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The Gazette of Puducherry

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GOVERNMENT OF PUDUCHERRY

LABOUR DEPARTMENT

(*G.O. Rt. No. 13/Lab./AIL/T/2018*
Puducherry, dated 5th Feburary 2018)

NOTIFICATION

Whereas, an Award in I.D (L) No. 30/2014, dated 27-12-2017 of the Labour Court, Puducherry in respect of the industrial dispute between Management of M/s. Pondicherry Institute of Medical Sciences, Puducherry–605 014 and N. Senthilkumar, Puducherry, over his 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.

Wednesday, the 27th day of December, 2017

I.D. (L) No. 30/2014

N. Senthilkumar,
No. 26C, Pudu Nagar,
(Near Angalamman Koil Temple),
Chinnakalapet, Puducherry. . . Petitioner

Versus

The Managing Director,
M/s. Pondicherry Institute of
Medical Sciences,
Kalapet, Puducherry.
Puducherry-605 014. . . Respondent

This industrial dispute coming on 14-12-2017 before me for final hearing in the presence of Tvl. S. Nagarajan and A. P. Ilangovan, Advocates for the petitioner and Tvl. L. Sathish, T. Pravin, S.Velmurugan, V. Veeraragavan and E. Karthik, Advocates 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. 78/AIL/Lab./J/2014, dated 02-05-2014 for adjudicating the following:-

(i) Whether the industrial dispute raised by the petitioner Thiru N. Senthilkumar against the management of M/s. Pondicherry Institute of Medical Sciences, Kalapet, Puducherry, over his non-employment is justified? If, justified what relief he is entitled to?

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

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

(i) It is stated that the petitioner has joined as Hospital Attendant in the respondent management of Pondicherry Institute of Medical Sciences (PIMS) on 17-01-2006 and the said management confirmed the service of the petitioner as regular employee on 01-09-2009 (with effect from 01-08-2009) with Basic Pay ₹ 2,050 and along with H.R.A., DA., Food allowance, Washing Allowance and Medical Allowance and soon after the confirmation of the service of the petitioner as regular employee, the respondent management and in particular, the then Personal Manager-A. Matthews was indulged in nefarious activities and atrocities against the petitioner so as to meet him the loss of employment and income and in fact, though the petitioner was appointed as Hospital Attendant from the day one of the appointment he was inducted and instructed by the management to look after some sort of administrative and clerical jobs also then and there at the whims and fancy of the said Personal Manager and further, that in fact one Mahendiran was engaged as Business Development Officer by the management who actually was engaged in the business of Medical Insurance covering the patients approach the institute and during beginning of 2010 the said Personal Manager was instructed the petitioner with honey surfaced tongue to assist the said Mahendiran initially and later with a fabulous hope that the petitioner would be appointed to the place of said Mahendiran and accordingly, the petitioner was become a puppet to the words and promise of said Personal Manager-Matthews and admittedly the petitioner was imputed for learning and training at the place of Mahendrian for about a year and above.

(ii) It is further stated that the petitioner was despite serving different nature of job against the initial appointment but, was paid as per appointment to the job which was so low to the newly imputed job

under the said Mahendiran, however, under the promiscuous words of the said Personal Manager Matthews the petitioner had to forbear all the burdens of the new job in the nature of insurance coverage of the patients which was far from the actual appointment of the petitioner and further, the said Mahendiran was uprooted from the employment by the respondent management purely out of a discreet plot and wrecking work pressure during the first quarter of 2011 and the petitioner was completely and perfectly allowed to look after the place of said Mahendiran after his quit to the job with the respondent for and about six months during 2011 and against the words and promise of the said Personal Manager Matthews the petitioner was knocked down the doors of the personal manager to upkeep his words by way of appoint the petitioner to the place of said Mahendiran.

(iii) It is further stated that the petitioner was very shocked to the reaction of the Personal Manager when the petitioner placed his request to comply as promised and apart from the shock the Personal Manager's insult to the petitioner with the rubbish and filthy language was surprised the petitioner's betray by the said Personal Manager and within a couple of days of the above incident the petitioner was transferred from the Pondicherry Hospital unit to Anaichakuppam Rural Health Center unit by oral instruction of the Personal Manager and infact there was no written order of transfer was made subject to legal formalities permitted under rules and in fact the petitioner was forced to accept the transfer order with no other go and to obey the oral transfer order, the petitioner was reported duty at the transferred place for nearly three months, but, with the salary for the post of Hospital Attendant and further that during December 2011, when the petitioner was tendered a leave letter for one month leave to the management against very sick of his father due to chronic alcoholic but, the respondent management was perfunctorily nodded its head for the leave but later when the petitioner was returned to report the duty at the end of January, 2012 he was astonished by the attitude of the management and also the petitioner was informed by the management that he himself left the job without proper sanction of the leave from the management and further that though the petitioner did his level best to raise his effort to convince the management by truth but the management was consistently failed to heard the hue and cry of the petitioner and however, the respondent management was assured the petitioner for the employment but to wait of some time for a sanction from the top management and accordingly, the petitioner had to wait for a long time without a say from the management from time to time and also the ensured words of the management was made the petitioner to wait for a plausible recall from the management and however, the petitioner was with incessant effort for the continuance of employment with the respondent management on various times and to the instruction of the management from time to time.

(iv) It is further stated that the petitioner had come to know that all his efforts of approach and wait for the management recall were ended vain and futile and came to realize the tactful play of the management to uproot the service of the petitioner by way of victimization with the means of unfair labour practice and with no other go the petitioner was approached the Labour Officer, Conciliation by way of complaint, dated 22-10-2013 to mitigate the solution against the illegal termination and non-employment and the petitioner was surprised to know through the reply filed by the respondent management, dated 30-10-2013 that the management was scripted charge-memo on 31-01-2012 treating the leave for the period 22-10-2011 to 31-01-2012 as unauthorized absence and thereby abandoned the service voluntarily and in view of the charge memo a domestic enquiry was conducted in the absence of the petitioner by setting *ex parte* and in pursuance of the proceeding an order for struck off the name of the petitioner from the muster roll with effect from 21-05-2012.

(v) It is further stated that the respondent management has committed unfair labour practice against the petitioner which are prohibited and condemned under law and the case of the petitioner is a complete violation of the natural justice and further stated that the respondent management has not issued charge-sheet to the petitioner at any point of time nor called for and conducted any domestic/disciplinary enquiry against the petitioner and upon the alleged charge memo, dated 31-01-2012 and further that the stand of the respondent management against the petitioner in respect of service of communication and alleged unclaimed the communication are all egregious lie and to say so all the papers related to the charge-memo and other proceedings connected there with is purely a purported one for the purpose of the case so as to defeat the right of the petitioner so protected under the labour laws of India and therefore, the petitioner is deserved for the relief of reinstatement of service with respondent management with continuity of service and with back wages apart from the compensation to the sum of Rs.1,00,000 for the mental agony faced by the petitioner for the period of loss of income due to non-employment or illegal termination of service.

