



# புதுச்சேரி மாநில அரசிதழ்

## La Gazette de L'État de Poudouchéry

### The Gazette of Puducherry

அதிகாரம் பெற்ற வெளியீடு

Publiée par Autorité

Published by Authority

விலை : ₹ 27-00

Prix : ₹ 27-00

Price : ₹ 27-00

எண்	புதுச்சேரி	செவ்வாய்க்கிழமை	2018 ஆக்டோபர் 9
No.	41 Poudouchéry	Mardi	9 Octobre 2018 (17 Asvina 1940)
No.	Puducherry	Tuesday	9th October 2018

பொருளடக்கம்

SOMMAIRES

CONTENTS

பக்கம்

Page

Page

தொழில் நீதிமன்றத் தீர்ப்புகள் ..	1298	Sentence arbitral du Travail ..	1298	Award of the Labour Court ..	1298
		de Tribunal.			
அரசு அறிவிக்கைகள் ..	1307	Notifications du Gouvernement ..	1307	Government Notifications ..	1307
ஒப்ப அறிவிப்புகள் ..	1316	Avis d'Adjudications ..	1316	Tender Notices ..	1316
ஆபத்தான நிறுவனங்கள் ..	1322	Etablissements Dangereux ..	1322	Dangerous Establishments ..	1322
சாற்றறிக்கைகள் ..	1326	Annonces ..	1326	Announcements ..	1326
திருத்தம் ..	1334	Corrigendum ..	1334	Corrigendum ..	1334

**GOVERNMENT OF PUDUCHERRY  
LABOUR DEPARTMENT**

(G.O. Rt. No. 96/AIL/Lab./T/2018,  
Puducherry, dated 18th June 2018)

**NOTIFICATION**

Whereas, an Award in I.D. (L) No. 42/2015, dated 05-04-2018 of the Industrial Tribunal-cum-Labour Court, Puducherry in respect of the industrial dispute between the management of M/s. Pondicherry Institute of Medical Sciences, Kalapet, Puducherry and Thiru R. Murugaiyan, Puducherry, over non-employment has been received;

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

(By order)

**S. MOUTTOULINGAM,**  
Deputy Labour Commissioner.

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

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

*Thursday, the 05th day of April 2018*

**I.D(L). No. 42/2015**

Thiru R. Murugaiyan,  
No. 1, Gopal Chettiyar Street,  
Periya Kalapet,  
Puducherry 605 008. . . Petitioner

*Versus*

The Managing Director,  
M/s. Pondicherry Institute of Medical Sciences,  
Ganapathichettikulam,  
Village No. 20, Kalapet,  
Puducherry. . . Respondent

This industrial dispute coming on 06-03-2018 before me for final hearing in the presence of Thiru R.T. Shankar, Counsel for the petitioner and Thiru L. Sathish, 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. 85/AIL/Lab./J/2015, dated 03-08-2015 for adjudicating the following:-

(i) Whether the dispute raised by Thiru. R. Murugaiyan against the management of M/s. Pondicherry Institute of Medical Sciences, Puducherry, over his non-employment is justified ? If justified, what relief he is entitled to ?

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

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

The petitioner joined the service of the respondent in the year 2002 and he has been working in a prompt manner without any default or remarks since his joining of duty in the respondent Hospital. The petitioner was young and energetic person and was not feeling well due to stomach problem and he was forced to take leave from his duties with the respondent and consequently the petitioner was issued with a warning memo on 30-03-2013 by the respondent for which the petitioner had given due explanation to the respondent. Since, the petitioner again not well and was forced to take leave from his duty and as such on 21-09-2013 he was issued with charge memo by the respondent for which he had duly produced Medical Certificate along with explanation to the respondent. Once again the petitioner was issued with charge memo on 17-01-2013 for which also the petitioner had given his due explanation and the same was refused to receive by the respondent. The petitioner was issued with an enquiry notice on 27-12-2013 for which the petitioner has given his suitable explanation. The petitioner was forced to take continuous leave from his duty and he could not produce suitable evidence to substantiate his claim. In fact, due to his illness, the petitioner could not attend his duties properly. A false notice was given to the petitioner alleging that he was felt asleep during duty hours during the course of his employment. The petitioner has given his due reply and there was an enquiry was conducted and he had enclosed his suitable explanation for the long absence from his duty along with his explanation to the respondent on 06-11-2014. The petitioner belongs to poor family and he is married and maintaining his entire family out of his sole income of salary as well as paid by the respondent. Hence, the petitioner requested the respondent to drop the allegations

levelled against the petitioner in the enquiry report and to make necessary arrangement for his reinstatement to his duty with the respondent. No poor employee shall not be punished for his other part time work when the employee causes no harm to his permanent employer. The petitioner is a workman of the respondent. In any event no prior notice having been given prior to the termination, the termination being reattachment within meaning of section 2(oo) of the Industrial Disputes Act, the same is *void ab initio*. The petitioner approached the respondent several times for reinstatement with back wages, but, his entire attempt becomes in vain. The respondent has not given any employment or to settle the back wages with benefits to the petitioner. Therefore, the petitioner prayed this Court to pass an order to direct the respondent to reinstate into service with full back wages and other attendant benefits by dismissing the termination order against the petitioner and to pay a sum of ₹ 2,00,000 (Rupees two lakhs only) as back wages and other benefits due to the petitioner for the period of termination.

