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La Gazette de L' État de Poudouchéry

The Gazette of Puducherry

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GOVERNMENT OF PUDUCHERRY

LABOUR DEPARTMENT

(*G.O. Rt. No. 20/AIL/Lab./T/2023, dated 16th February 2023)*

NOTIFICATION

Whereas, an Award in I.D (L) No. 52/2017, dated 22-12-2022 of the Industrial Tribunal-*cum*-Labour Court, Puducherry, in respect of dispute between M/s. Adhi Sakthi Project Private Limited, Puducherry and Thiru P. Sudalaikathan, Puducherry, 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. 20/9/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.

Thursday, the 22nd day of December, 2022

I.D. (L) No. 52/2017
CNR. No. PYPY06-000082-2017

P. Sudalaikathan,
No. 22, Murugan Koil Street,
Keezhsathamangalam,
Korkadu Post, *Via* Villianur,
Puducherry. . . Petitioner

Versus

The Managing Director,
M/s. Adhi Sakthi Project Private Limited,
R.S. No. 40/9, (Near Wipro Computers),
Earikarai Road,
Thiruvandarkoil,
Kothapurinatham,
Puducherry. . . Respondent

This industrial dispute coming on 01-12-2022 before me for final hearing in the presence of Thiruvalargal R. T. Shankar, L.K. Saravanan, A. Ashokkumar, P. Suresh and B. Balamurugan, Counsel for Petitioner, Thiruvalargal R. Ilanchezhiyan and S. Geetha, Counsel for Respondent, and after hearing 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. 153/AIL/Lab./T/2017, dated 13-10-2017 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 Thiru P. Sudalaikathan, Villianur, Puducherry against the management of M/s. Adhi Sakthi Project Private Limited, Puducherry, over non-employment is justified or not? If justified, what relief the Petitioner is entitled to?

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

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

The Respondent Management is company incorporated under the provision of the Indian Companies Act, 1913 and started its concern in the year 2004. The Petitioner had been duly selected and appointed on 19-04-2012 as Welder. But, no orders towards his employment issued by the Respondent Management. He was doing his work without any leave or remarks for the period of more than 4 years since he joined.

(ii) The Petitioner had performed all works assigned to him more than 8 hours in a day without any safety, health, statutory leave or welfare, and also lesser wages.

(iii) The Respondent Management engaged the Petitioner to do the perennial nature of work in full-time for 8 hours in a day and all working days in a month in the Production Department as a Welder and doing the perennial nature works with other permanent workers thereby the Respondent Management extended the benefits of ESI and EPF to the Petitioner at par with permanent employees only from 19-04-2013 and the Petitioner is having requisite experience and qualification as well.

(iv) Petitioner has been working for a long period as a permanent worker in the Respondent Management after the Petitioner completing his probation period and he has worked more than 240 days of service in a year and the same was continued for more than 4 years without any interruption of service. Hence, the petitioner is deemed to be a permanent workman as per labour laws. However, the Respondent Management has not absorbed and regularized

the services of the Petitioner despite he placed his request. The Respondent Management did not ready to regularize the Petitioner and increase the wages.

(v) While being so on 29-06-2015 the Respondent Management had issued an alleged "Probation Order" to the Petitioner in which the Petitioner had been designated as "Probationer". Though, the Petitioner has been directly working at the Production Department as Welder and doing the perennial nature of works with other permanent workers, the Petitioner is having requisite experience and qualification and the Petitioner workman has been working for a long period since from 2012 with the Respondent Management. To the contrary, the Respondent Management has issued such an alleged Probation Order.

(vi) The Petitioner had been continued with the service more than 4 years with the Respondent Management for the same nature of work and similar number of hours like permanent employees therefore, the Petitioner are entitled for regularisation as per labour laws and therefore, the Petitioner had insisted the Respondent Management to absorb and confirm his employment and increase the wages. The Respondent Management on 15-03-2016 to the shock and surprise of the Petitioner, not permitted him to do his work and stopped him at the main gate with an ulterior motive, without issuing any termination order or statutory notice. Thereafter, the Respondent Management sent a letter, dated 15-03-2016 to the Petitioner and the same was received by the Petitioner on 19-03-2016.

