

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 15.3.2018

Delivered on: 28-03-2018

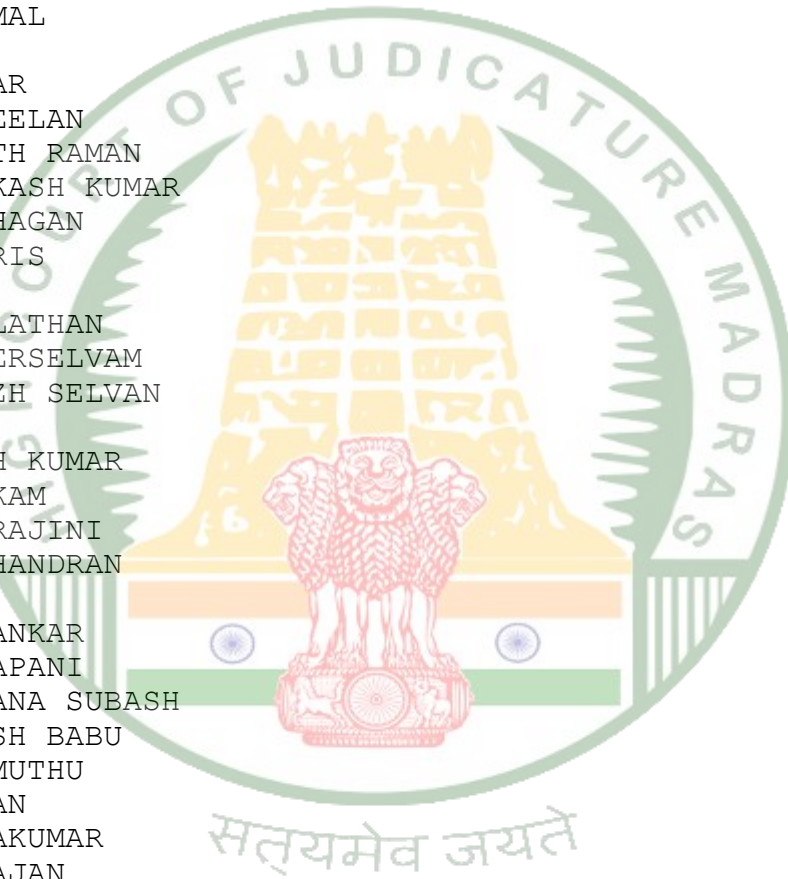
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THE HONOURABLE THIRU JUSTICE V. PARTHIBAN

W.P.Nos. 17513, 22212 & 29796 of 2010 &
M.P.Nos.1 of 2010, 1to 1 of 2011, WMP 28482 of 2017
in WP.No.17513/2010