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

The respondent denied all the averments contained in the claim petition and stated that the cause title in the claim petition as well as in the reference is wrong as there is no Managing Director in the Respondent Institution. The Respondent is headed by Director-Principal and therefore, the cause title in the claim petition needs to be suitably amended and further stated that it is a Multi-Specialty Hospital and Trauma Care Centre, providing plethora of medical facilities and treatments to people in and around Puducherry region. It also runs a reputed Medical College and Nursing College. The respondent has qualified and efficient Doctors, Nurses, Staffs, Administrators, Faculty Members, latest equipments, medical gadgets, best machineries, well furnished laboratories, and all the other required facilities to facilitate best possible treatments to patients and best education to students. The respondent is emerging as one of the reputed medical institutions in and around Puducherry region and it has assumed strategic importance for people of Pondicherry in providing quality medical care in complicated fields of medicine. The respondent is a Trauma Care Centre where hundreds of patients come in for emergency treatments in any given day. Apart from that, there are in-patients and out-patients,

who require constant medical attention. The respondent's Hospital also has ICU and CCU wards, critical operation theatres where Doctors, Nurses, Technicians, Assistants, Attendants and other workers provide round the clock medical treatment and assistance to patients. The respondent employs around 1670 workers, Nursing Staff, General Staff, Officers and Faculty out of whom 682 employees are covered under the Industrial Disputes Act of 1947. It also has a reputed Medical College and a Nursing College within its premises and the students therein, attend to hospital every day as part of their curriculum and take valuable practical education from Hospital. It is gainsaid that being a public utility service institution catering to the emergency health care, highest levels of discipline, integrity, honesty, sincerity and conduct is expected from each and every one associated with respondent. It cannot take any incident of dishonesty, indiscipline or lack of integrity easily. Any compromise by respondent on such qualities expected of any worker can only wreck havoc in the institution and can give a leeway to others to follow such courses with impunity. It can also be demoralizing to honest and upright workers. The petitioner was employed as Office Assistant on 17-04-2002 and even since then he had not only been habitually absenting himself without intimation and also involved in other serious misconducts and misdemeanors. The charge memo was given to the petitioner on 21-08-2010 for the misconduct of sleeping in duty and neglect of work for which the petitioner requested forgiveness and he was suspended for two days as punishment *vide* order, dated 24-08-2010. The another charge memo was given to the petitioner on 27-02-2013 for the misconduct of absent for more than eight continuous working days from 20-02-2012 and he was issued warning memo, dated 30-03-2013 permitting him to re-join duty on his letter of pardon stating that he was under treatment for alcohol dependence syndrome. The another charge memo was given to the petitioner on 27-04-2013 for the misconduct of absent for more than eight continuous working days from 13-04-2013 and order was issued against him on 15-05-2013 suspending him from 29-04-2013 to 14-05-2013 on his letter of pardon that in case of any recurrence, the management will be constrained to take serious action including termination. The another charge memo was given to the petitioner on 21-09-2013 for the misconduct of absent for eight continuous working days from 06-09-2013 for which the petitioner sought excuse on health grounds and

order was issued on 01-10-2013 warning him that any further recurrence will be viewed seriously. The respondent had shown extraordinary leniency to the petitioner and on more than one occasion it had condoned the misconduct of chronic absenteeism. The petitioner took undue advantage of the leniency shown by the respondent did not bother to mend his ways. The petitioner continued to be erratic and once again remained unauthorizedly absent from 02-12-2013. A charge memo, dated 17-12-2013 was issued to him for his unauthorized absence from 02-12-2013 to 22-12-2013. The petitioner was specifically charged for his habitual attitude of remaining absent from work and in the present case he had remained continuously absent from 02-12-2013 to 22-12-2013 without any intimation and therefore, was liable for abandonment of employment. He submitted his explanation, dated 23-12-2013 accepting his misconduct. An impartial domestic enquiry was held on 02-01-2014, wherein, the petitioner appeared in person and after having understood the charges, unconditionally accepted the same. He did not let any oral evidence on his side and hence, the enquiry closed as admitted. The petitioner also signed the enquiry proceedings. The Enquiry Officer submitted his findings, dated 03-01-2014 holding that the petitioner was found guilty of the charges framed on his admission and on the basis of the records. A second show cause notice, dated 03-01-2014 was issued, enclosing the copy of the enquiry proceedings and findings seeking his explanation as to why his name should not be struck off from the rolls under Rule 11.1.7 of the Service Rules. The petitioner submitted his explanation, dated 03-01-2014, once again accepting the absence and seeking forgiveness. The past record of petitioner shows that he has been warned and suspended on earlier occasions for remaining absent without authorization, but there was no improvement in his conduct. Petitioner was also reprimanded for getting intoxicated and remaining absent for long spells. Infact, the main reason for such frequent absence of the petitioner and that too for long duration, was his addiction to alcohol and the petitioner even took treatment in respondent's hospital for de-intoxication was admitted as inpatient on 28-02-2013 and discharged on 13-03-2013 after extensive treatment. He also underwent de-addiction treatment at a rehabilitation centre from 26-07-2011 to 26-08-2011. In spite of such history of petitioner, the respondent showed maximum leniency in case of the petitioner and tried to accommodate him to the

