



W.P.No.24009 of 2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Reserved on 19.07.2023	Pronounced on 27.07.2023
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THE HONOURABLE MR. JUSTICE RMT.TEEKAA RAMAN

W.P.No.24009 of 2012

R.Palani

... Petitioner

Vs.

1.The State Transport Department,
Secretariat,
Fort St.George,
Chennai – 600 009.

2.The Managing Director,
The Metropolitan Transport Corporation
(Chennai), Ltd.,
Ex.Dr.Ambedkar Transport Corporation,
Pallavan Salai,
Chennai – 600 002.

... Respondents

Prayer: Writ Petition has been filed under Article 226 of Constitution of India, to issue a writ of Mandamus, directing the respondent 1 viz., The State Transport Department, Fort St. George, Chennai – 9, to pay the petitioner's pension from 01.01.1980 in the light of the orders of the Supreme Court in Civil Appeal Nos.1444-1445 of 1999 dated 04.11.2003.



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For Petitioner : Mr.R.Singgaravelan
Senior Counsel
for Mr.V.S.Jagadeesan

For Respondents
For R1 : Mr.M.Muthusamy
Government Advocate

For R2 : Mr.R.Ramanlal
Additional Advocate General IV
for Mr.R.Balaji

ORDER

The writ petition has been filed for issuance of writ of Mandamus, directing the 1st respondent to pay the petitioner's pension from 01.01.1980 in the light of orders of the Hon'ble Supreme Court in Civil Appeal Nos.1444 & 1445 of 1999 dated 04.11.2003.

2. The service matrix of the petitioner is as under:

<i>Sl.Nos.</i>	<i>Particulars</i>	<i>Date</i>
1.	Date of appointment on temporary basis	12.09.1967
2.	Date of Absorption in monthly cadre	01.10.1968
3.	Date of Joining the Corporation	01.05.1975
4.	Cut Off date as per G.O.Ms.No.42 dated 27.05.2005	01.04.1982
5.	Date of Retirement under VRS	31.01.1995



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3. Mr.R.Singgaravelan, learned Senior Counsel for the petitioner is relying upon the G.O.Ms.No.42 Transport Department, dated 27.05.2005 and orders passed by this Court in W.P.No.3517 of 2008 (***N.Sundaram Nadar Vs. Government of Tamil Nadu, Rep. by its Special Commissioner & Secretary to Government, (Transports) Department, Fort St.George, Chennai and Others***), dated 31.03.2010, which was confirmed by the Hon'ble Supreme Court in SLP.(Civil).CC.No.1660 of 2012 dated 03.02.2012. The learned counsel for the petitioner also relied upon the order passed by this Court in W.P.No.25790 of 2012 dated 02.11.2012, which was confirmed in W.A.No.1752 of 2014 dated 05.08.2015 and consequent order of implementation by the very same respondent.

4. The official respondents have separately filed their counter affidavits. As per the counter affidavit of the 1st respondent, the petitioner was appointed as Cleaner in Tamil Nadu State Transport Corporation on daily paid on 12.09.1967 and then he was absorbed into monthly cadre from 01.10.1968 and thereafter, he was promoted as Assistant Tradesman and he retired Voluntarily from service on 31.01.1995. Further, the 1st respondent relied upon the



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G.O.Ms.No.42, Transport (RW1) Department, dated 27.05.2005, and on calculation of the service records, it is a specific case that the service rendered by the petitioner falls short by 10 years and he has actually worked only 9 years 2 months and 20 days. Therefore, he is not entitled for grant of pension.

5. The 2nd respondent filed counter affidavit and as per the counter, the period of service spent and the qualifying period for the payment of pension as per the G.O.Ms.No.378, P&AR Department dated 18.04.1975 and G.O.Ms.No.42, Transport (RW) Department, dated 27.05.2005 and calculation is given below:

	Y	M	D
Last date of Govt. Service	82	03	31
Date of Appointment	68	10	01

Total Length of Service	13	05	30
LESS: Non Qualifying Service	04	03	10

Net Qualifying Service	09	02	20

LLP Details:			
	Y	N	D
Govt. Period	00	10	21
PTC Period	03	04	19

	04	03	10



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6. This Court has directed the learned Government Advocate to produce the calculation sheet of various dates and net qualifying service details. Accordingly, as directed by this Court, Mr.R.Ramanlal, learned Additional Advocate General for the 2nd respondent produced the calculation sheet of various dates and net qualifying service and the same is as under:

- | | |
|------------------------------|--------------------|
| 1) Name of the Employee | : R.Palani |
| 2) Design | : ATM |
| 3) Staff No | : 5200 |
| 4) Date of Appointment | : 12.09.1967 |
| 5) Date of Absorption | : 01.10.1968 |
| 6) Name of the STU | : MTC Ltd |
| 7) Date of Absorption in STC | : 01.05.1975 |
| 8) Date of Retirement | : 31.01.1995 (VRS) |

His service details are given below:

		Y	M	D
Last date of Government Service	:	82	03	31
Date of Appointment in	:	68	10	01

