

W.P.(MD) No.3059 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On : 28.07.2025

Pronounced On : 08.08.2025

CORAM:

THE HONOURABLE DR. JUSTICE A.D. MARIA CLETE

W.P. (MD) No.3059 of 2017

and

W.M.P.(MD)No.2436 of 2017

1.K.Gunasekaran (Died)

S/o.R.Kamatchi
23-C, Agraharam,
Ramarkovil Street,
Palanganatham,
Madurai -3.

2.Devasena,

W/o.K.Gunasekaran,

3. Suresh Babu,

S/o.K.Gunasekaran,

4. Chitra Devi,

D/o K.Gunasekaran,

5.Rajeshkumar,

S/o.K Gunasekaran,

Petitioners 2 to 5 are residing at:

23-C, Agraharam, Ramarkovil Street,
Palanganatham,
Madurai 625 003.

(Petitioners 2 to 5 are substituted vide court order dated 20.02.2025 in WMP(MD)No.3413/2025 in WP(MD)No.3059/2017 by SSYJ)

... Petitioners

Vs.



W.P.(MD) No.3059 of 2017

1.The Management of Tamil Nadu
State Transport Corporation
(Madurai) Ltd.,
Represented by its
Managing Director,
Bye Pass Road,
Madurai - 10.

2.The General Manager,
Tamil Nadu State Transport Corporation
(Madurai) Ltd.,
Mddurai Region,
Madurai.

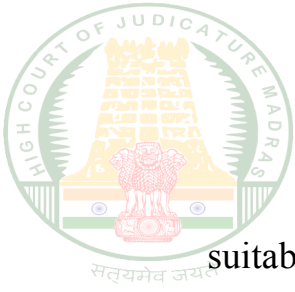
3.The Administrator,
Tamil Nadu State Transport Corporation
Pension Fund Trust,
Thiruvalluvar House,
Pallavan Salai, Chennai – 2.

... Respondents

PRAYER in W.P.:

To issue a Writ, order or direction or any other writ in the nature of a Writ of Certiorarified Mandamus calling for the records pertaining to the impugned order of the 2nd respondent in Ref:Koo.Sa.Sattam/W.P.No. 20982/2014 dated 27.06.2016, quash the same and consequently directing the respondents to sanction and grant superannuation pension to the petitioner by adding/counting the period of service from the date of dismissal i.e., with effect from 23.07.1983 to the date of reinstatement i.e., till 29.05.2010 along with the admitted period of service ordered to be counted for the purpose of pension in W.P.(MD)No.20982/2014 and to direct the respondents to pay him monthly pension, gratuity, commuted value of pension, leave salary and all other attendant benefits with arrears payable to him with effect from 01.04.2014 together with

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suitable rate of interest payable from 01.04.2014 to till the date of actual payment and pass such further or other orders as this Hon'ble Court may deem fit and proper in the circumstances of the case and thus render justice.

PRAYER in W.M.P:

To dispense with the production of the original impugned order in Ref :Koo.Sa.Sattam/W.P.No.20982/2014 dated 27.06.2016 passed by the 2nd respondent pending disposal of the above writ petition and thus render justice.

APPEARANCE OF PARTIES:

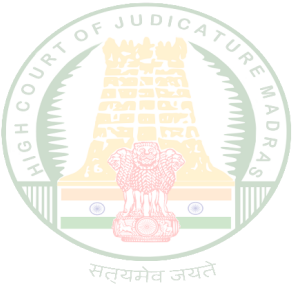
For Petitioner : Mr.A. Rahul, Advocate

For Respondents : Mr.S.C.Herold Singh, Standing Counsel
for R1 & R2
: Mr.L.Jeen Felix, Advocate for R3

J U D G M E N T

Heard.

2. The original writ petitioner is no longer alive. At the time of instituting the writ petition, he was 61 years old and had filed it on 21.02.2017, nearly three years after his retirement, dated 31.03.2014. He passed away on 16.05.2017 during the Pendency of the proceedings, and his legal representatives have since been brought on record.



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3. The original petitioner was employed as a Conductor in the 2nd Respondent Transport Corporation. In this writ petition, he assailed the order dated 27.06.2016 of the 2nd Respondent, whereby his request to reckon the period from his dismissal on 23.07.1983 until his reinstatement on 29.05.2010 for pensionary benefits was rejected. The rejection was premised on the ground that, as the Labour Court had denied him back wages, the said period could not be counted towards qualifying service for pension.

