BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 24.11.2025

CORAM:

THE HONOURABLE MR.JUSTICE **B.PUGALENDHI**

WP(MD)Nos.7498 to 7500 and 7859 of 2024, 21689 to 21693, 22178 to 22197, 22921 to 22945, 23668 to 23700, 31769 to 31776 & 32244 to 32253 of 2025
and connected WMPs

The District Manager,
Tamil Nadu State Marketing Corporation Limited,
Kappalur, Madurai South,
Madurai District.

... Petitioner in WP(MD)Nos.7498 to 7500 & 7859 of 2024 and 31769 to 31776 of 2025

Vs

1.The Assistant Commissioner of Labour (Enforcement),
The Tamil Nadu Industrial Establishment
(Conferment of Permanent Status to Workmen) Act, 1981,
Madurai.

...1st Respondent in all WPs

2.L.Britto Arockianathan ... 2nd respondent in WP(MD)No.7498 of 2024

2.S.Sivakumar ... 2nd respondent in WP(MD)No.7499 of 2024

2.V.Senthilkumar ... 2nd respondent in WP(MD)No.7500 of 2024

2.P.Sivaraj ... 2nd respondent in WP(MD)No.7859 of 2024

2.Deivam ... 2nd respondent in WP(MD)No.31769 of 2025

2.Ilayaraja ... 2nd respondent in WP(MD)No.31770 of 2025

2.Jeyapandi ... 2nd respondent in WP(MD)No.31771 of 2025

2.Kanthavel ... 2nd respondent in WP(MD)No.31772 of 2025

2.Muthupandi ... 2nd respondent in WP(MD)No.31773 of 2025

2.Sivakumar ... 2nd respondent in WP(MD)No.31774 of 2025

2.Vallarasan ... 2nd respondent in WP(MD)No.31775 of 2025

2.Yogaraja ... 2nd respondent in WP(MD)No.31776 of 2025

COMMON PRAYER in WP(MD)Nos.7498 to 7500 & 7859 of 2024 and WP(MD)Nos.31769 to 31776 of 2025: Writ Petitions filed under Article 226 of the Constitution of India to issue a writ of certiorari to call for the impugned order of the 1st respondent in CPS.Nos.11, 22, 21, 23 of 2020 dated 15.03.2023 and the proceedings in Na.Ka.Nos.433-3, 4,6,11,8,13,14 and 9/2019, dated 18.11.2024 and quash the same as illegal.

The District Manager,

Tamil Nadu State Marketing Corporation Limited (TASMAC),
29-34, SIDCO Industrial,
Soolakarai, Virudhunagar District.

... Petitioner in WP(MD)Nos. 21689 to 21693,
22178 to 22197, 22921 to 22945,
23668 to 23700 of 2025

Vs

1.The Assistant Commissioner of Labour (Enforcement),
The Tamil Nadu Industrial Establishment
(Conferment of Permanent Status to Workmen) Act, 1981,
Virudhunagar.

...1st Respondent in in WP(MD)Nos. 21689 to
21693, 22178 to 22197,
22921 to 22945, 23668 to 23700 of 2025

2.Gunasekaran	... 2nd respondent in WP(MD)No.21689 of 2025
2.Annadurai	... 2nd respondent in WP(MD)No.21690 of 2025
2.Arumaikodi	... 2nd respondent in WP(MD)No.21691 of 2025
2.Balakrishnan	... 2nd respondent in WP(MD)No.21692 of 2025
2.Chandrasekar	... 2nd respondent in WP(MD)No.21693 of 2025
2.Chinnaraj	... 2nd respondent in WP(MD)No.22178 of 2025
2.Deivendran	... 2nd respondent in WP(MD)No.22179 of 2025
2.Ganesan	... 2nd respondent in WP(MD)No.22180 of 2025
2.Jawaharlal Nehru	... 2nd respondent in WP(MD)No.22181 of 2025
2.Jeyakumar	... 2nd respondent in WP(MD)No.22182 of 2025
2.Kannan	... 2nd respondent in WP(MD)No.22183 of 2025
2.Murugan	... 2nd respondent in WP(MD)No.22184 of 2025
2.Murugapandi	... 2nd respondent in WP(MD)No.22185 of 2025
2.Muthuraj	... 2nd respondent in WP(MD)No.22186 of 2025
2.Paulmurugan	... 2nd respondent in WP(MD)No.22187 of 2025
2.Murugan	... 2nd respondent in WP(MD)No.22188 of 2025
2.Radhakrishnan	... 2nd respondent in WP(MD)No.22189 of 2025
2.Ramar	... 2nd respondent in WP(MD)No.22190 of 2025
2.Ramasamy Pandian	... 2nd respondent in WP(MD)No.22191 of 2025
2.Sekar	... 2nd respondent in WP(MD)No.22192 of 2025

