



புதுச்சேரி மாநில அரசிதழ்

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No.		Puducherry	Tuesday	12th	March 2019

பொருளடக்கம்

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**GOVERNMENT OF PUDUCHERRY
LABOUR DEPARTMENT**

(G.O. Rt. No. 27/Lab./AIL/T/2019,
Puducherry, dated 27th February 2019)

NOTIFICATION

Whereas, an Award in I.D (L) No.17/2016, dated 06-02-2019 of the Industrial Tribunal-cum-Labour Court, Puducherry in respect of the industrial dispute between the management of M/s. E. Quire Technologies Private Limited and Tmt. A. Malathi, over non-employment has been received;

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

(By order)

S. MOUTTOULINGAM,
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 (FAC).

Wednesday, the 6th day of February 2017.

I.D. (L) No. 17/2016

A. Malathi,
w/o. Anandharaja,
No.13, Bharathiyar Street,
5th Cross, Ganesh Nagar,
Muthialpet,
Puducherry-605 003.

. . Petitioner

Versus

The Managing Director,
M/s. E.Quire Technologies Pvt. Ltd.,
No.78, II Cross,
Sithanandha Nagar,
Puducherry-605 005.

. . Respondent

This Industrial Dispute coming on 23-01-2019 before me for final hearing in the presence of Thiru R. Raja, Advocate for the claimant, representative for the petitioner and Thiru N. Mouraly, Advocate for the

respondent, upon hearing both sides, upon perusing the case records, after having stood over for consideration till this day, this Court passed the following:

AWARD

1. This Industrial Dispute has been referred by the Government as per the G.O. Rt. No. 91/AIL/LAB/T/2016, dated 12-09-2016 for adjudicating the following:-

(a) Whether the dispute raised by Tmt. A. Malathi against the management of M/s. E-Quire Technologies Private Limited, Sithanandha Nagar, Puducherry, over non-employment is justified? If justified, what relief the petitioner is 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 petitioner submits that the above reference has been made by the appropriate Government for decision and Award on the following matters with regard to the employment of the petitioner under the respondent:

(a) Whether the dispute raised by Tmt. A. Malathi against the management of M/s. E-Quire Technologies Private Limited, Sithanandha Nagar, Puducherry, over her non-employment is justified or not? if justified, what relief the petitioner is entitled to?

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

4. The petitioner submit that she is a M.B.A. graduate and she joined the respondent company on 03-03-2011 as a "COMPOSER" through a proper interview conducted by the respondent company on 05-03-2011, the appointment letter was issued to the petitioner. The petitioner was an able worker in the respondent organization from then. The petitioner was given yearly increment because of her disciplined performance given to the respondent company by her.

5. The petitioner submits that she even worked for twelve hours for the sake of the respondent company. She never disobeyed the terms and conditions discussed and agreed upon from the date of her appointment. She had become a Senior Composer in the respondent company. She even worked sincerely at the time of pregnancy.

6. The petitioner submits that suddenly on 30-05-2014, the Manager of the respondent company one Mr. Sathish asked the petitioner not to come to

the work from then, without giving any prior intimation or with any termination notice. The act of the respondent company is totally against law. The illegal termination given to the petitioner (a pregnant woman) had caused immense mental agony and financial loss to her. And has claimed for reinstatement and monetary loss due to the non-employment to the non-employment of her.

7. The petitioner submits that it was at this stage, the petitioner raised a dispute before the learned Conciliation Officer, Puducherry, on 16-06-2014. The petitioner further submits that only after the representation given to the Conciliation Officer, Puducherry on 23-06-2014, the management issued the dismissal/termination letter to the petitioner having the following contents that.

“1. On 21st March, 2014, memo against sleeping activity on working hours at production hall.

2. On 24th April, 2014, memo against sleeping and error accrued.

3. On 27th May 2014, we received many complaints (unsatisfactory job performance) from your Manager.

4. On 30th May, memo for following explanation, why would he terminate her?

- A. Your are not following client instructions.
- B. Your are composing unwanted characters and missing caption texts.
- C. You files (Projects) are mostly reject by QC.
- E. Unnecessary taken extra time for correction work.
- F. Without intimation taking permission.

Based on review of all information available including prior disciplinary action (just warning), and your current unsatisfactory performance, we are not satisfied and also your comments or lack of explanation is not acceptable so are taking a disciplinary action against you. You are continually absent without intimation hence, your dismissed (terminated) from your position (job) with effect ending hours on 30th May 2014.”

8. The petitioner submits that she issued the legal notice on 16-06-2014 through her Advocate for the irresponsible and illegal termination letter on 23-06-2014 with all cooked up reasons which is mentioned above (in the para 7 of this claim petition).

9. The petitioner submits that on 16-07-2014, the petitioner appeared before the Conciliation Officer for enquiry even at the stage of pregnancy. And on several dates she attended the enquiry and at the

beginning stage the management were ready to settle the issue amicably but, later stated that there is no chance of any amicable settlement and it was even recorded in the failure report issued by the Labour Conciliation Officer. And the report on failure was issued on 11-08-2015. It is view of the deadlock created by the management by taking untenable stands in the conciliation proceedings, the matter has been referred to this Honourable Court for adjudication.

10. The petitioner submits that the actual reason for her illegal termination from the work by the management was only to escape from the MATERNITY BENEFITS which has to be given for the petitioner, such act is purely *mala fied* and arbitrary in nature.

In view of the above, it is respectfully prayed that this Hon'ble Court may be pleased to pass an Award holding.

(i) That the non-employment (termination) of Tmt. A. Malathi as a Composer who was in the work from 05-03-2011 to 30-05-2014 by the respondent is not justified.

(ii) That the claim of employment of Tmt. A. Malathi with reinstatement with compensation as back wages from the respondent is justified.

