

Registered with the Registrar
of Newspapers for India under
No. 10410



Registered No. SSP/PY/44/2015-17
WPP No. TN/PMG(CCR)/WPP-88/2015-17
Dated : 19-12-2017
Price : ₹ 21-00

புதுச்சேரி மாநில அரசிதழ்

La Gazette de L'État de Poudouchéry The Gazette of Puducherry

அதிகாரம் பெற்ற வெளியீடு

Publiée par Autorité

Published by Authority

விலை : ₹ 21-00

Prix : ₹ 21-00

Price : ₹ 21-00

எண்	புதுச்சேரி	செவ்வாய்க்கிழமை	2017	டிசம்பர்	19
No.	51 Poudouchéry	Mardi	19	Decembre	2017 (28 Agrahayana 1939)
No.	Puducherry	Tuesday	19th	December	2017

பொருளடக்கம்

SOMMAIRES

CONTENTS

	பக்கம்		Page		Page
தொழில் நீதிமன்றத் தீர்ப்புகள் ..	1364	Sentence arbitral du travail ..	1364	Award of the Labour Court ..	1364
		de tribunal.			
அரசு அறிவிப்புகள் ..	1380	Notifications du Gouvernement ..	1380	Government Notifications ..	1380
ஒப்ப அறிவிப்புகள் ..	1386	Avis d'Adjudications ..	1386	Tender notices ..	1386
சாற்றறிக்கைகள் ..	1387	Annonces ..	1387	Announcements ..	1387

GOVERNMENT OF PUDUCHERRY
LABOUR DEPARTMENT

(G. O. Rt. No. 165/Lab./AIL/T/2017,
Puducherry, dated 30th October 2017)

NOTIFICATION

Whereas, the Award in I.D.(L) No. 82/2012, dated 05-09-2017 of the Labour Court, Puducherry in respect of the Industrial Dispute between the Management of Cannanore Spinning and Weaving Mills, Mahe and United Trade Union, Mahe in respect of Thiru T.K. Surendaran over dismissal of the services has been received;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947), read with the notification issued in Labour Department's G.O. Ms. No. 20/91/Lab./L, dated 23-5-1991, it is hereby directed by the Secretary to Government (Labour), that the said Award shall be published in the Official Gazette, Puducherry.

(By order)

S. MOUTTOULINGAM,
Under Secretary to Government (Labour).

**BEFORE THE INDUSTRIAL TRIBUNAL-CUM-
LABOUR COURT AT PUDUCHERRY**

Present : Thiru G. THANENDRAN, B.COM.,M.L.,
Presiding Officer.

Tuesday, the 05th day of September 2017

I.D. (L) No. 2/2012

The Secretary,
United Trade Union,
Cannanore Spinning and
Weaving Mills, P.O. Palloor,
Mahe-673 333. .. Petitioner

Versus

The General Manager,
Cannanore Spinning and
Weaving Mills, P.O. Palloor,
Mahe. .. Respondent

This industrial dispute coming on 18-08-2017 before me for final hearing in the presence of M.K. Suresh Kumar, Advocate, for the petitioner, Thiru O.G. Premarajan, Advocate for the respondent, upon hearing both sides, upon perusing the case records, after having stood over for consideration till this day, this Court passed the following:

AWARD

1. This Industrial Dispute has been referred by the Government as per the G.O.Rt.No.76/AIL/LAB/J/2009, dated 22-05-2009 for adjudicating the following:-

(i) Whether the dispute raised by united Trade union (Regd. No. 1019/RTU/96) against the management of M/s. Cannanore Spinning and Weaving Mills, Palloor, Mahe regarding the dismissal of the services of Thiru T.K.Surendaran, cone winding No. 124 is justified or not?

(ii) If justified, to what relief the worker is entitled to?

(iii) To compute the relief, if any awarded in terms of money if, it can be so computed?

The above reference originally taken on file by the Sub-Court at Mahe which was being functioned as Labour Court in I.D. No. 04/2010 and subsequently when this Industrial Tribunal-cum-Labour Court established in the year 2012, the case has been transferred to this Court and this case was taken on file by renumbering it as I.D(L). No. 82/2012.

2. It is the case of the petitioner union that one of its member Surendran, Cone Winding worker No. 124 was working in the respondent Spinning and Weaving Mill and he was the Secretary of the union involved in the dispute and there are six other unions at the respondent management and this petitioner Surendran is the active and prominent member of the petitioner trade union and hence others became jealous and enmical against petitioner union and its Secretary and Particularly, the union of the staff exerted pressure on the mill management to sent out Surendran from the service of the mill by adopting any means and methods and the mill management also surrendered to the pressure of the unions and therefore, based on the above understanding the then General Manager of the Mill caused the suspension of Surendran from service with effect from 27-09-2006 by fabricating allegations against him and charge-sheet, dated 03-10-2006 was served by the factory manager alleging that on 27-09-2006 at about 01.30 p.m., that the said Surendran entered into the room of the General Manager without his permission and threatened him, abused his authority, interfered with his office duties, showered abuses on him, destroyed the food items kept on the dining table for him and thereby committed misconduct of acting in a riotous and disorderly manner, disobedience, destruction of property, habitual defiance of orders which would attract the 11(1)

provisions of standing order relating to misconduct and that the charge-sheet issued against him was absolutely false and this workman Surendran has not entered into the room of the General Manager without permission and there was also no such acts of threatening of the General Manager abusing his authority, interfering with his official duties and showering of abuses on the General Manager and he never acted in a riotous and disorderly manner as stated by the respondent management on 27-09-2006 and hence, charge-sheet, dated 03-10-2006 was fabricated against Surendran only with a pre-determined view to cause his dismissal from service and that therefore, the entire action of the mill management against Surendran was by recouring to foul play and false tricks and thereafter, the memo was issued by the factory manager on 03-10-2006 for which the workman Surendran had submitted a written explanation stating all the facts what actually happened on 27-09-2006 and the factory Manager under the pretext stated that the written explanation submitted by the workman was unsatisfactory and taken decision to conduct the domestic enquiry against the said worker Surendran by appointing Advocate Kuttan as Enquiry Officer and when the written explanation is given by the workman Surendran to the General Manager he refused to entertain it asking him to submit the same before the factory manager and subsequently one Advocate Kuttan was appointed as Enquiry Officer by the respondent management and he conducted the domestic enquiry and submitted a report with findings that the workman Surendran is guilty of charges and on the basis of the report submitted by the Advocate Kuttan the management as a formality invited objection to the enquiry report and passed the order of dismissal of service against the workman Surendran on 19-01-2007 and that the entire disciplinary proceedings by the mill management against the workman Surendran was without acting *bona fides* and the same is rooted in *mala fide* intention and that the charge-sheet issued against Surendran by the factory manager without authority and competency is illegal, irregular and unsustainable and the entire domestic enquiry is vitiated for that reasons and the charges levelled against the workman Surendran was fabricated and question of proving the same in the domestic enquiry does not arise at all and the documents produced and marked in the domestic enquiry as Ex.M1 to Ex.M.3 have no evidentiary value and the same are inadmissible in evidence and these documents would go to show that no loss was caused by workman Surendran to the respondent management and the

management intentionally failed to consider the objections submitted by workman Surendran and passed order forfeiting the whole amount of gratuity payable to workman Surendran for his 23 years of continuous service and the order of dismissal and the order of forfeiture of gratuity were not made by the appointing authority under the provisions of the standing orders and that therefore, the union has filed this petition praying to pass an Award holding that the dismissal of Surendran from the service of the respondent management and forfeiture of gratuity of workman Surendran is illegal and unjustifiable and to direct the respondent management to reinstate the workman Surendran in the service of the respondent management with full back wages, benefits and continuity of service.

