



WEB COPY



W.A.Nos.3481 of:
323, 453 & 748 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.03.2024

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

AND

THE HONOURABLE MR.JUSTICE K.RAJASEKAR

W.A.Nos.3481 of 2023, 323, 453 & 748 of 2024

and

C.M.P.Nos.28403 of 2023, 1981, 3013 & 4999 of 2024

W.A.No.3481 of 2023:

1.Government of Tamil Nadu,
Rep. by the Additional Chief Secretary,
Transport Department,
Government of Tamil Nadu,
Fort St. George,
Chennai – 600 009.

2.Metropolitan Transport Corporation Limited,
Rep. by its Managing Director,
Pallavan House, Anna Salai,
Chennai – 600 002.

... Appellants

Vs.

1.Tamil Nadu State Transport Employees Federation,
Rep. by its General Secretary,
No.52, Cooks Road, Otteri,
Chennai - 600 012.



W.A.Nos.3481 of:
323, 453 & 748 of 2024

2. The Additional Chief Secretary,
Labour Welfare and Skill Development Department,
Fort St. George,
Chennai - 600 009.
3. The Commissioner of Labour,
O/o. The Commissioner of Labour,
DMS Complex,
Teynampet,
Chennai- 600 006.
4. The Special Joint Commissioner of Labour,
O/o. The Commissioner of Labour,
DMS Complex, Teynampet,
Chennai- 600 006.
5. State Express Transport Corporation Limited,
Rep. by its Managing Director,
Thiruvalluvar Illam, Pallavan Salai,
Anna Salai, Chennai – 600 002.
6. Tamil Nadu State Transport Corporation (Villupuram) Limited,
Rep. by its Managing Director,
3/137, Salamedu, Vazhuda Reddy,
Villupuram – 605 602.
7. Tamil Nadu State Transport Corporation (Salem) Limited,
Rep. by its Managing Director,
12, Ramakrishna Road, Seerangapalayam,
Salem – 636 007.
8. Tamil Nadu State Transport Corporation (Coimbatore) Limited,
Rep. by its Managing Director,
37, Mettupalayam Road,
Coimbatore – 641 043.



W.A.Nos.3481 of:
323, 453 & 748 of 2024

9. Tamil Nadu State Transport Corporation (Kumbakonam) Limited,
Rep. by its Managing Director,
New Railway Station Road,
Kumbakonam – 612 001.

10. Tamil Nadu State Transport Corporation (Madurai) Limited,
Rep. by its Managing Director,
Bye Pass Road, Madurai – 625 002.

11. Tamil Nadu State Transport Corporation (Tirunelveli) Limited,
Rep. by its Managing Director,
Kattabomman Nagar,
Tirunelveli – 682 002.

... Respondents

Prayer: Writ Appeal filed under Clause 15 of Letters Patent to set aside the order passed in W.P.No.31458 of 2023 dated 15.11.2023 in respect of prayers (i) to (iii) and allow this appeal.

For Appellants	: Mr.P.S.Raman Advocate General Assisted by Mr.A.Vinoth Raj
For R1	: Mr.Ajay Khose
For R8	: Mr.T.Chandrasekaran
For R10	: Mr.C.Gouthamaraj
For R6	: Mrs.S.Pavithra
For R7	: Mr.M.Aswin
For R9	: Mr.M.Murali Vinoth
For R5	: Mr.L.S.M.Hasan Fizal



W.A.Nos.3481 of:
323, 453 & 748 of 2024

For R11

: Mr.C.Senapathi

WEB COPY

W.A.No.323 of 2024:

1.Government of Tamil Nadu,
Rep. by the Additional Chief Secretary,
Transport Department,
Government of Tamil Nadu,
Fort St. George,
Chennai – 600 009.

2.Tamil Nadu State Transport Corporation (Villupuram) Limited,
Rep. by its Managing Director,
3/137, Salamedu, Vazhuda Reddy,
Villupuram – 605 602.

... Appellants

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Chennai - 600 012.

2.The Additional Chief Secretary,
Labour Welfare and Skill Development Department,
Fort St. George,
Chennai - 600 009.

3.The Commissioner of Labour,
O/o. The Commissioner of Labour,
DMS Complex,
Teynampet,
Chennai- 600 006.

4.The Special Joint Commissioner of Labour,



W.A.Nos.3481 of:
323, 453 & 748 of 2024

O/o. The Commissioner of Labour,
DMS Complex, Teynampet,
Chennai- 600 006.

