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W.A.Nos.496 to 499 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on 12.03.2025	Delivered on 25.03.2025
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CORAM:

THE HONOURABLE MR. JUSTICE R.SUBRAMANIAN
AND
THE HONOURABLE MR. JUSTICE G.ARUL MURUGAN

W.A.Nos.496 to 499 of 2020
and
C.M.P.Nos.7340 and 7333 of 2020

W.A.No.496 of 2020:

The Registrar,
Thiruvalluvar University,
Serkkadu, Vellore - 632 115.

... Appellant

Vs.

1.The Principal Labour Court,
Vellore, Vellore District.

2.Thiruvalluvar University,
Employees Union No.1505 V.L.R/2012,
Rep. by its General Secretary Manivannan,
#17, Vivekanandan Street,
Vellore - 632 006.

...Respondents

Prayer: Writ Appeal filed under Clause 15 of the Letters Patent, praying to
set aside the order made in W.P.No.16818 of 2018 dated 29.05.2020 and



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allow the writ.

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For Appellant : Mr.P.S.Raman, Advocate General
Assisted by Mr.M.C.Swamy
For Respondents : Ms.R.Vaigai, Senior Counsel
for Mr.Ajay Khose for R2
R1- Labour Court

W.A.No.497 of 2020:

The Registrar,
Thiruvalluvar University,
Serkkadu, Vellore - 632 115.

... Appellant

Vs.

1.The Principal Labour Court,
Vellore, Vellore District.

2.Thiruvalluvar University,
Employees Union No.1505 V.L.R/2012,
Rep. by its General Secretary Manivannan,
#17, Vivekanandan Street,
Vellore - 632 006.

...Respondents

Prayer: Writ Appeal filed under Clause 15 of the Letters Patent, praying to set aside the order made in W.P.No.16817 of 2018 dated 29.05.2020 and allow the writ.

For Appellant : Mr.P.S.Raman, Advocate General
Assisted by Mr.M.C.Swamy
For Respondents : Ms.R.Vaigai, Senior Counsel

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W.A.No.498 of 2020:

Thiruvalluvar University,
Rep. by its Registrar,
Thiruvalluvar University
Serkkadu, Vellore - 632 115.

... Appellant

Vs.

Thiruvalluvar University,
Employees Union,
Rep. by its General Secretary,
Reg. No.1505 V.L.R/2012,
#17, Vivekanandan Street,
Thirunagar, Vellore - 632 006.
Vellore District.

...Respondent

Prayer: Writ Appeal filed under Clause 15 of the Letters Patent, praying to set aside the order made in W.P.No.20126 of 2018 dated 29.05.2020 and allow the writ.

For Appellant : Mr.P.S.Raman, Advocate General

Assisted by Mr.M.C.Swamy

For Respondent : Ms.R.Vaigai, Senior Counsel

for Mr.Ajay Khose

W.A.No.499 of 2020:

The Registrar,

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Thiruvalluvar University,
Serkkadu, Vellore - 632 115.

... Appellant

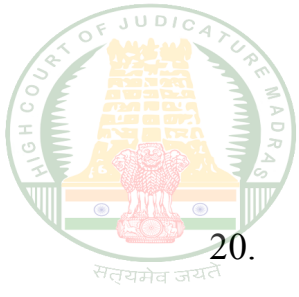
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Vs.

1.The Principal Labour Court,
Vellore, Vellore District.

2. M.Mohan
3. Vijayalakshmi Venkatraman
4. D.Prakash
5. H.Vijayakumar
6. S.Ranjani
7. L.Baskar
8. J.Parameshwari
9. K.Siva
10. P.Vijayalakshmi
11. S.Pramila
12. P.Ponmani Selvan
13. B.Godahvari
14. K.S.Ramesh
15. C.Prem Kumar
16. T.Shinath
17. T.S.Manikandan
18. D.Vijaya
19. Velmurugan

