



# புதுச்சேரி மாநில அரசிதழ்

## La Gazette de L'État de Poudouchéry The Gazette of Puducherry

அதிகாரம் பெற்ற வெளியீடு

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GOVERNMENT OF PUDUCHERRY  
LABOUR DEPARTMENT

(G.O. Rt. No. 87/Lab./AIL/T/2021,  
Puducherry, dated 28th December 2021)

NOTIFICATION

Whereas, an Award in I.D (L) No. 8/2015, dated 07-10-2021 of the Industrial Tribunal-cum-Labour Court, Puducherry, in respect of the Industrial Dispute between Management of M/s. AVA Cholayil Health Care Private Limited, Puducherry and Thiru V. Siva Kumar, 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 23-05-1991, it is hereby directed by the Secretary to Government (Labour) that the said Award shall be published in the Official Gazette, Puducherry.

(By order)

**D. MOHAN KUMAR,**  
Under Secretary to Government (Labour).

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

*Present* : Thiru R. BHARANIDHARAN, M.L.  
Presiding Officer.

*Thursday, the 7th day of October 2021.*

**I.D. (L) No. 8/2015**

**in**

**CNR. No. PYPY060000472015**

V. Siva Kumar,  
No. 1/150, Mettu Street,  
Sellancherry Post,  
Cuddalore.

. . Petitioner

*Versus*

The Managing Director,  
M/s. AVA Cholayil Health Care Private Limited,  
Odhiyampet Village,  
Puducherry-605 110.

. . Respondent

This Industrial Dispute coming on 08-09-2021 before me for final bearing in the presence of Thiruvalargal A. Sakthivel and A. Govindh, Advocates for the petitioner and Thiruvalargal B. Mohandoss, P. Manivannan, K. Ilango, K. Indrajith, Kruthiga Devi, Vijayasanthi, Velmurugan and Sunder Rajan, Advocates for the

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

AWARD

This Industrial Dispute has been referred by the Government as per the G.O. Rt. No. 12/AIL/Lab./J/2015, dated 06-02-2015 for adjudicating whether the industrial dispute raised by the petitioner Thiru V. Siva Kumar, against the management of M/s. AVA Cholayil Health Care Private Limited, Puducherry, over non-employment is justified and if justified, what relief the petitioner is entitled to?

(b) Whether the management adopted unfair labour practice against the Union Office-bearers? If so, what relief the petitioner is entitled to?

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

2. *The case of the petitioner, in brief, are as follows:*

The petitioner is working as an employee in the respondent management. The petitioner is one of the Executive Committee Member in Medimix Thozhilalargal Sangam, a registered Trade Union in No. 1593/RTU2009. Out of 88 permanent employees 60 employees are the members of Medimix Thozhilalargal Sangam. The respondent company was started before 28 years, but, they were not followed the Standing Orders and the Industrial Dispute Act. For the past 28 year the respondent management has not negotiated with the workers, but, the workers were compelled to sign in the section 18 (1) settlement. The respondent management has utilized the members of the petitioner Union for non-production work like, cleaning drainage and painting the walls. The respondent management has also dismissed Thiru Ayyappan who is the President of Medimix Thozhilalargal Sangam since, the petitioners approached the Government Officials to redress their grievance. The respondent management by imputing false allegation against the petitioner for dismiss him from service.

(ii) On 20-02-2012 the petitioner was attending duty at making section of he company, on that day 18 employees present. The target was fixed for production of 72 moulds whereas, in the show cause notice given to the petitioner the producion target was fixed as 50 moulds. Even in the 18(1) settlement there is an agreement that an employee has produced 4 moulds, it is falsely alleged that after completion of 40 moulds the petitioner went away from the work spot. There is no electrically operate machine in the

making section. The entire section is managed manually. There is no canteen facilities for the workers working in making section. On 08-02-2012 Thiru Sunil instructed the employees to produce 50 moulds. When the petitioner requested for some documents to prove that there was no production from 08-03-2010, 03-10-2011, 13-02-2012 to 18-02-2012. But, the respondent representative has not furnished those document by saying that those documents were destroyed during Thane Cyclone. When the petitioner requested for documents for the period 13 to 18 February 2012 the respondent refused to give the same by saying the company is under lockout. The Domestic Enquiry Officer one Tmt. Devasundari has not given sufficient opportunity to the petitioner to disprove the charge against the petitioner. The Enquiry Officer has acted in contravention to the principles of natural justice.

(iii) The Enquiry Officer is the Junior Counsel for the Advocate in O.S. No. 986/2012 for the respondent management. Though the name of the Enquiry Officer was not signed in the vakalat her name was present in the docket and hence, there is no possibility for the conduct of impartial domestic enquiry. The request of the petitioner for examination of the representative of the management to prove the petitioner has not committed any misconduct was negated by the Enquiry Officer. The request of the petitioner for grant of time for examination of management witness No. 2 Thiru Ramu was also negated by the Enquiry Officer. The petitioner is working honestly for a long time with the respondent management. The charges levelled against the petitioner is *prima facie* false and prayed to set aside the dismissal order passed by the respondent management and pray for an order of reinstatement into service with back wages and other allowances along with compensation.

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

The respondent management submit that through charge-sheet, dated 18-02-2012, the petitioner was alleged to a have committed the following misconducts on 08-02-2012; (1) refusal to discharge the duties entrusted to him by the making supervisor Mr. Sunil, (2) Not satisfying the production target of 50 moulds along with 17 other workmen, (3) refusal to follow the instructions of the management in discharging the duties by stating (jointly along with workmen A. Pandi and S. Anbzhagan) only 40 moulds could be done and finishing the work according to your will and pleasure (4) Stopping the work abruptly

even when the shift working time as not ever and the production target was not completed and leaving the place of work without obtaining prior permission of the supervisor, (5) Performing the work for less than 8 hours. The petitioner submitted the explanation, dated 08-03-2012 denying the charges of misconduct by stating that he and the other 1 workmen produced 40 moulds which was in excess by 4 moulds, as per the practice followed for the past 1 year. He also stated that the management has followed the victimizing attitude again him and the other workmen who are Trade Union members. To find out the truth regarding the charges framed against the petitioner, the respondent made arrangement for a domestic enquiry. In the enquiry, adequate opportunity was granted to the petitioner to defend the charges in the proper manner. The enquiry was conducted in accordance with law and principle of natural justice. The charges framed against the petitioner were proved in the enquiry in accordance with law through reliable evidence. The petitioner was granted opportunity to submit objection/explanation for the enquiry report, dated 12-06-2013 through letter of the respondent, dated 23-08-2013 in which the respondent accepted the report of the Enquiry Officer holding the petitioner guilty of the charges. The petitioner submitted his explanation, dated 04-09-2013 in which the petitioner had stated untrue facts and alleged unwarranted charges against learned Enquiry Officer and also against management. The respondent sent the 2nd show-cause notice of proposed penalty of dismissal, dated 08-11-2013. The punishment of dismissal was imposed after taking into consideration the past record of service of the petitioner which is not free from blemish, through order, dated 12-12-2013.

