

பதிவு தபால் ஒப்புக்கையுடன்

பெறுநர்:

நிர்வாகம்,
M/s.டிபூப் நிட்ஸ் பேசன் லிட்., (M/s.Tube Knits Fashion Ltd.)
பூனிட் - 1, கான்சீவரம்,
நல்லூர், திருப்பூர்.

ஐயா,

எமது கட்சிக்காரர் திரு.வெ.பழனிச்சாமி, த/பெ. வெங்கிடுசாமி, தாயம்பாளையம் - அஞ்சல், ஊதியூர் (வழி), காங்கேயம் - தாலுகா, ஈரோடு மாவட்டம் - 638 710, அவர்களின் அறிவுறுத்தலின் பேரில் அனுப்பப்படும் வழக்கறிஞர் அறிவிப்பு என்னவென்றால்,

1. தங்கள் நிறுவனத்தில் எமது கட்சிக்காரர் திரு.பழனிச்சாமி என்பவர் கடந்த 01-08-2005-ம் தேதிமுதல் பணியில் சேர்ந்து தொடர்ச்சியாக நிரந்தர பணியாளராக பணியாற்றி வந்துள்ளார். மேலும் அவருக்கு கிடைக்க வேண்டிய நிலுவை சம்பளம் மற்றும் போனஸ் கோரி கோவை மாண்புமிகு தொழிலாளர் நீதிமன்றத்தில் தொழிற்சாலை சட்டத்தின் கீழ் கணக்கீட்டு மனு தாக்கல் செய்யப்பட்டு சி.பி.எண்:274/2007-ஆக வழக்கு நடத்தப்பட்டு இறுதியில் தாங்கள் மனுதாரருக்கு நிலுவை சம்பளத்தொகை ரூ.36,425/-ம் மற்றும் போனஸ் ரூ.6,435/- சேர்த்து மொத்தம் ரூ.42,860/-த்தை மனு தாக்கல் செய்த நாளிலிருந்து தொகை கொடுக்கும்வரை 6% வட்டியுடன் சேர்த்து வழங்க வழங்க வேண்டும் என்ற ஆணையினை கடந்த 26-07-2012-ம் தேதியன்று வழங்கியதை தாங்கள் அறிந்ததே.

2. மேலும் மேற்படி கணக்கீட்டு வழக்கு எண்:274/2007-ன் உத்தரவை நிறைவேற்றும்படி எமது கட்சிக்காரர் தாங்களிடம் நேரில் முறையிட்டும் இதுவரை எவ்வித பலனும் கிடைக்கவில்லை. அதன் காரணமாகவே இந்த வழக்கறிஞர் அறிவிப்பை தாங்களுக்கு எமது கட்சிக்காரர் அறிவுறுத்தலின்படி தெரிவிக்கப்படுகிறது.

3. மேலும் மேற்கண்ட கணக்கீட்டு வழக்கின் உத்தரவு கடந்த 26-07-2012-ம் தேதியன்று தெரிவிக்கப்பட்டு இன்று வரை தாங்கள் நிறைவேற்றாமல் இருந்து வருகிறீர்கள் என்று தெரிவித்துள்ளார். எனவே தாங்கள் எமது கட்சிக்காரருக்கு மேற்படி உத்தரவின்படி வழங்க வேண்டிய பணிக்கான நிலுவை சம்பளத்தொகை, போனஸ் மற்றும் வட்டியையும் உடனடியாக இந்த அறிவிப்பு கிடைக்கப்பெற்ற 7 நாட்களுக்குள் வழங்க வேண்டுமாய் கேட்டுக் கொள்ளப்படுகிறது. தவறும்பட்சத்தில் மேற்படி உத்தரவை நடைமுறைப்படுத்த உரிய நீதிமன்றத்தில் வழக்கு தொடுத்து பரிகாரம் பெற வேண்டியதாக இருக்கும், அதற்காக ஏற்படும் அனைத்து கஷ்ட நஷ்டத்திற்கு தாங்களே முழு பொறுப்பாவீர்கள் என்பதை இதன் மூலம் தெரிவித்துக் கொள்கிறேன்.

நாள் : 01-07-2019
இடம் : கோயமுத்தூர்

பதிவு
வழக்கறிஞர்.

