



புதுச்சேரி மாநில அரசிதழ்

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பொருளடக்கம்

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GOVERNMENT OF PUDUCHERRY

LABOUR DEPARTMENT

(G. O. Rt. No. 184/Lab./AIL/T/2017,
Puducherry, dated 29th November 2017)

NOTIFICATION

Whereas, an Award in I.D.(T) No. 28/2012, dated 24-10-2017 of the Industrial Tribunal, Puducherry in respect of the industrial dispute between the management of M/s. Larsen and Toubro Limited, ECC Division, Puducherry and as its workmen Larsen and Toubro Pattali Thozhirsangam over non-payment of one time lump sum amount for the year 2010-2011 has been received.

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

(By order)

S. MOUTTOULINGAM,

Under Secretary to Government (Labour).

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

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

Tuesday, the 24th day of October, 2017

I.D. (T) No. 28/2012

The President,
Larsen and Toubro Pattali Thozhirsangam,
No. 109, Sixth Cross Street,
Rathna Nagar, Gundupalayam,
Puducherry. . . Petitioner

Versus

The Managing Director,
M/s. Larsen and Toubro Limited,
ECC Division,
Mylam Road, Sedarapet,
Puducherry-605 111. . . Respondent.

This industrial dispute coming on 27-09-2017 before me for final hearing in the presence of Tvl. P.R. Thiruneelakandan and A. Mithun Chakkaravarthy and R. Harinath, Counsel for the petitioner, Tvl. M. Vaikunth,

V. Narayanan, R. Vikneshraj and R. Elamparuthi, Counsel for the respondent and when the case was posted for respondent side argument, the respondent remained absent and no representation for the respondent, upon hearing the petitioner, upon perusing the case records, after having stood over for consideration till this day, this Court passed the following:

AWARD

1. This industrial dispute has been referred by the Government as per the G. O. Rt. No. 177/AIL/Lab./J/2012, dated 09-10-2012 for adjudicating the following:-

i. Whether the dispute raised by Larsen and Toubro Pattali Thozhirsangam against the management of M/s. Larsen and Toubro Limited, ECC Division, Puducherry over non-payment of one time lump sum amount for the year 2010-2011 with an increase from the payment made in the previous year 2009-2010 for (i) Grade I to III - increase by 70% to a tune of ₹13,580 and (ii) Grade-IV - increase by 75% to a tune of ₹ 15,075 are justified?

(ii) If justified, to what relief the union workmen are entitled to ?

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

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

The petitioner trade union is a registered trade union registered before the Registrar of Trade union as Reg. No.1249/RTU/2001, under the Trade Union Act, 1926. The details of petitioner union members given in Annexure-I are permanent employees of the respondent factory situated at Mylam, Sedarapet, Puducherry - 605 111. The respondent had been paying one time lump sum amount during Diwali festival and it has been followed as a customary practice and it became the part of service conditions of the employees of the respondent factory. Every year the one time lump sum amount has been paid to the employees in addition to the bonus without any reference to the profit or loss to the respondent company. With regard to the quantum of one time lump sum amount, every year the trade union demanded increase. The respondent every year announced a reasonable hike in the one time lump sum amount after negotiation, for instance in the year 2005-2006 the respondent announced one time lump sum amount for Grade 2 employees and Grade 3 employees as ₹ 11,400 and for Grade 4 employees-12,000. For the year 2006-2007 after the demand of the petitioner union the respondent negotiated with the petitioner union and then

announced an increase a sum of ₹ 1,500 from the last year. Till 2009 the respondent considered the demand of the petitioner trade union and gave increase reasonable amount in the one time lump sum amount. In the year 2008 the respondent announced one time lump sum amount for Grade 2 employees and Grade 3 employees as ₹ 14,900 with the increase of ₹ 2,000 and for Grade 4 employees - 15,600 with the increase of ₹ 2,100. In the year 2009 the respondent announced one time lump sum amount for Grade 2 employees and Grade 3 employees as ₹ 19,400 with the increase of ₹ 2,500 and for Grade 4 employees-20,100 with the increase of ₹ 2,500. It is a usual practice that the respondent along with the charter of demand of wage revision and other allowances negotiate the quantum of increase of one time lump sum amount. In the year 2011 due to some difference of opinion between the respondent and the trade union the signing of wage settlement was delayed. In order to pressurise the trade union to accept the offer of wage increase announced by the respondent management the respondent management did not come forward to negotiate the demand of one time lump sum amount increase for the year 2010-2011. The respondent despite the objection of petitioner trade union unilaterally without any increase announced the one time lump sum amount paid for the year 2009-2010 as one time lump sum amount for the year 2010-2011 and also credited the same to the petitioner union members bank account. The petitioner trade union sent several letters, dated 11-9-2011, 10-10-2011, 22-10-2011 and 27-10-2011 requesting the respondent to reasonably increase one time lump sum amount for the year 2010-2011 at least on par with the increase given to the employees in the managerial staff category. The respondent did not pay any heed to the request of the petitioner. Hence, the petitioner union raised the dispute before the Labour Officer Conciliation on 8-11-2011 and the same was ended in failure. The respondent without negotiation unilaterally announced one time lump sum amount without any hike, which is an unfair labour practice followed by the respondent to pressurise the petitioner trade union to sign in the wage settlement without any demand or oppose. For several years the respondent paid one time lump sum amount with reasonable hike arrived in the negotiation talk with the petitioner union. The petitioner union members are entitled to a reasonable increase in the one time lump sum amount for the year 2010-2011. The respondent denied such increase to the petitioner union members and increased the one time lump sum amount to the company staff alone, which is illegal and unfair labour practice. The respondent profited 25% than the earlier financial year. The employees

employed as managerial staff in the respondent factory were paid One Lakh to Two Lakhs as one time lump sum amount for the year 2010-2011. On considering the amount paid to the managerial staff the petitioner union members who are all directly engaged in the manufacturing activities are entitled for 70% to 75% increase of one time lump sum amount paid in the previous year 2009-2010 for the year 2010-2011. Even for the year 2011 to 2012 the respondent had negotiation with petitioner union and gave reasonable hike, that if the respondent would have given hike in the one time lump sum amount for the year 2010-2011 it would have added for the year 2011-2012, since the respondent denied hike for the year 2011-2012 also, hence the petitioner union members are entitled hike with cumulative effect for from the period 2010-2011. Petitioner union prayed this Court to direct the respondent to pay one time lump sum amount for the year 2010-2011 with an increase from the payment made in the previous year 2009-2010 for (i) Grade 1 to 3 increase by 70% to a tune of ₹ 13,580 and (ii) Grade IV increase by 75% to a tune of ₹15,075 with cumulative effect from the period 2010-2011 interest.

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

The respondent denied the averments made by the petitioner in the claim petition and stated that the averments in the claim petition are farce and concocted for the purpose of the petition and further stated that it is admitted by the petitioner union that it is only customary practice of giving one time lump sum amount and not under any provisions of law in force. Hence, giving a one time lump sum amount payment is only based on discretion of the company and not under any law. Hence, the petitioner cannot ask for prayer which totally question of policy of the company and in other way putting the company under threat and trying to get the means by illegal method which is not permissible under law. It is a settled proposition of law equality can be pleaded only among the equal not among the in equals. The prayer of the claim petition is totally unknown to law.

4. In the course of enquiry on the side of the petitioner PW.1 & PW.2 was examined and Ex.P1 to Ex.P45 were marked and on the side of the respondent RW.1 was examined and Ex.R1 was marked. The argument of the petitioner was heard. Though several opportunities were given, the respondent has not turned up before this Court to putforth their argument. Since, the case relates to the year 2012 the argument of the respondent was closed and the case was posted for orders.