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

The respondent denied all the averments of the claim statement filed by the petitioner and stated that the cause title in the claim petition is wrong as there is no Managing Director in the respondent institution and the respondent is headed by Director - Principal and therefore, the cause title in the claim petition needs to be suitably amended and further stated that the petitioner was employed as Office Attendant on 03-01-2007 and ever since then he had not only been habitually absenting himself without intimation, he had also be erratic in his behavior, insubordinate and argumentative and even shown lack of integrity in his employment and inspite of extraordinary leniency shown towards petitioner, the petitioner once again remained unauthorisedly absent from 22-12-2011 and a charge-memo on 31-01-2012 for his unauthorized absence from to 31-01-2012 and for his past habitual absenteeism and other grave misconducts and a charge-memo was sent to the petitioner's last known two address by registered post which was returned with endorsements 'unclaimed' and 'partly left and returned to sender' respectively and further it sent enquiry notice, dated 15-02-2012 to petitioner by RPAD posting the enquiry at 10.00 a.m., on 01-03-2012 and again both notices were returned with endorsement 'refused' and 'partly left and returned to sender' and the enquiry notice was also affixed on respondent's notice-board and the refusal of petitioner to receive the charge-sheet, dated 31-01-2012 and the enquiry notice, dated 15-02-2012 indicated that he was fully aware of the contents in those covers and the Enquiry Officer in his wisdom and as per law deemed the service of notices to his official address sufficient and he set the petitioner *ex parte* on 01-03-2012 and proceeded with the enquiry and the respondent examined its witnesses and exhibited documents in support of the charges and some of the past misconducts and based on the oral and documentary evidences, the Enquiry Officer gave his report, finding the petitioner guilty of charges levelled against him and that the disciplinary authority also examined charges against petitioner independently and concurred with enquiry report and therefore, awarded punishment of dismissal to petitioner *vide* its order, dated 21-05-2012 and thereby, the domestic enquiry was conducted in absolutely fair and impartial manner and also gave full opportunity to petitioner by sending registered post at every stage to the addresses for communication given by the petitioner in his service records and those notices were refused to be received by the petitioner because he was fully aware of the disciplinary proceedings initiated against him and hence, the Enquiry Officer therefore, had no other options but, to proceed against him *ex parte* and though the enquiry was conducted *ex parte,* the Enquiry Officer has analyzed the documentary and oral evidences produced before him by respondent management and gave a reasonable finding based on admissible evidences and in such circumstances, strong disciplinary action was warranted and since the petitioner showed no inclination to improve his conduct inspite of previous reprimands, the respondent was forced to impose maximum punishment of dismissal and prayed this Court to dismiss the claim petition.

4. In this case, since the petitioner was terminated from service after the domestic enquiry and the petitioner has challenged the fairness of the domestic enquiry this Tribunal has first decided as the preliminary issue whether the domestic enquiry was conducted by the Enquiry Officer in accordance with the principles of natural justice. As, it was already decided by this Tribunal that the domestic enquiry conducted by the respondent management is valid and in accordance with the principles of natural justice, no oral evidence has been let in and no exhibits has been marked by either sides in the further enquiry. Both side arguments were heard.

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 if justified, what is the relief entitled to the petitioner?

6. This reference has been made to this Tribunal to decide whether the industrial dispute raised by the petitioner against the respondent management over his non-employment is justified or not. This Tribunal has already passed the preliminary Award holding that the domestic enquiry conducted by the respondent management against the petitioner is valid and in accordance with the principles of natural justice. In such circumstances, it is to be seen whether the punishment given by the respondent management is proportionate to the nature of offence. The learned Counsel appearing for the petitioner argued that though it was decided by this Tribunal that the domestic enquiry is valid one in the preliminary Award, the petitioner has to be given an opportunity to let evidence on his side to prove the fact that the domestic enquiry was not properly conducted and the punishment given by the respondent management is not proportionate to the nature of the alleged

misconduct of unauthorized absence committed by the petitioner and that the respondent management ought to have given minor punishment. In support of his argument the learned Counsel appearing for the petitioner has relied upon the Judgment reported in (2013) 6 SCC 602, wherein, the Hon'ble Supreme Court has held that.

".....,..26. The proved charges remained only charge nos. 4 and 6 and in both the cases, the misconduct seems to be of an administrative nature rather than a misconduct of a serious nature. It was not the case of the Department that the appellant had taken the escort vehicle with him. There was only one vehicle which was an official vehicle for his use and charge no.6 stood partly proved. In view thereof, the punishment of compulsory retirement shocks the conscience of the Court and by no stretch of imagination can it be held to be proportionate or commensurate to the delinquency committed by and proved against the appellant. The only punishment which could be held to be commensurate to the delinquency was as proposed by the Government of India to withhold two increments for one year without cumulative effect. It would have been appropriate to remand the case to the disciplinary authority to impose the appropriate punishment. However, considering the chequered history of the case and in view of the fact that the appellant had remained under suspension for 11 months, suffered the order of dismissal for 19 months and would retire after reaching the age of superannuation in December 2013, the facts of the case warrant that this Court should substitute the punishment of compulsory retirement to the punishment proposed by the Union of India *i.e.*, withholding the two increments for one year without having cumulative effect. ..." and also relied upon the Judgment reported in Colour-Chem Limited *Vs*. A.L.Alspurkar & Ors, wherein, the Hon'ble Supreme Court has held that,

".....Thus it must be held that the management even though not guilty of factual victimization was guilty of legal victimization in the light of the proved facts which squarely attracted the ratio of the decisions of this Court in Hind Construction (Supra) and Bharat Iron, Works (Supra). It is easy to visualize that no reasonable management could have punished a delinquent workman who in the late hours of the night shift by about 03.30 a.m., had gone to sleep keeping the machine in a working condition especially in the absence of any gross misconduct reflected by the past service record, with the extreme penalty of dismissal. It is also interesting to note that this was a peculiar case in which the Plant In-charge found during his surprise visit at 03.30 a.m., in the early hours of the dawn entire work force of 10 mazdoors and 2 operators like the respondents and the supervisor all asleep. It is pertinent to note that so far as 10 mazdoors were concerned they were let off for this very misconduct by mere warning while the respondents were dismissed from service. It is of course, true that the respondents were assigned more responsible duty as compared to mazdoors, but, in the background of surrounding circumstances and especially in the light of their past service record there is no escape from the conclusion that the punishment of dismissal imposed on them for such misconduct was grossly and shockingly disproportionate, as rightly held by the Labour Court and as confirmed by the revisional Court and the High Court. By imposing such grossly disproportionate punishment on the respondents, the appellant -management had tried to kill the fly with a sledge hammer. Consequently, it must be held that the appellant was guilty of unfair labour practice. Such an Act was squarely covered by clause (a) of Item 1 of Schedule IV of the Act being legal victimization, if not factual victimization. The ultimate finding of the Labour Court about maintainability of the complaint can be supported on this ground. The second point is answered in the affirmative against the appellant and in favour of the respondent - workmen. ..."

