



W.P.(MD) No.1219 of 2020

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**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

**DATED : 06.12.2022**

**CORAM**

**THE HONOURABLE MR.JUSTICE M.DHANDAPANI**

W.P.(MD) Nos.1219 and 16806 of 2020  
and WMP(MD) No.989/2020

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... Petitioner in  
both Petitions

-VS-

1.The Tamil Nadu State Transport Corporation (KMB) Ltd.,  
Rep. By the Managing Director,  
Tirunelveli and Nagercoil Zone,  
KTC Nagar  
Tirunelveli 627 011.

2.The General Manager,  
Tamilnadu State Transport Corpn., (Kmb) Ltd.,  
Tirunelveli Zone, Vannarpet,  
Tirunelveli

... Respondents  
in W.P.No.1219

1.The Principal Secretary to the Government  
Tamil Nadu State Transport Corporation Limited,  
Secretariat, Chennai 600 009.

2.The Tamil Nadu State Transport Corporation (KMB) Ltd.,  
Rep. By the Managing Director,



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Tirunelveli and Nagercoil Zone,  
KTC Nagar  
Tirunelveli 627 011.

3. The General Manager,  
Tamilnadu State Transport Corpn., (Kmb) Ltd.,  
Tirunelveli Zone, Vannarpet,  
Tirunelveli

... Respondents  
in W.P.No.16806

Prayer:- Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus to call for the records in the 2<sup>nd</sup> respondent letter No.5398/NiYa11/TNSTC/Tirunelveli/2016 dated 23.06.2017 quash the same and consequently direct the respondents to include the period of the petitioner's forced non employment for 106 days from 08.01.2017 to 23.04.2017 as days of work and as part and parcel of his continuous uninterrupted service for the purpose of computing his terminal benefits.

Prayer in W.P.No.16806/2020:- Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus to call for the records relating to the impugned order in Ka.No. 7989/Sa06/ONaPi/TiLi/2018 dated 14.08.2020 passed by the 2<sup>nd</sup> respondent, quash the same and consequently direct the respondents to settle the wages for the period on 19.01.2017 to 17.04.2018 with interest at the rate of 12% per annum.



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For Petitioner : Ms.D.Geetha (both petitions)  
For Respondents : Mr.R.Rajamohan (both petitions)

### COMMON ORDER

Since the issue involved in both the writ petitions is one and the same and both the petitioner and respondents are also one and the same, these writ petitions were heard together and disposed of by this common order.

2. Challenging the impugned order of the 2<sup>nd</sup> respondent dated 23.06.2017 and for a consequential direction to the respondents to include the period of the petitioner's forced non employment for 106 days from 08.01.2017 to 23.04.2017 as days of work and as part and parcel of his continuous uninterrupted service for the purpose of computing his terminal benefits, W.P.(MD) No.1219/2020 has been filed.

3. Challenging the impugned order of the 2<sup>nd</sup> respondent dated 14.08.2020 and for a consequential direction to the respondents to settle the



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wages for the period on 19.01.2017 to 17.04.2018 with interest at the rate of 12% per annum, W.P.No.16806/2020 has been filed.

4. It is the case of the petitioner that the petitioner entered in the respondent Corporation as a Driver in the year 1993. Since then he has been continuously working in the said cadre. While so, the petitioner was directed to undergo a medical test for eyes. Accordingly, the petitioner has undergone the same. Since it was instructed that the petitioner has to undergo a surgery, the petitioner once again undergone a check up in Aravind Eye Hospital, where it was certified that the petitioner is fit to work as a Driver and his vision is also normal. However, the respondent denied work by issuing an order dated 23.12.2016. The petitioner has challenged the said order before this Court by filing a writ petition in W.P.(MD) No. 3125 of 2017 and this Court, by order dated 23.02.2017, gave a direction to the petitioner to appear before the Medical Board. Accordingly, the petitioner appeared before the Medical Board and a report was also given to the effect that the petitioner's vision is normal. The respondents also accepted the same and he was allowed to work by an order dated 17.04.2017



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and the petitioner joined duty on 24.04.2017. While so, the petitioner sent a representation to the respondents seeking arrears of pay for the period of non-employment. The petitioner's request has been turned down vide impugned order dated 23.06.2017, challenging which, the petitioner is before this Court with the present writ petition in W.P.No.1219/2020.

