



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 22.04.2022
(Reserved on 16.03.2022)

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN
and
THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

W.A(MD)Nos.1163 and 1164 of 2016 and
W.P(MD)Nos.20438 and 20442 of 2017 and
Connected Miscellaneous Petitions

W.A(MD)No.1163 of 2016:-

Madurai Corporation,
Madurai,
Rep. by its Commissioner

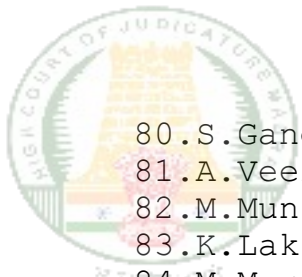
... Appellant

vs.

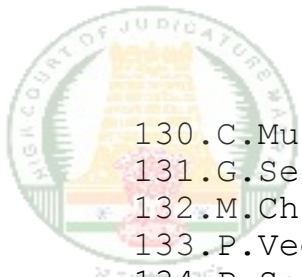
1. The Inspector of Labour, Madurai.
2. P.Paramasivan
3. S.Umaiyaaraj
4. M.Thangapandi
5. K.Selvi
6. K.Theivandhiran
7. M.Madasamy
8. D.Subbulakshmi
9. C.Ramar
10. R.Mariyadass
11. V.Murugan
12. S.Govindasamy
13. M.Selvam
14. G.Vijayakumar
15. V.Gnanam
16. C.Alagammal
17. A.Pitchamuthu
18. T.Pandiyammal
19. T.Kuppusamy
20. K.Padma
21. M.Karuppasamy
22. M.Mariappan
23. R.Kannan
24. S.Rani
25. K.Balasubramanian
26. S.Malliga
27. R.Valli
28. S.Arumugam
29. M. Alagunathan



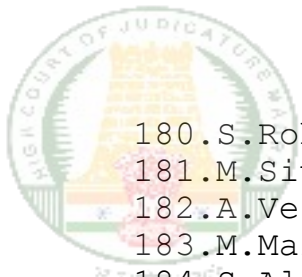
- 30.P.Murugan
- 31.P.Suresh
- 32.V.Devi
- 33.M.Saraswathi
- 34.P.Adaikalam
- 35.A.Ambedkar
- 36.A.Valasappan
- 37.P.Ravichandran
- 38.M.Jambunathan
- 39.K.Panjavarnam
- 40.M.Pandiyammal
- 41.M.Lakshmi
- 42.A.Sheeladevi
- 43.T.Alagammal
- 44.G.Mayilammal
- 45.M.Muthupandi
- 46.S.Muthumari
- 47.Veeralakshmi
- 48.S.Shanthi
- 49.R.Padampiriyal
- 50.A.Selvapandi
- 51.A.Ramesh
- 52.Arumugam
- 53.G.Alagammal
- 54.A.Mariappan
- 55.A.Arumugam
- 56.V.Murugan
- 57.P.Arayee
- 58.P.Thayammal
- 59.M.Meena
- 60.T.Manimegalai
- 61.M.Nallalu
- 62.K.Pitchaiammal
- 63.M.Murugesan
- 64.A.Lakshmi
- 65.M.Pandiyammal
- 66.P.Lakshmi
- 67.N.Vasanthi
- 68.M.Arammal
- 69.C.Chitradevi
- 70.P.Irulandi
- 71.M.Mariyammal
- 72.A.Manikandan
- 73.A.Vennila
- 74.P.Shanmugavalli
- 75.K.Meenakshisundaram
- 76.R.Panchavarnam
- 77.K.Andi
- 78.P.Sakthi
- 79.P.Rakkammal



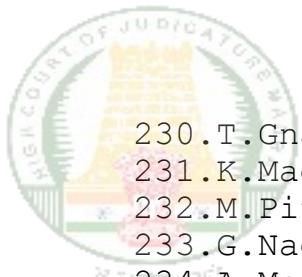
- 80.S.Ganesan
- 81.A.Veeriyakali
- 82.M.Muniyammal
- 83.K.Lakshmi
- 84.M.Murugammal
- 85.V.Kuppatchi
- 86.V.Pattu
- 87.P.Alagarsamy
- 88.C.Veerammal
- 89.M.Velammal
- 90.M.Seethalakshmi
- 91.K.Poopandi
- 92.M.Mariyammal
- 93.A.Chinnathai
- 94.M.Ganesan
- 95.J.Periyar
- 96.P.Shanmugam
- 97.P.Pandiyammal
- 98.P.Alamu
- 99.S.Anitha
- 100.M.Pappa
- 101.L.Alagurani
- 102.P.Tamilarasi
- 103.A.Devi
- 104.A.Karthik
- 105.K.Valivittan
- 106.M.Sonai
- 107.T.Pongodi
- 108.P.Subbammal
- 109.R.Muniyasamy
- 110.M.Rakkammal
- 111.K.Mookkammal
- 112.P.Muthukumar
- 113.M.Kannan
- 114.P.Muniyammal
- 115.K.Meenatchi
- 116.R.Deivanai
- 117.M.Mookkammal
- 118.Pandanaselvi
- 119.P.Palpandiyammal
- 120.M.Ilango
- 121.A.Parvathi
- 122.P.Rajendran
- 123.Veerasamy
- 124.K.Perumal
- 125.N.Karthik
- 126.R.Saravanan
- 127.A.Rani
- 128.K.Valivittan
- 129.A.Mariyammal



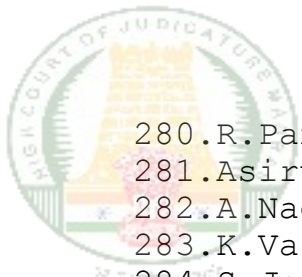
- 130.C.Murugan
- 131.G.Selvakumar
- 132.M.Chinnakumar
- 133.P.Veerapandi
- 134.P.Seeniyammal
- 135.P.Murugan
- 136.J.Lawrence
- 137.T.Ramalakshmi
- 138.N.Nagammal
- 139.R.Mariyammal
- 140.N.Panjavarnam
- 141.S.Vasantha
- 142.R.Vellaiyammal
- 143.K.Muthupillai
- 144.C.Muthumari
- 145.A.Shanthi
- 146.P.Mariyammal
- 147.C.Balamurugan
- 148.C.Senthilkumar
- 149.P.Chandra
- 150.M.Jothimuthu
- 151.P.Muthupalani
- 152.P.Malathi
- 153.R.Sangili
- 154.M.Malaiyandi
- 155.S.Kaliyammal
- 156.M.Palaniyammal
- 157.M.Alagar
- 158.P.Meena
- 159.P.Palaniyammal
- 160.K.Selvakumar
- 161.M.Mahalakshmi
- 162.A.Murugeswari
- 163.A.Mahalakshmi
- 164.B.Latha
- 165.C.Nagalakshmi
- 166.A.Subbammal
- 167.P.Murugeswari
- 168.O.Selvi
- 169.S.Suriyaprakash
- 170.Ganesan
- 171.R.Kaliyappan
- 172.R.Eswaran
- 173.E.Meena
- 174.P.Seethalakshmi
- 175.S.Parvathi
- 176.M.Kavitha
- 177.D.Mahalakshmi
- 178.P.Sevanammal
- 179.M.Meena



