



புதுச்சேரி மாநில அரசிதழ்

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GOVERNMENT OF PUDUCHERRY

LABOUR DEPARTMENT

(G.O. Rt. No. 36/Lab./AIL/T/2018,
Puducherry, dated 9th March 2018)

NOTIFICATION

Whereas, an Award in in I.D. (L) No. 03/2016, dated 03-01-2018 of the Labour Court, Puducherry in respect of the industrial dispute between management of M/s. Mahatma Gandhi Medical College and Research Institute, Puducherry and Thiru R. Karthikeyan over his refusal of employment and non-payment of subsistence allowance from 10-02-2012 Award of the Labour Court, Puducherry 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.

Wednesday, the 3rd day of January 2018.

I.D. (L) No. 03/2016

R. Karthikeyan,
No. 7, Kaviyarasu Kannadassan Street,
Mettupalayam,
Puducherry.

..Petitioner

Versus

The Managing Director,
Mahatma Gandhi Medical College and
Research Institute,
Pillaiyarkuppam,
Puducherry-607 402.

..Respondent

This industrial dispute coming on 18-12-2017 before me for final hearing in the presence of Thiru K. Velmurugan, Counsel for the petitioner, Thiru B. Mohandoss, 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. 19/AIL/Lab./T/2016, dated 30-03-2016 for adjudicating the following:-

(i) Whether the dispute raised by Thiru R. Karthikeyan against the management of M/s. Mahatma Gandhi Medical College and Research Institute, Pillaiyarkuppam, Puducherry over his refusal of employment and non-payment of subsistence allowance from 10-02-2012 is justified? If justified, what relief the petitioner is entitled to?

(ii) 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 was appointed on 18-02-2004 as Electrician in the respondent management on consolidated basis with salary of ₹ 1,800 per month and he was directed to report duty on 01-03-2004. From 01-03-2004 the petitioner rendered his services in a sincere and honest manner without any blackmark whatsoever to the respondent management. On 26-09-2006 the respondent management transferred the petitioner to the CHIP Department (IT Department) and posted him as Networking and Communication Technician with effect from 27-09-2006. Abiding with the order of the respondent management, the petitioner had discharged his duties as Networking and Communication Technician to the respondent management in an unblemished manner. The respondent management has confirmed the services of the petitioner on 15-07-2008 and made his post permanent. The respondent management is an institution which involves in the administration of Medical College and Hospital having familiarity in the Puducherry region with 38 BSNL connections in which 205 Intercom connections and 150 Networking points. The petitioner alone is employed in the Network Department to look after the entire servicing, wiring, fault rectification works, *etc.*, The respondent management has not provided any helper or assistant to the petitioner. The petitioner was

under very high work load and pressure. The petitioner on many occasions was worked for more than 12 hours in day without any overtime allowance in order to rectify the network issues. The respondent management is having another Medical College by name Sathyasai Medical College, Thiruporur, Chennai and during the Medical Council of India inspection, the petitioner was assigned to work at Chennai for more than a week during the years 2009 to 2011. The petitioner is very sincere and honest in doing his work without taking any unnecessary leave, loss of pay from the respondent management till the year 2011. During the year 2011 the petitioner's mother health was fallen ill critically and thereby the petitioner being the sole male member to take care of his old aged parents availed few days leave during the period March, 2011 to October, 2011 that too with proper and prior intimation or permission from the respondent management. The respondent management has issued show cause notice to the petitioner on 08-10-2011 calling upon his explanations for his absenteeism during the above period for which the petitioner has furnished his detailed reply on 11-10-2011 to the respondent explaining his family situations which forced him to avail leave on the aforesaid occasions and also assured that he will not take any leave on loss of pay in future. The respondent management through letter, dated 14-10-2011 dropped all further proceedings against the petitioner and directed the petitioner to resume work and thereafter, the petitioner has worked with the respondent management without availing any leave or loss of pay. The petitioner has submitted his leave application on 09-02-2012 to the Head of Department Mr. Balamugundan seeking leave on 10-02-2012, under Earned Leave on account of his personal work. The said leave was duly sanctioned by the said HOD and hence, the petitioner remained absent on 10-02-2012. On 10-02-2012 at about 12.10 p.m., the HOD Mr. Balamugundan called the petitioner over phone and informed that suspension order was issued to him for the leave availed by him on 10-02-2012. On hearing the said news the petitioner was shocked and hence, he immediately approached the HOD during the afternoon *i.e.*, on 10-02-2012 and explained him about the sanctioned leave. The respondent management through Personnel Manager without hearing the words of petitioner, arbitrarily issued suspension order, dated 10-02-2012 to the petitioner for which the petitioner submitted his detailed explanation on 15-02-2012 to the Personnel Manager and requested him to revoke the suspension order. On 13-03-2012