		13	05	30

LLP Details		Y	M	D
Govt. Period	:	00	10	21
PTC Period	:	03	04	18



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Total Non Qualifying Service : 04 03 09

Y M D

Total Length of Service : 13 05 30

Total Non Qualifying Service : 04 03 09

As per G.O.Ms.No.42 Net Qualifying Service : 09 02 21

As per G.O.Ms.No.408/Fin (Pen) Dept. dated 25.08.2009 50% of Daily paid service is taken as the Net Qualifying Service

Y M D

Date of Absorption : 68 10 01

Date of Daily Paid : 67 09 12

Total Length of Daily Paid service : 01 00 19

Y M D

The Length of Daily paid service : 01 00 19

LLP on Daily paid : 00 02 00

Net Qualifying service on Daily paid : 00 10 19

As per G.O.Ms.No.408, 50% Daily paid service 5 moth 09 ½ days (i.e., 5 months 10 days)



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	Y	M	D
As per G.O.Ms.No.42 Net Qualifying Service :	09	02	21
As per G.O.Ms.No.408 – 50% of Daily Paid Service :	00	05	10

Total Length of Non Qualifying Service :	09	08	01

Thus, according to the Government Advocate, the petitioner has served only 9 years 8 month and 1 day and as such, he is not eligible for grant of pension, as per to the G.O.s in force.

7. Mr.R.Singgaravelan, learned Senior Advocate drew my attention to Sub Rule (2) of Rule 11 of the Tamil Nadu Pension Rules, which stated as follows:

“ The Tamil Nadu Pension Rules contain provision for calculating the qualifying service for the purpose of fixing pension. Rule 11(1) provides that temporary or officiating service in a pensionable post whether rendered in a regular capacity or not shall count in full as qualifying service even it is not followed by confirmation. Sub Rule (2) of Rule 11 provides for counting 50% of the service rendered on daily wages. Sub Clause (a) of Clause 5 of the Government Order in G.O.Ms.No.42 dated 27.05.2005, runs counter to Rule



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11(2) of the Tamil Nadu Pension Rules. The learned Single Judge was therefore perfectly correct in quashing Sub Clause (8) of Clause 5 of the Government Order in G.O.Ms.No.42, Transport Department dated 27 May 2005.”

8. The learned Senior Counsel further relied upon the judgment passed by this Court in W.A.No.1752 of 2014 (***The Secretary, Transport Department Vs. K.A.Padmavathi and Another***) dated 05.08.2015 and per contra, by relying upon the service particulars, Mr.R.Ramanlal, learned Additional Advocate General would contend that 50% of daily paid service only can be taken as net qualifying service as detailed in the above tabular column.

9. The short point that arises for consideration is that whether the period of 1 year 9 months namely on 12.09.1967 date of daily pay till the date of absorption namely on 01.10.1968 and whether 100% has to be taken into consideration or only 50% only to be taken into consideration as per G.O.Ms.No.42 dated 25.05.2005?



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10. After perusing the order passed by the Division Bench of this Court in W.A.No.1752 of 2014 (***The Secretary, Transport Department Vs. K.A.Padmavathi and Another***) dated 05.08.2015 at paragraph No.11, it is made clear that G.Os cannot be put in operation and based upon the factual position, this Court has held as follows:

“11. In the result, the order passed by the learned Single Judge quashing Sub Clause (a) of Clause 5 of the G.O.Ms.No.42, Transport Department dated 27 My 2005 is upheld. We modify the direction given by the learned Single Judge to grant pension. The appellant and the second respondent are directed to consider the case of the first respondent for payment of pension, taking into account the services rendered by the deceased employee, including the service rendered by him on daily wages. Such exercise shall be completed within a period of six weeks from the date of receipt of a copy of this judgment.”

Hence, they have confirmed the same. Therefore, I find that the calculation taken by the official respondents for the purpose of net qualifying service only at 50% of daily paid wages namely 5 months 10 days is erroneous and it ought



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to be calculated as 1 year and 19 days, by adding the same to the net qualifying service as per the G.O.Ms.No.42 dated 27.05.2005 as stated supra, it crosses 10 years.

11. Accordingly, I find that the petitioner is having net qualifying service for pension. Therefore, I have no hesitation to hold that the petitioner is entitled for the relief of pension as prayed for and hence, there shall be a direction on the above line directing the official respondents to process the pension, as per the G.Os from the date of retirement namely on 31.01.1995 and such exercise shall be completed within a period of eight weeks from the date of receipt of a copy of this order.

12. Accordingly, the writ petition stands allowed. There shall be no order as to costs.

27.07.2023

Index : Yes/No
Neutral citation : Yes/No
Speaking Order/Non-Speaking Order

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To

1.The Secretary,
Secretariat,
State Transport Department,
Fort St.George,
Chennai – 600 009.

2.The Managing Director,
The Metropolitan Transport Corporation (Chennai), Ltd.,
Ex.Dr.Ambedkar Transport Corporation,
Pallavan Salai,
Chennai – 600 002.



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RMT.TEEKAA RAMAN.J,

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**Pre-delivery Judgment made in
W.P.No.24009 of 2012**

Dated: 27.07.2023