

BEFORE THE PRINCIPAL LABOUR COURT, COIMBATORE

Present:- **Dr.A. D. Maria Clete, Ph.D (Law)**
Presiding Officer,
Principal Labour Court,
Coimbatore.

Friday, the 18th day of December 2020

ID No. 74/2015, ID No.78/2015, ID No. 80/2015 and ID No.82/2015

1. K.Thamburaj, (ID No.170)
Age 43 (14.10.1972)
S/o. Karuppusamy,
Door No.123, Ambethkar Nagar,
Vilankurichi (Post),
Coimbatore – 641 035. ... Petitioner in ID No. 74/2015
2. P.John Peter, (ID No.184)
Age 42 (27.06.1973)
S/o. Justin Paul Diary,
Annai Velankanni Nagar,
Sowripalayam (Post),
Coimbatore – 641 028. ... Petitioner in ID No. 78/2015
3. V.Murugan, (ID No.6114)
Age 37 (17.04.1978)
S/o. Vellingiri,
Door No.205, Soba Nagar Road,
Avarampalayam,
Coimbatore – 641 006. ... Petitioner in ID No. 80/2015
4. V.Anbarasu, (ID No.6087)
Age 40 (03.05.1975)
S/o. Marappan,
Door No.35, Kavatti Naidu Layout,
Sowripalayam,
Coimbatore – 641 028. ... Petitioner in ID No. 82/2015

/vs/

1. The Management,
M/s. V.R.Foundries & V.R.Finishers,
Door No. 83, 83-C, PKD Nagar,
Peelamedu, Coimbatore – 641 004.

...1st Respondent in all the above
ID No.74/2015, ID No.78/2015,
ID No.80/2015 & ID No.82/2015

2. The Management,
M/s. Ranba Castings Limited,
Door No. 495-A & 495/3,
Sulur Railway Feeder Road,
Muthugoundanpudur, Coimbatore – 641 006.

...2nd Respondent in all the above
ID No.74/2015, ID No.78/2015,
ID No.80/2015 & ID No.82/2015

The above Industrial Disputes ID No.74/2015, ID No.78/2015, ID No.80/2015 and ID No.82/2015 came up for final hearing before me on 10.12.2020 in the presence of Thiru.R.Lakshmana Narayanan, Learned Advocate for the Petitioner and Thiru.K.S.Bhuvanendran, Learned Advocate for the Respondent and upon perusing the Petition, Counter Statement, Documents and upon hearing the arguments of both side and having stood over for consideration, till this date, this Court doth passeth the following:-

COMMON FINAL AWARD

The petitioner had raised dispute under Section 2(A) of the Industrial Disputes Act, 1947 before the Assistant Commissioner of Labour, Conciliation-3, Coimbatore against their termination and upon conciliation failed as seen from report in ID No.74/2015 Naa.Kaa.No.158/2015, ID No.78/2015 Naa.Kaa.No.148/2015, ID No.80/2015 Naa.Kaa.No.151/2015, ID No.82/2015 Naa.Kaa.No.156/2015 dated 18.06.2015, the aggrieved petitioners filed their Claim Statements on 20.08.2015 under Section 2(A)(2) of the I.D.Act praying this Court to reinstate the petitioner with continuity of service, backwages and other attendant benefits from the date denial of employment to the petitioner by the respondent from 01.04.2015. This Court had issued summon on 24.08.2015 for the appearance of the Parties on 28.09.2015. On appearance, the 1st respondent and 2nd respondent side filed Counter on 29.02.2016.

2. The common averments in the Claim Petitions in brief are as follows:

The petitioners joined the 1st respondent company. They were entitled for a new rate of salary from April 2015. The particulars regarding their date of birth, dated of joining, section employed, record of service and last drawn salary are as hereunder:-

Sl.No	ID Nos.	Name of the Petitioner	Date of Birth	Date of Joining	Section employed	Years of service	Last Drawn Salary
1.	74/2015	K.Thamburaj	14.10.1972	01.01.1993	Moulding	22	Rs.15,635/-
2.	78/2015	P.John Peter	27.06.1973	07.06.1994	Moulding	21	Rs.13,915/-
3.	80/2015	V.Murugan	17.04.1978	17.07.1996	Fettling	19	Rs.13,649/-
4.	82/2015	M.Anbarasu	03.05.1975	12.07.1991	Fettling	24	Rs.14,907/-