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

1. This respondent does not admit any of the averments/allegations contained in the petitioner save and except those that are specifically admitted herein and the petitioner is put to proof of such of those averments/allegations not specifically admitted.

2. The respondent state that the E-Quire Technologist has strength of 70 employees. The respondent has not engaged in any manufacturing process. The respondent is not in an industry as defined in the Industrial Disputes Act and there is not jurisdiction of this Hon'ble Labour Court to enquire in to the matter.

3. The respondent states that the issue of applicability of the Industrial Disputes Act and the jurisdiction of this Hon'ble Court may be taken as a primary issue before going into the merits of the case.

4. The respondent states that the petitioner was appointed on the terms of conditions contained in the appointment letter, dated 05-03-2011.

5. The respondent states that the petitioner did not seems pregnant and the petitioner had not informed to the respondent that the petitioner was pregnant and had not asked for any light work to be granted to the petitioner.

6. The respondent states that on 21-03-2014, while on duty, the petitioner was found to be sleeping during working hours and hence, the petitioner was issued a memo to that effect. The petitioner had refused to receive the same, but, the petitioner had issued a letter, dated 21-03-2014, accepting her mistake and promising not to sleep during duty.

7. The respondent states that the petitioner committed the following project errors:-

(a) Client instruction to process the filed in double column. But, she has composed in single column (3526 - Bibliography - First Pass - 15-05-14).

(b) In Koren Project (the Yellow star) she has inserted tab character, it is trade book and in some places italic missed. Page number not followed in body matter. Chapter number position wrong globally.

(c) In project 116, Part 6 caption texts are missing insert caption texts for all images as per style globally and set all images in full width of the columns.

(d) In project 116 Part 7 filed was rejected by QC.

8. The respondent states that the petitioner committed the following E-Track errors:-

(a) Mismatch with the total page number. In E-track, she has entered 43 pages but, actual pages was 31.

(b) For correction, she has taken nearly 5 hours 22 Minutes, actually time would be maximum 2 to 3 hours.

9. The respondents states that the petitioner acted irresponsibly in the following manner:-

(a) She has taken permission on 10-05-2014 without giving information.

10. The respondent states that all the above amounts to dereliction of duty of the petitioner which caused very large financial loss/implications to the respondent. The petitioner's activities also caused loss of reputation to the respondent's company.

11. The respondent states that on 30-05-2014, the respondent has informed that the petitioner will have to be terminated from work for her under performance. After that the petitioner did not come to work and was continuously and unauthorizedly absent from 30-05-2014. The respondent states that the petitioner did not approach to the respondent regarding her non-performance or absenteeism.

12. The respondent states that the petitioner had issued a legal notice, dated 16-06-2014, stating that the petitioner has been terminated and asking for reinstatement. The petitioner has approached to Labour Officer (Conciliation) by giving complaint immediately without even waiting for a reply period/ notice.

13. The respondent states that SI.No. 7 of page 2 of the appointment letter reads as "In the event you have absent from duty without information or permission of leave of your overstay your sanctioned leave, the management will treat you as having voluntarily abandoned the services of the company". According to this condition, the petitioner is considered to have voluntarily abandoned the services of the company as she was absent from duty from 30-05-2014 till today without any explanation. Hence, the respondent had issued a termination notice on 23-06-2014. There is no reply to the said termination notice, dated 23-06-2014.

14. The respondent states that the petitioner has given complaint to the Labour Officer (Conciliation) in a premature manner even before the petitioner was terminated.

15. This respondent reserves its right to file additional counter statement at a later point of the time as and when new facts come to light or when additional documents are filed by the petitioner.

16. This respondent states that the claim is devoid of merits and is liable to be dismissed with costs.

4. In the course of enquiry on both sides no evidence has been let in and on the side of the petitioner Exs.Pl to Ex.P13 were marked on consent and on the side of the respondent Exs.R1 to Ex.R6 were marked consent. Both sides are heard.

5. *The point for determination is:*

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

6. *On the point:*

It is the claim of the petitioner that the non-employment as Composer in the work from 05-03-2011 to 30-05-2014 by the respondent is not justified and the petitioner claimed her employment with reinstatement along with compensation as back wages from the respondent. Further, it is the contention of the petitioner that the respondent company intimate her without any prior notice or termination notice, she has been terminated from her

work and it is stated that the act of the respondent is totally against the law. And now, the petitioner has raised the industrial dispute for her financial loss and claimed for reinstatement and monetary loss due to the non-employment.

7. *Per contra*, the respondent hereby denied all allegations made in the claim statement of the petitioner and stated that the petitioner did not seeing as pregnant lady and had not informed and on 21-03-2014, while she was on duty, she was found to be sleeping during the working hours. Further, it is the contention of the respondent in the counter statement that the petitioner committed error in the project work and committed E-Track errors and she has taken leave without any information on 10-05-2014 and she has refused to receive memo, thereafter, she informed that she will have to be terminated from the work for her under performance and she has continuously unauthorized absent from 30-05-2014 and did not approach the respondent to give any explanation regarding her performance or absenteeism.

8. The pleadings of the parties and the exhibits marked on both sides are carefully considered. On both sides, written arguments were filed and the same was carefully considered. The petitioner is examined as PW.I and stated that the respondent management acted illegally and terminated from service without any prior intimation and terminated her without any justification and the act of the respondent is totally against the law and such act of the respondent management is purely *mala fide* and it is an arbitrary in nature. Further, it is the evidence of PW.I that she being a pregnant woman, the respondent had caused immense mental agony and financial loss the petitioner/PW.I deposed that the respondent has to reinstatement of her employment and they are liable to pay back wages due to her monetary loss. Further, it is stated in her evidence of PW.I that the respondent was acted only to escape their liability to give Maternity Benefit to the petitioner and they gave termination/dismissal from her service on 23-06-2014, the management issued the termination/dismissal letter to the petitioner and it would amounts to illegal termination from employment.

