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The Gazette of Puducherry

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பொருளடக்கம் SOMMAIRES CONTENTS

GOVERNMENT OF PUDUCHERRY

LABOUR DEPARTMENT

(G.O. Rt. No. 76/Lab./AIL/T/2018, Puducherry, dated 15th May 2018)

NOTIFICATION

Whereas, an Award in I.D. (T) No. 02/2011, dated 22-03-2018 of the Industrial Tribunal-*cum*-Labour Court, Puducherry, in respect of the Industrial Dispute between the management of M/s. Superfil Products Limited, Puducherry and Superfil Products Workers Union, Villianur, Puducherry, over wages disparity and privileged leave to 6 workmen 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.

Thursday, the 22nd day of March 2018.

I.D. (T) No. 02/2011

The President,
Superfil Products Workers Union,
R.S. No. 28-8/12, Mangalam Road,
Villianur Commune,
Puducherry. .. Petitioner

Versus

The Managing Director,
Superfil Products Limited,
Puducherry. .. Respondent

This industrial dispute coming on 05-03-2018 before me for final hearing in the presence of Thiruvalargal P.R. Thiruneelakandan and A. Mithun Chakkaravarthy, Advocates for the petitioner and Thiruvalargal M. Lakshmi Narasimhan and P. Sakthi, 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 of Puducherry as per the G.O. Rt. No. 32/AIL/Lab./J/2011, dated 08-02-2011 for adjudicating the following:-

(i) Whether the dispute raised by the Superfil Products Workers Union against the management of M/s. Superfil Products Limited, Puducherry seeking privileged leave and wage benefits to 6 of its workmen *viz.*, 1. Paavadai, 2. Jayachandiran, 3. Baskar, 4. Swaminadhan, 5. Anjapuli and 6. Theepanjan who were not covered under the existing 12(3) settlement is justified or not?

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

(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 registered trade union and it is only trade union in the respondent factory. By a General Body resolution, dated 15-03-2009 the President of the union is authorised to take up all issues concerning the trade union and its members. The present industrial dispute concerns 6 members of the petitioner trade union. The petitioner union has raised two fold dispute *i.e.,* to direct the management to compute privilege leave for all the workers in accordance with the provisions of Factories Act and consequently to pay the arrears of privileged leave encashment for the unpaid period and to direct the management to pay equal salary to the six workman as is paid to the other confirmed operators by the management who are doing work of exactly identical nature and to pay the arrears of differential salary to all the 6 workmen. Section 79 of the Factories Act mandates annual leave with wages, which is also called earned leave or privileged leave. As per section 79 of Factories Act, an adult worker who has completed 240 days or more in a factory during a calendar year shall be entitled for one (1) for every 20 days of work

performed by him during the previous calendar year as annual leave. The Explanation-II to section 79 of Factories Act provides that the leave admissible under the said section shall be exclusive of all holidays whether occurring during or at either end of the periods of leave. In computing annual leave, the weekly holiday and other paid holidays, statutory and authorised leaves shall be considered as working days and worker is deemed to have performed his work on those days. Therefore, the annual leave shall be calculated for the total number of days worker works in the preceding year inclusive of all paid holidays, weekly holidays, national and festival holidays, ESI leaves, *etc.*, where, the worker is deemed to have worked on all those days. In violation of the statute, the respondent has calculated annual leave by excluding the weekly holidays, national and festival holidays ESI leaves, *etc.*, and only calculated the actual number of days a worker was physically present in the factory. It is clearly a misconception and misinterpretation of section 79 or Factories Act. The annual leave is to be given with wages. The respondent is bound to give leave with a day's wages as Annual Leave. Since, the respondent has extracted work on the annual holidays, they are bound to pay wages for the work extracted as well as wages for holiday, which means that they are bound to pay twice the wages for those days. The calculation for all the workers regarding their entitlement to wages for the number of days of leave denied by the respondent is given as Annexure A-l in the claim petition. The second issue involved in the present industrial dispute is one of the fundamental issues governing industrial relations between the employer and the employee. It is now a well established principle of law as well as fundamental right that equal pay should be given to all the workers who are doing equal work and there cannot be distinction made in the wages of 2 individuals who are doing identical nature of work. The respondent is flouting this fundamental rule of industrial law and fundamental right with utmost impunity. The 6 workmen involved in the present dispute have joined the respondent's organisation on 21-04-2005. They were initially inducted as management trainees on a paltry consolidated wage of ₹ 1,800 per month. It is most unfortunate that the respondent management kept the 6 workmen as management trainee till 31-12-2006 and thereafter enrolled them on probation from 01-01-2007 till 31-12-2008. The respondent extracted 4-years of regular work on par with all confirmed workers as trainee and probationer on a meager salary, which was far lower than what was paid to the confirmed workers in the same category. The very engagement of 6 workmen as trainees/apprentices was contrary to various statutes. The 6 workmen were actually engaged as confirmed workmen but, they we given the status of trainees only to avoid the statutory obligations associated with confirmed workmen. Therefore, all the 6 workers must be deemed to have been the workers of the respondent from 02-04-2005 itself. It also the proposition of law that any worker who works continuously for 240 or more days in preceding year, shall be deemed to be in continuous service and number of statutory benefits flows to such workmen. The 6 workmen in the present industrial dispute has completed 240 days of continuous services in December 2006 itself when they were continuously engaged by the respondent under the nomenclature of management trainees but, were actually the direct employees of this respondent. It is fundamental law that once a person completes 240 days of continuous service, his wages should be on par with the confirmed workers engaged in the same category. There cannot be any distinction or disparity in wages between a confirmed workmen and workmen who is in continuous services for 240 days or more, when both the workers are doing the same nature of work. The respondent herein had always maintained gross wage disparity between the 6 workmen and the other confirmed workmen on the ground that they were trainees, inspite of the fact that they have been doing all the works identical to confirmed workmen. The respondent has also been extremely unfair to the 6 workers herein in giving belated confirmation to them. All the 6 workers herein along with few other workers joined the respondent organisation on the same day *i.e.*, 21-04-2005. However, the respondent showed undue favour towards a group of workers for being not part of petitioner union and confirmed them much earlier to the 6 workers. But, it continued to keep the 6 workers herein on probation and kept extracting work of identical nature from the 6 workmen on par with confirmed workers. As per relevant statutes, even though the 6 workers continued to work as probationers, they ought to have been given the same salary along with the confirmed workers who were doing identical works. But, the respondent continued to pay lesser salary to the 6 workers than the confirmed workers in contravention of the law of this land. The 6 workers in the present dispute were confirmed only on 01-01-2009 and they were given consolidated salary of ₹ 3,250 with effect from 01-01-2009. On 12-11-2008, the respondent entered into a Memorandum of Settlement under section 12

