



W.P.(MD) No.14216 of 2019

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

ORDERS RESERVED ON : 25.09.2023

ORDERS PRONOUNCED ON : 17.11.2023

CORAM

THE HON'BLE MR.JUSTICE BATTU DEVANAND

W.P.(MD) No.14216 of 2019

and

W.M.P.(MD) No.10691 of 2019

Arasu Pokkuvarathu Madurai
Thozhilalargla Sangam,
Rep., by its General Secretary,
A.Kanagasundar,
V.P.Chinthan Ninaivagam,
V.O.C. 2nd Street, Arul Nagar,
Bye Pass Road, Madurai-625 016.

... Petitioner

Vs.

1.The Additional Chief Secretary &
Chariman of State Transport Undertakings,
Fort St. George,
Chennai-9.

2.The Tamil Nadu State Transport
Corporation (Madurai) Limited,
Rep., by its Managing Director,
Bye Pass Road,
Madurai-625 016.



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3.The Chief Financial Officer,
The Tamil Nadu State Transport
Corporation (Madurai) Limited,
Bye Pass Road, Madurai-625 016.

4.The Inspector of Labour (Enforcement),
Labour Department,
Tamil Nadu Housing Board
Commercial Complex,
Ellis Nagar, Madurai-625 016.

5.The Assistant Commissioner of
Labour (Enforcement),
Labour Department,
Collectorate, Virudhunagar.

6.The Assistant Commissioner of
Labour (Enforcement),
Labour Department,
66, Thondi Road, Sivagangai-630 561.

... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India praying for issue of Writ of Mandamus, directing the 1st respondent to pay temporary workers (Drivers, Conductors and Non ITI Helper/Junior Tradesman including daily paid and reserve crew employees) working in the 1st respondent corporation at rates not below what has been prescribed in G.O.(2D) No.120, Labour and Employment (J1) Department dated 31.12.2018 read with the statement bearing Z3/7657/2019 dated 18.03.2019 issued by the Commissioner of Labour, Chennai-6 together with the arrears payable from 01.04.2019.



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For Petitioner : Mr.A.Rahul

For RR1 & 3 to 6 : Mr.Veerakathiravan
Additional Advocate General
assisted by
Mr.A.Kannan
Additional Government Pleader

For R2 : Mr.S.C.Herold Singh
Standing Counsel

ORDER

This writ petition is filed to issue a Writ of Mandamus, directing the 1st respondent to pay temporary workers (Drivers, Conductors and Non ITI Helper/Junior Tradesman including daily paid and reserve crew employees) working in the 1st respondent-Corporation at rates not below what has been prescribed in G.O.(2D) No.120, Labour and Employment (J1) Department, dated 31.12.2018 read with the Statement bearing No.Z3/7657/2019, dated 18.03.2019 issued by the Commissioner of Labour, Chennai together with the arrears payable from 01.04.2019.

2. Heard Mr.A.Rahul, learned counsel for the petitioner, Mr.Veerakathiravan, learned Additional Advocate General assisted by



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Mr.A.Kannan, learned Additional Government Pleader for Respondents No. 1 and 3 to 6 and Mr.S.C.Herold Singh, learned Standing Counsel appearing for the 2nd respondent.

3. Learned counsel for the petitioner submits that the petitioner is a registered Trade Union bearing Registration No.157/MDU, which was founded to espouse the cause of the workers working in the 2nd respondent-Corporation. He submits that there are 500 temporary Drivers, Conductors and Technical Workers employed in the 2nd respondent-Corporation and they are called as “daily paid” and “reserve crew”.

4. Learned counsel for the petitioner submits that the Government of Tamil Nadu issued G.O.(2D) No.120, Labour and Employment (J1) Department, dated 31.12.2018 laying down the minimum rates of wages for the employees in Public Motor Transport. The schedule contains as many as 65 categories of employees, in which basic wages rate per month is set out. The said Government Order also states that in addition to the minimum rates of basic wages, the employees shall be paid dearness allowance. Further,



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the Transport Department also issued G.O.(D) No.41, dated 16.03.2007 fixing the norms for appointment of Drivers/Conductors in the Transport Corporation owned by the State of Tamil Nadu. The Government also ordered in the said Government Order that the reserved Drivers and Conductors are permitted to be engaged by selecting them through Employment Exchange and they will be paid minimum wages, when their services are utilized.