இணைப்பு:

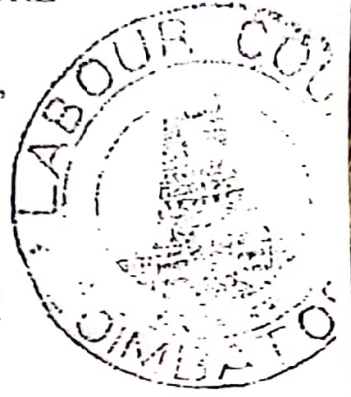
1. மாண்புமிகு தொழிலாளர் நீதிமன்றம், கோயமுத்தூர் - கணக்கீட்டு மனு எண்:274/2007-ன் 26-07-2012-ம் நாளிட்ட உத்தரவு (நகல்).

BEFORE THE LABOUR COURT, COIMBATORE

PRESENT: Thiru P.Rajamanickam, B.Sc.,B.L.,
Presiding Officer

Thursday, the 26th day of July 2012

COMPUTATION PETITION No.274/2007



V.Palanisamy
S/o Venkidusamy
Thayampalayam Post,
Oothiyur via,
Gangeyam taluk,
Erode District – 638 710.

...Petitioner

..Vs..

The Management,
M/s Tube Knits Fashion Ltd.,
Unit 1, Kancheevaram,
Nallur, Tiruppur,
Coimbatore District.

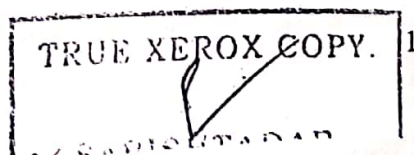
...Respondent

This Computation Petition coming on for final hearing before me on 28.06.2012 in the presence of Thiru B.Jothikumar, Advocate for the petitioner and of Thiru P.Subbarayan, Advocate for the respondent and upon perusing the petition, counter, documents, evidences and upon hearing the arguments of both sides and having stood over till this day for consideration, this court passed the following:-

ORDER

1. This petition has been filed by the petitioner/workman under section 33 C (2) of the Industrial Disputes Act, 1947 to compute the amount due to him at Rs.73,339.45 and direct the respondent to pay the said amount with interest at the rate of 18% per annum.
2. The averments made in the petition are in brief as follows.

The petitioner was working as a packer from 01.08.2005 in the



P. Rajamanickam

respondent company. The petitioner has worked for more than 480 days during the past two years. The respondent has not paid the salary and other allowances in terms of the wage settlement arrived at between the workers and the respondent management. As per the wage settlement arrived at, the respondent has to pay a sum of Rs.142.50 per shift. But the respondent has paid only Rs.60/- per shift. Finally, the petitioner was getting Rs.70/- per day. In the month of January 2007 a fresh wage settlement was arrived at between the employees and the respondent management. As per the said settlement, the respondent has to pay R.156.50 per day. But the respondent did not implement both the settlements. Hence the petitioner on behalf of the other workers and also on his behalf made demands to implement the said settlement. The management enraged by the demands made by the petitioner, terminated the petitioner from his service orally with effect from 07.08.2007. From 01.08.2005 to 31.12.2006 the petitioner is entitled to get salary of R.3,705/- per month. The said amount comes to Rs.62,985/- for seventeen months, whereas the respondent has paid at the rate of Rs.1,560/- per month and the total amount for seventeen months comes to Rs.26,520/-. So the petitioner is entitled to get the difference amount of Rs.36,425/- for the salary arrears. From 01.01.2007 to 07.08.2007 as per the new wage settlement, the petitioner is entitled to get a sum of Rs.4,069/- per month. So the total amount for eight months comes to Rs.32,552/-. For the aforesaid period, the respondent has paid Rs.14,560/- only calculating the said amount at the rate of Rs.1,820/- per month. So the difference amount comes to R.17,992/-. Leave salary for the period of 2005-2006 comes to Rs.11,115/- whereas the respondent has paid only Rs.4,680/-. So the balance amount of Rs.6,435/- is due from the respondent. As per the second wage settlement, the petitioner is entitled to get Rs.9,155.25 towards salary leave. So totally the petitioner is entitled to get Rs.73,339.45. Since the respondent has not paid the said amount in time they have to pay the said amount with interest at the rate of 18% per annum.