(3) of Industrial Disputes Act with the petitioner union wherein, the wage tor all the confirmed workers were revised. The operators who were doing identical work as that of the 6 workers herein were given the gross salary of ₹4,700, with effect from March 2009. The petitioner expected the respondent to revise the wage or 6 workers herein on par with those operators atleast with effect from 01-01-2009 when the 6 workers were confirmed in service. But, the respondent fixed the consolidated pay of ₹ 3,250 to 6 workers herein which was far lesser than what was paid to the operators who were also performing works of identical nature. Therefore, the respondent had discriminated the 6 workers herein by paying them substantially lower salary than the operators who are also performing identical nature of work. The union therefore raised conciliation with the Labour Officer (Conciliation). In the conciliation proceedings the respondent took an very naive stand that it cannot pay the wages to 6 workers on par with other workers of same class because the wages to those workers were paid in pursuance of 12 (3) settlement, dated 12-11-2008 and whereas, the 6 workers herein were given confirmation after the settlement was signed. They claimed that the benefits of 12(3) settlement will not ensure to the benefit of the 6 workers herein for simple reasons that were not confirmed workers at that point of time. It is most unfortunate that the respondent took such patently illegal stand before the Conciliation Officer and yet went unprosecuted for a glaring unfair labour practice. It is a fundamental concept of industrial jurisprudence that a 12(3) settlement signed between the union and the management should ensure to the benefit of all the workers of the company and as soon as a person becomes eligible for the benefits agreed to be provided under the 12(3) settlement the same cannot be denied to him for the reason that at the time when the agreement was signed he was not covered under the agreement. Such gross disparity in wages between the same set of workers doing identical nature of job is violative of fundamental rights of the 6 workers. Irrespective of the status of the workers whether temporary, permanent or contractual the wages payable to the workers doing same nature of work must always be same. That is what the principle 'equal pay for equal work' envisages. As on July 2012 the salary of 6 workers, involved in the present litigation is ₹ 5,850 whereas, the operators performing same nature of work who were given permanent status under 12(3) settlement, dated 01-01-2009 are being paid a sum of ₹7,300 per month. Therefore, there is absolutely no justification for the respondent to pay lesser salary to the six workers concerned in the dispute than the other similarly placed workmen. Therefore, prayed this Court to answer the reference holding that the workers of the respondent are entitled to privileged leave of one (1) day for every 20 days of work which includes the all authorized leave such as weekly holidays, national and festival holidays, ESI leave *etc.*, the 6 workers involved in the present dispute are entitled to wages on par with the other operators doing identical works who were given increased salary under the 12(3) settlement dated 01-01-2009 and drawing, the respondent is directed to pay a sum of ₹3,09,906 as over-time for each number of extra days worked by the workers for which they were entitle to privileged leave from 2003 to 2011 as per the calculation given in Annexure A-1, the respondent is bound and directed to pay ₹7,300 as salary to each of the six workmen involved in the dispute as against the present salary of ₹ 5,850 on par with the other similarly placed workman who were getting the above salary of ₹ 7,300 and the respondent is bound and directed to pay a sum of ₹ 3,54,000 being the arrears of salary payable to all the six workers involved in the dispute herein being the differentials amount between the wages fixed for other workers under the 12(3) settlement, dated 12-11-2008 and the salary paid to the six workers herein as per the calculation given in Annexure A-2.

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

The respondent denied all the averments made by the petitioner union in the claim petition and stated that as per section 79 of the Factories Act of 1948 the eligibility-for privilege leave is to be calculated based on actual number of days present for work and not based on number of days in a calendar month as wrongly understood and interpreted by petitioner union. As per the explanation to section 79 that any days of lay-off, by agreement or contract or as permissible under the standing orders; in the case of a female worker, maternity leave for any number of days not exceeding twelve weeks; and the leave earned in the year prior to that in which the leave is enjoyed shall be deemed to be days on which the worker has worked in a factory for the purpose of computation of period of 240 days or more, but shall not earn leave for these days. Thus, the respondent management calculating and crediting Privilege Leave to Employee only based on the above calculation stipulated in the Factories Act. Thus, the petitioners claim as in the claim petition is misconceived and misinterpretation

and not valid as per Law. Thus, this industrial dispute is to be dismissed on point of privilege leave. The claim of petitioner union is irrelevant and clearly exhibit their ignorance in not understanding the terms of the settlement referred above entered between the management and the union on 12-11-2008. Terms as agreed as per settlement of 12-11-2008 are including all the concession, referred a recorded in this settlement will be applicable only in respect of 43 confirmed workmen as on date of signing of settlement detailed in Annexure-I. In other words, probationers and future incumbents are not eligible for this increase during agreement of this settlement unless where stated specifically. But, names of said six workmen referred by petitioner union were confirmed subsequent to 12th November 2008 *i.e.,* after signing of said settlement. ln such case they cannot claim said increase recorded in the settlement of 12-11-2008 and their cases are correctly dealt with as per terms recorded in page 4 of said settlement. The petitioner union had signed said settlement of 12-11-2008 had agreed for terms as are specified as in 12 (3) settlement. Thus, petitioner is not in any rights to raise this dispute for overriding legal and factual effects of said settlement. The concept of "equal pay for equal work" is not applicable in all circumstances and cases. The Hon'ble Supreme Court and High Courts had laid down parameters for application of principles of "equal pay for equal work" as that temporary employees, trainees or workers who in probation cannot claim parity in salary with regular employees / workers on principle of "equal pay for equal work", said Pay Scale may differ on basis of criteria such as experience, Seniority and service weightage, Workers with longer years of service get more increments as service weightage benefit that those with less number of years of service. The petitioner is trying to create a mistaken interpretation of Principle of equal pay for equal work. Thus, equal pay for equal work does not mean that all Workers/Employees/Members of cadre must receive equal pay scale irrespective of their Seniority/ Service Weightage. The claim specified six workmen were drawing a salary of ₹ 2,100 during their probationary period as Helper and that their salary was revised as ₹ 3,250 by offering an increase of ₹ 1,150 at time of confirmation. Yet Petitioner Union had failed to note effects and implication not knowing implication of settlement and applicable Law and had thus raised dispute on issue by malicious and vexatious abuse of law. Referred six employees had worked and received wages as agreed in their probation period and such factors cannot be disputed after confirmation of their employment. Respondent management is always in regular payments for fixed wages and in all cares to all employees by several welfares including voluntary payments for over-time incentives, ESI and PF *etc.,* to all Labourers including said six employees. Thus, respondent is thus acting well and fair as Model Employer on Facts and under Law. Thus, this industrial dispute is liable to be dismissed as per Law and applicable precedents.

4. In the course of enquiry on the side of the petitioner PW.1 was examined and Ex.P1 to Ex.P46 were marked and on the side of the respondent RW.1 was examined and Ex.R1 to Ex.R5 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. On the side of the respondent, written argument was filed and the same was carefully considered. In support of his case, the learned Counsel for the respondent relied upon the Judgment reported in CDJ 1997 ALL HC 716, CDJ 1998 APHC 200, CDJ 1974 SC 355, CDJ 1989 SC 298 and CDJ 2010 SC 1136.