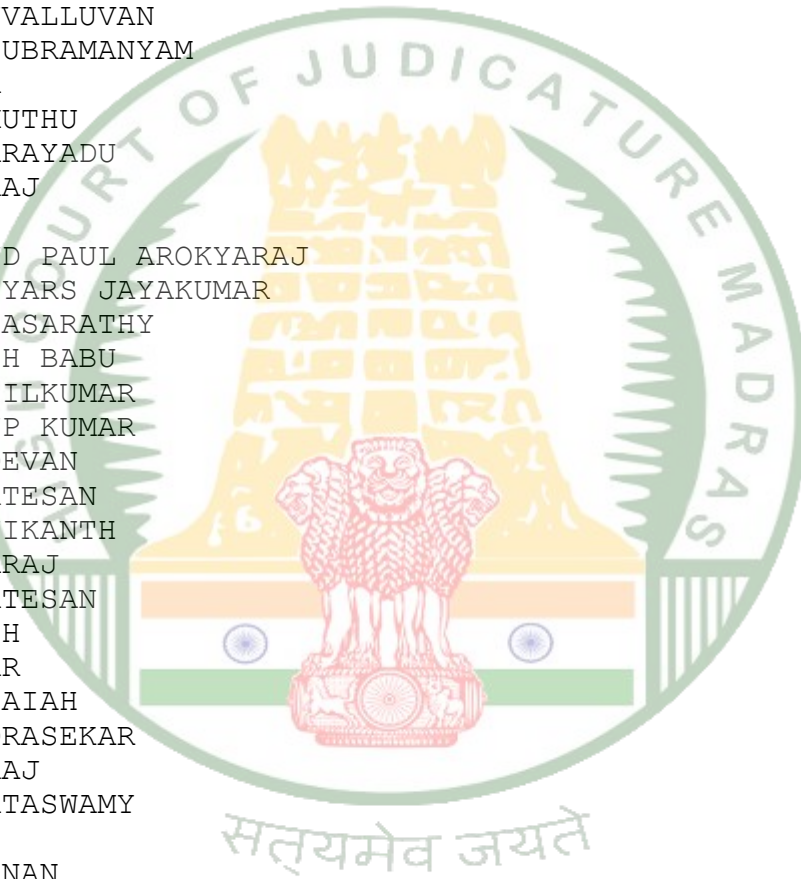
1 ANTSON JOSEPH
2 K.MUNUSAMY
3 M.KANAGARAJ
4 S.MURUGAN
5 K.ARUMUGAM
6 J.BARNABAS
7 K.IRUDHAYARAJ
8 M.ANBABHAGAN
9 K.TAMIL SELVAN
10 A.CHRISTY RAJA
11 A.VINCENT
12 M.NAYAGAM
13 R.ETHIRAJ
14 K.NANDAKUMAR
15 R.RAJ
16 N.RAVI
17 K.PANNEERSELVAM
18 T.THOMPSON JOSEPH
19 N.THAMBRAN
20 B.DEVARAJAN
21 S.BOBBI DERRIN
22 R.SIVAVANNAN
23 T.SHANMUGAM
24 V.THIRUMARAN
25 K.PADMANABHAN
26 C.BALAJI
27 R.KUMAR
28 S.GANESAN
29 K.GAJAGOPI
30 R.JAGADEESAN
31 S.VENKATESAN
32 B.BERNAT @ B.VASANTH
33 P.MASANAM
34 A.MOSES D SILVA
35 M.PANDIAN
36 P.SEKAR
37 N.PALRAJ
38 S.SELVAKUMAR
39 C.ELLAPPAN

40 R.RAVI
41 C.S.BALAJI
42 P.RAVIKUMAR
43 S.KUMARAN
44 G.VISWANATHAN
45 K.DEVENDARAN
46 V.M.NATARAJAN
47 R.PALANISWAMY
48 G.S.VENKATESAN
49 B.C.GIRI
50 N.SIVASANKAR
51 G.D.DOMINIC PULAVANDHEN
52 R.THIRUMAL
53 V.JOHN
54 K.SHANKAR
55 S.JAYASEELAN
56 R.RANJITH RAMAN
57 V.K.PRAKASH KUMAR
58 M.ANBZHAGAN
59 S.J.HARRIS
60 S.BABU
61 K.PRAKALATHAN
62 J.PANNEERSELVAM
63 S.THAMIZH SELVAN
64 J.GOPU
65 D.SURESH KUMAR
66 S.MANICKAM
67 JOSEPH RAJINI
68 N.RAMACHANDRAN
69 M.KUMAR
70 M.SIVASANKAR
71 G.DHANDAPANI
72 S.SARAVANA SUBASH
73 K.PRAKASH BABU
74 E.VEERAMUTHU
75 J.KUMARAN
76 S.VIJAYAKUMAR
77 G.NATARAJAN
78 S.LENIN
79 V.RUKUMANGATHAN
80 R.CHANDRASEKAR
81 N.KUPPUSWAMY
82 R.BABU
83 S.GEORGE
84 N.VIJAYAKUMAR
85 C.PRABHAKAR
86 M.VARADHARAJAN
87 T.CHINNATHAMBI
88 M.SADASIVAM
89 D.STALIN
90 S.SALOMON
91 M.MURALI KANNAN
92 S.SUKUMAR