the respondent management through letter informed the petitioner regarding the appointment of Resident Medical Officer of the respondent management Dr. Latchumana Perumal as Enquiry Officer to enquire into the charges leveled against him and fixed the hearing on 16-03-2012. No charge-sheet was issued to the petitioner and his explanation letter, dated 15-02-2012 was not at all considered by the respondent management. On 16-03-2012 the petitioner attended the enquiry proceedings before the RMO Dr. Latchumana Perumal and the Enquiry Officer simply asked few questions to him and conducted the enquiry proceedings. No witnesses were examined. No documents were produced by the management and nothing was recorded during the enquiry proceedings. On 02-04-2012 the respondent management sent transfer order, dated 29-03-2012 to the petitioner transferring him to Bharathiyar College of Engineering and Technology, Karaikal by way of punishment. Since, petitioner is the sole member who was looking after his sick and old aged parents, on 03-04-2012 the petitioner met the Personnel Manager explained his family situation and other factors and requested him to revoke the transfer order for which the Personnel Manager told him to give his written representations so as to discuss with the Chairman and as such the petitioner has sent his explanation letter, dated 07-04-2012 to the respondent management addressing the Personnel Manager. On 09-05-2012 the petitioner sent his reminder letter to the respondent management through registered post. On several occasions whenever the petitioner approached the Personnel Manager in person, he replied that he will discuss with the Chairman and will do favour to the petitioner. Till date neither the respondent management nor its Personnel Manager has considered the representations of the petitioner for the reasons best known to them and did not provide employment to the petitioner. Hence, the petitioner through letter, dated 15-05-2013 and 29-06-2015 gave representation to the Labour Officer (Conciliation), Puducherry to intervene in this issue and to advise the management to provide employment and subsistence allowance to the petitioner. The respondent management officials after receipt of the notice from the Labour Officer (Conciliation), Puducherry appeared before the conciliation enquiry and told that they will discuss with the Chairman and amicably settle the issue. Subsequently the respondent management did not turn up. Since, the Labour Officer (Conciliation), Puducherry could not reach amicable settlement between the

parties submitted failure report to the Government of Puducherry and the Government in turn referred the above industrial dispute for adjudication before this Court. The act of the respondent management in not issuing charge-sheet with specific charges against the petitioner vitiates purported enquiry proceedings conducted by the respondent management and that the appointment of RMO Dr. Latchuma Perumal as Enquiry Officer who being a pay-roll of the respondent management is not an independent and impartial person and the whole enquiry proceedings conducted by him is vitiated by personal bias which is against the principle of natural justice "Nemo judex in Causa Propria" which means that no one shall be appointed as Judge for his own cause of action. The whole enquiry is liable to be quashed. The Enquiry Officer has neither examined any independent witness nor marked any documents as exhibits. Though the petitioner has refuted the allegations of management the Enquiry Officer completed the enquiry proceedings in the first hearing itself and has not submitted his enquiry report to the petitioner till date. The Enquiry Officer has not given fair and proper opportunity to the petitioner to defend his case and favoured the management. The proceedings conducted by the said RMO Dr. Latchuma Perumal cannot be construed as enquiry proceeding. From the date of suspension, the respondent management has not given single pie to the petitioner towards subsistence allowance till date, despite several oral representations of the petitioner. The punishment inflicted by the respondent management is very high and excessive which is against the doctrine of proportionality. In light of various judicial pronouncements of Hon'ble Apex Court and Labour jurisprudence the act of the respondent management in not providing employment to the petitioner is arbitrary, illegal, invalid and unjust. The petitioner prayed to direct the respondent management to reinstate the petitioner in his original employment with full backwages from 11-02-2012, continuity in service and all other attendant benefits and to award compensation of ₹ 3,00,000 for the mental agony, hardship suffered by the petitioner due to the non-employment by the respondent with interest at 18% from the date of petition till date of realization and to award the cost of this industrial dispute.

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

The petitioner was appointed as Electrician on 18-02-2004 on consolidated basis from 01-03-2004 and he was posted as Networking and Communication Technician with effect from 27-09-2006 and his service was confirmed by the management. The petitioner was permitted to avail compensatory off for the period from February, 2011 to January, 2012. The petitioner availed leave on loss of pay without permission from the respondent for 2½ days in March-2011, 6 days in April-2011, 7 days in May-2011, 6½ days in June-2011, 5 days in July-2011, 5 days in August-2011, 4½ days in September-2011 and 2 days in October-2011. The petitioner was un-authorisedly absent for 38 days. The petitioner was admitted his fault in availing leave in his reply, dated 11-10-2011 and gave assurance to the respondent, that in future he would not avail such leave and therefore, the disciplinary action was not taken against the petitioner and warning letter was issued on 14-10-2011 stating that in future suitable disciplinary action would be taken for misconduct. Due to the communication gap between the IT Department and Personnel Department and misplacement of the leave application, the petitioner was given suspension on 10-02-2012 for which the petitioner has given explanation on 15-02-2012 and that the petitioner has committed habitual misconduct of committing unauthorised absence on many earlier occasions and therefore, the enquiry was conducted by the RMO Dr. Lakshmana Perumal which was informed to the petitioner on 13-03-2012 and enquiry report was submitted on 16-03-2012 by the Enquiry Officer to the respondent management for further action. The said enquiry was a preliminary enquiry and hence, no opinion or finding of guilt on the allegations made against the petitioner was submitted by the Enquiry Officer and therefore, no charge-sheet was issued to the petitioner for the allegations made against the petitioner. The respondent did not proceed with the matter further by way of disciplinary proceedings and the respondent was convinced with the explanation furnished by the petitioner for the questions put by the Enquiry Officer in the light of the document submitted by him in respect of his absence on 10-02-2012 and hence, no charge-sheet was issued to him and no explanation was called for from him and no pucca enquiry was conducted and no evidence was adduced and that therefore, no punishment was imposed on the

