



புதுச்சேரி மாநில அரசிதழ்

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SOMMAIRES

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GOVERNMENT OF PUDUCHERRY
LABOUR DEPARTMENT

(G.O. Rt. No. 97/AIL/Lab./T/2019,
Puducherry, dated 8th July 2019)

NOTIFICATION

Whereas, an Award in I.D (L) No. 16/2017, dated 20-02-2019 of the Industrial Tribunal-cum-Labour Court, Puducherry, in respect of the industrial dispute between the management of M/s. Jayaprakash Narayanan Co-operative Spinning Mill, Karaikal and Thiru M. Dhanasekaran, Karaikal, over reinstatement with back wages has been received;

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

(By order)

S. MOUTTOULINGAM,

Under Secretary to Government (Labour).

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

Present : Thiru C. KUMAR SARAVANAN, M.A., M.L.,
Presiding Officer.

Wednesday, the 20th day of February 2019

I.D. (L) No. 16/2017

Thiru M. Dhanasekaran,
No. 26, Sivan Koil Street,
Poovam, Varichikudi,
Karaikal.

.. Petitioner

Versus

The Managing Director,
M/S. Jayaprakash Narayanan Co-operative
Spinning Mill,
Karaikal.

.. Respondent

This Industrial Dispute coming on 01-02-2019 before me for final hearing in the presence of Thiru N. Ramar, Secretary of Karaikal CITU for the petitioner, and the respondent M/s. Jayaprakash Narayanan Co-operative Spinning Mill, Karaikal being called absent and set *ex parte*, upon hearing the petitioner and perusing the case records, this Court passed the following:

AWARD

1. This Industrial Dispute arises out of the reference made by the Government of Puducherry *vide* G.O. Rt. No. 43/AIL/Lab./T/2017, dated 06-04-2017 of the Labour Department, Puducherry to resolve the following dispute between the petitioner and the respondent, *viz.*,

(a) Whether the dispute raised by Thiru M. Dhanasekaran against the management M/s. Jayaprakash Narayanan Co-operative Spinning Mill, Karaikal, over his reinstatement with wages and continuity of his service from 30-08-2014, to his continuing is justified?

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

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

The averments of the claim statement are as follows:

2. The petitioner has filed the claim statement wherein, it is stated that he had joined the respondent Spinning Mill as trainee and thereafter, he joined as Sider in the year 2000 and he was permanent workman in the respondent's Spinning Mill. Further, it is stated that the respondent has given a loss of pay leave from 01-02-2013 to 01-02-2015 but, the respondent has called the petitioner without availing the loss of pay leave fully for doing work and on 10-02-2014, the petitioner was joined the duty and he paid a sum of ₹ 12,000 per month as salary. That being so, the petitioner has suffered ill health from 01-03-2014 to 07-03-2014 on E.S.I. leave and he took treatment in the Vinayaka Mission's Hospital on E.S.I. and undergone surgery and he discharged from the hospital on 21-04-2014 and further is on leave from 22-04-2014 to 27-04-2014. In the mean time, the respondent has issued a show cause notice to the petitioner on 15-04-2014 and the said letter has not received so far. The petitioner has wrote a reply on 30-04-2014 and stating that he has suffered from ill health and so, he could not attend the work and he stated that he would joined the duty after recovery of his ill health and he joined the duty on 30-05-2015. But, the respondent refused to give work and not to allowing the petitioner and refused to consider the medical certificates, instead of that the respondent has dismissed the petitioner from 30-08-2014 from the employment and the respondent issued dismissal order, dated 30-08-2014 to the petitioner. In spite of several request made by the petitioner for his reinstatement of the employment and it is ended vain and the petitioner has raised the Labour dispute approached the Labour Department on 02-02-2015. But, as the matter was not settled before the Labour Officer at Karaikal.

