



W.P(MD)Nos.2652 of 2008, 2069, 2070, 2071 & 2072 of 2013

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Orders reserved on
27.07.2022

Orders pronounced on
30.08.2022

CORAM

THE HONOURABLE MR. JUSTICE G.CHANDRASEKHARAN

**W.P(MD)Nos.2652 of 2008, 2069, 2070,
2071 & 2072 of 2013
and M.P(MD)No.2 of 2008**

1.W.P(MD)No.2652 of 2008:-

1.Arasu Pokkuvarathu Madurai Thozhilalar Sangam,
Represented by its General Secretary,
V.O.C, 2nd Street, Arul Nagar,
Bye-Pass Road,
Madurai - 16.

2.B.Sakthivel
3.S.Sivakumar
4.K.Mahamani
5.P.Sathiyamurthy
6.P.Rajangam
7.G.Ganesan
8.R.Rajaram
9.P.Murugaiah
10.P.Soundarapandi
11.M.Hyder Ali
12.S.Palaniraj
13.S.Chinnasamy
14.R.Kannan
15.M.K.Dhanapalan
16.T.Gopalakrishnan

... Petitioners

Vs

1.The Management of
Tamil Nadu State Transport Corporation
(Madurai) Limited,
Represented by its Managing Director,
Bye Pass Road, Madurai - 16.



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2.The Management of
Tamil Nadu State Transport Corporation
(Madurai) Limited,
Represented by its General Manager,
Bye Pass Road,
Madurai - 16.

3.The Labour Officer,
Office of the Deputy Commissioner of Labour,
K.K.Nagar,
Madurai - 20.

... Respondents

PRAYER: Writ Petition filed under Article 226 of Constitution of India, praying to issue a Writ of Declaration, declaring that the action of the second respondent in giving permanency to the petitioners 2 to 16 only with effect from 01.09.2005 instead of giving their permanency from the date of completion of 240 days of service as per the agreed advice of the third respondent in proceeding No. 56(1)/05, dated 08.06.2005 is illegal and consequently to direct the second respondent to make them permanent on completion of 240 days of service as per the agreed advice in proceeding No.56(1)/05 dated 08.06.2005 of the third respondent.

For Petitioners	: Mr.S.Arunachalam
For RR 1 & 2	: Mr.J.Senthil Kumariah
For R - 3	: Mr.D.Gandhiraj Special Government Pleader

2.W.P(MD)No.2069 of 2013:-

S.Palnairaj ... Petitioner

Vs



W.P(MD)Nos.2652 of 2008, 2069, 2070, 2071 & 2072 of 2013

1.Tamil Nadu State Transport Corporation
(Madurai) Limited,
Represented by its Managing Director,
Bye Pass Road,
Madurai - 10.

2.Tamil Nadu State Transport Corporation
(Madurai) Limited,
Represented by its General Manager,
Bye Pass Road,
Madurai - 10.

... Respondents

PRAYER: Writ Petition filed under Article 226 of Constitution of India, praying to issue a Writ of Certiorarified Mandamus, to call for the records in connection with the impugned order in Ref.No.ThA.Aa.Poo.Ka/Madhu/Niru/Aa4/2117/2005-26, dated 01.09.2005 which is issued by the second respondent, quash the same, consequently directing the respondents to confirm the petitioner's service with effect from the date of completion of 240 days of the petitioner's actual service, with all service and statutory benefits, award costs.

For Petitioner : Mr.K.Murugesan

For Respondents : Mr.J.Senthil Kumariah

3.W.P(MD)No.2070 of 2013:-

R.Kannan

... Petitioner

Vs

1.Tamil Nadu State Transport Corporation
(Madurai) Limited,
Represented by its Managing Director,
Bye Pass Road,
Madurai - 10.



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2.Tamil Nadu State Transport Corporation
(Madurai) Limited,
Represented by its General Manager,
Bye Pass Road,
Madurai - 10.

... Respondents

PRAYER: Writ Petition filed under Article 226 of Constitution of India, praying to issue a Writ of Certiorarified Mandamus, to call for the records in connection with the impugned order in Ref.No.Th.Aa.Poo.Ka/Madhu/Niru/Aa4/2117/2005-24, dated 01.09.2005 which is issued by the second respondent, quash the same, consequently directing the respondents to confirm the petitioner's service with effect from the date of completion of 240 days of the petitioner's actual service, with all service and statutory benefits, award costs.

For Petitioner : Mr.K.Murugesan

For Respondents : Mr.J.Senthil Kumariah

4.W.P(MD)No.2071 of 2013:-

S.Sivakumar

... Petitioner

Vs

1.Tamil Nadu State Transport Corporation
(Madurai) Limited,
Represented by its Managing Director,
Bye Pass Road,
Madurai - 10.

2.Tamil Nadu State Transport Corporation
(Madurai) Limited,
Represented by its General Manager,
Bye Pass Road,
Madurai - 10.

