

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.04.2016

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.Nos.14027 to 14047 of 2016

And

W.M.P.Nos.12260 to 12280 of 2016

P.ANBUCHEZIAN PETITIONER in WP.14027 of
2016.P.GUNASEKARAN ... PETITIONER in WP.14028 of
2016
M.YUVARAJ PETITIONER in WP.14029 of 2016
S.RAMESH KUMAR PETITIONER in WP.14030 of 2016
M.SADASIVAM PETITIONER in WP.14031 of 2016
V.BALACHANDRAN PETITIONER in WP.14032 of 2016
S.PERIYASAMY PETITIONER in WP.14033 of 2016
P.SUBRAMANIAM PETITIONER in WP.14034 of 2016
D.SUBRAMANIAM PETITIONER in WP.14035 of 2016
A.PALANISAMY PETITIONER in WP.14036 of 2016
G.VENKATESAN PETITIONER in WP.14037 of 2016
R.MAHALINGAM PETITIONER in WP.14038 of 2016
K.PUTHIRAKUMARAN PETITIONER in WP.14039 of 2016
V.SIVAKUMAR PETITIONER in WP.14040 of 2016
C.SUBRAMANI PETITIONER in WP.14041 of 2016
P.SRINIVASAN PETITIONER in WP.14042 of 2016
V.VEERAPPAN PETITIONER in WP.14043 of 2016
K.MANIKKAM PETITIONER in WP.14044 of 2016
N.KANDASAMY PETITIONER in WP.14045 of 2016
N.NATARAJAN ... PETITIONER in WP.14046 of 2016
P.NATESAN ... PETITIONER in WP.14047 of 2016

Vs

1. The Inspector of Labour
Authority under the TamilNadu Industrial Establishment,
(Conferment of permanent status to workmen) Act 1981
Salem, Salem District.
2. The Managing Director,
Tamil Nadu State Transport Corporation,
[Salem Division-1] Ltd.,
12, Ramakrishna Salai, Salem - 636 007.

3. The General Manager

Tamil Nadu State Transport Corporation
[Salem Division - 1] Ltd.,
12, Ramakrishna Salai, Salem-636 007.

... RESPONDENTS in all the WPs

W.P Nos.14027 to 14034 of 2016 : Petitions filed under Article 226 of the Constitution of India WRIT OF MANDAMUS Petitions filed under Article 226 of the Constitution of India WRIT OF MANDAMUS directing the 2nd and 3rd respondents to pass appropriate orders regularizing the services of the petitioner conferring permanent status with time scale of pay and all other attendant benefits from the date of completion of 480 days of service on 16.05.1999, 17.08.1999, 15.06.1999, 16.06.1999, 02.06.1999, 22.09.1999 duly implementing the orders dated 31.3.2005 on the 1st respondent / Authority passed in proc.No.A/ 993/ 2001 as confirmed by the common orders of the Honourable High Court in W.P. Nos. 38558, 38559, 39277, 39332/2005 & 3966/ 2006 dated 28.04.2006.

W.P No.14035 of 2016 : Petition filed under Article 226 of the Constitution of India WRIT OF MANDAMUS directing the 2nd and 3rd respondents to pass appropriate orders regularizing the services of the petitioner conferring permanent status with time scale of pay and all other attendant benefits from the date of completion of 480 days of service on 23.05.1999 duly implementing the orders dated 31.3.2005 on the 1st respondent / Authority passed in proc.No.A/ 993/ 2001 as confirmed by the common orders of the Honourable High Court in W.P. Nos. 38558, 38559, 39277, 39332/2005 & 3966/ 2006 dated 28.04.2006.

W.P No.14036 of 2016 : Petition filed under Article 226 of the Constitution of India WRIT OF MANDAMUS directing the 2nd and 3rd respondents to pass appropriate orders regularizing the services of the petitioner conferring permanent status with time scale of pay and all other attendant benefits from the date of completion of 480 days of service on 24.07.1999 duly implementing the orders dated 31.3.2005 on the 1st respondent / Authority passed in proc.No.A/ 993/ 2001 as confirmed by the common orders of the Honourable High Court in W.P. Nos. 38558, 38559, 39277, 39332/2005 & 3966/ 2006 dated 28.04.2006.