petitioner. Since, the petitioner has complaining of heavy work load for him in the respondent institute he was transferred to Bharathiyar College of Engineering and Technology to give leisure work to him which is the sister concern of Sri Balaji Educational and Charitable Trust. The transfer order is only administrative in nature passed by the respondent depending upon the exigencies of work. The petitioner after getting the transfer order met Personnel Manager of the respondent institute on 03-04-2012 and requested time for joining at Bharathiyar College of Engineering and Technology, Karaikal. The time was granted till 09-04-2012 to report to the transferred place through order wherein it was stated that failure to obey the order would amount to grave misconduct. On 07-04-2012 the petitioner made a representation to revoke the transfer order and permit him to join duty at respondent Institute and approached the Conciliation Officer on 15-05-2013 with his grievance to cancel the transfer pointing out in his representation that he has not paid subsistence allowance for the period of suspension. The respondent passed the order on 19-03-2014 to the Accounts section for payment of subsistence allowance of ₹ 3,842 to the petitioner at the rate of 50% of wages on his gross salary of ₹ 4,760 and cheque for ₹ 3,842 drawn on Indian Bank, Puducherry Main bearing No. 333948 was given to the petitioner during conciliation proceedings, but the same was not accepted by the petitioner. The petitioner was not terminated from service and as such the non-employment of the petitioner is only because of the petitioner's failure and refusal to report to duty at the transferred place. Therefore, the claim statement filed before this Court does not challenged the validity of the transfer and that therefore, the claim statement filed by the petitioner is to be dismissed with costs.

4. In the course of enquiry on the side of the petitioner PW.1 was examined and Ex.P1 to Ex.P16 were marked and on the side of the respondent RW.1 was examined and Ex.R1 to Ex.R18 were marked.

5. The point for consideration is:

Whether the dispute raised by the petitioner against the respondent management over his refusal of employment and non-payment of subsistence allowance from 10-02-2012 is justified or not and if, justified, what is the relief entitled to the petitioner?

6. Both sides are heard. The submission of both the parties, the evidence let in by either sides and the exhibits marked on both sides are carefully considered.

7. In order to prove his case the petitioner has examined himself as PW.1 and it is the evidence of the PW.1 that on 18-02-2004 he was appointed as Electrician in the respondent management on consolidated basis with salary of ₹ 1,800 per month and he was directed to report duty on 01-03-2004 and as such from 01-03-2004 he rendered his services in a sincere and honest manner without any blackmark whatsoever to the respondent management and that on 26-09-2006 the respondent management transferred him to the CHIP Department (IT Department) and posted him as Networking and Communication Technician with effect from 27-09-2006 and that on 15-07-2008 the respondent management has confirmed his services and made his post permanent and that during the year 2011 his mother health was fallen ill critically and thereby he being the sole male member to take care of his old aged parents availed few days leave during the period March, 2011 to October, 2011 that too with proper and prior intimation or permission from the respondent management and that the respondent management has issued show cause notice, dated 08-10-2011 to him calling upon his explanations for his absenteeism during the above period for which he has furnished his detailed reply, dated 11-10-2011 to the respondent management explaining his family situations which forced him to avail leave on the aforesaid occasions and also assured the respondent management that he will not take any leave on loss of pay in future and that on 09-02-2012 he has submitted his leave application to the Head of Department Mr. Balamugundan seeking leave on 10-02-2012 under Earned Leave on account of his personal work and the said leave was duly sanctioned by the said HOD and hence, he remained absent on 10-02-2012 and that on 10-02-2012 at about 12.10 p.m., the HOD Mr. Balamugundan called him over telephone and informed him that suspension order was issued to him for the leave availed by him on 10-02-2012 and that he was shocked to hear the above news and immediately approached the HOD during the afternoon *i.e.*, on 10-02-2012 and explained him about the sanctioned leave and that the respondent management through Personnel Manager without hearing the words of him, arbitrarily issued suspension order, dated 10-02-2012 to him and that on 15-02-2012 he submitted his detailed explanation

to the Personnel Manager and requested him to revoke the suspension order and that he was communicated on 13-03-2012 that an Enquiry Officer has been appointed to enquire into the charges leveled against him wherein hearing was fixed on 16-03-2012 and that his explanation given on 15-02-2012 was not at all considered by the respondent management and on 16-03-2012 he attended the enquiry proceedings before the Enquiry Officer and that the Enquiry Officer simply asked some questions and conducted the enquiry proceedings and no witnesses were examined and no documents were produced by the management and nothing was recorded during the enquiry proceedings and on 02-04-2012 he was transferred *vide* order, dated 29-03-2012 to Bharathiyar College of Engineering and Technology, Karaikal by way of punishment and that he was looking after his old aged parents, he submitted a oral requisition on 03-04-2012 stating his family situation and other factors to revoke the transfer order and as per the advice of the Personnel Manager he submitted a written explanation letter on 07-04-2012 to the respondent management for which no reply has been sent by the respondent management and hence, on 09-05-2012 he sent his reminder letter to the respondent management under registered post and even then it was not replied by the management and hence, he raised industrial dispute before the Conciliation Officer.