5. Learned counsel for the petitioner further submits that in the 1st respondent-Corporation, number of temporary workers are in employment and they are paid below the minimum wages rate prescribed by the Government, which is illegal.

6. Learned counsel for the petitioner contends that the 2nd respondent, which is a State Government undertaking, must necessarily comply with the mandate issued in G.O.(2D) No.120, dated 31.12.2018 and there is no question of challenging the said Government Order or refusing to conform to the mandate set out therein. Further, prior to G.O.(2D) No.120,



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dated 31.12.2018, the Government of Tamil Nadu issued G.O.(2D) No.91, Labour and Employment Department, dated 12.12.2013 and the Commissioner of Labour, Chennai also issued a statement dated 24.03.2016 fixing minimum rates of wages and dearness allowance payable to the workers of Public Motor Transport with effect from 01.04.2016. Since the minimum wages fixed by the Government from 01.04.2016 was not paid, the petitioner-Union filed W.P.(MD) No.21436 of 2016 seeking direction against the 2nd respondent to pay the temporary workers including daily paid and reserve crew employees working in the Corporation at rates not below what has been prescribed in G.O.(2D) No.91, dated 12.12.2013 read with the statement of the Commissioner of Labour, dated 24.03.2016 together with arrears payable from 01.04.2016.

7. This Court, by order dated 01.12.2016, disposed of the writ petition, in the light of the decision of the Hon'ble Supreme Court in the case of *State of Punjab vs. Jagjit Singh and others*⁽ⁱ⁾ and also in the light of G.O.(2D) No.91, dated 12.12.2013, and made it clear that the members of

(i) (2017) 1 SCC 148



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the petitioner-Union are entitled to the basic rate of wages and dearness allowance as mentioned in G.O.(2D) No.91, dated 12.12.2013 and accordingly, the 2nd respondent was directed to disburse the minimum rate of wages as payable under the Government Order regularly and also to pay arrears within a period of four weeks. Since the said order dated 01.12.2016 was not complied with, the petitioner-Union moved contempt petition in Cont.P.(MD) No.795 of 2018. Subsequently, the 2nd respondent in compliance of the order dated 01.12.2016, issued guidelines to fix minimum wages to casual employees and the Government has also issued a direction to implement the orders of the Government issued in G.O.(2D) No.91, dated 12.12.2013 in regard to payment of minimum rates of wages and to sanction the minimum wages prescribed in the Government Order to all temporary employees of the State Transport Undertakings including reserve Drivers, Conductors, daily wage Drivers, Conductors and Technical Staff.

8. Learned counsel for the petitioner submits that the Board of Directors of the 2nd respondent-Corporation was held on 17.08.2017 and it was unanimously resolved to immediately pay minimum rates of wages to



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temporary workers from 01.04.2016 in terms of the direction issued in W.P. (MD) No.21436 of 2016, dated 01.12.2016. Pursuant to the decision of the Board of Directors, the 2nd respondent-Corporation has also started paying monthly salary to the casual employees in terms of the minimum rates of wages fixed by the Government in G.O.(2D) No.91, dated 12.12.2013. But, arrears of difference in salary from 01.04.2016 is yet to be paid. This Court by order dated 07.09.2017, in Contempt Petition (MD) No.266 of 2017, directed the respondent-Corporation to pay arrears of monthly salary within a period of three weeks.

9. Learned counsel for the petitioner contends that the conduct of the 1st respondent in not paying the arrears from 01.04.2016 is arbitrary, illegal, unjust and against to the principles of natural justice and prays for allowing the writ petition.