5. *The point for consideration is:*

Whether the dispute raised by the petitioner union against the respondent management seeking privileged leave and wage benefits to 6 of its workmen *viz.,* 1. Paavadai, 2. Jayachandiran, 3. Baskar, 4. Swaminadhan, 5. Anjapuli and 6. Theepanjan who were not covered under the existing 12(3) settlement is justified or not and if justified, what is the relief entitled to the said workers.

6. On behalf of the petitioner union in order to prove their case the President of the petitioner union was examined as PW.1 and he has stated in his evidence that their union is the registered trade union and it has passed the resolution on 15-03-2009 to authorise to take up all issues concerning the trade union and its members and it has raised the industrial dispute concerning six members of the petitioner trade union against the respondent management seeking privileged leave and wage benefits to the said six workman who were not covered under the existing 12(3) settlement and that the section 79 of the Factories Act mandates annual leave with wages and as per section 79 of Factories Act, an adult worker who has completed 240 days or more in a factory during a calendar year shall be entitled for one day for every 20 days of work performed by him during the previous calendar year as annual leave and it is the further evidence of the PW.1 that in computing annual leave, the weekly holiday and

other paid holidays, statutory and authorised leaves shall be considered as working days and worker is deemed to have performed his work on those days and therefore, the annual leave shall be calculated for the total number of days worker works in the preceding year inclusive of all paid holidays, weekly holidays, national and festival holidays, ESI leaves, *etc*., where the worker is deemed to have worked on all those days and that the respondent management in violation of the statute has calculated annual leave by excluding the weekly holidays, national and festival holidays ESI leaves, *etc*., and that the respondent management has only calculated the actual number of days a worker was physically present in the factory and therefore, it is a misconception and misinterpretation of section 79 or Factories Act and that therefore, annual leave should be given with wages and this respondent management is bound to give leave with a day's wages as annual leave and to pay wages for those days and that the calculation for all the workers regarding their entitlement to wages for the number of days of leave denied by the respondent is given as Annexure A-l in the claim petition and it is the further evidence of PW.1 that equal pay should be given to all the workers who are doing equal work and that there cannot be distinction made in the wages of two individuals who are doing identical nature of work and that these workers have joined the respondent's organisation on 21-04-2005 and consolidated wage was given to them and thereafter these workmen have been kept as management trainees till 31-12-2006 and thereafter, enrolled them on probation from 01-01-2007 till 31-12-2008 and the workers are doing 4 years of regular work on par with all confirmed workers as trainee and probationer on a meager salary and the said workers were actually engaged as confirmed workmen by the respondent management but, they were given the status of trainees only to avoid the statutory obligations associated with confirmed workmen and that all the said 6 workers have completed 240 days of continuous service in December 2006 itself when they were continuously engaged by the respondent under the nomenclature of management trainees and actually they were doing work of regular employees and that the respondent management had always maintained gross wage disparity between these 6 workmen and the other confirmed workmen on the ground that they were trainees, inspite of the fact that they have been doing all the works identical to confirmed workmen and the respondent management showed undue favour towards a group of workers and confirmed their service much earlier to the said 6 workers and these 6 workmen have been given consolidated salary of ₹ 3,250 with effect from 01-01-2009 and the respondent management has entered into a Memorandum of settlement under section 12 (3) of Industrial Disputes Act with the petitioner union wherein the wage for all the confirmed workers were revised and the operators who were doing identical work as that of the 6 workers herein were given the gross salary of ₹ 4,700 with effect from March 2009 and that therefore, the respondent management has to revise the wages of 6 workers herein on par with those operators atleast with effect from 01-01-2009 when the 6 workers were confirmed in service and that the respondent management has fixed the consolidated pay of ₹ 3,250 to the said 6 workers which is lesser than the amount paid to the operators who were also performing works of identical nature in the respondent establishment and that the respondent management has discriminated the said 6 workers by paying them substantially lower salary than the operators who are also performing identical nature of work in the establishment and therefore, the dispute has been raised by the petitioner union on behalf of the said 6 workmen and that these 6 workers were given confirmation after the 12(3) settlement was signed by the respondent management with the union and that the benefits of the said 12(3) settlement has not been given to these 6 workers for simple reasons that they were not confirmed workers at that point of time when the settlement was executed between the respondent management and the union and that therefore, since the said 6 workers are doing identical nature of work the gross disparity in wages between the same set of workers doing identical nature of job is violative of fundamental rights of the said 6 workers and that the salary of 6 workmen involved in the present litigation is ₹ 5,850 as on July, 2011 and the operators performing the same nature of work were given permanent status under the 12(3) settlement dated 01-01-2009 are being paid a sum of ₹ 7,300 per month and that there is absolutely no justification for the respondent management to pay lesser salary to the six workers concerned in the dispute than the other similarly placed workmen.

7. In support of their evidence the petitioner union has marked Ex.P1 to Ex.P46. Ex.P1 is the copy of the resolution passed by General Body of union. Ex.P2 is the copy of extra calculations made by the petitioner. Ex.P3 is the copy of calculation of differential salary. Ex.P4 is the copy of the letter given by the respondent to Anjapulli, dated 02-04-2005. Ex.P5 is the copy of the letter given by the respondent to Anjapulli, dated 01-11-2006. Ex.P6 is the copy of

the letter given by the respondent to Anjapulli, dated 01-01-2007. Ex.P7 is the copy of the letter given by respondent to Anjapulli, dated 24-12-2007. Ex.P8 is the copy of the letter given by the respondent to Anjapulli, dated 27-08-2008. Ex.P9 is the copy of the letter given by the respondent to Anjapulli, dated 01-01-2009. Ex.P10 is the copy of the letter given by the respondent to R. Pavadai, dated 01-01-2009. Ex.P11 is the copy of the letter given by the respondent to Pavadai, dated 01-7-2008. Ex.P12 is the copy of the letter given by the respondent to Pavadai, dated 24-12-2007. Ex.P13 is the copy of the letter given by respondent to Raja, dated 01-01-2007. Ex.P14 is the copy of the letter given by the respondent to Raja, dated 01-11-2006. Ex.P15 is the copy of the letter given by the respondent to Raja, dated 02-04-2005. Ex.P16 is the copy of the letter given by the petitioner union to Labour Officer, dated 11-05-2009. Ex.P17 is the copy of the letter given by the respondent to Theepanjan, dated 02-04-2005. Ex.P18 is the copy of the letter given by the respondent to Theepanjan, dated 01-11-2006. Ex.P19 is the copy of the letter given by the respondent to Theepanjan, dated 01-01-2007. Ex.P20 is the copy of the letter given by the respondent to Theepanjan, dated 24-12-2007. Ex.P21 is the copy of the letter given by the respondent to Theepanjan, dated 01-07-2008. Ex.P22 is the copy of the letter given by the respondent to Theepanjan, dated 01-01-2009. Ex.P23 is the copy of the Tamil translation given by the respondent, dated 03-07-2010. Ex.P24 is the copy of the letter given by the petitioner union to Labour Officer, dated 20-07-2010. Ex.P25 is the copy of the Failure Report, dated 30-09-2010. Ex.P26 is the copy of the Memorandum of Settlement, dated 12-11-2008. Ex.P27 is the copy of the letter given by the petitioner union to Labour Officer, dated 07-05-2009. Ex.P28 is the copy of the letter given by the respondent to Vijayan, dated 01-07-2008. Ex.P29 is the copy of the letter given by the respondent to Vijayan, dated 06-01-2009. Ex.P30 is the copy of the letter given by the respondent to Swaminathan, dated 02-04-2005. Ex.P31 is the copy of the letter given by the respondent to Swaminathan, dated 01-11-2006. Ex.P32 is the copy of the letter given by the respondent to Swaminathan, dated 01-01-2007. Ex.P33 is the copy of the letter given by the respondent to Swaminathan, dated 24-12-2007. Ex.P34 is the copy of the letter given by the respondent to Swaminathan, dated 01-07-2008. Ex.P35 is the copy of the letter given by the respondent to Swaminathan, dated 01-01-2009. Ex.P36 is the copy of the letter given by the respondent to Jayachandran, dated 02-04-2005. Ex.P37 is the copy of the letter given by the respondent to Jayachandran, dated 01-11-2006. Ex.P38 is the copy of the letter given by the respondent to Jayachandran, dated 01-01-2007. Ex.P39 is the copy of the letter given by the respondent to Jayachandran, dated 24-12-2007. Ex.P40 is the copy of the letter given by the respondent to Jayachandran, dated 01-07-2008. Ex.P41 is the copy of the letter given by the respondent to Jayachandran, dated 01-01-2009. Ex.P42 is the copy of the letter given by the respondent to Baskaran, dated 02-04-2005. Ex.P43 is the copy of the letter given by the respondent to Baskaran, dated 01-11-2006. Ex.P44 is the copy of the letter given by the respondent to Baskaran, dated 01-01-2007. Ex.P45 is the copy of the letter given by the respondent to Baskaran, dated 01-07-2008. Ex.P46 is the copy of the letter given by the respondent to Baskaran, dated 01-01-2009.