8. In support of his evidence PW.1 has exhibited the Ex.P1 to Ex.P16. Ex.P1 is the copy of the appointment confirmation of the petitioner issued by the respondent management. Ex.P2 is the copy of the posting order of the petitioner issued by the respondent management, dated 26-09-2006. Ex.P3 is the copy of the confirmation order of the petitioner issued by the respondent management, dated 15-07-2008, Ex.P4 is the copy of the show cause notice issued to the petitioner by the respondent management, dated 08-10-2011. Ex.P5 is the copy of the reply submitted by the petitioner on 11-10-2011 to the respondent management. Ex.P6 is the copy of the order issued by the respondent to the petitioner, dated 14-10-2011. Ex.P7 is the copy of the suspension order of the petitioner issued by the respondent management, dated 10-02-2012. Ex.P8 is the copy of the letter submitted by the petitioner on 15-02-2012 to the respondent management. Ex.P9 is the copy of the application of leave submitted by the petitioner on 09-02-2012 which was duly sanctioned by

the HOD of respondent management. Ex.P10 is the copy of the enquiry notice issued by the respondent management, dated 13-03-2011. Ex.P11 is the copy of the transfer order of the petitioner issued by the respondent management, dated 29-03-2012, Ex.P12 is the copy of the letter submitted by the petitioner on 07-04-2012 to the respondent management. Ex.P13 is the copy of the letter submitted by the petitioner on 09-05-2012 to the respondent management. Ex.P14 is the copy of the letter submitted by the petitioner on 15-05-2013 to the Labour Officer (Conciliation), Puducherry. Ex.P15 is the copy of the letter submitted by the petitioner on 29-06-2015 to the Labour Officer (Conciliation), Puducherry. Ex.P16 is the copy of the failure report submitted by the Labour Officer (Conciliation), Puducherry on 26-10-2015 to the Secretary to Government (Labour), Puducherry. These documents would go to show that the petitioner was working at the respondent establishment from 2004 and his service was confirmed by the management and he was suspended from service on 10-02-2012 and he was given memo for which the petitioner was submitted his explanation and the same was accepted by the management and an enquiry was conducted against the petitioner and thereafter the petitioner was transferred by the respondent management after getting explanation from him and that the petitioner has raised the industrial dispute before the Conciliation Officer which was failed and during conciliation the Conciliation Officer has advised the respondent to provide employment to the petitioner at Mahatma Gandhi Medical College and also to provide subsistence allowance to the petitioner.

9. On the other hand, in order to prove the case of the respondent, RW.1 was examined and he has stated in his evidence that petitioner was appointed as Electrician on 18-02-2004 and he was posted as networking and Communication Technician with effect from 27-09-2006 and his service was confirmed by the management and that the petitioner was permitted to avail compensatory off for the period from February, 2011 to January, 2012 and due to the communication gap between the IT Department and Personnel Department and misplacement of the leave application, the petitioner was given suspension on 10-02-2012 for which the petitioner has given explanation on 15-02-2012 and that the petitioner has committed habitual misconduct of committing unauthorised absence on many earlier occasions and

therefore, the enquiry was conducted by the RMO which was informed to the petitioner on 13-03-2012 and enquiry report was submitted on 16-03-2012 by the Enquiry Officer to the respondent management for further action and the said enquiry was preliminary enquiry and hence, no opinion or finding of guilt on the allegations made against the petitioner was submitted by the Enquiry Officer and therefore, no charge-sheet was issued to the petitioner for the allegations made against the petitioner and that the respondent did not proceed with the matter further by way of disciplinary proceedings and the respondent was convinced with the explanation furnished by the petitioner for the questions put by the Enquiry Officer in the light of the document submitted by him in respect of his absence on 10-02-2012 and hence, no charge-sheet was issued to him and no explanation was called for from him and no pucca enquiry was conducted and no evidence was adduced and that therefore, no punishment was imposed on the petitioner and since the petitioner has complaining of heavy work load for him in the respondent institute he was transferred to Bharathiyar College of Engineering and Technology to give leisure work to him which is the sister concern of Sri Balaji Educational and Charitable Trust and that the transfer order is only administrative in nature passed by the respondent depending upon the exigencies of work and that the petitioner after getting the transfer order met Personnel Manager of the respondent institute on 03-04-2012 and requested time for joining at Bharathiyar College of Engineering and Technology, Karaikal and as such time was granted till 09-04-2012 to report to the transferred place through order wherein it was stated that failure to obey the order would amount to grave misconduct and thereafter, on 07-04-2012 the petitioner made a representation to revoke the transfer order and permit him to join duty at respondent Institute and that the petitioner approached the Conciliation Officer on 15-05-2013 with his grievance to cancel the transfer and the petitioner also has pointed out in his representation that he has not paid subsistence allowance for the period of suspension and that the petitioner has not terminated from service and as such the non-employment of the petitioner is only because of the petitioner's failure and refusal to report to duty at the transferred place and that therefore, the claim

statement filed before this Court does not challenge the validity of the transfer and that therefore, the claim statement filed by the petitioner is to be dismissed with costs.

