



புதுச்சேரி மாநில அரசிதழ்

La Gazette de L'État de Poudouchéry

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GOVERNMENT OF PUDUCHERRY
LABOUR DEPARTMENT

(G.O. Rt. No. 88/Lab./AIL/T/2018,
Puducherry, dated 7th June 2018)

NOTIFICATION

Whereas, an Award in I.D. (L) No. 28/2017, dated 19-04-2018 of the of the Industrial Tribunal-cum-Labour Court, Puducherry in respect of the Industrial Dispute between the management of M/s. Swadeshi Cotton Mills, Puducherry and Puducherry Textile Mills Labour Union, over non-payment of pending category increment for 4 workers viz., Thiruvallargal R. Ramakrishnan, R. Sivanandan, N. Munisamy @ Jeevanandam and Adinarayanan has been received;

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

(By order)

S. MOUTTOULINGAM,
Deputy Labour Commissioner.

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

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

Thursday, the 19th day of April 2018.

I.D. (L) No. 28/2017

The President,
Puducherry Textile Mills Labour Union,
49, Rodier Mill Street, Mudaliarpeta,
Puducherry-605 004. . . Petitioner

Versus

The Managing Director,
M/s. Swadeshi Cotton Mills,
P.O.Box No. 3,
Marai Malai Adigal Salai,
Puducherry. . . Respondent

This Industrial dispute coming on 02-04-2018 before me for final hearing in the presence of Thiru R.S. Zivanandam, 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. 70/AIL/Lab./T/2017, dated 02-05-2017 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 union, Puducherry Textile Mills Labour Union, Puducherry against the management of M/s. Swadeshi Cotton Mills, Puducherry (A Government of Puducherry undertaking), Puducherry, over non-payment of pending category increment for 4 workers *viz.*, Tvl. R. Ramakrishnan, R. Sivanandan, N. Munisamy @ Jeevanandam and Adinarayanan is justified or not? If justified, what relief they are 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 is a registered trade union and it raised this industrial dispute against the respondent Mill by espousing the cause of the individual workers namely, Thiruvallargal R. Ramakrishnan, R. Sivanandan, N. Munisamy @ Jeevanandam and Adinarayanan. The worker Munisamy @ Jeevanandam was worked as Winder Skilled 3 and he was paid salary for this category as Basic pay of ₹ 3,470. He was promoted as Jobber by the respondent Mill on 01-01-2014. However, his salary as per Jobber category Special Grade I is ₹ 3,730 whereas, eventhough he was promoted as Jobber, his salary was not fixed but, he was paid only winder category salary G.I. *i.e.*, ₹ 3,650 when he was promoted in the month of January 2014, the same salary was paid to the promoted category of Jobber G.I. This is unjustified. He is eligible to draw Jobber G.I salary from the month of January 2014 *i.e.*, ₹ 3,730. Therefore, he may be adjudged eligible for higher salary. The salary difference is ₹ 80. Hence, it must be fixed with annual increment from January 2014 to till date *i.e.*, November 2017 to the tune of ₹ 60 per year alone with category fixation increment. Hence, he prays for the relief as stated above. The worker R. Ramakrishnan, who was a

retired as a Jobber and superannuated on 14-07-2014. He was promoted as a Jobber from the month of November 2013. Before that he was acted as a Jobber in a vacant post from the month of February 2013. He was also paid acting salary for the post of Jobber. Whereas, after his promotion from November 2013, he was once again paid the same salary was received by him in a previous month for the post of Simplex Tenter. But, the increment pay was paid, but, no category salary was paid to him. In fact, he was retired in the midst of July 2014. He is eligible for the category salary from the month of February 2013 to up to his superannuation which comes totally 18 months. The worker Sivanandan, S/o. Rangasamy, has raised this dispute individually through a letter, dated 27-10-2014 and his cause was also exposed by the petitioner union through a letter, dated 13-11-2014 expressing the category salary has not been fixed or either paid eventhough he was promoted in the category of Jobber on 01-01-2014. The said worker who has discharged the Job of the worker from the month of September 2013 in view of he worked as acting jobber. This was also reflected in the payment slip during the month of September, 2013 and also October, 2013 inspite of the post has not been filed during the said period. He was also eligible for month of November and December, 2013 when he worked as a acting Jobber. There is a discrepancy in the preparation of the salary slip and payment of salary. The said worker was promoted as a Jobber from the post of Reserve Piecer to the Jobber on 01-01-2014. He was superannuated only on 29-11-2014. He raised this dispute individually and also through union before he was superannuated. Hence, he is asking the disparity of payment scale from the month of November, 2013 to November, 2014. During the conciliation, the management strict on with their contention that this worker is not eligible for fixation of category salary since he was superannuated. He is not demanding more than 12 months of withheld category salary. The worker Aadhi Narayanan who was also promoted as Winding Jobber from the month of 01-01-2014. But, he was not paid category-wise salary and category increment. He was superannuated only in the month November 2014. Therefore, he is eligible for category salary ₹ 80 per month along with yearly increment salary ₹ 60. It is the meager amount and the respondent management adamantly making a plea ineligible for fixation of salary in view of his superannuation. His cause was also exposed by the petitioner union within time before

