



புதுச்சேரி மாநில அரசிதழ்

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அதிகாரம் பெற்ற வெளியீடு

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பொருளடக்கம்

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**GOVERNMENT OF PUDUCHERRY
LABOUR DEPARTMENT**

(G.O. Rt. No. 178/AIL/Lab./T/2022, dated 15th December 2022)

NOTIFICATION

Whereas, an Award in I.D. (L) No. 47/2017, dated 18-10-2022 of the Industrial Tribunal-cum-Labour Court, Puducherry in respect of dispute between the management of M/s. Pandy Agrochemicals Private Limited, Periyakalpet Puducherry, and Thiru S. Sengeni, Karayambuthur, Puducherry, over reinstatement with salary dues.

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. 20/9/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)

P. RAGINI,

Under Secretary to Government (Labour).

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

Present :Tmt. V. SOFANA DEVI, M.L.,
Presiding Officer.

Tuesday, the 18th day of October, 2022

**I.D. (L) No. 47/2017
CNR. No. PYPY06-000077-2017**

Sengeni S/o. Sadhasivam,
No. 3, Balaji Nagar,
Opposite to Police Station,
Karayambuthur, Puducherry. . . Petitioner

Versus

The Managing Director,
M/s. Pandy Agrochemicals Private Limited,
Mathur Road, Periyakalpet,
Puducherry. . . Respondent

This industrial dispute coming on 30-09-2022 before me for final hearing in the presence of Thiru R. Raja Prakash, Counsel for the Petitioner, Thiruvalargal B. Baskaran, K. Ashokkumar, B. Karunakaran and R. Maduraimuthu, Counsel for the Respondents, and after hearing the both sides and perusing the case records, 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. 127/AIL/Lab./T/2017 dated 18-08-2017 of the Labour Department, Puducherry to resolve the following dispute between the Petitioners and the Respondent, *viz.*

(a) Whether the dispute raised by Thiru Sengeni, Karayambuthur, Puducherry against the Management of M/s. Pandy Agrochemicals Private Limited, Periyakalpet, Puducherry, over reinstatement with salary dues are justifiable 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?

2. Brief facts of the case of the Petitioner averred in the claim petition:

The Petitioner was employed since 09-01-2004 with the Respondent as a permanent worker in Respondent factory at Kalapet and his monthly salary is ₹18,000. During the employment with Respondent, Petitioner rendered his unblemished and flawless services to Respondent from the date of his joining the services. The Petitioner is a nativian of Karayambuthur Village. Petitioner is an uneducated and his family comprised of his mother, wife and two children. Because of his employment with Respondent, he shifted his residence from Karaiyambuthur village to Kalapet.

(ii) In April 2015, the Petitioner requested the respondent Management for salary hike, who in turn refused by saying that it cannot enhance the salary for Petitioner alone. However, on 09-05-2015, the Petitioner was transferred to its Poothurai Unit without serving any transfer order. The Petitioner reported at Poothurai Unit of Respondent and attended the work assigned to him at Poothurai Unit to the satisfaction of the Respondent. While being so, the Petitioner was informed that the Poothurai Unit of respondent is functioning without obtaining any permission from the Labour Department, therefore, his services at Poothurai Unit of respondent will not be considered into account as his service period. Therefore, the Petitioner requested the Respondent to transfer him to Kalapet Factory, the respondent though agreed but dilly dallied the issue on one count or the other. The Poothurai Unit also does not have proper and necessary facilities as mandated according to the Factories Act and more importantly because of Petitioner's financial and family constraints he repeatedly requested the respondent to transfer him to its factory at Kalapet but, it had not done so.

(iii) Meanwhile in July 2015, the Respondent Management illegally deducted a sum of ₹ 286 from his monthly wages. Immediately, the Petitioner had approached the Respondent Management and sought for an explanation. But, there was absolutely no reason given by the respondent. Therefore, the Petitioner raised his objections for the illegal deduction from his monthly wage with the Respondent Management. The respondent assured the Petitioner that such deducted wages to the tune of ₹ 286 will be credited along with the salary in the upcoming months and requested the Petitioner not to precipitate the issue. The Petitioner continued his work to the satisfaction of respondent even then it has not paid the deducted wages to Petitioner in the subsequent months. Again in December 2015, the respondent deducted a sum of ₹ 5,931 in the monthly wage of Petitioner. The Petitioner was really disturbed because of the fact that he did his work according to the satisfaction of the Respondent without any lack on his part. Once again the Petitioner approached the respondent and called for an explanation for such illegal deduction in his monthly wage in the month of December 2015. Without giving proper explanation, the respondent in turn had informed the Petitioner that the same will be credited along with the salary of January 2016. Since, the Petitioner and his entire family is fully dependent on his employment and his monthly salary, Petitioner has not intended to take the issue of illegal deduction and his transfer to Labour Department. But, he had continued his employment with respondent.

(iv) The Respondent once again deducted a sum of ₹ 9,948 in the monthly wage of Petitioner for January 2016. Since the wages deducted in July 2015 and December 2015 were not paid by respondent and his request of transfer from Poothurai Unit to Kalapet Village was dilly dallied by Respondent, Petitioner suspects that he had been victimized by respondent. Therefore, on 20-01-2016, he approached the Labour Department, Puducherry seeking their intervention to direct the Management to pay the illegal deduction of his monthly wages and gave a written representation, dated 27-01-2016 and on 23-01-2016, he approached the Labour Officer (Conciliation) for transfer and other reliefs.