(vii) The Respondent Management first orally terminated on 15-03-2016 and sent a letter, dated 15-03-2016 to the Petitioner by RPAD without following mandatory procedures and thrown him out without following the Labour Welfare laws. The said Act committed by the Respondent Management is a clear violation of section 25-F of the Industrial Disputes Act and against the Principles of Natural Justice.

(viii) The Respondent Management utilised the Petitioner/Employee like a slave for a long time and exploited his tender age and not consider his welfare and all other benefits which are enumerated in the labour laws. In order to escape from the clutches of law the Respondent Management denied/refused the employment to the Petitioner for their permanent status, the said act committed by the Respondent Management is absolutely illegal and against the law and therefore, the Respondent Management is liable to reinstate the petitioner with full back wages and continuity of service.

(ix) The Petitioner has not been gainfully employed in any establishment, his family are facing untold hardship without employment and earnings. Hence, the Petitioner prays to reinstate the petitioner with full back wages and continuity of service and other attendant benefits. Hence, the petition.

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

The Respondent Management denied all the averments made by the Petitioner in his claim statement. The petitioner's claims are absolutely false and not maintainable under law. The Petitioner was initially appointed as trainee and after completion of training period he has been appointed as probationer *w.e.f.* 01-12-2014. The petitioner was placed as probationer with a main object of observing him for the fitness for job and to access his abilities by measuring various parameters such as attitude in discharging his duties, attendance, obedience, general attitude and behaviour and so on. However, the Petitioner could not reach the Bench Mark, even though he was given sufficient time and tolerance by the Respondent Management. The Petitioner happened to be a non-performer and could not reach the Benchmark. Therefore, as per the terms of appointment his services were terminated by an order, dated 15-03-2016 and whatever amount payable to him was credited in his Bank account.

(ii) The Petitioner was working only as a probationer with clear terms and conditions as envisaged in his order of appointment and unless his services were confirmed he continued to be a probationer and he cannot claim the status of a permanent workmen. His services were terminated for the non-performance and as a probationer, the Petitioner can neither challenge his termination nor claim employment as a matter of right. Therefore, whatever allegations made by the Petitioner in his petition are absolutely false and the termination made by the Management is a valid termination. As far as the Respondent is concerned it does not have any ulterior motive or vested interest as contended by the Petitioner in terminating the services of the Petitioner. It is the prerogative right of the Respondent to foreclose the period of probation/terminate the service on the principle that once a probationer is always a probationer and he cannot claim employment as a matter of right. In view of the reasons stated above the Petitioner is not entitled for any reemployment, back wages or any other monetary benefits whatsoever. Hence, prayed for dismissal of the claim petition.

4. Point for determination:

Whether the Petitioner is entitled for an order of reinstatement, back wages, continuity of service and other attendant benefits as claimed in the claim petition?

5. On Point:

Petitioner himself examined as PW1 and Ex. Pl to P8 were marked. On Respondent side Thiru Sasikumar, General Manager, Manufacturing of Respondent Company examined as RW1. Through him Ex. Rl to R5 were marked. Written arguments filed on the Respondent Management side.

6. On the point:

Industrial dispute raised by the Petitioner herein against the Respondent Management challenging an order, dated 15-03-2016 (Ex. P3/Ex. R3) whereby, his services have been terminated by discontinuance of his contract (Ex. Pl/ Ex. Rl) on the ground of unsatisfactory performance up to the level required during probation period as Welder in the Respondent Company. The Reference has been made by the Government of Puducherry, over his non-employment.