he was superannuated. Therefore, he is also eligible to claim the relief of category fixation pay. This dispute by the petitioner union with the respondent management is a simple dispute which can be decided with the documents submitted. Each worker is claiming only a sum of ₹ 80 per month along with increment salary of ₹ 60 per month which is monetarily met by the management with open mind. The worker Munusamy @ Jeevanandam is an existing employee and he is a continuing worker with the respondent. But, his case is not considered during the conciliation. But, no explanation has been submitted by the management for this case. For the other 3 workers the management is taking a plea, that they are superannuated employees. There their case cannot be considered, which is highly deplorable against the natural justice. Once he discharged his work as a Jobber even for a month he could not denied a category salary with yearly increment. This is a verdict given by the intervention of Chief Minister of Puducherry during the meeting held in the chamber of him on 11-01-2011. There was also a 12(3) settlement arraigned in between the petitioner union and management on 14-02-2011, wherein, it was categorically mentioned in para No. 4 of the agreement of settlement that 'Category', 'Grade', 'Basic Salary' which is called as IDA wage pattern. Also has been decided in the Annexure No. 2 of this settlement. Therefore, the claim of the petitioner union on behalf of the abovesaid workers is justified and they are eligible to draw category-wise payment of ₹ 3,730 per month from the month of January, 2014 along with increment salary of ₹ 60 per month and one time category fixation salary also to the tune of ₹ 80 in the basic pay of category fixation. Therefore, the union prayed this union to pass an Award in favour of the petitioner union to direct the respondent management to rectify anomaly pay the fixation.

3. The respondent after receipt of the notice has appeared in person before this Court and despite several opportunities, the respondent did not turn up before this Court to file their counter objection and hence, the respondent was set *ex parte*. In the course of enquiry, on the side of the petitioner PW.1 was examined and Ex.P1 to Ex.P8 were marked. Heard.

4. *The point for determination is:*

Whether the dispute raised by the petitioner union against the respondent management over non-payment of pending category increment for abovesaid 4 workers is justified or not and if, justified what is the relief entitled to the petitioners.

5. It is the evidence of the petitioner PW1 that the employees Thiruvallargal R. Ramakrishnan, R.Sivanandan, N. Munisamy @ Jeevanandam and Adinarayanan were given promotion as Jobber with effect from 01-01-2014 and even though their cadre has been changed they are not paid the wages of the post of Jobber and paid only in the grade of skilled Grade-III and in connection with the above request was sent by the workers to the management and that the union has also submitted a request representation to the management and however, the management has not taken any action till date regarding the demand of the petitioners and therefore, the union has raised the industrial dispute before the Conciliation Officer, over non-payment of pending category increment for the abovesaid four workers against the respondent management and the conciliation was failed and this reference has been sent to this Court for proper adjudication.

6. In support of their case, the petitioner union has exhibited Ex.P1 to Ex.P8. Ex.P1 is the copy of minutes of the meeting, dated 11-01-2011. Ex.P2 is the copy of 12(3) settlement. Ex.P3 to Ex.P5 are the copy of salary receipts of Sivanandam, Ramakrishnan and Munisamy @ Jeevanandam. Ex.P6 is the letter to the Labour Officer (Conciliation) by the management. Ex.P8 is the copy of failure report of the Labour Officer (Conciliation).

7. From the above evidence and documents, it is clearly established by the petitioner union that the petitioners are eligible to withdraw the Jobber G.I salary from January-2014 at the rate of ₹ 3,730 and they are entitled for increment as claimed in the claim petition and that the claim of the union on behalf of the workers Thiruvallargal R. Ramakrishnan, R. Sivanandan, N. Munisamy @ Jeevanandam and Adinarayanan is justified and they are eligible to draw category-wise payment of ₹ 3,730 per month from the month of January-2014 along with increment salary of ₹60 per month and one-time category fixation salary also to the tune of ₹ 80 in the basic pay of category fixation as claimed in the claim petition. Further, despite several opportunities, the respondent did not turn up before this Court to file their counter objection and hence, the respondent was set *ex parte*. Considering the fact that the petitioner union has established their case, it is to be held that the industrial dispute raised by the petitioner union against the respondent management, over non-payment of pending category increment for 4 workers *viz.*, Thiruvallargal R. Ramakrishnan, R.Sivanandan, N. Munisamy @ Jeevanandam and Adinarayanan is justified and the petitioners are entitled for the claim as prayed by them and as such the petition is liable to be allowed.

