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		Puducherry	Tuesday	16th	January	2018

பொருளடக்கம்

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GOVERNMENT OF PUDUCHERRY
LABOUR DEPARTMENT

(G.O. Rt. No. 188/Lab./AIL/T/2017,
Puducherry, dated 30th November 2017)

NOTIFICATION

Whereas, an Award in I.D.(L)No. 43/2012, dated 31-10-2017 of the Labour Court, Puducherry in respect of the industrial dispute between the management of M/s. Bharathiar College of Engineering and Technology, Karaikal and Thiru P. Manickam 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.

Tuesday, the 31st day of October 2017

I.D. (L) No. 43/2012

The President,
Bharathiyar College of Engineering and Technology,
Non-Teaching Staff Union,
Gnanajothi Illam, 4th lane,
Kuthulampet Road, Senior Kulam Street,
Karaikal. . . Petitioner

Versus

The Employer,
Bharathiyar College of Engineering and Technology,
Thiruvettakudy,
Karaikal. . . Respondent

This industrial dispute coming on 27-10-2017 before me for final hearing in the presence of V. Govindassamy, Counsel for the petitioner and Thiruvallargal L. Swaminathan and L. Illankumar, Counsel 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. 123/AIL/Lab./J/2008, dated 08-07-2008 for adjudicating the following:-

(a) Whether the dispute raised by Thiru P. Manickam against the Management of Bharathiyar College of Engineering and Technology, Karaikal, over termination, is justified or not?

(b) To 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. 04/2008 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. 43/2012.

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

The petitioner was the President of respondent Bharathiyar College of Engineering and Technology Non-Teaching Staff Union under Registration No. 1488/RTU/2007 and was employed in the respondent management as a Driver for about 8 years of unblemished record of service. His last drawn salary was ₹ 3,500 The respondent management employed about 160 workers and most of them have put in more than 8 years of service. They have not been given any grade or increment, despite having served for long years. The respondent management not paying appropriate wages to their employees. Though the respondent is an Educational Institution, they do not even pay the minimum wages under the Minimum Wages Act, 1948. Since, the service conditions of the employment were very poor and the grievances of the workers were not redressed by the management, the workers formed themselves into a union. The union was registered on 08-03-2007 and the same was informed to the management. On 28-04-2007, the union sent a letter enclosing a list of office bearers and also the list of protected workman which is permissible under the law, not exceeding the limit. The petitioner is one of the protected workmen. On 12-09-2006, the union placed a charter of demands relating to wage revision and other demands before the respondent management for which the respondent management

did not agree and therefore, the union raised an industrial dispute before the Conciliation Officer, Karaikal. The conciliation proceedings were commenced but, the management did not come forward to settle the matter before the Conciliation Officer.

It is further stated that the respondent management by way of victimising the union members for their active participation in union activities on 09-07-2007 issued a circular stating that the food, breakfast and beverages were given free of cost to non-teaching staffs will not be available from 11-07-2007 and the same may be availed on payment basis from that date. Changing the existing conditions without notice was in violation of section 9A under Industrial Disputes Act, 1947. On 10-07-2007, the union raised a dispute under section 9A of the Industrial Disputes Act before the Conciliation Officer, Karaikal. The conciliation notice was sent to the respondent. On 11-07-2007, conciliation proceedings were held before the Labour Officer. The petitioner attended the same in his capacity as the President of the union. On 12-07-2007, being the President of the union, the petitioner went for settlement talk with the management regarding the service condition of free food for which the management did not agree to settle the matter and instead issued an order of suspension to the petitioner on the same date without any basis. The allegation was that the petitioner instigated the other workman to demand free breakfast and led them in a crowd, forcibly entered into the hostel mess *etc.*, are frivolous. The allegations were trumped up. After 6 days of the alleged incident *i.e.*, on 18-07-2007 a charge-sheet was issued to the petitioner making baseless charges. On 30-07-2007, the petitioner submitted his reply to the management denying all the charges. On 04-08-2007, the respondent management sent a notice of enquiry to the petitioner. The union filed a complaint under section 33A of Industrial Disputes Act, before the Conciliation Officer contending that during the pendency of conciliation, the management has taken action against the protected workman and the same was illegal. The union filed a Writ Petition in No. 33199 of 2007 before the Hon'ble High Court for an early disposal of the dispute regarding section 9A violation and section 33A compliant pending before the Conciliation Officer, Karaikal. In the mean while, the respondent management commenced the enquiry. The petitioner by his letter, dated 25-08-2007

stated that he had filed the abovesaid Writ Petition and the same was pending. Hence, he requested the Enquiry Officer to defer the enquiry till the disposal of the Writ Petition. He denied the allegation that he decided to stay away from the enquiry. The Enquiry Officer without heeding to petitioner's request commenced the enquiry and examined three witnesses of the management in the absence of the respondent workman.