4. It is, therefore, necessary to examine the issue in light of the award passed by the Labour Court, Madurai, in I.D. No. 44 of 2000. The original petitioner was appointed as a Conductor in March 1977, and his services were confirmed on 01.08.1979. In 27.07.1983, disciplinary proceedings were initiated against him for having collected fare from passengers without issuing tickets, thereby causing a loss of Rs. 26.55 to the Corporation. Following an inquiry, he was dismissed from service by order dated 04.01.1984.



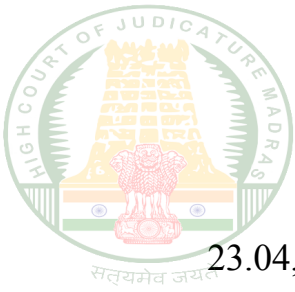
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5. At the relevant time, a bonus dispute was pending before the Industrial Tribunal, Chennai, in I.D. No. 62 of 1982. During this period, the Transport Corporation filed a petition under Section 33(2)(b) of the Industrial Disputes Act, seeking the Tribunal's approval for the petitioner's dismissal. This petition was numbered as A.P. No. 10 of 1984. The Industrial Tribunal dismissed the approval petition, with the result that the petitioner's dismissal was rendered ineffective, and in law, he was deemed never to have been dismissed from service.

6. Aggrieved by the Tribunal's order, the 2nd Respondent filed W.P. No. 12278 of 1985 before this Court challenging the same. However, during the pendency of the writ petition, and without prejudice to its contentions, the original petitioner was reinstated as a Conductor with effect from 19.04.1985. In the meantime, the respondent Corporation underwent bifurcation into two separate entities, and the petitioner was absorbed into the services of the Corporation headquartered at Dindigul.

7. Following his reinstatement and absorption into the new Corporation, the petitioner was granted his first annual increment on



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23.04,1986. Upon completion of five years of service, his performance was reviewed on 01.08.1991 for the purpose of granting a higher pay scale. Subsequently, the writ petition filed by the respondent Corporation in W.P.No.12278 of 1985 was taken up for hearing before this Court. Without entering into the merits, this Court remanded the matter to the Tribunal for fresh consideration.

8. The order dated 02.01.1996 passed by this Court reads as follows:

“The arguments of the learned Advocate of both sides are heard.

2. The learned Advocate for the 2nd respondent stated across the Bar that he is not arguing the matter on merits and sought for remand. Having considered the entire materials available on record, I am of the clear opinion that it is just and proper to accept the request of the learned Advocate for the 2nd respondent to remand the matter to the 1st respondent for fresh disposal according to law.

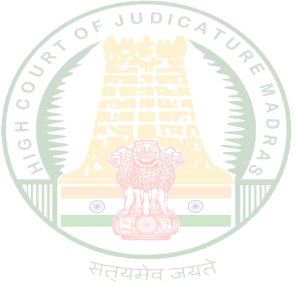
3. In the result, this Writ Petition is allowed and the order passed by the 1st respondent in Petition No. 10 of 1984 in I.D. No. 62 of 1982 dated 21.01.1985 is hereby set aside and the matter is remanded to the 1st respondent for fresh disposal according to law after giving an opportunity to both sides; but in the circumstances without costs.”



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9. Pursuant to the remand, the Industrial Tribunal, Chennai, took up the matter for fresh disposal in terms of this Court's directions. However, as the original petitioner, being the respondent in the approval petition, failed appear, he was set *ex parte* in A.P. No. 10 of 1984, By order dated 24.02.1997, the Tribunal granted approval for his dismissal. Relying on the said order, the 2nd Respondent Corporation, by proceedings dated 25.02.1998, dismissed the petitioner from service with retrospective effect from 23.07.1983, the date of his initial suspension.

10. Since the grant of approval for dismissal under Section 33(2)(b) does not preclude the raising of a regular industrial dispute under Section 2A(2), the petitioner initiated conciliation proceedings before the Government Labour Officer. Upon receipt of the failure report, he filed a claim statement before the Labour Court, Madurai. The dispute was registered as I.D.No. 44 of 2000, and notice was issued to the Corporation. The Labour Court found that the domestic inquiry had been conducted in accordance with law and that the charges against the petitioner stood proved.



