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W.P.Nos.5038 of 2022 and 25448 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders reserved on : 16.02.2026

Orders pronounced on : **05.03.2026**

CORAM :

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

W.P.Nos.5038 of 2022 and 25448 of 2021
and W.M.P.Nos.26885 of 2021 and 5299 of 2022

In W.P.No.5038 of 2022:-

S.Maragatham @ Madubala

.. Petitioner

Versus

1. Appellate Authority/The Special Joint
Commissioner of Labour,
DMS Complex, 4th Floor,
Teynampet, Chennai – 600 006.
2. Neptune travels,
Rep. by its Managing Director,
G1, TAAS Mahal, No.10, Monteith Road,
Egmore, Chennai – 600 003.
3. Neptune Travels India Pvt. Ltd.,
Rep. by its Managing Director,
Harinder Agarwal,
No.109, S.No.3 & 4, Pamadi Chamber,
DVG Road, Basavankudi, Bangalore – 4.

.. Respondents



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In W.P.No.25448 of 2021:-

Neptune Travels India Pvt. Ltd.,
Rep. by its Managing Director,
Harinder Agarwal,
No.109, S.No.3 & 4,
Pamadi Chamber, DVG Road,
Basavankudi, Bangalore – 4.

.. Petitioner

Versus

1. The Appellate Authority/
The Deputy Labour Commissioner,
DMS Complex, 4th Floor,
Teynampet, Chennai – 600 006.

2. S.Maragatham @ Madubala

.. Respondents

Prayer in W.P.No.5038 of 2022 : Writ Petition filed under Article 226 of the Constitution of India seeking a Writ of Certiorari, calling for the records relating to T.N.S.E.No.1/3/2007 from the files of the 1st respondent and quash its impugned order, dated 13.09.2021 insofar as the 1st respondent has denied the claim of the petitioner full back wages and other monetary and terminal benefits due and payable to the petitioner.

Prayer in W.P.No.25448 of 2021 : Writ Petition filed under Article 226 of the Constitution of India seeking a Writ of Certiorari, to call for the records relating to the award, dated 13.09.2021 passed by the learned Appellate Authority in TSE No.1/3/2007 and quash the same.



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In W.P.No.5038 of 2022:-

For Petitioner : Mr.V.Subramani
For Respondent : Mr.A.M.Ayyadurai,
Government Advocate for R1
: Mr.S.Venkatesan, for R-2 and 3

In W.P.No.25448 of 2021:-

For Petitioner : Mr.S.Venkatesan
For Respondent : Mr.A.M.Ayyadurai,
Government Advocate for R1
: Mr.V.Subramani, for R2

COMMON ORDER

These two Writ Petitions challenge the order of the appellate authority under the Tamil Nadu Shops and Establishments Act, 1947 in T.N.S.E-I/3/2007, dated 13.09.2021. The management namely, Neptune Travels India Private Limited, had filed W.P.No.25448 of 2021 challenging award inasmuch as it orders compensation to the employee. W.P.No.5038 of 2022 is filed by the employee inasmuch as the award denies reinstatement with full backwages.

2. The case of the employee is that she was appointed by the



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management by the order dated 29.05.2006 and she joined the services with effect from 01.06.2006. Her employment was with relation to the business of the management. Though she was called as a Manager, there was absolutely no managerial activity. While so, from the month of July, 2006, the management did not pay wages to the employee. They promised to settle the entire arrears in the first week of January, 2007. Even thereafter, they did not settle and a legal notice was issued on 07.02.2007. Thereafter, with effect from 01.03.2007, the petitioner was denied employment. Therefore, the termination was without any justifiable cause.

3. Simultaneously, the employee also filed C.P.No.229 of 2007 to compute the arrears of wages from the month of June, 2003 to March, 2007 under Section 33C(2) of the Industrial Disputes Act, 1947. Thereafter, on 19.09.2007, the management was set *ex parte* in the above appeal in T.N.S.E-I/3/2007 and the appeal was allowed as prayed for. Thereafter, C.P.No.213 of 2013 was filed under Section 33C(2) of the Industrial Disputes Act, 1947 for computation of the back-wages from 01.03.2007 upto 01.04.2013. The management remained *ex parte* in the said C.P.No.213 of 2013 also and therefore, the sum of Rs.21,77,224/- was computed and the management was directed to pay by the award, dated



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26.11.2013.