8. In the result, the petition is allowed and the industrial dispute raised by the petitioner union against the respondent management, over non-payment of pending category increment for 4 workers *viz.*, Thiruvallargal R. Ramakrishnan, R. Sivanandan, N. Munisamy @ Jeevanandam and Adinarayanan is justified and an Award is passed by directing the respondent management to pay increment to the abovesaid four workers as per their category. No cost.

Dictated to Stenographer, transcribed by her, corrected and pronounced by me in the open Court on this the 19th day of April, 2018.

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

List of petitioner's witness:

PW.1— 02-04-2018 — D. Ravi.

List of petitioner's exhibits:

Ex.P1 — 11-01-2011 — Copy of minutes of meeting.
Ex.P2 — 14-02-2011 — Copy of 12(3) settlement.
Ex.P3 — — — Copy of salary receipt of Sivanandam.
Ex.P4 — — — Copy of salary receipt of Ramakrishnan.
Ex.P5 — — — Copy of salary receipt of Munisamy @ Jeevanandam.
Ex.P6 — 05-07-2014 — Copy of 3 letter sent by
03-06-2014 the petitioners to the
28-05-2014 management.
Ex.P7 — 13-01-2016 — Letter to the Labour
Officer (Conciliation) by
the management.
Ex.P8 — 24-02-2017 — Copy of failure report
of the Labour Officer
(Conciliation).

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. 89/Lab./AIL/T/2018,
Puducherry, dated 7th June 2018)

NOTIFICATION

Whereas, an Award in I.D. (L) No. 12/2017, dated 19-04-2018 of the of the Industrial Tribunal-cum-Labour Court, Puducherry in respect of the Industrial Dispute between the management of M/s. AML Steel Limited, Puducherry and Thiru Vellaiyan, Puducherry, over reinstatement with full back wages, continuity in service and all other attendant benefits 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 23-05-1991, it is hereby directed by the Secretary to Government (Labour) that the said Award shall be published in the Official Gazette, Puducherry.

(By order)

S. MOUTTOULINGAM,
Deputy Labour Commissioner.

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

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

Thursday, the 19th day of April 2018.

I.D. (L) No. 12/2015

Vellaiyan,
S/o. Kalivaradhan,
No.30, Mariamman Koil Street,
Eripakkam Nathamedu,
Kariyamanikkam post,
Nettapakkam,
Puducherry. . . Petitioner

Versus

The Managing Director,
AML Steel Limited,
No. 33/5, Eripakkam Village,
Nettapakkam,
Puducherry. . . Respondent

This Industrial Dispute coming on 23-03-2018 before me for final hearing in the presence of Thiru R.T. Shankar, Advocate for the petitioner and Thiru A. Karunamoorthy, Advocate for the respondent, upon hearing and upon perusing the case records, after having stood over for consideration till this day, this Court passed the following:

AWARD

1. This is a petition filed by the petitioner under section 2A of the Industrial Disputes (Amendment) Act, 2010 praying to pass an Award directing the respondent management to reinstate the petitioner with full back wages, continuity of service and all other attendant benefits.

2. The case of the petitioner is that he has joined in the respondent establishment in the month of May, 1996 as Office Attender and he was paid ₹ 1,500 at initial and recently the respondent management had raised his salary at ₹ 4,500 per month and that he has asked for wage increase on par with minimum wages and it was denied by the management and that by an act of victimization and motivation the respondent management issued order of transfer to him to report duty at Head Office, Chennai with immediate effect and that he reported duty on 25-10-2013 at 12.30 p.m., as directed by the management at the Chennai Head Office and also signed in the entry note maintained by the security and that the management has not allowed him to enter inside the factory and asked to sit outside the factory premises and thereafter, asked to report him on 26-10-2013 and that as instructed by the management he reported to duty on 26-10-2013 and again he was not allowed to enter the factory premises and therefore, after three days he returned to his original work place at Puducherry unit and that the management denied employment to him and not allowed him to enter the factory and therefore, he raised an industrial dispute against the respondent management on 03-12-2013 before the Labour Officer (Conciliation) and that the management by an Act of victimization and motivation denied employment as he requested for the salary increase and implement as it was not paid and bonus was also not paid to him and that out of 300 employees only 10 employees were on roll and other employees were engaged on contract system against the Contract Act and all the said employees more than 280 workmen belongs to North India and that the respondent management so far not extend the benefit of ESI and EPF to their workmen and also so far the management have not extended the benefit of leave salary, over time allowances, weekly holiday, bonus, etc., which are statutory benefits under

the Social Security Acts and that the respondent management not maintaining any records such as attendance register, wage register, leave register, *etc.*, to their workmen and that all the workmen including the petitioner working for more than 12 hours per day and no allowances were paid under the Act and that in the conciliation proceedings the respondent management eventhough participated not extended their co-operation and not submitted any reply in this regard and they have not submitted any valid reason for denial of employment to him and in the conciliation proceedings, the Conciliation Officer was advised the respondent management to provide employment to the petitioner as there is no valid reason for denial of employment and it was against the principles of natural justice and Industrial Disputes Act and the same was ended in vain and that the respondent management has no right to transfer the petitioner to different regions and hence, the transfer order issued by the respondent management is arbitrary and illegal one and also against the Industrial Disputes Act and therefore, he had approached the Labour Officer (Conciliation), at Puducherry on 03-12-2013 and however, there is no amicable settlement was arrived within the period of 45 days and therefore, as per the Amended Act he is constrained to file this petition before this Court and prayed for reinstatement with full back wages, continuity of services and all other attendance benefits.