3. It is contended by the respondent stating that on 27-09-2006 at about 01.30 p.m., the workman Surendran who was not on duty during that shift, unauthorizedly and forcefully entered into the room of the General Manager, threatened him, questioned his authority, interfered with his official duties, showered abuses on him in filthy and unparliamentary language in threatening posture and that the workman Surendran prevented the ASM (Assistance) and the Deputy Manager (Accounts) from entering into the room showering abuses on them by forcefully shutting the door from inside and when the General Manager moved to quench his thirst and to take some food to cure the shooting blood pressure and physical weakness the workman Surendran forcibly entered into the dining room and occupied a chair in the dining room opposite the General Manager without heeding to the advice of the Deputy manager who came inside in the meanwhile and continued his shouting and showering of abuses and further that threw away the food items kept on the dining table for the General Manager and the Internal Auditors and left after continuing the havoc for some time and thereafter, the management framed charges against the workman Surendran who submitted his reply to the charges and thereafter, an Enquiry Officer was appointed to conduct a domestic enquiry and the Enquiry Officer submitted a report on 30-10-2006 with a finding that the workman Surendran, Cone Winding No. 124 committed the acts of misconduct as alleged against him by the management and thereafter, along with enquiry report show cause notice to the workman Surendran was issued called upon him to show cause that why should not be dismissed from service and after the receipt of his reply, the management

dismissed the workman Surendran on 19-01-2007 and that therefore, the allegation in the claim petition that as a Secretary of the United Trade union, the workman Surendran had been taking a prominent role in espousing the legitimate cause of the workers of the mill for their better terms of employment, conditions of service and welfare is not correct and the allegations made by the petitioner are denied by the respondent management and the workman Surendran also has admitted in the written explanation given by him on 09-10-2006 that he came to the room of the General Manager to give a letter regarding the grievance of the workers and that the explanation submitted to the charge by the workman Surendran was not in his personal capacity but, as the Secretary of the union no such letter is given by the workman Surendran on the said day to the General Manager as contended by him and it is the further case of the respondent management that if, there is any dispute about the denial of gratuity the workman can approach the proper authority under the payment of Gratuity act and Rules made there under and the question of payment and forfeiture of Gratuity is not a subject or issue to be decided by this authority as the claim under the Gratuity Act could be decided only the authority constituted under the payment of Gratuity Act and that the Labour Court is not having jurisdiction to entertain any claim under the payment Gratuity Act and that the management is having ample powers to forfeit the gratuity of an employee as per the section 4(6) (b) (i) of the Payment of Gratuity Act as the service of workman Surendran has been terminated for his riotous and disorderly conduct and act of violence on his part and the enquiry has been conducted by the Enquiry Officer in full compliance with the principles of natural justice and granting all opportunities to the employee with in fairness and the allegation to the contrary and the other allegations regarding the conduct and assistance of an Advocate and appreciation of evidence are all untenable and there are no reasons for choosing an Advocate for conducting an enquiry and he was not sponsored by any counsel or the Legal Advisor for the management on any undertaking as alleged in the claim petition by the claim petitioner and that the enquiry was conducted in most fair and independent manner and the Enquiry Officer has not recourse to any foul play, false tricks or unfair methods as alleged in the claim statement and no provision is available in the standing orders also to claim for an appointment of an Advocate to represent the workmen in the domestic enquiry and the Presenting Officer of the management is not a legally

trained person and it is in fairness that the management appointed an outside agency to conduct an enquiry and provisions are available in the standing orders that that an enquiry can be conducted in like matters and it was found by the Enquiry Officer that the charges leveled against the workman Surendran was proved which is passed on the evidence and documents produced in the domestic enquiry and that therefore, the procedure adopted by the Enquiry Officer is legal and proper and that as misconduct established against a workman Surendran is a major misconduct involving serious consequences highly detrimental to the running of the establishment and the dismissal of the workman is in proportionate to the charges and it is fully justified by the activity of the misconduct and that the action taken by the management is fully justified in the facts and circumstances of the case and that an earlier charge sheet and proceedings initiated thereon was not relied on by the management to impose the punishment and hence the claim petition filed by the petitioner is liable to be dismissed and that therefore, no reason available for the workman for claim of reinstatement with backwages.

4. In the course of enquiry on the side of the petitioner WW1 was examined and Ex.W1 to Ex.W10 were marked and on the side of the respondent management the Enquiry Officer PW1 was examined and Ex.P1 to Ex.P3 were marked.

5. *The point for consideration is:*

Whether the dispute raised by the petitioner against the respondent management regarding the dismissal of the services of Thiru T.K. Surendaran, Cone Winding No. 124 is justified or not and if justified what relief the petitioner is entitled to?

6. Both sides are heard. The submission of both the parties, the evidence let in by either sides and the exhibits marked on both sides are carefully considered. On both sides written arguments were filed and the same were carefully considered.

7. The main contention of the petitioner is that the Factory Manager who issued charge-memo is not competent authority to issue charge-memo while the defacto complainant is the General Manager of the respondent establishment to whom the said Factory Manager is subordinate. The second contention of the petitioner union is that the allegation leveled against the workman Surendran on 29-7-2006 has not accrued and only on the motive of victimization and intention to remove him from service from the respondent

management since he was the Secretary of the union and active participant of the petitioner united trade union, the respondent management has foisted the charges against the delinquent workman. The third contention of the petitioner that the petitioner was not given fair opportunity in the domestic enquiry by permitting him to assist through an Advocate, though he has asked for a permission to appoint a Counsel to assist him in the domestic enquiry.

8. On the other hand the respondent management has contended that the workman Surendran has committed mis-conduct of riotous and disorderly manner and the workman Surendran though was not on duty during the shift unvoluntarily entered into the room of the General Manager threatened him, questioned his authority, interfered his official duty, showered abuses on him in filthy and unparliamentary language and forcefully shutting the door and workman also entered into the dining room and continued his shouting and showering of abuses and threw away the food items kept on the dining table which was established before the Enquiry Officer and on the report of the Enquiry Officer he was terminated from service on 19-01-2007 and the domestic enquiry was conducted in a fair and proper manner following the principles of natural justice and that therefore, the contention of the petitioner that the domestic enquiry is not fair and the Enquiry Officer has violated the principles of natural justice is not correct and as the workman Surendran committed the misconduct in a riotous and disorderly manner he has been terminated from service.

9. It is learnt from the records that though the petitioner union has pleaded that the domestic enquiry conducted against the delinquent workman is not fair and not in accordance with the principles of natural justice and the said pleading was denied by the respondent management, the then Presiding Officer of this Tribunal has not taken the issue as a preliminary issue and to decide the same at the, initial stage. Now, both the parties have let evidence in support of their pleadings and particularly the respondent management has let evidence at the first instance and the respondent witness was examined as PW1 and exhibits were marked as Ex.P1 to Ex.P3 and the delinquent workman was examined as WW1 and Ex.W1 to Ex.W10 were marked. Since, both the parties have let evidence and the Hon'ble High Court has also passed an order in W.P. No. 37527 of 2016 to dispose the I.D within the period of 4 months, it is just and necessary to dispose the main I.D regarding industrial dispute raised by the petitioner union against the respondent management at this stage.

10. From the pleadings of both the parties it is clear that the following facts are admitted by either sides that the petitioner union is functioning at the respondent establishment and the workman Surendran was working at the respondent establishment for more than 20 years and he was the Secretary of the petitioner trade union and the show cause notice was given to him for the occurrence alleged to have been happened on 27-9-2006 at the room of the General Manager and the said workman Surendran has given explanation and thereafter, the domestic enquiry was conducted by the Enquiry Officer who is appointed by the Factory manager and for the charge alleged to have been taken place on 27-09-2006 that the workman Surendran entered into the room of the General Manager shouting and using abusive words and threatened him shutting the door and threw away the food items which are kept in the dining table at about 01.30 p.m., and also used abusive words against other two employees and that after the completion of the enquiry the Enquiry Officer has filed report found guilty of the petitioner and thereafter, he was terminated from service against which the petitioner has raised the industrial dispute before the Conciliation Officer and the conciliation was referred to the Court for adjudication.