7. On the other hand, the learned Counsel appearing for the respondent management argued that whenever the Court had decided that the domestic enquiry is a valid one in the preliminary issue, the Court cannot permit the petitioner to let any evidence and the Court has to decide the matter only on the materials available before this Court and the petitioner cannot be permitted to let any evidence to disprove the fact that the domestic enquiry is a valid one. On this aspect the learned Counsel has relied upon the Judgment reported in CDJ 2002 APHC 743, wherein, the Hon'ble High Court of Andhra Pradesh has held that,

".....(6) The Industrial Court, as required under section 11-A of the Act, in the first instance, dealt with the question of validity of domestic inquiry held by the management of Bank of Baroda and by its order, dated 16-07-1997, as already noticed above, held that the domestic inquiry is valid and legal. The application, on which the Industrial Court passed the impugned order, admittedly, was made subsequent to that Order. The precise contention of the Management is that such an application is not maintainable and the Industrial Court acted without

jurisdiction in allowing the application and permitting the workman to lead evidence. It is also contended by Sri. D.V. Sitharama Murthy that the Industrial Court has completely lost sight of the fact that when it dealt with the question of validity of the domestic inquiry, the workman had specifically pleaded before it that his admission with regard to the charges was secured by the management of the Bank by making a false promise and that plea was in fact specifically dealt with by the learned Industrial Judge and rejected and, therefore, there was no justification to allow the application to lead evidence on the same issue..... But, here is a case where the Industrial Court itself having considered the question of validity of the domestic inquiry has held that the inquiry was valid and legal and the plea of the workman that his admission with regard to the charge was obtained by the management by employing misrepresentation and/or fraud was untenable. Therefore, the question is whether in such fact-situation and particularly in the context of the finding recorded by the very Industrial Court while deciding the validity of the domestic enquiry, it is permissible in law to permit the delinquent workman again to raise the same plea of misrepresentation fraud alleged to have been practiced by the Management in obtaining his admission to the charges levelled against him by virtue of the power under the proviso to section 11-A of the Act. In our considered opinion, such a course was not open to the Industrial Court. Once domestic inquiry is held to be valid and regular by virtue of the proviso to section 11-A of the Act, the Industrial Court has to exercise its discretion under that section exclusively and only on the basis of the evidence already on record. That is the clear intendment and purport of the provisions of the proviso to section 11-A of the Act....."

Further, the learned Counsel has also relied upon the Judgment reported in CDJ 1998 SC 099, wherein the Hon'ble Supreme Court of India has held that,

"....11. Provisions of the Industrial Disputes Act were thus amended on the recommendation of the International Labour Organization and section 11-A was introduced in the Act by the Parliament, wherein, it was provided that the Tribunal had not only the power to set aside the order of dismissal and direct reinstatement of the workman, it had also the power to Award lesser punishment. The proviso to section 11-A, however, provided that the Tribunal would rely only on the material already on record and shall not take any fresh evidence.

12. The provisions of section 11-A, specifically the prohibition contained in the Proviso that the Labour Court would not take any fresh evidence, came to be considered by this Court in several cases which we shall shortly notice but even before the introduction of section 11-A, this Court in Ritz Theatre Pvt. Ltd., Delhi v. Its Workmen, 1962 (2) LLJ 498 : AIR 1963 SC 295 : 1963 (3) SCR 461, laid down that where the Management relied upon the domestic enquiry in defending its action, it would be the conclusion that the enquiry was improper or invalid, it would itself go into the merits of the case and call upon the parties to lead evidence.

Evenafter, the introduction of Section 11-A, the legal position as to the jurisdiction of the Labour Court or Tribunal to itself decide the merits of charges on fresh evidence remained unaltered.....,"

From the above-observations of the Hon'ble Supreme Court and the Hon'ble High Court, it is clear that whenever the Court has decided that the domestic enquiry conducted by the respondent management is valid one, the provision of section 11-A of the Act, specifically the provision contain in the proviso that the Labour Court would not take any fresh evidence and it can decide the case on the basis of the evidence already on record and that therefore, the contention raised by the petitioner that the petitioner is entitled to let fresh evidence after deciding the preliminary issue that the domestic enquiry is a valid one is not sustainable.

8. The another contention of the petitioner is that punishment of termination from service for unauthorized absence is not proportionate and punishment of dismissal is not justified for the misconduct of unauthorized absence for certain period. On the other hand, it is vehemently contended by the respondent management that unauthorized absence is not a tolerable misconduct and punishment of dismissal is not disproportionate for the misconduct of unauthorized absence. On this aspect the learned Counsel appearing for the respondent management argued that the punishment of termination given by the respondent management for the misconduct of unauthorized absence committed by the petitioner is reasonable one and it cannot be said that the punishment is disproportionate to the charge levelled against the petitioner. In support of his argument, the learned Counsel has relied upon the Judgment reported in (i) CD J 2009 SC 1194, wherein, the Hon'ble Supreme Court of India has held that,

"The respondent employee has not completed the service of six years and has been imposed punishment three times for remaining absent from duty. On the fourth occasion, when he remained absent for 10 days without leave, the disciplinary proceedings were initiated against him. The show cause notice could not be served upon him for the reason that he again deserted the LINE and returned back after 50 days. Therefore, the disciplinary proceedings could not be concluded expeditiously. The respondent submitted the reply to the show cause notice and the material on record reveal that during the pendency of the enquiry he further deserted the LINE for 10 days. There is nothing on record to show any explanation for such repeated misconduct or absenteeism. The Court/Tribunal must keep in mind that such indiscipline is intolerable so far as the disciplined force is concerned. The respondent was a guard in CISF. No attempt had ever been made at any stage by the respondent - employee to explain as to what prejudice has been caused to him by non-furnishing of the enquiry report. No he ever submitted that such a course has resulted in failure of justice–More so, the respondent employee had never denied at any stage that he had not been punished three times before initiation of the disciplinary proceedings and deserted the LINE twice evenafter issuance of the show cause notice in the instant case. No explanation could be furnished by the respondent - employee as under what circumstances he has not even consider it proper to submit the application for leave. Rather, the respondent thought that he had a right to desert the LINE at his sweet will. It was a case of gross violation of discipline....."

Further, the learned Counsel has also relied upon the Judgment reported in (i) CDJ 2007 SC 1306, wherein the Hon'ble Supreme Court of India has held that,

"The Labour Court and the High Court were not justified in directing the reinstatement by interference with the order of termination. The orders are accordingly set aside. The order of termination as passed by the concerned authority stands restored. The appeal is allowed with no orders as to costs. ..... So far as the question whether habitual absenteeism means the gross violation of discipline, it is relevant to take note of what was stated by this Court in M/s. Burn & Co. Ltd., V. Their Workmen and Ors. (Air 1959 SC 529) "There should have been an application for leave but, Roy thought that he could claim as a matter of right leave of absence though that might be without permission and though there might not be any application for the same. This was gross violation of discipline. Accordingly, if, the company had placed him under suspension that was in Order. On these findings, it seems to us that the Tribunal erred in holding that it could not endorse the Company's decision to dispense with the services altogether. In our opinion, when the Tribunal upheld the Order of suspension it erred in directing that Roy must be taken back in his previous post of employment on the pay last drawn by him before the order of suspension...".