best possible extent, but, he did not mend his ways and failed to utilize the opportunities presented to him. Any further leniency shown to him would adversely affect the discipline and as the employee did not seem to rectify himself inspite of several charge memos, warnings and suspensions issued to him, the respondent was constrained to take a strong action and it was decided to terminate his services for proved misconduct of habitual/continuous absence in the interest of the organization and the maintenance of discipline and by way of deterrence to other such employees in the respondent's institution as per the termination order, dated 28-01-2014. The respondent is a medical institution which requires the services of its Staffs, Officers, Doctors, Nurses, Attendants, *etc.*, at all times to cater to the needs of its patients. It receives number of emergency cases and round the clock attendance of such patients are extremely essential, unauthorized absence and that too in such regularity, cripples the entire functioning of the respondent's Hospital. Such indiscipline and lack of interest in services, if, left unpunished or even if, lesser punishments are imposed it will set a trend among the other workers and such unauthorized absence spreads like contagious disease. The respondent was therefore, compelled to take such severe action which is fully justified. The averments in the claim petition of the petitioner are absolutely false and baseless and are invented by the petitioner solely for the purposes of gaining sympathy of this Court and seeking reinstatement in service.

4. In the course of enquiry on the side of the petitioner PW.1 and PW.2 were examined and Ex.P1 to Ex.P11 were marked and on the side of the respondent RW.1 was examined and Ex.R1 to Ex.R26 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 his non-employment 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 exhibits marked on both sides are carefully considered. In support of his case the learned Counsel for the petitioner has relied upon the Judgment reported in CDJ 2014 DHC 2655. In order to establish his case the petitioner has examined himself as PW.1 and he has reiterated all the

averments in the claim petition in his evidence and stated that he joined in the respondent establishment in the year 2002 and he was working in the respondent establishment in a prompt manner without any default or remarks since from joining in duty and that he was not feeling well due to his stomach problem and he was forced to take leave from his duties for which the respondent management has issued a warning memo on 30-03-2013 and he has given due explanation to the respondent for the said warning memo and he had again unwell and he was forced to take leave from his duty on 21-09-2013 and again he was received the charge memo and he had duly produced his Medical Certificate before the respondent management with his explanation and that the respondent management has refused to receive the same and thereafter, he has received the enquiry notice on 27-12-2013 for which he has given his suitable explanation and PW.1 further stated that due to his illness he could not attend his duty properly and again he was forced to take continuous leave due to his illness and the respondent management has given false notice to him alleging that he was felt asleep during duty hours in the course of his employment and he had given his due reply and an enquiry was conducted wherein, he has enclosed his suitable explanation on 06-11-2014 for his long absence from duty and that since he belongs to poor family and he is maintaining his entire family out of his sole income he requested the respondent management to drop the allegations levelled against him in the enquiry report and to make necessary arrangement for his reinstatement to his duty with the respondent management and that the respondent management has not given prior notice before termination of his service and even he has approached the respondent management several times for reinstatement of his service the respondent management refused to give employment and that the respondent management has not given any employment or to settle the back wages with benefits to him and therefore, he prayed this Court to direct the respondent to reinstate into service with full back wages and other attendant benefits.

7. In support of his evidence the co-worker of the petitioner was examined as PW.2 and it is the evidence of PW.2 that he was working as plumber in the respondent Hospital along with the petitioner and the petitioner was working as Office Assistant in Library Department and he personally known him and that he was undergoing medical treatment for his habit of

alcoholism and he has not come to duty with drunken mood at any point of time. In support of his case the petitioner has exhibited Ex.P1 to Ex.P11. Ex.P1 is the copy of appointment order of the petitioner, dated 15-04-2002. Ex.P2 is the copy of termination order of the petitioner, dated 28-01-2014. Ex.P3 is the copy of complaint given by the petitioner to the Labour Conciliation Officer on 15-07-2014. Ex.P4 is the copy of notice of enquiry issued by the Labour Conciliation on 10-09-2014. Ex.P5 is the copy of reply by the management, dated 08-10-2014. Ex.P6 is the copy of Medical Certificate, dated 22-12-2013. Ex.P7 is the copy of Medical Certificate, dated 24-05-2011. Ex.P8 is the copy of alcoholism treatment report, dated 02-08-2011. Ex.P9 is the copy of employee Identity Card. Ex.P10 is the copy of explanation for the enquiry report, dated 02-01-2014 given by the petitioner to Labour Conciliation Officer. Ex.P11 is the copy of failure report, dated 19-06-2015. These documents would go to show that the petitioner was appointed on 15-04-2002 and he was terminated from service on 28-01-2014 and he filed a petition on 15-07-2014 before the Labour Conciliation against the respondent management for wrongful termination from his service for which the management has given a reply and that the petitioner has taken medical treatment to avoid addiction to alcoholism and that the petitioner has given explanation for the enquiry report, dated 02-01-2014 and after negotiations since the matter has not been amicably settled on 19-06-2015 the Conciliation Officer has sent failure report to the Government.