It is further stated that the petitioner objected the action of the Enquiry Officer and alleged bias against the Enquiry Officer through his letter, dated 01-09-2007. But, the management did not change the Enquiry Officer. The Enquiry Officer conducted an *ex parte* enquiry and gave his report, dated 09-11-2007, holding that the charges were proved. On 04-12-2007, a second show cause notice was issued to the petitioner proposing the punishment of dismissal. The petitioner gave his detailed reply, dated 19-01-2008 to the second show cause notice. The management did not consider the reply and denied an opportunity of hearing the petitioner passed an order of termination on 20-03-2008, and filed the Approval Application No. 30/2008 in I.D. No. 2/2008 before the Industrial Tribunal, Puducherry. The petitioner also filed his counter statement in the abovesaid approval petition and the same is pending. The respondent failed to comply with the section 33(1) of the Industrial Disputes Act, 1947. The respondent denied an opportunity of hearing the petitioner before terminating the services of petitioner. The respondent failed to comply with the principles of natural justice, thereby causing serious prejudice to the rights of the petitioner. The respondent terminated the services of the petitioner with the vindictive attitude and as a measure of victimisation for espousing the trade union activities. The respondent failed to consider the fact that there was no evidence in the alleged *ex parte* enquiry to prove the imaginary allegations made by them against the petitioner. The enquiry was a farce. The Enquiry Officer failed to comply with the principles of natural justice and acted merely as a representative of the respondent. The Enquiry Officer being an Advocate, he ought to have verified as to whether the industrial dispute raised by the trade union was pending Conciliation. His failure to do so exposes his bias and also the unlawful nature of his conduct. The respondent has violated section 33 of the Industrial Disputes Act 1947 and their action is illegal. Hence, the

termination order, dated 20-03-2008 is illegal, arbitrary and unjustified. The petitioner belongs to poor family and he should take care of his children and his wife. He is still unemployed after his termination. He is suffering a lot due to his non-employment. The petitioner prayed this Court to set aside the order of termination, dated 20-03-2008 issued by the management and pass an order of reinstatement of the petitioner with full back wages and all other attendant and service benefits *etc.*, with continuity of service.

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

The petitioner P. Manickam was issued with an order of suspension through memo, dated 12-07-2007 by the respondent college in contemplation of disciplinary proceedings for the involvement of riotous and disorderly behaviour of the delinquent employee inside the College premises on 12-07-2007. The delinquent employee was served with a charge-sheet, dated 18-07-2007 by the respondent College and was directed to submit his written explanation within three days from the receipt of the charge-sheet as to why disciplinary action should not be initiated for creating a situation of terror and a panic situation from among the staff and students. Being an Educational Institution, the attitude and behaviour of the said employee on 12-07-2007 had made Students Community in general and the lady students in particular to return back home fearing assault. The charge-sheet, dated 18-07-2007 issued to the employee clearly highlighted the sequence of commission of misconduct and specifically referred about the defamatory languages and the criminal intimidation of the said employee on 12-07-2007 while on duty. After receipt of the charge-sheet, the said employee by his letter, dated 25-07-2007 addressed to the Group Manager (HRD) of the respondent College had sought for seven days extension of time to submit his written explanation. Thereafter, on 30-07-2007, the employee had submitted his written explanation and by bare reading of the written explanation it could be clearly seen that the petitioner had not replied to the charge-sheet, dated 18-07-2007 but, have concentrated on intimating to the respondent College that the petitioner had raised a petition under section 33-A of the Industrial Disputes Act, 1947 and hence, dictated terms to the respondent College that his conditions of service should not be disturbed during pendency of

conciliation. The conciliation proceedings pending before the Labour Officer (Conciliation) was pertaining to the circular of the management, dated 09-07-2007 and the petitioner cannot invoke section 33-A of the Industrial Disputes Act, 1947 for disciplinary proceeding initiated against him on account of commission of serious misconduct.

