



# புதுச்சேரி மாநில அரசிதழ்

## La Gazette de L'État de Poudouchéry

### The Gazette of Puducherry

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#### பொருளடக்கம்

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**GOVERNMENT OF PUDUCHERRY  
LABOUR DEPARTMENT**

(G.O. Rt. No. 101/AIL/Lab./T/2018,  
Puducherry, dated 19th June 2018)

**NOTIFICATION**

Whereas, an Award in I.D. (L) No. 32/2015, dated 10-5-2018 of the Industrial Tribunal-cum-Labour Court, Puducherry in respect of the Industrial Dispute between the management of M/s. Shri Raamsurat Kumar Enterprise, Puducherry and Tmt. K. Kasiammal and 11 others, over charter of demands and refusal of employment to 12 employees while pending of the conciliation proceedings 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 10th day of May, 2018*

**I.D. (L) No. 32/2015**

1. K. Kasiammal
2. M. Saroja
3. V. Tamilselvi
4. M. Rani
5. R. Sumathi
6. S. Vijayalakshmi
7. P. Lakshmi
8. D. Suganthi
9. E. Valli
10. I. Savitha
11. K. Porkalai
12. K. Chamundeswari . . . Petitioners

*Versus*

The Managing Director,  
M/s. Shri Raamsurat Kumar Enterprise,  
No.139, Ramanathapuram Post,  
Koodapakkam Road,  
Pathukannu,  
Puducherry-605 502. . . Respondent

This industrial dispute coming on 23-02-2018 before me for final hearing in the presence of Tvl. P.R. Thiruneelakandan and A. Mithun Chakkaravarthy and R. Harinath, Advocates for the petitioner and Tvl. L. Swaminathan and I. Ilankumar, Advocates for the respondent, upon hearing, 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. 56/AIL/Lab./J/2015, dated 18-06-2015 for adjudicating the following:-

(a) Whether the dispute raised by the workers representatives namely, 1. K. Kasiammal, 2. M. Saroja, 3. V. Tamilselvi, 4. M. Rani, 5. R. Sumathi, 6. S. Vijayalakshmi, 7. P. Lakshmi, 8. D. Suganthi, 9. E. Valli, 10. I. Savitha, 11. K. Porkalai and 12. K. Chamundeswari against the management of M/s. Shri Raamsurat Kumar Enterprise situated at No.72, Pettaiyan Chatram, Puducherry, over charter of demands and refusal of employment to 12 employees while pending of the conciliation proceedings is justified? If justified what relief they are entitled to?

(b) 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 petitioners 1 to 12 are workers of the respondent establishment. The 1st petitioner joined at the respondent establishment on 08-06-2004. The 2nd petitioner joined at the respondent establishment on 12-08-2004. The 3rd petitioner joined at the respondent establishment on 10-10-2005. The 4th petitioner joined at the respondent establishment on 02-02-2006. The 5th petitioner joined at the respondent establishment on 22-04-2006. The 6th petitioner joined at the respondent establishment on 20-04-2006. The 7th petitioner joined at the respondent establishment on 06-11-2006. The 8th petitioner joined at the respondent establishment on 24-05-2004. The 9th petitioner joined at the respondent establishment on 04-12-2004. The 10th petitioner joined at the respondent establishment on 08-12-2009. The 11th petitioner joined at the respondent establishment on 20-11-2004. The 12th petitioner joined at the respondent establishment on 20-11-2004. Their last drawn wage is ₹ 5,580. Though, the petitioners rendered more than 5 to 10 years of service in the

respondent establishment they were not issued any written appointment order and the petitioners' rights and benefits under the various labour laws were denied. The petitioners were extracted over time work but, they were not paid over time wages and they were denied weekly holiday and Government holiday and for the same they were not paid compensatory wages, leave benefits. The respondent management used not to give any salary slip to the workers. The respondent management deducted ESI, EPF contribution from the petitioners' wage. The workers were not issued any receipt for deduction of EPF contribution and also they were not given their EPF particulars. The respondent factory at Sedarapet unit more than 100 workers are employed in day to day manufacturing activity as such it covered under Chapter V-B of the I.D. Act. Till April, 2014 there are 250 employees employed in the respondent factory, in which about 180 workmen illegally retrenched and they were not paid compensation and several workers were transferred to other unit on false promise to increase their wage and provide DA, medical allowances and transfer allowances, etc... The respondent management suspended the operation of the Sedarapet unit without any permission from the Government of Puducherry with effect from 28-07-2014. The workers were not given any closure notice before closure of the unit at Sedarapet. Therefore, the petitioners demanded the respondent management to issue their letter of appointment and furnish their EPF details and demanded over time wage for their over time work. The respondent management did not come forward to concede the demand of the petitioners and decided to victimized them by transferring them to its sister unit. Accordingly, on 28-07-2014 all the petitioners were transferred to respondent's sister concern situated at Kudapakkam road, Pathukannu, Puducherry. The workers were given assurance that after the maintenance work in Sedarapet unit they will be reverted back to continue their service in Sedarapet unit. On the contrary, the workers were not reverted back to Sedarapet unit. Hence, the petitioners preferred a complaint to the Chief Inspector of Factories and Labour Officer (Conciliation) on 24-11-2014. On receipt of the complaint the Labour Officer (Conciliation) initiated proceedings and issued a conciliation notice on 12-12-2014 to both the petitioners as well the respondent management. The conciliation was held on 22-12-2014, 07-01-2015 and 13-05-2015. On receipt of the conciliation notice the respondent management did not chose to