W.P No.14037 of 2016 : Petition filed under Article 226 of the Constitution of India WRIT OF MANDAMUS directing the 2nd and 3rd respondents to pass appropriate orders regularizing the services of the petitioner conferring permanent status with time scale of pay and all other attendant benefits from the date of completion of 480 days of service on 23.05.1999 duly implementing the orders dated 31.3.2005 on the 1st respondent / Authority passed in proc.No.A/ 993/ 2001 as confirmed by the common orders of the

Honourable High Court in W.P. Nos. 38558, 38559, 39277, 39332/2005 & 3966/ 2006 dated 28.04.2006.

W.P No.14038 of 2016 : Petition filed under Article 226 of the Constitution of India WRIT OF MANDAMUS directing the 2nd and 3rd respondents to pass appropriate orders regularizing the services of the petitioner conferring permanent status with time scale of pay and all other attendant benefits from the date of completion of 480 days of service on 29/06/99 duly implementing the orders dated 31.03.2005 of the 1st respondent/Authority passed in Proc.No. A/993/2001 as confirmed by the common orders of the Honourable High Court in W.P.Nos. 38558, 38559, 39277, 39332/2005 & 3966/2006 dated 28/04/2006.

W.P No.14039 of 2016 : Petition filed under Article 226 of the Constitution of India WRIT OF MANDAMUS directing the 2nd and 3rd respondents to pass appropriate orders regularizing the services of the petitioner conferring permanent status with time scale of pay and all other attendant benefits from the date of completion of 480 days of service on 24/07/99 duly implementing the orders dated 31.03.2005 of the 1st respondent/Authority passed in Proc.No. A/993/2001 as confirmed by the common orders of the Honourable High Court in W.P.Nos. 38558, 38559, 39277, 39332/2005 & 3966/2006 dated 28/04/2006.

W.P Nos.14040 & 14041 of 2016 : Petitions filed under Article 226 of the Constitution of India WRIT OF MANDAMUS directing the 2nd and 3rd respondents to pass appropriate orders regularizing the services of the petitioner conferring permanent status with time scale of pay and all other attendant benefits from the date of completion of 480 days of service on 15/06/99 duly implementing the orders dated 31.03.2005 of the 1st respondent/Authority passed in Proc.No. A/993/2001 as confirmed by the common orders of the Honourable High Court in W.P.Nos. 38558, 38559, 39277, 39332/2005 & 3966/2006 dated 28/04/2006.

W.P Nos.14042 & 14045 of 2016 : Petitions filed under Article 226 of the Constitution of India WRIT OF MANDAMUS directing the 2nd and 3rd respondents to pass appropriate orders regularizing the services of the petitioner conferring permanent status with time scale of pay and all other attendant benefits from the date of completion of 480 days of service on 13/09/1999 duly implementing the orders dated 31.03.2005 of the 1st respondent/Authority passed in Proc.No. A/993/2001 as confirmed by the common orders of the Honourable High Court in W.P.Nos. 38558, 38559, 39277, 39332/2005 & 3966/2006 dated 28/04/2006.

W.P No.14043 of 2016 : Petition filed under Article 226 of the Constitution of India WRIT OF MANDAMUS directing the 2nd and 3rd respondents to pass appropriate orders regularizing the services

of the petitioner conferring permanent status with time scale of pay and all other attendant benefits from the date of completion of 480 days of service on 23/05/1999 duly implementing the orders dated 31.03.2005 of the 1st respondent/ Authority passed in Proc.No. A/993/2001 as confirmed by the common orders of the Honourable High Court in W.P.Nos. 38558, 38559, 39277, 39332/2005 & 3966/2006 dated 28/04/2006.

W.P No.14044 of 2016 : Petition filed under Article 226 of the Constitution of India WRIT OF MANDAMUS directing the 2nd and 3rd respondents to pass appropriate orders regularizing the services of the petitioner conferring permanent status with time scale of pay and all other attendant benefits from the date of completion of 480 days of service on 02/06/99 duly implementing the orders dated 31.03.2005 of the 1st respondent/ Authority passed in Proc.No. A/993/2001 as confirmed by the common orders of the Honourable High Court in W.P.Nos. 38558, 38559, 39277, 39332/2005 & 3966/2006 dated 28/04/2006.

W.P No.14046 of 2016 : Petition filed under Article 226 of the Constitution of India WRIT OF MANDAMUS directing the 2nd and 3rd respondents to pass appropriate orders regularizing the services of the petitioner conferring permanent status with time scale of pay and all other attendant benefits from the date of completion of 480 days of service on 17/08/99 duly implementing the orders dated 31.03.2005 of the 1st respondent/ Authority passed in Proc.No. A/993/2001 as confirmed by the common orders of the Honourable High Court in W.P.Nos. 38558, 38559, 39277, 39332/2005 & 3966/2006 dated 28/04/2006.