10. In support of their contention the respondent also has exhibited Ex.R1 to Ex.R18. Ex.R1 is the copy of show-cause notice given by the respondent to the petitioner, dated 08-10-2011. Ex.R2 is the copy of reply given by the petitioner on 11-10-2011 to the respondent for the show-cause notice. Ex.R3 is the copy of warning letter given by the respondent to the petitioner, dated 14-10-2011. Ex.R4 is the copy of suspension order given by the respondent to the petitioner, dated 10-02-2012. Ex.R5 is the copy of reply given by the petitioner on 15-02-2012 to the respondent against the suspension order. Ex.R6 is the copy of application for leave submitted by the petitioner on 09-02-2012 to the respondent. Ex.R7 is the copy of letter of enquiry given by the respondent on 13-03-2012 to the petitioner. Ex.R8 is the copy of the report of Enquiry Officer, dated 16-03-2012 Dr. M. Lakshmana Perumal submitted to the Personnel Manager of the respondent along with the statement of the petitioner made on 16-03-2012 for the questions put in by the Enquiry Officer, Ex.R9 is the copy of order of transfer given by the respondent to the petitioner, dated 29-03-2012. Ex.R10 is the copy of letter given by the respondent on 04-04-2012 to the petitioner granting time to report to duty at the place of transfer. Ex.R11 is the copy of representation submitted by the petitioner to the respondent, dated 07-04-2012. Ex.R12 is the copy of representation submitted by the petitioner to the respondent, dated 09-05-2012. Ex.R13 is the copy of representation submitted by the petitioner to the Labour Officer (Conciliation), Puducherry, dated 15-05-2013. Ex.R14 is the copy of the notice of remarks sent by the Labour Officer (Conciliation), Puducherry to the respondent, dated 12-05-2013. Ex.R15 is the copy of the notice of enquiry sent by the Labour Officer (Conciliation), Puducherry to the respondent, dated 18-06-2013. Ex.R16 is the copy of the letter sent by the Personnel Department on 19-03-2014 to Accounts Manager of the respondent institute with details of subsistence allowance to be paid to the petitioner. Ex.R17 is the Indian Bank, Puducherry main cheque bearing No. 333948, dated 19-03-2014 for ₹ 3,842 drawn by the respondent in favour of the petitioner. Ex.R18 is the copy of the representation submitted by the petitioner to the Labour Officer

(Conciliation), Puducherry, dated 29-06-2015. These documents would go to show that the respondent institute has given show cause notice to the petitioner on 08-10-2011 for which the petitioner has given reply on 11-10-2011 and warning has been given by the respondent institute to the petitioner on 14-10-2011 and thereafter, on 10-02-2012 for the absence of the petitioner he was suspended from service for which he was given reply on 15-02-2012 to the respondent management against the suspension order and that the petitioner has submitted the leave application on 09-02-2012 and enquiry notice was given to the petitioner on 13-03-2012 by the respondent and enquiry report was submitted on 16-03-2012 by the Enquiry Officer who conducted preliminary enquiry and subsequently the petitioner was transferred to Karaikal and thereafter, the petitioner was granted time at the request of the petitioner to report to duty at the transferred place and representation was submitted by the petitioner on 09-05-2012 and subsequently the petitioner raised the industrial dispute before the Conciliation Officer on 15-05-2013 for his non-employment and the conciliation proceedings were failed and conciliation failure report was sent by the Labour Conciliation Officer to the Government of Puducherry.

11. It is clear from the pleadings of both the parties and evidence let in by either sides and exhibits marked on either sides that the following facts are admitted by either sides that the petitioner was working at the respondent institute from 01-03-2004 and his service was confirmed and he was given show cause notice that he has taken leave on loss of pay for several times in the year 2011 from March to October for which he has given suitable reply and warning letter was given to him and thereafter, he has taken leave on 10-02-2012 and he has submitted a leave application on 09-02-2012 to the Head of the Department who have permitted him to take leave, but the same was not intimated to the management in time and meanwhile he was suspended for his absence on 10-02-2012 and against which the petitioner has given explanation to the respondent management and the same was considered by the respondent management and thereafter, he was transferred to Bharathiyar College of Engineering and Technology and thereafter, the petitioner has not reported duty to the transferred place and apply for time and time was also granted by the management and thereafter, the petitioner has raised the industrial dispute before the

Conciliation Officer and conciliation proceedings were failed and conciliation failure report was sent by the Conciliation Officer to the Government and the same was referred to this Court to decide whether the industrial dispute raised by the petitioner against the respondent management over his refusal of employment and non-payment of subsistence allowance from 10-02-2012 is justified or not.

12. Apart from the above admitted facts it is also clearly disclosed by the evidence that the petitioner was suspended from service on 10-02-2012 itself when the petitioner was alleged to have been unauthorisedly absent from duty. The respondent side witness RW.1 in his cross examination has stated as follows :