3. On the other hand the respondent management has filed the counter statement denying the averments made by the petitioner in the claim petition except those that are specifically admitted by them in the counter statement and stated that the petitioner has been working in the company since 1996 and during October, 2013 as there was a shortage of staff in the Head Office, Chennai-600 086 the petitioner being an experienced person was transferred to the Head Office and communication was sent to the petitioner on 25-10-2013 informing him that he is transferred to the Head Office AML Tower, No. 9, 6th Street, Gopalapuram, Chennai-600 086 due to administrative reasons and he was granted one week time with pay for reporting to new station and further stated that the petitioner though acknowledged their letter on 25-10-2013 failed to report within the time granted and he did not sent any communication, which resulted in a lot of confusion and hence, the respondent was forced to issue a show cause notice, dated 20-11-2013 directing the petitioner to join duty immediately failing which disciplinary action would be initiated for disobedience and no reply was submitted to the respondent for the show cause notice and instead the petitioner went directly to the Labour Officer, Labour Department, Puducherry on 03-12-2013 with false particulars that

work was not given and not allotted and further stated that the petitioner was not satisfied with the working condition he would not have continued to work for 17 long years and proper records and Register has been maintained and thus, it is not wrong to transfer a workman, if, there is a need by the management and that this cannot be construed to be *mala fide* and there has been no violation any provisions of Industrial Disputes Act, 1947 and prayed this Court to dismiss the claim petition.

4. In the course of enquiry on the side of the petitioner WW1 was examined and Ex.W1 to Ex.W8 were marked and on the side of the respondent RW1 was examined and no documents were marked by them. Argument was heard.

5. *The point for consideration is:*

Whether the industrial dispute raised by the petitioner against the respondent management, over reinstatement with back wages, continuity of service and all other attendant benefits is justified or not and if justified, what is the relief entitled to the petitioner.

6. *On the point:*

The pleadings of the parties, the evidence let in by either sides and the documents marked on the side of the petitioner are carefully considered. On the side of the respondent management written argument was filed and the same was also carefully considered. The learned Counsel appearing for the petitioner has argued that they have established that the petitioner was working at the respondent establishment for about 15 years as an Office Attender and transfer order was given to the petitioner by the respondent management with a direction to report before the Head Office at Chennai and as per the order, the petitioner has appeared on 25-10-2013 at the respondent Head Office at Chennai wherein, the signature of the petitioner was obtained and the petitioner was asked to sit outside the factory and thereafter, the petitioner was asked to report on the next day *i.e.*, 26-10-2013 and on which date also the petitioner was refused to enter into the factory premises and after three days the petitioner returned to the original work place *i.e.*, the factory at Puducherry, wherein, also the petitioner was refused to enter the factory by the respondent management and hence, the petitioner has raised the Industrial dispute before the Conciliation Officer.

7. On the other hand the learned Counsel appearing for the respondent management has argued that the petitioner was actually transferred to Head Office of the

respondent establishment at Gopalupuram, Chennai but, the petitioner has not reported there and that the contention raised by the petitioner that he was not allowed to enter into the Head Office premises is totally baseless and in order to avoid the legal action for non-obeying the transfer order the petitioner has raised the present industrial dispute.

8. From the pleadings of both the parties and on perusal of the claim statement filed by the petitioner and the counter statement filed by the respondent management it is noticed that the following facts are admitted by either sides that the petitioner was working at the respondent establishment from the year 1996 and he was transferred to the Head Office at Chennai by the respondent management on 25-10-2013 and he was granted one week time with pay for reporting at the new station and a show cause notice was issued to him on 20-11-2013 and the petitioner has raised the industrial dispute before the Conciliation Officer on 03-12-2013 and it is also noticed from the pleadings that no charge has been framed against the petitioner for not reporting duty at Head Office and no disciplinary enquiry was conducted and no written order of termination was given to the petitioner.

