

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.08.2019

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
and
THE HONOURABLE MS.JUSTICE P.T.ASHA

W.P.Nos.12807, 20411, 24808 to 24812 of 2013
&
23598, 35585 to 35588 of 2016

W.P.No.12807 of 2013:

S.Dharman

..... Petitioner

-vs-

1.Union of India rep. by
The General Manager,
Southern Railway, Chennai 600 003.

2.The Financial Advisor and
Chief Accounts Officer,
Southern Railway, Chennai 600 003.

3.The Chief Personnel Officer,
Southern Railway, Chennai 600 003.

4.The Divisional Railway Manager,
Chennai Division, Southern Railway,
Chennai 600 003

5.The Senior Divisional Personnel Officer,
Chennai Division, Southern Railway,
Chennai.

6.The Registrar,
The Central Administrative Tribunal,
Madras Bench, Chennai

..... Respondents

W.P.No.20411 of 2013:

1.Union of India rep.
By the General Manager,
Southern Railway,
Madras 600 003.

2.The Financial Advisor and
Chief Accounts Officer,
Southern Railway,
Madras 600 003.

3.The Chief Personnel Officer,
Southern Railway,
Madras 600 003.

4.The Divisional Railway Manager,
Chennai Division,
Southern Railway,
Madras 600 003.

5.The Senior Divisional Personnel Officer,
Chennai Division,
Southern Railway,
Madras 600 003.

.... Petitioners

-vs-

1.The Registrar
Central Administrative Tribunal,
Madras Bench,
Madras - 600 104

2.M.Kannan

3.M.Ponnuswamy

4.S.Arumugam

5.V.Ramachandran

6.M.J.Thangadurai

7.E.Neelakandan

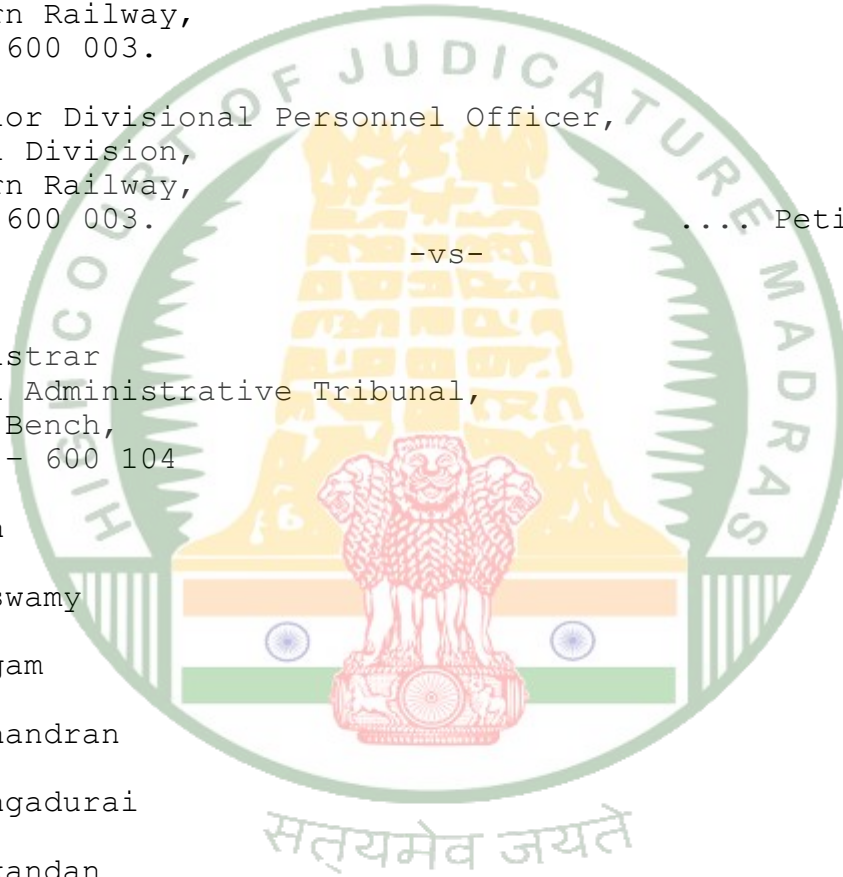
8.S.Perumal

9.H.M.Shivaperumal

10.A.Andrews

11.G.Munuswamy

.... Respondents



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W.P.No.24808 of 2013:

1.The Union of India
rep. by the Chairman,
Railway Board,
Railway Bhavan,
New Delhi - 110 001.