(ii) The Domestic Enquiry Officer M/s. Devasundari attached to the office of the Senior Counsel appearing for the establishment, but, the Enquiry Officer is not appeared for the establishment in the present case or any other case against the petitioner. The punishment of dismissal is in tune with the gravity of the misconduct committed by the petitioner as pointed out in the 2nd show-cause notice, dated 08-11-2013 which is past performance is also not clean. For the charge-sheet issued on 31-12-2008, the charges were framed for misconduct. During enquiry the petitioner has admitted the misconduct and the Enquiry Officer Thiru K. Velmurugan found the petitioner guilty and he supplied the Enquiry Officer, report, dated 26-02-2010. In the enquiry proceedings, the petitioner participated with his defence assistant and was permitted to adduce

evidence and to cross-examine the witnesses as such it is not an *ex parte* enquiry. The petitioner along co-worker Pandi and Anbazhagan were the main cause for stopping the production by arguing that only 40 moulds could be produced on 08-02-2012. The said Pandi has admitted the charges and settled his accounts with respondent management after submitting his resignation. The respondent prayed to dismiss the claim made by the petitioner with heavy costs.

4. *The points for consideration are:*

Whether the dispute raised by the petitioner Thiru V. Siva Kumar, against the respondent, management over his non-employment is justified?

5. On the petitioner side Ex.P1 to Ex.P23 were marked. On the respondent side Ex.R1 to Ex.R5 were marked.

6. In the evidence of PW.1 Thiru V. Siva Kumar, he has stated in the chief affidavit that he was functioning as Executive Committee Member in the Medimix Thozhilalargal Sangam. Out of the 88 permanent employees 60 employees are the members of the Medimix Thozhilalargal Sangam. Ever since, the date of starting of the respondent company they have not negotiated with the employees, but, they have compelled the employees to accept the 18(1) settlement on 01-10-2010 when the employees demanded for wage revision, the management has insisted the employees to signed in the 18(1) settlement. The petitioner Trade Union has raised the Industrral Dispute stating that the 18(1) settlement is invalid and the said dispute is pending before this Court. The management has also engaged his employee in non-productive works like cleaning the drainage and white washing the walls. The employees were demanded to declare them as protected employees and the claim was not accepted by the management hence, they have preferred a representation to the Conciliation Officer. The management in order to take revenge against the employees has given a false charge on 08-02-2012 stating that the employees were not produced the target 72 moulds for 18 employees and they have failed to implement the production as per the 18(1) settlement. On 08-02-2012 after completion of 40 moulds the petitioner and others left the place to attend other works. On 08-02-2012 the production supervisor Sunil has fixed production target as 50 moulds in order to increase the production capacity.

7. The respondent failed to furnish the require documents to prove that they were no production in the month of March 2010, October 2011 and February 2012. The respondent has not furnished the required

documents stating that the documents were destroyed in Thane Cyclone and also they have stated reason that since, lockout is declared they were unable to furnish the required documents. The Enquiry Officer Tmt. Deva Sundari has not followed the principles of natural justice during Domestic Enquiry. Moreover, the Enquiry Officer is a Junior Advocate practicing under the Senior Advocate who has appeared in O.S. No. 986/2012 for the management side. The Enquiry Officer has not afforded sufficient opportunity to the petitioner in the Domestic Enquiry. The petitioner is working with the respondent management for a long period and the charges levelled against the petitioner are *prima facie* false and prays to set aside the order of the dismissal and prayed for reinstatement of the petitioner along with back wage and compensation.

8. Thiru Lucas, Factory Manager of the respondent company was examined as RW.1. On 08-02-2012, the petitioner has refused to discharge the duties entrusted to him by the making supervisor Mr. Sunil and not satisfying the production target of 50 mould along with 17 workmen refusing to follow the instruction of the management while discharging the duties by stating that they can do only 40 mould according to will and pleasure and stopping the work abruptly without obtaining prior permission of the Supervisor and performed the work for less than 8 hours. For the above stated lapses the petitioner was charge-sheeted on 08-02-2012 to find out the truth regarding charges framed against the petitioner. The respondent has arranged for Domestic Enquiry. In the Enquiry, adequate opportunity was provided to the petitioner to defend the charges, the enquiry was conducted in accordance with law and by following the principles of natural justice. The petitioner was also granted opportunity to submit his objections to the enquiry report, dated 12-06-2013. The petitioner submitted his explanation, dated 04-09-2013 has stated that the things were which not true. The respondent has also issued a 2nd show-cause notic stating proposed penalty of dismissal, dated 08-11-2013. After considering the explanation submitted by the petitioner and after considering is past record has served the order of dismissal, dated 12-12-2013. A per the principles of labour jurisprudence it is enough if, there is some evidence to prove the charges of misconduct. The nature of proof is not the proof beyond reasonable doubts. In the Domestic Enquiry the petitioner participated with his defence assitant and cross-examination of the respondent witnesses was permitted. The report of the Enquiry Officer is not perverse. The co-employees of the petitioner Thiru A. Pandi and S. Anbazhagan were admitted the charge and settled their account with the respondent.

9. Thiru K. Saravanan, Production Supervisor of the respondent management is examined as RW.2. He deposed in his evidence that when he has working an employee before February 2017 in the respondent company. On 05-06-2012 when he was going to the factory in his two wheeler he was stopped by the member of the Medimi Thozhilalargal Sangam and informed that Medimix Thozhilalargal Sangam called for a strike and hence, I should not attend the duty on that day they have also attempted to remove the key from the motorcycle. The member of the Medimix Thozhilalargal Sangam threatened RW.2 with dire consequences and the woman workers of the said Union abused him in filthy language thereafter, preferred a complaint as to what was happened on 05.06.2012 and handed over the same to the Factory Manager.

10. Thiru P. Sundar who is an employee of the respondent company was examined as RW.3. He deposed in his evidence that when he was working in the making section on 05-06-2012 when he was going to the factory to attend the work at about 08.30 a.m the co-employees who were the members of the Medimix Thozhilalargal Sangam informed that Medimix Thozhilalargal Sangam has called his strike and he could not enter the factory premises when RW3 was about enter the respondent company he was prevented by members of the Medimix Thozhilalargal Sangam Union. He has written a complaint about the incidents happens on 05-06-2012 and handed over to the Factory Manager.