Further, the learned Counsel has also relied upon the Judgment reported in (i) CDJ 2007 MHC 3398, wherein, the Hon'ble High Court of Judicature of Madras has held that,

".....This is a classic instance wherein, misplaced sympathy has been shown by the Labour Court, having found that the domestic enquiry was conducted in a fair manner. This practice of showing misplaced sympathy of generosity or compassionate ground to review the quantum of punishment is held to be impermissible by hierarchy of judgments of the Apex Court. It is also clear that the Apex Court has held that only in cases where the punishment awarded is shockingly disproportionate to the charge proved, the Court can interfere to reduce the punishment - On the factual situation in this case, as found by the Labour Court itself considering the conduct of the petitioner for frequently absenting himself, the punishment is not shocking to the conscience warranting interference in respect of the quantum of punishment - The Award of the Labour Court in ordering reinstatement of the appellant with service benefits, however, without backwages if, not on proper and sound reasoning as found by the learned single Judge. In view of the same the writ appeal fails and the same is dismissed... 10. It is also relevant to point out that the Supreme Court in a recent case reported in State of Rajastan and another Vs. Mohd. Ayub Naz [2006 (1) SCC 589] held that, an employee who was absented himself for a prolonged period without prior permission; the decision of the employer to dismiss him on disciplinary enquiry cannot be interfered. Further, the Supreme Court has observed, 9. Absenteeism from Office for a prolonged period of time without prior permission by Government Servants has become a principal cause of indiscipline which has greatly affected various Government Services. ....."

Further, the learned Counsel has also relied upon the Judgment reported in (i) CDJ 2005 MHC 1053, wherein, the Hon'ble High Court of Judicature of Madras has held that,

"Constitution of India - Article 226 - Service Disciplinary Proceedings - Unauthorised absence- Apart from the unauthorized absence, for which disciplinary proceedings were been initiated, the disciplinary authority has relied upon the fact that on previous occasions also the petitioner had remained unauthorisedly absent. The disciplinary authority had also considered the fact that there has been several other punishments imposed upon the petitioner on numerous occasions and considering all these aspects, the disciplinary authority had come to the conclusion that the person was to be dismissed. The Labour Court, on independent consideration, has also come to the very same conclusion and has held that the punishment of dismissal was justified in the peculiar facts and circumstances of the case. In the absence of any patent illegality in such orders, it is difficult for the High Court to come to any different conclusion and to interfere with the punishment - Apart from the unauthorized absence of the petitioner for more than a month on the particular occasion, there was absence from duty on three occasions and the petitioner himself was punished for several other misdemeanors. The facts of the present case being entirely different, the ration of the aforesaid decision of the Supreme Court cannot be made applicable ."

Further, the learned Counsel has also relied upon the Judgment reported in 2010 4 LLJ 245 (Delhi) and also relied upon the Judgment reported in 2010 3 LLJ 659 (Chat), wherein, the Hon'ble Chattisgarh High Court has held that,

"....8. Indisputably, the petitioner remained absent for 127 days from October, 1983 to May, 1984 which resulted into imposition of minor penalty of reducing his Basic Pay by one stage from ₹ 787/- to 769/-. Thereafter, he remained unauthorizedly absent from July, 1984 to April, 1985 for 196 days. A show cause notice was issued to him and during departmental enquiry, the petitioner admitted his guilt, thus, it was held that the petitioner remained unauthosedly absent without reasonable explanation which resulted into removal from service. .....11. In Chairman-*cum*-Managing Director, V.S.P. & Amp., others V. Goparaju Sri Prabhakara hari Babul, relied on by the petitioner, the Supreme Court observed as under & quot :16. Indisputably, the respondent was a habitual absentee. He in his explanation, in answer to the charge-sheet pleaded guilty admitting the charges. In terms of section 58 of the Evidence Act, charges having been admitted were not required to be proved. It was on that premise that the enquiry proceeding was closed. Before the Enquiry Officer, he did not submit the explanation of his mother being ill. He, despite opportunities granted to report to duty, did not do it. He failed to explain even his prior conduct. 21. Once it is found that all the procedural requirements have been complied with, the Courts would not ordinarily interfere with the quantum of punishment imposed upon a delinquent employee. The Superior Court only in some cases may invoke the doctrine of proportionality. If, the decision of an employer is found to be within the legal parameters, the jurisdiction would ordinarily not be invoked when the misconduct stands proved. (See Sangroid Remedeis Ltd. V. Union of India.)--. The absence of 196 days from 1984 to 1985 was not the first instance as even earlier also, the petitioner remained absent for a period of 127 days from October, 1983 to May, 1984. Thus, the petitioner was a habitual absentee. Some information to the employer does not grant sanction to an employee to remain absent unauthorisedly without proper sanction of the employer. The Courts below have not examined the fact of willful absence but, on the basis of documents and the facts produced before this Court as well as before the Courts below, I have no hesitation in holding that the petitioner remained willfully unauthorisedly absent from service. ...."

From the above observation of the Hon'ble Supreme Court and the Hon'ble High Court, it is clear that the absence without getting leave even for 10 days is not a tolerable misconduct and if, there is no explanation would be furnished by the employee under which circumstances he was unauthorisedly absent from duty, it is the case of gross violation of discipline.

9. In this case it is learnt from the records that the petitioner was habitually absent himself without intimation and he was unauthorisedly absent from 22-10-2011 to 31-01-2012 and he has given an apology letter admitting his unauthorized absence on 15-02-2011 stating that there was some family circumstances for about two months and apart from that there was complaint from one Ravichandiran on 07-06-2011 that while he was taking treatment on 12-05-2011, the petitioner Senthilkumar tortured him by claiming amount from him and for which a charge-memo was issued by the respondent management to the petitioner Senthilkumar on 01-07-2011 and for which the petitioner has given apology letter on 05-07-2011 and thereafter, the petitioner was transferred on 29-07-2011 to the Department of Community Medicine, Anaichikuppam Rural Health Center and he was directed to report to Head of Department, Community Medicine for instructions

but, the petitioner has not reported and has given resignation after giving one month time on 28-10-2011 and he was absenting himself without any information from 29-10-2011 for which the charge-memo has been issued for unauthorized absence from 29-10-2011 to 04-11-2011 for which the petitioner has given letter to the management stating that there was some family problem and he could not attend the work and he has also asked for two months leave and he was absent for duty from 1st January, 2012 to 31st January, 2012 and the said period of absence from 29-10-2011 to 21-11-2011 has been treated as loss of pay.

10. Further, it is also learnt from the records that the petitioner was suspended for 8 days from 22-11-2011 with the warning that any such repetition will be viewed seriously for which the petitioner has given a letter to the management admitting the fact that he has not attend the duty for a month without giving any intimation to the management and he has given undertaking that he could not commit such mistake in future and asking for apology for the misconduct committed by him and subsequently, he was absenting himself from duty from 02-12-2011 without any information and therefore, a charge-memo has been issued by the Personnel Manager on 06-12-2011 for the absence from 30-11-2011 to 06-12-2011 and thereafter, the petitioner was absent for a long time and hence, the respondent management has issued a memo on 31-01-2012 and the same was exhibited in the preliminary enquiry as Ex.R23 and the said memo runs as follows :

"That you had remained absent from 30-11-2011 to 06-12-2011 without intimation and a charge-memo dated 06-12-2011 was sent requiring your explanation as to why your name should not be "struck off" from the Muster Rolls for abandonment of service as contemplated under service rule 11-1.7.