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93 G.SANTHANAM
94 T.RATHISH KUMAR
95 G.MUTHU
96 G.KUMAR
97 M.STEPHEN JOSEPH
98 R.RAJENDRAN
99 R.CHANDRAMOHAN
100 M.MOSES
101 A.DILLI BABU
102 R.NALLATHAMBI
103 M.C.NITHYANANDAN
104 V.S.SARAVANAN
105 D.THIRUVALLUVAN
106 P.BALASUBRAMANYAM
107 S.KUMAR
108 S.MARIMUTHU
109 R.SUBBARAYADU
110 V.DEVARAJ
111 P.MOSES
112 STEPHEND PAUL AROKYARAJ
113 S.ZACKIYARS JAYAKUMAR
114 S.PARTHASARATHY
115 I.RAMESH BABU
116 M.SENTHILKUMAR
117 A.SWARUP KUMAR
118 D.SAGADEVAN
119 N.VENKATESAN
120 D.RAJINIKANTH
121 K.SELVARAJ
122 N.VENKATESAN
123 G.SURESH
124 N.SANKAR
125 S.CHELLAIAH
126 S.CHANDRASEKAR
127 S.AMALRAJ
128 S.VENKATASWAMY
129 D.BABU
130 S.KRISHNAN
131 A.ARUL MURUGAN
132 S.RAGUNATHAN
133 V.RANGANATHAN
134 R.RAMADOSS
135 R.RANJAN
136 A.K.HIDHAYATHULLA KHAN
137 R.VENKATESAN
138 L.VASANTH KUMAR
139 ABDUL SYED
140 S.ALEXANDER
141 R.SUNDARAM
142 R.JAGANATHAN
143 K.R.SENTHILNATHAN
144 V.ARULDOSS



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.. PETITIONERS IN
WP NO.17513 OF 2010

1. P.JAGAN
2. V.BAKTHAVATSALU
3. M.RAMESH BABU
4. M.MOHAMMED USMAN
5. P.DILLIBABU
6. C.R.DHARANIVASU
7. V.KANNIYAPPAN

.. PETITIONERS IN
WP NO.22212 OF 2010

1. F.ALBERT ANTHONY
- 2 E.PALANI
- 3 P.RAMESH
- 4 N.VENKATESH
- 5 R.KRISHNAN
- 6 M.H.ABBAS
- 7 S.RAJASEKAR
- 8 R.MURUGAN
- 9 G.GAJENDRA BABU
- 10 P.RAMAKRISHNAN
- 11 V.SARAVANAN
- 12 M.ELUMALAI
- 13 L.RAFI AHAMED
- 14 S.RAJA
- 15 M.VENKATESAN
- 16 K.ANANTHAN
- 17 R.SAMPATH KUMAR
- 18 MOHAN KUMARAMANGALAM
- 19 R.RAGHU
- 20 S.ELANGO
- 21 R.CHARLES PETER
- 22 T.G.SARAVANAN
- 23 G.JANAKIRAMAN

.. PETITIONERS IN
WP NO.29796 OF 2010

VERSUS

सत्यमेव जयते

- 1 THE UNION OF INDIA
REP BY THE SECRETARY MINISTRY OF CIVIL
AVIATION GOVT. OF INDIA NEW DELHI
- 2 THE EXECUTIVE DIRECTOR
AIR INDIA LTD NATIONAL AVIATION COMPANY OF
INDIA LTD NACII (I) AIRLINES HOUSE
MEENAMBAKKAM CHENNAI 27
- 3 GENERAL MANAGER-PERSONNEL
AIR INDIA LTD NATIONAL AVIATION COMPANY OF
INDIA LTD AIRLINES HOUSE MEENAMBAKKAM
CHENNAI 27

4 THE REGIONAL DIRECTOR
AIRPORTS AUTHORITY OF INDIA CHENNAI AIRPORT
MEENAMBAKKAM CHENNAI 27

5 THE PRESIDENT AND CEO
AISATS C/O.AIR INDIA AIRLINES HOUSE 113
GURUDWARA RAKABGANJ ROAD
NEW DELHI-110 011

6 THE GENERAL MANAGER-GROUND
HANDING AISATS C/O. AIR INDIA AIRLINES
HOUSE 113 GURUDWARA RAKABGANJ ROAD NEW
DELHI-110 011

... RESPONDENTS 1 to 6 IN
ALL WRIT PETITIONS

7. THE NODAL OFFICER,
AIR INDIA, AIR TRANSPORT SERVICES,
AIR INDIA UNITY COMPLEX,
PALLAVARAM CANTONMENT,
CHENNAI-600 043.