11. The learned Counsel for the petitioner submit that the respondent management in order to victimize the petitioner who is one of the Executive Member of the Medimix Thozhilalargal Sangam as issued a false charge-sheet stating that the petitioner along 17 other workers were refused to do the work assigned by the Supervisor and also cause lost to the company by decrease the production and disobey the orders of the management officials. The learned Counsel for the petitioner submit that on 08-02-2012 Thiru Sunil, has instructed the employees to make 50 moulds there is no specific averment or complaint against the petitioner that he has refused to carry out the instructions of the supervisor and also engaged in altercation with management officials. If, is further submitted that after 18 (1) settlement it is practice that an employee has to make two moulds per day when that is to be taken into consideration the employees present on 08-02-2012 has produced 40 moulds. Even in the charge-sheet on 08-02-2012 at about 12.00 p.m the employee by name Pandi informed the production supervisor Sunil that they can make only 40 moulds the name of the petitioner was not found place in the said charge. The learned Counsel for the petitioner further submitted that the

respondent company is managed by the hard labour of the employees and there was no machineries for production and packing of the end products. Whenever the employee has complete the work he has to go for the next work otherwise the next day production would be affected as such the 18 employees worked in the packing section 08-02-2012 after completion of the job moved from that place to attend some other work as such the allegation against the petitioner that he has left the premises without informing the supervisor as not at all sustainable.

12. The learned Counsel for the petitioner further submit that the Domestic Enquiry conducted as against the petitioner and two others as a single enquiry by appointing same Enquiry Officer is not at all sustainable in the Eye of law. It is further submitted the Enquiry Officer has not followed the principle of natural justice and has not afforded sufficient opportunity to the petitioner to examine his own witnesses. On 05-06-2012 the Medimix Thozhilalargal Sangam has announced for strike. The petitioner is the Executive Member of the Medimix Thozhilalargal Sangam. When the petitioner sought for an adjournment so as to facilitate to him to attend the strike the Enquiry Officer has not granted adjournment. Moreover, the Enquiry Officer wantonly negative contention of the petitioner whenever, the sought time for production of his witnesses. The learned Counsel for the petitioner has invited this Court attention to the Judgment of Hon'ble Karnataka High Court in G.R. Venkateswara Reddy vs. Karnataka State Road Transport Corporation reported in 1993 1LLJ (1011) wherein, the Hon'ble Karnataka High Court quoted the landmark judgment of Hon'ble Apex Court in Crescent Dyes and Chemicals Ltd. vs. Ram Naresh Tripathi reported in 1993 I CLR 253. In the said judgment Hon'ble Apex Court held "There can be no doubt that a delinquent must be given an opportunity of presenting his case in such a way suitable to the character of the enquiry which would ensure a fair hearing resulting in fair dispensation of justice. But, does that extend to the right to be represented through counselor agent is the question which we are called upon to answer."

"A delinquent employee appearing before a tribunal may feel that the right to representation is implied in the large entitlement of a fair hearing based on the rule of natural justice. He may, therefore feel that refusal to be represented by an agent of his choice would tantamount to denial of natural justice. Ordinarily it is considered desirable not to restrict this right of representation by counselor an agent of one's choice, but, it is a different thing to say that such a right is an element of the principles of natural justice and denial thereof would invalidate the enquiry".

13. The learned Counsel for the petitioner has invited the attention of this Court to the Judgment of Hon'ble Guwahati High Court in Anushrnan Des Gupta v. Jute Corporation of India reported in 1997 LAB IC 1824 and submit if, the principles of natural justice is violated the Domestic Enquiry would be vitiated. The learned Counsel has also invited this Court attention to the Judgment of Hon'ble Supreme Court in Chandrama Tewari v. Union of India required that the copy of the documents if, any relied upon against the reported in 1988 AIR 117 held "that principles of natural justice party charged should be given to him and he should be afforded opportunity to cross-examine the witnesses. In the instant case, it is quite clear from the orders of the Enquiry Officer that some of the documents and copies of the statements of witnesses who were examined during preliminary enquiry were made available during examination of the witnesses. It is also not disputed that some of the statements of the witnesses recorded during preliminary enquiry were not supplied to the petitioner before the Enquiry Officer started recording the evidence. It cannot be disputed that for effective cross-examination the statements of the witnesses recorded during preliminary enquiry ought to have been made available to the petitioner before recording the evidence of the prosecution witnesses. In the instant case, it is clear from the orders of the Enquiry Officer as mentioned-above mat copies of some of the statements of the witnesses and documents were not made available before the Enquiry Officer started recording the evidence of M.W. 1. I am, therefore, of opinion that for non-supply of copies of such documents prejudiced the Delinquent Officer and consequently the enquiry is vitiated".

14. The learned Counsel for the petitioner further submit that this Court has passed Preliminary Award in I.D.(L) 0412015 to I.D. (L) 10/2015 wherein, this Court has held that the Domestic Enquiry conducted by the Enquiry Officer is not valid. The learned Counsel for the petitioner further submit that RW.1 Lucas is the Factory Manager who has not developed any good relationship with employees of the company. He always support the management in all crisis. In so far as RW2 Saravanan and RW3 Sundar are concerned they were not at all present during the alleged period of misconduct and their evidence will not lend any support to the case of the respondent. It is further submitted that Thiruvargal Pandi and Anbazhagan who has faced the same charge were threatened by the management to accept the settlement. Finally, the co-employees Pandi and Anbazhagan were settled by the management. The learned Counsel for the petitioner further submitted that when the Domestic Enquiry is held to be defective

it deem that there would be no enquiry conducted at all. The petitioner clearly established that the Domestic Enquiry conducted by Tmt. Devasundari is defective and she is the Junior Advocate, practicing under the Senior Advocate who has appeared for management in O.S.986/2012. Certainly the Junior Counsel Tmt. Devasundari appointed a Enquiry Officer acted in a partial manner and supported the case of the management since, her Senior has appeared for the management in the Civil case. Since, the Enquiry Officer acted partially and has not afforded any opportunity to the petitioner to lead his side evidence the enquiry report submitted by the Enquiry Officer will not stand the test of *bona fide*. The enquiry report of the Enquiry Officer is totally against the principles of natural justice and established principle of law. The petitioner was working with the respondent management for more than 18 years and he was dismissed from service without any justifiable reason. The learned Counsel for the petitioner prayed for the reinstatement of the petitioner with continuity of service along with back wages benefits and other attendant benefits.