... Respondents



W.P(MD)Nos.2652 of 2008, 2069, 2070, 2071 & 2072 of 2013

PRAYER: Writ Petition filed under Article 226 of Constitution of India, praying to issue a Writ of Certiorarified Mandamus, to call for the records in connection with the impugned order in Ref.No.Tha.Aa.Poo.Ka/Madhu/Niru/Aa4/2117/2005-3, dated 01.09.2005 which is issued by the second respondent, quash the same, consequently directing the respondents to confirm the petitioner's service with effect from the date of completion of 240 days of the petitioner's actual service, with all service and statutory benefits, award costs.

For Petitioner : Mr.K.Murugesan

For Respondents : Mr.J.Senthil Kumariah

5.W.P(MD)No.2072 of 2013:-

S.Chinnasamy ... Petitioner

Vs

1.Tamil Nadu State Transport Corporation
(Madurai) Limited,
Represented by its Managing Director,
Bye Pass Road,
Madurai - 10.

2.Tamil Nadu State Transport Corporation
(Madurai) Limited,
Represented by its General Manager,
Bye Pass Road,
Madurai - 10.

... Respondents

PRAYER: Writ Petition filed under Article 226 of Constitution of India, praying to issue a Writ of Certiorarified Mandamus, to call for the



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records in connection with the impugned order in Ref.No.Th.Aa.Poo.Ka/Madhu/Niru/Aa4/2117/2005-27, dated 01.09.2005 which is issued by the second respondent, quash the same, consequently directing the respondents to confirm the petitioner's service with effect from the date of completion of 240 days of the petitioner's actual service, with all service and statutory benefits, award costs.

For Petitioner : Mr.K.Murugesan

For Respondents : Mr.J.Senthil Kumariah

COMMON ORDER

W.P(MD)No.2652 of 2008 is filed for issuance of a Writ of Declaration, declaring that the action of the second respondent in giving permanency to the petitioners 2 to 16 only with effect from 01.09.2005 instead of giving their permanency from the date of completion of 240 days of service as per the agreed advice of the third respondent in proceeding No.56(1)/05, dated 08.06.2005 is illegal and consequently to direct the second respondent to make them permanent on completion of 240 days of service as per the agreed advice in proceeding No.56(1)/05 dated 08.06.2005 of the third respondent.



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2. **W.P(MD)No.2069 of 2013** is filed for issuance of a Writ of Certiorarified Mandamus, to quash the impugned order in Ref.No.Th.Aa.Poo.Ka/Madhu/Niru/Aa4/2117/2005-26, dated 01.09.2005 passed by the second respondent and consequently directing the respondents to confirm the petitioner's service with effect from the date on the completion of 240 days of the petitioner's actual service, with all service and statutory benefits, award costs.

3. **W.P(MD)No.2070 of 2013** is filed for issuance of a Writ of Certiorarified Mandamus, to quash the impugned order in Ref.No.Th.Aa.Poo.Ka/Madhu/Niru/Aa4/2117/2005-24, dated 01.09.2005 passed by the second respondent and consequently directing the respondents to confirm the petitioner's service with effect from the date of completion of 240 days of the petitioner's actual service, with all service and statutory benefits, award costs.

4. **W.P(MD)No.2071 of 2013** is filed for issuance of a Writ of Certiorarified Mandamus, to quash the impugned order in Ref.No.Th.Aa.Poo.Ka/Madhu/Niru/Aa4/2117/2005-3, dated 01.09.2005 passed by the second respondent and consequently



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directing the respondents to confirm the petitioner's service with effect from the date of completion of 240 days of the petitioner's actual service, with all service and statutory benefits, award costs.

5. **W.P(MD)No.2072 of 2013** is filed for issuance of a Writ of Certiorarified Mandamus, to quash the impugned order in Ref.No.Th.Aa.Poo.Ka/Madhu/Niru/Aa4/2117/2005-27, dated 01.09.2005 passed by the second respondent and consequently directing the respondents to confirm the petitioner's service with effect from the date of completion of 240 days of the petitioner's actual service, with all service and statutory benefits, award costs.

6. The issues involved in all the Writ Petitions are identical and therefore, taken up together for consideration.

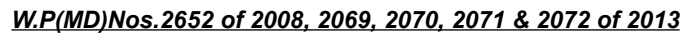
7. For the sake of convenience, the parties herein are referred in the rank as specified in W.P(MD)No.2652 of 2008.

8. The facts of the case in **W.P(MD)No.2652 of 2008** are that in the year 2000, the second respondent called for the names



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from the Employment Exchange, Madurai for the posts of Drivers against the permanent vacancies. The petitioners 2 to 16 were given employment as Drivers from March, 2001. However, no appointment orders were given and they were paid a sum of Rs.75/- as daily wage. In April, 2002, the petitioners 2 to 16 were given appointment orders as Drivers at the rate of Rs.163/- per day as wages. As per 12(3) Settlement entered into between the Trade Unions and the Transport Corporations, permanent status has to be given to the workmen on completion of 240 days of service in one year as daily paid workmen. The petitioners 2 to 16 ought to have been made permanent in April, 2002. The petitioners' Sangam gave a letter, dated 11.12.2004 to the first respondent to grant permanent status to the petitioners 2 to 16. Since there was no response, the Sangam sent a letter, dated 07.01.2005 to the Deputy Commissioner of Labour and complained that the second respondent had committed breach of 12(3) Settlement. The Labour Officer advised the second respondent to implement 12(3) Settlement and the same was recorded in proceeding No.56(1)/05 of the Labour Officer, Madurai on 08.06.2005. However, the petitioners 2 to 16 were made permanent only from 01.09.2005 based on 12(3) Settlement, dated 31.08.2005. Instead of making the petitioners 2 to 16 permanent on completion of 240 days of



