



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.11.2025

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**THE HONOURABLE MRS.JUSTICE N.MALA**

**W.P.No.24999 of 2023**  
**and**  
**W.M.P.No.24418 of 2023**

The Management of  
Kwang Sung Break India  
Private Limited,  
Represented by its  
Managing Director,  
No.49, Sengattugramam,  
Sriperumbuthur Taluk,  
Kanchipuram District,  
Pin:602 105.

... Petitioner

Vs.

United Labour Federation,  
Represented by its Secretary,  
Reg.No.2657/CNI  
No.149, Thambuchetty Street,  
C.J.Complex,  
4<sup>th</sup> Floor,  
Chennai – 600001.

... Respondent

**PRAYER:** Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari, to call for the records in I.D.No.42 of 2017 dated 23.05.2023 on the file of the Industrial Tribunal at Chennai and quash the same as illegal.



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For Petitioner : Mr.S.Muthuraman  
For Respondent : Mr.V.Prakash  
Senior Advocate  
For Mr.T.Ramkumar

### **ORDER**

This writ petition is filed for a writ of Certiorari to call for the records in the award dated 23.05.2023 of the Industrial Tribunal in I.D.No.42 of 2017 and quash the same as illegal.

2. The petitioner will be referred to as the Company and the respondent will be referred to as the union.

3. The company is a Tier- II company employing more than 600 workers in its factory. The company is engaged in manufacture of automobile spare parts such as bearings, welding equipment supplies, gears and gear boxes, hoses, springs V-belts, etc. while so, the union raised 22 demands before the Assistant Commissioner of Labour, Conciliation - II, Sriperumbudur. The conciliation ended in failure as no settlement was reached. The conciliation failure report was submitted by the Conciliation Officer on 07.10.2016, to the Government of Tamil Nadu. The Government of Tamil Nadu rejected 12 demands out of the 22 demands, vide G.O.D.No.567 dated 14.09.2017 and referred 10 demands to the Industrial Tribunal. The Tribunal vide impugned award dated 23.05.2023



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allowed the following demands:

- (i) Demand No.1 Basic Salary
- (ii) Demand No.2 Variable Dearness Allowance
- (iii) Demand No.5 Conveyance Allowance
- (iv) Demand No.8 Night Shift Allowance
- (v) Demand No.9 Educational Allowance

4. The Tribunal further directed that the award shall be enforced with effect from 18.09.2015 i.e., date of demand and the dues to the workmen covered under the disputed shall be disbursed within a period of two months from the date of publication of the award. Aggrieved by the said award of the Tribunal, the company has filed the above writ petition for the aforesaid relief.

5. The learned counsel for the petitioner submitted that the Tribunal erred in allowing Demand Nos.1, 2, 4, 8 and 9. The counsel submitted that the Tribunal failed to apply the principle of industry-cum-region while fixing the wages on revision and further failed to consider the financial burden on the company for discharging the liability from the date of demand i.e., 18.09.2015. The learned counsel submitted that the award of the Tribunal, insofar as it relates to Demand Nos.1, 2, 4, 8 and 9 is erroneous and against the evidence on record. The learned counsel further submitted that the Tribunal failed to note that the balance sheets marked as Exhibit M53 to M58 clearly established that



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the company was incurring loss right from the year 2014-2015. The counsel submitted that the learned Judge erred in concluding that the company was making profit by merely taking the annual turnover, without making any provision for deductions or depreciations. The learned Counsel therefore submitted that the award of the Tribunal was illegal and deserved to be set aside.

6. The learned Senior counsel for the respondent submitted that the award of the Tribunal was a well considered and reasoned Award. The learned Senior counsel submitted that the Tribunal adopted the right principles while allowing fair wages and therefore, this Court exercising jurisdiction under Article 226 of the Constitution of India, should not interfere with the same as an Appellate Court. The learned counsel therefore submitted that the writ petition lacks merits and the same deserves to be dismissed.

7. I have considered the rival submissions made by the learned counsel on either side and perused the materials placed on record.