That you had submitted explanation dated 12-12-2012 accepting your mistake and assuring that you will not repeat such misconduct.

You were issued order dated 19-12-2011 giving a last and final opportunity to amend yourself with a direction to report to the Department of Community Medicine (ARHC) from 19-12-2011.

As you failed to report, a revised Order dated 21-12-2011 was issued and you were directed to report to the Nursing Department from 22-12-2011. However, the communications were returned by the postal authorities as "Unclaimed".

Your past records clearly show that you are in the habit of frequently absenting yourself.

You are hereby charged for remaining absent from 22-12-2011 to till date (31-01-2012) without any intimation. You have remained absent once again for more than 8 continuous working days and you are liable to have abandoned service and lost your lien on employment."

The above-memo would go to show that the petitioner was even after giving sufficient chances and warning letters habitually absent unauthorisedly for more than 50 days and that therefore, it is clearly established by the respondent management that the petitioner is a habitual absentee for duties without any intimation for which domestic enquiry was conducted and sufficient opportunities were given to the petitioner in the enquiry and this Court has already held that the domestic enquiry conducted by the management is a valid one and that therefore, it is clearly established by the respondent management that the petitioner is a habitual absentee from duty often without any intimation and that therefore, as observed by the Hon'ble Supreme Court and the Hon'ble High Court, the unauthorized absence of the petitioner from duty is intolerable and that therefore, the punishment of dismissal order passed by the respondent management is not disproportionate and hence, the another contention raised by the petitioner is also not sustainable and therefore, it is to be held that the industrial dispute raised by the petitioner against the respondent management over his non-employment is unjustified and as such, the petition is liable to be dismissed.

10. In the result, the petition is dismissed and the industrial dispute raised by the petitioner against the respondent management over his non-employment is unjustified. No cost

Dictated to the Stenographer, transcribed by her, corrected and pronounced by me in the open Court on this the 27th day of December, 2017.

List of petitioner's witness:— Nil

List of petitioner's exhibits: — Nil

List of respondent's witnesses:— Nil

List of respondent's exhibits: — Nil

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

GOVERNMENT OF PUDUCHERRY

LABOUR DEPARTMENT

(G. O. Rt. No. 14/Lab./AIL/T/2018, dated 5th February 2018)

NOTIFICATION

Whereas, an Award in I.D (T) No.04/2015, dated 26-12-2017 of the Industrial Tribunal, Puducherry in respect of the Industrial Dispute between the Management of M/s. Ariyankuppam Commune Panchayat, Puducherry and Ariyankuppam Commune Panchayat Workers Union, Puducherry, over granting promotion based on, experience to their union member Thiru T. Rajendran 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).

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

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

Friday, the 26th day of December, 2017

I.D. (T) No. 04/2015

The Secretary,
Ariyankuppam Commune
Panchayat Workers Union,
No. 49, Rodier Mill Street,
Mudaliarpet,
Puducherry-605 004 .. Petitioner

Versus

The Commissioner,
M/s. Ariyankuppam Commune
Panchayat,
Ariyankuppam,
Puducherry-605 007. .. Respondents.

This industrial dispute coming on 19-12-2017 before me for final hearing in the presence of Thiru R.S. Zivanandam, Counsel for the petitioner, Thiru. B. Sethuraman, Counsel for the respondent and subsequently the respondent not turn up before this Court for argument, upon hearing the petitioner, 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.98/AIL/Lab./J/2015, dated 20-08-2015 for adjudicating the following: -

(a) The relief, if whether the dispute raised by the Ariyankuppam Commune Panchayat Workers Union against the management of M/s. Ariyankuppam Commune Panchayat, Puducherry, over granting promotion based on experience to their union member Thiru T. Rajendiran is justified ? If justified, what relief the union is entitled to ?

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

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

The petitioner union is a registered union under the registrar of trade union in No. 950/95 and the said union is functioning for the welfare of the workers. The petitioner union member T. Rajendran was initially appointed as Sanitary Worker in the year 1993 and discharging his duties on the satisfaction of the respondent. An official order No. 5051/2009 was issued on 27-07-2009 by the respondent to the union member Rajendiran to do assist the existing plumbers Kathalingam and Manickasamy under the water supply flying squad and another order was issued on 17-02-2010 by the respondent to the union member Rajendiran to do plumber works independently. Initially, T. Rajendran was appointed as Sanitary Worker. However, he was assisted to do only plumbing work from the date of his employment. He carried out only plumbing work and he never discharges any duty of Sanitary Worker under respondent employment. His promotion was not at all considered from the respondent over a period of 18 years and hence, he made a demand to fill up the post of plumber namely, Manickasamy who has superannuated of his service on December 2011. The plumber post is vacant from the year 2012. The trade union member T. Rajendran made a demand notice on 30-01-2012 with the respondent for the filling of the vacant post. Again on 10-02-2012, he made another request of demand for filling of the post of plumber, however, no positive reply was received by the said member T. Rajendran. His cause of promotion was espoused by the union and made a demand notice on 13-02-2012 for which the respondent did not care to reply and therefore, the union raised an industrial dispute with the Labour Officer, Conciliation and on failure the Government has referred the industrial dispute to this Court and therefore prayed this Court to direct the respondent to appoint the union member T. Rajendran as Plumber by relaxing the recruitment rules framed.

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

The respondent denied all the allegation set out in the claim statement except those that are specifically admitted and stated that the claim statement is bad for non jointer of necessary parties and that the worker T. Rajendran was appointed as Sanitary Worker in the year 1993 on Daily Wages basis and was regularied to the post of Sanitary Worker with effect from 06-03-2002. On 27-09-2009 and 17-02-2010 an order was issued to the worker T. Rajendran to assist the Plumber in addition to his normal duties and no order was issued to the worker T. Rajendran to do plumbing works independently. The worker T. Rajendran has submitted representation to fill up the post of Plumber due to the vacancy is true. The worker T. Rajendran demand was not considered since, his promotion was not eligible to fill up the said post. His demand was overruled since, the incumbent not fulfilled the Recruitment Rules. The worker T. Rajendran has not made demand on 10-02-2012 and 13-02-2012 for the said post. Filling up the post is only based on recruitment rules framed by concerned Department and this respondent was not empowered to oversee the said rules. All the said 31 workers were appointed on daily rated service and they were absorbed in the permanent post in the same category as per approval and order by the Department of Local Administration and the worker T. Rajendran is one among them. The procedures related to relaxation of Recruitment Rules for appointment, transfer or grant promotion were adopted only by Local Administrative Department. The proposal was sent to the Department of Local Administration for relaxing the Recruitment Rules to fill up the plumber post to the workman T. Rajendran and one Kanadasan both working as Sanitary Worker. However, the concerned Department has not accepted since, as per Recruitment Rules the appointment is by direct recruitment. As per Recruitment Rules required education qualification or post of Plumber was a pass in VIII standard, Industrial Training Institute certificate in the trade of Plumber/Fitter which was not satisfied by the petitioner union member. All the petitioner union member's grievance has to be rectified necessary Department has to be impleaded and can seek relief but not with this respondent and the union member worker, T. Rajendran has filed a Writ Petition in W.P. No. 22464 of 2012 before the Hon'ble Madras High Court against this respondent challenging the seniority list fixed for sanitary workers which is pending for disposal.