W.P No.14047 of 2016 : Petition filed under Article 226 of the Constitution of India WRIT OF MANDAMUS directing the 2nd and 3rd respondents to pass appropriate orders regularizing the services of the petitioner conferring permanent status with time scale of pay and all other attendant benefits from the date of completion of 480 days of service on 06/11/99 duly implementing the orders dated 28.04.2004 of the 1st respondent/ Authority passed in Proc.Na.Ka 268/2001 as confirmed by the common orders of the Honourable High Court in W.P.Nos. 38558, 38559, 39277, 39332/2005 & 3966/2006 dated 28/04/2006.

For Petitioner : Mr.T.Sellapandian

For Respondents : Mr.R.M.Muthukumar for R1
Government Advocate
Mr.P.Paramasivados
for R2 and R3

C O M M O N O R D E R

Heard the learned counsel appearing for the petitioner, the learned Government Advocate appearing for the first respondent as well as the learned counsel appearing for the respondents 2 and 3.

2.All the petitioners are working as Conductors in the respondent Transport Corporation and they have filed these writ petitions praying for issuance of Writ of Mandamus to confer permanent status on them by appointing them in a regular time scale of pay from the date on which the petitioners have completed 480 days of service by implementing the order passed by the first respondent who is the competent Authority under the provisions of Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, 1981.

3.The facts which are necessary for the disposal of the writ petitions are that all the petitioners were employed as Conductors on temporary basis after their names were sponsored by the Employment Exchange. The date of initial engagement of the petitioners was during 1999. The petitioners continued as daily rated employees and since the respondent Corporation did not regularise their services, they approached the first respondent by way of an application under the Act for conferring permanent status on them on completion of 480 days of continuous work. The first respondent by an elaborate order dated 31.03.2005 allowed the claim made by the petitioners and directed the respondent Management to confer permanent status on the petitioners from the date they have completed 480 days of service and the relevant details were furnished in a tabular column which was appended as Annexure I to the order passed by the first respondent dated 31.03.2005.

4.The Management did not challenge the orders and therefore, the petitioners/ workmen filed W.P.No.38558 of 2005 etc. batch to implement the order passed by the first respondent and to regularise their services from the dates mentioned in the said order and along with the said batch of cases, the respondent Corporation's writ petition challenging the order of the first respondent in W.P.No.39332 of 2005 was also tagged. The Corporation contended that the Inspector of Labour without properly appreciating the facts and circumstances of the case, held that the workman/ petitioners are entitled to be made permanent and the order has to be set aside.

5.After elaborately hearing the matter, this Court pointed out that before the first respondent documents were marked on behalf of each workman separately and no contra document was

marked by the Management and after considering the contents of the exhibits which were marked, the first respondent granted relief to the workmen and the same is not a perverse finding.

6.Further, it was pointed out that the first respondent had considered the exhibits filed by the individual workman and factually found that the workmen have proved their claim and the Management failed to produce any contra documents and therefore, the finding of the first respondent is based on acceptable evidence.

7.The argument raised by the Management that there was a ban on recruitment vide Government letter dated 21.01.2002 was also rejected as it is inapplicable to the workmen as they were all appointed prior to the order and the first respondent found that as per the settlement under Section 12(3) of the Act, several similarly placed persons as that of the petitioners herein were regularised. Therefore, it was held that the Management is bound to give permanent status to the Workmen as per the settlement under Section 12(3) of the Act, on completion of 480 days of employment.

8.Accordingly, the writ petition filed by the Management in W.P.No.39332 of 2005 was dismissed and the writ petition filed by the workmen were allowed with direction to the respondent Corporation to regularise the services of the workmen, confer permanent status by implementing the order passed by the first respondent dated 31.03.2005 and all of them are entitled to all consequential benefits. This order dated 28.04.2006 passed in the batch of cases had become final and the respondent Management did not challenge the same. However, under the guise of implementation of the order, the respondent Corporation issued fresh appointment orders to the petitioners during 2006-2007 appointing them as a fresh entrant from the date of which such appointment order was issued.

9.The petitioners submitted representation through their counsel requesting for being made as regular employees from the dates on which the petitioners have completed 480 days of continuous employment as held by the first respondent in its order dated 31.03.2005. These representations are pending and till date no orders have been passed. The petitioners have moved Labour Court, Salem by filing Computation Petitions in C.P.Nos.14 and 49 of 2015 requesting the Labour Court to compute monetary benefits payable to the workmen. These Computation Petitions are now pending before the Labour Court and counter statement has been filed by the respondent.