(v) The Respondent Management having gained knowledge about the Petitioner approaching the Labour Department, in order to counter protect the Respondent and to pressurize the Petitioner to withdraw his complaints with the Labour Departments, has issued the 1st charge memo, dated 23-01-2016 containing false and vague allegations against him based on a bogus complaint, dated 22-01-2016 given by its Factory Manager at Kalapet. The said complaint, dated 22-01-2016 given by its Factory Manager at Kalapet was

not served to Petitioner to understand the nature and veracity of complaint given against him. Even though, the Petitioner gave a befitting reply to the alleged charges levelled against him *vide* his reply dated 30-01-2016. In order to deny the charges levelled by Petitioner *vide* his reply dated 30-01-2016 against the respondent, it has issued a reply dated 06-02-2016 to Petitioner. However, in its reply dated 06-02-2016, it has admitted that about the deductions of wages, for which the respondent gave an evasive reason which is false and the respondent has put to strict proof of the same. However, it has absolutely failed to state any reasons for the illegal deduction of Petitioner's wages for the months of July and December 2015. That 11-01-2016 was Petitioner's weekly off, thereafter the Petitioner did reported to his duty from 12-01-2016 onwards and worked at Poothurai Unit which was to the satisfaction of his superior. Respondent further admitted in its reply dated 06-02-2016 that it has transferred the Petitioner to its Poothurai Unit and have claimed that the Poothurai Village is within Puducherry District, which is once again absolutely false and it falls within the Vanur Taluk, Villupuram District, Tamil Nadu. The Respondent completely failed to assign any reason as to why the Petitioner was transferred to Poothurai Village, which is run by it without any permission from Government Authorities.

(vi) In order to strengthen the Respondent false accusation and allegations against the Petitioner, it has issued the 2nd charge memo, dated 06-02-2016 based on another bogus complaint dated 05-02-2016 given by its Kalapet Factory Manager and once again Petitioner was not served with the alleged complaints of its Factory Manager dated 05-02-2016. In the 2nd charge memo dated 06-02-2016 the Respondent has extracted the same charges for which the Petitioner was already called for an explanation in the 1st charge memo dated 23-01-2016, which once again very vague and imprecise. After receipt of Tamil translation of 2nd charge memo dated 06-02-2016 the Petitioner replied to the same on 02-03-2016. Meanwhile, the Labour Officer (Conciliation), Puducherry has sent a Notice of Enquiry to the respondent but, the respondent did not turn up for enquiry hearings, instead it gave a representation dated 29-02-2016.

(vii) Since, the Petitioner has not withdrawn his complaints from the Labour Departments the Respondent decided to throw him out of its factory, it has issued a Charge Sheet-*cum*-Suspension Order dated 01-03-2016 (posted on 07-03-2016) through its authorized signatory, whereby it has suspended the Petitioner pending enquiry for minor charges issues, when in fact the Petitioner has not past misconducts. The charges

levelled against the Petitioner are very vague as the respondent has failed to mention; (1) under what provisions of model standing order the Petitioner was charge sheeted; (2) what are the works that were assigned to Petitioner which were done and undone by him; (3) the names and designations of the superior officers of Petitioner who gave instructions which are not obeyed; (4) the names of his co-workers with whom the Petitioner is combating; (5) the details of mobile numbers with whom the Petitioner is talking over phone; (6) what are the filthy and threatening words that were used by Petitioner against the manager or his co-workers; (7) why the reply given by Petitioner to the 1st charge memo was not satisfactory to the respondent. The documents based on which the charges were framed *vide* charge sheet dated 01-03-2016 was not served to Petitioner along with the Charge Sheet-cum-Suspension Order. Furthermore, the charge-sheet is not issued by the disciplinary authority of the Respondent. Therefore, it is not valid under law.

(viii) Petitioner has not received any letter from the Respondent for appointment of an (independent and impartial) Enquiry Officer to enquiry in to the alleged charges against the Petitioner. But, the Petitioner received an advocate notice dated 28-03-2016, wherein, it is claimed that he was appointed as an Enquiry Officer to enquiry into the alleged charges levelled against the Petitioner *vide* Charge-sheet dated 06-02-2016 and Suspension Order dated 01-03-2016 and called upon the Petitioner to attend the enquiry at Advocate's place on 26-04-2016. Petitioner was shocked and surprised that he has not been served with any Charge-sheet dated 06-02-2016 by the Respondent. Further more, the place of enquiry fixed by the Enquiry Officer is 15 kms. away from Petitioner's place and the Petitioner was required to take two buses from his place to reach the Enquiry Officer's place, which caused grave prejudice during his suspension period, when in fact subsistence allowance was also not paid according to law. Petitioner, being a layman, who does not know his rights to object the place of enquiry and subsistence allowance payable to him during suspension period, he attended the enquiry on 26-04-2016.

(ix) The entire enquiry proceedings conducted by Enquiry Officer conducted in a biased and highhanded manner, which are against the Principles of Natural Justice and equity. The following acts done by Enquiry Officer would prove the same;

(a) The place of enquiry fixed by Enquiry Officer, where the equity alleged to have been took place, which was far away from the Petitioner's place.

(b) Enquiry was not conducted in his mother tongue.

(c) Enquiry Officer conducted the enquiry proceedings without there being a Management's representative.

(d) The date of charge-sheet was wrongly mentioned in the alleged enquiry intimation notices sent by Enquiry Officer and in his Order dated 01-10-2016.

(e) Enquiry Officer permitted the Respondent to represent through advocates.

(f) Enquiry Officer has not explained the charges levelled against the Petitioner for which he is conducting the Enquiry proceedings.

(g) Enquiry Officer has not informed/explained the manner in which the enquiry will be conducted and the rights and opportunities the Petitioner had during the Enquiry proceedings.

(h) Enquiry Officer received the list of witnesses and allowed the same behind the back of Petitioner .

(i) Enquiry Officer received the documents produced by Respondent and recorded oral evidences of respondent in the absence of Petitioner.

(j) Enquiry Officer had not given sufficient time to Petitioner to peruse the documents filed by Respondent and statements recorded by respondent's witnesses during enquiry proceedings but have insisted the Petitioner to get along with enquiry.

(k) Enquiry Officer did not consider the objections raised by Petitioner regarding the manner in which the enquiry was conducted.

(l) Enquiry Officer did not give sufficient opportunities to Petitioner to lead his evidence and puts forth his arguments.