... RESPONDENT NO.7 IN
WP NOS17513 & 29796 OF 2010

(R7 impleaded as per order dt.14/12/17 in
WMP.No.28481/17 in WP.No.17513/10 and
WMP.No.27154/17 in WP.No.29796/10)

Common Prayer in W.P.No.17513, 22212 & 29796 of 2010: This Writ
Petition is filed under Article 226 of the Constitution of
India, praying for issuance of Writ of Mandamus, to direct the
respondents to permanently absorb all the petitioners in the
post of Helper in Chennai Airport.

For Petitioners : Mr.Balan Haridass in all WPs

For Respondents: Ms.G.Hema, CGSC for
R1 & R to R6 in all WPs
Mr.N.G.R.Prasad, SC for
Mr.K.Srinivasamurthy,
for R2 and R3 in all WPs

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COMMON ORDER

The petitioners have approached this Court, seeking the
following relief:

"To issue Writ of Mandamus, issuance of
Writ of Mandamus, to direct the respondents
to permanently absorb all the petitioners in
the post of Helper in Chennai Airport.

2. Since the prayer sought for in these Writ Petitions as
well as the issues involved therein, are one and the same,

these Writ Petitions are taken up together for common disposal.

3. The petitioners have been working as Helpers, having been appointed on various dates from 1986 and 1991 onwards. They have been engaged as Commercial Helpers by the respondents for a period of 90 days in a year on rotation basis and being paid daily wages, which have been revised from time to time. According to these petitioners, from the date of initial appointment, they have been engaged continuously till date for the limited period as mentioned above. The nature of the job discharged by the petitioners is to load and unload the cargo and baggages from the flights at Chennai Airport terminal. According to the petitioners, very few employees were engaged on permanent basis, but substantial work force is being

employed only through daily wagers like the petitioners herein. The casual workers who are the members of the then Indian Airlines Canteen, had approached this Court by filing batch of Writ Petitions, viz., W.P.No.17381 of 1991 etc., seeking regularization of their service. Those workers were employed 90 days in a year on rotation basis. In pursuance of certain interim directions of this Court in the above said Writ Petitions, a Scheme came to be framed for regularizing the services of the casual workers, like the petitioners herein and others. This Court, while dismissing the above said batch of Writ Petitions on 20.4.2000, had ultimately observed that the scheme framed by the Indian Airlines is just, equitable and fair and the workers had to workout their rights as per the scheme.

4. As against which, Writ Appeals came to be filed in a batch of Writ Appeals, viz., W.A.Nos.808 and 861 of 2000 etc., The Writ Appeals were disposed of by slightly modifying the order passed by the learned single Judge as he then was, to the extent that for consideration of regular employment, the workers should have atleast put in 90 days of service in a year from 1991. With such modification, the other directions contained in the order order passed by the learned single Judge, were ordered to remain in tact.

5. Be that as it may, after 2000 and 2003 when those orders were pronounced by the learned single Judge as well as the Division Bench, there appeared to be a sea change which took place in Aviation industry where ground handling activity had been outsourced. According to the petitioners, Indian Airlines which had been subsequently merged with Air India, which had entered into a joint venture with Singapore Airlines Terminal Services Limited, called 'AISATS' and newly created company started handling the loading and unloading of cargo and baggages of the passengers for Airlines which used the Chennai Airport terminal. In these circumstances, fearing displacement in view of the changes in the employment status of the petitioners, they had approached this Court by filing the present Writ Petitions, seeking for issuance of Writ of Mandamus for their permanent

absorption as Helpers in Chennai Airport. During the pendency of the Writ Petitions, on behalf of the petitioners, 7th respondent was impleaded by orders of this Court dated 14.12.2017. The 7th respondent is a subsidiary company of Air India which was formed specifically for the purpose of ground handling activity in the Airport. In view of the formation of new company for ground handling, it became necessary to implead the said company as a party to the present writ petitions.

