consideration of the arguments and perusal of the records, the following questions arise for consideration :

(i) Whether the claim has to be rejected on the ground that the petitioner trade union was registered after the inception of the dispute ?

(ii) Whether the litigation is conducted without even the workmen being interested in the matter ?

(iii) Whether the settlement in Ex.B5 in respect of 21 workmen has to be

¹⁰ (2011) 15 SCC 209

¹¹ (1976) 1 SCC 810



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honoured ?

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(iv) Whether the labour Court was right in holding that there is employer employee relationship and whether there is evidence with reference to the same ?

(v) Whether there is non-employment and if so whether it is justified ?

(vi) To what relief the workmen is entitled to ?

G. Question No. (i):

17. In the instant case, 44 workmen under the Management formed the trade union in question in November, 2000 and pending registration, when the fact was informed to the Management, it was alleged that the Management plunged into action. It is true that unregistered trade union cannot represent as it was not a legal person at all, much less a trade union within the definition as per Section 2(qq) of the Industrial Disputes Act (hereinafter referred to as 'the Act'). But in this case, the Trade Union was registered with effect from 04/06/2001. The claim statement was thereafter filed on 08/11/2001. In that scenario, though originally, when the demand was raised, it ought not to have been in the Union's



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name, however, when the reference has been made, and when the claim petition

was made, the trade union was registered. In that view of the matter to conclude

that the Union ought to take up the very issue that arose on account of its

formation would strike at the very root of collective bargaining, which was the

very purpose of the ID Act. The Hon'ble Supreme Court of India even while

upholding the vires of the ID Act, in the judgment in *Niemia Textile Finishing*

*Mills Ltd. and Another -Vs- 2nd Punjab Tribunal and Others*¹² quoted the

judgment of this Court with an approval and the relevant portion of paragraph 21

reads as follows :

“21. It is next contended that the Industrial Tribunals to whom industrial disputes are referred for adjudication by the appropriate Government are legislating in the guise of adjudication and this amounts to delegation of the powers of legislation which it was not competent to the Central Legislature to do. The argument is that the Industrial Courts are not bound to follow the provisions of the ordinary law of the land as enacted in the Indian Contract Act, the Payment of Wages Act, the Workmen's Compensation Act, the Indian Limitation Act and the like, but are authorised by the terms of the Act to lay down their own code of conduct in regard to industrial relations and their own policy in regard to the promotion of industrial peace. This, it is submitted, is legislation and the legislature has in effect abdicated its powers in favour of the Industrial Courts. The provisions in regard to reinstatement of dismissed or discharged employees, the provisions in regard to lay-off and retrenchment and the provisions in regard to strikes and lock-outs, amongst others are pointed out as introducing provisions contrary to the positive law of the land and as laying down a code of conduct or policy, and reference is made in this

12 (1957) SCC OnLine SC 64



behalf to a decision of the Federal Court in *Western India Automobile Association v. Industrial Tribunal, Bombay*¹ and two decisions of the Madras High Court viz. *The Electro-Mechanical Industries Ltd., Madras v. The Industrial Tribunal No. 2 for Engineering Firms and Type Foundries, Fort St. George, Madras*², and *Shree Meenakshi Mills Ltd. v. State of Madras*³. It has to be remembered, however, that the functions of the Industrial Tribunals, while adjudicating upon the industrial disputes referred to them for adjudication, are quite different from those of arbitration tribunals in commercial matters. As has been observed by Ludwig Teller in *Labour Disputes and Collective Bargaining*, Vol. 1, p.536:

“Then too, industrial arbitration may involve the extension of an existing agreement, or the making of a new one, or in general the creation of new obligations or modifications of old ones, while commercial arbitration generally concerns itself with interpretation of existing obligations and disputes relating to existing agreements.”

It was also observed by the Privy Council in *Labour Relations Board of Saskatchewan v. John East Iron Works Ltd.*⁴ while referring to a claim for reinstatement by a dismissed employee as one of the typical matters in dispute between employers and employees:

“The jurisdiction of the Board (Labour Relations Board) ... is not invoked by the employee for the enforcement of his contractual rights : those, whatever they may be, he can assert elsewhere. But his reinstatement, which the terms of his contract of employment might not by themselves justify, is the means by which labour practices regarded as unfair are frustrated and the policy of collective bargaining as a road to industrial peace is secured. It is in the light of this new conception of industrial relations that the question to be determined by the Board must be viewed.”