9. According to the pleadings in her claim statement of the petitioner and evidence of PW.I that petitioner is Composer, she joined in the respondent's organization M/s. Qiure Technologies Private Limited, Puducherry, on 03-03-2011 and she had worked for 12 years for the sake of the respondent's company sincerely even her pregnancy period. Ex.P1 is the appointment letter issued to the petitioner, dated 05-03-2011 and she was appointed as Composer in the respondent's organization

namely, M/s. Qiure Technologies Private Limited, Puducherry, as per the terms and conditions discussed and she agreed for the same during the time of appointment. Ex.P2 is the Identification Card (Composer E.Q No. 114) issued by the respondent organization to the petitioner. The petitioner has issued a legal notice, dated 16-06-2014 to the respondent under Ex.P3 by stating that to give compensation to the mental agony and financial loss and for reinstatement of the employment. Ex.P4, dated 17-06-2014 is the Acknowledgment Card of the respondent. PW.I, further stated that she has approached and given a representation to the Labour Officer (Conciliation), dated 16-06-2014 which is Ex.P5. Further, the petitioner was terminated from her employment and the respondent organization was terminated her from service and issued a Letter on 23-06-2014 to the petitioner under Ex.P6 and the letter communicates for disciplinary action due to the act and unsatisfactory performance of the petitioner. The Labour Officer (Conciliation) has issued a notice to the petitioner Tmt. Malathi, for enquiry, conciliation calling upon the petitioner in person or through authorized person with relevant records and evidence oral and documentary positively and attend the conciliation proceedings and the Notice of Enquiry Officer (Conciliation), dated 11-07-2014 is as Ex.P7. Thereafter, the conciliation was conducted with regard to dispute arose between the petitioner Tmt. Malathi and the respondent organization M/s. E-Quire Technologies Private Limited and both parties stood firmly on their stand there is no amicable settlement arrived between the parties as such the industrial dispute ended in failure. Ex.P8 is the report on failure conciliation in No. 1195/LOC/AIL/2014, dated 11-08-2015. PW.I stated in her evidence that she appeared before the Conciliation Officer on 16-07-2014 for enquiry even at her pregnancy stage and several dates attended in the conciliation enquiry and beginning stage, the management ready and settle the issue amicably, but, later stated that there are no chances of any amicable settlement and the same was recorded by the Labour (Conciliation) Officer and failure report was issued on 11-08-2015. Then the matter was referred to the Industrial Tribunal/Labour Court for adjudication in G.O. No. 91/AIL/LAB/2016 on 12-09-2015 and it is evidenced from Ex.P9. And Ex.P10 is the copy of the Savings Passbook Vijaya Bank Account in the name of the petitioner. Ex.P11 and Ex.P12 are the Birth Certificate, dated 29-06-2017 of the petitioner's two children namely, Devadharshani and Saiprasad, dated 02-12-2014. The petitioner has filed Neonatal Unit Form given by JIPMER Hospital, Puducherry, for the petitioner's children's dated 02-12-2014 and it is Ex.P13.

10. Repudiating the averments made in the claim statement, the respondent management has filed their counter statement and denied all allegations made in the claim statement by the petitioner. On behalf of the respondent's organization, their Representative/Administrator was examined as RW.1 and documents are marked as Ex.R1 to ExR.6 marked on their side. RW.1 admitted the employment of the petitioner and her work as Composer. Further, it is deposed by RW.1 that the petitioner was sleeping during the working hours on 21-03-2014 and was issued a memo to that effect and stated that the petitioner was accepting her mistake and further, the petitioner has committed errors in the following project work are given hereunder:

(a) Client instruction to process the filed in Double Column. But, she has composed in single column (3526 - Bibliography - First Pass - 15-05-14).

(b) In Koren Project (the Yellow star) she has inserted tab character, it is trade book and in some places italic missed. Page number not followed in body matter. Chapter number position wrong globally.

(c) In project 116, part 6 caption texts are missing insert caption texts for all images as per style globally and set all images in full width of the columns.

(d) In project 116 part 7 filed was rejected by QC.

8. The respondent states that the petitioner committed the following E-Track errors:-

(a) Mismatch with the total page number. In E-track, she has entered 43 pages but actual pager was 31.

(b) For correction, she has taken nearly 5 hours 22 Minutes, actually time would be maximum 2 to 3 hours.

9. The respondents states that the petitioner acted irresponsibly in the following manner:-

(a) She has taken permission on 10-05-2014 without giving information.

11. It is the evidence of RW.1 that the petitioner has activities are amounts to dereliction of the duty which caused very financial loss to the respondent's organization and caused loss of reputation of the company and the petitioner voluntarily abandoned the service of the company. Further, RW.1 stated in his evidence that the petitioner was absent without any information from duty 30-05-2014 onwards and till date there is no explanation for her absence and so that the company has issued termination letter under Ex.R5 and Ex.P6, dated 23-06-2014 and the conciliation also failure.

12. Admittedly, the respondent management has not conducted domestic enquiry by issuing charge memo and has not passed any termination order against the petitioner and that there is charge memo issued against the petitioner for the alleged sleeping activities at production hall on working hours under Ex.R3, dated 21-03-2014. Admittedly, the petitioner has given reply on 30-05-2014 under ExR1. Further, it is found that the respondent management have not taken any disciplinary proceedings and enquiry against the petitioner for the petitioner's activities. *Per contra*, the respondent has produced error report which is Ex.R4, dated 30-05-2014. But, the respondent management has terminated the petitioner from her employment and intimated to the petitioner under Ex.R5, dated 23-06-2014, which is also marked on the petitioner side as ExP6. From the evidence of PW.1 and RW.1 it is found that the petitioner has taken permission without giving any information to the respondent on 10-05-2014 and it amounts to dereliction of her duty which caused implications to the respondent management. After due notice for termination of duty under Ex.P6, the petitioner did not approach the management to give any explanation regarding the performance or absenteeism.