2.The Chief Personnel Officer,
Southern Railway,
Park Town,
Chennai 600 003.

3.The Senior Divisional Personnel Officer,
Southern Railway,
Personnel Branch,
Chennai Division,
Chennai 600 003.

..... Petitioners

-vs-

1.The Registrar
Central Administrative Tribunal,
Madras Bench,
Madras - 600 104

2.M.Janarthanam

3.S.S.Jayakumar

4.K.Thiyagarajan

5.N.Vedhachalam

6.N.Anbalagan

..... Respondents

W.P.No.24809 of 2013:

1.The Union of India
rep. by the Chairman,
Railway Board,
Railway Bhavan,
New Delhi - 110 001.

2.The Chief Personnel Officer,
Southern Railway,
Park Town,
Chennai 600 003.

3.The Senior Divisional Personnel Officer,
Southern Railway,
Personnel Branch,
Chennai Division,
Chennai 600 003.

.... Petitioners

-vs-

1.The Registrar
Central Administrative Tribunal,
Madras Bench,
Madras - 600 104

2.K.Pandurangan

.... Respondents

W.P.No.24810 of 2013:

1.The Union of India
rep. by the Chairman,
Railway Board,
Railway Bhavan,
New Delhi - 110 001.

2.The Chief Personnel Officer,
Southern Railway,
Park Town,
Chennai 600 003.

3.The Senior Divisional Personnel Officer,
Southern Railway,
Personnel Branch,
Chennai Division,
Chennai 600 003.

.... Petitioners

-vs-

1.The Registrar
Central Administrative Tribunal,
Madras Bench,
Madras - 600 104

2.M.Panchamurthy

.... Respondents

W.P.No.24811 of 2013:

1.The Union of India
rep. by the Chairman,
Railway Board,
Railway Bhavan,
New Delhi - 110 001.

2.The Chief Personnel Officer,
Southern Railway,
Park Town,
Chennai 600 003.

3.The Senior Divisional Personnel Officer,
Southern Railway,
Personnel Branch,
Chennai Division,
Chennai 600 003.

.... Petitioners

-vs-

1.The Registrar
Central Administrative Tribunal,
Madras Bench,
Madras - 600 104

2.S.Elangovan

.... Respondents

W.P.No.24812 of 2013:

1.The Union of India
Represented By
The Chairman,
Railway Board,
Railway Bhavan,
New Delhi - 110 001.

2.The Chief Personnel Officer,
Southern Railway,
Park Town,
Chennai 600 003.

3.The Senior Divisional Personnel Officer,
Southern Railway,
Personnel Branch,
Chennai Division,
Chennai 600 003.

.... Petitioners

-vs-

1.The Registrar
Central Administrative Tribunal,
Madras Bench,
Madras - 600 104

2.J.Krishnamurthy

3.P.Elumalai

4.N.Ramadoss

5.T.Shanmugam

.... Respondents

W.P.No.23598 of 2016:

A.Arumugam

.... Petitioner

-vs-

1.The Union of India

rep. by the General Manager,
Southern Railway, Chennai 600 003.

2.The Chief Personnel Officer,
Southern Railway, Chennai 600 003.

3.The Divisional Railway Manager,
Chennai Division, Southern Railway,
Chennai 600 003.

4.The Registrar,
The Central Administrative Tribunal,
Madras Bench, Chennai.

.... Respondents

W.P.No.35585 of 2016:

1.The Union of India
rep. by the General Manager,
Southern Railway,
Chennai - 600 003.

2.The Chief Personnel Officer,
Southern Railway,
Chennai 600 003.

3.The Divisional Railway Manager,
Chennai Division,
Southern Railway,
Chennai - 600 003.

.... Petitioners

-vs-

1.G.Vincent

2.A.Chandran

3.D.Jayapaul

4.P.Ramachandran

5.C.Murthyvelu

6.R.Parthasarathy

7.The Registrar
Central Administrative Tribunal,
Madras Bench,
Chennai.

.... Respondents

W.P.No.35586 of 2016:

1.The Union of India
rep. by the General Manager,
Southern Railway,
Chennai - 600 003.

2.The Chief Personnel Officer,
Southern Railway,
Chennai 600 003.

3.The Divisional Railway Manager,
Chennai Division,
Southern Railway,
Chennai - 600 003.

.... Petitioners

-vs-

1.D.Arjunan

2.E.Chinnapaiyan

3.The Registrar
Central Administrative Tribunal,
Madras Bench,
Chennai.

