



புதுச்சேரி மாநில அரசிதழ்

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GOVERNMENT OF PUDUCHERRY
LABOUR DEPARTMENT

(G.O. Rt. No. 74/AIL/Lab./T/2018,
Puducherry, dated 15th May 2018)

NOTIFICATION

Whereas, an Award in I.D (L) No. 04/2013, dated 28-03-2018 of the Industrial Tribunal-cum-Labour Court, Puducherry in respect of the industrial dispute between the management of M/s. Leo Fasteners and Thiru D. Pazhanisamy, 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,
Deputy Labour Commissioner.

BEFORE THE INDUSTRIAL TRIBUNAL-CUM-
LABOUR COURT AT PUDUCHERRY

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

Wednesday, the 28th day of March 2018

I.D.(L). No. 04/2013

Thiru.D. Pazhanisamy,
No.17, 11th Cross Street,
Kurinchi Nagar, Lawspet,
Puducherry 605 008. .. Petitioner

Versus

The Occupier,
M/s. Leo Fasteners,
No. 27-A, Industrial Estate,
Thattanchavady,
Puducherry-605 009. .. Respondent

This industrial dispute coming on 21-03-2018 before me for final hearing in the presence of Thiru L. Vinoba, Advocate for the petitioner and M/s. Vrintha Mohan, 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. 5/AIL/Lab./J/2013, dated 04-02-2013 for adjudicating the following:-

(i) Whether the dispute raised by Sri. D. Pazhanisamy against the management of M/s. Leo Fasteners, Puducherry over his non-employment is justified?

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

(iii) 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:*

The petitioner is a worker in the respondent Company M/s. Leo Fasteners, Puducherry which is one of the leading manufacturing industry functioning at Puducherry for few decades. The petitioner was employed as 'Helper' vide appointment order, dated 20-07-2000 and working in the said industry for the past 13 years. The petitioner is now a permanent workman employed in "Tapping" Section. The petitioner is a member of 'Leo Fasteners Labour Welfare Union' actively participating in the day-to-day affairs of the union. The respondent with arbitrary power kept the workmen at its mercy depriving their basic privileges and such act comes under unfair labour practice on part of the respondent as per the provisions of the Industrial Disputes Act. The petitioner agitated before the respondent for all the basic amenities and needs of the workers through the union, by which he gathered the displeasure of the management. The respondent has caused a charge-sheet, dated 09-04-2010 on the petitioner alleging that the petitioner was absent on 22-02-2010 and continued his absence from 23-02-2010 without any intimation. The petitioner requested 10 days time vide letter, dated 15-04-2010 which was refused by the respondent vide letter, dated 17-04-2010. The petitioner has requested the respondent to initiate domestic enquiry and induct him to work pending enquiry vide letter, dated 17-04-2010. The respondent has initiated domestic enquiry as against the petitioner by suspending him vide suspension order, dated 06-05-2010. The petitioner has submitted his explanation, dated 20-07-2010 with relevant documents by denying the allegations levelled by the respondent in charge-sheet before the Enquiry Officer. Since, the petitioner went on leave

on 22-02-2010 he contested the domestic enquiry tooth and nail, by producing relevant documents and proved beyond reasonable doubt that there is no mischief on his part by the own admissions of the witnesses produced by the respondent during cross examination. Despite the fact, the Enquiry Officer who danced to the tunes of the respondent, without going through the admissions made by the witnesses produced by the respondent, advised that the petitioner was found guilty *vide* his report, dated 20-01-2012. The respondent on the strength of the enquiry report, dated 20-01-2012 terminated the petitioner on 17-04-2012. The petitioner was not regularly provided with subsistence allowance pending enquiry. The petitioner has raised a conciliation proceeding before the Labour Officer, (Conciliation) on 18-07-2012. On receipt of the representation, conciliation was initiated. The respondent in order to precipitate the conciliation proceedings, had issued a cheque bearing number 966328 for a sum of ₹ 84,399 towards Full and Final settlement (terminal dues including subsistence allowance). The petitioner has refused to accept the settlement and returned the cheque to the respondent. The Labour Officer (Conciliation) too warned the respondent not to indulge in such activities pending conciliation proceedings and instructed the respondent to pay the subsistence allowance. The respondent again issued two cheques bearing numbers 966346 and 966347 for a sum of ₹ 48,462 and ₹ 35,937 respectively towards subsistence allowance and terminal benefits. The Petitioner en-cashed the cheque bearing number 966347 for a sum of ₹ 35,937 issued towards subsistence allowance and returned the cheque bearing number 966346 for a sum of ₹ 48,462 the conciliation proceedings ended in failure and therefore, the matter was referred before this Hon'ble Court as stated above.

Further, the petitioner prays this Court to decide the matter on the grounds that the petitioner is a permanent employee working in the respondent establishment for the past eight years. The petitioner was a work aholic performing the work assigned to him with utmost care to the satisfaction of the respondent management with blemish less record. The petitioner was resisted from entering the factory premises from 23-02-2010 and he was not assigned any work. The petitioner was served with a charge-sheet, dated 09-04-2010 despite satisfactory replies given and domestic enquiry was initiated. Though the petitioner proved beyond reasonable doubt that he was innocent of the allegations

levelled in the charge-sheet he was terminated on 17-04-2012 against the principles of natural justice. Therefore, he has to be reinstated with back wages and continuity in service. The respondent management was registered under the Factories Act and they employed more than 120 workmen and they come under the definition of industrial employment (Standing orders) act to the conditions of discharge, disciplinary *etc.*, of the workmen employed in the industry, there is no standing order in operation of the industry. Therefore, prescribed model standing orders shall be deemed to be adopted in the industry. The punishment against the workmen is completely contradicting the model standing orders. The petitioner being the President of the 'Leo Fasteners Labour Welfare Union' is bound to question the high handedness of the respondent management when they terminated 09 employees without assigning any reason which fact was established during the domestic enquiry. The Employers were forced to agitate against the respondent to safeguard their legitimate rights. The respondent with the help of Police attacked the employees and resisted them from entering into the Industry. The respondent management taking into consideration of the petitioner who came to the rescue of the terminated employees resisted him from entering the Industry. Further, all the request and the pleas of the workmen to resume work have been refused and rejected by the management without offering fair opportunity to justify his stand. The petitioner has agitated against the management only when 9 employees were terminated from their employment for no obvious reasons. The Industry was closed till 04-04-2010 by the management and therefore, the allegation that the respondent willfully absented himself for more than 10 days is a sheer product of imagination recited on advice to victimise the petitioner. The petitioner was suspended only after initiation of conciliation proceedings in ID. No. 637/2010/LO(C)/AIL which was closed by the Labour Officer (Conciliation) on representation by the respondent that domestic enquiry is going to be commenced. The respondent with the intention to settle the scores had foisted false charges against the petitioner under charge-sheet, dated 09-04-2010 stating that the petitioner has breached the relevant provisions of the standing orders. Domestic enquiry was initiated with false charges in a haste to satisfy the management's ego stimulated by reply letter, dated 06-04-2010 issued by the petitioner who requested to initiate enquiry to substantiate his

claims and contentions. The motive of the respondent management is to curb the natural instinct of the employees from agitating to safeguard their legitimate rights. The respondent management's attitude exposes violation of the principles of natural justice. The reply letters issued by the petitioner, dated 23-03-2010 and 06-04-2010 would expose the fact that despite the petitioner expressed his willingness to work, but, he was neither permitted to meet the management staffs nor assigned any work. There is no justifiable reason to initiate domestic enquiry. Charges were foisted in the charge-sheet, dated 09-04-2010 and domestic enquiry was initiated only after a reply letter, dated 23-03-2010 addressed by the petitioner. The petitioner was suspended only after he had raised conciliation proceedings in ID. No. 637/2010/LO(C)/AIL, before the Labour Officer (Conciliation). The period of delay in issuing the charge-sheet was utilised by the management to create and manipulate evidence against the petitioner. The Enquiry Officer who conducted the enquiry acted biasedly to benefit the respondent management. The copies of the documents relied and submitted on the side of the respondent management were not verified with original even after repeated demands made by the petitioner. Further, certain documents were not produced by the management which are vital for the petitioner to disprove the charges levelled against him. The petitioner was not allowed to have the defence assistance of his own choice. Further, the Enquiry Officer failed to record the petitioner's version and even the petitioner is deprived of the right of cross examining the respondent's witness. The evidence adduced by the management in the enquiry is not convincing and the documentary evidences produced before the Enquiry Officer is not relevant to the charges levelled against the petitioner. The evidences were created with ulterior motive to terminate the petitioner at once. The respondent in order to put an end to the union activity of the petitioner fabricated the charge-sheet stating that the petitioner is indulging in activities against the provisions of the standing orders. No fair opportunity was offered to the petitioner during the domestic enquiry. The respondent in the course of enquiry acted biased, the management witnesses stated their evidence collectively which is not fair and the process of cross examination is also conducted unfairly. The petitioner evidences were not allowed to establish the real facts and they were

shut from exhibiting the real facts. There is no fair play of justice in conducting the domestic enquiry, it is deliberately orchestrated by the respondent and the Enquiry Officer too danced the tunes of the respondent in order to terminate him deceitfully on the strength of the fabricated evidences. The attitude of the respondent management is to terminate the workmen due to his involvement in union activities. The petitioner is innocent of the allegations made in the charge-sheet, dated 09-04-2010 and yet he is being punished due to his involvement in union activities which displeased the respondent. The respondent's objective and purpose is to keep the petitioner out of the industry, thereby to put an end to his legitimate union activities. The petitioner therefore, prayed this Court to reinstate him with continuity of service and pay full back wages from the date of termination till the date of reinstatement.