13. Further, it is true that the respondent management is having right to take action against the employers or workman for their wrong activities if arose during the working hours and the workers has to follow the terms and conditions of the company and it is contained in the appointment order under Ex.P1 and the facts is not been denied by the petitioner. But, in this case, the respondent has issued termination/dismissal letter to the petitioner under ExP.6/Ex.R6 without making any domestic enquiry. It is the fact admitted by RW.1 during his cross-examination and further RW.1 narrated in his cross-examination that they have no objection to reinstatement of the petitioner for service in the company. Further, it is found that the respondent has not produced any documents or evidence to shows that the company would be loss due to the activities of the petitioner and they unable to know about actual loss of pay to the petitioner. There is no evidence to shows that the petitioner being a pregnancy woman and the petitioner has committed any error or any other activities except sleeping during working hours on 21-03-2014 and it is proved under Ex.R1. Therefore, it can be held that the industrial dispute raised by the petitioner against the respondent management, over his refusal of employment and reinstatement is not justified and as such the petitioner is entitled for reinstatement as claimed by her.

14. In this dispute, the petitioner's claim is that the non-employment (termination/dismissal) of the petitioner as a Composer in the respondent's organization, who was worked from 05-03-2011 to 30-05-2014 is not justified and sought for reinstatement with back wages from the respondent is justified. 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.

15. 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 victimization 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.

16. The Apex Court has held that the principles governing the award of back wages is no longer res Integra and the same are well settled in M.P. State Electricity Board v Jarina Bee (Smt.), G.M. Haryana Roadways v Rudhan Singh, U.P. State Brassware Corporation v Uday Narain Pandey, J.K. Synthetics Limited. v K.P. Agrawal & Anr., Metropolitan Transport Corporation v V. Venkatesan, Jagbir Singh v Haryana State Agriculture Marketing Board & Anr., and Deepali Gundu Surwase v Kranti Junior Adhyapak. After referring to the above judgments, the Court held that:

"In our considered opinion, the Courts below completely failed to see that the back wages could not be awarded by the Court as of right to the workman consequent upon setting aside of his dismissal/termination order. In other words, a workman has no right to claim back wages from his employer as of right only because the Court has set aside his dismissal order in his favour and directed his reinstatement in service."

17. The cases in which the Labour Court/Industrial Tribunal exercises the power under section 11A of the Industrial Disputes Act, 1947 and finds that even though the enquiry held against the employee/ workman is consistent with the rules of natural justice and/or certified standing orders, if any, but, holds that the punishment was disproportionate to the misconduct found proved, then, it will have the discretion not to award full back wages. However, if, the Labour Court/Industrial Tribunal finds that the employee or workman is not at all guilty of any misconduct or that the employer had foisted a false charge, then, there will be ample justification for award of full back wages.

18. As this Court has decided that industrial dispute raised by the petitioner against the respondent over non-employment is not justified, because of there is no domestic enquiry conducted about the error committed by the petitioner during the working hours and for her unsatisfactory job performance as specified in the memo, dated 21-03-2014. Further, it is decided that the petitioner is not entitled for back wages as claimed by her, due to voluntary absence from 30-05-2014 without any explanation and she has voluntarily abandoned the service of the company. There is no evidence that the said workman is working so far in any other industry and that there is no proof exhibited before this Court that she is working anywhere else. The respondent has not proved the fact that the petitioner has been working in any other establishment after the refusal of employment. However, the petitioner workman could have served at any other industry after the refusal of employment. Considering the above facts and circumstances, this Court decides that the petitioner is entitled only for reinstatement of the employment and the respondent has also consented for reinstatement of the petitioner. With regard to compensation as back wages with continuity of service from the respondent and other attendant benefits are not entitled for the petitioner. Therefore, the claim of the petitioner Tmt. A. Malathi for reinstatement in the respondent organization is justified and the petitioner is not entitled for compensation as back wages for the voluntarily absenteeism without any information to the respondent, because of no work and no pay for the default period.

15. In the result, this industrial dispute (Labour) petition is allowed and the Respondent/Management is directed to reinstate the petitioner within one month from the date of the order. No back wages to the petitioner. No cost.

Typed in my Laptop by me corrected and pronounced by me in the open Court on this the 6th day of February, 2019.

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

List of petitioner's witness:

PW.1 — 21-03-2017 — Tmt. A. Malathi (Petitioner).

List of petitioner's exhibits:

Ex.P1 — 05-03-2011 — Copy of the Appiontment Letter issued by the respondent to the petitioner.

Ex.P2 — — — Identification Card (Composer) E.Q.No.114 by the respondent to the petitioner.

Ex.P3 — 16-06-2014 — True copy of the receipt with legal notice issued by the petitioner.

Ex.P4 — 17-06-2014 — Acknowledament of the respondent.

Ex.P5 — 16-06-2014 — True copy of the representation given by the petitioner to the Labour Officer (Conciliation) with acknowledgment.

Ex.P6 — 23-06-2014 — Dismissal/termination letter issued by the respondent to the petitioner.

Ex.P7 — 11-07-2014 — Notice of enquiry by conciliation issued by Labour Officer to the petitioner.

Ex.P8 — 11-08-2015 — Report on failure of conciliation issued by the Labour Officer to the petitioner.

Ex.P9 — 12-09-2016 — Notification G.O. Rt. No. 91/AIL/LAB/T/ 2016 issued by Under Secretary to Government (Labour) to the petitioner.

Ex.P10 — 06-07-2011 — Notary attested photocopy of the Bank Passbook (Vijaya Bank).

Ex.P11 — 02-02-2014 — Birth Certificate of the petitioner's daughter.

