



புதுச்சேரி மாநில அரசிதழ்

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**GOVERNMENT OF PUDUCHERRY
LABOUR DEPARTMENT**

(G. O. Rt. No. 99/AIL/Lab./T/2018,
Puducherry, dated 19th June 2018)

NOTIFICATION

Whereas, an Award in I.D. (L) No. 22/2016, dated 25-05-2018 of the Industrial Tribunal-cum-Labour Court, Puducherry, in respect of the industrial dispute between the management of M/s. Aathi Sakthi Projects Private Limited, Puducherry and Thiru Manimaran, 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 23-5-1991, 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,

Friday, the 25th day of May, 2018

I.D. (L) No. 22/2016

Manimaran,
S/o. Vellaisamy,
No.45, Murugan Koil Street,
Kothapurinatham,
Thiruvandarkoil,
Puducherry-605 102. . . Petitioner

Versus

The Managing Director,
M/s. Aathi Sakthi Projects
Private Limited,
R.S. No. 40/9, Earikarai Road,
Kothapurinatham,
Thiruvandarkoil,
Puducherry-605 102. . . Respondent.

This industrial dispute coming on 08-05-2018 before me for final hearing in the presence of Tvl. R.T. Shankar, A.Ashokkumar and P. Suresh, Counsels for the petitioner and Tvl. R. Ilancheliyan and S. Geetha, Counsels 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 is a petition filed by the petitioner under section 2-A of the Industrial Disputes Act praying to pass an Award to direct the respondent management to re-instate the petitioner with full back wages, continuity of service and all other attendance benefits.

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

The respondent management started his concern in the year 2004 and after the due course of the selection process the petitioner had been appointed in Fitter Post. The petitioner had been serving at the the respondent management from April, 2018 at the utmost satisfaction of the respondent management and there is no remark at all as against the petitioner so far. All the employees are performed all works assigned to them more than 12 hours without any safety, health, statutory leave or welfare and also the employees are getting very low salary, due to escalating the price of living cost/living index, the financial position and buying capacity of the employees comes down toward. Hence, the employees were demanded wage increase/revision from the respondent management but, they are not ready to increase the wages. Therefore, all the employees are formed one trade union in the year of 2014 namely, Adhisakthi Project Workers Limited, Workers Union wherein the petitioner is a Joint Secretary and the same was duly registered before the Government of Puducherry vide Registration No. 1764/RTU/2014 for their collective bargaining. All the employees of the respondent management are joined as a member of the said Trade Union. Therefore, the said union is only one and majority union and therefore, the respondent management is heated as against the Office Bearers of the Trade Union as well as its active members. The respondent management has started all sorts of unfair Labour Practice against the trade union to deprive the workmen from their legitimate right created under the Labour Laws and also to abolish/wipe out the petitioner's Trade Union from respondent's concern, as a result, the respondent management has committed and adopted the unfair labour practices against the Office Bearers as well as active members of the said Trade Union. The respondent management has

finally after a lapse of 7 days accusing the petitioner that on 29-10-2014 without obeying the instructions of Mr. Balamurugan, Tool Room Incharge, induced co-workers to walk out from the company without getting any prior permission for the same, used abusive/filthy languages, attempting to assault and followed malpractice of causing violence and based on the said false complaint issued a show cause notice, dated 05-11-2014. The petitioner had replied aptly for the said show-cause notice to the respondent. Whereas, the respondent management did not act further, after receipt of the said reply of the petitioner. On 13-11-2014 the petitioner and other co-workers demanded the respondent to provide safety materials like hand gloves and glass. Whereas, the respondent willfully and wantonly delayed without providing any such safety materials to the employees and the Personnel Managers Mr. Sasikumar and Saravanan asked them in a threatening manner whether the petitioner and his co-workers did engage in strike after a long time waiting by the petitioner. There was a notification was pasted on the notice board after some hours that the petitioner and other co-workers called for a strike for which there would a deduction of 8 days salary per day. Hence, the workers were on duty on that day gave a denial letter to the respondent management. But, the respondent did not accept it. So, they sent it to the respondent through courier. The respondent management on the next day did not allocate any job to the petitioner and other co-workers for attending their routine works. There was no fruitful result yielded for the repeated demands made by the petitioner for their duties in the respondent management and they were ignored by the respondent and hence the petitioner returned home without attending duty. On 15-11-2014 the respondent management issued suspension order to four employees namely, Senthilkumar, Karunagaran, Munikumar and this petitioner Manimaran and they have sent out of the company stating that there would be an enquiry on the charges leveled against them. After giving show-cause notice to the employees of about 40 people, the respondent suspended only these four employees for their collective demand of safety materials. The respondent management openly threaten the members of the petitioner union and offered a suggestion to come out the said trade union or otherwise the employees of the union will lose more and more and the respondent management forcefully get the signatures from the employees and these four suspended employees were exposed as the models of punishment. The respondent management appointed an Enquiry Officer, who the Counsel is appearing on behalf of this management before the Labour Court at Puducherry and

she formally enquired to fulfill the statutory norms which is enumerated in the labour laws. The Enquiry Officer conducted the enquiry in their senior advocate office who is the Counsel for respondent management and acted upon the tunes of the respondent management in a biased manner and as per the instructions and pre-plan of the respondent management the Enquiry Officer submitted her report without giving sufficient opportunities to the petitioner and co-employees and without following the principal of natural justice. Based on the abovesaid false report given by the Enquiry Officer the respondent management dismissed the employees on 08-01-2016 as per their pre-plan. The employees were made scapegoats and the respondent management forced and threatened the other employees by showing such dismissal order of these employees, further, the domestic enquiry conducted against the petitioner was in violation of principles of natural justice and the enquiry was not conducted in a free and fair manner, giving full opportunity to the petitioner to contest the charges on merits and all the essential requisites of a fair trial were scrupulously not followed and the Enquiry Officer did not consider the deposition of the petitioner side witness in the enquiry proceedings. Therefore, the dismissal order passed against the petitioner is illegal and it is shockingly disproportionate. The order passed by the respondent management is against the natural justice and contrary to the code of the Labour Laws. The respondent management has not followed any rules or provisions under the Labour Rules and Act and acted against them in order to wreck vengeance against the petitioner and his union. The petitioner therefore, prayed this Court to pass an order to direct the respondent management to re-instate the petitioner with full back wages, continuity of service and all other attendance benefits.

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

The respondent denied all the averments made by the petitioner in his claim statement except those that are all specifically admitted in the counter. The petitioner has filed his claim statement with false allegations against the respondent. The petitioner was a workman in the respondent factory and while he was on duty on 29-10-2014 the security guard asked him to give the gate pass while he was going out around 08.30 a.m., for morning breakfast for which the petitioner along with his co-workers one Mr. Munikumar, started quarrelling with the security guard Mr. Dharani and threatened him using filthy language. Subsequently, on the same day around 1.00 p.m.,

when the security guard was standing in his place, the petitioner along with his co-workmen namely, Mr. Karunakaran, and Mr. Sendhilkumar locked the main gate inside, of his own accord and continued their battle against the security guard. When the situation became tense and uncontrollable Mr. R.V. Balamurugan, Tool Room Engineer came to the spot with an intention of pacifying the situation. However, he was also reprimanded by the petitioner using abusive languages. The petitioner also did not allow other workmen to go for lunch break. The petitioner was issued a show cause notice on 05-11-2014 for his above said acts and since, the petitioner refused to take the notice the same was sent to him through registered post and a copy of it was pasted in the notice board but, it was ripped off by one Mr. V. Munikumar by the inducement of the petitioner. Subsequently, on 13-11-2014, the petitioner along with his co-workers Mr. Manikandan, Mr. Sendhilkumar and Mr. Thirumaran squabbled with Mr. Sasikumar regarding the issuance of hand gloves to everyone. Again the petitioner did not take up the duties allocated to him and around 10.00 a.m., on the same day convened a meeting at the shop floor and instigated the other workers to stop work. He indulged in an act of preventing the other workmen from doing their lawful duties and forcefully prevented 13 workmen who were working with gloves and the production was stopped by the petitioner from 13-11-2014 to 15-11-2014. The petitioner along with his co-workers Mr. Mugunthan and Mr. Latchuminarayanan prevented a customer from Parry Agro Company who came to take up trial of the machine on 15-11-2014 and also prevented one Mr. Arun who came to give trial connection to the same machine for which the petitioner was suspended pending enquiry and against which the petitioner provoked his co-workmen to instigate violence inside the factory. Therefore, the respondent was constrained to seek the intervention of the local Police to control the adverse situation and only upon intervention by the Police the petitioner was removed from the spot and situation was brought under control. In fact the petitioner indulged in such unlawful acts of enticing and misleading the worker Mr. Abinathan to take up the company orders with a view to misappropriate the respondent's projects. A written intimation regarding this was given to the respondent by Mr. Abinathan, after that the petitioner has given a pardon letter to the respondent for his mischievous behaviour. On 15-12-2014 when the petitioner came to the factory to collect his subsistence allowance, threatened the managerial staffs Mr. T. Vinayagam and