8. On the side of the respondent management the General Manager-Administration-Principal Officer of the respondent's Hospital was examined as RW.1 and RW.1 has stated in his evidence that their Hospital is a Multi-Specialty Hospital and Trauma Care Centre and number of patients come in for emergency treatments and apart from that, there are in-patients and out-patients and they have to be given medical attention and their Hospital is having ICU and CCU wards, critical operation theatres where Doctors, Nurses, Technicians, Assistants, Attendants and other workers provide round the clock medical treatment and assistance to patients and 1670 workers are working in the respondent Hospital and out of which 682 employees are covered under the Industrial Disputes Act and that the claim petitioner was employed as Office Assistant on 17-04-2002 and even since then he had not only been habitually absenting himself without intimation but, also involved in other serious misconducts and misdemeanors and that the charge memo was issued against the petitioner on 21-08-2010 for the misconduct

of sleeping in duty hours and neglect of work and for the said charge memo the petitioner requested forgiveness and he was suspended for two days as punishment *vide* order, dated 24-08-2010 and another charge memo was issued against the petitioner on 27-02-2013 for the misconduct of absent for more than eight continuous working days from 20-02-2012 and that he was issued warning memo on 30-03-2013 permitting him to re-join duty on his letter of pardon stating that he was under treatment for alcohol dependence syndrome and that another charge memo was issued against the petitioner on 27-04-2013 for the misconduct of absent for more than eight continuous working days from 13-04-2013 and order was issued against him on 15-05-2013 suspending him from 29-04-2013 to 14-05-2013 on his letter of pardon that in case of any recurrence, the management will be constrained to take serious action including termination and another charge memo was issued against the petitioner on 21-09-2013 for the misconduct of absent for eight continuous working days from 06-09-2013 for which the petitioner sought excuse on health grounds and order was issued on 01-10-2013 warning him that any further recurrence will be viewed seriously and that the petitioner was shown extraordinary lenience by the respondent management and that the respondent management has condoned the misconduct of chronic absenteeism of the petitioner for more than one occasion and that the petitioner has taken due advantage of the leniency shown by the respondent management did not bother to mend his ways and the petitioner continued to be erratic remained unauthorizedly absent from 02-12-2013 and that charge memo was issued to him on 17-12-2013 and he was issued show cause notice for his unauthorized absence from 02-12-2013 to 22-12-2013 and he was charged specifically for his habitual attitude of remaining absent from work and that he had remained continuously absent from 02-12-2013 to 22-12-2013 without any intimation and therefore, the petitioner was liable for abandonment of employment and that the petitioner has submitted his explanation on 23-12-2013 accepting his misconduct and an impartial domestic enquiry was held on 02-01-2014 and that the petitioner was unconditionally accepted the charges and he did not let any oral evidence on his side and hence, the enquiry was closed as admitted and the petitioner also signed the enquiry proceedings and findings was given by the Enquiry Officer on 03-01-2014 holding that the petitioner was found guilty of the charges framed on his admission and on the basis of the records and that second show cause notice was issued on 03-01-2014

and that the petitioner has submitted his explanation on 03-01-2014 once again accepting the absence and seeking forgiveness and that the petitioner was also reprimanded for getting intoxicated and remaining absent for long spells and frequent absence for long duration and that the petitioner was taking treatment from 28-02-2013 at their Hospital and discharged on 13-03-2013 and he also underwent de-addiction treatment at a rehabilitation centre from 26-07-2011 to 26-08-2011 and that the petitioner was not seem to rectify himself inspite of several charge memos, warnings and suspensions issued to him and therefore, the respondent was compelled to take such severe action of dismissal of service against the petitioner which is fully justified.

9. In support of their oral evidence the respondent management has exhibited Ex.R1 to Ex.R26. Ex.R1 is the copy of the letter given by the petitioner to the respondent on 19-06-2014. Ex.R2 is the copy of the Service Certificate given by the respondent to the petitioner on 19-06-2014. Ex.R3 is the copy of the charge memo issued by the respondent to the petitioner on 21-08-2010. Ex.R4 is the copy of the explanation letter given by the petitioner on 23-08-2010 to the respondent for the charge memo, dated 21-08-2010. Ex.R5 is the copy of the order, dated 24-08-2010 passed by the respondent in charge memo, dated 21-08-2010. Ex.R6 is the copy of acknowledgment card for service of charge memo, dated 27-02-2013 to the petitioner. Ex.R7 is the copy of the charge memo issued by the respondent to the petitioner on 27-02-2013. Ex.R8 is the copy of the warning memo given by the respondent to the petitioner on 30-03-2013. Ex.R9 is the copy of the discharge summary given by the respondent Hospital to the petitioner on 13-03-2013. Ex.R10 is the copy of the charge memo issued by the respondent to the petitioner on 27-04-2013. Ex.R11 is the copy of the explanation letter given by the petitioner on 29-04-2013 to the respondent for the charge memo, dated 27-04-2013. Ex.R12 is the copy of the order, dated 15-05-2013 passed by the respondent for the charge memo, dated 27-04-2013. Ex.R13 is the copy of the charge memo issued by the respondent to the petitioner, dated 21-09-2013. Ex.R14 is the copy of the explanation letter given by the petitioner on 23-09-2013 to the respondent to the charge memo, dated 21-09-2013. Ex.R15 is the copy of the order, dated 01-10-2013 passed by the respondent for the charge memo, dated 21-09-2013. Ex.R16 is the copy of the charge memo issued by the respondent to the petitioner, dated 17-12-2013. Ex.R17 is the copy of the explanation

letter given by the petitioner to the respondent, dated 23-12-2013. Ex.R18 is the copy of the enquiry notice sent by the respondent to the petitioner on 27-12-2013. Ex.R19 is the copy of acknowledgment card for service of charge memo, dated 27-12-2013 to the petitioner. Ex.R20 is the copy of the enquiry proceedings given by the Enquiry Officer. Ex.R21 is the copy of the second show cause notice given by the respondent to the petitioner, dated 03-01-2014. Ex.R22 is the copy of the findings of the enquiry report submitted by the Enquiry Officer, dated 03-01-2014. Ex.R23 is the copy of the explanation letter given by the petitioner to the respondent on 03-01-2014. Ex.R24 is the copy of the explanation letter given by the petitioner to the respondent on 04-06-2014. Ex.R25 is the copy of the service rules of the respondent's institution. Ex.R26 is the copy of the dismissal order, dated 28-01-2014 passed by respondent to the petitioner with RPAD slip and Acknowledgment Card.