5. *The point for consideration is:*

Whether the dispute raised by the petitioner Thozhirsangam against the respondent management over non-payment of one time lump sum amount for the year 2010-2011 with an increase from the payment made in the previous year 2009-2010 for (i) Grade I to III - increase by 70% to a tune of ₹13,580 and (ii) Grade-IV increase by 75% to a tune of ₹ 15,075 are justified or not and if justified, what is the relief entitled to the union workmen?

6. The pleadings of the parties, the evidence let in by either sides and the exhibits marked on both sides are carefully considered. From the pleadings of both the parties it is clear that following facts are admitted by either sides that petitioner union members are working at the respondent establishment and they have been paid one time lump sum amount for the period from 2005-2006, 2006-2007, 2007-2008, 2008-2009 and 2009-2010 with an increase and they have paid One Time lump sum amount for the year 2010-2011 without an increase. It is the contention of the petitioner union that the respondent management had been paying one time lump sum amount during Diwali festival and it has been followed as a customary practice and it became the part of the service conditions of the employees of the respondent factory and every year the one time lump sum amount has been paid to the employees in addition to the bonus without any reference to the profit or loss to the respondent company and the quantum of one time lump sum amount for every year was increased by the respondent management after negotiation and the respondent management has paid one time lump sum amount from 2005-2006, 2006-2007, 2007-2008, 2008-2009 and 2009-2010 with some reasonable increase and in the year 2011 due to some difference of opinion between the respondent management and the trade union with regard to the signing of wage settlement the management did not come forward to negotiate the demand of one time lump sum amount with an increase for the year 2010-2011 and hence, the union has sent several letters, dated 11-9-2011, 10-10-2011, 22-10-2011 and 27-10-2011 requesting the respondent to reasonably increase one time lump sum amount for the year 2010-2011. But, the respondent did not heed to the request of the petitioner and hence, the petitioner union raised the dispute before the Labour Officer-Conciliation on 08.11.2011 and on failure the Government has referred this matter to this Court.

7. In order to prove the contention, the petitioner has exhibited Ex.P1 to Ex.P45. Ex.P1 is the Copy of the circular issued by the respondent for lump sum payment for permanent workmen. Ex.P2 is the Copy of the minutes of meeting regarding OTLS for the year 2006-2007. Ex.P3 is the Copy of the minutes of meeting regarding the payment of OTLS for the year 2007-2008. Ex.P4 is the Copy of the receipt of payment of OTLS for the year 2008-2009. Ex.P5 is the Copy of the circular issued by the respondent for OTLS for the year 2009-2010. Ex.P6 is the Copy of the petitioner's letter to respondent. Ex.P7 is the Copy of the details of the payment OTLS since 2004. Ex.P8 is the Copy of the petitioner's letter to respondent regarding OTLS non-payment. Ex.P9 is the Copy of the petitioner's letter to the respondent regarding non payment of OTLS. Ex.P10 is the Copy of receipt for payment of OTLS to the workers namely S. Kumar for the year 2011-2012. Ex.P11 is the Copy of the respondent's letter to the petitioners regarding payment of OTLS in the Bank Account of the petitioners. Ex.P12 is the Copy of the petitioner's letter to the respondent regarding objection as to non payment of increased OTLS. Ex.P13 is the Copy of the petitioner's letter to the Conciliation Officer regarding OTLS. Ex.P14 is the Copy of the respondent's letter to the Conciliation Officer. Ex.P15 is the Copy of the Conciliation Notice. Ex.P16 is the Copy of the respondent's letter to the Conciliation Officer. Ex.P17 is the Copy of the petitioner's letter to the Conciliation Officer. Ex.P18 is the Copy of the Conciliation report. Ex.P19 is the Copy of the Government's Order. Ex.P20 is the Copy of the payment of OTLS for the year 2011-2012 (minutes of meeting). Ex.P21 is the Copy of the minutes of meeting regarding payment of OTLS payment OTLS further year 2012-2013. Ex.P22 is the Copy of the circular issued by the Head Quarters for lump sum payment to permanent Non-Supervisory Employees. Ex.P23 is the Copy of the Circular issued by the respondent for lump sum payment to permanent workers. Ex.P24 is the Copy of the petitioner's letter to the respondent. Ex.P25 is the Copy of the petitioner's letter to the respondent. Ex.P26 is the Copy of the petitioner's letter to the Conciliation Officer. Ex.P27 is the Copy of the petitioner's letter to the Conciliation Officer. Ex.P28 is the Copy of the petitioner's letter to the respondent. Ex.P29 is the Copy of the petitioner's letter to the respondent. Ex.P30 is the Copy of the petitioner's letter to the respondent. Ex.P31 is the Copy of the petitioner's letter to the Labour Secretary. Ex.P32 is the Copy of the petitioner's letter to the Conciliation Officer. Ex.P33 is the Copy of the petitioner's letter to the respondent. Ex.P34 is the

Copy of the petitioner's letter to the respondent. Ex.P35 is the Copy of the petitioner's letter to the respondent for strike notice. Ex.P36 is the Copy of the petitioner's letter to the respondent. Ex.P37 is the Copy of the petitioner's letter to the respondent for hunger strike. Ex.P38 is the Copy of the petitioner's union member namely *viz* Krishnamoorthy Suspension order. Ex.P39 is the Copy of the petitioner's union member namely *viz* Rajendiran Suspension order. Ex.P40 is the Copy of the petitioner's letter to the respondent. Ex.P41 is the Copy of the petitioner's union member namely *viz* Krishnamoorthy letter to the respondent. Ex.P42 is the Copy of the petitioner's letter to the respondent. Ex.P43 is the Copy of the respondent's revocation order. Ex.P44 is the Copy of the petitioner's letter to the respondent. Ex.P45 is the Copy of the petitioner's letter to the respondent.

8. The above documents would go to show that one time lump sum amount was granted by the respondent management for the year 2005-2006 as ₹11,400 to Grade II and III workmen and ₹12,000 to Grade IV workmen and that one time lump sum amount was given apart from the bonus and that the office bearers of the petitioner union and the management have signed the settlement in a meeting held on 31-10-2007 pertaining to Bonus and one time lump sum amount for the year 2006-2007 and that meeting was held on 14-10-2008 pertaining to bonus and one time lump sum amount for the year 2007-2008 wherein one time lump sum amount has been increased ₹ 2,000 for Grade-II and III and ₹ 2,100 for Grade IV and that one time lump sum amount was given to the members of the petitioner union for the period 2008-2009 at ₹16,900 and that for the period 2009-2010 one time lump sum amount were paid to the Grade II and III employees at the rate of ₹19,400 and ₹ 20,100 to Grade IV employees and the amount has also been credited to the bank account of the members of the workers union and that on 14-9-2011 the petitioner union have demanded one time lump sum amount along with the bonus.

9. The documents would further reveal the fact that the respondent management has paid one time lump sum amount with an increase for every year from 2005-2006, 2006-2007, 2007-2008, 2008-2009 and 2009-2010 to the workers and the respondent management had paid one time lump sum amount without an increase for the year 2010-2011 and the petitioner union has sent several letters to the management to pay the one time lump sum amount with an increase for which the respondent management has stated in their reply under Ex.P11 that they have not increased the one time lump sum amount and has paid one time lump sum

amount as granted to them in the year 2009-2010 without any increase for which the union has once again demanded the same and they have filed the petition and raised the industrial dispute before the Conciliation Officer and conciliation notice was issued and since the conciliation was failed the Government has referred this matter to this Court and meanwhile the respondent management has announced the one time lump sum amount with some increase in the year 2011-2012.