9. In order to prove his case the petitioner has examined himself as WW1 and it is the evidence of the WW1 that he had been in service at the respondent establishment as an Office Attender from May, 1996 and working for about 17 years without any remarks and he has been granted only ₹ 4,500 as salary by the respondent management even he has completed 17 years of service at the respondent office as an Office Assistant and he has requested for wage increase for which the management has denied to pay even the minimum wages to the petitioner and has started all sort of unfair labour practice against the petitioner and he was transferred by the respondent management by an order, dated 25-10-2013 to the Head Office at Chennai with immediate effect and though he has reported immediately on the same day on 25-10-2013 at the respondent Head Office at Chennai and also signed in the entry note maintained by the security the management has not allowed him to enter inside the factory and directed him to report on 26-10-2013 and though, the petitioner has reported as directed by the respondent management on 26-10-2013, again the petitioner was not allowed to enter the factory premises and was instructed to go out the factory and thereafter, he has returned to the original work place at Puducherry wherein, the respondent management has denied employment to him by not allowing him to enter the

factory and that therefore, he raised an industrial dispute before the Conciliation Officer against the respondent management.

10. In support of his evidence the petitioner has exhibited the copy of the letter of transfer order given by the respondent to the petitioner on 25-10-2013 as Ex.W1, the letter of Notice given by the respondent to the petitioner on 20-11-2013 as Ex.W2, the dispute raised by the petitioner before the Labour Officer (Conciliation) on 03-12-2013 as Ex.W3, the letter given by the petitioner before the Labour Officer (Conciliation) on 01-07-2014 as Ex.W4, the failure report submitted by the Labour Officer - Conciliation, Puducherry on 01-12-2014 as Ex.W5, the experience letter given by the respondent to the petitioner on 30-04-2013 as Ex.W6, the copy of the ESIC card given by Employee's State Insurance Corporation to the petitioner on 01-12-2003 as Ex.W7, the copy of the EPF slip given by the Employee's Provident Fund to the petitioner for various financial years of 2001-2002, 2005-2006 and 2006-2007. These documents would go to show that the petitioner was working at the respondent management from May, 1996 and he was working for about 17 years and he has been transferred by the respondent management on 25-10-2013 to Chennai Head Office and subsequently, on 20-11-2013 he was directed to report before the respondent management at Chennai and thereafter, he has raised the industrial dispute before the conciliation on 03-12-2013 and the conciliation was failed and the reference has been sent to this Court and while he was in employment at the respondent establishment, he has been paid ESI contribution by the respondent management and also given ESIC card and for the financial year 2001-2002, 2005-2006 and 2006-2007, the petitioner has also been paid Provident Fund amount.

11. Admittedly, the petitioner has been transferred from Puducherry to Chennai Head Office on 25-10-2013 and it is the case of the petitioner that he appeared on 25-10-2013 at the respondent Head Office at Chennai as directed by the respondent management under the transfer order but, he has not been allowed to enter the factory and he has been asked to appear on the next day on which day also he was not allowed to enter into the factory and hence, he has returned to the original working place at Puducherry wherein, also he has denied employment.

12. On the other hand, it is contended by the respondent management that the petitioner has not appeared before the respondent office at Chennai as per the order of transfer, dated 25-10-2013 and that

therefore, he has been given show cause notice on 20-11-2013 to report before the respondent Head Office at Chennai and due to the administrative reason alone he has been transferred for which he has not obeyed and that therefore, he is not entitled for the order of reinstatement. In support of their contention the respondent management has examined the Accountant of the respondent establishment as RW1 and it is the evidence of the RW1 that whenever any shortage of manpower arises resulting transfer of workers from one unit to other unit and the transfer would be effected on administrative grounds and that the petitioner was transferred to Head office at Chennai on 25-10-2013 and even after giving one week time with pay for reporting to new station the petitioner has failed to report within the time granted before the Head Office at Chennai and that since he has not reported to duty at Head Office, Chennai the show cause notice was issued on 20-11-2013 directing the petitioner to report for duty at Head office, Chennai and however, he has not reported so far and that the petitioner has not preferred to sent any reply for such notice which shows his disobedient attitude. In support of their oral evidence the respondent has not at all produced any documents on their side and no document has been marked as an exhibit.

13. From the evidence of RW1 it is clear that even the petitioner has not turned up for duty as directed in the notice, the respondent management has not at all framed charge against the petitioner and no disciplinary action was taken against the petitioner by appointing an Enquiry Officer. It is not the case of the respondent management that they have initiated any disciplinary proceedings against the petitioner workman for his non appearance at the Head Office as per the transfer order and a charge-memo was served on him and an Enquiry Officer was appointed and the Enquiry Officer filed any report before the respondent management finding any guilty against the petitioner workman and the petitioner has been terminated from service on the finding of the Enquiry Officer. As the petitioner is the permanent workman of the factory since he has served as an attender at the respondent management for about 17 years, it is the duty cast upon the respondent to adopt procedure laid down under the labour laws and the opportunity ought to have been given to the petitioner workman to defend his case by conducting domestic enquiry for his non-appearance at the respondent Head Office at Chennai as directed by them and to conduct the domestic enquiry by an Enquiry Officer by taking evidence and marking exhibits by giving opportunity to

the petitioner to defend his case. But, in this case nothing is done by the respondent management for terminating the petitioner workman from the respondent establishment and that therefore, the refusal of employment to the petitioner without adopting any proper steps in accordance with law by following the principles of natural justice which would go to show that the respondent management has committed unfair labour practice as stated by the petitioner and that therefore, it is to be held that the Industrial dispute raised by the petitioner against the respondent management, over reinstatement with full back wages, continuity of service and all other attendant benefits is justified and the petitioner is entitled for the order of reinstatement as claimed by him in the claim petition.

