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புதுச்சேரி மாநில அரசிதழ்

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பொருளடக்கம்

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GOVERNMENT OF PUDUCHERRY
LABOUR DEPARTMENT

(G.O. Rt. No. 151/Lab./AIL/T/2017
Puducherry, dated 10th October 2017)

NOTIFICATION

Whereas, the Award in I.D. (T) No. 07/2011, dated 29-08-2017 of the Industrial Tribunal, Puducherry in respect of the industrial dispute between the Management of M/s. Pondicherry Co-operative Spinning Mills Limited, Puducherry and Pudukai Mill Thozhilalargal Sangam, Puducherry over violation of change of service conditions under section 9-A of the Industrial Disputes Act, 1947 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 23-5-91, it is hereby directed by the Secretary to Government (Labour) that the said Award shall be published in the Official Gazette, Puducherry.

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 29th day of August, 2017

I.D. (T) No. 7/2011

The President,
Pudukai Mill Thozhilalargal Sangam,
No.42, Cuddalore Road,
Bharathi Mill Thittu,
Mudaliarpet,
Puducherry-605 004. . . Petitioner

Versus

The Managing Director,
M/s. Pondicherry Co-Operative
Spinning Mills Limited,
Thiruvandarkoil (Post),
Thirubuvanai,
Puducherry-605 102. . . Respondent

This industrial dispute coming on 3-8-2017 before me for final hearing in the presence of M/s. Vrintha Mohan, Advocate for the petitioner, Thiru P. Rabindran, 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. 121/AIL/Lab./J/2011, dated 16-6-2011 for adjudicating the following:-

(i) Whether the dispute raised by Pudukai Mill Thozhilalargal Sangam, Puducherry against the management of M/s. Pondicherry Co-Operative Spinning Mills Limited, Puducherry over violation of change of service conditions under section 9-A of the Industrial Disputes Act, 1947 is justified?

(ii) If justified, to what relief they are entitled to ?

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

2. It is the case of the petitioner union that the respondent company is a Co-operative Mill registered under the Pondicherry Co-operative Societies Act and the respondent management functioning from 1984 and 500 workmen were working under various divisions/departments and all of them have been enrolled into the services of the respondent as apprentice and subsequently their services were confirmed as permanent workmen after the completion of the training period and due to the mismanagement of the respondent establishment the respondent establishment Mill met with a loss and under the guise of welfare of the mill the management had started to adapt various wrong procedures and methods and to ensure the same it followed improper and malicious transfer policies of its workmen and the mill has given unilateral hasty decision of closing the Reeling Division which produces hank yarn from the inception of the mill and thereby transferring 39 workmen employed thereby dividing them into three groups of 13 each in the post of 'Junior most Doffer' and the petitioners had protested the stand of the management and the matter was taken to the knowledge of the Managing Director opposing the decision of the management to close down the Reeling Section and also the petitioners have sent a representation to the respondent management, the Labour Conciliation Officer, the Co-operative Minister, Puducherry, the Chief Secretary, Puducherry, the Co-operative Director, Puducherry and

to the Director, Economics and Statistics Branch objecting the same and the management had divided the transferred 39 workmen from Reeling Department to Ring Frame Department - Noorpu Pirivu A/B/C into three groups and these 39 workmen to work as Doffer were forced to work under their colleagues and that therefore, they have raised the industrial dispute challenging the transfer of 39 workmen and dividing them 3 groups and prayed to decide the reference in favour of them and to grant appropriate reliefs to them.

3. On the other hand, it is the case of the respondent that section 9-A of the Industrial Disputes Act would only deals with any change in the conditions of the service applicable to any workmen in respect of any matter specified in the IV schedule and if any such change is proposed in the conditions of the service without giving notice to other side and that in this case there is no such change of service condition and hence, nothing in any manner attract section 9-A of the Industrial Disputes Act and that therefore, the transfer of 39 workmen belonging to the category of 'Reeler' were transferred to the Spinning Department to carry out the work of 'Doffer' would not make any change of service condition and the Reelers were engaged only for 2 shifts and since the respondent management is not able to generate profit oriented business to suffer a drastic set back in addition to facing difficulties in running the mill and as taking into consideration of such beneficial aspects with due benefits of saving labourers and other employees to reduce the gross loss to the Mill and to avoid frequent lay-off and retrenchment of Reelers, the respondent management committee decided to stop production of Hank yarn itself and only with the *bona fide* interest of the labourers, has transferred 39 mill operatives belonging to the category of Reelers to the Spinning Department and therefore, there is no notice under section 9-A of the Act is required for transfer the 39 workmen and therefore, there is no violation of change of service conditions under section 9-A of the Industrial Disputes Act.

4. In the course of enquiry on the side of the petitioner PW.1 and PW.2 were examined and Ex.P1 to Ex.P.54 were marked and on the side of the respondent RW.1 was examined and Ex.R1 to Ex. R18 were marked.

5. *The point for consideration is:*

Whether the dispute raised by the petitioner against the respondent management over violation of change of service conditions under section 9-A of the Industrial Disputes Act, 1947 is justified or not and if, justified what relief the petitioners are 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 and pleadings of both the parties are carefully considered.

7. It is clear from the pleadings of both the parties that both the parties have admitted the fact that these petition mentioned union members are the workers of the respondent Co-operative Mill and 500 workmen were working under various divisions and departments of the respondent management and these petitioners were working as a Reelers and they have worked at the Reeling Division of the respondent mill which produces hank yarn from the inception of the respondent mill and 39 workmen have been transferred by dividing them into 3 groups of 13 each for the post of 'Doffer' and the petitioner union has raised this industrial dispute before the respondent management and the Labour Conciliation Officer for conciliation which was failed and the reference has been made to this Court.

8. In order to prove the case of the petitioner PW.1 and PW.2 were examined and they have reiterated the averment of the claim petition in their Chief Examination and they have exhibited the copy of the Office Order issued by the Pondicherry Co-operative Spinning Mills Limited as Ex.P1, the copy of the Action as Ex.P2, the copy of the Writ Petition No. 471/2004 before the Hon'ble High Court of Madras (1) Manavalan Vs. SPINCO) as Ex.P3, the copy of the letter by the Pudukkottai Mill Thozilalar Sangam (CITU) to Managing Director, SPINCO as Ex.P4, the copy of the Office Order issued by the Pondicherry Co-operative Spinning Mills Limited as Ex.P5, the copy of the letter by the Reeling Section workmen to the Managing Director, SPINCO as Ex.P6, the copy of the letter to R. Avaniappan, General Secretary of CITU by SPINCO as Ex.P7, the copy of the letter by the Pudukkottai Mill Thozilalar Sangam (CITU) to Managing Director, SPINCO as Ex.P8, the letter by M. Manavalan to the Managing Director, SPINCO as Ex.P9, the copy of the letter by the Pudukkottai Mill Thozilalar Sangam (CITU) to Chief Secretary, Pondicherry Government as Ex.P10, the copy of the letter by the Pudukkottai Mill Thozilalar Sangam (CITU) to Co-operative Minister, Pondicherry Government as Ex.P11, the copy of the letter by the Pudukkottai Mill Thozilalar Sangam (CITU) to Director of Labour Department, Pondicherry Government as Ex.P12, the copy of the Form L by President, Pudukkottai Mill Thozilalar Sangam (CITU) as Ex.P13, the copy of the letter by the Pudukkottai Mill Thozilalar Sangam (CITU) to Director, Economics and Statistics Branch,