7. According to the Petitioner, he was appointed on 19-04-2012 as Welder and worked for four years in the Respondent Management, which was perennial in nature and having 8 hours work per day. ESI and EPF were assigned to the claim Petitioner and deductions were made from the salary towards ESI and EPF from 19-04-2013. On 29-06-2015 the Respondent Management issued Probation Order in which the Petitioner has been designated as Probationer. On 15-03-2016 the Respondent Management has not permitted the Petitioner to do his work and stopped him at the main gate without issuing any termination order or statutory notice. A letter of the Respondent Management, dated 15-03-2016 was received by the Petitioner. The impugned action of termination is *mala fide* and a result of the personal vendetta of the Management on account of the fact that Petitioner insisted for wage revision and regularisation of his services in the Respondent Company. Thus, the act of the Respondent Management is a clear violation of 25-F of the Industrial Disputes Act. No Principles of Natural Justice and statutory provisions followed by the Respondent Management. Hence, the claim for reinstatement with full back wages, continuity of services and all other attendant benefits filed by the claim Petitioner.

8. On the other hand, it is contended on the side of the Respondent Management that the Petitioner was initially appointed as trainee and after completion of training period he was appointed as probationer *w.e.f.* 01-12-2014. The Petitioner was working only as a probationer and unless his services were confirmed in writing he should be construed to be considered as a probationer only. It is well settled that *"In the absence of any deeming clause or term in the contract of for automatic confirmation on expiry of probation or extended period of probation, the services of the employee would continue on probation till he is confirmed in his employment"*. Jaya Raina *vs.* Gujarat Livelihood Promotion Company Limited & Anr. (Gujarat HC 2015 LLR 193 & 194). The Petitioner could not reach the Benchmark even though he was given sufficient time. Therefore, as per the terms of the appointment his services were terminated by Ex. P3/R3.

9. Further, it is contended on the Respondent Management side that the Termination Order Ex. R3 dated 15-03-2016 tendered to the Petitioner but, he was refused to receive the same. It is well settled that *"Probationer has no right on the job and his termination as per contract of employment will not be stigmatic and as such he will not be entitled to get any relief by challenging termination of probationary services"*. Continental Construction Limited *vs.* Workmen of Continental Construction Limited (Karnataka HC 2013 LLJ 612). Further, he also relied on the case decide by the Hon'ble Jharkhand High Court in 2010 LLR 40. Wherein, it is held that, *"A probationer does not acquire any right to hold or continue to hold such a post during the period of probation, hence, probationary services can be terminated either during or after the completion or the extended period of probation"*. Services of a probationer can be terminated or dispensed with during or at the end of probation period without assigning any reason.

10. Further, it is contended in the counter filed by the Respondent Management that the allegations of bias and *mala fides* levelled by the Petitioner against the Respondent Institution are completely baseless. Termination of the service of the Petitioner is an outcome of the non-performance and as a probationer the Petitioner can neither challenge his termination nor claim employment as a matter of right.

11. Heard. Perused the records. The Probation Order Ex. Pl/Ex. Rl was issued on 29-06-2015 and same was received by the Petitioner on 06-07-2015. There is no documentary evidence to show that this Probation Order was objected by the claim Petitioner at the time of its issuance. Thus, the Order deemed to be accepted without any objection. Therefore, now, he cannot challenge the Probation Order nor he challenged the same in this reference. In the said Probation Order, it is mentioned that unless confirmed in writing the Petitioner will be deemed as Probationer after the expiry of the initial or extended period of Probation. The services are liable to be terminated without any notice or wages *in lieu* thereof during the initial or extended period of probation. Furthermore, in the same probation order Ex. Pl/Rl, it is clearly mentioned that the initial period of training will not be counted for service or any other benefits whatsoever and the said appointment as probationer is subject to the Petitioner's acceptance to the general terms and condition of service as enumerated in the enclosed Annexure. Therefore, Ex. Pl/Rl, the Probation order, dated 29-06-2015 which was accepted by the Petitioner without any protest. The letter was never challenged in any Court of law prior to the order of

termination impugned herein and only because his services have been terminated, Petitioner is laying a challenge to its validity, as an after-thought.