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

The respondent is a company incorporated under the provisions of the Indian Companies Act. It is a leading manufacturer of fasteners for the automotive industry. The annual turnover of the company is about ₹ 75 crores. It has saved the Indian nation large amounts of foreign exchange as it has developed import substitute parts for automotive industries. The respondent is a leading manufacturer making nut blanks and heat treatment for the automotive industry and supports and does job work for Leo Fasteners Unit-II also. All the contract of the company for supply of its goods to its customers is time bound and requires to be completed within a stipulated period of time and failure of which could cause heavy loss and damages to it apart from loss of business and cancellation of orders and that even a casual delay in supply of materials causes incalculable and unimaginable hardship and prejudice, in addition to huge monetary loss and therefore, it is very important that the respondent runs the unit non-stop with utmost decency, discipline ethics and performs its obligations without any demur. The petitioner and the respondent herein are well governed by the 'Model Standing Orders'. All the allegations contained in the claim statement are denied except those that are specifically admitted. The reference is bad in law and not maintainable and deserves to be rejected in limine. There is no believable reason or logic to allege against the respondent management that it against its own employees.

No reasonable management which had invested huge capital will go against its employees against their betterment or against its own employer who are working for its profit and progress. The petitioner was appointed as Helper on 20-07-2000 and was made permanent thereafter. The petitioner is a chronic absentee right from the beginning and that he used to take long leaves on false pretext or another. The respondent management had pardoned him umpteen number of times for such behaviors and the management was always helpful to him in times of his need and even when the petitioner sought for loan with this respondent through the State Bank of India, the management got it done and that he was also extended assistance in the LIC Policy under Salary Saving Scheme. The petitioner apart from his other misconducts had with high handedness started to threaten co-workers to join his group for reasons best known to him and that he was served with notices for the said charge on 05-08-2008 for which the petitioner sought a extension of time without reply and thereafter, gave a unconditional 'Good Conduct Assurance' on 13-08-2008. Under the above back-drop the petitioner indulged in unlawful activities in and around the premises of the respondent establishment and this petitioner had meticulously planned for the illegal strike and around 59 workers on 22-02-2010 was arrested by the SHO, D Nagar in crime No. 70/2010 since, the petitioner and some of his co-workers willfully and voluntarily indulged in an unlawful and illegal strike disobeying an order of Injunction, dated 30-04-2009 passed by the Hon'ble Additional Sub-Judge, Puducherry in I.A.290/2009 in O.S. 63/2009 and thereafter, the petitioner unauthorisedly abstained from the work without any intimation or permission. However, on humanitarian grounds on 05-03-2010 the respondent had called up the petitioner to report for duty immediately on receipt of this letter, for which there was no response from the petitioner and belatedly on 20-03-2010 the petitioner submitted a reply stating that the petitioner had participated in the unauthorised and illegal strike as against the respondent management from 22-02-2010 beside the petitioner also gave malicious and evasive replies that the management is preventing the petitioner from work but, on the reality the petitioner had deliberately continued his unauthorised absence from work. It was constrained to issue a detailed charge-sheet, dated 09-04-2010 with a show cause as against the petitioner which

was received by the petitioner and on 17-04-2010, the petitioner gave a reply with *mala fideness* and falsities besides admitting the illegal strike and voluntarily requested for conducting a domestic enquiry. The petitioner was sent letter of suspension on 06-05-2010. Thereafter, in accordance with the legal principles enshrined under the Labour Laws coupled with the principles of natural justice a Domestic Enquiry Officer, Advocate Ashok Kumar was appointed on 06-05-2010 and the notice of enquiry was served on the petitioner and the enquiry date was also intimated to the petitioner duly by a letter and all the legal formalities were duly complied with and the Enquiry Officer conducted the enquiry in utmost evenhandedness and by adhering to all the essential principles of natural justice, equity and fair play. The domestic enquiry was conducted in a free and fair manner giving full opportunity to the petitioner to defend himself from 13-05-2010 to 20-08-2011. The Enquiry Officer had explained the entire proceedings in detail to the petitioner in vernacular and the petitioner had revealed that it was understood by him. The Enquiry Officer permitted the petitioner to peruse the documents relied on by the respondent and even copies of the documents were provided after due verification with the originals before the petitioner herein. The Enquiry Officer offered permission to the petitioner to engage defense assistance of his choice which was also acknowledged and accepted by the petitioner. The Enquiry Officer explained to the petitioner that he has right of cross examination of respondent's witness which was also acknowledged and accepted by the petitioner and acted upon. The entire enquiry proceedings were conducted in Tamil which is the mother tongue of the petitioner with which he is conversant. The day to day proceeding notes of the domestic enquiry were duly signed by the petitioner without protest and agitation thus acknowledging the fairness of the proceedings. The enquiry report was based on the appreciation of the entire materials placed on record by either of the parties by applying the established principles of justice, equity and good conscience. The enquiry report was served on the petitioner which was duly received by him and that adequate and reasonable opportunity was granted to submit his explanation on the enquiry report. The order of dismissal was a cumulative decision taking into consideration all the aspects that were involved in the case including the past conduct of petitioner. In the enquiry proceedings, the petitioner

categorically admitted the fact that he remained unauthorisedly absent from 22-02-2010 and had taken part in the illegal strike as against the order of injunction, dated 30-04-2009 by the Hon'ble Additional Sub-Judge, Puducherry in I.A. No. 290/2009 in O.S. No. 63/2009. Thereafter, the Enquiry Officer submitted his detailed report, dated 20-01-2012 analyzing the charges levelled against the petitioner in the light of the available records and evidences and more importantly the admissions made by petitioner during enquiry proceedings. The Enquiry Officer came to the conclusion that the petitioner was guilty of the charges levelled against him in accordance with the model standing orders. Immediately after the conclusion of the enquiry proceedings it issued a notice along with the domestic enquiry report to the petitioner on 07-03-2012 which was duly received by the petitioner and the respondent on 13-04-2012 sent a 2nd show cause notice to the petitioner seeking for explanation and that the show cause notice was acknowledged by the petitioner and a bald, malicious, fictions reply, dated 08-05-2012 was furnished on the respondent and since the petitioner did not give any valid, reasonable or sufficient cause or explanation and the respondent has no other alternative but, to terminate the petitioner from services on 03-07-2012. The petitioner was removed from the services for a grave misconduct of absenteeism, which was admitted by him in an independent and impartial domestic enquiry. Therefore, the dismissal of petitioner from service is fully justified and warrants non interference of this Court. Even after the petitioner was charge-sheeted and domestic enquiry was conducted, he remained unauthorizedly absent and never showed any inclination to report to duty. The petitioner did not even respond to the 2nd show cause notice or the termination order, which by itself shows that he had actually abandoned his employment and was not inclined to resume duty. Hence, the petitioner's dismissal was absolutely justified. Apart from financial loss, the acts of the petitioner were also leading to frustration amongst the regular employees as the absenteeism was causing additional burden of work on those employees. The petitioner was terminated only in accordance with the principles of natural justice and that he was given an opportunity to explain the show cause notice issued by the management but, the explanation tendered by him was unjust, unreasonable and non-convincing. The Judicious appreciation of the facts and circumstances of the case of the petitioner, a strong disciplinary action is highly

warranted since, the conduct and chain of events enacted by the petitioner showed no willful inclination or orientation towards employment with the respondent's organisation despite enjoying warnings and pardons umpteen number of times as a result of which the respondent was left with no other alternative than to impose a maximum punishment of dismissal from service. The respondent management had paid the 'Subsistence Allowance' to the petitioner as was laid by the parameters of Labour Laws. The petitioner is put to strict proof to show that on the date when he was terminated, the conciliation proceedings concerning him or connected to him was pending. The industry was closed till 04-04-2010 as was maliciously stated by the petitioner. The petitioner had not shown any inclination or willingness to work with the employment of the respondent even during the enquiry period and all the contrary allegations are *mala fide* fantasies. The story of the petitioner about the trade union and his involvement in it and the managements intentions to terminate him due to his involvement in the union activities are false and stories invented by him to cover up his misconduct leading to termination. The prayer by the petitioner for reinstatement with full back wages and monitory benefits is unjust and illegal since, the question of reinstatement would not arise as he was legally terminated on just and fair grounds. The petitioner having accumulated technical skill and know-how is employed for higher remuneration in a different company and that he had not whispered in the entirety of the petition that he is jobless and hence, the question of back wages and monitory benefits would not arise.