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20. K.Subramani
21. S.Lalitha
22. G.Kumaran
23. Dilli Praakash
24. V.Krithika
25. P.Vijenthra Kumar
26. S.Ravidoss
27. G.Sasikala
28. S.Saroja
29. V.Manijula
30. S.Janarthanan
31. K.Venkataramanan
32. D.Elamparithi
33. S.Venkatesan
34. K.Suresh
35. P.Thavamani
36. G.Krishnaveni
37. D.Lakshmi
38. M.Manivannan
39. K.Jothi
40. K.Rani
41. S.Amuthua
42. V.Karunakaran
43. S.Gnanam

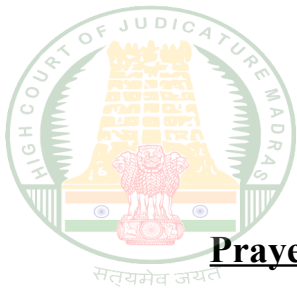


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44. K.Karthika
45. N.M.Sivakumar
46. R.Rathina Kumar
47. C.Thalapathi
48. S.Radha
49. M.Jagadeesan
50. J.Baskar
51. G.Lakshmi
52. M.Suresh Babu
53. C.Shakila
54. V.Sarala
55. R.Gunasekaran
56. S.Geethanjali
57. A.Thirugnanasambandan
58. S.Prabakar
59. A.S.Nagarani
60. P.Sangararajan
61. R.Chandrakala
62. S.Baskaran
63. M.Yuvarajan
64. Sasirekha
65. A.Harikrishnan
66. R.Parameswari

...Respondents



W.A.Nos.496 to 499 of 2020

Prayer: Writ Appeal filed under Clause 15 of the Letters Patent, praying to set aside the order made in W.P.No.37681 of 2016 dated 29.05.2020 and allow the writ.

For Appellant : Mr.P.S.Raman, Advocate General
Assisted by Mr.M.C.Swamy

For Respondents : Ms.R.Vaigai, Senior Counsel
for Mr.Ajay Khose
for R2 to R43 and R45 to R66
R44 - Died
R1 - Labour Court

COMMON JUDGMENT

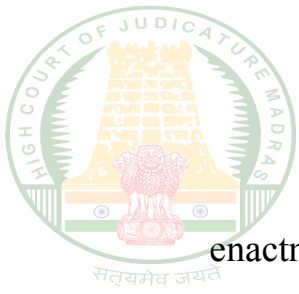
(Judgment of the Court was delivered by **R.SUBRAMANIAN, J.**)

All the appeals are at the instance of the University which claims to be aggrieved by the common judgment of the writ Court dated 29.05.2020, wherein the writ Court modified the award of the labour Court directing reinstatement of all the employees with continuity of service while denying them back wages.

The background facts that led to the Industrial Dispute are as follows:-

2. The University which was established on 16.10.2002 under an

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enactment of the State Legislature viz., the Thiruvalluvar University Act, 2002 was originally established with a sanctioned staff strength of 22 non-teaching staff. The other required staff were engaged by the University on a temporary basis. All these employees were appointed on various dates as temporary employees and it is not in dispute that they have served for quite a long number of years from the date of their appointment till their services were terminated by the University, which led to the industrial disputes being raised in I.D.Nos.61 of 2015 to 108 of 2015 and 110 to 126 of 2015.

3. The workmen were terminated because they went on an illegal strike, when attempts were made by the University to resolve the issue amicably. This termination resulted in industrial disputes being raised. The labour Court by its award dated 12.04.2018 directed reinstatement of the workmen on the conclusion that the University has committed unfair labour practice as defined in part 1 of Schedule V of the Industrial Disputes Act against the 66 employees. The labour Court also concluded that all the 66 employees are entitled to be made permanent as directly recruited by the University.



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4. It is this award which was subject matter of challenge in the Writ Petition. The labour Court also awarded 30% back wages to the employees. Aggrieved by the direction to reinstate, the University filed a Writ Petition in W.P.No.37681 of 2016. Aggrieved by the denial of back wages to the extent of 70%, the workman filed a Writ Petition in W.P.No.17793 of 2017. The University also filed W.P.No.16817 and 16818 of 2018 seeking to set aside the award in I.D.No.161 of 2014 and I.D.No.50 of 2015 which related to certain individual employees.