8. The above documents exhibited by the petitioner union would go to show that the worker Anjapuli was appointed as trainee from 02-04-2005 at the respondent establishment and subsequently the training period was extended by the respondent management on 01-11-2006 till the period of 31st December, 2006 and thereafter once again he was appointed as probationer on 01-01-2007 by fixing ₹ 2,100 as salary and thereafter the probation period of the said Anjapuli was extended from 24-12-2007 till the period 30th June, 2008 from 01-01-2008 and thereafter the probation period was once again extended for the period from 01-07-2008 on 27-08-2008 and thereafter his service was confirmed on 01-01-2009 fixing the salary as ₹ 3,250 and in the same way some of the workers including the reference mentioned workers were appointed initially as trainee at the respondent establishment and subsequently their training period was extended by the respondent management and thereafter once again they were appointed as probationer and thereafter their probation period of the said workers were extended and thereafter their probation period was once again extended and thereafter their service was confirmed and it is learnt from the documents that the services of the workers have been confirmed only after four years and memorandum of settlement was entered by the management with the petitioner union on 12-11-2008 and the services of the petitioners were confirmed on 01-01-2009 *i.e.,* only after 48 days from the date of execution of the settlement.

9. On the other hand to disprove the case of the petitioner the respondent management has examined the authorised signatory as RW.1 and he has stated in his evidence that the respondent management has

calculating and crediting privilege leave to employee only based on the calculation stipulated in the Factories Act and that the claim of the petitioner union in the claim petition is misconceived and misinterpretation and not valid as per law and that as per the terms of the settlement which was executed on 12-11-2008 the concession will be applicable only in respect of 43 confirmed workmen as on date of signing of settlement detailed in Annexure-I and other probationers and future incumbents are not eligible for this increase during agreement of this settlement unless where stated specifically and that the names of said six workmen referred by petitioner union in this dispute were confirmed subsequent to 12th November 2008 *i.e.,* after signing of said settlement and hence they cannot claim said increase recorded in the settlement and the same was agreed and singed by the petitioner union on 12-11-2008 and that therefore, the said 6 persons are not having any right to raise the industrial dispute and that therefore, they cannot claim increase recorded under 12(3) settlement and the concept "equal pay for equal work" is not applicable in all circumstances and cases.

10. In support of their oral evidence the respondent management also has marked Ex.R1 to Ex.R5. Ex.R1 is the copy of 12(3) settlement between petitioner and respondent, dated 12-11-2008. Ex.R2 is the copy of confirmation of appointment of employee C. Mayavan, dated 01-07-2008. Ex.R3 is the copy of confirmation of appointment of employee K. Vijayan, dated 01-07-2008. Ex.R4 is the copy of confirmation of appointment of employee R. Pavadai, dated 01-07-2008. Ex.R5 is the copy of confirmation of appointment of employee V.Jeyachandran, dated 01-07-2008. These documents would reveal the fact that there was the settlement executed between the members of the petitioner union and the management on 12-11-2008 wherein it was agreed by the management to give wage increase including basic pay, fixed dearness allowance, house rent allowance, conveyance allowance, washing allowance, *etc.,* to the permanent workers whose services were confirmed and on 01-07-2008 the services of the employees Mayavan, K.Vijayan, R. Pavadai and V. Jeyachandran were confirmed as production helpers.

11. From the pleadings of both the parties it is clear that the respondent management has admitted the fact that these petitioners have been in service at the respondent establishment even prior to the settlement and the settlement was executed between the petitioner union and the respondent management on 12-11-2008 in respect of the workers whose services were regularised as confirmed and they have been given some wage revision under the said settlement and the reference mentioned workers have not been given wages on par with the permanent workers and after the execution of the settlement the services of these six petitioners have been confirmed subsequently and therefore, it is the only question to be decided by this Court that whether the reference mentioned six workers are entitled to get the settlement benefits on par with the permanent workers who entered the 12(3) settlement and whether the reference mentioned six workers are entitled for privilege leave.

12. It is the first contention of the respondent management that the reference mentioned six workers are not entitled to get equal salary as paid to the confirmed operators on the ground that the services of these workers are not confirmed and they had been in service as trainees and probationers and their services were confirmed only on 01-01-2009 and they were given consolidated salary of ₹ 3,250 with effect from, 01-01-2009 and the settlement entered on 12-11-2008 under section 12(3) of the Industrial Disputes Act with the union and under the settlement the wages of the reference mentioned six workers cannot be revised and the services of the said workers were confirmed only after the settlement was arrived and therefore, the benefits of the 12(3) settlement will not ensure to the said workers and hence, they are not entitled for the benefits of the 12(3) settlement and that 12(3) settlement signed between the union and the management should ensure to the benefit of all workers of the company and as soon as a person becomes eligible for the benefits agreed to be provided under 12(3) settlement and the same cannot be given to them for the reason at the time when the agreement was signed they were not covered under the agreement. However, the documents filed by the petitioner union would go to show that the reference mentioned six workers had been in service from 2005 as trainee and probationer and thereafter their services were confirmed on 01-01-2009 and further, it can be inferred that the said workman have done the identical nature of work along with the workers who are having permanent status in the Production Department which was admitted by the respondent that the said workers have been appointed at Production Department as trainees and as probationers and they have done identical nature of work along with the permanent workers and that therefore, as the petitioner union has proved through documents that the reference mentioned workers have been in service from 2005 to 2009 as trainee and probationer and they have completed 240 days in a calendar year.