EX.P12 — 02-02-2014 — Birth Certificate of the petitioner's son.

Ex.P13 — 02-02-2014 — Copy of details of Neonatal Unit of the petitioner's children issued by the JIPMER hospital, Puducherry.

List of respondent's witness:

Ex.P13 — 02-02-2014 — Copy of details of Neonatal Unit of the petitioner's children issued by the JIPMER hospital, Puducherry.

RW.1 — 07-03-2018 — P r a b a g a r a n (Adminstrator of respondent's company).

List of petitioner's exhibits:

Ex.R1 — 21-03-2014 — Letter given by the petitioner to the respondent.

EX.R2 — 05-03-2011 — Appointment letter of the petitioner.

EX.R3 — 21-03-2014 — Memo issued by the respondent to the petitioner.

EX.R4 — 30-05-2014 — Error report of the petitioner.

EX.R5 — 23-06-2014 — Dismissal/Termination letter to the petitioner with effect from 30-05-2014.

Ex.R6 — 01-03-2018 — Authorization letter of E-Quire Technologies Private Limited.

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

**GOVERNMENT OF PUDUCHERRY
LABOUR DEPARTMENT**

(G.O. Rt. No. 30/AIL/Lab./T/2019,
Puducherry, dated 28th February 2019)

NOTIFICATION

Whereas, an Award in I.D. (L) No.27/2016, dated 5-12-2018 of the Industrial Tribunal-cum-Labour Court, Puducherry in respect of the industrial dispute between the management of M/s. Karaikal Co-op. Milk Supply Society, Karaikal and Thiru V. Ramakrishnan, Thiruvavur District, over his reinstatement with wages from 12-5-2001 to his construed date of retirement 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 (FAC),

Wednesday, the 5th day of December, 2018

I.D. (L) No. 27/2016

V. Ramakrishnan,
S/o. Veerasamy,
Main Road, Nadakudy,
Siruppulliyur Post,
Nannilam Taluk,
Thiruvavur District.

.. Petitioner

Versus

The Managing Director,
M/s. Karaikal Co-op. Milk
Supply Society (KCMSS),
Karaikal.

.. Respondent

This Industrial Dispute coming on 28-11-2018 before me for final hearing in the presence of Thiru S. Sasibalan Mrs. A. Kamatchi, Advocates for the petitioner, and the respondent being called absent and remained - *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. 114/AIL/LAB/T/2016, dated 5-12-2016 of the Labour Department, Puducherry based on the failure report of conciliation and confidential report *vide* No. 22/2015-LO(C)/PA/310, dated 10-08-2016 from the Labour Officer, Karaikal is to resolve the following dispute between the petitioner and the respondent, *viz.* The dispute raised by virtue of the authority delegated *vide* G.O. Ms. No. 20/91/Lab./L, dated 23-05-1991 of the Labour Department, Puducherry, to exercise the powers conferred by clause (c) of sub-section (1) of the Industrial Disputes Act, 1947 (Central Act, XIV of 1947), it is hereby directed by Secretary to Government (Labour) that the said dispute referred to the Labour Court, Puducherry for adjudication. The Labour Court, Puducherry, shall submit the Award within 3 months from the date of issue of reference as stipulated under sub-section 2-A of the Industrial Disputes Act, 1947 and in accordance with rule 10-B of the industrial disputes (Central Rules, 1957). The party raising the dispute shall file a statement of claim complete with relevant documents. List of reliance and witnesses to the Industrial Tribunal, Puducherry, within 15 days of the receipt of the order of reference and also forward a copy of such statement to each one of the opposite parties involved in the dispute.

(i) Whether the dispute raised by Thiru V. Ramakrishnan, Nannilam against the management of M/s. Karaikal, Co-op. Milk Producers Union Ltd., P8, Karaikal, over his reinstatement with wages from 12-5-2001 to his construed date of retirement is justified ?

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

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

2. The facts giving rise to this industrial dispute as stood exposed from the claim petition filed by the petitioner under section 10(1)(C) r/w section 10 of the Industrial Disputes Act, 1947 runs thus:-

(i) The petitioner submits that he had joined the respondent Society on 17-8-1973 as temporary employee and thereafter he was regularized from 1-6-1984 and worked up to 11-5-2001. The petitioner further submits that he had joined as a clerk and due to his hard work and dedication towards his work he was promoted as technical supervisor. The respondent Society was not prompt in paying the wages to the daily wage labourers of the Society and the labourers have given written request to the respondent to settle their outstanding wages on 26-4-2001. The petitioner also orally requested to settle the outstanding wages of the said daily wages of the labourers. The oral request of the petitioner had created an aversion in the respondent Society towards him and as a result, the petitioner was transferred to the Refrigeration Department on 16-4-2001 and later he was suspended on 11-5-2001 with false allegations that the petitioner has not obeyed the orders and rules of the Society and he has involved in *mala fide* propaganda against the Society among the public.

(ii) The petitioner had sent a letter of his resignation on 12-5-2001 to the respondent Society, but, no letter of acceptance of his resignation was sent by the respondent. Later on, 4-6-2001, the petitioner herein has sent a letter to the respondent to reinstate him in the work and to cancel his letter of resignation sent by him on 12-5-2001 and he also submits that there has been no reply to this letter. The petitioner had moved earth to heaven to reenter his job and after failure of several the benefits of the petitioner is arbitrary unjust and against the principles of natural justice. Hence, the petitioner seeking proper accounts for gratuity amount of the petitioner, for the subsistence allowances from 11-5-2001 till his retirement, for retirement benefits compensation for his mental agony, damages for the false charges against the petitioner and for costs of the litigation.

3. The point for consideration is that:

(1) Whether the dispute raised by petitioner against the respondent to seek proper accounts for gratuity amount, for the subsistence allowances from 11-5-2001 till his retirement, for retirement benefits, compensation for his mental agony, and for damages?