15. The learned Counsel for the respondent submit that the petitioner was charge sheeted for the following misconduct: (1) refusal to discharge the duties entrusted to him by the making Supervisor Mr. Sunil, (2) ot satisfying the production target of 50 moulds along with 17 other workmen, (3) refusal to follow the instructions of the management in discharging the duties by stating (jointly along with workmen A. Pandi and S. Anbazhagan) only 40 moulds could be done and finishing the work according to his will and pleasure, (4) Stopping the work abruptly even when the shift working time was not over and the production target was not completed and leaving the place of work without obtaining prior permission of the supervisor, (5) Performing the work for less than 8 hours. On receipt of the charge-sheet the petitioner has submitted his explanation, dated 08-03-2012 by denying the charges of misconduct. In order to bring out the fact the respondent management has arranged to conduct Domestic Enquiry in the said Domestic Enquiry Tmt. Devasundari was appointed as Enquiry Officer the petitioner was permitted to assist by another employee the petitioner was given reasonable opportunity to cross-examine the respondent witnesses. Despite grant of several opportunities the petitioner was not ready to examine any witness on his side. The Enquiry Officer having concluded the Domestic Enquiry by following the principles of natural justice and the legal principles has filed her enquiry report, dated 12-06-2013. The respondent has also accepted the report and the Enquiry Officer holding the petitioner guilty of charges

framed against him in the charge sheet, dated 18-02-2012. The petitioner was served with second show cause notice stating the proposed penalty of dismissal, dated 08-11-2013. After considering the previous misconduct of the petitioner and there is no mitigating circumstances expressed by the petitioner, the respondent was constrained to pass order of dismissal as against the petitioner. The learned Counsel for the respondent further submitted that the Domestic Enquiry was conducted in a fair manner and the alleged motive attributed against the Enquiry Officer is unsustainable.

16. In fact, the Enquiry Officer Tmt. Devasundari was not a Counsel on record in O.S. No. 986/2012. The learned Counsel for the respondent submit that evidence of RW1 Lucas Factory Manager is crystal clear that the petitioner along with other employees has stopped the Production abruptly without achieving the target fixed by the Production Supervisor. The evidence of RW.2 and RW.3 who are the co-employees of the petitioner has clearly deposed as against the petitioner.

17. The learned Counsel for the respondent further submitted that the right to take disciplinary action and the manner of conducting disciplinary enquiry and if, proved to decide the quantum of punishment are mainly managerial functions with which the Tribunal has no jurisdiction to sit in Judgment over the decision of the employer. In this respect the learned Counsel for the respondent has invited this Court attention to the Judgment of Hon'ble Apex Court in Delhi Cloth and General Mills Co. vs. Ludh Budh Singh, (1972) 1 SCC 595 "If, no Domestic Enquiry had been held by the management, or if, the management makes it clear that it does not rely upon any Domestic Enquiry that may have been held by it, it is entitled to straightway adduce evidence before the Tribunal justifying its action. The Tribunal is bound to consider that evidence so adduced before it on merits and give a decision thereon. In such a case, it is not necessary for the Tribunal to consider the validity of the Domestic Enquiry as the employer himself does not rely on it.

When the management relies on the enquiry conducted by it, and also simultaneously adduces evidence before the Tribunal, without prejudice to its plea that the enquiry proceedings are proper, it is the duty of the Tribunal, in the first instance, to consider whether the enquiry proceedings conducted by the management, are valid and proper. If, the Tribunal is satisfied that the enquiry proceedings have been held properly and are valid, the question of considering the evidence adduced before it on merits, no longer survives. It is only when the Tribunal holds that the enquiry proceedings have not been properly held, that

it derives Jurisdiction to deal with the merits of the dispute and in such a case it has to consider the evidence adduced before it by the management and decide the matter on the basis of such evidence".

18. The Counsel for the respondent placed reliance on the Judgment of Hon'ble Apex Court in Workmen of Firestone Tyre & Rubber Co. of India (P) Ltd. vs. The management of Firestone Tyre & Rubber Co. of India (P) Ltd. and others., (1973) 1 SCC 813 wherein, the Hon'ble Apex Court held "From those decisions, the following principles broadly emerge:

1. The right to take disciplinary action and to decide upon the quantum of punishment are mainly managerial functions, but, if, a dispute is referred to a Tribunal, the latter has power to see if, action of the employer is justified.

2. Before imposing the punishment, an employer is expected to conduct a proper enquiry in accordance with the provisions of the Standing Orders, if applicable, and principles of natural justice. The enquiry should not be an empty formality.

3. When a proper enquiry has been held by an employer, and the finding of misconduct is a plausible conclusion flowing from the evidence, adduced at the said enquiry, the Tribunal has no jurisdiction to sit in judgment over the decision of the employer as an Appellate Body. The interference with the decision of the employer will be justified only when the findings arrived at in the enquiry are perverse or the management is guilty of victimization, unfair labour practice or *mala fide*".

19. The learned Counsel for the respondent further submit that in a Domestic Enquiry there is no need to produce strict proof of legal evidence. Moreover, the adequacy of evidence are reliability of evidence cannot be permitted to the canvass before the Labour Court unless the order suffer from patent error or perversity. In this respect, the learned Counsel for the respondent has invited this Court attention to the Judgment of Apex Court State Bank of Bikaner and Jaipur vs. Nemi Chand Nalwaya, (2011) 4 SCC 584 "this Court held that the Courts will not act as an appellate Court and reassess the evidence led in the Domestic Enquiry, nor interfere on the ground that another view is possible on the material on record. If, the enquiry has been fairly and properly held and the findings are based on evidence, the question of adequacy of the evidence or the reliable nature of the evidence will not be ground for interfering with the findings in Departmental enquiries. The Court held as under:

“It is now well settled that the Courts will not act as an appellate Court and reassess the evidence led in the Domestic Enquiry, nor interfere on the ground that another view is possible on the material on record. If, the enquiry has been fairly and properly held and the findings are based on evidence, the question of adequacy of the evidence or the reliable nature of the evidence will not be grounds for interfering with the findings in Departmental enquiries. Therefore, Courts will not interfere with findings of fact recorded in departmental enquiries, except where such findings are based on no evidence or where they are clearly perverse. The test to find out perversity is to see whether a tribunal acting reasonably could have arrived at such conclusion or finding, on the material on record. Courts will however, interfere with the findings in disciplinary matters if principles of natural justice or statutory regulations have been violated or if, the order is found to be arbitrary, capricious, *mala fide* or based on extraneous considerations”.