Office of the Textile Commissioner, Mumbai - 20 as Ex.P14, the copy of the letter by the Pudukkottai Mill Thozilalar Sangam (CITU) to Director, Regional Officer of the Textile Commissioner, Coimbatore as Ex.P15, the copy of the letter by the Pudukkottai Mill Thozilalar Sangam (CITU) to Director, Regional Officer of the Textile Commissioner, Bangalore as Ex.P16, the copy of the letter by the Pudukkottai Mill Thozilalar Sangam (CITU) to The Managing Director, SPINCO as Ex.P17, the copy of the letter by R. Kuppan, Employee No. 485 to the Managing Director, SPINCO as Ex.P18, the copy of the letter by P.K. Selvaraj, Employee No. 531 to the Managing Director, SPINCO as Ex.P19, the copy of the letter by S. Kuppusamy, Employee No. 402 to the Managing Director, SPINCO as Ex.P20, the copy of the letter by P. Sekar, Employee No. 542 to the Managing Director, SPINCO as Ex.P21, the copy of the letter by V. Govinda Reddy, Employee No. 45 to the Managing Director, SPINCO as Ex.P22, the copy of the letter by M. Piraisoodi, Employee No.286 to the Managing Director, SPINCO as Ex.P23 of the copy of the letter by A. Muthalu, Employee No. 145 to the Managing Director, SPINCO as Ex.P24, the copy of the letter by S. Balan, Employee No. 156 to the Managing Director, SPINCO as Ex.P25, the copy of the letter by E. Dhandapani, Employee No. 593 to the Managing Director, SPINCO as Ex.P26, the copy of the letter by S. Durairaj, Employee No. 157 to the Managing Director, SPINCO as Ex.P27, the copy of the letter by R. Rajaram, Employee No.495 to the Managing Director, SPINCO as Ex.P28, the letter by K. Vadivelu, Employee No. 38 to the Managing Director, SPINCO as Ex.P29, the letter by S. Arumugam, Employee No. 365 to the Managing Director, SPINCO as Ex.P30, the letter by P. Rajendiran, T.No. 443 to the Managing Director, SPINCO as Ex.P31, the copy of the letter by P. Singaravelu, Employee No. 330 to the Managing Director, SPINCO as Ex.P32, the copy of the letter by V.M. Ramamourthy, Employee No. 452 to the Managing Director, SPINCO as Ex.P33, the copy of the letter by S. Ravichandiran, Employee No. 396 to the Managing Director, SPINCO as Ex.P34, the copy of the letter by J. Dayalan, Employee No. 528 to the Managing Director, SPINCO as Ex.P35, the copy of the letter by P. Bramman, Employee No. 334 to the Managing Director, SPINCO as Ex.P36, the copy of the letter by R. Krishnamourthy, Employee No. 419 to the Managing Director, SPINCO as Ex.P37, the copy of the letter by N. Subramani, Employee No. 255 to the Managing Director, SPINCO as Ex.P38, the copy of the letter by V. Kadavul, Employee No. 481 to the Managing Director, SPINCO as

Ex.P39, the copy of the letter by K. Elangovan, Employee No.72 to the Managing Director, SPINCO as Ex.P40, the copy of the letter by V. Krishnamourthy, Employee No. 250 to the Managing Director, SPINCO as Ex.P41, the copy of the letter by S. Ilayaperumal, Employee No. 167 to the Managing Director, SPINCO as Ex.P42, the copy of the letter by J. Jeganathan, Employee No.35 to the Managing Director, SPINCO as Ex.P43, the copy of the letter by K. Sankar, Employee No. 218 to the Managing Director, SPINCO as Ex.P44, the copy of the letter by P. Murugaiyan, Employee No. 53 to the Managing Director, SPINCO as Ex.P45, the copy of the letter by K. Mourthy, Employee No.600 to the Managing Director, SPINCO as Ex.P46, the copy of the letter by B. Pandurangam, Employee No. 472 to the Managing Director, SPINCO as Ex.P47, the copy of the letter by R. Sridharan, Employee No. 404 to the Managing Director, SPINCO as Ex.P48, the copy of the letter by the Managing Director, SPINCO to the Labour Officer, (Conciliation) as Ex.P49, the copy of the letter to the Labour Officer, (Conciliation) by CIRU as Ex.P50, the report on failure of conciliation to the Secretary to Government of Pondicherry (Labour) by the Labour Officer, Conciliation as Ex.P51, G.O. Rt. No. 121/AIL/Lab./J/2011 issued by the Labour Department Puducherry as Ex.P52, Notice in ID(T).07/2011, PDJ, Puducherry as Ex.P53 and notice in ID(T).07/2011, LC, Puducherry as Ex.P54.

9. On the other hand, in order to prove the case of the respondent, RW.1 was examined and RW.1 has reiterated the counter averments in his evidence and the respondent has exhibited the copy of the transfer order by the Pondicherry Co-operative Spinning Mills Limited as Ex.R1, the copy of the letter by K. Elangovan to the Co-operative Mills, Thirubuvani as Ex.R2, the copy of the Office Order by the Pondicherry Co-operative Spinning Mills Limited as Ex.R3, the copy of the authorisation letter given by the Pondicherry Co-operative Spinning Mills Limited to S. Muthukumar as Ex.R4, the copy of the representation given by K. Vadivelu to the respondent as Ex.R5, the copy of the representation given by P. Murugaiyan to the respondent as Ex.R6, the copy of the representation given by T. Jayabalan to the respondent as Ex.R7, the copy of the representation given by V. Ranganathan to the respondent as Ex.R8, the copy of the representation given by S. Balan to the respondent as Ex.R9, the copy of the representation given by S. Devadass to the respondent as Ex.R10, the copy of the representation given by S. Mahendiran to the respondent as Ex.R11, the copy of the representation given by M. Piraisudi to the respondent

as Ex.R12, the copy of the representation given by L. Rajaram to the respondent as Ex.R13, the copy of the representation given by P. Bramman to the respondent as Ex.R14, the copy of the representation given by S. Arumugam to the respondent as Ex.R15, the copy of the representation given by P. Pandurangan to the respondent as Ex.R16, the copy of the representation given by K. Moorthy to the respondent as Ex.R17, the copy of the representation given by K. Moorthy to the respondent as Ex.R18.

10. These evidence and documents would go to show that these 39 workmen have been working at the respondent mill and they have been transferred and posted as Doffer for which the petitioner union has made representation before the respondent management and they have raised the industrial dispute stating that they have not been given any notice under section 9-A of the Industrial Disputes Act before closing the Reeling Section and transferring them to Spinning Department.

11. It is the main contention of the petitioner that before transferring them and posted as Doffer that is to change the nature of work and service condition of the workers the respondent management has failed to issue prior notice under section 9-A of the Industrial Disputes Act to them. Admittedly, in this case no such notice was sent by the respondent management to these petitioners prior to the Transfer Order against workers and divided them into 3 groups and posted them as Doffer. In order to prove the case the petitioners have exhibited the order of the Hon'ble High Court as Ex.P3 which would reveal the fact that one of the employee of the respondent management who also was transferred and posted as doffer along with these 39 workers has filed a Writ petition before the Hon'ble High Court against the Transfer Order passed on 02-07-2003 by the respondent management to quash the same and consequently to direct the management to promote the petitioner to the post of Slider retrospectively with effect from the date on which his immediate junior was promoted as Slider, taking into account the date of initial appointment of the petitioner on 01-06-1994 with all monetary benefits, arrears and other consequential service benefits wherein, the Hon'ble High Court has discussed and observed that the Writ petitioner was denied promotion by the respondent management. The observation of the Hon'ble High Court runs as follows:

“6. It is seen from the materials available on record that the petitioner joined as an Apprentice under the respondent on 17-04-1990. The petitioner was absorbed in the permanent post of Reeler on

01-06-1994. Subsequently, on 01-01-1999 since the work load in the Reeler Section was reduced, the petitioner was reverted to the post of Sweeper and posted in the Spinning Department. The petitioner accepted the same without any protest. He worked in the said Department till 26-02-2002 and on the request made by the petitioner, he was transferred to the Cone Winding Department. The petitioner was informed at that time that as per the policy of the Mills, the seniority is maintained Department-wise with reference to the date of appointment in the Department, either after training or by transfer. When that being so, one of his juniors by name J. Balan (Token No. 612), who joined the respondent Mill on 03-10-1995, was posted as Slider. Similarly, N.Jayakumar (Token No. 615) and V.Rajasekaran (Token No. 625) and others, who are juniors to the petitioner, were posted as Sliders whereas, the petitioner was denied promotion to the said post. It is not the case of the respondent that the petitioner was retrenched from service when he was working in the Reeler Section. But, on the other hand, he was reverted to the post of Sweeper and there is no break in service from the date of his initial appointment. Thereafter, the date of his initial appointment should have been taken into account for the purpose of seniority. But, without taking that date into account the petitioner was denied promotion and his juniors were given promotion. No explanation whatsoever had been offered by the respondent as to why the petitioner was denied promotion to the post of Slider when his juniors were promoted. Therefore, the petitioner is also entitled to the same.