(m) Enquiry Officer failed to give findings to the documents filed by respondent to prove the charges levelled against the Petitioner.

For all the abovesaid reasons, the entire enquiry proceedings conducted was against the Principles of Natural Justice, which caused serious prejudice and irreparable loss to the Petitioner. Therefore, the entire enquiry proceedings is not valid under law and it is against the law.

(x) The Order dated 01-10-2016 passed by the Enquiry Officer sent directly by him to Petitioner, which was in English and was received by the Petitioner on 04-10-2016. The 2nd show cause notice as mandated under the Model Standing Order was not issued to Petitioner to call for an explanation to the Order of Enquiry Officer. However, the respondent terminated

the Petitioner *vide* its Order of Termination dated 05-10-2012. The Respondent has failed to consider the past services of Petitioner with respondent and his conducts but has passed an extreme punishment of dismissal from services. The respondent has not complied with the provision of Section 33(1) (b) of Industrial Disputes Act while dismissing the Petitioner while the dispute is pending before the Conciliation Officer, therefore, the Petitioner's dismissal is invalid under law. The Petitioner was victimized and punished by respondent only because he raised his objections when the Respondent illegally deducted his monthly wages and in order to refrain the other workers in the respondent factory from raising any protest and questions against the Management.

(xi) The Petitioner is unemployed from the date of his suspension and the subsistence allowance paid by the respondent is also lesser than what has to be paid as per law. Petitioner was suspended by respondent *vide* its Charge sheet-cum-Suspension Order dated 01-03-2016 (posted on 07-03-2016). The Respondent did not paid the 50 of his monthly salary, which amounts to ₹ 9,000 towards subsistence allowance making his life and his family members miserable but have paid paltry sums after making deduction, which is against the law. The respondent failed to pay 75% of Petitioner's monthly salary as subsistence allowance to him from the 91st day of his suspension as per section 10.A(1)(b) of Industrial Employment (Standing Orders) Act. Such an atrocious act by the respondent prevented the Petitioner from contesting the Domestic Enquiry properly as he was struggling to even sustain his family. The non-payment of actual subsistence allowance by itself is against the Principles of Natural Justice as the Petitioner cannot be expected to defend himself properly with empty stomach. Therefore, the non-payment of proper/actual subsistence allowance to Petitioner by respondent by itself vitiates the enquiry proceedings.

(xii) Without giving proper subsistence allowance to Petitioner, it is obnoxious on the part of respondent to expected the Petitioner conduct the enquiry proceedings on empty stomach that too at a faraway place. The Respondent do not have a certified Standing Order inspite of the statutory mandate and has charge sheeted the Petitioner only under the Model Standing Orders. When the Respondent do not have it own certified Standing Orders permitting it to pay reduced salary during the period of suspension the respondent is bound to pay full salary to the Petitioner without any deduction. Hence, the petitioner prays for an order of reinstatement with full back wages, continuity of service, other attendant benefits, bonus, salary increment, balance subsistence allowance to the petitioner.

3. *The brief averments of the counter filed by the respondents are as follows:*

Based on the complaints dated 22-01-2016 and 05-02-2016 given by one Mr. P. Krishnasamy, Factory Manager of Respondent Company, two charge memo dated 23-01-2016 and 06-02-2016 were issued to the Petitioner calling for explanations on the said charges. The list of the above said complaint was that the Petitioner during working hours, often used to talk over mobile phone without attending his work inspite of repeated instructions and warnings from the Superior Officers of the factory. In spite of the charge memo, the Petitioner continued the same and did not change his attitude. Thus, it resulted in low production of goods. Petitioner gave an explanation only to the Charge memo dated 22-01-2016 but, continued in speaking over mobile phone during working hours and not attending his work. He also used to threaten the Superior Officer as he will lodge false complaints before the Labour Department and against the respondent factory if he compelled to do work. Hence, respondent company had decided to conduct Domestic Enquiry of the petitioner employee.

(ii) The Domestic enquiry initiated by appointing Enquiry Officer and Petitioner was suspended from 01-03-2013. Since he was suspended pending enquiry, 50% of his salary, *i.e.*, ₹ 5,099 has been paid as subsistence allowance. In order to escape from any action against him, he gave a complaint with false allegation before Labour Department and the same was pending.

(iii) Though the Petitioner received the notice of hearing on the domestic enquiry issued by Enquiry Officer and filed his reply in the said enquiry, he did not turn up for further proceedings in the domestic enquiry. He wantonly evaded from the domestic enquiry, not co-operated to conduct the said enquiry. Since, even after giving opportunities, Petitioner did not come forward to cross examine the Respondent witnesses, domestic enquiry officer without any other option closed the enquiry and submitted his report to the Respondent Management. In his report, Enquiry Officer found the charges as proved and thereby has given a finding that Petitioner is guilty of the charges framed.

(iv) Based on the domestic enquiry report, Respondent Management has issued a dismissal order to the Petitioner and the legally entitled benefits has been credited into the Petitioner's Bank Account. The said amount has also been received by the Petitioner. The Respondent factory never acted against the interest, welfare of its workmen at any point of time. Hence, prayed for dismissal of the claim petition.

4. *Point for determination:*

Whether the Petitioner employee is entitled for an order of reinstatement with full back wages, continuity of service, other attendant benefits, bonus, salary increment, balance subsistence allowance to the petitioner as claimed in the claim petition?

5. *On Point:*

Petitioner himself examined as PW1 and Ex. P1 to P14 were marked. On Respondent side Mr. Krishnasamy, the General Manager of Respondent Company examined as RW1. Through him Ex. R1 to R13 were marked. On Petitioner side Ex. P15 marked though RW1 during cross-examination. Mr. Sengeni/co-employee examined as RW2 and Ex. P16 marked on the Petitioner side through RW2 during cross-examination.

