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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders reserved on : 04.02.2026

Orders pronounced on : 12.03.2026

CORAM :

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

W.P.Nos.8523 of 2021 and 34618 of 2022
and W.M.P.Nos.9077 of 2021, 6677, 34065 and 6674 of 2022

In W.P.No.8523 of 2021:-

1. President,
Human Resource,
Tata Consultancy Services,
No.185, Lloyds Road,
Chennai – 600 086.

2. Manager,
Human Resources,
Tata Consultancy Services,
No.185, Lloyds Road,
Chennai – 600 086.

.. Petitioners

Versus

Latha Govindasamy

.. Respondent

In W.P.No.34618 of 2022:-

Latha Govindasamy

.. Petitioner

Versus

1. The President,
Human Resource,
Tata Consultancy Services,
No.185, Lloyds Road,
Chennai – 600 086.

2. The Manager,



Human Resources,
Tata Consultancy Services,
No.185, Lloyds Road,
Chennai – 600 086.

.. Respondents

Prayer in W.P.No.8523 of 2021 : Writ Petition filed under Article 226 of the Constitution of India seeking a Writ of Certiorari, calling for the records of the First Additional Labour Court in I.D.No.6 of 2019 and quash the award, dated 14.12.2020 passed in I.D.No.6 of 2019.

Prayer in W.P.No.34618 of 2022 : Writ Petition filed under Article 226 of the Constitution of India seeking a Writ of Certiorarified Mandamus, after calling for the records from the I Additional Labour Court, Chennai relating to the award, dated 14.12.2020 in O.P.No.6 of 2019 and quash the same insofar as the Labour Court denied 50% backwages to the petitioner and consequently modify the award, dated 14.12.2020 in O.P.No.6 of 2019 on the file of the I Additional Labour Court, Chennai to one of reinstatement with full backwages and continuity of service and all attendant benefits which the petitioner would have received had her services not been terminated, together with interest and costs.

In W.P.No.8523 of 2021:-

For Petitioners : Mr.G.Anand Gopalan,
for Mr.M.G.Pranava Charan

For Respondent : Mr.N.G.R.Prasad, Senior Counsel
for Mr.Srinivasa Murthy

In W.P.No.34618 of 2022:-

For Petitioner : Mr.N.G.R.Prasad, Senior Counsel
for Mr.Srinivasa Murthy

For Respondents : Mr.G.Anand Gopalan,
for Mr.M.G.Pranava Charan



COMMON ORDER

The Writ Petitions:

These two Writ Petitions assail the award of the Labour Court dated 14.12.2020 made in O.P.No.6 of 2019, in as much the award partly allowed the claim petition and directed reinstatement of the employee – *Latha Govindasamy* with continuity of service with 50% of back wages and all other attendant benefits.

1.1. W.P.No.8523 of 2021 is filed by the Management - The Manager, Human Resources, Tata Consultancy Services, aggrieved by the portion which denied 50% of back wages. WP.No.34618 of 2022 is filed by the employee.

Factual Background:

2. The factual background in which these Writ Petitions arise are that the employee raised a dispute about the non employment before the Assistant Labour Commissioner – III - Conciliation, Kuralagam, Chennai and the conciliation did not yield any settlement and resulted in a failure report dated 28.01.2018. Thereafter, a claim petition was filed under Section 2 A(2) of the Industrial Disputes Act, 1947, which was taken on file as ID No.6 of 2019.

2.1. The case of the employee is that she joined the services of the



management on 23.02.1975 and had put in services of about 23 years. At the time of the dispute, the employee was working as an Associate Consultant.

While so, she fell ill due to giddiness and dehydration on 02.05.2017 and she informed the management about the same through an e-mail on 09.05.2017 and submitted her medical records to the Manager, Human Resources on 11.05.2017 and explained about her health conditions to the management. However, on 02.06.2017 it was communicated that she was dismissed from service. The impugned order holds that she is incompetent in her work. It is denied by the employee that she was ever incompetent and it is submitted that on the basis of the performance, she was promoted many times and only pursuant to the exercise of down sizing the organization, she was now dismissed. She therefore issued a legal notice on 23.06.2017 and raised a dispute and since the conciliation failed, the claim petition is filed.

