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W.P.Nos.10538 of 2024, etc. batch

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 02.08.2024

Pronounced on : 01.10.2024

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

W.P.Nos.10538, 10556, 10560, 10562, 10567, 10555, 10558, 10561,
10564, 10540, 10544, 10546 & 10548 of 2024 and
WMP.Nos.11554, 11585, 11588, 11592, 11595, 11582, 11587, 11590,
11594, 11560, 11564, 11566 & 11571 of 2024

WP.No.10538 of 2024

R.Manoharan

... Petitioner

Vs.

1.Tamilnadu State Transport Corporation(Coimbatore) Ltd.,
Rep. By its Managing Director,
37, Mettupalayam Road,
Coimbatore-43

2.The General Manager,
Tamilnadu State Transport Corporation(Coimbatore) Ltd.,
Erode Region, Chennimalai Road,
Erode-1.

... Respondents

PRAYER:

Writ Petition is filed under Article 226 of Constitution of India
praying to issue a Writ of Certiorarified Mandamus calling for the
records pertaining to the order dated 03.10.2023 passed by the second
respondent in Memo No.2080(3427)/L13/MCOP/TNSTC/KO/E.R/2023,



W.P.Nos.10538 of 2024, etc. batch

quash the same and consequently direct the respondents to give and grant him permanency and regularisation from the date of completion of 480 days of service from the date of his joining with arrears and all other consequential benefits, award exemplary costs.

For Petitioners
in all WP's : Mr.V.Ajay Khose

For Respondents
in all WP's : Mr.T.Chandrasekaran,
Special Government Pleader

COMMON ORDER

These writ petitions have been filed challenging the order dated 03.10.2023 on the file of the second respondent thereby rejected the request made by the petitioners seeking permanency and regularisation of their service from the date of completion of 480 days of their service from the date of their joining with arrears and all other consequential benefits.

A) FACTS OF THE CASE

2. The petitioners are Drivers and Conductors and they were



W.P.Nos.10538 of 2024, etc. batch

engaged as daily wage employee from the year 1993 in the erstwhile Jeeva Transport Corporation, which was subsequently changed as Tamil Nadu State Transport Corporation Limited (Coimbatore Division-II). Though they were continuously employed for more than 240 days from the date of joining and they were entitled to get permanency and regularisation with time scale of pay, they were not regularised and they were terminated / retrenched from service from the year 1996. Therefore, similarly placed retrenched Drivers and Conductors individually filed writ petitions before this Court for direction to reinstate them with continuity of service, backwages and all other benefits. This Court directed the respondents to consider the request made by them to reinstate them with continuity of service with backwages, if they have completed 240 days of service and to give them reemployment if they had not completed 240 days of service. Accordingly, they were reinstated into service. However, their services were not made permanent and they were not regularised.

2.1 Though they are entitled for permanent employment and



W.P.Nos.10538 of 2024, etc. batch

regularisation as per clause 3(1) of the Tamilnadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, 1981 (hereinafter called as 'the Act'), they were not made permanent. Therefore, they were constrained to file petition before the Labour Inspector, Erode. On receipt of the reply from the second respondent, the authority, after fulfilled enquiry, passed common order dated 31.05.2005 considering the fact that the petitioners had worked continuously for 480 days in two academic years, thereby directed the respondents to make the petitioners permanent and to regularise their services on the date on which they completed 480 days continuously in two academic years. However, the second respondent neither complied with the order nor filed any appeal. Therefore, the order dated 31.05.2005 became final.

2.2 In fact, the petitioners once again approached this Court in WP.Nos.31322 and 31323 of 2005 for directing the respondents to make them permanent from the date of completion of 480 days of service as per the order passed by the authority dated 31.05.2005. In the meanwhile,



W.P.Nos.10538 of 2024, etc. batch

WEB COPY

order dated 09.07.2007 was issued to the petitioners without prejudice to the outcome of the writ petitions. This court, by common order dated 11.01.2013, directed the second respondent to give benefits to the workmen as per the order passed by the authority dated 31.05.2005. Even then, the second respondent did not comply with the said order and as such, the other remaining workmen once again approached this Court individually in WP.Nos.14642 to 14654 of 2014 for direction to the respondents to confer permanency along with all attendant benefits from the date of completion of 480 days as per the order passed by the authority dated 31.05.2005. This Court by common order dated 02.02.2021, disposed of the writ petitions thereby directed the respondents to consider the representation submitted by the petitioners and pass appropriate orders in the light of the order passed by the authority dated 31.05.2005 within a period of eight weeks. As directed by this Court, the second respondent considered the representation. However, the request made by the petitioners was rejected by order dated 03.10.2023.