6. *On the point:*

The present reference made in this industrial dispute is over reinstatement with salary dues. According to the Petitioner since 09-01-2004 he was employed with the Respondent as a permanent worker in the Respondent factory with his monthly salary as ₹ 18,000. In April 2015, he requested for salary hike. So, all of a sudden on 09-05-2015 he was transferred to Poothurai Unit of the Respondent company without serving any transfer order. Petitioner reported at Poothurai Unit of the Respondent and doing the work that was assigned to him to the satisfaction of the Respondent. The Petitioner repeatedly requested the Respondent to transfer back him to the Kalapet factory. Meanwhile in July 2015, ₹ 286 and in December 2015 ₹ 5,931 were deducted from his monthly wage without any proper reason. When he approached the Respondent he was informed that the said amounts will be credited in the January 2016 salary.

7. The learned Counsel appearing for the Petitioner would submit that on 20-01-2016, the Petitioner approached the Labour Department, Puducherry, for suitable direction to the management towards such illegal deduction. He also approached the Labour Officer (Conciliation) for transfer and other reliefs on 23-01-2016 *vide* EX. P1. The Petitioner also gave a written representation to the Managing Director of the Respondent Factory *vide* EX. P2 dated 27-01-2016. That being so, he was served with the charge memo *vide* EX. P4 dated 23-01-2016 in which it is mentioned that said charge memo has been issued based on the complaint EX. R2 dated 22-01-2016 given by the Factory manager, Kalapet. He replied *vide* EX. R4 on 30-01-2016. The second charge memo dated 06-02-2016 *vide* EX. P6 was served on the Petitioner on 11-02-2016 in which it is mentioned that said charge memo has been issued

based on the complaint EX. R5 dated 05-02-2016 given by the Factory Manager, Kalapet. Petitioner submitted his reply *vide* EX. P8. The Respondent Management did not turn up for the enquiry hearings before Labour Officer (Conciliation), Puducherry. But, they gave a representation dated 29-02-2016.

8. The learned Counsel for the Petitioner would argue that the Respondent issued Charge Sheet-cum-Suspension Order EX. P9 dated 01-03-2016. According to the Petitioner, no communication received by the Petitioner from the Respondent regarding the appointment of Domestic Enquiry Officer, but, an Advocate Notice dated 28-03-2016 received from the Enquiry Officer for the charge sheet dated 06-02-2016 and suspension order dated 01-03-2016. The place of enquiry fixed by an Enquiry Officer is far away from the Petitioner's place. Subsistence allowance also not paid in accordance with the provisions of law. He was not explained about the rights and opportunities, he had during the enquiry. Advocates were present on the Respondent Management side which was objected by the Petitioner, but, the same was not considered by the Enquiry Officer. The enquiry was not conducted in a fair and free manner. Despite the requests made by the Petitioner to conduct the enquiry in the local language, *i.e.*, in Tamil, it was not considered by the Enquiry Officer. The Enquiry Officer permitted the Respondent Management to file its list of witnesses, documents and witnesses statements in the absence of Petitioner and failed to give an opportunity to the Petitioner to peruse the same. Petitioner was forced to cross-examine the Respondent's witnesses without looking into the documents filed on the side of the Respondent Management. The Enquiry Office did not give sufficient opportunities to the Petitioner to adduce his side evidence and for production of his documents. Based on the biased and partial enquiry, the Enquiry Officer prepared his report dated 01-10-2016 EX. P12 in English and sent the same to the Petitioner. Termination order was issued to the Petitioner thereby terminating him from the services of the Respondent Management *vide* EX. P13 dated 05-10-2016. Therefore, the Learned Counsel for the Petitioner has concluded his arguments that the entire domestic enquiry proceedings were conducted in a biased, partial manner and against the Principles of Natural Justice. Therefore, he prayed to reinstate the Petitioner with salary dues as claimed in the claim petition.

9. On the other hand, the learned Respondent Counsel would submit in his reply that the domestic enquiry was conducted by the Enquiry Officer in a fair manner by giving fair opportunity to the Petitioner to put forth his defence. Only the Petitioner who had not

cooperated with the proceedings of the enquiry. He had also not come forward to cross examine the Respondent Management witnesses. Petitioner was the one who delayed the enquiry proceedings by not appearing before the Enquiry Officer for several hearings. Therefore, the contention of the Petitioner that the domestic enquiry was conducted against the Principles of Natural Justice has to be rejected at the threshold.

10. *Heard both. Perused the case records.*

On perusal of documents filed on either side, I could see that the domestic enquiry proceedings/minutes were not produced before this Court by either parties. Whereas, the Petitioner in his claim statement has raised specific plea that the enquiry was not held in an impartial manner. In his claim statement, he has also clearly pleaded that he raised same objections before the domestic Enquiry Officer but it was not considered by him. In fact, the said fact has been mentioned even by the Enquiry Officer in his report EX. P12 that, “on 09-07-2016 employee submitted letter raising objections regarding the manner in which domestic enquiry had been conducted”. The photocopy of said objection letter is also marked by the Petitioner as Ex. P15, dated 09-07-2016 through RW1, the management witness, who has also admitted the same in his cross-examination.

11. RW1 has deposed while he was cross examined by the Petitioner’s Counsel that, “09-07-2016-ல் மனுதாரர், உள்விசாரணை அதிகாரியிடம் ஒரு ஆட்சேபனை கடிதம் தாக்கல் செய்தார் என்றால் ஆமாம். அது தற்போது என்னிடம் காண்பிக்கப்படுவதுதான். அது Ex.P15-ஆவது தற்போது குறியீடு செய்யப்படுகிறது. Ex. P15-ல் உள்விசாரணையை சரியான முறையில் நடத்தவில்லை என்றும் உள்விசாரணையின்போது விசாரணை நடைமுறை இயற்கை நீதி கோட்பாடு விதிகள் பின்பற்றப்படவில்லை என்றும் சொல்லியுள்ளார் என்றால் ஆமாம் Ex. P15-மீது உள்விசாரணை அதிகாரி எந்தவித உத்தரவும் போடவில்லை என்று சொன்னால், அவர் முதலில் மனுதாரர் தர்ப்பு உள்விசாரணையில் ஆட்சேபணையை தாக்கல் செய்யுமாறு அறிவுறுத்தினார் என்று சாட்சி பதிலளிக்கிறார்.