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11. However, in exercise of its powers under Section 11A, the

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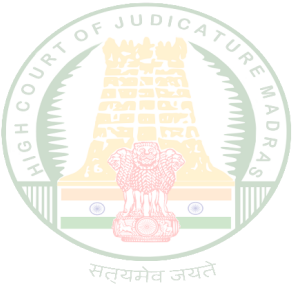
Labour Court, in its award dated 05.08.2009, held as follows:

“மனுதாரருக்கு வழங்கப்பட்டுள்ள தண்டனையை கவனத்திற்கு கொள்ளும்பொழுது மனுதாரருக்கு வழங்கப்பட்டுள்ள தண்டனை மிகவும் அதிகமானது என்பதாகவே தீர்மானிக்க வேண்டியுள்ளது. மனுதாரருக்கு வழங்கப்படக்கூடிய வேலை இழந்த நாட்களுக்கான ஊதிய இழப்பே போதுமான தண்டனை என்பதாக தீர்மானித்து மனுதாரருக்கு மீண்டும் பணி தொடர்ச்சியுடன் கூடிய பணி வழங்குவதைப் பொறுத்து இந்த மனுவை பகுதியாக அனுமதிக்கலாம் என்று இந்தப் பிரச்சினைகளுக்கு தீர்வு காண்கின்றேன்.

9. முடிவாக இந்த தொழில் தகராறு பகுதியான அனுமதிக்கப்படுகின்றது. மனுதாரருக்கு எதிர்மனுதாரர் 2 மாதங்களுக்குள் மீண்டும் பணி தொடர்ச்சியுடன் கூடிய பணி வழங்க வேண்டும் என்று தீர்வும் பிறப்பிக்கப்படுகின்றது. மனுதாரர் மனுவில் கோரியுள்ள இதர பரிகாரங்களைப் பொறுத்து மனு தள்ளுபடி செய்யப்படுகின்றது. செலவு தொகை இல்லை.□

12. Thus, while directing reinstatement without back wages, the Labour Court made it clear that the original petitioner was entitled to continuity of service. The 2nd Respondent Corporation did not challenge this award by way of a writ petition. On the contrary, by order dated 29.05.2010, it reinstated the petitioner. The order stated as follows:

“திரு.K.குணசேகரன், முன்னாள் நடத்துனர், 60387 தேனி கிளை என்பவர் பார்வையில் கண்டுள்ள தொழிலாளர் நீதிமன்ற தீர்ப்பு மற்றும் நிருவாக குழுவின் தீர்மானம் அடிப்படையில் 29.05.2010-ந் தேதி முதல் மீண்டும் பணித் தொடர்ச்சியுடனும் பின்னீட்டுச் சம்பளம் இல்லாமலும் (With continuity of service but without



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back wages) பணி நியமனம் செய்யப்படுகிறார்.

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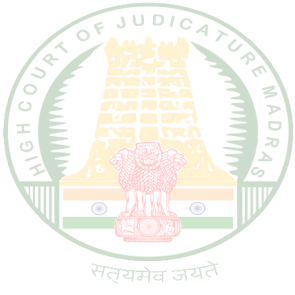
இவர் இக்கழகத்தில் அவ்வப்போது
நடைமுறையில் உள்ள சட்ட திட்டங்களுக்கு
உட்பட்டு பணிபுரிய வேண்டும்.□

13. Thereafter, the petitioner served in the Corporation without any complaint and retired on attaining the age of superannuation on 31.03.2014. Upon being denied pension, he filed W.P.(MD) No. 20982 of 2014 seeking a direction to the Corporation for its grant. This Court, by order dated 12.04.2016, passed the following:

“8. So far as the disputed question viz., "continuity of service" and other benefits are concerned, it is open to the petitioner to make a representation to the second respondent and the second respondent shall consider and dispose of the same within a period of four weeks from the date of receipt of such representation.”