Mr. V. Ravindran. This was communicated to the Labour Department and Conciliation Officer. Therefore, the petitioner is a continuous offender and every acts committed by him is unlawful acts and not in the order of a workman. Only in such a situation disciplinary action was contemplated against the petitioner. The petitioner was issued a show cause notice, dated 05-11-2014 for which the petitioner submitted his explanation on 07-11-2014. Since, the explanation given by the petitioner was not satisfied, he was issued a charge-sheet, dated 26-12-2014 and an independent Enquiry Officer was appointed. The Enquiry Officer conducted her enquiry by giving due opportunities to the petitioner and submitted her report, dated 02-11-2015. Since, the charges leveled against the petitioner were stated to have been proved by the Enquiry Officer in her enquiry report, dated 02-11-2015, a second show-cause notice, dated 24-11-2015 was issued communicating the proposed punishment. The petitioner gave his explanation, dated 02-12-2015. The petitioner did not come forward neither to accept the charges nor to prove himself innocent and submitted only an evasive reply and imputed various allegations against this respondent and the enquiry proceedings without any documentary evidence in support of his allegations. Since, the misconducts committed by the petitioner were serious and grievous in nature, his services were terminated. Therefore, the contention of the petitioner are fictitious and an afterthought and trying to mislead this Court by giving fabricated and false allegations against this respondent. The petitioner has suppressed every fact with ulterior motive of gaining sympathy and he has not come to this Court with clean hands.

The respondent was paying-reasonable salary to the industrial standard of its kind. The industry is not a processing industry and it is only producing packaging machines by buying various spare parts from other industries and assembling the same. There are no hazardous operations as contended by the petitioner and wherever safety materials are required to be provided, the same is provided within the parameter of Factories Act, 1948 and rules made there under. The petitioner was having any grievance, should have approached the respondent management and negotiated the issue. If, there were any contraventions, the petitioner was having openings to approach the Government Authorities seeking relief in the event any failure in negotiations. The petitioner has unnecessarily not only intervened in the managerial decisions and also refused to work, prevented the other workmen from doing their lawful duties, instigated violence in the factory *etc.*,

Whatever, may be the grievances, the petitioner was having every right to seek a legal remedy through an appropriate forum and he was not supposed to take the law in his own hand with an ulterior, motive of disturbing the industrial peace and harmony inside the premises of the shop floor. The petitioner used filthy languages against the management and the managerial staffs, which is not permissible at any point of time. The petitioner instead of proving himself that he has not involved in such unlawful acts, now taking the blanket to cover up his acts in the guise of union activities and trying to gain sympathy of this Court. The petitioner's contention that the enquiry was conducted by a junior of the senior Advocate, who is appearing in this case, is a strategy to escape from the charges leveled against him. The enquiry was conducted by giving due opportunities under the principles of natural justice and the findings were submitted based on the various oral and documentary evidences. The petitioner was also given good opportunities to examine and cross examine the witnesses and permitted to produce the documents. The petitioner who did not object the proceedings all along, now objecting is only an after thought tutored by the learned counsel. The petitioner is to prove as to how the enquiry is biased and in the absence of proving unfairness of the enquiry proceedings, making out such allegation is absolutely not maintainable. Even, there are cases, decided by the Apex Court that the enquiry- conducted by the legal advisor of the company is permissible, unless there were no bias is established. In this case also the same analogy is applicable and the contention of the petitioner is not maintainable. The respondent does not have any intention to deny the legal rights of the petitioner and the enquiry was conducted within the parameter of Law. In case the petitioner was having any issues, he should have settled the issue within frame work of law and he did not have any legal rights directly or indirectly to take the Law in his hand. The action initiated against the petitioner is only for the grievous misconducts committed by him while he was on duty-and there were no *mala fide* intentions as contended by the petitioner in his claim petition. The punishment imputed against the petitioner is in proportion to the misconducts committed by him. The petitioner is in gainful employment. The petitioner is not entitled for any reinstatement back wages or any other pecuniary benefits what so ever. The respondent therefore prayed to dismiss the petition as devoid of merits.

4. In the course of enquiry on the side of the petitioner PW.1 was 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.R20 were marked. Both sides are heard.

5. The point for consideration is:

Whether the petitioner is entitled for the order of reinstatement with full back wages, continuity of service and all other attendance benefits as claimed in the claim petition against the respondent management or not.

6. The point for consideration is:

The submission of both the parties, the evidence let in by either sides and the exhibits marked on both sides are carefully considered. This application has been filed by the petitioner for the relief of reinstatement with full back wages, continuity of service and all other attendance benefits. In order to prove his case the petitioner was examined himself as PW.1 and it is the evidence of the PW.1 that he was working at the respondent establishment from April 2008 and he is the Office Bearer of the Trade Union and he was appointed as Fitter after due course of selection process and he had been serving at the respondent management and he has not committed any misconduct or misbehavior and all the employees were working 12 hours per day without any safety, health, statutory leave or welfare and their salary was also very low and therefore, the employees of the respondent establishment have demanded wage revision but, the same was refused by the management and that therefore, in the year of 2014 trade union was formed and registered and hence, the respondent management was heated as against the Office Bearers of the Trade Union and started all sorts of unfair labour practice against the members and office bearers of the Trade Union and the respondent management has committed and adopted the unfair labour practices against the Office Bearers and the active members of the trade union and the respondent management on 29-10-2014 accusing the petitioner that without obeying the instruction of Mr. Balamurugan. Tool Room Incharge, induced co-workers to walk out from the company without getting any prior permission and used abusive, filthy languages and attempting to assault and based on the said false complaint, a show-cause notice was issued on 05-11-2014 for which the petitioner has replied and the respondent management did not act further, after receipt of the said reply and on 13-11-2014 the petitioner and other co-workers demanded the respondent management to provide safety materials to the employees and the management has pasted a notice stating that the petitioner and other co-workers called for a strike for which there would be a deduction of 8 days salary per day and hence, the workers were on duty on that day gave a denial letter to the respondent management and the respondent

management did not allocate any job to the petitioner and other co-workers and on 15-11-2014 the respondent management issued suspension order to four employees including the petitioner and the petitioner was sent out of the company to face the enquiry and the respondent management openly threaten him and offered a suggestion to come out the said Trade Union and forcefully get the signatures from the employees and this petitioner and three other suspended employees were exposed as the models of punishment and an Advocate who is junior advocate to the Counsel appearing on behalf of this management was appointed as Enquiry Officer by the management to conduct the enquiry and the enquiry was conducted by the Enquiry Officer in her senior advocate office who is the Counsel for respondent management and acted upon the tunes of the respondent management in a biased manner and as per the instructions and pre plan of the respondent management" the Enquiry Officer submitted her report without giving sufficient opportunities to the petitioner and co-employees and without following the principal of natural justice and based on the false report given by the Enquiry Officer the respondent management dismissed the petitioner from service on 08-01-2016 and therefore, the dismissal order passed against the petitioner is illegal and disproportionate and is against the natural justice.

7. In support of his oral evidence the petitioner has exhibited Ex.P1 to Ex.P11. Ex.P1 is the copy of the Trade Union Certificate. Ex.P2 is the copy of the petitioner dismissed letter issued by the management. Ex.P3 is the copy of reply notice to the management given by workers. Ex.P4 is the copy of notice to the Labour Department. Ex.P5 is the original conciliation letter. Ex.P6 is the copy of the dispute raised by the petitioner union before the Labour Officer (Conciliation). Ex.P7 is the copy of letter sent by the workers to the respondent management through professional courier. Ex.P8 is the copy of letter submitted by the petitioner's union before the Labour Commissioner. Ex.P9 is the copy of letter submitted by the petitioner's union before the Labour Officer (Conciliation). Ex.P10 is the copy of call letter sent by the Labour Officer for conciliation. Ex.P11 is the copy of strike notice given by the petitioner's union. These documents would go to show that there is a Trade Union in the respondent establishment and service of the petitioner was terminated by the respondent management and industrial dispute has been raised by the petitioner before the Conciliation Officer and the union also has submitted a letter to the Labour Commissioner and conciliation notice was issued by the Conciliation Officer and Conciliation Officer has sent a letter to the parties to conduct the conciliation and strike notice was given on 27-11-2014 by the union.