12. When, the fairness of the Domestic enquiry was challenged in the specific terms by the Petitioner in his claim petition, it is the bounden duty of the Respondent to prove its Fairness before this Court. Whereas, the Respondent did not come forward to file the said Enquiry proceedings/minutes to prove the fairness and validity of the Domestic enquiry initiated by it as against the Petitioner. As mentioned earlier, the Domestic Enquiry Proceedings/Minutes are not before this court. The Management has not taken any steps to produce the same before this Court. RW1, the General Manager of Respondent Company has deposed that,

“16-04-2016-ல் உள்விசாரணையின் முதல் வாய்தா நடைபெற்றது. உள்விசாரணை தமிழில் தான் நடந்தது. உள்விசாரணையின்போது விசாரணை நடைமுறை இயற்கை கோட்பாடு விதிகள் பற்றி விளக்கினாரா என்றால் ஆம் விளக்கினார். உள்விசாரணை நாட்குறிப்பு நடவடிக்கைகளில் அவ்வாறு விளக்கியதாக உள்விசாரணை அதிகாரி குறிப்பிட்டுள்ளாரா என்றால், குறிப்பிட்டுள்ளார். உள்விசாரணை நாட்குறிப்பு நடவடிக்கைகள் அவ்வப்போது உள்விசாரணை அதிகாரி எங்களுக்கு தருவார்களா என்றால் இல்லை. உள்விசாரணை முடிந்தபிறகு, உள்விசாரணை நாட்குறிப்பு நடவடிக்கைகளை விசாரணை அதிகாரி எங்களுக்கு தரவில்லை. உள்விசாரணையின்போது விசாரணை நடைமுறை இயற்கை நீதி கோட்பாடு விதிகள் கடைப்பிடிக்கப்படவில்லை என்று சொன்னாலும் அதனால்தான் நாட்குறிப்பு நடவடிக்கைகள் எங்களுக்கு அவ்வப்போது உள்விசாரணை அதிகாரி தரவில்லை என்று சொன்னாலும் சரியல்ல. உள்விசாரணை அதிகாரி, மனுதாரரிடம் அவர் மேல் சுமத்தப்பட்டுள்ள குற்றச்சாட்டை, அவரிடமும், அவர் சார்பாக வாதாடிய பிரதிநிதியிடமும் தமிழில் விளக்கி கூறினார். மேற்படி அம்சம் நாட்குறிப்பில் கொண்டுவந்துள்ளார்களா என்று எனக்கு தெரியாது. அவ்வாறு அவர் மீது சுமத்தப்பட்ட குற்றச்சாட்டை மனுதாரரிடமும் விளக்கிக் கூறவில்லை என்று சொன்னாலும், அதனை நாட்குறிப்பில் குறிப்பிடவில்லை என்றாலும் அதனால்தான் அந்த நாட்குறிப்பு நடவடிக்கைகளை எங்கள் தரப்பில் தாக்கல் செய்யவில்லை என்றாலும் சரியல்ல”. Even thereafter *i.e.*, after this above cross-examination of RW1, the Respondent Management has not chosen to produce the Enquiry proceedings/minutes for reason best known to them.

13. Further, it has been clearly elucidated by the learned Petitioner Counsel by way of cross-examining the General Manager of Respondent Company RW1 that, no proof examination affidavit filed by the Management in the domestic enquiry, but, in the enquiry report EX. P12, Enquiry Officer had mentioned as if, proof affidavit filed by the Respondent management. He also admitted that it was wrongly mentioned in the report as proof affidavit filed on the side of the management and no such affidavit filed on their side. The relevant portion of RW1, the General Manager of Respondent company is extracted hereunder “எங்கள் நிறுவனம் சார்பாக வழக்குக்கு சம்மந்தமான ஆவணங்களை உள்விசாரணையில் தாக்கல் செய்தோம். மனுதாரர் தரப்பில் எங்களை குறுக்கு விசாரணை செய்தார். அதை தவிர வாக்குமூலம் எதுவும் நாங்கள் தாக்கல் செய்யவில்லை “Ex.P12-லில் விசாரணை அதிகாரி நிர்வாகதரப்பில் proof affidavit தாக்கல் செய்யப்பட்டதாக குறிப்பிட்டுள்ளார். ஆனால், நிர்வாகம் அவ்வாறு proof affidavit உள்விசாரணையில் தாக்கல் செய்யவில்லை. தாக்கல் செய்ததாக Ex.P12-ல் கண்டுள்ளது தவறு என்றால் அது தவறுதான்.”

14. On close and careful perusal of the Domestic Enquiry Report EX. P12, I could able to find that the Petitioner Mr. Sengenani was represented by Mr. P. R. Sathishkumar, Advocate. Management was

also represented by some Advocates. At the first hearing the Enquiry Officer adjourned the enquiry to 23-04-2016 for filing counter by the Petitioner employee, and thereafter, to 21-05-2016, 04-06-2016, 11-06-2016, 25-06-2016 and 02-07-2016, but, counter not filed by him. Instead, the Petitioner filed a letter raising objections on the enquiry conducted. In the objection letter Ex. P15, dated 09-07-2016 the Petitioner has mentioned that "குறிப்புகளை குற்றம் சாட்டப்பட்ட தொழிலாளியாகிய நான் அறிந்த தமிழ் மொழியில் பதிவு செய்ய வேண்டும் என்று தங்களிடம் கோரிக்கை வைத்தும், அதனை தாங்கள் ஏற்கவில்லை. நான் மற்றவரிடம் கேட்டு அறிந்த வகையில், விசாரணை குறிப்பின் பிரதியினை, விசாரணையில் பங்கேற்கும் குற்றம் சாட்டப்பட்ட எனக்கு வழங்க வேண்டும் என்பதையும் தாங்கள் கடைபிடிக்கவில்லை. மேலும், நிர்வாகத்தரப்பில் விசாரணையில் கூற்று அறிக்கை/ஆவணங்கள் பட்டியல்/சாட்சிகளின் பட்டியல் என்று இதுவரை எதுவும் தாக்கல் செய்யப்படவில்லை. ஆனால், நான் பதில் அறிக்கை தாக்கல் செய்யவேண்டும் என்று நிர்வாகத்துவருகிறீர்கள். நான் அறிந்த வகையில் உள்விசாரணையில் அவ்வாறான நடவடிக்கைகள் இல்லை என்று அறியப்பட்டுள்ளன. மேலும், விசாரணை நடவடிக்கைகளின் பிரதி எனக்கு வழங்கப்படவேண்டும் என்று அறியப்பட்டுள்ளன.