3. The averments made in the counter statement are in brief as follows.

The respondent is running a Garment unit at Tiruppur by employing

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sizable number of employees. The garment knitting industries are not working continuously throughout the year. Hence it is very difficult to retain the workers on permanent basis. The petitioner was engaged as a daily wager on the basis of needs of work. He was a temporary employee. As per the records available with the respondent, the petitioner has joined in the respondent company only on 01.01.2007 as packer. The daily rate of wages of the petitioner was Rs.142.50. He totally worked for 161 days only. It is false to state that the petitioner was appointed on 01.08.2005. It is also false to state that he has worked for more than 480 days for the past two years. Further it is false to state that the petitioner was orally terminated from service on 07.08.2007. The petitioner left his service on his own accord. Since the petitioner has joined in the respondent company only on 01.01.2007, the petitioner is not entitled to ask arrears of salary prior to 01.01.2007. The amounts claimed under the various heads are not correct. The respondent is not liable to pay any amount to the petitioner. No amount is due from the respondent. Therefore the respondent prayed to dismiss the petition.

4. The Points for consideration are as follows.

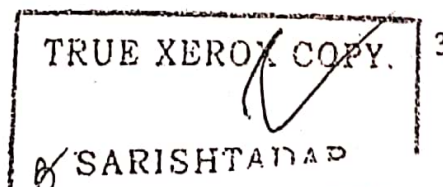
- (1) Whether the petitioner has joined in the respondent company on 01.08.2005?
- (2) Whether the petitioner is entitled to recover the petition mentioned amount from the respondent?
- (3) To what relief the petitioner is entitled to?

5. During enquiry, on the side of the petitioner, the petitioner examined himself as W.W.1 and marked exhibits as Ex.W1 to Ex.W5. On the side of the respondent one witness was examined as M.W.1 and exhibits marked as Ex.M1 to Ex.M8.

6. Heard both sides.

7. Both sides have filed written arguments also.

8. **Point No.1:** According to the petitioner he joined in the respondent company as a packer on 01.08.2005. The case of the respondent is that the petitioner



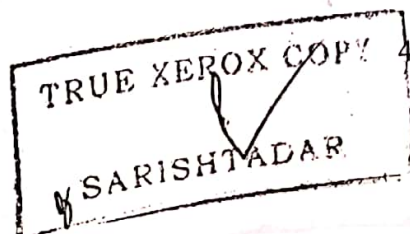
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has joined in the respondent company on 01.01.2007 only and not on 01.08.2005 claimed by the petitioner. Though the petitioner has not produced an appointment order to show that he was appointed in the respondent company on 01.08.2005 itself, the evidence available in the record would show that he worked in the respondent company from the month of August 2005.

9. Ex.W1 is the receipt for subscription made by the petitioner to the Kovai Mavatta Banian Thozhilalar Munnetra Sangam dated 02.08.2005. In the said document, it is clearly stated that the petitioner was working in the respondent company. Ex.W2 is the copy of the letter sent by the petitioner to the Chief Minister of Tamil Nadu dated 29.08.2006. In the said letter, the petitioner has stated that he was working in the respondent company for the past one year. He also stated in the said letter that the respondent has not paid the proper salary. Ex.W3 is the letter sent by the Commissioner of Labour, Chennai dated 24.01.2007. Through Ex.W3 the Commissioner of Labour, Chennai requested the Deputy Commissioner of Labour Coimbatore to take action on the letter submitted by the petitioner dated 29.08.2006 (Ex.W2) and submit a report to the Chief Minister's Special Cell. Ex.W4 is a copy of the letter sent by the petitioner dated 30.06.2006 to the respondent company. In the said letter also the petitioner has stated that he was working in the respondent company for the past one year and the wages have not been paid properly. Ex.W5 is the letter sent by the Joint Commissioner of Labour dated 09.10.2006 to the petitioner herein. In the said letter, the Joint Commissioner of Labour advised the petitioner to raise industrial dispute through his trade union and get remedy.

10. During the cross-examination of W.W.1, the respondent has not asked any question disputing the genuineness of Ex.W1 to Ex.W3 and Ex.W5. Only in respect of Ex.W4 questions were asked, that too in respect of non mentioning of door number of the respondent company. No suggestion was put that the Ex.W4 was not received by the respondent. So it has to be presumed that the said letter has been received by the respondent.

11. Unless the petitioner was working in the respondent company prior



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to the date of 01.01.2007 he would not have sent Ex.W2 and Ex.W4 on 29.08.2006 and 30.06.2006 respectively. As already pointed out that in both the said letters the petitioner has stated that he was working in the respondent company for the past one year. The aforesaid statement coupled with Ex.W1, Ex.W3 and Ex.W5 would clearly show that the petitioner was working in the respondent company from the month of August 2005.