The 1st respondent company is foremost in the foundary business in and around Coimbatore and produces about 1000 tonnes of moulding products. They are running the company profitably employing 100 workmen. The 2nd respondent is engaged in the same type of business as the 1st respondent but it has obtained registrations for functioning as a separate unit. The 2nd respondent is paying separately the sales tax, income tax and service taxes. The 1st and the 2nd respondents are run by separate managements. Although the 1st and 2nd respondents are totally different companies, yet the 1st respondent had announced that it will be transferring some workmen including the petitioners to the 2nd respondent company and that regarding the above transfer order the 2nd respondent had not stated any objection or given their opinion. Not only that, in the year 1993 the 1st respondent for the reason that the BMS Union was started, sent its workers namely Tr.Raja, Tr.Ramamoorthy, Tr.Krishnamoorthy, Tr.Muthuvadivel, Tr.Nagaraj, Tr.Kalimuthu, Tr.Subramaniam, Tr.Sundarraaj, Tr.Paramasivam, Tr.Kandasamy to the 2nd respondent company in the name of transfer and that the 2nd respondent accepted the same. However the 2nd respondent showed different reasons and sent out the workers from service and regarding this some cases are pending before this Labour Court and before the

Hon'ble High Court of Madras. Since the 2nd respondent had not objected or explained the said transfers made by the 1st respondent therefore the 2nd respondent is arrayed as a necessary party in this case and that further without prejudice to seeking reinstatement by the 1st respondent, the 2nd respondent is added herein as a formal party. The Industrial Disputes Act and all the Labour legislations are applicable to both respondents.

In the above circumstances, while the petitioner and other workmen were working well in the 1st respondent company for several years together, from the commencement of this year (2015), the 1st respondent has been functioning with an ulterior motive to illegally send out the petitioners including all permanent workmen. The 1st respondent had been adopting different strategies like transfer to the 2nd respondent company of those workmen who have only one or two years of service before attainment of superannuation, compelling resignation of those workmen who have several years of service and thereby calling each and individual workmen and seeking resignation letters, increasing the workload, replacing work etc.

The Trade Union namely CITU was the only union functioning in the 1st respondent company and the petitioners and other workers were members of the said union and the said union was not questioning any of the anti worker activities of the 1st respondent. Therefore in the situation when the said union was not raising its voice towards the welfare of the workmen and was a brain behind the anti worker activities of the respondent, the petitioner and other workmen quit from the said union and accordingly on 16.03.2015 they had sent a letter to the union and the 1st respondent and also to the Assistant Commissioner of Labour. The 1st respondent, knowing the activities of workmen, it had already announced in advance on the management notice board a notice dated 14.03.2015 stating that on account of business competition, market situation and also since the pollution control board has been instructing that the industry should not function in the said place, therefore the workers are being transferred to the 2nd respondent Procompany namely the 2nd respondent. When the 1st respondent was questioned about this they had stated that

the above said notice was published after consultation with the trade union and therefore it has advised them to approach the trade union and that when the trade union was contacted they did not give proper explanation and they had also stated that the stand of the management was correct and legal and spoke in a manner to passify them and therefore because of the attitude of the trade union the petitioner and other workmen lost confidence of the trade union and quit from the said union.

The petitioner states that on 18.03.2015 the petitioner and other workmen sent a letter to the 1st respondent. In the said letter it was detailed out about the illegal transfers of the management and about the compulsory resignations, the stay order obtained against the orders of the pollution control board and about the starting of the BMS trade union and that some workmen who were transferred to the 2nd respondent company and wherein they were not allowed to continuously work and hence the institution of cases in the Labour Court, Coimbatore. The 1st respondent had received the said letter and it had not replied to the said letter but continued to increase its revengeful activities against the workmen and thereafter on 20.03.2015 they again sent a letter to the 1st respondent about the transfer order such as issued to the workmen Sasikumar and that the 2nd respondent is not a branch management of the 1st respondent; therein the activities of the 1st respondent and 2nd respondent was elaborately stated and that the copy of letter was sent to the Labour Welfare and other Higher Officials of the Labour Department and the District Collector and the same was done in order to protect themselves against the danger approaching them and in order to affirm their livelihood and also considering that they could save themselves a bit from the anti worker approaches of the respondents.