4. In the course of enquiry on the side of the petitioner WW1 was examined and Ex.P1 to Ex.P18 were marked and on the side of the respondent RW1 was examined and Ex.R1 & Ex.R2 were marked. Though, several opportunities were given, the respondent has not turned up before this Court to putfoth their argument. Hence, the argument of the respondent was closed and the case was posted for orders.

5. *The point for consideration is:*

Whether the dispute raised by the petitioner union against the respondent Panchayat over granting promotion based on experience to their union member Thiru. T. Rajendiran is justified or not and if justified, what is the relief entitled?

6. Heard. The pleadings of both the parties, the evidence let in by either sides and the exhibits marked on both sides are carefully considered. In order to prove their case, the petitioner union has examined the Secretary of the union as WW1 and he has deposed that one Rajendran, the member of the union was working at the respondent Commune Panchayat as Sanitary Worker from 13-05-1993 and was discharging his duties on the satisfaction of the respondent and the said Rajendran was directed to discharge the plumber helper duties from the date of appointment onwards and his service was confirmed as Sanitary Worker from 21-03-2002 and on 27-07-2009, the said Rajendran was transferred to water board flying squad with direction to assist the existing plumber Kathalingam and Manickasamy as per the office order in No.5051/2009 and subsequently, on 17-02-2010 another office order was passed by the respondent directing the said Rajendran to do plumbing works independently and that right from beginning of his appointment the said Rajendran assisted the plumbing works and he never discharges any duty of sanitary work and while so in the month of December, 2011, the Plumber one Manickasamy was retired and the post was fell vacant and as the said Rajendran had put in 9 years and 9 months of service as a confirmed employee and another nearly 9 years of service as daily rated, he addressed the respondent Commune Panchayat on 30-01-2012 demanding to consider him in the vacant post as he is servicing as a plumber in the said post and he has also written a letter to the Secretary of the Ariyankuppam Commune Panchayat Workers Union on 10-02-2012 seeking promotion and hence, the union has raised the industrial dispute before the Labour Officer (Conciliation) on 27-02-2012 and on failure of conciliation the Government has made a reference to this Court to decide the dispute.

7. In support of their case the petitioner union has exhibited Ex. P1 to Ex. P18. Ex.P1 is the copy of the service certificate issued by PWD Contractor, dated 18-08-1993. Ex. P2 is the copy of office order for regularisation of petitioner member, dated 21-03-2002. Ex.P3 is the copy of minutes of the meeting of the Departmental Promotion Committee, dated 06-01-2005. Ex. P4 is the copy of memorandum for the filling up the post of Electrician, dated 05-01-2005. Ex. P5 & Ex. P6 are the copy of petitions by the union member T. Rajendran. Ex.P7 is the copy of letter of the petitioner

union to respondent. Ex.P8 is the copy of petition to Labour Officer (Conciliation) by the petitioner. Ex.P9 is the copy of RTI reply by respondent raised by union leader V.S. Abishekam. Ex.P10 is the petition and Ex.P11 is the copy of petition to Labour Officer (Conciliation) by the petitioner. Ex. P12 is the letter by the petitioner to Secretary to Government. Ex. P13 to Ex. P15 are the office orders of the respondent. Ex. P16 is the copy of failure report by the Labour Officer (Conciliation). Ex. P17 is the copy of reference notification. Ex.P18 is the copy of letter by the respondent to the Director, Local Administration Department, Puducherry. The oral evidence of WW1 and exhibits marked on the side of the petitioner would go to show that the member of the union Rajendran had been in service from 1993 at the respondent Commune Panchayat and his service was regularised on 21-03-2002 and the said Rajendran had made an application seeking promotion to the respondent on 30-01-2012 and to the union on 10-02-2012 and that the union has raised the industrial dispute on 27-02-2012 before the Labour Officer (Conciliation) and the union has made several communications to the Labour Officer (Conciliation) and also to the Secretary to Government. Further, the office orders of the respondent Commune Panchayat, dated 27-07-2009, 17-02-2010 and 12-02-2015 under Ex. P13 to Ex. P15 would reveal the fact that workman Rajendran was directed to do the plumber work from 2009 and the said Rajendran has discharged the plumber work from the date of his appointment as a helper and as a Plumber.

8. On the other hand, the respondent Commune Panchayat has examined RW1 and he has deposed that the allegation made against the respondent Commune Panchayat that they have relaxed the recruitment rules for 31 workers and the said workers were appointed as permanent workers after the relaxation of recruitment rules are false and further deposed that all the workers were appointed on daily rated service and they were absorbed in the permanent post in the same category as per approval and order by the Department of Local Administration and the worker T. Rajendran is one among them and that they have not empowered to relax the recruitment rules for appointment, transfer or grant promotion and all the procedures were adopted by Local Administrative Department and the proposal was sent to the Department of Local Administration for relaxing the recruitment rules to fill up the Plumber post to the workman T. Rajendran and one Kanadasan both working as Sanitary Workers and the same was not accepted by the Department since, as per Recruitment Rules the appointment can be made only by direct recruitment and as per Recruitment Rules required education qualification to the post of Plumber was a pass in VIII standard and must have completed Industrial Training Institute certificate in the trade of Plumber / Fitter and the same has not been satisfied by the petitioner union member Rajendran and that therefore, the petition has to be dismissed. In support of their case the respondent has exhibited Ex. Rl and Ex. R2. Ex. Rl is the copy of recruitment rules. Ex. R2 is the copy of requisition letter and order of Local Administration Department.

9. From the evidence of RW1, it is clear that the member of the petitioner union Rajendran had been in service at the respondent Commune Panchayat as daily rated Sanitary Worker from the year 1993 and thereafter, his service was confirmed on 21-03-2002 and the said Rajendran was a permanent worker and he had doing the duty of Plumber which are not disputed by the respondent. The only contention of the respondent Commune Panchayat is that they have no power to relax the recruitrnent rules to give promotion to the post of Plumber to the petitioner union member Rajendran and only the Government can relax the recruitment rules. The respondent witness RW1 has admitted in his evidence that the workman Rajendran was working as assistant to the Plumber from the year 2012 and he was directed to do the assistant plumber work under an office order, dated 27-07-2009 and that Kathalingam and Manickasamy who were in service as Plumbers have been retired from service and thereafter, the workman Rajendran was directed to do the plumber work independently under an office order, dated 17-02-2010. The evidence of RW1 in his cross examination runs as follows :