9. Since the Writ Petition in W.P(MD)No.2652 of 2008 has been filed seeking for declaration, the petitioners, viz., S.Palaniraj, S.Chinnasamy, S.Sivakumar and S.Chinnasamy, who are the petitioners in Nos. 4, 3 and 13 respectively in W.P(MD)No.2652 of 2008, have filed W.P(MD)Nos.2069, 2070, 2071 and 2072 of 2013 to quash the impugned orders, dated 01.09.2005 passed by the second respondent.

10. Learned counsel appearing for the petitioners submitted that the petitioners 2 to 16 had been appointed through regular selection process from March, 2001. As per 12(3) Settlement entered between the Management and Workers Union during the years 1986, 1989 and 1992, the services of Drivers and Conductors shall have to be confirmed after satisfactory completion of 240 days



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of actual work in a continuous period of one year. Despite several representations made, services of the petitioners 2 to 16 had not been confirmed on satisfactory completion of 240 days in one year. Therefore, the petitioners' Union filed a petition before the Labour Officer, Madurai, to regularize the services of the petitioners 2 to 16. The Labour Officer, Madurai, in his proceedings No.56(1)/05, dated 08.06.2005 conducted negotiations between the Union and Management and advised the Management to take steps to regularize the services of the petitioners 2 to 16 as per terms of 12(3) Settlement, dated 25.09.1986. Even thereafter, the service of petitioners 2 to 16 were not regularized. Then the issue was taken by Sangam, another 12(3) Settlement, dated 31.08.2005 was entered into between the Management and Union, whereby it was agreed to regularize the services of daily paid employees on completion of 240 days of service. Then by proceedings, dated 01.09.2005, services of petitioners 2 to 16 were regularized with effect from 01.09.2005. However, they should have been regularized on completion of their 240 days of service from the date of their initial appointment. The petitioners 2 to 16 are not keen on getting backwages, but their main concern is getting pensionary benefits. Therefore, the present Writ Petitions are filed for the aforesaid reliefs.



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11. In support of his submission that the workman should be regularized on completion of 240 days of regular service under the Tamil Nadu Industrial Establishments (Conferment of permanent Status to Workmen) Act, 1981 (hereinafter referred to as 'the Act, 1981) learned counsel appearing of the petitioners relied on the following Judgments:-

"(i) CDJ 2003 MHC 753 (Plantation Workers Union Congress vs. The Tamil Nadu Tea Plantation Corporation Limited and another);

(ii) 1998 Writ L.R 514 (The Tamil Nadu Civil Supplies Corporation Modern Rice Mill Engineering Section Employees Union, represented by its Secretary Sundarakottai vs. The Tamil Nadu Civil Supplies Corporation, represented by its Managing Director and others);

(iii) W.P.No.4371 of 1998, dated 30.07.2008 (The Management of Tamil Nadu Civil Supplies Corporation Limited, represented by its Senior Regional Manager Vs. Inspector of Labour, Thanjavur and others);



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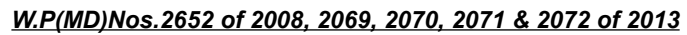
(iv) 2007 (4) KLT 513 (SC) (U.P State Electricity Board Vs. Pooran Chandra Pandey) (2012) 1 MLJ 240 (M.Anandan and others Vs. Secretary to Government of Tamil Nadu, Municipal Administration and Water Supply Department, Chennai and others);

(v) (2012) 1 MLJ 240 (M.Anandan and others Vs. Secretary to Government of Tamil Nadu, Municipal Administration and Water Supply Department, Chennai and others);

(vi) (2012) 6 MLJ 480 (R.Lakshmi Vs. Chief Engineer (Personnel), Tamil Nadu Electricity Board, Chennai and another);

(vii) 2015-II-LLJ-257 (SC) (ONGC Limited Vs. Petroleum Coal Labour Union and others); and

(viii) 2020-IV-LLJ-685 (Mad) (Management, Tamil Nadu State Transport Corporation (Villupuram) Limited, Vellore Vs. Inspector of Labour, Thiruvannamalai and others)."



