



புதுச்சேரி மாநில அரசிதழ்

La Gazette de L'État de Poudouchéry

The Gazette of Puducherry

அதிகாரம் பெற்ற வெளியீடு

Publiée par Autorité

Published by Authority

விலை : ₹ 25-00

Prix : ₹ 25-00

Price : ₹ 25-00

எண்	புதுச்சேரி	செவ்வாய்க்கிழமை	2018 ஆம் ஆண்டு	ஆகஸ்ட் மீ	28
No.	35	Poudouchéry	Mardi	Août	2018 (6 Bhadra 1940)
No.		Puducherry	Tuesday	August	2018

பொருளடக்கம்

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GOVERNMENT OF PUDUCHERRY
LABOUR DEPARTMENT

(G. O. Rt. No. 78/Lab./AIL/T/2018,
Puducherry, dated 15th May 2018)

NOTIFICATION

Whereas, an Award in I.D. (L) No. 09/2013, dated 28-03-2018 of the Industrial Tribunal-cum-Labour Court, Puducherry in respect of the industrial dispute between the management of M/s. Leo Fasteners and Thiru D. Gurunathan, over non-employment has been received;

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

(By order)

S. MOUTTOULINGAM,
Deputy Labour Commissioner.

BEFORE THE INDUSTRIAL TRIBUNAL-CUM-
LABOUR COURT AT PUDUCHERRY

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

Wednesday, the 28th day of March, 2013

I.D. (L) No. 09/2013

Thiru D. Gurunathan,
16A, Iyyanar Koil Street,
Ulandaikerapalayam,
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. 11/AIL/Lab./J/2013, dated 11-02-2013 for adjudicating the following:-

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

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

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

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

The petitioner is a worker in the respondent company M/s. Leo Fasteners, Puducherry which is one of the leading manufacturing industry functioning at Puducherry for few decades. The petitioner was employed as 'Helper' vide appointment order, dated 19-08-2002 and working in the said industry for the past 8 years. The petitioner is now a permanent workman employed in "Tapping" Section. The petitioner is the "President" of 'Leo Fasteners Labour Welfare Union' actively participating in the day-to-day affairs of the union. The respondent with arbitrary power kept the workmen at its mercy depriving their basic privileges and such act comes under unfair Labour practice on part of the respondent as per the provisions of the Industrial Disputes Act. The petitioner agitated before the respondent for all the basic amenities and needs of the workers through the union, by which he gathered the displeasure of the management. The respondent has caused a charge-sheet, dated 09-04-2010 on the petitioner alleging that the petitioner was absent on 22-02-2010 and continued his absence from 23-02-2010 without any intimation. The petitioner requested 10 days time vide letter, dated 15-04-2010 which was refused by the respondent vide letter, dated 17-04-2010. The petitioner has requested the respondent to initiate domestic enquiry and induct him to work pending enquiry vide letter, dated 17-04-2010. The respondent has initiated domestic enquiry as against the petitioner by suspending him vide suspension order, dated 06-05-2010. The petitioner has submitted his explanation, dated 20-07-2010 with relevant documents by denying the allegations levelled by the respondent in charge-sheet before the Enquiry Officer. 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 proceeding before the Labour Officer, (Conciliation) on 18-07-2012. On receipt of the representation, conciliation was initiated. The respondent in order to precipitate the conciliation proceedings, had issued a cheque bearing number 966330 for a sum of ₹ 54,290 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 966351 and 966350 for a sum of ₹ 16,103 and ₹ 38,187 respectively towards subsistence allowance and terminal benefits. The petitioner en-cashed the cheque bearing number 966351 for a sum of ₹ 16,103 issued towards subsistence allowance and returned the cheque bearing Number 966350 for a sum of ₹ 38,187. The conciliation proceedings ended in failure and therefore, the matter was referred before this Hon'ble Court as stated above.

Further, the petitioner prays this Court to decide the matter on the grounds that the petitioner is a permanent employee working in the respondent establishment for the past eight years. The petitioner was a 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 leveled in the charge-sheet he was terminated on 17-04-2012 against the principles of natural justice. Therefore, he has to be reinstated with back wages and continuity in service. The respondent management was registered under the Factories Act and they employed more than 120 workmen and they come under the definition of industrial employment (Standing orders) act to the conditions of discharge, disciplinary *etc.*, of the workmen employed in the industry, there is no standing order in operation of the industry. Therefore,

prescribed model standing orders shall be deemed to be adopted in the industry. The punishment against the workmen is completely contradicting the model standing orders. The petitioner being the President of the 'Leo Fasteners Labour Welfare Union' is bound to question the high handedness of the respondent management when they terminated 09 employees without assigning any reason which fact was established during the domestic enquiry. The employers were forced to agitate against the respondent to safeguard their legitimate rights. The respondent with the help of Police attacked the employees and resisted them from entering into the Industry. The respondent management taking into consideration of the petitioner who came to the rescue of the terminated employees resisted him from entering the Industry. Further, all the request and the pleas of the workmen to resume work have been refused and rejected by the management without offering fair opportunity to justify his stand. The petitioner has agitated against the management only when 9 employees were terminated from their employment for no obvious reasons. The industry was closed till 04-04-2010 by the management and therefore, the allegation that the respondent willfully absented himself for more than 10 days is a sheer product of imagination recited on advice to victimize the petitioner. The petitioner was suspended only after initiation of conciliation proceedings in I.D. No. 637/2010 /LO(C) /AIL which was closed by the Labour Officer (Conciliation) on representation by the respondent that domestic enquiry is going to be commenced. The respondent with the intention to settle the scores had foisted false charges against the petitioner under charge-sheet, dated 09-04-2010 stating that the petitioner has breached the relevant provisions of the standing orders. Domestic enquiry was initiated with false charges in a haste to satisfy the management's ego stimulated by reply letter, dated 06-04-2010 issued by the petitioner who requested to initiate enquiry to substantiate his claims and contentions. The motive of the respondent management is to curb the natural instinct of the employees from agitating to safeguard their legitimate rights. The respondent management's attitude exposes violation of the principles of natural justice. The reply letters issued by the petitioner, dated 23-03-2010 and 06-04-2010 would expose the fact that despite the petitioner expressed his willingness to work, but he was neither permitted to meet the management staffs nor assigned any work. There is no justifiable reason to initiate domestic enquiry. Charges were foisted in the charge-sheet, dated 09-04-2010 and domestic enquiry was initiated only after a reply letter, dated 23-03-2010 addressed by the petitioner. The petitioner was suspended only after he had raised conciliation proceedings in I.D. 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 19-08-2002 and was made permanent on 20-08-2004. The petitioner is a chronic absentee right from the beginning and that he used to take long leaves on false pretext or another. The respondent management had pardoned him umpteen number of times for such behaviors and the management was always helpful to him in times of his need and even on 01-02-2008 when he sought for loan of 1 Lakh rupees with this respondent through the State Bank of India, the management got it done through Loan Number 30430897585 and that he was also extended assistance in the L1C policy under Salary Saving Scheme in Policy Number 732546409. 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 herein and on 22-02-2010 he was arrested by the SHO, D Nagar in Crime No.70/2010 since, the petitioner and some of his co-workers willfully and voluntarily indulged in an unlawful and illegal strike disobeying an order of Injunction, dated 30-04-2009