2.Sekar	... 2nd respondent in WP(MD)No.22193 of 2025
2.Selvaraj	... 2nd respondent in WP(MD)No.22194 of 2025
2.Sivasubramanian	... 2nd respondent in WP(MD)No.22195 of 2025
2.Vairamuthu	... 2nd respondent in WP(MD)No.22196 of 2025
2.Velmurugan	... 2nd respondent in WP(MD)No.22197 of 2025
2.Ramakrishnan	... 2nd respondent in WP(MD)No.22921 of 2025
2.Babu	... 2nd respondent in WP(MD)No.22922 of 2025
2.Balamurugan	... 2nd respondent in WP(MD)No.22923 of 2025
2.Chandrasekaran	... 2nd respondent in WP(MD)No.22924 of 2025
2.Dhanasekar	... 2nd respondent in WP(MD)No.22925 of 2025
2.Kaliraj	... 2nd respondent in WP(MD)No.22926 of 2025
2.Kaliyappan	... 2nd respondent in WP(MD)No.22927 of 2025
2.Kannan	... 2nd respondent in WP(MD)No.22928 of 2025
2.Karuppaiah	... 2nd respondent in WP(MD)No.22929 of 2025
2.Karuppasamy	... 2nd respondent in WP(MD)No.22930 of 2025
2.Kumaraiya	... 2nd respondent in WP(MD)No.22931 of 2025
2.Karuppasamy	... 2nd respondent in WP(MD)No.22932 of 2025
2.Mahalingam	... 2nd respondent in WP(MD)No.22933 of 2025
2.Manickam	... 2nd respondent in WP(MD)No.22934 of 2025
2.Manikandan	... 2nd respondent in WP(MD)No.22935 of 2025

2.Mariappan	... 2nd respondent in WP(MD)No.22936 of 2025
2.Marimuthu	... 2nd respondent in WP(MD)No.22937 of 2025
2.Mayakrishnan	... 2nd respondent in WP(MD)No.22938 of 2025
2.Mayilvahanan	... 2nd respondent in WP(MD)No.22939 of 2025
2.Muniyandi	... 2nd respondent in WP(MD)No.22940 of 2025
2.Murugan	... 2nd respondent in WP(MD)No.22941 of 2025
2.Murugan	... 2nd respondent in WP(MD)No.22942 of 2025
2.Murugesan	... 2nd respondent in WP(MD)No.22943 of 2025
2.Muthukumar	... 2nd respondent in WP(MD)No.22944 of 2025
2.Muthukumara Pandian	... 2nd respondent in WP(MD)No.22945 of 2025
2.Nagamani	... 2nd respondent in WP(MD)No.23668 of 2025
2.Nagarajan	... 2nd respondent in WP(MD)No.23669 of 2025
2.Narayanasamy	... 2nd respondent in WP(MD)No.23670 of 2025
2.Pandiyaraj	... 2nd respondent in WP(MD)No.23671 of 2025
2.Pathinettu	... 2nd respondent in WP(MD)No.23672 of 2025
2.Rajangam	... 2nd respondent in WP(MD)No.23673 of 2025
2.Ramakrishnan	... 2nd respondent in WP(MD)No.23674 of 2025
2.Ramamoorthy	... 2nd respondent in WP(MD)No.23675 of 2025
2.Ramaraj	... 2nd respondent in WP(MD)No.23676 of 2025
2.Sangilipoothathan	... 2nd respondent in WP(MD)No.23677 of 2025

2.Saravanan	... 2nd respondent in WP(MD)No.23678 of 2025
2.Saravanan	... 2nd respondent in WP(MD)No.23679 of 2025
2.Selvaraj	... 2nd respondent in WP(MD)No.23680 of 2025
2.Soundarapandian	... 2nd respondent in WP(MD)No.23681 of 2025
2.Thangamuniyandi	... 2nd respondent in WP(MD)No.23682 of 2025
2.Uruvaadi	... 2nd respondent in WP(MD)No.23683 of 2025
2.Vairamuthu	... 2nd respondent in WP(MD)No.23684 of 2025
2.Venkatachalam	... 2nd respondent in WP(MD)No.23685 of 2025
2.Vishwalingam	... 2nd respondent in WP(MD)No.23686 of 2025
2.Xavier	... 2nd respondent in WP(MD)No.23687 of 2025
2.Packiyaraj	... 2nd respondent in WP(MD)No.23688 of 2025
2.Arumugam	... 2nd respondent in WP(MD)No.23689 of 2025
2.Balakrishnan	... 2nd respondent in WP(MD)No.23690 of 2025
2.Ganeshkumar	... 2nd respondent in WP(MD)No.23691 of 2025
2.Jeyapandi	... 2nd respondent in WP(MD)No.23692 of 2025
2.Murugan	... 2nd respondent in WP(MD)No.23693 of 2025
2.Paulsamy	... 2nd respondent in WP(MD)No.23694 of 2025
2.Ponnusamy	... 2nd respondent in WP(MD)No.23695 of 2025
2.Ragunathan	... 2nd respondent in WP(MD)No.23696 of 2025
2.Rengasamy	... 2nd respondent in WP(MD)No.23697 of 2025
2.Thirumalai Samundeeswarar	... 2nd respondent in WP(MD)No.23698 of 2025