13. Furthermore, the respondent management witness RW.1 has stated in his cross examination as follows:

"மூன்று ஆண்டு தொடர்ந்து பணிபுரிந்தால் நிரந்தரம் செய்ய வேண்டும் எல்லோருக்கும் மற்ற தொழிலாளர்களுக்கும் அது தான் பின்பற்றப்பட்டது. மனுதாரர்களுக்கு பணி நிரந்தரம் செய்ய காலம் தாழ்த்தினோம் என்றால் சரியல்ல. Privilege leave எல்லா தொழிலாளர்களுக்கும் கொடுக்கிறோம். Model standing order தான். மற்ற தொழிலாளர்களும் அதே வேலை தான் செய்கிறார்கள். Training period-ல் மனுதாரர்கள் சரியாக வேலை செய்தார்கள் என்றால் சரியல்ல. Probation extend செய்ததற்கான ஆவணகள் தாக்கல் செய்யவில்லை".

From the above evidence it is clear that the respondent witness RW.1 has admitted the fact that the reference mentioned workers have been in service with the permanent workers and they have done identical nature of work which are done by the permanent workers and they have not been given permanent status to the reference mentioned workers though they have done service more than four years and the respondent management witness RW.1 has further stated in his cross examination as follows :

".....12-11-2008 போடப்பட்ட 12(3) செட்டில்மெண்டில் இந்த வழக்கின் மனுதார் யூனியனும் கையெழுத்து செய்தள்ளது என்றால் சரிதான். மனுவில் கண்டுள்ள 6 பேரும் கையெழுத்து செய்யவில்லை. தற்போது அந்த யூனியனில் அந்த 6 பேரும் உறுப்பினர்களாக இருக்கிறார்கள். அவர்கள் 2005-ல் வேலைக்கு சேர்ந்தார்கள் என்றால் சரிதான். Probation period-ன் காலக் கெடு எவ்வளவு என்றால் ஒரு ஆண்டு ஆகும். ஆனால், மனுதாரர்களை Trainee-ஆக எடுத்து ஒரு ஆண்டு பணி புரிந்த மீண்டும் Trainee-ஆக நீட்டிப்பு செய்தோம். அதன் பிறகு Probation period-ஆக ஒரு வருடம் பணி புரிந்தார். அது மீண்டும் ஒரு வருடம் நீட்டிக்கப்பட்டது மனுதாரருக்கு ஏன் Probation காலம் நீட்டிக்கப்பட்டது என்பதற்கான காரணம் எதுவும் குறிப்பிட்டு ஆவணம் எதுவும் தாக்கல் செய்யவில்லை. Probation period-ல் அவர்கள் வாங்கிய சம்பளம் ₹ 2,100 ஆகும். Trainee-ஆக இருந்த போது அவர்கள் எவ்வளவு சம்பளம் வாங்கினார்கள் என்று ஞாபகம் இல்லை. மனுதாரர்கள் 6 பேரை தவிர்த்து மற்றவர்கள் 12 (3) செட்டில்மெண்டிற்கு முன் எவ்வளவு சம்பளம் வாங்கினார்கள் என்றால் ₹ 2,000 முதல் ₹ 2,500 வரை வாங்கியிருப்பார்கள். 12(3) செட்டில்மெண்டிற்கு பிறகு ₹ 3,250 வாங்குகிறார்கள்.

From the above evidence it is clear that the petitioner union has executed the settlement with the management under section 12(3) of the Act on 12-11-2008 and the reference mentioned workers have been initially appointed as trainees and thereafter their probation period was extended for another one year and subsequently after the completion of training the said workers were appointed as probationers for the period of one year and their probation period was also extended for another one year and thereafter they were given permanent status and therefore, it could be inferred that they have to be given permanent status whenever they completed the 240 days of service in a calendar year and that therefore to avoid the benefits to the workmen the respondent might have denied the permanent status of the reference mentioned workers and entered settlement on 12-11-2008 and subsequently the reference mentioned workers have been given permanent status by confirming their appointment from 01-01-2009 and that therefore, the reference mentioned workers are entitled to get equal pay on par with the permanent workers who have done the identical nature of job of the permanent workers and therefore, the disparity in wages cannot be allowed and that therefore it is clear that these reference mentioned six workers are also entitled for equal wages and benefits of the 12(3) settlement under which the benefits has to be extended on par with the permanent workers and therefore, it is decided that the reference mentioned six workers are entitled for the revision of pay on par with the permanent workers for whom the 12(3) settlement was executed since these reference mentioned six workers were doing the work of exactly identical in nature.

14. It is the second contention of the respondent management that the reference mentioned six workers are not entitled for privileged leave as per provisions of the Factories Act. Admittedly, in this case the reference mentioned six workers were in service from 2005 and their services were confirmed by the respondent management on 01-01-2009 under section 79 of the Factories Act which mandates that an adult worker who has completed 240 days or more in a factory during a calendar year shall be entitled for one day for every 20 days of work performed by him during previous calendar year as annual leave. In this case also, the reference mentioned six workers were appointed as trainees and their training period was wantonly extended by the respondent management for the period of one year and thereafter, they were appointed as probationers wantonly and their probation period was also wantonly extended by the respondent management to avoid to give some benefits of the labour laws to such workers and thereafter after completion of four years of service the services of the said workers have to be confirmed and therefore, only with a view to avoid to give statutory benefits of the labour law to the workers who had done identical nature of work of the permanent workers in the Production Department and hence, it is decided by this Court that the reference mentioned six workers are also have completed 240 days of work in the factory during the calendar year and they should have given permanent status and therefore, they are also entitled for the

annual leave with wages under section 79 of the Factories Act and that therefore, it is to be held that the industrial dispute raised by the petitioner union against the respondent management seeking privileged leave and wage benefits to 6 of its workmen *viz.*, 1. Paavadai, 2. Jayachandiran, 3. Baskar, 4. Swaminadhan, 5. Anjapuli and 6. Theepanjan who were not covered under the existing 12(3) settlement is justified and the said workers are entitled for the relief as prayed for.

15. In the result, the petition is allowed and the industrial dispute raised by the petitioner union against the respondent management seeking privileged leave and wage benefits to 6 of its workmen *viz.*, 1. Paavadai, 2. Jayachandiran, 3. Baskar, 4. Swaminadhan, 5. Anjapuli and 6. Theepanjan who were not covered under the existing 12(3) settlement is justified and Award is passed directing the respondent management to give privileged leave and pay revision to the said six workers from the date of settlement on par with the permanent workers by giving the benefits of 12(3) settlement. No cost.

Dictated to the Stenographer, transcribed by her, corrected and pronounced by me in the open Court on this the 22nd day of March, 2018.

G. THANENDRAN,
Presiding Officer,
Industrial Tribunal,
Puducherry.

List of petitioner's witness:

PW.1— 07-08-2013 — Thiruneelakandan.