In continuation of the above Acts, the 1st respondent from 01.04.2015 onwards was denying employment to the workers without stating any reason and without any prior notice and without issuing show cause notice or domestic enquiry and that the activity of the 1st respondent is not providing employment to the workmen is totally against law and principles of natural justice and that since the petitioner did not concede to the transfer or compulsory resignation etc of the 1st

respondent, it was denying employment from 01.04.2015 onwards and that on account of the threats and compulsion made by the 1st respondent some workers received paltry sum of money and the management settled their accounts. Further, the management denied employment to the petitioner and those workmen who were insisting workers upon their rights and the respondent management appointed those workers who were made to compulsorily quit service and selected them and put them into service as temporarily workers and thus continued to run the V.R. Foundries. The petitioner states that the 1st respondent completely ignored the Labour Welfare Legislations and continuously subjected workmen to several crises situation and finally at its climax it had been denying job to the workmen from 01.04.2015 onwards. The petitioner and other workmen therefore had raised industrial dispute under section 2(A)(1) before the Assistant Conciliation Officer -3 against the denial of employment and since the conciliation failed and the conciliation report was submitted on 18.06.2015, in consequence this petition is filed before this court and therefore this court may order continuity in service from the date of denial of employment on 01.04.2015 and order backwages and other attended benefits payable by the 1st respondent and pass such other order in the interest of justice.

3. The Common averments in the Counter filed by 1st respondent in brief are as follows :

The various averments and allegations made in the claims of the petitioners are denied and not maintainable either in law or on facts of this case. Except as to matters that are specifically admitted here under the petitioner is put to strict proof of the various averments and allegations made in the claim. On facts of this case, the respondent submits the following facts:- Their Foundry was one of the oldest foundry functioning in Coimbatore with an unblemished service record and have been maintaining cordial relations with the workers and union functioning in their factory. They employed 198 workers and due to several factors including pollution control problem, they were unable to continue their operations peacefully.

Hence they decided to stop the production and in order to protect the interest and welfare of the workforce, they introduced voluntary retirement scheme and also transferred some of their workers to Ranba castings Ltd, a sister concern unit situated in S.F.No.495/A & 496/3, Sulur Railway Feeder Road, Muthugoundanputhur, Coimbatore – 641406. Hence proper transfer orders were served to 52 workers. After receiving the transfer orders some of the recalcitrant workers, joined hands with each other workers, who were not at all transferred and have raised false and fabricated disputes before the ACL (C) 2, Coimbatore. They firmly objected to the disputes having raised under section 2A(2) of the ID Act but the above fact was not taken into consideration and failure reports were issued. Hence the present disputes are before the Labour Court, Coimbatore. The under mentioned workers were served with proper transfer orders and their names and their ID numbers are given below:-

S.No.	ID No.	Name
1.	72	P. Ganesan
2.	70	M.Senthilselvam
3.	73	R.Appuswamy
4.	76	M.Moorthy
5.	75	K.Boopathi
6.	77	N.Thiyagarajan
7.	79	R.A.Ramaswamy
8.	81	K.A.Chandrasekaran

Eventhough P.Sasikumar T.No.W0040 has raised dispute before the ACL subsequently the voluntarily submitted his resignation and settled his accounts. The remaining other 5 workers were served with show cause notices for misconduct and after conducting domestic enquires, second show cause notices were served to them. They replied for the second show cause notices and is now has raised the present non-employment disputes on false and fabricated claims. Their names and ID No's are as follows,

S.No.	ID No.	Name
1.	74	K.Thamburaj
2.	80	V.Murugan
3.	82	M.Anbarasu
4.	71	K.Murugesan
5.	78	P.John Peter

However Mr.O.Ranganathan (T.No.W0125) and Mr.R.Vigneswaran (T.No.6052) have submitted their resignation letter dated 10.08.2015 and 09.07.2015 respectively voluntarily and settled their accounts. All the 13 workers acting in concert refused to obey the orders of the management and have raised the false and fabricated disputes with ulterior motives and hence the disputes are all not maintainable under section 2A(2) of the ID Act and the same may be taken as a preliminary issue before embarking on the main issues/disputes. There is no case pending in the Coimbatore Labour Court or in Madras High Court. Transfer of workers and voluntary retirement of workers are recognized under law and standing orders and there cannot be any compulsion in the above and everything was voluntary and after negotiation with union functioning in the Foundry. In the above said circumstances the managements pray that the court may be pleased to dismiss the dispute as not maintainable and thus render justice.