It is further stated that as the written explanation, dated 30-07-2007 submitted by the said employee was found to be unsatisfactorily, the Group Manager-HRD of the respondent College by his letter, dated 04-08-2007 had intimated the said employee that an enquiry will be conducted into the charge-sheet, dated 18-07-2007 and Mr. K. Babu, Advocate, Puducherry had been appointed as the Enquiry Officer and have specifically directed the employee to co-operate with the enquiry proceedings. In pursuance thereof, the Enquiry Officer by his notice of enquiry, dated 23-08-2007 had intimated the said employee that the enquiry in respect of the charge-sheet, dated 18-07-2007 will be held in the respondent College premises on 01-09-2007 at 11.30 a.m. and instructed the said employee to appear on the said date without fail. The copy of the said notice was also sent to the Presenting Officer Mr. D. Anandan. Instead of appearing to the enquiry proceedings, the said employee had addressed a letter, dated 25-08-2007 to the Enquiry Officer stating that a petition regarding violation of the section 9-A of the Industrial Disputes Act, 1947 is pending before the Labour Officer (Conciliation), Karaikal and the said employee had also lodged a complaint under section 33-A of the Industrial Disputes Act, 1947 before the Labour Officer (Conciliation), Karaikal and till a decision is taken on the said petition, the said employee requested the Enquiry Officer to defer the enquiry proceedings till the final disposal of the complaint pending on the file of the Labour Officer (Conciliation), Karaikal. The said employee without understanding the provisions of the Industrial Disputes Act, 1947 is dictating terms to the Enquiry Officer instead of attending the enquiry proceedings which itself would vouch safe the attitude and behaviour of the petitioner. The said employee had expressed his unwillingness to participate in the enquiry proceedings for insubstantial reasons, the Enquiry Officer had conducted the enquiry proceedings on 01-09-2007 through examination of the management witnesses and submitted a detailed enquiry report, dated

19-11-2007 by holding that the charges framed against the said employee under charge-sheet, dated 18-07-2007 stands proved beyond reasonable doubt through the depositions of three management witnesses and the exhibits.

It is further stated that the respondent College by the show cause notice, dated 04-12-2007 had directed the said employee to submit his written explanation within 10 days from the receipt of the show cause notice as to why the enquiry report, dated 19-11-2007 should not be accepted for imposing the major penalty of dismissal from service. Along with the said show cause notice, the copy of the enquiry report, dated 19-11-2007 was also enclosed. The said employee after receipt of the show cause notice had requested the respondent college by his letter, dated 04-12-2007 that the said employee is in need of 20 days to submit his written explanation. Again the said employee by his letter, dated 04-01-2008 had requested for another 15 days to submit his written explanation which was acceded by the respondent College. On 19-01-2008 the said employee had submitted his written explanation and had again stated that in view of pendency of the petitions before the Labour Officer (Conciliation), Karaikal instituted for violation of section 9-A and petition under section 33-A of the Industrial Disputes Act, 1947, the said employee has expressed his unwillingness to participate in the enquiry proceedings and never answered to the enquiry report, dated 19-11-2007. Thus, even to the second show cause notice the said employee was only reiterating about the petitions filed by him before the Labour Officer (Conciliation) and never understood that the disciplinary proceedings are instituted for commission of serious misconduct which has no relevance to the pendency of petitions before the Labour Officer (Conciliation), Karaikal. The respondent management after analysing the enquiry report, dated 19-11-2007 and the written explanation, dated 19-01-2008 of the said employee, by the order of dismissal, dated 20-03-2008 had imposed the major punishment of dismissal from service for the indisciplinary activities of the said employee by effecting one month wages/subsistence allowances. Necessary approval application has been filed before the Industrial Tribunal, Puducherry under section 33 (2)(b) of the Industrial Disputes Act, 1947 under approval Application No. 30/2008 in I.D.(T) No. 2/2008 requesting approval of the order of the dismissal, dated 20-03-2008 issued to the said employee and the same is pending.

4. In the course of enquiry on the side of the petitioner PW.1 was examined and Ex.P1 to Ex.P20 were marked and on the side of the respondent no oral evidence has been let in and only Ex.R1 to Ex.R22 were marked. Though several opportunities were given, both the parties have not turned up before this Court to putforth their arguments. Hence, argument was closed with the liberty to file written argument on or before the date of passing of order. On petition oral argument was putforth and written argument was filed by the respondent management.