List of petitioner's exhibits:

Ex.P1 — — — Copy of the resolution passed by General Body of union

Ex.P2 — — — Copy of extra calculations made by the petitioner.

Ex.P3 — — — Copy of calculation of differential salary.

Ex.P4 — 02-04-2005— Copy of the letter given by the respondent to Anjapuli.

Ex.P5 — 01-11-2006— Copy of the letter given by the respondent to Anjapuli.

Ex.P6 — 01-01-2007— Copy of the letter given by the respondent to Anjapuli.

Ex.P7 — 24-12-2007— Copy of the letter given by respondent to Anjapuli.

Ex.P8 — 27-08-2008— Copy of the letter given by the respondent to Anjapuli.

Ex.P9 — 01-01-2009— Copy of the letter given by the respondent to Anjapuli.

Ex.P10 — 01-01-2009— Copy of the letter given by the respondent to R. Paavadai.

Ex.P11 — 01-07-2008— Copy of the letter given by the respondent to Paavadai.

Ex.P12 — 24-12-2007— Copy of the letter given by the respondent to Paavadai.

Ex.P13 — 01-01-2007— Copy of the letter given by respondent to Raja.

Ex.P14 — 01-11-2006— Copy of the letter given by the respondent to Raja.

Ex.P15 — 02-04-2005— Copy of the letter given by the respondent to Raja.

Ex.P16 — 11-05-2009— Copy of the letter given by the petitioner union to Labour Officer.

Ex.P17 — 02-04-2005— Copy of the letter given by the respondent to Theepanjan.

Ex.P18 — 01-11-2006— Copy of the letter given by the respondent to Theepanjan.

Ex.P19 — 01-01-2007— Copy of the letter given by the respondent to Theepanjan.

Ex.P20 — 24-12-2007— Copy of the letter given by the respondent to Theepanjan.

Ex.P21 — 01-07-2008— Copy of the letter given by the respondent to Theepanjan.

Ex.P22 — 01-01-2009— Copy of the letter given by the respondent to Theepanjan.

Ex.P23 — 03-07-2010— Copy of the Tamil translation given by the respondent.

Ex.P24 — 20-07-2010— Copy of the letter given by the petitioner union to Labour Officer.

Ex.P25 — 30-09-2010— Copy of the Failure Report.

Ex.P26 — 12-11-2008— Copy of the Memorandum of Settlement.

Ex.P27 — 07-05-2009— Copy of the letter given by the petitioner union to Labour Officer.

Ex.P28 — 01-07-2008— Copy of the letter given by the respondent to Vijayan.

Ex.P29 — 06-01-2009— Copy of the letter given by the respondent to Vijayan.

Ex.P30 — 02-04-2005— Copy of the letter given by the respondent to Swaminathan.

Ex.P31 — 01-11-2006— Copy of the letter given by the respondent to Swaminathan.

Ex.P32 — 01-01-2007— Copy of the letter given by the respondent to Swaminathan.

Ex.P33 — 24-12-2007— Copy of the letter given by the respondent to Swaminathan.

Ex.P34 — 01-07-2008— Copy of the letter given by the respondent to Swaminathan.

Ex.P35 — 01-01-2009— Copy of the letter given by the respondent to Swaminathan.

Ex.P36 — 02-04-2005— Copy of the letter given by the respondent to Jayachandran.

Ex.P37 — 01-11-2006— Copy of the letter given by the respondent to Jayachandran.

Ex.P38 — 01-01-2007— Copy of the letter given by the respondent to Jayachandran.

Ex.P39 — 24-12-2007— Copy of the letter given by the respondent to Jayachandran.

Ex.P40 — 01-07-2008— Copy of the letter given by the respondent to Jayachandran.

Ex.P41 — 01-01-2009— Copy of the letter given by the respondent to Jayachandran.

Ex.P42 — 02-04-2005— Copy of the letter given by the respondent to Baskaran.

Ex.P43 — 01-11-2006— Copy of the letter given by the respondent to Baskaran.

Ex.P44 — 01-01-2007— Copy of the letter given by the respondent to Baskaran.

Ex.P45 — 01-07-2008— Copy of the letter given by the respondent to Baskaran.

Ex.P46 — 01.01.2009 — Copy of the letter given by the respondent to Baskaran.

List of respondent's witness:

RW.1 — 03-11-2017 — V. Saravanan

List of respondent's exhibits:

Ex.R1 — 12-11-2008— Copy of 12(3) settlement between petitioner and respondent.

Ex.R2 — 01-07-2008— Copy of confirmation of appointment of employee C. Mayavan.

Ex.R3 — 01-07-2008— Copy of confirmation of appointment of employee K. Vijayan.

Ex.R4 — 01-01-2009— Copy of confirmation of appointment of employee R. Paavadai.

Ex.R5 — 01-01-2009— Copy of confirmation of appointment of employee V. Jeyachandran.

G. THANENDRAN,
Presiding Officer,
Industrial Tribunal,
Puducherry.

GOVERNMENT OF PUDUCHERRY

LABOUR DEPARTMENT

(G.O. Rt. No. 77/AIL/Lab./T/2018, Puducherry, dated 15th May 2018)

NOTIFICATION

Whereas, an Award in I.D. (L) No. 08/2013, 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 L. Jeyachandran, 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.

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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. 08/2013

Thiru L. Jeyachandran,
16A, Iyyanar Koil Street,
No. 51, Anna Street,
Shanmugapuram,
Puducherry. .. 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. 12/AIL/Lab./J/2013, dated 11-02-2013 for adjudicating the following:-

(i) Whether the dispute raised by Thiru L. Jeyachandran 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, Pondicherry which is one of the leading manufacturing industry functioning at Pondicherry for few decades. The petitioner was employed as 'Helper' and working in the said industry for the past 12 years. The petitioner is now a permanent workman employed in "Power Press" 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. The petitioner has submitted his explanation with relevant documents by denying the allegations levelled by the respondent in charge sheet before the Enquiry Officer. The petitioner 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 proceedings 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 966329 for a sum of ₹ 74,462.00 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 966349 and 966348 for a sum of ₹ 18,675 and ₹ 55,787 respectively towards subsistence allowance and terminal benefits. The petitioner en-cashed the cheque bearing number 966349 for a sum of ₹ 18,675 issued towards subsistence allowance and returned the cheque bearing number 966348 for a sum of ₹ 55,787. 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 twelve years. The Petitioner was a workaholic 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 member 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. 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 victimize 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 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 utilized 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 limini. 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 01-04-2009 and was made permanent on 02-04-2001. 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 behaviours and the management was always helpful to him in times of his need and even on 05-09-2008 when he sought for loan of 1,25,000 rupees with this respondent through the State Bank of India, the management got it done through loan number 30479918580 and that he was also extended assistance in all other schemes when and where needed. 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 and on 22-02-2010 he was arrested by the Station House Officer, 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 l.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 04-03-2010 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 23-03-2010 the petitioner submitted a reply stating that the petitioner had conspired with the other co-worker and was material in the conduct of the illegal strike and had also participated in the unauthorised and illegal strike as against the 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 and thereafter, this reply was not satisfactory the respondent on 30-03-2010 again gave a chance for the petitioner to give suitable explanations for his unauthorised absence from work for which the respondent herein received a malicious reply in which the petitioner had once again accepted his involvement in the illegal strike and that the petitioner insisted that the respondent shall conduct a domestic enquiry as against him. 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 on 12-04-2010 and on 15-04-2010, the petitioner gave a reply with malafideness and falsities besides admitting the illegal strike and voluntarily requested for conducting a domestic enquiry. Thereafter, since the explanation offered by the petitoner was not reasonable, he was suspended on 06-05-2010 and the same was served on him. 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 even handedness 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 acknowledgd 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 had remained unauthorizedly 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, Pondicherry 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 on 08-03-2012 and the respondent on 28-03-2012 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 05-04-2012 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 17-04-2012. 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 organization 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 respondent 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 intensions 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 monetory 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 monetory benefits would not arise. Therefore, the respondent management prayed this Court to dismiss the claim petition.