8. On the other hand to disprove the case of the petitioner the respondent management has examined RW.1 and RW.1 has deposed that the petitioner was working at the respondent establishment and while he was on duty on 29-10-2014 the security guard asked him to give the gate pass while he was going out for morning breakfast for which the petitioner along with his co-worker Munikumar started quarrelling and threatened the security guard using filthy language and subsequently on the same day around 01.00 p.m., the petitioner along with his co-workman Karunakaran and Senthilkumar continued their quarrel against the security guard and hence, Tool Room Engineer Balamurugan came to the spot with an intension of pacifying the situation and he was also reprimanded by the petitioner using abusive languages and not allow other workmen to go for lunch break and that therefore, show-cause notice was issued on 05-11-2014 to the petitioner for his abovesaid act and on 13-11-2014 the petitioner did not take up the duties allocated to him and around 10.00 a.m. on the same day convened a meeting at the shop floor and instigated the other workers to stop work and indulged in an act of preventing the other workmen from doing their lawful duties and forcefully prevented 13 workmen who were working with gloves and the production was stopped by the petitioner from 13-11-2014 to 15-11-2014 and the petitioner again on 15-11-2014 prevented a customer from Parry Agro Company who came to the factory to take up trial of the machine and also prevented one Mr. Arun who came to give trial connection to the same machine for which the petitioner was suspended pending enquiry and the petitioner provoked his co-workmen to instigate violence inside the factory and therefore, the respondent was constrained to seek the intervention of the local Police to control the adverse situation and the petitioner was removed from the spot and situation was brought under control and on 15-12-2014 when the petitioner came to the factory to collect his subsistence allowance threatened the managerial staffs T.Vinayagam and V. Ravindran for which he was issued warning letter and that the petitioner is a continuous offender and every act committed by him is unlawful acts and not in the order of a workman and therefore, disciplinary action was taken against the petitioner and show-cause notice was issued on 05-11-2014 for which the petitioner submitted his explanation on 07-11-2014 and an independent Enquiry Officer was appointed and the Enquiry Officer conducted the enquiry by giving due opportunities under the principles of natural justice to the petitioner and submitted a report on 02-11-2015 and thereafter, a second show-cause notice was issued to the petitioner along with the documentary evidences on 24-11-2015 calling upon him regarding proposed

punishment and the petitioner gave his explanation on 02-12-2015 and since, the misconducts committed by the petitioner were serious and grievous in nature his services were terminated by the management by issuing full and final settlement through registered post and the petitioner has refused to work prevented the other workmen from doing their lawful duties and instigated violence in the factory with an aim of disturbing the industrial peace and harmony inside the premises of the factory and the respondent does not have any intention to deny the legal rights of the petitioner.

9. In support of their contention the respondent management has exhibited Ex.R1 to Ex.R20. Ex.R1 is the copy of complaint letter given by production Manager Mr. S. Sasikumar, Ex.R2 is the copy of complaint letter given by Tool Room Engineer Mr. R. V. Balamurugan. Ex.R3 is the copy of complaint letter given by Security Guard Mr. S.Tharani. Ex.R4 is the copy of show-cause notice issued to the petitioner. Ex.R5 is the copy of reply letter given by the petitioner to the show-cause notice. Ex.R6 is the copy of complaint letter given by Production Manager Mr. S. Sasikumar. Ex.R7 is the copy of notice displayed by the respondent in the notice board of the Factory. Ex.R8 is the copy of complaint letter given by Asst.Manager Mr.T. Vinayagam. Ex.R9 is the copy of suspension order issued to the petitioner. Ex.R10 is the copy of letters given to the Police Department by the respondent. Ex.R11 is the copy of charge sheet issued to the petitioner. Ex.R12 is the copy of the warning letter issued to the petitioner. Ex.R13 is the copy of complaint letter given by Production Manager Mr. S. Sasikumar. Ex.R14 is the copy of the letter from Pepsico India Holdings Pvt., Ltd., to the respondent. Ex.R15 is the copy of domestic enquiry proceedings. Ex.R16 is the copy of domestic enquiry report. Ex.R17 is the copy of second show cause issued to the petitioner. Ex.R18 is the copy of reply letter given by the petitioner. Ex.R19 is the copy of termination order issued to the petitioner. Ex.R20 is the copy of full and final settlement sent to the petitioner by RPAD.

10. The documents exhibited by the respondent management would go to show that the petitioner was given show-cause notice on 05-11-2014 for the alleged incident taken place on 29-10-2014 and the petitioner has given reply on 07-11-2014 and the petitioner was suspended on 15-11-2014 and thereafter, the charges were framed against the petitioner on 26-12-2014 and Enquiry Officer was appointed to conduct the domestic enquiry and enquiry report was submitted by the Enquiry Officer and second show-cause notice was issued to the petitioner on 24-11-2015 for which the petitioner has given his reply and thereafter, the petitioner was terminated from service on 07-01-2016 by the respondent management and full and final settlement was sent to the petitioner through RPAD.

11. From the pleadings of both the parties and evidence let in by either side it can be inferred that following facts are admitted by either side that the petitioner was working at the respondent establishment and he is an Office Bearer of the Trade Union which was newly formed by the workers of the respondent establishment in the year 2014 and the said union has raised some industrial dispute before the Labour Officer (Conciliation) and this petitioner was charge sheeted and enquiry was conducted against him and show cause notice was given to him and lastly the petitioner was terminated from service and he has raised the industrial dispute before the Labour Officer (Conciliation) for reinstatement with back wages and while the same was pending before, the Conciliation Officer this petitioner has filed this application before, this Court for seeking an order of reinstatement with fullback wages, continuity of service and all other attendance benefits.

12. It is the main contention of the respondent management that on 29-10-2014 the Security Guard asked him to give the gate pass to go out for morning breakfast and this petitioner along with his co-worker started quarrelling with the security guard and threatened him using filthy language and subsequently on the same day around 1.00 p.m. this petitioner along with his co-workers Karunakaran and Sendhilkumar have continued their quarrel against the security guard which was questioned by Tool Room Engineer Mr. R.V. Balamurugan and he was also reprimanded by the petitioner using abusive languages and the petitioner also did not allow other workmen to go for lunch break and hence, the petitioner was issued a show cause notice on 05-11-2014 and thereafter, the petitioner did not take up the duties allocated to him. and around 10.00 a.m. on the same day he convened a meeting at the shop floor and instigated the other workers to stop work and thereafter, the Enquiry Officer was appointed and enquiry was conducted and Enquiry Officer has submitted a report found guilty of the charges and on the foot of the same on 07-01-2016 the petitioner was terminated from service.

13. On the other hand the petitioner has contended that the charges leveled against him by the management are false and only to victimize the Office Bearers of the union the petitioner and three other workmen have been charge-sheeted wantonly and an advocate who is the junior of the Counsel of the respondent management was appointed as Enquiry Officer and the Enquiry Officer conducted the enquiry without following the principles of natural justice and submitted the report in favour of the management and that the enquiry conducted by the Enquiry Officer is a biased one and is not in accordance with the principles of natural justice and the enquiry was conducted without

giving sufficient opportunities to the petitioner to put forth his case. Therefore, it is to be decided by this Court that whether, the enquiry was conducted by the Enquiry Officer in a fair manner in accordance with the principles of natural justice or not and whether the punishment given to the petitioner by the management is proportionate or not. On this aspect the evidence and documents are carefully perused.

14. The onus of proof is always cast upon the respondent management to prove the fact that the domestic enquiry was conducted properly and sufficient opportunities were given to the petitioner in accordance with the principles of natural justice before, submitting the enquiry report. The petitioner has denied that he has been given sufficient opportunity and it is contended by the petitioner that the enquiry was conducted without giving sufficient opportunities by the Enquiry Officer and without following the principles of natural justice and that therefore, it is to be seen whether, the respondent management has proved the fact that the domestic enquiry was conducted in a fair manner in accordance with the principles of natural justice or not.