- 180.S.Rohini
- 181.M.Siva
- 182.A.Velmurugan
- 183.M.Mari
- 184.S.Alagar
- 185.P.Kuruvan
- 186.P.Palani
- 187.K.Karuppasamy
- 188.K.Maragadavalli
- 189.R.Palani
- 190.R.Marry
- 191.P.Radhamani
- 192.N.Palpandi
- 193.M.Muthuselvam
- 194.A.Alagarsamy
- 195.S.Mahendran
- 196.M.Pandi
- 197.N.Kumaravel
- 198.R.Raja
- 199.A.Boominathan
- 200.T.Muthuganesan
- 201.P.Mookkaiah
- 202.P.Arumugam
- 203.P.Ramar
- 204.P.Manikandan
- 205.M.Nallu
- 206.K.Kalimuthu
- 207.P.Meenakshi
- 208.P.Kadarkaraiyan
- 209.G.Natarajan
- 210.A.Perumal
- 211.K.Kaliyammal
- 212.Veerammal
- 213.A.Devaki
- 214.M.Murugeswari
- 215.K.Meenatchiammal
- 216.S.Panjavarnam
- 217.G.Alagi
- 218.G.Muthukumar
- 219.D.Velmurugan
- 220.R.Murugan
- 221.G.Murugan
- 222.T.Kaliyappan
- 223.T.Muniyandi
- 224.K.Sevugan
- 225.M.Muniyandi
- 226.L.Selvam
- 227.T.Nallathangal
- 228.M.Muthalammal
- 229.V.Rajammal



230.T.Gnanamathi
231.K.Madathi
232.M.Pitchaimuthu
233.G.Nagarajan
234.A.Mariyammal
235.V.Malliga
236.P.Palaniyammal
237.M.Selvam
238.K.Pandi
239.S.Pandi
240.P.Balamurugan
241.S.Lakshmi
242.S.Kalyani
243.R.Krishnaveni
244.P.Selvi
245.K.Balammal
246.G.Kanniyammal
247.V.Radha
248.R.Kannaki
249.V.Muthukumar
250.S.Manikandan
251.T.Varadharajan
252.C.Ayyanar
253.A.Alagar
254.P.Moorthy
255.A.Velammal
256.S.Kanniyammal
257.M.Palaniyammal
258.S.Nataraj
259.M.Ayyappan
260.B.Vijayalakshmi
261.S.Radhika
262.M.Selvakumar
263.M.Muthuvel
264.P.Alagarsamy
265.K.Meenatchi
266.S.Muniyammal
267.I.Veerapathiran
268.K.Murugesan
269.V.Subramaniyan
270.P.Krishnapandi
271.S.Ramasamy
272.T.Muniyandi
273.G.Velammal
274.T.Arumugam
275.M.Kannan
276.E.Murugan
277.N.Muthu
278.A.Pandi
279.M.Arumugam



280.R.Panneerselvam
281.Asirvadham
282.A.Nagammal
283.K.Valli
284.S.Jakkammal
285.R.Karthigai Jothi
286.A.Karpagam
287.K.Janaki
288.P.Pandiyammal
289.P.Palpandi
290.K.Saravanan
291.S.Ramalakshmi
292.C.Muthulaksmi
293.R.Muthulakshmi
294.A.Meenatchi
295.S.Velmurugan
296.K.Palraj
297.M.Valliyammal
298.A.Shanmugavalli
299.M.Ponnuthai
300.P.Pandiyaraj
301.P.Lakshmi
302.M.Muthumari
303.P.Pushpavalli
304.K.Baskaran
305.S.Kalimuthu
306.V.Latha
307.T.Kanniyammal
308.V.Dharmapandi
309.A.Muniasamy
310.V.Shakthivel

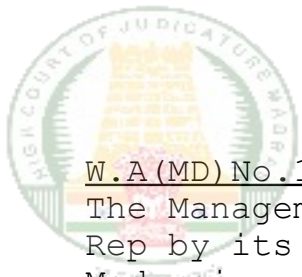
... Respondents

Appeal filed under Clause 15 of Letters Patent, against the order dated 03.09.2015 in W.P(MD)No.16595 of 2013.

Prayer in WP(MD). 16595 of 2013 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, calling for the records relating to the proceedings of the 1st respondent made in Na.Ka.No. E/3672/2011, C.P.S.No. 1 to 309 of 2010 dated 21/02/2013 and quash the same.

For Appellant	: Mr.Veera Kathiravan Additional Advocate General assisted by Mr.R.Murali
For Respondents	: Mr.Ajay Khosh for Mr.A.Rahul



W.A(MD)No.1164 of 2016:-

The Management of Madurai Corporation.
Rep by its Commissioner,
Madurai.

... Appellant

WEB COPY

vs.

1.P.Paramasivan

2.Madurai Maanagaratchi Thozhlilalar Sangam,
rep by its General Secretary,
19, Bharathiyar Road,
Melaponnagaram,
Madurai-625 016.

3.The Inspector of Labour,
Madurai.

... Respondents

Appeal filed under Clause 15 of Letters Patent, against the order dated 03.09.2015 in W.P(MD)No.14148 of 2013.

Prayer in WP(MD). 14148/ 2013 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Mandamus directing the 1st Respondent Corporation to regularize the services of the 1st petitioner and 308 Sanitary Workers employed in the 1st Respondent Corporation who are members of the 2nd petitioner Union and confer permanent status on them from the date on which they completed 480 days of service in 24 calendar months and to pay all other monetary and attendant benefits to them by implementing the order passed by Inspector of Labour, Madurai in Na.Ka.No. E/3672/2011 CPS No. 1 / 2010 to 309 of 2010 dated 21.02.2013 passed under Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workment) Act, 1981.

For Appellant : Mr.Veera Kathiravan

Additional Advocate General assisted by
Mr.R.Murali

For R1 & R2 : Mr.Ajay Khosh for Mr.A.Rahul

For R3 : Mr.A.Kannan

Additional Government Pleader

W.P(MD)No.20438 of 2017:-

The Commissioner,
Madurai Corporation,
Madurai.

... Petitioner



vs.

1. The Labour Inspector, Tamilnadu Housing Board Complex,
Ellis Nagar, Madurai-625 016.

2. Veeran

3. Mayavan

4. Solaiyammal

5. Muthupandi

6. Marikumar

7. Mariyammal

8. Sundaramoorthy

9. Muthupandi

10. Muthukumar

11. Mariyammal

12. Subramaniyan

13. Kanagavel

14. Raja

15. Muthuraja

16. Pandiyammal Devi

17. Devi

18. Jayabarathi

19. Pandiyan

20. Samikannu

21. Nagarajan

22. Meenakshi

23. Murugan

24. Mariyappan

25. Kanniyammal

26. Murugeshwari

27. Marichamy

28. Vijiveeran

29. Pandi

30. Palaniyammal

31. Pushpam

32. Subbulakshmi

33. Kaveri

34. Ponkasthuri

35. Marimuthu

36. Paulpandi

37. Chinnapandi

38. Ramprasad

39. Thiyagarajan

40. Subramaniyan

41. Alagumalai

42. Ramar

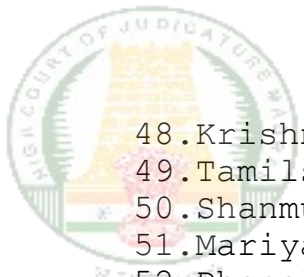
43. Muthu

44. Stalin

45. Karpagam

46. Perumal

47. Murugan



- 48.Krishnan
- 49.Tamilselvi
- 50.Shanmugam
- 51.Mariyammal
- 52.Dhanalakshmi
- 53.Chekkan
- 54.Veeralakshmi
- 55.Alagumalai
- 56.Chandran
- 57.Nilamathi
- 58.Meena
- 59.Palanichamy
- 60.Sethu
- 61.Murugan
- 62.Mangayarthilagam
- 63.Maheswari
- 64.Nageswaran
- 65.Pandilakshmi
- 66.Nagarajan
- 67.Veeriah
- 68.Puvaneshwari
- 69.Velmurugan
- 70.Arumugam
- 71.Muthukumar
- 72.Malaiyammal
- 73.Murugammal
- 74.Murugayee
- 75.Ganesan
- 76.Pandiyammal
- 77.Alagu Pandi
- 78.Eswaran
- 79.Suresh
- 80.Packiyam
- 81.Sundararajan

... Respondents

Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorari, by calling for the records relating to the proceedings of the 1st respondent made E/1827/13-CPS Nos.1/13 to 58/13 and 76/13 to 97/13 (Except CPS No.81/13) dated 23.02.2017 and quash the same.