12. There can be no manner of doubt that the employer is entitled to engage the services of a person on probation. During the period of probation, the suitability of the recruit / appointee has to be seen. If, his services are not satisfactory which means that he is not suitable for the job, then the employer has a right to terminate the services as a reason thereof. In absence of rules, if, the contract of employment, has fixed or particular period of probation and on expiry of the probation period the employee still continuous in services then the implications are that he or she continuous as a probationer. A Probationer continuing past the probation period will not automatically become a permanent employee and the employer has rights to extend the probation period till it is satisfied the probationer is fit for confirmation. Thus, a probationer will be a probationer until he or she is confirmed by the employer.

13. In the claim petition, the Petitioner has urged that as an act of victimisation, he has been terminated all of a sudden without any written Termination Order or statutory notice. On perusal of the case records and the evidences adduced before this Court, the claim Petitioner failed to showcause the fact that the Respondent Management wantedly has terminated and it was an act of victimization. Further, it is contended that a memo, dated 12-03-2016 (Ex. R2) issued to the claim Petitioner regarding the habit of the Petitioner going on in unauthorised leave for several days without any intimation or permission. Further, it is mentioned in it the leave details that the Petitioner had taken leave on Loss of Pay for the past nine months. In the same Ex. R2 number of days leave on Loss of Pay taken by the Petitioner on month wise from April to December has been mentioned. He has taken 30 days leave for nine months without permission and treated as leave on Loss of Pay. The said memorandum Ex. R2 was signed and received by the Petitioner. The learned Counsel for the Respondent Management referred the relevant endorsement made on Ex. R4 the Termination Order wherein, it is found an endorsement to the effect that petitioner herein has refused to receive the copy of the termination order when it was tendered to him in person. Hence, it was duly sent through post. Further, a letter from the Respondent Management addressed to the claim Petitioner, dated 24-05-2016 wherein, it is stated that the petitioner to approach the Respondent Office and to repay the loan due to be paid by the petitioner herein to the Respondent Management and it is found that the loan due of ₹ 28,022 which the petitioner is liable to repay to the Respondent Management after deducting the amount payable to the Petitioner towards full and final settlement from the Respondent Management. The reply of the Respondent Management on Industrial Disputes raised by the Petitioner before the Labour Officer (Conciliation) has been marked as Ex. R5. In the reply, the Respondent Management has stated that they are not satisfied with the claim Petitioner's work during his probationary period so they terminated him from his services. Further, it is mentioned in Ex. R5 that since his employment was on probationary bases he is not entitled to demand for any reemployment or for continuation of employment as a matter of right.

14. The Respondent Management by way of exhibiting document such as Ex. R2 as clearly made out that he was used to be absent from his service without any prior intimation or permission from the Respondent Management for several days and also went on several days leave on Loss of Pay. As a probationer the claim Petitioner has no lien over on the job, his service can be terminating as the discretion of the employer. The deductions towards EPF and ESI from the Petitioner salary has no impact on the claim of the Petitioner as every employee though he is a casual/contract/daily rated/probationer has to be given the benefits under the said Schemes. Hence, deductions towards ESI and EPF from the salary of the claim petitioner alone cannot create any special right to hold the posts as permanent post. Continuous working of 240 days in a year also does not create any right to hold the posts/services as the probationer. On the whole, being a probationer, I find no semblance of right for the claim Petitioner to make this claim against the Respondent Management.