15. The respondent management exhibited the enquiry proceedings as Ex.R15 which would reveal the fact that one Ms. R. Thilagavathi, Advocate has conducted the domestic enquiry on 22-01-2015 against the petitioner over the charge-sheet given by the management on 26-12-2014 and in the domestic enquiry the petitioner has denied the allegations of the management and the petitioner has been given an opportunity to appoint somebody to assist his case and on the same day the co-worker one Senthilkumar was permitted to assist the petitioner to face the domestic enquiry for which the management has objected and hence, the domestic enquiry was postponed and further it is learnt from Ex.R15 that the enquiry was conducted in several adjournments and in the enquiry on behalf of the management one Balamurugan, Vinayagam. Sasikumar, Saravanan and Rajasekar were examined as management witnesses and all the witnesses have been cross examined by the petitioner and all the witnesses have stated before, the Enquiry Officer that this petitioner along with some other workers have demanded safety materials like hand gloves and glass from the management and this petitioner and other workers have involved in the incident alleged to be happened on 29-10-2014 and this petitioner along with some other workers have been suspended from service on 15-11-2014 and thereafter, only the enquiry was conducted by the management.

16. Further, it is learnt from the records that the enquiry proceedings was completed on 12-05-2015 and the enquiry report was submitted only on 02-11-2015 and in the enquiry report it was decided by the Enquiry Officer that

without giving any strike notice the employees have illegally involved in the strike to demand the safety materials which is not required to be given to all the workers and should be given only to the particular nature of work and the Enquiry Officer has found that the charges have been proved against the petitioner and thereafter, the second show cause notice was issued on 24-11-2015 to the petitioner calling upon him to show-cause why he should not be removed from service and on 02-12-2015 the petitioner has submitted his explanation for the said notice denying the entire allegations of the management and also has stated that he has been suspended from service and thereby he has been affected and thereafter, on 07-01-2016 the management has passed an order terminating the petitioner from service.

17. Further, it is learnt from Ex.P6 that the union in the which the petitioner was functioning as Office Bearer has raised the industrial dispute over the charter of demand demanding safety materials like hand gloves and glass before the Labour Officer (Conciliation) on 13-10-2014 in which they have also asked for ESI and EPF benefits for 32 workers and on the foot of the same the Conciliation Officer has issued notice of conciliation to the management of the respondent establishment on 24-11-2014 stating that the conciliation proceedings would be held on 27-11-2014 at 11.00 a.m., at their Office and directed the management to appear for the conciliation proceedings. These facts would go to show that the notice of conciliation enquiry was issued by the Labour Officer (Conciliation) to the management and while the facts are so, the management has framed charges against the petitioner holding that he has committed misconduct and misbehavior on 29-10-2014 *i.e.*, while the dispute was raised and pending before the Labour Officer (Conciliation) regarding the charter of demand the petitioner along with three other workers were suspended by the management on 15-11-2014. The respondent management has taken the disciplinary proceedings against the petitioner the Office Bearer of the union and three other workers who are the executive and active participants of the Trade Union while the industrial dispute was raised by the union on 13-10-2014 itself under Ex.P6 and without getting permission from the Conciliation Officer the management has conducted and completed the domestic enquiry and has passed an order of termination of service of the petitioner which is clearly in violation of Sec.33 C(2) of the Act.

18. Further, it is contended by the petitioner that the enquiry was not conducted properly since, the Junior of the respondent Counsel who has been conducting the case on behalf of the management was appointed as Enquiry Officer knowing fully aware the fact that her senior is appearing for the management case and therefore, there

would be some bias in giving the findings of the enquiry report by the Enquiry Officer. On this aspect the evidence of the respondent management witness RW.1 was carefully considered which runs as follows :

“..... எங்கள் கம்பெனியில் மனுதாரர்கள் சேர்ந்து தொழிற்சங்கம் ஆரம்பித்த விவரம் எனக்கு தெரியும். தொழிற்சங்கம் ஆரம்பித்த பிறகு பாதுகாப்பு உபகரணங்கள் கேட்டு கடிதம் அனுப்பியிருக்கிறார்களா என்றால் அனுப்பியிருக்கிறார்கள். தொழிற்சாலையில் ஒரு தொழிற்சங்கம் தான் உள்ளது. மனுதாரர்கள் என்ன காரணத்தால் வேலை நீக்கம் செய்தோம் என்றால் செக்யூரிட்டி கேட் பாஸ் கேட்டார் மனுதாரர், அதை கொடுக்க முடியாது என்று தகராறு செய்தார். அதை ஏன் என்று கேட்ட Tool Room Manager பாலமுருகனிடமும் தகராறு செய்தார். 29-10-2014 அன்று சம்பவம் நடந்தது. அதில், 4 தொழிலாளர்கள் தான் ஈடுபட்டார்கள். அது சம்பந்தமாக 4 பேருக்கு மட்டுமே Memo. கொடுத்தோம். 13-11-2014 அன்று வேலை செய்யாத 40 பேருக்கும் show cause notice கொடுத்தோம். 29-10-2014 அன்று நடந்த சம்பவத்திற்கு 4 பேருக்கு மட்டும் Notice. கொடுத்தோம். அவர்கள் அதற்கு பதில் கொடுத்தார்கள். அந்த பதில் எங்களுக்கு திருப்தி தராததால் அவர்களுடன் சேர்ந்து வேலைக்கு வராத மற்றவர்களுக்கு 2-ஆவது சம்பவத்திற்காக Notice கொடுத்தோம். 40 பேரையும் நாங்கள் பணிநீக்கம் செய்யவில்லை. 4 பேருக்கும் குற்றப்பத்திரிக்கை கொடுத்தோம். ஆனால், show cause Notice 40 பேருக்கும் கொடுத்தோம். என்னிடம் காட்டப்படும் மதசாஆ 3 அன்றைய தேதியில் எங்களுக்கு கொடுக்கப்படவில்லை. அதே தேதியில் அது கூரியரில் அனுப்பப்பட்டு அதை வாங்கியிருக்கிறோம். அதனால் தான் அவர்கள் மீது கோபப்பட்டு நிர்வாகம் நடவடிக்கை எடுத்திருப்பதாக சொன்னால் சரியல்ல. மதசாஆ 3 எப்போது வந்தது என்று எனக்கு ஆவணங்களை பார்த்து சொல்ல முடியும். அதை பார்த்துவிட்டு தான் மனுதாரர்களுக்கு பணி நீக்க உத்தரவு கொடுத்தோம் என்றால் சரியல்ல. மனுதாரர்கள் கேட்ட பாதுகாப்பு உபகரணங்கள் வழங்காமல் மனுதாரர்களை வேலை செய்யவிடாமல் நிர்வாகம் தடுத்து நிறுத்திவிட்டு தொழிலாளர்கள் வேலை செய்ய மறுக்கிறார்கள் என்று சொல்கிறோம் என்றால் சரியல்ல. 40 தொழிலாளர்கள் போராட்டம் நடத்திய போதிலும் மனுதாரர்கள் தொழிற்சங்க நிர்வாகிகள் என்பதால் அவர்களை பணிநீக்கம் செய்தோம் என்றால் சரியல்ல. மனுதாரர்கள் யூனியனின் முக்கிய நிர்வாகிகள்தான். மனுதாரர்கள் தொழிலாளர்களை வேலை செய்யவிடாமல் தடுத்ததாக எந்த தொழிலாளர்களும் புகார் கொடுக்கவில்லை. ஆனால், விசாரணையில் சொல்லியிருக்கிறார்கள். விசாரணை அதிகாரி எங்கள் வழக்கறிஞரின் ஜூனியர்தான். விசாரணை அதிகாரி தன்னிச்சையாக விசாரணை நடத்தாமல் நடந்துக் கொள்ளவில்லை என்று சொன்னால் சரியல்ல. உள் விசாரணையில் தொழிற்சாலையில் நிர்வாகத்திற்கு ஆதரவாக உள்ள தொழிலாளர்களை

வைத்து அவர்களை தடுத்ததாக சாட்சியம் அளிக்க வைத்திருப்போம் என்றால் சரியல்ல. எந்த தொழிலாளியும் என்னை வேலைக்கு செல்ல வேண்டாம் என தடுத்து நிறுத்தியதாக புகார் எதுவும் கொடுக்கவில்லை என்றும் விசாரணையிலும் சொல்லவில்லை என்றும் சங்க நிர்வாகி என்பதால் நிர்வாகமே பொய் குற்றச்சாட்டு சொல்லி வேலை நீக்கம் செய்தார்கள் என்றால் சரியல்ல. இந்த வழக்கில் மனுதாரர்தான் என்னை வேலை செய்யவிடாமல் தடுத்து நிறுத்தினார் என்று யாரும் குறிப்பிட்டு சொல்லவில்லை என்று சொன்னால் சரியல்ல. மணிமாறன் மற்றும் செந்தில்குமார் ஆகியோர் தடுத்து நிறுத்தியதாக விசாரணையில் சொல்லியிருக்கிறார்கள். மதசாஆ. 6-ன்படி 13-10-2014-ல் தொழிலாளர் சமரச அதிகாரியிடம் நடந்த விசாரணையில் நாங்கள் கலந்துக் கொண்டோமோ என்றால் இல்லை. விசாரணை அப்படி நடக்கவில்லை. மதசாஆ. 10 24-11-2014 தேதியிட்ட கடிதம் எங்களுக்கு வந்தது. அதில் Charter of Demands சம்பந்தமாக பேசுவதற்காக வரச்சொல்லி வந்தது. அதன்படி 27-11-2014-ல் நாங்கள் ஆஜராகவில்லை. விசாரணைக்கு வேறு தேதி கேட்டு கடிதம் கொடுத்திருக்கிறோம். அதன் பிறகு நாங்கள் அது சம்பந்தமான விசாரணையில் கலந்துக்கொள்ளவில்லை..... ”.

