

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :02.04.2019

CORAM

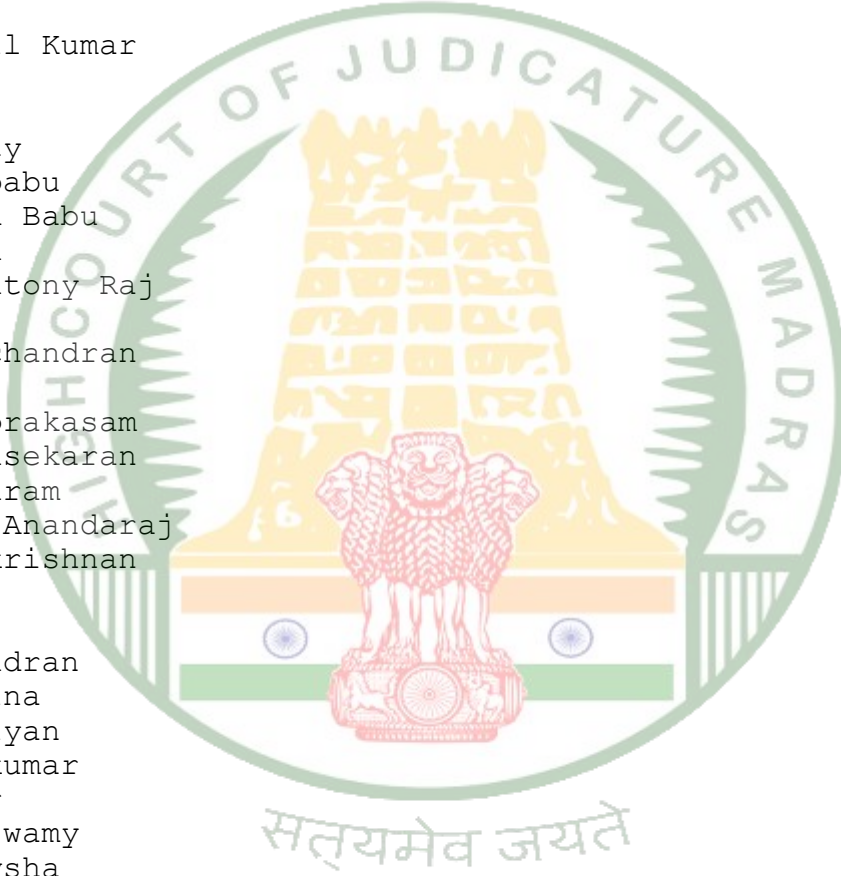
THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.Nos.17746 & 19367 of 2018

and

W.M.P.Nos.22773, 21015, 24650 of 2018 & 4841 of 2019

- 1.S.Senthil Kumar
- 2.M.Anand
- 3.M.Sekar
- 4.S.Christy
- 5.S.Dillibabu
- 6.M.Ramesh Babu
- 7.K.Ranjan
- 8.David Antony Raj
- 9.R.Anbu
- 10.T.Jayachandran
- 11.N.Ravi
- 12.P.Jayaprakasam
- 13.T.Dhanasekaran
- 14.B.Deekaram
- 15.S.Jaya Anandaraj
- 16.N.Balakrishnan
- 17.R.Balu
- 18.A.Mani
- 19.V.Rajendran
- 20.R.Margina
- 21.V.Sezhiyan
- 22.D.Rajakumar
- 23.E.Sekar
- 24.S.Ramaswamy
- 25.S.Kalaysha
- 26.M.Chinnamunuswamy
- 27.Md.Megachandran
- 28.M.Ramesh Kumar
- 29.R.Ramesh
- 30.S.Murugan
- 31.R.Muruganandam
- 32.A.Venugopal
- 33.G.Ramkumar
- 34.K.Anbalagan
- 35.N.Venugopal
- 36.C.Venkatesan
- 37.J.Selvanathan



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38.A.Chellappan
39.R.Ravi
40.M.Punniyakotti
41.A.Udayakumar
42.W.Lazar John
43.A.Janakiraman
44.A.Ayyamperumal
45.P.Manimaran
46.P.Kandan
47.C.Devan
48.S.Ashok
49.D.Loganathan
50.J.Pitchaipillai
51.E.Arul
52.M.Ponnan
53.B.Sreenivasulu
54.J.Rayman
55.D.Santhakumar
56.T.Gowthaman
57.S.Sridhar
58.C.Vikramaraj
59.K.Subramani
60.R.Deivamuthu
61.P.Sivakumar
62.C.Subramani
63.L.Raja
64.R.Jagadeesan
65.K.Devadoss
66.K.Panneerselvam
67.G.Linganathan
68.V.Thiyagarajan
69.B.Chandran
70.Joshua Newton
71.S.Ravichandran
72.R.Bhaskar
73.S.Venkatesan
74.R.Gajendran
75.S.Boopathy