2.Veeraraj ... 2nd respondent in WP(MD)No.23699 of 2025

2.Velmurugan ... 2nd respondent in WP(MD)No.23700 of 2025

COMMON PRAYER in WP(MD)Nos.21689 to 21693, 22178 to 22197, 22921 to 22945, 23668 to 23700 of 2025: Writ Petitions filed under Article 226 of the Constitution of India to issue a writ of certiorari to call for records relating to the impugned order of the 1st respondent in Na.Ka.No.A/2950 -1, 2, 3, 4, 6, 8, 9, 10, 11, 12, 14, 15, 16, 17, 18, 20, 22, 23, 24, 25, 29, 30, 31, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 48, 49, 50, 51, 52, 53, 54, 55, 58, 59, 61, 62, 63, 64, 65, 67, 68, 70, 71, 72, 73, 74, 75, 77, 79, 82, 83, 84, 85, 86, 87, 88, 89, 99, 98, 69, 90, 97, 100, 93, 92, 94, 96 / 2019 dated 18.10.2024 and quash the same as illegal.

The District Manager,
Tamil Nadu State Marketing Corporation Limited,
Kappalur, Madurai South,
Madurai District.

... Petitioner in
WP(MD)Nos.32244 to 32253 of 2025

Vs

1.The Assistant Commissioner of Labour (Enforcement),
The Tamil Nadu Industrial Establishment
(Conferment of Permanent Status to Workmen) Act, 1981,
Virudhunagar.

...1st Respondent in
WP(MD)Nos.32244 to 32253 of 2025

2.Anandharajan ... 2nd respondent in WP(MD)No.32244 of 2025

2.Amalraj ... 2nd respondent in WP(MD)No.32245 of 2025

2.Dharmar	... 2nd respondent in WP(MD)No.32246 of 2025
2.Kodiveeranan	... 2nd respondent in WP(MD)No.32247 of 2025
2.Ponraj	... 2nd respondent in WP(MD)No.32248 of 2025
2.Sundaramoorthy	... 2nd respondent in WP(MD)No.32249 of 2025
2.Velmurugan	... 2nd respondent in WP(MD)No.32250 of 2025
2.Santhana Thevan	... 2nd respondent in WP(MD)No.32251 of 2025
2.Baskaran	... 2nd respondent in WP(MD)No.32252 of 2025
2.Ayyar	... 2nd respondent in WP(MD)No.32253 of 2025

COMMON PRAYER in WP(MD)Nos.32244 to 32253 of 2025: Writ Petitions filed under Article 226 of the Constitution of India to issue a writ of certiorari to call for the relating to the impugned order of the 1st respondent in Na.Ka.No.433-1, 12, 10, 2, 7, 5 /2019, Na.Ka.No.1148, 1146, 1147 and 1145/2020, dated 18.11.2024 and quash the same as illegal.

For Petitioner	: Mr.J.Ravindran, Additional Advocate General Assisted by Mr.H.Arumugam
For Respondent No.1	: Mr.C.Venkatesh Kumar, Special Government Pleader
For Respondent No.2	: Mr.V.Ajay Khose for Mr.A.Rahul

in all WPs

COMMON ORDER

All these writ petitions are filed by the Tamil Nadu State Marketing Corporation Limited (TASMAC), as against the orders of the Assistant Commissioner of Labour (Enforcement), the authority under the Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workmen) Act, 1981 (in short 'Permanent Status Act). The said orders have been passed by the 1st respondents on the applications of the respective respondents in the writ petitions under Section 3 of the Permanent Status Act. The 2nd respondents claiming to be the workmen, engaged as salesmen in the petitioner TASMAC, have filed applications before the 1st respondent that they have been engaged in the year 2003 and they were in continuous service in the petitioner TASMAC for more than 480 days in a period of 24 calender months and therefore, they are entitled for conferment of permanent status as per the Permanent Status Act. The 1st respondent by the orders impugned in these writ petitions have allowed those applications and therefore, the management (TASMAC) has preferred these writ petitions.

2.Since the issue involved in these writ petitions is one and the same, these writ petitions are taken up together and are disposed of by this common order.