20. In yet another land mark Judgment our Hon'ble Apex Court held that while re-appreciate the evidence the High Court cannot act as an Appellate Authority in the disciplinary proceeding. In the Judgment, *Union of India vs. P. Gunasekaran*, (2015) 2 SCC 610 our Hon'ble Apex Court held “The Court held the parameters as to when the High Court shall not interfere in the disciplinary proceedings: “Under Article 226/227 of the Constitution of India, the High Court shall not:

- (i) re-appreciate the evidence;
- (ii) interfere with the conclusions in the enquiry, in case the same has been conducted in accordance with law;
- (iii) go into the adequacy of the evidence;
- (iv) go into the reliability of the evidence;
- (v) interfere, if, there be some legal evidence on which findings can be based;
- (vi) correct the error of fact however grave it may appear to be;
- (vii) go into the proportionality of punishment unless it shocks its conscience”.

21. The learned Counsel for the respondent further submit that it is the bounden duty of the Court to scrutinize the evidence let in by the management and adjudicate on the basis of available evidence. The Courts cannot simply order reinstatement stating that no disciplinary enquiry was held. Our Hon'ble High Court in the case of *GMM Company Ltd. Madras vs. Labour Court (II Additional Judge) Madras*, 2002 (2)

LLN 730 wherein, our Hon'ble High Court held “The Labour Court though mentioned both the parties have let in oral and documentary evidence failed to discuss the same before reaching its conclusion of the order of reinstatement. The Labour Court did not even whisper that the petition under S.11A of the Industrial Disputes Act has been filed by the management, which was allowed and consequently evidences were let in by the management, of Court by the workman also. Though the Labour Court discussed some of the documents and come to the conclusion that the order of termination passed by the management without holding any enquiry as if no petition under S.11A of the Act has been filed by the management. Once the petition under S.11A was allowed and evidences were let in by the parties, the bounden duty of the Labour Court is to scrutinize the same and adjudicate on the basis of such evidence. In this case the Labour Court failed to scrutinize and adjudicate upon the evidence let in before it”.

22. In the letter, dated 08-11-2013 which was marked as Ex.P12. The management has mentioned the previous misconduct of the petitioner. The management has issued charge-sheet, dated 31-12-2008. Thiru K. Velmurugan, Advocate, was appointed as Enquiry Officer during the course of enquiry you have pleaded guilty on 08-01-2010 and the Enquiry Officer has concluded the enquiry and found you guilty of the charges levelled against you and submitted his final report, dated 26-02-2010. The charge-sheets, dated 31-12-2008 and 21-10-2011 were proved against the petitioner and the respondent management has not found any mitigating circumstances to reduce the punishment. While imposing punishment the respondent is at liberty to consider the previous conduct of the petitioner. The attention of this Court is drawn to the Judgment of our Hon'ble High Court in *Engine Valves Ltd., Madras vs. Labour Court Madras*, 1991 (1) LLN 268 “we are of the view that the Standing Order in question is in the nature of an enabling provision casting an unilateral obligation on the concerned authority to take into account the previous record with no further duty or a corresponding right in favour of the employee to either insist upon the issue of a second show cause notice and an opportunity or consideration by a detailed discussion of the materials contained in such previous record. The factual reference in the Order to the consideration having been made of the previous record, in our view constitutes sufficient compliance with the requirements of the Standing Order in question and the grievance made about the non-consideration of past record of service before the Labour Court as well as the learned single Judge and which found their acceptance wholly unjustified and unwarranted. The nature of the



consideration that is required could be indicative of the manner in which it requires to be considered. In the light of the ratio of the Apex Court that it is meant to be for the unilateral consideration of the Authority, we are obliged to conclude that the manner of consideration of the past record adopted in the case on hand constitutes sufficient consideration as well as compliance with the Standing Order in question and the order of punishment could not be said to have been vitiated on this account”.

23. The learned Counsel for the respondent submit that even when the past misconduct of the employee is condoned by acceptance of his apology it cannot be the basis for discharge from service by way of punishment is the argument advanced by the Counsel for the petitioner which is not correct to the facts of the present case. The petitioner was charge-sheeted for Commission of fresh misconduct. The past misconducts were identified and submitted before this Court only to strengthen the action taken by the respondent. It is further submitted the respondent after considering all the facts and circumstances and also the representations made by the petitioner has lost faith with the petitioner and has passed final orders which need not be interfered with and prayed for dismissal of the claim made by the petitioner.

24. The loss of confidence and faith can only be established through the objective facts that leads to a definite inference that the conduct of the employees made an apprehension in the mind of the employer that further continuance of the employee in the services of the company would be detrimental to the interest of the Company. Our Hon'ble Apex Court in *Kanhaiyalal Agrawal vs. Gwalior Sugar Co. Ltd.* “this Court laid down the test for loss of confidence to find out as to whether there was *bona fide* loss of confidence in the employee, observing that, (SCC p.614), para (9) (i), the workman is holding the position of trust and confidence; (ii) by abusing such position, he commits an act which results in forfeiting the same; and (iii) to continue him in service/establishment would be embarrassing and inconvenient to the employer, or would be detrimental to the discipline or security of the establishment. Loss of confidence cannot be subjective, based upon the mind of the management. Objective facts which would lead to a definite inference of apprehension in the mind of the management, regarding trustworthiness or reliability of the employee, must be alleged and proved”.

25. This Court has carefully considered the rival submissions made by both sides learned Counsel. This Court is also carefully considered the document filed on both sides. The entire case is based on the alleged

misconduct committed by the petitioner on 08-02-2012. For the misconduct committed on 08-02-2012, the petitioner along with Pandi and one Anbzhagan were charge-sheeted on 18-02-2012. In order to bring out the facts the respondent management has appointed Tmt. Devasundari a practicing Advocate as Enquiry Officer. The Enquiry Officer has conducted full fledged enquiry on several dates. In the Domestic Enquiry RW.1 to RW.4 were examined on the management side and Ex.R1 to R12 were marked on the management side. The Enquiry Officer in her enquiry report Ex.P9 stated that even after affording of several opportunities the petitioner has not filed the list of witnesses and list of documents. It was further noted by the Enquiry Officer that the petitioner has filed four documents along with written arguments on 28-01-2013 and same could not be marked, since, the evidence was closed. Based on the enquiry conducted by the Enquiry Officer, she has submitted her Enquiry report, dated 12-06-2013. The management after giving sufficient opportunity to the petitioner by issuing notice, dated 08-11-2013 regarding the proposed punishment and after considering the explanation submitted by the petitioner has passed the dismissal order, dated 12-12-2013.