10. Learned counsel for the petitioner placed reliance on the following judgments/orders:

i. State of Punjab and others vs. Jagjit Singh and others (cited supra);



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- ii. ***Branch Manager, Ramanathapuram Mofussil Branch, Tamil Nadu State Transport Corporation (Kumbakonam) Ltd. And Another vs. The Minimum Wages Act Authority, Deputy Commissioner of Labour, Madurai and another*** [W.P(MD) Nos.23207, 23406 and 23407 of 2018, dated 24.01.2019]; and
- iii. ***Parry Agro Industries Limited vs. Deputy Commissioner of Labour and others⁽ⁱⁱ⁾.***

11. Counter affidavits have been filed by the respondents denying the averments made in the affidavit.

12. Learned Additional Advocate General appearing for the Respondents No.1 and 3 to 6, relying on the counter affidavit filed by the 1st respondent, submits that the employees of the Transport Corporation are governed by the Common Service rules, the certified Standing Orders as well as the Wage Settlement entered into from time to time under Section 12(3) of the Industrial Disputes Act, 1947. However, the petitioner-Union

(ii) 2021 SCC OnLine Mad 15955



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earlier filed W.P.(MD) No.21436 of 2016 and this Court by order dated 01.12.2016 directed the respondent-Corporation to pay the minimum rates of wages with effect from 01.04.2016 as prescribed in G.O.(2D) No.91, dated 12.12.2013 read with the statement of the Commissioner of Labour, dated 24.03.2016, wherein the Government was not arrayed as a party.

13. It is further submitted that during the course of hearing, in W.P.(MD) No.21436 of 2016, the respondent-Corporation could not inadvertently putforth certain important facts and relevant documents to substantiate the stand taken by all State Transport Undertakings before this Court. In the meantime, the petitioner-Union filed Contempt Petition (MD) No.266 of 2017 to implement the order of this Court in W.P.(MD) No.21436 of 2016, during the pendency of which, this case was referred to the Government seeking for guidance. Based on the above said order passed in the writ petition, the Government re-fixed the uniform rate of wages to all daily wage employees in all State Transport Undertakings in Government Letter No.355/C1/2017, Transport (C1) Department, dated 26.07.2017 as one time measure from 01.08.2017.



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14. Learned Additional Advocate General has drawn the attention of this Court to sub-section (2) of Section 26 of the Minimum Wages Act, 1948 (Central Act 11 of 1948), which exempts all the Transport Corporations in Tamil Nadu from paying minimum rates of wages. Based on the aforesaid clause, the Government of Tamil Nadu, *vide* G.O.Ms.No. 1811, Labour Department, dated 23.09.1986 granted exemption to pay the minimum rates of wages for the employees working in all passenger and goods transport corporation functioning under the control of Government of Tamil Nadu, which was also duly notified in the official gazette.

15. Learned Additional Advocate General submits that in a similar case in W.P.No.6189 of 1999, this Court elaborately discussed the matter and upheld the exemption given in the said G.O.Ms.No.1811, Labour Department, dated 23.09.1986.

16. Learned Additional Advocate General contends that the Government Order in G.O.Ms.No.1811, Labour Department, dated 23.09.1986 was notified in the official gazette and the same was upheld by



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this Court in W.P.No.6189 of 1999. Further, the same was not challenged so far and it has become final. He submits that the said Government Order holds good and that being so, the petitioner is estopped from placing reliance on G.O.(2D) No.120, dated 31.12.2018 claiming minimum rate of wages and sought for dismissing the writ petition.

17. Learned Standing Counsel appearing for the 2nd respondent submits that the claim made by the petitioner-Union to implement the minimum rates of wages as per G.O.(2D) No.120, dated 31.12.2018 is not maintainable to State Transport Undertakings and sought for dismissal of the writ petition.

18. This Court gave anxious consideration to the submissions of the respective counsels and carefully examined the material available on record.

19. The issue to be considered in this writ petition is whether the temporary workers, i.e., Drivers, Conductors and Non-ITI Helpers/Junior



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Tradesman and reserve crew employees working in the 1st respondent-Corporation are entitled for the wages at rates prescribed in G.O.(2D) No. 120, Labour and Employment (J1) Department, dated 31.12.2018 read with Statement bearing No.Z3/7657/2019, dated 18.03.2019 of the Commissioner of Labour, Chennai or not?

20. Though several contentions were raised on behalf of the petitioner and respondents, the admitted facts are not disputed by them.