"எனக்கு அனைத்து விசாரணை நடவடிக்கைகளின் பிரதியையும் வழங்க கேட்டுக்கொள்கிறேன்".

15. From this document Ex. P15, dated 09-07-2016, it is understood that Petitioner had raised serious objection on the conduct of the enquiry before the Enquiry Officer and requested to Domestic Enquiry Officer to furnish the copy of domestic enquiry proceedings/minutes as early as on 09-07-2016. But, the minutes/proceedings of the domestic enquiry has not been served on the Petitioner. When this question was put to RW1 (General Manager of the Respondent company) by the Petitioner Counsel, he has categorically admitted that no Domestic Enquiry proceedings/minutes were served on them by the Domestic Enquiry Officer. For better appreciation, the relevant portion of RW1 cross-examination is reproduced hereunder:

"உள்விசாரணை நாட்குறிப்பு நடவடிக்கைகளை அவ்வப்போது உள்விசாரணை அதிகாரி எங்களுக்கு தருவார்களா என்றால் இல்லை. உள்விசாரணை முடிந்தபிறகு உள்விசாரணை நாட்குறிப்பு நடவடிக்கைகளை விசாரணை அதிகாரி எங்களுக்கு தரவில்லை".

16. Further, RW1 in his cross-examination deposed before this Court to the effect that the Management documents were submitted already to the Domestic Enquiry Officer and copies were already given to the Petitioner. Only after the filing the reply/counter from the Petitioner/employee, the domestic enquiry will be started. Relevant portion of RW1, the General Manager of Respondent Company's cross-examination is as follows:-

"உள்விசாரணையின் போது முதலில் நிர்வாகத்தைதான் விசாரிப்பார்கள் என்றாலும் அவ்வாறு எங்களை விசாரிக்காமல், மனுதாரரை ஆட்சேபனை தாக்கல் செய்ய அறிவுறுத்தியது இயற்கை நீதி கோட்பாடு விதிகளுக்கு முரணானது என்று சொன்னால் உள்விசாரணை அதிகாரியிடம் நிர்வாகம், எங்கள் தரப்பு ஆவணங்களை ஏற்கனவே சமர்ப்பித்துவிட்டோம். அதன் நகல்களை மனுதாரருக்கு கொடுத்துவிட்டோம். அதற்கு மனுதாரர் பதிலளித்த பின்னர்தான் உள்விசாரணை தொடரும் என்று சாட்சி பதிலளிக்கிறார்".

17. First of all, in Ex. P12 the enquiry report, there is no mention as the documents were submitted by the Management and copies were also served on the Petitioner, either at the time of starting the enquiry or even before that. In the report EX. P12, I could not find any such recordings as documents of the Management received and copies served on the Petitioner before he was insisted to file his counter. Whereas, it could be seen from the report EX. P12 that on the first hearing of the enquiry itself *i.e.*, on 16-04-2016, the Petitioner employee was asked to submit his counter in the next hearing on 23-04-2016. The relevant portion of EX. P12 is extracted hereunder for better appreciation:-

"I hereby have given notice to both parties. Both the parties received the notice. The enquiry commenced on 16-04-2016 both the parties appeared, Mr. B. Karunakaran, and R. Madurai Muthu, Advocates for Employer, and Mr. P. R. Sathish Kumar, Advocate appeared for Mr. S. Sengen, adjourned for counter on 23-04-2016, and 21-05-2016, adjourned to 04-06-2016 as last chance, but not counter filed".

18. Therefore, it is made clear that, there is absolutely no evidence on the Respondent side that the documents of the Respondent were submitted before the domestic enquiry proceedings before the Petitioner was asked to file his counter. No proof to show that the copies of the so called documents were served upon the Petitioner/employee. As already said, the enquiry proceedings/ minutes are not before this Court. The Management has not taken steps to produce the enquiry proceedings before this Court even after the cross-examination of RW1-General Manager of the Respondent company for the reason best known to them. This makes this Court, without any other option than to draw an adverse inference in this regard as against the Respondent. From the above discussions and findings, I hold that the Domestic Enquiry held in this case is invalid, unfair and the Principles of Natural Justice not followed.

19. *Whether the Charges framed as against the Petitioner were proved?*

No sufficient oral as well as documentary evidences produced either before this Court or before the enquiry officer by the Management to substantiate

the charges. The management has not produced any records such as attendance register or any other proof to substantiate the charge that petitioner employee was absent for the period either before Domestic Enquiry or before this Court. Further, from Ex. P12, the enquiry report, I could not find any substance to substantiate the charges framed against the petitioner employee. The domestic Enquiry Officer has simply observed that "Reason for findings of charges: In perusal of the above said charges the employer filed the documents to prove their case and the PW2 has also deposed the evidence substantiating the charges. On the cross-examination also both the PW1 and PW2 did not make any admissions against the charges. On the other hand, the delinquent employee did not file any counter denying the charges. The delinquent employee did not file any documents to disprove the charges levelled against him. Hence, I am inclined to accept that the charges has been proved by the employer as against the Delinquent employee". Furthermore, as already decided by this Court that the domestic enquiry was unfair, invalid and against the Principles of Natural Justice, this Court holds that in absence of evidences the charges framed as against the Petitioner have not made out.