13. In support of his submission, learned counsel appearing for respondents 1 and 2 / Management relied on the following submissions:-



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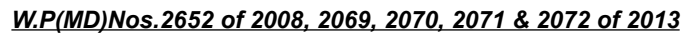
"(i) (2004) 3 CTC 1 (P.Pitchumani and others Vs. The Management of Sri Chakra Tyres Limited and others);

(ii) 2020-IV-LLJ-20 (Royal Enfield Employees Union, Represented by General Secretary, Chennai Vs. Government of Tamil Nadu, Represented by Secretary Labour and Employment Department, Chennai and others); and

(iii) W.P(MD)No.3086 of 2011, dated 14.10.2011 (P.Raja and others Vs. The Management, Tamil Nadu State Transport Corporation Limited, Madurai and others)".

14. Considered the rival submissions and perused the records.

15. It is not in dispute that the petitioners 2 to 16 were regularly appointed through following proper procedure from the year 2001. Initially they were paid daily wages and their services were regularized only from the year 2005 as per 12(3) Settlement dated 31.08.2005. It is the claim of the petitioners 2 to 16 that their services should have been regularized as per 12(3) Settlement



16. Learned counsel appearing for the petitioners relied on section 3(1) of the Act, 1981 and the àforesaid Judgements in support of the petitioners case.

17. Section 3(1) of the Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, 1981 reads as follows:-

"3.Conferment of permanent status to workmen. -- (1) Notwithstanding anything contained in any law for the time being in force every workman who is in continuous service for a period of four hundred and eighty days in a period of twenty four calendar months in an industrial establishment shall be made permanent."



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18. It is also seen from the copies of 12(3) Settlement dated 25.09.1986, August, 1989 and September, 1992 that services of Drivers and Conductors shall have to be confirmed after satisfactory completion of 240 days of actual work in a continuous period of one year.

19. In the Judgment reported in **CDJ 2003 MHC 753 (Plantation Workers Union Congress vs. The Tamil Nadu Tea Plantation Corporation Limited and another)**, it is observed as follows:-

"10. In the light of the statutory provisions and in the light of the two Division Bench judgments, it is well settled that the permanent status by operation of Section 3 of the Act is conferred on the industrial workman completing 480 days within a continuous period of 24 calendar months and it does not depend upon the order to be passed by the Inspector appointed under Section 4 of the Act. In the present case, the proceedings of the 2nd respondent holding that the permanent status is conferred by him only from the date on which his proceedings is communicated runs counter to the statutory provisions and to that extent the proceedings impugned suffers with illegality. If the impugned proceedings is allowed to stand, it will work hardship, besides, it runs counter to Section 3 read with



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Section 6 of the Act as well as the legislative intendment with which the enactment has been brought for".

It is seen from this Judgment that conferment of permanent status on the Industrial workman, on completion of 480 days within a continuous period of 24 calendar months, does not depend upon the order to be passed by the Inspector appointed under Section 4 of the Act, 1981.

20. It has been held in the Judgment reported in **1998 Writ L.R 514 (The Tamil Nadu Civil Supplies Corporation Modern Rice Mill Engineering Section Employees Union, represented by its Secretary Sundarakottai vs. The Tamil Nadu Civil Supplies Corporation, represented by its Managing Director and others)** that "[Section 3\(1\)](#), being a non-obstante provision, it prevails over any law for the time being in force which includes any service rules, Government orders or Government instructions. Therefore, want of sanctioned posts as required under General Service Rules cannot take away the rights conferred under Section 3(1) of the Act. Similarly, Government Orders which require that the appointments should be made only through Employment



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Exchange also cannot be a ground to refuse the right provided under Section 3(1) of the Act to the petitioners if they comply with the requirements prescribed under Section 3(1). Therefore, it is not open for the respondent to take shelter under any other law in force much less any Government Orders, Government instructions to deny the benefits conferred under Section 3(1) of the Act, to the petitioners, if they satisfy the conditions prescribed, therein, irrespective of the availability of sanctioned posts or sponsorship from Employment Exchange".

This Judgment makes it clear that Section 3(1) of the Act, 1981 prevails over any law for the time being in force. Want of sanctioned posts as required under General Service Rules cannot take away the rights conferred under Section 3(1) of the Act. Therefore, it is not open to the respondents to take shelter under any other law in force much less than any Government Orders, Government instructions to deny the benefits conferred under Section 3(1) of the Act.

21. In ***W.P.No.4371 of 1998, dated 30.07.2008 (The Management of Tamil Nadu Civil Supplies Corporation Limited, represented by its Senior Regional Manager Vs.***



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Inspector of Labour, Thanjavur and others) it has been observed as follows:-

"17. The argument that the settlement and the Award is binding cannot be accepted because of the non-obstante clause found in Section 3(1) of the I.D. Act. Originally, it did not cover a Settlement or an Award. Therefore, if there was any settlement or Award between the employer and the workmen, then the provisions of Tamil Nadu Act 46 of 1981 will have no application. This was noticed by a Division Bench of this Court in its judgment in Metal Powder Co. Ltd., Thirumangalam and another v. The State of Tamil Nadu and another [1985 (2) L.L.J. 376] and after referring to the similar provisions in other Labour enactments in paragraph 27, it was observed as follows:-

27..... We are bound to take notice of the legislative practice that where the intention of the legislature is that a law is to have effect notwithstanding any award, agreement or contract of service, such an intention is expressed in clear and unambiguous words. Consequently, in the absence of reference to an award, an agreement or a contract of service in S.3(1) and restricting the operation of the non-obstante clause in S.3(1) only to "anything contained in any law for the time being in force", we must accept the contention of the learned counsel for the petitioner that S.3 will not supersede a settlement between the employer and the employees in so far as



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the subject matter of the settlement is conferment of permanent status to the workmen...." Taking note of the above judgment, the State Legislature amended [Section 3\(1\)](#) of the Tamil Nadu Act 46 of 1981 and the words 'settlement' and 'Award' have been included in the Explanation to [Section 3\(1\)](#) of the Act.