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

(3) Whether the industrial dispute can be allowed?

4. This Court has issued notice to the respondent. Though, it was claimed by the respondent, called absent on 17-4-2018 and hence, the respondent was set *ex parte*. In the course of enquiry, on the side of the petitioner PW.1 was examined and Ex. P1 to Ex.P8 were marked. Heard the petitioner side and documents perused.

5. On this points No.1 and 2:

It is the contention of the petitioner that he joined as temporary employee in the respondent's Society on 17-8-1973 and he was regularised on 1-6-1984 and he worked up to 11-5-2001. Further, it is submitted that he worked as Technical Supervisor deication towards work and the respondent Society was not paying and the daily wages labourers were given written request to the respondent Society to settle the outstanding wages amount on 26-4-2001 and he prally requested several times to settle the amount to the daily wage labourers. Further, it is stated that the oral request of the petitioner has created an aversion in the respondent towards the petitioner and due to the above reasons, he transferred to the Refrigeration Department on 16-4-2001 and he was suspended later on 11-5-2001, with false allegations that he disobeyed the orders and rules of the respondent's Society and involved in *mala fide* propaganda among the public. It is further contended that the petitioner was resigned his employment on 12-5-2001 to the respondent Society, but, the respondent has accepted his resignation later on 4-6-2001 and sent a letter to the respondent is to reinstate in the work and seeking cancel his letter of resignation sent by the petitioner on 12-5-2001 and there is no reply to his letter, dated 4-6-2001. Further, it is stated that the petitioner moved far re-enter attempts in contacting the respondent ha had given written representation to the respondent on 29-11-2004, the requesting to re-enter his job, yet the respondent was idle to the letter, dated 29-11-2004. Thus, the petitioner herein was constraint to issue a legal notice on 28-3-2005 through his Lawyer to reinstate him in the work. The petitioner further submits that there was no reply to the said legal notice and the petitioner sent a written request to the respondent Society on 31-5-2005 to reinstatement him in job or to pay the subsistence allowances.

(iii) The petitioner submits that, aggrieved by the idleness of the respondent to the various efforts of the petitioner and he moved to the Hon'ble High Court of Madras and had filed Writ Petition No. 49256 of 2006 and the same was decided in favour of the petitioner and an order passed on 3-11-2010 directing the respondent to consider the representation of the petitioner, dated 31-5-2005. The respondent sent a letter to the petitioner on 3-4-2014 with false allegations that the petitioner's resignation impliedly accepted by the respondent's Society on 11-6-2001 and not handed over the scans belonging to the

respondent Society and he misappropriated a sum of ₹ 48,300 when the petitioner's letter of resignation on 12-5-2001. Thereafter, the respondent has sent a Demand Draft for sum of ₹ 41,236 after deducting the amount of ₹ 48,300 which deemed to be misappropriated then which was received by the petitioner. The petitioner has handed over the all properties belongs to the respondent Society under his custody and the accounts for cash and he sent a letter to the respondent Society' Secretary stating that the handling over the all properties of the Society which are under the custody of the petitioner and the same was endorsed by then supervisor R. Govindasamy, Technical Supervisor P. Kaliaperumal, Supervisor D. Jayakumar, Superintendant P. Mathiazhagan and the Head Constable of Peralam Police Station HC 723, on 18-6-2001.

(iv) Further, the petitioner submits, that the respondent sent a letter to the petitioner dated 3-4-2014 and a legal notice of the petitioner to the respondent's society of Karaikal and the Registrar of Co-operative Society of Puducherry to settle his outstanding salary, gratuity and other substantial allowances of his retirement. And the petitioner had lodged a complaint before the Labour Officer at Karaikal for payment of his outstanding benefits amount, gratuity and he filed a detailed counter statement on 9-2-2016 and the matter was not settled before the Labour Officer at Karaikal.

(v) The petitioner further submits that he had filed a complaint before the Labour Officer. Karaikal for payment of his outstanding benefits and gratuity and the respondent has also filed its detail counter on 9-2-2016 but, the matter was not settled before the Labour Officer and he approached the Court for his claim. The deprivation of his job after taken efforts in contacting the respondent and he given written representation to the respondent Society on 29-11-2014 requesting for re-enter employment. The respondent written a letter, dated 29-11-2014. But, the petitioner has issued legal notice, dated 28-3-2015 to reinstate his job, and there was no reply by the respondent Society. After that the petitioner has sent written representation to the respondent on 31-5-2015 is to reinstate in the work or to pay the subsistence allowances to him.

5. Further, it is stated that the petitioner moved to the Hon'ble High Court of Madras and filed a Writ Petition No. 49256/2006 and the same was decided in his favour and the Hon'ble High Court has passed an order on 3-11-2010 directed the respondent to consider the request of the petitioner, dated

31-5-2015. The respondent sent a letter to the petitioner on 3-4-2014 with false allegations that the petitioner's resignation inpliedly accepted by the respondent's Society on 11-6-2001 and not handed over the scans belonging to the respondent Society and he misappropriated a sum of ₹ 48,300 when the petitioner's letter of resignation on 12-5-2001. Thereafter, the respondent has sent a Demand Draft for sum of ₹ 41,2367 after deducting the amount of ₹ 48,300 which deemed to be misappropriated then which was received by the petitioner. The petitioner has handed over the all properties belongs to the respondent Society under his custody and the accounts for cash and he sent a letter to the respondent Society' Secretary stating that the handling over all the properties of the Society which are under the custody of the petitioner and the same was endorsed by then Supervisor R. Govmdasamy, Technical Supervisor P. Kaliaperumal, Supervisor D. Jayakumar, Superintendant P. Mathiazhagan and the Head Constable of Peralam Police Station HC 723, on 18-6-2001.