6. Upon notice, Ms.G.Hema, learned Central Government standing counsel entered appearance for the respondents 1 and 4 and Mr.N.G.R.Prasad, learned counsel entered appearance for respondents 2 and 3 and filed counter affidavits. As per the counter affidavits filed on behalf of the respondents, after introduction of open sky policy by the Government of India, the monopoly of the respondent Airlines had come to an end. As result of which, the market share of 68% held by the respondent Airlines in the Aviation sector has been drastically reduced to 19%. Moreover, the respondent Airlines incurred huge loss after the introduction of global competition in the Aviation sector and even they were unable to pay regular salaries for the permanent employees and officers of the company. In the said circumstances, the question of absorbing any casual workers like the petitioners herein, is not possible. According to the counter affidavits, the respondent Airlines is not recruiting any permanent employee in the category of Helpers even after the exist of permanent employees from the employment. Therefore, the question of absorbing the casual workers on permanent basis does not arise in the first place.

7. Shri N.G.R.Prasad, learned counsel appearing for the respondents would submit that this Court has rejected the contention of the casual employees that the respondent was involved in unfair labour practice. According to the learned counsel for the respondents, the Division Bench has taken note of changes in the Airlines Industry and the huge loss incurred by the Air India, disposed of the Writ Appeals and the Special Leave Petition filed against the Division Bench Order, was also dismissed by the Hon'ble Supreme Court. Therefore, the learned counsel would submit that the question of permanent absorption with respondent Airlines cannot be entertained since the respondent company had entered into an agreement with 7th respondent which is a subsidiary of respondents 2 and 3 to specifically in-charge of ground handling activity of the Airports and these petitioners were to be employed only by the 7th respondent.

8. On behalf of the respondents 2 and 3, additional counter affidavits have been filed, wherein, the details of the loss incurred by the respondent Airlines were set out and the financial restructuring plan was put in place and how the Government of India hive off ground handling activity at various Airports including loading and unloading of cargo and passengers

baggages including driving and maintaining ground support vehicles in the Airports, etc. The details as contained in paragraphs 5 and 6 of the additional counter affidavit, are extracted hereunder:

"5. I submit that due to the financial crisis faced by the respondents before and after the merger of erstwhile Air India Ltd., and erstwhile Indian Airlines Ltd., into one entity, i.e. Air India Ltd., the Government in the year 2012 have formulated a Turn-Around Plan (TAP) and a Financial Restructuring Plan (FRP) in respect of the Respondent-Airline which has been prepared by experts and approved by the Union Cabinet. The TP and FRP envisage several measures including restructuring of manpower. Subject to the respondent company achieving the milestones laid down in the TP/FRP, the Government is infusing funds into the Company to keep the company afloat. The Government has so far infused funds to the extent of around Rs.30,000/- crores. The aircraft to employee ratio in the respondent-Airline is unviable and far exceeds the acceptable/viable aircraft to employee ratio. As part of the Turn Around Plan, a decision has been taken by the Government to hive off the ground handling activities at various airports, including loading and unloading of cargo and passengers baggages, driving and maintaining ground support vehicles in the airport etc. to the respondent's fully owned subsidiary company Air India, Air Transport Services Ltd. (AIATSL). Similarly, activities relating to aircraft maintenance engineering have been hived off to the wholly owned subsidiary company, Air India Engineering Services Ltd.(AIESL). The operationalization of AIATSL at different airports, except in airports where ground handling is carried out by AI-SATS, a joint venture company, have begun in the year 2012-23. The decision to give off is taken so that AIATSL can expertise in Ground Handling work and also compete with other Ground Handling agencies to tap the business from foreign and other Airlines. They have been implementing latest technology machines to meet the requirement/demand of the customer Airlines. Due to this, even the permanent employees of this respondent company who were surplus

were transferred to the subsidiary company.