..Petitioners in W.P.No.17746/2018

1.M.Karuppasamy
2.P.Sudalaimani
3.N.Vijayakumar
4.R.Arputharaj
5.S.Asirvatham
6.PV.Ravanaiah
7.M.Narayanakutty
8.S.Chandrasekar
9.G.Baskaran

WEB COPY

10.V.Raman
11.S.Suresh
12.R.Sekar
13.V.Balaji
14.M.Gangadharan
15.A.K.Senthil Kumar
16.M.Lakshmanan
17.K.Sekar

..Petitioners in W.P.No.19367/2018

vs

- 1.The Union of India,
Represented by its Secretary,
Ministry of Civil Aviation,
Government of India,
New Delhi.
- 2.The Chairman & Managing Director,
Air India Ltd., Air Lines House,
New Delhi - 110 001
- 3.The Executive Director, Air India Ltd.,
National Aviation Company of India Ltd.,
Air Lines House,
Meenambakkam,
Chennai - 600 027
- 4.The General Manager-Personnel
National Aviation Company of India Ltd.,
Air Lines House,
Meenambakkam,
Chennai - 600 027.
- 5.The Manager HR,
Air India Air Transport Services Ltd.,
Air India Unity Complex,
Pallavaram Cantonment,
Chennai - 600 043.

..Respondents in both W.Ps

Common Prayer: Writ Petitions filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, directing the respondents No.1 to 4 herein to regularize the service of the Petitioners by conferring permanent status of service to the respective individuals by placing them on regular pay scale and grade or pass any other appropriate order or direction as deem fit in accordance with the circumstances of the case and thus render justice.

For Petitioners : Ms.A.L.Ganthimathi
for M/s.M.Sekar
(in both W.Ps)

For Respondents : Mr.S.Sathish Rajan
Central Government Standing counsel for R1
(in both W.Ps)

Mr.N.G.R.Prasad and
Mr.K.Srinivasamurthy
for R2 to R4
(in both W.Ps)

C O M M O N O R D E R

The relief sought for in the present writ petitions is for a direction to direct the respondents No.1 to 4 herein to regularize the service of the Petitioners by conferring permanent status of service to the respective individuals by placing them on regular pay scale.

2.The learned counsel for the writ petitioner states that all the writ petitioners are similarly placed casual labourers working under the services of the 2nd respondent to the 4th respondent. The writ petitioners are assisting as Helpers in all ground handling services in the Airport. In view of the fact that the writ petitioners are working for a considerable length of time, they are claiming regularization and permanent absorption in the establishment of the respondent.

3.The learned counsel for the respondents states that the regularization or permanent absorption at this point of time cannot be granted and the writ petitioners are allowed to work on certain terms and conditions as casual labourers. Their services are temporary and they were not initially appointed in accordance with the recruitment rules in force. The writ petitioners are being engaged, as and when their services are required for handling the Airport Services. In view of the fact that there is a change of control in Administration regarding the handling of the Airport ground works, the 2nd respondent cannot even consider the claim of the writ petitioners for grant of regularization.

4.It is brought to the notice of this Court that the similarly placed casual labourers earlier filed W.P.Nos.17513, 22212 & 29796 of 2010 and this Court passed an order on

28.03.2018 and the relevant paragraphs are extracted hereunder:-

"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 exist 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."

5. In view of the above judgment of this Court, the writ petitioners are also entitled to get the same benefit of their continuance in the present position as per the existing terms and conditions of service. As per the terms and conditions stipulated by the 5th respondent, the writ petitioners are entitled to get the benefit, provided they joined duty within a period of 10 days from the date of receipt of a copy of this order. In other words, the writ petitioners are at liberty to join duty, provided they are ready to accept the terms and conditions to be imposed by the 5th respondent for the continuance of their service in Airport.

6. It is made clear that in the event of not joining with the services of the 5th respondent by the writ petitioners within a period of 10 days from the date of receipt of a copy of this order, then the respondents are at liberty to engage the other persons in order to run the Administration in the Airport peacefully.

7.With these observations, both the writ petitions stand disposed of. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar (CS-IV)

//True copy//

Sub Assistant Registrar

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To

- 1.The Secretary,
Union of India,
Ministry of Civil Aviation,
Government of India,
New Delhi.
- 2.The Chairman & Managing Director,
Air India Ltd., Air Lines House,
New Delhi - 110 001
- 3.The Executive Director, Air India Ltd.,
National Aviation Company of India Ltd.,
Air Lines House,
Meenambakkam, Chennai - 600 027
- 4.The General Manager-Personnel
National Aviation Company of India Ltd.,
Air Lines House,
Meenambakkam, Chennai - 600 027.
- 5.The Manager HR,
Air India Air Transport Services Ltd.,
Air India Unity Complex,
Pallavaram Cantonment,
Chennai - 600 043.

+1cc to Mr.S.Sathishrajan, Advocate SR.No.31545

+2cc to Mr.M.Sekar, Advocate SR.No.31690,31691

+2cc to Mr.NGR.Prasad, Advocate SR.No.31564,31565

W.P.Nos.17746 & 19367 of 2018

CNR (CO)

GMV (16/04/2019)