10. On the other hand, it is contended by the respondent management that giving of one time lump sum amount is only based on the discretion of the company and not under any law and it is clear that the petitioners cannot ask the one time lump sum amount as a matter of right and it is only discretion of the company and petitioners are not entitle for any increase in the one time lump sum amount as a matter of right and it is not a change of service condition and asking one time lump sum amount on par with the managerial staff is not sustainable and it is settled provisions of law equality can be pleaded only among the equal not among the in equals and that petitioners are not entitle for any increase in the one time lump sum amount as a matter of right.

11. On this aspect, it is to be decided whether the petitioners are having the right to claim the right as a customary right or not. Admittedly in this case one time lump sum amount with increase has not been given by the respondent management for the period of 2010-2011 since they have paid one time lump sum amount with increase in the earlier financial years for the period 2005-2006, 2006-2007, 2007-2008, 2008-2009 and 2009-2010. Ex.P6 would reveal the same and they have not given one time lump sum amount with increase for the period 2010-2011 to the petitioners.

12. The learned Counsel appearing for the petitioner submits that no notice was issued to the workers union or its members regarding that they are going to stop the increase in payment of one time lump sum amount for the year 2010-2011 under section 9A of the Act as required under IV Schedule of the Act while changing the service condition of the workmen and decision of stopping of increase in one time lump sum amount for the period 2010-2011 was taken by the management without negotiating the same with the union members is unilateral and that therefore, the petitioners are entitled for the same as a customary right since they have paid the one time lump sum amount with increase for the past several years and that therefore, the petitioners are entitled to get one time lump sum amount with an increase of ₹ 3,000 for the period 2010-2011.

13. The main contention of the petitioner union is that one time lump sum amount has to be increased and paid as a customary right to the petitioners and the stoppage of increase in payment of one time lump sum amount in addition to the bonus is a change of service condition and it is also a customary right of the workers to get one time lump sum amount since they have received for the past 6 years from 2005-2006 till the period 2009-2010. On the other hand, it is contended by the respondent management that one time lump sum amount has not been given under any provision of law in force and it is paid only on the discretion of the company and petitioners cannot ask the one time lump sum amount as a matter of right without any legal basis.

14. On this aspect, records and documents are carefully perused. The proviso of section 9A of the Industrial Disputes Act runs as follows :

Notice of change. - No, employer, who proposes to effect any change in the conditions of service applicable to any workman in respect of any matter specified in the Fourth Schedule, shall effect such change,-

(a) without giving to the workmen likely to be affected by such change a notice in the prescribed manner of the nature of the change proposed to be effect; or

(b) within twenty-one days of giving such notice :

Provided that no notice shall be required for effecting any such change-

(a) where the change is effected in pursuance of any 2[settlement or award]; or

(b) where the workmen likely to be affected by the change are persons to whom the Fundamental and Supplementary Rules, Civil Services (Classification, Control and Appeal) Rules, Civil Services (Temporary Service) Rules, Revised Leave Rules, Civil Service Regulations, Civilians in Defence Services (Classification, Control and Appeal) Rules or the Indian Railway Establishment Code or any other rules or regulations that may be notified in this behalf by the appropriate Government in the Official Gazette, apply.

From the above provision, it is clear that if any employer propose to any change in service of condition applicable to any workmen in respect of any matter specified in fourth schedule would not give such change without giving any notice to the workmen in the prescribed manner of the nature of change proposed to be affected and whenever an employer unilaterally proposes to effect any change in respect of any of the

matters specified in the Fourth Schedule he ought to give notice to the workmen as mandated by this section. The provision safeguards the interest of the employees: in that it prohibits an employer from taking any action in the specified matters without giving due notice under section 9 of the Act.

15. The main contention of the respondent management is that to stop the increase in payment of one time lump sum Amount for the period 2010-2011 no meeting is necessary with the union members and it is the discretion of the respondent management to increase the same since the said amount is not wages and there is no change of service condition and it is also a further contention of the respondent that though they have paid the one time lump sum amount for the period from 2005-2006 to 2009-2010, the petitioner cannot claim the said one time lump sum amount as a customary right. On this aspect, it is to be decided whether the petitioner's claim of increase in one time lump sum amount as a customary right is sustainable or not and it is also to be decided whether the stoppage of one time lump sum amount for the period 2010-2011 required any notice under section 9A of the Industrial Disputes Act and.

16. The Fourth Schedule of the Act requires that a notice is to be given to the employee for change of service condition wages and withdrawal of any compensatory allowance or any allowances or any contribution payable by the employer to any provident fund or pension fund or for the benefit of the workmen under any law for the time being in force and particularly withdrawal of any customary concession or privilege or change in usage.

17. It is to be decided whether the petitioner union has established that they have got a customary right to get such one time lump sum amount from the respondent management. They have received the one time lump sum amount from the respondent management for the past 6 years from the year 2005-2006 till 2009-2010 apart from the bonus. Admittedly, the respondent management has paid the one time lump sum amount for the period 2005-2006 to 2009-2010 with gradual increase at the rate of ₹ 1,000 to ₹ 2,500-apart from bonus. On this aspect, the Supreme Court of India in Workmen of Kettlewell Bullen & Co. Limited, Vs. Kettlewell Bullen & Co. Limited, has held that,

"On the basis of payment during 1965 to 1973 at the uniform rate of 10.5% of the salary or wages, it could be said, ignoring the first few years that the payment was made at a uniform rate for an unbroken period of

nine years from 1965 to 1973 which was a sufficiently long period and the Tribunal could have reasonably drawn as inference that the said payment was customary or traditional bonus on the occasion of Pooja Festival".

From the above observation, it is clear that whenever an amount is being paid by the employer to the employees for some years it can be treated as customary right. In this case, admittedly, the petitioner has been paid the one time lump sum amount from the period 2005-2006 till 2009-2010 with gradual increase at the rate apart from bonus and hence, it is held by this Court that the petitioners are having the customary right of getting one time lump sum amount from the respondent management apart from bonus with increase.

18. In the light of the Judgment reported in AIR 1975 SC 1856 in Management of Indian Oil Corporation Limited, Vs. Workmen, the Hon'ble High Court has held that concession of paying allowance to workmen may become an implied condition of service so as to attract the mandatory provisions of section 9-A of the Act. Once the payment of allowance becomes a part of the conditions of service of workmen, it cannot be withdrawn at the will of the employer, even if the payment is made voluntarily and as a temporary measure out of sympathy for workers. It is needless to state that unilateral withdrawal of voluntary payment as a concession in the condition of service would materially and adversely affect the workmen for all time to come. It amounts to a change in the conditions of service and the management is bound to follow the procedure in section 9-A of the Act.

19. The petitioner has contended in its application since the employer has paid the lump sum amount from the year 2005-2006 to 2009-2010 for about six years with gradual increase and to stop such customary right, the employer has to give notice under section 9A of the Act but they have not given any such notice to stop the increase in payment of one time lump sum amount and has violated the provision of act and therefore they cannot stop the one time lump sum payment for the period 2010-2011 with increase and the members of the union sought for the Order of granting such one time lump sum amount with increase in the application

20. In the light of the Judgment reported in 2003-III-LLJ(Pg.No.81) of High Court of Rajasthan pronounced in Director, State Farms Corporation of India Limited Vs. Judge, Industrial Tribunal and Labour Court, Bikaner and others, wherein, it has been held that,

"Moreover we are informed by the learned Counsel for the parties that amenities extended to workmen, which is now used as shield to defend the action of management in unilateral reduction of project allowance from 10% to 8%, had already come into existence long before the unilateral reduction of the allowance and for long workmen were receiving project allowance at 10% in addition to amenities made available to them. Thus no nexus between the reductions in project allowance as *quid pro quo* for extending additional benefits *in lieu* thereof is discernible. The reduction in project allowance undoubtedly results in reduction of wages as defined in section 2(rr) of the Industrial Dispute Act, 1947 and falls within 'conditions of service for change of which notice is to be given' under items 1 and 3 of Schedule IV appended to the Act which attracted operation of section 9-A of the said Act, which has been held to be mandatory requirement before any such alteration can be effected.