7. Considering the above facts and circumstances of the case, this Writ petition is allowed and the respondent is directed to promote the petitioner as Slider from the date on which his juniors were promoted and pay all monetary and other consequential service benefits within a period of three months from the date of receipt of a copy of this order.”

From the above discussion and observation of the Hon'ble High Court, it is clear that the respondent management has denied promotion to the Writ Petitioner and instead of him another junior was appointed as Slider and his juniors were given promotion and no explanation was offered by the respondent management to the petitioner who has not been posted as Slider when the juniors were promoted and hence, the Writ petitioner was given all monetary

and other consequential service benefits from the date of the Order. In this case also these petitioners have been admittedly transferred and posted as Doffer while they have been served as Reeler. Furthermore, though the respondent management has closed the Reeling Section and transferred these 39 workers to some other Departments that is the respondent management has decided to give different nature of work to the petitioner workmen the respondent management ought to have given notice under section 9-A of the Industrial Disputes Act to these petitioners and that therefore, the respondent management has violated the provisions of section 9-A of the Industrial Disputes Act.

12. In this case, it is contended by the respondent management that they are not able to generate profit oriented business to suffer a drastic set back in addition to facing difficulties in running the Mill and as taking into consideration of such beneficial aspects with due benefits of saving labourers and other employees to reduce the gross loss to the Mill and to avoid frequent lay-off and retrenchment of Reelers, the respondent management committee decided to stop production of Hank yarn itself and only with the *bona fide* interest of the labourers has transferred these 39 mill operatives belonging to the category of Reelers to the Spinning Department. The reasons assigned by the respondent that they are facing difficulties in running the Mill and not able to generate profit oriented business and that why they transferred these 39 workers to the Spinning Department without giving notice under section 9-A of the Industrial Disputes Act is not sustainable since, the provision is mandatory and the respondent management ought to have given notice to the petitioner workmen since they have transferred from Reeling Department to Spinning Department.

13. It is not in dispute by the respondent management that the Hon'ble High Court has passed an order and the order of the Hon'ble High Court was obeyed by them and the Writ petitioner was given all the benefits as directed by the Hon'ble High Court and in this case also the respondent management has admitted in their evidence that they are ready to give promotion to the workers if, the petitioner workmen have given option to promote them. On this aspect, the evidence of the respondent management witness RW.1 is carefully perused and the evidence of RW.1 runs as follows:

“நான் தான் இந்த வழக்கின் பிரதிவாதி. மனுதாரர்களுக்கு விருப்பம் இருந்தால் Spinning Slider ஆக நியமிக்க ஆட்சேபணை இல்லை. பணி உயர்வு கொடுக்கப்பட்ட நாளிலிருந்து 2 ஆண்டுகளுக்கு முன்பாக

அதற்குண்டான பணி பலன்களை கொடுக்க தயாராக இருக்கின்றோம். இந்த நீதிமன்ற உத்தரவு கிடைத்தவுடன் மனுதாரர்களுக்கு பணி உயர்வு தர தயாராக இருக்கின்றோம். இந்த ஆண்டு டிசம்பர் மாதத்திற்குள் 2 ஆண்டுகளுக்கு உண்டான பணி பலன்களை தர தயாராக இருக்கின்றோம். ஆனால், மனு தேதியிலிருந்து கொடுக்க விருப்பமில்லை. ஏனெனில் எங்கள் நிறுவனம் நஷ்டத்தில் இயங்கி வருகிறது. இந்த நீதிமன்றம் பணி உயர்வு வழங்க உத்தரவு இட்டால், மனுதாரர்கள் விருப்பம் தெரிவித்து கடிதம் கொடுத்தால் 1 மாதத்திற்குள் பதவி உயர்வு வழங்கிவிடுவோம்.”

From the above evidence, it is clear that the respondent management is ready to give promotion to the petitioners if, they are willing and give their option for promotion and the respondent management has got no objection to appoint these petitioners as Spinning Slider and they are also ready to pay the promotion benefits to the petitioners for the period of two years prior to their promotion and the respondent management is also agreed to give promotion to these employees within one month from the date of their option for promotion. Therefore, considering the above Order of the Hon'ble High Court and fact that the respondent management has transferred these petitioners and has failed to give prior notice under section 9-A of the Industrial Disputes Act prior to the transfer, it is just and necessary to held that the workmen the petitioners are entitled for the relief of promotion as well as other consequential monetary benefits and hence, this Court held that the industrial dispute raised by the petitioner union against the respondent management over violation of change of service conditions of the workmen under section 9-A of the Industrial Disputes Act, 1947 is justified and the petitioner workmen are entitled for the relief of promotion. However, considering the fact that the respondent mill is running in a loss the monetary benefits of the petitioner union members have only to be given for the period of two years and therefore, the monetary benefits can be given for the period of two years by giving retrospective effect prior to the date of promotion.

14. In the result, the petition is allowed and the industrial dispute raised by the petitioner union over violation of change of service conditions under section 9-A of the Industrial Disputes Act, 1947 is justified and an Award is passed by directing the respondent management to give promotion to the petitioners within one-month from the date of this order and Promotional and Consequential monetary benefits is to be given to them for two years with the

retrospective effect prior to the date of promotion *i.e.*, from October 2015 and further the respondent management is directed to pay all the monetary benefits within the period of 3 months from the date of their promotion. No cost.

Dictated to the stenographer, transcribed by her, corrected and pronounced by me in the open Court on this the 29th day of August, 2017.

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

List of petitioner's witnesses:

PW.1 — 09-5-2014 — J. Gunasekaran

PW. 2— 11-1-2017 — K. Ilango

List of petitioner's exhibits:

Ex.P1—08-01-2005— Copy of the Office Order issued by the Pondicherry Co-operative Spinning Mills Limited.

Ex.P2—10-02-2006— Copy of the Action.

Ex.P3—17-12-2009— Copy of the Writ petition No. 471/2004 before the Hon'ble High Court of Madras (Manavalan Vs. SPINCO).

Ex.P4—19-05-2010— Copy of the letter by the Pudukkottai Mill Thozilalar Sangam (CITU) to Managing Director, SPINCO.

Ex.P5—21-05-2010— Copy of the Office Order issued by the Pondicherry Co-operative Spinning Mills Limited.

Ex.P6—24-05-2010— Copy of the letter by the Reeling Section workmen to the Managing Director, SPINCO.

Ex.P7—31-05-2010— Copy of the letter to R. Avaniappan, General Secretary of CITU by SPINCO.

Ex.P8—08-03-2010— Copy of the letter by the Pudukkottai Mill Thozilalar Sangam (CITU) to Managing Director, SPINCO.

