

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 15.03.2018

Coram

THE HONOURABLE Mr. JUSTICE K.K.SASIDHARAN
AND
THE HONOURABLE Mr. JUSTICE P.VELMURUGAN

W.A.No.1570 of 2012
and M.P.No.1 of 2012

The General Manager
Tamil Nadu State Transport Corporation
(Villupuram Division III) Ltd.,
Kancheepuram. ... Appellant/2nd Respondent

Vs.

1.M.Allah Basha ...1st Respondent/Petitioner

2.The Secretary to Government
Transport (R.W.I) Department
Secretariat, Chennai 600 009.
...2nd Respondent/1st Respondent

Prayer: Writ Appeal filed under Clause 15 of Letters Patent to
set-aside the order dated 28.02.2012 made in W.P.No.27665 of
2007 on the file of this Court.

W.P.No. 27665/2007:

Writ Petition filed under Article 226 of the constitution of
India to issue a Writ of Certiorarified Mandamus, calling for
the records of the second respondent relating to the order in
Letter No. 3772/Theervu2)/Tha Aa Po. Ka. Villu. kanchip/.06
dated 17/11/2005 and to quash the same and direct the
respondents to take steps to grant pension to the petitioner
the service rendered in the erstwhile Tamilnadu State Transport
Department in accordance with the G.O.Ms.No. 42 Transport)
DBC) Department dated 27-05-2005.

For Appellant : Mr.S.S.Swaminathan
For R2 : Mrs.A.Sri Jayanthi
Special Government Pleader
R1 : No Appearance

J U D G M E N T

[Judgment of the Court was delivered by K.K.SASIDHARAN,
J.]

The learned single Judge taking into account the service of the first respondent before his regularisation, directed the appellant to sanction him pension after quashing the order passed by the General Manager, Tamil Nadu State Transport Corporation, Kancheepuram. The order is under challenge at the instance of the State Transport Corporation.

2. The order passed by the learned single Judge indicates that the first respondent has worked for 9 years 5 months and 26 days. Since the appellant has taken up a contention that the first respondent has not completed 10 years of continuous service so as to enable him to claim pension, we have directed the learned counsel for the appellant to produce the records, including the past records relating to the service of the first respondent in the Transport Department.

3. When the appeal is taken up for hearing today, the learned counsel for the appellant produced a memo indicating that the first respondent worked for a period of one year in the erstwhile Transport Department. It was a temporary service. The first respondent is eligible to take 50% of the total service for the purpose of fixing his pension. The learned counsel for the appellant fairly submitted that the appellant is not in possession of the records and the period of one year was taken on a rough basis. It is the contention of the first respondent that he has worked for more than one year and as such, in case 50% of the earlier service is taken into account, he would be eligible for pension.

4. The first respondent claimed the benefit of the pension taking into account his earlier service. It is for the appellant to plead and prove that the service of the second respondent was from a particular date in the erstwhile Transport Department before his regularisation. No such records were produced before the writ court or in the appeal. The rough estimate taken by the appellant cannot be the basis for fixing the total service of the first respondent. The appellant must have produced the records to substantiate the contention that the first respondent is not qualified for pension. The benefit of the loss of records should be given to the first respondent. We are, therefore, of the view that the learned single Judge was correct in allowing the writ petition.

5. The factual matrix very clearly indicates that in case the earlier service was taken into account, the first respondent would be eligible for pension, he having completed 10 years of total service. We are, therefore, of the view that the order passed by the learned single Judge does not warrant interference.

In the upshot, we dismiss the intra court appeal. No costs.
Consequently, connected miscellaneous petition is closed.

-s/d-
Assistant Registrar (CS-IX)

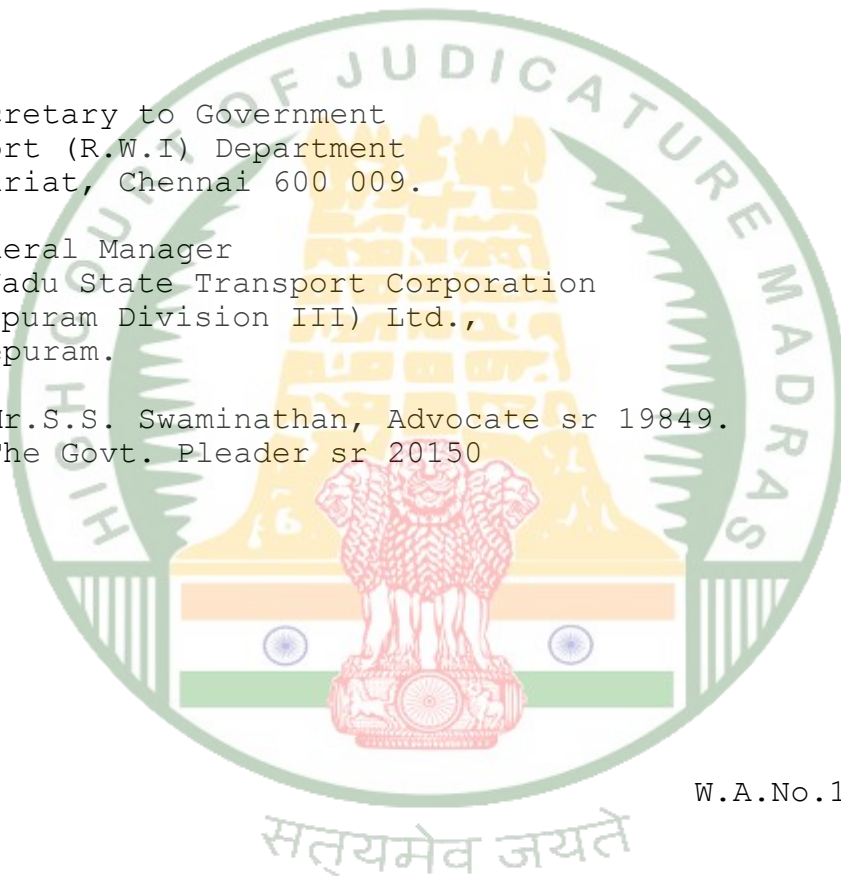
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Sub-Assistant Registrar

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To

1. The Secretary to Government
Transport (R.W.I) Department
Secretariat, Chennai 600 009.
 2. The General Manager
Tamil Nadu State Transport Corporation
(Villupuram Division III) Ltd.,
Kancheepuram.
- +1 CC to Mr.S.S. Swaminathan, Advocate sr 19849.
+1 CC to The Govt. Pleader sr 20150



W.A.No.1570 of 2012

SSV(CO)
SP(09/04/2018)

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