8. The primary contention of the learned counsel for the respondent is that there are absolutely no pleadings on the issue of financial burden of the Company in the counter statement filed to the claim petition, and therefore, in the absence of a basic pleading, the contention should be rejected at the



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threshold. The Hon'ble Supreme Court in the case of *Shankar Chakravarti Vs. Britannia Biscuit Co.Ltd* reported in *1979 SCR (3) 1165*, held that “the rules of fair play demand that where a party seeks to establish a contention which if proved would be sufficient to deny relief to the opposite side, such a contention has to be specifically pleaded and then proved. But if there is no pleadings there is no question of proving something which is not pleaded. This is very elementary. Can it for a moment be suggested that this elementary principle does not inform industrial adjudication? The answer must be an emphatic "no". There is absolutely no quarrel on the legal principle enunciated in the judgment of the Hon'ble Supreme Court. However, in the present case, despite the absence of pleadings, the Tribunal considered the evidence and gave its findings on merit. In such circumstances, this Court is of the view that the contention pales into insignificance.

9. The following demands were considered by the Government to be fit for adjudication and therefore, the Government referred the same for adjudication vide G.O.D.No.566 dated 14.09.2017:

- 1.Demand No.1.Basic Salary
- 2.Demand No.2.Variable Dearness Allowance
- 3.Demand No.3.House Rent Allowance
- 4.Demand No.4.Conveyance Allowance
- 5.Demand No.7.Washing Allowance



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- 6.Demand No.8.Night Shift Allowance
- 7.Demand No.9.Educational Allowance
- 8.Demand No.12.Medical Allowance
- 9.Demand No.16.Uniform and Stitching Charges
- 10.Demand No.20.Rain Coat

10. The Tribunal, on an appreciation of the entire materials on record and legal principles governing the issue of fair wage, allowed Demand Nos.1, 2, 4, 8 and 9 and rejected Demand Nos.3, 7, 12, 16 and 20. The Tribunal further directed the Company to disburse the arrears, with effect from 18.09.2015 (date of demand) and within a period of two months from the date of publication of the award.

11. The submissions of the learned counsel for the petitioner can be summarized as follows:

(i)The Tribunal failed to note that there was absolutely no justification for wage revision since the petitioner company was paying the best possible wages to its workers.

(ii)The failure of the Tribunal to follow the well established principle of industry cum region while fixing the fair wages.

(iii)The failure of the Tribunal to consider the financial capacity of the company to bear the financial burden and



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(iv) The failure of the Tribunal to provide for deduction and depreciation while arriving at the conclusion that the company was making profit.

These are the broad objections raised by the learned counsel for the petitioner.

**Prefatory:-**

12. Before advertent to the factual scrutiny of the fairness of the wage revision effected by the Labour Court, this Court deems it necessary to refer to the settled legal principles governing the wage fixation. The Hon'ble Supreme Court, in a catena of decisions commencing from *Express Newspapers Private Limited Vs. Union of India* and *Raptokos Brett & Co. Ltd Vs. Workmen of Raptokos Brett & Co. Ltd.*, recognized threefold classification of wages, minimum wage, fair wage and living wage. These concepts constitute the normative framework within which wage adjudication is to be undertaken. The Hon'ble Supreme Court, in *Express Newspapers' case*, following the judgment of *Australian Commonwealth Court of Conciliation in Harvester's case* and other concepts of living wage across the world, held as follows:-

*"It will be seen from this summary of the concepts of the living wage held in various parts of the world that there is general argument that the living wage should enable the male earner to provide for himself and his family not merely the bare essentials of food, clothing and shelter but a measure of*



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*frugal comfort including education for the children, protection against ill-health, requirements of essential social needs, and a measure of insurance against the more important misfortunes including old age. "*

On the concept of minimum wage, the Court found that the minimum wage was a lowest rate at which members of a specified grade of workers may be legally employed and as payable irrespective of capacity of the industry. The fair wage, was held to be a mean between the living wage and the minimum wage. The judicial precedents also mandate that wage fixation should confirm industry-cum-region principle and be founded on rational and transparent methodology. It is in this jurisprudential background, that this Court shall proceed to examine the validity of the methodology adopted by the Labour Court in fixing the wages.