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

15. In the result, the petition is allowed and the industrial dispute raised by the petitioner against the respondent management-over reinstatement with back wages is justified and Award is passed directing the respondent management to reinstate the petitioner in service within one month from the date of this Award and further directed the respondent management to pay 50% back wages to the petitioner from the date of termination till the date of reinstatement with continuity of service and other attendant benefits. No cost.

Dictated to the Stenographer, transcribed by her, corrected and pronounced by me in the open Court on this the 19th day of April, 2018.

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

List of petitioner's witness:

PW.1— 01-02-2016 — K. Vellaiyan

List of petitioner's exhibits:

Ex.W1 — 25-10-2013 — Letter of Transfer order given by the respondent to the petitioner.

Ex.W2 — 20-11-2013 — Letter of Notice given by the respondent to the petitioner.

Ex.W3 — 03-12-2013 — Dispute raised by the petitioner before the Labour Officer (Conciliation).

Ex.W4 — 01-07-2014 — Letter given by the petitioner before the Labour Officer (Conciliation).

Ex.W5 — 01-12-2014 — Failure report submitted by the Labour Officer - Conciliation, Puducherry.

Ex.W6 — 30-04-2013 — Experience letter given by the respondent to the petitioner.

Ex.W7 — 01-12-2003 — Photocopy of the ESIC Card given by Employee's State Insurance Corporation to the petitioner.

Ex.W8 — Several dates — Photocopy of the EPF Slip given by the Employee's Provident Fund to the petitioner for various financial years of 2001-2002, 2005-2006 and 2006-2007.

List of respondent's witness:

RW1 — 22-01-2018 — P. Gnanavelu

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. 91/AIL/Lab./T/2018,
Puducherry, dated 7th June 2018)

NOTIFICATION

Whereas, an Award in I.D. (L) No. 14/2014, dated 17-04-2018 of the Industrial Tribunal-cum-Labour Court, Puducherry in respect of the industrial dispute

between the management of M/s. Jayaprakash Narayan Co-op. Spinning Mills, Karaikal and Thiru M. Yesuadiyan, Karaikal, over reinstatement with back wage has been received;

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

(By order)

S. MOUTTOULINGAM,
Deputy Labour Commissioner.

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

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

Tuesday, the 17th day of April, 2018

I.D. (L) No. 14/2014

Thiru.M. Yesuadiyan,
No. 36, Gandhi Nagar,
Varichikudi, Karaikal. . . Petitioner

Versus

The Managing Director,
M/s. Jayaprakash Narayan Co-op.
Spinning Mills,
Keezhemanni, Neravy,
Karaikal-609 604. . . Respondent.

This industrial dispute coming on 27-03-2018 before me for final hearing in the presence of Thiru N. Ramar, Representative for the petitioner and Thiru C. Balasubramanian, Advocate for the respondent, upon hearing both sides, upon perusing the case records, after having stood over for consideration till this day, this Court passed the following:

AWARD

1. This Industrial Dispute has been referred by the Government as per the G.O. Rt. No. 32/AIL/Lab./J/2014, dated 05-03-2014 for adjudicating the following:-

(a) Whether the dispute raised by the petitioner Thiru M. Yesuadiyan against the management of M/s. Jayaprakash Narayan Co-op. Spinning Mills, over reinstatement with back wages is justified?

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

(c) 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 joined as trainee at the respondent Mill on 28-08-1996. Subsequently, he was regularized in the spinning department as sider with effect from 15-05-2000. He was paid ₹ 9,000 as monthly salary. While so, from 05-03-2009 the petitioner was affected by illness and went on ESI leave. Then since the petitioner was affected by Jaundice and was under medical treatment he was not able to attend the work. While so, on 01-09-2010, when the petitioner returned to duty after cure of disease with medical certificates, the management refused to offer work stating that he was terminated from service. The petitioner made several requests to the respondent management for his employment. But, the management refused to offer employment without any valid reasons. Hence, the petitioner raised the industrial dispute before the Labour Officer (Conciliation) on 10-06-2013 for which the respondent management has filed the reply stating that the petitioner has been removed from service on 16-04-2009. The petitioner came to know that he was terminated from service only on the said date. The petitioner has not received any show cause notice which alleged to have been sent by the management on 01-04-2009 and he also not received any letter from the respondent establishment regarding his termination of service alleged to have been sent by the management on 16-04.2009. No enquiry has been conducted by the management as per clause 20, 21 of the certified standing order of the respondent establishment. The alleged termination is against the principles of natural justice without giving any opportunity and without conducting any enquiry against the petitioner. The petitioner has prayed for reinstatement with back wages.