11. It is not in dispute that the said Surendran was working at the respondent establishment as permanent workman for a long time and he made a representation as Secretary for the petitioner trade union and it is also not in dispute that on 27-09-2006 the workman Surendran has gone to the factory but, not for the purpose of doing factory work and therefore, it can be inferred from the pleadings that two facts are disputed by the petitioner that the workman Surendran has committed mis-conduct of riotous and disorderly manner as alleged by the respondent management on 27-09-2006 and the domestic enquiry was not fair and was not conducted by following the principles of natural justice. It was stated by the respondent management that the domestic enquiry was conducted fairly and properly in accordance with the principles of natural justice and that therefore, now, this Court has to decide these two facts whether the domestic enquiry conducted by the Enquiry Officer in a fair manner and following the principles of natural justice or not and whether the respondent management has established before this Court that such alleged occurrence was happened on 27-09-2006 at the respondent office as alleged by the respondent or not and it is also to be ascertain whether the respondent management has imposed proportionate punishment or not for the alleged charge of misconduct of riotous and disorderly manner.

12. The allegation leveled against the workman Surendran is severe that he has entered into the room of the General Manager without his permission and shouted there and using filthy language and unparliamentary words and thereafter, entered into the dining room of the General Manager and threw away the food items which was provided for the General Manager and the internal Auditors are very serious mis-conduct and severe in nature and the respondent management has issued a memo to the petitioner and on the foot of the explanation given by the delinquent workman the Enquiry Officer was appointed and the domestic enquiry was conducted and the delinquent workman was given full opportunity to cross examine the witnesses and he was also permitted to adduce evidence on his side and full opportunities were given to him with the assistance of the President of the union. But, the requisition of the petitioner delinquent workman to appoint a Counsel to assist to defend the domestic enquiry was denied by the Enquiry Officer.

13. The respondent management in order to prove the case examined the Enquiry Officer who conducted the domestic enquiry as PW1 and exhibited Ex.P1 to Ex.P3. Ex.P1 is the enquiry report of the Enquiry Officer, Ex.P2 is the proceedings of the domestic enquiry conducted by him against the workman Surendran and Ex.P3 is the letter given by the workman Surendran to the Factory Manager of the respondent management. These documents would go to show that there was an enquiry conducted by the Enquiry Officer and the Enquiry Officer was appointed on 13-10-2006 by the Factory Manager to conduct the enquiry against the workman Surendran and the Enquiry Officer has issued a notice of enquiry to both the parties and the enquiry was commenced on 28-10-2006 and he examined all the witnesses and after completion of the enquiry the Enquiry Officer has found guilty of the charges against the delinquent Surendran that as per the charge-sheet, dated 03-10-2006.

14. In order to prove the contention of the petitioner the delinquent workman was examined as WW1 and Ex.W1 to Ex.W10 were marked. Ex.W1 is the Notice. Ex.W2 is the Reply. Ex.W3 is the Postal Acknowledgment Card. Ex.W4 is the Demand Notice. Ex.W5 is the Postal Acknowledgment card. Ex.W6 is the Reply. Ex.W7 is the Notice. Ex.W8 is the Copy of objection. Ex.W9 is the Postal Acknowledgment Card. Ex.W10 is the Order of Forfeiture of Gratuity. The reply of the delinquent workman exhibited as Ex.P3 which is in Malayalam language perused with the help of Court staff. On perusal of the records and

documents exhibited by the respondent management as Ex.P1 to Ex.P3, it is learnt to this Court the Enquiry Officer was appointed by the Factory Manager and the punishment was given by the disciplinary authority, the General Manager and no document is exhibited before this Court to prove the fact that whether the disciplinary authority has delegated his power to Factory Manager to issue a charge-memo to the delinquent workman and to appoint an Enquiry Officer to conduct the domestic enquiry. As the disciplinary authority the General Manager of the respondent mill has imposed punishment of dismissal to the delinquent workman. Having accepted as a disciplinary authority he has not made any delegation of power to the Factory Manager to take disciplinary action by issuing charge-memo against the delinquent workman and to appoint Enquiry Officer to conduct the domestic enquiry and furthermore, records available before this court would not disclose the fact that the power was delegated by General Manager to the Factory Manager and it is also not disclosed that the General Manager can delegate the powers to take disciplinary proceedings to the Factory manager as per the standing order of the respondent mill. Though, the Enquiry Officer has stated in his report that the requisition of the delinquent employee to appoint an Advocate to assist the enquiry was rejected by him on the advice of the Presenting Officer that the company standing order does not permit him to appoint such an Advocate, no such standing order is exhibited before this Court to ascertain the fact whether the standing order would not provide such assistance to the delinquent workman in the domestic enquiry. When the charge against the delinquent is serious one and if the result would be the dismissal or termination of employment, the delinquent workman would be given legal assistance by appointing an Advocate to conduct the domestic enquiry and furthermore, the requisition of the delinquent workman cannot be permitted or rejected by the domestic Enquiry Officer without getting approval of the disciplinary authority. But, in this case, the Enquiry Officer who conducted the enquiry has not at all get the opinion of the disciplinary officer to provide such assistance to the delinquent workman and only on the advice of the Presenting Officer he has rejected the requisition of the delinquent workman to conduct the enquiry through his Counsel.

15. As rightly pointed out by the learned Counsel for the petitioner admittedly the Enquiry Officer who conducted the domestic enquiry has not permitted the petitioner to engage an Advocate stating that the

Presenting Officer told him the standing order does not permit him to engage an Advocate in the domestic enquiry and it is also an admitted fact that in the domestic enquiry the petitioner was permitted only to get assistance of co-workers and the request of the delinquent workman was rejected by the Enquiry Officer to permit him to assist by the legal practitioner. The evidence of the Enquiry Officer who was examined as PW1 in this case runs as follows :

“G.M is the head of the Management.....
 MW2 and MW3 are persons holding post lower to the G.M. The DPM from the Personal Department was nominated as Presenting Officer. The employee appeared and submitted representation seeking permission to defend himself through a legal practitioner in the representation he has stated that there is nobody in the Union to assist him. I refused permission to engage an Advocate. The rejection is on two grounds, (i) there is no provision in the standing order and (ii) the Management has not engaged a law graduate. The delinquent is qualified only 4th standard, I do not know and I cannot deny the same. The Presenting Officer is a trained person, I cannot say that. It is true that when compared to Presenting Officer the delinquent is in lower category. The delinquent has to cross examine G.M who is holding higher post.1 The two other witnesses are holding higher post and educational qualification. No material was produced to show that the delinquent is having educational qualification. No provision is there in the standing order to engage Advocate. Standing order is silent as to domestic enquiry. There is no provision regarding representation. Natural justice and fair play would come into operation in the absence of provisions in the standing order. If, the workman is permitted to engage an Advocate the management would also be permitted to engage Advocate. No prejudice would be caused to the management if, the worker is permitted to engage Advocate.”

From the above evidence it is clear that the contention of the Enquiry Officer that the standing order does not prohibit the delinquent workman to engage a Counsel and it was silent with regard to the same. While so, it is also clear from the evidence of PW1 the Enquiry Officer that the delinquent workman has studied only 4th standard and in such circumstances he was denied permission to engage the counsel.

16. Furthermore, as rightly pointed out by the petitioner counsel that admittedly, the standing order absolutely was silent as to domestic enquiry and representation by parties in the domestic enquiry

regarding the representation of the domestic enquiry proceedings and that there is no provision of standing order to engage an Advocate for delinquent workman for defending his case in the domestic enquiry proceedings. On this aspect the learned Counsel also relied upon the Judgment reported in 1995 ILLJ1011, 1017(Kant), wherein, the Hon'ble High Court has observed that,—

“(a) The right to be represented by a legal practitioner is not an element of principles of natural justice.

(b) A delinquent will have to right to claim to be defended by legal practitioner, where the rules or regulation permit the employee to be represented by a legal practitioner.

(c) Where the rules or regulation are silent about representation by a Lawyer or vest a discretion in the disciplinary authority or the inquiry authority, to permit the employee to be represented by a legal practitioner or other agent of his choice denial of such permission a request made by the employee, would violate the principles of natural justice.

(i) If, the Presenting Officer is a legal practitioner or a person legally trained or experienced or

(ii) If, the charges are serious and complex nature.