.... Respondents

W.P.No.35587 of 2016:

1.The Union of India
rep. by the General Manager,
Southern Railway,
Chennai - 600 003.

2.The Financial Advisor and Chief Accounts Officer
Southern Railway,
Chennai.

3.The Chief Personnel Officer,
Southern Railway,
Chennai.

4.The Divisional Railway Manager,
Chennai Division,
Southern Railway,
Chennai.

5.The Senior Divisional Personnel Officer,
Chennai Division,
Southern Railway,
Chennai.

..... Petitioners

-vs-

1.N.Madurai

2.M.Kesavan

3.K.Umapathy

4.C.Sate

5.The Registrar
Central Administrative Tribunal,
Madras Bench,
Chennai.

..... Respondents

W.P.No.35588 of 2016:

1.The Union of India
rep. by the General Manager,
Southern Railway,
Chennai.

2.The Chief Personnel Officer,
Southern Railway,
Chennai.

3.The Divisional Railway Manager,
Chennai Division,
Southern Railway,

..... Petitioners

-vs-

1.G.Swamidoss

2.The Registrar
Central Administrative Tribunal,
Madras Bench,
Chennai.

.... Respondents

W.P.No.12807 of 2013: filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling for the records relating to the order of the 6th respondent made in O.A.No.1393 of 2011 dated 14.11.2011, to quash the same in so far as petitioner is concerned and consequently direct the 1st and 2nd and 3rd respondents to reckon with the date of conferment of temporary status of the petitioner as 03.03.1971 and to extend all the consequential service benefits that were extended to the petitioners in W.P.No.2554 of 2002, W.P.No.1351 of 2004 and W.P.Nos.26277 of 2012, etc Batch dated 07.02.2013.

W.P.No.20411 of 2013 filed under Article 226 of the Constitution of India to issue a Writ of Certiorari to call for the entire records relating to the first respondent made in O.A.No.1344 of 2011 dated 06.07.2012 and quash the same.

W.P.No.24808 of 2013 filed under Article 226 of the Constitution of India to issue a Writ of Certiorari to call for the entire records relating to the first respondent made in O.A.No.863 of 2011 dated 30.11.2012 and quash the same.

W.P.No.24809 of 2013 filed under Article 226 of the Constitution of India to issue a Writ of Certiorari to call for the entire records relating to the first respondent made in O.A.No.877 of 2011 dated 30.11.2012 and quash the same.

W.P.No.24810 of 2013 filed under Article 226 of the Constitution of India to issue a Writ of Certiorari to call for the entire records relating to the first respondent made in O.A.No.879 of 2011 dated 30.11.2012 and quash the same.

W.P.No.24811 of 2013 filed under Article 226 of the Constitution of India to issue a Writ of Certiorari to call for the entire records relating to the first respondent made in O.A.No.934 of 2011 dated 30.11.2012 and quash the same.

W.P.No.24812 of 2013 filed under Article 226 of the Constitution of India to issue a Writ of Certiorari to call for the entire records relating to the first respondent made in O.A.No.972 of 2011 dated 30.11.2012 and quash the same.

W.P.No.23598 of 2016 filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to call for the records relating to the orders of the 4th respondent made in

O.A.No.41 of 2013 dated 11.02.2015 and R.A.No.6 of 2015 dated 01.06.2015, to quash the same and to consequently direct the 1st, 2nd and 3rd respondents to reckon with the date of conferment of temporary status of the petitioner as 03.03.1971 and to re-fix applicants' basic pay with effect from the date of completion of 120 days with effect from their date of initial engagement with all the attendant benefits as had been extended to the petitioners in W.P.No.2554 of 2002 and W.P.No.1351 of 2004 as confirmed by the Hon'ble Supreme Court in SLP No. 24680 - 24681/08 with all other consequential service benefits arising thereto.

W.P.No.35585 of 2016 filed under Article 226 of the Constitution of India to issue a Writ of Certiorari to call for the entire records relating to the 7th respondent made in O.A.No.1013 of 2012 dated 23.07.2013 and quash the same.

W.P.No.35586 of 2016 filed under Article 226 of the Constitution of India to issue a Writ of Certiorari to call for the entire records relating to the 3rd respondent made in O.A.No.1028 of 2012 dated 23.07.2013 and quash the same.

W.P.No.35587 of 2016 filed under Article 226 of the Constitution of India to issue a Writ of Certiorari to call for the entire records relating to the 5th respondent made in O.A.No.677 of 2012 dated 10.07.2014 and quash the same.