WEB COPY

5. Metropolitan Transport Corporation Limited,
Rep. by its Managing Director,
Pallavan House, Anna Salai,
Chennai – 600 002.
 6. State Express Transport Corporation (TN) Limited,
Rep. by its Managing Director,
Thiruvalluvar Illam, Pallavan Salai,
Anna Salai, Chennai – 600 002.
 7. Tamil Nadu State Transport Corporation (Salem) Limited,
Rep. by its Managing Director,
12, Ramakrishna Road, Seerangapalayam,
Salem – 636 007.
 8. Tamil Nadu State Transport Corporation (Coimbatore) Limited,
Rep. by its Managing Director,
37, Mettupalayam Road,
Coimbatore – 641 043.
 9. Tamil Nadu State Transport Corporation (Kumbakonam) Limited,
Rep. by its Managing Director,
New Railway Station Road,
Kumbakonam – 612 001.
 10. Tamil Nadu State Transport Corporation (Madurai) Limited,
Rep. by its Managing Director,
Bye Pass Road, Madurai – 625 002.
 11. Tamil Nadu State Transport Corporation (Tirunelveli) Limited,
Rep. by its Managing Director,
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Tirunelveli – 682 002.
- ... Respondents



W.A.Nos.3481 of:
323, 453 & 748 of 2024

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For Appellants : Mr.P.S.Raman
Advocate General
Assisted by Mr.M.Aswin

For R1 : Mr.Ajay Khose

For R5 to R11 : Given Up

W.A.No.453 of 2024:

1.Government of Tamil Nadu,
Rep. by the Additional Chief Secretary,
Transport Department,
Government of Tamil Nadu,
Fort St. George,
Chennai – 600 009.

2.Tamil Nadu State Transport Corporation (Salem) Limited,
Rep. by its Managing Director,
12, Ramakrishna Road, Seerangapalayam,
Salem – 636 007.

... Appellants

Vs.

1.Tamil Nadu State Transport Employees Federation,
Rep. by its General Secretary,
No.52, Cooks Road, Otteri,
Chennai - 600 012.

2.The Additional Chief Secretary,



W.A.Nos.3481 of:
323, 453 & 748 of 2024

Labour Welfare and Skill Development Department,
Fort St. George,
Chennai - 600 009.

WEB COPY

3. The Commissioner of Labour,
O/o. The Commissioner of Labour,
DMS Complex,
Teynampet,
Chennai- 600 006.
4. The Special Joint Commissioner of Labour,
O/o. The Commissioner of Labour,
DMS Complex, Teynampet,
Chennai- 600 006.
5. Metropolitan Transport Corporation Limited,
Rep. by its Managing Director,
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Chennai – 600 002.
6. State Express Transport Corporation (TN) Limited,
Rep. by its Managing Director,
Thiruvalluvar Illam, Pallavan Salai,
Anna Salai, Chennai – 600 002.
7. Tamil Nadu State Transport Corporation (Villupuram) Limited,
Rep. by its Managing Director,
3/137, Salamedu, Vazhuda Reddy,
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Rep. by its Managing Director,
37, Mettupalayam Road,
Coimbatore – 641 043.
9. Tamil Nadu State Transport Corporation (Kumbakonam) Limited,
Rep. by its Managing Director,



W.A.Nos.3481 of:
323, 453 & 748 of 2024

New Railway Station Road,
Kumbakonam – 612 001.

WEB COPY

10. Tamil Nadu State Transport Corporation (Madurai) Limited,
Rep. by its Managing Director,
Bye Pass Road, Madurai – 625 002.

11. Tamil Nadu State Transport Corporation (Tirunelveli) Limited,
Rep. by its Managing Director,
Kattabomman Nagar,
Tirunelveli – 682 002.

... Respondents

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For Appellants : Mr.P.S.Raman
Advocate General
Assisted by Mr.M.Aswin

For R1 : Mr.Ajay Khose

For R5 to R11 : Given Up

W.A.No.748 of 2024:

Tamil Nadu State Transport Corporation (Madurai) Limited,
Rep. by its Managing Director,
Bye Pass Road, Madurai – 625 002.

... Appellant

Vs.

1. Tamil Nadu State Transport Employees Federation,
Rep. by its General Secretary,
No.52, Cooks Road, Otteri,



W.A.Nos.3481 of:
323, 453 & 748 of 2024

Chennai - 600 012.

2. Government of Tamil Nadu,
Represented by the Additional Chief Secretary,
Transport Department,
Government of Tamil Nadu, Fort St. George,
Chennai 600 009.
3. The Additional Chief Secretary,
Labour Welfare and Skill Development Department,
Fort St. George,
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4. The Commissioner of Labour,
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Thiruvalluvar Illam, Pallavan Salai,
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3/137, Salamedu, Vazhuda Reddy,



W.A.Nos.3481 of:
323, 453 & 748 of 2024

Villupuram – 605 602.