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4. The management filed W.P.No.25830 of 2012 challenging the order, dated 14.03.2012 passed in C.P.No.229 of 2007. Thereafter, the management had filed W.P.No.10935 of 2019 challenging the award in T.N.S.E.No.1/3/2007. By the order, dated 17.09.2020, the *ex parte* award, made in T.N.S.E-I/3/2007 was set aside on payment of costs of Rs.35,000/- and an opportunity was directed to be given to the management. On the same day, W.P.No.25830 of 2012 was also allowed stating that in view of the setting aside of the award in T.N.S.E-I/3/2007, the order passed in C.P.No.229 of 2007 shall no longer stand and the proceedings were treated to be closed.

5. Thereafter, the management filed a detailed counter-affidavit by stating that since the appointment order categorically designates the employee as manager, she will not come under the definition of workman and she cannot claim benefits under Section 33C(2) of the Industrial Disputes Act, 1947. Simultaneously, she had filed the present appeal under the Tamil Nadu Shops and Establishments Act, 1947, which should not be allowed. It is stated that the employee had voluntarily stopped



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reporting for work and it is not the management which had orally terminated from 01.03.2007. The appeal is not maintainable since only oral termination is complained of. The employee is undertaking parallel remedies under Section 33C(2) of the Industrial Disputes Act, 1947 and also under the Tamil Nadu Shops and Establishments Act, 1947.

6. A detailed rejoinder was also filed on behalf of the employee. In the rejoinder, subsequent events of filing the Claim Petition and the order of the High Court, are all pleaded. On the strength of the said pleadings, in the enquiry, employee examined herself and **Ex.P-1** to **Ex.P-5** were marked. On behalf of the management, no witnesses were examined and no documents were marked. The appellate authority considered the issue and considered the circumstances, in which, when the management claims that the employee stopped work on her own. The management did not even send any show-cause notice or memorandum as to why she did not report for work. Therefore, it held that the employee had proved that she was non-employed from 01.03.2007. There is no reasonable cause for the same. One month notice or salary was not given and held the non employment was illegal. However, since the employee had attained the age of superannuation, ordered a compensation of



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Rs.6,82,500/- to be paid to the employee within a period of 30 days.

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7. The learned Counsel for the management would submit that in view of the legal notice issued on behalf of the employee on 07.02.2007, in which she alleges that the management has shifted its premises without settling the dues of the workmen. Effectively, non-employment is alleged in the notice dated 07.02.2007. Therefore, there cannot be oral termination as claimed by the employee as on 01.03.2007. The case of the employee is self-contradictory and as such, it ought to be dismissed. The orders passed in the Claim Petition have already been set aside in the earlier round. The appeal filed by the employee has to be dismissed in toto.

8. Per *contra*, it is the case of the employee that when the non-employment was found to be unjustified, as a natural corollary, reinstatement with back-wages ought to have been ordered. Merely because the employee superannuated, compensation need not be ordered. The employee should be deemed to have been continued in service, all the retiral benefits, including gratuity, have to be paid. Therefore, it is submitted that the award has to be modified suitably and the management should be directed to pay all the benefits to the employee.

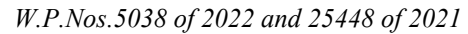


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9. I have considered the rival submissions made on either side and perused the material records of the case.

10. The first contention on behalf of the management is that the employee was availing parallel remedies. The same is factually incorrect. As far as the petition under Section 33C(2) of the Industrial Disputes act, 1947, filed in C.P.No.229 of 2007 is concerned, the same is claiming arrears of wages from the month of June, 2006 till March, 2007. When the employee was non-employed, she had filed an appeal under Section 41 of the Tamil Nadu Shops and Establishments Act, 1947. It cannot be said that the employee was availing dual remedy. C.P.No.213 of 2013 was filed to compute the benefits as per *ex parte* award passed in the present appeal. When this Court in the earlier round of litigation, set aside the *ex parte* award and granted an opportunity to the management, by way of order dated 17.09.2020 in W.P.No.10935 of 2019, the award in C.P.No.213 of 2013 only goes automatically. However, C.P.No.229 of 2007 was mentioned as if it is set aside.