4. In the course of enquiry on the side of the petitioner PW.1 was examined and Ex.P1 to Ex.P7 were marked and on the side of the respondent RW.1 was examined and Ex.R1 to Ex.R24 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 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 12 years as permanent workman in "Power Press" Section and that the petitioner is a member 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 was issued for a sum of ₹ 74,462.00 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 ₹ 18,675 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.P7. Ex.P1 to Ex.P3 are the copy of the representations sent by Leo Fasteners Unit-II Labour union to the Labour Secretary, Puducherry, 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 and Ex.P6 are the copy of the conciliation proceedings raised by Leo Fasteners Unit-II. Ex.P7 is the copy of the reply given by Leo Fasteners management on 09-06-2010. 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 for which the management has submitted a reply on 09-06-2010. Further, the documents would reveal the fact that the union has made a complaint against the non-compliance with the provisions of factories act by 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 on 05-09-2008 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 Station House Officer, 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, Pondicherry and thereafter, the petitioner unauthorisedly abstained from the work without any intimation or permission and on humanitarian grounds on 04-03-2010 the management had called upon the petitioner to report for duty for which there was no response from the petitioner and belatedly on 23-03-2010 the petitioner submitted a reply stating that the petitioner had participated in the unauthorized and illegal strike as against the management from 22-02-2010 and as the reply of the petitioner was not satisfactory the respondent on 30-03-2010 again gave a chance for the petitioner to give suitable explanations for his unauthorized absence from work for which the respondent herein received a malicious reply from the petitioner wherein he has accepted his involvement in the illegal strike and that the petitioner insisted that the respondent shall conduct a domestic enquiry as against him and detailed charge sheet, dated 09-04-2010 with a show-cause was issued against the petitioner which was received by the petitioner on 12-04-2010 and on 15-04-2010 the petitioner gave a reply with *mala fideness* and falsities besides admitting the illegal strike and voluntarily requested for conducting a domestic enquiry and as the explanation offered by the petitioner was not reasonable, he was suspended 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 acknowleged 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 conspired with the other co-workers for staging a illegal and unwarranted, unlawful strike as against the respondent management and had also meticulously participated in the strike and had also remained unauthorizedly 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.R24. 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 to the respondent on 23-03-2010. Ex.R3 is the copy of the show cause notice/charge sheet, dated 09-04-2010. Ex.R4 is the letter of authorization, dated 29-12-2017. Ex.R5 is the copy of the letter to the petitioner by the respondent on 04-03-2010. Ex.R6 is the copy of the letter to the petitioner by the respondent on 09-03-2010. Ex.R7 is the copy of the letter to the petitioner by the respondent. Ex.R8 is the copy of the reply letter sent by the petitioner to the respondent. Ex.R9 is the copy of the letter sent by the petitioner to the respondent on 15-04-2010. Ex.R10 is the copy of the order for domestic enquiry, dated 06-05-2010. Ex.R11 is the copy of the letter sent to petitioner by the respondent on 07-03-2012. Ex.R12 is the copy of the domestic enquiry report (Tamil and English), dated 20-01-2012. Ex.R13 is the copy of the second show cause notice, dated 28-03-2012. Ex.R14 is the copy of the letter by the petitioner to the respondent on 05-04-2012. Ex.R15 is the copy of the letter sent by the petitioner to the respondent on 29-09-2011. Ex.R16 is the copy of the order of the dismissal, dated 17-04-2012. Ex.R17 is the copy of notice of enquiry/ conciliation from the Labour Officer (Conciliation), Pondicherry to the respondent, dated 08-08-2012. Ex.R18 is the copy of the letter sent by the respondent to the Labour Officer (Conciliation) on 09-08-2012.

Ex.R19 is the copy of the letter, full and final settlement annexure along with the cheque, dated 23.08.2012 in No. 966329. Ex.R20 is the copy of the letter of the petitioner to the respondent on 27-08-2012. Ex.R21 is the copy of the letter sent to the petitioner along with annexure I and II and cheques 966628 and 966349, dated 05-09-2012. Ex.R22 is the copy of the letter sent by the petitioner to the respondent on 11-09-2012. Ex. is the copy of the letter sent by the petitioner to the Labour Conciliation Officer on 11-09-2012. Ex.R24 is the copy of the letter sent by the respondent to the Certifying Officer, Labour Department, Puducherry on 13-09-2012.

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 unauthorized absence and domestic Enquiry Officer was appointed to decide unauthorized 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 unauthorized 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.R12 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.R12 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 to the model standing orders,
>
> 1. Remaining in absenteeism for more than 10 days. Standing order : 14(3)(c).
>
> 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 12 மனுதாரர்களுக்கு கொடுக்கப்பட்ட குற்றபத்திரிக்கையில் Model Standing Order படி வனையப்பட்டதாக சொல்லப்பட்டுள்ளது. இந்த குற்றச்சாட்டு அடிப்படையில் தான் விசாரணை நடந்தது. மனுதாரர்களுக்கு கொடுக்கப்பட்ட Standing Order படி நடவடிக்கை எடுக்கப்படவில்லை என்றால் சரிதான். மனுதார்களுக்கு வழங்கப்பட்ட குற்றபத்திரிக்கை எல்லாம் அவர்களுக்கு வழங்கப்பட்ட Standing Order படி இல்லாது Model Standing Order படி வழங்கப்பட்டுள்ளது என்றால் சரிதான். மனுதாரர்களுக்கு பணி நியமனத்தின் போது

கொடுக்கப்பட்ட Standing Order படி நடந்துக் கொள்ளச் சொல்லி அறிவுறுத்தப்பட்டுள்ள நிலையில் Model Standing Order படி நடவடிக்கை எடுத்தது செல்லதக்கதல்ல என்றால் சரியல்ல. கொடுக்கப்பட்டுள்ள குற்றப்பத்திரிக்கையில் Standing Order பிரிவு 14 உட்பிரிவு 3 உட் பிரிவு (a), (c, (g), (h) (k) மீறியதாக சொல்லப்பட்டுள்ள நிலையில் மனுதாரர்களுக்கு கொடுக்கப்பட்ட Standing Order-ல் பிரிவு 14-ல் ESI-ஐ குறித்து சொல்லப்பட்டுள்ளது. ஆனால் Misconduct, Misbehave பற்றி அதில் சொல்லப்படவில்லை....."