10. The above documents exhibited by the respondent management would reveal the fact that the petitioner was given charge memo on 21-08-2010 for the misconduct of sleeping in duty hours and for which the petitioner has submitted his explanation on 23-08-2010 and thereafter another charge memo was given on 27-02-2013 to the petitioner and warning memo was given to the petitioner on 30-03-2013 and that the petitioner had taken treatment at respondent Hospital and thereafter, on 27-04-2013 charge memo has been given to the petitioner for which the petitioner has given explanation on 29-04-2013 and thereafter on 21-09-2013 charge memo was given to the petitioner alleging that the petitioner was unauthorizedly absent from duty for which also the petitioner has submitted his explanation on 23-09-2013 and lastly on 17-12-2013 another charge memo was issued once again to the petitioner for unauthorized absence for which also the petitioner has submitted his explanation on 23-12-2013 and thereafter, an enquiry was ordered and enquiry notice was issued on 27-12-2013 and the Enquiry Officer who conducted the enquiry submitted his report on 03-01-2014 and on the same day the second show cause notice was issued to the petitioner and the petitioner also on the same day submitted his explanation and thereafter, the petitioner was dismissed from service on 28-01-2014 and it was sent under RPAD along with the Acknowledgment Card.

11. From the pleadings of both the parties, the evidence let in by either sides and the exhibits marked on both dies it can be noticed that the following facts are admitted by either side that the petitioner was

working at the respondent Hospital from the year 2002 and he was terminated in the year 2014 and the charge against the petitioner was unauthorized absence and domestic enquiry was conducted and second show cause notice was issued for which the petitioner has given the explanation and thereafter, the petitioner was terminated from service and the petitioner has raised an industrial dispute before the Conciliation Officer and thereafter, negotiation were held and the conciliation was failed and the failure report was submitted by the Conciliation Officer and on which the Government has sent the reference to this Court.

12. From the pleadings of both the parties this Court has found that the only issue to be decided by this Court is that whether the dismissal action taken by the respondent management against the petitioner is justified or not. The contention of the petitioner is that he was unwell and he had been under treatment on the said date of alleged unauthorized absence and the order of termination is disproportionate to the alleged misconduct of unauthorized absence. On this aspect the evidence of both the parties and the documents exhibited by either sides are carefully perused. It is learnt from the documents exhibited on the side of the respondent that even prior to the alleged unauthorized leave the petitioner has also charged for some misconduct alleged to have been committed by him and he has also committed other misconduct on several occasions and the same was admitted by him. It is to be seen whether the respondent management has conducted the domestic enquiry properly by giving sufficient opportunities to the petitioner to disprove the charges levelled against him.

13. The enquiry proceedings which is exhibited under Ex.R20 would reveal the fact that the domestic enquiry was commenced on 02-01-2014 at 02.30 p.m. and ended on the same day wherein, the petitioner has stated that he had no witness to examine or documents to be marked and on the management side the attendance registers for the months of December-2013 and January-2014 were marked as exhibits and even on the side of the management no witness was examined to prove the charges leveled against the petitioner before the Enquiry Officer. Further, in Ex.R20 the Enquiry Officer has stated that the petitioner Murugaiyan has submitted a letter, dated 23-12-2013 accepting his mistake and the fact that he had not come for duty due to personal problems. Further, it reveals from Ex.R22 the enquiry report that the Enquiry Officer has submitted the report on the very next day of the enquiry that is on 03-01-2014 stating that as the

petitioner unconditionally accepted all the charges levelled against him and sought for forgiveness and that the charges levelled against him stands proved beyond doubt and found that the petitioner was absent from 02-12-2013 to 22-12-2013. Though the enquiry report shows that the petitioner has unconditionally admits the charges the letter submitted by him on 23-12-2017 which is exhibited as Ex.R17 and relied upon by the respondent management would go to show that the petitioner has given intimation for the leave to the management for the period 03-12-2013 to 06-12-2013 and the said intimation is admittedly given by the petitioner to the respondent management and the same intimation letter was not marked on the side of the respondent as stated in the Ex.R17 which was marked in the cross examination of PW1 by the respondent management and these fact would go to show that the petitioner has given letter on 23-12-2013 stating that due to his personal problem he could not attend the duty for the period 03-12-2013 to 22-12-2013 and that he has given intimation for the leave for the period 03-12-2013 to 06-12-2013. In such circumstances, the Enquiry Officer as well as the management has not stated anything about the fact that whether actually the petitioner has intimated the leave for the period 03-12-2013 to 06-12-2013 at the beginning of the leave. Without any explanation to the said content of the letter under Ex.R17 the Enquiry Officer has stated that the petitioner has unconditionally admitted the charges levelled against him.