For Petitioner: Mr.Veera Kathiravan
Additional Advocate General assisted by
Mr.R.Murali

For R1 : Mr.A.Kannan
Additional Government Pleader

For R2 to R81 : Mr.Ajay Khosh for Mr.A.Rahul
except R9



For R9 : Mr.V.Jeyarani

W.P (MD) No.20442 of 2017:-

Madurai Corporation,
Madurai,
Rep by its Commissioner

... Petitioner

vs.

1.The Inspector of Labour,
Ellis Nagar, Madurai.

2.A.Murugesan

... Respondents

Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorari, by calling for the records relating to the proceedings of the 1st respondent made in E.3229/12 Ma.Ne.25/015136/13 dated 30.12.2016 and quash the same.

For Petitioner: Mr.Veera Kathiravan
Additional Advocate General assisted by
Mr.R.Murali

For R1 : Mr.A.Kannan

For R2 : Mr.K.Vamanan

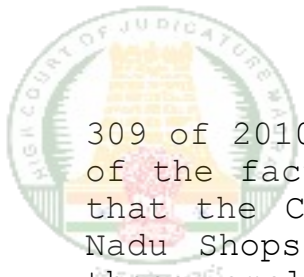
COMMON JUDGMENT

R.SUBRAMANIAN, J.
AND
N.SATHISH KUMAR, J.

The only question involved in these writ appeals and the writ petitions is as to whether the Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, 1981, (hereinafter referred to as, 'the Act 46 of 1981' for the sake of brevity) would apply to the appellant Corporation and as to whether the authority constituted under the Act 46 of 1981 could direct conferment of permanent status on the sanitary workers appointed by the Corporation.

2. The brief facts that led to the proceedings are as follows:-

The Madurai Corporation had employed several persons as sanitary workers on a daily wage basis on various dates between 2006 and 2007. About 309 such employees moved the Inspector of Labour seeking conferment of permanent status under the Act 46 of 1981 during the year 2010. Those claims were numbered as CPS.Nos.1 to



309 of 2010 before the authority. The authority, on a consideration of the facts and circumstances of the case, came to the conclusion that the Corporation would be a 'shop' as defined under the Tamil Nadu Shops and Establishments Act, 1947, and since the fact that these employees who were working for more than 480 days in two calendar years, are entitled to be regularised under the provisions of the Act 46 of 1981, was not in dispute, the authority by its order dated 21.02.2013, directed conferment of permanent status on all the 309 employees.

3. This order directing conferment of permanent status was challenged by the Corporation before this Court in W.P(MD)No.16595 of 2013. Since the orders of the authority were not complied with and permanent status was not granted, the workmen namely, the sanitary workers moved this Court by way of W.P(MD)No.14148 of 2013 seeking a direction in the nature of a Writ of Mandamus, directing the 1st respondent Corporation to regularise 309 sanitary workers by implementing the orders of the competent authority under the Act 46 of 1981. Both these writ petitions came to be disposed of by a common order dated 03.09.2015. While the writ petition filed by the Corporation challenging the orders of the authority was dismissed, the writ petition filed by the workmen seeking a Mandamus directing implementation of the orders of the authority, was allowed. Aggrieved, the Corporation had filed the above two writ appeals.

4. In the interregnum, another set of 80 employees moved the competent authority seeking conferment of permanent status in CPS.Nos.1/13 to 58/13 and 76/13 to 97/13 (Except CPS No.81/13). Those petitions were also allowed by the competent authority by order dated 23.02.2017. This order is challenged by the Corporation in W.P(MD)No.20438 of 2017. Another sanitary worker A.Murugesan filed a claim petition before the competent authority under the Act 46 of 1981, seeking conferment of permanent status and the same came to be allowed by the Inspector of Labour namely, the competent authority, by order dated 30.12.2016. Aggrieved by the said order, the Corporation has come up with W.P(MD)No.20442 of 2017. As per the directions of the Hon'ble Administrative Judge, these writ petitions were tagged on with the above writ appeals.

5. We have heard Mr.Veera Kathiravan, the learned Additional Advocate General appearing for the Corporation assisted by Mr.R.Murali, and Mr.A.Kannan, learned Additional Government Pleader for the 1st respondent in both the writ petitions and 2nd respondent in W.A(MD)No.1164 of 2016 and Mr.Ajay Khosh for Mr.A.Rahul, for the sanitary workers who are cited as respondents.

6. It is not in dispute that the sanitary workers though appointed on a temporary basis, have been working on a daily wage basis for more than 480 days in two calendar years immediately following their appointments. The only question that is raised and



argued before us in these writ appeals and the writ petitions is that the competent authority erred in concluding that the Corporation would be a 'shop' as defined under the Tamil Nadu Shops and Establishments Act, 1947.

7. Mr.Veera Kathiravan, learned Additional Advocate General appearing for the Madurai Corporation would also fault the common judgment of the Writ Court, contending that the Writ Court had not adverted to the specific contentions of the Corporation that the Madurai Corporation would not be an 'industrial establishment' within the meaning of Section 2(3) of the Act 46 of 1981. It is also the further contention of the learned Additional Advocate General that the Corporation being a statutory body governed by its own recruitment rules, any recruitment made against the recruitment rules shall be deemed to be a back door entry and therefore no benefit could accrue to those employees who have been recruited without following the recruitment rules. The learned Additional Advocate General would also submit that the Madurai Corporation which is a statutory Corporation, cannot be termed as an 'industrial establishment' within the meaning of Section 2(3) of the Act 46 of 1981.

8. Drawing our attention to the definition, the learned Additional Advocate General would submit that if the Corporation cannot be called an 'industrial establishment' as defined under Section 2(3) of the Act 46 of 1981, there is no question of conferment of permanent status. He would also invite our attention to the judgments of the Hon'ble Supreme Court as well as this Court in Hindustan Petroleum Corporation Ltd., vs. Ashok Ranghba Ambre reported in (2008) 2 SCC 717, Indian Drugs & Pharmaceuticals Ltd., vs. Workmen, Indian Drugs & Pharmaceuticals Ltd., reported in (2007) 1 SCC 408, Jodhpur Vidyut Vitran Nigam Ltd., vs. Nanu Ram and others reported in (2006) 12 SCC 494, Madhya Pradesh Electricity Board vs. Hariram reported in (2004) 8 SCC 246, Oil and Natural Gas Corporation vs. Krishnan Gopal and others reported in 2020 SCC Online SC 150, Hindustan Aeronautics Ltd., s. Dan Bahadur Singh and others reported in (2007) 6 SCC 207, A.Umarani vs. Registrar, Co-operative Societies and others reported in (2004) 7 SCC 112 and State of Karnataka and others vs. Umadevi and others reported in (2006) 4 SCC 1, in support of his submissions.