15. The learned Counsel for the Respondent Management argued that the Petitioner was terminated from his probationary service, since his efforts did not reach the expectation of the employer, even after given a chance by extended his probation for one more year to improve his work. It is for the employer to assess whether a probationer can be continued or not and the performance of the probationer is not up to the satisfaction of the employer, then the employer can terminate the services of a probationer, for unsatisfactory work. It is well settled that *"An employer can terminate the services of a probationer for unsatisfactory work"* Municipal Committee, Sirsa *vs.* Munishi Ram SCC (2) 2005 382. It is well settled that *"unsatisfactory performance of the probationer, cannot be ipso facto termed as "stigmatic" or "punitive" in nature. During the probation period, an employee has to be extra careful and diligent while discharging his assigned duties, so, that he can successfully complete his probation period*

to get confirmation against the post he has been selected for. Before the probationer is confirmed, the authority concerned is under an obligation to consider whether the work of the probationer is satisfactory or whether he is suitable for the post. If, during the period of probation, the performance of a probationer is not found satisfactory or suitable for a particular job, as per the assessment of the employer, he may be terminated from the service". Suresh Chand Jain *vs.* Director General & Anr. (2015 Delhi HC) and it is well settled that *"Termination of a probationer on account of unsatisfactory performance can never be treated as penal"* Paramjit Singh *vs.* Director Public Instructions and Ors. (2011 SS LLR 116) *"Even if, an order of termination of a probationer refers to unsatisfactory service of the person concerned, the same cannot be said to be stigmatic",* Chaitanya Prakash & Anr. *vs.* H. Omkarappa (2010 SCC LLR 225).

16. It is very well settled proposition that if, the termination is only due to unsatisfactory performance then the question of abiding by the principles of natural justice would not arise. The order of termination is not stigmatic rather it is termination simplicitor on the basis of unsatisfactory performance of the Petitioner. Though EX. R2 was exhibited on the respondent side to show that petitioner was not diligent and went on leave on loss of pay for several days without prior intimation or permission from the respondent company, this will not make his termination to be treated as punitive in nature or stigmatic, because the termination is not so worded to be stigmatic.

17. In Champaklal Chimanlal Shah *vs.* Union of India AIR 1964 SC 1854 wherein, after holding a preliminary enquiry, the employee was discharged. It was argued that since a fact finding enquiry was conducted with an intention to hold a departmental enquiry if, a *prima facie* case is found out, and, therefore, the termination order passed after completion of preliminary enquiry, would render it punitive. Rejecting this contention, Court held that once a preliminary enquiry is over, it is open to the employer not to proceed with the regular enquiry to prove guilt of the employee and instead to pass a simplicitor order of termination. Employer can stop at any stage. The preliminary enquiry, therefore, at the best can be a motive but, not a foundation so as to render the order punitive.

18. In A.G. Benjamin *vs.* Union of India 1967 (1) LLJ 718 (SC), the charge-sheet was issued, explanation was received and Enquiry Officer was appointed but, before completion of enquiry, the proceedings were dropped and the incumbent was terminated. Court held that the order is not punitive.

19. In the instant case, Ex. R2 issued to the Petitioner for not attending the work for several days which were treated as loss of pay. Though they were issued to the Petitioner, the Respondent did not proceed further on the Complaint. Instead the Respondent Management has issued a simplicitor order of termination of Probation, on account of unsatisfactory performance. There is no illegality in the action of Respondent Institution in terminating the Petitioner on account of unsatisfactory probation and no show cause notice was required, in law. It is a termination simplicitor and not by way of punishment pursuant to a disciplinary action requiring a Disciplinary Enquiry. The order is not punitive or stigmatic. As per the terms and conditions of the probation order Ex. Pl/Rl that the services of the Petitioner's probation are liable to be terminated without any notice or wages *in lieu* thereof during the initial or extended period of probation, the probation was terminated during the period of probation and the Respondent Management has given a one month's salary to the Petitioner. This could be seen from of Ex. R4.

20. Next point urges on the side of the Petitioner is that there was necessity of complying with section 25-F of Industrial Disputes Act since the Petitioner has completed 240 days of employment. For which it is necessary to reproduce the relevant provisions hereunder for better understanding:-

"Section 2 (oo) of Industrial Disputes Act- "retrenchment" means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include.

(bb) Termination of the service of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein."