14. Furthermore, though the petitioner has stated in Ex.R17 that due to his family problem he could not given further intimation for the leave for the subsequent period the Enquiry Officer did not consider the above fact to decide the guilt of the petitioner in the enquiry and he has not stated in the enquiry report that whether the leave taken by him is willfull or wanton. Further, the letter under Ex.R17 relied upon by the respondent management would go to show that the petitioner has stated in his letter that at the beginning of the leave for the period 03-12-2013 to 06-12-2013 it was intimated by him to the management. Further, it is learnt from the records Ex.R20 to Ex.R22 that the enquiry was commenced on 02-01-2014 and on the same day it was closed and second show cause notice was issued on 03-01-2014 and on the same day the petitioner also has given reply and these facts would go to show that the Enquiry Officer has commenced the enquiry on 02-01-2014 without examining any witnesses on both sides and only on marking of attendance registers the Enquiry Officer concluded that the petitioner was found guilty for unauthorized absence. It is not in dispute that the petitioner has not attended duty from 02-12-2013

to 22-12-2013 and therefore, it is ought to have been decided by the Enquiry Officer that whether the absence of the petitioner is willfull or wanton.

15. Though the respondent management has established the fact that the petitioner was in the habit of involving in unauthorised absence in the previous occasions and committed misconduct of unauthorized absence and for the same he was excused by the management and he was permitted to join the duty, as far as this charge is concerned the findings of the Enquiry Officer is not based on the above facts and other circumstances, he has only gone through the attendance registers for the absence of the petitioner and he did not find whether the unauthorized absence of the petitioner is willfull or wanton and further the enquiry was commenced and completed on the same day *i.e.*, on 02-01-2014 at 02.30 p.m. only on the foot of the alleged unconditional admission of the delinquent petitioner. But, it is learnt from Ex.P3 that the petitioner has given complaint to the Labour Conciliation Officer wherein, it is stated by the petitioner that only on assurance given by the management he has admitted the charges and he was terminated by the management on 28-01-2014 on the basis of false charges.

16. The Enquiry Officer has failed to conduct the enquiry to find out the fact that whether the absence of the petitioner is willfull or wanton and that therefore, it is clear that the findings of the Enquiry Officer is not based on the documentary evidence particularly the letter given by the petitioner on 23-12-2013 stating the above fact that he intimated the leave and that therefore, the findings of the Enquiry Officer without perusing the explanation given by the petitioner would go to show that the findings of the Enquiry Officer has suffers from the non-application of mind while deciding the guilt of the petitioner and no sufficient opportunities was given to the petitioner to prove his case that under what circumstances he could not give intimation for the extension of leave.

17. It is the another contention of the petitioner that to punish the workman it is to be established by the management that workman has committed unauthorized absence from duty willfully and wantonly and in this case the petitioner has not taken the leave willfully and only for the cause of taking treatment to avoid alcoholism he was not able to attend the duty and the respondent management has failed to establish that absence was willfull and wanton. On perusal of documents exhibited on the side of the petitioner, it is learnt from Ex.P6 that Government Medical Officer has



issued certificate that the petitioner was suffering from alcohol dependance-withdrawal syndrome was taking treatment which was prescribed at PIMS from 03-12-2013 to 22-12-2013. The document Ex.P7 would reveal the fact that the petitioner was taking treatment to avoid the habit of taking alcohol *i.e.* For de-addiction cum rehabilitation for alcoholic abused from 27-01-2014 to 24-05-2014 after he was terminated from service. The document Ex.P8 would reveal the fact that Annai Karunala Social Welfare Association has sent a letter on 02-08-2011 to the Personal Officer of PIMS respondent Hospital informing that the petitioner has been taking treatment in their Integrated Rehabilitation centre for his alcoholism since, 26-07-2011 up to 26-08-2011. From the above documents it is clear that the petitioner was suffering from alcohol dependance-withdrawal syndrome and he was taking treatment to avoid alcoholism. Further, the RW.1 in his cross examination has stated as follows :