26. On the petitioner side, it was contended that the Enquiry Officer Tmt. Devasundari is the Junior Counsel to the Senior Advocate who appearing for the management in O.S. No. 986/2012. Since, the Enquiry Officer is the Counsel in the management she has acted partially and has not afforded any opportunity to the petitioner and the entire enquiry report is unacceptable since, the principle of law and the principle of natural justice was not followed by the Enquiry Officer during enquiry. At the same time, the Counsel for the management contended that Tmt. Devasundari is not Counsel on record in O.S. No. 986/2012 and the apprehension of the petitioner is not basis at all. The petitioner has given Ex.P5 and Ex.P6 notice to the Enquiry Officer that he has not followed the principles of natural justice and she is acting in favour of the management. Though there are allegations levelled against the Enquiry Officer the petitioner has not substantiated the same. This Court has perused the enquiry proceedings conducted by the Enquiry Officer on perusal of the enquiry proceedings it is found that the petitioner was afforded several opportunities for cross-examination of RW.1 to RW.4. Since, the petitioner has not filed the list of witnesses and list of documents his evidence was closed and the Enquiry Officer proceeded to file her enquiry report based on the available evidence and available documents as such this Court has not found any perversity in the report of the Enquiry Officer.

27. In Ex.P12, dated 08-12-2013 information as to proposed punishment was given to the petitioner. After considering his explanation and previous misconduct, the Disciplinary Authority Vice-President HR has issued the order of dismissal from service.

28. Before this Court RW1 to RW3 were examined. PW1 Thiru Lucas, Factory Manager has deposed that the petitioner along with 17 workers have stopped the production abruptly and left the place of work without even informing to the production supervisor Thiru Sunil and they have failed to reach the target fixed by the production supervisor. On 08-02-2012, the production superior fixed the target of 50 moulds. However, the petitioner and others altercate with the production Supervisor Sunil and informed him that they can only make 40 moulds. RW2 and RW3 deposed about the misdeeds committed by the petitioner and others on the date of strike initiated by the Medimix Thozhilalargal Sangam. On the respondent side they have marked Ex.R2 which is the letter written by the co-worker Pandi, dated 12-06-2014 admitting his guilty and seek apology for his mistakes and resigned from the post of Vice-President of Medimix Thozhilalargal Sangam. It was argued on the side of the respondent that another co-employee Anbazhagan was also pleaded guilty and settled with his account with a company.

29. Our Hon'ble Apex Court in plethora of decisions held that the disciplinary authority is the sole Judge of the facts. In the disciplinary enquiry strict rule of evidence and strict rules of legal evidence and finding on the evidence are not so relevant. Moreover, the adequacy of the evidence and the reliability of the evidence cannot be permitted to be canvassed before the tribunal. In *Union of India vs. H.C. Goel* (1964) 4 SCR 781" upon consideration, the evidence reached by the disciplinary authority, is perverse or suffer from patent error on the face of the record or based on no evidence at all, a writ of certiorari.

30. Our Hon'ble Apex Court in High Court of Judicature at Bombay through its Registrar *vs. Shashikant S. Patil* and another case law reported in (2000) 1 SCC 416 held "the division bench of the High Court seems to have approached the case as though it was an appeal against the order of the administrative/disciplinary authority of the High Court. Interference with the decision of Departmental authorities can be permitted, while exercising jurisdiction under Article 226 of the Constitution if such authority had held proceedings in violation of the principles of natural justice or in violation of statutory regulations prescribing the mode of such enquiry or if the decision of the authority is vitiated by considerations extraneous to the evidence

and merits of the case, or if the conclusion made by the authority, on the very face of it, is wholly arbitrary or capricious that no reasonable person could have arrived at such a conclusion, or grounds very similar to the above. But, we cannot overlook that the Departmental authority (in this case the Disciplinary Committee of the High Court) is the sole judge of the facts, if, the enquiry has been properly conducted. The settled legal position is that if, there is some legal evidence on which the findings can be based, then adequacy or even reliability of that evidence is not a matter for canvassing before the High Court in a writ petition filed under Article 226 of the Constitution".

31. In the land mark Judgment the State of Karnataka and Another *vs. N. Gangaraj* case law reported in CDJ 2000 SC 180 our Hon'ble Apex Court held "the disciplinary authority agreed with the findings of the Enquiry Officer and had passed an order of punishment. An appeal before the State Government was also dismissed. Once the evidence has been accepted by the Departmental authority, in exercise of power of judicial review, the Tribunal or the High Court could not interfere with the findings of facts recorded by reappreciating evidence as if, the Courts are the Appellate Authority".

32. This Court is of the considered opinion that the misconduct of the petitioner is proved in the Domestic Enquiry conducted by the Enquiry Officer and also from the evidence adduced by the witnesses before this Court. Based on the Enquiry report of the Enquiry Officer the disciplinary authority after giving opportunity to the petitioner and after considering his previous misconduct of the petitioner and considering gravity of the charges has lost confidence with the petitioner. The management is of the further opinion that if the petitioner is not discharged from the service of the management the respondent would be put to irreparable loss was stated in the said dismissal order. The disciplinary authority has stated there is no mitigating circumstances to reduce the punishment.

33. This Court is of the opinion that the petitioner failed to establish that he was charge-sheeted by the respondent management only to victimize him, Since, he is actively participated in the Medimix Thozhilalargal Sangam Trade Union. The members of the Medimix Thozhilalargal Sangam Trade Union are still working with the respondent management. Hence, this Court come to the conclusion that the management has not adopted unfair labour practice against the petitioner who is the office bearer of the Medimix Thozhilalargal Sangam. This Court is of the further opinion that the Enquiry Officer is promptly and fairly conducted the Domestic Enquiry and found the petitioner guilty

of the charges. The disciplinary authority also applied his mind and passed the order of dismissal. Before this Court the respondent management has proved the misconduct of the petitioner by acceptable evidence. This Court could not find any reason to interfere with the order of dismissal passed by the respondent management.

34. Since, the petitioner workman was worked in the respondent management for more than 18 years he is entitled for other monetary benefit while he was terminated from service. Since, the respondent management lost faith on the petitioner, this Court is of the opinion that the workman is not entitled for any reinstatement as claimed by him. However, this Court can granted an alternative remedy to the petitioner by working out just compensation tentatively for his long tenure of service. Moreover, the right to "life" as enshrined in Article 21 of the Constitution denotes right to live a dignified life.