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 levelled 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. It is the evidence of the petitioner PW.1 that he is the President of Bharathiyar College of Engineering and Technology Non-Teaching Staff Union and he had been in service in the respondent establishment as a Driver for about 8 years and drawn a salary of ₹ 3,500 and since, the service conditions of the employment were very poor and the grievances of the workers were not redressed by the management, the workers formed themselves into a union and the same was registered on 08-03-2007 and the same was informed to the management and on 28-04-2007, a letter enclosing a list of office bearers and also the list of protected workman was sent by the union and on 12-09-2006, the union placed a charter of demands relating to wage revision and other demands before the respondent management but, they did not agree to any of the demands and that

therefore, an industrial dispute was raised before the Conciliation Officer, Karaikal wherein the respondent management did not come forward for amicable settlement and that by way of victimising the union members on 09-07-2007 the respondent management issued a circular stating that the food, breakfast and beverages should not be available from 11-07-2007 to non-teaching staffs at free of cost and such changing the existing conditions without notice was in violation of section 9A under Industrial Disputes Act, 1947 and hence, the union raised a industrial dispute under section 9A of the Industrial Disputes Act before the Conciliation Officer, Karaikal and the conciliation proceedings were held before the Labour Officer on 11-07-2007 and this petitioner as the President of the union participated in the conciliation proceedings on 12-07-2007 and the respondent management did not agree to settle the matter and issued an order of suspension to the petitioner on the same date without any basis on the allegation that the petitioner instigated the other workman to demand free breakfast and led them in a crowd, forcibly entered into the hostel mess *etc.*, and thereafter, on 18-07-2007 a charge-sheet was issued to the petitioner making baseless charges, for which the petitioner has submitted his reply to the management on 30-07-2007 denying all the charges.

8. It is further evidence of PW.1 that a notice of enquiry was given to the petitioner on 04-08-2007 against which the union has filed a complaint under section 33A of Industrial Disputes Act, before the Conciliation Officer contending that during the pendency of conciliation, the management has taken action against the protected workman and the union has filed a Writ Petition No. 33199 of 2007 before the Hon'ble High Court for an early disposal of the dispute regarding section 9A violation and section 33A compliant pending before the Conciliation Officer, Karaikal and in the mean while, the respondent management has commenced the enquiry for which the petitioner has sent a letter on 25-08-2007 stating that he had filed the abovesaid Writ Petition and the same was pending and requested the Enquiry Officer to defer the enquiry till the disposal of the Writ Petition and however the Enquiry Officer has commenced the enquiry and examined three witnesses of the management, in the absence of the petitioner workman which was objected by the petitioner alleging that the Enquiry Officer has conducting the enquiry in a biased manner on 01-09-2007 and an *ex parte* enquiry was conducted and the Enquiry Officer has submitted his

report on 09-11-2007, holding that the charges were proved and hence, the respondent management has issued a second show cause notice on 04-12-2007 to the petitioner proposing the punishment of dismissal for which the petitioner has given his detailed reply on 19-01-2008 to the second show cause notice and the management did not consider the reply and denied an opportunity to the petitioner passed an order of termination on 20-03-2008 and filed the Approval Application No. 30/2008 in I.D. No.2/2008 before the Industrial Tribunal, Puducherry and that the respondent failed to comply with the section 33(1) of the Industrial Disputes Act, 1947 denying an opportunity to the petitioner before terminating the services of petitioner and also failed to comply with the principles of natural justice and the respondent has violated section 33 of the Industrial Disputes Act, 1947 which is illegal and hence, the order of termination dated 20-03-2008 is illegal, arbitrary and unjustified and that therefore, an industrial dispute was raised by the petitioner against the termination before the Labour Officer, Karaikal, which was ended in failure and the Government has referred to this Court.