Ex.P9—05-06-2010 — Letter by M. Manavalan to the Managing Director, SPINCO.

Ex.P10—15-06-2010— Copy of the letter by the Pudukkottai Mill Thozilalar Sangam (CITU) to Chief Secretary, Pondicherry Government.

Ex.P11—15-06-2010— Copy of the letter by the Pudukkottai Mill Thozilalar Sangam (CITU) to Co-operative Minister, Puducherry Government.

Ex.P12—06-07-2010— Copy of the letter by the Pudukkottai Mill Thozilalar Sangam (CITU) to Director of Labour Department, Puducherry Government.

Ex.P13—06-07-2010— Copy of the Form L by President, Pudukkottai Mill Thozilalar Sangam (CITU).

Ex.P14—16-07-2010— Copy of the letter by the Pudukkottai Mill Thozilalar Sangam (CITU) to Director, Economics and Statistics Branch, Office of the Textile Commissioner, Mumbai-20.

Ex.P15—16-07-2010— Copy of the letter by the Pudukkottai Mill Thozilalar Sangam (CITU) to Director, Regional Officer of the Textile Commissioner, Coimbatore.

Ex.P16—16-07-2010— Copy of the letter by the Pudukkottai Mill Thozilalar Sangam (CITU) to Director, Regional Office of the Textile Commissioner, Bangalore.

Ex.P17—23-08-2010— Copy of the letter by the Pudukkottai Mill Thozilalar Sangam (CITU) to the Managing Director, SPINCO.

Ex.P18—01-09-2010— Copy of the letter by R. Kuppan, Employee No. 485 to the Managing Director, SPINCO.

- Ex.P19—01-09-2010—Copy of the letter by P. K. Selvaraj, Employee No. 531 to the Managing Director, SPINCO.
- Ex.P20—01-09-2010—Copy of the letter by S. Kuppusamy, Employee No. 402 to the Managing Director, SPINCO.
- Ex.P21—01-09-2010—Copy of the letter by P. Sekar, Employee No. 542 to the Managing Director, SPINCO.
- Ex.P22—01-09-2010—Copy of the letter by V. Govinda Reddy, Employee No. 45 to the Managing Director, SPINCO.
- Ex.P23—01-09-2010—Copy of the letter by M. Piraisoodi, Employee No. 286 to the Managing Director, SPINCO.
- Ex.P24—01-09-2010—Copy of the letter by A. Muthalu, Employee No. 145 to the Managing Director, SPINCO.
- Ex.P25—01-09-2010—Copy of the letter by S. Balan, Employee No. 156 to the Managing Director, SPINCO.
- Ex.P26—01-09-2010—Copy of the letter by E. Dhandapani, Employee No. 593 to the Managing Director, SPINCO.
- Ex.P27—01-09-2010—Copy of the letter by S. Durairaj, Employee No. 157 to the Managing Director, SPINCO.
- Ex.P28—01-09-2010—Copy of the letter by R. Rajaram, Employee No. 495 to the Managing Director, SPINCO.
- Ex.P29—01-09-2010—Letter by K. Vadivelu, Employee No. 38 to the Managing Director, SPINCO.
- Ex.P30—01-09-2010—Letter by S. Arumugam, Employee No. 365 to the Managing Director, SPINCO.
- Ex.P31—01-09-2010—Letter by P. Rajendiran, T. No. 443 to the Managing Director, SPINCO.
- Ex.P32—04-09-2010—Copy of the letter by P. Singaravelu, Employee No. 330 to the Managing Director, SPINCO.
- Ex.P33—04-09-2010—Copy of the letter by V. M. Ramamourthy, Employee No. 452 to the Managing Director, SPINCO.
- Ex.P34—04-09-2010—Copy of the letter by S. Ravichandiran, Employee No. 396 to the Managing Director, SPINCO.
- Ex.P35—04-09-2010—Copy of the letter by J. Dayalan, Employee No. 528 to the Managing Director, SPINCO.
- Ex.P36—04-09-2010—Copy of the letter by P. Bramman, Employee No. 334 to the Managing Director, SPINCO.
- Ex.P37—04-09-2010—Copy of the letter by R. Krishnamourthy, Employee No. 419 to the Managing Director, SPINCO.
- Ex.P38—04-09-2010—Copy of the letter by N. Subramani, Employee No. 255 to the Managing Director, SPINCO.
- Ex.P39—04-09-2010—Copy of the letter by V. Kadavul, Employee No. 481 to the Managing Director, SPINCO.
- Ex.P40—04-09-2010—Copy of the letter by K. Elangovan, Employee No. 72 to the Managing Director, SPINCO.
- Ex.P41—04-09-2010—Copy of the letter by V. Krishnamourthy, Employee No. 250 to the Managing Director, SPINCO.
- Ex.P42—04-09-2010—Copy of the letter by S. Ilayaperumal, Employee No. 167 to the Managing Director, SPINCO.
- Ex.P43—04-09-2010—Copy of the letter by J. Jeganathan, Employee No. 35 to the Managing Director, SPINCO.

Ex.P44—04-09-2010—Copy of the letter by K. Sankar, Employee No. 218 to the Managing Director, SPINCO.	Ex.R2—31-05-2005— Copy of the letter by K. Elangovan to the Co-operative Mills, Thirubuvani.
Ex.P45—04-09-2010—Copy of the letter by P. M u r u g a i y a n , Employee No. 53 to the Managing Director, SPINCO.	Ex.R3—23-06-2005— Copy of the Office Order by the Pondicherry Co-operative Spinning Mills Limited.
Ex.P46—04-09-2010—Copy of the letter by K. M o u r t h y , Employee No. 600 to the Managing Director, SPINCO.	Ex.R4—16-05-2017 — Copy of the authorisation letter given by the Pondicherry Co-operative Spinning Mills Limited to S. Muthukumar.
Ex.P47—04-09-2010—Copy of the letter by B. P a n d u r a n g a m , Employee No.472 to the Managing Director, SPINCO.	Ex.R5—05-05-2007 — Copy of the representation given by K. Vadivelu to the respondent.
Ex.P48—04-09-2010—Copy of the letter by R. S r i d h a r a n , Employee No. 404 to the Managing Director, SPINCO.	Ex.R6— — — Copy of the representation given by P. Murugaiyan to the respondent.
Ex.P49—08-09-2010—Copy of the letter by the Managing Director, SPINCO to the Labour Officer (Conciliation).	Ex.R7—08-02-2005— Copy of the representation given by T. Jayabalan to the respondent.
Ex.P50—21-09-2010—Copy of the letter to the Labour Officer, (Conciliation) by CIRU.	Ex.R8—15-02-2005— Copy of the representation given by V. Ranganathan to the respondent.
Ex.P51—18-03-2011—Report on failure of conciliation to the Secretary to Government of Pondicherry (Labour) by the Labour Officer, Conciliation.	Ex.R9—21-06-2003— Copy of the representation given by S. Balan to the respondent.
Ex.P52—16-06-2011—G. O. Rt. No. 121/AIL/Lab./J/2011 issued by the Labour Department, Puducherry.	Ex.R10—25-01-2005—Copy of the representation given by S. Devadass to the respondent.
Ex.P53—22-06-2011—Notice in ID(T).07/2011, PDJ, Puducherry.	Ex.R11—27-10-2004—Copy of the representation given by S. Mahendiran to the respondent.
Ex.P54—02-05-2013—Notice in ID(T).07/2011, LC, Puducherry.	Ex.R12—08-08-2003—Copy of the representation given by M. Piraisudi to the respondent.
<i>List of respondent's witness:</i>	Ex.R13—28-01-2004—Copy of the representation given by L. Rajaram to the respondent.
RW.1 —09-06-2017— S. Muthukumar	Ex.R14—31-03-2004—Copy of the representation given by P. Bramman to the respondent.
<i>List of respondent's exhibits:</i>	Ex.R15—15-09-2003—Copy of the representation given by S. Arumugam to the respondent.
Ex.R1—15-12-2001— Copy of the Transfer Order by the Pondicherry Co-operative Spinning Mills Limited.	