“..... மதசாஆ 1 நாங்கள் கொடுத்தது தான். 2004-லிருந்து 2011 வரை இந்த வழக்கு தவிர அவர் மீது வேறு குற்றச்சாட்டும் சொல்லப்படவில்லை என்றால் சரிதான். மதசாஆ 7 மனுதாரருக்கு வழங்கப்பட்ட தற்காலிய பணி நீக்க ஆணை என்றால் சரிதான். சஸ்பென்சன் ஆர்டருக்கு பிறகு இது வரை வேலை கொடுக்கவில்லை. தற்காலிக பணி நீக்க உத்தரவில் உள்ள தேதி 10-02-2012 அன்று அவர் பணிக்கு வராததால் தான் அவருக்கு தற்காலிய பணி நீக்க உத்தரவு வழங்கப்பட்டது. தற்காலிக பணி நீக்க ஆணையில் மனுதாரர் கல்லூரிகள், விடுதிகள் மற்றும் ஏனைய கல்லூரிகள் மருத்துவ கல்லூரி வளாகத்திற்குள் நுழைய கூடாது என்று குறிப்பிட்டுள்ளது என்றால் சரிதான். தற்காலிக உத்தரவை இது நாள் வரை ரத்து செய்யவில்லை. ஆனால் விசாரணை செய்து விட்டு பணி மாறுதல் ஆணை வழங்கினோம். விசாரணை அதிகாரி எங்கள் கம்பெனியில் தான் வேலை பார்த்து சம்பளம் வாங்குகிறார். மனுதாரருக்கு சஸ்பென்சன் அலவென்ஸ் கொடுத்து வருகிறோம். இந்தியன் பேங்க் மூலம் காசோலை மூலமாக பிப்ரவரி மாதத்தில் தற்காலிக பணி நீக்கம் செய்த பிறகு 2014 மாதம் மார்ச் மாதம் சமரச அதிகாரியிடம் சஸ்பென்சன் அலவென்ஸ் கொடுத்திருக்கிறோம். Failure Report-ல் மனுதாரருக்கு சஸ்பென்சன் அலவென்ஸ் வழங்கவில்லை என்றும், நிருவாகம் மனுதாரரை பணியில் சேர்க்கவில்லை என்று குறிப்பிட்டுள்ளதா என்றால் குறிப்பிட்டு இருக்கிறது. ஆனால் இந்தியன் பேங்கில் நாங்கள் சஸ்பென்சன் அலவென்ஸ் கொடுத்திருக்கிறோம். அவர் காசோலையை வசூலுக்கு போட்டரா என்ற ஆவணங்களை நாங்கள் தாக்கல் செய்யவில்லை. மனுதாரர் காசோலையை வாங்கிவிட்டு திரும்ப கொடுத்துவிட்டார். அந்த காசோலை எங்களிடம் தான் இருக்கிறது. அதை நாங்கள் திரும்பவும் தபாலில் கொடுக்கவில்லை. நாங்கள் காசோலையை கொடுக்கவில்லை என்றால் சரியல்ல. நாங்கள் Enquiry-க்கு Presenting Officer-ஐ நியமித்தோம் எமதசாஆ 8 அந்த Enquiry report ஆகும். அந்த விசாரணையில் யாரையும் விசாரிக்கவில்லை. விசாரணைக்காக எந்த ஆவணமும் தாக்கல் செய்யப்படவில்லை.....”.

From the above evidence of RW1, it is very clear that the petitioner was suspended on 10-02-2012 for the reason that he has not attended the duty on 10-02-2012 and in the suspension order it was directed by the management that he should not enter into the colleges, hostels and other colleges of the respondent and premises of the Medical College and that the said suspension order was not revoked so far and meanwhile the petitioner was transferred to Bharathiyar College of Engineering and Technology, Karaikal.

13. Further, it was stated by the petitioner that he was not paid subsistence allowance for the period of suspension. But, it was alleged by the respondent management that they have paid the same through a cheque before the Conciliation Officer in the month of March, 2014. But, no explanation was given by the respondent establishment that why they have not paid subsistence allowance to the petitioner from 10-02-2012 till March, 2014. Further, the failure report of the Conciliation Officer also would reveal the fact that subsistence allowance was not paid to the petitioner and the cheque alleged to have been issued by the respondent was also not collected and any document or any acknowledgement was exhibited before this Court to prove the contention that the cheque was honoured by the respondent management to the petitioner. Further, the respondent management witness RW.1 has stated in his chief examination that,

“..... With regard to the averment made by the petitioner relating to his availing leave on 10-02-2012, the respondent admits in all fairness the fact of the petitioner submitting leave application to his Head of the Department and his sanctioning leave. However, due to communication gap between the IT Department and Personnel Department and also misplacement of the leave application at that time, suspension order, dated 10-02-2012 was issued to the petitioner. However, when the petitioner submitted his explanation, dated 15-02-2012 pointing out his availing leave after sanctioning of the same by his HOD, the respondent called for the report from the IT Department”.

The above evidence would go to show that the petitioner has actually submitted his leave application to the Head of the Department for sanction of leave and due to communication gap between the IT Department and Personnel Department of the respondent establishment the leave application was

misplaced by them and the petitioner was suspended on 10-02-2012 by the respondent management and even after knowing the fact that petitioner has given proper explanation that the leave was availed by him after sanctioning of the Head of the Department the suspension order was not revoked by the respondent management so far and no explanation is given by the respondent establishment that why the said suspension order has not been revoked and why subsistence allowance or full salary has not been paid to the petitioner so far.