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Rep. by its Managing Director,
12, Ramakrishna Road, Seerangapalayam,
Salem – 636 007.

10. Tamil Nadu State Transport Corporation (Coimbatore) Limited,
Rep. by its Managing Director,
37, Mettupalayam Road,
Coimbatore – 641 043.

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Rep. by its Managing Director,
New Railway Station Road,
Kumbakonam – 612 001.

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For Appellant

: Mr.P.S.Raman
Advocate General
Assisted by Mr.R.Gouthamaraj

For R1

: Mr.Ajay Khose



WEB COPY



W.A.Nos.3481 of:
323, 453 & 748 of 2024

COMMON JUDGMENT

[Judgment was delivered by **S.M.SUBRAMANIAM, J.**]

All the Intra Court Appeals have been instituted challenging the common order dated 15.11.2023 passed in W.P.No.31458 of 2023.

2. The writ petitions were instituted by Tamil Nadu State Transport Federation, represented by its General Secretary. Multiple reliefs are sought for in the writ proceedings, but mainly, the open tender for engaging of drivers and conductors to operate regular bus operations published on 30.09.2023 was under challenge. Other reliefs sought for are in connection with the open tender and to quash the tender notification.

3. Mr.P.S.Raman, Learned Advocate General appearing on behalf of the 'State' would submit that open tender for engaging of drivers and conductors to operate regular bus operations are issued in order to engage temporary contract drivers and conductors to operate corporation buses. On account of dearth of employees, the management has taken a decision to flaunt tenders for engaging drivers and conductors on temporary basis. It is a



W.A.Nos.3481 of:
323, 453 & 748 of 2024

policy decision taken by the management to sub serve the public good and therefore, the Employees Federation Union cannot have any grievance over the decision taken by the Government. Decisions have already been taken to fill up the regular vacancies through open competitive process and actions are in progress. Temporary contractual staffs are proposed to be appointed in order to meet out the exigence circumstances. Thus, the order quashing of the open tender by the learned Single Judge is perverse and the Writ Court proceeded based on the provisions of the Industrial Disputes Act, 1947, which need not be applied on the present case, since it is a policy decision taken to sub serve the public good and to meet out the emergency circumstances.

4. Mr.Ajay Khose, learned counsel appearing on behalf of the Employees Federation would oppose by stating that conciliation proceedings are pending. Two issues are pending for conciliation. Firstly, all the vacancies in various categories are to be filled up. Secondly, the vacancies should not be filled by the contract employees in three Transport Corporations i.e., Kumbakonam Government Transport Corporation, State Express Transport Corporation and Metropolitan Transport Corporation. The



W.A.Nos.3481 of:
323, 453 & 748 of 2024

12(3) Settlement entered into between the employers Workmen stipulates conditions prohibiting appointment of contract employees and the impugned open tender has been issued in violation of terms of the Settlement.

5. Mr.Ajay Khose expressed the difficulties being faced by the employees in the Transport Corporations. It is contended that non-filling of the existing vacancies are causing hardship to the serving employees. The serving employees are unable to avail their leave benefits and on some occasions they are forced to do over time work. No weekly off have been provided and on account of all these difficulties being faced by the employees in Transport Corporations, they have chosen to challenge the open tender notification issued by the respondents for recruitment of contract drivers and conductors.

6. The relationship between the employer and employee is contractual in nature. It is based on the service conditions agreed between the employer and the employee. In respect of Transport Corporations in the State of Tamil Nadu, it is wholly owned by the Government of Tamil Nadu and the “State” within the meaning of Article 12 of the Constitution of India. Thus, the



W.A.Nos.3481 of:
323, 453 & 748 of 2024

recruitments/appointments are to be made under the Constitutional schemes and scrupulously following the recruitment rules in force. Common Service Rules are in force.

7. That apart 12(3) Settlement are entered into between the employers and the employees under the Industrial Disputes Act in respect of workmen categories. The service conditions of the workmen are governed under the Settlements. Filling up of vacancies or engaging contract labourers on account of certain administrative exigencies are policy decisions of the Government to sub serve the public good and to meet out the emergency circumstances. Such policy decision taken in the interest of public would not affect the service conditions of the employees already in service.