W.P.Nos.10538 of 2024, etc. batch

WEB COPY

B) SUBMISSION ON BEHALF OF THE PETITIONER

3. *Mr.V.Ajay Khose*, the learned counsel appearing for the petitioners submitted that this Court specifically directed the respondents to consider the request made by the petitioners in view of the order passed by the authority dated 31.05.2005 to make them permanent and to regularise their service after completion of 480 days of their service in two calendar years. In fact, as against the direction issued by the learned Single Judge of this Court, the respondents filed writ appeals in WA.Nos.2871 and 2872 of 2018 and the same were dismissed and confirmed the order passed by the learned Single Judge of this Court.

3.1 He further submitted that the specific contention raised by the second respondent is that once permanency has been given to two other workmen from a later date as per 12(3) settlement, they cannot claim permanency in terms of Section 3(1) of the Act in view of that the settlement was binding on them. Therefore, they cannot claim permanency retrospectively and from an earlier date to the date of



W.P.Nos.10538 of 2024, etc. batch

permanency given by them, was rejected. It was further held that the settlement cannot override Section 3(1) of the Act and the provision would over ride and prevail over the settlement arrived under Section 12(3) of the Industrial Disputes Act, 1947 dated 31.08.2005. No settlement can be entered into in violation and contrary to the provisions contained in Section 3(1) of the Act. Therefore, the settlement was held to be void as per Section 23 of the Indian Contract Act. In fact, as against the said order passed by the Hon'ble Division Bench of this Court, the respondents filed appeal before the Hon'ble Supreme Court of India in SLP(C).Nos.4810 and 4811 of 2021 and it is pending without any interim order. Therefore, the order impugned in these writ petitions cannot be sustained and the same is liable to be quashed. In support of his contention, he relied upon the following judgments:

- (i) *Metal Powder Company Ltd., Madras Vs. State of Tamilnadu and another*¹
- (ii) *State of Tamilnadu and others Vs. Nellai Cotton Mills Ltd and others*²
- (iii) *N.Mamundiraj and others Vs. Management of BHEL,*

¹ 1985 (2) LLJ 376

² 1990 (2) SCC 518



W.P.Nos.10538 of 2024, etc. batch

*Trichy*³

(iv) *Oswal Agro Furance Ltd., and another Vs. Oswal Agro Furance Workers Union and others*⁴

(v) *Management of Tamilnadu Civil Supplies Corporation Ltd Vs. Inspector of Labour and others*⁵

(vi) *Tata Tea Ltd. Vs. State of Tamilnadu and others*⁶

(vii) *R.Lakshmi Vs. The Chief Engineer, TNEB and another*⁷

C) SUBMISSION ON BEHALF OF RESPONDENTS

4. Per contra, the second respondent filed counter and *Mr.T.Chandrasekaran*, the learned Special Government Pleader appearing for the respondents submitted that the Inspector of Labour, Erode by an order dated 31.05.2005 directed the respondents to make the petitioners permanent on completion of 480 days in two years from the date of their appointment. However, thereafter there was settlement arrived between the Management of all Transport Corporations and its

³ 1998 (2) LLJ 534

⁴ 2005 (3) SCC 224

⁵ CDJ 2008 MHC 3567

⁶ 2010 SCC Online Mad 813

⁷ 2012 SCC Online Mad 2941



W.P.Nos.10538 of 2024, etc. batch

Employees Union Federation under Section 12(3) of the Industrial Disputes Act, 1947. Accordingly, they all agreed that the casual labours / employees working in all the Transport Corporations would be appointed as daily rate employee with effect from 01.09.2005 and they would be made permanent on completion of 240 days of service from the date of appointment on daily wages. Therefore, the order passed by the authority on 31.05.2005 was superseded by the settlement dated 31.08.2005 and the settlement is binding on the petitioners. Accordingly, they were appointed as daily wage employee as Conductor and Driver on 01.09.2005. After completion of their 240 days of work, they were made permanent and granted regular time scale of pay. That apart, immediately after settlement, they had submitted undertaking by their own handwriting thereby agreed to forgo the benefits of permanency as directed by the authority dated 31.05.2005 and agreed to work as daily wage employees. Therefore, now they cannot take 'U turn' and seek permanency and regularisation of their service as per the order dated 31.05.2005.