Ex.R16 —30-11-2004—Copy of the representation given by P. Pandurangan to the respondent.

Ex.R17 —07-04-2004—Copy of the representation given by K. Moorthy to the respondent.

Ex.R18 —27-10-2004—Copy of the representation given by K. Moorthy to the respondent.

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

GOVERNMENT OF PUDUCHERRY
LABOUR DEPARTMENT

(G. O. Rt. No. 154/Lab./AIL/T/2017,
Puducherry, dated 13th October 2017)

NOTIFICATION

Whereas, the Award in I.D. (L) No. 15/2010, dated 07-07-2017, of the Labour Court, Puducherry in respect of the Industrial Dispute between the Management of M/s. Cadilla Pharmaceuticals Limited, Chennai and Thiru V. Chandramohan, Puducherry over non-employment 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.

Friday, the 7th day of July 2017

I.D. (L) No. 15/2010

V. Chandramohan,
S/o. V. Vanmiganathan,
No. 8, 5th Cross, Mariyal Nagar,
Reddiarpalayam,
Puducherry.

.. Petitioner

Versus

The Sales Manager,
M/s. Cadila Pharmaceuticals Limited,
Puducherry. . . Respondent

This industrial dispute coming up before me for final hearing on 20-06-2017 in the presence of the petitioner in person and Thiruvallargal L. Sathish, N. Krishnamurthy, T. Pravin and V. Veeraragavan, Counsels for the respondent, upon hearing and after perusing the records, after having stood over 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. 55/AIL/Lab./J/2010, dated 23-03-2010 for adjudicating the following:-

(a) Whether the dispute raised by Thiru V. Chandramohan against the management of M/s. Cadilla Pharmaceuticals Limited, over non-employment is justified or not?

(b) If justified, what relief the petitioner is entitled to?

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

2. *The brief averment of the Claim Statement filed by the petitioner is as follows:*

The petitioner submit that he was appointed in the service of the respondent establishment as a Sales Promotion Employee in June, 1996 in the grade of Senior Field Officer and the appointment order was given on 10-06-1996 and he was confirmed in the said post and he has worked at Dharmapuri. On 09-12-2002, the respondent management was relocated the service of the petitioner from Dharmapuri to Pondicherry Head Quarter and the petitioner was doing best service in the new place of postings for which the respondent management has sent 17 appreciation letters to the petitioner and on 14-04-2007 the respondent management issued an order that due to the business exigency, the management has decided to relocate the services of the petitioner from Pondicherry Head Quarters to Mumbai with effect from 01-05-2007 and the petitioner was had fallen sick in the month of April, 2007 with severe cervical spondilolities and therefore, the petitioner was not in a position to proceed Mumbai and consequently applied for leave on medical grounds duly supported by medical

certificates and the respondent has not paid salary for the month of April 2007 to the petitioner and the petitioner was also continue to be on leave on applications submitted duly supported by medical certificate sent through courier and no further salary was disbursed by the management inspite of repeated request made by the petitioner for release of salary and the respondent management has asked for X-ray report of the petitioner illness and that was complied with and the fitness certificate was sent on 05-11-2007 with a request to consider reposting of the petitioner in Pondicherry and the complete medical file was also sent to the management on 30-11-2007 and consequently on 15-12-2007 the respondent management has sent the letter to the petitioner that he directed to report before Mr. J.N. Pathak, Assistant General Manager at Dhoka, Ahmedabad to discuss the issues which the petitioner could not comply with for want of funds for which the petitioner sent a detailed reply with the signature of their family praying for release of salary from May 2007 to December 2007 and thereafter, a cheque for ₹ 7,478 was sent by the Manager (IR and Legal) of the respondent management without indicating any details and asking the petitioner to go to Ahmedabad with all medical records for reference to the company's Doctor and the petitioner also went to Ahmedabad on 17-03-2008 and as per the advice a letter was sent to the company to consider the withdrawal of the transfer order and further that he has received a charge-sheet, dated 01-05-2008 alleging unauthorised absence from 14-4-2007 pursuant to the transfer order and ordering a departmental enquiry to be held at Ahmedabad on 19-05-2008 and due to strained circumstances, the petitioner could not proceed to Ahmedabad and in the enquiry, the petitioner was set *ex parte* for non-appearance and a summary enquiry report was drawn on 04-06-2008. The copy of the enquiry proceedings and exhibits were sent to the petitioner and all the submissions made by the petitioner were thrown to air and the petitioner could not obey the transfer order since he was only inconvenience for the non-payment of the salary to the petitioner from the month of April, 2007 and that therefore, the petitioner could not move on transfer to Mumbai and participated in the enquiry charges against by him and the enquiry was conducted *ex parte* and on the basis of the evidence collected behind the back of the petitioner, the petitioner was dismissed from service with effect from 02-09-2008 and the act of the respondent management by withholding the salary

from April 2007, transfer of the petitioner from Pondicherry to a remote station Mumbai without releasing the monetary entitlement and virtually disabling the petitioner to proceed on transfer and the act of the respondent management that conducting *ex parte* enquiry without releasing the financial entitlements to the petitioner and passing final order of dismissal is against the principles of natural justice and that therefore, he raised the industrial dispute before the Conciliation Officer and has prayed for reinstatement with back wages and other attendant benefits.

3. *The brief averment of the Counter Statement filed by the respondent is as follows:*

The respondent is doing the business of manufacturing and marketing of pharmaceutical preparation, bulk drugs, specialty chemicals, hospital products and has established its marketing-outlets all over India and in various countries. The employees of the respondent are provided with letters of appointment and one of the conditions in their letters of appointment is that their jobs are transferable to various locations across India and that the petitioner joined in the services of the respondent on 10-06-1996 as a Senior Field Officer in Dharmapuri, Tamil Nadu. In the year 2002, he was transferred to Puducherry. In 2007, the respondent issued order of transfer to the petitioner transferring him to Mumbai with effect from 01-05-2007. The petitioner, without reporting for duty began to apply for leave under the pretext of being sick. As the petitioner was seeking leave under the pretext of sickness for a very long time, the respondent directed him to furnish his medical records to substantiate his illness and he was also further asked to present himself for medical examination. Series of correspondences were exchanged between the petitioner and respondent in this regard. However, despite several opportunities provided by the respondent, the petitioner failed to report for worker Mumbai and was requesting the management to consider posting him once again in Puducherry. It was therefore, apparent that the petitioner was not interested in reporting at Mumbai. As the petitioner refused to obey the lawful orders of the respondent and continued to absent himself unauthorised by under a false pretext, he was issued a charge-sheet-cum-enquiry notice on 01-05-2008. The petitioner was directed to appear for an enquiry at Ahmadabad on 19-05-2008. However, the petitioner did not attend the enquiry on 19-05-2008.

The enquiry was thereafter, adjourned to 04-06-2008. As the petitioner failed to appear on 04-06-2008 as well, the enquiry was thereafter, adjourned to 20-06-2008. As the petitioner did not attend the enquiry the Enquiry Officer was left with no other option than to proceed with enquiry in the absence of the petitioner. Copies of the enquiry proceedings from time to time were however sent to the petitioner and the petitioner was fully aware of the enquiry proceedings. The Enquiry Officer after appreciating the evidence placed before him submitted his report holding the petitioner guilty of the charges. After sending the enquiry report and issuance of second show cause notice, the petitioner was terminated from the services of the respondent on 02-09-2008.