participate in the conciliation proceedings and decided to victimize the petitioners. On 19-01-2015 when the petitioners reported to duty they were denied employment and they were stopped in the factory gate itself for which the petitioners have made a complaint to the Labour Officer (Conciliation) and also sent a letter, dated 27-01-2015 to the respondent through registered post. Even after, the said letter the respondent did not come forward to provide employment to the petitioners. Hence, the petitioners preferred a complaint to the Labour Officer (Conciliation) regarding unfair labour practice and denial of employment. The same was acknowledged by the Labour Officer (Conciliation) on 27-01-2015. On the very same date *i.e.*, 27-01-2015 the petitioners sent another letter through registered post to the respondent requesting to provide employment with back wages. The respondent did not pay any heed to the petitioners request and denied them employment. While pending the said dispute before the Labour Officer (Conciliation) the respondent without prior permission from the Conciliation Officer and in contravention of section 33A of the Industrial Disputes Act illegally denied employment to the petitioners. The Labour Officer (Conciliation) considering the dispute raised by the petitioners and their illegal denial of employment, advised the management to reinstate them in service with back wages, continuity of services and the same was not considered by the respondent management. Hence, the conciliation was ended in failure and the Conciliation Officer submitted his failure report on 06-05-2015 to the Government of Puducherry. The denial of employment to the petitioners is arbitrary, illegal and it is an act of victimization and unfair labour practice under Schedule-V Part-1 Clause 5(a), (b), (d), (f) and 16 of the Industrial Disputes Act. The denial of employment to the petitioners without enquiry is illegal and violation of Model Standing Orders and the denial of employment in contravention of section 33-A of the ID Act is bad in law and such a denial of employment is violation of provision of section 33A of the Industrial Disputes Act. Therefore, the denial of employment to the petitioners' service from 19-01-2015 is illegal and unfair labour practice and the petitioners are entitled for reinstatement in their service with full back wages and continuity of service and all other attendant benefits. After the illegal denial of employment the petitioners have not been gainfully employed anywhere in any establishment.

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

The claim petition is not maintainable either on law or on facts. The averments and contentions set out in the claim petition is untenable, unjust, vexatious. The 12 petitioners were insisting that they should be employed only at M/s. Shri Raamsurathkumar Enterprises and not in the premises located at Koodapakkam Road, Pathukannu, Puducherry, which *per se* is illegal, not maintainable and it would be a travesty of justice if, these kind of industrial disputes are entertained by this Court as the workers cannot decide their place of work. It is not the case of denial of employment to the 12 claim petitioners. It is the refusal on the part of the 12 claim petitioners in discharging their duties in the premises located at Koodapakkam road, Pathukannu, Puducherry. If, there is any illegal closure of factory unit located at Puducherry it is for the Labour Department, Government of Puducherry to conduct any enquiry or proceed as deemed fit and proper in accordance with law on the so-called illegal closure and the workers employed in the said factory unit cannot agitate or dictate terms on the duties and responsibilities to be performed by the Labour Department. The claim petitioners seek the relief of reinstatement in services with back wages without stating the fact as to when and how the 12 claim petitioners were prevented from discharging their duties from 28-07-2014 onwards in the transferred place. It is mandatory for every Industrial unit to abide by the statutory provisions of E.S.I and E.P.F and the worker merely being a member of E.S.I./E.P.F one cannot array to a conclusion that they are on the permanent rolls of the said Industrial units and can claim permanency in employment. To seek any permanency in employment, the concerned employer or worker should establish beyond reasonable doubt about their continuity in service in the industrial unit with relevant proof/documents and cannot contend in a sardonic/casual manner that they are the permanent workers of the said Industrial unit and had been terminated without any cause. Thus, in the instant claim petition, the 12 claim petitioners had only chosen to state about their date of joining and clever and silent in suppressing the fact that they were in continuous employment as there are documentary evidences that shows that the 12 Claim Petitioners were not in continuity of service/not on permanent rolls with the respondent management. Only these 12 Claim Petitioners who are residing in and around Sedarapet were particular and adamant that they should be provided employment near their

