

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT****Dated : 24.01.2018****CORAM :****THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN****W.P(MD)No.19921, 20616 to 20624 of 2017****and****WP(MD)Nos.20672 to 20675 of 2017**

S.Chorimuthu	....	Petitioner in W.P(MD).No.19921/2017
I.Mariadass	....	Petitioner in W.P(MD).No.20616/2017
P.Ananchaperumal	....	Petitioner in W.P(MD).No.20617/2017
E.Krishnaswamy Naidu	....	Petitioner in W.P(MD).No.20618/2017
S.Ananthakrishnan	....	Petitioner in W.P(MD).No.20619/2017
M.Subbaiah	....	Petitioner in W.P(MD).No.20620/2017
D.Murugesu Pillai	....	Petitioner in W.P(MD).No.20621/2017
M.Nadarajan	....	Petitioner in W.P(MD).No.20622/2017
V.Ganesa Pillai	....	Petitioner in W.P(MD).No.20623/2017
S.Bahuleyan Nair	....	Petitioner in W.P(MD).No.20624/2017
P.Ramachandran	....	Petitioner in W.P(MD).No.20672/2017
S.Gangadharan	....	Petitioner in W.P(MD).No.20673/2017
V.Ramasubramania Achari	....	Petitioner in W.P(MD).No.20674/2017
B.Sivakamiammal	....	Petitioner in W.P(MD).No.20675/2017

Vs.

1. The Government of Tamil Nadu,
Rep.by its Commissioner and Secretary,
Transport Department,
Fort St. George, Chennai.
2. The Government of Tamil Nadu,
Rep.by its Secretary,
Finance Department,
Fort St. George, Chennai.
3. The Principal Accountant General,
Accountants and Entitlements,
361, Anna Salai,
Chennai - 600 018. Respondents 1 to 3 in all WPs
4. The Managing Director,
TNSTC Department,
Nesamani Nagar, Rani Thottam,
Nagercoil, Kanyakumari District. 4th Respondent in
WP(MD).Nos.19921,20616 to 20621/17,20623,20624/17,
20672 to 20674/17



The Managing Director,
TNSTC Department,
Kattabomman Transport Corporation Ltd.,
Tirunelveli,
Tirunelveli District. .. 4th Respondent in WP(MD).No.20622/2017

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The Managing Director,
Tiruvaluvar Transport Corporation,
Pallavan Salai,
Chennai - 600 002. .. 4th Respondent in WP(MD).No.20675/2017

Prayer : Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus, to direct the respondents 1 to 3 to implement the order of the Hon'ble Apex Court in S.L.P.No.19016 of 2008 dated 07.02.2013 and order in S.L.A(C)No.10152 of 2016 on 04.04.2016 and G.O.Ms.(3D)No.21, Transport (RW1) Department dated 06.05.2016 and on the basis of their own undertaking given before the Hon'ble Division Bench Contempt Application No.290 to 292 of 2015 dated 24.02.2015 by refixing and remitting the petitioner's pension, arrears with emoluments and with interest at the rate of 18% per annum in his pension

- 1)pass book order No.A560737 Huzur Treasury, Nagercoil, Kanyakumari District. -Prayer in W.P(MD).No.19921/2017
- 2)pass book order No.C380475/TPT Huzur Treasury, Nagercoil,-Prayer in W.P(MD).No.20616/2017
- 3)pass book order No.C304758/TPT Eraniel Sub Treasury, -Prayer in W.P(MD).No.20617/2017
- 4)pass book order No.C380647/TPT Thoivalai Sub Treasury @ Boothapandi -Prayer in W.P(MD).No.20618/2017
- 5)pass book order No.A560772 Eraniel Sub Treasury
- Prayer in W.P(MD).No.20619/2017
- 6)pass book order No.A560672 Huzur Treasury at Nagercoil
- Prayer in W.P(MD).No.20620/2017
- 7)pass book order No.A560538 Eraniel Sub Treasury
- Prayer in W.P(MD).No.20621/2017
- 8)pass book order No.A551941 Thoivalai Sub Treasury at Boothapandi
- Prayer in W.P(MD).No.20622/2017
- 9)pass book order No.A552249 Eraniel Sub Treasury
- Prayer in W.P(MD).No.20623/2017
- 10)pass book order No.A560474 Sub Treasury, Vilavancode
- Prayer in W.P(MD).No.20624/2017
- 11)pass book order No.C380475/TPT Huzur Treasury, Nagercoil
- Prayer in W.P(MD).No.20672/2017
- 12)pass book order No.C380728/TPT Huzur Treasury, Nagercoil
- Prayer in W.P(MD).No.20673/2017
- 13)pass book order No.C380475/TPT Huzur Treasury, Nagercoil
- Prayer in W.P(MD).No.20674/2017
- 14)pass book order No.A560737/TPT Huzur Treasury, Nagercoil, Kanyakumari District - Prayer in W.P(MD).No.20675/2017