**Justification for revision:**

13.The company contended that there was no justification for revising the wages as it was already paying the best possible wages which were above the minimum wages notified by the Government, and that such wages were periodically revised in tune with the Government notifications. It was contended that ever since the Company was established in 2008, and the Union was formed in 2015, the wages were fixed only on mutual agreement, and increases were granted whenever, minimum wages were revised by the



Government. The Tribunal, on examining Ex.M7 [wage slips of the year 2015] and the cost escalation between 2015 and 2018, found that the wages paid were not commensurate with the rise in the cost of living. It noted that the gross salary paid of Rs.15,188/- and the net salary of Rs.12,642/- were insufficient for sustaining the workers families. The Tribunal therefore held that the demand for wage revision was justified. The finding of the Tribunal, in my view is reasonable and based on proper appreciation of the evidence on record. Therefore, the contention of the learned counsel for the petitioner that there is no justification for wage revision cannot be accepted.

**Principle of Industry-cum-Region:**

14.The learned counsel for the petitioner argued that the Tribunal failed to adopt the industry-cum-region principle while refixing the wages. It is true that the Hon'ble Supreme Court has laid down the principles to be adopted for determining wage revision and one of the principle laid down by the Hon'ble Supreme Court is industry-cum-region. (*Greaves Cotton and co., limited Vs Their Workmen reported in AIR 1964 SC 689, Workmen of Hindusthan Motors v.Hindustan Motors, reported in 1962 II LLJ 352, Indian Hume Pipe Co. Ltd., vs. The Indian Hume Pipe Co.Ltd., Bombay reported in AIR 1986 SC 1794*). However, on the facts of the case, it is seen that the Tribunal found the Company failed to provide any relevant material like comparative data



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relating to wages in comparable industries or the financial position of such industries. In the absence of such foundational material, the Tribunal was justified in considering the claim on the basis of the available evidence. The Tribunal, on facts, found that the wages had increased from 2013-2014, but the Company's method of merging dearness allowance with the basic wages rendered it impossible to ascertain whether there was any real increase in the basic wages. Accepting the Union's contention, the Tribunal held that the basic wage component must be separately indicated and that the Company's method of merging Dearness Allowance with basic wages, was incorrect and improper. Proceeding thereafter, the Tribunal adopted the basic wage reflected in Ex.M7 [Rs.7,000/- for 2015] and added an annual increase of Rs.500/- for the subsequent years. The Tribunal having fixed the basic wage as a separate component, proceeded to consider the demand for Dearness Allowance. The Tribunal, following the judgment of the Hon'ble Supreme Court in the case of ***Killick Mixon Limited Vs. Killick and Allies Companies Employees Union (1975 II MLJ 53)***, took the minimum wage notification of the year 2015, as threshold for fixation and fixed the Dearness Allowance at Rs.7/- per point and arrived at Rs.4,634/- towards Dearness Allowance.

15. Now, the issue is whether the methodology adopted by the tribunal and revised wage fixed is fair, proper and sustainable. It is to be noted that the



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construction of wage award is not based on strict mathematical formulae and that it requires human approach based on the facts and circumstances and the reasonable requirements of the workers' families. The facts of the case reveal that the Union was formed only in the year 2015 and until then, the Management had unilaterally fixed wages by merging the basic wage with the Dearness Allowance. Even the Tribunal has returned a factual finding that it was not able to determine the rate of Dearness Allowance since the wage slips did not reflect the basic wage as a separate component. As already noted above, the Company until the Union raised the present dispute, unilaterally and arbitrarily fixed the wages, adopting the minimum wage notified by the Government and merging the Dearness Allowance with it. Further, in the absence of foundational material, for adopting industry-cum-region principle, the Labour Court took into consideration, the cost escalation between 2015 and 2018 and fixed the wages commensurate with the rising cost of living. Under the circumstances, this Court finds that the method adopted by the Tribunal is fair, just and reasonable and fixing of revised wages by the Tribunal was undertaken by taking into consideration the relevant factors. This Court also finds that the revised wage fixed by the Tribunal is only fair wage, barely sufficient to maintain a standard family with food, shelter, clothing, medical care and education of children, it can in no way be said to be a living wage. Hence, this Court is of the view that the revised wage fixed by the Tribunal calls