After quoting these observations of the Privy Council, Rajamannar, C.J., pointed out in *Shree Meenakshi Mills Ltd. v. State of Madras*, at p. 857:

“The essential object of all recent labour legislation has been not so much to lay down categorically the



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mutual rights and liabilities of employer and employees as to provide recourse to a given form of procedure for the settlement of disputes in the interests of the maintenance of peaceful relations between parties, without apparent conflicts such as are likely to interrupt production and entail other dangers. It is with this object that in the United States there has been legislation arranging for the adjustment of conflicting interests by collective bargaining. In Great Britain there have been Acts like the Industrial Courts Act, 1919, which provides for Industrial Courts to enquire into and decide trade disputes. There is also provision for Conciliation Boards under the Conciliation Act, 1896. In fact, our Industrial Disputes Act is modelled on these two British Acts.”

18. The roots of collective bargain lie in Article 19(1)(c) whereby the right to form associations or unions is a fundamental right under the Constitution of India. The very purpose of the ID Act was to maintain industrial peace through collective bargaining. It has various stages of raising a demand, negotiation, strike, conciliation and adjudication. Thus, in this case, when the registration of the petitioner union was complete and it continued to represent the workmen, there is no illegality. It is essential to keep in mind the purpose of jurisdiction of the Industrial Courts as laid down by the Hon’ble Supreme Court in *Niemla Textile's case* (cited supra) and paragraph 23 reads thus:

“23. So far as delegated legislation is concerned, abstract definitions of the difference between the judicial and the legislative functions have been offered (see the distinction drawn by Mr Justice



Field in the *Sinking-Fund cases*[(1879) 99 US 700, 761 : 25 L Ed 496, 516] , but they are of little use when applied to a situation of complicated facts. The function of a court is to decide cases and leading jurists recognize that in the decision of many cases a court must fill interstices in legislation. A legislator cannot anticipate every possible legal problem; neither can he do justice in cases after they had arisen. This inherent limitation in the legislative process makes it essential that there must be some elasticity in the judicial process. Even the ordinary courts of law apply the principles of justice, equity and good conscience in many cases e.g. cases in tort and other cases where the law is not codified or does not in terms cover the problem under consideration. The Industrial Courts are to adjudicate on the disputes between employers and their workmen, etc., and in the course of such adjudication they must determine the “rights” and “wrongs” of the claims made, and in so doing they are undoubtedly free to apply the principles of justice, equity and good conscience, keeping in view the further principle that their jurisdiction is invoked not for the enforcement of mere contractual rights but for preventing labour practises regarded as unfair and for restoring industrial peace on the basis of collective bargaining. The process does not cease to be judicial by reason of that elasticity or by reason of the application of the principles of justice, equity and good conscience.”

(Emphasis supplied)

19. In that view of the matter and in view of Section 2 (h) of the Trade Unions Act, 1926 read with Section 2 (k) of the Industrial Disputes Act, 1947, the claim cannot be rejected merely because the trade union was registered after the demand was raised or the subsequent processes.

H. Question No. (ii) :

20. The argument that the whereabouts of the workmen are not known and that their identity itself was in question was raised during the course of



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arguments. On behalf of the second respondent trade union, it is now represented that even though adjudication was made in respect of 25 employees, 14 of the employees are in touch with the Union and are pursuing the present remedy. Their credential are also filed. In view thereof, this question is answered partially accepting the stand of the learned Senior Counsel for the Management that the rights under the award, as determined in the present proceedings will apply only to the said 14 employees mentioned in the affidavit, namely :

- “1.V.Senthamizh
- 2.Usha.G
- 3.B.Devi
- 4.Kanniappan
- 5.Veerappan
- 6.Mannammal
- 7.Tamilselvi
- 8.T.Vetrivel
- 9.A.Prakash
- 10.D.Manimala
- 11.V.Malar
- 12.Nazir
- 13.A.Vadivel
- 14.Sumathi @ Muthulakshmi”

I. Question No. (iii):

21. The very reading of the Ex. B5 – settlement, it can be seen that a sum of Rs, 5,000/- was agreed to be received by four workman, Rs. 2,500/- was agreed to be received received by 13 workman, Rs. 2000/- by one workman and Rs. 1800/- by one workman was already paid to them and that they agreed to



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withdraw the Industrial Disputes. The settlement, on the face of it unconscionable for the extremely meagre amount that was mentioned as settlement. Besides no proof was produced that the same was paid. There was no further proof that both sides acted upon the same. In the first page, signature of only 11 workmen was there. In the 3rd page only 14 signatures are there. 8 signatures are obtained below the word 'witnesses'. In page 2 and 4, 18 signatures and one LTI was there. Thus, the very manner in which it was written does not inspire confidence at all and on the face of it Ex. B5 was liable to be rejected and as such the workman cannot be non suited on the said basis.