3.Mr.J.Ravindran, learned Additional Advocate General appearing for the petitioner management submits that the TASMAC is a company registered under the Companies Act and it is wholly owned by the Government of Tamil Nadu with its registered office at Chennai. Since it is a government owned company, the TASMAC is exempted from the provisions of the Tamil Nadu Shops and Establishments Act, 1947 (in short 'Shops Act'), as per Section 4(1)(c) of the Shops Act and the same has been clarified by the government vide letter No. 9894/K2/2008-11, dated 19.02.2010 that the Tamil Nadu State Marketing Corporation Limited is wholly owned and controlled by the government therefore, it is an establishment under the state government and consequently, the provisions of the Shops Act are not applicable to the TASMAC in view of the exemption contained in Clause (c) of Sub Section(1) of Section 4 of the Shops Act. This clarification was issued on the request made by the Managing Director, TASMAC seeking a notification for exemption under the Shops Act and the government by its letter dated 19.02.2010 has clarified that it does not come within the purview of the Shops Act and therefore, a separate notification is not required.

4.The learned Additional Advocate General further submits that as per Section 2 (3) (c) of the Permanent Status Act, this Act will apply only to the industrial establishment, which comes within the meaning as defined under Section 2(6) of the Shops Act. The Hon'ble Supreme Court in ***C.V.Raman Vs State Bank of India [1988 (3) SCC 105]*** has held that the provisions of the Shops Act are not applicable to the establishment under the control of the state and central government. The issue is no more *res integra,* since this court in WP(MD)No.17607 of 2015 dated 14.12.2018 in the case of the District Manager, TASMAC, Sivagangai vs P.Murugan has held that the TASMAC is a state government undertaking, which comes within the purview of Section 4(1)(c) of the Shops Act and therefore, the Shops Act will not apply to the TASMAC. The writ appeal in WA(MD)No.1882 of 2023 filed as against the order dated 14.12.2018 in WP(MD)No.17607 of 2015, is pending and no interim order has been granted. This Court in WP(MD)No.2095 of 2019 dated 22.11.2024 in the Senior Regional Manager, TASMAC, Madurai and another vs the Deputy Commissioner of Labour / Appellate Authority, Madurai has held that the TASMAC is a state government undertaking comes within the purview of Section 4(1)(c) of the Shops Act and therefore, the Shops Act will not apply to the TASMAC. The Permanent Status Act does not define the industrial establishment independently, whereas Section 2(3)(c) defines the definition for industrial establishment, as provided in Section 2(6) of the Shops Act. When all the provisions of the Shops Act were exempted, the very definition of industrial establishment as provided in Section 2(6) of Act alone cannot be considered.

5.The learned Additional Advocate General also submits that in similar writ petitions filed by the TASMAC in WP(MD)Nos.7782 of 2024, etc., batch, the learned single judge of this court by following the judgment of a Division Bench of this court in V.Elayaperumal vs State Bank of India, and others [2007 2 LLN 212] and another Division Bench of this court in S.Selvam vs the Senior Manager – HRD, Air India Limited and others [2020 SCC Online Mad 1178], has dismissed the writ petition filed by the TASMAC holding that the exemption contemplated under Section 4 of the Shops Act would not apply to the claim of the 2nd respondents made under the Permanent Status Act. The order passed by the learned single judge in the above batch of cases, has been challenged in writ appeal before the Division Bench in WA(MD)No.2017 of 2015, etc, batch and the Division Bench has entertained the same and granted an order of interim stay.

6.Insofar as the cases referred to by the learned single judge in WP(MD)No.7782 of 2024 with regard to Elayaperumal's case is concerned, the learned Additional Advocate General submits that as against the orders of the Division Bench in Elayaperumal's case a Special Leave Petition has been filed before the Hon'ble Supreme Court, the Hon'ble Supreme Court has entertained the Special Leave Petition and observed that the question of law raised in the Special Leave Petition requires consideration. However, the Special Leave Petition was disposed on the proposal made by the petitioners therein, leaving open the question of law to be decided. Therefore, according to the learned Additional Advocate General, the issue has not been finalised, the question of law with regard to the applicability to the Permanent Status Act on the government establishment is still left open. The other judgment referred by the learned single judge in Selvam's case was passed by following the judgment of the Division Bench in Elayaperumal's case. Since the issue is now left open, the reliance on those two judgments is not proper and therefore, the Division Bench of this Court entertained the writ appeal filed by the Management as against the orders of the learned single judge in WP(MD)No.7782 of 2024 and interim order has been granted in favour of the management. Therefore, according to the learned Additional Advocate General the issue is now sub judice before the Division Bench and this writ petition can be either tagged along with the writ appeal or taken up after disposal of the writ appeal in WA(MD)No.2017 of 2025 etc, batch.

7.The learned Additional Advocate General has relied on the order of this court in WP(MD)No.17607 of 2015, dated 14.12.2018 in the case of District Manager vs Murugan, WP(MD)No.2095 of 2019, the order dated 22.11.2024 passed in the case of Regional Manager Vs Sivakumar and the order of this court in WP.No.24642 of 2009 dated 13.09.2023 in the case of Managing Director, TASMAC vs Gurunathan in support of his contention and submits that the similar issue raised by the employees of TASMAC has been rejected by this court more than once by considering the exemption provided in Section 4(1)(c) of the Shops Act.