9. Contending contra, Mr.Ajay Khose, learned counsel appearing for the respondents/workmen would submit that even though the appellant Corporation could not be termed as a 'shop' as defined under the Tamil Nadu Shops and Establishments Act, 1947, it would fall within the definition of a 'factory' as defined under Section 2 (m) of the Factories Act, 1948. Therefore, it would be an 'industrial establishment' as defined under Section 2(3) of the Act 46 of 1981. Once the appellant Corporation could be treated as a factory within the meaning of Section 2(3)(a) of the Act 46 of 1981,



since the fact that the workmen or the sanitary workers had worked for more than 480 days in two calendar years is not in dispute, the order of the authority directing permanency cannot be interfered with.

10. The learned counsel would also contend that the mere fact that the authority had treated the Corporation as a shop within the meaning of the Tamil Nadu Shops and Establishments Act, 1947, would not stand in the way of this Court deciding as to whether the Corporation would be an 'industrial establishment' as defined under Section 2(3) of the Act 46 of 1981 and that is precisely what has been done by the Writ Court and therefore, the claim of the Corporation that it would not be an industrial establishment as defined under Section 2(3) of the Act 46 of 1981, has to be rejected. Arguing further, the learned counsel would submit that the Hon'ble Supreme Court and this Court had repeatedly held that the proposition of law laid down by the Hon'ble Supreme Court in **A.Umarani vs. Registrar, Co-operative Societies and others** reported in (2004) 7 SCC 112 and **State of Karnataka and others vs. Umadevi and others** reported in (2006) 4 SCC 1, regarding public employment would not apply to cases covered by the Act 46 of 1981.

11. The learned counsel would rely upon the following judgments of the Hon'ble Supreme Court and this Court in support of his submissions:-

(i) V.P.Gopala Rao vs. Public Prosecutor, Andhara Pradesh reported in 1969 (1) SCC 704.

(ii) Delhi Gymkhana Club Limited vs. Employees' State Insurance Corporation reported in (2015) 1 SCC 142.

(iii) Ardeshir H.Bhiwandiwalla vs. State of Bombay reported in AIR 1962 SC 29.

(iv) State of Maharashtra and another vs. Sarva Shramik Sangh, Sangli and others reported in 2013-IV-LLJ-513(SC)

(v) The Executive Engineer, TWAD Board, Tirunelveli, and others vs. The Inspector of Labour, Tirunelveli, and others (W.A(MD)Nos.352 to 354 of 2019, dated 07.08.2019)

(vi) The Management, Tamilnadu Khadi and Village Industries Board, Chennai vs. Industrial Estate General Workers Union, Chennai (W.A.No.758 of 2016, dated 24.07.2018), to which, one of us (RSMJ) was a party.

(vii) K.Thiruvankataswami vs. Coimbatore Municipality reported in (1968) 1 LLJ 361

(viii) K.Gangadhar and others vs Appellate Authority under the Payment of Gratuity Act and others reported in 1994-II-LLN 726

(ix) Municipal Board, Hathras vs. Union of India and others reported in AIR 1975 Allahabad 364.

(x) Ravi Shankar Sharma vs. The State of Rajasthan and another reported in AIR 1993 Raj 117

(xi) D.N.Banerjee vs. P.R.Mukherjee and others reported in AIR 1953 SC 58



(xii) Corporation of the City of Nagpur vs. Employees reported in AIR 1960 SC 675

12. From the rival contentions, it could be seen that the only question that is to be decided in these writ appeals and writ petitions is as to whether the Madurai Corporation could be deemed to be a 'factory' within the meaning of Section 2(m) of the Factories Act, 1948 and whether the competent authority under the Act 46 of 1981, has the power to direct conferment of permanency on the employees.

13. Section 2(3) of the Act 46 of 1981 defines 'industrial establishment' as follows:-

''(3) ''industrial establishment'' means---

(a) a factory as defined in clause (m) of Section 2 of the Factories Act, 1948 (Central Act LXIII of 1948) or any place which is deemed to be a factory under sub-section (2) of section 85 of that Act; or

(b) a plantation as defined in clause (f) of section 2 of the Plantations Labour Act, 1951 (Central Act LXIX of 1951); or

(c) a motor transport undertaking as defined in clause (g) of section 2 of the Motor Transport Workers Act, 1961 (Central Act 27 of 1961); or

(d) a beedi industrial premises as defined in clause (i) of section 2 of the Beedi and Cigar Workers (conditions of employment) Act, 1966. (Central Act 32 of 1966); or

(e) an establishment as defined in clause (6) of section 2 of the Tamil Nadu Shops and Establishment Act, 1947 (Tamil Nadu Act XXXVI of 1947); or

(f) a catering establishment as defined in clause(1) of section 2 of the Tamil Nadu Catering Establishment Act, 1958. (Tamil Nadu Act XIII of 1958) ; or

(g) any other establishment which the Government may, by notification, declare to be an industrial establishment for the purpose of this Act.''

14. Section 2(4) of the Act 46 of 1981 defines the 'workman' as follows:-

''(4) ''Workman'' means any person employed in any Industrial Establishment to do any skilled or unskilled, manual, supervisory, technical or clerical work for hire or reward, whether the terms of employment be express or implied and includes a badli workman, but does not include any such person, --

(a) who is employed in the police service or as an officer or other employee of a prison ; or

(b) who is employed mainly in managerial or administrative capacity ; or

(c) who, being employed in a supervisory capacity, draws



wages exceeding three thousand and five hundred rupees per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature.''

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15. Section 3 of the Act 46 of 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.

(2) A workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorized leave or an accident or a strike, which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman.

[For the purposes of computing the continuous service referred to in sub-sections (1) and (2), a workman shall be deemed to be continuous service during the days on which ---] ;

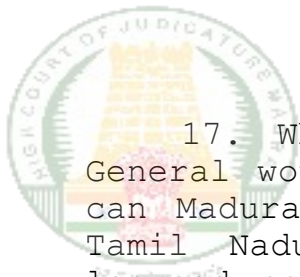
(i) he has been laid off under an agreement or as permitted by standing orders made under the Industrial Employment (Standing Orders) Act, 1946 (Central Act XX of 1946) or under any other law applicable to the industrial establishment ;

(ii) he has been on leave with full wages, earned in the previous years;

(iii) he has been absent due to temporary disablement caused by accident arising out of and in the course of his employment; and

(iv) in the case of a female, she has been on maternity leave; so, however, that the total period of such maternity leave does not exceed twelve weeks.''

16. Section 3 of the Act 46 of 1981 provides for conferment of permanent status on a workman who satisfies the conditions prescribed under Section 3. The power is conferred on the competent authority to confer such permanent status. As already pointed out, in the cases on hand, there is no dispute regarding the factual matrix namely, the fact that the workmen had completed 480 days of continuous service and they satisfy the requirements of Section 3 of the Act 46 of 1981. The only question that is disputed is the applicability of the Act to the employer namely, the Madurai Corporation. The authority has arrived at a conclusion that the Madurai Corporation would be a 'shop' within the meaning of the Tamil Nadu Shops and Establishments Act, 1947. The Writ Court has affirmed the conclusion of the authority though on different grounds.