The respondent further stated that the petitioner after issuance of the order of transfer was refusing to report at the transferred location only due medical reasons and not for any other reasons. Being so, the action of the petitioner is not reporting for work after 01-05-2007 under the pretext of ill health is the issue that arises for consideration of this Court. The petitioner did not participate in the enquiry or submit any evidence to show that he did not report for work due to ill health and therefore, the order of termination of the petitioner is fully justified and prayed that this Hon'ble Court may not interfere with the order of the termination and that the domestic enquiry was conducted in consonance with principles of natural justice before terminating the petitioner and the petitioner having not participated in the same cannot question the fairness of the same and that the fairness of enquiry may however be taken up at the first instance and decided as a preliminary issue and if, for any reason, would this Court to conclude the enquiry to be not fair, the respondent craves leave to adduce evidence on merits to prove charges alleged against the petitioner and therefore, the action of the respondent in terminating the petitioner is fully justified and does not require any interference and prayed this Court to dismiss the claim petition.

4. In the course of enquiry PW.1 was examined and Ex.P1 to Ex.P32 were marked and on the side of the respondent though the case was adjourned for several hearings the respondent has not turned up and no witness was produced by the respondent and no documents were marked by them.

5. *The point for consideration is:*

Whether the dispute raised by the petitioner against the respondent management over his non-employment is justified or not and whether the petitioner is entitled for the relief as claimed by him?

6. The submission of both the parties, the evidence let in and the exhibits marked on the side of the petitioner are carefully considered. On the side of the petitioner he has filed the written argument and on the side of the respondent though several opportunities were given no argument was put forth by the respondent and hence, the argument was closed.

7. From the pleadings of both the parties, it is clear that the following facts are admitted by both the parties that the petitioner has joined in the respondent establishment on 10-06-1996 under an appointment order issued by the respondent management as a Sales Promotion employee of the respondent establishment and the petitioner was in service at Dharmapuri and thereafter, he was transferred to Puducherry on 09-12-2002 and thereafter, the petitioner has served at Puducherry respondent establishment till 14-04-2007 and thereafter, the petitioner was once again transferred to respondent establishment at Mumbai with effect from 01-05-2007 and the petitioner has not reported duty at Mumbai as directed by the respondent management under the letter of transfer and the respondent management has not paid the salary for the month of May, 2007 to the petitioner as he has not reported at the respondent management at Mumbai as directed by the respondent and the petitioner has applied for medical leave from May, 2007 for which the respondent has asked the petitioner to furnish his medical records to substantiate his illness and the petitioner was also asked to appear himself for medical examination and that thereafter, the enquiry notice was issued to the petitioner and the petitioner was directed to appear for the enquiry at Ahmedabad on 19-05-2008 for which the petitioner did not appear and the Enquiry Officer has proceeded with the enquiry in the absence of the petitioner and the copies of the enquiry proceedings were sent to the petitioner and the Enquiry Officer has submitted the report holding that the petitioner was guilty of charges and a show cause notice was issued to the petitioner and thereafter, the petitioner was terminated from the services of the respondent establishment on 02-09-2008.

8. In order to prove case, the petitioner has examined himself as PW.1 and in his evidence PW.1 has stated that the petitioner was appointed in the service of the respondent establishment as a Sales Promotion Employee in June, 1996 in the grade of Senior Field Officer and the appointment order was given on 10-06-1996 and he was confirmed in the said post and he has worked at Dharmapuri and on 09-12-2002, the respondent management was relocated the service of the petitioner from Dharmapuri to Pondicherry

Head Quarter and the petitioner was doing best service in the new place of posting for which the respondent management has sent 17 appreciation letters to the petitioner and on 14-04-2007 the respondent management issued an order that due to the business exigency, the management has decided to relocate the services of the petitioner from Pondicherry Head Quarters to Mumbai with effect from 01-05-2007 and the petitioner had fallen sick in the month of April, 2007 with severe cervical spondilites and therefore, the petitioner was not in a position to proceed Mumbai and consequently applied for leave on medical grounds duly supported by Medical Certificates and the respondent has not paid salary for the month of April, 2007 to the petitioner and the petitioner was also continued to be on leave on application submitted duly supported by Medical Certificate sent through courier and no further salary was disbursed by the management inspite of repeated request made by the petitioner for release of salary and respondent management has asked for X-ray report of the petitioner illness and that was complied with and the Fitness Certificate was sent on 05-11-2007 with a request to consider reposting of the petitioner in Puducherry and the complete medical file was also sent to the management on 30-11-2007 and consequently on 15-12-2007 the respondent management has sent the letter to the petitioner that he was directed to report before one Mr. J.N. Pathak, Assistant General Manager at Dhoka, Ahmedabad to discuss the issues for which the petitioner could not comply with for want of funds for which the petitioner has sent a detailed reply with the signature of their family praying for release of salary from May 2007 to December 2007 and thereafter, a cheque for ₹ 7,478 was sent by the Manager (IR and Legal) of the respondent management without indicating any details to the petitioner and asking the petitioner to go to Ahmedabad with all medical records for reference to the company's Doctor and the petitioner also went to Ahmedabad on 17-03-2008 and as per the advice the letter was sent to the company to consider the withdrawal of the Transfer Order and subsequently he has received a charge-sheet, dated 01-05-2008 alleging unauthorised absence from 14-04-2007 pursuant to the Transfer Order and ordering a departmental enquiry to be held at Ahmedabad on 19-05-2008 and due to strained circumstances, the petitioner could not proceed to Ahmedabad and in the enquiry, the petitioner was ser *ex parte* non appearance and a summary enquiry report was drawn on 04-06-2008 and the copy of the enquiry proceeding's and exhibits were sent to the petitioner and all the submissions

made by the petitioner were thrown to air and the petitioner could not obey the transfer order since he was only inconvenience for the non-payment of the salary to the petitioner from the month of April 2007 and that therefore, the petitioner could not move on transfer to Mumbai and to participate in the enquiry charges against him and the enquiry was conducted *ex parte* and on the basis of the evidence collected behind the back of the petitioner, the petitioner was dismissed from service with effect from 02-09-2008 and the Act of the respondent management by withholding the salary from April 2007, transfer of the petitioner from Puducherry to a remote station Mumbai without releasing the monetary entitlement and virtually disabling the petitioner to proceed on transfer and the act of the respondent management that conducting *ex parte* enquiry without releasing the financial entitlements to the petitioner and passing final order of dismissal is against the principles of natural justice and that therefore, he raised the industrial dispute before the Conciliation Officer.

9. In support of his oral evidence, the petitioner has exhibited the copy of the appointment letter issued by the management on 10-06-1996 as Ex.P1. the copy he Transfer Order issued by the management on 09-12-2002 as Ex.P2. the copy of the Transfer Order issued by the management on 14-04-2007 as Ex.P3. The Ex.P4 to Ex.P7 are the copies of the petitioner's inter Office memorandum Ex.P8 is the copy of the inter office memorandum together with Fitness Certificate and the monthly prescription issued by the Doctor, dated 05-11-2007. The Ex.P9, Ex.P11, Ex.P12, Ex.P30, Ex.P31 and Ex.P32 are the copies of the e-mail correspondence exchanged between the petitioner and the respondent. The copy of the causality slip issued by Indira Gandhi Government Hospital, Puducherry, on 22-12-2006 as Ex.P10 the copy of the Charge Sheet issued by the management on 01-05-2008 as Ex.P14. The Ex.P15 to Ex.P17 are the copies of the enquiry proceedings, dated 04-06-2008, 20-06-2008 and 29-07-2008 respectively. The copy of the findings of the Enquiry Officer issued to the petitioner, dated 06-08-2008 as Ex.P18. the copy of the second show cause notice issued by the management on 12-08-2008 as Ex.P19, the copy of the dismissal order issued by the management on 02-09-2008 as Ex.P20. The Ex.P21 and Ex.P22 are the copy of the reply letter of the petitioner, Ex.P23 is the copy of the field work report *vide* inter office memorandum from 16-04-2007 to 30-04-2007 along with April 2007 expenses statement to the management, Ex.P24 is the copy of the inter office memorandum, dated 15-05-2007 along with Medical

Certificate, dated 1-5-2007, ExP25 is the copy of the Inter Officer memorandum, dated 12-05-2003 together with the reply by the management, dated 19-05-2003. Ex.P26 copy of the telegram receipt, dated 01-05-2007, Ex.P27 is copy of the pay slip for the month of April, 2007, Ex.P28 is the copy of the demand draft for ₹ 7,478 issued by the management, dated 21-02-2008, Ex.P29 is the copy of the telegram issued by the petitioner to the management, dated 24-12-2007.