2.2. It is her case that her work is in the nature of clerical and technical. Her non employment is without following the provisions of the Industrial Disputes Act, 1947. Therefore, she prayed for reinstatement with continuity of service, back wages and monetary benefits with further interest at the rate of 18% per annum.

2.3. It is the case of the management that the employee was appointed on 15.03.1995 as a ASA trainee. Thereafter, she was promoted as System Analyst



on 25.04.1997. From time to time, further promotions were also given and last in the year 2006 she was granted promotion as Associate Consultant with effect from 01.01.2006 with a gross annualised compensation of Rs.9,37,006/-. The employee was working in the supervisory level and her key responsibility was effective deployment of the project performance, improvement initiatives.

2.4. Since 07.03.2015, the employee could not be allocated to any project, owing to her inability to upgrade the subject knowledge and requisite skill sets. She remained unallocated for 727 days from 07.03.2015 till the date of discharge from service. The employee did not make any efforts during the above said period to upgrade her skills, to enable herself to get allocation in the project. However, she was paid salary during the said period. While so the employee was absent from duty with effect from 02.05.2017. She was directed to report for duty but she failed to report for duty. She only visited the managements office at Llyods Road on 10.05.2017 and submitted the medical certificate and continued to remain absent without the approval of the authorised officials of the management. Therefore, the management issued a letter dated 02.06.2017 discharging the employee from the services by invoking the provisions of the conditions of service along with the cheque for Rs.2,89,699/-towards the salary in lieu of the notice period on the ground of surplusage of her services to the management.



2.5. It is further contended that the employee being employed as an Associate Consultant in Grade C3B which falls under supervisory level and therefore, she cannot be considered as a 'Workman' within the definition of the Act. The chief functions required to be performed by the employee are to ensure the awareness of process of performance improvement in the unit; to train the employees on the processes for performance improvement; to formulate strategy/plan of performance improvement for the unit along with the stake holders; prioritise improvement opportunities within the unit; drives the process compliance across the unit; tracks the deployment of performance improvement across the unit and report to the concerned stakeholders; facilitate creation of assets pertaining to performance improvement for further usage; share best practices in performance improvement with the concerned teams. Further, the employee had also worked as Project Management Officer which involves the functions of organising the governance meeting, involving the senior management of the customer and preparation of leadership deck presentation; actively participate and publish the minutes and action on the points with the senior management; track the progress of open action items with the various stake holders and publish the status during the meetings; and track the red amber green status of various programs, projects in plan, view and report to the customer. Detailed submissions were also made with reference to the merits of the matter.



2.6. With the above pleadings, the employee – *Latha Govindasamy* was examined as W.W.1 and exhibits W.1 to W.14 were marked. On behalf of the management, one *Mr. Vijayakumar* was examined as M.W.1 and exhibits M.1 to M.12 were marked.

2.7. The Labour Court first considered the question, whether the employee *Latha Govindasamy* is a workman within the definition of Section 2 (s) of the Industrial Disputes Act, 1947. After analysing the evidence on record, it was held that the determinative factor is the main duties of the concerned employee and not the incidental work. It held that the main duties were not supervisory or managerial in nature, though there may be some incidental supervisions done. It considered the admission of M.W.1 that the main job of the employee was that of a software engineer and therefore answered the question that she is an employee within the meaning of Section 2 (s) of the Industrial Disputes Act, 1947.

2.8. Thereafter it considered the questions as to whether the discharge of the employee from service is in violation of principles of natural justice and is liable to be set aside and whether she is entitled for reinstatement with back wages and other benefits and to what reliefs.

2.9. Since the termination is making allegations against her and after



considering the long number of 22 years of service, whereby the management itself had recognised the services of the employee and granted several promotions, held that the policy of higher and fire cannot be upheld and the termination is unlawful and the employee was entitled for reinstatement. After considering the period of service and all the attendant circumstances, however, restricted the back wages for 50% and passed the award. As against which the Writ Petitions are filed.