place of residence and were rigid that they would not work in the premises located at Koodapakkam Road, Pathukannu, Puducherry and the respondent management totally deny the fact in its entirety that the 12 claim petitioners would again be accommodated in the Sedarapet Unit. As long as the 12 claim petitioners were in the Sedarapet unit, there was no complaint of violation of the Industrial Disputes Act by the respondent management and once the 12 claim petitioners were asked to perform the duties in Koodapakkam Road, Pathukannu, Puducherry, all the allegations as mentioned in the claim petition have suddenly cropped up against the respondent management including denial of employment. The claim of reinstatement in services would occur only if, there is a termination of employment. The 12 claim petitioners were not denied employment and their grievance revolves upon the employer should give them an opportunity of employment in Sedarapet unit. In totality, the entire claim of the 12 claim petitioners is false and frivolous and contrary to factual circumstances, premature and cannot be entertained even to slightest extent at this juncture and the failure/commissions and omissions on the part of the claim petitioners cannot be construed that the claim petitioners has been terminated horn service and it is for the claim petitioner to establish the said plea of termination. The 12 individual claim petitioners if, at all they are aggrieved have to individually agitate their cause as contemplated under section 2-A of the Industrial Disputes Act 1947. Hence, the scope of entertaining a claim petition by the 12 claim petitioners styled in a single Industrial Dispute cannot be entertained more particularly in the matter of Service of an Individual Employee is not maintainable since in Service matters adjudication, it has to be clearly mentioned about the "person aggrieved". The 12 claim petitioners have no existing right to raise an Industrial Dispute without any *locus standi* as they are not terminated from Services and it is the case that the 12 claim petitioners are not reporting for duty in the Koodapakkam Road, Pathukannu, Puducherry and the very objective of framing of section 2-A of the Industrial Disputes Act, 1947 would get defeated if, these kind of industrial disputes are entertained. It has been well settled that the Courts have to be extremely careful that it does not encroach upon the sphere reserved by the Constitution in the guise of redressing public grievances as in the instant case it could be clearly seen that the 12 claim petitioners are not the persons

aggrieved as there is no denial of employment and therefore, they cannot be permitted to raise an Industrial Dispute collectively espousing the cause of the 12 claim petitioners.

4. In the course of enquiry on the side of the petitioner PW1 was examined and Ex.P1 to Ex.P25 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.R4 were marked in the cross examination of PW1. The argument of the petitioners' side was heard. On the side of the respondent though several opportunities were given to putforth their case no argument was putforth by the respondent and hence with no other option, the argument of the respondent side was closed.

*5. The point for consideration is:*

Whether the dispute raised by the petitioners against the respondent management over charter of demands and refusal of employment to 12 employees while pending of the conciliation proceedings 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 adduced by the petitioners and exhibits marked on both sides are carefully considered. In order to prove the case of the petitioners, the first petitioner was examined himself as PW.1 and it is the evidence of the PW.1 that petitioners are the workers of the respondent establishment and they have joined in between the period 2004 and 2006 at the respondent establishment and they were extracted over time work, but, they were not paid over time wages and they have also denied weekly holiday and Government holiday and that the management have used not to give any salary slip to the workers and the management has deducted ESI, EPF contribution from the wages of the petitioners and the workers have been employed at Sedarapet unit in day to day manufacturing activity and some of the workers have been illegally retrenched and they have not been paid compensation and some of the workers have been transferred and the management has suspended the operation of the Sedarapet unit without any permission from the Government of Puducherry with effect from 28-07-2014 and it is the further evidence of the PW.1 that these petitioners have demanded the respondent management to furnish EPF details and demanded over time wage for their over time work

and hence, as to victimize the petitioners, the respondent management transferred them to its sister unit situated at Kudapakkam Road, Pathukannu, Puducherry and the workers have been given assurance that after the maintenance work in Sedarapet unit they will be reverted back to continue their service in Sedarapet unit and the workers have not been reverted back to Sedarapet unit and hence, the petitioners have preferred a complaint to the Chief Inspector of Factory and Labour Officer (Conciliation) on 24-11-2014 and on the receipt of the complaint the Labour Officer (Conciliation) initiated proceedings and issued a conciliation notice to both the petitioners as well the respondent management and though the conciliation was held on 22-12-2014, 07-01-2015 and 13-05-2015, the respondent management did not chose to participate in the conciliation proceedings and decided to victimize the petitioners and on 19-01-2015, when the petitioners reported for duty they have been denied employment and they were stopped in the factory gate itself and hence, the petitioners have made a complaint to the Labour Officer (Conciliation) regarding denial of employment and the letter has been sent on 27-01-2015 to the respondent through registered post and even then the respondent management did not come forward to provide employment to the petitioners and that therefore, the petitioners preferred a complaint to the Labour Officer (Conciliation) regarding unfair labour practice committed by the management and denial of employment and that while the said dispute is pending before the Labour Officer (Conciliation) the respondent without prior permission from the Conciliation Officer and in contravention of section 33A of the Industrial Disputes Act illegally denied employment to the petitioners and though the Labour Officer (Conciliation) has advised the respondent management to reinstate the petitioners in service with back wages, continuity of service, the management has denied employment to the petitioners and the conciliation failure report was sent by the Conciliation Officer on 06-05-2015 and the Government has made a reference to this Court for adjudication and that the management has committed the act of victimization and unfair labour practice and the petitioners have been terminated from service without any enquiry in violation of section 33A of the Industrial Disputes Act and also in violation of section 25F of the Industrial disputes Act and prayed for reinstatement with full back wages and continuity of service.