For the foregoing reasons, we hold that, the view of the learned single Judge that the change in the rate of project allowance adversely affected the conditions of service of the employees working in project and they were required to be given notice under section 9-A of the Act, which the appellant failed to do cannot be faulted and must be sustained. We Order accordingly. The appeal, therefore, fails and is hereby dismissed."

From the above observation of the Hon'ble High Court, it is clear that if the employer propose to change any condition of service applicable to any workmen, section 9A of the Act would come into operation, the moment when the employer propose to change any condition of service and to effect such a change, a notice is to be given under section 9A of the Act and if, such notice was not given, the withdrawal of increase in the payment of one time lump sum amount cannot be stopped and furthermore, the Hon'ble High Court has observed in the case that even project allowance is part of the condition of the workmen and the notice is mandatory under section 9A of the Act for effecting the change of reduction of project allowance but in this case admittedly, the respondent has not arrived at any settlement with the members of the petitioner union and furthermore the petitioners workmen have not given any consent for stoppage of increase in payment of one time lump sum amount to the workers.

21. The respondent management who has admittedly stopped the increase in the payment of one time lump sum amount for the period of 2010-2011 to the employees and changed the condition of service

of the workmen by withdrawing the increase in payment of one time lump sum amount to the employees described in item-8 of the 4th Schedule of the Act before effecting the change, the respondent management must have complied with the section 9A of the Act, and a notice has to be issued for the stoppage of increase in payment of one time lump sum amount to the employees under the customary right. In such circumstances, the respondent management ought to have given notice under section 9A of the Act for stoppage of the said increase amount to the workers but the respondent management has failed to give such notice to the petitioner union and that therefore, it is clear that the petitioner union members are entitled for the one time lump sum amount with an increase of ₹ 3,000 for the period 2010-2011 as claimed by the petitioner union since they have received one time lump sum amount with an increase of ₹ 2,500 for the year 2009-2010 in addition to the bonus and that therefore the dispute raised by the petitioner Union against the respondent management over non-payment of one time lump sum amount for the year 2010-2011 with an increase from the payment made in the previous year 2009-2010 for (i) Grade I to III - increase by 70% to a tune of ₹ 13,580 and (ii) Grade-IV - increase by 75% to a tune of ₹ 15,075 are justified and hence the petition is liable to be allowed.

22. In the result, the petition is allowed and the industrial dispute raised by the petitioner union against the respondent management over non-payment of one time lump sum amount for the year 2010-2011 with an increase from the payment made in the previous year 2009-2010 for (i) Grade I to III - increase by 70% to a tune of ₹ 13,580 and (ii) Grade-IV - increase by 75% to a tune of ₹ 15,075 are justified and an Award is passed by directing the respondent management to pay ₹ 3,000 increase in one time lump sum amount for the period 2010-2011 to the members of the petitioner union who have been received the one time lump sum amount till 2009-2010. No cost.

Dictated to the Stenographer, transcribed by her, corrected and pronounced by me in the open Court on this the 24th day of October, 2017.

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

List of petitioner's witnesses:

PW.1 — 19-08-2014 — A.R. Sivakumar
PW.2 — 07-01-2016 — K. Madheswaran

List of petitioner's exhibits:

- Ex.P1 —16-10-2006—Copy of the circular issued by the respondent for lump sum payment for permanent workmen.
- Ex.P2 —31-10-2007—Copy of the minutes of meeting regarding OTLS for the year 2006-2007.
- Ex.P3 —14-10-2008—Copy of the minutes of meeting regarding the payment of OTLS for the year 2007-2008.
- Ex.P4 — — — Copy of the receipt of payment of OTLS for the year 2008-2009.
- Ex.P5 —01-11-2010— Copy of the circular issued by the respondent for OTLS for the year 2009-2010.
- Ex.P6 —14-09-2011— Copy of the petitioner's letter to respondent.
- Ex.P7 — — — Copy of the details of the payment OTLS since 2004.
- Ex.P8 —10-10-2011—Copy of the petitioner's letter to respondent regarding OTLS non-payment.
- Ex.P9 —22-10-2011—Copy of the petitioner's letter to the respondent regarding non payment of OTLS.
- Ex.P10 — — — Copy of receipt for payment of OTLS to the workers namely S. Kumar for the year 2011-2012.
- Ex.P11—24-10-2011—Copy of the respondent's letter to the petitioners regarding payment of OTLS in the Bank Account of the petitioners.
- Ex.P12—27-10-2011—Copy of the petitioner's letter to the respondent regarding objection as to non payment of increased OTLS.
- Ex.P13—08-11-2011—Copy of the petitioner's letter to the Conciliation Officer regarding OTLS.

- Ex.P14—21-11-2011—Copy of the respondent's letter to the Conciliation Officer.
- Ex.P15—06-12-2011—Copy of the Conciliation Notice.
- Ex.P16—01-02-2011—Copy of the respondent's letter to the Conciliation Officer.
- Ex.P17—11-04-2012—Copy of the petitioner's letter to the Conciliation Officer.
- Ex.P18—06-09-2012—Copy of the Conciliation report.
- Ex.P19—09-10-2012—Copy of the Government's Order.
- Ex.P20—02-11-2012—Copy of the payment of OTLS for the year 2011-2012 (minutes of meeting).
- Ex.P21—24-10-2013—Copy of the minutes of meeting regarding payment of OTLS payment OTLS further year 2012-2013.
- Ex.P22—11-10-1999—Copy of the circular issued by the Head Quarters for lump sum payment to permanent Non-Supervisory Employees.
- Ex.P23—07-11-2001—Copy of the Circular issued by the respondent for lump sum payment to permanent workers.
- Ex.P24—09-11-2001—Copy of the petitioner's letter to the respondent.
- Ex.P25—28-10-2002—Copy of the petitioner's letter to the respondent.
- Ex.P26—07-11-2002—Copy of the petitioner's letter to the Conciliation Officer.
- Ex.P27—18-03-2003—Copy of the petitioner's letter to the Conciliation Officer.
- Ex.P28—08-10-2003—Copy of the petitioner's letter to the respondent.
- Ex.P29—14-10-2003—Copy of the petitioner's letter to the respondent.
- Ex.P30—21-10-2003—Copy of the petitioner's letter to the respondent.
- Ex.P31—18-11-2003—Copy of the petitioner's letter to the Labour Secretary.
- Ex.P32—27-09-2004—Copy of the petitioner's letter to the Conciliation Officer.
- Ex.P33—30-09-2004—Copy of the petitioner's letter to the respondent.
- Ex.P34—10-11-2004—Copy of the petitioner's letter to the respondent.
- Ex.P35—15-11-2004—Copy of the petitioner's letter to the respondent for strike Notice.
- Ex.P36—22-11-2004—Copy of the petitioner's letter to the respondent.
- Ex.P37—22-11-2004—Copy of the petitioner's letter to the respondent for hunger strike.
- Ex.P38—03-12-2004—Copy of the petitioner's union member namely *viz* Krishnamoorthy Suspension order.
- Ex.P39—03-12-2004—Copy of the petitioner's union member namely *viz* Rajendiran Suspension order.
- Ex.P40—07-12-2004—Copy of the petitioner's letter to the respondent.
- Ex.P41—14-02-2005—Copy of the petitioner's union member namely *viz* Krishnamoorthy letter to the respondent.
- Ex.P42—14-02-2005—Copy of the petitioner's letter to the respondent.
- Ex.P43—19-02-2005—Copy of the respondent's revocation order.
- Ex.P44—20-08-2005—Copy of the petitioner's letter to the respondent.
- Ex.P45—28-09-2006—Copy of the petitioner's letter to the respondent.