4. **The Common averments in the Counter filed by 2nd respondent in brief are as follows :**

The various averments and allegations made in the claim of the petitioners are denied and not maintainable either in law or on facts of this case. Except as to matters that are specifically admitted here under the petitioner is put to strict proof of the various averments and allegations made in the claim. On facts of this case, the respondent submits the following facts:- Their Foundry was situated in S.F.No.495/A & 496/3, Suler Railway Feeder Road, Muthugoundanputhur, Coimbatore – 641406 with free air and pollution free atmosphere employing about

250 workers and producing high value casting with modern machinery and they are a sister concern unit of V.R.Foundries functioning at 83, P.K.D.Nagar, Peelamedu, Coimbatore – 641004. Since their parent company namely V.R.Foundries could not continue their operations due to several reasons including pollution control problem. Hence the parent company decided to transfer 52 of workers to Ranba Castings and proper transfer orders were served to them. All the workers have joined in Ranba Castings and now working peacefully. The following 9 workers alone have not joined as per the transfer order and their names and the ID numbers are as follows:-

S.No.	ID No.	Name
1.	72	P. Ganesan
2.	70	M.Senthilselvam
3.	73	R.Appuswamy
4.	76	M.Moorthy
5.	75	K.Boopathi
6.	77	N.Thiyagarajan
7.	79	R.A.Ramaswamy
8.	81	K.A.Chandrasekaran

One P.Sasikumar has resigned his job on 14.08.2015 and settled his entire claims from V.R.Foundries and since the other 8 workers have not joined in their factory, there was no employer and employee relationship between them. Further some other 5 workers have also raised dispute against them and they have nothing against them, since they are not their workers and their names and ID numbers are as follows:-

S.No.	ID No.	Name
1.	74	K.Thamburaj
2.	80	V.Murugan
3.	82	M.Anbarasu
4.	71	K.Murugesan
5.	78	P.John Peter

All the 13 workers with fabricated and false allegations have raised the claim against them and the disputes are not maintainable either in law or on facts of this case. They cannot state to be a necessary party to the dispute and hence the above point may be treated as a preliminary issue and has to be decided as a preliminary issue. The other allegations and averments are made with ulterior motives and the management has nothing to do with these allegations and they have never made any positive act against any of the 13 workers and hence the disputes are to be dismissed in limine, as far as they are concerned. In the above said circumstances the court may be pleased to dismiss the disputes as far as Ranba Castings concerned with costs and thus render justice.

5. During enquiry, on the side of the petitioner, Tr.M.Anbarasu was examined as WW1 and he has deposed behalf of himself in ID No. 82/2015, the petitioner Tr.K.Thamburaj in ID No.74/2015, the petitioner Tr.P.John Peter in ID No.78/2015 and the petitioner Tr.V.Murugan in ID No.80/2015. The petitioner side has marked Ex W1 to Ex W19. On the side of the respondent MW1 was examined as a common witness in the above ID's and Ex M1 to Ex M14 were marked.

6. Heard both. Records perused. No written arguments filed on both sides. On the side of respondent they have filed citation in re: (i) Hon'ble High Court of Madras – S.V.Velu vs. Labour Court, Madurai and another; (ii) 2001(1)LLN 326 – Hon'ble High Court of Madras – Mercury Manufacturing Company Ltd., Madras Export Processing Zone, Chennai and Joint Commissioner of Labour, Chennai and others; (iii) 2013-I-LLJ-627 (Mad) – Hon'ble High Court of Madras – K.Thirumalaisamy vs. Managing Director, Tamil Nadu State Transport Corporaiton, Coimbatore and another.