5. The writ Court upon examination of the material on record confirmed the findings of the labour Court that the University has engaged in unfair labour practice. The writ Court also concluded that though the Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, 1981 would not apply, the workmen who had worked for sufficient number of years would be entitled to regularization.



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6. The claim was resisted by the University contending that there were only 22 sanctioned posts in the University and all the employees who are before the Court were appointed to non-sanctioned posts without a proper recruitment process and they did not also possess the required qualification. They were termed as back door entrants. The judgment in **State of Karnataka Vs. Umadevi and others** reported in **2006 (4) SCC 1** was invoked by the University to support its contentions. Reliance was also placed on the judgment of the Hon'ble Supreme Court in **Harinandan Prasad and another Vs. Food Corporation of India and another** reported in **(2014) 7 SCC 190**, wherein, it was held that the labour Court cannot grant permanent status when there are no sanctioned posts available.

7. On behalf of the workmen, it was urged that once the labour Court comes to the conclusion that the University had adopted unfair labour practice, it can always direct the University to create posts and employ the



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workmen, who were working for sufficiently long number of years in the temporary cadre.

8. The writ Court also referred to several communications by the University to the Government seeking sanction to regularize these employees. No doubt, those letters are now characterized as letters written without authority. To our pointed query as to whether any action has been taken against the author of those letters, the learned Advocate General would fairly submit that no action has been taken against the authors of those letters. The writ Court upon relying on the said communications concluded that there was a need for these employee in the University and therefore the labour Court was right in passing an award directing that they shall be conferred with permanent status.

9. We must place on record here that the writ Court had referred to almost all the judgments on the issues arising in the Writ Petitions and had concluded that the University has been adopting unfair labour practice by keeping these workmen temporary for a very long time. Aggrieved by the



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said order, the University is on appeal.

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10. We have heard Mr.P.S.Raman, learned Advocate General assisted by Mr.M.C.Swamy, learned counsel for the University and Ms.R.Vaigai, learned Senior Counsel assisted by Mr.Ajay Khose, learned counsel for the workmen.

11. The learned Advocate General would fairly submit that the University is not aggrieved by the direction to reinstate as well as the payment of back wages. According to him, the University is aggrieved only by the grant of permanent status to these workmen, since there are no permanent posts available. The learned Advocate General would submit that a direction to create permanent post is beyond the jurisdiction of the labour Court. He would also add that while it is open to the writ Court to direct creation of permanent post, it was not within the domain of the labour Court to do that.

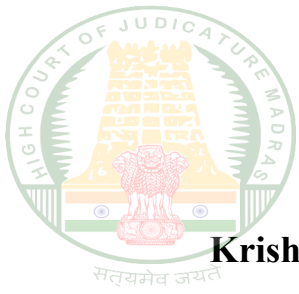


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12. The learned Advocate General would rely upon the judgment of the Hon'ble Supreme Court in **Oil and Natural Gas Corporation Vs. Krishan Gopal and others** reported in (2021) 18 SCC 707, wherein, a two Judge Bench of the Hon'ble Supreme Court had doubted the law laid down in **Oil and Natural Gas Corporation Limited Vs. Petroleum Coal Labour Union** reported in (2015) 6 SCC 494 (herein after referred to as PCLU). The judgment in PCLU recognized the power of the labour Court to direct creation of additional posts. The correctness of the judgment in PCLU was doubted in **Oil and Natural Gas Corporation Vs. Krishan Gopal and others (supra)** and a reference was made to a larger Bench. It is not in dispute that the reference has not been answered yet.

13. The learned Advocate General would rely upon the observations made in the order of reference to contend that the labour Court was not justified in directing creation of additional posts. Reliance is also placed on **Mahatma Pule Agricultural University and others Vs. Nazik Zilla Sheth Kamgar Union and others** reported in (2001) 7 SCC 346 and other cases which have been referred to in **Oil and Natural Gas Corporation Vs.**



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Krishan Gopal and others (*supra*).