(d) Where rules or regulations specifically prohibit the employee from engaging the service of a legal practitioner, such rules or regulations will be read down as vesting a discretion in the disciplinary authority to permit the employee to engage a legal practitioner, where

(i) The Presenting Officer is a legal practitioner or legally trained person, or

(ii) The charges are of a serious and complex nature if it is not so read down, the rule itself may have to be held to be invalid as violating Article 14 of the constitution.”

From the above observation of the Hon'ble High Court, it is very clear that absence of provision in the standing order is not at all a ground for denying the assistance of the Lawyer to the delinquent workman to defend him in the domestic enquiry proceedings. But in this case, the enquiry report itself would clear that delinquent workman was denied the permission to appoint the Counsel to assist him in the domestic enquiry.

17. The another contention of the petitioner that the General Manager who is the defacto complainant in this case has not delegated any power to the Factory Manager who is sub-ordinate to him is not competent to initiate the disciplinary proceedings by issuing charge memo. On this aspect, the learned Counsel for the petitioner relied upon the Judgment reported in Manihar Singh Vs. S.P. United Kashi Jainlia Hills, Shillong, 1969 LIC 4, wherein, it was held as follows:

“The framing of charges the holding of an enquiry into them, the suspension of the Civil Servant” during the enquiry, the notice to show cause are all steps in the exercise of the disciplinary powers. All these steps are required to be taken by the disciplinary authority and not by the delegate of that authority. In the absence of statutory provisions pertaining expressly or impliedly delegation of disciplinary power, an authority other than the disciplinary authority has clearly no power to frame on its own initiative, charges against a civil servant and held an enquiry into them.”

The learned Counsel for the petitioner has also relied upon the Judgment reported in D.S. Garewell Vs. State of Punjab. AIR 1959 Sc 512 wherein it was held as follows:

“It is well established that an authority competent to impose a penalty or to dismiss an employee can issue or frame the charge-sheet”

The learned Counsel for the petitioner has also relied upon the Judgment reported in Shardul Singh Vs. State of Madhya Pradesh, AIR 1968 (11) LIJ 274, wherein, it was held as follows:

“The exercise of disciplinary powers extends not only to appointment and dismissal but also to initiation of disciplinary action against an employee by training charges against the employee and in suspending him and in the absence of any statutory provision permitting expressly or impliedly delegation of disciplinary powers any authority other than the disciplinary has no power to frame charge-sheet. It is therefore, obvious that when the charge-sheet is required to be framed by the Manager, than the charge sheet issued by the section in charge is not in order.”

The learned Counsel for the petitioner has also relied upon the Judgment reported in Britania Biscuit Co. Ltd. Vs. Workman, Calcutta Gazette. Pt. I.C., dated 7th November, 1969, P.3612, wherein, it was held as follows:

“Where the appointing authority of the delinquent official was Commissioner of Municipal corporation of Delhi but, the charge-sheet was issued by the Deputy Commissioner (T), the action as initiated by the Deputy Commissioner (T) was without jurisdiction”

The learned Counsel for the petitioner has also relied upon the Judgment reported in Municipal Corporation of Delhi Vs. Omprakash Sharma, 1989 (1) Del. Lawyer 199, wherein, it was held as follows:

“An enquiry ordered by an official, Junior to the appointing authority will not be valid. Where the charge-sheet was issued by the Deputy Commissioner and the action was initiated by him against the Delinquent Officer whereas, the appointing authority was the Commissioner the enquiry could be initiated by the Commissioner only since he was the appointing authority. Thus, the disciplinary action as initiated by the Deputy Commissioner was without jurisdiction and *void ab initio*.”

The learned Counsel for the petitioner has also relied upon the Judgment reported in G.N.Nanjundian Vs. Inspector-General of Police, 1966 (2) Ker LK (DB) (Kar.ITC) as relied on by the Karnataka High Court in K.S.Somasundaram Vs. Karnataka Power Corporation Ltd., 1989 (58) FLU (S.N) 29 (Kar.HC), wherein, it was held as follows:

“The disciplinary enquiry, in order to be valid has to be instituted by authority competent to institute the proceedings. Even the appellate authority cannot impose a penalty in an enquiry instituted by an authority, not competent to institute it.”

The learned Counsel for the petitioner has also relied upon the Judgment reported in Anantha Krishnan Vs. Oriental Fire and General Insurance Co. Ltd., 1988 (2) KLT 159 = 1988 (2) LLJ 526, wherein, the division bench of the Kerala High Court held as follows:

“Disciplinary Authority not having jurisdiction to initiate disciplinary proceedings. Proceedings cannot be valid an account of the fact that the enquiry was held in conformity with the principles of natural justice. In this view of the matter the mere compliance with the principles of natural justice does not validate the enquiry. The disciplinary action was initiated against the petitioner herein by an incompetent authority. He has no jurisdiction to proceed against the petitioner such a total lack of jurisdiction of the primary authority cannot be

cured in Appeal. If, the initial authority has no jurisdiction to proceed with the enquiry, such a defect will not be cured, on account of the fact that the said order was confirmed by the Appellate Authority. The question about want of jurisdiction could be raised even at a later stage”

From the above observations made in the citations it is clear that other than the disciplinary authority has clearly no power on his own initiative charges against a delinquent workman and to held domestic enquiry and also to appoint any Enquiry Officer and these powers cannot be delegated in the absence of the statutory provisions permitting expressly or impliedly delegation of disciplinary powers to the person other than the disciplinary authority. In this case it is admitted by the respondent management that the General manager is the disciplinary authority and he has not delegated any power to the Factory Manager and also admitted that the respondent management has not established that the Factory Manager is competent initiated the disciplinary proceedings by issuing charge-memo to the delinquent workman and that therefore, the second contention is also sustainable that the Factory Manager who initiated the disciplinary proceedings by issuing charge-memo and appointing the Enquiry Officer who conducted the domestic enquiry is not competent to take disciplinary proceedings.

18. Furthermore, the memo of charge given by the Factory Manager to the delinquent workman on 03-10-2006 for the occurrence alleged to have been happened on 27-09-2006 which runs as follows :

“In the background of the above allegations the following charges are levelled against you :

(i) That you have acted in a riotous and disorderly manner within the mill premises and you have indulged in acts subversive of discipline of the mills (Standing Order No. 17((3)(j)).

(ii) That you have willfully destroyed the food items arranged for the lunch of the General Manager and Internal Auditors of the Mills (Standing Order No. 17((3)(o)).

(iii) That you have willfully disobeyed and defied the orders of the superior (Standing Order No. 17((3)(o)).

And

(iv) That you have habitually defied the lawful orders of the Management (Standing Order No. No. 17((3)(g)).

From the above contention of the charge-memo it is clear that the delinquent workman has been charged for misconduct of (i) acted in a riotous and disorderly manner, (ii) willfully destroyed the food items, (iii) willfully disobeyed and defied the orders of the superior and (iv) habitually defied the lawful orders of the management. However, on perusal of records it is learnt to this court that the Enquiry Officer who conducted the domestic enquiry in his final report has stated commonly that the charges levelled against the delinquent workman was proved. The final report of the Enquiry Officer in the domestic enquiry runs as follows:

“6.02. In the light of the facts which transpire from the evidence in the enquiry discussed above I find that the employee, Sri T.K. Surendran, Cone Winding No. 124 (under suspension), committed the acts of misconduct, as alleged against him in the memo of charges, dated 03-10-2006 issued to him by the management and that the charges raised against him therein are substantiated in full.”

From the above final report of the Enquiry Officer, it is clear that though the delinquent workman was charged for 4 charges, the Enquiry Officer has not dealt with each and every charges leveled against the delinquent workman. Simply, the Enquiry Officer has stated in his report that the workman Surendran committed the acts of misconduct as alleged against him. The Enquiry Officer has not stated in his domestic enquiry report that these 4 charges were proved by the management separately.