7. **Point for Consideration:**

Whether the petitioners in the above ID 74/2015, ID 78/2015, ID 80/2015 and ID 82/2015 are entitled to with continuity of service and back wages and other attendant benefits as prayed for?

8. **The Point:**

This is a 2(A)(2) dispute raised by the petitioners/workmen before this court stating that they were denied employment by the 1st respondent from 01.04.2015 and therefore they may be awarded continuity of service and backwages from the said date i.e. 01.04.2015 onwards. The respondent would contend that the dispute is not one of non-employment but that the petitioners in ID 74/2015, ID 78/2015, ID 80/2015 and ID 82/2015 were served with second show cause notice after domestic enquiry for misconduct and false and fabricated disputes are raised before this Court and hence the IDs to be dismissed as not maintainable.

9. With regard to the petitioner in ID 82/2015, WW1, has marked Ex W15 which is his salary slip for the month of April 2014 which shows the date of joining as 02.07.2001, as against the date of joining to be 12.07.1991 for the said petitioner. Ex W16, Ex W17, Ex W18 are the pay slips for the period March 2014, August 2014 and June 2014 of WW1 showing the total salary as Rs.6951/- and Ex W14 is ESI Card of WW1. These documents are not denied or disputed by the respondents and they would show that preceding 01.04.2015 the said WW1/petitioner worked for 240 days in a year in the 1st respondent company.

Similarly WW1, has marked Ex W2 which is the salary slip for the month of August 2014 of the petitioner in ID No.74/2015 which shows the date of joining as 01.07.2004, as against the date of joining to be 01.01.1993 for the said petitioner. Ex W3 is also the pay slip for the month of October 2014 of petitioner in ID No.74/2015 showing the total salary as Rs.7836/- and Ex W1 is his ESI Card.

These documents are not denied or disputed by the respondents and they would show that preceding 01.04.2015 the said petitioner in ID No.74/2015 namely K.Thamburaj worked for 240 days in a year in the 1st respondent company.

Again WW1, has marked Ex W5 which is the salary slip for the month of December 2014 of the petitioner in ID No.78/2015 which shows the date of joining as 01.07.2005, as against the date of joining to be 07.06.1994 for the said petitioner. Ex W6, Ex W7 are the pay slips for the period January 2015 and February 2015 of petitioner in ID No.78/2015 showing the total salary as Rs.749/- and Ex W4 is his ESI Card. These documents are not denied or disputed by the respondents and they would show that preceding 01.04.2015 the said petitioner in ID 78/2015 namely P.John Peter worked for 240 days in a year in the 1st respondent company.

Also WW1, has marked Ex W9 which is the salary slip for the month of April 2013 of the petitioner in ID No.80/2015 which shows the date of joining as 01.03.2006, as against the date of joining to be 17.07.1996 for the said petitioner. Ex W10, Ex W11, Ex W12 are the pay slips for the period March 2009, March 2010 and July 2010 of petitioner in ID No.80/2015 showing the total salary as Rs.3440/- and Ex W13 is the EPF slip for the period 2012-2013 of petitioner in ID No.80/2015 and Ex W8 is his ESI Card. These documents are not denied or disputed by the respondents and they would show that preceding 01.04.2015 the said petitioner in ID 80/2015 namely V.Murugan worked for 240 days in a year in the 1st respondent company.

10. The petitioner side state that they were denied employment from 01.04.2015; now turning to the documents marked by the respondent side through MW1, Ex M2 charge memo dated 9.1.2015 was issued to WW1 to show cause for unauthorised absence for different periods in the years 2010 to 2014; Ex M4 dated 10.1.2015 is letter of WW1 that due to family circumstances and ill health he was not able to attend work and that he would take care that the same is not repeated in future; Ex M3 is copy of the domestic enquiry proceedings in respect of WW1 as