From the above evidence of RW1, 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, in I.D. (L). No. 9/ 2013 the respondent management has exhibited the service standing orders of the company as Ex.R6 and Ex.R11 respectively which were given to the petitioner in the said I.D 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 with the direction to follow it in their service. While so, the charge 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.R23 the letter sent by the petitioner to the Labour Officer (Conciliation), 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 23-ல் ஜெயச்சந்திரன் கொடுத்து கடித்ததில் Model Standing Order படி உள் விசாரணை நடத்த முடியாது என்றும் மனுதாரர்களுக்கு கொடுக்கப்பட்ட Standing Order படி விசாரணை நடத்த வேண்டும் என்றும் சொல்லியிருக்கிறார்கள் என்றால் இல்லை. அதனால் தான் நாங்கள் விசாரணை அதிகாரிகளின் கோப்புகளை முழுவதையும் நாங்கள் தாக்கல் செய்யவில்லை என்றால் சரியல்ல. 22-02-2010 அன்று நடந்ததாக கூறப்பட்ட சம்பவத்திற்கும் மனுதாரர் பழனிசாமிக்கும் எவ்வித சம்பந்தமும் இல்லை என்றால் சரியல்ல. 22-02-2010-ல் பழனிசாமி 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 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 as Ex.R6 and Ex.R11 in I.D. (L). No. 9/2013 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 became 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 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 unauthorizedly 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 that for the misconduct of unauthorized 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 earlierly 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, punishment of termination against the petitioner for the charge of unauthorized absence for sometime without any prior charges while the union in which the petitioner was the member 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 unauthorized 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 unauthorized absence is also sustainable.

16. Further, it is learnt from Ex.P5 and Ex.P6 marked on the side of the petitioner that the union in which the petitioner was the member has raised the industrial dispute before the Conciliation Officer against the management of the respondent establishment over the unfair labour practice and against the victimization 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 member. While, the union has raised the industrial dispute with regard to victimization 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.R6 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.

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List of petitioner's witness:

PW.1 —12-09-2014 Jeyachandran

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

Ex.P6 —22-03-2010 Copy of the conciliation proceedings raised by Leo Fasteners Unit-II.

Ex.P7 —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 —23-03-2010 Copy of the letter sent by the petitioner to the respondent.

Ex.R3 —09-04-2010 Copy of the show cause notice/charge sheet.

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

Ex.R5 —04-03-2010 Copy of the letter to the petitioner by the respondent.

Ex.R6 —09-03-2010 Copy of the letter to the petitioner by the respondent.

Ex.R7 —30-03-2010 Copy of the letter to the petitioner by the respondent.

Ex.R8— – Copy of the reply letter sent by the petitioner to the respondent.

Ex.R9 —15-04-2010 Copy of the letter sent by the petitioner to the respondent.

Ex.R10—06-05-2010 Copy of the order for domestic enquiry.

Ex.R11—07-03-2012 Copy of the letter sent to petitioner by the respondent.

Ex.R12—20-01-2012 Copy of the domestic enquiry report (Tamil and English).

Ex.R13—28-03-2012 Copy of the second show cause notice.

Ex.R14—05-04-2012 Copy of the letter by the petitioner to the respondent.

Ex.R15—29-09-2011 Copy of the letter sent by the petitioner to the respondent.

Ex.R16—17-04-2012 Copy of the order of the dismissal.

Ex.R17—08-08-2012 Copy of notice of enquiry/ conciliation from the Labour Conciliation Officer, Pondicherry to the respondent.

Ex.R18—09-08-2012 Copy of the letter sent by the respondent to the Labour Conciliation Officer.

Ex.R19—23-08-2012 Copy of the letter, full and final settlement annexure along with the cheque, dated 23-08-2012 in No. 966329.

Ex.R20—27-08-2012 Copy of the letter of the petitioner to the respondent.

Ex.R21—05-09-2012 Copy of the letter sent to the petitioner along with Annexure I and II and cheques 966628 and 966349.

Ex.R22—11-09-2012 Copy of the letter sent by the petitioner to the respondent.

Ex.R23—11-09-2012 Copy of the letter sent by the petitioner to the Labour Conciliation Officer.

Ex.R24—13-09-2012 Copy of the letter sent by the respondent to the Certifying Officer, Labour Department, Puducherry.

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

GOVERNMENT OF PUDUCHERRY

LOCAL ADMINISTRATION SECRETARIAT

(*G.O. Ms. No. 10/LAS/A1/2018, Puducherry, dated 26th July 2018)*

NOTIFICATION

The Hon'ble Supreme Court in a Writ Petition (c) No. 55 of 2003, passed an order on 10-1-2018, directing *inter alia,* that –

(i) each State and the Union Territory shall constitute a Committee consisting of a retired Officer who has retired at the level equivalent to Secretary to the Government of India, the Principal Secretary (Urban Development) (by whatever designation called) as also one senior and respected person from Civil Society who is sensitive to the issue of homeless persons for the purpose of monitoring the progress of Shelter for Urban Homeless.

2. Therefore, in compliance with the said direction of the Hon'ble Supreme Court, a State Committee for Shelter for Urban Homeless Scheme in the Union territory of Puducherry is constituted with the following Members:

1. Thiru B. Vijayan, I.A.S., (Rtd.,) . . Chairman
2. Thiru P. Jawahar, I.A.S., Secretary. . Member (Local Administration).
3. Smt. Chitra Shah . . Person from Civil Society (NGO)
4. Thiru Ponnusamy Balasundaram . . Social Worker

3. The Chairman and Members of the said Committee are entitled for sitting fee as under:

(i) Sitting fee of ₹ 4,000 per day of sitting to Chairman of the Committee.

(ii) Sitting fee of ₹ 2,000 per day of sitting to Civil Society Member(s) of the Committee.

(iii) In no case, the ceiling should exceed 10 meeting in a month of the Committee.

4. The expenditure on account of the sitting fee and other related expenditure would be met from the budgetary provision of Shelter for Urban Homeless (SUH) of DAY-NULM.

(By order)

GIDDI BALRAM,
Under Secretary to Government
(Local Administration).

GOVERNMENT OF PUDUCHERRY

DIRECTORATE OF SCHOOL EDUCATION
(SECRETARIAT WING)

(*G. O. Ms. No. 26, Puducherry, dated 27th July 2018*)

NOTIFICATION

On attaining the age of superannuation, Thiru E. Nagappan, Vice-Principal, Thanthai Periyar Government Girls' Higher Secondary School, Ariyankuppam, Puducherry, is admitted into retirement with effect from the afternoon of 31-8-2018.

(By order)

P. EJOUMALE,
Under Secretary to Government
(School Education).