18. In fact, when the amended provisions were challenged before the Supreme Court, the Act was held to be intra vires of the Constitution by the Supreme Court in [State of Tamil Nadu and others v. Nellai Cotton Mills Ltd. and others](#) [1990 (2) SCC 518]. Therefore, the objections based on the Award and settlement by the learned counsel for the Management must necessarily fail."

22. The Judgment reported in **2007 (4) KLT 513 (SC) (U.P State Electricity Board Vs. Pooran Chandra Pandey)** is relied for the proposition that there shall be no discrimination among the employees similarly placed. This Judgment is pressed into service for the reason that when the petitioners are not regularized on completion of 240 days of service from the date of their initial appointment, some others had been conferred permanent status on completion of 240 days of service. It is observed in this Judgment as follows:-



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"17. In the present case the writ petitioners (respondents herein) only wish that they should not be discriminated against vis-a-vis the original employees of the Electricity Board since they have been taken over by the Electricity Board 'in the same manner and position'. Thus, the writ petitioners have to be deemed to have been appointed in the service of the Electricity Board from the date of their original appointments in the Society. Since they were all appointed in the society before 4.5.1990 they cannot be denied the benefit of the decision of the Electricity Board dated 28.11.1996 permitting regularization of the employees of the Electricity Board who were working from before 4.5.1990.

.....

19. In the present case many of the writ petitioners have been working from 1985 i.e. they have put in about 22 years service and it will surely not be reasonable if their claim for regularization is denied even after such a long period of service. Hence apart from discrimination, [Article 14](#) of the Constitution will also be violated on the ground of arbitrariness and unreasonableness if employees who have put in such a long service are denied the benefit of regularization and are made to face the same selection which fresh recruits have to face."



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23. The Judgment reported in **(2012) 1 MLJ 240 (M.Anandan and others Vs. Secretary to Government of Tamil Nadu, Municipal Administration and Water Supply Department, Chennai and others)** is relied on for the proposition that identically placed persons shall be given similar relief by the Courts of law. It is observed in this Judgment as follows:-

"26.In my view, the submission made by the learned Special Government Pleader / Government Pleader for the respondents has no substance. The respondents, who are guilty of not granting time scale of pay to the consolidated pay employees under G.O.Ms.No.198 and 199, could not plead estoppel. The respondents, who are Government authorities, should set an example and act like a model employer and they could not come with these types of technical pleas. Furthermore, the Writ Petition in W.P.No.9726 of 2011 was filed subsequent to filing of one of the present Writ Petitions viz., W.P.No.9586 of 2011. When the sanitary workers, who have filed the Writ Petition in W.P.No.9726 of 2011 are given the benefits, the respondents could not now allege that the petitioners, having accepted the benefit under the order, dated 27.02.2006 of the third respondent, could not agitate against the same."



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24. While answering the reference "*Whether a workman, who has completed 480 days of continuous service in a period of 24 calendar months, would become automatically a permanent employee under the employer or will he become a permanent employee only on conferment of permanent status either by the employer on his own or on a direction given by a competent authority under the Act*", the Division Bench of this Court reported in **(2012) 6 MLJ 480 (R.Lakshmi Vs. Chief Engineer (Personnel), Tamil Nadu Electricity Board, Chennai and another)** answered that "*a workman, who had completed 480 days of continuous service in a period of 24 calendar months, would become automatically a permanent employee under the employer, even if, an employer had not conferred him with the permanent status or even if, no direction was issued by the competent authority in this regard under the Act, 1981 or the Rules framed thereunder*".

25. It has been held in the Judgment of the Hon'ble Supreme Court reported in **2015-II-LLJ-257 (SC) (ONGC Limited Vs. Petroleum Coal Labour Union and others)**, as follows:-

"39.In light of the above said discussion and legal principles laid down by this Court in the cases



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referred to supra, we are of the considered view that the procedure of appointments adopted by the Corporation with respect to the concerned workmen initially appointed through contractors, subsequently through the Co-operative Society, and then vide memorandum of appointment issued to each one of the concerned workmen in the year 1988 and thereafter, continuing them in their services in the posts by the Corporation without following any procedure as contended by the learned senior counsel on behalf of the Corporation whose contention is untenable in law and their appointment can be said as irregular appointments but not as illegal as the same was not objected to by any other Authority of the Corporation at any point of time. But their appointment in their posts and continuing them in their services is definitely cannot be termed as illegal, at best it can be called irregular. Therefore, the Certified Standing Orders of the Corporation by all means apply to the concerned workmen. The legal contention urged on behalf of the Corporation that the statutory right claimed by the concerned workmen under Clause 2(ii) of the Certified Standing Orders of the Corporation for regularizing them in their posts as regular employees after rendering 240 days of service in a calendar is not an absolute right conferred upon them and their right is only to consider their claim. This plea of the learned senior counsel cannot again be accepted by us for the reason that the Corporation is bound by law to take its decision to regularise the services of the