W.P.No.35588 of 2016 filed under Article 226 of the Constitution of India to issue a Writ of Certiorari to call for the entire records relating to the 2nd respondent made in O.A.No.179 of 2013 dated 17.09.2014 and quash the same.

W.P.No.12807 of 2013:

For Petitioner : Mr.L.Chandrakumar
For Respondents : Mr.V.Radhakrishnan
1 to 5 : Senior Counsel
for Mr.P.T.Ramkumar

W.P.No.20411 of 2013:

For Petitioners : Mr.V.Radhakrishnan
Senior Counsel
for Mrs.A.Sri Jeyanthi

For Respondents
2 to 6 & 8 to 11 : No Appearance

For Respondent 7 : Not Ready in notice

W.P.No.24808 of 2013:

For Petitioners : Mr.V.Radhakrishnan
Senior Counsel
for Ms.T.P.Savitha

For Respondent 1 : Tribunal

For Respondent 2 to 6: Mr.Karthik Raja
for Karthik, Mukundan &
Neelakantan

W.P.Nos.24809 to 24812 of 2013:

For Petitioners : Mr.V.Radhakrishnan
Senior Counsel
for Ms.T.P.Savitha

For Respondent 1 : Tribunal

For Respondent 2 : Mr.Karthik Raja
for Karthik, Mukundan &
Neelakantan

W.P.No.23598 of 2016:

For Petitioner : Mr.L.Chandrakumar

For Respondents
1 to 3 : Mr.V.Radhakrishnan
Senior Counsel
for Mr.P.T.Ramkumar

For Respondent 4 : Tribunal

W.P.Nos.35585 to 35588 of 2016:

For Petitioners : Mr.V.Radhakrishnan
Senior Counsel
for Mr.Vijay Anand

For Respondents : Mr.L.Chandrakumar
for R1 to 6 (in WP 35585/16)
for R1 & 2 (in WP 35586/16)
for R1 to 4 (in WP 35587/16)
and for R1(in WP 35588/16)

COMMON ORDER

[Order of the Court was delivered by P.T.ASHA,J.]

Since the issue involved in all the Writ Petitions are one and the same a common Order is being pronounced in all the 12 Writ Petitions. Out of 12 Writ Petitions, 2 have been filed by the workmen and the remaining by the Union of India along

with Indian Railways.

2. The facts which has led to the filing of the Writ Petitions are as follows:

The applicants before the Central Administrative Tribunal, Madras Bench (who are the respondents in 10 of the Writ Petitions and petitioners in 2 of the Writ Petitions), were inducted as Casual Labourers in the Railways, Divisional Signal and Telecommunication Engineering, Tambaram (in short DSTE/W/TBM). They had been appointed from the years 1968 - 1969 right upto the year 1977.

3. On 31.12.1980, vacancies had been arisen and many of the Casual Labourers were empanelled against these vacancies and temporarily posted as Khalasis in scale of pay under various Supervisory Officials. The said appointment was in keeping with the Indian Railways Establishment Manual. Para No.2501 of the Second Edition of the Indian Railways Establishment Manual, hereinafter termed as IREM, published in the year 1968, described three kinds of Casual Labourers that the railway should employ:

a) Staff paid from contingencies and who continue to do the same work or other work of the same type for more than 6 months without a break. Such labourers were to be treated as temporary labourers after 6 months of continuous employment.

b) Labour on projects, irrespective of duration, but not transferred from other temporary or permanent employment.

c) Seasonal labour sanctioned for specific works for less than 6 months. However if they work for over 6 months continuously then such labourers shall also be treated as temporary.

4. The various types of works which were considered to be the same type of work was given in the manual itself:

a) Track renewals and linking.

b) Masonary and Concrete work

c) Steel work

d) Earth work

e) Fitting, Smithy, Carpentry and such other artisan work and helpers.

f) All work performed by the unskilled Casual Labourers working under the same I.O.W.P.W.I. and Bridge Inspector etc, was to be treated as the same type of work.

5. Paragraph No.2512 of the manual describes the procedure for absorption of Casual Labour in regular vacancies.

6. Paragraph No.2513 talks about the Identity Cards being issued to Casual labourers which shall contain details about the Supervisory Officials under whom the labourer was working. The Identity Card shall contain the following details, like Name

of the employee, Father's name, Date of Birth, Age at initial appointment, Identification marks, Date of Engagement, Date of Termination, Nature of Job, Signature of Supervisor and Designation of Supervisory with his name in full and also the department in which the Casual Labourers engage. The specimen of this card has been given in Annexure I of the manual.