7. Further, it is stated by the petitioner, that the respondent sent a letter to the petitioner dated 3-4-2014 and a legal notice of the petitioner to the respondent's Society of Karaikal and the Registrar of Co-operative Society of Puducherry to settle his outstanding salary, gratuity and other substantial allowances of his retirement. And the petitioner had lodged a complaint before the Labour Officer at Karaikal for payment of his outstanding benefits amount, gratuity and he filed a detailed counter statement on 9-2-2016 and the matter was not settled before the Labour Officer at Karaikal. So, the dispute raised by the petitioner was referred to the Labour Court for adjudication.

8. reference of disputes to Boards, Courts or Tribunals, (1) Where the appropriate Government is of opinion that any industrial dispute exists or is apprehended, it may at any time, by order in writing,—

(a) refer the dispute to a Board for promoting a settlement thereof; or for "If any industrial dispute exists or is apprehended, the appropriate Government may".

(b) refer any matter appearing to be connected with or relevant to the dispute to a Court for inquiry; or

(c) refer the dispute or any matter appearing to be connected with, or relevant to, the dispute, if, it relates to any matter specified in the Second Schedule, to a Labour Court for adjudication; or

(d) refer the dispute or any matter appearing to be connected with, or relevant to, the dispute, whether it relates to any matter specified, in the

second schedule or the third schedule, to a tribunal for adjudication: Provided that where the dispute relates to any matter specified in the third schedule and is not likely to affect more than one hundred workmen, the appropriate Government may, if, it so thinks fit, make the reference to a Labour Court under clause (c): [Provided further that] where the dispute relates to a public utility service and a notice under section 22 has been given, the appropriate Government shall, unless it considers that the notice has been frivolously or vexatiously given or that it would be inexpedient so to do, make a reference under this sub-section notwithstanding that any other proceedings under this Act in respect of the dispute may have commenced; ³ Provided also that where the dispute in relation to which the Central Government is the appropriate Government, it shall be competent for that Government to refer the dispute to a Labour Court or an Industrial Tribunal, as the case may be, constituted by the State Government.

8. The concerned employee, namely, Thiru V. Ramakrishnan, who has been examined as PW1. He has categorically stated that he was employed as temporary employee and regularised on 17-8-1973; and thereafter, he was regularised on 1-6-1984 and he worked up to on 11-5-2001. PW.1 further deposed that he joined as Clerk and was promoted as Technical Supervisor and was not promptly not in paying wages and to the daily wages labourers, even inspite of several efforts taken by the worker, and written request to the respondent to settle outstanding wages on 21-6-2001. The said letter of demanding daily wages by the labourers dated 26-4-2001 is evidenced from Ex. P1. Ex. P2 is the order of suspension of the petitioner, dated 11-5-2001 issued by the respondent Society. The petitioner handing over all the properties to the respondent and it is evidenced from Ex.P3 dated 18-6-2001. The petitioner has issued legal notice under Ex.P4, dated 28-3-2015. That on 31-10-2015, a letter written by the respondent under Ex.P5 to the respondent Society Ex. P6 is the copy of order Hon'ble High Court of Madras in W.P. No. 49256/2006, dated 3-11-2010. A letter sent by the respondent to the petitioner as full and final settlement dated 3-4-2014. On 5-5-2014 a legal notice issued by the petitioner to the Managing Director, Karaikal Co-op Milk Producers Society and to the Assistant-Registrar Co-operative Department, Karaikal and to Registrar Co-operative Department, Karaikal. Though the petitioner made several representations, the respondent management was not amenable to settle the wages and other monetary benefits as specified in the claim petition. Further, it is stated by the petitioner - PW.1 that the

management has refused to acted upon, inspite of representation made by the petitioner and the respondent has not settled the wages and other allowances amenable to the petitioner.

9. The petitioner - PW.1 has specifically contended that the industrial tribunal having jurisdiction to order to give proper accounts regarding the gratuity amount of the petitioner and pay the subsistence allowances to the petitioner from 11-5-2001 till his retirement and pay the retirement benefits. The respondent has not appeared before the Tribunal even after receipt of the notice sent by the Tribunal on the dispute. Further, the testimonials of the petitioner, it is crystal clear that the respondent was not, properly disbursed the outstanding gratuity amount and subsistence allowances and his retirement benefits amount from 11-5-2001, which were mentioned in the claim statement. Further, it is contended that, Not only the petitioner, but the respondent Socety was not properly in paying the wages to the dialy wage labourers inspite of given written request to settle the amount, but, the respondent did not do so. So, this documents which were produced by the workman would substantiate the contention of the petitioner.

10. The petitioner has let in relevant and precise documentary evidence to substantiate his contention that his claim. The genuineness of claim is proved by way of oral and documentary evidence. The burden is on the petitioner to prove his claim by adducing relevant reliable evidence. The petitioner has let in relevant documentary evidence, namely, Ex.P1 to Ex.P8. 'The respondent has not come forward to arise any objection to the documentary evidence namely, Ex.P1 to Ex.P8, produced by the petitioner to show his claim which are described in the claim statement.

Further, the petitioner has stated that though he made several oral and written representations, the respondent was not amenable and finally settle the wages, subsistence allowances, retirement benefits till the date of his retirement. Ultimately, on behalf of the said employee the petitioner has raised the industrial dispute before the Conciliation Officer and since the conciliation failed, the same has been referred to this Court for adjudication. The petitioner has filed his claim Statement.

11. Under these circumstances on appreciating oral and documentary evidence adduced on the petitioner side, the Court hold that the petitioner is entitled for the relief as claimed in the industrial dispute with regard to his proper accounts, the gratuity amount and pay the outstanding gratuity amount and pay the subsistence allowances from 11-5-2001 till his date of retirement and pay the retirement benefits alone. Accordingly, it is decided the point. Point No. 1 and 2.

