



W.P.No.1538 of 2004

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

|                      |                   |
|----------------------|-------------------|
| <b>Reserved on</b>   | <b>27.06.2022</b> |
| <b>Pronounced on</b> | <b>14.07.2022</b> |

**Coram**

**The Honourable Mr.Justice J.SATHYA NARAYANA PRASAD**

**W.P.No.1538 of 2004  
and W.P.M.P.No.1643 of 2004**

Tamilnadu Fisheries Development Corporation,  
Rep. by its Managing Director,  
67, Greams Road, Chennai.

...Petitioner

**Versus**

1.The Presiding Officer,  
Principal Labour Court,  
Madras.

2.V.Alamelu (deceased)

3.Meena

4.Rajeswari

5.Kumaran

(R3 to R5 were impleaded vide order dated 01.03.2022 made in  
W.M.P.No.3320 of 2022)

...Respondents



W.P.No.1538 of 20...

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of certiorari calling for the records of the order of the first respondent in I.D.No.671/92 dated 19.06.2001 and quash the same.

For Petitioner : Ms.Thenmozhi Shivaperumal  
For Respondent – 1 : Court  
For Respondent – 2 : Dismissed  
vide order dated 18.06.2007  
For Respondents – 3 to 5 : Mr.M.Abdul Majeed

### **ORDER**

The relief sought by the petitioner in this writ petition is to call for the records of the order passed by the first respondent in I.D.No.671 of 1992 dated 19.06.2001.

2. The case of the petitioner corporation is that on 07.09.1982, they appointed the second respondent as a daily wage cook on temporary basis to fry and market fish at Sathanoor Dam Establishment. Thereafter, the direct activity of the fried fish at Sathanoor Dam was not continued. So, the petitioner corporation terminated the second respondent from work on



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15.09.1990, aggrieved over which, the second respondent had filed an Industrial Dispute in I.D.No.671 of 1992 before III Additional Labour Court, Madras. After the abolition of III Additional Labour Court, Madras, the said I.D.No.671 of 1992 was dealt with by the first respondent Court (Principal Labour Court, Madras). On 31.12.1992, the said I.D.No.671 of 1992 was dismissed for default. Subsequent to the dismissal of I.D.No.671 of 1992, the second respondent has filed two Interlocutory Applications in I.A.Nos.624 & 625 of 1994 before the first respondent Court, for the following reliefs:

- (i) I.A.No.624 of 1994 – for condoning the delay of 73 days in filing the I.A.No.635 of 1993.
- (ii) I.A.No.625 of 1994 – for setting aside the order dated 31.12.1992 and restore I.D.No.671 of 1992 on file

3. The aforesaid Interlocutory Applications were allowed on 07.08.1996. Thereafter, when I.D.No.671 of 1992 was taken up for enquiry of 30.05.2001, the petitioner was called absent and set *ex-parte*. The first respondent Court vide its award dated 19.06.2001, directed the petitioner to reinstate the second respondent into service with backwages and other



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attendant benefits. The Labour and Employment Department, Secretariat, Chennai vide its Letter No.32066/A1/2001, informing the petitioner corporation about the said *ex-parte* award. As against the said *ex-parte* award, the petitioner corporation has filed two Interlocutory Applications in I.A.Nos.101 & 102 of 2002 before the first respondent Court, for the following reliefs:

(i) I.A.No.101 of 2002 – for condoning the delay of 127 days in seeking to set aside the *ex-parte* award dated 19.06.2001 passed in I.D.No.671 of 1992.

(ii) I.A.No.102 of 2002 – for setting aside the *ex-parte* award dated 19.06.2001 passed in I.D.No.671 of 1992 and restore I.D.No.671 of 1992 on file

However, the above I.A.Nos.101 & 102 of 2002 were came to be dismissed on 13.10.2003. Hence, challenging the *ex-parte* award dated 19.06.2001, passed by the first respondent Court in I.D.No.671 of 1992, petitioner corporation has filed the present writ petition before this Court.

4. The learned counsel for the petitioner corporation submitted that the petitioner corporation had filed its counter affidavit in I.D.No.671 of



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1992 as well as in I.A.Nos.624 & 625 of 1994 but the same were taken into consideration by the first respondent Court. Further, in the impugned order, the first respondent Court has erroneously held that the petitioner corporation has not filed the counter statement. The petitioner corporation was not given a chance to explain its case.

4.1. The learned counsel further submitted that the second respondent was appointed as a cook purely on temporary basis and there was no order to permanent her appointment. The persons who were appointed as a daily wager on temporary basis would be ousted, as and when their services were not found necessary. The petitioner corporation has terminated the second respondent from work only for the valid reason that the direct activity of fried fish at Sathanoor Dam was not continued. She further submitted that subsequent to the termination of the second respondent from the petitioner corporation, the second respondent and 10 other similarly placed persons had filed a batch of claim petitions before the first respondent Court, claiming computation of certain monetary benefits from the petitioner corporation and the same were came to be dismissed.