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concerned workmen as regular employees as provided under Clause 2(ii) of the Certified Standing Orders after their completion of 240 days of service in a calendar year as they have acquired valid statutory right. This should have been positively considered by the Corporation and granted the status of regular employees of the Corporation for the reason that it cannot act arbitrarily and unreasonably deny the same especially it being a Corporate Body owned by the Central Government and an instrumentality of the State in terms of [Article 12](#) of the Constitution and therefore, it is governed by Part III of the Constitution. The Corporation should exercise its power fairly and reasonably in accordance with law."

26. The Judgment reported in **2020-IV-LLJ-685 (Mad)** (**Management, Tamil Nadu State Transport Corporation (Villupuram) Limited, Vellore Vs. Inspector of Labour, Thiruvannamalai and others**) is pressed into service for the proposition that "the term 'law' bearing in Section 3 of the permanent Status Act, includes any award, agreement, settlement, instrument or contract of service and for the proposition that there is no period of limitation prescribed for seeking conferment of permanent status". The relevant portion of the Judgment reads as follows:-



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"5..... In the first place, when no period of limitation has been prescribed under the Permanent Status Act for making an application for conferment of permanent status, there is no scope for entertaining such contention. Moreover, the Division Bench of this Court in [R.Lakshmi -vs- Chief Engineer \(Personnel\), Tamil Nadu Electricity Board \[\(2012\) 6 MLJ 480\]](#) has held that a workman, who had completed 480 days of continuous service in a period of 24 calendar months, would become automatically a permanent employee under the employer, even if the employer had not conferred him with the permanent status, or even if no direction was issued by the competent authority in that regard under the Permanent Status Act or the Rules framed thereunder. As such, there is no merit in this objection raised so as to deserve any consideration."

27. All these Judgments make it abundantly clear that conferment of permanent status to a workman on completion of 240 days of satisfactory service in a continuous period of one year or 480 days of continuous service in a period of two years is a statutory right available to the workman and it cannot be denied by any other law whether made before or after the commencement of this Act. It is an absolute right vested on the workman.



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28. Countering the submissions of the learned counsel appearing for the petitioners, learned counsel appearing for the respondents 1 and 2 relied on the Judgment reported in **(2004) 3 CTC 1 (P.Pitchumani and others Vs. The Management of Sri Chakra Tyres Limited and others)**, with regard to the scope of writ jurisdiction under Article 226 of the Constitution of India. He further submitted that if an industrial dispute relates to the enforcement of a right or an obligation created under the Act, then the only remedy available to the suitor is to get the dispute adjudicated under the Act and no Writ Petition is maintainable. It is observed in this Judgment as follows:-

"14. In view of what is stated supra, we hold that

(i) only such violations under [I.D. Act](#), which involve public duties, are amenable to Writ jurisdiction under [Article 226](#) of Constitution of India;

(ii) dismissals, transfers and other matters concerning the service conditions of employees governed by [I.D. Act](#), have to be adjudicated only by the forums created under the said statute and not otherwise;

(iii) it is needless to mention that the disputes relating to matters not governed by [I.D. Act](#) have to be resolved only by common law Courts;



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(iv) the transfers effected in these cases do not involve any public duties and involve the disputed questions of fact and they should be resolved only before the forums under the [I.D. Act](#);

(v) the appellants/petitioners-employees shall be entitled to seek for reference by filing application under [Section 10](#) of the ID Act within two weeks from the date of receipt of a copy of this order;

(vi) if any industrial disputes are raised, then the concerned forums, be it Labour Court or Industrial Tribunal, shall dispose of the same within four months from the date of receipt of the reference, after affording opportunity to either party;

(vii) without prejudice to the contentions of the appellants/ petitioners-employees, one week time from the date of receipt of a copy of this order is given to the employees to join at the transferred places and in respect to such of those dismissed employees, for non-joining at the transferred places, the delay is condoned if they join as stipulated above and in that event, dismissal orders passed against them disappear automatically; and

(viii) the respondents-managements shall sympathetically consider the payments of wages/salaries to the appellants/petitioners-employees so as to maintain the industrial peace and harmony".



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29. He further relied on the Judgment reported in **2020-IV-LLJ-20 (Royal Enfield Employees Union, Represented by General Secretary, Chennai Vs. Government of Tamil Nadu, Represented by Secretary Labour and Employment Department, Chennai and others)** for the same proposition. It is observed that *"whether the settlement is binding; whether it is fair or proper; whether the settlement can operate, are all questions of fact relating to the terms of employment, for which an industrial dispute can be raised before the appropriate forum"*.