held on 13.01.2015. As regards the petitioner in ID No.78/2015, Ex M5 shows that upon the charge memo dated 06.12.2014 for unauthorised absence for different periods in the years 2006 to 2014, a domestic enquiry was held on 30.12.2014 and the enquiry officer has submitted his enquiry report dated 2.1.2015 finding that the charges proved against the said petitioner in ID No.78/2015 (P. Johnpeter). As regards the petitioner in ID No. 80/2015, Ex M6 shows that upon the charge memo dated 06.12.2014 for unauthorised absence for different periods in the years 2006 to 2014, a domestic enquiry was held on 2.1.2015 and the enquiry officer has submitted his enquiry report dated 5.1.2015 finding that the charges proved against the petitioner in ID No.80/2015 (V.Murugan). Then, it is also seen that under Ex M11 series, letters sent by the petitioner in ID No.74/2015 (K.Thamburaj) and petitioner in ID No. 78/2015 (John Peter) dated 3.4.2015 and 4.4.2015 respectively, to the 1st respondent management, referring to a show cause notice dated 30.03.2015 issued by the 1st respondent to the said petitioners and seeking for copies of documents marked before the enquiry officer namely copies of attendance register documents relating to management contention to the loss of revenue of the company, the final enquiry report of the enquiry officer copy of the certified Standing Orders and further stating that upon issuance of the same they will be able to submit their reply to the said show cause notice. There is no further document placed before this Court to show that subsequent to Ex M11 dated 04.04.2015, the petitioners were not given any order informing him that pursuant to the enquiry report and following the second show cause notice, that the 1st respondent has terminated their services. Furthermore, at this juncture this Court also looks into the averments of the respondents wherein the 1st respondent has stated that as they were not able to continue operations they decided to stop production and they introduced voluntary retirement scheme in the interest of the workforce and also transferred some workers in ID No.72,70,73,76,75,77,79,81 to the 2nd respondent company which is a sister concern and that five workers (ID No.74,80,82,71,78) were served with show cause notices for misconduct and that domestic enquiry was conducted and second show cause notices were also issued and

after they replied to the second show cause notice they have raised false disputes of non-employment and the same is not maintainable and that the IDs may be dismissed. The 2nd respondent has stated that they are the sister concerns of the 1st respondent and that the parent company 1st respondent issued proper transfer orders for 52 of their workmen and all the workmen joined the 2nd respondent and are working with them except 9 workmen namely the petitioner in ID 72,70,73,76,75,77,79 and 81 and that they have nothing against the workmen in ID 74,80,82,71 and 78 since they are not their workmen and that all the claims raised in the about 13 cases are false and the IDs are not maintainable in law and may be dismissed. Therefore it is evident from the above averments and material documentary evidence that the petitioners were not transferred by the 1st respondent to the 2nd respondent and it is not also the case of the respondent that WW1 accepted any voluntary retirement scheme and resigned from job upon any final settlement. The Learned Counsel for the respondent argued that the petitioners replied to the second show cause notice dated 30.03.2015 only on 04.04.2015 but however they have contended that were denied job from 01.04.2015 and therefore the Learned Counsel wondered how the same could be true after sending reply to show cause notice only on 04.04.2015 and therefore the plea of the petitioners that they were refused employment from 01.04.2015 is false. It was further argued that in his said reply to the second show cause notice the petitioners had asked for copies of documents and even while the respondent could decide on their request for said copies, the petitioners/workman proceeded to the Assistant Commissioner of Labour and raised a dispute before the said authority on 09.04.2015 and therefore the respondent could not take any further action on the pending dispute before Assistant Commissioner of Labour. This Court at the outset finds that all these above contentions are not averred in the counter filed by the respondents and they are mere arguments which cannot be weighed in the absence of any evidence before this Court. In re 2012(2) LLN 130 (Del) it was held:

“LABOUR LAW – unauthorised absenteeism or Abandonment of Service – Establishment of – Management to place on record necessary material to prove that enough efforts were made by it to call upon Workman to resume back his duty and Workman has shown clear reluctance for same – In instant case, Workman prevented from reporting on duty by Management – Workman, thus, not, guilty of absenteeism. (Para 7)

LABOUR LAW – Abandonment of Service – What is – Abandonment of service is voluntary relinquishment of one's services with intention not to resume same – mere absenteeism for a continuous period would not establish that Employee had abandoned his service Management to bring on record, sufficient material to show that Employee had abandoned service – On failure to report for duty, Management has to call upon Employee and if Employee refuses to report, enquiry to be ordered and accordingly action to be taken – In absence of anything placed on record by Management, presumption against Employee cannot be drawn – In instant case, no enquiry set up by Petitioner-Management and no letter sent by Management to Workman calling upon him to resume his duty – Act of Petitioner Management in clear violation of procedure prescribed under Section 25-F of Industrial Disputes Act – Order of Labour Court granting reinstatement of Workman, along with 40% backwages, upheld – Industrial Disputes Act, 1947 (14 of 1947), Section 25-F. (Para 8)”