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4.2. The learned counsel also submitted that when this writ petition was admitted, interim stay was granted in favour of the petitioner corporation on condition that the petitioner corporation shall deposit entire backwages within a period of 12 weeks from the date of receipt of a copy of that order and also, comply with 17-B provisions. Further, on 18.06.2007, this writ petition was dismissed as against the second respondent and later, the same was dismissed as against the first respondent on 15.09.2010. Therefore, the petitioner corporation has filed a petition for restoring this writ petition on file and the same was allowed on 20.02.2014.

5. The learned counsel appearing for the respondents 3 to 5 contended that the second respondent is no more and therefore, her two daughters and son were impleaded as petitioners 3 to 5 herein. In the counter affidavit filed by the fourth respondent, particularly, in paragraph no.3, it is clearly stated that the second respondent was paid wages at the rate of Rs.12/- per day and she was paid a maximum monthly salary of Rs.372/-. It is further stated that the second respondent had worked for almost all the 365 days in a year and she did not avail any weekly rest or holiday including National Holidays because any absence would amounts to



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reduction in her monthly salary. Aggrieved over the said working conditions and the denial of job permanency, fair wages and other facilities including leave, the second respondent and 10 other similarly placed contingency fishermen and mazdoors had filed a batch of claim petitions before the first respondent Court, Chennai. During the pendency of the said claim petitions, the petitioner corporation has terminated the second respondent and one Mr.Palanimuthu from their service on 15.09.1990, without assigning any reasons. Aggrieved over the termination, the second respondent as well as the said Palanimuthu had filed separate Industrial Disputes in I.D.No.671 of 1992 and I.D.No.672 of 1992 before the first respondent Court.

5.1. The aforesaid batch of claim petitions filed by the second respondent and 10 others were came to be dismissed on 03.05.1995. After the dismissal of aforesaid claim petitions, excluding the second respondent and one Mr.Palanimuthu who were already got terminated, all other 9 persons were retrenched from their services. Challenging the retrenchment order, those 9 petitioners had filed separate writ petition before this Court in W.P.Nos.8526 to 8534 of 1995. The said writ petitions were disposed of on 11.02.1998 for the reason that nothing survives in those petitions since the



petitioners therein were reinstated with respective time scale of pay with effect from 29.11.1997, without backwages but with notional increments from their respective date of retrenchment.

5.2. Thereafter, on 19.06.2001, the first respondent Court passed an award in I.D.No.671 of 1992, by directing the petitioner corporation to reinstate the second respondent into service with backwages and other attendant benefits. The publication of the said award was effected on 24.08.2001 by the Labour and Employment Department. But in the case of Palanimuthu, the first respondent Court vide its award dated 30.08.2013, directed the petitioner corporation to pay a sum of Rs.40,000/- to him as compensation in lieu of reinstatement in service within 8 weeks from the date of receipt of a copy of that order.

5.3. The learned counsel further contended that the petitioner corporation has no interest to proceed with I.D.No.671 of 1992 and it has filed I.A.Nos.101 & 102 of 2002 only with an intention to drag on the proceedings. Therefore, the first respondent Court has rightly dismissed the aforesaid Interlocutory Applications filed by the petitioner corporation. It is



also to be noted that the petitioner corporation has not yet challenged the dismissal order passed by the first respondent Court in I.A.Nos.101 & 102 of 2002.

5.4. In support of his contentions, he has relied on the following decisions of the Hon'ble Supreme Court:

(i) In the case of ***Uttar Pradesh State Sugar Corporation Limited vs. Kausahal Kumar Sinha*** reported in ***MANU/SC/0505/2017***, the Hon'ble Supreme Court held as follows:

*“6. We have given our thoughtful consideration to the rival submissions made by the parties. We are of the considered opinion that as the respondent had worked for a period of only one year and two months and that too as an Apprentice, even though not under the Apprenticeship Act, 1961. He cannot be given reinstatement and that too on the wages of a regular Typist.*

*7. In the interest of justice, as held by this Court in the aforesaid two decisions, we feel it fit and proper to direct the Appellant-Corporation to give some compensation which we quantify at Rs.2.5 lakhs to be paid to the Respondent-workman within a period of one month.”*



(ii) In the case of ***Senior Superintendent Telegraph (Traffic)***

***Bhopal vs. Santosh Kumar Seal and Ors.*** reported in

***MANU/SC/0292/2010***, the Hon'ble Apex Court has observed as hereunder:

*“8. In view of the aforesaid legal position and the fact that the workmen were engaged as daily wagers about 25 years back and they worked hardly for 2 or 3 years, relief of reinstatement and back wages to them cannot be said to be justified and instead monetary compensation would subserve the ends of justice. In our considered view, the compensation of Rs.40,000/- to each of the workmen (respondent Nos.1 to 14) shall meet the ends of justice. We order accordingly. Such payment shall be made within six weeks from today failing which the same shall carry interest at the rate of 9 per cent per annum.”*

6. Heard the learned counsel for the petitioner corporation as well as the learned counsel appearing for the respondents 3 to 5 and perused the materials placed before this Court.