passed by the Hon'ble Additional Sub-Judge, Puducherry in I.A. 290/2009 in O.S. 63/2009 and thereafter, the petitioner unauthorisedly abstained from the work without any intimation or permission. However, on humanitarian grounds on 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 participated in the unauthorized 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 unauthorized 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 unauthorized absence from work for which the respondent herein received a malicious reply, dated 06-04-2010 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 10-04-2010 and on 16-04-2010, the petitioner sought an adjournment of 10 days for replying to the show cause notice for which the management extended the time and thereafter on 17-04-2010 the petitioner gave a reply with *mala fideness* and falsities besides admitting the illegal strike and voluntarily requested for conducting a domestic enquiry. Thereafter, since the explanation offered by the petitioner was not reasonable, he was suspended. Thereafter, in accordance with the legal principles enshrined under the Labour Laws coupled with the principles of natural justice a domestic Enquiry Officer, Advocate Ashok Kumar was appointed on 06-05-2010 and the notice of enquiry was served on the petitioner and the enquiry date was also intimated to the petitioner duly by a letter and all the legal formalities were duly complied with and the Enquiry Officer conducted the enquiry in utmost evenhandedness and by adhering to all the essential principles of natural justice, equity and fair play. The domestic enquiry was conducted in a free and fair manner giving full opportunity to the petitioner to defend himself from 13-05-2010 to 20-08-2011. The Enquiry Officer had explained the entire proceedings in detail to the petitioner in vernacular and the petitioner had revealed that it was understood by him. The Enquiry Officer permitted the petitioner to peruse the documents relied on by the respondent and even copies of the documents were provided after due verification with the

originals before the petitioner herein. The Enquiry Officer offered permission to the petitioner to engage defense assistance of his choice which was also acknowledged and accepted by the petitioner. The Enquiry Officer explained to the petitioner that he has right of cross-examination of respondent's witness which was also acknowledged and accepted by the petitioner and acted upon. The entire enquiry proceedings were conducted in Tamil which is the mother tongue of the petitioner with which he is conversant. The day to day proceeding notes of the domestic enquiry were duly signed by the petitioner without protest and agitation thus acknowledging the fairness of the proceedings. The enquiry report was based on the appreciation of the entire materials placed on record by either of the parties by applying the established principles of justice, equity and good conscience. The enquiry report was served on the petitioner which was duly received by him and that adequate and reasonable opportunity was granted to submit his explanation on the enquiry report. The order of dismissal was a cumulative decision taking into consideration all the aspects that were involved in the case including the past conduct of petitioner. In the enquiry proceedings, the petitioner categorically admitted the fact that he 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 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 industry was closed till 04-04-2010 as was maliciously stated by the petitioner. The petitioner had not shown any inclination or willingness to work with the employment of the respondent even during the enquiry period and all the contrary allegations are *mala fide* fantasies. The story of the petitioner about the trade union and his involvement in it and the managements intentions to terminate him due to his involvement in the union activities are false and stories invented by him to cover up his misconduct leading to termination. The prayer by the petitioner for reinstatement with full back wages and monetary 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 monetary benefits would not arise.

4. In the course of enquiry on the side of the petitioner PW.1 was examined and Ex.P1 to Ex.P11 were marked and on the side of the respondent RW.1 was examined and Ex.R1 to Ex.R37 were marked. Both sides are heard. The pleadings of the parties, the evidence let in by either sides and the exhibits marked on both sides are carefully considered.

5. *The point for consideration is:*

Whether the dispute raised by the petitioner against the respondent management, over his non-employment is justified or not and if justified what is the relief entitled to the petitioner?

6. *On the point :*

In order to prove his case the petitioner has examined himself as PW.1 and he has stated all the facts which are stated in the claim petition and it is the evidence of the petitioner PW.1 that he was working at the respondent establishment as Helper for the past 8 years as permanent workman in "Tapping" Section and that the petitioner is the President of Leo Fasteners Labour Welfare Union and that the petitioner agitated before the respondent for all the basic amenities and needs of the workers through the union and to victimize the petitioner the respondent has caused a charge-sheet on 09-04-2010 alleging that the petitioner was absent on 22-02-2010 and continued his absence from 23-02-2010 without any intimation and that though he asked 10 days time for reply, his request was refused by the respondent on 17-04-2010 and domestic enquiry was ordered and domestic enquiry was initiated against the petitioner by suspending him and that though he submitted his explanation with relevant documents by denying the allegations levelled against him in the charge-sheet before the Enquiry Officer the management has ordered for the domestic enquiry wherein, it was proved by the petitioner that there is no mischief committed by him and the Enquiry Officer danced to the tunes of the respondent and he submitted the report on 20-01-2012 stating that the petitioner was found guilty and that therefore, the management has terminated the petitioner on 17-04-2012 and that subsistence allowance was not paid regularly to the petitioner and that therefore, conciliation was raised by the petitioner on 18-07-2012 and precipitate the conciliation proceedings wherein a cheque was issued for a sum of ₹ 54,290.00 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 ₹ 16,103 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.P11. Ex.P1 to Ex.P3 are the copy of the representations sent by Leo Fasteners Unit-II Labour union to the Labour Secretary, Puducherry, the Deputy Labour Commissioner, Puducherry and to the Managing Director, Leo Fasteners Unit-II. Ex.P4 is the copy of the returned postal cover. 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. Ex.P8 is the copy of the explanation given by the petitioner with acknowledgment card, dated 06-04-2010. Ex.P9 is the copy of the representation given by the petitioner with acknowledgment card, dated 15-04-2010. Ex.P10 is the copy of the letter given by the management to the petitioner on 17-04-2010. Ex.P11 is the copy of the letter given by the petitioner to the management on 17-04-2010. 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 of the respondent management and has claimed to provide safety measures like hand gloves, goggles, mask and appropriate first aid and ambulance facilities, canteen facility and for proper drinking water with sufficient dining facilities and to repair and relay the damaged unsafety electric wiring.

8. On the side of the respondent management the HR-Manager of the respondent establishment was examined as RW.1 and he has reiterated the counter statement filed by the respondent management. It is the evidence of the RW.1 that they are the leading manufacturer of fasteners for the automotive industry and making nut blanks and heat treatment for the automotive industry and that the petitioner and the respondent are well governed by the Model Standing Orders and that the petitioner is a chronic absentee right from the beginning and used to take long leaves on false pretext or another and the management had pardoned him number of times for such behaviours and the management was always helpful to him in times of his need and even

on 01-02-2008 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 SHO, D Nagar in Crime No.70/2010 since, the petitioner and some of his co-workers willfully and voluntarily indulged in an unlawful and illegal strike disobeying an order of Injunction passed by the Hon'ble Additional Sub-Judge, Puducherry and thereafter, the petitioner unauthorisedly abstained from the work without any intimation or permission and on humanitarian grounds on 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 10-04-2010 and on 16-04-2010 for which the petitioner gave a reply with *mala fideness* and falsities besides admitting the illegal strike and voluntarily requested for conducting a domestic enquiry and as the explanation offered by the petitioner was not reasonable, he was suspended and enquiry notice was served on the petitioner and enquiry was initiated against the petitioner after following the legal formalities and that the domestic enquiry was conducted in a free and fair manner giving full opportunity to the petitioner to defend himself from 13-05-2010 to 20-08-2011 and the Enquiry Officer also had explained the entire proceedings of the domestic enquiry and the Enquiry Officer permitted the petitioner to peruse the documents relied on by the respondent and even copies of the documents were furnished after due verification with the originals and the Enquiry Officer also has given permission to the petitioner to engage defense assistance of his choice and the same