“மனுதாரர் எங்கள் நிறுவனத்தில் ஏப்ரல் 2002-ஆம் ஆண்டு பணியில் சேர்ந்தார். 2012-ஆம் ஆண்டு டிசம்பர் மாதம் வரை அவர் மீது வேறெந்த குற்றச்சாட்டும் இல்லை என்றால் சரிதான். 2013-ஆம் ஆண்டில் தான் மனுதாரர் குடிப்பழக்கத்திற்கு ஆளானார். அவருக்கு குடிப்பழக்கம் உள்ளதாக எடுத்துக்கொண்டு அவருக்கு சிகிச்சைக்காக சென்றார். எந்த மருத்துவமனை என்று எங்களுக்கு தெரியாது. மொத்தம் எத்தனை நாள் விடுப்பு எடுத்ததார் என்று எனக்கு ஞாபகம் இல்லை. அவருக்கு மூன்று முறை பணிக்கு வரவில்லை என்று அறிவிப்பு கொடுத்திருக்கிறோம் என்றால் சரிதான். நான்கு முறை விடுப்பு எடுத்ததற்காக Memo வழங்கப்பட்டது என்றால் சரிதான். மனுதாரர் 2013-ஆம் ஆண்டில் 50 நாட்களுக்கு குறைவாக விடுப்பில் இருந்தார் என்றால் அது பற்றி எனக்கு தெரியாது. மனுதாரரின் மனைவி எங்கள் நிறுவனத்தின் HR Department-ல் பணிபுரிகிறார் என்றால் சரிதான். அவரது பெயர் திருமதி. தமிழரசி. மனுதாரரின் மனைவி தமிழரசி மனுதாரர் எடுக்கும் விடுமுறைக்கு தகவல் தெரிவித்தார் என்றால் சரியல்ல. நான் 2013-ஆம் ஆண்டு எதிர்மனுதாரர் நிறுவனத்தில் பணியில் இல்லை. மனுதாரரின் மனைவி மனுதாரரின் விடுப்பிற்கு ஒவ்வொரு முறையும் தகவல் தெரிவித்து இருந்தார் என்றால் அது பற்றி எனக்கு தெரியாது. ஏனென்றால் அந்த சமயத்தில் நான் அங்கு பணியில் இல்லை. இந்த விடுமுறை எடுத்த குற்றத்தை தவிர வேறெந்த குற்றமும் குற்றச்சாட்டில் சொல்லப்படவில்லை. மனுதாரரின் குற்றச்சாட்டிற்கு அதிகமாக தண்டனை வழங்கப்பட்டிருக்கிறது என்றால் சரியல்ல. மனுதாரர் தன் மேல் உள்ள குற்றச்சாட்டை நியாயமாக ஒப்புக்கொண்டுள்ளார். அவர் எங்கள் மருத்துவமனையில் சிகிச்சை எடுத்துக் கொண்டுள்ளாரா என்றால் சில சமயம் எடுத்துக் கொண்டுள்ளார். வேறு மருத்துவமனையில் குடிப்பழக்கத்தை மாற்றுவதற்காக சிகிச்சை எடுத்துள்ளார் என்றால் சரிதான்...”

From the above evidence it is clear that the petitioner was working in the respondent Hospital from the year 2002 and the petitioner has not committed any other misconduct except the unauthorized absence and it is also admitted by the management witness that the petitioner was taking medical treatment to avoid alcoholism. Further, it was suggested by the petitioner that his wife is working at HR Department in the respondent Hospital and he informed then and there regarding his leave to the management through his wife and the fact that the petitioner's wife was working at the HR Department in the respondent Hospital is admitted by RW.1 but, he denied that the petitioner's wife has informed the leave taken by the petitioner. The Enquiry Officer ought to have enquired whether the petitioner's wife has informed the leave or not before giving finding of the guilt against the petitioner and therefore, it is clear that no sufficient opportunities was given to the petitioner to disprove the case of the management.

18. Further, the learned Counsel for the petitioner has relied upon the Judgment reported in CDJ 2014 DHC 2655 wherein, the Hon'ble High Court of Delhi has held that,

“.....The question whether 'unauthorized absence from duty' amounts to failure of devotion to duty or behaviour unbecoming of a Government Servant cannot be decided without deciding question whether absence is wilful or because of compelling circumstances.

If, the absence is the result of compelling circumstances under which it was not possible to report or perform duty, such absence cannot be held up be wilful. Absence from duty without any application or prior permission may amount to unauthorized absence, but, it does not always mean willful. There may be different eventualities due to which an employee may abstain from duty, including compelling circumstances beyond his control like illness, accident, hospitalization, *etc.*, but, in such case the employee cannot be held guilty of failure of devotion to duty or behaviour unbecoming of a Government Servant.

In a Departmental proceeding, if, allegation of unauthorized absence from duty is made, the disciplinary authority is required to prove that the absence is wilful, in absence of such finding, the absence will not amount to misconduct...”

From the above observation of the Hon'ble High Court it is clear that mere absence without prior permission may amount to unauthorized absence but it does not always mean willful and that therefore, it is clear that the Enquiry Officer has failed to decide the

same and the disciplinary authority has failed to decide that whether the unauthorized absence of the petitioner is willfull or not. Further, it is learnt from the evidence of RW.1 that the petitioner has taken medical treatment to avoid alcoholism and the same was known to the respondent management and therefore, it is clear that the petitioner has taken the leave for his medical treatment and he has not taken the leave willfully and wantonly.

19. Further, as it is established by the management that this petitioner is a habitual absentee without giving any intimation to the management this petitioner can be given some penalty for such misconduct committed by him and that therefore, the dismissal of punishment given by the management for such alleged unauthorized absence cannot be accepted and hence, it is to be held that the industrial dispute raised by the petitioner against the respondent management over his non-employment is justified by declaring that the punishment order passed by the respondent management against the petitioner is untenable and as such the petitioner is entitled for reinstatement as claimed by him. However, considering the fact that the petitioner has committed misconduct of unauthorized absence previously on many occasions and the fact that the petitioner was absent for the period from 07-12-2013 to 22-12-2013 unauthorizedly, penalty of stoppage of two increments with cumulative effect can be awarded while granting reinstatement with continuity of service. Further, considering the fact that the petitioner has asked the respondent management to give Service Certificate to join in some other establishments it can be inferred that the petitioner was working at some other establishment after his termination of service from the respondent Hospital and hence, he is not entitled for any back wages as claimed by him.