12. The learned counsel for the respondent contended that Ex.M1 and Ex.M2 would clearly establish that the petitioner has joined in the respondent company only on 01.01.2007. Ex.M1 is the application said to have been submitted by the petitioner requesting job. Ex.M2 is the appointment order dated 01.01.2007. In Ex.M2 it is stated that the petitioner has submitted an application seeking employment dated 29.12.2007. That itself shows that the Ex.M2 has been filled up only subsequently.

13. It is seen from the records that the petitioner has filed an application in I.A. No124/2011 to direct the respondent to produce attendance register for the period from January 2005 to 06.08.2007, Salary Register for the period from 01.08.2005 to 31.07.2007 and Bonus Register for the years 2005-2006 and 2006-2007. In the said application, the learned counsel for the respondent made an endorsement stating that the petition may be allowed and the respondent undertakes to file all those documents at the time of evidence. Based on the said endorsement, the said application was allowed on 01.06.2011. Subsequently, the respondent has filed list of documents on 27.06.2011 in which also the respondent has stated that he has produced the Attendance Register for the period from 01.08.2005 to 31.12.2007, Salary Register for the aforesaid period and Bonus Register for the years 2005-2006 and 2006-2007. But actually the aforesaid documents were not produced for the relevant periods as stated in the list of documents filed by the respondent. Ex.M6 is the Attendance Register for the period from January 2007 to August 2007 only. Ex.M7 is the copy of the Salary Register for the period from January 2007 to August 2007 only. Ex.M8 is the copy of the register for the payment of Bonus from

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November 2006 to October 2007 only. The respondent has not produced Attendance Register and Salary Register for the period from 01.08.2005 to 31.12.2006. Likewise, the Bonus Register also not produced for the year 2005 to 2006. If the respondent had produced the aforesaid registers from 01.08.2005 onwards that would reveal that the petitioner was working in the respondent company from 01.08.2005 onwards. But the respondent has purposely withheld the best evidence and therefore an adverse inference has to be drawn against the respondent. As already pointed out that the Ex.W1 to Ex.W5 would clearly establish that the petitioner was working in the respondent company from the month of August 2005 onwards. Therefore I hold that the petitioner has joined in the respondent company on 01.08.2005. Accordingly this point is answered in favour of the petitioner.

14. **Point No.2:** According to the petitioner that as per the wages settlement arrived at between the employees and the respondent, the respondent has to pay Rs.142.50 per shift up to 31.12.2006 and thereafter at the rate of Rs.156.50 per shift. His further case is that the respondent has paid only Rs.60/- per day up to 31.12.2006 and thereafter at the rate of Rs.70/- per day. Though the petitioner has not produced the wages settlement arrived at between the employees and the respondent, the evidence of M.W.1 would clearly show that the petitioner was paid Rs.142.50 per day. As already pointed out that the respondent has not produced the Salary Register for the period from 01.08.2005 to 31.12.2006 and hence an adverse inference has to be drawn against the respondent. In the said circumstances, the oral evidence of the petitioner has to be accepted. The petitioner has deposed that from 01.08.2005 to 31.12.2006 he was paid only Rs.60/- per day. So the petitioner is entitled to get the difference amount for the aforesaid period. The difference amount for the aforesaid period comes to Rs.36,425/-.

15. According to the petitioner the bonus for the said period comes to Rs.11,115/-, but the respondent has paid only Rs.4,680/- and the balance amount of Rs.6,435/- is due from the respondent. The respondent has not disputed the said calculation. Therefore, the petitioner is entitled to get a sum of Rs.36,425/- towards

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arrears of salary and Rs.6,435/- towards arrears of bonus for the period from 01.08.2005 to 31.12.2006.

16. According to the petitioner a second wages settlement was arrived at and as per the said settlement, the respondent has to pay Rs.156.50 per day, but the respondent has paid only Rs.70/- per day. The said averments were denied by the M.W.1. Under the said circumstances, it is for the petitioner to prove the said settlement. The petitioner has not produced a copy of the said settlement and therefore I hold that the petitioner has not proved that a second settlement was arrived at and as per the said settlement, the respondent has to pay Rs.156.50 per day from 01.01.2007. Ex.M7 and Ex.M8 would clearly show that the petitioner was paid Rs.156.50 per day from 01.01.2007 and the bonus was also paid on that basis only. Therefore the petitioner is not entitled to claim any arrears of salary and bonus from 01.01.2007. Accordingly this point is answered.