was also acknowledged and accepted by the petitioner and that the entire enquiry proceedings were conducted in Tamil and the same was signed by the petitioner without protest and that the petitioner himself acknowledged the fairness of the proceedings and that the enquiry report was based on the appreciation of the entire materials and reasonable opportunity was granted after the enquiry report was furnished to him to submit his explanation and that this petitioner had 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, Pondicherry 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.R37. 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 respondent to the petitioner as reply for letter, dated 04-03-2010. Ex.R3 is the copy of the 1st show cause notice, dated 09-04-2010. Ex.R4 is the copy of letter of authorization, dated 29-12-2017. Ex.R5 is the copy of the appointment letter, dated 19-08-2002. Ex.R6 is the copy of the service standing order, dated 19-11-2003. Ex.R7 is the letter of the ESI Manager regarding the petitioner's signature, dated 19-11-2003. Ex.R8 is the copy of the permission letter of the petitioner asking 20 days leave. Ex.R9 is the copy of the permission letter of the petitioner asking for a sitting job for a period of 3 months, dated 07-12-2005. Ex.R10 is the copy of the confirmation letter, dated 15-07-2008. Ex.R11 is the copy of the service standing orders, dated 29-07-2008. Ex.R12 is the copy of the letter sent by the petitioner to the respondent requesting time for reply for the, dated 05-08-2008. Ex.R13 is the copy of the explanation letter sent by the respondent to the petitioner for the letter, dated 06-08-2008. Ex.R14 is the copy of the letter sent by the petitioner to the respondent, dated 04-03-2010. Ex.R15 is the copy of the unclaimed returned postal cover, dated 11-03-2010. Ex.R16 is the copy of the letter sent by the petitioner to the respondent on 30-03-2010. Ex.R17 is the copy of the letter sent by the respondent to the petitioner as reply for the letter, dated 30-03-2010. Ex.R18 is the copy of the letter sent by the respondent to the petitioner as reply to the letter, dated 09-04-2010. Ex.R19 is the copy of the letter sent by the petitioner to the respondent as reply to the letter, dated 15-04-2010.

Ex.R20 is the copy of the letter sent by the respondent to the petitioner as reply to the letter, dated 15-04-2010. Ex.R21 is the copy of the letter sent by the respondent to the Enquiry Officer, Leo Fasteners on 29-09-2011. Ex.R22 is the enquiry report of the Enquiry Officer, dated 20-01-2012. Ex.R23 is the copy of the letter intimating the result of the domestic enquiry report sent by the petitioner to the respondent on 07-03-2012. Ex.R24 is the copy of the second show cause notice sent by the respondent to the petitioner, dated 28-03-2012. Ex.R25 is the copy of the letter sent through FAX by the petitioner to the respondent regarding the enquiry report, dated 05-04-2012. Ex.R26 is the copy of the letter of dismissal sent by the respondent to the petitioner on 17-04-2012. Ex.R27 is the notice of remarks from office of the Labour Officer (Conciliation) regarding the petitioner, dated 19-07-2012. Ex.R28 is the notice of remarks from office of the Labour Officer (Conciliation) to the respondent, dated 08-08-2012. Ex.R29 is the copy of the letter sent by the respondent to the petitioner regarding the non-payment of subsistence allowance from Feb. 2012 to 17-04-2012 along with calculation and cheque copy. Ex.R30 is the copy of the letter sent by the respondent to the office of the Labour Officer (Conciliation) on 28-08-2012. Ex.R31 is the copy of the letter, dated 27-08-2012 sent by the petitioner to the respondent returning the cheque. Ex.R32 is the copy of the letter, dated 05-09-2012 sent by the respondent to the petitioner with 2 separate cheques for subsistence allowance and terminal benefits. Ex.R33 is the copy of the letter, dated 11-09-2012 sent by the petitioner to the respondent. Ex.R34 is the copy of the letter, dated 11-09-2012 sent by the petitioner to the Office of the Labour Officer (Conciliation). Ex.R35 is the copy of the explanation letter, dated 16-11-2012 sent by the respondent to the Office of the Labour Officer (Conciliation). Ex.R36 is the copy of the report, dated 18-01-2013 on failure of conciliation sent by the Office of the Labour Officer (Conciliation) to the Secretary to Government (Labour). Ex.R37 is the copy of the notice of hearing, dated 08-03-2013 from the Hon'ble Labour Court, Puducherry.

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.R22 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.R22 in which the portion of it runs as follows :

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

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

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

From the above it is clear that the petitioner was charged only under the model standing order and the petitioner was charged for the misconduct under clause 14 (3) (a), 14 (3) (c), 14 (3) (g), 14 (3) (h) and 14 (3) (k) of the model standing order. It is the case of the petitioner that the respondent management having its own service standing order and the employees were given service standing order at the time of their appointment and when they became permanent. The RW.1 in his cross examination has stated as follows :

".....எங்கள் நிறுவனத்தில் தொழிலாளர்களை பணியில் சேரும்போது பணி நியமன உத்தரவோடு (Standing Order) கொடுப்பது இல்லை. பணி நிரந்தரம் செய்யப்படும்போதுதான் Standing Order-ஐ கொடுப்போம். ஆனால், அவர் பணி நிரந்தரம் செய்யப்பட்டவர். ஆனால், எல்லா தொழிலாளர்களுக்கும் Standing Order பொருந்தும் என்றால் சரிதான். 22-02-2010 அன்று மனுதாரர் மற்றும் இதர தொழிலாளர்கள் ஸ்டிரைக்கில் ஈடுபட்டதற்கான charge-sheet-ஐ நீதிமன்றத்தில் தாக்கல் செய்திருக்கிறோம். அப்படி தாக்கல் செய்யவில்லை என்றால் சரியல்ல. எமதசாஆ-22 மனுதாரர்களுக்கு கொடுக்கப்பட்ட குற்றப்பத்திரிக்கையில் model standing order-படி வரையப்பட்டதாக சொல்லப்பட்டுள்ளது. இந்த குற்றச்சாட்டு அடிப்படையில்தான் விசாரணை நடந்தது. மனுதாரர்களுக்கு கொடுக்கப்பட்ட standing order-படி நடவடிக்கை எடுக்கப்படவில்லை என்றால் சரிதான். மனுதாரர்களுக்கு வழங்கப்பட்ட குற்றப்பத்திரிக்கை எல்லாம் அவர்களுக்கு வழங்கப்பட்ட standing order-படி இல்லாது model standing order-படி வழங்கப்பட்டுள்ளது என்றால் சரிதான். மனுதாரர்களுக்கு பணி நியமனத்தில் போது கொடுக்கப்பட்ட standing order-படி நடந்துக் கொள்ளச் சொல்லி அறிவுறுத்தப்பட்டுள்ள நிலையில் model standing order-படி நடவடிக்கை எடுத்தது சொல்லத்தக்கதல்ல standing order பிரிவு 14 உட்பிரிவு 3 உட்பிரிவு (a), (b), (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 RW.1, it is clear that the respondent management has accepted that they are having service standing order and the same was furnished to the employees at the time of their appointment and they have to be acted according to the service standing order and the charges have not been levelled as per the service standing order against the petitioner and the charge mentioned under clause 14 (3) (a), 14 (3) (c), 14 (3) (g), 14 (3) (h) and 14 (3) (k) have not been in the service standing order and clause 14 would speak only about the ESI contribution and it has not spoken any misconduct or

misbehavior of the employees and RW.1 has corroborated the same by perusing the service standing order of the company in the above evidence. Furthermore, the respondent management has exhibited the service standing orders of the company as Ex.R6 and Ex.R11 respectively which were given to the petitioner 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 charges were framed against the petitioner without following the service standing order of the respondent company and charges were framed only on the model standing order cannot be tenable.