9. In support of his oral evidence the petitioner has exhibited Ex.P1 to Ex.P20. Ex.P1 is the copy of the letter addressed to the Administrator, BCET, Karaikal, dated 28-04-2007. Ex.P2 is the copy of the Circular, dated 09-07-2007. Ex.P3 is the copy of the memo of suspension, dated 12-07-2007. Ex.P4 is the copy of the charge-sheet, dated 18-07-2007. Ex.P5 is the copy of the reply letter, dated 30-07-2007 to the charge-sheet, dated 18-07-2007. Ex.P6 is the copy of the letter of the appointment of an Enquiry Officer, dated 04-08-2007. Ex.P7 is the copy of the telegram addressed to the Enquiry Officer, dated 01-09-2007. Ex.P8 is the copy of the notice of enquiry, dated 23-08-2007. Ex.P9 is the copy of the enquiry proceedings, dated 17-09-2007. Ex.P10 is the copy of the letter addressed to the Enquiry Officer, dated 01-09-2007. Ex.P11 is the copy of the show cause notice, dated 04-12-2007. Ex.P12 is the copy of the reply letter to the second show cause notice, dated 19-01-2008. Ex.P13 is the copy of the dismissal order, dated 20-03-2008. Ex.P14 is the copy of the approval application, dated 20-03-2008. Ex.P15 is the copy of the complaint under section 33-A of the Industrial Disputes Act, dated 24-07-2007. Ex.P16 is the copy of the Order in I.A. No. 30/2008 in I.D.No. 02/08, dated 19-06-2009. Ex.P17 is the copy of the petition filed under section 2K of the industrial dispute, dated 31-08-2007. Ex.P18 is the copy of the counter petition, dated 24-09-2007. Ex.P19 is the copy of the petition filed under industrial dispute, dated 04-04-2008. Ex.P20 is the copy of the reply to the notice of enquiry, dated 25-08-2007.

10. The above documents and oral evidence of PW.1 would go to show that the workers of the respondent establishment formed a union and the same was registered and the respondent management has sent a circular on 09-07-2007 stating that facility of providing food, tea and coffee to the staff members have been stopped and outside canteen and mess services are not been permitted in the campus and staff members can go for lunch during 01.00 p.m., to 02.00 p.m., and the workers were given canteen facilities at the rate displayed in the dining hall from 11-07-2007 and a memo was given to the petitioner on 12-07-2007 and charge-sheet was served to him on 18-07-2007 and on 30-07-2007 the petitioner has given reply to the charge-sheet and the petitioner has sent a telegram to the Enquiry Officer on 01-09-2007 and notice of enquiry was issued to the petitioner on 23-08-2007 and the enquiry was held at the premises of the respondent establishment and enquiry was conducted and Enquiry Officer has submitted a report and thereafter, a show cause notice was issued to him along with the enquiry report of the Enquiry Officer and the petitioner has given a detailed reply on 19-01-2008 and thereafter, on 20-03-2008 the management has passed an order of termination and on the same day the management has sent a letter to the Presiding Officer, Industrial Tribunal, Puducherry regarding the dismissal of the petitioner from service of the respondent establishment for the act of misconduct committed by him and filed approval application along with one month salary in view of demand draft and dismissal order and thereafter the petitioner union has made a complaint before the Labour Officer, conciliation under section 33A of the Industrial Disputes Act on 24-07-2007 against the suspension order and the application was closed by the Industrial Tribunal on 19-06-2009 for the non-prosecution of the parties and the union has sent another communication on 31-08-2007 stating that they have raised the industrial dispute regarding violation of section 9A of the Industrial Disputes Act and the same is pending before the Conciliation Officer the petitioner was suspended from 12-07-2007 alleging that he has committed misconduct and on the pendency of complaint regarding violation of section 9A of the Industrial Disputes Act without getting express permission from the authority the management has again proceeding enquiry without considering the industrial dispute raised by the union and the petitioner has sent a communication to the Enquiry Officer on 22-09-2007 asking the Enquiry Officer to stop the enquiry stating that he could not get justice if, the inquiry is conducted

by the said Enquiry Officer and the union has raised the industrial dispute before the Labour Officer, conciliation on 04-04-2008 against the termination of the petitioner from service with the request to pass an order of reinstatement and the petitioner has also sent a letter to the Enquiry Officer to stop the proceedings till the disposal of the complaint given by the union before the Labour Officer, Conciliation Karaikal.