17. **Point No.3:** In view of the findings given to Point No.1 and 2, the petitioner is entitled to get a sum of Rs.36,425/- towards wage arrears and Rs.6,435/- towards bonus totally a sum of Rs.42,860/- with interest at the rate of 6% per annum from the date of petition till the date of realisation.

18. In the result, this computation petition is partly allowed.

(1) That the respondent is directed to pay Rs.42,860/- [Rupees forty two thousand eight hundred and sixty only] to the petitioner with interest at the rate of 6% per annum from the date of petition till the date of realisation and

(2) that the parties are directed to bear their own costs.

Dictated to the Steno-typist and transcribed by her and then corrected and pronounced by me on this the 26th day of July 2012.


Presiding Officer,
Labour Court, Coimbatore.

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LIST OF EXHIBITS MARKED

For Petitioner:

- Ex.W1: 02.08.2005 - Receipt issued to the petitioner by Banian Thozhilalar Munnetra Sangam for having received Rs.50/- as yearly subscription.
- Ex.W2: 29.08.2006 - Letter from the petitioner addressed to the Chief Minister of Tamil Nadu.
- Ex.W3: 24.01.2007 - Copy of the memo issued to the petitioner by the Labour Officer, Coimbatore.
- Ex.W4: 30.06.2006 - Copy of the letter from the petitioner addressed to the respondent.
- Ex.W5: 09.10.2006 - Copy of the letter from the Joint Commissioner of Labour, Chennai to the petitioner.

For Respondent:

- Ex.M1: 01.01.2007 - Application containing the particulars of the petitioner issued to the respondent by the petitioner.
- Ex.M2: 01.01.2007 - Appointment order of the petitioner.
- Ex.M3: --- - Gratuity Nomination Form of the petitioner.
- Ex.M4: --- - Copy of the Family Card concerning the petitioner for the year 2005-2009.
- Ex.M5: 29.08.2007 - Certificate issued by the Bureau Veritas Certification (India) Private Limited to the respondent concern in SA 8000:2001.
- Ex.M6 --- - Copy of Attendance Register containing some portions for the period from January 2007 to August 2007 relating to the respondent concern.
- Ex.M7: --- - Salary register for the period from January 2007 to August 2007.
- Ex.M8: --- - Bonus register for the year 2006 – 2007 relating to the

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respondent concern.

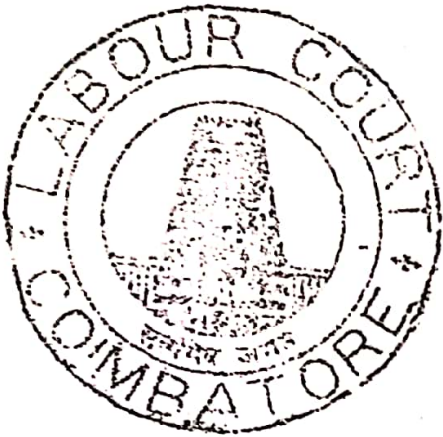
LIST OF WITNESSES EXAMINED

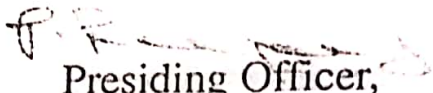
For Petitioner:

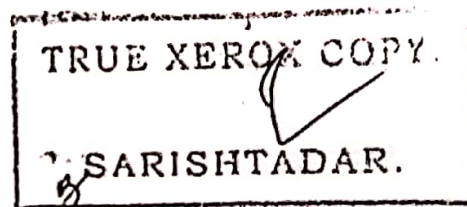
W.W.1: Mr.Palanisamy (petitioner)

For Respondent:

M.W.1: Mr.P.Madurai Durai (HR Manager)




Presiding Officer,
Labour Court, Coimbatore.



Labour Court, Coimbatore

X C.A. No 455 112

Application made on : 12.9.12

Stamps Collected : 15.9.12

Stamps Furnished : 15.9.12

Copy ready on : 15.9.12

Copy Delivered sent on : 15.9.12

[Signature]
Sarishtadar

B. Sethi Kumar
Advocate