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**Financial Capacity:-**

16.The learned counsel for the petitioner, at the time of arguments, vehemently contended that the Tribunal failed to take into consideration the financial burden that would be imposed on the Company by the wage revision. It was submitted that the balance sheets filed under Exs.M53 to M58 for the year 2014-2015 to 20192-2020 reflected loss and that the Tribunal erred in computing profit without accounting for depreciation or other deductions. The learned counsel submitted that the Tribunal ought to have taken the Company's financial incapacity into account. The Hon'ble Supreme Court in the judgment rendered in the case of ***Killick Mixon Limited*** stated supra, indicated 14 factors to be considered while fixing the wages. The Hon'ble Supreme Court at Paragraph No.33 held as follows:

*“33.All that the management wants in this case is that D.A. must not go on rising with the scaring price index and a limit should be imposed. We have already observed that in view of the status of the company the capacity to pay will not alone be of moment in favour of removal of the ceiling. The problem will have to be viewed from the following important aspects :-*

- (1) Condition of the wage scale prevalent in the company.*
- (2) Condition of the wage level prevalent in the industry and the region.*



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(3) *The wage packet as a whole of each earner in the company with all amenities and benefits and it-, ability and potency to cope with the economic requirements of daily existence consistent with his status in society, responsibilities, efficiency at work and industrial peace.*

(4) *The position of the company viewed in relation to other comparable concerns in the industry and the region.*

(5) *Peremptive necessity for full neutralisation of the cost of living at the rock-bottom of wage scale if at or just above the subsistence level.*

(6) *The rate of neutralisation which is being given to the employees in each salary slab.*

(7) *Avoidance of huge distortion of wage differentials taking into reckoning all persons employed in the concern.*

(8) *Degree of sacrifice necessary even on the part of workers in general interest.*

(9) *The compulsive necessity of securing social and distributive justice to the workmen.*

(10) *Capacity of the company to bear the additional burden.*

(11) *Interest of national economy.*

(12) *Repercussions in other industries and society as a whole.*

(13) *The state of the consumer price, index at the time of decision.*

(14) *Forebodings and possibilities in the foreseeable future as far as can be envisaged.*



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17.The Hon'ble Supreme Court in the case of ***Ahmedabad Mill Owners Association etc., vs. Textile Labour Association*** reported in ***AIR 1966 SC 497***

held as follows:

*“69.The last question to consider is whether the Industrial Court was right in coming to the conclusion that the additional burden which its award would impose upon the appellants would not be beyond their financial capacity. In dealing with this question, there are two general considerations which cannot be ignored. The first consideration is that the task of constructing a wage structure of industrial employees is a very responsible task and if,- -present.,, several difficult and delicate problems. The claim of the employees for a fair and higher wage is undoubtedly based on the concept of social justice, and it inevitably plays a major part in the construction of a wage structure. There can be little doubt that if the employees are paid a better wage which would enable them to live in fair comfort and discharge their obligations to the members of their families in a reasonable way, they would be encouraged to work whole-heartedly and their work would show appreciable increase in efficiency.*

*70.On the other hand, in trying to recognise and give effect to the demand for a fair wage, including the payment of dearness allowance to provide for adequate neutralisation against the everincreasing rise in the cost of living, industrial adjudication must always take into account the problem of the additional burden which such wage structure would impose upon the employer and ask itself whether the employer can reasonably be called upon to bear such burden. The problem of constructing a wage structure must be tackled on the basis that such wage structure should not be changed from*



