

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

**THE HONOURABLE THE AG.CHIEF JUSTICE MR.ASHOK BHUSHAN
THE HONOURABLE MR.JUSTICE T.R.RAMACHANDRAN NAIR
THE HONOURABLE MR.JUSTICE K.SURENDRA MOHAN
THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI
&
THE HONOURABLE SMT. JUSTICE P.V.ASHA**

FRIDAY, THE 20TH DAY OF FEBRUARY 2015/1ST PHALGUNA, 1936

WP(C).No. 7910 of 2012 (K)

PETITIONER(S):

- 1. T.N.SOMAN, AGED 56 YEARS
S/O.O.A.NARAYANAN, THYKKOODAM VATHIL HOUSE
VADAYAR P.O., THALAYOLAPARAMBU, PIN 686605 (CONDUCTOR
KERALA STATE ROAD TRANSPORT CORPORATION
RETIRED ON 31.3.2010, VAIKOM).**
- 2. I.N.MOHANAN
S/O.NARAYANAN, AIKKARA MALA, THEEKROY P.O.
ERATTUPETTA-686580, KOTTAYAM DISTRICT, (CONDUCTOR
KERALA STATE ROAD TRANSPORT CORPORATION
RETIRED ON 31.3.2010, PALA).**
- 3. JOSE FRANCIS
S/O.FRANCIS JOSEPH, NANJILATHU HOUSE, KOORAPPADA P.O.
KOTTAYAM-686502, (CONDUCTOR
KERALA STATE ROAD TRANSPORT CORPORATION
RETIRED ON 31.3.2011, KOTTAYAM).**
- 4. JOSE JOSEPH
S/O.M.V.JOSEPH, MEPPURAM VEEDU P.O., KOTTAYAM-686562
(CONDUCTOR, KERALA STATE ROAD TRANSPORT CORPORATION
RETIRED ON 31.3.2011, KOTTAYAM).**
- 5. K.K.RAJAN
S/O.KELAN, 'USHAS', KALLUVAZHI P.O.
PIN 679514, THIRUVAYODU, PALAKKAD DISTRICT
(CONDUCTOR, KERALA STATE ROAD TRANSPORT CORPORATION
RETIRED ON 31.3.2011, PALAKKAD).**

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6. N.C.JOSEPH
S/O.N.J.CHACKO, NEYYUNNIL HOUSE
THAZHATHU VADAKARA P.O.-686541, KOTTAYAM DISTRICT
(CONDUCTOR, KERALA STATE ROAD TRANSPORT CORPORATION
RETIRED ON 31.3.2011, CHANGANASSERY).

BY ADV. SRI.K.P.JUSTINE (KARIPAT)

RESPONDENT(S):

1. THE KERALA STATE ROAD TRANSPORT CORPORATION
REPRESENTED BY ITS MANAGING DIRECTOR
TRANSPORT BHAVAN, FORT P.O., THIRUVANANTHAPURAM-23.
2. THE FINANCIAL ADVISOR & CHIEF ACCOUNTS OFFICER
KERALA STATE ROAD TRANSPORT CORPORATION
TRANSPORT BHAVAN, FORT P.O., THIRUVANANTHAPURAM-23.
3. THE ASSISTANT TRANSPORT OFFICER
KERALA STATE ROAD TRANSPORT CORPORATION,
VAIKOM-686800.
4. THE ASSISTANT TANSPOET OFFICER
KERALA STATE ROAD TARNSPORT CORPORATION,
PALA-686019.
5. THE ASSISTANT TRANSPORT OFFICER
KERALA STATE ROAD TRANSPORT CORPORATION,
KOTTAYAM-686004.
6. THE ASSISTANT TRANSPORT OFFICER
KERALA STATE ROAD TRANSPORT CORPORATION,
PALAKKAD-670006.
7. THE ASSISTANT TRANSPORT OFFICER
KERALA STATE ROAD TRANSPORT CORPORATION
CHANGANASSERY-691009.

BY SRI.M.GOPIKRISHNAN NAMBIAR,SC,KSRTC

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 28-01-2015 ALONG WITH WPC. 31599/2009 AND CONNECTED CASES,
THE COURT ON 20-02-2015, DELIVERED THE FOLLOWING:

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APPENDIX

PETITIONER(S) EXHIBITS

EXHIBIT-P1. TRUE COPY OF THE PENSION PAYMENT ORDER ISSUED TO THE 1ST PETITIONER BY THE RESPONDENT CORPORATION.

EXHIBIT-P1(a).TRUE COPY OF THE PENSION PAYMENT ORDER ISSUED TO THE 2ND PETITIONER BY THE RESPONDENT CORPORATION.

EXHIBIT-P1(b).TRUE COPY OF THE PENSION PAYMENT ORDER ISSUED TO THE 3RD PETITIONER BY THE RESPONDENT CORPORATION.