"6. I submit that as per the policy decision, at Chennai Airport, the ground handling of Air India flights and other client-airline flights is now carried out by AIATSL, a separate entity in ground handling and this respondent-airline has no role in ground handling of flights. The AIATSL has its own manpower and policy on engaging personnel. Since the ground handling business is mainly dependent upon business given by client airlines, which depends upon the contract entered into between AIATSL and the Customer Airlines, AIATSL engages persons on their own term. The work of AIATSL will depend upon the contract given by the Client Airlines which ultimately depend upon the AIATSL carrying out the work at the utmost satisfaction of the Client Airlines and offer competitive rates."

9. Shri N.G.R.Prasad, learned counsel would also submit that the employment of casual workers depends on the client patronage and the market is quite fluctuating as there are several competitors for carrying out ground handling activities competing with one another. He would reiterate the above submission as found in additional counter affidavit in paragraph 16, which is reproduced herein below:

"16. I submit that the ground handling business carried on by AIATSL is a highly competitive one and there is no guarantee that the client airlines that are serviced by them would continue their Service Level agreement with the subsidiary Company AIATSL. Presently, M/s.Bhadra is a competitive ground handling agency, a private company who have secured the contract to handle major Airlines like Lufthansa, British Airways, etc. Earlier, the AIATSL was servicing the said Airlines. Consequently, the manpower requirement keeps on changing. Therefore, it is not possible for AISTSL to have personnel on permanent basis as the work would depend upon the contract they would get from the Client Airlines and the period of the said contract. Further the ground handling policy of the Government is periodically changing depending upon the various factors."

10. The learned counsel would also submit that these petitioners are now being engaged by the 7th respondent on co-

terminus basis as averred in paragraph 18 of the additional counter affidavit, which reads as under:

"18. I submit that in the present case, due to the Court orders, the petitioners are being engaged on casual daily-rated basis by the respondent Airlines at Chennai. They are mainly engaged in the ground handling activity. Since the ground handling activity has been hived off to AIATSL, the services of these casual workers are no longer required by the respondent-Airlines and this respondent is not in a position to utilize their services. Therefore, a decision has been taken by the respondent Headquarters that the casual workers engaged at various airports may be provided opportunity by the subsidiary company in such suitable jobs as and when required on co-terminus basis, as per the wage structure and other terms and conditions of the subsidiary company, i.e., AIATSL. Accordingly, the AIATSL vide letter dated 19.4.2016 offered the petitioners the post of Handyman on fixed term contract basis, considering that they were working with the respondent company as casual labour. Under the offer, the petitioners are eligible for consolidated emoluments which is equivalent to their present wages. They are also entitled to certain other benefits which they are not getting at present. Accordingly, the casual workers were requested to submit their consent/willingness within seven days of receipt of that letter dated 19.4.2016."

11. In all, the learned counsel would submit that the petitioners cannot expect any guarantee of continuous employment in view of the fluctuating market trends and however, they would be engaged whenever there is man power required depending upon their clients patronage.

12. Per contra, Shri Balan Haridoss, learned counsel appearing for the petitioners would submit that although in all Writ Petitions, the prayer is to issue a Writ of Mandamus to direct the respondent Airlines to grant permanent absorption to the petitioners, but in view of radical and drastic changes in the Aviation industry including the respondent Airlines, the prayer as sought for in the present writ petitions cannot be pursued to its logical end. However, his point of contention is that for 15 to 25 years, these petitioners had been employed though for limited period, yet continuously in consecutive years and therefore, 7th respondent being subsidiary of respondents 1

to 3 can be directed to employ these petitioners as long as they are in the industry and as long as they require man power. He would only submit that the petitioner having been allowed to work for considerable length of time, cannot be replaced by another set of casual employees and therefore, it is imperative on the part of the 7th respondent to employ these petitioners without going for any replacement by resorting to any other casual employment.