13. Further, from Ex.R34 the letter sent by the petitioner to the Labour Conciliation Officer, it is learnt to this Tribunal that the petitioner has challenged the service standing order on 19-08-2010 in the enquiry. The RW.1 in his cross examination has further stated as follows :

".....Model Standing Order-படி விசாரணை நடத்தக்கூடாது என்றும் மனுதாரர்களுக்கு வழங்கப்பட்ட Standing Order-படி விசாரணை நடத்த வேண்டும் என்றும் கூறியதாக சொன்னால் சரியல்ல. எமதசாஆ-21-ல் குருநாதன் கொடுத்த கடிதத்தில் Model Standing Order-படி உள்விசாரணை நடத்த முடியாது என்றும் மனுதாரர்களுக்கு கொடுக்கப்பட்ட Standing Order-படி விசாரணை நடத்த வேண்டும் என்று சொல்லியிருக்கிறார்கள் என்றால் இல்லை. அதனால்தான் நாங்கள் விசாரணை அதிகாரிகளின் கோப்புகளை முழுவதையும் நாங்கள் தாக்கல் செய்யவில்லை என்றால் சரியல்ல. 22-02-2010 அன்று நடந்ததாக கூறப்பட்ட சம்பவத்திற்கும் மனுதாரருக்கும் எவ்வித சம்பந்தம் இல்லை என்றால் சரியல்ல. 22-02-2010-ல் விடுப்பில் இருந்தால் என்று சொன்னால் சரியல்ல. அவர் லீவில் தான் இருந்தார் என்றும், அவ்வாறு இல்லை என்று நான் வழக்கிற்காக பொய் சொல்கிறேன் என்றால் சரியல்ல. 22-02-2010 தேதியிட்ட வருகைப்பதிவேட்டை நாங்கள் தாக்கல் செய்யவில்லை என்று சொன்னால் சரியல்ல. தாக்கல் செய்திருக்கிறோம்.....".

From the above evidence it is clear that the respondent management is having service standing order and while so the charges have not been framed under the respondent's own service standing order which was admitted by RW.1 in his evidence after perusing the service standing order of the company which was exhibited as Ex.R6 and Ex.R11 that the charges mentioned in the clause XIV of the service standing order of the company is only relating to payment of contribution regarding ESI and not about any misconduct or misbehavior of an employee and that therefore, it is clear from the above evidence that the charges have been mistakenly laid against the petitioner under clause XIV of the model standing order while workers have been directed to follow the service standing order of the company when they have been appointed as an employee.

14. Further, it is admitted by RW.1 that they are used to give standing order while the employees have become permanent and this petitioner was also given standing order when he became permanent and every employee has to follow the own standing order. While it was admitted by the respondent management this Court does not find any reason why the petitioner has been charged under the model standing order and further, it is the contention of the petitioner that he has not been allowed to enter into the respondent establishment though he has made attempt to enter into the factory and it is also learnt from the records Ex.P1 to Ex.P3 the representation made by the union that that they have made some demands to the management that the employees are in indefinite strike from 22-02-2010 for their fundamental grievances and non-compliance with the provisions of the Factories Act for safety measures, canteen facilities, toilet facilities and it is also learnt from Ex.P2 that the union has sent a letter to the Deputy Commissioner of Labour, Puducherry regarding the fact that the respondent management has not provided safety measures, etc., in the factory. Further, it is learnt from the said letter that the said letter was sent after they have declared strike and that therefore, the charges levelled against the petitioner by the respondent management that the petitioner is 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 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 earlier and committed any misconduct against the management and no proof is exhibited before this Court to prove the same and therefore, the alleged domestic enquiry conducted against the petitioner is not in accordance with the principles of

natural justice as the charge itself is not properly framed under the own service standing order and furthermore, the punishment of termination against the petitioner for the charge of unauthorized absence for sometime without any prior charges while the union in which the petitioner was the president has undergone the strike and on the complaint of the respondent management some of the workers have been arrested by the Police and they had been in custody and hence, show cause notice could not be given by the management for the 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 president has raised the industrial dispute before the Conciliation Officer against the management of the respondent establishment over the unfair labour practice and against the 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 president. 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.R26 that the order has not been given with the payment of one month wage to the petitioner and that therefore, the order of dismissal has not been passed properly and therefore, it is to be held that the industrial dispute raised by the petitioner against the respondent management over non-employment is justified and the petitioner is entitled for the order of reinstatement as claimed by him in the claim statement.

17. As this Court has decided that the industrial dispute raised by the petitioner against the respondent management over his non-employment is justified, it is to be decided whether the petitioner is entitled for back wages as claimed by him. There is no evidence that the petitioner is working so far in any other industry and that

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

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

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

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

List of petitioner's witness:

PW.1 —12-09-2014— Gurunathan

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.
- Ex.P8—06-04-2010—Copy of the explanation given by the petitioner with acknowledgment card.
- Ex.P9—15-04-2010—Copy of the representation given by the petitioner with acknowledgment card.
- Ex.P10—17-04-2010—Copy of the letter given by the management to the petitioner.
- Ex.P11—17-04-2010—Copy of the letter given by the petitioner to the 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 respondent to the petitioner as reply for letter, dated 04-03-2010.
- Ex.R3—09-04-2010—Copy of the 1st show cause notice.
- Ex.R4 —29-12-2017—Letter of authorization.
- Ex.R5 —19-08-2000—Copy of the appointment letter.
- Ex.R6—19-11-2003—Copy of the service standing order.
- Ex.R7—19-11-2003—Letter of the ESI Manager regarding the petitioner's signature.
- Ex.R8—25-08-2005—Copy of the permission letter of the petitioner asking 20 days leave.
- Ex.R9 —07-12-2005—Copy of the permission letter of the petitioner asking for a sitting job for a period of 3 months.

- Ex.R10—15-07-2008—Copy of the confirmation letter.
- Ex.R11—29-07-2008—Copy of the service standing orders.
- Ex.R12—06-08-2008—Copy of the letter sent by the petitioner to the respondent requesting time for reply for the, dated 05-08-2008.
- Ex.R13—21-08-2008—Copy of the explanation letter sent by the respondent to the petitioner for the letter, dated 06-08-2008.
- Ex.R14—04-03-2010—Copy of the letter sent by the petitioner to the respondent.
- Ex.R15—11-03-2010—Copy of the unclaimed returned postal cover.
- Ex.R16—30-03-2010—Copy of the letter sent by the petitioner to the respondent.
- Ex.R17—06-04-2010—Copy of the letter sent by the respondent to the petitioner as reply for the letter, dated 30-03-2010.
- Ex.R18—15-04-2010—Copy of the letter sent by the respondent to the petitioner as reply to the letter, dated 09-04-2010.
- Ex.R19—17-04-2010—Copy of the letter sent by the petitioner to the respondent as reply to the letter, dated 15-04-2010.
- Ex.R20—17-04-2010—Copy of the letter sent by the respondent to the petitioner as reply to the letter, dated 15-04-2010.
- Ex.R21—29-09-2011—Copy of the letter sent by the respondent to the Enquiry Officer, Leo Fasteners.
- Ex.R22—20-01-2012—Enquiry report of the Enquiry Officer.
- Ex.R23—07-03-2012—Copy of the letter intimating the result of the domestic enquiry report sent by the petitioner to the respondent.

Ex.R24—28-03-2012—Copy of the second show cause notice sent by the respondent to the petitioner.

Ex.R25—05-04-2012—Copy of the letter sent through FAX by the petitioner to the respondent regarding the enquiry report.

Ex.R26—17-04-2012—Copy of the letter of dismissal sent by the respondent to the petitioner.

Ex.R27—19-07-2012—Notice of remarks from Office of the Labour Officer (Conciliation) regarding the petitioner.

Ex.R28—08-08-2012—Notice of remarks from Office of the Labour Officer (Conciliation) to the respondent.

Ex.R29—23-08-2012—Copy of the letter sent by the respondent to the petitioner regarding the non-payment of subsistence allowance from Feb. 2012 to 17-04-2012 along with calculation and cheque copy.

Ex.R30—28-08-2012—Copy of the letter sent by the respondent to the Office of the Labour Officer (Conciliation).

Ex.R31—27-08-2012—Copy of the letter sent by the petitioner to the respondent returning the cheque.

Ex.R32—05-09-2012—Copy of the letter sent by the respondent to the petitioner with 2 separate cheques for subsistence allowance and terminal benefits.

Ex.R33—11-09-2012—Copy of the letter sent by the petitioner to the respondent.