14. Further, it is the evidence of RW.1 in his chief examination that,

“..... I most respectfully submit that on perusal of the preliminary enquiry report, the respondent did not proceed with the matter further by way of disciplinary proceedings, It was on account of the fact that the respondent was convinced with the explanation furnished by the petitioner for the questions put by the Enquiry Officer in the light of the document submitted by him in respect of his absence on 10-02-2012. Had the Management wanted to frame charges for habitual misconduct in respect of the petitioner's earlier absence period, it could have issued charge-sheet, asked for explanation for the same and then conducted pucca enquiry or full-fledged enquiry involving adducing of evidence and submission of enquiry report with finding of guilty or not for the charges framed. In this case the respondent management did not issue a charge-sheet to the petitioner and so no explanation was called for and no full-fledged enquiry (quasi-judicial in nature) was conducted for obtaining finding of guilty. It was for the benefit of the petitioner and he cannot have any grievance against the respondent for the same. Moreover, no punishment was imposed on the petitioner.....”.

From the above evidence it is also clear that the respondent management was convinced with the explanation furnished by the petitioner for the question put by the Enquiry Officer in the light of the document submitted by him in respect of his absence on 10-02-2012. Though it was stated and admitted by the respondent management that the explanation given by the petitioner was convinced with the management and that the leave was granted by the Head of the Department and the fact only on the communication gap between the IT Department and Personnel

Department the leave application was misplaced by them, they have not revoked the suspension order and instead of revoking suspension order the petitioner was transferred to Bharathiyar College of Engineering and Technology, Karaikal wantonly by the management and further the enquiry report of the Enquiry Officer under Ex.R8 runs as follows :

“10-02-2012 அன்று எந்தவித முன்னறிவிப்பின்றி பணிக்கு வரவில்லை என்ற குற்றச்சாட்டிற்கு தான் 09-02-2012 அன்றே விடுப்பு விண்ணப்பத்தை தனது மேல் பொறுப்பாளரிடம் அனுமதிபெற்று 09-02-2012 அன்றே கொடுத்துவிட்டதாக கூறியுள்ளார்.

இதற்கு முன்பு முன்னறிவிப்பின்றி நீங்கள் விடுப்பு எடுத்துள்ளீர்களா? என்ற கேள்விக்கு இதற்குமுன்பு தான் விடுப்பு எடுக்கும் பொழுதெல்லாம் மேல் அதிகாரியிடம் அனுமதிப்பெற்றும் தவிர்க்க முடியாத காரணத்தால் சில சமயங்களில் விடுப்பு எடுக்கும் அன்றைய தினம் தொலைபேசி மூலம் மேலதிகாரியிடம் தெரிவித்தோ அல்லது உடன் பணிபுரிபவர்களிடம் மேலதிகாரியிடம் கூறும்படி விடுப்பு எடுத்துள்ளேன் என்றும், இதுசம்பந்தமாக முன்பு ஒரு முறை 08-10-2011 அன்று எச்சரிக்கை கடிதம் நிர்வாகத்திடமிருந்து பெறப்பட்டு அதற்கு பதில் கடிதம் 11-10-2011 தேதியிட்டு கொடுத்துள்ளதாகவும் அதற்கு பின் தான் ஒழுங்காக தனது விடுப்பை மட்டும் எடுத்துக்கொண்டு பணிக்கு வந்து கொண்டு இருப்பதாகவும் கூறியுள்ளார்.

மேல் நடவடிக்கைக்காக சமர்ப்பிக்கப்படுகிறது.”

From the content of the Ex.R8 it is clear that the Enquiry Officer has also submitted the report that the petitioner has taken leave properly and after the issuance of show cause notice in the year 2011 the petitioner was working properly and the Enquiry Officer has not found guilty against the petitioner. While so the reasons stated by the respondent management for not revoking the order of suspension and passed the order of transfer on the foot of the unauthorised absence alleged to have been committed on 10-02-2012 by the petitioner is absolutely unlawful and hence, the order of suspension passed against the petitioner by the respondent management is to be declared as unlawful and against the natural justice.

15. Admittedly the respondent management has not conducted domestic enquiry by issuing charge memo and has not passed any termination order against the petitioner and that there is no charge memo issued against the petitioner for the alleged unauthorised absence on 10-02-2012. Further, the respondent

management has admitted the fact that they have not taken any disciplinary proceedings against the petitioner for not reporting duty before the transferred place as per the transfer order and that the respondent management has not taken any action against the petitioner for the charge of disobedience of the transfer order and that the respondent management has not passed any order of termination. But, the respondent management has not permitted the petitioner to enter into the premises of the respondent establishment which amount to refusing of employment and therefore, the petitioner is entitled for reinstatement.

16. Further, it is true that the respondent management is having right to transfer the workers to some other institutions which were maintained by them if, the standing order of the respondent establishment permits or if, the terms and conditions of the appointment permits. But, in this case, the respondent management has transferred the petitioner from the respondent institute to Bharathiyar College of Engineering and Technology without revoking the suspension order. Hence, without revoking the suspension order passed against the petitioner transferred him to Bharathiyar College of Engineering and Technology is not sustainable and without paying the subsistence allowance the petitioner was transferred and hence, it cannot be accepted and that therefore, it can be held that the industrial dispute raised by the petitioner against the respondent management over his refusal of employment and non-payment of subsistence allowance from 10-02-2012 is justified and as such the petitioner is entitled for reinstatement as claimed by him.