7. In support of their oral evidence the petitioners has exhibited Ex.P1 to Ex.P25. Ex.P1 to Ex.P9 are the copy of ESI card of the petitioners. Ex.P10 to Ex.P12 and Ex.P14 to Ex.P22 are the copy of petitioners' letter to Office of the Chief Inspector of Factory, the Labour Officer (Conciliation), Labour Department, Labour Commissioner and to the respondent management on several dates. Ex.P13 is the copy of conciliation notice. Ex.P23 is the copy of letter from EPF Organization. Ex.P24 is the copy of conciliation failure report. Ex.P25 is the copy of Government reference. These documents would evident that the petitioners have been given ESI card and they have been paid ESI contribution and these petitioners have made a complaint to the Chief Inspector of Factories and the Assistant Labour Conciliation Officer to direct the respondent management to start the function of the factory situated at Sedarapet village and to revert them at Sedarapet factory and also made a complaint against their transfer by the respondent management on 28-07-2014 from Sedarapet unit to its sister concern which is situated at Koodapakkam Road, Pathukannu, Puducherry and the Labour Officer (Conciliation) has given notice to the petitioner Kasiammal as well the respondent management on 12-12-2014 to attend the conciliation to be held on 22-12-2014 and thereafter, the petitioners have sent a letter to the Labour Officer and the Chief Inspector of factories on 09-01-2015 asking them to take action to the complaint made by them on 24-11-2014 against the respondent management and on 27-01-2015 the petitioners have raised a industrial dispute before the Labour Officer (Conciliation) for their non- employment stating that their employment was denied by the respondent management while the industrial dispute which was already raised by them was pending before the conciliation.

8. It is learnt from Ex.P23 that the Employees Provident Fund Organization has given intimation to the first petitioner on 13-04-2015 stating the PF account number of all the 12 petitioners and further the Ex.P23 would evident that the petitioners have been working at the respondent establishment M/s. Shri Raamsurat Kumar Enterprise. It is evident from Ex.P24, the conciliation failure report that these petitioners have raised the industrial dispute against the respondent management on 24-11-2014, over charter of demands and refusal of employment to 12 employees while pending of conciliation proceedings wherein, the petitioners have made a representation that 180 workers of the respondent establishment have been illegally retrenched and that these 12 petitioners have been refused employment from 19-01-2015 and that they have asked for

reinstatement with back wages and insisted to provide statutory benefits such as drinking water, toilet facility, confirmation order and other welfare measures. It is also learnt from Ex.P24 that Conciliation Officer has advised the respondent management to provide employment to the 12 petitioners and to extend the statutory benefits and welfare measures under the Factories Act and to provide the confirmation order, P.F receipt, drinking water and toilet facility to the employees and the management also has assured that they are ready for bilateral discussion to settle the issue amicably and the management has not settled the issue and dragged for more than 4 months and hence, the Conciliation Officer has sent a failure report to the Government.

9. On the other hand, to disprove the case of the petitioners the respondent management has not let any oral evidence and instead of that the respondent management has marked Ex.R1 to Ex.R4. Ex.R1 to Ex.R4 are the copy of letters sent by the respondent management to the Regional Commissioner, Provident Fund Office on several dates. These documents would go to show that that the respondent has sent a letter enclosing form-19 & 10C of the staffs M. Rani, P. Lakshmi, Sumathi, V.Tamilselvi, K. Chamundeeswari and K. Kasiyammal having account numbers PC/1503/503, PC/1503/541, PC/1503/1035, PC/1503/935, PC/1503/35 and PC/1503/52 respectively to the Regional Commissioner, Provident Fund Office. The respondent contended that these 12 petitioners insisting the respondent management that they should be provided employment only at M/s. Shri Raamsurat Kumar Enterprise the factory situated at Sedarapet village and the said 12 petitioners are not willing to work at the sister concern of the respondent establishment which is situated at Pathukannu village of Puducherry and that the respondent has not terminated these 12 petitioners and they have voluntarily refused to discharge their duties in the factory located at Koodapakkam Road, Pathukannu village of Puducherry and the petitioners have not stated in the claim petition that how the 12 petitioners were prevented from discharging their duties from 28-07-2014 onwards in the transferred place.

10. From the pleadings of either side it is clear that following facts are admitted by either side that these petitioners are working at the respondent establishment as stated by the petitioners and they have been paid ESI contribution by the respondent and these petitioners have originally worked at respondent establishment, M/s. Shri Raamsurat Kumar Enterprise and subsequently, they have been directed to work at its sister concern

which is situated at Pathukannu village of Puducherry. It is also not disputed by either sides that now, the petitioners are not working at the respondent establishment and the petitioners have claimed reinstatement with back wages with continuity of service. Further, it is also not disputed by the respondent that these petitioners have raised the industrial dispute over charter of demands and subsequently for the refusal of employment and seeking the order for reinstatement with back wages and no written order of termination has been given to the petitioners.