17. While Mr.Veera Kathiravan, learned Additional Advocate General would vehemently contend that by no stretch of imagination can Madurai Corporation be termed as a shop as defined under the Tamil Nadu Shops and Establishments Act, 1947, Mr.Ajay Khose, learned counsel appearing for the workmen would contend that even assuming that the Madurai corporation cannot be termed as a shop as defined under Section 2(6) of the Tamil Nadu Shops and Establishments Act, 1947, it could fall within the definition of 'factory' as defined under Section 2(m) of the Factories Act, 1948 and therefore, the Inspector of Labour is the competent authority under the Act 46 of 1981. Therefore, the competent authority was justified in exercising jurisdiction under Section 3 of the said Act and directing conferment of permanent status on the sanitary workers.

18. In order to consider the rival contentions, we will have to necessarily look at the definition of the term 'shop' under the Tamil Nadu Shops and Establishments Act, 1947, and the term 'factory' under the Factories Act, 1948.

19. Section 2(6) of the Tamil Nadu Shops and Establishments Act, 1947, reads as follows:-

'(6) 'establishment' means a shop. commercial establishment, restaurant, eating-house, residential hotel, theatre or any place of public amusement or entertainment and includes such establishment as the State Government may by notification declare to be an establishment for the purposes of this Act.

20. We have no hesitation in accepting the contention of Mr.Veera Kathiravan, learned Additional Advocate General that the Corporation cannot be termed as 'establishment' under Section 2(6) of the Tamil Nadu Shops and Establishments Act, 1947, but the question does not end there. As rightly contended by Mr.Ajay Khose, if the Corporation answers the definition of an 'industrial establishment' as defined under Act 46 of 1981, the said Act would apply to it and the authority under the Act would have the power to confer permanency on the workers who qualify under Section 3 of the said enactment. We have to, therefore, examine as to whether the Madurai Corporation would answer the description of an 'industrial establishment' under Section 2(3) of the Act 46 of 1981. We have already extracted the definition of the term 'industrial establishment' in Section 2(3) of Act 46 of 1981.

21. Section 2(m) of the Factories Act, 1948, which defines 'factory', reads as follows:-

'(m) "factory" means any premises including the precincts thereof-

(i) whereon ten or more workers are working, or were working on any day of the preceding twelve months, and in any



part of which a manufacturing process is being carried on with the aid of power, or is ordinarily so carried on, or (ii) whereon twenty or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on without the aid of power, or is ordinarily so carried on, but does not include a mine subject to the operation of the Mines Act, 1952 (35 of 1952), or a mobile unit belonging to the armed forces of the Union, railway running shed or a hotel, restaurant or eating place.''

22. The term 'manufacturing process' has been defined in Section 2(k) of the Factories Act which reads as follows:-

''(k) "manufacturing process" means any process for-

- (i) **making, altering, repairing, ornamenting, finishing, packing, oiling, washing, cleaning, breaking up, demolishing, or otherwise treating or adapting any article or substance with a view to its use, sale, transport, delivery or disposal;** or
- (ii) pumping oil, water, sewage or any other substance; or
- (iii) generating, transforming or transmitting power; or
- (iv) composing types for printing, printing by letter press, lithography, photogravure or other similar process or book binding; or
- (v) constructing, reconstructing, repairing, refitting, finishing or breaking up ships or vessels; or
- (vi) preserving or storing any article in cold storage.''

23. Let us now consider the judicial pronouncements on this aspect:-

(i) In **K.Thiruvengataswami vs. Coimbatore Municipality** reported in (1968) 1 LLJ 361, this Court has considered the definition of a 'factory' under Section 2(m) of the Factories Act, 1948, and had concluded that the Electricity Department of the Coimbatore Municipality could be called a 'factory' within the meaning of Section 2(m) of the Factories Act, 1948, and therefore the provisions of the Industrial Employment (Standing Orders) Act, 1946, would apply to the employees of the Electricity Department of the Coimbatore Municipal Corporation.

(ii) In **The Regional Director, Employees State Insurance Corporation, Jaipur, vs. The Assistant Engineer, Municipal Council, Water Works, Ganganagar**, reported in 1972 RLW 258, the Rajasthan High Court had held that water works of a Municipal Corporation would be a 'factory' as defined under Section 2(m) of the Factories Act, 1948. The Court observed as follows:-

''21. There is no manner of doubt that in the Water Works the process of cleaning the water is involved so that it may be rendered proper and sufficient for preventing danger to of inhabitants from the insufficiency or



unwholesomeness. Then water has to be pumped. Therefore, the treatment of water as also the act of storing and supplying it by pumping will undoubtedly constitute a manufacturing process within the meaning of sec. 2(k) of the Factories Act, 1948. The term "power" as defined in this Act means electrical energy, or any other form of energy which is mechanically transmitted and is not generated by human or animal agency. There is, therefore, no substance in the contention that the Water Works maintained by the Municipal Council were not a factory within the meaning of the Act.''

(iii) In **K.Gangadhar and others vs Appellate Authority under the Payment of Gratuity Act and others** reported in **1994-II-LLN 726**, the Andhra Pradesh High Court held that the existence of a definite premises is not required for an establishment to be called a 'factory' within the meaning of Section 2(m) of the Factories Act, 1948. The Hon'ble Mr.Justice **SRI.B.SUBHASHAN REDDY** (as he then was) had observed as follows:-

'4. Dealing with the first contention that the provisions of the Gratuity Act, 1972, are not applicable on the ground that the management is neither a factory nor an establishment, I repel the contention of the management. The word "factory" is defined under S. 2(m) of Factories Act, 1948, and the contention of the management is that there is no premises for carrying on manufacturing process by the management and as such, it cannot be construed as a factory, is not acceptable for the reason that, it is the manufacturing process which is the criterion and not the premises or place in question. It cannot be disputed that the making of beedis is a manufacturing process and the words "manufacturing process" under definition clause contained under S. 2 (k) of Beedi and Cigar Workers (Conditions of Employment) Act, 1966, clearly take in the process of making beedis as a manufacturing process, wherever the manufacturing process is carried. May be, a particular place, a premises or the same are scattered over, nevertheless, the object being the manufacturing process, a definite place or premises loses its significance and instances are galore, where in judicial precedents, it was held that any place, even that of a sea shore, where prawns are processed, can be construed as a factory within the meaning of Factories Act, 1948. As such, I have got no hesitation to hold that the management is a factory.''

(iv) In **Mohan Singh and others vs. Chairman, Railway Board and others** reported in **(2015) 10 SCC 759**, the Hon'ble Supreme Court had an occasion to consider the definition of a 'factory' under Section 2(m) of the Factories Act, 1948. The contention of the Railway Board in the said case was that the activities of the Divisional Railway Manager, Office of Railways cannot be said to be within the



premises and therefore, it cannot be called a 'factory'. Repelling the said contention, the Hon'ble Supreme Court held as follows:-

'18 The more important question that arises is whether the said manufacturing activities are carried on within the premises of DRM Office, Moradabad. Black's Law Dictionary, 5th Edition defines 'Premises', so far as estates and property are concerned, as lands and tenements. With regard to the Worker's Compensation Act, 'premises of employer' is not restricted to permanent site of the employer's business nor to property owned or leased by him but contemplates any place under the exclusive control of the statutory employer where his normal business is conducted or carried out." In Kamla Devi V. LaxmiDevi (2000) 5 SCC 646, in the context of the Delhi Rent Control Act, this Court has held that even an open plot of land so long as it has some structures on it, will fall within the meaning of 'premises'. Extrapolating from these decisions, we are in no manner of doubt that the DRM Office of Moradabad Division along with all the appurtenant lands, yards, etc. are 'premises' within the contemplation of the Factories Act. In Ardeshir H. Bhiwandiwalla v. State of Bombay AIR 1962 SC 29, the Constitution Bench explained that "premises including precincts" does not necessarily mean that:

'6. ... the premises must always have precincts. Even buildings need not have any precincts. The word "including" is not a term restricting the meaning of the word "premises" but is a term which enlarges the scope of the word "premises".