11. On the other hand, the respondent management has not let any oral evidence and has exhibited Ex.R1 to Ex.R22. Ex.R1 is the copy of the memo of suspension, dated 12-07-2007. Ex.R2 is the copy of the charge-sheet, dated 18-07-2007. Ex.R3 is the copy of the requisition letter for extension of time to submit explanation, dated 25-07-2007. Ex.R4 is the copy of the written explanation, dated 30-07-2007. Ex.R5 is the copy of the intimation letter about appointment of Enquiry Officer, dated 04-08-2007. Ex.R6 is the copy of the notice of enquiry, dated 23-08-2007. Ex.R7 is the copy of the reply letter, dated 25-08-2007. Ex.R8 is the copy of the telegram addressed to the respondent management, dated 01-09-2007. Ex.R9 is the copy of the letter addressed to the Enquiry Officer, dated 01-09-2007. Ex.R10 is the copy of the letter of the Enquiry Officer, dated 17-09-2007. Ex.R11 is the copy of the letter addressed to the Enquiry Officer, dated 22-09-2007. Ex.R12 is the copy of the daily order proceedings, dated 01-09-2007 and 24-09-2007. Ex.R13 is the copy of the show cause notice, dated 04-12-2007. Ex.R14 is the copy of the enquiry report, dated 19-11-2007. Ex.R15 is the copy of the petitioner's letter, dated 14-12-2007. Ex.R16 is the copy of the petitioner's letter, dated 04-01-2008. Ex.R17 is the copy of the explanation letter, dated 19-01-2008. Ex.R18 is the copy of the order of dismissal, dated 20-03-2008. Ex.R19 is the copy of the Approval Application No. 30/2008, dated 20-03-2008. Ex.R20 is the copy of the affidavit in IA No.29/2009 in ID No. 02/2008, dated 13-07-2009. Ex.R21 is the copy of the counter statement in Approval Application No. 30/2008 in ID No. 02/2008, dated 08-09-2008. Ex.R22 is the copy of the order in Approval Application No. 30/2008, dated 19-06-2009.

12. The above documents would go to show that the disciplinary action was taken by the respondent management and the memo was issued on 12-07-2007 to the workman Manickam and the charge-sheet was given to him on 18-07-2007 and the petitioner has given a letter to the respondent management asking

extension of time and submitted a written explanation on 30-07-2007 and the appointment of Enquiry Officer was intimated to the petitioner on 04-08-2007 and the notice was issued to him on 23-08-2007 for which he has given a reply on 25-08-2007 and the petitioner has sent a telegram to the respondent management and a letter to the Enquiry Officer on 01-09-2007 and on 22-09-2007 and the enquiry proceedings was conducted by the Enquiry Officer on 01-09-2007 and 24-09-2007 and a show cause notice was issued to him on 04-12-2007 along with the enquiry report, dated 19-11-2007 and the petitioner has sent several letters on 14-12-2007, 04-01-2008, 19-01-2008 for the second show cause notice and thereafter the respondent management has terminated the petitioner from service on 20-03-2008 and approval application was submitted by the respondent management on 20-03-2008 before the Presiding Officer, Industrial Tribunal wherein the respondent management has filed a counter on 08-09-2008 and the approval application was closed on 19-06-2009 for the absence of the parties.

13. The oral evidence of PW.1 and the exhibits marked by both sides would go to show that the petitioner workman Manickam was working at the respondent establishment as Driver for about 8 years and union has been formed by the workers in the year 2007 and the workman Manickam is the office bearer of the petitioner union and the union has raised the industrial dispute before the Conciliation Officer, Karaikal for wage revision and other demands and while the conciliation is pending the respondent management has issued a circular stating that the food, breakfast and beverages will not be available from 11-07-2007 at free of cost to non-teaching staffs and subsequently on 12-07-2007 a memo was issued to the workman Manickam stating that he alleged to have entered into the canteen without the permission and caused some damages and charge-sheet was given to him and enquiry was conducted and the petitioner has filed a complaint under section 33A of Industrial Disputes Act against the enquiry proceedings conducted by the respondent management without the permission of the Conciliation Officer when the conciliation was pending for wage revision and other benefits and subsequently after the enquiry the Enquiry Officer has submitted his report found guilty of the workman Manickam for which a second show cause notice was issued for the proposed punishment for which the workman Manickam has submitted explanation and subsequently the respondent management has terminated the service of the petitioner on 20-03-2008 and hence, he raised the

industrial dispute before the Conciliation Officer and in the meanwhile the respondent management has filed a approval Application No. 30/2008 before the Industrial Tribunal which was closed on 19-06-2008 for the non-prosecution.