19. Furthermore, on receipt of the proceedings and findings of the Enquiry Officer, the Disciplinary Authority should forward a copy of the findings of the Enquiry Officer to the delinquent employee and advise him to submit his comments on the findings of the Enquiry Officer within a specific period of time and on receipt the delinquent employee should submit his comments and only after expiry of specific period of time given to delinquent employee to submit his comments, the Disciplinary Authority should come to his own conclusion by going through all the papers and applying his mind dispassionately and he should also record his view on the Enquiry Officer's findings in respect of each charge separately. But, in this case the notice which was alleged to have been given by the respondent management to the delinquent workman to submit his comments on the enquiry report was not

exhibited before this Court. Furthermore, after deciding the punishment for the misconduct proved against the employee the Disciplinary Authority should issue a show cause notice furnishing his order and proposing the punishment and advising the employee to show cause why such a punishment should not be awarded to him. But, in this case no such notice was exhibited which was issued to the delinquent employee before giving punishment of dismissal terminating employee from service.

20. Furthermore, the Disciplinary Authority should also go into the past record of the employee while awarding the punishment and when it is favorable to the employee and the misconduct committed by and approved against him is of a minor nature, the Disciplinary Authority may take a lenient view. In case of adverse past record, it should be disclosed to him in the show cause notice and he should be given an opportunity to explain the same. But, in this case no such notice was exhibited before this Court which was alleged to have been issued to delinquent employee. After considering all the above factors, and after affording a personal hearing to the employee, the Disciplinary Authority will issue the final order reducing or confirming the punishment already proposed. But, in this case the respondent management has not stated anything about his past records of the delinquent workman and even a show cause notice alleged to have been issued by the Disciplinary authority to the delinquent workman was not exhibited before this Court and also no notice regarding the proposed punishment imposed against him was exhibited before this Court. These facts would go to show that the disciplinary authority has failed to follow the principles of natural justice before Award the punishment of termination of service and furthermore the punishment is also not proportionate since the petitioner delinquent workman has no past records in misconduct and he was working at the respondent establishment for more than 20 years and that therefore, it is just and necessary to hold that the Industrial dispute raised by the petitioner union against the respondent management against the dismissal of service of delinquent workman Surendran is to be justified. Since, this Court has held that the industrial dispute raised by the petitioner union against the respondent management against the dismissal of service of delinquent workman Surendran is justified, it is also just and necessary to decide the relief which can be given to the petitioner delinquent workman.

21. On this aspect records and documents are carefully perused. Though the respondent management has failed in conducting the domestic enquiry properly the allegation leveled against the petitioner is serious in nature that he has entered into the room of the General Manager without his permission and threw away the food items kept for the General Manager and the Internal Auditors and used filthy and unparliamentarily language against the management and that therefore, the management has lost faith on the workman and that therefore, they have terminated the workman from the respondent Industry and in such circumstances, the relief of order of reinstatement is not a reasonable one and only compensation alone is a reasonable one to the petitioner delinquent workman. The records and documents filed by the petitioner would go to show that the respondent management also has forfeited gratuity amount after giving show cause notice to the petitioner delinquent workman who was terminated from service and no monetary benefits was given to him by the respondent management. Since, the petitioner delinquent workman was working for more than 20 years at the respondent management, he is entitled for gratuity and other monetary benefits while he was terminated from service and that therefore, considering the long tenure of service of the petitioner delinquent workman and considering the other circumstances and fact that the petitioner delinquent workman could not serve at the respondent establishment in future since, the dispute has arose between the delinquent workman and the General Manager of the factory, this Court has decided that the petitioner delinquent workman is not entitled for any reinstatement as claimed by him instead of that he can be granted compensation as an alternative remedy to him from the respondent management.

22. In order to fix the compensation, the records and circumstances are carefully considered. The petitioner has served at the respondent establishment for about 20 years and thereafter, due to the alleged incident taken place in the year 2007 the petitioner delinquent workman had not been in service from 2007 *i.e.*, for more than 10 years. Considering all other circumstances, this Court tentatively fix ₹ 5,00,000 as compensation which is to be paid by the respondent management to the petitioner, apart from compensation the petitioner delinquent workman is entitled for all other retirement benefits as if, he is in service at this stage such as gratuity and other benefits.

23. In the result, the petition is partly allowed and the industrial dispute raised by the petitioner union against the respondent management regarding the dismissal of the services of Thiru T.K.Surendaran, Cone Winding No. 124 is justified and an Award is passed by directing the respondent management to pay ₹ 5,00,000 (Rupees five lakhs only) as compensation and also directed the respondent management to pay retirement benefits such as gratuity and other benefits to the said Thiru T.K. Surendaran as if, he is in service at this stage. No cost.

Dictated to the stenographer, transcribed by her, corrected and pronounced by me in the open Court on this the 05th day of September, 2017.

G. THANENDRAN,
Presiding Officer,
Industrial Tribunal-cum-
Labour Court, Puducherry.

List of petitioner's witness :

WW1—21-12-2011— T.K. Surendran

List of petitioner's exhibits :

Ex.W1 —31-03-2007 Notice given by the respondent management to the workman Surendran.

Ex.W2—17-04-2007 Reply given by the petitioner United Trade union to the respondent management.

Ex.W3 — Postal Acknowledgment Card.

Ex.W4—17-04-2007 Demand Notice given by the petitioner United Trade union to the respondent management.

Ex.W5 — Postal Acknowledgment Card.

Ex.W6—06-12-2007 Reply given by the respondent management.

Ex.W7—16-05-2007 Notice given by the respondent management to the workman Surendran.

Ex.W8—26-05-2007 Copy of objection given by the workman Surendran.

Ex.W9 — Postal Acknowledgment Card.

Ex.W10—01-06-2007 Order of Forfeiture of Gratuity.

List of respondent's witness :

PW1 —05-09-2011 A.N. Kuttan

List of respondent's exhibits :

Ex.P1 —30-12-2006 Report of Enquiry.

Ex.P2 — Enquiry file

Ex.P3 —17-01-2007 Letter given by the workman- Surendran to the respondent management.

G. THANENDRAN,
Presiding Officer,
Industrial Tribunal-cum-
Labour Court, Puducherry.

GOVERNMENT OF PUDUCHERRY
LABOUR DEPARTMENT

(G.O. Rt. No. 168/Lab./AIL/T/2017,
Puducherry, dated 6th November 2017)

NOTIFICATION

Whereas, the Award in I.D.(L)No.33/2013, dated 13-09-2017 of the Labour Court, Puducherry in respect of the industrial dispute between Thiru A. Sasikumar, S/o. Arumugam, Mangalam, Puducherry against the management of M/s. Hindustan Unilever Limited, Personal Products Factory, Vadamangalam, Puducherry over to reinstate the petitioner with continuity of service, back wages and all other attendant benefits has been received;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947), read with the notification issued in Labour Department's G.O. Ms. No. 20/91/Lab./L, dated 23-5-1991, it is hereby directed by the Secretary to Government (Labour) that the said Award shall be published in the Official Gazette Puducherry.

(By order)

S. MOUTTOULINGAM,
Under Secretary to Government (Labour).

**BEFORE THE INDUSTRIAL TRIBUNAL-CUM-
LABOUR COURT AT PUDUCHERRY**

Present :Thiru G. THANENDRAN,
B.COM.,M.L., Presiding Officer.

Wednesday, the 13th day of September 2017

I.D. (L) No. 33/2013

A. Sasikumar,
S/o. Arumugam,
No.95, Embalam Main Road,
Mangalam, Puducherry. .. Petitioner

Versus

Hindustan Unilever Limited,
Personal Products Factory,
Rep. by its Factory Manager,
No. 45-A, Vadamangalam,
Puducherry-605 102. .. Respondent

This industrial dispute coming on 30.08.2017 before me for final hearing in the presence of Thiruvalargal P.R.Thiruneelakandan and A. Mithun Chakkaravarthy, Counsel for the petitioner, Thiruvalargal L. Sathish, T.Pravin, S. Velmurugan, V. Veeraragavan and E. Karthik, Advocates for the respondent, upon hearing the respondent upon perusing the case records, after having stood over for consideration till this day, this Court passed the following:

AWARD

1. This is a petition filed by the petitioner under section 2A(2) of the Industrial Disputes Act, 1947 praying to pass an Award holding that the termination of service of the petitioner by the respondent from 02-03-2012 is illegal, consequently direct the respondent to reinstate the petitioner with effect from 02-03-2012 as a workman in the respondent's factory with continuity of service, back wages and all other attendant benefits.