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

The respondent did not admitted any of the averments and allegations contained in the claim petition except those that are specifically admitted and stated that the respondent Mill is a Society and its main object is "no gain no loss" and it has been runs under the control of Puducherry Government. The petitioner had joined the respondent Society in the year 1996 and

the respondent Society had permanent the employee on 15-05-2000. The petitioner work a Spinning Piecer and his card number is 139. The petitioner was always a chronic absentee and was taking leave without any permission. The petitioner since his joining in the respondent society till 16-04-2009 had taken 913 days leave. The above absence attitude of the petitioner clearly shows the petitioner has no interest in his work. The respondent Society has sent several warning and show cause notice to the petitioner and all such notice are duly received by the petitioner. However, after that also the petitioner did not turn his earns. Finally, the petitioner does not co-operate the respondent on 16-04-2009 the respondent society has take steps and treated as left out of his service and the copy also sent through post. The allegation stated in the petitioner in his petition is false. The petitioner did not produce any medical certificate or any medical record for his long absence. The petitioner has not come with clean hands before this Court. The petitioner's unauthorized absence affected the respondent Society a huge loss. The issue of chronic absenteeism has become a very serious in respondent's Society, the production activities and disturbing its work schedules and manpower allotments. The high percentage of unauthorized absenteeism clearly indicated that the workers of respondent Society were taking their employment casually and the leniency shown by the respondent in the past in not taking stringent disciplinary action was an encouraging factor. Apart from financial loss, it was also leading to frustration amongst the regular employees as the absenteeism was causing additional burden of work on those employees. The claim petition is devoid of merits, lacks *bona fide* and the same is liable to be dismissed.

4. In the course of enquiry on the side of the petitioner no witness has been examined and only Ex.P1 to Ex.P8 were marked on consent and on the side of the respondent RW.1 was examined and Ex.R1 to Ex.R5 were marked. Both side arguments were heard.

5. *The point for consideration is:*

Whether the dispute raised by the petitioner against the respondent management, over reinstatement with back wages is justified or not and if justified, what is the relief entitled to the petitioner?

6. *On the point :*

The pleadings of the parties, the evidence let in by respondent and the exhibits marked on both sides are carefully considered. On both sides, written arguments

were filed and the same were carefully considered. In support of his case, the learned representative for the petitioner has relied upon the Judgment reported in 1996 (1) LLJ 1/96, Pg.152. On the side of the petitioner no oral evidence has been adduced and on consent Ex.P1 to Ex.P8 were marked. Ex.P1 is the copy of offer of appointment issued by the respondent to the petitioner on 22-07-1996. Ex.P2 is the copy of order of appointment on regular basis issued by the respondent to the petitioner on 15-05-2000. Ex.P3 (series) is the copy of ESI medical certificates issued to the petitioner for the period 05-03-2009 to 18-03-2009. Ex.P4 (series) is the copy of medical certificates issued to the petitioner for the period 18-03-2009 to 01-09-2010. Ex.P5 is the copy of industrial dispute raised by the petitioner before the Labour Officer (Conciliation) on 10-06-2013. Ex.P6 is the copy of letter given by the respondent to the Labour Officer (Conciliation) on 12-08-2013. Ex.P7 is the copy of conciliation failure report, dated 14-11-2013. Ex.P8 is the copy of the certified standing order of the Mill. These documents would go to show that the petitioner was appointed at the respondent establishment on 22-07-1996 and he had been in service and his service became permanent on 15-05-2000 and he has taken medical treatment for the period from 05-03-2009 to 01-09-2010 and he had been given several prescriptions and thereafter, he has raised the industrial dispute for his non-employment on 10-06-2013 before the Conciliation Officer and conciliation proceedings were taken place and the management has appeared before the conciliation proceedings and the conciliation was failed and the matter has been referred to this Court and the respondent establishment is having certified standing order.