8.The learned Additional Advocate General as a second limb has raised a point that some of the respondents herein are working as Supervisors drawing more than Rs.15,000/- per month as salary and therefore, they cannot claim the relief under the Permanent Status Act that they are not coming under the category of workman as defined under Section 2(4) of Permanent Status Act. He also submits that they have engaged only contract labours. Therefore, the employment is contractual in nature, they are not entitled for regularisation and they cannot claim for any legitimate expectation in this regard.

9.The learned Additional Advocate General has also relied on the judgment of the Hon'ble Supreme Court in the State of Karnataka vs Umadevi [2006 4 SCC 1] and submits that the contract employees / daily wage employee are not having any right to seek regularisation and permanent absorption.

10.Mr.Ajay Khose, learned counsel appearing for the 2nd respondents submits that all the 2nd respondents have been engaged by the TASMAC from the year 2003 and they have completed 480 days in the year 2005 itself. They filed applications before the 1st respondent authority under the Permanent Status Act in the year 2019 and the same were allowed by considering the ratio laid down by this court and also by the Hon'ble Supreme Court. According to him, the exemption provided under clause (c) of Sub Section 1 of Section 4 of Shops Act would not be applicable to the provisions of the Permanent Status Act. The power of exemption under the Permanent Status Act has been conferred on the government under Section 9 of the Permanent Status Act and no such exemption has been provided by the government as on date by any notification. This issue has already been discussed and the very same stand has been taken by the State Bank of India in Elayaperumal's case and the Division Bench has held that exemption provided under clause (c) of Sub Section 1 of Section 4 of the Shops Act on the establishment of any state government or central government is of no consequences under the Permanent Status Act. The Division Bench has also stated that the definition of establishment as defined in the Shops

Act alone had been borrowed to the Permanent Status Act and that does not mean that all the provisions of the Shops Act would be applicable to the Permanent Status Act. This ratio laid down by the Division Bench in Elayaperumal's case has been followed by another Division Bench in Selvam's case in WA(MD)No.490 of 2020, dated 17.06.2020.

11.As against the above orders, Special Leave Petition was filed before the Hon'ble Supreme Court and the Hon'ble Supreme Court has dismissed the Special Leave Petition confirming the orders of the Division Bench in Selvam's case by order dated 11.04.2022 in SLP.Nos.1148 and 1149 of 2020. The Hon'ble Supreme Court while entertaining the Elayaperumal's case initially granted an order of interim stay, however, disposed the same without deciding the question of law, raised by the petitioners therein. In fact it has been decided only on the submission made by the Senior Counsel appearing on behalf of the petitioners in the above special leave petitions. Therefore, according to the learned counsel the exemption provided under the Shops Act would not be applicable to the Permanent Status Act and a specific provision is provided under Section 9 of the Permanent Status Act and there is no notification issued in this regard. Therefore, the learned counsel prayed to dismiss all these writ petitions.

12.This court has considered the rival submissions made and perused the materials placed on record.

13.The orders passed under Section 3 of the Permanent Status Act, 1981 are the subject matter in these writ petitions. Section 3 of the Permanent Status Act is extracted 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.*
>
> *(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.*

(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."

14.A workman is defined under sub section 4 of section 2 of the Permanent Status Act and the same is extracted as under:

"2(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 implied1

[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.”

15.One of the contentions of the petitioner management is that most of the workmen are in the supervisory cadre drawing salary of Rs.15,000/- and therefore, they cannot seek any employment under the capacity as workman as per clause (c) of sub section 4 of section 2 of the Permanent Status Act. However this contention has been denied by the learned counsel for the 2nd respondents that the applications have been filed for declaring Permanent Status Act on their position from the date when they have completed 480 days. Though some of the workmen are now engaged in supervisory cadre, they were initially engaged as salesmen in the year 2003 and they completed 480 days in the year 2005 itself. Moreover according to the learned counsel, there is no supervisory work, they are not having any control over salesmen and they are also selling liquor as that of the salesmen, apart from maintaining accounts and depositing cash in the bank. Considering this submission, this court has directed the petitioner management to produce the duties and responsibilities of the supervisors and their salary as on their date of completion of 480 days. Accordingly they have produced the details of the works assigned to the supervisors as under:

i. *Maintenance of entire shop records and supervising the salesman while selling the liquor.*
ii. *Daily preparation of indent and stock verification.*
iii. *Implementing first in first in first out method and displaying all varieties of liquor items in the shop.*
iv. *Monitoring 60 days stock and 90 days stock.*
v. *Submission of monthly physical verification report by every 3rd of the succeeding month.*
vi. *Checking while unloading and stacking.*
vii. *Cooperating for Auditors/Squad for inspection*
viii. *Monitoring the activities in the Bar and collection of monthly bar demand by 5th of every succeeding month.*
ix. *Supervising the activities of salesman in the shop.*

x. Reporting of sedimented stock, if any/foreign particles in stock

xi. Ensuring cleanliness of shop and surroundings of the shop.