14. It is also an admitted fact that the petitioner union has raised the industrial dispute over wage revision and other benefits and also filed a complaint under section 9A of the Industrial Disputes Act before the Conciliation Officer and while the industrial dispute is pending the respondent management has conducted domestic enquiry and suspended the petitioner workman from service and subsequently terminated him from service on 20-03-2008. Further, the respondent management has filed the copy of the Award passed by this Court in I.D. No. 44/2012 dismissing the dispute raised by the non-teaching staff union as unjustified on 02-01-2013. Admittedly, in this case it is learnt from Ex.R18 that the approval application filed by the respondent management was closed on 19-06-2008 for non prosecution of the applicant and for non-appearance of the respondent. Since, this Labour Court has not allowed the approval application, it is to be decided whether the dismissal order passed by the respondent management without getting approval of the Labour Court or Conciliation Officer after conducting domestic enquiry which was decided by this Court earlier as valid is sustainable or not.

15. On this aspect, the learned Counsel appearing for the respondent management has relied upon the Judgment reported in (2013) 9 SCC 23, Rajasthan State Road Transport Corporation and another Vs. Satya Prakash, wherein the Hon'ble Supreme Court has held that,

“In the present case, the Tribunal accepted that during this very short span of service as a daily wagger the respondent had committed the misconduct which had been duly proved. Having held so, the Tribunal was expected to dismiss the complaint filed by the respondent. It could not have passed the order of reinstatement with continuity in service in favour of the respondent on the basis that initially the appellant had committed a breach of section 33(2)(b) of the Act. It is true that the appellant had not applied for the necessary approval as required under that section. That is why the complaint was filed by the respondent under section 33-A of the Act. That complaint having been filed, it was adjudicated like a reference as required by the statute. The same having been done, and the misconduct having been held to have been proved,

now, there is no question to hold that the termination shall still continue to be void and inoperative. The de jure relationship of employer and employee would come to an end with effect from the date of the order of dismissal passed by the appellant. In the facts of the present case, when the respondent had indulged in a misconduct within a very short span of service which had been duly proved, there was no occasion to pass the award of reinstatement with continuity in service.....”

and the learned Counsel for the respondent has also relied upon the Judgment reported in Civil Appeal No. (s)9956 of 2017, Managing Director, NEKRTC, Karnataka Vs. Shivasharanappa, wherein the Hon'ble Supreme Court of India has held that,

“In the present case, the High Court interfered with the punishment merely on the ground that the requirement under section 33(2)(b) of the Act had not been complied with and prior approval had not been taken. The same, as already held by this Court, could not have authorised the High Court to interfere with the punishment imposed without an adjudication on the validity of the dismissal. In the present case, such an adjudication had already been made and therefore, the issue of the validity of the dismissal of the workman must be understood to have been gone into and decided. In such a situation, the High Court ought not to have interfered with the punishment imposed without considering the findings of the Labour Court on the correctness of the charges brought against the workman. The said aspect of the order of the High Court has however, not been assailed by the workman. The aforesaid part of the order may, therefore, be understood to have been accepted by the workman. In the above situation, the remaining part of the order *i.e.*, the High Court interfering with the punishment imposed would clearly be contract to the view expressed by this Court on the issue in Management of Karur Vysya Bank Limited (supra).”

From the above observations of the Hon'ble Supreme Court, it is clear that though necessary approval is not obtained from the Tribunal when the misconduct having been held to have been proved there is no question to hold that the termination shall still continue to be void and inoperative and there was no occasion to pass the award of reinstatement with continuity in service and that therefore, though the respondent management has not get approval of the Industrial Tribunal for the dismissal of the petitioner when the misconduct was proved and workman had indulged any misconduct, an Award for reinstatement cannot be ordered.

16. In this case, it is already held by this Court that the preliminary enquiry conducted by the Enquiry Officer who was nominated by the respondent management has conducted the enquiry in accordance with the principles of natural justice and is valid one and the misconduct of the petitioner was proved before the Enquiry Officer. Though the respondent management has not obtained the approval of the dismissal, Award for reinstatement cannot be passed and as such it is to be held that the industrial dispute raised by the petitioner against the respondent management over termination is unjustified. However, as the petitioner was serving for more than 10 years and the petitioner was not at all settled so far, it is to be held that the petitioner is entitled for other benefits under law for his 10 years of service and hence, the Award can be passed in favour of the petitioner directing the respondent to pay the service benefits in accordance with law for his service period of 10 years.

17. In the result, the petition is partly allowed and the industrial dispute raised by the petitioner against the respondent management over termination is unjustified and an Award is passed by directing the respondent to pay service benefits to the petitioner according to the law for his 10 years of service at the respondent College. No cost.