35. The petitioner worked in the respondent management for about 18 years. On the petitioner side it was submitted that he was not in gainful employment elsewhere and his family is suffering without any employment and without any income.

36. Considering the overall circumstances of the case, this Court is of the considered opinion to fix reasonable quantum of compensation to meet the ends of justice. This Court direct the respondent management to pay a sum of ₹ 3,00,000 (Rupees three lakhs only) as compensation to the petitioner. Apart from the compensation above fixed, the petitioner workman is entitled for all other retirement benefit as if he is in the service of the respondent management.

37. In the result, the petition is dismissed. The termination of the petitioner Thiru V. Siva Kumar from the service of the respondent management is justified. The respondent is directed to pay the compensation amount of ₹ 3,00,000 (Rupees three lakh only) and other monetar benefit to the petitioner within a period of six weeks from the date of this order. No costs.

Dictated to Stenographer, transcribed by him, corrected and pronounced by me in the open Court, on this 7th day of October, 2021.

**R. BHARANIDHARAN,**  
Presiding Officer,  
Industrial Tribunal-cum-  
Labour Court, Puducherry.

*List of petitioner's witness:*

PW.1 — 15-02-2016 V. Siva Kumar

*List of petitioner's exhibits:*

- Ex.P1 — 18-02-2012 Letter regarding call for explanation letter sent by the Factory Manager to the petitioner V. Siva Kumar.
- Ex.P2 — 08-03-2012 Copy of the reply given by the petitioner V. Siva Kumar to the letter sent by the Factory Manager.
- Ex.P3 — 12-04-2012 Reply given by the Factory manager to the petitioner for conducting Enquiry proceedings based on the non satisfaction of the reply given by the petitioner on the show cause notice.
- Ex.P4 — 02-05-2012 Suspension order and Enquiry Proceedings information sent by the General Manager to the petitioner.
- Ex.P5 — 20-10-2012 Copy of the letter sent by the petitioner to the Enquiry Officer regarding Principles of Natural Justice was not followed by the Respondent Management.
- Ex.P6 — 17-11-2012 Copy of the letter sent & through registered post by 15-12-2012 the petitioners to the Disciplinary authority.
- Ex.P7 — 28-01-2013 Copy of the Final Written Statement sent by the petitioner to the Enquiry Officer.
- Ex.P8 — 14-05-2012 Copy of the Enquiry proceedings. to 26-12-2012
- Ex.P9 — 12-06-2013 Copy of the Enquiry Officer report.
- Ex.P10 — 23-08-2013 Show cause notice sent by the respondent management to the petitioner V. Siva Kumar.

- Ex.P11 — 03-09-2013 Copy of the reply given by the petitioner V. Siva Kumar to the letter, dated 23-08-2013 of Disciplinary authority.
- Ex.P12 — 08-11-2013 Notice of punishment to be proposed sent by the Disciplinary authority to the petitioner V. Siva Kumar.
- Ex.P13 — 18-11-2013 Copy of the reply given by the petitioner V. Siva Kumar to the notice of Disciplinary authority.
- Ex.P14 — 12-12-2013 Dismissal order given by the Disciplinary authority to the petitioner V. Siva Kumar.
- Ex.P15 — 20-12-2013 Requisition to withdraw the termination submitted by the petitioner V. Siva Kumar.
- Ex.P16 — 14-02-2014 Petition filed under section 2A of ID Act by the petitioner V. Siva Kumar.
- Ex.P17 — 16-05-2014 Reply given by the respondent management to the Labour Officer (Conciliation).
- Ex.P18 — 08-12-2014 Failure report submitted by the Labour Officer (Conciliation) to the Secretary to Government, Puducherry.
- Ex.P19 — 08-02-2013 Copy of the Petitioner Process Clearance Certificate.
- Ex.P20 — 12-11-2014 Copy of the Making Report.
- Ex.P21 — 05-06-2012 Signature of RW1 found in the Acknowledgment Card.
- Ex.P22 — 04-06-2012 Copy of the Staffs Attendance & Register.  
05-06-2012
- Ex.P23 — 05-06-2012 Copy of Affixed Notice (Lockout).

*List of respondent's witnesses:*

- RW1 — 01-02-2018 E.M.I.D. Lucas
- RW2 — 28-02-2018 K. Saravanan
- RW3 — 28-02-2018 P. Sundar

*List of respondent's exhibits:*

- Ex.R1 — 12-12-2013 Punishment Order sent by M/s. AVA Cholayil Health Care Private Limited to V. Siva Kumar.
- Ex.R2 — 12-06-2014 Letter submitted by Co-employee A. Pondi to AVA Cholayil Health Care Private Limited.
- Ex.R3 — 26-02-2010 Report by Enquiry Officer, Advocate K. Velmurugan in the Charge-sheet, dated 31-12-2008 by AVA Cholayil Health Care Private Limited to V. Siva Kumar.
- Ex.R4 — 05-06-2012 Complaint given by K. Saravanan against the Striking Workmen to the Management.
- Ex.R5 — 05-06-2012 Complaint given by P. Sundar against the Striking Workmen to the Management.

**R. BHARANIDHARAN,**  
Presiding Officer,  
Industrial Tribunal-cum-  
Labour Court, Puducherry.

GOVERNMENT OF PUDUCHERRY  
**LABOUR DEPARTMENT**

(G.O. Rt. No. 88/Lab./AIL/T/2021,  
Puducherry, dated 28th December 2021)

NOTIFICATION

Whereas, an Award in I.D (L) No. 12/2017, dated 24-11-2021 of the Industrial Tribunal-cum-Labour Court, Puducherry, in respect of the Industrial Dispute between Management of M/s. The Karaikal Women Co-operative Printing Society Limited, Karaikal and Selvi M. Kalaivani, Karaikal, over refusal of 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 23-05-1991, it is hereby directed by the Secretary to Government (Labour) that the said Award, shall be published in the Official Gazette, Puducherry.

(By order)

**D. MOHAN KUMAR,**  
Under Secretary to Government (Labour).

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

*Present* : Thiru R. BHARANIDHARAN, M.L.  
Presiding Officer.