For Petitioner

: Mr. Joseph Thatheus Jerome

For Respondents

: Mrs. S. Srimathy,
Special Government Pleader
for R1 and R2

Mr. P. Gunasekaran for R3

Mr. S. Sathiyasingh for R4

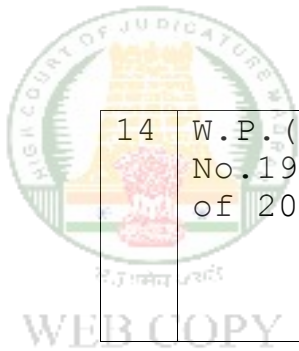
COMMON ORDER

The writ petitioners were originally appointed in the Madras Transport Corporation. Following the creation of the various public transport corporations, the petitioners were absorbed in various transport corporations. All the writ petitioners retired from service long back. The service details of the individual writ petitioners is set out in the following table :

S. No	Case No	Petitioner's Name	Date of Appointment and Designation	Date of Retirement And Designation
1	W.P. (MD) No.20672 of 2017	P. Ramachandran	26.06.1965 Mechanic Madras state Transport Corporation	30.11.1991 Tradesman Kattabomman transport Corporation
2	W.P. (MD) No.20673 of 2017	S. Ganagadharan	06.02.1963 Conductor Madras State Transport Corporation	01.12.1990 Conductor Nesamony Transport Corporation.
3	W.P. (MD) No.60674 of 2017	P. Ramasubramania Achari	13.11.1963 Mechanic Madras state Transport Corporation	31.05.1997 Fore man Nesamony Transport Corporation.
4	W.P. (MD) No.20675 of 2017	B. Sivakamiammal W/o. Late. M. Balasubramaniyn	01.11.1956 Conductor Thiruvanthapum Metropolitan Transport Department	30.04.1985 Senior Driver Thiruvallur Transport Corporation.
5	W.P. (MD) No.20616 of 2017	I. Mariadass	01.10.1966 Liner Madras state Transport Corporation	28.02.1991 Liner Nesamony Transport Corporation.



6	W.P. (MD) No.20617 of 2017	P.Ananchaperumal	28.06.1965 Mechanic Madras state Transport Corporation	30.04.1996 Tradesman Special Grade Nesamony Transport Corporation.
7	W.P. (MD) No.20618 of 2017	E.Krishnaswamy	26.06.1965Mechanic Madras state Transport Corporation	31.08.1994 Tradesman Special Grade Nesamony Transport Corporation.
8	W.P. (MD) No.20619 of 2017	S.Ananthakrishnan	14.11.1963Mechanic Madras state Transport Corporation	31.08.1997 Fore man Nesamony Transport Corporation.
9	W.P. (MD) No.20620 of 2017	M.Subbaiah	23.03.1963 Driver Madras state Transport Corporation	31.01.1996 Driving Instructor Nesamony Transport Corporation.
10	W.P. (MD) No.20621 of 2017	T.Murugesapillai	12.11.1963 Pharmacist Madras state Transport Corporation	31.01.1995 Tradesman Special Grade Nesamony Transport Corporation.
11	W.P. (MD) No.20622 of 2017	M.Nadarajan	15.03.1960 Conductor Madras state Transport Corporation	31.05.1994 Traffic Manager Nesamony Transport Corporation.
12	W.P. (MD) No.20623 of 2017	V.Ganesapillai	01.01.1964 Pharmacist Madras state Transport Corporation	30.04.1994 Chief Pharmacist Nesamony Transport Corporation.
13	W.P. (MD) No.20624 of 2017	S.Bahuleyan Nair	13.11.1963 Pharmacist Madras state Transport Corporation	31.07.1981 Tradesman Special Grade Nesamony Transport Corporation.