EXHIBIT-P1(c).TRUE COPY OF THE PENSION PAYMENT ORDER ISSUED TO THE 4TH PETITIONER BY THE RESPONDENT CORPORATION.

EXHIBIT-P1(d).TRUE COPY OF THE PENSION PAYMENT ORDER ISSUED TO THE 5TH PETITIONER BY THE RESPONDENT CORPORATION.

EXHIBIT-P1(e).TRUE COPY OF THE PENSION PAYMENT ORDER ISSUED TO THE 6TH PETITIONER BY THE RESPONDENT CORPORATION.

EXHIBIT-P2. TRUE COPY OF THE PAGE NO.7 OF THE PAY REVISION AGREEMENT SIGNED IN THE KSRTC ON 13.4.1999.

EXHIBIT-P3. TRUE COPY OF THE PAGE NOS.15 AND 16 OF THE NEW PAY REVISION AGREEMENT DATED 28.11.2009.

EXHIBIT-P4. TRUE COPY OF THE REPRESENTATION SUBMITTED BY THE 1ST PETITIONER BEFORE THE 1ST RESPONDENT DATED 12.1.2012.

EXHIBIT-P4(a).TRUE COPY OF THE REPRESENTATION SUBMITTED BY THE 2ND PETITIONER BEFORE THE 1ST RESPONDENT DATED 12.1.2012.

EXHIBIT-P4(b).TRUE COPY OF THE REPRESENTATION SUBMITTED BY THE 3RD PETITIONER BEFORE THE 1ST RESPONDENT DATED 12.1.2012.

EXHIBIT-P4(c).TRUE COPY OF THE REPRESENTATION SUBMITTED BY THE 4TH PETITIONER BEFORE THE 1ST RESPONDENT DATED 12.1.2012.

EXHIBIT-P4(d).TRUE COPY OF THE REPRESENTATION SUBMITTED BY THE 5TH PETITIONER BEFORE THE 1ST RESPONDENT DATED 12.1.2012.

EXHIBIT-P4(e).TRUE COPY OF THE REPRESENTATION SUBMITTED BY THE 6TH PETITIONER BEFORE THE 1ST RESPONDENT DATED 12.1.2012.

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**EXHIBIT-P5. TRUE COPY OF THE JUDGMENT DATED 28.3.2011 IN W.A.NO.1896/2010
OF THIS HONOURABLE COURT.**

RESPONDENTS' EXHIBITS

NIL.

/ TRUE COPY /

P.S. TO JUDGE

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B.P. Ray, J.

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W.P.(C)Nos.31599/2009 & 7910/2012

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Dated this the 20th day of June, 2012.

ORDER OF REFERENCE

1. Petitioners have filed these writ petitions praying therein to reckon the past service rendered by them as temporary employees before their absorption in service under the Corporation for the purpose of computing the pensionary benefits. Learned counsel for the KSRTC has drawn my attention to a decision in **District Transport Officer v. Kunchan** reported in **(2009 (3) K.L.T. 954 (F.B)** wherein it is held that the temporary service rendered by a candidate not advised by PSC cannot be taken into consideration for the purpose of computation of pension whereas the provisional service of PSC advised hands can be reckoned for computing pensionary benefits. Learned counsel for the petitioners submits that the Full Bench has not taken into consideration the decision in Ext.P7 judgment and pleaded that in view of the provisions contained in Section 18(3)(d) of the Industrial Disputes Act, 1947, a settlement will be binding

even on the future employees, unless it is terminated in accordance with law as provided in Section 19 of the said Act. In the absence of termination of Clause XXIII of the Memorandum of Settlement, the benefit accrued cannot be taken away. He relies upon the judgment of the Apex Court in **National Textile Corporation (APKKM) Ltd. v. Sree Yellamma Cotton, Woollen and Silk Mills Staff Association and others (2001 (2) S.C.C. 448)**. He also referred to the judgment of a Division Bench of this Court in **K.Jabbar v. KSRTC (W.A.No.1896/2010)**. He points out that the trade unions who are parties to the settlement was not parties before the Full Bench. He further relies on a reported judgment of the Apex Court in **Devinder Singh v. Municipal Council, Sanaur (A.I.R. 2011 S.C. 2532)** wherein the Apex Court held as follows:

“There is nothing in the plain language of Section 2(s) from which it can be inferred that only a person employed on regular basis or a person employed for doing whole time job is a workman and the one employed on temporary, part-time or contract basis on fixed wages or as a casual employee or for doing duty for fixed hours is not a workman.”

2. In view of the judgment of the Apex Court and in view of the

agreement reached by the Corporation along with the employees, I am of the considered view that the Full Bench decision needs re-consideration. Therefore, Registry is directed to place this matter before the Hon'ble the Acting Chief Justice for necessary orders.

sl.

B.P. Ray, Judge.