4. In the course of enquiry on the side of the petitioner PW.1 was examined and Ex.P1 to Ex.P13 were marked and on the side of the respondent RW.1 was examined and Ex.R1 to Ex.R35 were marked. Both sides are heard. The pleadings of the parties, the evidence let in by either sides and the exhibits marked on both sides are carefully considered.

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. *On the point:*

In order to prove his case the petitioner has examined himself as PW.1 and he has stated all the facts which are stated in the claim petition and it is the evidence of the petitioner PW.1 that he was

working at the respondent establishment as Helper for the past 13 years as permanent workman in "Tapping" Section and that the petitioner is the President of Leo Fasteners Labour Welfare Union and that the petitioner agitated before the respondent for all the basic amenities and needs of the workers through the union and to victimize the petitioner the respondent has caused a charge-sheet on 09-04-2010 alleging that the petitioner was absent on 22-02-2010 and continued his absence from 23-02-2010 without any intimation and that though he asked 10 days time for reply, his request was refused by the respondent on 17-04-2010 and domestic enquiry was ordered and domestic enquiry was initiated against the petitioner by suspending him and that though he submitted his explanation with relevant documents by denying the allegations levelled against him in the charge-sheet before the Enquiry Officer, the management has ordered for the domestic enquiry wherein, it was proved by the petitioner that there is no mischief committed by him and the Enquiry Officer danced to the tunes of the respondent and he submitted the report on 20-01-2012 stating that the petitioner was found guilty and that therefore, the management has terminated the petitioner on 17-04-2012 and that subsistence allowance was not paid regularly to the petitioner and that therefore, conciliation was raised by the petitioner on 18-07-2012 and precipitate the conciliation proceedings wherein, a cheque bearing number 966328 was issued for a sum of ₹ 84,399.00 towards full and final settlement which was refused by the petitioner and returned the cheque to the respondent and that the respondent management was also advised and warned by the Labour Officer (Conciliation) that not to indulge in such activities pending conciliation proceedings and instructed the respondent to pay the subsistence allowance and that therefore the subsistence allowance was paid to the tune of ₹ 35,937 towards subsistence allowance and another cheque issued by the management towards terminal benefits was returned by the petitioner and the conciliation was failed and the matter has been referred to this Court.

7. In support of his case the petitioner has exhibited Ex.P1 to Ex.P13. Ex.P1 to Ex.P3 are the copy of the representation sent by Leo Fasteners Unit-II Labour union to the Labour Secretary, Puducherry, the Deputy Labour Commissioner, Puducherry and to the Managing Director, Leo Fasteners Unit-II. Ex.P4 is the copy of the returned postal cover, dated 12-03-2010. Ex.P5 is the copy of the letter sent by

the petitioner seeking allocation of work on 20-03-2010. Ex.P6 is the copy of the returned postal cover. Ex.P7 is the copy of the explanation letter. Ex.P8 is the copy of the explanation letter with acknowledgment Card. Ex.P9 and Ex.P10 are the copy of the conciliation proceedings raised by Leo Fasteners Unit-II. Ex.P11 is the copy of the proof of service issued by the Superintendent of posts, dated 17-05-2010. Ex.P12 (series) are the copy of photograph of the petitioner standing outside the company. Ex.P13 is the copy of the reply given by Leo Fasteners Management. These documents would reveal the fact that the Labour union has sent a letter to the Labour Secretary, Puducherry, Deputy Labour Commissioner, Puducherry and to the Managing Director, Leo Fasteners Unit-II and the letter sent by the petitioner was returned as unclaimed and conciliation proceedings was raised by the union. Further, the documents would reveal the fact that the union has made a complaint against the non-compliance with the provisions of factories act of the respondent management and has claimed to provide safety measures like hand gloves, goggles, mask and appropriate first aid and ambulance facilities, canteen facility and for proper drinking water with sufficient dining facilities and to repair and relay the damaged unsafety electric wiring.

8. On the side of the respondent management the HR-Manager of the respondent establishment was examined as RW.1 and he has reiterated the counter statement filed by the respondent management. It is the evidence of the RW.1 that they are the leading manufacturer of fasteners for the automotive industry and making nut blanks and heat treatment for the automotive industry and that the petitioner and the respondent are well governed by the model standing Orders and that the petitioner is a chronic absentee right from the beginning and used to take long leaves on false pretext or another and the management had pardoned him number of times for such behaviours and the management was always helpful to him in times of his need and even when he sought for loan it was arranged by the management through State Bank of India and he was also extended assistance in other Schemes and that apart from the misconducts the petitioner had with high handedness started to threaten co-workers to join his group for the reasons best known to the petitioner and he was served with notices for the said charge on 05-08-2008 and that on 13-08-2008 unconditional good conduct assurance was given by the petitioner and thereafter, the petitioner indulged in unlawful activities in and around

the premises of the respondent herein and on 22-02-2010 he was arrested by the SHO, D Nagar in Crime No. 70/2010 since, the petitioner and some of his co-workers willfully and voluntarily indulged in an unlawful and illegal strike disobeying an order of Injunction passed by the Hon'ble Additional Sub-Judge, Puducherry and thereafter, the petitioner unauthorisedly abstained from the work without any intimation or permission and on humanitarian grounds on 05-03-2010 the management had called upon the petitioner to report for duty for which there was no response from the petitioner and belatedly on 20-03-2010 the petitioner submitted a reply stating that the petitioner had participated in the unauthorised and illegal strike as against the management from 22-02-2010 and that it was constrained to issue a detailed charge-sheet on 09-04-2010 with show cause as against this petitioner for which the petitioner gave a reply with *mala fideness* and falsities besides admitting the illegal strike and voluntarily requested for conducting a domestic enquiry and he was sent letter of suspension on 06-05-2010 and enquiry notice was served on the petitioner and enquiry was initiated against the petitioner after following the legal formalities and that the domestic enquiry was conducted in a free and fair manner giving full opportunity to the petitioner to defend himself from 13-05-2010 to 20-08-2011 and the Enquiry Officer also had explained the entire proceedings of the domestic enquiry and the Enquiry Officer permitted the petitioner to peruse the documents relied on by the respondent and even copies of the documents were furnished after due verification with the originals and the Enquiry Officer also has given permission to the petitioner to engage defense assistance of his choice and the same was also acknowledged and accepted by the petitioner and that the entire enquiry proceedings were conducted in Tamil and the same was signed by the petitioner without protest and that the petitioner himself acknowledged the fairness of the proceedings and that the enquiry report was based on the appreciation of the entire materials and reasonable opportunity was granted after the enquiry report was furnished to him to submit his explanation and that this petitioner had admitted that he had remained unauthorisedly absent from 22-02-2010 and had taken part in the illegal strike as against the order of injunction, dated 30-04-2009 by the Hon'ble Additional Sub-Judge, Puducherry and that the Enquiry Officer came to the conclusion that the petitioner was guilty of the charges levelled against him in accordance with the model standing orders.

9. In support of their evidence the respondent management has exhibited Ex.R1 to Ex.R35. Ex.R1 is the copy of the good conduct assurance signed by the petitioner on 13-08-2008. Ex.R2 is the copy of the letter sent by the petitioner on 20-03-2010 to the respondent management as reply to the letter, dated 05-03-2010. Ex.R3 is the copy of the show cause notice sent by the respondent management on 09-04-2010 to the petitioner. Ex.R4 is the letter of authorisation, dated 29-12-2017. Ex.R5 is the copy of the letter sent by the respondent management on 05-03-2010 to the petitioner regarding unauthorised absence from work from 23-02-2010. Ex.R6 is the copy of the letter sent by the petitioner on 03-04-2010 to the HR Manager of the respondent establishment. Ex.R7 is the copy of the letter sent by the petitioner on 17-04-2010 to the respondent management regarding the show cause notice, dated 09-04-2010. Ex.R8 is the copy of the enquiry intimation notice from the Enquiry Officer, dated 08-05-2010. Ex.R9 is the copy of the letter sent by the petitioner on 18-04-2011 to the respondent management. Ex.R10 is the copy of the explanation letter to the show cause notice, dated 09-04-2010 sent by the petitioner to the respondent management. Ex.R11 is the enquiry report in English, dated 20-01-2012. Ex.R12 is the enquiry report in Tamil, dated 20-01-2012. Ex.R13 is the copy of the letter sent by the respondent management on 07-03-2012 to the petitioner. Ex.R14 is the copy of the letter sent by the petitioner on 05-04-2012 to the respondent management regarding the letter, dated 07-03-2014. Ex.R15 is the copy of the second show cause notice sent by the respondent management on 13-04-2012 to the petitioner. Ex.R16 is the copy of the letter sent by the petitioner on 08-05-2012 to the respondent management regarding the letter, dated 13-05-2012. Ex.R17 is the copy of the letter sent by the petitioner on 14-05-2012 to the respondent management. Ex.R18 is the copy of the notice, dated 17-05-2012 from Labour Department, Puducherry. Ex.R19 is the copy of the letter sent by the petitioner on 25-06-2012 to the respondent management. Ex.R20 is the copy of the dismissal letter sent by the respondent management on 03-07-2012 to the petitioner. Ex.R21 is the copy of the letter sent by the respondent management on 05-07-2012 to the petitioner. Ex.R22 is the copy of the letter sent by the petitioner on 06-07-2012 to the respondent management. Ex.R23 is the copy of the letter sent by the respondent management on 07-08-2012 to the Labour Officer (Conciliation) regarding termination of the petitioner. Ex.R24 is the copy of the letter sent by the respondent