11. It is the first contention of the respondent that the claim petition filed by the 12 claim petitioners styled in a single industrial dispute cannot be entertained more particularly in the matter of service of an individual employee is not maintainable and each and every employee has to file a separate application under section 2A of the Industrial Disputes Act. On this aspect the records and evidence are perused. On perusal of the claim petition it is learnt to this Court that each and every petitioner has signed the claim petition and all of them shown as petitioners. Further, it is learnt that these petitioners have jointly raised the industrial dispute before the Conciliation Officer, wherein, the respondent has not objected the same on this ground and hence, the contention raised by the respondent that they have to file the claim petition individually is not sustainable as all of them have filed this claim petition sought for the relief of reinstatement.

12. It is the second contention of the respondent management that the petitioners are not the permanent workers of the respondent establishment and they are not entitled for any reinstatement as claimed by them. It is not disputed by the respondent that the petitioners are working for more than 5 years. It is true that the burden of proof is on the petitioner workmen to prove that they had been in service for about 5 years at the respondent establishment and that atleast they have to prove that whether they have worked for 240 days in a calendar year. On perusal of the records it is learnt to this Court that ESI card has been issued to the petitioners and the respondent has exhibited the letters enclosing Form-19 and 10C of the staffs sent by them to the Regional Commissioner, Provident Fund Office under Ex.R1 to Ex.R4 which would go to show that the petitioners were in service till 2012. Further, the petitioners have exhibited the letter sent by the Employees Provident Fund Organization on 13-04-2015 to the 1st petitioner under Ex.P23 which would reveal the fact that the petitioners are the workers of the respondent establishment M/s. Shri Raamsurat Kumar

Enterprise till 2014-2015. Further, it is learnt from the records that the respondent has not at all stated before the Conciliation Officer that these petitioners are not the permanent workers of the respondent establishment. Furthermore, the respondent management has not come forward to produce the documents before this Court to establish that the petitioners are not the permanent workers of the respondent establishment and that they have not worked for more than 240 days in a calendar year since the petitioners have proved *prima facie* that they have been in service at the respondent, establishment for more than 5 years as pleaded by them and even the respondent management has not put any suggestion that the petitioners are not the permanent workers of the respondent establishment while cross examining, the petitioners side witness and that therefore, the second contention raised by the respondent management also is not sustainable and hence, it is to be concluded that the petitioners are the permanent workers of the respondent establishment.

13. It is the third contention of the respondent management that they have not terminated the petitioners at any point of time and the petitioners alone has failed to discharge their duties at the transferred factory situated at Koodapakkam Road, Pathukannu village of Puducherry and that they are not entitled for any order of reinstatement and they are not having any *locus standi* to raise the industrial dispute for non-employment and therefore, now, the question is to be decided by this Tribunal is that whether these petitioners have failed to discharge their duty at the transferred factory or the respondent management has refused employment to the petitioners orally by not allowing them to enter into the factory.

14. On this aspect the evidence and records are carefully perused. It is not disputed by the respondent management that the petitioners are the employees of the respondent establishment and they have been paid ESI contribution and the petitioners were originally working at their factory which is situated at Sedarapet village of Puducherry and subsequently, they have been transferred to their sister concern which is situated at Pathukannu village of Puducherry. However, both of them have not filed transfer order before this Court. It is also admitted by the petitioners in their evidence that they have been transferred from the factory situated at Sedarapet village of Puducherry to the factory situated at Pathukannu village of Puducherry and it is evident from the exhibits that the petitioners have raised the industrial dispute over charter of demands before the Conciliation Officer and while it was

pending they have been transferred by the respondent management to the factory situated at Pathukannu village of Puducherry. It is the right of the respondent management to transfer their workers within the units administered by them and hence, the denial of the petitioners to serve at the transferred place *i.e.*, the factory situated at Pathukannu village is not an acceptable one. However, as the petitioners are working for more than 5 years the management has to take proper steps for disciplinary action against the petitioners for not appearing for work at the transferred place and it is not the right of the respondent management to deny the employment to the petitioners without any domestic enquiry followed on charge memo for the misconduct of unauthorized absence.

15. Further, the respondent management has failed to take the disciplinary action against the petitioners while they were not attending the duty at the transferred place since the petitioners have served at the factory for more than 5 years. Though, the petitioners were working at the respondent establishment for more than 5 years and they have been paid ESI contribution the respondent management has not even issued any show cause notice or issued any charge memo to the petitioners for their non-appearance at the transferred place. The respondent management has failed to give any notice to the petitioners who have alleged to have been not reported for duty while they have been transferred to the factory situated at Pathukannu village of Puducherry. Though, it is stated by the respondent management that they have not terminated the petitioners from service they have failed to state why they have not taken any disciplinary action against the petitioners while they have not turned up for duty at the transferred place and for the misconduct of unauthorized absence. These facts would go to show that the respondent management has wantonly failed to give employment to the petitioners and they have denied employment to them.