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14. Contending contra Ms.Vaigai, learned Senior Counsel for the workmen would submit that **Oil and Natural Gas Corporation Vs. Krishan Gopal and others (*supra*)** is only an order of reference and the Hon'ble Supreme Court itself in **State of Maharashtra and another Vs. Sarva Shramik Sangh and others** reported in **2013 (16) SCC 16** had held that an order of reference would not amount to overruling the earlier judgment which is doubted and the Courts will be bound to follow the law laid down until the reference is answered.

15. In **Oil and Natural Gas Corporation Limited Vs. Petroleum Coal Labour Union (PCLU)**, the Hon'ble Supreme Court has recognized the power of the labour Court to direct creation of additional posts also. No doubt, the correctness of the said judgment has been doubted. However, there are certain subsequent judgments of the Hon'ble Supreme Court which are relied upon by the learned Senior Counsel for the workmen they are the judgment in **Shripal and another Vs. Nagar Nigam, Ghaziabad** reported



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in 2025 SCC OnLine SC 221 and the judgment in **Jaggo Vs. Union of India and others** reported in 2024 SCC OnLine SC 3826.

16. Before we proceed to consider the arguments of the learned Advocate General and the learned Senior Counsel, we feel that the time has come to put an end to exploitation of people by the Government and its arms. The materials that have been placed before us in these cases show that the directions contained in **State of Karnataka Vs. Umadevi and others** (*supra*) have been wilfully flouted by the University. We are left wondering as to how the State Legislature will establish a University under an enactment with just 22 employees as non-teaching staff. It has become the practice of the State and its arms to launch projects and Universities without providing the required infrastructure and employing temporary hands to tide over the situation. This very same University viz., Thiruvalluvar University which was established in the year 2002 was in the midst of a storm created by the unrest of the guest lecturers who were employed by it.



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17. It is open to the State to establish Universities by enacting a Law.

But when the State establishes such Universities it must make sure that the adequate infrastructure is also provided. Adequate infrastructure would not only mean buildings and equipment, it would also include the enough man power to run the University. If we are to look at the sanctioned strength of employees in the University as of the year 2007 it was only 22. The breakup of which is as follows:-

Deputy Registrar	-	1
Assistant Registrar	-	2
PA to the Vice Chancellor	-	1
Superintendents	-	4
Assistants and Computer Operators	-	8
Personal Clerk of the Vice Chancellor	-	1
Lab Technicians	-	4
System Administrator	-	1

Total - 22



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18. It could be seen that the list does not contain even a single basic worker viz., a sweeper or a watchman or an office boy or a clerk. This by itself would demonstrate that the University has been created without man power giving a complete discretion to the Vice Chancellors to engage the persons temporarily and after extracting work from them for sufficient number of years to disengage them without assigning any reason. Aid is often sought from the pronouncement of the Hon'ble Supreme Court in **State of Karnataka Vs. Umadevi and others** (*supra*).

19. The law laid down in **State of Karnataka Vs. Umadevi and others** (*supra*) is not only that temporary employees who are back door entrants should not be made permanent, it also said that such employment should be avoided in future. The second part is conveniently forgotten by the powers that be and **State of Karnataka Vs. Umadevi and others** (*supra*) is very often invoked to deny the benefits of regularization for the

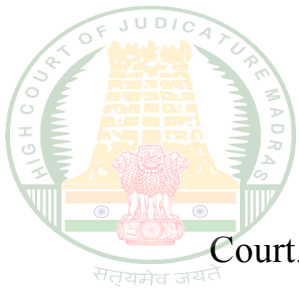


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workmen who are engaged temporarily to very essential posts. Unless the temporary engagement stops or the State refrains from engaging people temporarily it should not be allowed to take advantage of dictum under **State of Karnataka Vs. Umadevi and others** (*supra*).

20. Adverting to the contentions raised, while it is the claim of the learned Advocate General that the power of the labour Court to direct creation of permanent post is under a cloud and the reference made in **Oil and Natural Gas Corporation Vs. Krishan Gopal and others** (*supra*) is pending. It is the contention of Ms.Vaigai, learned Senior Counsel appearing for the workmen that unless the reference is answered, the judgment in **PCLU** would prevail.