7. The manual was revised in the year 1990 and in Volume II Chapter XX Casual Labour has been dealt with, Paragraph No.2001 gives the definition of Casual Labour and the very manual draws a clear distinction between a Casual Labourer and a Project Casual Labourer. Paragraph No.2001.5 deal with the issue of Cards for Casual Labourers and also the details to be provided in the said cards. It was further provided that upon their completing 6 months of continuous work they had to be given temporary status.

8. It appears that though the Casual Labourers had been brought into the temporary status the services rendered by them prior to that was not taken into account for pensionary benefits. Consequently a group of them had originally filed W.P.No.2554 of 2002 to treat them as Open Line Casual Labours and grant them all the benefits that were available to such labourers. The services was however not taken note of and representations were given by the Casual Labourers and to this the Railway had stated that these labourers were not the Open Line Casual Labourers but were employed on a project basis and was therefore only Project Casual Labourers. Therefore the services rendered by them cannot be taken note of.

9. This stand taken by the Railways prompted the various applicants to initiate the proceedings against the Union of India as well as the Indian Railways. The first of such application was moved in O.A.No.59 of 2005 by a group of persons for counting 50% of their service after completion of 4 months from the date of their respective initial employment as Casual Labourers with full retiral benefits and post retiral benefits. The application was moved before the Central Administrative Tribunal, Madras Bench. However by order dated 29.11.2005 the application was dismissed on the ground that the petitioners were Project Casual Labourers and therefore cannot seek to have their service counted.

10. Meanwhile, some of the Casual Labourers filed W.P.No.2554 of 2002 and 1351 of 2004, wherein, the Railway had also taken out a defense that the petitioners were Project Casual Labourers and was therefore not entitled to the benefit. However, by order dated 11.10.2007, the Division Bench of this Court was pleased to allow the Writ Petitions. The Bench had observed that though the Railways had taken out a stand that the labourers were Project Casual Labourers, however, on perusal of

the records it can be seen that the petitioners therein were engaged for doing regular work. Therefore the contention of the Railways that the DST/W were not engaged on day-to-day works (open-line) is totally false and contrary to the findings rendered by the Ernakulam Bench of the Central Administrative Tribunal.

11. The Bench had relied upon the order passed by the Ernakulam Bench of the Central Administrative Tribunal in O.A.No.849 of 1990 where similarly situated persons were given the benefits for. The Bench had also observed that the work entrusted and discharged by the petitioners would clearly show that their service had not been engaged for the project but they have been continuously working. This order of the Bench was upheld by the Honourable Supreme Court in S.L.P.Nos.13015 to 13016 of 2008.

12. The various applicants before the Central Administrative Tribunal, Madras Bench relying upon this Judgement of the Division Bench which was confirmed by the Honourable Supreme Court made applications to the Railways to extend the same benefits to them. However by a one line order dated 12.04.2011, 25.04.2011 21.06.2011 and 24.06.2011 the Railways had rejected the requests on the ground that the order passed in W.P.No.2554 of 2002 and W.P.No.1351 of 2004 would apply only to the petitioners therein. It is this order that was challenged by the various applicants before the Central Administrative Tribunal, Madras Bench in the various Original applications.

13. The Railways had filed a reply inter alia contending that the applicants were not entitled to the relief as they were all Project Casual Labourers and not Open Line Casual Labourers. They would contend that Open Line Casual Labourers were treated as temporary labourers after completion of 6 months of continuous employment and stood on a totally different plane from the Project Casual Labourers. In the reply they would further submit that the grant of temporary status to Project Casual Labourers came into effect only on basis of the order in the Inder Pal Yadav's case. In the scheme floated on 11.09.1986 the railways decided to confer temporary status on the Project Casual Labourers if they had completed 360 days of continuous employment. This scheme detailed the persons who would come within its ambit. The Railways would further contend that the register issued to all the applicants would clearly demonstrate that they had worked only as Project Casual Labourers.

14. In the year 1987, the Railways had issued several office memoranda to the applicants granting and refixing the pay scale from 01.01.1981, terming them as Project Casual

Labourers. The reply would further state that the facts of case in W.P.No.2554 of 2002 and W.P.No.1351 of 2004 would not apply to the applicants herein.

15. The Tribunal after take into consideration the actual service rendered by the applicants and the earlier order in W.P.No.2554 of 2002 and W.P.No.1351 of 2004 allowed all the original applications barring two. The applications in O.A.No.1393 of 2011, O.A.No.41 of 2013 and R.A.No.16 of 2015 were not dismissed only on the ground of laches. Challenging all these orders the respective Writ Petitioners are before this Court.