16. Furthermore, the respondent management has contended that the petitioners have not turned up for duty while they have transferred the petitioners to the factory situated at Pathukannu village of Puducherry. However, the respondent management has not come forward to examine any witness on their side to prove the above contention that the petitioners themselves have failed to turn up for duty at the transferred place which is situated at Pathukannu village of Puducherry. From the above facts it can be presumed by this Court that the respondent management has refused employment orally to the petitioners by not allowing them to enter into the factory.

17. Furthermore, the petitioners have been transferred to the sister concern of the respondent establishment which is situated at Pathukannu village of Puducherry on 28-07-2014 while pendency of the dispute which was already raised by the petitioners before the Labour Conciliation Officer for charter of demands regarding over time wages and other demands. Therefore, the transfer of the petitioners without getting prior permission from the Conciliation Officer and without giving notice to the petitioners under section 9A of the Industrial Disputes Act is in violation of section 33C(2) of the Act and that therefore, it is to be held that the industrial dispute raised by the petitioners against the respondent management over charter of demands and refusal of employment to 12 employees while pending of the conciliation proceedings is justified and the petitioners are entitled for order of reinstatement as claimed by them. Considering the fact that the respondent factory which is situated at Sedarapet village of Puducherry is not in a working condition and considering the another fact that the petitioners have already been transferred by the respondent management to its sister concern which is situated at Pathukannu village of Puducherry, the petitioners have to be reinstated at the transferred factory which is situated at Pathukannu village of Puducherry. Furthermore, in the claim petition the petitioners have not prayed for any relief regarding charter of demands and hence, no relief can be granted to them in respect of charter of demands made by the petitioners before the Labour Officer (Conciliation).

18. Further, as far as back wages is concerned absolutely there is no evidence that the petitioners are working so far in any other industry and that there is no proof exhibited before this Court that they are working anywhere else. The respondent has not proved the fact that petitioners have been working in any other establishment after their denial of employment. However, the petitioners could have served at any other industry after their denial of employment. Considering the above facts and circumstances, this Court decides that the petitioners are entitled only for 20% back wages with continuity of service and other attendant benefits.

19. In the result, the petition is partly allowed and the industrial dispute raised by the petitioners against the respondent management, over charter of demands and refusal of employment to 12 employees while pending of the conciliation proceedings is justified and Award is passed directing the respondent management to reinstate the petitioners in service at the transferred factory which is situated at Pathukannu village of Puducherry within one month from the date of this



Award and further directed the respondent management to pay 20% back wages to the petitioners till the date of reinstatement with continuity of service and other attendant benefits and the petition is partly dismissed in respect of charter of demands. No cost.

Dictated to the Stenographer, transcribed by her, corrected and pronounced by me in the open Court on this the 10th day of May, 2018.

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

*List of petitioner's witness:*

PW.1 — 30-8-2017 — Kasiammal

*List of petitioner's exhibits:*

Ex.P1 —03-12-2011— Copy of representation by the petitioner.

Ex.P1 - Copy of ESI card of the 1st petitioner.

Ex.P2 - Copy of ESI card of the 2nd petitioner.

Ex.P3 - Copy of ESI card of the 3rd petitioner.

Ex.P4 - Copy of ESI card of the 4th petitioner.

Ex.P5 - Copy of ESI card of the 6th petitioner.

Ex.P6 - Copy of ESI card of the 9th petitioner.

Ex.P7 - Copy of ESI card of the 10th petitioner.

Ex.P8 - Copy of ESI card of the 11th petitioner.

Ex.P9 - Copy of ESI card of the 12th petitioner.

Ex.P10—24-11-2014— Copy of petitioners' letter to Office of the Chief Inspector of Factories.

Ex.P11—24-11-2014 — Copy of petitioners' letter to Labour Officer (Conciliation).

Ex.P12 —24-11-2014 — Copy of petitioners' letter to Labour Department.

Ex.P13—12-12-2014 — Copy of conciliation notice.

Ex.P14—09-01-2015 — Copy of petitioners' letter to Labour Department.

Ex.P15 —09-01-2015 — Copy of petitioners' letter to Chief Inspector of Factories.

Ex.P16 —27-01-2015 — Copy of petitioners' letter to Conciliation Officer.

Ex.P17—27-01-2015 — Copy of petitioners' letter to respondent.

Ex.P18 —28-01-2015 — Copy of petitioners' letter to Labour Commissioner.

Ex.P19—28-01-2015 — Copy of petitioners' letter to Labour Commissioner.

Ex.P20 —06-02-2015 — Copy of petitioners' letter to Chief Inspector of Factories.

Ex.P21 —06-02-015 — Copy of petitioners' letter to Labour Commissioner.

Ex.P22—06-02-2015 — Copy of petitioners' letter to respondents.

Ex.P23 —13-04-2015 — Copy of letter from EPF Organization.

Ex.P24 —06-05-2015 — Copy of conciliation failure report.

Ex.P25 —08-06-2015 — Copy of Government reference.