Point No. 3

12. For the foregoing reasons discussed above and as answered for the Points No. 1 and 2, and it is conclude that this industrial dispute has deserves to be allowed partly with regard to his proper accounts, the gratuity amount and pay the outstanding gratuity amount and pay the subsistence allowances from 11-5-2001 till his date of retirement and pay the retirement benefits alone and regarding compensation for his mental agony and damages for the claim of alleged false charges against the petitioner is dismissed and the Court is decided Point No. 3 accordingly.

13. In the result, the industrial dispute (Labour) is allowed partly, and the respondent is hereby directed to give proper accounts regarding gratuity amount and pay the outstanding gratuity amount and pay the subsistence allowances from 11-5-2001 till date of retirement, pay the retirement benefits alone to the petitioner. And, regarding the claim of the compensation and damages for the alleged charges against the petitioner is hereby dismissed. There is no order as to costs.

The order typed by me in Laptop, corrected and pronounced by me in the open Court on this the 5th day of December, 2018.

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

List of petitioner's witness:

PW.1 — 03-05-2018 V. Ramakrishnan

List of petitioner's exhibits:

- Ex.P1 — 26-04-2001 Letter of daily wages of labourers - xerox copy.
- Ex.P2 — 11-05-2001 Order of suspension given to the petitioner - xerox copy.
- Ex.P3 — 18-06-2001 Letter by petitioner while handing over the respondent's properties - xerox copy.
- Ex.P4 — 28-03-2005 Legal notice to the Chiaman of the respondent' Society.
- Ex.P5 — 31-10-2005 Letter by the petitioner to the respondent's Society Managing Director and the Chairman of the Society.
- Ex.P6 — 03-11-2010 Order of W.P. No. 49256/2006 of Hon'ble High Court of Madras.
- Ex.P7 — 03-04-2014 Letter of the respondent to the petitioner as full and final settlement communication of disposal of the representation, dated 31-10-2005.

Ex.P8 — 05-05-2014 Legal notice by the petitioner to Respondent's Society.

List of respondent's witness: Nil.

List of respondent's exhibits: Nil.

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

புதுச்சேரி அரசு

இந்து சமய நிறுவனங்கள் மற்றும் வக்ஃபு துறை

(அரசு ஆணை பலவகை எண் 81/இசுநி/கோ.4/2018,
புதுச்சேரி நாள் 2019 (வரு) பிப்ரவரி மீ 20 உ)

ஆணை

புதுச்சேரி மாநிலம், புதுச்சேரி வட்டாரம், தேங்காய்திட்டி, அருள்மிகு வரசித்தி விநாயகர் தேவஸ்தானத்திற்கு அரசு ஆணை பலவகை எண் 38/இசுநி/கோ.4/2017, நாள் 20-12-2017-ன் மூலம் அமைக்கப்பட்ட அறங்காவலர் வாரியத்தால் நிர்வகிக்கப்பட்டு வருகிறது. இவ்வறங்காவலர் வாரியத்தின் தலைவர், துணைத் தலைவர், செயலாளர் மற்றும் உறுப்பினர் ஆகியோர் இராஜினாமா கடிதம் அளித்து பதவி விலகிவிட்டனர்.

2. இந்நிலையில், மேற்கூறிய தேவஸ்தானத்திற்குப் புதிய அறங்காவலர் வாரியம் அமைக்கும்வரையில் ஒரு சிறப்பு அதிகாரியை நியமனம் செய்து நிர்வகிப்பது இன்றியமையாதது என்று அரசால் கருதப்படுகிறது.

3. எனவே, 1972-ஆம் ஆண்டு புதுச்சேரி இந்து சமய நிறுவனங்கள் சட்டம் 4-ஆம் பிரிவின்கீழ் வழங்கப்பட்டுள்ள அதிகாரங்களைச் செலுத்தி, புதுச்சேரி மாநிலம், புதுச்சேரி வட்டாரம், புது சாரம், பாண்டிச்சேரி கதர் மற்றும் கிராம தொழில் வாரியத்தில் மேற்பார்வையாளராக பணிபுரியும் திரு. சீ. மதி ஒளி, த/பெ. சீத்தாராமன் அவர்களை, புதுச்சேரி அருள்மிகு வரசித்தி விநாயகர் தேவஸ்தானத்திற்கு சம்பளம் பெறாச் சிறப்பு அதிகாரியாக அரசால் இதன் மூலம் நியமனம் செய்யப்படுகிறார்.

4. திரு. சீ. மதி ஒளி அவர்கள், மேற்கூறிய தேவஸ்தானத்தின் நிர்வாகத்தை அதன் அசையும், அசையாச் சொத்துக்கள் மற்றும் இதர ஆவணங்களுடன் பதவி விலகும் அறங்காவலர் வாரியத்திடமிருந்து பொறுப்பேற்றுக்கொண்டு, அரசுத் துறையில் தான் வகிக்கும் பதவிக்குக் கூடுதலாகவும், 1972-ஆம் ஆண்டு, புதுச்சேரி, இந்து சமய நிறுவனங்கள் சட்டம் மற்றும் அதன் கீழ் உருவாக்கப்பட்டுள்ள விதிகளுக்கு இணங்கவும், தேவஸ்தானத்தின் நிர்வாகத்தைக் கவனித்துவரவேண்டும். மேலும் கடைபிடிக்க வேண்டிய சில முக்கிய பணிகள் கீழே கொடுக்கப்பட்டுள்ளன.

(i) கோயிலுக்குச் செந்தமான காலி மனைகள், கோயிலை சுற்றியுள்ள இடங்கள் மற்றும் கோயில் குளங்கள் தூர்வாருதல்/சுத்தம் செய்தல் இவைகளை உள்ளடக்கிய ஒரு ஆண்டறிக்கையினை சமர்ப்பித்தல் வேண்டும்.