7. On the other hand, to disprove the case of the petitioner the respondent management has examined the Supervisor of the respondent Mill as RW.1 and he has stated in his evidence that the petitioner was working at the respondent Mill since from 1996 and he was made permanent from 15-05-2000 and that the petitioner was a chronic absentee and was taking leave without any permission and he has taken 913 days leave since his joining in the respondent Society till 16-04-2009 and several warnings has been issued against the petitioner and since the petitioner has not turned up for service from 18-03-2009 the show cause notice was sent to the petitioner on 01-04-2009 for which the petitioner has not given any reply to the management and therefore, he has

been removed from service on 16-04-2009 as per the standing order of the respondent Mill. In support of their oral evidence the respondent management has exhibited Ex.R1 to Ex.R5. Ex.R1 is the statement of unauthorized absence chart which would go to show that the petitioner has unauthorizedly absent for 913½ days but, the said statement is not supported by any documentary evidence or any attendance register. Ex.R2 is the copy of termination order issued against petitioner on 16-04-2009 which would go to show that the petitioner was terminated from service on 16-04-2009. Ex.R3 and Ex.R4 are the copy of the registers to show the dispatching of letters regarding explanation notice and termination order but, both the documents have not been supported by any documentary evidence for the proof of receipt of the same by the petitioner. Ex.R5 is the copy of authorization letter on 22-04-2017. Further, these documents would reveal the fact that the charge memo has not been issued to the petitioner for the alleged unauthorized absence and no Enquiry Officer was appointed to conduct the domestic enquiry against the petitioner and no domestic enquiry was conducted and no findings were given by the Enquiry Officer and without affording any opportunity to the petitioner to putforth his case by conducting domestic enquiry the petitioner was terminated from service.

8. On perusal of evidence and documents it is clear that no charges has been framed against the petitioner for his unauthorized absence and no opportunity was given to the petitioner and no domestic enquiry was conducted to putforth his defence. Further, it is admitted by the respondent management in their evidence that the petitioner was terminated without conducting domestic enquiry. The petitioner has exhibited the standing order of the respondent Mill under Ex.P8 which would reveal the fact that clause 20 of the standing order deals with the misconduct of the employee and clause 21 deals with the enquiries by officer *i.e.*, a neutral person appointed by the Factory Manager in this behalf and the Factory Manager shall have powers to award punishment and clause 22 deals with the punishment for misconduct and particularly no order of punishment shall be made unless the workman concerned is informed in writing of the alleged misconduct against him and the enquiry in accordance with the principles of natural justice is conducted.

9. In this case, admittedly, no such domestic enquiry proceedings were conducted by the management by appointing Enquiry Officer and no opportunity was given to the petitioner in accordance with the standing order of the respondent Mill and that therefore, it is clear that the

respondent management has not followed the standing order and the petitioner has also not been given sufficient opportunities to put forth his case by giving an opportunity of an enquiry which would be conducted by a neutral person and to find the truth of the charges levelled against him and that therefore, the order of termination of the petitioner is against the principles of natural justice and also against the provisions of the standing order of the respondent Mill and that therefore, the alleged termination order passed against the petitioner is absolutely illegal and is liable to be set aside and therefore, it is to be held that the industrial dispute raised by the petitioner against the respondent management, over reinstatement with back wages is justified and 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 reinstatement with back wages is justified, it is to be decided whether the petitioner is entitled for back wages as claimed by him. There is no evidence that the petitioner is working so far in any other industry and that there is no proof exhibited before this Court that he is working anywhere else. The respondent has not proved the fact that the petitioner has been working in any other establishment after his termination. However, the petitioner could have served at any other industry after his termination. Considering the above facts and circumstances, this Court decides that the petitioner is entitled only for 25% back wages with continuity of service and other attendant benefits.

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

Dictated to the Stenographer, transcribed by her, corrected and pronounced by me in the open Court on this the 17th day of April, 2018.

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

List of petitioner's witnesses: Nil.

List of petitioner's exhibits:

- Ex.P1 — 22-07-1996 — Copy of offer of appointment issued by the respondent to the petitioner.
- Ex.P2 — 15-05-2000 — Copy of order of appointment on regular basis issued by the respondent to the petitioner.
- Ex.P3 — 05-03-2009 — Copy of medical certificates (series) to issued to the petitioner.
18-03-2009
- Ex.P4 — 18-03-2009 — Copy of medical certificates (series) to of the petitioner.
01-09-2010
- Ex.P5 — 10-06-2013 — Copy of industrial dispute raised by the petitioner before the Labour Officer (Conciliation).
- Ex.P6 — 12-08-2013 — Copy of letter given by the respondent to the Labour Officer (Conciliation).
- Ex.P7 — 14-11-2013 — Copy of conciliation failure report.
- Ex.P8 — 23-03-2003 — Copy of the certified standing order of the Mill.

List of respondent's witness:

- RW.1 — 20-07-2017 — Kumaresan

List of respondent's exhibits:

- Ex.R1 — — — Statement of unauthorized absence chart.
- Ex.R2 — 16-04-2009 — Copy of termination order issued against petitioner.
- Ex.R3 — — — Copy of register to show the dispatching of letter regarding explanation notice.
- Ex.R4 — — — Copy of register to show the dispatching of letter regarding termination order.
- Ex.R5 — 22-04-2017 — Copy of authorization letter.

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