7. It is an admitted fact that the second respondent was appointed as a cook in the petitioner corporation on temporary basis in the year 1982. Her job was to fry and market fish at Sathanoor Dam, for which, she was paid Rs.12/- per day and her maximum monthly salary was Rs.372/-. She



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had worked in the petitioner corporation for a period of 8 years i.e., from 07.09.1982 (date of appointment) to 15.09.1990 (date of termination). She was terminated from service on 15.09.1990. Therefore, the aggrieved second respondent has filed I.D.No.671 of 1992 before the first respondent Court. After considering the said I.D.No.671 of 1992, the first respondent Court vide its award dated 19.06.2001, directed the petitioner corporation to reinstate the second respondent into service with backwages and other attendant benefits.

8. Since the aforesaid award is an *ex-parte* award, the matter has to be remanded back to the first respondent Court for fresh consideration. But, in this case, it cannot be done because the second respondent has passed away on 30.06.2015. Hence, there is no question of reinstatement.

9. From a perusal of the materials, it is crystal clear that one Mr.Palanimuthu, a person who was terminated along with the second respondent has raised an Industrial Dispute in I.D.No.672 of 1992 before the first respondent Court, seeking for reinstatement, continuity of service with full back wages and all other attendant benefits. The first respondent



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Court vide its award dated 30.08.2013, partly allowed I.D.No.672 of 1992, by directing the petitioner corporation to pay him a sum of Rs.40,000/- as compensation in lieu of reinstatement into service. Moreover, a batch of claim petitions which were filed by 9 other similarly placed persons were dismissed as unsustainable in law by the first respondent Court. Subsequent to the dismissal of aforesaid batch of claim petitions, those 9 persons were retrenched from their services. Later, the petitioner corporation has reinstated those persons into service with respective time scale of pay with effect from 29.11.1997, without backwages but with notional increments from their respective date of retrenchment.

10. Though the petitioner corporation had retrenched the aforesaid 9 persons from their service, afterwards, it reinstated them into service. Similarly, the petitioner corporation ought to have reinstated the second respondent and said Palanimuthu into service but it failed to do so. This Court could not understand why such kind of discrimination attitude was adopted by the petitioner corporation.



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11. In the case of ***Senior Superintendent Telegraph (Traffic) Bhopal vs. Santosh Kumar Seal and Ors.*** reported in ***MANU/SC/0292/2010***, the Hon'ble Supreme Court has awarded a sum of Rs.40,000/- as compensation to each of the workmen (respondents 1 to 14 therein) who worked as daily wagers for a period of 2 to 3 years. But, in the case on hand, the second respondent worked in the petitioner corporation for a period of 8 years, however, now, she cannot be reinstated into service since she has passed away. Therefore, it is appropriate and justified, if a monetary compensation is awarded to the legal representatives of the deceased second respondent to meet the ends of justice.

12. Considering the fact that the first respondent Court has directed the petitioner corporation to pay a sum of Rs.40,000/- as compensation to said Palanimuthu, instead of, reinstating him into service with backwages and in the light of the ratio laid down by the Honourable Apex Court in the case of ***Senior Superintendent Telegraph (Traffic) Bhopal vs. Santosh Kumar Seal and Ors.*** reported in ***MANU/SC/0292/2010***, this Court directs the petitioner corporation to pay a sum of Rs.1,00,000/- as compensation to each of the legal representatives of the deceased second respondent



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(respondents 3 to 5), excluding the backwages which was already deposited by the petitioner corporation as per the direction issued by this Court in interim order dated 03.02.2004 passed in W.P.M.P.No.1643 of 2002, within a period of six weeks from the date of receipt of a copy of this order, failing which, the petitioner corporation shall pay the aforesaid compensation amount along with 9% interest, to each of the legal representatives of the deceased second respondent (respondents 3 to 5). Consequently, the award passed by the first respondent Court in I.D.No.671 of 1992 dated 19.06.2001 is hereby quashed.

13. With the above directions, this writ petition is disposed of. No costs. Consequently, connected Miscellaneous Petition is closed.

**14.07.2022**

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Index : Yes

Speaking Order (or) Non-Speaking Order



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To

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The Presiding Officer,  
Principal Labour Court,  
Madras.



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**J.SATHYA NARAYANA PRASAD, J.**

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