Ex.R34—11-09-2012—Copy of the letter sent by the petitioner to the Office of the Labour Officer (Conciliation).

Ex.R35—16-11-2012—Copy of the explanation letter sent by the respondent to the Office of the Labour Officer (Conciliation).

Ex.R36—18-01-2013—Copy of the report on failure of conciliation sent by the Office of the Labour Officer (Conciliation) to the Secretary to Government (Labour).

Ex.R37—08-03-2013—Copy of the notice of hearing from the Hon'ble Labour Court, Puducherry.

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

GOVERNMENT OF PUDUCHERRY
LABOUR DEPARTMENT

*(G.O. Rt. No. 79/AIL/Lab./T/2018,
Puducherry, dated 15th May 2018)*

NOTIFICATION

Whereas, an Award in I.D. (L) No.47/2015, dated 20-3-2018 of the Industrial Tribunal-cum-Labour Court, Puducherry, in respect of the Industrial Dispute between the management of M/s. Rane Madras Limited, Puducherry and Gayathri, Puducherry, over reinstatement with full backwages, continuity in service and all other attendant benefit 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.

Tuesday, the 20th day of March, 2018

I.D. (L) No. 47/2015

Gayathri,
D/o. Kaliyaperumal,
No. 24, Police Street,
Nettapakkam,
Puducherry. Petitioner

Versus

The Managing Director,
Rane Madras Limited,
No. 77, Thirubuvanai Main Raod,
Puducherry -605 107. Respondent

This industrial dispute coming on 14-03-2018 before me for final hearing in the presence of Tvl. R.T. Shankar, L.K. Saravanan & A.Ashokkumar, Advocates for the petitioner, Thiru K. Babu, Advocate for the respondent, upon hearing both sides, upon perusing the case records, after having stood over for consideration till this day, this Court passed the following:

AWARD

1. This is a petition filed by the petitioner under section 2-(A) of the Industrial Disputes Act, praying to pass an Award to direct the respondent management to reinstate the petitioner with full backwages, continuity of service and all other attendant benefits.

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

The petitioner joined with the respondent company on 12-03-2010 as an employee, but, she had not been given any appointment order on the said date of appointment with the respondent however, continued her work with the respondent factory very honestly and to the entire satisfaction of the respondent management without any remarks or blemish at all. During the course of her employment the respondent management provided an Identity Card thereafter, the respondent management issued an appointment order on 01-06-2011 as such the respondent management concealed the previous employment/service of the petitioner for the period of 15 months and paid monthly salary to a tune of ₹ 4,095. The petitioner

was having requisite experience and qualification and the petitioner have been working for a long period since 12-03-2010 with the respondent management but in contra, the respondent management had issued such alleged appointment order dated 06-11-2011 for the reasons best known to them. The said order of employment, the respondent revealed/declared that the said order is only for the period of one year towards temporary job/employment and after one year, the said employment will be completed but, the petitioner had been continued with the service/employment with the respondent management for the same nature of work for the said period of 5 years. Since, the petitioner is employed for the past 5 years with respondent management and therefore, the petitioner had forced to the respondent management to confirm her employment as permanent employee on and from the year 2014 itself but, the respondent management denied and failed for the same but, instead of complying the lawful/legitimate demands of the petitioner, the respondent management had harassed the petitioner mentally accordingly on 23-10-2014 at about 5.00 p.m. the HR Manager called the petitioner and waited her by standing upto 7.00 p.m. and scolded her in a filthy languages and after very next day on 24-10-2014, the petitioner had been prevented to enter into the factory and waited her at the main gate without giving even water and food as such she has been failed/refused continuously to give food from 7.00 a.m. to 5.00 p.m. The next day i.e. 25-10-2014, is a Sunday and therefore, after taking leave on that day, when the petitioner rushed to the factory on 26-10-2014, she had been again prevented to enter into the factory and not permit her to continue with her employment. The petitioner had been served with the respondent management for the past 5 years from 13-03-2010 but, so far, she has not been confirmed for her employment apart from refusing to continue with her employment. The act committed by the respondent is against labour laws and industrial dispute. By an act of victimization and motivation, the respondent management denied/refused the employment of the petitioner for her permanent status, the said act committed by the respondent management is absolutely illegal and against law and therefore, the respondent is liable to reinstate the petitioner with back wages and continuity of service. The petitioner had also approached the Labour Officer (Conciliation), at Puducherry on 11-12-2014 but, within the period of 45 days there is no amicable settlement arrived as per the Amended Act (24 of 2010) and hence, the petitioner is constrained to file this petition before this Court for adjudication. Therefore, prayed this Court to pass an order to direct the respondent management to reinstate the petitioner with full back wages, continuity of service and all other attendance benefits.

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

The respondent denied all the allegations contained in the claim statement and stated that the claim statement of the petitioner are baseless, vexatious, devoid of merits and is not maintainable either in law or on facts and that the claim made by the petitioner over her alleged non-employment is not maintainable in law or on facts, devoid of merits and hence, liable to be dismissed. The petitioner has circumvented the legal procedures prescribed under the Industrial Disputes Act, 1947 by not approaching the conciliation machinery and had chosen to file her claim statement hastily before this Court for the best reasons known to her and as such the claim statement is to be rejected. The factory unit at Puducherry was established and started its commercial production in the year 1996 and manufactures various models of steering gears and suspension linkage products which are very sensitive products in terms of quality and performance. The numbers of apprentices/trainees taken were also gradually increased keeping pace with the number of products/models that were newly added. It is necessary to point out that these types of operations are comparable only with other units of the respondent management and therefore that was an added reason as to why the training had to be imparted carefully and meticulously over a period of time. In order to impart training to these persons, the Company had engaged experienced Supervisors, under whose immediate supervision, the trainees learn how to work on various process operations. Apart from this, the Company apprentices/trainees were also made to undergo training which is imparted to them by experts. Obviously, conscious of the need to learn and acquire the technique to operate all these advanced operations, the company apprentices/trainees had no objection whatsoever to learn the trade. It is under this process the petitioner was absorbed as a Company Apprentices/ Trainee in the respondent's factory at Puducherry with effect from 02-05-2011. The petitioner joined the factory unit at Puducherry as a Company Apprentice (CAPS) under the Company Apprentice Scheme of the respondent on 02-05-2011. In the meanwhile, since there arised a vacancy for temporary Operator, the petitioner applied for the same and based on the same she was engaged as a temporary Operator *vide* letter of appointment, dated 01-06-2011 initially for a period of one year, the terms and conditions of which are accepted by her. The said engagement of the petitioner as a temporary Operator was purely on temporary basis. It is further respectfully submitted that even

after said the period of one year, the petitioner was allowed to continue in her temporary post due to the temporary pressure of work arisen at that point of time. Since, the petitioner had opted and switched over to temporary Operator from Company Apprenticeship Scheme. She had not evinced much interest as other Apprentices in learning multi-skill that is very vital and essential for the production job. It is the usual practice of the company to periodically assess and appraise the skills of the Company Apprentices/Trainees and other workman of the factory and based on the assessment, the eligible persons will be absorbed as probationers for the permanent posts after screening tests. Though, the petitioner was also made to attend several training programs and offered to learn the production skills as that of others, she was much reluctant to attend training programs and also did not evinced any interest in learning multi-skills. Even in the final appraisal made on 31-05-2014 to assess the scope for permanency for Grade-I Operator, the petitioner expressed her inability to attend the work in other departments/cells of the factory and further expressed that she would do only her routine temporary job. She also failed to write the screening test conducted by the respondent company and as such she was found unsuitable for permanent post. In the meantime, the petitioner did not turn up for the job on and from 25-10-2014 without any intimation.