21. The 1st respondent has issued G.O.(2D) No.120, Labour and Employment (J1) Department, dated 31.12.2018, in exercise of the powers conferred by clause (b) of sub-section (1) of Section 3 and sub-section (2) of Section 5 of the Minimum Wages Act, 1948 (11 of 1948) and in supersition of the Labour and Employment Department Notification No.II(2)/LE/102/02014, dated 05.02.2014, the 1st respondent revised minimum rates of wages payable to the classes of employees in the employment in Public Motor Transport in the State of Tamil Nadu. The said notification came into force with effect from 31.12.2018.



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22. The contention of the respondents is that as per sub-section (2) of Section 26 of the Minimum Wages Act, 1948, all Transport Corporations in Tamil Nadu State are exempted from paying minimum wages and the Government of Tamil Nadu has issued G.O.Ms.No.1811, Labour Department, dated 23.09.1986 and granted exemption to pay the minimum rates of wages for the employees working in all Passenger and Goods Transport Corporations functioning under the control of the Government of Tamil Nadu. It is also the contention of the respondents that in a similar writ petition in W.P.No.6189 of 1999, this Court upheld the exemption granted in G.O.Ms.No.1811, Labour Department, dated 23.09.1986.

23. For better adjudication of the issue involved in this case, it is relevant to look into Section 26 of the Minimum Wages Act, 1948 as extracted hereinunder:

“26. Exemptions and exceptions. — (1) The appropriate Government may, subject to such conditions, if any, as it may think fit to impose, direct that the provisions



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of this Act shall not apply in relation to the wages payable to disabled employees.

(2) The appropriate Government may, if for special reasons it thinks so fit, by notification in the Official Gazette, direct that [subject to such conditions and] for such period as it may specify, the provisions of this Act or any of them shall not apply to all or any class of employees employed in any scheduled employment or to any locality where there is carried on a scheduled employment.

[(2A) The appropriate Government may, if it is of opinion that having regard to the terms and conditions of service applicable to any class of employees in a scheduled employment generally or in a scheduled employment in a local area, [or to any establishment or a part of any establishment in a scheduled employment], it is not necessary to fix minimum wages in respect of such employees of that class [or in respect of employees in such establishment or such part of any establishment] as are in receipt of wages exceeding such limit as may be prescribed in this behalf, direct, by notification in the Official Gazette and subject to such conditions, if any, as it may think fit to impose, that the provisions of this Act or any of them shall not apply in relation to such employees.]



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(3) Nothing in this Act shall apply to the wages payable by an employer to a member of his family who is living with him and is dependent on him.”

24. Relevant Paragraph No.3 of G.O.Ms.No.1811, Labour Department, dated 23.09.1986, is extracted hereinunder:

“3.The Government have also decided to exempt all the passenger and goods transport corporations functioning under the control of the Government of Tamil Nadu from the provisions of the Minimum Wages Act 1948 since the wages of the employees of these corporations are revised periodically by way of settlements reached under Section 12(3) of the Industrial Disputes Act, 1947 between the unions and the Managements after negotiations and bargaining.”

25. On a plain reading of Section 26 of the Minimum Wages Act, 1948 and the Notification issued by the 1st respondent thereunder *vide* G.O.Ms.No.1811, Labour Department, dated 23.09.1986, it is clearly established that it is pertaining to the employees working in the Public Motor Transport Corporations. The intention of the State Government in



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issuing such Notification exempting the Transport Corporations from the applicability of the Minimum Wages Act, 1948 is with a view that the Corporations are periodically entering into Settlement under Section 12(3) of the Industrial Disputes Act, 1947 and therefore, there is no necessity to fix the minimum wage and the wages of the Corporation employees are more than the minimum wages. Considering the said view, this Court in W.P.No.6189 of 1999, by its order dated 08.07.2008, has upheld the Notification issued by the State Government exempting the Public Motor Transport Corporations from the Minimum Wages Act, 1948.

26. This Court is fully agreeing with the view of this Court in W.P.No.6189 of 1999, wherein it is held that in the light of the clear exemption granted by the State, it is not open to the authority to compute any minimum wage in respect of any employees covered by the Notification covering Public Motor Transport Corporation.