5. Similarly, in the year 2018, vide letter dated 06.01.2018, the respondents again directed the petitioner to appear for another health checkup, challenging which, the petitioner filed WP(MD) No.7348/2018 for a direction to refer him to the Tirunelveli Medical College Hospital. The said writ petition was allowed vide order dated 05.04.2018 thereby setting aside the order and directed the petitioner to go before the Tirunelveli Medical College Hospital. However, the petitioner was not allowed to join duty. On receipt of the medical report from the Tirunelveli Medical College Hospital dated 02.07.2018, the petitioner was allowed to work as driver on and from 27.07.2018. While so, the third respondent issued a charge to the petitioner stating that without intimation and without applying for leave from 23.02.2018, the petitioner reported for duty. Following an explanation



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submitted by the petitioner, an enquiry was contemplated and the enquiry officer submitted a report stating that the charges are not proved. Thereafter, the third respondent inflicted a penalty of warning and treated the non employment period as leave period and however, denied the wages for 222 days. Aggrieved by the said non payment of salary, the petitioner preferred an appeal to the 2<sup>nd</sup> respondent on 29.03.2019. Since no action was taken, he filed another writ petition in WP (MD) No.26986/2019. This Court, vide order dated 19.12.2019, directed the 2<sup>nd</sup> respondent to dispose of the appeal. Pursuant to the same, the 2<sup>nd</sup> respondent passed the impugned order, challenging which, WP No.16806/2020 has been filed.

6. The learned counsel for the petitioner would submit that the petitioner's case has a checkered history. He would state that the petitioner was forced to appear for a medical test every year and during that period, he was not allowed to enter the office of the respondents and whenever he reported for duty, he was not allowed by the respondents. It is her further contention that when the respondents have not allowed the petitioner to work, the impugned order passed by the respondents denying the salary



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even by treating the non employment period as leave is non-est in the eye of law. When the petitioner is fit enough to work, denying him the employment is against law and when the charges are not proved, imposing a penalty of warning does not arise. It is her submission that if the disciplinary authority disagrees with the findings of the Enquiry Officer, the delinquent should be put on notice. For these reasons, she prays for interference.

7. Per contra, the learned counsel for the respondent Corporation, by relying upon the counter affidavit, would submit that the writ petitions are not at all maintainable in view of the dismissal of the statutory appeal dated 14.08.2020 filed by the petitioner. Since it is purely an industrial dispute, the petitioner has to approach the labour Court. As per the orders of the Government, the Drivers, who have completed 40 years of service, was sent for a medical test and accordingly, the petitioner was sent, where the petitioner was certified by the Agarwal Eye Hospital as unfit and hence, the respondents issued an order dated 23.12.2016. However, without undergoing the surgery, as directed vide order dated 23.12.2016, the petitioner on his own obtained a certificate from Aravind Eye Hospital, on



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12.01.2017. Based on the said report, the petitioner has given a representation to the respondents and also filed a writ petition. Thereafter, as per the orders of this Court, the petitioner appeared before the Medical Board and the petitioner was allowed to join duty on 24.04.2017. Since the petitioner has once again sent a representation seeking arrears of amount to the tune of Rs.1,27,943.28/- for the non-employment period, the respondent Corporation rightly rejected the same. He would further contend that the appeal filed also rightly rejected and hence, the same does not warrant interference and the writ petition is liable to be dismissed, it is contended.

8. Heard the learned counsel for the petitioner and the learned standing counsel for the respondents.

9. It is not in dispute that the petitioner was working in the respondent Corporation as a Driver. Initially, on completion of 40 years, he was directed to undergo an eye test, which was undergone and since he was certified to the effect that he has to undergo a surgery, on his own, he has undergone a further test before the Aravind Eye Hospital, where he was



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certified as fit to work as a Driver. Accordingly, the petitioner sent a representation and filed a writ petition as stated supra. Subsequently, in the year 2017, the petitioner was allowed to join duty, since before the Medical Board, he was certified as 'fit to work as Driver'. It is seen that a representation was sent by him to the respondents to pay the arrears for the non-employment period. However, the same has been rejected vide impugned order. It is pertinent to note that the petitioner has subsequently retired from service on attaining the age of superannuation on 31.12.2018.

10. The fact remains that in the year 2018, the petitioner was again directed to undergo medical test. When the respondent corporation has denied employment for the petitioner from 08.01.2017 to 23.04.2017, the petitioner could not be find fault with.

11. One more aspect to be decided in this case is that despite a direction from this Court, denying employment from 08.01.2017 to 23.04.2017 to the petitioner is contrary to the order passed in the earlier round of litigation and that the report of the enquiry officer was not



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challenged before this Court and the same is allowed to continue. Under such circumstances, contrary to the decision taken by the enquiry officer, no reasons whatsoever were assigned in the impugned order. For all these reasons, the writ petitions are allowed and the impugned orders are set aside and the respondents are directed to pay the monetary benefits for the period from 08.01.2017 to 23.04.2017. No costs. Consequently WMP(MD) No. 989/2020 is closed.

**06.12.2022**

Index : Yes  
Internet : Yes/No

RR

To

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Tamil Nadu State Transport Corporation (KMB) Ltd.,  
Tirunelveli and Nagercoil Zone,  
KTC Nagar  
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2.The General Manager,  
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**M.DHANDAPANI, J.**

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