In this situation, the version of the petitioners that they were denied employment by the 1st respondent is probable and sustainable; while the services of the petitioners, who have a record of continuous services is protected in terms of the ID Act, they were not communicated of any termination of their services, rather simply denied employment and such denial of employment by the 1st respondent is bad in law and wrongful and therefore the normal rule that follows is reinstatement with continuity of services and backwages.

11. Here and Now, the petitioners ought to be put in the same position in which they would have been but for the illegal action of the employer and this means reinstatement but WW1 has stated in the cross examination that presently the 1st respondent factory is not functioning and that they have not filed any dispute seeking

employment from the 2nd respondent. Again MW1 has also stated since April 2015 1st respondent closed its operations in the said address at Peelamedu Coimbatore and it is functioning in Arasoorthenampalayam. In these circumstances the relief of reinstatement is not possible and therefore the only relief is compensation in lieu of reinstatement.

Now, it is seen that all these petitioners have put in about 10 to 25 years of service and since the date of denial of employment i.e 01.04.2015 the petitioners have thus been out of job for over 5 years. It is also seen that the petitioners belong to the age group of 50 to 55 years and not yet reached superannuation; therefore inspired by the judgment of the Hon'ble Supreme Court Of India in re *O.P Bhandari v. Indian Tourism Development Corpn. Ltd. And Others* 1987 AIR 111, 1986 SCR (3) 923 it is decided that the 1st respondent shall pay to each of the petitioners in ID 74/2015, ID 78/2015, ID 80/2015 and ID 82/2015 (a) Salary including usual allowances for the period commencing from the date of denial of employment i.e. 01.04.2015 till the date of payment of compensation equivalent to 3 years' salary including their usual allowances; that the Provident Fund amount payable to the petitioners and terminal benefits computed as on the date of payment of compensation as per (a) above; that the above said amount shall be paid in lumpsum to the petitioners within one month; that on default the sum so payable shall be paid with interest at the rate of 7 percent. Thus the point is answered.

In result, the above ID 74/2015, ID 78/2015, ID 80/2015, ID 82/2015 are allowed and Common Award is passed,

i) That the 1st respondent shall pay to each of the petitioners Tr.K.Thamburaj in ID No.74/2015, Tr.P.John Peter in ID No.78/2015, Tr.V.Murugan in ID No.80/2015 and Tr.M.Anbarasu in ID No.82/2015 (a) Salary including usual allowances for the period commencing from the date of denial of employment ie 01.04.2015 till the date of payment of compensation equivalent to 3 years' salary including their usual allowances;

ii) That the Provident Fund amount payable to the petitioners and terminal benefits computed as on the date of payment of compensation as per (a) above;

iii) That the above said amount shall be paid in lumpsum to the petitioners within one month;

iv) That on default the sum so payable shall be paid with interest at the rate of 7 percent;

v) That the Parties shall bear their own costs.

Dictated to Key into the Computers by the Typist, Prints taken out by her, corrected and pronounced by me in the open Court this the 18th day of December 2020.

Sd xxxx/- (18.12.2020)

PRESIDING OFFICER,
PRINCIPAL LABOUR COURT,
COIMBATORE.

LIST OF WITNESSES EXAMINED

For Petitioner Side : WW1 - M.Anbarasu (Petitioner in ID No.82/2015)
For Respondent Side : MW1 - V.Thirukkaivel

LIST OF EXHIBITS MARKED

For Petitioner Side:

Exhibit No.	Date	Description	
Ex W1	-	ESI Card of the petitioner Tr.K.Thamburaj	Original
Ex W2	August 2014	Pay slip of the petitioner Tr.K.Thamburaj for the month of August 2014	Original
Ex W3	October 2014	Pay slip of the petitioner Tr.K.Thamburaj for the month of October 2014	Original
Ex W4	-	ESI Card of the petitioner Tr.P.John Peter	Original