Submissions made by the Management:

3. *Mr.Anand Gopalan*, the learned counsel appearing on behalf of the management would submit that the employee has risen to the higher level in the hierarchy. The role of the Associate Consultant is equivalent to that of the Manager. When she was being in the organisation without any work and it was her duty to find any suitable projects and get continuous employment. She chose to remain idle and drawn salary. Even then, the management kept on paying her salary without extracting any work for about two years. It must be seen that by virtue of her position she handled leave request, recommended for sanction or refusal of the leave pertains to the employees under her control and Ex.M3 is filed before the Labour Court to prove the same. It must be noted that Ex.M6 was returned even on 16.04.2020 informing the employee that her performance is not in line with the organisations expectation. Ex.M7 is filed in proof of the employee acting as an appraiser and also as reviewer to assess the



performance of the other persons working under her in the company, certainly would demonstrate that she was in the managerial cadre. In any event, the work done by her is supervisory in nature. She has performed both the roles of appraiser and also reviewer, and her recommendations weighed with the management in granting increment, salary or even retaining the other employees for work. Thus it must be seen that she is very much part of the management. Even otherwise in the promoted role of the Associate Consultant – Manager, the predominant duties that are pleaded by the management is mentoring, allocation of projects, supervision of the day-to-day activities, etc. and therefore, it must be seen that the role of the employee is predominantly supervisory and managerial in nature and when she was drawing the salary of Rs.97,000/- per month, it cannot be held that she is only a Workman. When this Court further requested about filing of the organisational structure, the learned counsel would also filed an additional affidavit whereby it is stated that hierarchy wise it starts with grade Y – Trainee, C1Y- Assistant System Engineer, C1 – Executive, C2 – Assistant Manager, C3A – Manager and C3B – Senior Manager.

3.1. The affidavit also explains the appraisal policy and the role of the appraiser and the reviewer. Thus, the learned counsel would submit that when she has risen to up to the level of Manager, there is no question of treating the employee as a Workman. The learned counsel would place strong reliance on the Judgment of the Bombay High Court in ***Rohit Dembiwal Vs. Tata***



Consultancy Services Limited and Others¹ whereby with reference to the very same organisation after analysing the nature of work, had concluded that the responsibility is supervisory and managerial in nature and the employee therein who was only an IT analyst grade C2 one level below that of the employee heren itself was not a Workman and it is stated that ultimately the Special Leave Petition in respect of the said Judgment was also dismissed. The learned counsel would also rely upon the Judgment in **Bharati Airtel Limited Vs. A.S. Raghavendra**² for the proposition that the petitioner cannot be deemed to be a workman in view of the powers enjoyed by the petitioner. The learned counsel would also rely upon the Judgment in **Ved Prakash Gupta Vs. Delton Cable India (P) Ltd.**³ in respect of the same proposition. The learned counsel would submit that since the main question itself goes against the employee and if she is held to be supervisor in the managerial cadre, her service has been duly dispensed with by enclosing a Cheque for the notice period as per the contract and therefore, the non employment is not illegal.

3.2. *Mr.Anand Gopalan.* The learned counsel would also argue in the alternative that even during the period of employment, the employee served as a Director in yet another company and when the employee is working with the management, she was also shown as a Director in Sudharshan Engineer and

¹ Manu/SCOR/48566/2024

² (2024) INSC 265

³ AIR (1984) SC 914



Contractor Private Limited, a company floated by her husband and thus on the sole principles of moon lighting and suppressing the said fact even in the claim petition filed before the Industrial Tribunal, no relief should be granted to the employee.