27. It is to be noted that the Government issued G.O.Ms.No.1811, Labour Department, dated 23.09.1986 exempting the Public Motor



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Transport Corporations, since the wages of the employees of these Corporations are revised periodically by way of settlement made under Section 12(3) of the Industrial Disputes Act, 1947 between the Unions and the Managements after negotiations and bargaining. But, in the present case, the relief sought towards 500 temporary Drivers, Conductors and Technical Workers, who are called as “daily paid” and “reserve crew” and admittedly, the daily paid workers and reserve crew employees are not covered under the 12(3) Settlement. As and when these daily paid workers and reserve crew employees are not covered under the settlement arrived under Section 12(3) of the Industrial Disputes Act, 1947, then automatically the provisions of the Minimum Wages Act, 1948 are applicable to them.

28. The view of this Court is fortified by a common order dated 24.01.2019 of this Court in W.P.No.23207 of 2018 and batch, wherein it is held that the provisions of the Minimum Wages Act, 1948 are applicable to the Transport Corporations also, in view of the fact that reserve crew employees are not covered under the 12(3) Settlement. The relevant Paragraph Nos.3 and 4 of the order dated 24.01.2019 are extracted



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hereinunder:

“3. The learned Amicus Curiae pointed out that the Government issued G.O.Ms.No.1811 Labour Department, dated 23.09.1986 exempting the Transport Corporations since the wages of the employees of these Corporations are revised periodically by way of settlement made under Section 12(3) of the Industrial Dispute Act between the units and the management after negotiation and bargaining.

4. When the matter was taken up for hearing, the learned Standing counsel appearing for the management passed on written instructions to the effect that the case on hand pertains only to Reserve Crew employees and that they are not covered under Section 12(3) Settlement. If the employees who are the subject matter of these proceedings are not covered by Section 12(3) Settlement, of course the provisions of the Minimum Wages Act will have to be necessarily applied to them. That apart, it is seen that the Government has issued a letter agreeing to implement the orders passed by this Court in W.P.(MD)No.21436 of 2016 dated 01.12.2016. Thus the present position is that the provisions of the Minimum Wages Act are applicable to the Transport Corporations also. Therefore, the plea of maintainability may no longer survive.”



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29. While dealing with a case of temporary employees seeking for minimum regular pay scale, the Hon'ble Apex Court in **Jagjit Singh** (*cited supra*), at Paragraph No.61, held as extracted hereinunder:

“61. In view of the position expressed by us in the foregoing paragraph, we have no hesitation in holding that all the temporary employees concerned, in the present bunch of cases would be entitled to draw wages at the minimum of the pay scale (at the lowest grade, in the regular pay scale), extended to regular employees holding the same post.”

30. In **Parry Agro Industries Limited** (*cited supra*), a Division Bench of this Court, while considering the issue whether daily allowances can be excluded or included in the minimum wages, in the light of the provisions of the Minimum Wages Act, 1948, held as extracted hereinunder:

“18. Coming to the next question whether the Terrain Allowance can be excluded or included in the minimum wages, it is relevant to extract Section 2(h) of the Minimum Wages Act, which is quoted below:—

2 (h) “wages” means all remuneration, capable



of being expressed in terms of money, which would, if the terms of the contract of employment, express or implied, were fulfilled, be payable to a person employed in respect of his employment or of work done in such employment [and includes house rent allowances], but does not include?

(i) the value of—

(a) any house accommodation, supply of light, water, medical attendance, or

(b) any other amenity or any service excluded by general or special order of the appropriate Government;

(ii) any contribution paid by the employer to any Pension Fund or Provident Fund or under any scheme of social insurance;

(iii) any travelling allowance or the value of any travelling concession;

(iv) any sum paid to the person employed to defray special expenses entailed on him by the nature of his employment; or

(v) any gratuity payable on discharge;

19. A careful reading of the above said provision vividly and conspicuously tells that any sum paid to the person employed to defray special expenses entailed on him by virtue of his employment cannot be included in the



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minimum wages. But, in the present case, admittedly, the appellant is a Tea Estate in Iyerpadi, Pollachi, Coimbatore District, and it is a cold place and hilly area. During day and night, the people cannot live without wearing sweaters. Admittedly, when the workmen working in the appellant plantation are living their entire life in the hilly region, as per Section 2(h), they should be paid with special expenses to meet out their special expenditure warranted by the nature of their duty. Therefore, when the appellant is duty bound to pay special expenses to defray the necessary expenses entailed on them, they cannot include Terrain Allowances as part of the minimum wages.”