*time to time. It is a long-range plan; and so, in dealing with this problem, the financial position of the employer must be carefully examined. What has been the progress of the industry in question; what are the prospects of the industry in future; has the industry been making profits; and if yes, what is the extent of profits; what is the nature of demand which the industry expects to secure; what would be the extent of the burden and its gradual increase which the employer may have to face ? These and similar other considerations have to be carefully weighed before a proper wage structure can be reasonably constructed by industrial adjudication, vide Express Newspapers (Private) Ltd., and Another v. Union of India & Others(1). Unusual profit made by the industry for a single year as a result of adventitious circumstances, or unusual. loss incurred by it for Similar reasons, should not be allowed to play a major role in the calculations which industrial adjudication would maker in regard to the construction of a wage structure. A broad and overall view of 'the financial position of the employer must be taken into account and attempt should always be made to reconcile the natural and just claims of the employees for a fair and higher wage with the capacity of the employer to pay it; and in determining such capacity, allowance must be made for a legitimate desire of the employer to make a reasonable profit. In this connection, it may also be permissible to take into account the extent of the rise in price structure which may result from the fixation of a wage structure, and the reasonableness of the additional burden which may thereby be imposed upon the, consumer. That is one aspect of the matter which is relevant."*



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18. Undoubtedly, the financial capacity of the employer is one of the factors to be considered while fixing the revised wages. From a reading of the Award, it is evident that the Tribunal examined Exs.M53 to M58, the Balance Sheets of the Company for the year 2014-2015 to 2019-2020 and found that although the Company reported losses for 2014-2018, its annual turnover steadily increased during the period. The Tribunal also found that depreciation, being a non-cash expense, deserved to be discounted while reckoning the profit. The financial statements of the Company showed annual turnovers of Rs.222 Crores and Rs.254 Crores for 2019 and 2020 respectively. The Tribunal, therefore concluded that the Company had the financial capacity to absorb the increased wage burden. The tabulated figures, of loss, depreciation and revenue from 2014-2015 to 2019-2020, shown below, support the conclusion.

| Balance sheet for the year ending on | Loss                    | Depreciation    | Revenue from operations |
|--------------------------------------|-------------------------|-----------------|-------------------------|
| 31.03.2014                           | Rs.11 Crores            | Rs.8 Crores     | Rs.98 Crores            |
| 31.03.2015                           | Rs.6 Crores             | Rs.13 Crores    | Rs.152 Crores           |
| 31.03.2016                           | Rs.7 Crores             | Rs.13 Crores    | Rs.167 Crores           |
| 31.03.2017                           | Rs.8.78 Crores          | Rs.11.35 Crores | Rs.180 Crores           |
| 31.03.2018                           | Rs.81 Lakhs             | Rs.9.67 Crores  | Rs.202 Crores           |
| 31.03.2019                           | Rs.1.17 Crores (profit) | Rs.13.78 Crores | Rs.222 Crores           |
| 31.03.2020                           | Rs.7.19 Crores (Profit) | Rs.7.45 Crores  | Rs.254 Crores           |

19. Though depreciation was higher in the earlier years, the Tribunal rightly held that the Company's rising turnover, coupled with improved financial results in the year 2019 and 2002, justified the inference that the Company could



bear the revised wage structure. In these circumstances, the finding of the Tribunal on financial capacity based on proper appreciation of evidence, does not warrant interference.

**Operation of Award:-**

20.The learned counsel for the petitioner further contended that the Tribunal ought not to have directed that the award be enforced with effect from 18.09.2015 (date of demand). The counsel submitted that the Award of the Tribunal relating to the payment of arrears from the date of the demand is unjustified.

21.The discussion relating to the financial capacity of the Company, to bear the burden of wage revision, induced the Tribunal to hold that the award would be effective from the date of demand.

22.This Court finds that the direction of the Tribunal that the arrears have to be paid with effect from the date of demand cannot be said to be unreasonable, since the Tribunal exercised the discretion vested in it by applying the correct principles of law. It is settled law that the Tribunal has discretion to determine the date from which the wage structure should be given effect to. Unless and until the discretion exercised is established to have been exercised arbitrarily and capriciously, this Court will not interfere with the same. In



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***Hindustan Times Limited Vs. Their Workemn [1963 [1] LLJ 108 : AIR 1963***

***SC 1332]*** and ***Western India Match Company Limited Vs. Their Workmen***

***[AIR 1964 SC 472].*** The Hon'ble Supreme Court while considering the effective date of operation of the Award, held that it is best left to the discretion of the Tribunal, since no general rules could be laid down in this regard.