21. She would also draw our attention to the two recent pronouncements of the Hon'ble Supreme Court in **Shripal and another Vs. Nagar Nigam, Ghaziabad** (*supra*) and the judgment in **Jaggo Vs. Union of India and others** (*supra*) to contend that the labour Court's power to order creation of additional posts has been recognized by the Hon'ble Supreme



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Court. In **Jaggo Vs. Union of India and others** (*supra*), the Hon'ble Supreme Court considered the dictum in **State of Karnataka Vs. Umadevi and others** (*supra*) and observed as follows:-

25. *It is a disconcerting reality that temporary employees, particularly in government institutions, often face multifaceted forms of exploitation. While the foundational purpose of temporary contracts may have been to address short-term or seasonal needs, they have increasingly become a mechanism to evade long-term obligations owed to employees. These practices manifest in several ways:*

- **Misuse of "Temporary" Labels:** *Employees engaged for work that is essential, recurring, and integral to the functioning of an institution are often labeled as "temporary" or "contractual," even when their roles mirror those of regular employees. Such misclassification deprives workers of the dignity, security, and benefits that regular employees are entitled to, despite performing identical tasks.*

- **Arbitrary Termination:** *Temporary employees are frequently dismissed without cause or notice, as seen in the present case. This practice undermines the principles of natural justice and subjects workers to a*



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state of constant insecurity, regardless of the quality or duration of their service.

- ***Lack of Career Progression:*** *Temporary employees often find themselves excluded from opportunities for skill development, promotions, or incremental pay raises. They remain stagnant in their roles, creating a systemic disparity between them and their regular counterparts, despite their contributions being equally significant.*

- ***Using Outsourcing as a Shield:*** *Institutions increasingly resort to outsourcing roles performed by temporary employees, effectively replacing one set of exploited workers with another. This practice not only perpetuates exploitation but also demonstrates a deliberate effort to bypass the obligation to offer regular employment.*

- ***Denial of Basic Rights and Benefits:*** *Temporary employees are often denied fundamental benefits such as pension, provident fund, health insurance, and paid leave, even when their tenure spans decades. This lack of social security subjects them and their families to undue hardship, especially in cases of illness, retirement, or unforeseen circumstances.*



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26. *While the judgment in Uma Devi (supra) sought to curtail the practice of backdoor entries and ensure appointments adhered to constitutional principles, it is regrettable that its principles are often misinterpreted or misapplied to deny legitimate claims of long-serving employees. This judgment aimed to distinguish between “illegal” and “irregular” appointments. It categorically held that employees in irregular appointments, who were engaged in duly sanctioned posts and had served continuously for more than ten years, should be considered for regularization as a one-time measure. However, the laudable intent of the judgment is being subverted when institutions rely on its dicta to indiscriminately reject the claims of employees, even in cases where their appointments are not illegal, but merely lack adherence to procedural formalities. Government departments often cite the judgment in Uma Devi (supra) to argue that no vested right to regularization exists for temporary employees, overlooking the judgment's explicit acknowledgment of cases where regularization is appropriate. This selective application distorts the judgment's spirit and purpose, effectively weaponizing it against employees*



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who have rendered indispensable services over decades.

22. The same position was re-stated in **Shripal and another Vs. Nagar Nigam, Ghaziabad** (*supra*). In fact in **Shripal and another Vs. Nagar Nigam, Ghaziabad** (*supra*) the Hon'ble Supreme Court had directed that the employer will expedite all necessary administrative processes to ensure that these long time employees are not indefinitely retained as daily wagers contrary to statutory and equitable norms. It will be useful to re-state the directions issued by the Hon'ble Supreme Court in **Shripal and another Vs. Nagar Nigam, Ghaziabad** (*supra*) which read as follows:-

18. The impugned order of the High Court, to the extent they confine the Appellant Workmen to future daily-wage engagement without continuity or meaningful back wages, is hereby set aside with the following directions:

I. The discontinuation of the Appellant Workmen's services, effected without compliance with Section 6E and Section 6N of the U.P. Industrial Disputes Act, 1947, is declared illegal. All orders or communications terminating their services are quashed. In consequence,



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the Appellant Workmen shall be treated as continuing in service from the date of their termination, for all purposes, including seniority and continuity in service.