31. In the light of the judgment of the Division Bench of this Court as stated *supra*, the contention of the respondents that the daily wage employees in the State Transport Corporations are getting some special allowances like bonus, collection batta/steering allowance, fixed pay, shift allowances, canteen expenses and free bus facility, would not come in the way to pay minimum rates of wages to the temporary workers and reserve crew working in the State Transport Corporations.



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32. For the aforesaid reasons, in the considered opinion of this Court, the contention of the respondents that the claim made by the petitioner-Union to implement the minimum rates of wages as per G.O.(2D) No.120, Labour and Employment (J1) Department, dated 31.12.2018 read with Statement bearing No.Z3/7657/2019, dated 18.03.2019 is not maintainable to the State Corporations under the control of the Government of Tamil Nadu, in the light of the exception granted to Public Transport Corporation *vide* G.O.Ms.No.1811, Labour Department, dated 23.09.1986 is unsustainable and untenable.

33. Accordingly, this Court holds that the daily wage worker and reserve crew employees working in the 2nd respondent-Transport Corporation under the control of the Government of Tamil Nadu are entitled for the minimum wages prescribed under G.O.(2D) No.120, Labour and Employment (J1) Department, dated 31.12.2018 and the Settlement bearing No.Z3/7657/2019, dated 18.03.2019.



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34. With the above findings, this Writ Petition is allowed with the following direction:

- The 1st respondent is directed to pay the minimum rates of wages prescribed in G.O.(2D) No.120, Labour and Employment (J1) Department, dated 31.12.2018 and Settlement bearing No.Z3/7657/2019, dated 18.03.2019 to all temporary workers and reserve crew working in the 2nd respondent-Corporation together with arrears payable from 01.04.2019 within a period of eight weeks from the date of receipt of a copy of this order.

35. There shall be no order as to costs.

36. Consequently, connected miscellaneous petition is closed.

17.11.2023

Note: Issue order copy by 17.11.2023.

NCC : Yes/No

Index : Yes/No

Internet : Yes

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To

- 1.The Additional Chief Secretary &
Chariman of State Transport Undertakings,
Fort St. George, Chennai-9.
- 2.The Managing Director,
The Tamil Nadu State Transport
Corporation (Madurai) Limited,
Bye Pass Road, Madurai-625 016.
- 3.The Chief Financial Officer,
The Tamil Nadu State Transport
Corporation (Madurai) Limited,
Bye Pass Road, Madurai-625 016.
- 4.The Inspector of Labour (Enforcement),
Labour Department,
Tamil Nadu Housing Board
Commercial Complex,
Ellis Nagar, Madurai-625 016.
- 5.The Assistant Commissioner of
Labour (Enforcement),
Labour Department,
Collectorate, Virudhunagar.
- 6.The Assistant Commissioner of
Labour (Enforcement),
Labour Department,
66, Thondi Road, Sivagangai-630 561.



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Pre-delivery Order made in
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BATTU DEVANAND, J.

This Writ Petition is listed today under the caption “For Being Mentioned” at the request of the learned counsel for the petitioner.

2. The learned counsel for the petitioner submits that in the order dated 17.11.2023 passed in W.P(MD)No.14216 of 2019, he found certain typographical mistakes in paragraph Nos.33 and 34. In Paragraph Nos.33 and 34 of the order instead of the word “statement”, the word “settlement” has been inadvertently typed and sought to modify the same.

3. Having considered the request of the learned counsel for the petitioner, it is appropriate to modify the order to that extent to



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replace the word “settlement” as “statement” in paragraph Nos.
33 and 34.

4. Registry is directed to carry out necessary correction in the order and issue fresh order copies to the parties within two days.

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