List of respondent's witnesses:

RW.1 — 13-10-2014 — A. Nepolayan

List of respondent's exhibits:

Ex.R1 — 28-10-2005 — Memorandum of Understanding.

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

GOVERNMENT OF PUDUCHERRY
LABOUR DEPARTMENT

(G.O. Rt. No. 185/Lab./AIL/T/2017,
Puducherry, dated 20th Decembe 2017)

NOTIFICATION

Whereas, an Award in I.D. (L) No. 03/2017, dated 24-10-2017 of the Labour Court, Puducherry in respect of the industrial dispute between Muruganathan, Puducherry and the management of M/s. Etablissement Patel, Puducherry over non-employment has been received;

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

(By order)

S. MOUTTOULINGAM,
Under Secretary to Government (Labour).

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

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

Tuesday, the 24th day of October, 2017

I.D(L). No. 03/2017

Muruganathan,
S/o. Ramalingam,
No. 27, Subramaniayarkoil Street,
Kuyavarpalayam,
Puducherry.

.. Petitioner

Versus

The Managing Director,
M/s. Etablissement Patel,
(Indian Oil Corporation),
21, Kamaraj Salai,
Thattanchavady,
Puducherry.

.. Respondent

This industrial dispute coming on 23-10-2017 before me for final hearing in the presence of Thiru.R.T. Shankar, Advocate for the petitioner, the respondent being called absent and set-*ex parte*, upon hearing the petitioner and perusing the case records, this Court passed the following:

AWARD

1. This industrial dispute arises out of the reference made by the Government of Puducherry *vide* G.O. Rt. No. 10/AIL/Lab./T/2017, dated 25-1-2017 of the Labour Department, Puducherry to resolve the following dispute between the petitioner and the respondent, *viz.*,

(i) Whether the dispute raised by the petitioner Muruganathan against the management of M/s. Etablissement Patel, Thattanchavady, Puducherry over non-employment is justified or not? If justified, what relief he is entitled to ?

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

2. Despite of due service of notice, the respondent did not turn up before this Court and hence, the respondent was set *ex parte*.

3. In the course of enquiry, on the side of the petitioner PW.1 was examined and Ex.P1 to Ex.P6 were marked.

4. *The point for determination is:*

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

5. Heard. As per the claim statement and evidence of PW.1, the petitioner, it is established by the petitioner that petitioner was appointed as Accountant at the respondent organisation and had been in service for about 16 years. Though, he had been in service for about 16 years he has been terminated from service on 7-4-2016 without assigning any reason and his employment was refused only orally and no written termination order was given to him and his termination was informed over phone by Shri Srikanth and he was terminated from service without conducting the domestic enquiry and no show cause notice was given to him and no charge-sheet was filed against him and no second

show cause notice was given to him in respect of the proposed punishment and that therefore, he raised the industrial dispute before the Conciliation Officer and on failure, the Government has referred this matter to this Court.

6. In support of his case, the petitioner/PW.1 has exhibited Ex.P1 to Ex.P6. Ex.P1 is the copy of the dispute raised by the petitioner before the Conciliation Officer. Ex.P2 is the copy of the notice of enquiry sent by the Conciliation Officer. Ex.P3 is the copy of the letter submitted by the respondent management. Ex.P4 is the copy of the conciliation failure report which would go to show that the petitioner has raised the industrial dispute before the Conciliation Officer and conciliation proceedings were conducted by the Conciliation Officer and the respondent management has filed reply before the Conciliation Officer on 30-6-2016 denying each and every statement of the petitioner and the respondent management most specifically denied the averment of the petitioner that he was working in the respondent organisation since, April 2000 and he had rendered 16 years of service and it also reveals from the conciliation failure report that the respondent management has stated that the petitioner has submitted his resignation on 1-4-2010 and received full and final settlement for his dues towards termination of employment and there after he was working as a part time employment in the evening from 6.00 to 9.00 p.m., to handle accounts and accordingly, the petitioner was engaged only as a part time by respondent organisation and that therefore, the petitioner had an altercation with one John Bosco on 20-2-2015 and brought an outsider to the petrol bunk to threaten John Bosco, who gave oral complaint to the management and when the management questioned the petitioner about his inappropriate conduct, the petitioner gave a letter of apology and again on 6-4-2016, the petitioner had reported assaulted John Bosco, who gave a written complaint to the management. The management called upon petitioner and questioned his inappropriate conduct. The petitioner was once again apologetic and requested the management to condone his conduct. But, the management informed him that a show cause notice will be issued to him and petitioner can give a suitable reply. But, the petitioner remained unauthorised absent since 7-4-2016 and not been reported to duty. The office staff of respondent organisation had even called him over phone but he claimed to have lost interest in the job. The management had already decided to seek appropriate explanation from the petitioner for his inappropriate behavior with his co-staff and for remaining unauthorised absent. From the above facts, it is clear that the respondent management has admitted the fact that petitioner had been in service and without enquiry his service was terminated from the respondent organisation. Ex.P5 is the copy of the reference letter. Ex.P6 is the copy of the letter issued by the respondent management to the petitioner which would go to show that the petitioner was working as store-keeper from March, 1998 to 7th October, 2001 in the respondent organisation.

7. It is clearly established through the petitioner evidence and records that the petitioner was working in the respondent concern and he has been terminated from service without following any procedure laid under the Industrial Disputes Act by the respondent for which he has raised the Industrial dispute before the Conciliation Officer and the conciliation proceedings were failed and that therefore, this reference has been made to this Court to decide whether the dispute raised by the petitioner over non-employment is justified or not.

8. Though, the petitioner was working for long tenure his service was terminated without conducting any domestic enquiry by the respondent management. Further, though the respondent management has stated before the Conciliation Officer that petitioner himself has resigned from job, they have not appeared before this Court after due service of notice to them and subsequently due to their absence, the respondent was set *ex parte*. Considering the fact that the petitioner has established his case that he was working in the respondent concern and he has been terminated from service without giving sufficient opportunity and without conducting domestic enquiry and without following any procedure laid down under the Industrial Disputes Act by the respondent, it is to be held that the industrial dispute raised by the petitioner against the respondent management over his non-employment is justified and the petition is liable to be allowed and as such, the petitioner is entitled for the order of reinstatement as claimed by him.

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

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

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

and that therefore, in the light of the above observation it is clear that the petitioner has to prove the fact that he has not employed gainfully during the intervening period. But in this case, nothing is before this Court to show that the

petitioner was not working anywhere else and that therefore, he cannot be given full back wages. The petitioner has stated that he is not working anywhere else after his termination. However, the petitioner could have served at anywhere else after his termination from the respondent establishment. Considering the above circumstances, this Court decides that the petitioner is entitled for 30% back wages and other attendant benefits.

11. In the result, the petition is partly allowed and the industrial dispute raised by the petitioner over non-employment is justified and an Award is passed by directing the respondent to reinstate the petitioner within one month from the date of this order and to pay 30% back wages 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 24th day of October, 2017.

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

List of petitioner's witness:

PW.1 — 23-10-2017 — Muruganantham

List of petitioner's exhibits:

Ex.P1— 26-04-2016 — Copy of the dispute raised by the petitioner before the Conciliation Officer.

Ex.P2— 10-06-2016 — Copy of the notice of enquiry sent by the Conciliation Officer.

Ex.P3— 01-06-2016 — Copy of the letter submitted by the respondent management.

Ex.P4— 18-11-2016 — Copy of the conciliation failure report.

Ex.P5— 25-01-2017 — Copy of the reference letter.