2. The averments in the claim statement of the petitioner, in brief, are as follows :

The petitioner was appointed as workman in the year 2005 by the respondent and he was illegally terminated on 02-03-2012 and till that time he had been continuously working in respondent's factory and further stated that the respondent had given assurances that if, the petitioner carried out the works as permanent employee, he will be confirmed

as permanent employee and the respondent has ulterior motive to change petitioner's ID number and the petitioner completed more than 7 years of continuous service and only because of the demand of the petitioner to confirm him as permanent employee and to pay wages on par with permanent employees the respondent terminated petitioner from services on 02-03-2012 and denied employment without any notice as he is a trainee and further stated that the petitioner's termination and denial of employment is illegal and since his initial appointment till his illegal termination respondent deducted ESI, PF contribution from petitioner's wage and that the petitioner is a workman and fall under the definition of section 2(s) and his service cannot be terminated in violation of provisions of Industrial Disputes Act and Model standing order and from the date of petitioner's appointment in the year 2005, he had been continuously working in respondent's factory and therefore, he cannot be treated as fixed term contract employee and that the respondent committed unfair labour practice under Schedule V Part I clause 10 of ID Act and the termination of petitioner is an act of victimisation, unfair labour practice by the respondent and is violation of section 25F of the ID Act and Model standing order and further stated that the petitioner is not gainfully employed in any establishment or anywhere after his termination and prayed for the above reliefs.

3. The brief averments in the counter filed by the respondent are as follows :

The respondent is engaged in the business of manufacturing personal care products, which are extremely competitive and their demands keep fluctuating in both national and international market depending on various factors and its products are marketed not only in India but, also in foreign countries and as and when there is an increase in production order, respondent engages temporary workers specifically for specified period or for specific production volume and it has necessary licence and permission from Inspector of Factories to engage temporary workers and even its Certified Standing Orders permits engagement of temporary workers as well as trainees and that the petitioner was engaged as temporary worker purely on contractual basis for specified periods depending upon exigencies and to cater to special and

emergency orders in the year of 2007 not in the year of 2005 and the said appointment was specifically for a period of 6 months for a sudden escalation in the demand and each and every term of appointment was explained to petitioner in his local language and only after accepting such terms, petitioner joined respondent's organisation as temporary worker for specific period and on completion of the said period, petitioner was relieved from service and further stated that the petitioner himself gave a request letter, dated 02-03-2012 for appointing him as a trainee and seeking necessary training in respondent however in the interview, the petitioner's performance, qualification and experience were not satisfactory for the post for which he applied and hence, the respondent served a letter, dated 09-05-2012 informing him that his application for training could not be acceded and the petitioner was therefore, only a temporary worker engaged for a specific period and his tenure expired efflux of time on completion of said period and the petitioner was never engaged as trainee or in any other capacity except on contract bound by time for a specific period and he was engaged only when our company had any escalation in production requirements and every time the petitioner was taken on contract for specific period for specific work, he was given a new token number and new ESI, EPF Code No. which by itself is a proof of the fact that he was not in continuous employment with the respondent company and further stated that the petitioner has already raised an industrial dispute on 30-04-2012 with the Labour Officer (Conciliation), Puducherry, vide No.H85/LO(C)/AIL/2012 and it was withdrawn by the petitioner and the petitioner gave another representation, dated 06-09-2012 to Labour Officer (Conciliation) vide No.2415/LO(C)/AIL/2012 raising the same dispute with false and baseless contentions and the petitioner's contention that he was victimised is false and baseless and the fact that the petitioner worked for particular number of days in 2012 and 2013 does not by itself give him any lien over employment, especially, when he was engaged only as temporary worker for specific period for a specific order and that period had expired by efflux of time and that the mere fact that ESI and EPF contributions were deducted for petitioner does not by itself gives any right to the petitioner to claim any permanency in his employment as ESI and EPF is payable for all workers irrespective of their employment status and prayed to dismiss the claim petition.

4. In the course of enquiry on the side of the petitioner PW.1 was examined and Ex.PI to Ex.P14 were marked and on the side of the respondent RW.1 to RW.3 was examined and Ex.R1 to Ex.R14 were marked.

5. *The point for consideration is:*

Whether the termination of service to the petitioner by the respondent from 02-03-2012 is illegal or not and whether the petitioner is entitled for the claim?

6. The submission of both the parties, the evidence let in by either sides and the exhibits marked on both sides are carefully considered. The learned Counsel for the respondent has filed a written argument and relied upon the following citations : CDJ 2011 SC 622, CDJ 2006 SC 958, CDJ 2006 SC 196, CDJ 2006 SC 982, CDJ 2007 SC 139, CDJ 2006 SC 611, CDJ 2006 1238, CDJ 2005 SC 604, CDJ 2001 SC 363, CDJ 1992 SC 118, CDJ 2016 BHC 1370, 2014 III LLJ 329 (Guj) : CDJ 2014 GHC 080, CDJ 2013 DHC 1750, CDJ 2012 DHC 2073, 2009 I LLJ 96 AP : CDJ 2008 APHC 690, unreported judgment of Delhi High Court in, dated 07-12-2005 India Tourism Development Corporation Vs. Poonam Rai (DEL) and unreported judgment of Delhi High Court in W.P.(C) 2054/2014 Mahesh Kumar Vs. M/s. Fruit and Vegetable Projects, dated 01-04-2014.

7. It is clear from the pleadings of both the parties that both the parties have admitted the fact that the respondent establishment is doing manufacturing business and this petitioner has served at the respondent management and ESI, EPF contributions were deducted for the petitioner by the respondent and work note sheet were given to him on various dates from 2006 to 2011 and the petitioner also have been given salary slips by the respondent management and the respondent establishment product demands keep fluctuating in the market and the petitioner has not been given work from 02-03-2012 and thereafter, the petitioner raised the industrial dispute before the Conciliation Officer on 30-04-2012 and it was withdrawn by the petitioner on 14-02-2013 and the petitioner also has given another representation on 06-09-2012 and thereafter, he has filed this application before this Court for an order of reinstatement with back wages.

8. It is the evidence of the PW.1 the petitioner workman that he was in service continuously from July, 2005 till 02-03-2012 on which date he was terminated from service by the respondent

management and that the respondent management has paid wages below to the minimum wages and the petitioner was asked to do all works as permanent workman and EPF and ESI were contributed by the respondent management and however they have changed the identity number and that he had been in service for more than 7 years and though the petitioner has requested the management to regularise his appointment and for revision of wages the respondent management has not paid the same and subsequently he was appointed as a trainee but the petitioner was not given any training instead of that he was asked to do all the production work as permanent worker and while so without any intimation he was terminated from service on 02-03-2012 as a trainee which is absolutely against law and that no such training was actually given to him and for the past 7 years the respondent management has asked him to do all the work as permanent worker and he never appointed as a trainee or apprentice of the respondent management and the termination of the petitioner stating that he is a apprentice or trainee is also against the provisions of Apprentice Act, 1961 and since the petitioner has asked for revision of wages and regularisation only to victimise the petitioner the respondent management has terminated him from service and that therefore, the termination is absolutely illegal and that ₹ 4,119 was received by him as monthly wages and the petitioner would not survive due to termination and that the petitioner is entitled for reinstatement along with back wages.

9. In support of his oral evidence, the petitioner has exhibited the copy of the Identity Card of the petitioner as Ex.P1, The Ex.P2 to Ex.P5, Ex.P7 and Ex.P9 are the copy of the job induction given by the respondent to the petitioner for the year 2006, 2007, 2008, 2009 and 2011 respectively. The Ex.P6, Ex.P8 and Ex.P10 are the copy of the wage slips given by the respondent to the petitioner for the month of August-2010, September 2011 and January 2012 respectively, which would reveal the fact that the petitioner has received ₹ 3,828 as salary for the month of August-2010, the petitioner has received ₹ 5,112 as salary for the month of September 2011 and the petitioner has received ₹ 4,119 as salary for the month of January 2012. Ex.P11 is the copy of the letter given by respondent to petitioner which would reveal the fact that the petitioner had an interview with the respondent management and subsequently the petitioner has been informed that respondent management are not able to

offer any suitable position to match his qualification and experience. Ex.P12 is the copy of the petition filed by the petitioner before the Conciliation Officer. Ex.P13 is the copy of the P.F Account which does not disclose the name of the petitioner. Ex.P14 is the copy of the Bank Account Book of the petitioner.