regarding pending allowance and cheque copy, dated 23-08-2012. Ex.R25 is the copy of the letter sent by the respondent on 25-08-2012 to the Labour Department. Ex.R26 is the copy of the letter sent by the petitioner to the respondent regarding the letter, dated 23-08-2012. Ex.R27 is the copy of the letter sent by the respondent to the petitioner regarding separate cheques for subsistence allowance and final settlement along with annexures, dated 05-09-2012. Ex.R28 is the copy of the letter sent to the Labour Department by the respondent regarding the payment of dues to the petitioner on 11-09-2012. Ex.R29 is the copy of the letter sent by the petitioner to the respondent on 11-09-2012. Ex.R30 is the copy of the letter sent by the petitioner to the Labour Officer (Conciliation) on 11-09-2012. Ex.R31 is the copy of the explanation letter sent by the respondent on 04-10-2012 to the Labour Department regarding dismissing the petitioner. Ex.R32 is the copy of the letter sent by the petitioner on 08-10-2012 to the Labour Officer (Conciliation). Ex.R33 is the copy of the report on failure of conciliation sent to the Labour Secretary, Puducherry, dated 20-12-2012. Ex.R34 is the copy of notification from the Government of Puducherry, dated 04-02-2013. Ex.R35 is the copy of notice of hearing from the Hon'ble Labour Court, dated 27-02-2013.

10. From the evidence of PW.1 and RW.1 and exhibits marked on their side it can be noticed that the following facts are admitted by either side that the petitioner was working at the respondent establishment as permanent worker and there was a strike for some demands on 22-02-2010 and that the petitioner was charged for unauthorised absence and domestic Enquiry Officer was appointed to decide unauthorised absence of the petitioner from 23-02-2010 and enquiry was conducted by the Enquiry Officer wherein, the petitioner has participated and the Enquiry Officer has submitted the report found guilty of the charges against the petitioner and thereafter, the show cause notice was given to the petitioner and thereafter, the petitioner was terminated from service by the respondent management.

11. It is the main contention of the petitioner that domestic enquiry has not been conducted properly and it is not conducted in accordance with the principles of natural justice and is not fair on the ground that even the charge was framed under the model standing order while the company is having its own certified service standing order and furthermore the second contention of the petitioner is that punishment given by the

respondent management for the alleged misconduct of unauthorised absence is highly disproportionate and therefore, the termination order passed by the management is not sustainable and the petitioner is entitled for the order of reinstatement as claimed in the claim statement with back wages.

12. In respect of the first contention, the learned Counsel for the petitioner has submitted the argument that the disciplinary action was taken against the petitioner only on the model standing order not under the service standing order of the respondent company. Though the respondent industry having its service standing order they have not followed it and hence, the charges levelled against the petitioner itself is not sustainable. On this aspect the learned Counsel has pointed out that the enquiry report under Ex.R11 would reveal the fact that the petitioner was charged under the model standing order and the charge has not been levelled against the petitioner under the certified service standing order of the company. The charges levelled against the petitioner have been stated in the enquiry report under Ex.R11 in which the portion of it runs as follows :

“The above-mentioned activity of yours are grave in nature, if, proved are equivalent to the following misconducts according the model standing orders,

1. Voluntarily, individually or collectively not obeying the orders of the Supervisors, standing order No: 14 (3) (a).
2. Remaining in absenteeism for more than days. standing order : 14(3)(c).
3. Habituated Prohibition of the rules and regulations of the management standing order No:14 (3) (g).
4. Indulging in disciplinary activities during the working hours. 14(3)(h).
5. Involving in strike illegally, prohibiting the rules, intimidating others to involve in strike. standing order No:14 (3) (k).

If, proved true, the charges above which are levelled against you are serious misconducts according to model standing orders.”

From the above it is clear that the petitioner was charged only under the model standing order and the petitioner was charged for the misconduct under clause 14 (3) (a), 14 (3) (c), 14 (3) (g), 14 (3) (h) and 14 (3) (k) of the model standing order. It is the case of the petitioner that the respondent management having its own service standing order and the

employees were given service standing order at the time of their appointment and when they became permanent. The RW.1 in his cross examination has stated as follows :

“.....எங்கள் நிறுவனத்தில் தொழிலாளர்களை பணியில் சேரும் போது பணி நியமன உத்தரவோடு standing order கொடுப்பது இல்லை. பணி நிரந்தரம் செய்யப்படும் போது தான் Standing Order-ஐ கொடுப்போம். ஆனால் அவர் பணி நிரந்தரம் செய்யப்பட்டவர் ஆவார்.எல்லா தொழிலாளர்களுக்கும் standing order பொருந்தும் என்றால் சரிதான்.22-02-2010 அன்று மனுதாரர் மற்றும் இதர தொழிலாளர்கள் ஸ்டிரைக்கில் ஈடுபட்டதற்கான charge-sheet-ஐ நீதிமன்றத்தில் தாக்கல் செய்திருக்கிறோம். அப்படி தாக்கல் செய்யவில்லை என்றால் சரியல்ல. எமதசாஆ 22 மனுதாரர்களுக்கு கொடுக்கப்பட்ட குற்றப்பத்திரிக்கையில் model standing order படி வனையப்பட்டதாக சொல்லப்பட்டுள்ளது. இந்த குற்றச்சாட்டு அடிப்படையில்தான் விசாரணை நடந்தது. மனுதாரர்களுக்கு கொடுக்கப்பட்ட standing order-படி நடவடிக்கை எடுக்கப்படவில்லை என்றால் சரிதான். மனுதாரர்களுக்கு வழங்கப்பட்ட குற்றப்பத்திரிக்கை எல்லாம் அவர்களுக்கு வழங்கப்பட்ட standing order படி இல்லாது model standing order படி வழங்கப்பட்டுள்ளது என்றால் சரிதான். மனுதாரர்களுக்கு பணி நியமனத்தின் போது கொடுக்கப்பட்ட standing order படி நடந்து கொள்ளச் சொல்லி அறிவுறுத்தப்பட்டுள்ள நிலையில் model standing order படி நடவடிக்கை எடுத்தது செல்லத்தக்கதல்ல என்றால் சரியல்ல. கொடுக்கப்பட்டுள்ள குற்றப்பத்திரிக்கையில் standing order பிரிவு 14 உட்பிரிவு 3 உட்பிரிவு (a), (c), (g), (h) (k) மீறியதாக செல்லப்பட்டுள்ள நிலையில் மனுதாரர்களுக்கு கொடுக்கப்பட்ட Standing Order-ல் பிரிவு 14-ல் ESI-ஐ குறித்து சொல்லப்பட்டுள்ளது. ஆனால் misconduct, misbehave பற்றி அதில் சொல்லப்படவில்லை.....”

From the above evidence of RW.1, it is clear that the respondent management has accepted that they are having service standing order and the same was furnished to the employees at the time of their appointment and they have to be acted according to the service standing order and the charges have not been levelled as per the service standing order against the petitioner and the charge mentioned under clause 14 (3) (a), 14 (3) (c), 14 (3) (g), 14 (3) (h) and 14 (3) (k) have not been in the service standing order and clause 14 would speak only about the ESI contribution and it has not spoken any misconduct or misbehavior of the employees and RW.1 has corroborated the same by perusing the service standing order of the company in

the above evidence. Furthermore, the respondent management in I.D. (L). No. 9/2013 has exhibited the service standing orders of the company as Ex.R6 and Ex.R11 respectively which were given to the petitioner in the above said industrial dispute at the time of his appointment and when he was given permanent status by the respondent management and these copies are furnished by the management to the petitioner in the abovesaid industrial dispute with the direction to follow it in their service. While so, the charges were framed against the petitioner without following the service standing order of the respondent company and charges were framed only on the model standing order cannot be tenable.