II. The Respondent Employer shall reinstate the Appellant Workmen in their respective posts (or posts akin to the duties they previously performed) within four weeks from the date of this judgment. Their entire period of absence (from the date of termination until actual reinstatement) shall be counted for continuity of service and all consequential benefits, such as seniority and eligibility for promotions, if any.

III. Considering the length of service, the Appellant Workmen shall be entitled to 50% of the back wages from the date of their discontinuation until their actual reinstatement. The Respondent Employer shall clear the aforesaid dues within three months from the date of their reinstatement.

IV. The Respondent Employer is directed to initiate a fair and transparent process for regularizing the Appellant Workmen within six months from the date of reinstatement, duly considering the fact that they have performed perennial municipal duties akin to permanent



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posts. In assessing regularization, the Employer shall not impose educational or procedural criteria retroactively if such requirements were never applied to the Appellant Workmen or to similarly situated regular employees in the past. To the extent that sanctioned vacancies for such duties exist or are required, the Respondent Employer shall expedite all necessary administrative processes to ensure these longtime employees are not indefinitely retained on daily wages contrary to statutory and equitable norms.

23. From the above pronouncements it is clear that the contention of the learned Advocate General that the labour Court cannot direct creation of new post cannot be accepted as a absolute proposition. Realizing these difficulties, the learned Advocate General would make a statement that these employees would be regularized as and when regular vacancies arise, without going for an open market selection.

24. Though the offer of the learned Advocate General appears to be attractive it may not offer an equitable solution. From the letters which emanate from very responsible officers of the University which had been

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extracted by the writ Court it could be conclusively seen that there is a need for these workmen and the man power in the University. The University is only on a technical issue as to whether these posts could be created without approval of the Government. In fact, the University had written to the Government as early as in the year 2011 that these employees will have to be regularized. The said letter also refers to the assurance by the Chief Minister of the State that these employees would be regularized.

25. Further in the notice issued by the Registrar on 18.10.2013 when these temporary workers called for a strike there is a tacit admission of the duty of the University to regularize the services of the employees. In the light of the above factual background and in the light of the submissions of the learned Advocate General, we find that the directions of the writ Court need not be interfered with. However, it is also seen that these employees are being paid 17B wages. After all, the University is run out of public funds.

26. In the circumstances, we feel that while retaining the back wages



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paid, it will be in the interest of Justice to direct regularization of these employees from the date of the award with continuity of service. It is made clear that the employees will not be entitled to any monetary benefits till today. The University will regularize the services of the employees as permanent workers notionally with effect from the date of the award with continuity of service within a period of eight (8) weeks from today. We are sure that the Government will accord necessary sanction for the posts which are required to be created by virtue of this order. It is made clear that 17B wages paid to the employees will not be recovered.

27. The Writ Appeals are disposed of with the above directions. No costs. Consequently, the connected miscellaneous petitions are closed.

(R.SUBRAMANIAN, J.) (G.ARUL MURUGAN, J.)
25.03.2025

dsa

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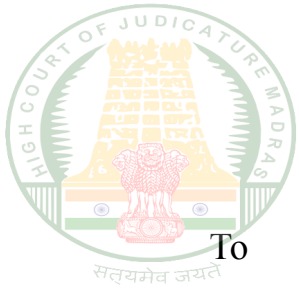
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Internet : Yes

Neutral Citation : Yes

Speaking order

Note:- Issue order copy by 26.03.2025.



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To

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- 1.The Registrar,
Thiruvalluvar University,
Serkkadu, Vellore - 632 115.
- 2.The Principal Labour Court,
Vellore, Vellore District.
- 3.General Secretary Manivannan,
Thiruvalluvar University Employees Union No.1505 V.L.R/2012,
#17, Vivekanandan Street, Vellore - 632 006.



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W.A.Nos.496 to 499 of 2020

R.SUBRAMANIAN, J.
and
G.ARUL MURUGAN, J.

dsa

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