From the above evidence it is clear that the respondent management though has received the conciliation notice not participated in the enquiry on 27-11-2014 before, the Conciliation Officer for the dispute raised by the union wherein the petitioner was functioned as Office Bearer over the charter of demand and further, it is also admitted by the respondent management witness RW.1 that the Enquiry Officer is the junior Advocate of the Counsel of the respondent management who has appearing in this case. These facts would go to show that the enquiry could not be conducted by the junior Advocate the Enquiry Officer without any bias in favour of the respondent management for whom her senior Counsel was appearing and therefore, the domestic enquiry could not have been conducted in a fair manner.

19. Further, it is learnt from Ex.R9 the suspension order issued by the respondent management to the petitioner that this petitioner and three other workers have been suspended from service on 15-11-2014 for the alleged incident happened on 29-10-2014 and further, it is revealed from Ex.R9 that no subsistence allowance has been granted to the petitioner to make convenient to the petitioner to face the domestic enquiry. The non-payment of subsistence allowance while the petitioner was facing disciplinary domestic enquiry is also against the provisions of the Industrial Disputes Act and against the principles of natural justice.

20. Furthermore admittedly there is no previous charge or complaint against this petitioner before the formation of Trade Union though the petitioner has joined in the respondent establishment in the year 2008 and hence, even

assuming that this petitioner and other three suspended workers have committed misconduct or misbehavior on 29-10-2014 and made an attempt to commit an illegal strike without giving any notice while they have formed Trade Union with the motive to get the charter of demand the punishment of termination given by the management is disproportionate to the alleged misconduct committed by the petitioner workman the one of the Office Bearer of the Trade Union instead of that the management might have imposed lesser punishment to the petitioner and other co-workers.

21. From the above discussion and the facts and circumstances this Court finds that the respondent management has committed error in appointing the junior Advocate of the respondent Advocate who has appeared for the respondent management in this case as domestic Enquiry Officer and the above fact would create a doubt over the enquiry report and in findings of the Enquiry Officer being the junior counsel of the management Counsel and also finds that only after the formation of the Trade Union in the year 2014 by the workers of the respondent establishment and after raising of industrial dispute by the union on 13-10-2014 regarding charter of demand for pay-revision and for ESI, EPF and safety measures, the entire disciplinary proceedings, domestic enquiry on the allegation that the petitioner has committed alleged misbehavior on 29-10-2014 was complained and charge-sheeted by the respondent management and same also would establish that only to take vengeance the respondent management has charge-sheeted the employees to victimize them since they have formed Trade Union and raised industrial dispute before the conciliation for charter of demand.

22. Further, it is also found from the above facts and circumstances that the order of termination passed by the respondent management against the petitioner is disproportionate to the misconduct alleged to have been committed by him since, this petitioner and other three suspended workers have not indulged or involved or committed any other misconduct or misbehavior in previous occasions though they have been in service from 2008 and 2009 respectively and the alleged incident has also happened while they have been demanding some safety measures. Further, this Court also finds that non-payment of subsistence allowance to the petitioner while he was facing the domestic enquiry is against the principles of natural justice and that therefore, it is decided by this Court that the domestic enquiry conducted by the respondent management against the petitioner is not fair and not in accordance with the principles of natural justice and hence, it is to be held that the industrial dispute raised by the petitioner against the respondent management over reinstatement is justified and the petitioner is entitled for the order of reinstatement as claimed by him.

23. Further, as far as back wages is concerned absolutely there is no evidence let in by the petitioner to prove that he is not working so far in any other industry. The respondent has also not proved the fact that petitioner has been working in any other establishment after his termination and no proof is exhibited by the respondent management before this Court that the petitioner is working anywhere else, However, the petitioner could have served at any other industry after his termination and therefore, 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.

24. In the result, the petition is allowed and the industrial dispute raised by the petitioner against the respondent management over 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 and further directing 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 25th day of May, 2018.

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

List of petitioner's witness:

PW.1 — 29-08-2017 — Manimaran

List of petitioner's exhibits:

- Ex.1 — 10-10-2014 — Copy of the Trade Union certificate.
- Ex.2 — 07-01-2016 — Copy of the petitioner dismissed letter issued by the management.
- Ex.3 — 13-11-2014 — Copy of reply notice to the management given by workers.
- Ex.4 — 17-11-2014 — Copy of notice to the Labour Department.
- Ex.5 — 05-05-2016 — Original Conciliation letter.
- Ex.6 — 13-10-2014 — Copy of the dispute raised by the petitioner union before the Labour Officer Conciliation.

- Ex.7 —13-11-2014—Copy of letter sent by the workers to the respondent management through professional courier.
- Ex.8 —18-11-2014—Copy of letter submitted by the petitioner's union before the Labour Commissioner.
- Ex.9 —18-11-2014—Copy of letter submitted by the petitioner's union before the Labour Officer (Conciliation).
- Ex.10 —24-11-2014—Copy of call letter sent by the Labour Officer for Conciliation.
- Ex.11 —27-11-2014—Copy of strike notice given by the petitioner's union.

List of respondent's witness:

- RW.1 —11-01-2018— S.A. Saravanan

List of petitioner's exhibits:

- Ex.R1 —29-10-2014— Copy of complaint letter given by production Manager Mr. S. Sasikumar.
- Ex.R2 —30-10-2014— Copy of complaint letter given by Tool Room Engineer Mr. R.V. Balamurugan.
- Ex.R3 —30-10-2014— Copy of complaint letter given by security guard Mr. S. Tharani.
- Ex.R4 —05-11-2014— Copy of show cause notice issued to the petitioner.
- Ex.R5 —07-11-2014— Copy of reply letter given by the petitioner to the show cause notice.
- Ex.R6 —13-11-2014— Copy of complaint letter given by Production Manager Mr.S. Sasikumar.
- Ex.R7 —13-11-2014— Copy of notice displayed by the respondent in the notice-board of the Factory.
- Ex.R8 —15-11-2014— Copy of complaint letter given by Assistant Manager Mr.T. Vinayagam.

- Ex.R9 —15-11-2014— Copy of suspension order issued to the petitioner.
- Ex.R10—16-11-2014—Copy of letters given to the Police Department by the respondent.
- Ex.R11—26-12-2014—Copy of charge sheet issued to the petitioner.
- Ex.R12—26-12-2014—Copy of warning letter issued to the petitioner.
- Ex.R13—25-11-2014—Copy of complaint letter given by Production Manager Mr.S.Sasikumar.
- Ex.R14—13-08-2014—Copy of the letter from Pepsico India Holdings Pvt., Ltd., to the respondent.
- Ex.R15— — —Copy of domestic enquiry proceedings.
- Ex.R16—02-11-2015—Copy of domestic enquiry report.
- Ex.R17—24-11-2015—Copy of second show cause issued to the petitioner.
- Ex.R18—02-12-2016—Copy of reply letter given by the petitioner.
- Ex.R19—07-01-2016—Copy of termination order issued to the petitioner.
- Ex.R20—24-02-2016—Copy of full and final settlement sent to petitioner by RPAD.

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

GOVERNMENT OF PUDUCHERRY
LABOUR DEPARTMENT

(G.O. Rt. No. 100/AIL/Lab./T/2018,
Puducherry, dated 19th June 2018)

NOTIFICATION

Whereas, an Award in I.D. (L) No. 46/2015, dated 22-05-2018 of the Industrial Tribunal-*cum*-Labour Court, Puducherry in respect of the Industrial Dispute between the management of M/s. Mahatma Gandhi Medical College and Research Institute, Puducherry and Thiru A. Dhanasekar, 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.