13. Further, from Ex.R29 the letter sent by the petitioner to the Labour Conciliation Officer, it is learnt to this Tribunal that the petitioner has challenged the service standing order on 19-08-2010 in the enquiry. The RW.1 in his cross examination has further, stated as follows :

“.....Model standing order படி விசாரணை நடத்தக் கூடாது என்றும் மனுதாரர்களுக்கு வழங்கப்பட்ட standing order படி விசாரணை நடத்த வேண்டும் என்றும் கூறியதாக சொன்னால் சரியல்ல. எமதசாஆ 21-ல் குருநாதன் கொடுத்து கடித்ததில் model standing order படி உள் விசாரணை நடத்த முடியாது என்றும் மனுதாரர்களுக்கு கொடுக்கப்பட்ட standing order படி விசாரணை நடத்த வேண்டும் என்று சொல்லியிருக்கிறார்கள் என்றால் இல்லை. அதனால்தான் நாங்கள் விசாரணை அதிகாரிகளின் கோப்புகளை முழுவதையும் நாங்கள் தாக்கல் செய்யவில்லை என்றால் சரியல்ல. 22-02-2010 அன்று நடந்ததாக கூறப்பட்ட சம்பவத்திற்கும் மனுதாரருக்கும் எவ்வித சம்பந்தமும் இல்லை என்றால் சரியல்ல. 22-02-2010-ல் விடுப்பில் இருந்தார் என்று சொன்னால் சரியல்ல. அவர் லீவில் தான் இருந்தார் என்றும் அவ்வாறு இல்லை என்று நான் வழக்கிற்காக பொய் சொல்கிறேன் என்றால் சரியல்ல. 22-02-2010 தேதியிட்ட வருகைப் பதிவேட்டை நாங்கள் தாக்கல் செய்யவில்லை என்று சொன்னால் சரியல்ல. தாக்கல் செய்திருக்கிறோம்.....”

From the above evidence it is clear that the respondent management is having service standing order and while so the charges have not been framed under the respondent's own service standing order which was admitted by RW.1 in his evidence after perusing the service standing order of the company which was exhibited by the respondent in I.D. (L). No. 9/2013 as Ex.R6 and Ex.R11 that the charges mentioned in the clause XIV of the service standing order of the company is only relating to payment of contribution regarding ESI and not about any misconduct or misbehavior of an employee and that therefore, it is clear from the above evidence

that the charges have been mistakenly laid against the petitioner under clause XIV of the model standing order while workers have been directed to follow the service standing order of the company when they have been appointed as an employee.

14. Further, it is admitted by RW.1 that they are used to give standing order while the employees have become permanent and this petitioner was also given standing order when he became permanent and every employee has to follow the own standing order. While it was admitted by the respondent management this Court does not find any reason why the petitioner has been charged under the model standing order and further it is the contention of the petitioner that he has not been allowed to enter into the respondent establishment though he has made attempt to enter into the factory and it is also learnt from the records Ex.P1 to Ex.P3 the representation made by the union that that they have made some demands to the management that the employees are in indefinite strike from 22-02-2010 for their fundamental grievances and non-compliance with the provisions of the Factories Act for safety measures, canteen facilities, toilet facilities and it is also learnt from Ex.P2 that the union has sent a letter to the Deputy Commissioner of Labour, Puducherry regarding the fact that the respondent management has not provided safety measures, *etc.*, in the factory. Further, it is learnt from the said letter that the said letter was sent after they have declared strike and that therefore, the charges levelled against the petitioner by the respondent management that the petitioner is unauthorisedly absent from 22-02-2010 cannot be accepted while the union has undergone strike and the strike notice was given regarding their strike to the management. Further, it is learnt from the records filed by the respondent management that on the complaint of the respondent management some of the workers have been arrested by the police while they have commenced strike on 22-02-2010 and further, the charges also has not been properly laid against the petitioner under the own service standing order while it was admitted that the service standing order was existing in factory at the respondent establishment which was alleged to have been furnished to the employees at the time of appointment and when they became permanent employee and advised the employees to follow the same in service.

15. Furthermore, as rightly pointed out by the learned Counsel for the petitioner for the misconduct of unauthorised absence for the period of more than 10 days the punishment of dismissal of an employee is disproportionate since, absence is only due to the strike announced by the union and furthermore, it is not the case of the respondent management that the

petitioners have involved in some other cases earlier and committed any misconduct against the management and no proof is exhibited before this Court to prove the same and therefore, the alleged domestic enquiry conducted against the petitioner is not in accordance with the principles of natural justice as the charge itself is not properly framed under the own service standing order and furthermore, the punishment of termination against the petitioner for the charge of unauthorised absence for sometime without any prior charges while the union in which the petitioner was the president has undergone the strike and on the complaint of the respondent management some of the workers have been arrested by the police and they had been in custody and hence, show cause notice could not be given by the management for the unauthorised absence knowing the fact that they are arrested on their complaint and therefore, the contention raised by the petitioner that the domestic enquiry is not conducted properly and is not fair and is not in accordance with the principles of natural justice is established through evidence and further, the another contention that the punishment of termination is not proportionate to the misconduct of unauthorised absence is also sustainable.

16. Further, it is learnt from Ex.P9 and Ex.P10 marked on the side of the petitioner that the union in which the petitioner was the president has raised the industrial dispute before the Conciliation Officer against the management of the respondent establishment over the unfair labour practice and against the victimisation of the labourers and it is not disputed by the respondent that such industrial dispute has not been raised by the union in which the petitioner was the president. While the union has raised the industrial dispute with regard to victimisation and unfair labour practice committed by the respondent management and while conciliation proceedings were pending before the Conciliation Officer the respondent management cannot take any dismissal action against the petitioner without getting approval of the Conciliation Officer and therefore, the termination order passed against the petitioner without getting prior permission of the Conciliation Officer is also not sustainable and further, it is clear from the order of dismissal under Ex.R20 that the order has not been given with the payment of one month wage to the petitioner and that therefore, the order of dismissal has not been passed properly and therefore, it is to be held that the industrial dispute raised by the petitioner against the respondent management over non-employment is justified and the petitioner is entitled for the order of reinstatement as claimed by him in the claim statement.

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 as claimed by him. There is no evidence that the petitioner is working so far in any other industry and that there is no proof exhibited before this Court that he is working anywhere else. The respondent has not proved the fact that the petitioner has been working in any other establishment after his termination. However, the petitioner could have served at any other industry after his termination. Considering the above facts and circumstances, this Court decides that the petitioner is entitled only for 25% back wages with continuity of service and other attendant benefits.

18. In the result, the petition is allowed and the industrial dispute raised by the petitioner against the respondent management over his non-employment is justified and Award is passed directing the respondent management to reinstate the petitioner in service within one month from the date of this Award and further directed the respondent management to pay 25% back wages to the petitioner from the date of termination till the date of reinstatement with continuity of service and other attendant benefits. No cost.

Dictated to the Stenographer, transcribed by her, corrected and pronounced by me in the open Court on this the 28th day of March, 2018.

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

List of petitioner's witness:

PW.1 —12-09-2014 Pazhanisamy

List of petitioner's exhibits:

Ex.P1 —25-02-2010 Copy of the representation sent by Leo Fasteners Unit-II Labour union to the Labour Secretary, Puducherry.

Ex.P2 —26-02-2010 Copy of the representation sent by Leo Fasteners Unit-II Labour union to the Deputy Labour Commissioner, Puducherry.

Ex.P3 —01-03-2010 Copy of the representation sent by Leo Fasteners Unit-II Labour union to the Managing Director, Leo Fasteners Unit-II.

Ex.P4 —12-03-2010 Copy of the returned postal cover.

Ex.P5 —20-03-2010 Copy of the letter sent by the petitioner seeking allocation of work.

Ex.P6 —31-03-2010 Copy of the returned postal cover.

Ex.P7 —03-04-2010 Copy of the explanation letter.

Ex.P8 —17-04-2010 Copy of the explanation letter with acknowledgment card.

Ex.P9 —22-03-2010 Copy of the conciliation proceedings raised by Leo Fasteners Unit-II.

Ex.P10—22-03-2010 Copy of the conciliation proceedings raised by Leo Fasteners Unit-II.

Ex.P11—17-05-2010 Copy of the proof of service issued by the Superintendent of posts.

Ex.P12—
(series) Copy of photograph of the petitioner standing outside the company.

Ex.P13—09-06-2010 Copy of the reply given by Leo Fasteners Management.

List of respondent's witness:

RW.1 —09-01-2018 N. Krishnan

List of respondent's exhibits:

Ex.R1 —13-08-2008 Copy of the good conduct assurance signed by the petitioner.

Ex.R2—20-03-2010 Copy of the letter sent by the petitioner to the respondent as reply to the letter, dated 05-03-2010.