17. As this Court has decided that industrial dispute raised by the petitioner against the respondent over non-employment is justified, it is to be decided whether the petitioner is entitled for back wages as claimed by him. There is no evidence that the said workman is working so far in any other industry and that there is no proof exhibited before this Court that he is working anywhere else. The respondent has not proved the fact that the petitioner has been working in any other establishment after the refusal of employment. However the petitioner workman could have served at any other industry after the refusal of employment. Considering the above facts and circumstances, this Court decides that the petitioner is entitled only for 50% back wages with continuity of service and other attendant benefits.

18. In the result, the petition is partly allowed and the industrial dispute raised by the petitioner against the respondent management over his refusal of employment and non-payment of subsistence allowance from 10-02-2012 is justified and Award is passed directing the respondent management to reinstate the petitioner in service within one month from the date of this order and further directed the respondent management to pay 50% back wages from 10-02-2012 when the suspension order was passed by the respondent management against the petitioner till 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 03rd day of January 2018.

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

List of petitioner's witnesses:

PW.1— 05-07-2017 — R. Karthikeyan.

List of petitioner's exhibits:

- Ex.P1 — — — Copy of the appointment confirmation of the petitioner issued by the respondent management.
- Ex.P2 — 26-09-2006— Copy of the Posting order of the petitioner issued by the respondent management.
- Ex.P3 — 15-07-2008— Copy of the confirmation order of the petitioner issued by the respondent management.
- Ex.P4 — 08-10-2011— Copy of the show cause notice issued to the petitioner by the respondent management.
- Ex.P5 — 11-10-2011— Copy of the reply submitted by the petitioner to the respondent management.
- Ex.P6 — 14-10-2011— Copy of the order issued by the respondent to the petitioner.

Ex.P7 — 10-02-2012— Copy of the suspension order of the petitioner issued by the respondent management.

Ex.P8 — 15-02-2012— Copy of the letter submitted by the petitioner to the respondent management.

Ex.P9 — 09-02-2012— Copy of the application of leave submitted by the petitioner which was duly sanctioned by the respondent management.

Ex.P10 — 13-03-2011— Copy of the enquiry notice issued by the respondent management.

Ex.P11 — 29-03-2012— Copy of the transfer order of the petitioner issued by the respondent management.

Ex.P12 — 07-04-2012— Copy of the letter submitted by the petitioner to the respondent management.

Ex.P13 — 09-05-2012— Copy of the letter submitted by the petitioner to the respondent management.

Ex.P14 — 15-05-2013— Copy of the letter submitted by the petitioner to the Labour Officer (Conciliation), Puducherry.

Ex.P15 — 29-06-2015— Copy of the letter submitted by the petitioner to the Labour Officer (Conciliation), Puducherry.

Ex.P16 — 26-10-2015— Copy of the failure report submitted by the Labour Officer (Conciliation), Puducherry to the Secretary to Government (Labour), Puducherry.

List of respondent's witness:

RW.1 — 05-10-2017— Zaibunissa Begum

List of respondent's exhibits:

- Ex.R1 — 08-10-2011—Copy of show cause notice given by the respondent to the petitioner.
- Ex.R2 — 11-10-2011—Copy of reply given by the petitioner to the respondent for the show cause notice.
- Ex.R3 — 14-10-2011—Copy of warning letter given by the respondent to the petitioner.
- Ex.R4 — 10-02-2012—Copy of suspension order given by the respondent to the petitioner.
- Ex.R5 — 15-02-2012—Copy of reply given by the petitioner to the respondent against the suspension order.
- Ex.R6 — 09-02-2012—Copy of application for leave submitted by the petitioner to the respondent.
- Ex.R7 — 13-03-2012—Copy of letter of enquiry given by the respondent to the petitioner.
- Ex.R8 — 16-03-2012—Copy of the report of Enquiry Officer Dr. M. Lakshmana Perumal submitted the Personnel Manager of the respondent along with the statement of the petitioner made on 16-03-2012 for the questions put in by the Enquiry Officer.
- Ex.R9 — 29-03-2012—Copy of order of transfer given by the respondent to the petitioner.
- Ex.R10 — 04-04-2012—Copy of letter given by the respondent to the petitioner granting time to report to duty at the place of transfer.

- Ex.R11 — 07-04-2012—Copy of representation submitted by the petitioner to the respondent.
- Ex.R12 — 09-05-2012—Copy of representation submitted by the petitioner to the respondent.
- Ex.R13 — 15-05-2013—Copy of representation submitted by the petitioner to the Labour Officer (Conciliation), Puducherry.
- Ex.R14 — 12-05-2013—Copy of the notice of remarks sent by the Labour Officer (Conciliation), Puducherry to the respondent.
- Ex.R15 — 18-06-2013—Copy of the notice of enquiry sent by the Labour Officer (Conciliation), Puducherry to the respondent.
- Ex.R16 — 19-03-2014—Copy of the letter sent by the Personnel Department to Accounts Manager, of the respondent institute with details of subsistence allowance to be paid to the petitioner.
- Ex.R17 — 19-03-2014—Indian Bank, Puducherry Main Cheque bearing No. 333948 for ₹ 3,842 drawn by the respondent in favour of the petitioner.
- Ex.R18 — 29-06-2015—Copy of the representation submitted by the petitioner to the Labour Officer (Conciliation), Puducherry.

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