Submissions made by the Employee:

4. *Per Contra, Mr.N.G.R.Prasad*, the learned Senior Counsel appearing on behalf of the employee by pointing out to the evidence would submit that when the management has failed to prove that the work was predominantly supervisory or managerial in nature and on the contrary, through the cross examination of M.W.1 and by other evidence when the employee has proved that the employment is clerical and technical in nature, it is proved that the employee is a worker within the definition of Section 2 (s) of the Industrial Disputes Act, 1947. Once it is proved that the employee is a workman, then admittedly the case of the management is that by way of surplusage, the workman was retrenched. Neither any compensation under Section 25 F was paid and if it is for the incompetency, then it raises a stigma and no opportunity to the workman was granted and therefore once the non employment is held to be illegal, then the Labour Court ought to have granted the reinstatement with full back wages. There is no circumstances that exist to deviate from the said rule and grant only 50% of the back wages.



4.1. In reply to the submission relating to the employee being the Director in an another firm, the learned Senior Counsel would submit that it is true that when her husband wanted to float a company to carry on the contract business, she was also shown as the Director, however, that did not involve any employment and ultimately the company never took off and struck off as defunct and therefore the same should not in any manner be held against the employee, for claiming the lawful benefits due.

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

Submissions and Questions:

6. The following questions arise for consideration in the instant case.

(i) Whether or not the employee Latha Govindasamy is a workman within the definition of Section 2 (s) of the Industrial Disputes Act, 1947 ?

(ii) Whether the termination of the Workman is unjustified and if so, to what relief the parties are entitled to ?

Question No.(i):

7. The primary submissions on either side is in this case is with reference to whether the employee can invoke the jurisdiction of the Labour Court claiming herself to be a workman within the provisions of the section 2(s) of the



Industrial Disputes Act, 1947. In this regard, before adverting to the factual scenario, it is necessary to advert to the decisions that are relied upon by either side. In **Rohit Dembiwal's** case (cited *supra*) the Bombay High Court considered the evidence that was let in, in that case and held that the employee therein was a leader of the module. Module was found to be one section of particular application in which the company engages certain number of team members, the employee in that case was found to be empowered to grant planned leave to associates working with him in the module and the employees signature was also appended in the time sheet. It further found that the role of the employee was to supervise and handle the issues of the team members as a project in-charge having managerial and administrative functions. The employee was also evaluating appraisal performance of the team members which will all go to show that the employee was not the workman. Reference can be made to paragraph Nos.12 to 14.

7.1. On behalf of the learner Senior Counsel for the employee, the Division Bench Judgment of the Karnataka High Court in the case of ***the Commissioner of Income Tax and another Vs. Texas Instruments India Pvt. Ltd., and another*** (ITA No.141 of 2020) was relied upon. Though it considered in the context of assessment of income tax, one of the substantial question of law framed by the Division Bench, whether the employees in the software industry would be covered within the definition of Section 2 (s) of the Industrial



Disputes Act, 1947 and the question framed thereunder in paragraph No.16 and the detailed discussion and answer in paragraph Nos.16.5 and 16.6 are extracted here under for ready reference:-

“16.5. The Apex Court has in the case of Devinder Singh's (supra) categorically held that when a person is employed in an industry for hire or reward for doing manual, unskilled, skilled, operational, technical or clerical work, such a person would satisfy the requirement and would fall within the definition of the 'workman'. In the present case, a software engineer is a skilled person, a technical person who is engaged by the employer for hire or reward. Therefore, all the said persons would satisfy the requirement of being a workman in terms of Section 2(s) of the I.D.Act.

16.6. In our considered view, the concept of the workman has undergone a drastic change and is no longer restricted to a blue collared person but even extends to white-collared person. A couple of decades ago, an industry would have meant only a factory, but today industry includes software and hardware industry, popularly known as the Information technology industry. Thus the undertaking of the Assessee being an industrial undertaking, the persons employed by the Assessee on this count also would satisfy the requirement of a workman under Section 2(s) of the ID Act.”