Tuesday, the 22nd day of May 2018

I.D. (L). No. 46/2015

Thiru A. Dhanasekar,
No. 22, North Street,
Nonankuppam, Ariyankuppam,
Puducherry. . . Petitioner

Versus

The Managing Director,
M/s. Mahatma Gandhi Medical College
and Research Institute,
Pondy-Cuddalore Road,
Pillayarkuppam,
Puducherry-605 402. . . Respondent

This industrial dispute coming on 11.05.2018 before me for final hearing in the presence of Thiruvalargal R.T. Shankar, N. Babu and A.Ashok Kumar, Counsels for the petitioner and Thiruvalargal L. Swaminathan and I.IIankumar, Counsels 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.83/AIL/Lab./J/2015, dated 16-07-2015 for adjudicating the following:-

(i) Whether the dispute raised by Thiru A. Dhanasekar against the management of M/s. Mahatma Gandhi Medical College and Research Institute, Puducherry, over 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 with respondent management on 07-10-2002 as Attender under employee code No. 402139 and rendered his service sincerely, honestly and up to the satisfaction of the management and performed all kinds of work as directed by the management without any black mark and performed till 16-10-2013. Even though extracted all kinds of work for the past 10 years the respondent not provided any promotions in his service. Therefore, the petitioner personally approached the HR Manager for his promotion but, the same was ended in vein. Thereafter, the respondent management sorted all kinds of unfair labour practice in order to victimize the petitioner as a result the respondent management changed his service condition to perform duty as lift operator temporarily which is not related with his service conditions as he joined only as Attender. The petitioner has no experiences and knowledge in respect of lift operator and he obeyed the orders of the management to perform as lift operator. Due to change of service condition he often become sickness and suffered severe head ache, vomiting sensations and therefore, he requested the management to post him in his original post of Attender But, the management not cared the request and stated that they will take necessary action to post permanent lift operator. When he tried to represent through the trade union he was warned by the respondent management that they will not consider his request and by an act of victimization issued false and fake charges on 15-10-2013 in order to terminate him from service. The respondent management refused the employment on and from 16-10-2013 and subsequently, he was punished by suspension pending enquiry. The management by an act of victimization and motivation refused employment by way of issuing a false and fake charge without following any mandatory provision which is enumerated in Industrial Disputes Act. After the charge sheet issued by the respondent management nothing has happened and the respondent management not followed the statutory provisions as per the Industrial Disputes Act, Hence, the act of the respondent management is illegal, unlawful one under the Industrial Disputes Act and violation of the principal of natural justice. Therefore, the same is comes under "otherwise termination of service" and

attracted section 2-A of Industrial Disputes Act, 1947. Therefore, the petitioner prays this Court to pass an order for directing the respondent management to reinstate the petitioner with full back wages, continuity service and all other attendance benefits.

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

The industrial dispute filed by the claim petitioner is *per se* not maintainable either on law or on facts and liable to be dismissed. The various contentions and allegations stated in the claim petition are factually incorrect and the claim petitioner only to achieve unlawful gains through suspension of material facts had approached this Court with unclean hands. Thiru A. Dhanasekar, Emp. No. 402139 was appointed as Attender on 21-10-2002 in the respondent Medical College and had to perform his duties and responsibilities as instructed by his superiors. Being a Medical College and Hospital, the Attenders who are appointed in the respondent Medical College are required to perform their duties in various departments of the Medical College and Hospital and Thiru A. Dhanasekar is not an exemption to it. During the course of employment with the Respondent Medical College Thiru A. Dhanasekar was issued with several warnings and was even suspended for commission of misconduct which could be evident from the personal file. The Claim petitioner was posted as Lift Operator in July 2008 and many emergency cases, needy patients, senior citizens, transfer of patients in stretchers would all require lift as a mode for commuting in the floors of the respondent Medical College and duty is cast upon the Lift Operators to be vigilant at all times and is required to perform duties with utmost concentration as the life of the needy patients are at stake. Understanding the emergency of the lift to be operated 24 * 7 throughout the year, the respondent Medical College through its Personnel Manager had issued a Memorandum, dated 30-07-2008 to all the Lift Operators intimating about the emergencies that is to be adhered while operating the lifts and made it very clear not to leave the duty spot at any point of time without prior permission from the superiors. The said Memorandum, dated 30-07-2008 was acknowledged by the Claim petitioner who is fully aware about the dire necessity of operating the Lift in the respondent Medical College while on duty. While on duty on 19-12-2008 Thiru.A.Dhanasekar had left the duty spot at about 05.45 p.m. which was noticed by the Dean of the respondent Medical

College and his superiors while on rounds and a Suspension Order cum Charge Memorandum, dated 20-12-2008 was issued to the Claim petitioner seeking explanation. The Claim petitioner had submitted his written explanation on 25-12-2008 wherein, he had admitted of leaving the work spot for consuming tea due to his headache and apologized for the said incident and requested for reinstatement into service with an assurance that he would not commit such misconduct in future. For the above said incident, an Enquiry Committee comprising of Medical Superintendent and Deputy Superintendent was constituted and the then Personnel Manager through his Letter dated 26-12-2008 intimated the Claim petitioner to appear for enquiry on 30-12-2008. The Enquiry Committee conducted an Enquiry on 30-12-2008 and came out with a finding that the claim petitioner accepted and admitted of leaving the work spot at about 05.45 p.m. on 19-12-2008 for consuming tea owing to his headache and pleaded leniency in punishment and assured not to commit such misconduct in future. Though, the Enquiry findings, dated 31-12-2008 had held the claim petitioner guilty of charges, the then Personnel Manager after perusing the findings had bestowed mercy on the claim petitioner by revoking the Order of Suspension, dated 20-12-2008 by clearly warning that no such incident should recur in future. While this being the factum of reality, the claim petitioner during his night shift on 14-10-2013 had left the work spot and was found sleeping in the demonstration hall located in the D-Block of the respondent Medical College. The claim petitioner had also taken the Keys of the Lift with him and the security of the respondent Medical College were trapped inside the Lift at about 1.50 a.m. owing to sudden failure of power supply and the Lift was opened through the help of the Electrician after breaking the lock of the Lift. The search conducted by the Securities for tracing the Lift Operator/Claim petitioner inside the respondent Medical College ended in vain and the claim petitioner was found sleeping in the Demonstration Hall which is located far away from the place of lift which portrays the casual and callous attitude of the Claim petitioner. It is well known to the Claim petitioner that the Respondent Medical College is functioning for 24 hours a day and the necessity of Lift is vital and paramount and any lethargic attitude in operating the lift would only lead to untold causalities which cannot be explained in terms of words. The Claim petitioner had submitted a written explanation, dated

15-10-2013 admitting about sleeping while on duty. As the explanation was found not satisfactory, the respondent Medical College issued an Order of Suspension, dated 16-10-2013 in contemplation of disciplinary proceedings. While so, one Dr. Lakshmana Perumal, RMO was appointed as Enquiry Officer to enquire about the incident of sleeping while on duty and the Enquiry Officer had conducted enquiry and submitted his report on 20-02-2014 holding that the claim petitioner is guilty of charges. Meanwhile, the claim petitioner had raised the issue of suspension from service as a dispute before the Labour Officer (Conciliation), Puducherry, through his representation, dated 10-02-2014 and the respondent Medical College had submitted a reply on 03-03-2014 by clearly stating that the dispute is pre-matured. A second Show-Cause Notice, dated 23-03-2014 was issued to the claim petitioner calling upon him to explain in writing as to why he should not be terminated from service for proven misconduct which was returned by the claim petitioner on 29-03-2014 and the claim petitioner had neither acknowledged any of the correspondences of the respondent Medical College thereof nor came forward to with any plea for revocation of suspension till date. The entire claim of the claim petitioner is false and frivolous and contrary to factual circumstances, prematured and cannot be entertained even to slightest extent at this juncture and the failure/commissions and omissions on the part of the claim petitioner cannot be construed that the claim petitioner has been terminated from service and it is for the claim petitioner to establish the said plea of termination. Therefore, the respondent prays this Court to dismiss the claim petition.

4. In the course of enquiry on the side of the petitioner PW.1 was examined and Ex.P1 to Ex.P12 were marked and on the side of the respondent no witness was examined and no oral evidence has been let in and Ex.R1 to Ex.R10 were marked in the cross examination of PW.1. Both sides are heard.