10. On the other hand, in order to prove the case the respondent management has examined 3 witnesses and RW.1 is the HR Executive of the respondent establishment and he has stated in his evidence that there is always fluctuation in demand for the products depending on various factors and when they receive such export orders and when there is a sudden spurt in demand in Indian market, the Company finds it difficult to extract additional production from its regular workers and therefore, the temporary workers specifically for specified period or for specific production volume on contract and for such export orders or excess local demand is satisfied the regular production targets are meted out with regular workers in the factory and temporary workers was engaged for specific term or specific production volume are discharges as and when such excess orders are emerge temporary workers are re-engaged for specific period and that the petitioner was one among those temporary workers who was engaged by the company on contract for a specific period with intermittent gaps depending upon escalating production demands with a clear understanding that such temporary engagement was either for specific period or for specific tonnage of production and his engagement shall not give him any right to make any claims for permanent employment in the factory.

11. Further, the respondent management also has examined Santhosh Chatterjee who is working as the plant site incharge in Cargo Inspectors and Superintendence Co-operative Private Limited as RW.2 and he has stated in his evidence that the joining letter of petitioner A. Sasikumar was exhibited as Ex.R8 and his resignation letter was exhibited as Ex.R9 and his ESI returns of contribution for October 2012 to September 2013 was exhibited as Ex.R10 and his PF returns from 2012 to 2014 was exhibited as Ex.R11 and he was an employee of the organisation for the period mentioned in Ex.R8 and Ex.R9 *i.e.*, from 27-05-2012 to 31-07-2014. Further, it is the evidence of RW.3 that they are conducting factory in the name of Wans Enviro Tech (P) Limited and they are functioning as a contractor as General Optics Asia Ltd., and they are

doing contract business and the petitioner Sasikumar was working at their factory and his Salary certificate is exhibited as Ex.R12 and he has been contributed ESI and PF and registers are Ex.R13 and attendance register of the factory was exhibited as Ex.R14 wherein, the said Sasikumar has signed. The evidence of RW.2 and RW.3 would go to show that petitioner had been working from 27-05-2012 to 31-07-2014 at Cargo Inspectors and Superintendence Co-operative Private Limited and the petitioner has been contributed ESI and PF.

12. It is the case of the petitioner that he was working from 2005 at the respondent establishment and he has been terminated on 02-03-2012 and the petitioner was carry out the work as permanent workers and assurance was also given to them by the respondent management that they confirmed him as permanent worker and that he completed more than 7 years of continuous service and when the petitioner claimed for confirmation or regularisation as permanent employee in the month of March, 2012, the petitioner was denied employment without any notice from 02-03-2012 as he was terminated from service as a trainee on 02-03-2012 and that the termination of the petitioner is in violation of provisions of the Industrial Disputes Act and Model Standing Order and the petitioner was working from 2005 continuously at the respondent factory and that the respondent has committed unfair labour practice against the petitioner and the termination of petitioner is in violation of section 25F of the ID Act.

13. On the other hand, it is the contended by the respondent management that appointment of petitioner was specifically for a period and the petitioner has joined the employment after knowing the facts that terms and conditions of the respondent organisation as a temporary workers particularly for a specific period and that after completion of the period, the petitioner has to leave from service and as the petitioner was only a temporary worker engaged for a specific period and his tenure is completed, he has no right whatsoever for the appointment as a permanent worker and though the petitioner was contributed for ESI and EPF and contribution has been deducted from the petitioner alone is not given any right of permanent employment.

14. On this aspect, the evidence and records are perused. The evidence of PW.1 the petitioner runs as follows:

“நான் பணி நீக்கம் செய்யப்பட்ட பிறகு, வருமானம் ஏதும் இன்றி கஷ்டப்பட்டு வருகிறேன் என்று மனுவினும், முதன்மை சாட்சியத்திலும் கூறியுள்ளேன். 2-3-2012 அன்று என்னை பணி நீக்கம் செய்தார்கள். என்னை பணி நீக்கம் செய்த பிறகு நான் எந்த வருமானம் வரும் வேலையை செய்யவில்லை. நான் தற்போது, தவளகுப்பத்தில் உள்ள General Optics Ltd. என்ற நிறுவனத்தில் வேலை பார்த்து வருகிறேன் என்று சொன்னால் சரியல்ல. 7-6-2012 முதல் 20-7-2014 வரை Carbo Inspectors and Superintendent (SISCO) என்ற நிறுவனத்தில் நான் பணியில் இல்லை.....”

From the above evidence it is clear that it is denied by the petitioner workman that he has served in other establishment after his termination from respondent establishment. But, it is established by the respondent management that he has served at two other establishments after he was not given employment by the respondent establishment. RW.2 has stated in his evidence that petitioner has appointed in their institution on 27-05-2012 and subsequently, he resigned his job on 31-07-2014 and it is the evidence of RW.3 that the petitioner was joined in their institution and he had been in service. The evidence of RW.2 and RW.3 would reveal the fact that petitioner had been in service at some other establishments after refusal of employment by the respondent management.

15. Further, the petitioner has joined in the employment of the respondent factory knowing the facts and terms and conditions of the respondent organisation as a temporary worker and the temporary worker has been approved by the Inspector of Factories and he has been appointed as temporary workman giving break in his service. Ex.R2 - Letter of Offer runs as follows :

“.....Your temporary employment will commence from 28-06-2007 and your employment will automatically cease as on the close of work on 27-02-2007 (both days inclusive) or a completion of the above order whichever is earlier.

Your employment in the Factory will be terminated on the expiry of the period given above or on completion of the items of work for which you are specifically employed whichever is earlier. You will have no right to continue in employment after the above period....”

From the above content of the offer letter given by the respondent management to the petitioner workman, it is clear that the respondent management can terminate the petitioner on the expiry of period given

to him or on completion of the items of work for which he has specifically employed and that he has no right whatsoever to continue in employment and that therefore, the terms and conditions of the appointment order and the above evidence would go to show that petitioner has not come before this Court with clear hands to establish his case.

16. The main contention of the respondent that the petitioner was appointed only as contractual labourer and his service was not continuous one and appointment of temporary workers for a specific period and for a specific purpose and this petitioner was also engaged by the respondent industry for the specific period and for the specific purpose with genuine contract and the petitioner himself knew the terms and conditions of the appointment at the time of engagement that his employment is purely temporary in nature and therefore, the petitioner has no right to claim regularisation.

17. In support of his contention the learned Counsel appearing for the respondent relied upon the Judgment reported in CDJ 2011 SC 622 - Union of India and Anr Vs. Arulmozhi Iniarasu wherein, it was held that,

“14. In the instant case, indubitably, the respondents were engaged as part-time contingent casual labourers in the Office of the Commissioner of Central Excise for doing all types of work as may be assigned to them by the Office.In view of the stated factual scenario, in our opinion. The engagement of the respondents as casual labourers even for considerable long duration did not confer any legal right on them for seeking a *mandamus* for relaxation of age-limit.

20. It is plain from the terms of the letter of appointment that the respondents were told in unambiguous terms that their appointments were temporary and would not confer any right to claim any permanent post in the department. It is not the case of the respondents that at any point of time, during their engagements with the appellants, a promise was held out to them by the appellants that they would be absorbed as regular employees of the department”.

The learned Counsel appearing for the respondent also relied upon the Judgment reported in CDJ 2007 SC 139 - Punjab State Electricity Board Vs. Sudesh Kumar Puri, wherein, it was held that,

“The material on record clearly established that the management of the respondent was for specific period and conditional. It appears that on the appointment of regular Meter Readers, the engagement has been dispensed with. The contracts clearly governed the terms of engagement.

Above being the position, the orders passed by the Labour Court and the High Court are clearly untenable and are quashed. In two cases the concerned respondents have been engaged again on contractual basis. It shall not be construed that we have expressed any opinion on such subsequent contractual engagement.”