7.2. Thus, it can be seen that just by considering the above, which was specifically held in the context of software companies it must still be seen that what is the nature of the employment of the employee involved and even if it involves supervisory, managerial, skilled, technical and clerical in nature, the predominant part of the employment has to be taken into account while determining whether the person is a workman or not. In this regard as far as the workman is concerned she has examined herself as W.W. 1. The proof affidavit was filed on behalf of her. It was specifically stated that the job of ensuring awareness of the processes for process improvement in the unit is essentially



clerical and technical in nature. The assignments mentioned in the counter statement do not involve supervising the work of others nor exercising any managerial functions. The employee had no power to take action against any other workers. As an Associate Consultant, she works with other workers and was only doing technical and clerical work. When the evidence in chief was as above and when it follows in the cross examination, Ex.M3 was put to the employee to suggest that she used to sanction the leave, which was denied and stated by the employee that when the manager is on leave, she will be asked to back up and the employee denied that she has not functioned in the managerial capacity.

7.3. On behalf of the management, the over evidence was that apart from the functional designation of Trainee, Assistant System Engineer, System Engineer. IT Analyst, Assistant Consultant and Associate Consultant, the administrative designation equivalent to the Associate Consultant is that of the Senior Manager. The role and responsibilities that are given in paragraph 11 and 12 of the proof affidavit which is extracted hereunder for ready reference.

“11. It is further submitted that the Petitioner chief responsibility involved the performance improvement champion to mentor projects and to help effective deployment of project performance improvement initiatives. Further the chief functions performed by the Petitioner are given hereunder under the designation of Associate Consultant:

a. Ensure awareness of processes for performance improvement in the unit



- b. Trains the relationship employees on the processes for performance improvement.
- c. Formulates strategy/plan for performance improvement for the unit along with the stakeholders.
- d. Prioritizes improvement opportunities within the unit
- e. Drives the process compliance across the unit
- f. Tracks the deployment of performance improvement across the unit and report to concerned stakeholders.
- g. Facilitate creation of assets pertaining to performance improvement for further usage
- h. Share best practices in performance improvement with the concerned teams.

12. It is further submitted that prior to the role of performance improvement champion she, had worked as a project management officer which involved the following functions:

- a. Organizing the governance meetings involving the senior management of the customer and preparation of leadership deck.
- b. Actively participate and publish the minutes and action items of meetings with customer senior management
- c. Track the progress of open action items with various stakeholders and publish the status during meetings
- d. Track the red, amber, green status of various program's/projects in plan view and report to customer.
- e. Responsible for approval of leave
- f. To assess performance of her subordinates and prepare reports.”

In the cross examination, the following admission was made by M.W.1,



“மனுதாரர் ஒரு மென்பொறியாளர் என்பதும் அவருடைய முக்கிய பணி software சம்பந்தப்பட்டது என்பது சரிதான். Ultimatix project allocation system என்பதை தாக்கல் செய்தால் 2017 வரை மனுதாரருக்கு allocate செய்த project பற்றி தெரியவரும் என்பது சரிதான். மனுதாரர் April 2017 வரை வேலை செய்ததை மறைப்பதற்காகத்தான் அந்த ஆவணங்களை தாக்கல் செய்யவில்லை என்றால் சரியல்ல.”

7.4. As a matter of fact, in the cross examination it is admitted that in the designation or in the promotion order, the fact that the employee is a supervisor or a manager is not mentioned. It is admitted that the employee did not have any cheque signing power. The employee did not have power to employ anybody. Though it is contended that the employee can recommend for promotion, but it is admitted in the decision that is taken, the employee will not sign in the same. Further, it was cross examined by saying that when the employee was last working in the Royal Bank of Scotland project from 07.03.2015 until her termination, nobody else was working with her. Following was the answer that is given by MW1.

“7.3.2015 to 2.6.2017 வரை மனுதாரர் Royal bank of Scotlandல் பணிபுரிந்தபோது அவருடன் யாரும் சேர்ந்து பணிபுரியவில்லை என்றால் எனக்கு அது ஞாபகம் இல்லை.”

7.5. It is in this context, at the earliest point of time, when a legal notice was issued, the following was the stand taken by the management.



“From April 01, 2015 in the post of Associate Consultant since she could not be accommodated in any of the projects of our clients, she had to be "benched ". This is on account of the reason that with the passage of time and the various changes and the latest developments of our clients business, her qualifications did not permit her to be part of any project.