Ex.P6— 27-10-2001 — Copy of the letter issued by the respondent management to the Petitioner.

List of respondent's witness: Nil.

List of respondent's exhibits: Nil.

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

**GOVERNMENT OF PUDUCHERRY
LABOUR DEPARTMENT**

(G.O. Rt. No. 186/Lab./AIL/T/2017,
Puducherry, dated 29th November 2017)

NOTIFICATION

Whereas, the Award in I.D. (L) No. 48/2012, dated 30-10-2017 of the Labour Court, Puducherry in respect of the industrial dispute between the Ms. K. Jamuna and the Management of M/s. Bharathiar College of Engineering and Technology, Thiruvettakudi, Karaikal over termination of service 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.

S. MOUTTOULINGAM,
Under Secretary to Government (Labour).

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

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

Monday, the 9th day of October 2017.

I.D. (L) No. 48/2012

K. Jamuna,
D/o. Kalaiselvan,
No. 138, Colony Street,
Thiruvettakudi,
Kottucherry, Karaikal. . . Petitioner

Versus

The Management,
M/s. Bharathiar College of
Engineering and Technology,
Thiruvettakudy, Karaikal. . . Respondent

This industrial dispute coming on 15-9-2017 before me for hearing, Thiru V. Govindassamy, Counsel for the petitioner and Tvl. L. Swaminathan and M. Muruganandam, Counsel for the respondent on record, 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. 74/AIL/Lab./J/2010, dated 5-4-2010 for adjudicating the following:

(a) Whether the dispute raised by Ms. K. Jamuna against the management of M/s. Bharathiar College of Engineering and Technology, Thiruvettakudy, over termination of service is justified or not?

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

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

The above reference originally taken on file by the District Court at Karaikal which was being functioned as Labour Court in I.D. No. 03/2010 and subsequently when this Industrial Tribunal-cum-Labour Court established in the year 2012, the case has been transferred to this Court and this case was taken on file by renumbering it as I.D(L). No. 48/2012.

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

The petitioner was a regular employee working as a House-keeping staff from 2000 to 22-4-2009 in the respondent College. On 23-10-2008, the memo was issued to the petitioner alleging that she talked with the Principal of College disrespectfully and also refused to obey his order in discharging her duty. On 23-10-2008, the explanation was given by the petitioner denying the allegations. On 31-10-2008 she was suspended by the Principal. On 9-1-2009, a charge-sheet was also issued by the same Principal wherein, it is alleged that she was insubordinate and disobedient of lawful order of her superior and indisciplined disrespectful behaviour against her superior and also failure to maintain integrity and devotion in her duty. The memo. dated 23-10-2008, and order of suspension notice, dated 31-10-2008 and even the charge-sheet, dated 9-1-2009, all are vague and inaccurate clearly indicating that the allegation made against the petitioner from and out of perverse and with an ulterior motive. What was the date in which the alleged act of misconduct was committed and what was the time the name of the Superior Officer, who witnessed the alleged incident and in the order of suspension also all those particulars were totally absent in the memo. The charge-sheet, dated 9-1-2009 was also vague as no particulars about the time, the name of the supervisors who were actually present at the time of the alleged incident were totally absent and there was no reference about any written complaint which

was allegedly given by the supervisors to the Principal of the College. The copies of the document were also not given or even has shown to the petitioner along with charge sheet which are clearly indicating the documents marked in domestic enquiry, were created for the purpose of this case with afterthought. Therefore, these are the facts which are clearly indicating and exposing that the allegation are motivated and made with an ulterior motive of removing the petitioner from employment.

It is further stated that the domestic enquiry was not conducted in accordance with procedure of nature justice as no copies of the documents were given, list of witnesses who were going to be examined was not given and no opportunity was given for doing effective cross examination and particularly she was not permitted to engage an effective person for defending her case. In fact, the important witness namely the Principal of the College was not examined as a witness. Therefore, the domestic enquiry was not valid under law and liable to be thrown-out. The show cause notice, dated 7-3-2009 and order of dismissal, dated 22-4-2009, all are illegal and against the Principle that "no one to be a Judge for his own case" as it was the allegation of the respondent against the petitioner that she shouted against the Principal and disobeyed his order. Dismissal is illegal, invalid and motivated and act of victimisation as she became a member of trade union. Several workers were terminated from their employment as they joined with trade union activities. Petitioner is one of the victims and prayed for reinstatement with full back wages with all attendant benefits.

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

The order of dismissal, dated 20-4-2009 issued to the petitioner on account of proven misconduct in the Enquiry Proceedings. The Supervisors of the petitioner namely J. Jayasenthil Kumaran and T. Ramakrishnan had submitted a letter, dated 23-10-2008 to the then Director of M/s. Bharathiar College of Engineering and Technology, Thiruvettakudy, Karaikal, wherein, it was stated that the petitioner was found loitering in the College and was not found in the duty spot. Further, it was also reported that the petitioner was shouting against the Principal of the College during the routine rounds. After receipt of the said letter, the then Director of the College had issued a Memo to the petitioner directing her to reply as to why disciplinary actions should not

be initiated for insubordination. The petitioner had submitted an explanation to the Memo on 24-10-2008 denying the charges. The explanation of the petitioner was not satisfactory, the petitioner was suspended from service on 31-10-2008 by the Administration of in contemplation of Disciplinary Proceedings through order of suspension dated 31-10-2008. Therefore, the petitioner was served with a charge-sheet on 9-1-2009 and was directed to explain in writing. The petitioner submitted her written explanation on 12-1-2009 by refusing the charges and requested for reinstating her in service. The respondent College by its Order, dated 20-1-2009 had rejected the written explanation and decided to conduct an enquiry and appointed Thiru G.K. Govindasamy, Advocate, Puducherry as Enquiry Officer and Thiru L. Magesh, Office Superintendent as the Presenting Officer.

The enquiry commenced on 3-2-2009 and the petitioner seeking permission that one K. Chitra a co-employee would assist the petitioner in the enquiry proceedings and necessary permission was granted to the petitioner. The Enquiry Officer had examined one T. Ramakrishnan as MW.1 and one J. Jayasentil Kumar was examined as MW.2 by the Presenting Officer. After examination of the Management witnesses, the petitioner had denied the charges mentioned in the charge-sheet. During the course of cross-examination by the Presenting Officer, it was admitted by the petitioner that she came to the Administrative Block by 11.20 a.m. and denied the charges mentioned in the charge-sheet. The defence witness Ms. K. Chitra had stated that the petitioner came along with her to the Main Block at 11.20 a.m. and refuted the allegation during the cross examination. The Enquiry Officer completed the enquiry proceedings and submitted the Report on 2-3-2009 to the College by holding the charges as proved on the charges levelled as against the petitioner and after subjective satisfaction of the enquiry report, the respondent college by its show cause Memorandum, dated 7-3-2009 had directed the petitioner to explain in writing. The petitioner had not chosen to either submit the written explanation or prayed for any extension of time for submitting the same.

The petitioner having participated in the enquiry proceedings by cross examining the Management Witnesses/Examining her witness cannot make a somersault and make allegations about the conduct of the enquiry proceedings. The petitioner addressed a letter, dated 10-3-2009, had sought for the copy of the management documents marked in

the Enquiry Proceedings, for submitting her written explanation to the show-cause Memorandum, dated 7-3-2009 which cannot be entertained even remotely. Having failed to submit her explanation within the stipulated time-limit, the Disciplinary Authority imposed the major punishment of dismissal from service on 20-4-2009 through a detailed speaking order. After receipt of the order of dismissal the petitioner had approached the Labour Officer (Conciliation), Karaikal by making frivolous allegations against the respondent College to which a detailed counter statement was filed by the respondent College. During the conciliation proceedings, the respondent management made it very clear that the respondent college would not compromise on discipline and insubordination activities. The respondent College could not be a mute spectator to the commission and omission of the petitioner and there was no rule/law prohibiting the respondent College from initiating disciplinary proceedings against the petitioner.