Dictated to Stenographer, transcribed by her, corrected and pronounced by me in the open Court on this the 31st day of October, 2017.

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

List of petitioner's witness:

PW.1—09-11-2010— P. Manickam

List of petitioner's exhibits:

Ex.P1 — Copy of the letter addressed to the Administrator, BCET, Karaikal, dated 28-04-2007.

Ex.P2 — Copy of the Circular, dated 09-07-2007.

Ex.P3 — Copy of the memo of suspension, dated 12-07-2007.

Ex.P4 — Copy of the charge-sheet, dated 18-07-2007.

Ex.P5 — Copy of the reply letter, dated 30-07-2007 to the charge-sheet, dated 18-07-2007.

- Ex.P6 — Copy of the letter of the appointment of an Enquiry Officer, dated 04-08-2007.
- Ex.P7 — Copy of the telegram addressed to the Enquiry Officer, dated 01-09-2007
- Ex.P8 — Copy of the notice of enquiry, dated 23-08-2007.
- Ex.P9 — Copy of the enquiry proceedings, dated 17-09-2007.
- Ex.P10— Copy of the letter addressed to the Enquiry Officer, dated 01-09-2007.
- Ex.P11— Copy of the show cause notice, dated 04-12-2007.
- Ex.P12— Copy of the reply letter to the second show cause notice, dated 19-01-2008.
- Ex.P13— Copy of the dismissal order, dated 20-03-2008.
- Ex.P14— Copy of the approval application, dated 20-03-2008.
- Ex.P15— Copy of the complaint under section 33-A of the Industrial Disputes Act, dated 24-07-2007.
- Ex.P16— Copy of the Order in I.A.No. 30/2008 in I.D.No. 02/08, dated 19-06-2009.
- Ex.P17— Copy of the petition filed under section 2K of the industrial dispute, dated 31-08-2007.
- Ex.P18— Copy of the counter petition, dated 24-09-2007.
- Ex.P19— Copy of the petition filed under industrial dispute, dated 04-04-2008.
- Ex.P20— Copy of the reply to the notice of enquiry, dated 25-08-2007.

List of respondent's witnesses: Nil

List of respondent's exhibits:

- Ex.R1 — Copy of the memo of suspension, dated 12-07-2007.
- Ex.R2 — Copy of the charge-sheet, dated 18-07-2007.
- Ex.R3 — Copy of the requisition letter for extension of time given by the petitioner, dated 25-07-2007.
- Ex.R4 — Copy of the written explanation given by the petitioner, dated 30-07-2007.
- Ex.R5 — Copy of the intimation letter about appointment of Enquiry Officer, dated 04-08-2007.

- Ex.R6 — Copy of the notice of enquiry, dated 23-08-2007.
- Ex.R7 — Copy of the reply letter given by the petitioner, dated 25-08-2007.
- Ex.R8 — Copy of the telegram addressed to the respondent management, dated 01-09-2007.
- Ex.R9 — Copy of the letter given by the petitioner to the Enquiry Officer, dated 01-09-2007.
- Ex.R10— Copy of the letter of the Enquiry Officer to the petitioner, dated 17-09-2007.
- Ex.R11— Copy of the letter given by the petitioner to the Enquiry Officer, dated 22-09-2007.
- Ex.R12— Copy of the daily order proceedings, dated 01-09-2007 and 24-09-2007.
- Ex.R13— Copy of the show cause notice, dated 04-12-2007.
- Ex.R14— Copy of the enquiry report, dated 19-11-2007.
- Ex.R15— Copy of the letter given by the petitioner, dated 14-12-2007.
- Ex.R16— Copy of the letter given by the petitioner, dated 04-01-2008.
- Ex.R17— Copy of the explanation letter given by the petitioner, dated 19-01-2008.
- Ex.R18— Copy of the order of dismissal, dated 20-03-2008.
- Ex.R19— Copy of the approval Application No. 30/2008, dated 20-03-2008.
- Ex.R20— Copy of the Affidavit and petition in IA No. 29/2009 in ID No. 02/2008, dated 13-07-2009.
- Ex.R21— Copy of the counter statement in approval Application No. 30/2008 in ID No. 02/2008, dated 08-09-2008.
- Ex.R22— Copy of the order in approval Application No. 30/2008, dated 19-06-2009.

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