5. *The point for consideration is:*

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

6. *On the point:*

The pleadings of the parties, the evidence let in by the petitioner and the exhibits marked on both sides are carefully considered. On the side of the respondent management, written argument was filed

and the same was carefully considered. In order to prove his case, the petitioner examined himself as PW1 and he has stated in his evidence that he joined at the respondent establishment on 07-10-2002 and he had been in service till 16-10-2013 and originally he was posted as Attender and subsequently, his service condition was changed as Lift Operator temporarily which is not related with his service conditions as he joined only as Attender and he was given charge memo on 15-10-2013 by the management in order to terminate him from service and on 16-10-2013, he was given suspension order while the enquiry was pending and the management by an act of victimization and motivation refused employment by way of issuing a false and fake charge without following any mandatory provision of the Industrial Disputes Act and after the charge sheet was issued by the respondent management nothing has happened and the respondent management not followed the statutory provisions as per the Industrial Disputes Act and his employment was refused and that therefore, he raised the conciliation proceedings before the Conciliation Officer for his reinstatement with full back wages, continuity of service and all other attendance benefits.

7. In support of his oral evidence the petitioner has exhibited Ex.P1 to Ex.P12. Ex.P1 is the copy of the notice sent by the respondent management to the petitioner. Ex.P2 is the copy of the reply letter sent by the petitioner to the respondent management. Ex.P3 is the copy of the temporary suspended letter sent by the respondent management to the petitioner. Ex.P4 is the dispute raised by the petitioner before the Labour Officer (Conciliation). Ex.P5 is the copy of the failure report submitted by the Labour Officer (Conciliation), Puducherry. Ex.P6 is the copy of the appointment confirmation letter issued by the respondent to the petitioner. Ex.P7 is the copy of the identity card issued by the respondent to the petitioner. Ex.P8 is the copy of the confirmation order issued by the respondent to the petitioner. Ex.P9 is the copy of the request letter submitted by the petitioner to the respondent. Ex.P10 is the copy of the request letter submitted by the petitioner to the respondent. Ex.P11 is the copy of cheque issued by the respondent to the petitioner. Ex.P12 is the call letters sent by the Conciliation Officer to the respondent.

8. On the other hand the respondent has not examined any witness. However, the respondent management has filed a counter stating that on 19-12-2008, the petitioner while working as Lift Operator had left the duty spot at

about 05.45 p.m., for which he was given charge memo on 20-12-2008 along with suspension order and after his apology, the petitioner was reinstated into service with the assurance that he would not commit such mistake in future and thereafter, on 14-12-2013, the petitioner during his night shift had left the work spot and was found sleeping in the demonstration hall located in the D-Block of the respondent Medical College and had also taken the Keys of the Lift with him and the Security of the respondent Medical College were trapped inside the Lift at about 1.50 a.m. owing to sudden failure of power supply and the Lift was opened through the help of the Electrician after breaking the lock of the Lift and the petitioner had submitted a written explanation, dated 15-10-2013 admitting about sleeping while on duty and as the explanation was found not satisfactory, the respondent Medical College issued an Order of Suspension on 16-10-2013 and Enquiry Officer was appointed and enquiry was conducted and report was submitted by the Enquiry Officer on 20-02-2014 holding that the petitioner is guilty of charges and while so the petitioner has raised the industrial dispute before the Labour Officer (Conciliation) on 10-02-2014, over the issue of suspension from service for which the respondent Medical College had submitted a reply on 03-03-2014 stating that the dispute is pre-matured and second Show-Cause notice was issued on 23-03-2014 to the petitioner calling upon him to explain in writing as to why he should not be terminated from service for proven misconduct and the said letter was returned by the petitioner on 29-03-2014 and the entire claim of the petitioner is false and frivolous and contrary to factual circumstances, prematured and cannot be entertained and as the claim petitioner has not been terminated from service an industrial dispute raised by the petitioner before the Labour Officer (Conciliation) is not sustainable.

9. In support of their contention, the respondent management has exhibited Ex.R1 to Ex.R10. Ex.R1 is the copy of the charge sheet-cum-suspension order, dated 20-12-2008. Ex.R2 is the copy of the reply of the claim petitioner, dated 23-12-2008. Ex.R3 is the copy of the enquiry proceedings of the claim petitioner. Ex.R4 is the copy of severe warning letter issued to the claim petitioner, dated 31-12-2008. Ex.R5 is the copy of the charge sheet issued to the claim petitioner, dated 15-10-2013. Ex.R6 is the copy of the reply to the charge sheet, dated 15-10-2013. Ex.R7 is the copy of the suspension order issued to the claim petitioner, dated 16-10-2013. Ex.R8 is the copy of the reply to the suspension order, dated 16-10-2013. Ex.R9 is the copy

of the letter to the Labour Officer (Conciliation), Puducherry by the claim petitioner. Ex.R10 is the copy of failure of conciliation, over the industrial dispute raised by the claim petitioner.

10. From the pleadings of the parties, the evidence adduced by the petitioner and the exhibits marked on either side, it can be noticed that the following facts are admitted by both sides that this petitioner was originally joined at the respondent establishment as attender and subsequently, he was posted as Lift Operator and he had been in service upto 2013 and the petitioner has completed 11 years of service at the respondent establishment and he was given suspension order on 16-10-2013 alleging that he has committed misconduct of sleeping in the demonstration hall located in the D-Block during night shift while he was working as Lift Operator and as the petitioner was suspended from service he was not given work and the petitioner also has submitted his explanation admitting the fact that he has slept at the demonstration hall due to sickness and vomiting during night hours while he was doing the lift operating work and the petitioner has approached the Labour Officer (Conciliation) over the issue of suspension from service and for reinstatement with back wages stating that the misconduct committed by him is due to sickness and vomiting during night shift while he was operating lift and the conciliation was failed and the matter has been referred to this Court for adjudication.

11. It is the main contention of the respondent management that the petitioner wantonly went away from the lift while he was doing lift operating work in the night shift and has slept in the demonstration hall located in the D-Block wantonly and it is the further contention of the respondent management that they conducted domestic enquiry by appointing Enquiry Officer against the petitioner for the misconduct of the charge levelled against him that he wantonly went away from the lift to the demonstration hall for sleeping and in the enquiry, it was found by the Enquiry Officer that the petitioner wantonly committed misconduct of sleeping during duty hours since the petitioner himself has admitted the misconduct of sleeping while on duty in his written explanation. But, it is the case of the petitioner that he has left away from the lift in the night shift while he was doing lift operating work since he was suffering from sickness and vomiting. On perusal of records it is learnt to this Court that the petitioner has stated that he felt sickness and suffering from vomiting while on duty and hence, he left away from the lift. Therefore, now, it is to be decided by this Court that

whether the domestic enquiry conducted by the respondent management against the petitioner is fair in accordance with the principles of natural justice or not and whether the petitioner has left away from the lift wantonly or due to cause of ill-health as stated by the petitioner.

12. The respondent management though has exhibited Ex.R1 to Ex.R10, has not filed any documents to prove the fact that Enquiry Officer was appointed by the management to conduct the enquiry against the petitioner for the alleged charge of misconduct of sleeping while on duty. The respondent management has also not exhibited enquiry notice before this Court to prove that the enquiry notice was given to the petitioner by fixing the date for domestic enquiry. Further, though, the respondent management has exhibited the enquiry proceedings against the petitioner by the respondent management relating to the year 2008, has not exhibited any enquiry proceedings or enquiry report with regard to the alleged charge of misconduct of sleeping committed by the petitioner on 14-12-2013 while he was operating lift at night shift before this Court and further though, the respondent management has filed enquiry proceedings and enquiry report along with some documents, the said documents has not been exhibited before this Court by the respondent management to establish that the domestic enquiry was conducted by the respondent management by appointing Enquiry Officer and the Enquiry Officer has filed the final report. The charge sheet issued against the petitioner and the reply given by the petitioner for the charge for the same day *i.e.*, on 15-10-2013 is not all sufficient to hold that there was domestic enquiry conducted by the management in accordance with the principles of natural justice.

13. Further on perusal of conciliation failure report under Ex.R10 it is learnt to this Court that in the conciliation proceedings the respondent management has agreed to provide employment to the petitioner as advised by the Conciliation Officer and insisted the petitioner to submit apology letter. This fact would go to show that the respondent management is ready to provide reinstatement whenever the petitioner is giving apology letter. As admittedly, the petitioner was working for more than 11 years at the respondent establishment he can be terminated only under due process of law by conducting domestic enquiry as per the Industrial Disputes Act and in accordance with the principles of natural justice. The burden is on the respondent management to prove the fact that there was a domestic enquiry conducted by the management against the petitioner and all the opportunities were given in

accordance with the principles of natural justice before deciding guilt of the petitioner. But, the respondent management has utterly failed to establish that there was a domestic enquiry conducted against the petitioner properly. Further, the management has not ascertained the fact that whether the petitioner has actually suffering from sickness and vomiting during the shift hours while he was operating lift by examining available witness or by conducting medical examination of the petitioner on the said date. Without conducting any steps for medical examination of the petitioner for ascertaining the sickness of the petitioner, it cannot be said that the petitioner has wantonly left away for sleeping during night shift and that therefore, this Court inferred that the domestic enquiry was not conducted by the management by giving proper opportunities to the petitioner.