4. In the course of the 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 management, though proof affidavit has been filed and since RW.1 has not turned up before this Court subjecting himself for cross examination this Court has passed an order struck down the chief evidence of the RW1 and subsequently no evidence was let in by the respondent management. However already by consent Ex.M1 to Ex.M4 were marked. Though several opportunities were given, both the parties have not turned up before this Court to put forth their arguments. Hence, argument was closed with the liberty to file written argument on or before the date of passing of order. But, even then no written argument was filed by the parties.

5. The point for consideration is:

Whether the dispute raised by the petitioner against the respondent management over termination of service is justified or not and if justified what is the relief entitled to the petitioner.

6. The pleadings of the parties, the evidence let in by the petitioner and the exhibits marked by both sides are carefully considered. In this case this Court has already decided and passed a preliminary Award holding that the domestic enquiry conducted by the respondent management against the petitioner by the Enquiry Officer is fair and in accordance with the principles of natural justice. Since, this Court has already held that

the domestic enquiry was fair and not in violation of principles of natural justice now this Court has to decide whether the punishment of termination of service given to the petitioner is proportionate to the gravity of charges leveled against the petitioner and it is also to be decided whether the findings of the Enquiry Officer is based on the evidence let in before him by both sides. On this aspect the evidence let in by the petitioner and the exhibits marked on both sides have to be carefully considered.

7. On perusal of the documents the petitioner has exhibited the copy of the Memorandum, dated 23-10-2008 as Ex.P1. On perusal of the Memo. it is clear that it does not contain the date and time when the petitioner shouted against the Principal of the respondent establishment and when she disobeyed the orders of the respondent management and further it is clear that the memo. does not contain what are the words used by the petitioner against the Principal alleged to have been shouted against the Principal which words would have given disrespect to the Principal. Absolutely, there is no words mentioned in the memo and no time has been stated and even the place where it was happened was not stated by the Director while issuing Memorandum on 23-10-2008. The copy of the order of Suspension, dated 31-10-2008 is exhibited as Ex.P2. The copy of the charge-sheet, dated 9-1-2009 is exhibited as Ex.P3 from which it is clear that the charge-sheet does not contain when the petitioner committed disobedience of the instruction of the Principal and what was the instruction disobeyed by the petitioner and when she shouted against the Principal in a loud tone audible to other employees of the College. Absolutely, no particulars have been stated in the charge sheet what words alleged to have been uttered by the petitioner against the Principal and what is the time she has not been found in the administration block as stated by the supervisor to the Director. Though the charge-sheet stated that the charge against the petitioner is insubordination/disobedience of lawful order of superior, indiscipline and loitering, disrespectful behavior against the superior, behaving in an unbecoming manner, failure to maintain integrity and devotion to duty, it does not contain the date and time and on when the petitioner committed each and every misconduct or misbehavior against whom. The copy of the enquiry report, dated 2-3-2009 is exhibited as Ex.P4 which would reveal the fact that the Enquiry Officer has given findings in favour of the respondent management that petitioner came to the Administrative Block only by 11.20 a.m., and that

charges of disrespectful behavior towards the Superiors resulting in behaving in an unbecoming manner and failure to maintain integrity to duty stands proved. The copy of the second show cause notice, dated 7-3-2009 is exhibited as Ex.P5 which would reveal the fact the Enquiry Officer has submitted the report on 2-3-2009 to the Administration of the College holding the charges as proved on the charges leveled against the petitioner Jamuna, House-keeping staff under the charge-sheet, dated 31-10-2008. The copy of the order of dismissal, dated 22-4-2009 is exhibited as Ex.P6.

8. On the other hand, the respondent management has exhibited Ex.M1 to Ex.M4 on consent. The copy of the reply letter of the petitioner, dated 24-10-2008 is exhibited as Ex.M1 which would reveal the fact that petitioner has denied the charges and she has stated that she has not committed disrespect to the Principal and the letter was given as reply for the memo. given by the respondent management. The copy of the written explanation of the petitioner, dated 12-1-2009 to the charge-sheet, dated 9-1-2009 is exhibited as Ex.M2 in which the petitioner has asked the Principal to accept her explanation and to stop the proposed disciplinary action and to remove the suspension order and she has given assurance that she should not commit any mistake if the suspension order is vacated. The copy of the letter of the petitioner, dated 10-3-2009 is exhibited as Ex.M3 in which the petitioner has asked the Principal to give Tamil translation copy for the letter, dated 7-3-2009. Ex.M1 to Ex.M4 would not go against the petitioner and further it would not support the respondent management. The copy of the enquiry proceedings, dated 3-2-2009 is exhibited as Ex.M4 which would reveal the fact that the enquiry was started on 3-2-2009 at 10.30 a.m., at the respondent College and completed on the same day. But, the report was submitted by the Enquiry Officer only on 2-3-2009.

9. From the documents exhibited by the petitioner it is clear that Ex.P3 - charge-sheet does not contain the place where the Principal of the College during his routine visit has found the petitioner loitering at the campus of the College and what is the time and what was the words were spoken by the petitioner in loud tone and what discipline has not been maintained by the petitioner and what was the willful insubordination and what was the order of the superior was refused to accept by the petitioner. Mere indicating that she disobeyed the instruction of the petitioner and willful insubordination and refusal to accept orders of the

superiors and behaving an unbecoming manner is not sufficient to charge the petitioner without specifying the date order of instruction given by the superiors and indiscipline behavior of the petitioner. Further, Ex.P4 would reveal the fact that the Enquiry Officer has not dealt with each and every charge separately when it was committed and what is the time and date at each of the charges have been committed by the petitioner and he has not held separately each and every charge has proved. Hence, finding of the Enquiry Officer is incorrect while charges are framed without the date and time and without mentioning of the words uttered by the petitioner against the Principal.

10. As rightly pointed out by the petitioner the show cause notice was issued by the Principal of the College while himself was alleged to have been insulted by the petitioner by using loud tone, it is clear that it is against the natural justice since no one can be judge for his own case. Therefore, this Court finds that the findings given by the Enquiry Officer is not based on the evidence and other circumstances. Furthermore, being admitted that the petitioner is a house keeping staff working at College for more than 9 years and mere reason of the fact that she had found in the another block that is left from Administrative Block and using loud tone are not alone sufficient to terminate the petitioner from service. Even assuming that the petitioner has committed the above misconducts and misbehavior, the punishment of termination is not proportionate to the gravity of the said charges while considering the fact that she was working at the respondent establishment for more than 9 years without any previous complaints or charges.

11. Furthermore, as rightly stated by the petitioner the charge must be specific with all particulars then only the delinquent can defend the case. The Enquiry Officer has failed to consider the above fact while giving findings in the enquiry report against the petitioner and that therefore, the termination on the basis of the findings of the enquiry report and as the punishment of termination is disproportionate to the charges levelled against the petitioner, it is just and necessary to hold that the termination order passed by the respondent management is not justified and therefore, it is to be held that the industrial dispute raised by the petitioner against the respondent management over termination of service is justified and the petitioner is entitled for the relief of reinstatement as claimed by her in the claim statement.

12. As this Court has decided that the industrial dispute raised by the petitioner against the respondent management over termination of service is justified, it is to be decided whether the petitioner is entitled

for back wages as claimed by the petitioner. It is not the case of the respondent management that petitioner is working in any other industry after her termination. The petitioner has stated that she is not working anywhere else after her termination. However, the petitioner could have served at anywhere else after her termination from the respondent establishment. Considering the above circumstances, this Court decides that the petitioner is entitled for 30% back wages and other attendant benefits.