14. Pursuant to the said direction, the 2nd Respondent passed the impugned order, assigning the following reasons for declining to grant relief :-

□இந்நிலையில் பார்வை 2-ல் காணும் தங்களது மனு தமிழ்நாடு அரசு போக்குவரத்து கழக ஊழியர்கள் ஓய்வூதிய நம்பகம் விதி எண்.13 [C] “if there is non-contributory period during the service it shall not be counted for arriving the actual service”-ன் படி தாங்கள் பணிபுரியாத காலத்தை [Non-employment period] ஓய்வூதிய கணக்கீட்டிற்கு எடுத்துக்கொள்ள இயலாது எனத் தெரிவித்துக் கொள்கிறோம். ஏனவே தங்களது மனு உயர்நீதிமன்ற உத்தரவிற்கிணங்க (Accordingly your



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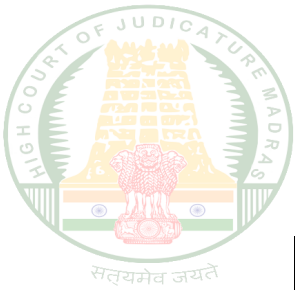
Representation is disposed off) முடித்து
வைக்கப்படுகிறது.□

15. Challenging the said order, the present writ petition has been filed. It is unclear why the respondents have chosen to create difficulties for the original petitioner, and, after his demise, for his legal representatives. In view of the award passed by the Labour Court, there can be no dispute that the petitioner's service is to be treated as continuous; accordingly, he is entitled to reckon his service from 1997 until his retirement in 2014.

16. In W.P.(MD)No.20982 of 2014, upon notice from this Court, the respondent filed a counter affidavit dated Nil, March 2016. In paragraph 6 thereof, the 2nd Respondent set out the following reason for denying pension:

"6. I state that the Petitioner had rendered a total service of 7 years 9 months and 24 days only. Whereas, the Tamil Nadu State Transport Corporation Pension Fund Rules have filed a Minimum 10 years of qualifying service for eligibility of Pension. As per TNSTC Employees Pension Fund Trust Rule No.21 the Petitioner is not eligible for monthly pension and commutation. The Petitioner's Service Details as follows:

Date of service	01.08.1979	
Date of Dismissed	23.07.1983	
Date of Reinstatement		23.04.1985
Date of Stopped from service		25.02.1998
Date of Reinstatement	29.05.2010	



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Date of Superannuation	31.03.2014	
Total Eligibility Service	7 Years, 9 Months, 24 days	

17. The calculation made by the respondent is wholly untenable. It is pertinent to note that the original petitioner was appointed in 1977 and confirmed in 1979. Although he was sought to be dismissed by order dated 04.01.1984 with effect from 23.07.1983, an industrial dispute was then pending before the Industrial Tribunal, Chennai, leading to the filing of an approval petition seeking confirmation of his dismissal. That petition was dismissed on 21.01.1985, which in law meant that the petitioner was deemed to have continued in service as though no order of dismissal had ever been passed.

18. Although the respondent Corporation had filed W.P. No. 12278 of 1985, the petitioner was reinstated in service by order dated 19.04.1985, albeit without prejudice to the outcome of the writ petition. Throughout the pendency of the writ proceedings, the petitioner continued in service and drew his wages. In fact, following his reinstatement, the respondent, while treating it as fresh employment, granted him his first annual increment on 23.04.1986 and subsequently reviewed his service for the

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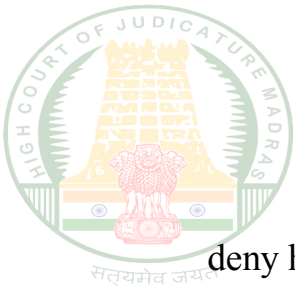
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grant of senior scale, which was conferred on 01.08.1991.

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19. Even after the writ petition was allowed by order dated 02.01.1996, the respondent continued the petitioner in service, pending the outcome of the Tribunal's fresh decision, which was ultimately rendered on 24.02.1997. Following the approval order, the respondent once again dismissed the petitioner on 25.02.1998. This means that from 19.04.1985 until 25.02.1998, the petitioner had in fact worked for the Corporation and earned his salary.

20. As already noted, in the dispute raised by the petitioner, the Labour Court in I.D. No. 44 of 2000 passed an award in his favour, directing not only reinstatement but also continuity of service, though without back wages. Accordingly, during the so-called period of non-employment, the petitioner was, save for brief intervals, in service and drawing wages; such service cannot lawfully be ignored by the respondent. In any event, the Labour Court's award granting continuity of service from the original date of dismissal until reinstatement is binding on the respondent. Following his restoration, the petitioner served until his retirement in 2014. It is, therefore, wholly unjustified for the respondent to



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deny him continuity of service for the entire period.