xii. Attending meetings at District Manager office or other places and conveying the instructions to the shop personnel.

xiii. Submitting indents to the District Manager office in time.

xiv. Collection of Bar DD and handing over of the same at the District Managers' office.

xv. Arranging for submission of fixed travelling cost claims.

xvi. Payment of electricity bill and rent.

xvii. Submission of attendance sheet and salary acquittance.

xviii. Monitoring and reporting of factors which are affecting the shop sales.

xix. Placing requirement of stationary.

xx. Handing over of sediment and 90 days stock to the depot.

xxi. Utilize properly the electronic billing machine, bottle coolers, burglar alarm, CCTV, other electric and electronic gadgets in the retail vending shops.”

It appears that except one or two duties mentioned above, all duties are clerical in nature. Therefore, the nature of work of the 2nd respondent cannot be termed as supervisory in nature.

16.As per Section 2(4) (c) of the Permanent Status Act, this Act is not applicable to a workman, who in a supervisory capacity draws wages exceeding Rs.3,500/- per month. The 2nd respondents claim that they have joined service in the year 2003 and completed their 480 days in the year 2005 itself and at the time of their completion of 480 days they were drawing less than Rs.3,500/- as salary. The management has not placed any materials before this court to show that the 2nd respondents on the date of completion of 480 days were drawing salary exceeding Rs.3,500/-. However, the 2nd respondents have produced salary acquittance pertaining to the year 2005, which shows that their salary was less than Rs.3,500/-.

17. In view of the above provision and the materials placed before this court, this court concludes that though the petitioner management claims that the 2nd respondents are working as Supervisors and as such,

the Permanent Status Act is not applicable to them, the 2nd respondents are workman of the petitioner management as per Section 2(4) of the Permanent Status Act, in view of their nature of work and their salary on the date of completion of 480 days work. Therefore this court is not inclined to accept the contention of the management that the petitioners are not entitled for the relief under the provisions of the Permanent Status Act, in view of the provisions under clause (c) of Sub Section 4 of Section 2 of the Permanent Status Act.

18.The main contention of the petitioner is that the petitioner establishment is the company wholly owned by the State Government and therefore, it is exempted as per Section 4(1)(c) of the Shops Act, which is extracted below:

> *"**4.Exemption.--** (1) Nothing contained in this Act shall apply to*
>
> *(a) ... ...*
>
> *(b) ... ...*
>
> *(c) Establishments under the Central and State Governments, local authorities, the Reserve Bank of India, a railway administration operating any railway as defined in clause (20) of Article 366 of the Constitution and cantonment authorities."*

19.In fact the applicability of Shops Act to the Permanent Status Act is in view of the provision under Section 2(e) of the Permanent Status Act. The establishment is defined under clause (e) of Section 2 of the Permanent Status Act, which reads as follows"

> *"2(e) an establishment as defined in clause (6) of Section 2 of the Tamil Nadu Shops and Establishments Act, 1947."*

20.Sub Section 6 of Section 2 of the Shops Act defines an establishment as under:

> *"2(6) 'establishment means a shop, commercial establishment, restaurant, eating-house, residential hotel, theatre or any place of public amusement or entertainment and includes such establishments as the State Government may by notification declare to be an establishment for the purpose of this Act."*

21.The Shops Act is in existence from 10.02.1948 and this Permanent Status Act is in existence with effect from 01.01.1982. The definition for the establishment alone has been borrowed from the Shops Act, under the Permanent Status Act, as notified in the year 1981. That does not mean that all the provisions under the Shops Act would apply to Permanent Status Act. In fact, a Division Bench of this court considered the question of whether the Permanent Status Act would apply to employees of the State Bank of India in Elayaperumal's case. It was undisputed that the Tamil Nadu Shops and Establishments Act, 1947, did not apply to the State Bank of India. However, this court held that the Permanent Status Act would continue to apply to such establishments unless exemption was specifically granted under Section 9 of the Permanent Status Act. The relevant portions are extracted hereunder:

> *" 12. From a conjoint reading of Section 2(6) with 2(3) of the Shops Act it is seen that the Bank comes within the field of `commercial establishment' included in `the establishment' falling under Clause (e) of Sub-section (3) of Section 2 of the Permanent Status Act. For the purpose of Permanent Status Act, the definition of an 'establishment' as defined in the Shops Act had alone been borrowed and not the other provisions of the Shops Act. In such a situation, once an 'establishment' falls within the definition of 'establishment' under Clause (e) of Sub-section (3) of Section 3 of the Permanent Status Act, the inevitable conclusion is that the provisions of the said Act are*

applicable in construing the conferment of permanent status to any workman, who fulfills the criteria as laid down under Sub-section (1) of Section 3 thereof, notwithstanding anything contained in any other law for the time being in force, unless and until the Government, invoking its power under Section 9 of the Permanent Status Act exempts conditionally or unconditionally any employer or class of employers or any industrial establishments from the provisions thereof. Therefore, once the establishment is defined in the Permanent Status Act by incorporating the definition of establishment in the Shops Act the definition so incorporated in Permanent Status Act become part and parcel of the later Act.