30. He further relied on the order in **W.P(MD)No.3086 of 2011, dated 14.10.2011 (P.Raja and others Vs. The Management, Tamil Nadu State Transport Corporation Limited, Madurai and others)** for the proposition that, in a similar line, this Court dismissed the Writ Petition seeking the conferment of permanent status on completion of 240 days from the date of initial appointment, for the reason that 12(3) Settlement came to be entered into by the Trade Unions. In the absence of the settlement being held to be invalid, the petitioners therein cannot file Writ Petition based on the advice given by the Conciliation Officer.



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31. Learned counsel appearing for the respondents 1 and 2 submitted that the order passed in W.P(MD)No.3086 of 2011 squarely covers the issue before this Court for the reason that a similar claim made by the petitioners in W.P(MD)No.3086 of 2011 was dismissed. The claim in that case was raised on the same set of facts as raised in this case also. However, learned counsel appearing for the petitioners submitted that this order has not considered the scope of Section 3(1) of the Act, 1981 and therefore, these matters have to be independently decided.

32. It is ordered in ***W.P(MD)No.3086 of 2011, dated 14.10.2011 (P.Raja and others Vs. The Management, Tamil Nadu State Transport Corporation Limited, Madurai and others)*** as follows:-

"5.It must be noted that settlement under Section 12(3) of the Act came to be signed before the Joint Commissioner of Labour at Chennai on 31.08.2005. Therefore, the earlier advice given by the Subordinate Officer can only be an advice and not binding on the parties. All the trade unions are signatories to the settlement and in the absence of the settlement being held to be invalid, the



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petitioners cannot file writ petition based on the advice of the third respondent.

6.In the counter affidavit filed by the respondents 1 and 2, in paragraph 3 it was served as follows:-

"Thereafter a wage settlement talks was made and negotiation between the recognized Trade Unions and Management was held on 21.07.2005, 22.07.2005, 29.07.2005, 30.07.2005, 08.08.2005, 09.08.2005 and finally a settlement was arrived between the representatives of Trade Unions and Management on 31.08.2005 by the Memorandum of Settlement duly signed by all parties. In that settlement talks the demand raised by the petitioners were discussed and arrived at mutually, agreeing to regularize the services of the 1375 daily paid employees including the petitioners with effect from 01.09.2005 and also to give daily paid order to 2172 persons. Based on the terms under the Clause 4(aa) of the settlement, this respondent Corporation has issued confirmation orders to all the workers and it was also implied to the workers including the petitioners under a settlement made under Section 12(3) of I.D Act, 1947. Hence, the petitioners cannot claim any benefit under writ proceedings for the benefit already availed in the settlement made under Section 12(3) of I.D Act, 1947".



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33. Coming to the application of these legal propositions to the facts of this case, there is no dispute with regard to the fact that the petitioners 2 to 16 were appointed through Employment Exchange and by following the due selection process. It is also not in dispute that they have completed 240 days of continuous service within a period of 12 months. We have seen through the catena of Judgments referred above, conferment of permanent status to a workman on completion of 240 days of satisfactory service in a continuous period of one year or 480 days of continuous service in a period of two years is a statutory right available to the workman under Section 3(1) of the Act, 1981. We have also seen that the ban on recruitment is not a reason to deter the conferment of permanent status. Even if there is a ban, that ban applies only for a fresh recruitment and not for conferment of permanent status to an existing workman who had satisfactorily completed 240 days of service in a period of one year.

34. As already submitted, learned counsel appearing for the respondents 1 and 2 heavily relied on the Judgment in **W.P(MD)No.3086 of 2011, dated 14.10.2011 (P.Raja and others Vs. The Management, Tamil Nadu State Transport Corporation Limited, Madurai and others)** for the proposition



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that on a similar set of facts, this Court dismissed the similar prayer for the reason that 12(3) Settlement came to be reached after negotiations and all the trade unions are signatories to the Settlement. In the absence of the Settlement being held to be invalid, the petitioners therein cannot file Writ Petition based on the advice of the third respondent therein. However, this Court finds from this order that there was no discussion about the statutory right available to the workman under Section 3(1) of the Act, 1981, for conferment of permanent status on completion of 240 days of service in a period of one year. This Section starts with non-obstante clause and it reads that notwithstanding anything contained in any law for the time being in force every workman who is in continuous service for a period of four hundred and eighty days in a period of twenty four calendar months in an industrial establishment shall be made permanent. The term 'law' includes any award, agreement, settlement, instrument or contract of service whether made prior to or after the commencement of this Act. There is no dispute that the motor transport undertaking like the first respondent is an industrial establishment. The petitioners 2 to 16 are also workmen under the industrial establishment ie., the first respondent and therefore the statutory right conferred on the workmen under Section 3(1) of the Act will prevail over any settlement.



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35. After referring to various Judgments on this point, this Court in **W.A.Nos.2871 and 2872 of 2018, dated 30.09.2019 (The Managing Director, Tamil Nadu State Transport Corporation Limited, Coimbatore Division, Erode Region, Chennimalai Road, Erode)** concluded that statutory right of the respondents under Section 3(1) of the Act, 1981, prevails over any settlement.