"..... மனுதாரர் புரோமோஷன் கோரிய போது அவர் எங்களிடம் பிளம்பராக வேலை செய்ததற்கான ஆவணம் மதசாஆ 1 கொடுத்துள்ளார் என்றால் சரிதான். காத்தலிங்கமும், மாணிக்கசாமியும் ஓய்வு பெற்ற பிறகு அந்த பதவி காலியாகதான் உள்ளது. அந்த 2 பிளம்பர்கள் மட்டுமே பணியாற்றினார்கள். தற்போது பிளம்பர் யாருமே இல்லை. தற்போது அந்த வேலைகளை மனுதாரரும் மற்ற 3 பேரும் சேர்ந்து செய்து வருகிறார்கள். அந்த 4 பேரில் நாராயணன் மற்றும் ரத்தினவேலு அந்த பணியில் இல்லை. மேற்படி 4 பேரில் யாரும் இதுவரை பணி நிரந்தரம் செய்யப்படவில்லை. மொத்தம் எங்கள் முனிசிபாலிட்டியின் பராமரிப்பின் கீழ் 27 மேல் நிலை நீர் தேக்கத்தொட்டிகளும், 10 கீழ் நிலை நீர் தேக்க தொட்டிகள் இருக்கிறது. அதில் 22 பம்ப் ஹவுஸ் இருக்கிறது. அந்த பொறுப்புகள் அனைத்தையும் மனுதாரர்தான் கவனித்து வருகிறார். அந்த அத்தியாவசிய தேவைகளில் தவறுகள் நடந்தால் மனுதாரர்தான் பொறுப்பு என்றால் சரிதான். பிளம்பர் நியமிக்க இதுவரை முனிசிபாலிட்டியில் எந்த நடவடிக்கையும் எடுக்கப்படவில்லை. மனுதாரருக்கு இதுவரை பிளம்பருக்கான சம்பளம் வழங்கப்படவில்லை. துப்புரவு தொழிலாளருக்கான சம்பளத்தைதான் பெற்று வருகிறார்கள். பிளம்பரின் அடிப்படை

சம்பளம் ரூ. 5,200 ஆனால் துப்புரவு தொழிலாளருக்கு அடிப்படை சம்பளம் ரூ. 5,200 தான் ஆனால் கிரேடு பே பிளம்பருக்கு ரூ. 1,900ம் துப்புரவு தொழிலாளருக்கு ரூ. 1,800ம் வழங்கப்பட்டு வருகிறது. என்னிடம் காட்டப்படும் ஆவணம் உள்ளாட்சி துறை இயக்குநருக்கு 26-11-2013 அன்று பிளம்பர் போஸ்டை நிரப்புவதற்கு Recruitment Relaxation கேட்டு மனுதாரர் மற்றும் கண்ணதாசனுக்காக கொடுக்கப்பட்டுள்ளது என்றால் சரிதான். அந்த ஆவணம் மதசாஆ 18 ஆகும். அந்த கோரிக்கை Return ஆகிவிட்டது. எங்கள் முனிசிபாலிட்டியில் வேலை பார்த்த குப்புசாமி (எ) ராஜராம் என்பவருக்கு எலக்டிரிசியன் போஸ்டை கொம்யூன் பஞ்சாயத்தின் Departmental Promotion Committee கூடி அவருக்கு Relaxation செய்யப்பட்டது என்றால் சரிதான். Recruitment Rulesல் காலம் 7ல் ஒருவர் 3 ஆண்டுகள் பணியாற்றியிருந்தால் அவர் அந்த பதவிக்கு தகுதி குறித்து Relaxation செய்யலாம் என்று சொல்லப்பட்டிருக்கிறது என்றால் சரிதான். ஒரு பதவிக்கான புரோமோஷன் என்பது கீழ் நிலை பதவியில் இருப்பவருக்கு வாய்ப்பு இருந்தால் Relax செய்து கொடுக்கலாம் என்று அரசாங்க Rule இருக்கிறதா என்றால் அது பற்றி எனக்கு தெரியாது. இது போன்ற எங்கள் நகராட்சியில் 31 நபர்களுக்கு Relax செய்து பணி உயர்வு கொடுக்கப்பட்டிருக்கிறது. என்றால் 3 நபருக்கு மட்டுமே எனக்கு தெரியும். மற்றவர்களுக்கு எனக்கு தெரியாது. மனுதாரர் ஏற்கனவே பிளம்பருக்குரிய அடிப்படை சம்பளத்தை தாண்டி சென்று விட்டார் என்றால் சரிதான். அதனால் மனுதாரருக்கு புரோமோஷன் கொடுப்பதில் எங்கள் நகராட்சிக்கு எந்த பண இழப்பும் கிடையாது என்றால் சரிதான். மனுதாரருக்கு பணி விதிகளில் இடம் இருந்தால் அவருக்கு பதவி உயர்வு கொடுக்கலாம் என்றால் சரிதான். மனுதாரருக்கு முன்பில் பிளம்பர் பதவியிலிருந்த மாணிக்கசாமி, காத்தலிங்கம் ஆகியோருக்கு உள்ளாட்சி துறை இயக்குநர் தகுதியை Relax செய்து கொடுத்தார் ஆனால் மனுதாரருக்கு தகுதி Relax செய்து கொடுக்கவில்லை. அதனால்தான் எங்களால் புரேமோஷன் கொடுக்க முடியவில்லை. 10 வருட காலமாக பிளம்ர் போஸ்ட் காலியாக இருக்கும் காரணத்தினாலும், அதற்கு தகுதியான ஆட்களை பதவியில் நியமிக்க நடவடிக்கை எதுவும் எடுக்காததாலும் மனுதாரருக்கு பதவி உயர்வு கொடுக்கலாம் என்று சிபாரிசு செய்தீர்களா என்று கேட்டால் அப்படி காரணம் சொல்லவில்லை. ஆனால் Relax கேட்டுள்ளோம்."

From the above evidence, it is clear that the workman Rajendran was doing the work of assistant to the plumbers for some time and after the retirement of the workers Kathalingam and Manickasamy who were the only plumbers, the plumbers post are vacant and the said work were allotted to 4 workers including the member of the petitioner union Rajendran and out of which two workers namely, Narayanan and Rathinavelu were not in service and right now the member of the petitioner union Rajendran alone is doing the plumber work and he is maintaining the 36 water tanks and 22 pump houses and it is also admitted by RW1 in his evidence that workman Rajendran alone is maintaining the 22 pump houses and 36 water tanks which is an essential service to the public and the respondent has also sent a requisition to the Director of Department of Local Administration to relax the Recruitment Rules to give promotion to the workman Rajendran the member of the petitioner union but the same was not granted by the Local Administration Department since, the workman Rajendran has not completed the Industrial Training Institute certificate in the trade of Plumber and further, it is learnt from the above evidence that some of the workers have been granted relaxation from the Recruitment Rules and the Recruitment Rules permits to relax the qualification whenever the worker had completed 3 years of service in the same post.

10. Admittedly, in this case, the member of the petitioner union Rajendran had been in service as a Plumber under an office orders which are exhibited as Ex. P13 to Ex. P15. It is clear from documents Ex. P13 to Ex. P15 that including the member of the petitioner union Rajendran four Sanitary Workers have been directed to do the plumber work under an office order, dated 27-07-2009 and thereafter, the member of the petitioner union Rajendran was directed to do independent plumber work with effect from 17-02-2010 in addition to his sanitary duties and he was also directed to do the work of plumber in addition to his duties with immediate effect from 12-02-2015. These documents would go to show that the member of the petitioner union Rajendran is doing only the plumber work and further, the evidence of RW1 would reveal the fact that the workman Rajendran has not been paid salary of the Plumber but, he was doing the plumber work.