13. The law on the subject is well settled. When an earlier Act or certain of its provisions are incorporated become part and parcel of the later Act as if they had been bodily transposed into it. The incorporation of an earlier Act into a later Act is a legislative device adopted for the sake of convenience in order to avoid verbatim reproduction of the provisions of the earlier Act into the later. But this must be distinguished from a referential legislation which merely contains a reference or the citation of the provisions of an earlier statute. In *a case where a statute is incorporated, by reference, into a second statute, the repeal of the first statute by a third does not affect the second. The later Act along with the incorporated provisions of the earlier Act constitute an independent legislation which is not modified or repealed by a modification or repeal of the earlier Act. However, where in later Act there is a mere reference to an earlier Act, the modification, repeal or amendment of the statute that is referred, will also have an effect on the statute in which it is referred. It is equally well settled that the question whether a former statute is merely referred to or cited in a later statute, or whether it is wholly or partially incorporated therein, is a question of construction."*

14. In Re: Wood's Estate, Ex parte, Works and Buildings Commrs. (1986) 31 Ch D 607 at page 615 Lord Esher, M.R. Observed:

"If a subsequent Act brings into itself by reference some of the clauses of a former Act, the legal effect of that, as has often been held, is to write those sections into the new Act as if they had been actually written in it with the pen, or printed in it."

15. In U.P. Avas Evam Vikas Parishad Vs. Jainul Islam (AIR 1998 SC 1028) the Supreme Court has observed as follows:-

"A subsequent legislation often marks a reference to the earlier legislation so as to make the provisions of the earlier legislation applicable to matters covered by the later legislation. Such a legislation may either be (i) a referential legislation which merely contains a reference to or the citation of the provisions of the earlier statute; or (ii) a legislation by incorporation whereunder the provisions of the earlier legislation to which reference is made are incorporated into the later legislation by reference. If it is a referential legislation the provisions of the earlier legislation to which reference is made in the subsequent legislation would be applicable as it stands on the date of application of such earlier legislation to matters referred to in the subsequent legislation. In other words, any amendment made in the earlier legislation after the date of enactment of the subsequent legislation would also be applicable. But if it is a legislation by incorporation the rule of construction is that repeal of the earlier stature which is incorporated does not affect operation of the

subsequent statute in which it has been incorporated. So also any amendment in the statute which has been so incorporated that is made after the date of incorporation of such statute does not affect the subsequent statute in which it is incorporated and the provisions of the statute which have been incorporated would remain the same as they were at the time of incorporation and the subsequent amendments are not be read in the subsequent legislation."

16. This is a reiteration of the principle as laid down by earlier judgments of the Supreme Court in a catena of decisions including Mary Roy Vs. State of Kerala (1986 (2) SCC 209); Ramsarup Vs. Munshi (AIR 1963 SC 553: Ram Kripal Bhagat Vs. State of Bihar (AIR 1970 SC 951); Bolant Ores Ltd. Vs. State of Orissa (AIR 1975 SC.

17); Mahindra and Mahindra Ltd. Vs. Union of India (AIR 1979 SC 798).

17. In the instant case, the definition of establishment is virtually lifted from the Shops Act and has been incorporated in the Permanent Status Act. Therefore, the provisions of Clause (c) of Sub-Section (1) of Section 4 of the Shops Act which exempt the *establishments under the Central Government is of no consequence and the Permanent Status Act would continue to apply for such establishments unless and until exemption has been obtained from the State Government under Section 9 of the Permanent Status Act. In C.V.Raman's Case which was referred to by the learned single Judge, the Court was concerned with the question as to whether the provisions of Shops Act would be applicable to the Nationalised Bank in view of exemption."*

22.This order of the Division Bench was followed by another Division Bench in WA(MD)No.490 of 2020 in Selvam's case, as under:

"In effect, in Elayaperumal, the Court concluded that the definition of "establishment" in S.2(6) of the TN Shops and Establishments Act is incorporated by reference in the TN Permanent Status Act but not S.4 of the TN Shops and Establishments Act, which contains the exemption in respect of Central and State Government establishments. We respectfully concur. Air India Limited, the first Respondent herein, is also an entity that is majority owned and controlled by the Central Government. Therefore, the TN Permanent Status Act applies unless an exemption is obtained under Section 9

thereof. The admitted position is that no such exemption was granted. Hence, the Industrial Tribunal was justified in directing regularization. Thus, we conclude that the learned Single Judge was not justified in setting aside the Award of the Tribunal by largely relying upon the judgment in Umadevi. Consequently, the impugned order of the Writ Court is set aside and the Award of the Industrial Tribunal is restored."