W.P.Nos.10538 of 2024, etc. batch

WEB COPY

5. Heard, the learned counsel appearing on side and perused all the materials placed before this Court.

D) POINT FOR CONSIDERATION

6. On submissions of the learned counsel appearing on either side, the following point arises for consideration of these writ petitions:

(i) Whether the settlement arrived at between the Management and the Union Federation which these petitioners belong to, is binding on them or support the benefit of conferring permanent status to workmen by the order dated 31.05.2005 on the file of the Labour Inspector, Erode?

E) DISCUSSION

7. Admittedly, the petitioners were not engaged as Driver and Conductor on daily rate basis from the year 1993 to 1997. Though they had made request for their permanency and regularisation of their service, it was not considered and as such they were constrained to approach the Labour Inspector under the Act. The authority by its order dated 31.05.2005 allowed the claim made by the petitioners and directed



W.P.Nos.10538 of 2024, etc. batch

the respondents to make them permanent and to regularise their service on completion of their 480 days of service continuously in two calendar years. However, the said order was not complied with though the petitioners made several representations. In fact, they were terminated / retrenched from service and as such, they were constrained to approach this Court and as directed by this Court, once again the petitioners were reinstated into service as daily wage employee from 10.04.1999. Thereafter, there was settlement under Section 12(3) of the Industrial Disputes Act, 1947 between the Management of all Transport Corporations and the Transport Employees Union Federation dated 31.08.2005. As per the settlement, the casual labour / employees working in all the Transport Corporations would be made permanent on completion of their 240 days of service from the date of appointment on daily wages. Accordingly, once again, they were appointed as daily wage employee on 01.09.2005 and subsequently after completion of their 240 days of continuous service, they were made permanent and brought to regular time scale of pay.



W.P.Nos.10538 of 2024, etc. batch

WEB COPY

7.1 In fact, two workmen already approached this Court and this Court directed the respondents in WP.Nos.31322 and 31323 of 2005 to give benefits of the order passed by the authority dated 31.05.2005. However it was not complied with and as such, the respondents filed writ appeals before this Court in WA.Nos.2871 and 2872 of 2018. Both the writ appeals were dismissed by the Hon'ble Division Bench of this Court by an order dated 30.09.2019 and held that the superior rights of the workmen under Section 3(1) of the Act prevails over the settlement dated 31.08.2005. It is relevant to extract the provisions under 3(1) of the Tamilnadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, 1981 hereunder:

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.

7.2 It was challenged and held valid one in the case of ***Metal Powder Company Ltd.'s case (cited supra)***, wherein it is held as follows:

37. Accordingly, in the view which we have taken, we



W.P.Nos.10538 of 2024, etc. batch

must hold,

(1) The Explanation to S. 3 is incapable of enforcement and must therefore be held to be redundant.

(2) The provisions of S. 3(2) of the Act are valid except that the clause "or on account of non-employment or discharge of such workman for a period which does not exceed three months and during which period a substitute has been employed in his place by the employer" is void on the ground that it amounts to an unreasonable restriction on the right of the employer;

(3) An apprentice or a badli worker could not be included in the "workman" referred to in Ss. 3(1) and (2) of the Act, and they will, therefore, be not entitled to the benefit of S. 3.

(4) The Act will not supersede a settlement between workers and the employer in so far as it deals with the subject of conferment of permanent status to workmen.

(5) The Act cannot be held to be retrospective in character.

The petitions are accordingly partly allowed.

7.3 As such, every workman who is in continuous service for a period of 480 days in a period of 24 calendar months in an industrial establishment, shall be made permanent. Therefore, so intention of this



W.P.Nos.10538 of 2024, etc. batch

provision is to confer status of permanent workman on completion of continuous service of 480 days in the preceding 24 calendar months. Further, 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, the settlement arrived under Section 12(3) of the Industrial Disputes Act cannot be a ground to refuse the right provided under Section 3(1) of the Act on complying the requirements prescribed under Section 3(1) of the Act. Therefore, the settlement arrived between the Management and the Union under Section 12(3) of the Industrial Disputes Act will not supersede the provision under Section 3(1) of the Act insofar as the subject matter of conferment of permanent status to the workmen.