13. In the result, the petition is partly allowed and an industrial dispute raised by the petitioner against the respondent management over termination of service is justified and an Award is passed by directing the respondent to reinstate the petitioner in service within one month from the date of this order and to pay 30% back wages 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 9th day of October, 2017.

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

List of petitioner's witness:

PW.1 — 06-06-2011— K. Jamuna

List of petitioner's exhibits:

Ex.P1 — Copy of the Memorandum, dated 23-10-2008.

Ex.P2 — Copy of the Order of Suspension, dated 31-10-2008.

Ex.P3 — Copy of the charge-sheet, dated 9-1-2009.

Ex.P4 — Copy of the Enquiry Report, dated 2-3-2009.

Ex.P5 — Copy of the second show cause notice, dated 7-3-2009.

Ex.P6 — Copy of the order of dismissal, dated 22-4-2009.

List of respondent's witness:

—Nil—

List of respondent's exhibits:

Ex.M1— Copy of the reply letter of the petitioner, dated 24-10-2008.

Ex.M2— Copy of the written explanation of the petitioner, dated 12-1-2009 to the charge-sheet, dated 9-1-2009.

Ex.M3— Copy of the letter of the petitioner, dated 10-3-2009.

Ex.M4— Copy of the Enquiry Proceedings, dated 3-2-2009.

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

புதுச்சேரி அரசு

இந்து சமய நிறுவனங்கள் மற்றும் வக்ஃபு துறை

(அரசு ஆணை பலவகை எண் 35/இசநி/கோ.4/2017,
புதுச்சேரி, நாள் 2017 (வரு) நவம்பர் 17^{ம்} 20 வ.)

ஆணை

புதுச்சேரி மாநிலம், புதுச்சேரி வட்டாரம், அரியாங்குப்பம் கொம்புன், அபிஷேகப்பாக்கம், அருள்மிகு விநாயகர், அருள்மிகு முத்தாலம்மன், அருள்மிகு நல்லத்தம்பி ஜயனார் மற்றும் அருள்மிகு சிங்கிரிகுடி லட்சுமிநாராயணப்பெருமாள் தேவஸ்தானம், அரசு ஆணை பலவகை எண் 19/இசநி/கோ.3/1991, நாள் 19-11-1991-ன் மூலம் அமைக்கப்பட்ட அறங்காவலர் வாரியத்தால் நிர்வகிக்கப்பட்டு வருகிறது. இவ்வறங்காவலர் வாரியத்தின் பதவிகாலம் முடிவடைந்துவிட்டது.

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

3. எனவே, 1972-ஆம் ஆண்டு, புதுச்சேரி இந்து சமய நிறுவனங்கள் சட்டம் 4(1)-ஆம் பிரிவின்கீழ் வழங்கப்பட்டுள்ள அதிகாரங்களைச் செலுத்தி, மேற்கூறிய திருக்கோயில்களுக்கு கீழ்க் குறிப்பிடப்பட்டுள்ள ஐந்து நபர்களைக்கொண்ட ஓர் அறங்காவலர் வாரியத்தை அரசு உடனடியாக அமைக்கிறது.

திருவாளர்கள் :

- | | |
|---|-----------------------|
| (1) ஜானகிராமன்,
த/பெ. வெங்கடராயர்,
எண் 77, மடுகரை ரோடு,
அபிஷேகப்பாக்கம், புதுச்சேரி. | . . தலைவர் |
| (2) குமாரகிருஷ்ணன்,
த/பெ. வெங்கடராயலு,
2-ஆவது குறுக்குத் தெரு,
சாரதாம்பாள் நகர்,
அபிஷேகப்பாக்கம், புதுச்சேரி. | . . துணைத்
தலைவர். |
| (3) ராஜமூர்த்தி,
த/பெ. ராமச்சந்திரன்,
எண் 11, மேரி வீதி,
அபிஷேகப்பாக்கம், புதுச்சேரி. | . . செயலாளர் |

(4) முத்துக்குமரன், . . பொருளாளர்
த/பெ. பலராம்,
எண் 72, மடுகரை ரோடு,
அபிஷேகப்பாக்கம், புதுச்சேரி.

(5) ஞொலி சித்தரஞ்சன் தாஸ், . . உறுப்பினர்
த/பெ. ஞொலி வீரப்பன்,
எண் 22, மேரி வீதி,
அபிஷேகப்பாக்கம், புதுச்சேரி.

4. புதிய அறங்காவலர் வாரியத்தினர் உடனடியாக திருக்கோயிலின் பொறுப்புக்களை அதன் அசையும், அசையாச் சொத்துக்கள் மற்றும் இதர ஆவணங்களுடன் பதவி விலகும் அறங்காவலர் வாரியத்திடமிருந்து ஏற்றுக்கொள்ளுமாறு அறிவுறுத்தப்படுகிறது.

5. 1972-ஆம் ஆண்டு, புதுச்சேரி இந்து சமய நிறுவனங்கள் சட்டம் மற்றும் அதன்கீழ் இயற்றப்பட்ட விதிகளுக்குட்பட்டு அறங்காவலர் வாரியத்தினர் திருக்கோயிலை நிர்வகிக்கக் கடமைப்பட்டவர்களாவர். மேலும், நிர்வாகத்தினர் கடைப்பிடிக்க வேண்டிய சில முக்கிய பணிகள் கீழே கொடுக்கப்பட்டுள்ளன.

(i) கோயிலுக்குச் சொந்தமான காலி மனைகள், கோயிலை சுற்றியுள்ள இடங்கள் மற்றும் கோயில் குளங்களை தூர்வாருதல்/சுத்தம் செய்தல் இவைகளை உள்ளடக்கிய ஓர் ஆண்டறிக்கையினை சமர்ப்பித்தல் வேண்டும்.

(ii) நன்கொடையாளர்களால் மேற்கொள்ளப்படும் பணிகளை நிறைவேற்ற முழு மூச்சுடன் ஈடுபடுத்தல் வேண்டும்.

(iii) ஒவ்வொரு வருடத்திற்குமான உத்தேச வரவு, செலவு கணக்குகள் மார்ச் மாத காலத்திற்குள் சமர்ப்பித்தல் வேண்டும்.

(iv) கோயில் வரவு, செலவு கணக்குகளை முறையாக பராமரித்தல் மற்றும் அக்கணக்கினை ஆண்டுக்கு ஒருமுறை கணக்கு மற்றும் கருவூலகத்துறை மூலம் தணிக்கை செய்தலை உறுதி செய்யவேண்டும்.

(v) அறங்காவலர் கடமைகளையும் பொறுப்புகளையும் இந்து சமய ஆலய விதிகள் 1975-ன் பிரிவு 5-இன் படி செவ்வனே நிறைவேற்றுதல் வேண்டும்.

6. அறங்காவலர் வாரியத்தின் பதவிக்காலம் இவ்வரசாணை பிறப்பிக்கப்பட்ட தேதியிலிருந்து மூன்று ஆண்டுகள் ஆகும். இதற்கிடையில் அரசு அவர்களை நீக்கினால் தவிர அல்லது தகுதி இழக்கச் செய்தால் தவிர அல்லது வாரிய உறுப்பினர்கள் தங்களது பதவிகளை இராஜினாமா செய்யுங்கால் அவர்களின் இராஜினாமாவை அரசு ஏற்றுக்கொண்டால் தவிர, வாரிய உறுப்பினர்கள்/வாரியம் பதவியில் இருப்பதாகக் கருதப்படும்.

(துணைநிலை ஆளுநரின் ஆணைப்படி)

பா. தில்லைவேல்,
அரசு சார்புச் செயலர் (கோயில்கள்).