20. In the result, the petition is partly allowed and the industrial dispute raised by the petitioner against the respondent management, over his non-employment is justified and Award is passed directing the respondent management to reinstate the petitioner in service within one month from the date of this Award by giving penalty of stoppage of two increments with cumulative effect while granting reinstatement with continuity of service and the petition is partly dismissed in respect of back wages claimed by him. No cost.

Dictated to the Stenographer, transcribed by her, corrected and pronounced by me in the open Court on this the 05th day of April, 2018.

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

*List of petitioner's witnesses:*

PW.1 —15-03-2016 Murugaiyan

PW.2 —12-04-2017 Umapathy

*List of petitioner's exhibits:*

Ex.P1 — 15-04-2002 Copy of appointment order of the petitioner.

Ex.P2 — 28-01-2014 Copy of termination order of the petitioner.

Ex.P3 — 15-07-2014 Copy of complaint given by the petitioner to the Labour Conciliation Officer.

Ex.P4 — 10-09-2014 Copy of notice of enquiry issued by the Labour Conciliation.

Ex.P5 — 08-10-2014 Copy of reply by the management.

Ex.P6 — 22-12-2013 Copy of Medical Certificate.

Ex.P7 — 24-05-2011 Copy of Medical Certificate.

Ex.P8 — 02-08-2011 Copy of alcoholism treatment report.

Ex.P9 — 17-04-2002 Copy of employee Identity Card.

Ex.P10—06-11-2014 Copy of explanation for the enquiry report, dated 02-01-2014 given by the petitioner to the Labour Conciliation Officer.

Ex.P11—19-06-2015 Copy of failure report.

*List of respondent's witness:*

RW.1 — 09-06-2017 A.G. Isaiah

*List of respondent's exhibits:*

Ex.R1 — 19-06-2014 Copy of the letter given by the petitioner to the respondent.

Ex.R2 — 19-06-2014 Copy of the service certificate given by the respondent to the petitioner.

Ex.R3 — 21-08-2010 Copy of the charge memo issued by the respondent to the petitioner.

Ex.R4 — 23-08-2010 Copy of the explanation letter given by the petitioner to the respondent for the charge memo, dated 21-08-2010.

Ex.R5 — 24-08-2010 Copy of the order passed by the respondent in charge memo, dated 21-08-2010.

Ex.R6	—	Copy of Acknowledgment Card for service of charge memo, dated 27-02-2013 to the petitioner.
Ex.R7	27-02-2013	Copy of the charge memo issued by the respondent to the petitioner.
Ex.R8	30-03-2013	Copy of the warning memo given by the respondent to the petitioner.
Ex.R9	13-03-2013	Copy of the discharge summary given by the respondent Hospital to the petitioner.
Ex.R10	27-04-2013	Copy of the charge memo issued by the respondent to the petitioner.
Ex.R11	29-04-2013	Copy of the explanation letter given by the petitioner to the respondent for the charge memo, dated 27-04-2013.
Ex.R12	15-05-2013	Copy of the order passed by the respondent for the charge memo, dated 27-04-2013.
Ex.R13	21-09-2013	Copy of the charge memo issued by the respondent to the petitioner.
Ex.R14	23-09-2013	Copy of the explanation letter given by the petitioner to the respondent to the charge memo, dated 21-09-2013.
Ex.R15	01-10-2013	Copy of the order passed by the respondent for the charge memo, dated 21-09-2013.
Ex.R16	17-12-2013	Copy of the charge memo issued by the respondent to the petitioner.
Ex.R17	23-12-2013	Copy of the explanation letter given by the petitioner to the respondent.
Ex.R18	27-12-2013	Copy of the enquiry notice sent by the respondent to the petitioner.
Ex.R19	—	Copy of Acknowledgment Card for service of charge memo, dated 27-12-2013 to the petitioner.

Ex.R20	02-01-2014	Copy of the enquiry proceedings given by the Enquiry Officer.
Ex.R21	03-01-2014	Copy of the second show cause notice given by the respondent to the petitioner.
Ex.R22	03-01-2014	Copy of the findings of the enquiry report submitted by the Enquiry Officer.
Ex.R23	03-01-2014	Copy of the explanation letter given by the petitioner to the respondent.
Ex.R24	04-06-2014	Copy of the explanation letter given by the petitioner to the respondent.
Ex.R25	—	Copy of the service rules of the respondent's institution.
Ex.R26	28-01-2014	Copy of the dismissal order passed by respondent to the petitioner with RPAD slip and Acknowledgement Card.

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

**GOVERNMENT OF PUDUCHERRY**  
**LABOUR DEPARTMENT**

(G.O. Rt. No. 124/AIL/Lab./T/2018,  
Puducherry, dated 23rd August 2018)

**NOTIFICATION**

Whereas, the Government is of the opinion that an industrial dispute has arisen between the management of M/s. Lanson Motors Private Limited, Bahour, Puducherry and the union workmen represented by United Labour Federation, Thambu Chetty Street, Chennai, over providing safety in supply of food to the workers in the working place/canteen in respect of the matter mentioned in the Annexure to this order;

And whereas, in the opinion of the Government, it is necessary to refer the said dispute for adjudication;

Now, therefore, by virtue of the authority delegated *vide* G.O. Ms. No. 20/91/Lab./L, dated 23-5-1991 of the Labour Department, Puducherry to exercise the powers conferred by clause (c) of sub-section (1) of