Ex.R3—09-04-2010 Copy of the show cause notice sent by the respondent to the petitioner.

Ex.R4—29-12-2017 Letter of authorisation.

Ex.R5—05-03-2010 Copy of the letter sent by the respondent to the petitioner regarding unauthorised absence from work from 23-02-2010.

Ex.R6—03-04-2010	Copy of the letter sent by the petitioner to the HR manager of the respondent.	Ex.R21—05-07-2012	Copy of the letter sent by the respondent to the petitioner.
Ex.R7—17-04-2010	Copy of the letter sent by the petitioner to the respondent regarding the show-cause notice, dated 09-04-2010.	Ex.R22—06-07-2012	Copy of the letter sent by the petitioner to the respondent.
Ex.R8—08-05-2010	Copy of the enquiry intimation notice from the Enquiry Officer.	Ex.R23—07-08-2012	Copy of the letter sent by the respondent to the Labour Officer (Conciliation) regarding termination of the petitioner.
Ex.R9—18-04-2011	Copy of the letter sent by the petitioner to the respondent.	Ex.R24—23-08-2012	Copy of the letter sent by the respondent regarding the pending allowance and Cheque copy.
Ex.R10—29-09-2011	Copy of the explanation letter to the show cause notice, dated 09-04-2010 sent by the petitioner to the respondent.	Ex.R25—25-08-2012	Copy of the letter sent by the respondent to the Labour Department.
Ex.R11—20-01-2012	Enquiry report in English	Ex.R26—27-08-2012	Copy of the letter sent by the petitioner to the respondent regarding the letter, dated 23-08-2012.
Ex.R12—20-01-2012	Enquiry report in Tamil.	Ex.R27—05-09-2012	Copy of the letter sent by the respondent to the petitioner regarding separate Cheques for subsistence allowance and final settlement along with annexures.
Ex.R13—07-03-2012	Copy of the letter sent by the respondent to the petitioner.	Ex.R28—11-09-2012	Copy of the letter sent to the Labour Department by the respondent regarding the payment of dues to the petitioner.
Ex.R14—05-04-2012	Copy of the letter sent by the petitioner to the respondent regarding the letter, dated 07-03-2014.	Ex.R29—11-09-2012	Copy of the letter sent by the petitioner to the respondent.
Ex.R15—13-04-2012	Copy of the second show cause notice sent by the respondent to the petitioner.	Ex.R30—11-09-2012	Copy of the letter sent by the petitioner to the Labour Officer (Conciliation).
Ex.R16—08-05-2012	Copy of the letter sent by the petitioner to the respondent regarding the letter, dated 13-05-2012.	Ex.R31—04-10-2012	Copy of the explanation letter sent by the respondent to the Labour Department regarding dismissing the petitioner.
Ex.R17—14-05-2012	Copy of the letter sent by the petitioner to the respondent.	Ex.R32—08-10-2012	Copy of the letter sent by the petitioner to the Labour Officer (Conciliation).
Ex.R18—17-05-2012	Copy of the notice from Labour Department, Puducherry.	Ex.R33—20-12-2012	Copy of the report on failure of conciliation sent to the Labour Secretary, Puducherry.
Ex.R19—25-06-2012	Copy of the letter sent by the petitioner to the respondent.		
Ex.R20—03-07-2012	Copy of the dismissal letter sent by the respondent to the petitioner.		

Ex.R34—04-02-2013 Copy of notification from the Government of Puducherry.

Ex.R35—27-02-2013 Copy of notice of hearing from the Hon'ble Labour Court.

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

**GOVERNMENT OF PUDUCHERRY
LABOUR DEPARTMENT**

(G.O. Rt. No. 75/AIL/Lab./T/2018,
Puducherry, dated 15th May 2018)

NOTIFICATION

Whereas, an Award in I.D. (T) No. 09/2010, dated 21-03-2018 of the Industrial Tribunal-cum-Labour Court, Puducherry, in respect of the Industrial Dispute between the management of M/s. Vinayaka Mission Medical College and Hospital and Vinayaga Mission's Staff Welfare Union, over various issues such as transfer of Thiru Albert Tremot Anand parity in pay between Thiru Muralitharan, promotion and non-fixation of higher wages, *etc.*, 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,
Deputy Labour Commissioner.

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

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

Wednesday, the 21st day of March, 2018

I.D. (T) No. 09/2010

The Secretary,
Vinayaga Mission's Staff Welfare Union,
No. 19, 4th Cross, Nehru Nagar,
Thalatheru (Post),
Karaikal-609 605.

.. Petitioner

Versus

The Management,
M/s. Vinayaka Mission Medical
College and Hospital,
Keezhakasakudimedu,
Kottucherry (Post),
Karaikal.

.. Respondent

This industrial dispute coming on 07-03-2018 before me for final hearing in the presence of Thiruvalargal R. Ilancheliyan and R. Thilagavathi, Advocates for the respondent, Thiru P. Muthukrishnan, Advocate for the petitioner on record, the petitioner being called absent and no representation for the petitioner, upon hearing, 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. 192/AIL/Lab./J/0, dated 24-09-2010 for adjudicating the following:-

(a) Whether the dispute raised by the Vinayaka Mission's Staff Welfare Union against the management of M/s. Vinayaka Mission Medical College and Hospital, Karaikal over the following issues are justified?

(i) Whether the transfer of Thiru Albert Tremot Anand, Medical Social Worker from teaching cadre to non-teaching and reduction of basic pay from ₹ 6,000 to ₹ 2,400 justified?

(ii) Whether the parity in pay between Thiru Muralidharan who is drawing more than ₹ 500 to R. Ganesan is justified?

(iii) Whether the demand of Thiru M. Senthilkumar, Attender seeking promotion for the post of Lab. Assistant based on his qualification on par with others is justified?

(iv) Whether the demand of higher fixation of wages to Mrs. Nilavazhagi based on her qualification and designation when comparing with Mrs. Santhi is justified?

(v) Whether the demand of D.A. and other other allowances as fixed in other institutions is justified?

(b) If justified, what relief the petitioners are entitled to?

(c) 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 union, in brief, are as follows:

The workman union raised the following allegations before the management. The first allegation is that Mr. Albert Tremot Anand is working as Medical Social Worker since 17-07-2001. On 17-07-2001, he was appointed on consolidated pay of ₹ 2,500 per month and then enhanced as ₹ 3,000 per month consolidated. While confirming all the staff, the character of salary was changed from consolidated to pay structure by fixing Basic Pay as ₹ 5,000 with effect from 01-10-2002 then his pay was raised as ₹ 5,300 per month from 02-01-2005 and by January 2005, the basic pay was fixed as ₹ 6,000. Moreover, during January 2006, his Basic Pay was reduced to ₹ 2,400 and subsequently in January 2007, the same has been enhanced to ₹ 3,040 without any enhancement in gross pay. Mr. C. Bageerathan has violated the codal provisions under section 9A of Industrial Disputes Act with regard to the reduction of basic pay without prior notice. Moreover, though, his pay has been changed from consolidated pay to the structure of basic pay, the individual has not been paid with other allowances such as DA, HRA, *etc.*, as per the Rules of Central Civil Service (Revised Pay) Rules, 1997. The individual is legally eligible for pay with allowances since 01-10-2002. As envisaged in 7th and 9th condition in Part-I of fifth Schedule of the Industrial Disputes Act, 1947, read with sec (ra), the affected workman was transferred from teaching cadre to non-teaching cadre and his basic pay was reduced without prior notice and the same was not done to other workmen. EPF was not deducted from the date of his initial appointment. The nature of work and duties of other two Medical Social Workers serving in the Hospital are entirely different from that of Thiru Albert Tremot Anand working in Community Medicine Department in the College, where he has to teach the students, *etc.*, and requested to hold his pay on par with the teaching staff of the College.

The further allegation is that Thiru R. Ganesan, was appointed as Heavy Driver during 2000 and one Thiru Muralidharan, who was initially appointed as Attender and promoted as Light Driver and after 3 years, he was promoted as Heavy Driver, was drawing ₹ 500 more than Mr. R. Ganesan who was appointed as Heavy Driver. The above activities of the Management amount to (i) Changing seniority rating of workman (ii) refusing to promote workman to higher post due to trade union activities and (iii) giving unmerited promotion to

certain workman with a view to undermine the strength of their trade union which are nothing but, unfair labour practice. While giving promotion, seniority from the date of appointment should not be considered and the seniority should be corresponding to the particular cadre in which he is to be promoted.

The further allegation is that Mr. Senthilkumar, who joined as an Attender was possessing the certificate of Medical Lab Asst. and still continues as Attender. It is a discrimination that priority was not given to the qualification holders even though there are more vacancies. Mr. Bageerathan, Manager (Accounts and Administration) has favoured some of the employees by designating them as Lab. Assistant which amounts to unfair Labour Practice and requested to consider Mr. Senthil Kumar for promotion to the post of Lab. Assistant.