*List of respondent witnesses:* Nil

*List of respondent exhibits:*

Ex.R1 —15-10-2012 — Copy of letter to the Regional Commissioner, Provident Fund Officer by the respondent management.

Ex.R2 —03-10-2012 — Copy of letter to the Regional Commissioner, Provident Fund Office by the respondent management.

Ex.R3 — 10-01-2012 — Copy of letter to the Regional Commissioner, Provident Fund Office by the respondent management.

Ex.R4 —21-12-2009 — Copy of letter to the Regional Commissioner, Provident Fund Office by the respondent management.

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

GOVERNMENT OF PUDUCHERRY  
LABOUR DEPARTMENT

(G.O. Rt. No. 102/Lab./AIL/T/2018,  
Puducherry, dated 19th June 2018)

NOTIFICATION

Whereas, an Award in I.D (L) No.21/2016, dated 25-5-2018 of the Industrial Tribunal-cum-Labour Court, Puducherry in respect of the Industrial Dispute between the management of M/s. Adhi Sakthi Projects Private Limited, Puducherry and Thiru Munikumar over reinstatement with full backwages, 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. 21/2016

Munikumar,  
S/o. Vellaisamy,  
No. 54, Malligai Street,  
Sivaganapathy Nagar,  
Villianur, Puducherry. . . Petitioner

Versus

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

This industrial dispute coming on 08-05-2018 before me for final hearing in the presence of Tiruvalargal R.T. Shankar, A. Ashokkumar and P. Suresh, Counsels for the petitioner and Tiruvalargal 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 Welder Post. The petitioner had been serving at the respondent management from August 2008 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 the Executive Member 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, Manimaran, Senthilkumar, Karunakaran, and this petitioner Munikumar and they have sent out of the company stating that there would be an enquiry on the charges levelled 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 above said 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 for

morning break (breakfast) for which the petitioner along with his co-worker one Mr. Karunakaran, 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, Mr. Manimaran 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. Subsequently, on 06-11-2014, the petitioner had deliberately ripped off the copy of the show cause notice issued to another worker one Mr. Manimaran which was displayed in the notice-board for which another show cause notice, dated 13-11-2014 was issued calling for an explanation within 3 days from the date of issuance of such notice for which he has not submitted any replied. 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 with a view an ulterior motive of stopping the disciplinary actions against him. He indulged in an act of preventing the other workmen to join with him and also prevented the 13 workmen who were working with gloves. The petitioner again did not come forward to take up his work and also prevented the other workmen from doing their works on the subsequent dates *i.e.*, 14-11-2014 & 15-11-2014. Hence, the petitioner was suspended from 15-11-2014. Against this the petitioner fought with the Officer who had issued him the notice and then provoked his co-workmen namely Mr. Mugunthan, Mr. Meenatchisundharam, Mr. Latchuminarayanan, Mr. Manikandan and Mr. Sundhar 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 coercing the other workmen even in previous occasions and on 01-10-2014 between 3.00 p.m. and 6.00 p.m., he endeavored stoppage of production and again from 13-11-2014 to 15-11-2014, the production was stopped by him. This was communicated to the Labour Department

and Conciliation Officer. On 22-10-2014, with a view to spoil the name of the respondent, despite of several warnings from the respondent, the petitioner and his co-worker Mr. Rajasekar were boozed in a guest house, which is being maintained by the respondent for which the petitioner was given a oral warning also. 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, dated 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 levelled 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 levelled 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 RW1 was examined and Ex. R1 to Ex. R21 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. *On the point :*

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 August 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 instructions 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 and the petitioner along with his co-worker Karunakaran started quarrelling and threatened the Security Guard using filthy language and subsequently, on the same day around 1.00 p.m., the petitioner along with his co-workman Karunakaran, Manimaran and Senthilkumar continued their quarrel against the Security Guard and hence, Tool Room Engineer Balamurugan came to the sport 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 workman to join with him and also prevented the 13 workmen who were working with gloves and the petitioner again did not come forward to take up his work and also prevented the other workmen from doing their works on the subsequent dates and the petitioner quarreled with the officer who has issued him the notice and then provoked his co-workmen Mugunthan, Meenatchinsundharam, Latchuminarayanan, Manikandan and Sundhar 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 01-10-2014 between 3.00 p.m. and 6.00 p.m., the petitioner endeavored stoppage of production and again from 13-11-2014 to 15-11-2014 the production was stopped by him and the same was communicated to the Labour Department and Conciliation Officer 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 the 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. R21. 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 Assistant 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 complaint letter given by Production Manager Mr.S.Sasikumar. Ex. R13 is the copy of the letter from Pepsico Indian Holidngs Private Limited, to the respondent. Ex. R14 is the copy of domestic enquiry proceedings. Ex. R15 is the copy of domestic enquiry report. Ex. R16 is the copy of second show cause issued to the petitioner. Ex. R17 is the copy of reply letter issued by the petitioner. Ex.R18 is the termination order issued to the petitioner. Ex.R19 is the full and final settlement sent to the petitioner by RPAD. Ex.R20 is the copy of complaint letter given by Production Manager Mr. S. Sasikumar. Ex.R21 is the copy of show cause notice issued to the petitioner.