A comprehensive reading of the Factories Act, 1948 clearly shows that the word "premises" can refer to an entire area, which may have several separate buildings, within it, or which may correspond to an open yard. Further, an important point to consider is that the definition of "manufacturing process" does not mandate that the manufacturing activities should be carried on in one building alone. What this definition really deals with is the nature of the work done and not with where that work is to be done. It must, therefore, be held that all the requirements of the term "factory" as defined under Section 2(m) of the Act are satisfied on the facts of the present case. Thus, the premises of DRM, Moradabad must be also treated as a factory under the Factories Act, 1948 in which case Moradabad Canteen shall ipso facto corresponded to a 'Statutory Canteen' within the meaning of Section 46 of the Act.'

(v) In **Municipal Board, Hathras vs. Union of India and others** reported in **AIR 1975 Allahabad 364**, the Allahabad High Court has considered the definition of manufacturing process in Section 2(k) of the Factories Act, 1948. While doing so, the Court held that pumping of water and water works of a Municipal Corporation would be a 'manufacturing process' under Section 2(k) of the Factories Act,



1948.

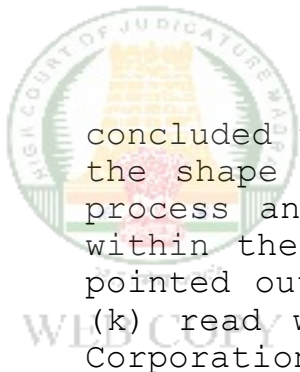
(vi) In **Ravi Shankar Sharma vs. The State of Rajasthan and another** reported in **AIR 1993 Raj 117**, the Rajasthan High Court held that washing and cleaning would fall within the definition of 'manufacturing process' as defined under Section 2(k) of the Factories Act, 1948.

(vii) In **D.N.Banerjee vs. P.R.Mukherjee and others** reported in **AIR 1953 SC 58**, the Hon'ble Supreme Court held that the Municipal Corporation is an 'industry' under the Industrial Disputes Act, 1947. While doing so, the Hon'ble Supreme Court observed as follows:-

''15. A public utility service such as railways, telephones and the supply of power, light or water to the public may be carried on by private companies or business corporations. Even conservancy or sanitation may be so carried on, though after the introduction of local self-government this work has in almost every country been assigned as a duty to local bodies like our Municipalities or District Boards or Local Boards. A dispute in these I services between employers and workmen is an industrial dispute, and the proviso to Section 10 lays down that where such a dispute arises and a notice under Section 22 has been given, the appropriate Government shall make a reference under the sub-section. If the public utility service is carried on by a corporation like a Municipality which is the creature of a statute, and which functions under the limitations imposed by the statute, does it cease to be an industry for this reason? The only ground on which one could say that what would amount to the carrying on of an industry if it is done by a private person ceases to be so if the same work is carried on by a local body like a Municipality is that in the latter there is nothing like the investment of any capital or the existence of a profit earning motive as there generally is in a business. But neither the one nor the other seems a sine qua non or necessary element in the modern conception of industry.''

(viii) In **Corporation of the City of Nagpur vs. Employees** reported in **AIR 1960 SC 675**, the Hon'ble Supreme Court considered the question whether the said Corporation of Nagpur is an 'industry' or not. The Court answered the question in the affirmative and held that the Corporation would be an 'industry'.

(ix) In **Uttaranchal Forest Development Corporation and another vs. Jabar Singh and others** reported in **(2007) 2 SCC 112**, the Hon'ble Supreme Court had an occasion to consider the meaning of the term 'factory' and 'manufacturing process' as defined under Section 2(m) and 2(k) of the Factories Act, 1948. The Hon'ble Supreme Court



concluded that the process of cutting of trees by axe and changing the shape of the timber into logs would amount to a manufacturing process and the Forest Development Corporation would be a factory within the meaning of Section 2(m) of the Act. As we had already pointed out, the definition of 'manufacturing process' in Section 2(k) read with Section 2(m) of the Act would definitely make the Corporation a Factory.

(x) In **Ardeshir H.Bhiwandiwalla vs. State of Bombay** reported in **AIR 1962 SC 29**, the Hon'ble Supreme Court had held that premises does not necessarily mean that it should be a precincts. The Hon'ble Supreme Court had held that even salt works would be a premises. Therefore, the fact that the sanitary workers are not engaged within a particular premises would not deprive them of the benefit under the Act 46 of 1981.

(xi) In **Delhi Gymkhana Club Limited vs. Employees' State Insurance Corporation** reported in **(2015) 1 SCC 142**, the Hon'ble Supreme Court held that the preparation of foodstuffs and serving in the Kitchen by the appellant Club for providing catering services to its members, was held to be a manufacturing process and therefore, the Club would be a 'factory' as defined under Section 2(12) of the Employees' State Insurance Act, 1948. The principles laid down therein would certainly apply to the case on hand.

(xii) Recently, a Division Bench of this Court in **The Superintending Engineer, Erode Electricity Distribution Circle, Erode vs. Inspector of Labour, Erode, (W.P.No.4061 of 2013 etc., batch dated 07.03.2022)**, had considered the applicability of the Act 46 of 1981 to the Electricity Board and the contention of the Board that the provisions of the Act 46 of 1981 could not be applied in derogation of the service rules of the Board namely, Tamil Nadu Electricity Board Service Regulations framed under the Electricity (Supply) Act, 1948. A specific plea on behalf of the Board was to the effect that the Inspector of Labour cannot direct conferment of permanent status even in favour of those persons who are not engaged by the Corporation as per the service regulations. Repelling the contention, the Hon'ble Division Bench held that the Service Rules and Act 46 of 1981 operate on different fields and they are not in conflict with each other. While doing so, the Division Bench had observed as follows:-

'18. The argument aforesaid has been contested by the side opposite and we find that the Act of 1981 is not in conflict with the Tamil Nadu Electricity Board Service Regulations, rather both the legislations are occupying different fields of operation. The Regulations provides for the mode of selection, apart from the qualification, etc., but other than the mode

<https://hcservices.ecourts.gov.in/hcservices/> and therein when employees are engaged by



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the petitioner corporation, then he cannot be denied the benefit of the Act of 1981. It is more so when both the legislations are not in conflict with each other and otherwise the similar benefit, as claimed by the employees in this case, has been given in the past. The petitioner corporation entered into settlement on 10.8.2007, which would not have been required if the Act of 1981 could not have been applicable. The settlement aforesaid has already been upheld by the Division Bench of this court by its judgment dated 24.10.2008. In view of the above, we are unable to accept the first argument raised by learned counsel for the petitioner corporation.''