Ex W5	December 2014	Pay slip of the petitioner Tr.P.John Peter for the month of December 2014	Original
Ex W6	January 2015	Pay slip of the petitioner Tr.P.John Peter for the month of January 2015	Original
Ex W7	February 2015	Pay slip of the petitioner Tr.P.John Peter for the month of February 2015	Original
Ex W8	-	ESI Card of the petitioner Tr.V.Murugan	Original
Ex W9	April 2013	Pay slip of the petitioner Tr.V.Murugan for the month of April 2013	Original
Ex W10	March 2009	Pay slip of the petitioner Tr.V.Murugan for the month of March 2009	Original
Ex W11	March 2010	Pay slip of the petitioner Tr.V.Murugan for the month of March 2010	Original
Ex W12	July 2010	Pay slip of the petitioner Tr.V.Murugan for the month of July 2010	Original
Ex W13	2012-2013	EPF Slip of the petitioner Tr.V.Murugan for the period 2012-2013	Original
Ex W14	-	ESI Card of the petitioner Tr.M.Anbarasu	Original
Ex W15	April 2014	Pay slip of the petitioner Tr.M.Anbarasu for the month of April 2014	Original
Ex W16	March 2014	Pay slip of the petitioner Tr.M.Anbarasu for the month of March 2014	Original
Ex W17	August 2014	Pay slip of the petitioner Tr.M.Anbarasu for the month of August 2014	Original
Ex W18	June 2014	Pay slip of the petitioner Tr.M.Anbarasu for the month of June 2014	Original
Ex W19	-	Counter Statement of CP.No.60/2001	Xerox Copy

For Respondent Side:

Exhibit No.	Date	Description	
Ex M1	16.09.1996 & 01.08.1996	ESI Card of Tr.C.Raja and Tr.K.Ramamoorthy	Xerox Copy

Ex M2	09.01.2015	Show Cause Notice issued by the 1 st respondent to the petitioner Tr.M.Anbarasu	Xerox Copy
Ex M3	13.01.2015	Enquiry Proceedings regarding 09.01.2015 show cause notice	Xerox Copy
Ex M4	10.01.2015	Letter sent by the petitioner Tr.M.Anbarasu to the 1 st respondent	Xerox Copy
Ex M5	02.01.2015	Enquiry Report regarding 30.12.2014 enquiry proceedings	Xerox Copy
EX M6	02.01.2015 & 05.01.2015	Enquiry proceedings regarding 06.12.2014 show cause notice and Enquiry report	Xerox Copy
Ex M7	March 2015	Pay slip of Tr.A.Ravichandran, Tr.V.Elango and Tr.P.John Peter	Xerox Copy
Ex M8	March 2015	Pay slip of Tr.K.Shanmugam, Tr.K.Thamburaj	Xerox Copy
Ex M9	18.03.2015 & 04.08.2015	Transfer order and Resignation letter of Tr.P.Sasikumar	Xerox Copy
Ex M10	29.10.2014	Letter sent by the Pollution control department to the 1 st respondent management	Xerox Copy
Ex M11	03.04.2015	Letter sent by the petitioner Tr.K.Thamburaj to the 1 st respondent - explanation submitted regarding the second show cause notice	Xerox Copy
Ex M12	29.10.2014	Letter sent by the Pollution control department to the 1 st respondent management	Xerox Copy
Ex M13	May 2015	Letter sent by the Assistant Commissioner of Labour, Coimbatore to the petitioner K.A.Chandrasekaran and others stating that any objections regarding the transfers may be raised as a dispute under 2K of the Act	Xerox Copy
Ex M14	18.03.2015 & 04.08.2015	Transfer order and Resignation letter of Tr.P.Sasikumar	Xerox Copy

Sd xxxx/- (18.12.2020)
PRESIDING OFFICER,
PRINCIPAL LABOUR COURT,
COIMBATORE.

/ Copy of Common Award ID No.74/2015, 78/2015, 80/2015 & 82/2015 /

COMMON FAIR AWARD

in

ID No.74/2015, 78/2015,
80/2015 & 82/2015

Dated : 18.12.2020

Principal Labour Court,
Coimbatore