13. The learned counsel appearing for the petitioners would draw the attention of this Court to the 'Contract of the Appointment' entered into by the 7th respondent with individual workers, a specimen of it, dated 19.5.2016 is enclosed in the additional typed set of papers filed in WP No.17513 of 2010, which would state that the 7th respondent had offered appointment to one of the petitioners as Handyman for a fixed term of three years. His main objection is only with regard to Clause 27 which is extracted hereunder:

"27. This Fixed Term Employment, if not terminated earlier, will automatically expire on _____ OR on attaining the age of superannuation, i.e. 58 years, whichever is earlier, without company having to do any other action in this respect or assigning any reason thereof."

14. The apprehension of the petitioners is that there should not be unjust termination from service and they should not be replaced by another set of casual employees. In fact, the learned counsel would rely on a decision of the Hon'ble Supreme Court of India, reported in "2007(13)SCC 292 (Hargurpratap Singh versus State of Punjab and others)". He would draw the attention of this Court to para 3 of the judgment which extracted below:

"3. We have carefully looked into the judgment of the High Court and other pleadings that have been put forth before this Court. It is clear that though the appellants may not be entitled to regular appointment as such it cannot be said that they will not be entitled to the minimum of the pay scale nor that they should not be continued till regular incumbents are appointed. The course adopted by the High Court is to displace one ad hoc arrangement by another ad hoc arrangement which is not at all appropriate for these persons who have gained experience which will be more beneficial and useful to the colleges concerned rather than to appoint persons afresh on ad hoc basis. Therefore, we set aside the orders made by the High Court to

the extent the same deny the claim of the appellants of minimum pay scale and continuation in service till regular incumbents are appointed. We direct that they shall be continued in service till regular appointments are made on minimum of the pay scale. The appeals shall stand allowed in part accordingly."

15. Therefore, the learned counsel for the petitioners would submit that the petitioners would only want a limited direction to continue the existing nature of employment of the petitioners in which they were employed at present.

16. This Court has given its anxious consideration to the rival submissions of the learned counsels and perused the materials and pleadings placed on record.

17. As rightly contended by the learned counsel appearing for the respondents 2 and 3 that in view of drastic changes in Aviation industry over a period of time due to open sky policy adopted by the Government of India, the monopoly of the respondent Airlines had ended. In view of global competition in the Aviation industry, the Airlines had also suffered huge financial loss and eventually even unable to pay salaries due to the permanent employees regularly. Moreover, when the ground handling activity has been outsourced in all Airports in the country and these petitioners having been employed only in such activity, they cannot be ordered to be absorbed permanently in the respondent Airlines. As stated by the learned counsel for the respondents that the respondent Airlines was not recruiting any permanent Helpers for the last many years after the exit of permanent employees from employment. That being the case, the question of consideration of the original prayer by this Court as sought for in the writ petitions, does not arise.

18. In view of the inevitable changes which took place in the Aviation industry, this Court has to take practical and pragmatic view to find just and equitable solution to the employment crisis faced by the petitioners. As contended by the learned counsel for the petitioners that atleast the present state of employment of the petitioners with the 7th respondent has to be protected, since they cannot be made to work under constant fear of termination at any time, particularly, in the teeth of the fact that these petitioners had been employed as Helpers for more than two decades. That is why, probably the learned counsel appearing for the petitioners had pleaded only for limited protection in order to atleast protect the present nature of employment of the petitioners, instead of seeking for absorption of their services with the respondent Airlines.