*Wednesday, the 24th day of November 2021.*

**I.D. (L) No. 12/2017**

**in**

**CNR. No. PYPY060000622017**

Selvi M. Kalaivani,  
No. 84, Mariamman Koil Street,  
Thirunagar, Karaikal. . . Petitioner

*Versus*

The President,  
The Karaikal Women Co-operative Printing  
Society Limited No. P.348,  
No. 172, Bharathiyar Road,  
(Old Bus Stand), Karaikal. . . Respondent

This Industrial Dispute coming on 19-11-2021 before me for final hearing in the presence of Thiru N. Ramar, Representative for the petitioner and Thiru R. Vetrivelan, Counsel for the respondent, upon hearing both sides, perusing the case records, after having stood over for consideration till this day, this Court delivered the following:

**AWARD**

This Industrial Dispute arises out of the reference made by the Government of Puducherry *vide* G.O. Rt. No. 33/AIL/Lab./T/2017, dated 05-04-2017 of the Labour Department, Puducherry to resolve the following dispute between the petitioner and the respondent *viz.*,

(a) Whether the dispute raised by the petitioner Selvi M. Kalaivanai, Karaikal, against the management of M/s. The Karaikal Women Co-operative Printing Society Limited, Karaikal, over refusal of employment is justified or not? If justified, what relief she is entitled to?

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

*2. Brief averments made in the claim Statement of the petitioner:*

The petitioner is a work woman appointed in the respondent Society on 01-12-2011. The petitioner engaged in binding machine work and also acted as a milk vendor and received monthly salary of ₹ 3,503. On 01-06-2015, when the petitioner went to attend her regular duty the respondent management did not

permitted her and refused employment to the petitioner. The petitioner has preferred an Industrial Dispute before the Labour Department, Karaikal on 27-01-2016. The respondent has given a reply before the Labour Officer, Karaikal, that due to financial constraints they could not offer employment to the petitioner. Before the Labour Officer the petitioner has submitted that she was in the services of the respondent management as direct employee from 01-12-2011. The respondent cannot denied employment to the petitioner by stating their financial constraints. The respondent has given a technical break in the services of the petitioner which is against the principles of natural justice. The Conciliation before the Labour Officer, Karaikal, was ended in failure and the matter was referred for adjudication before this Court. The petitioner is suffering for four years without any salary and without any employment. Hence, prayed for reemployment with continuity of services.

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

The petitioner is an unskilled labour engaged on daily wages basis for ₹ 120 per day. She has attended the book binding work and milk vending work conducted by the respondent management. The respondent management never paid monthly salary of ₹ 3,503 to the petitioner. The petitioner was paid ₹ 120 per day only on daily wages basis since, there was no regular work in the respondent management. The petitioner was given break of service for the period August 2013 to November 2013. Thereafter, for the abovesaid reason break of service from January 2014 to February 2014 and also April 2014 to June 2014 was given to the petitioner. The petitioner was not engaged as a regular employee or permanent employee the petitioner is not entitled for any permanent job as prayed in the petition since, the respondent management was not able to disburse the monthly salary for 5 months for the regular employees due to financial constraints. The respondent management has decided not to give employment to the petitioner since, there was pressure on the side of the Provident Fund contribution payment and payment of LIC of India. The Directors of the Society has unanimously decided not to give employment to the petitioner. The respondent society is a small Society without much investment and there is a decline in the printing industry. The respondent management could not compete with the other private printers, since, the respondent management has faced severe financial

constraints they could not afford any employment to the petitioner since, the petitioner is not the permanent employee of the respondent management, she is not entitled for permanent employment with backwages. The petition is devoid of merit and hence, the same has to be dismissed.

4. *Points for consideration:*

Whether the respondent management M/s. Karaikal Women Co-operative Printing Societ Limited, Karaikal, is justified? over refusal of employment to the petitioner?

5. On the petitioner side Selvi M. Kalaivani was examined as PW.1 and through her proof affidavit was filed. The petitioner Selvi Kalaivani, has deposed that she has joined Services of the respondent management on 01-12-2011 and has indulged in binding machine work and milk vending work. The respondent management refused to give employment to the petitioner which is against the principle laid down in section 25-F of the Industrial Dispute Act. The petitioner prays for reemployment with continuity of services along with back wages and other benefits.

6. On the petitioner side Ex.P1 to Ex.P3 were marked. Ex.P1 is the requisition submitted by the petitioner, dated 27-01-2016 for conciliation. Ex.P2 is the reply filed by the respondent management before the Conciliation Officer. Ex.P3 is the detail of break of service given by the respondent management to the petitioner. The petitioner was cross-examined in detail by the respondent management.

7. During the pendency of the case before this Court, for examination of respondent said evidence the respondent has filed a memo stating that the respondent is ready to appoint the petitioner as milk vendor with daily wages of ₹ 220 per day. The respondent management has further stated in the memo that the wages of the petitioner could be regularized under the Grade-II permanent employment to be given to the petitioner as per the recommendations of the 4th Pay Commission within the period of one year. It is further stated in the memo, since, the respondent Society is functioning not in good condition they could not offer any back wages. The respondent management has consent to give employment to the petitioner from 01-12-2021. On the petitioner side they have accepted the proposal stated in the memo filed by the respondent and the representative of the petitioner was accepted for the waiver of back wages.

8. This Court has carefully considered the rival submissions made by the both sides. This Court has also taken into consideration the memo filed on the

respondent side. On the respondent side they have consented for reemployment of the petitioner with daily wage at the rate of ₹ 220 per day and also they assured to make the petitioner as permanent employee from 02-05-2022. On the petitioner side it was fairly accepted not to claim continuity of services, back wages and other benefits. This Court after hearing both sides deem it fit to pass Award.

9. In the result, the petition is partly allowed. The respondent is directed to give employment to the petitioner from 01-12-2021. The respondent is further directed to regularize the service of the petitioner as permanent employee from 02-05-2022. The petitioner is not entitled for continuity of service and back wages. No costs.

Dictated to Stenographer, transcribed by him, corrected and pronounced by me in the open Court, on this 24th day of November, 2021.

**R. BHARANIDHARAN,**  
Presiding Officer,  
Industrial Tribunal-cum-  
Labour Court, Puducherry.

*List of petitioner's witness:*

PW.1 — 23-01-2020 Selvi M. Kalaivani

*List of petitioner's exhibits:*

Ex.P1 — 27-01-2016 Copy of the representation given by the petitioner to the Labour Officer (Conciliation), Karaikal.

Ex.P2 — 16-02-2016 Copy of reply submitted by the respondent to the Labour Officer (Conciliation), Karaikal.

EX.P3 — 09-03-2016 Copy of the petitioner (working days schedule) submitted by the respondent to the Labour Officer (Conciliation), Karaikal.

*List of respondent's witnesses:* Nil

*List of respondent's exhibits:* Nil

**R. BHARANIDHARAN,**  
Presiding Officer,  
Industrial Tribunal-cum-  
Labour Court, Puducherry.