12. Per *contra*, the case of the management is that the employee, own, stopped reporting for work. In that regard, the appellate has taken into consideration the circumstances and if the is absent without any reason, neither any show-cause notice/ dum was issued nor any order of termination was passed by the ent. Therefore, it held that the case of management stood



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disproved. Further, it can be seen that when this Court had granted opportunity for the management to contest the matter even after so many years, the management chose not to let in any evidence in support of its case. Therefore, when the employee has got into the box and pleaded that she was orally terminated and no evidence to the contrary being let in, no exception whatsoever can be taken for the finding of the appellate authority that the employee was non-employed from 01.03.2007 and that it was without any reasonable or justifiable cause and not even any written order of termination was passed nor one month notice was given nor salary was paid. Therefore the findings of the appellate authority in that regard are in order.

13. As far as the relief that was granted to the employee, this is not a case where loss of confidence is pleaded by the management for awarding compensation. If the compensation is to be awarded, the formula, as propounded by the Hon'ble Supreme Court of India in ***O.P.Bhandari Vs. Indian Tourism Development Corporation Limited and Ors.***¹, ought to have been followed. However, the same was also not mentioned and simply the amount of compensation was mentioned.

¹ (1986) 4 SCC 337



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Though I am of the view that in this case, reinstatement with continuity of service and backwages should be relief, it can be seen that the employee started her battle in the year 2007 and is in the 19th year of litigation. She has not realised the fruits. Admittedly, her last drawn wages was Rs.25,000/-. As per the judgment of the Hon'ble Supreme Court of India in **O.P.Bhandari's** case (cited *supra*), 39 months salary is to be granted as compensation normally. Therefore, she will be entitled to Rs.9,75,000/- (Rs.25,000/- x 39). But, at the same time, it can be seen that the reason for the Hon'ble Supreme Court of India to fix the compensation is that the employee should be in a position to get at least 50% of the last drawn wages as interest from the corpus if deposited in a Bank. If the present day bank rate is taken into account, the amount, as calculated above, will not fetch even 50% of the same. The Hon'ble Supreme Court of India also, in the later judgments had held that reasonable addition should be made considering the increase in wages.

14. The fact that the employee was in service from 2006 to 2007, is also taken into consideration. But, it can be seen that it was entirely the fault of the management to have left the appeal *ex parte* and filed the Writ Petition very belatedly. If reinstatement with 100% or part of back-wages



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has to be ordered, then the same has to be computed and realised.

Similarly the gratuity has also be again claimed, computed and realised.

Even though the learned Counsel argued the case on behalf of the employee, she herself was also present in Court and virtually pleaded fatigue and her position not to further run pillar to post. She has already attained the age of superannuated of 60 years.

15. For all the above reasons, by giving reasonable addition and also taking into account the present day interest, I am of the view that the compensation shall be fixed at a sum of Rs.15,00,000/- and the same shall be ordered to be paid by the management.

16. Accordingly, this Writ Petitions are disposed of on the following terms:-

(i) The award passed in T.N.S.E-I/3/2007 is modified on the following terms:-

(a) The non-employment of the employee is held to be illegal;

(b) In lieu of all claims of reinstatement, back-wages and benefits, a total sum of Rs.15,00,000/- shall be paid by the management as compensation within a period of eight weeks from the date of receipt of a

12/14



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(c) If the said sum is not paid within the said period, then, thereafter, it shall carry further interest at the rate of 9% per annum from today.

(ii) There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

05.03.2026

Neutral Citation : yes
grs

To

1. The Special Joint Commissioner of Labour,
DMS Complex, 4th Floor,
Teynampet, Chennai – 600 006.
2. The Deputy Labour Commissioner,
DMS Complex, 4th Floor,
Teynampet, Chennai – 600 006.



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D.BHARATHA CHAKRAVARTHY, J.

grs

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