19. Considering the submissions made on behalf of the petitioners that their nature of present employment as indicated in the contract of appointment entered into by the 7th

respondent with the individual workman as reflected in specimen copy enclosed in additional typed set of papers, dated 19.5.2016, which pertains to one of the workmen, namely, Thiru.S.Venkatesan, on the same terms and conditions and such employment shall be continued in respect of other petitioners who were offered such appointment till they attain the age of superannuation. As rightly contended by the learned counsel for the respondents 2 and 3 that the requirement of man power may change from time to time due to fluctuating market trends as the ground handling activity may increase or decrease depending upon the client-Airlines patronage. Therefore, considering the said submissions, this Court is of the view that as long as man power requirement is there by the second respondent, the services of the petitioners ought to be utilized and the petitioners at no point of time should be replaced by any other casual arrangement by resorting to employ other persons. It is made clear that on the basis of genuine man power requirement, it is always open to the 7th respondent to downsize or rightsize the employment as and when the situation demands and depending on such contingencies, these petitioners shall be continued in service with the terms and conditions of services as stipulated by the 7th respondent. In any case, the petitioners' employment cannot be brought to end by adopting any unfair mean or unfair labour practice by bringing other casual workers from the open market in order to displace the petitioners herein.

With these observations and directions, these Writ Petitions shall stand disposed of. No costs.

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Sd/-

Assistant Registrar(CS VII)

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Sub Assistant Registrar

To

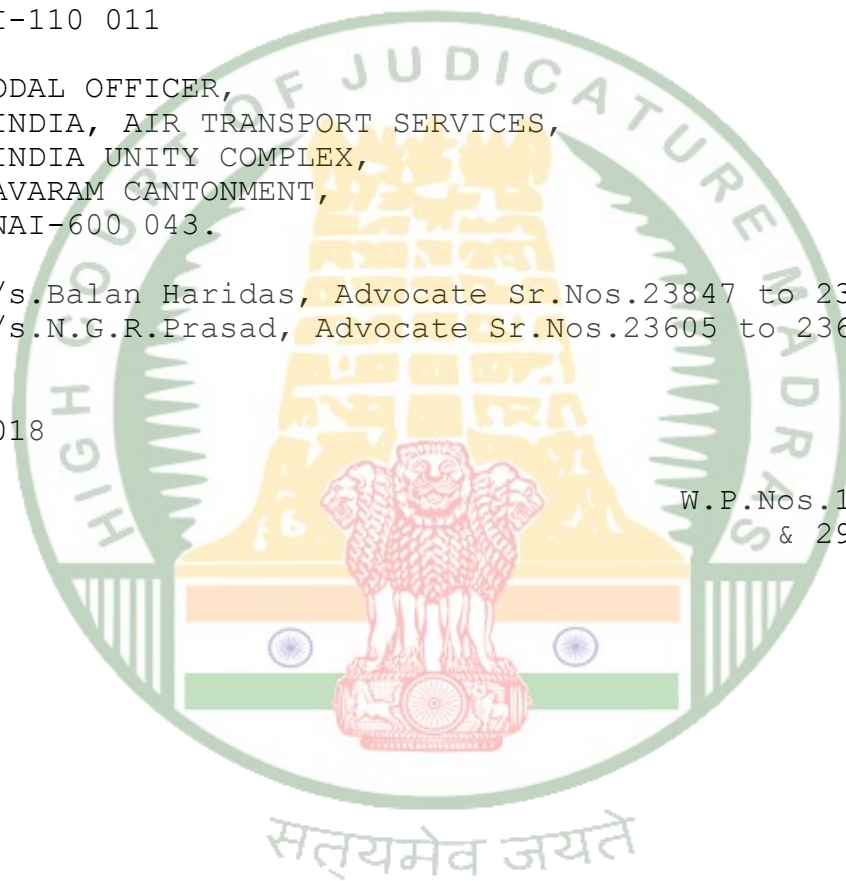
- 1 THE SECRETARY MINISTRY OF CIVIL AVIATION GOVT. OF INDIA, NEW DELHI
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7. THE NODAL OFFICER,
AIR INDIA, AIR TRANSPORT SERVICES,
AIR INDIA UNITY COMPLEX,
PALLAVARAM CANTONMENT,
CHENNAI-600 043.

+3cc to M/s.Balan Haridas, Advocate Sr.Nos.23847 to 23849/18
+3cc to M/s.N.G.R.Prasad, Advocate Sr.Nos.23605 to 23607/18

RJI (CO)
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Order in
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