4. In the course of enquiry on the side of the petitioner PW.1 was examined and Ex.P1 to Ex.P6 were marked and on the side of the respondent RW.1 was examined and Ex.R1 to Ex.R15 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 both sides, written arguments were filed and the same were also carefully considered. In support of his case, the learned Counsel for the petitioner has relied upon the Judgment reported in CDK 1987 BHC 472, CDJ 2011 MHC 4578 and also relied upon the common order passed in W.P.(MD)Nos.11 and 80 of 2015 and M.P.(MD) Nos.1, 1 and 2 of 2015 and WMP (MD) No.1578 of 2016 by Hon'ble Madurai Bench of Madras High Court. The learned Counsel for the respondent also in support of his case has relied upon the Judgment reported in 2003(3) CTC 244 (SC), 1998 LLR 1167 SC, 2006 LLR 68 SC and 2007 LLR 98 (SC).

5. *The Point for consideration is:*

Whether the petitioner is entitled for the order of reinstatement with full back wages, continuity of service and all other attendant benefits or not.

6. It is the case of the petitioner that she joined with the respondent company on 12-03-2010 as an employee and no appointment order was given to her and she was provided with an Identity Card and thereafter, on 01-06-2011 an appointment order was given to her without considering the fact that she already served 15 months at the respondent establishment and her monthly salary was ₹ 4,095 and she had been working at the production department as an Operator doing the perennial nature of work along with other permanent workers and she had been in service for about 5 years and the petitioner has asked the management to confirm her employment as permanent from the year 2014 which was denied by the management and on 23-10-2014 she was prevented to enter into the factory at the main gate without giving even water and food as such she has been refused continuously and on 26-10-2014 again she was prevented to enter into the factory and her employment was refused since she has asked for the status of permanent worker with the management and she was victimized by the management and therefore, she has prayed for reinstatement with full back wages, continuity, service and all other attendance benefits.. In support of her case, the petitioner herself was examined as PW.1 and she has stated all the above-facts in her evidence. In support of her evidence, the petitioner has exhibited Ex.P1 to Ex.P6. Ex.P1 is the copy of appointment order issued by the respondent to the petitioner on 01-06-2011. Ex.P2 is the copy of insured person (I.P) order issued by the Employees State Insurance Corporation to the petitioner on 28-11-1986. Ex.P3 is the copy of the identity card issued by the respondent to the petitioner on 11-03-2011. Ex.P4 is the copy of the identity card order issued by the respondent to the petitioner on 01-05-2012. Ex.P5 is the original copy of the dispute raised before the Labour Officer (Conciliation), Puducherry on 11-12-2014. Ex.P6 is the copy of the ESI contribution details, under the Member I.P. No: 5518704367 and 5518837196 from October-2009 to March-2015. These documents would go to show that the petitioner was appointed on 01-06-2011 at the respondent establishment and an identity card was issued to her on 11-03-2011 even prior to the alleged appointment order and another identity card issued to the petitioner under Ex.P4 would reveal the fact that the petitioner was working at the respondent establishment since from 2011 and the petitioner has raised the industrial dispute before the Labour Conciliation Officer was exhibited on 11-12-2014 and ESI contribution was paid by the respondent management in the name of the petitioner from October-2009 to March-2015.

7. On the other hand, it is the case of the respondent that the respondent factory commenced its business in the year 1996 and manufactures various models of steering gears and suspension linkage products which are very sensitive products in terms of quality and performance and manufacturing operations involves multiple operations and that the induction of apprentice trainees if of two types one is technical with ITI qualification and the other is non-technical with 10th or 12th passed and later they are placed on probation for a year based on their performance and the petitioner joined the factory unit at Puducherry as a Company Apprentice under the Company Apprentice Scheme on 02-05-2011 and subsequently, she appointed as temporary Operator under an order of appointment on 01-06-2011 for a period of one year and her engagement as a temporary Operator was purely on temporary basis and even after the period of one year the petitioner was allowed to continue in her temporary post due to the temporary pressure of work arisen at that point of time and it is the usual practice of the company to periodically assess and appraise the skills of the company Apprentices/Trainees and other workman of the factory and based on the assessment the eligible persons will be absorbed as probationers for the permanent posts after screening tests and that though, the petitioner was also made to attend several training programs and offered to learn the production skills as that of others, she was much reluctant to attend training programs and also did not evinced any interest in learning multi-skills and that the petitioner is bound by the terms and conditions of the appointment order acknowledged by her and in view of the terms and conditions of the appointment order the petitioner has no *locus standi* to claim any permanent post with the respondent establishment and that the petitioner has failed to write the screening test conducted by the respondent company and that the respondent company found that the petitioner was unsuitable for permanent post and thereafter, the petitioner did not turn up for the job on and from 25-10-2014 without any intimation to the respondent management. To prove their contention the respondent management has examined RW.1 and marked as Ex.R1 to Ex.R15. Ex.R1 is the copy of appointment order issued by the respondent to the petitioner on 01-06-2011. Ex.R2 is the copy of sign in Form, dated 25-04-2014. Ex.R3 is the copy of sign in Form, dated 19-06-2014. Ex.R4 and Ex.R5 are the identity cards of the petitioner. Ex.R6 is the copy of assessment sheet of the petitioner, dated 31-05-2014. Ex.R7 and Ex.P8 are the copy of assessment sheet and test papers of company apprentice of the respondent Mr. E. Mariappan,

dated 28-03-2011. Ex.R9 and Ex.R10 are the copy of assessment sheet papers written by company apprentice Mr. N. Dhayanithi, dated 31-12-2011. Ex.R11 is the copy of assessment sheet of company apprentice of the respondent Mr. R. Thirunavukkarasu, dated 28-03-2011. Ex.R12 is the copy of test papers written by company apprentice Mr. R. Thirunavukkarasu. Ex.R13 is the certified photocopy of Exhibit P3 in I.D(L).No.47/2015, dated 11.01.2014. Ex.R14 is the certified photocopy of Exhibit P5 in I.D. (L).No.47/2015, dated 15.02.2017. Ex.R15 is the copy of H4 notice along with copy of petition and documents of the petitioner served on the respondent.

8. From the pleadings of both the parties and evidence let in by both the parties, it can be noticed that the following facts are admitted by either sides that the petitioner was working at the respondent establishment for about four years and now she is not at the respondent establishment and she has raised an industrial dispute for reinstatement of her employment and also for back wages. It is also not disputed by the respondent that the petitioner was working at the respondent establishment. However, it is the main contention of the respondent management that the petitioner was only a apprentice trainee working as temporary employee and she had not been found suitable for the work at the respondent establishment and the petitioner has voluntarily not turned up to the employment. It is stated by the petitioner that her employment has been refused by the respondent management and she was restrained by the management at the main gate on 24-10-2014 and 26-10-2014. But, it is stated by the respondent management that this petitioner was not turned up for the job from 25-10-2014 without any intimation.

9. Apart from the oral evidence of PW.1 the petitioner has exhibited Ex.P1 to Ex.P6. The copy of appointment order is exhibited as Ex.P1 which was issued on 01-06-2011 by the respondent management wherein, it was stated by the respondent management that it is the temporary appointment and it will not confer any right and entitlement for claiming absorption against any regular vacancy and the petitioner was appointed as temporary Operator from 01-06-2011. The Ex.P2 is the copy of identity card issued by the Employees State Insurance Corporation to the petitioner which would evident that the petitioner was working at the respondent establishment. The Ex.P3 and Ex.P4 are the copy of identity cards issued by the respondent management to the petitioner which would evident that the petitioner was working at the respondent establishment and

identity card was given to her which was valid till 01-05-2012. The Ex.P5 is the copy of industrial dispute raised by the petitioner on 11-12-2014 before the Labour Officer (Conciliation). The Ex.P6 is the copy of ESI contribution details which would reveal that the petitioner was paid ESI contribution for the period from 2009 to 2015. These documents would reveal the fact the petitioner was working at the respondent establishment for the period from 2009 to 2014 for about five years.