10. It is the contention of the petitioner that the petitioner had fallen sick in the month of April, 2007 with severe cervical spondylities and he was not in a position to proceed to Mumbai after receiving the Transfer Order and subsequently applied for leave on medical grounds duly supported by the Medical Certificates and the salary for the month of April, 2007 was not paid at all and the petitioner continued to be on leave on the application duly supported by the medical certificates sent through courier and no further salary was disbursed by the management inspite of repeated requests for the release of the salary which was more necessary to enabling the petitioner to move to Mumbai and the petitioner was asked to report for his illness which was also complied with and the Fitness Certificate was sent on 05-11-2007 with a request to consider repositing of the petitioner in Puducherry and complete medical file was also sent to the management on 30-11-2007 and on 21-06-2008 the Legal Manager has sent a letter to the petitioner along with a cheque for ₹ 7,478 without indicating any details and asking him to go to Ahmedabad with all medical records for reference to the company's Doctor and the petitioner also has appeared on 17-03-2008 at Ahmedabad and the petitioner was not against the transfer to Mumbai but, was only the sore and the inconvenience about the non-payment of salary to the petitioner from the month of April, 2007 and the petitioner had no other earning except his monthly salary and in the circumstance the petitioner could not move to Mumbai and participate in the enquiry.

11. It is also the further contention of the petitioner that the petitioner was not at all paid salary from April, 2007 and the respondent management has transferred him from Puducherry to Mumbai without releasing his monetary entitlements and the charge for unauthorised absence and non-compliance with the Transfer Order holding of enquiry at a far of place without facilitating the provisions of funds and financial entitlements, conduct of *ex parte* enquiry and passing of the order of dismissal *ex facie* show a schematic plan contrived with a foregone conclusion to dispense with the

services of the petitioner on a false facade of compliance with principles of natural justice which has been actually violated by the respondent management.

12. It is the main contention respondent management that the petitioner has not reported at Mumbai as per the Transfer Order of the respondent management on 01-05-2007 and that therefore, the domestic enquiry was conducted in accordance with the procedure and following the principles of natural justice and the petitioner was found guilty and that on the foot of the domestic enquiry report the petitioner has been terminated from service on 02-09-2008.

13. Considering the above contention of both the parties it is to be decided by this Tribunal that the domestic enquiry conducted against the petitioner was in accordance with the law or not and whether there is any violation of principles of natural justice. It is the only contention of the petitioner that he was in sick in the month of April, 2007 when he has been transferred to Mumbai by the respondent management under Transfer Order, dated 14-04-2007 in which the respondent management has directed him to report at Mumbai on 01-05-2007 and he has applied for medical leave along with the medical certificate and also sent a telegram to the respondent management for medical leave and since, he has not been paid salary from the month of April, 2007 to November, 2007 and no shifting allowance was granted he would not be able to report before respondent management at Mumbai as directed by the respondent.

14. Admittedly, the respond has not paid the salary to the petitioner from May, 2007 to November, 2007 stating that since, he has not joined at Mumbai as directed by them according to the Transfer Order. The petitioner as an employee working from 1996 at the respondent establishment has applied for a medical leave along with the medical certificate for his severe cervical spondylities. But, the respondent management has not passed any order on the leave application and the said application was not even rejected by the respondent management. It is also admitted fact that the domestic enquiry was conducted at Ahmedabad without paying salary to him and he was terminated from service on 02-09-2008 and till date he has not been paid any salary, though the salary has been claimed by the petitioner and he has been asked to produce the medical certificate and the petitioner has appeared before the respondent management at Ahmedabad with medical records but the respondent management has not at all stated any reason why they have kept the

medical leave application without rejecting it or allowing it. The petitioner has exhibited the copy of the letter sent by the petitioner along with the Medical Certificates to the respondent management as Ex.P24 which would reveal the fact that the petitioner has applied medical leave on 01-05-2007 and further, the copy of the telegram receipt is exhibited as Ex.P26 which would reveal the fact that the petitioner has sent a telegram for his leave on 01-05-2007 to the respondent management. These exhibits would evident that the petitioner has applied for medical leave and also sent a telegram to the respondent management on 01-05-2007. Neither the leave was granted to him nor it was rejected by the respondent management. If, the petitioner is entitled for medical leave he ought to have been granted medical leave and he ought to have given salary for the period in which he is on medical leave as he has served at the respondent establishment from the year 1996 as an employee and hence, he is entitled for medical leave and the salary could have been given to him for the period which he is on leave. Though the petitioner has appeared at the respondent Head Office at Ahmedabad on 17-03-2008 before the Company's Doctor as directed by the respondent management with medical records, the respondent management has not at all neither rejected the medical leave application nor granted the leave and it is also an admitted fact that even after the enquiry was initiated against the petitioner no salary has been released to him as he has not reported at the transferred place of Mumbai as directed by the respondent management and it is also not the case of the respondent that they have given salary to the petitioner even after the initiation of domestic enquiry till the date of termination on 02-09-2008.

15. The petitioner has pleaded that as a salary has not release to him, his family was in starvation from April, 2007 and he could not meet out the family expenses and educational expenses of his children and he could not even proceed to Mumbai as directed by the respondent and in such circumstances the domestic enquiry was initiated against the petitioner wherein, the petitioner was set *ex parte* for his non-appearance and the enquiry was proceeded and in the enquiry he was found guilty without giving opportunity to the petitioner.

16. In Case No.588 of 1972 - Ghanshyam Das Shrivastava Vs. State of Madhya Pradesh, the Hon'ble Supreme Court of India has held that-

“This is obviously specific pleading on the point that for non-payment of subsistence allowance he was short of funds and could not attend the enquiry. It is true that his affidavit does not give any particulars about his

sources of income and the estimate of expenses to be incurred in the enquiry. But, it would *prima facie* suggest that he had no other sources of income, except his pay. If, he had no other sources of income, he could not invent them for the purpose of mentioning them in the affidavit. More significantly, the Government affidavit does not allege that he had any other source of income except pay. The fact that he had been drawing a monthly pay of ₹ 300 till October, 1964 would not necessarily show that he had sufficient money to enable him to go to Jagdalpur to attend the enquiry in February, 1965. He was suspended on October 30, 1964 and thereafter, he did not get subsistence allowance until March 20, 1965. Having regard to the prevailing high prices, it is not possible to draw any adverse inference against him from the mere circumstance that he had been receiving a monthly pay of ₹ 300 till October, 1964. The fact that he filed a Writ Petition immediately on the passing of the order of dismissal and thereafter, came in appeal to this Court, would not establish that he had enough resources to enable him to attend the enquiry. It seems to us that on the whole the High Court has gone by conjectures and surmises. There is nothing on the record to show that he has any other source of income except pay. As he did not receive subsistence allowance (sic) was made to him on March 20, 1965 after a part of the evidence had already been recorded on February 9, 10 and 11, 1965. The enquiry proceedings during those days are vitiated accordingly. The report of the Enquiry Officer based on that evidence is infected with the same defect. Accordingly, the order of the Government dismissing him from service cannot stand. It was passed in violation of the provisions of Art, 311(2) of the Constitution for the appellant did not receive a reasonable opportunity of defending himself in the enquiry proceedings”.