8. In fact, on perusal of the settlement dated 31.08.2005 under Section 12(3) of the Industrial Disputes Act, nothing whispered about the order passed by the authority dated 31.05.2005 under Section 3(1) of the



W.P.Nos.10538 of 2024, etc. batch

WEB COPY

Act. Though on the date of settlement itself, the respondents obtained undertaking letter from each workman thereby undertaking not to claim any benefit under the order passed by the authority dated 31.05.2005, it would not supersede the order passed by the authority under Section 3(1) of the Act. Therefore, it is not open for the respondents to take shelter under any undertaking letter or the settlement arrived between the Management and the Unions under Section 12(3) of the Act. Further, the provision under Section 3(1) of the Act being imperative in character, would prevail over the rights of the parties to arrive at a settlement. Therefore, the settlement arrived between the Management and the Unions becomes invalid.

9. The learned counsel appearing for the respondents relied upon the judgment of the Hon'ble Division Bench of this Court in WA.Nos.2642 to 2655 of 2012 dated 02.02.2018, in which the Hon'ble Division Bench held that between the years 1999 to 2005, there was a ban on recruitments by the Government, during which period the workmen alleged to have been working for 480 days within a period of



W.P.Nos.10538 of 2024, etc. batch

24 calendar months, however permanent status cannot be conferred during the currency of the said ban period. He also relied upon the judgment passed by this Court in WP.Nos.8596 to 8602 of 2015 dated 13.11.2019, in which also it is held that the claim made by the workmen ought not to have been entertained when the order of regularisation became final. Once the order of regularisation became final and the terms of regularisation have already been accepted by the employee concerned, thereafter they cannot claim any benefit based on the order of regularisation after a lapse of 10 years. However, in both the cases, the workmen did not approach the authority concerned seeking permanency and regularisation under Section 3(1) of the Act. Therefore, the above judgments are not applicable to the case on hand.

10. By order dated 31.05.2005, the respondents were directed to confer permanent status after completion of 480 days in two years from the date of appointment. Therefore, on the date of the order dated 31.05.2005, there was no settlement between the Management and the Unions. Further, even as per the settlement, casual labour / employees



W.P.Nos.10538 of 2024, etc. batch

working in all the Transport Corporations would be appointed as daily rate employee with effect from 01.09.2005 but the petitioners were already engaged on daily rate basis and they obtained order from the authority under Section 3(1) of the Act. Therefore, the above judgments are not applicable to be case on hand.

11. The learned counsel appearing for the petitioners specifically contended that when the settlement is contrary to law, it becomes unenforceable. In this regard, he relied upon the judgment of the Hon'ble Supreme Court of India in the case of ***Oswal Agro Furance Ltd.'s case*** (*cited supra*), wherein it is held as follows:

14. A bare perusal of the provisions contained in Sections 25-N and 25-O of the Act leaves no manner of doubt that the employer who intends to close down the undertaking and/or effect retrenchment of workmen working in such industrial establishment, is bound to apply for prior permission at least ninety days before the date on which the intended closure is to take place. They constitute conditions precedent for effecting a valid closure, whereas the provisions of Section 25-N of the Act provides for conditions precedent to retrenchment; Section 25-O speaks of procedure for closing



W.P.Nos.10538 of 2024, etc. batch

down an undertaking. Obtaining a prior permission from the appropriate Government, thus, must be held to be imperative in character.