14	W.P. (MD) No.19921 of 2017	S.Chorimuthu	26.11.1956 Conductor Thiruvanthapuum Metropolitan Transport Department	Traffic Inspector Nesamony Transport Corporation.
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2.The writ petitioners were disbursed the pensionary benefits by the respondent transport corporations. But, the grievance of the writ petitioners is that the services put in by them in the Transport Department of the Government of Tamil Nadu was not taken into account while computing their pensionary and other benefits.

3.When the erstwhile Government employees were absorbed as employees of the various transport corporations, an option was given to them. Some of the employees availed commutation benefits from the Government and therefore in those cases, the question of taking into account the services rendered in the Government department did not arise for calculating the pensionary benefits. But, where the erstwhile Government employees did not avail the commutation benefits, the services put in by them in the Government department will have to be taken to account by the transport corporation and their pensionary benefits will have to be fixed accordingly. The issue is no longer *res integra*.

4.The Hon'ble Supreme Court of India while dismissing SLP(C) No.19016 of 2008 filed by the State of Tamil Nadu questioning the order dated 16.04.2008 in WA.No.3265 of 2002 fixed the cut of date as 01.04.1982 and held that pensionary benefits will have to be extended to the eligible employees who did not exercise the option for availing the commutation benefit from the Government.

5.In the present case, in the affidavits filed in support of these writ petitions, the petitioners have specifically made an averment that they belonged to pensionable service and they had not given any option for commutation of the pensionary benefits and the provident fund and they had specifically pleaded that they had not given up their claim for pension in the government service at any point of time. They can only make an averment to this effect and they cannot be called upon to prove the negative. If the writ petitioners had exercised an option for availing provident fund benefit from the Government on 01.04.1982, it is for the respondents to produce the document showing that the writ petitioners have already relinquished their claim by availing the benefit from the Government.

6.This writ petition was filed way back in the year 2017. Till date, the respondents have not been in a position to rebut the aforesaid assertions made by the writ petitioners. Therefore, this Court has to proceed on the footing that the writ petitioners did not exercise any option for availing the commutation benefit. Therefore, their request for re-fixation and payment of arrears, of the order of the Hon'ble Supreme Court in SLP.No.19016 of 2008 dated 07.02.2013 will have to be necessarily



accepted. The respondents are directed to refix the pension of the writ petitioners accordingly and disburse the pensionary benefits within a period of four months from the date of receipt of a copy of this order.

7. The learned counsel appearing for the writ petitioners on instructions foregoes the claim for any interest. The learned Special Government Pleader as well as the other counsel submitted that they are not in a position to trace out the relevant documents. The writ petitioners had retired almost 25 years ago. Therefore, they are not in a position to maintain the records. This is because of this difficulty that they are not in a position to meet the averments set out in the writ petitions. The learned counsel would also contend that the writ petitions deserve to be dismissed on the ground of laches. This Court is unable to agree with the said contention. The writ petitioners were the employees of the respective transport corporations. They are still getting pension. Therefore, the stand of the respondents that the records are not available cannot be accepted.

8. These writ petitions are allowed. No costs.

Sd/-

Assistant Registrar(W)

/True Copy/

Sub Assistant Registrar

To

1. The Commissioner and Secretary,
Transport Department,
Fort St. George, Chennai.
2. The Secretary, Government of Tamil Nadu,
Finance Department,
Fort St. George, Chennai.
3. The Principal Accountant General,
Accountants and Entitlements,
361, Anna Salai, Chennai - 600 018.

+ 1 cc TO Mr.P.Gunasekaran , Advocate in SR No. 44249
+ 1 cc TO Mr.K.Sathiya Singh , Advocate in SR No. 44137
+ 1 cc TO The Special Government Pleader in SR No. 44613

skm

AE/SV MMS/SAR3/02.07.2018/6P/7C

**W.P(MD)No.19921, 20616 to 20624 of 2017
and**

**WP (MD) Nos.20672 to 20675 of 2017
24.01.2018**