The respondent management never cared about the health condition of the petitioner and he would not consider the same and there is sufficient opportunity given to the petitioner and the act of the respondent is against the rules and law under Standing Order 21 without making any enquiry and therefore, he has approached this Court that the deprivation of the benefits of the petitioner is arbitrary, unjust and against the principles of natural justice under standing order 17 and 21 of the respondent's mill and the Production Officer have no authority to dismiss the petitioner without conducting any enquiry and without any reason, the petitioner was dismissed from his employment *vide* letter given by the respondent management, dated 30-01-2015 and the dismissal order is not valid under Law. Therefore, the petitioner prayed this Court to direct the respondent Spinning Mill to reinstatement of the petitioner with back wages and give continuity of his service in the respondent's mill and to pay all the subsistence allowances to the petitioner.

3. After due service of notice the respondent appeared before this Court along with their Counsel and even after granting sufficient opportunities the respondent has failed to file their objection as a counter statement and the respondent did not file any objection or counter statement and hence, the respondent was set *ex parte*.

4. In the course of enquiry, on the side of the petitioner PW.1 was examined and Exs.P1 to Ex.P11 were marked. Heard the petitioner side and the case records are perused.

5. *The point for determination is:*

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

6. *On the point :*

The case of the petitioner is that the respondent has dismissed the petitioner from his service without conducting any enquiry and the act of the respondent management is against the natural justice and it is an arbitrary dismissal order and it is not valid under law and the petitioner pleaded to reinstatement with back wages and all allowances. The evidence adduced and the exhibits marked by the petitioner are carefully considered. It is the evidence of the petitioner PW.1 that the respondent Spinning Mill was not prompt in giving employment to the petitioner and the petitioner was dismissed from 30-08-2014 from his service without conducting any enquiry and

without giving opportunity and the respondent management has issued a letter to the petitioner on 30-01-2015 is arbitrary against the principles of natural justice.

7. In support of his contention, the petitioner has adduced his oral evidence, the petitioner examined as PW.1 and documents exhibited as Ex.P1 to Ex.P11. Ex.P1, dated 02-02-2015 is the copy of letter of the petitioner to the respondent management for raising dispute and approached the Labour Department, Karaikal. Ex.P2 is the copy of order (office order) of Appointment of the petitioner on regular basis, dated 06-03-2000. Ex.P3 is the copy of letter, dated 14-03-2013 by the respondent to the petitioner for giving JPCOSPIN- LOP Leave from 01-02-2013 to 01-02-2015 regarding leave application of the petitioner, dated 23-01-2013 and Loss of Pay from 01-02-2013. Ex.P4 is the copy of letter issued, dated 27-10-2014 by the respondent to call upon the petitioner to join the duty. Ex.P5 is the copy of the discharge summary of the petitioner issued by Vinayaka Mission's Medical College Hospital for the petitioner's left side Sctotal swelling for 6 months and mild lower abdominal pain. Ex.P6 is the Medical Certificate for Leave or Extension of Leave or Commutation of Leave for the petitioner's complicated ill health. Ex.P7 is the copy of show cause notice, dated 15-04-2014 issued by the respondent to petitioner for non attending the duty without any information to the management. Ex.P8 is the copy of reply given by the petitioner to the respondent's management, dated 30-04-2014. Ex.P9 is the copy of the dismissal order of the respondent, dated 28-08-2014. Ex.P10 is the xerox copy of the Standing Order of the Jayaprakash Narayanan Spinning Mill, Karaikal. The dispute has been raised by the petitioner before the Labour Department against the management/respondent herein for seeking reinstatement with back wages and because of the petitioner was removed from service without conducting enquiry and he terminated from service only on by proper procedure due to his unauthorized absence and neglecting to join service even after many noitces. Ex.P11 is the copy of the failure report of the Labour Officer, Labour Department, Karaikal and there was no improvement in this issue conciliation and no amicable settlement could be arrived and the case ended in failure.