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 full back 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 the petitioner 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, Manimaran 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. R14 which would reveal the fact that one Ms. R. Thilagavathi, Advocate has conducted the domestic enquiry on 24-01-2015 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.R14 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 cloves 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 cloves 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 executives 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. மனுதாரர்களை 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 Case 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 மற்றவர்களுக்கும் 2வது சம்பளத்திற்காக Notice கொடுத்தோம் 40 பேரையும் நாங்கள் பணிநீக்கம் செய்யவில்லை. 4 பேருக்கும் குற்றப் பத்திரிக்கை கொடுத்தோம். ஆனால் Show Case Notice 40 பேருக்கும் கொடுத்தோம். என்னிடம் காட்டப்படும் மதசாஆ 3 அன்றைய தேதியில் எங்களுக்கு கொடுக்கப்படவில்லை. அதே தேதியில் அது கூரியரில் அனுப்பப்பட்டு அதை வாங்கியிருக்கிறோம். அதனால் தான் அவர்கள் மீது கோப்பட்டு நிர்வாகம் நடவடிக்கை எடுத்திருப்பதாக சொன்னால் சரியல்ல. மதசாஆ 3 எப்போது வந்தது என்று எனக்கு ஆவணங்களை பார்த்து சொல்ல முடியும். அதை

பார்த்து விட்டு தான் மனுதாரர்களுக்கு பணி நீக்க உத்தரவு கொடுத்தோம் என்றால் சரியல்ல. மனுதாரர்கள் கேட்ட பாதுகாப்பு உபகரணங்கள் வழங்காமல் மனுதாரர்களை வேலை செய்ய விடாமல் நிர்வாகம் தடுத்தி நிறுத்தி விட்டு 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 செய்ய விடாமல் தடுத்ததாக எந்த தொழிலாளர்களும் புகார் கொடுக்கவில்லை. ஆனால் விசாரணையில் சொல்லியிருக்கிறார்கள். விசாரணை அதிகாரி எங்கள் வழக்கறிஞரின் ஜூனியர் தான். 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 மனுதாரர் தான் என்னை வேலை செய்யவிடாமல் தடுத்து நிறுத்தினார் என்று யாரும் குறிப்பிட்டு சொல்லவில்லை என்று சொன்னால் சரியல்ல. மணிமாறன் மற்றும் செந்தில்குமார் ஆகியோர் தடுத்து நிறுத்தியதாக விசாரணையில் சொல்லியிருக்கிறார்கள். மதசாஆ 6-ன் படி 13-10-2014-ல் தொழிலாளர் சமரச அதிகாரியிடம் நடந்த விசாரணையில் நாங்கள் கலந்துக்கொண்டோமா 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 கொடுத்திருந்தோம். அதன்பிறகு 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 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 Munikumar

*List of petitioner's exhibits:*

- Ex.P1 — 10-10-2014 Copy of the Trade Union Certificate.
- Ex.P2 — 07-01-2016 Copy of the petitioner dismissed letter issued by the management.
- Ex.P3 — 13-11-2014 Copy of reply notice to the management given by workers.
- Ex.P4 — 17-11-2014 Copy of notice to the Labour Department.
- Ex.P5 — 05-05-2016 Original conciliation letter.
- Ex.P6 — 13-10-2014 Copy of the dispute raised by the petitioner union before the Labour Officer (Conciliation).
- Ex.P7 — 13-11-2014 Copy of letter sent by the workers to the respondent management through Professional Courier.
- Ex.P8 — 18-11-2014 Copy of letter submitted by the petitioner's union before the Labour Commissioner.
- Ex.P9 — 18-11-2014 Copy of letter submitted by the petitioner's union before the Labour Officer (Conciliation).
- Ex.P10 — 24-11-2014 Copy of call letter sent by the Labour Officer for Conciliation.
- Ex.P11 — 27-11-2014 Copy of strike notice given by the petitioner's union.

*List of respondent's witness:*

RW.1 — 21-12-2017 S.A. Saravanan

*List of respondent'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 Asst. 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— 25-11-2014 Copy of complaint letter given by Production Manager Mr. S. Sasikumar.
- Ex. R13— 13-08-2014 Copy of the letter from Pepsico Indian Holidngs Private Limited, to the respondent.
- Ex.R14 — Copy of domestic enquiry proceedings.
- Ex. R15— 02-11-2015 Copy of domestic enquiry report.
- Ex. R16 — 24-11-2015 Copy of second show cause issued to the petitioner.
- Ex.R17— 02-12-2015 Copy of reply letter given by the petitioner.
- Ex.R18 — 07-01-2016 Termination order issued to the petitioner.
- Ex.R19 — 24-02-2016 A full and final settlement sent to the petitioner by RPAD.
- Ex. R20 — 06-11-2014 Copy of complaint letter given by Production Manager Mr. S. Sasikumar.
- Ex. R21— 13-11-2014 Copy of show cause notice issued to the petitioner.

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