10. It is contended by the respondent management that the petitioner was only a temporary employee working as apprentice and thereafter, she was working as an Operator and she was found not suitable for employment. But, to prove the same, no such document is exhibited before this Court that the performance of the petitioner was ascertained by them and they passed an order found not suitable for the work to give status of permanent worker. Though, the respondent management has exhibited Ex.R1 to Ex.R15, the assessment sheet of the petitioner as well as other employees are exhibited under Ex.R6 to Ex.R12 which would reveal the fact that it was not signed by the workers who have been assessed by the management and it is a unilateral document. Further, who assessed the level of the petitioner was not examined before this Court. It is also not stated by the respondent management whether the assessment level was intimated to them or not. No document is exhibited before this Court whether the above facts are intimated to the employees regarding the assessment made by them. The respondent himself has exhibited the identity card of the petitioner as Ex.R5 which would reveal the fact the petitioner was working at the respondent establishment from 11-03-2011. Though, the respondent management has contended that the petitioner was only apprentice or trainee and she is not suitable for work, the respondent management has not established that the petitioner had been appointed only as apprentice or trainee. The appointment order has nine terms and conditions. The appointment order has not stated that the petitioner was appointed either as an apprentice or trainee. The said appointment order would evident that the petitioner was appointed as temporary Operator but, in the counter it was stated by the respondent management that the petitioner was appointed as an apprentice. The petitioner by exhibiting the documents established that she had been working at the respondent establishment from 2009 till 2014 and therefore, the contention raised by the respondent management that the petitioner was appointed only as apprentice or trainee cannot be accepted by this Tribunal since the petitioner was

working more than five years continuously at the respondent establishment and she had been contributed for ESI, it can be inferred that she had working for more than 240 days in a year and she has to be treated as permanent worker.

11. Admittedly, in this case no memo and no charge-sheet has been issued to the petitioner and no domestic enquiry was conducted before terminating or refusal of employment to the petitioner from service. It is the case of the respondent management that the petitioner did not turn up for service from 25-10-2014. But, the respondent has not at all stated the reason that why they have not issued any notice or memo to the petitioner for her absence from 25-10-2014 till now. The RW.1 in his cross examination has stated as follows:

“..... கம்பெனி apprentice எடுத்துக்கொள்வதற்கு எந்த சட்டப்படி எடுத்திருக்கிறோம் என்றால் அது பற்றி எனக்கு தெரியாது. எங்களது scheme படி எடுத்திருக்கிறோம். எந்த சட்டத்தின் கீழும் அது வராது. பணியாளராகத்தான் வேலைக்கு எடுத்தோம் என்றும் வழக்கிற்காக பொய் சாட்சி அளிக்கிறோம் என்றும் கம்பெனி apprentice ஆக வைத்திருப்பதற்கு சட்டப்படி இடமில்லை என்றும் சொன்னால் சரியல்ல. 3 ஆண்டுகளுக்கு apprentice ஆக கம்பெனி scheme வைத்திருக்க முடியாது என்றால் சரியல்ல. மனுதாரர் எங்கள் தொழிற்சாலையில் 2011-ல் வேலைக்கு சேர்ந்தார். மனுதாரர் 2010-ல் வேலைக்கு சேர்ந்துவிட்டார் என்றும் வழக்கிற்காக பொய்யாக சொல்கிறோம் என்றால் சரியல்ல. 1-6-2011-ல் அவர் வேலைக்கு சேர்ந்தார் 25-10-2014 வரை மனுதாரர் எங்கள் நிறுவனத்தில் வேலை பார்த்தது உண்மைதான். 3 ஆண்டுகள் apprentice முடிந்த பிறகும் அவரை ஏன் பணியில் வைத்துக்கொள்ளவில்லை என்று கேட்டால் நிரந்தரமாக்குவதற்கு முயற்சிகள் எடுத்தோம். மனுதாரர் ஆர்வம் காட்டவில்லை. மனுதாரர் ஆர்வம் காட்டவில்லை என்று வழக்கிற்காக பொய் சொல்கிறேன் என்று சொன்னால் சரியல்ல. எங்களுக்கு production செய்வதற்கும் apprentice வைத்து நடத்துவதற்கும் அனுமதி அளித்துள்ளது. எங்கள் நிறுவனம் மற்றவர்களுக்கு தொழில் கற்றுக்கொடுக்க ஆரம்பிக்கப்பட்ட நிறுவனம் அல்ல என்றும் உற்பத்தி செய்வதற்காக அனுமதிக்கப்பட்ட நிறுவனம்தான் என்றால் தொழிலையையும் கற்றுக்கொடுக்க ஆரம்பிக்கப்பட்ட நிறுவனம் ஆகும். மனுதாரர் நல்ல முறையில் வேலை செய்வதற்காக சொன்னால் சரியல்ல. அவர் குறைபாடுகளுடன் தான் வேலை செய்து வந்தார். எமதசாஆ 6-ல் அஸஸ்மெண்டில் மனுதாரரிடம் கையெழுத்து வாகவில்லை என்றால் சரிதான். 3 ஆண்டுகளுக்கு பிறகுதான் அவர் வேலையை பற்றி அஸஸ்மெண்டில் செய்வோம். அதற்கு முன் செய்வதில்லை. எமதசாஆ 7 முதல் 12 வரை உள்ள ஆவணங்களில் மனுதாரர் சம்பந்தப்பட்ட ஆவணங்கள் இல்லை என்று சொன்னால் சரிதான். எமதசாஆ 13 முதல் 15 வரை உள்ள ஆவணங்கள் ஏற்கனவே நீதிமன்றத்தில் உள்ள ஆவணங்கள்

தான் என்றால் சரிதான். நாங்கள் தாக்கல் செய்த ஆவணங்கள் அனைத்தும் மனுதாரர் சம்பந்தப்பட்ட ஆவணங்கள் அல்ல என்று சொன்னால் சரியல்ல. 25-10-2014 முதல் மனுதாரர் வேலைக்கு வரவில்லை என்று நாங்கள் சொல்லியிருக்கிறோம். ஆனால் அவருக்கு அறிவிப்பு எதுவும் அனுப்பவில்லை.....”

From the above evidence of RW.1 it is clear that the petitioner was working at the respondent establishment continuously for more than three years and assessment done by the respondent management is not known to the petitioner and it was also not intimated to the petitioner and further, the RW.1 admits that they have not issued any notice to the petitioner for the unauthorized absence from 25-10-2014 as alleged by them. No reason has been assigned by RW.1 that why the respondent management has not taken any disciplinary action against the petitioner for unauthorized absence or for abandonment of service. On this aspect the learned Counsel for the petitioner has relied upon the Judgment reported in CDJ 1984 BHC 472 wherein, the Hon'ble High Court has held that,

“.....What strikes us more is the reasoning of the Labour Court. Since, it is the case of the respondent No.1 Company that the workman had abandoned the service, it was for the company to prove that there was such abandonment. However, the Labour Court has argued that since the workman had not given any notice to the company after his alleged removal, it should be held that it was he who had refused to join the service, and that he had no intention to work in the factory. We have therefore no hesitation in holding that the finding recorded by the Labour Court is *prima-facie* bad in law, and the order of the Labour Court should be set aside.....”.

From the above observation it is clear that atleast notice or memo has to be given whenever the workman had abandoned the service and that therefore, as per the observation of the Hon'ble High Court it is to be inferred that the management has refused the employment of the petitioner. Further, it is stated by the respondent management that the petitioner was appointed only as apprentice and the petitioner has to be worked as probationer and after verifying the performance of the petitioner she would be appointed as permanent. But, no record has been produced by the respondent establishment to prove that she was appointed as an apprentice and thereafter, she appointed as probationer and therefore, it is clear that the respondent management has failed to establish that the petitioner has committed any unauthorized absence as stated by them.