In the hope that she could be accommodated in any of the projects for the past two years she had been "benched" notwithstanding the passage of time, it turned out that there was no project where she could be aligned or allotted on account of her not possessing the skill sets required for those projects unlike her colleagues who with the passage of time had trained themselves to acquire the skill sets.”

7.6. Therefore, the said stand itself would be clear that the job of the employee is predominantly technical and skilled in nature and in the context of performance appraisal also with reference to software company, that is also more of a skill involving technical exercise rather than being the function of a higher official or a manager, writing annual confidential reports etc. Thus, the evidence available on record, coupled with the pleading of the respondent - management itself would reveal that the predominant aspect of the employment of the employee is nothing but that of the software engineer, being technical in nature and therefore I hold that the employee would be the ‘workman’ within the meaning of Section 2 (s) of the Industrial Disputes Act, 1947.

Question No.2:-

8. Once the employee is held to be a workman, then even as per the counter to the claim statement, on account of surplusage that her services was no longer required to the management, therefore the workman was sent out of



the employment, that is the language used in the termination order. Therefore, in the absence of compliance of Section 25F of the Industrial Disputes Act, 1947, the termination becomes illegal. Further, when it is alleged that there is a misconduct in as much as she wilfully not equipped herself and got into any project and was wilfully remaining of the bench continuously and also yet another allegation of moon lighting that is being lending her her name as a Director in the company formed by her husband, those, misconduct should have been specifically put across to the workmen, by conducting an inquiry and passing appropriate orders of punishment. The same is not the case of the management. Even before the Labour Court, it was not pleaded that there was other misconduct and the management is willing to let in evidence in respect of the said misconduct. Therefore, the termination is unjustified and as a natural corollary, the workman is entitled for reinstatement. In the normal course, the workman would have been granted 100 % back wages. However, considering the quantum of salary received, the long number of years of service put in by the workman, that is 22 years, the allegation that she has lent her name in the company which was initially floated by her husband and thereafter struck off, the fact that after obtaining five promotions, when she has sent an e-mail about her illness straight away the employee access by which all these human beings enter into their office is suddenly blocked and the manner in which this employees is sent out, all along up to the year 2015 the performance of the employee was not even faulted, after having appointed her in a campus



interview conducted at IIT, and if all these factors taken into account in total, the interest of justice is well served by the order of the Labour Court in granting reinstatement with 50% of back wages.

The Result:

9. Accordingly, both the Writ Petitions filed by the management and the employee lack merit and the award of the Labour Court made in O.P.No.6 of 2019 dated 14.12.2020 shall stand confirmed. The management shall comply with the award within a period of eight weeks from the date of website uploaded copy of this order without waiting for the certified copy. No cost. Consequently, the connected Miscellaneous petitions are closed

12.03.2026

Neutral Citation : Yes
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To
The Presiding Officer
1st Additional Labour Court, Chennai.



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W.P.Nos.8523 of 2021 and 34618 of 2



D.BHARATHA CHAKRAVARTHY, J.

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W.P.Nos.8523 of 2021 and 34618 of 2022
and W.M.P.Nos.9077 of 2021, 6677, 34065 and 6674 of 2022

12.03.2026



W.P.Nos.8523 of 2021 & 34618 of 2022
W.P.Nos.8523 of 2021 & 34618 of 2022

D.BHARATHA CHAKRAVARTHY, J.

The matter is listed today under the caption “for being mentioned”.

2. It is brought to the notice of this Court that there is a mistake in the appearance portion, wherein, instead of “Mr.N.G.R.Prasad, for Mr.K.Srinivasa Murthy”, it has been wrongly typed as “Mr.N.G.R. Prasad, Senior Counsel for Mr.Srinivasa Murthy”.

3. In view thereof, the Registry is directed to correct the appearance portion and upload the corrected order.

4. The Registry shall also ensure that the copy uploaded on the website reflects the Tamil extracted portions of the order.

07.04.2026

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W.P.Nos.8523 of 2021 & 34618 of 2022

D.BHARATHA CHAKRAVARTHY, J.
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W.P.Nos.8523 of 2021 & 34618 of 2022

07.04.2026