23.The Hon'ble Supreme Court in ***Hindustan Times Ltd's case, [cited supra]***, held as follows:-

*"The Tribunal rejected the workmen's claim for giving effect to its award from April 11 1956. Wherever however the tribunal has given relief the tribunal has directed that the award should come into effect from the date of reference, i.e., 23 January, 1958. On behalf of the company Mr. Pathak contends that there is no reason why the award should be given effect to from any date prior to the date of its pronouncement. We are not impressed by this argument. No general formula can be laid down as to the date from which a tribunal should make its award effective. That question has to be decided by the tribunal on a consideration of circumstances of each case. There have been cases where this Court had made an award effective from the date when the demand was first made. There are other cases where the orders of the tribunal directing award to be made effective from the date of the award have not been interfered with. It is true that in some cases this Court has modified the tribunal's award in such a case it does not appear however that any general*



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*principles have been laid down. Indeed difficult and not even desirable that this Court should try to lay down general principles such matters that require careful consideration of the peculiar circumstances of case for the exercise of discretion. It is sufficient to say that we find no reason to interfere with the tribunal's direction this matter that the reliefs given by it would be effective from the date of the reference.”*

24. So also in ***Western India Match Company Ltd., vs. Their Workmen*** reported in ***AIR 1964 SC 472***, the Hon'ble Supreme Court, while referring to the discretion of the Tribunal in fixing the date from which the benefit granted by it shall take effect, held as follows:

*“The question as to the date from which the benefit granted by an award should take effect must generally be left to the discretion of the Tribunal making the award and this Court ordinarily refused to interfere with the exercise of that discretion. We are unable to find any special circumstances in this case that would justify any departure from our established practice.”*

22. From the facts and circumstances of the case, this Court finds no illegality or infirmity in the discretion exercised by the Tribunal regarding the effective date of operation of the Award. Hence, the contention of the learned counsel for the petitioner is rejected.



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23. At this juncture, this Court deems it appropriate to consider the nature of interference in a writ of Certiorari under Article 226 of the Constitution of India. In the judgment of the Hon'ble Supreme Court in the case of ***Central Council for Research in Ayurvedic Sciences and others Vs Ayurvedic Sciences and others Vs. Bikartan Das and others***, it was held as follows:

*“64. Thus, from the various decisions referred to above, we have no hesitation in reaching to the conclusion that a writ of certiorari is a high prerogative writ and should not be issued on mere asking. For the issue of a writ of certiorari, the party concerned has to make out a definite case for the same and is not a matter of course. To put it pithily, certiorari shall issue to correct errors of jurisdiction, that is to say, absence, excess or failure to exercise and also when in the exercise of undoubted jurisdiction, there has been illegality. It shall also issue to correct an error in the decision or determination itself, if it is an error manifest on the face of the proceedings. By its exercise, only a patent error can be corrected but not also a wrong decision. It should be well remembered at the cost of repetition that certiorari is not appellate but only supervisory.”*

From the aforesaid judgment of the Hon'ble Supreme Court, it is clear that unless a definite case for the issuance of writ of certiorari is made out, the same cannot be issued for mere asking.



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24. For all the above reasons, this Court finds that the award of the Industrial Tribunal is neither unreasonable nor unfair. The Tribunal has considered all relevant factors for revising the wages and for fixing the effective date of operation of the Award. Therefore, this Court finds absolutely no compelling reasons to interfere with the well considered award of the Industrial Tribunal.

25. The writ petition is accordingly dismissed. There shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.

**19.11.2025**

NCC: Yes

Index: Yes

Internet: Yes

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To

1. The Secretary,  
United Labour Federation,  
Reg.No.2657/CNI  
No.149, Thambuchetty Street,  
C.J.Complex, 4<sup>th</sup> Floor,  
Chennai – 600001.

2. The Managing Director,  
Management of  
Kwang Sung Break India  
Private Limited,



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No.49, Sengattugramam,  
Sriperumbuthur Taluk,  
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Pin:602 105.



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