8. From the above claim statement, the petitioner's evidence and documents, it is clearly established by the petitioner that he has joined at the respondent as Operative Trainee and joined duty as Sider in the year 2000 as a regular employee basis and his basic pay would be ₹ 2,626 with variable DA, house rent allowances, special pay, and it is proved under Ex.P2. Due to the ill health of the petitioner he would not

attended the duty from 01-03-2014 to 07-03-2014 leave on E.S.I. and he came to the respondent mill to join the duty on 27-04-2014, but, the respondent refused to accept his request without verifying the medical certificate of the petitioner, the respondent has issued a show cause notice on 15-04-2014 and it is evidenced from Ex.P7. As per the Ex.P9, it would clear that the petitioner was dismissed from duty without any conducting enquiry and without consider his request and his medical certificates. Further, it is found from the evidence of the petitioner based on the Ex.P11 there was no amicable settlement before the Labour Officer and the dispute is raised by the petitioner was ended vain before the Labour Department. For which the petitioner raised the industrial dispute before the Conciliation Officer and the failure conciliation report has been sent to the Labour Court in G.O. Rt. No. 43/AIL/Lab./T/2017, dated 06-04-2017. Further, the party raising the dispute in accordance with the rule 10B of the Industrial Disputes (Central Rules), 1957 and conciliation was failed and that therefore, this reference has been made to this Court to decide whether the dispute raised by the petitioner against the respondent management, over his reinstatement with wages from 30-08-2014 under Ex.P9 is justified or not. On perusal of the Ex.P11 would go to shows that the parties are stand on own way there was no possible for conciliation and make settlement. But, here there was no enquiry report submitted either by the petitioner or the respondent to prove that the enquiry was conducted properly and sufficient opportunities given to the petitioner for his absence of the employment, even after the petitioner showing his inclination to join his duty, but, the opportunity has not given to the petitioner. In this case, there was no sufficient evidence on the respondent side to shows that they are acted properly by adopting procedure for terminating the service of the petitioner.

9. The Court while arriving at its verdict made reference to Supreme Court's judgment in the case of "Sujanpur vs. Surinder Kumar", wherein, the Apex Court observed that reinstatement is not automatic but, it was for the Labour Court to consider the facts of each case to ascertain the relief that can be granted in terms of Section 11A of the Industrial Disputes Act, 1947. At this juncture, we have to mentioned about some decisions on this issue for determination. In "Deepali Gundu Surwase vs. Kranti Junior Adhyapak Mahavidyalaya (D. Ed.) and Ors., 2013 (10) SCC 324" the SC held that in the case of wrongful termination of a worker, reinstatement with continuity of service and back wages was a normal rule. However, the payment of back wages has to be determined as per the facts and circumstances of each case and cannot be automatically granted on

an order of reinstatement of the worker. The worker has to specifically raise the claim for back wages, as well as present supporting evidence demonstrating his unemployment. The Court also set out various factors for calculating the back wages, which include, among others: (a) the length of service of a worker; (b) the nature of misconduct, if any, proved against a worker; and (c) the financial condition of an employer.

10. The two important kinds of reliefs that can be granted, in case, the workman is found to be wrongfully discharged are : (1) reinstatement, and (2) compensation *in lieu of* reinstatement. Which of the two is appropriate in the circumstances of a particular case, is a matter of judicial discretion depending upon the facts of each case. In "B. & C.Mills", it was contended that the relief of reinstatement should be granted only in cases of victimisation and unfair labour practice, and compensation should be granted in all other cases of improper termination of service. The Labour Appellate Tribunal rejected the contention saying that it was not possible to lay down rules which could be regarded as exhaustive on the subject and that each case had to be considered on its merits. And a year later, their Lordships of the Supreme Court confirmed the proposition: Whether, a discharged employee is to be reinstated in service, or the compensation would be an adequate relief is a matter of discretion."

11. In this issue, the respondent has not conducted proper enquiry about the misconduct of the petitioner. Domestic enquiries in industrial adjudication Introduction Disciplining a workman is one of the key methods of curtailing disputes amongst them and achieving maximum productivity. Accordingly, the Supreme Court of India ("SC") in *Hombe Gowda Educational Trust vs. State of Karnataka*, stated that giving Managers the power to punish a workman according to Law, even if, the punishment may result in some hardship is important. But, one needs to bear in mind that conducting disciplinary proceedings against a workman is most controversial and often lead to long drawn out cases. Hence, the management of any industrial establishment must cautiously approach such proceedings and strictly follow the procedure laid down by judicial precedents. The present bulletin focuses on the requirements of holding a domestic enquiry with respect to indiscipline on part of a workman, the procedure to be followed thereunder and the impact of section 11-A of the Industrial Disputes Act, 1947, on domestic inquiries.