20. *Is termination order is correct and on valid reasons?*

The learned Counsel appearing for the Petitioner employee has argued that the order, dated 01-10-2016 passed by the Enquiry Officer has sent directly by him to Petitioner, which was in English and was received by the Petitioner on 04-10-2015. The 2nd show cause notice as mandated under the model Standing Order was not issued to Petitioner to call for an explanation to the order of Enquiry Officer. However, the respondent terminated the Petitioner *vide* its order of termination, dated 05-10-2012. The respondent has failed to consider the past services of Petitioner with respondent and his conducts, but, has passed an extreme punishment of dismissal from services. The respondent has not complied with the provision of section 33(1) (b) of Industrial Disputes Act while dismissing the Petitioner while the dispute is pending before the Conciliation Officer, therefore, the Petitioner's dismissal is invalid under law. The Petitioner was victimized and punished by respondent only because he raised his objections when the respondent illegally deducted his monthly wages and in order to refrain the other workers in the respondent factory from raising any protest and questions against the Management.

21. It is an admitted fact that no 2nd show cause notice issued to the Petitioner, calling for his explanations on the findings of the Enquiry Officer.

Without issuing 2nd show cause notice and without receiving the version of the Petitioner, the respondent company had directly soon after receiving the report from the Enquiry Officer, had issued the termination order to the Petitioner.

Relevant portion of RW 1, the General Manager of Respondent Company's cross-examination is as follows:-

"உள்விசாரணை அறிக்கை கீடைக்கப்பெற்ற பிறகு, இரண்டாவது முறையாக எந்தவித show cause notice மனுதாரருக்கு அனுப்பியதாக நீனைவில்லை. உள்விசாரணை அறிக்கை கீடைக்கப்பெற்ற உடன் மனுதாரரிடம் show cause notice அனுப்பி அவருடைய விளக்கம் கேட்ட பிறகுதான் மேற்கொண்டு எந்தவித நடவடிக்கையும் எடுக்க முடியும் என்று சொன்னாலும், ஆனால் இந்த வழக்கில் அவ்வாறு எந்தவித அறிவிப்போ விளக்கமோ, மனுதாரரிடம் பெறாமல், நாங்கள் நேரடியாக அனுப்பிய Termination Order சட்டப்படி ஏற்றுக்கொள்ளத்தக்கதல்ல என்று சொன்னால் சரியல்ல".

22. EX. P13 is the copy of the termination order, dated 05-10-2016. From the said Termination order also, I could see that after the receipt of the Enquiry report, the management had straight away passed the Termination order EX. P13 without giving an opportunity to the Petitioner to explain his defence. The relevant portion from the termination Order, dated 05-10-2016 (Ex. P13) runs as follows:

"The Management referred the alleged allegations against you to the Independent Enquiry Officer Mr. S. Ganesh Gnanasambanthan. Yourself, your Advocate Mr. P.R. Satishkumar, and Mr. Dinesh Ponnaiha, General-Secretary, AITUC, Puducherry, have participated in the Enquiry before the Enquiry Officer. In the result, 01-10-2016 the Enquiry Officer confirmed the allegations and passed the orders on result of the enquiry. On perusal of the Enquiry Officer Order the Management herein decided to terminate you (Mr. S. Sengeni, S/o. Sadhasivam), from services effected on 05-10-2016. Therefore, I herein informed you, and on behalf of the management that your services have been terminated with immediate effect". Therefore, the termination order without giving opportunity for the petitioner employee to submit his version on the findings of the enquiry report is illegal and liable to be set aside.

23. In addition to that the case of the Petitioner employee is that he was employed since 09-01-2004 with the respondent as a permanent worker in respondent factory at Kalapet and his monthly salary is ₹ 18,000. During the employment with Respondent, Petitioner rendered his unblemished and flawless services to

respondent from the date of his joining the services. This has been proved by the Petitioner by putting a specific question to RW1, the General Manager of the Respondent Company, while cross-examination. The answer given by RW1 is extracted below for the better appreciation:-

Cross-examination of RW1 on 02-03-2022 at page 1:

"2004 முதல் 2015-ம் ஆண்டுவரை மனுதாரர் மீது எதிர்மனுதாரரால் ஒழுங்கு நடவடிக்கை எதுவும் எடுக்கப்படவில்லை என்றால் சரிதான்".

Cross-examination of RW1 on 15-06-2022 at page 4:

"மனுதாரர் இதற்கு முன்பு எந்தவித தண்டனை ஆணையோ, அறிவுறுத்தல் கடிதமோ பெறாதபோது, நேரடியாக இந்த குற்றத்திற்காக Termination Order கொடுத்தது அதிகபட்ச தண்டனை என்று சொன்னாலும் அது ரத்து செய்யப்பட வேண்டும் என்று சொன்னாலும் சரியல்ல. மனுதாரரை வேலையிலிருந்து நீக்க வேண்டும் என்ற உள்நோக்கத்தோடு, அவர் மீது வீண் பழி சுமத்தி அவசர கதியில் உள்விசாரணை நடத்தி சட்ட விதிகளுக்கு புறம்பாக அதிகபட்ச தண்டனை அளித்து, அவரை வேலையிலிருந்து வேண்டுமென்றே நீக்கினோம் என்று சொன்னால் சரியல்ல". Therefore, from all angles, the punishment of termination is not valid and without any supportive or justifiable reasons. Thus, the termination order is liable to be set aside.

24. To conclude, the domestic enquiry held in this case is decided as unfair and principles of Natural Justice has not been followed. Thus, it is declared as invalid. The charges framed against the Petitioner Employee is not proved. The termination order is liable to be set aside.

25. In the result, the Reference is decided as Justified and the industrial dispute is allowed. The Respondent management is directed to reinstate the Petitioner with full back wages, continuity of service, other attendant benefits, bonus and salary increment and other perks which the petitioner is legally entitled to as claimed in the claim petition. No costs.