16. The stand of the Railways is that the applicants before the Central Administrative Tribunal, Madras Bench are the Project Casual Labourers and that the orders in W.P.No.2554 of 2002 and W.P.No.1351 of 2004 will not apply to them, since they were Project Casual Labourers. As stated herein above, the IREM describes Casual Labourers and the procedure for absorption of these Casual Labourers. The IREM also describes the same / other work of same type in its manual. The Identity card that has been filed in the typed set of papers would clearly indicate that the same is identical to the card as described in the annexure I of the IREM paragraph No.2513. A perusal of this card would clearly indicate that the applicants were not engaged for projects but they had been doing the regular work continuously.

17. That apart the similarly placed persons have obtained the benefit of 50% of their temporary service being counted for pensionary benefits. The petitioners in W.P.No.2554 of 2002 and W.P.No.1351 of 2004 were also engaged in the very same department as that of the applicants herein which would clearly show that the Writ Petitioners were not engaged in a project but were doing a regular work in the Railways. The order of the Ernakulam Bench of the Central Administrative Tribunal in O.A.No.849 of 1990 has been upheld by the Honourable Supreme Court. The order in W.P.No.2554 of 2002 and W.P.No.1351 of 2004 have also been confirmed by the Honourable Supreme Court.

18. The argument of the learned Senior Counsel appearing on behalf of the Railways that the order would only apply to the parties to those Writ Petition alone is fallacious. The parties are all similarly placed and there cannot be a different yard stick being adopted for persons similarly placed.

19. In the Judgment in 2011 (4) SCC 374 BSNL vs.Ghanshyam Dass & Others, the Hon'ble Supreme Court has held that in the case of an order which is applicable to all similarly placed persons there was no necessity for each and every one of them to

move to the Court as the order would cover all such persons.

20. The 2 original applications were dismissed by the Tribunal below on the ground of laches. The Honourable Supreme Court in its Judgement in (2015) 1 SCC 347 - State of Uttar Pradesh and other Vs. Arvind Kumar Srivastava and others has held that the question of laches would not apply to cases where the Judgements pronounced by the Court was Judgement in rem with intention to give benefit to all the similarly situated persons irrespective of whether they had approached the Court or not. This observation would clearly apply to the facts of the case in W.P.Nos.12807 of 2013 and 23598 of 2016.

21. In view of the above, the Writ Petition in W.P.Nos.20411, 24808 to 24812 of 2013, 35585 to 35588 of 2016 are dismissed by confirming the order passed by the Central Administrative Tribunal, Madras Bench. The Writ Petitions in W.P.Nos.12807 of 2013 and 23598 of 2016, are allowed and the order passed by the Central Administrative Tribunal, Madras Bench is set aside.

22. The Railways is therefore directed to count the temporary services prior to the absorption of the applicants for the purpose of calculating their pensionary benefits. Such exercise shall be completed with a period of 3 months from the date of receipt of a copy of the order. No costs.

Sd/-
Assistant Registrar(CS-VI)

//True copy//

Sub Assistant Registrar

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To

1. The General Manager,
Southern Railway,
Chennai 600 003.
2. The Financial Advisor and
Chief Accounts Officer,
Southern Railway,
Chennai 600 003.

3.The Chief Personnel Officer,
Southern Railway,
Chennai 600 003.

4.The Divisional Railway Manager,
Chennai Division,
Southern Railway,
Chennai 600 003.

5.The Senior Divisional Personnel Officer,
Chennai Division,
Southern Railway,
Chennai.

6.The Registrar,
The Central Administrative Tribunal,
Madras Bench, Chennai

7. The Chairman,
Railway Board,
Railway Bhavan,
New Delhi - 110 001

+1cc to Mr.Menon, Karthik, Mukundan, Advocate SR.No.75439

+1cc to Ms.A.Sri Jayanthi, Advocate SR.No.75824

+1cc to Mr.TP.Savitha, Advocate SR.No.75357

+2cc to Mr.P.T.Ramkumar, Advocate SR.No.76260, 76261

+2cc to Mr.L.Chandrakumar, Advocate SR.No.76367, 75741

+1cc to Mr.M.Vijay Anand, Advocate SR.No.76017

W.P.Nos.12807, 20411, 24808 to 24812 of 2013,
23598, 35585 to 35588 of 2016

VD(CO)
GMY(26/09/2019)

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