11. Further, it is clear from the evidence of RW1 that the member of the petitioner union Rajendran is doing the work of Plumber from the year 2009 and column 7 of Recruitment Rules would permits that whoever work for more than 3 years in the same Department can be considered for promotion by giving relaxation. Admittedly, the respondent Commune Panchayat has sent letter to the Local Administration Department which is exhibited as Ex. Pl8 seeking an order of approval by relaxing recruitment rules to fill up the post of Plumber by giving promotion to the workman Rajendran and another workman Kanadasan on 26-11-2013 in which it is stated by the Commissioner of respondent Commune Panchayat that due to the absence of regular Plumbers the above said Rajendran and Kanadasan are doing the plumbing works satisfactorily without any interruption and any other remarks from public and in which he has asked to relax the age, educational qualification to promote them to the post of Plumber as per Recruitment Rules. Further, it is also revealed from the Recruitment Rules under Ex. Rl that Recruitment Rules for the post of Plumber the Government can relax the rules who are

working in the same post not less than 3 years. The member of the petitioner union Rajendran had been in service from 2009 as a plumber in the same post and he was working as a Plumber assistant and Plumber as per office order by the respondent Commune Panchayat and hence, relaxation has to be given to the said Rajendran.

12. Furthermore, the only contention of the respondent Commune Panchayat is that the proposal sent by them to the Department of Local Administration for relaxing the Recruitment Rules to fill up the post of Plumber by giving promotion to workmen Rajendran and Kanadasan has not been accepted by the said Department as per Recruitment Rules the Plumbers can only be appointed by direct recruitment and that the workman Rajendran had no educational qualification as per rules. However, in this case, the respondent Commune Panchayat itself has ordered officially to do the plumber work to the member of the petitioner union Rajendran from 2009 and he has been doing the same Plumber work till date. The evidence of RW1 also disclose the fact that no one is available as a Plumber except the member of the petitioner union Rajendran and he alone is working as a Plumber and no one can be promoted as a Plumber except Rajendran and Kanadasan since, they are doing plumbing work continuously for the past 3 years and after the retirement of Plumbers Kathalingam and Manickasamy, the member of the petitioner union Rajendran alone is doing the work of Plumber and maintaining 36 water tanks and 22 pump houses as a Plumber. Considering the duration of service rendered by the petitioner union member Rajendran as a Plumber from the year 2009 and considering the fact that he has not been paid Plumber salary though, he had been doing the Plumber work and considering the fact that he had been in service for about 18 years from 1993 and he alone is handling the plumbing work after the retirement of the Plumbers Kathalingam and Manickasamy, he has to be considered for the appointment of Plumber and he has to be given promotion by relaxing the Recruitment Rules. Further, the respondent has not filed any document that the Government has refused to relax the Recruitment Rules to the member of the petitioner union Rajendran for giving promotion and no such order of the Government refusing to relax the Recruitment Rules is filed before this Court and that therefore, it is to be held that the industrial dispute raised by the petitioner union against the respondent Commune Panchayat over granting promotion based on experience to their union member T. Rajendiran is justified and as such the petition is liable to be allowed in respect of promotion. But, in respect of monetary benefits as referred in the reference, the petitioner union has not claimed any monetary loses in the claim petition in respect of union member Rajendran and no evidence has been let in on that aspect and as such, the union member Rajendran is not entitled for any monetary benefits .

13. In the result, the petition is allowed and the Industrial dispute raised by the petitioner union against the respondent Commune Panchayat over granting promotion based on experience to their union member T. Rajendiran is justified and Award is passed directing the respondent Commune Panchayat to give promotion to the said Rajendran to the post of Plumber by relaxing the Recruitment Rules. No cost.

Dictated to the Stenographer, transcribed by her, corrected and pronounced by me in the open Court on this the 26th day of December.

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

List of petitioner's witness:

WW.1— 25-02-2016 —A. Murugaiyan

List of petitioner's exhibits:

Ex. P1	18-08-1993	Copy of the service certificate issued by PWD Contractor.
Ex. P2	21-03-2002	Copy of office order for regularisation of petitioner member.
Ex. P3	06-01-2005	Copy of minutes of the meeting of the Departmental Promotion Committee.
Ex. P4	05-01-2005	Copy of memorandum for the filling up the post of Electrician.
Ex. P5	30-01-2012	Copy of petition by the union member T. Rajendran.
Ex.P6	10-2-2012	Copy of petition by the union member T. Rajendran.
Ex.P7	13-02-2012	Copy of letter of the petitioner union to respondent.
Ex.P8	27-02-2012	Copy of petition to Labour Officer (Conciliation) by the petitioner.
Ex. P9	10-06-2012	Copy of RTI reply by respondent raised by union leader V.S. Abishekam.
Ex. P10	05-10-2012	Petition to Labour Officer (Conciliation) by the petitioner.

Ex. P11 —21-12-2012— Copy of petition to Labour Officer (Conciliation) by the petitioner.

Ex. P12—07-09-2015— Letter by the petitioner to Secretary to Government.

Ex.P13 —27-07-2009— Office order of the respondent.

Ex. P14 —17-02-2010— Copy of the office order of the respondent.

Ex. P15—12-02-2015— Office order of the respondent.

Ex. P16—11-12-2014— Copy of failure report by the Labour Officer (Conciliation).

Ex. P17—20-08-2015— Copy of reference notification.

Ex. P18—26-11-2013— Copy of letter by the respondent to the Director, Local Administration Department, Puducherry.

List of Respondents witness:

RW1 — 03-11-2017 — Ravi

List of Respondents exhibits:

Ex. Rl — Copy of Recruitment Rules.

Ex. R2— 03-10-2012 — Copy of requisition letter and order of Local Administration Department.

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

GOVERNMENT OF PUDUCHERRY

LABOUR DEPARTMENT

(*G.O. Rt. No. 42/AIL/Lab./T/2018, Puducherry, dated 19th March 2018)*

NOTIFICATION

Whereas, the Government is of the opinion that an industrial dispute has arisen between the management of M/s. Abirami Soap Works, Puducherry and Thiru C. Sellakannu, Sembiyapalayam, Puducherry, over non-employment 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 (c) 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 Labour Court, Puducherry for adjudication. The Labour Court, 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 Labour Court, 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 Thiru C. Sellakannu, S/o. Chinnathambi, Sembiyapalayam, Puducherry against the management of M/s. Abirami Soap Works, Sembiyapalayam, Puducherry, over non-employment is justified or not? If justified, what relief he is 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).

GOVERNMENT OF PUDUCHERRY

LABOUR DEPARTMENT

(*G.O. Rt. No. 43/AIL/Lab./T/2017, Puducherry, dated 19th March 2018)*

NOTIFICATION

Whereas, the Government is of the opinion that an industrial dispute has arisen between the management of M/s. MRF Limited, Puducherry and Purachiyalar Ambedkar MRF Thozhilalar Sangam (RTU/1718/2013) School Street, Pallipudupet, Villupuram District, over non-employment of Thiru A. Mahendiran, Puducherry in respect of the matter mentioned in the Annexure to this order;