The Court further held that the Labour Inspector in that case had overstepped its authority and therefore, while setting aside the orders, had remitted the matter to the Labour Inspector for fresh consideration in the light of the provisions of the Act 46 of 1981. We are, therefore, fortified in our conclusions that the Act 46 of 1981 empowers the Labour Inspector to direct conferment of permanent status on employees who had worked for 480 days in two calendar years *de hors* the manner in which they were employed. Once we find that the Corporation would be an industrial establishment as defined under Section 2(3) of the Act 46 of 1981 and it is admitted that all the workmen/sanitary workers had worked for 480 days in two calendar years, they would be entitled to conferment of permanent status. The manner in which they were recruited would definitely take the backseat, since the provisions of the Act 46 of 1981 which is a beneficial legislation, will have to be strictly construed and applied *de hors* the method of recruitment.

(xiii) Useful reference can also be made to the judgment of this Court in **The Management, Tamilnadu Khadi and Village Industries Board, Chennai vs. Industrial Estate General Workers Union, Chennai (W.A.No.758 of 2016, dated 24.07.2018)**, to which, one of us (RSMJ) was a party, wherein, it has been held that the Khadi and Village Industries Board would be an 'industry' within the meaning of Section 2(3) of the Act 46 of 1981 and the workmen are entitled to permanent status. It will be useful to extract paragraphs 14 and 15 of the said judgment:-

'14. A cursory reading of the above definition of the term 'workmen' under the 1981 Act, would show that the definition is couched in a very wide language and would take with in its sweep all kinds of casual/contract employees. Section 3 of the said Act makes it mandatory for the Industrial Establishment to accord permanent status to workmen, who had worked for 480 days in 24 calendar months. The Act also provides for penal consequences in the



event of violations.

15. The other contention of the learned Additional Advocate General is that all these workmen were not direct employees of the appellant Board and they were employed by the contractors and paid on piece rate basis. The said contention has to fail since the Labour Court has on facts found that the workmen were employed in the Carpentry Division of the appellant Board and were paid wages on piece rate basis. Merely because the wages were paid on piece rate basis, it cannot be presumed that the workmen were not employed by the appellant Board. The Labour Court has held that there is Master and Servant relationship between the appellant Board and the Workmen after referring to the evidence on the side of the workmen particularly exhibits W.32 and W.33 series, wherein, the workmen were issued identity cards under the Employees State Insurance Scheme as well as the Employees Provident Fund Scheme. The Labour Court on an analysis of the evidence that was placed before it had come to a factual conclusion that the workmen were actually employed by the appellant Board and they had also worked for 480 days continuously over a period of 24 months. The learned Single Judge had also agreed with the said findings of the Labour Court. No material has been placed before us, to enable us to take a different view. It has not been shown that the said factual conclusion of the Labour Court is either perverse or is based on no material.'

24.If we are to consider the case on hand in the light of the definition and the judicial pronouncements referred to above, it will be abundantly clear that the function of the disposal of garbage/sanitary works carried out by the Corporation by itself would bring it within the meaning of a factory. Section 2(k) which defines the 'manufacturing process' includes collection of an object for disposal. We have no doubt in our mind that collection of garbage for disposal would fall within the ambit of the definition of 'manufacturing process' under Section 2(k)(i) of the Factories Act, 1948. Once we conclude that collection of garbage for disposal by itself would amount to manufacturing process, automatically the Corporation would answer the description of a factory as defined under Section 2(m) of the Factories Act, 1948. Once we reach the conclusion that the Corporation would be a factory within the meaning of Section 2(m) of the Factories Act, 1948, it would automatically answer the description of 'industrial establishment' as defined under Section 2(3)(a) of the Act 46 of 1981.

25. Adverting to the decisions relied upon by the learned Additional Advocate General, the Hon'ble Supreme Court has upheld the constitutional validity of the Tamil Nadu Act 46 of 1981 in **State of Tamil Nadu and others vs. Nellai Cotton Mills Ltd., and others** reported in (1990) 2 SCC 518. A perusal of the Act 46 of



1981 would show that it does not make a distinction between a temporary employee appointed regularly or a temporary employee appointed irregularly. The Act itself is a beneficial legislation intended to confer permanent status on workmen who satisfy the requirements of Section 3 of the said Act, in order to avoid continuous exploitation of workmen by employers. If a private employer or a private industry which would answer the definition of 'industrial establishment' under the Act 46 of 1981, will have to subject itself to the jurisdiction of the Inspector of Labour and confer permanent status on its employees who had worked for more than 480 days in two calendar years.

26. We see no reason to exclude the applicability of the enactment to the statutory corporation and other quasi-Government bodies. A provision is made under the Act exempting certain industrial establishments and the power of exemption is also granted to the Government. It is not the claim of the Corporation that it either falls under Section 7 which exempts certain industrial establishments or that there is any notification exempting the applicability of the Act to the Corporation. In the absence of any exemption granted, the Corporation will have to necessarily comply with the orders of the authority under the Act, which directs conferment of permanent status on the workmen.

27. The Hon'ble Supreme Court in **Maharashtra State Road Transport Corporation and another vs. Casteribe Rajya Parivahan Karmchari Sanghatana** reported in (2009) 8 SCC 556, had held that the law relating to irregular appointments as declared by Umadevi's case would not apply to matters covered by specific labour statutes which confer permanent status on certain workmen. This Court has also taken the view that the regularisation of employees is different from conferment of permanent status. In **Hindustan Petroleum Corporation Limited and another vs. The Presiding Officer, Central Government Labour Court cum Industrial Tribunal, Chennai**, reported in 2008 (4) CTC 819, this Court had an occasion to consider the difference between regularisation and conferment of permanent status. While rejecting the contention that regularisation of back door entrance and conferment of permanent status under the enactment would be the same, this Court held as follows:-

'38. Once there is a valid State enactment providing for relief to such of those workmen deemed permanency to those who had completed 480 days' of service within a period of two calendar years then, such workmen getting permanent status cannot be questioned by any Management. Such conferment of permanent status to the workmen cannot be labelled as violation of Articles 14 and 16 of the Constitution. The effect of a local enactment conferring permanent status to workmen was never considered by any Court so far.'



28. It is thus clear that once the State enactment which has been held to be a valid piece of legislation provides for conferment of permanent status on certain workmen upon completion of certain period of services, the question whether they were appointed as per the service rules or not, will fade into insignificance and once it is shown that they satisfy the requirements of law conferring permanent status on them, they would be entitled to the benefit of permanent status, *de hors* the method of recruitment. Adverting to the decision cited by Mr.Veera Kathiravan, learned Additional Advocate General in **Hindustan Petroleum Corporation Ltd., vs. Ashok Ranghba Ambre** reported in (2008) 2 SCC 717, the Hon'ble Supreme Court was concerned with termination of services of an employee. The Hon'ble Supreme Court held that even though the termination was bad under Section 25F of the Industrial Disputes Act, 1947, the employee cannot be treated as a permanent employee and a direction cannot be issued by the High Court to make the petitioner a permanent employee and extend the benefits on that basis from 1992. The said judgment was rendered in terms of the provisions of the Industrial Disputes Act, 1947, and there is no reference to any enactment that is akin to the Act 46 of 1981. We, therefore, do not think that the said judgment could safely be applied to the facts of the present case.