8. In the present case, the Federation could contend that their service conditions are violated by not allowing them to avail leave and they are forced to perform over duty. It is an indirect form of obstruction caused to implement the policy decision taken by the Government. Contrarily, the Federation could have asked to protect their service conditions in consonance with the Statutes and the Settlements. Indirect form of obstructions for



W.A.Nos.3481 of:
323, 453 & 748 of 2024

implementing the public policies at no circumstances be entertained by the Courts. Normally a policy is decision is presumed to be in public interest and such a decision once made is not amenable to challenge, until and unless there is manifest or extreme arbitrariness of the Constitutional Court is expected to keep hands off.

9. In the present case, we have no further opinion regarding the claim of the Federation that their service conditions are to be protected. However, the Government taking a policy decision to engage contract drivers and conductors to sub serve the public good cannot be obstructed by raising certain other rights under the Settlement, which is absolutely unconnected with the policy decision taken in the present case.

10. Mr.P.S.Raman, learned Advocate General appearing on behalf of the 'State' would submit that outsourcing contract drivers and conductors were already engaged 530 in number. However, Mr.Ajay Khose, learned counsel appearing for the Employees Federation would oppose by stating that those employees were already relieved from service. But, the practice of engaging contractual drivers and conductors to meet out certain



W.A.Nos.3481 of:
323, 453 & 748 of 2024

administrative exigencies are in practice in Transport Corporations in the State of Tamil Nadu. Such engagements are made to meet out the public needs during festival seasons, strike periods, etc.

11. In the present case, the Writ Court has proceeded mainly based on the Labour legislations and based on the pending conciliation. In our opinion those issues are no way connected with the policy decision taken by the Government to engage contract drivers and conductors in Transport Corporation on temporary basis to meet out certain administrative exigencies.

12. With reference to the issues pending for conciliation, we are of the opinion that the second issue relating to engagement of contract labourers is beyond the scope of the service conditions and the service rights of the employees working as of now. Regarding the filling up of vacancies it is the provocative of the administration to take decisions in the interest of the public administration.

13. Learned Advocate General would submit that actions are already taken to fill up the vacancies through direct recruitment. It is further



W.A.Nos.3481 of:
323, 453 & 748 of 2024

submitted by the learned Advocate General that these issues were not brought to the notice of the learned Single Judge. The learned Single Judge proceeded mainly on the issues relating to Industrial Disputes Act and the policy decision taken by the Government to engage the temporary contractual Drivers and conductors to meet out the emergency circumstances in the Transport Corporations.

14. Policy decision of outsourcing and engagement of contract employees would not fall under the service conditions or the service rights of the employees in service. It is beyond the scope of Section 33 of the Industrial Disputes Act, 1947. It is an administrative provocative of an employer to engage contractual employees to meet out certain emergency circumstances or based on mitigating factors. Therefore, the Writ Court has erroneously proceeded with the issues based on the ground that the issues raised by the Federation are relating to the service conditions of the employees in service.

15. Therefore, there is no impediment for negotiation of all other issues in connection with the service rights and conditions between the parties in



W.A.Nos.3481 of:
323, 453 & 748 of 2024

the conciliation proceedings.

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16. Learned Advocate General made a submission that the decisions to engage the contract drivers and conductors would really assist the regular drivers to avail the other service benefits to have better working atmosphere.

17. Thus, we are of the opinion that the impugned open tender notification is a policy decision of the Government to meet out the emergency circumstances and would not provide a cause for the Employees Federation to challenge the same. The Federation is unable to establish that there is manifest or extreme arbitrariness in the policy decision already taken by the Government to engage contract employees. Thus, the service conditions and the service rights of the employees alone are to be protected in consonance with the Statutes and the terms of the settlement. Regarding the engagement of contract labourers though outsourcing are the policy decision of the Government, which is beyond the realm of the employees Federation.



WEB COPY



W.A.Nos.3481 of:
323, 453 & 748 of 2024

18. Accordingly, the order impugned passed in W.P.No.31458 of 2023 dated 15.11.2023 is quashed and the Writ Appeals filed by the State are allowed and the Writ Appeal filed by the Employees Federation are dismissed. No costs. Consequently, connected Miscellaneous Petitions are closed.

[S.M.S., J.] [K.R.S., J.]
28.03.2024

Jeni
Index : Yes
Speaking order
Neutral Citation : Yes

To

- 1.The Additional Chief Secretary,
Government of Tamil Nadu,
Transport Department,
Government of Tamil Nadu, Fort St. George,
Chennai 600 009.
- 2.The Additional Chief Secretary,
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WEB COPY



W.A.Nos.3481 of
323, 453 & 748 of 2024

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W.A.Nos.3481 of 2023,
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