The further allegation is that one Mrs. Santhi, who was appointed as personal Assistant to Director and was regularized in the above-mentioned post, is drawing more salary when compared to Mrs. Nilavazhagi, who is working as P.A. to Principal in the same capacity, also senior most is drawing lesser salary and her category was brought down from JM 3 to JM 2, even though, she is having typewriting English Senior Grade, short hand, having degree along with knowledge in Hindi as additional qualification. Since, she is a member of Vinayaga Mission Staff Welfare Union, she was not given promotion as well as her category was reduced and placed in lesser salary. The union demanded that DA and other allowances as fixed in other institution and stated that it created a heavy monetary loss to all employees. The union demanded wages to all employees for the strike period; further stated that while the management agreed to pay 15 days salary as *ex gratia* instead of 48 days, it is accepted by the management that the strike is legal, the management has to pay for the entire 48 days of strike period. The union also demanded salary for the Teaching, Non teaching, Administrative staff, Paramedical staff, Ancillary staff of Medical College to be fixed on par with the Government of Puducherry and Government of India Medical Institutions. This disputes were made to the Labour Conciliation Officer. The management did not arrive at any settlement and the conciliation ended in failure the Conciliation Officer has referred this matter to the Government and the Government through its modification, dated 24-09-2010 has framed the

issues and has made section 10 reference to this Tribunal. With respect to revision of wages, allowances, an industrial dispute (T) No. 14/2009 is pending before this Tribunal. Hence, the issue may kindly be dropped. With regard to other issues, the relevant records with the management.

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

The respondent denied all the averments made by the petitioner union except those that are specifically admitted and stated that the claim of the petitioner union in their claim statement is not maintainable under law. The respondent is running a Medical College and Hospital at Karaikal and there are three registered unions namely, Vinayaka Mission's Medical College and Hospital non-Teaching staff union, Vinayaka Mission's Staff Welfare Union and Vinayaka Mission's Tholilalar Munnetra Sangam respectively. Out of these three unions Vinayaka Mission's non-teaching staff union enjoys the majority support of the non-teaching employees and the petitioner union does not enjoy even 10% of its members as required under the Trade Union Act 1926. Therefore, the petitioner union as such does not have any *locus standi* to raise this dispute. The petitioner union made a complaint before the Labour Officer, Karaikal alleging unfair labour practice against the respondent management on the ground that few employees had not been given promotions and arbitrarily changed the service condition of one Thiru Albert Tremot Anand by way of bringing him from teaching to non-teaching category and also revising the consolidated salary as basic and other allowances. On these issues the respondent management submitted detailed replies and justified that there was no unfair labour practice on the part of the management as claimed by the petitioner union. Therefore, the terms of reference ought to have been referred by the Government of Puducherry whether there was any unfair labour practice as claimed by the petitioner union instead of which, a reference has been made regarding the claim of the petitioner on the issues of revision of pay, and promotions which is bad in law and not within the scope of the claim made by the petitioner union. As far as revision of pay, promotions and other matters relating to common issues are concerned the respondent used to negotiate the issues with the trade union and arrived at various settlements under the Industrial Dispute Act, 1947. The respondent arrived at such settlements after discussing all the pros and cons with the trade unions. The members of the petitioner union

accepting and enjoying all the benefits as per settlements has raised these issues in respect of some isolated cases which is not acceptable and also against the principle of collective bargaining mechanism provided under law. The petitioner Mr. Albert Tremot Anand was appointed as Medical Social Worker and a temporary appointment order was issued on 17-07-2001 by the Dean, Vinayaka Mission's Medical College. He was given an amount of ₹ 2,500 as salary. Subsequently, his salary was periodically increased. In January 2003, he was given ₹ 5,000 per month and in January 2004 he was given ₹ 5,300 per month by an order dated 2nd January 2004. In the said order it is clearly mentioned the details of his salary structure and also the said Albert Tremot Anand expressly accepted and stating that "I hereby accept and abide by the above terms and conditions in full contained therein" The said Albert Tremot Anand was also periodically sending letters to the management asking for revision of salary and nowhere he requested to pay any other allowances. Subsequently, he submitted a letter dated 21st October 2005 asking to allow him to continue on non-teaching cadre. His request was taken up for consideration. As far as the individual is concerned, he was appointed as Medical Social Worker with effect from 18-07-2001 and was holding a temporary position. Therefore, he was paid a consolidated basic salary. There were two more Medical Social Workers namely, G. Kannan and Mouttousamy whose dates of appointments were 10-11-1999, 10-12-1998 respectively. When the process of regularization was taken up, the services of those two Medical Social Workers were regularized and their wages were fixed as basic and other allowances. Since, the individual's appointment was only in 2001 and was persistently giving pressure, he was also taken up along with the two other Social Workers who were senior to him and a revised structure was worked out keeping in view the total emoluments drawn by him and also the pay structure fixed to other two Medical Social Workers. While working out the revised pay structure his last drawn wages were protected and in no way his wages were reduced. Therefore, the claim of the individual is incorrect. His wage structure has been revised on par with other two Social Workers who were senior to him and the right of the individual has never been denied. As per our records Mr. Ganesan @ Mariappan was appointed by an order, dated 30-06-2000 and he is working with effect from 5th July 2000. The services of Mr. Ganesan were regularized in 2002 along with all the non-teaching employees. Most of the employees

were appointed in different dates and were holding different posts. The year 2002 was taken as base and in whichever position they were holding in 2002 was taken as the criteria for regularization. If, at all there was an anomaly, it should have been brought to the notice of the management at the time of regularization and the said Ganesan has not made any objection. The regularization order was accepted and the benefits given were also enjoyed by the individual. Having enjoyed all these benefits now making an objection is belated. Therefore, his claim for equating with other employee is not maintainable and there is no justification in the claim of the individual. As per the particulars submitted by Mr. Senthilkumar, he has stated that he has passed only 10th Std. at the time of his appointment. He was appointed as Attender. Just because had some particular training, he can not claim promotion as a matter of right. Moreover, taking up isolated cases for giving particular positions may not be conducive in the interest of other employees. Hence, the management is not in position to consider. Mrs. Nilavazagy has already been promoted with retrospective effect as Stenographer (Grade-I) and she has accepted the revised salary and arrears from July 2008. There is no disparities in wages as claimed by the petitioner. Moreover, it is the prerogative right of the respondent to assign work and the petitioner does not have any legal right to claim parity of work or responsibilities. The other contentions/allegations made in the claim petition do not have any relevancy to the terms of reference and therefore, the respondent does not have any obligation to reply. The dispute raised by the petitioner is a subject matter to be decided with in the jurisdiction of the Labour Court as the matters are involving the interest of the other employees which is to be decided by giving notices to other employees who are likely to be affected. The petitioner having filed a complaint alleging unfair labour practice now filed claim petition to match the terms of reference. The petitioner has already stated in the claim petition that they are dropping their claim regarding D.A. and other allowance as fixed in other institutions as the matter is pending before this Tribunal. In these circumstances, the petition is not maintainable before this Hon'ble Tribunal and this respondent is having every justification in declining the claim of the petitioner in general and particularly the isolated cases of the four employees mentioned in the claim. Therefore, prayed this court to dismiss the claim as devoid of merits.

4. In the course of enquiry on the side of the petitioner PW.1 was examined and no further witness was examined by the petitioner union and they have closed their side and have not exhibited any documents and the, case was posted for respondent side evidence. Even after granting sufficient opportunities the respondent has also not come forward to examine any witness and mark any documents and therefore, the evidence of the respondent side was closed and the case was posted for arguments. Even after granting sufficient opportunities no argument has been put forth by the petitioner side and hence, the argument of the petitioner side was closed. The argument of the respondent side was heard. The pleadings of the parties, the evidence let in by the petitioner side are carefully considered.

5. *The point for consideration is:*

Whether the dispute raised by the Vinayaka Mission's Staff Welfare Union against the respondent management, over the issues regarding the transfer of Thiru Albert Tremot Anand, the parity in pay between Thiru Muralidharan to R . Ganesan, the demand of Thiru.M.Senthilkumar, Attender, the demand of higher fixation of wages to Mrs. Nilavazhagi, the demand of D.A. and other allowances as fixed in other institutions are justified or not and if justified, what is the relief entitled to them.