29. In **Indian Drugs & Pharmaceuticals Ltd., vs. Workmen, Indian Drugs & Pharmaceuticals Ltd.**, reported in (2007) 1 SCC 408, also, the Supreme Court decried the practice of making regularisation as a mode of appointment. There also, we do not find any reference to an enactment which confers permanent status on employees who were appointed irregularly. No doubt, the mode of recruitment or method of recruitment will have to be respected and followed, but at the same time, when an enactment prescribes conferment of permanent status on certain workmen *de hors* the mode of recruitment, the provisions of the enactment will have to be given primacy. Hence, we are afraid that the judgment in **Indian Drugs & Pharmaceuticals Ltd., vs. Workmen, Indian Drugs & Pharmaceuticals Ltd.**, reported in (2007) 1 SCC 408, would also be of no help to the appellant Corporation.

30. In **Jodhpur Vidyut Vitran Nigam Ltd., vs. Nanu Ram and others** reported in (2006) 12 SCC 494, the Supreme Court noted the difference between regularisation and conferment of permanency. There also, we do not find any reference to a law which confers certain rights on workers who had put in certain amount of service similar to the Act 46 of 1981. We, therefore, do not think that the said judgment would also be of any help to the Corporation.

31. In **Madhya Pradesh Electricity Board vs. Hariram** reported in (2004) 8 SCC 246, the Hon'ble Supreme Court was concerned with a person who was employed in a project work for specific instances.



On facts, the Apex Court held that the nature of the work namely, digging pits for erection of poles cannot be construed as a permanent job. We, therefore, do not find that the said judgment of the Supreme Court could be of any assistance to the appellant Corporation.

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32. In **Oil and Natural Gas Corporation vs. Krishnan Gopal and others** reported in **2020 SCC Online SC 150**, the Hon'ble Supreme Court has, in fact, concluded that the statutory power of the Labour Court or the Industrial Court to grant relief to workmen including the status of permanency continues to exist in the circumstances where the employer has indulged in unfair labour practice by not filling up permanent posts even though such posts are available and by continuing to employ workmen as temporary on daily wage employees, despite they are performing the same work as regular workmen on lower wages. In fact, it will be useful to reproduce paragraph 23 of the said judgment which reads as follows:-

'23 The following propositions would emerge upon analyzing the above decisions:

(i) Wide as they are, the powers of the Labour Court and the Industrial Court cannot extend to a direction to order regularisation, where such a direction would in the context of public employment offend the provisions contained in Article 14 of the Constitution;

(ii) The statutory power of the Labour Court or Industrial Court to grant relief to workmen including the status of permanency continues to exist in circumstances where the employer has indulged in an unfair labour practice by not filling up permanent posts even though such posts are available and by continuing to employ workmen as temporary or daily wage employees despite their performing the same work as regular workmen on lower wages;

(iii) The power to create permanent or sanctioned posts lies outside the judicial domain and where no posts are available, a direction to grant regularisation would be impermissible merely on the basis of the number of years of service;

(iv) Where an employer has regularised similarly situated workmen either in a scheme or otherwise, it would be open to workmen who have been deprived of the same benefit at par with the workmen who have been regularised to make a complaint before the Labour or Industrial Court, since the deprivation of the benefit would amount to a violation of Article 14; and

(v) In order to constitute an unfair labour practice under Section 2(ra) read with Item 10 of the Vth Schedule of the ID Act, the employer should be engaging workmen as badlis, temporaries or casuals, and continuing them for years, with the object of depriving them of the benefits payable to permanent workmen.'



33. This judgment of the Hon'ble Supreme Court, in fact, advances the case of the workmen in these writ appeals and writ petitions. The Act 46 of 1981 confers a power on the Inspector of Labour to direct permanency of employees who had worked for more than 480 days in two calendar years. As we had already pointed out, there is no dispute with regard to the fact that all the employees had worked for 480 days in two calendar years. The work of sanitary workers in a Corporation cannot be at any stretch of imagination termed as temporary.

34. The Municipal Solid Wastes (Management and Handling) Rules, 2000, would show that the municipal authority is burdened with the responsibility of implementation of the provisions of the rules and therefore, it cannot be said that collection and disposal of wastes is a temporary phenomenon. It is a continuing factor which has to be carried out by the Corporation. Therefore, the Corporation cannot be had to contend that the sanitary workers were employed purely on temporary basis to carry out the temporary work.

35. The next decision cited by Mr.Veera Kathiravan, learned Additional Advocate General in **Hindustan Aeronautics Ltd., s. Dan Bahadur Singh and others** reported in (2007) 6 SCC 207, is also one rendered with reference to the provisions of service law where it was held that a person cannot claim permanency in the absence of availability of the posts. We, therefore, do not think that this judgment could be of any help to further the cause of the Corporation. Needless to point out that both in **A.Umarani vs. Registrar, Co-operative Societies and others** reported in (2004) 7 SCC 112 and **State of Karnataka and others vs. Umadevi and others** reported in (2006) 4 SCC 1, the Hon'ble Supreme Court has decried appointment of a person on temporary basis to regular posts in public employment. This Court has time and again held that those two decisions of the Hon'ble Supreme Court will not put fetters on the applicability of the Act 46 of 1981 on the workers who are appointed by an industrial establishment on a temporary basis.

36. In the light of the discussion above, we are unable to fault the Writ Court for having dismissed the writ petition filed by the Corporation challenging the conferment of permanent status and allowing the writ petition filed by the workmen directing the implementation of the orders of the Inspector of Labour conferring permanent status. Insofar as the writ petitions before us in W.P (MD)Nos.20438 and 20442 of 2017 are concerned, they challenge the subsequent orders of the Inspector of Labour conferring permanent status on 81 workmen. In the light of the conclusions reached, we have no hesitation in dismissing the said writ petitions confirming the orders passed by the Inspector of Labour directing conferment of permanent status on 81 workmen involved in the two writ petitions.



37. In the upshot, the Writ Appeals and the Writ Petitions filed by the Corporation will stand dismissed confirming the orders of the Writ Court and the orders of the Inspector of Labour conferring permanent status on the workmen. No costs. Consequently, connected miscellaneous petitions are closed.

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38. Before parting with this case, we wish to add the following:-

No doubt, the State and Central Governments call themselves as Welfare Governments, but our little experience shows that most of the unfair labour practices of employing temporary workmen even to discharge permanent work, is being practiced by the statutory corporations and the departments of the Government with impunity. Most of the times, these temporary appointments and recruitments which are made without following the service rules result in denial of equal opportunity in public employment. Unless a conscious effort is made by the authority concerned to curb exploitation of workmen by keeping them as temporary workmen under lower salary, though they do a work of permanent character, malady will remain. Despite rules having been framed for appointments, we find temporary appointments are made, thereby, letting in people through the back door and schemes for regularisation are being implemented by the Government by way of Government Orders, thereby, paving way for such back door entrance to become regular employees. We hope that the practice of having temporary employees at a lower pay for discharging work of permanent character, would be dispensed with by the State and its arms in future.

Sd/-

Assistant Registrar(CS-I)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

Bala

To

1)The Commissioner, Madurai Corporation,
Madurai.

2)The Commissioner,
The Management of Madurai Corporation,
Madurai.

3)The Inspector of Labour,
Madurai.



+5 CC to M/s.A. RAHUL, Advocate (SR-20366[F] dated 22/04/2022)

+2 CC to M/s.R. MURALI, Advocate (SR-20627 & 20626[F] dated
22/04/2022)

+1 CC to M/s.SPL.GP (SR-20880[F] dated 25/04/2022)

COMMON JUDGMENT MADE IN
W.A(MD)Nos.1163 and 1164 of 2016 and
W.P(MD)Nos.20438 and 20442 of 2017
DATED : 22.04.2022

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ck (CO)
TR(05.05.2022) 30P 12C