21. As per Sec 2(oo) (bb) of the Industrial Disputes Act the termination of the service of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein. The said section squarely applicable to this present situation. In this case in hand the Termination of the service of the workman as a result of discontinuance of the probationary contract of employment between the Respondent herein and the Petitioner due to the unsatisfactory work, for the conditions as stipulated in the contract would come within the purview of section

2(oo) (bb) of the Industrial Disputes Act, Further, in the case law reported in CDJ 1992 SC 118, it is upheld that Constitution of India, Article 16-Regularisation of services *ad hoc* appointment on a consolidated compensation on contract basis for a limited period. By expiry of contractual period, the right to remain in post comes to an end-services of respondent being continued from time to time on '*ad hoc*' basis for more than a year, does not entitle him to regularisation.

22. From the above discussions and findings, I hold that the Termination order Ex. P3/R3 is termination simplicitor and not punitive nor stigmatic. The appointment of the Petitioner in the Respondent Management was under probation based on the probation order Ex. Pl/Rl, the Termination Order Ex. P3/R3 issued to the Petitioner on account of unsatisfactory performance needs no show cause notice or enquiry before its issuance. Since this case comes under the purview of sec 2(oo)(bb) of the Industrial Disputes Act, Petitioner cannot ask for relief under Sec 25(F) of the Act. Thus, the point for determination is decided accordingly to the effect that Petitioner is not entitled for any reliefs as claimed in his claim petition.

23. In this result, the Reference is decided as unjustified and the industrial dispute is dismissed. No costs.

Dictated to the Stenographer, directly typed by him, corrected and pronounced by me in open Court on this the 22nd day of December, 2022.

V. Sofana Devi,
Presiding Officer,
Industrial Tribunal-*cum*
Labour Court,
Puducherry.

List of petitioner's witness:

PW.1 —14-09-2021 Thiru Sudalaikanthan
Claim Petitioner.

List of petitioner's exhibits:

Ex.P1 — 29-06-2015 Probation Order with terms and conditions issued by the Respondent Management to the Petitioner.

Ex.P2 — 15-03-2016 Photocopy of the letter of the Petitioner addressed to the Manager of the Respondent Management.

Ex.P3 — 15-03-2016 Photocopy of the Termination Order issued by the Respondent Management to the Petitioner.

Ex.P4 — 16-03-2016 Photocopy of the letter of the Petitioner addressed to Manager of the Respondent Management.

Ex.P5 — 31-03-2016 Photocopy of the letter sent by the Petitioner to the Respondent Management with postal receipt.

Ex.P6 — 05-05-2016 Photocopy of the petition under section 2A of Industrial Disputes Act filed by the Petitioner before the Labour Officer (Conciliation), Government of Puducherry.

Ex.P7 — 22-12-2016 Photocopy of the reply of the Petitioner on the Respondent's reply before the Labour Officer (Conciliation), Government of Puducherry.

Ex.P8 — 14-09-2017 Photocopy of the Conciliation Failure Report.

List of Respondent's witness:

RW.1 — 07-07-2022 Thiru Sasikumar, General Manager-Manufacturing Respondent Management.

List of Respondent's exhibits:

EX.RI — 29-06-2015 Photocopy of the Probation Order issued to the Petitioner by the Respondent Management.

Ex.R2 — 12-03-2016 Photocopy of the Memorandum issued to the Petitioner by the Respondent Management.

Ex.R3 — 15-03-2016 Photocopy of the Termination Order issued to the Petitioner by the Respondent Management.

Ex.R4 — 24-05-2016 Photocopy of the letter sent by the Respondent to the Petitioner intimating him about the loan amount due to be repaid by the the Petitioner to the Respondent Company.

Ex.R5 — 09-04-2016 Photocopy of the reply filed by the Respondent Management to the Labour Officer (Conciliation), Government of Puducherry.

V. Sofana Devi,
Presiding Officer,
Industrial Tribunal-*cum*-
Labour Court, Puducherry.