The learned Counsel appearing for the respondent also relied upon the Judgment reported in CDJ 2006 SC 958 National Small Industries Corporation Limited Vs. Lakshminarayanan, wherein, it was held that,

“Even if, it is accepted that the respondent was a workman within the meaning of the 1947 Act, on account of his contractual tenure, his case would come within the exception of clause (bb) of section 2 (oo) thereof. In such a case also, the provisions of section 25F of the said Act would have no application to the respondent’s case”.

The learned Counsel appearing for the respondent also relied upon the Judgment reported in CDJ 2006 SC 611 - Municipal Council, Samrala Vs. Sukhwinder Kaur, wherein, it was held that,

“The respondent, within a span of about 18 months, was appointed thrice and disengaged thrice. As noticed hereinbefore, she was appointed on a contractual basis. The appointments were temporary ones. She was aware that her services could be terminated without notice. She accepted the terms and conditions of the said offers of appointments without any demur.

The question as to whether Chapter VA of the Act will apply or not would depend on the issue as to whether an order of retrenchment comes within the purview of section 2 (oo) of the Act or not. If, the termination of service in view of the exception contained in clause (bb) of section 2(oo) of the Act is not a ‘retrenchment’, the question of applicability of Chapter VA thereof would not arise.”

From the above Judgments and findings of the Hon’ble Supreme Court and the Hon’ble High Court it is clear that whenever the person was appointed for a specific purpose and for a specific period under the

contract and the appointment was temporary in nature and the workman aware that his service would be terminated without notice and as he accepted the terms and conditions of the said offers of the appointment, he cannot claim permanent employment.

18. From the above observations of the Hon'ble Supreme Court and the Hon'ble High Court it is also very clear that whenever, the person is appointed as temporary workman for a specific period and for the specific purpose and whenever the workman has accepted the terms and conditions of the offer of appointment without any demur, he could be terminated without notice as he accepted the terms and conditions of the said offer of appointment and as such the above citations relied by the respondent management is sorely applicable to this case and that therefore, it is held that the termination of service of the petitioner by the respondent management is sustainable and hence, it cannot be held that the termination is illegal and therefore, this Court finds that the petitioner is not entitle for any relief of reinstatement and back wages as claimed by him and as such the claim petition is liable to be dismissed.

19. In the result, the petition is dismissed. No cost.

Dictated to the stenographer, transcribed by her, corrected and pronounced by me in the open Court on this the 13th day of September, 2017.

G. THANENDRAN,
Presiding Officer,
Industrial Tribunal-cum-
Labour Court, Puducherry.

List of petitioner's witness :

PW.1 —19-12-2014— Sasikumar

List of petitioner's exhibits :

Ex.P1 — Copy of the Identity Card of the petitioner.
Ex.P2—28-03-2006 Copy of the job induction given by the respondent to the petitioner.
Ex.P3— 2007 Copy of the job induction given by the respondent to the petitioner.
Ex.P4—06-11-2008 Copy of the job induction given by the respondent to the petitioner.

Ex.P5—23-12-2009 Copy of the job induction given by the respondent to the petitioner.
Ex.P6— August, 2010 Copy of the wage slip given by the respondent to the petitioner.
Ex.P7—28-03-2011 Copy of the job induction given by the respondent to the petitioner.
Ex.P8—September, 2010 Copy of the wage slip given by the respondent to the petitioner.
Ex.P9—12-12-2011 Copy of the job induction given by the respondent to the petitioner.
Ex.P10—January, 2010 Copy of the wage slip given by the respondent to the petitioner.
Ex.P11—09-05-2012 Copy of the letter given by respondent to the petitioner.
Ex.P12— 06-09-2012 Copy of the petition filed by the petitioner before the Conciliation Officer.
Ex.P13—26-06-2012 Copy of the acknowledgment.
Ex.P14 — Copy of the Bank Account book.

List of respondent's witnesses :

RW.1 — 28-04-2015 G. Kanessane

RW.2 — 04-04-2017 Santhosh Chatterjee

RW.3 — 11-05-2017 Selva Kumar

List of respondent's exhibits :

Ex.R1— Letter of authorisation of Mr. G. Kanessane.
Ex.R2—28-06-2007 Copies of various letters of
12-11-2008 appointment to petitioner
24-12-2009 given by respondent (5 Nos.)
29-03-2011
16-12-2011
Ex.R3— Particulars of ESI form-3 and ESI contribution made by the respondent to petitioner for intermittent periods from July, 2007 to December, 2011 (11 sheets).

- Ex.R4 — Particulars of EPF contribution and returns made by the respondent to the account of petitioner on 31-03-2008, 31-03-2009, August, 2010, 31-03-2011, 18-04-2012, 08-04-2011.
- Ex.R5 — 09-05-2012 Copy of the letter given by respondent to petitioner informing that he is not selected in interview.
- Ex.R6—14-02-2013 Copy of the letter given by the O© to the respondent intimating it that petitioner withdrew his representation, dated 30-04-2012 and the reference was closed to respondent.
- Ex.R7—25-10-2010 Notice of period of work (Form 11) submitted by the respondent to the Inspector of Factory.
- Ex.R8—27-05-2012 Copy of the joining letter of A. Sasikumar.
- Ex.R9—31-07-2014 Copy of the resignation letter of A. Sasikumar.
- Ex.R10— October, 2012 to September, 2012 ESI returns of contribution.
- Ex.R11— 2012 to 2014 PF returns.
- Ex.R12— June, 2015 to February, 2016 Copy of the Wage register.
- Ex.R13— Electronic challan *cum* return (ECR).
- Ex.R14 — June, 2015 to March, 2016 Copy of the Muster Roll.

G. THANENDRAN,
Presiding Officer,
Industrial Tribunal-*cum*-
Labour Court, Puducherry.

GOVERNMENT OF PUDUCHERRY
LABOUR DEPARTMENT

(G.O. Rt. No. 180/AIL/Lab./T/2017,
Puducherry, dated 27th November 2017)

NOTIFICATION

Whereas, the Government is of the opinion that an industrial dispute has arisen between the management of M/s. Mahatma Gandhi Medical College and Research Institute, Pillaiyarkuppam, Puducherry, M/s. IG Enterprises, Nellithope, Puducherry and Mahatma Gandhi Maruthuvakalloori matrum Aaraitchi Niruvana Oppantha Thozhilarlarga Vazhurimai Sangam, Puducherry over charter of demands in respect of the matter mentioned in the Annexure to this order;

And whereas, in the opinion of the Government, it is necessary to refer the said dispute for adjudication;

Now, therefore, by virtue of the authority delegated *vide* G.O. Ms. No. 20/91/Lab./L, dated 23-5-1991 of the Labour Department, Puducherry to exercise the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947), it is hereby directed by the Secretary to Government (Labour) that the said dispute be referred to the Industrial Tribunal, Puducherry for adjudication. The Industrial Tribunal, Puducherry shall submit the Award within 3 months from the date of issue of reference as stipulated under sub-section 2-A of section 10 of the Industrial Disputes Act, 1947 and in accordance with rule 10-B of the Industrial Disputes (Central) Rules, 1957. The party raising the dispute shall file a statement of claim complete with relevant documents, list of reliance and witnesses to the Industrial Tribunal, Puducherry within 15 days of the receipt of the order of reference and also forward a copy of such statement to each one of the opposite parties involved in the dispute.

ANNEXURE

(a) Whether the dispute raised by the petitioner Mahatma Gandhi Maruthuvakalloori matrum Aaraitchi Niruvana Oppantha Thozhilarlarga Vazhurimai Sangam, No. 87, 4th Cross Street, Moogambigai Nagar, Reddiyarpalayam, Puducherry against the management of M/s. Mahatma Gandhi Medical College and Research Institute, Puducherry and M/s. IG Enterprises, Puducherry over charter of demands and reinstatement of suspended/terminated employees, is justifiable or not? If justified, what is the relief entitled to?

(b) To compute the relief if any, awarded in terms of money if, it can be so computed ?

(By order)

S. MOUTTOULINGAM,
Under Secretary to Government (Labour).