From the above observation of the Hon'ble Supreme Court, it is clear that under Article 311(2) of Constitution of India the person against whom the domestic enquiry was conducted even if, he is in suspension he has to be given subsistence allowance till the date of termination and before the enquiry proceedings were commenced. But, in this case admittedly the medical leave application of the petitioner was kept in abeyance without passing any order and the salary has not been released by the respondent to the petitioner from May, 2007 to till the date of completion of the domestic enquiry which would go to show that the enquiry was conducted by the respondent management at Ahmadabad which is far

away from Puducherry, without paying any salary or financial assistance to the workman, the petitioner throughout the enquiry and conducted the domestic enquiry in the absence of the petitioner and the petitioner had not in a position to appear due to financial crisis for the enquiry since, much more amount has to be spent to attend the bearing at Ahmadabad and the reasonable opportunity was also not given to the petitioner to defending himself in the enquiry proceedings by paying the salary or financial assistance to him and that therefore, the domestic enquiry conducted by the respondent management is against the principles of natural justice and the termination on the foot of the enquiry report is to be declared as illegal and not in accordance with law and it is to be held that the petitioner is entitled for the claim as prayed by him and hence, the dispute raised by the petitioner against the respondent management over his non-employment is justified and the petition is liable to be allowed and the petitioner is entitled for the order of reinstatement as claimed by him.

17. As this Court has decided that the industrial dispute raised by the petitioner against the respondent management over his non-employment is justified, it is to be decided whether the petitioner is entitled for back wages with continuity of service as claimed by the petitioner. In Judgment reported in U.P. State Brassware Corporation Limited, Vs. Uday Narain Pandey (Supra), wherein, the Bench has observed that:

"26. No precise formula can be laid down as to under what circumstances payment of entire back wages should be allowed. Indisputably, it depends upon the facts and circumstances of each case. It would, however, not be correct to contend that it is automatic. It should not be granted mechanically only because on technical grounds or otherwise an order of termination is found to be in contravention of the provisions of section 6-N of the U.P. Industrial Disputes Act, 27.

The Court also reiterated the rule that the workman is required to plead and *prima facie* prove that he was not gainfully employed during the intervening period".

and that therefore, in the light of the above observation it is clear that the petitioner has to prove the fact that he has not employed gainfully during the intervening period. But, in this case, it is stated by the petitioner that he has been in service at no where else from 02-09-2008 the date of termination since he was on medical leave subsequently his employment was refused by the respondent. But, no document is before this Court to

prove that the petitioner has not been in employment at anywhere else after the dismissal for about nine years and that therefore, he cannot be given full back wages. However, it is not the case of the respondent that the petitioner is working anywhere else and hence, considering all the above facts and circumstances and the above foregoing reasons, this Court finds that the petitioner is entitled for only part of back wages and hence, this Court tentatively fix that the petitioner is entitled only for 60% back wages with continuity of service and other attendant benefits.

18. In the result. the petition is partly allowed and the industrial dispute raised by the petitioner over the non-employment is justified and an Award is passed by directing the respondent to reinstate the petitioner within one month from the date of this order and to pay 60% back wages from the date of termination till the date of reinstatement with continuity of service and other attendant benefits and further directed the respondent to pay full wages for the month of May, 2007 to 02-09-2008 *i.e.*, till the date of termination. No cost.

Dictated to Stenographer, transcribed by her, corrected and pronounced by me in the Open Court on this the 7th day of July, 2017.

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

List of petitioner's witness:

PW.1 — 20-08-2013 — V. Chandramohan

List of petitioner's exhibits:

- Ex.P1 — Copy of the appointment letter issued to the petitioner, dated 10-06-1996.
- Ex.P2 — Copy of the Transfer Order issued to the petitioner, dated 09-12-2002.
- Ex.P3 — Copy of the Transfer Order issued to the petitioner, dated 14-04-2007.
- Ex.P4 — Copy of the petitioner's inter office memorandum to the respondent management, dated 02-04-2007.
- Ex.P5 — Copy of the petitioner's inter office memorandum to the respondent management, dated 19-11-2007.
- Ex.P6 — Copy of the petitioner's inter office memorandum to the respondent management, dated 30-11-2007.

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| Ex.P7 — Copy of the petitioner's inter office memorandum to the respondent management, dated 25-03-2008. | Ex.P21 — Copy of the reply sent by the petitioner to the respondent management, dated 18-08-2008. |
| Ex.P8 — Copy of the petitioner's inter office memorandum together with Fitness Certificate and the monthly prescription issued by the Doctor, dated 05-11-2007. | Ex.P22 — Copy of the reply sent by the petitioner to the respondent management, dated 29-08-2008. |
| Ex.P9 — Copy of the e-mail correspondence exchanged between the petitioner and the respondent from April 2007 to September 2007. | Ex.P23 — Copy of the field work report <i>vide</i> inter office memorandum from 16-04-2007 to 30-04-2007 along with April 2007 expenses statement to the management. |
| Ex.P10 — Copy of the causality slip issued to the petitioner by Indira Gandhi Government Hospital, Puducherry, dated 22-12-2006. | Ex.P24 — Copy of the petitioner's inter office memorandum, dated 15-05-2007 along with Medical Certificate to the respondent management, dated 01-05-2007. |
| Ex.P11 — Copy of the e-mail correspondence exchanged between the petitioner and respondent in the month of July 2008. | Ex.P25 — Copy of the petitioner's inter officer memorandum, dated 12-05-2003 together with the reply by the management, dated 19-05-2003. |
| Ex.P12 — Copy of the e-mail correspondence exchanged between the petitioner and respondent from November 2007 to December 2007. | Ex.P26 — Copy of the telegram receipt, dated 01-05-2007. |
| Ex.P13 — Copy of the letter issued to the petitioner, dated 26-02-2008. | Ex.P27 — Copy of the petitioner's pay slip for the month of April 2007. |
| Ex.P14 — Copy of the Charge-Sheet- <i>cum</i> -enquiry notice issued to the petitioner, dated 01-05-2008. | Ex.P28 — Copy of the demand draft for ₹ 7,478 issued to petitioner, dated 21-02-2008. |
| Ex.P15 — Copy of the enquiry proceedings issued to the petitioner along with the covering letter, dated 04-06-2008. | Ex.P29 — Copy of the telegram issued by the petitioner to the management, dated 24-12-2007. |
| Ex.P16 — Copy of the enquiry proceedings issued to the petitioner along with the covering letter, dated 20-06-2008. | Ex.P30 — Copy of the e-mail correspondences of the petitioner to the management, dated 07-07-2008. |
| Ex.P17 — Copy of the enquiry proceedings issued to the petitioner along with the covering letter, dated 29-07-2008. | Ex.P31 — Copy of the e-mail correspondences received by the petitioner from his immediate superior, dated 20-10-2007. |
| Ex.P18 — Copy of the findings of the Enquiry Officer issued to the petitioner, dated 06-08-2008. | Ex.P32 — Copy of the e-mail correspondences of the petitioner to the management, dated 05-10-2007. |
| Ex.P19 — Copy of the second show cause notice issued to the petitioner, dated 12-08-2008. | |
| Ex.P20 — Copy of the dismissal order issued to the petitioner, dated 02-09-2008. | |

List of respondent's witness: Nil.

List of respondent's exhibits: Nil.

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