J. Question No. (iv) :

22. In this case both sides have not let in any oral evidence. But documents are marked by consent. A perusal of Ex.A7 - first information report, it was stated in the complaint that the Management had engaged rowdy elements and waylaid and attacked the President of the Trade Union for forming the trade union. Ex. A8 is the Anticipatory bail granted to 11 workmen. Ex. A9 is the representation given by one of the workmen *Tamilselvi* to the Superintendent of Police. She categorically states that there are about 70 workmen in the



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Management. When they started union on 26/11/2000, the Management refused entry for 29 workmen. After issue of strike notice all the employees struck work on 11/01/2000. These statements are marked on consent. Therefore, the contention of the Learned Senior Counsel that this is a case of no evidence cannot be countenanced. Once these statements are on record, it can be seen that in respect of 6 employees the relationship was admitted. With reference to the balance 19 workmen, it was the assertion of the Management in their pleadings that they are contract labourers. In that case, it is for them to have let in evidence with reference to their assertion. In the absence of the same, the employer-employee relationship is established. Additionally, the Labour Court found that muster rolls and the attendance register from the beginning are not produced. No exception whatsoever can be taken in respect of the said finding. Thus, the employer-employee relationship is duly established.

K. Question No. (v):

23. Once the relationship is admitted, the management claims that a domestic enquiry was conducted in respect of one employee; however, no evidence was presented. In respect of others also allegations are made that they



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voluntarily stopped work due to the wages. However, it can be seen that injunction was prayed and also complaint was given against them. Thus, the evidence on record is otherwise. Similarly when Ex.A9 statement is that they were all stopped entry by the Management, the non-employment is proved. Neither there was any domestic enquiry or any proven charge nor there was any procedure of retrenchment was followed. In that view of the matter, the non-employment is unjustified.

L. Question No. (vi):

24. It can be seen that the non-employment is of the year 2000 and now 25 years have gone by. Only 14 workmen are pursuing the matter and some of them have also been intermittently employed elsewhere. The entire manner of working in respect of the Management is no more relevant. The period of employment is stated to be from 1997-2000 and the period of litigation is 25 years. Even that position was disputed by the Learned Counsel stating that the unit commenced production only in 1998. The financial difficulty pleaded on behalf the Management is taken note off. The submission made on behalf of the workmen that they belong to downtrodden strata of society and many of them started



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working even before the completion of 18 years for paltry wages is also borne in
mined.

25. Thus, on a overall consideration of the facts and circumstances of the case, I am of the view that this a fit case for ordering compensation, in *lieu* of reinstatement with back wages and all other benefits. Since the wages at the time was very low as the labour court itself had ordered revision of scales and therefore calculation of 39 months wages will not be appropriate in this case. Considering the overall circumstances, a sum of Rs.1,50,000/- each to the 14 workmen will be appropriate in the facts and circumstances of the case.

M. The Result :

26. Accordingly, this Writ Petition is disposed of on the following terms :

(a) The award dated 07/12/2009 made in I.D. No. 24 of 2001 by the Presiding Officer, Labour Court, *Puducherry* is upheld in as much as it finds that the non-employment of the 25 workmen was unjustified;

(b) The award is set aside and modified that 11 of the workmen /their legal



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heirs are not interested in pursuing the matter further and no further relief is granted to them;

(c) In respect of the 14 employees mentioned in paragraph No.20 above, the petitioner/Management shall pay the compensation of Rs.1,50,000/- (Rupees One Lakh Fifty Thousand Only) each within a period of 12 weeks from the date of receipt/production of the website-uploaded copy of this order, without waiting for the certified copy of the Order;

(d) If the said sum is not paid within the time, it shall carry interest at the rate of 9% per annum from today, till the date of disbursement;

(e) No costs. Consequently, the connected miscellaneous petitions are closed.

22.01.2025

Neutral citation:Yes

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D.BHARATHA CHAKRAVARTHY, J.,

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To

1. The Presiding Officer,
Labour Court,
Pondicherry.
2. The Section Officer
Vernacular Section
High Court of Madras.

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and M.P.Nos.3 of 2010 and 1 of 2015**

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