14. Further, admittedly, in this case, the petitioner workman has raised the industrial dispute on 10-02-2014 for reinstatement with back wages and while so it is alleged by the respondent management that the domestic enquiry was conducted only on 20-02-2014 and second show cause notice was issued calling upon the petitioner's explanation that why he should not be terminated from service which facts would go to show that while the dispute is pending before the Conciliation Officer from 10-02-2014, the respondent management has been conducting domestic enquiry and issued second show cause notice without the permission of the Conciliation Officer. Furthermore, it is the case of the respondent management that the petitioner was so far not terminated from service by the respondent management and the claim is premature. But, admittedly, the petitioner was suspended on 16-10-2013 and after three or four months the petitioner has raised the industrial dispute before the Conciliation Officer on 10-02-2014 since he has not been provided employment by revoking the suspension order and therefore, the reason stated by the petitioner to raise the industrial dispute over refusal of employment is absolutely correct and the same was established by him through documents exhibited on his side.

15. Further, from Ex.P11, it is established by the petitioner that he was given cheque by the respondent management on 08-07-2014 for ₹ 19,158 towards subsistence allowance and the said allowance was given only after completion of the enquiry and therefore, it is established by the petitioner that the respondent management has not followed the proper procedure to conduct the domestic enquiry and it is also established by the petitioner that his employment was refused by the respondent management without any due cause and without following the procedure.

16. Furthermore, even assuming that the petitioner has committed misconduct in the year 2008 and also in the year 2013 that he was sleeping during duty hours while he was working as Lift Operator, the punishment of suspension or refusal of employment or termination of service is highly disproportionate to the alleged misconduct of sleeping and that therefore, it is to be held that the industrial dispute raised by the petitioner against the respondent management over non-employment is justified and the petitioner is entitled for the order of reinstatement as claimed by him.

17. Further, as far as back wages is concerned, the respondent management has not proved the fact that the petitioner has been working in any other establishment after his suspension and no proof is exhibited by the respondent management before this Court to prove the fact that the petitioner is working anywhere else. Absolutely there is no evidence let in by the petitioner to prove that he is not working so far in any other industry. However, the petitioner could have served at any other industry after his suspension for the past about 4 years and therefore, 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.

18. In the result, the petition is allowed and the industrial dispute raised by the petitioner against the respondent management, over 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 and further directing the respondent management to pay 25% back wages to the petitioner from the date of suspension 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 22nd day of May, 2018.

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

List of petitioner's witness:

PW.1 — 27-06-2017 Dhanasekar

List of petitioner's exhibits:

Ex.P1 — 15-10-2013 Copy of the notice sent by the respondent management to the petitioner.

Ex.P2 — 15-10-2013	Copy of the reply letter sent by the petitioner to the respondent management.
Ex.P3 — 16-10-2013	Copy of the temporary suspended letter sent by the respondent management to the petitioner.
Ex.P4 — 10-02-2014	Dispute raised by the petitioner before the Labour Officer (Conciliation).
Ex.P5 — 09-12-2014	Copy of the failure report submitted by the Labour Officer (Conciliation), Puducherry.
Ex.P6 — 07-10-2002	Copy of the appointment confirmation letter issued by the respondent to the petitioner.
Ex.P7 Nil	Copy of the identity card issued by the respondent to the petitioner.
Ex.P8 — 31-07-2008	Copy of the confirmation order issued by the respondent to the petitioner.
Ex.P9 — 22-10-2013	Copy of the request letter submitted by the petitioner to the respondent.
Ex.P10—03-12-2013	Copy of the request letter submitted by the petitioner to the respondent.
Ex.P11—08-07-2014	Copy of cheque issued by the respondent to the petitioner.
Ex.P12—18-03-2014	Call letters sent by the Conciliation Officer to the respondent.

List of respondent's witnesses: Nil

List of respondent's exhibits:

Ex.R1 — 20-12-2008	Copy of the charge sheet-cum-suspension order.
Ex.R2 — 23-12-2008	Copy of the reply of the claim petitioner.
Ex.R3 — 30-12-2008	Copy of the enquiry proceedings of the claim petitioner.
Ex.R4 — 31-12-2008	Copy of severe warning letter issued to the claim petitioner.

- Ex.R5 — 15-10-2013 Copy of the charge sheet issued to the claim petitioner.
- Ex.R6 — 15-10-2013 Copy of the reply to the charge sheet, dated 15-10-2013.
- Ex.R7 — 16-10-2013 Copy of the suspension order issued to the claim petitioner.
- Ex.R8 — 03-12-2013 Copy of the reply to the suspension order, dated 16-10-2013.
- Ex.R9 — 10-02-2014 Copy of the letter to the Labour Officer (Conciliation), Puducherry by the claim petitioner.
- Ex.R10—09-12-2014 Copy of failure of conciliation-over the industrial dispute raised by the claim petitioner.

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

**GOVERNMENT OF PUDUCHERRY
LABOUR DEPARTMENT**

(G.O. Rt. No. 136/AIL/Lab./T/2018,
Puducherry, dated 17th September 2018)

NOTIFICATION

Whereas, the Government is of the opinion that an industrial dispute has arisen between the management of M/s. Mahatma Gandhi Medical College, Puducherry and Mahatma Gandhi Medical College and Indira Gandhi Dental College Congress Employees Union, Puducherry, over charter of demands such as to revise the basic pay for unskilled employees as ₹ 9,000, semi-skilled as ₹ 10,000, skilled as ₹ 11,000 and high-skilled as ₹ 12,000; washing allowance at ₹ 300 per month; annual increment of 25%, to grant promotion on completion of 10 years of service and other allowances, etc., 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 (d) of sub-section (1) of

section 10 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947), it is hereby directed by the Secretary to Government (Labour) that the said dispute be referred to the Industrial Tribunal, Puducherry for adjudication. The Industrial Tribunal, Puducherry, shall submit the Award within 3 months from the date of issue of reference as stipulated under sub-section (2-A) of section 10 of the Industrial Disputes Act, 1947 and in accordance with rule 10-B of the Industrial Disputes (Central) Rules, 1957. The party raising the dispute shall file a statement of claim complete with relevant documents, list of reliance and witnesses to the Industrial Tribunal, Puducherry, within 15 days of the receipt of the order of reference and also forward a copy of such statement to each one of the opposite parties involved in the dispute.

ANNEXURE

(a) Whether the dispute raised by Mahatma Gandhi Medical College and Indira Gandhi Dental College Congress Employees Union, Karikalampakkam and Post, Puducherry against the management of M/s. Mahatma Gandhi Medical College, Pillaiyarkuppam, Puducherry, over charter of demands such as to revise the Basic Pay for unskilled employees as ₹ 9,000, semi-skilled as ₹ 10,000, skilled as ₹ 11,000 and high-skilled as ₹ 12,000; washing allowance at ₹ 300 per month; annual increment of 25%, to grant promotion on completion of 10 years of service and other allowances, etc., is justified or not? If, justified, what relief the union workmen are entitled to?

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

(By order)

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

புதுச்சேரி அரசு

இந்து சமய நிறுவனங்கள் மற்றும் வக்ஃபு துறை

(அரசு ஆணை பலவகை எண் 70/இசரி/கோ.3/2018,
புதுச்சேரி, நாள் 2018 செப்டம்பர் மீ 17ல்)

ஆணை

புதுச்சேரி மாநிலம், புதுச்சேரி வட்டாரம், மண்ணாடிப்பட்டு கொம்புன், மதகடிப்பட்டு அருள்மிகு அங்காளம்மன் தேவஸ்தானத்தை நிருவகிக்கும் பொருட்டு, அரசு ஆணை பலவகை எண் 15/இசரி/கோ.2/2014, நாள் 28-8-2014-ன் மூலம் அமைக்கப்பட்ட அறங்காவலர் வாரியத்தால் நிர்வகிக்கப்பட்டு வருகிறது. இவ்வறங்காவலர் வாரியத்தின் பதவிக்காலம் முடிவடைந்துவிட்டது.