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21. In this context, learned counsel for the petitioner placed reliance on the judgment of a Division Bench of this Court in W.A. No. 2302 of 2021, dated 03.02.2022, It is apposite to extract the following passages from paragraphs 5.6 and 8 thereof:

“5.6. When the petition was taken up for final hearing on 15.03.2021, it was disposed of without any interference in the impugned order (rejecting approval application). Since the workman would be entitled to all consequential benefits, considering the concession given on behalf of the workman, learned Single Judge ordered that the workman shall not be entitled to back wages for the period from 25.03.2013 to 19.07.2015 and further providing that the said period shall be counted as duty period for all purposes, including for the purpose of calculation of pension. The payment was ordered to be made within a period of six weeks.

8. Once the action of the Management is held to be illegal, the said action is illegal for all purposes and for all consequences. In a given case, either Labour Court or the Writ Court, in the facts of the case may exercise discretion, on permissible parameters, of granting / not granting back wages but exercise of that power under no circumstances can be read as exclusion of that service as non-pensionable service as sought to be canvassed on behalf of the appellant / Management. We make it clear that even in those cases, where back wages is not granted for valid reason, the very fact that the termination was held to be illegal, the period during which the workman had remained out of employment for no fault attributable to him, has to be counted as pensionable service unless it is so specifically ordered / provided by the Court. Even with the aid of stipulation 10 e as quoted above,



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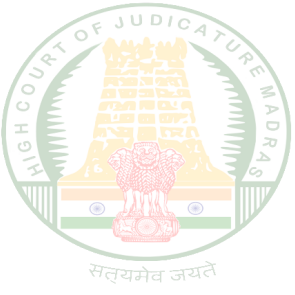
permitting the Management or the Pension Trust to exclude the said period as non pensionable service would result in acceptance of the said termination to be valid for limited purpose which is already held to be illegal. No One can be permitted to take advantage of / benefited from his Own wrong. The workman can not be asked to suffer, for not being in the employment for the fault of his employer. Keeping this in view, we find that, harmonious reading of all the decisions relied by learned advocate for the Pension Trust would lead to this conclusion only. So far financial constraints are concerned, it is a matter to be reconciled by the Pension Trust and the Management of the respective Transport Corporations. Such administrative difficulties can not be permitted to be stretched to the extent of reduction of pension for no fault on the part of the workman."

22. In view of the foregoing, the writ petition is allowed. The respondents are directed to reckon the entire service of the original petitioner (now deceased) for the purpose of computing pension and other attendant benefits and to extend such benefits to the present petitioners, who are his legal heirs. The respondents shall pass appropriate orders within 30 days from the date of receipt of this order and duly communicate the same to the petitioners. No costs. Consequently, W.M.P.(MD)No. 2436 of 2017 is closed.

08.08.2025

Index: Yes / No
Speaking Order / Non-speaking Order
Neutral Citation : Yes / No
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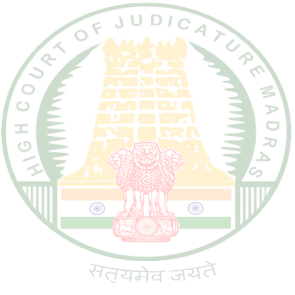
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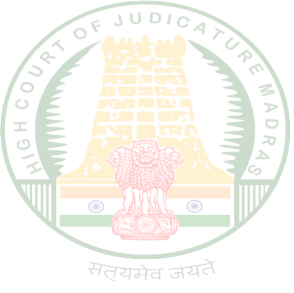


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Copy to:

- 1.The Management of Tamil Nadu
State Transport Corporation
(Madurai) Ltd.,
Represented by its
Managing Director,
Bye Pass Road,
Madurai - 10.
- 2.The General Manager,
Tamil Nadu State Transport Corporation
(Madurai) Ltd.,
Mddurai Region,
Madurai.
- 3.The Administrator,
Tamil Nadu State Transport Corporation
Pension Fund Trust,
Thiruvalluvar House,
Pallavan Salai,
Chennai – 2.



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DR. A.D. MARIA CLETE, J.

LS

Pre-delivery Judgment made in
W.P. (MD) No.3059 of 2017

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