12. On the other hand, though the respondent appeared before this Court, they have not filed any counter and subsequently due to the absence, the

respondent was set *ex parte*. Considering the fact that the petitioner has established his case, it is to be held that the industrial dispute raised by the petitioner against the respondent Jayaprakash Narayanan Spinning Mill, Karaikal, over his reinstatement with wages from 30-08-2014 and the claim to be continuing service in the respondent Spinning Mill is justified and the petitioner is entitled for the claim as prayed by him and as such the petition is deserves to be allowed.

13. In the result, the petition is allowed and the industrial dispute raised by the petitioner against the respondent, over his reinstatement with back wages and to be continuity service is justified and an Award is passed by directing the respondent to reinstatement of the petitioner with back wages as per rules with all allowances. There is no order as to cost.

Typed by me in Laptop, transcribed by me, corrected and pronounced by me in the open Court on this the 20th day of February, 2019.

C. KUMAR SARAVANAN,
Presiding Officer (FAC),
Industrial Tribunal-cum-
Labour Court, Puducherry.

List of petitioner's witness:

PW.1 — 01-02-2019 M. Dhanasekaran
(Petitioner)

List of petitioner's exhibits:

Ex.P1 — 02-02-2005 Copy of letter of the
petitioner to the respondent
management for raising
industrial dispute.

Ex.P2 — 06-03-2000 Copy of order (office
order) of Appointment of
the petitioner on regular
basis.

Ex.P3 — 14-03-2013 Copy of letter by the
respondent to the petitioner
for giving JPCOSPIN-LOP
Leave from 01-02-2013 to
01-02-2015.

Ex.P4 — 27-10-2014 Copy of letter issued by
the respondent to call
upon the petitioner to join
the duty.

Ex.P5 — 21-04-2014 Copy of the discharge
summary of the petitioner
issued by the Vinayaka
Mission's Medical College
Hospital.

Ex.P6 — Medical Certificate for
leave or extension of leave
or commutation of leave.

Ex.P7 — 15-04-2014 Copy of show cause
notice, dated 15-04-2014
issued by the respondent
to petitioner.

Ex.P8 — 30-04-2014 Copy of reply given by the
petitioner.

Ex.P9 — 28-08-2014 Copy of dismissal order of
the petitioner.

Ex.P10 — 23-05-2003 Copy of standing orders
of the respondent's mill.

Ex.P11 — 14-12-2016 Copy of the Failure Report
of the Labour Officer,
Karaikal.

List of respondent's witnesses: NIL

List of respondent's exhibits: NIL

C. KUMAR SARAVANAN,
Presiding Officer (FAC),
Industrial Tribunal-cum-
Labour Court, Puducherry.

புதுச்சேரி அரசு

துணை மாவட்ட ஆட்சியர் (வருவாய்) அலுவலகம், காரைக்கால்

எண் 14088/1856/சாமா ஆ/காரை/15/2019.

அறிவிக்கை

[புதுச்சேரி நில மானிய விதி 1975, விதி 60(iii)-ன் கீழ்]

புதுச்சேரி அரசால் தங்களுக்கு ஒப்படை செய்யப்பட்ட கீழ்க்காணும் நிலவிவரங்களுடைய இடத்தில் தாங்கள் வீடு கட்டாமலோ அல்லது குடியிருக்காமலோ இருப்பதன் மூலம் தங்களுக்கு வழங்கப்பட்ட நில ஒப்படை ஆணையில் காணப்படும் நிபந்தனை (2)-ஐ தாங்கள் கடைபிடிக்காததை அறியவும்.