12. On the other hand, it is established by the petitioner from Ex.P1 that the petitioner was only appointed after the interview conducted by the respondent management and she rendered uninterrupted service for more than three years between 2009 to 25-10-2014 and she was abruptly denied employment without giving any memo or notice. Further, it is also established by the petitioner that she had been doing production work along with the permanent workers. Though, the respondent management has exhibited Ex.R2 and Ex.R3 the training sign Form, it does not contain any signature of the management and the Form is relating to the year 2014 and no reason has been assigned by the management that why these workers have been treated as trainees while they were working as early as from 2011 and further, the said Ex.R2 and Ex.R3 are not supported by any evidence of the officials who are maintaining it. Further, the respondent management has exhibited the identity cards of the petitioner under Ex.R4 and Ex.R5 wherein, it has not been stated that the petitioner was a trainee or apprentice. Furthermore, the Ex.R5 would evident that the identity card was issued by the management to the petitioner stating that the identity card was valid till 11-03-2011 while she had been given appointment only on 01-06-2011. The same identity card exhibited under Ex.R5 was also exhibited by the petitioner under Ex.P4. It is alleged by the respondent management that the document exhibited by the petitioner is fabricated one. But, no steps were taken by the respondent management to prove that such document is fabricated one and therefore, from Ex.R5 it can be inferred that even prior to the date of appointment the petitioner had been in service at the respondent establishment as stated by the petitioner and Ex.R5 strengthen the case of the petitioner that he had been in service from 12-03-2010 prior to the order of appointment dated 01-06-2011.

13. The learned Counsel appearing for the respondent submitted a written argument wherein, he has stated that as per the point No. 2 of the appointment order the petitioner will not confer any right or entitlement for claiming absorption against any regular vacancy and when it occurs it will be determined on the basis of relative merit of other candidates. However, any terms and conditions which is against the labour laws cannot be enforced against the worker as the petitioner has completed the service of about four years and as the respondent has not produced the attendance registers or wage register to establish that the petitioner had not been in service for about 240 days in a year, it is to be inferred that the petitioner's service has to be regularized and the

termination of the employment was done without following the procedure as laid down under the Act and even no memo has been issued and no charge-sheet has been issued and no domestic enquiry was conducted before refusal of employment and that therefore, the contention raised by the respondent that petitioner was not turned up from 25-10-2014 also cannot be accepted and that therefore, the refusal of employment to the petitioner is against the provisions of labour laws while the petitioner had been working at the respondent establishment for more than five years as an Operator and that therefore, it is to be held that the industrial dispute raised by the petitioner against the respondent management over her non-employment is justified and as such the petitioner is entitled for order of reinstatement as claimed by her.

14. As this Court has decided that the industrial dispute raised by the petitioner against the respondent management over her non-employment is justified, it is to be decided whether the petitioner is entitled for back wages as claimed by her. 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 she is working anywhere else. The respondent has not proved the fact that the petitioner has been working in any other establishment after her abandonment of service. However, the petitioner could have served at any other industry after her refusal of employment. Considering the above facts and circumstances, this court decides that the petitioner is entitled only for 30% back wages with continuity of service and other attendant benefits.

15. In the result, the petition is allowed and the industrial dispute raised by the petitioner against the respondent management over her 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 30% back wages from the date of refusal of employment 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 20th day of March, 2018.

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

List of petitioner's witness:

PW.1 —29-12-2016— Gayatri

List of petitioner's exhibits:

- Ex.P1 01-06-2011 — Copy of appointment order issued by the respondent to the petitioner.
- Ex.P2 28-11-1986 — Copy of insured person (I.P) order issued by the Employees State Insurance Corporation to the petitioner.
- Ex.P3 11-03-2011 — Copy of the identity card issued by the respondent to the petitioner.
- Ex.P4 01-05-2012 — Copy of the identity card issued by the respondent to the petitioner.
- Ex.P5 11-12-2014 — Original copy of the dispute raised before the Labour Officer Conciliation, Puducherry.
- Ex.P6 — October 2009 to March-2015 — Copy of the ESI contribution details, under the Member I.P. No. 5518704367 and 551887196.

List of respondent's witness:

RW.1 —09-06-2017— S. Joseph

List of respondent's witnesses:

- Ex.R1 01-06-2011 — Copy of appointment order issued by the respondent to the petitioner.
- Ex.R2 25-04-2014 — Copy of sign in form.
- Ex.R3 19-06-2014 — Copy of sign in form.
- Ex.R4 — — Identity card of the petitioner valid till 01-05-2012.
- Ex.R5 — — Identity Card of the petitioner valid till 11-03-2011.
- Ex.R6 31-05-2014 — Copy of assessment sheet of the petitioner.
- Ex.R7 28-03-2011 — Copy of assessment sheet of an company apprentice of the respondent Mr. E. Mariappan.
- Ex.R8 — — Copy of test papers written by company apprentice Mr. E. Mariappan.
- Ex.R9 31-12-2011 — Copy of assessment sheet of an company apprentice of the respondent Mr. N. Dhayanithi.

- Ex.R10 — — Copy of test papers written by company apprentice Mr. N. Dhayanithi.
- Ex.R11 28-03-2011 — Copy of assessment sheet of an company apprentice of the respondent Mr. R. Thirunavukkarasu.
- Ex.R12 — — Copy of test papers written by company apprentice Mr. R. Thirunavukkarasu.
- Ex.R13 11-01-2017 — Certified photocopy of Exhibit P3 in I.D. (L). No.47/2015.
- Ex.R14 15-02-2017 — Certified photocopy of Exhibit P5 in I.D. (L). No. 47/2015.
- Ex.R15 — — Copy of H4 notice along with copy of petition and documents of the petitioner served on the respondent.

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

புதுச்சேரி அரசு

இந்து சமய நிறுவனங்கள் மற்றும் வக்ஃபு துறை

(அரசு ஆணை பலவகை எண் 66/இசநி/கோ.3/2018
புதுச்சேரி, நாள் 2018 (வருட) சூலை மீ 24 உ.)

ஆணை

புதுச்சேரி மாநிலம், உழவர்கரை நகராட்சி, சண்முகாபுரம், அருள்மிகு சர்வசித்தி விநாயகர், ஸ்ரீ வள்ளி தேவசேனா சமேத ஸ்ரீ சுப்பிரமணிய சுவாமிகள் தேவஸ்தானம், அரசு ஆணை பலவகை எண் 20/இசநி/கோ.3/2009, நாள் 08-10-2009-ன் மூலம் ஓர் அறங்காவலர் வாரியம் அமைக்கப்பட்டது. இவ்வறங்காவலர் வாரியத்தின் பதவிக்காலம் முடிவடைந்துவிட்டது.

2. இந்நிலையில், மேற்குறிப்பிட்ட திருக்கோயிலை நிர்வகிப்பதற்கு ஓர் புதிய அறங்காவலர் வாரியம் அமைக்க வேண்டியது இன்றியமையாததாகிறது.

3. எனவே, 1972-ஆம் ஆண்டு புதுச்சேரி இந்து சமய நிறுவனங்கள் சட்டம் 4-(1)ஆம் பிரிவின்கீழ் வழங்கப்பட்டுள்ள அதிகாரங்களைச் செலுத்தி, மேற்கூறிய ஆலயத்திற்கு கீழ்க்குறிப்பிட்டுள்ள ஐந்து நபர்களைக் கொண்ட ஓர் அறங்காவலர் வாரியத்தை அரசு உடனடியாக அமைக்கிறது.

திருவாளர்கள் :

- (1) விநாயகம், . . தலைவர்
த/பெ. சண்முகம்,
எண் 38 B, விநாயகர் கோயில் வீதி,
சண்முகாபுரம், புதுச்சேரி.