15. A settlement within the meaning of [Section 2\(p\)](#) read with sub-section (3) of [Section 18](#) of the Act undoubtedly binds the workmen but the question which would arise is, would it mean that thereby the provisions contained in [Sections 25-N](#) and [25-O](#) are not required to be complied with? The answer to the said question must be rendered in the negative. A settlement can be arrived at between the employer and workmen in case of an industrial dispute. An industrial dispute may arise as regard the validity of a retrenchment or a closure or otherwise. Such a settlement, however, as regard retrenchment or closure can be arrived at provided such retrenchment or closure has been effected in accordance with law. Requirements of issuance of a notice in terms of [Sections 25-N](#) and [25-O](#), as the case may, and/or a decision thereupon by the appropriate Government are clearly suggestive of the fact that thereby a public policy has been laid down. The State Government before granting or refusing such permission is not only required to comply with the principles of natural justice by giving an opportunity of hearing both to the employer and the workmen but also is required to assign reasons in support thereof and is also required to pass an order having regard to the several factors laid down therein. One of



W.P.Nos.10538 of 2024, etc. batch

the factors besides others which is required to be taken into consideration by the appropriate Government before grant or refusal of such permission is the interest of the workmen. The aforementioned provisions being imperative in character would prevail over the right of the parties to arrive at a settlement. Such a settlement must conform to the statutory conditions laying down a public policy. A contract which may otherwise be valid, however, must satisfy the tests of public policy not only in terms of the aforementioned provisions but also in terms of [Section 23](#) of the Indian Contract Act.

12. As stated supra, on perusal of the settlement arrived between the Management and the Unions, it does not even whisper about the order passed by the authority dated 31.05.2005 under Section 3(1) of the Act. Subsequent to the settlement, the respondents had obtained undertaking letter from each of the workmen i.e. the petitioners and others. That apart, as per the provision under Section 3(1) of the Act, the respondents shall have to make them permanent and to regularise the services of the petitioners on the date of completion of 480 days of service in two calendar years. Therefore, once again fresh appointment of the petitioners on daily wage basis from 01.09.2005 is illegal since the



W.P.Nos.10538 of 2024, etc. batch

petitioners were already engaged on daily wage basis as Conductor and Driver from the year 1993 itself. In fact, they were terminated /retrenched from service and only after the direction issued by this Court, they were reinstated into service in the year 1999. Even then, the respondents failed to make them permanent and regularise their service and as such, they were constrained to approach the authority under Section 3(1) of the Act.

13. Insofar as making the petitioners permanent and regularisation of their service, it is relevant to rely upon the judgment of this Court in the case of ***R.Lakshmi's case*** (*cited supra*), wherein it is held as follows:

34. On going through the ingredients of [Section 3\(1\)](#) of the Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, 1981, we are of the considered view that the Petitioners husband, completed 480 days of work in a period of 24 calender months (during his lifetime), and would become automatically a permanent employee under the Respondents/Tamilnadu Electricity Board, because of the simple fact that the Section mandates the Respondents to confer permanent status on the Petitioners husband S.Raju and the conferment of permanent status to the



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W.P.Nos.10538 of 2024, etc. batch

Petitioners husband S. Raju / Employee / Workman would not depend upon his employer on his own or on a direction given by the competent authority under the Act.

36. We also hold that even in the absence of any enquiry conducted by the Inspector under the Act, the right conferred upon the Petitioners husband to claim the benefit of permanent status could not be denied by any means because of the simple fact that [Section 3\(1\)](#) of the Act imposes an obligation upon the Respondents/Electricity Board Authorities to confer permanent status of the Petitioners husband, who had rendered 480 days of work continuously in a period of 24 calender months and on that basis, we hold that the Petitioners husband deceased S. Raju is entitled to be made permanent by the Respondents / Tamil nadu Electricity Board Authorities and once, in law, he was entitled to the benefit of conferment of permanent status, the resultant benefit could not be deprived to the Petitioner (wife) notwithstanding the fact that during his lifetime no such permanency was conferred on him. Viewed in that perspective, we hold that a workman, who had completed 480 days of continuous service in a period of 24 calender 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. Accordingly, we answer the



W.P.Nos.10538 of 2024, etc. batch

Reference.

14. At this juncture, it is relevant to extract the judgment of the Hon'ble Division Bench of this Court rendered in the writ appeals in WA.Nos.2871 and 2872 of 2018 dated 30.09.2019, wherein the respondents herein had challenged the order dated 11.01.2013 in WP.Nos.31322 and 31323 of 2005, which a learned Single Judge allowed the writ petitions and directed the respondents herein to give the benefit of the order dated 31.05.2005 passed by the authority under the Tamilnadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, 1981, hereunder:

34. On going through the ingredients of Section 3(1) of the Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, 1981, we are of the considered view that the Petitioner's husband, completed 480 days of work in a period of 24 calendar months (during his lifetime), and would become automatically a permanent employee under the Respondents/Tamilnadu Electricity Board, because of the simple fact that the Section mandates the Respondents to confer permanent status on the Petitioner's husband S.Raju and the conferment of permanent status to the



WEB COPY



W.P.Nos.10538 of 2024, etc. batch

Petitioner's husband S. Raju / Employee / Workman would not depend upon his employer on his own or on a direction given by the competent authority under the Act.