10.It is stated by the learned counsel appearing for the petitioner that the petitioners are unable to proceed with the

CPs, since the Management is yet to pass orders giving effect to the order passed by the first respondent dated 31.03.2005.

11.The learned counsel appearing for the respondent Management vehemently contended that the order passed by the first respondent dated 31.03.2005 is un-tenable and the facts of the case were not properly appreciated and the Management was justified in giving employment with prospective effect.

12.In my view, the submission made on behalf of the respondent Corporation is absolutely devoid of merits and liable to be summarily rejected for the simple reason that the order dated 31.03.2005 has become final and the Management has not challenged the order passed in their writ petition in W.P.No.39332 of 2005 which was dismissed by the common order dated 28.04.2006.

13.That apart, there can be no ambiguity in the dates of initial engagement of the petitioners since the petitioners are all stated to have been recruited through the Employment Exchange. In such circumstances, the respondent Corporation is bound to pass orders and while doing so, the observations made in this order as well as the findings rendered by this Court in W.P.No.38558 of 2005 etc. batch dated 28.04.2006 should be borne in mind.

14.In the light of the above, there will be a direction to the respondents 2 and 3 to pass appropriate orders on the petitioners representation sent through their counsel dated 22.08.2014 and 08.07.2015 bearing in mind the above observations. This direction is to be complied with by the respondents 2 and 3 within a period of eight weeks from the date of receipt of a copy of this order.

15.The writ petitions are disposed of with the above observations. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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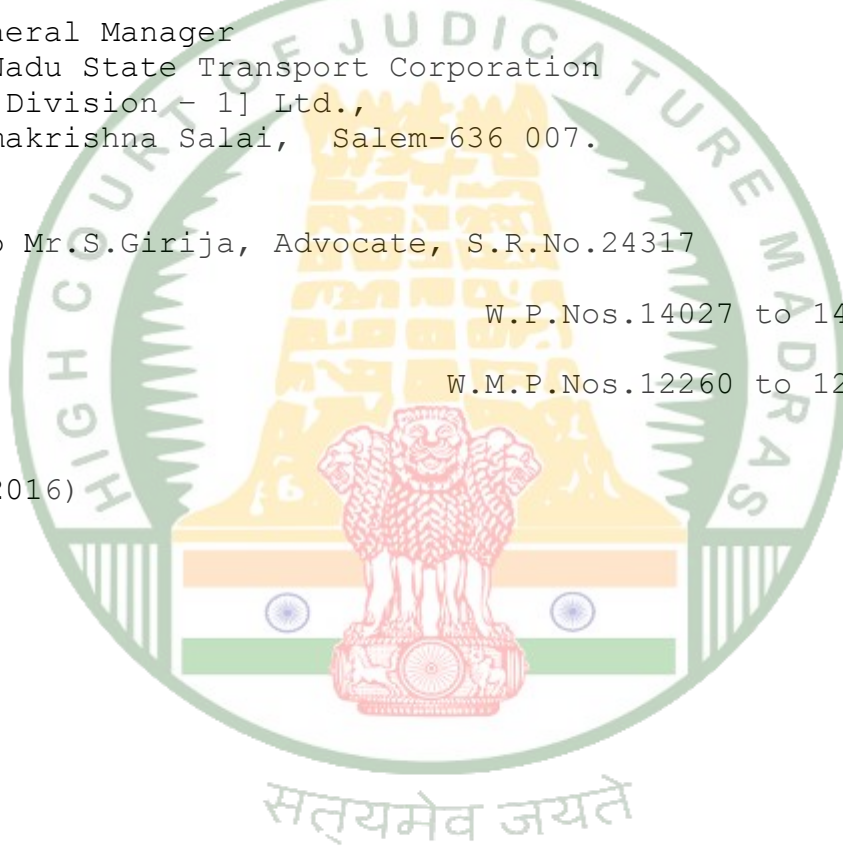
To

1. The Inspector of Labour
Authority under the TamilNadu Industrial Establishment,
(Conferment of permanent status to workmen) Act 1981
Salem, Salem District.
2. The Managing Director,
Tamil Nadu State Transport Corporation,
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+21cc's to Mr.S.Girija, Advocate, S.R.No.24317

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and
W.M.P.Nos.12260 to 12280 of 2016

CNR (CO)
CA (05/05/2016)



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