36. Therefore, in the considered view of this Court, it is not necessary that a settlement should be declared as invalid for getting the statutory benefit under Section 3(1) of the Act, 1981. This Court respectfully differs from the views expressed in **W.P(MD)No.3086 of 2011, dated 14.10.2011 (P.Raja and others Vs. The Management, Tamil Nadu State Transport Corporation Limited, Madurai and others)** that the workmen are bound by the terms of the settlement and they cannot file Writ Petition. When the terms of the settlement is not enforced and permanent status is not conferred under Section 3(1) of the Act, 1981, the affected workman can always approach the Court for appropriate remedy. It is seen from the typedset of papers filed by the petitioners that the daily wage drivers, who joined service after the petitioners 2 to 16 in the year 2007 were given permanency immediately after the



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completion of 240 days of continuous service in a year by proceedings in Paarvai Nirvagam/A4/1865/06, dated 13.04.2009.

When juniors of the petitioners are made permanent, immediately on the completion of 240 days of continuous service in a year, it is unfortunate that the petitioners' case was not considered favourably.

37. The other two Judgments relied on by the learned counsel appearing for the respondents 1 and 2 viz., **(2004) 3 CTC 1 (P.Pitchumani and others Vs. The Management of Sri Chakra Tyres Limited and others) and 2020-IV-LLJ-20 (Royal Enfield Employees Union, Represented by General Secretary, Chennai Vs. Government of Tamil Nadu, Represented by Secretary Labour and Employment Department, Chennai and others)** for the proposition that the petitioners have to approach only the Labour Court and cannot straightaway invoke the jurisdiction of this Court under Article 226 of the Constitution of India, may have some force in it. However, the petitioners 2 to 16 have been pursuing their remedy before the third respondent and before this Court from the year 2008. It is clearly established that the petitioners 2 to 16 have legal right for permanent status on completion of 240 days of satisfactory service as per the settlement



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entered in the year 1986, 1989 and 1992 and as per Section 3(1) of the Act. Therefore, at this distant point of time, this Court does not want to drive the petitioners 2 to 16 back to square one and direct them to raise an Industrial Dispute before an appropriate forum. In view of clear and well-founded statutory right available to the petitioner, the infringement of right by the respondents 1 and 2 Corporation cannot be allowed to sustain.

38. In the result,

"(i) **W.P(MD)No.2652 of 2008 is allowed** by declaring that the action of the second respondent in giving permanency to the petitioners 2, 4 to 11, 15 and 16 only with effect from 01.09.2005 instead of giving their permanency from the date of completion of 240 days of service as per the agreed advice of the third respondent in proceeding No.56(1)/05, dated 08.06.2005 is illegal and consequently the second respondent is directed to make them permanent on completion of 240 days of service as per the agreed advice in proceeding No.56(1)/05 dated 08.06.2005 of the third respondent. Considering the financial implications that may be



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caused to the Transport Corporation, this Court intends to restrict the monetary relief as follows:-

"For those, who are still in service, the monetary benefits will accrue only from the date of passing of this order and for those who have already retired on attaining the age of superannuation, they are entitled for pensionary and other monetary benefits, on the basis of revised pay on account of regularization on conferment of permanent status on completion of 240 days of service, only from the date of their respective date(s) of retirement.""

(ii) **W.P(MD)Nos.2069, 2070, 2071 & 2072 of 2013 are partly allowed** by setting aside the impugned orders, dated 01.09.2005 passed by the second respondent and consequently directing the respondents to confirm the petitioners service with effect from the date of completion of 240 days of the petitioner's actual service, with all service and statutory benefits. However, with regard to the claim



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of monetary benefits to the petitioners, it is not known whether the petitioners are still in service. Considering the financial implications that may be caused to the Transport Corporation, this Court intends to restrict the monetary relief as follows:-

"For those, who are still in service, the monetary benefits will accrue only from the date of passing of this order and for those who have already retired on attaining the age of superannuation, they are entitled for pensionary and other monetary benefits, on the basis of revised pay on account of regularization on conferment of permanent status on completion of 240 days of service, only from the date of their respective date(s) of retirement.""

There shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

30.08.2022

Internet :Yes
Index :Yes / No
ps



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Note:-

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

To

- 1.The Management of
Tamil Nadu State Transport Corporation
(Madurai) Limited,
Represented by its Managing Director,
Bye Pass Road, Madurai - 16.
- 2.The Management of
Tamil Nadu State Transport Corporation
(Madurai) Limited,
Represented by its General Manager,
Bye Pass Road,
Madurai - 16.
- 3.The Labour Officer,
Office of the Deputy Commissioner of Labour,
K.K.Nagar,
Madurai - 20.



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G.CHANDRASEKHARAN, J.

ps

Order made in
**W.P(MD)Nos.2652 of 2008,
2069, 2070, 2071 & 2072 of 2013**

30.08.2022