35. The words 'employed' in Section 3(1) of the Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, 1981, are not directory in nature, in our considered opinion. Per contra, they are mandatory in character. In short, the deeming clause of Section 3(1) of the Act as aforesaid is explicit and admits of no exception as opined by this Court. Furthermore, the Petitioner's husband late Raju satisfied the essential condition of, being a worker and the Tamil nadu Electricity Board being his master, so as to claim the permanent status. Thus, the logical conclusion that can be deduced in the present case is that even if no order of regularization was passed in respect of the petitioner's husband Raju (since deceased), the statutory benefit of permanent status is to be necessarily granted to him by the Respondent/Tamil nadu Electricity Board.

36. We also hold that even in the absence of any enquiry conducted by the Inspector under the Act, the right conferred upon the Petitioner's husband to claim the benefit of permanent status could not be denied by any means because of the simple fact that Section 3(1) of the Act imposes an obligation upon the Respondents/Electricity Board Authorities to confer permanent



W.P.Nos.10538 of 2024, etc. batch

status of the Petitioner's husband, who had rendered 480 days of work continuously in a period of 24 calendar months and on that basis, we hold that the Petitioner's husband deceased S. Raju is entitled to be made permanent by the Respondents / Tamil nadu Electricity Board Authorities and once, in law, he was entitled to the benefit of conferment of permanent status, the resultant benefit could not be deprived to the Petitioner (wife) notwithstanding the fact that during his lifetime no such permanency was conferred on him. Viewed in that perspective, we hold 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. Accordingly, we answer the Reference.

F) CONCLUSION

15. Thus it is clear that the workmen who had completed 480 days of continuous service in a period of 24 calendar months would become automatically permanent employee even if an employer had not conferred him with permanent status or even if no direction was issued by the competent authority in this regard under the Act or Rules framed



16. In the case on hand, though several directions were issued by this Court, the respondents failed to act upon and rejected the claim made by the petitioners. In fact, this Court while directing the respondents to comply in the light of the order passed by the authority dated 31.05.2005 and as per the order passed by this Court in WP.Nos.31322 and 31323 of 2005 and even then, the respondents without considering the above directions issued by this Court, mechanically rejected the request made by the petitioners on the ground that after the order passed by the authority, the Management and the Unions had entered into settlement under Section 12(3) of the Industrial Disputes Act dated 31.08.2005.

17. In view of the above, the orders impugned cannot be sustained and the same are liable to be quashed. Accordingly, all the impugned orders 03.10.2023 passed by the second respondent are quashed. The respondents are directed to confer the petitioners with



W.P.Nos.10538 of 2024, etc. batch

permanent status from the date of their completion of 480 days of service from the date of their joining with all service benefits except salary, within a period of four weeks from the date of receipt of copy of this order.

18. With the above direction, all the writ petitions stand allowed. Consequently, connected miscellaneous petitions are closed. There shall be no order as to costs.

01.10.2024

Neutral Citation: Yes/No
Index: Yes/No
Speaking/Non-speaking order
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W.P.Nos.10538 of 2024, etc. batch

To

1. Managing Director,
Tamilnadu State Transport Corporation(Coimbatore) Ltd.,
37, Mettupalayam Road,
Coimbatore-43
2. The General Manager,
Tamilnadu State Transport Corporation(Coimbatore) Ltd.,
Erode Region, Chennimalai Road,
Erode-1.



W.P.Nos.10538 of 2024, etc. batch

WEB COPY

G.K.ILANTHIRAIYAN, J.

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W.P.Nos.10538, 10556, 10560, 10562, 10567, 10555, 10558, 10561,
10564, 10540, 10544, 10546 & 10548 of 2024 and
WMP.Nos.11554, 11585, 11588, 11592, 11595, 11582, 11587, 11590,
11594, 11560, 11564, 11566 & 11571 of 2024