Dictated to the Stenographer, directly typed by him, corrected and pronounced by me in open Court on this the 18th day of October, 2022.

V. SOFANA DEVI,
Presiding Officer,
Industrial Tribunal-cum
Labour Court,
Puducherry.

List of petitioner's witness:

PW.1 — 03-10-20192 Thiru Sengeni

List of petitioner's exhibits:

- Ex.P1 — 23-01-2016 Photocopy of the complaint given by the Petitioner before the Labour Officer (Conciliation), Puducherry.
- Ex.P2 — 27-01-2016 Photocopy of the letter given by the Petitioner to the Respondent.
- Ex.P3 — 06-02-2016 Photocopy of the reply letter given by the Respondent.
- Ex.P4 — 23-01-2016 Photocopy of the 1st charge Memo issued by the Respondent.
- Ex.P5 — 30-01-2016 Photocopy of the explanation letter given by the Petitioner to the Respondent.
- Ex.P6 — 06-02-2016 Photocopy of the 2nd charge memo issued by the Respondent.
- Ex.P7 — 12-02-2016 Photocopy of the letter given by the Petitioner to the Respondent.
- Ex.P8 — 02-03-2016 Photocopy of the explanation letter given by the Petitioner to the Respondent.
- Ex.P9 — 01-03-2016 Photocopy of the charge sheet-cum-suspension order.
- Ex.P10 — 28-03-2016 Photocopy of the Advocate Notice.
- Ex.P11 — 02-09-2016 Photocopy of the Advocate Notice.
- Ex.P12— 01-10-2016 Photocopy of the enquiry report.
- Ex.P13— 05-10-2016 Photocopy of the order of termination.
- Ex.P14— 21-09-2016 Photocopy of the letter given by the Petitioner to the Respondent.
- Ex.P15 — 09-07-2016 Photocopy of the objection filed by the petitioner employee before the domestic enquiry objecting the conduct of domestic enquiry.
- Ex.P16 — 02-01-2016 Photocopy of the complaint given by PW2 Mr. Datchinamurthy to the Manager, Respondent company.

List of petitioner's witnesses:

RW.1 — 14-12-2022 Krishnasamy

RW.2 — 28-06-2022 Datchinamurthy

List of respondent's exhibits:

- Ex.R1 — 15-10-2017 Authorization letter.
- Ex.R2 — 22-01-2016 Photocopy of Krishnasamy to the Management.
- Ex.R3 — 23-01-2016 Photocopy of the charge memo issued by the management to Sengeni.
- Ex.R4 — 30-01-2016 Photocopy of reply notice to the Management by Sengeni.
- Ex.R5 — 05-02-2016 Photocopy of the 2nd complaint of Krishnasamy to the Management.
- Ex.R6 — 06-02-2016 Photocopy of the 2nd charge memo issued by the Management to Sengeni.
- Ex.R7 — 01-03-2016 Photocopy of the charge sheet-cum-suspension order issued by the Management to Sengeni.
- Ex.R8 — Photocopy of the salary pay slips (from November 2015 to March 2016).
- Ex.R9 — Photocopy of the termination letter and compensation letter issued by the management to Sengeni.
- Ex.R10 — 15-10-2016 Photocopy of the acknowledgment card signed by Sengeni.
- Ex.R11 — 14-11-2016 Photocopy of the letter communicating the termination and payment of Settlement of Gratuity by M/s. Pondy Agro Advice letter issued by Pondy Agro Chemicals Private Limited.
- Ex.R12 — 18-11-2016 Acknowledgment card signed by Sengeni.
- Ex.R13 — Photocopy of the Statement of Axis Bank Respondent Account No. xxxxxxxxxxxx3579 stating that Petitioner Sengeni withdraw settlement and compensation amount sum of ₹ 89,362 through cheque No. 189883 on 31-10-2016.

V. SOFANA DEVI,
Presiding Officer (FAC),
Industrial Tribunal-cum-
Labour Court, Puducherry.

GOVERNMENT OF PUDUCHERRY
**DEPARTMENT OF PERSONNEL AND
ADMINISTRATIVE REFORMS (PERSONNEL WING)**

No. A.1911/1/2023/DP&AR/SS.I(1)

Puducherry, dated 20th January 2023

ORDER

Shri D. Manikandan, I.A.S., Secretary to Government, Puducherry, is designated as Nodal Officer for preparation of "Vision and Action Plan-2047" document, until further orders. He shall coordinate with the other Secretaries for finalisation of the document.

(By order)

V. JAISANKAR,
Under Secretary to Government.

GOVERNMENT OF PUDUCHERRY
**DEPARTMENT OF ANIMAL HUSBANDRY AND
ANIMAL WELFARE**

No. 4741/DAH&AW/Estt./A7/2023/82,

Puducherry, dated 27th January 2023.

NOTIFICATION

The Notice of voluntary retirement given under rule 43 of the Central Civil Services (Pension) Rules, 2021 by Tmt. S. Jenith Mary, Fieldman, Department of Animal Husbandry and Animal Welfare, Karaikal, is accepted.

2. Accordingly, she is admitted into voluntary retirement with effect from the afternoon of 13-02-2023.

(By order)

Dr. G. LATHA MANGESHKKAR,
Director (Animal Husbandry).

GOVERNMENT OF PUDUCHERRY
**DEPARTMENT OF PERSONNEL AND
ADMINISTRATIVE REFORMS (PERSONNEL WING)**

[G.O. Ms. No. 04/DP&AR/SS.II(1),

Puducherry, dated 31st January 2023]

NOTIFICATION

The Notice of voluntary retirement given under rule 48-A of Central Civil Services (Pension) Rules, 1972, by Tmt. M. Selvanayaguy, Superintendent, Department of Science, Technology and Environment, Puducherry, is accepted.

2. Accordingly, she stands retired from service with effect from the afternoon of 06-01-2023.

(By order)

V. JAISANKAR,
Under Secretary to Government
(Personnel).