6. It is the case of the petitioner union that one Albert Tremot Anand, was working as Medical Social Worker since 17-07-2001 on consolidated pay at ₹ 2,500 per month and the same was enhanced as ₹ 3,000 per month consolidated and thereafter, his basic pay was fixed as ₹ 5,000 with effect from 01-10-2002 and thereafter, his pay was raised as ₹ 5,300 per month from 02-01-2005 and thereafter, his basic pay was fixed as ₹ 6,000 and subsequently, during January 2006 his basic pay was reduced to ₹ 2,400 and subsequently, which was enhanced to ₹ 3,040 in January 2007 and thereby, the management has violated the provisions under section 9A of Industrial Dispute Act with regard to the reduction of basic pay without prior notice and he has not been given other allowances such as D.A. HRA, etc., as per the Rules of Central Civil Service (Revised Pay) Rules, 1997 and the affected workman was transferred from teaching cadre to non-teaching cadre and his basic pay was reduced without prior notice and the same was not done to other workmen and EPF was also not deducted from the date of his initial appointment and it is further, case of the petitioner union that one

R. Ganesan, was appointed as Heavy Driver during 2000 and one Thiru Muralidharan, who was initially appointed as Attender and promoted as Light Driver and after 3 years, he was promoted as Heavy Driver, was 'drawing ₹ 500 more than Mr. R. Ganesan who was appointed as Heavy Driver and brought before the management to change the seniority rating of workmen, the management has refused to promote workman to higher post due to trade union activities and the management has given unmerited promotion to certain workmen with a view to undermine the strength of their trade union and has committed unfair labour practice and further, it is reported by the petitioner union that one Mr. Senthilkumar, was joined as an Attender was possessing the certificate of Medical Lab. Assistant and even though, there are more vacancies, Mr. Bageerathan, Manager (Accounts and Administration) has favoured some of the employees by designating them as Lab. Assistant without considering the request of the Senthil Kumar for promotion to the post of Lab Assistant and further, it has been stated by the petitioner union that one Mrs. Santhi, who was appointed as Personal Assistant to Director and was regularized in the above-mentioned post, is drawing more salary when compared to Mrs. Nilavazhagi, who is working as P.A. to Principal in the same capacity, also senior most is drawing lesser salary and her category was brought down from JM 3 to JM 2, even though, she is having typewriting English Senior Grade, short hand, having degree along with knowledge in Hindi as additional qualification and since, she is a member of Vinayaga Mission's Staff Welfare Union, she was not given promotion as well as her category was reduced and placed in lesser salary and the union also demanded DA and other allowances as fixed in other institution and stated that it created a heavy monetary loss to all employees and hence, demanded wages to all employees for the strike period and it also has demanded salary for the Teaching, Non-teaching, Administrative staff, Paramedical staff, Ancillary staff of Medical College to be fixed on par with the Government of Puducherry and Government of India Medical Institutions.

7. The respondent management has filed the counter statement stating that there are three registered unions and this petitioner union is not the majority union and it does not have even 10% of its members as required under the Trade Union Act and it has no *locus standi* to raise this dispute and the allegation of the petitioner union that three employees have been given promotion and arbitrarily changed the service condition of one Thiru Albert Tremot Anand and also revising the consolidated salary as basic and other allowances is not true and as far as revision of pay, promotions and other matters relating to common issues are concerned the respondent used to negotiate the issues with the trade union and arrived at various settlements and the members of the petitioner union

accepting and enjoying all the benefits as per settlements and that therefore, the industrial dispute raised by the petitioner union is not sustainable and one Mr. Albert Tremot Anand was appointed as Medical Social Worker and while working out the revision of wages his last drawn wages were protected and in no way his wages were reduced and his wage structure was revised on par with other two Social Workers who were senior to him and the right of the individual has never been denied and in respect of the allegation regarding Mr. Ganesan @ Mariappan was working from 5th July 2000 and his services were regularized in 2002 along with all the non-teaching employees and regularization order was accepted by him and benefits were given and the same were also enjoyed by the individual and therefore, the claim for equating with other employee is not maintainable and other allegation of the petitioner union that one Senthilkumar was passed only 10th standard at the time of his appointment and appointed as an Attender and he can not claim promotion as a matter of right and that therefore, the claim of the petitioner union is not sustainable and further claim of the petitioner union that one Nilavazagi has already been promoted with retrospective effect as Stenographer (Grade-I) and she has accepted the revised salary and arrears from July 2008 and there is no disparities in wages as claimed by the petitioner union and it is the prerogative right of the respondent to assign work and the petitioner does not have any legal right to claim parity of work and the dispute raised by the petitioner union is a subject matter to be decided within the jurisdiction of the Labour Court as the matters are involving the interest of the other employees which is to be decided by giving notices to other employees who are likely to be affected and the respondent management has not committed any unfair labour practice.

8. In order to prove their case the petitioner union has examined PW.1. But, in support of their oral evidence the petitioner union has not exhibited any documents. Though, the petitioner union has filed petition in I.A. No. 233/2015 to summon some of the documents which was allowed by this Court on 17-11-2017 and directed the respondent management to produce the same and some of the documents were produced by the respondent management, the said documents have not been exhibited before this Court by the petitioner union. Even after granting sufficient opportunities no arguments has been put forth by the petitioner side and therefore, the arguments of the petitioner side was closed. On the other hand, though the respondent has denied all the allegations of the petitioner in their counter even after granting sufficient opportunities they have not come forward to examine any witness on their side and therefore, the evidence of the respondent side was also closed by this Court.

9. Though, the petitioner union has raised the industrial dispute against the respondent management over the above said issues, it has not come forward to exhibit any documents to establish their case and in support of their oral evidence no document is exhibited before this Court to prove their case. Even the petitioner union has not established that the industrial dispute was raised for the affected workers and the said alleged workers have also not been examined before this Court as witness to establish the case of the petitioner union and therefore, nothing is proved by the petitioner union as alleged in the claim petition through the documentary evidence while the oral evidence of the petitioner side witness PW.1 is not supported by even the oral evidence of the affected workmen to prove even the *prima facie* case of the petitioner union and therefore, it is just and necessary to decide that the industrial dispute raised by the petitioner union against the respondent management over the abovesaid issues is not justified and hence, the members of the petitioner union are not entitled for any relief as prayed for and as such the petition is liable to be dismissed.

10. In the result, this petition is dismissed. No cost.

Dictated to the Stenographer, transcribed by her, corrected and pronounced by me in the open Court on this the 21st day of March, 2018.

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

List of petitioner's witness:

PW.1 — 01-07-2011 — M. Arokianathan

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.

புதுச்சேரி அரசு

மாவட்ட சார்பு ஆட்சியர் (வருவாய்) அலுவலகம், காரைக்கால்

எண் 2354/மாசாஆ/காநா/195/2018.

அறிவிப்பு

[புதுச்சேரி நில மானிய விதி 1975, விதி 60(iii)ன் கீழ்]

புதுச்சேரி அரசால் தங்களுக்கு ஒப்படை செய்யப்பட்ட கீழ்க்காணும் நிலவிவரங்களுடைய இடத்தில் தாங்கள் வீடு கட்டாமலோ அல்லது குடியிருக்காமலோ இருப்பதன் மூலம் தங்களுக்கு வழங்கப்பட்ட நில ஒப்படை ஆணையில் காணப்படும் நிபந்தனை (2)ஐ தாங்கள் கடைபிடிக்காததை அறியவும்.

வரிசை எண்	ஒப்படை பெற்றவரின் பெயர் மற்றும் முகவரி	நகர மறு அளவை எண்	நிலத்தின் பரப்பளவு	நில ஒப்படை ஆணை எண்
(1)	(2)	(3)	(4)	(5)

H. A. Ca.

2-நல்லமுந்தூர் வருவாய் கிராமம்

1	ரஹிம், த/பெ. காசிம், எண் 47, LGR நகர், நல்லம்பல்.	107/23	0 00 84	520/1995
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ஆதலால், இவ்விவரிப்பு கிடைக்கப்பெற்ற 15 நாட்களுக்குள் தங்களுக்கு வழங்கப்பட்ட இடத்தினை ஏன் அரசே திரும்ப எடுத்துக்கொள்ளக்கூடாது என்பதற்கான காரணங்களை இவ்வலுவலகத்திற்கு தெரிவிக்கும்படி கேட்டுக்கொள்ளப்படுகிறது. இது தொடர்பாக தாங்கள் கருத்து ஏதேனும் தெரிவிக்கவிரும்பினால், மேற்குறிப்பிட்ட காலக்கெடுவிற்குள் கீழ்க் கையொப்பமிட்டுள்ள அதிகாரியிடம் முறையிடலாம்.

குறிப்பிட்ட காலக்கெடுவிற்குள் தாங்கள் நேரிலோ அல்லது கடிதம் வாயிலாகவோ தங்களது கருத்தைத் தெரிவிக்காவிடில், தங்களிடம் கருத்துக்கூற ஏதும் இல்லை எனக்கருதப்பட்டு இதற்குமேல் எந்த அறிவிப்புமின்றி தங்களுக்கு வழங்கப்பட்ட நில ஒப்படை ஆணை ரத்துசெய்யப்படும்.

காரைக்கால், 2018 *வர்பு* சூலை மீ 20 *உ*.

அ. விக்ரந்த ராஜா, இ.ஆ.ப.,
சார்பு ஆட்சியர் (வருவாய்).