23.Aggrieved by the decision of this court in ***S. Selvam vs. the Senior Manager-HRD, Air India Limited and other [2020 SCC Online Mad 1178]***, Air India challenged the judgment before the Hon'ble Supreme Court by way of Special Leave Petition, which was dismissed on 11.04.2022 as under:

"We find no reason to interfere with the order passed by the High Court in our jurisdiction under Article 136 of the Constitution.

The Petition is accordingly, dismissed."

24.In the Special Leave Petition filed by the SBI as against the findings of the Division Bench in Elayaperumal's case and another, the

Hon'ble Supreme Court has entertained the appeal and granted an order of interim stay that the legal issue raised needs to be considered. However, the grant of this interim stay has no effect on the legal issue raised. It is now a well settled principle of law that the ratio of a judgment is the reason assigned in support thereof. While a Court of appeal stays the operation of the judgment, it only stays the further implementation, as between the parties, of the operative portion thereof. But this does not mean that the court has expressed opinion on the legal issues involved in the appeal. *In **M/s. Sree Chamundi Mopeds Ltd. v. Church of SIT Association [AIR 1992 SC 1439]***, the Hon’ble Supreme Court has held that an order of interim stay only means that the order will not be operative from the date of the order of the stay and the final issue is decided only when the appeal is disposed. The relevant portions are extracted as under:

> *“10….While considering the effect of an interim order staying the operation of the order under challenge, a distinction has to be made between quashing of an order and stay of operation of an order. Quashing of an order results in the restoration of the position as it stood on the date of the passing of the order which has been*

quashed. ***The stay of operation of an order does not, however, lead to such a result. It only means that the order which has been stayed would not be operative from the date of the passing of the stay order and it does not mean that the said order has been wiped out from existence****....”*

25.Moreover during the final hearing since the senior counsel appearing for the petitioners therein has suggested that the issue can be resolved by paying lump sum compensation to the respondents therein and therefore, the same was disposed by the Hon'ble Supreme Court by order dated 31.07.2025. However based on the submission of the senior counsel for the appellants in the above civil appeals, that the submissions made may have some effect in the case of the State Bank in other states and hence the question of law may be left open and therefore, the Hon'ble Supreme Court has observed as under:

“7.As in the appeals, the legal issue regarding application of the 1981 Act has been raised which, according to the learned senior counsel for the appellants, may have effect in cases of the Bank in other States as well, hence, we leave this question of law open, as the dispute in the present appeals otherwise has been settled and not considered on merits of the controversy.”

26.This observation of the Hon'ble Supreme Court based on the submission of the senior counsel after settling the issue cannot be taken in favour of the petitioner management when the subsequent judgment of the Division Bench followed by the ratio laid down by the Division Bench in Elayaperumal's case and in Selvam's case, has already been upheld by the Hon'ble Supreme Court.

27.The learned senior counsel has also referred to some of the orders of the learned single judge in dealing with similar matters on the writ petition filed by the TASMAC by referring the provisions under clause (c) of Sub Section 1 of Section 4 of the Shops Act cannot hold good in view of the authoritative pronouncement made by the Division Bench of this court in Elayaperumal's case and Selvam's case, cited supra, as confirmed by the Hon'ble Supreme Court.

28.In view of the above discussion, the orders of the Hon'ble Supreme Court and the orders of the Division Bench of this Court, this court is not inclined to interfere with the impugned orders of the 1st respondents. Accordingly, these writ petitions are dismissed. No costs. Consequently connected miscellaneous petitions are closed.

24.11.2025

DSK

Index: Yes/No

NCC: Yes/No.

To

1.The Assistant Commissioner of Labour (Enforcement),
The Tamil Nadu Industrial Establishment
(Conferment of Permanent Status to Workmen) Act, 1981,
Madurai.

2.The Assistant Commissioner of Labour (Enforcement),
The Tamil Nadu Industrial Establishment
(Conferment of Permanent Status to Workmen) Act, 1981,
Virudhunagar.

3.The District Manager,
Tamil Nadu State Marketing Corporation Limited,
Kappalur, Madurai South,
Madurai District.

4.The District Manager,
Tamil Nadu State Marketing Corporation Limited (TASMAC),
29-34, SIDCO Industrial,
Soolakarai, Virudhunagar District.

B.PUGALENDHI.J.,

DSK

**WP(MD)Nos.7498 to 7500 and 7859 of 2024,
21689 to 21693, 22178 to 22197,
22921 to 22945, 23668 to 23700,
31769 to 31776 and
32244 to 32253 of 2025**

24.11.2025