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W.A.(MD)No.1441 of 2022



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

**DATED : 02.03.2023**

**CORAM:**

**THE HON'BLE MR.T.RAJA, THE ACTING CHIEF JUSTICE  
and  
THE HON'BLE MR.JUSTICE D.KRISHNAKUMAR**

**W.A.(MD)No.1441 of 2022  
and C.M.P.(MD)No.11604 of 2022**

1.The Management of Tamil Nadu Transport  
Corporation (Kumbakonam) Ltd.,  
Represented by its Managing Director,  
Kumbakonam.

2.The General Manager,  
Tamil Nadu Transport Corporation,  
(Kumbakonam) Ltd.,  
Tiruchirappalli Region,  
Tiruchirappalli.

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

... Appellants

-VS-

P.Perumal (Died)

1.Natchammal  
2.Thiruvassagam  
3.Dhanalakshmi  
4.P.Vadivel

(Respondents 1 to 4 were substituted for the  
deceased sole writ petitioner vide Court order



dated 17.07.2019 in W.M.P.(MDNo.13837/2018 in  
W.P.(MD)No.3037/2014)

... Respondents

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**PRAYER:** Appeal filed under Clause 15 of the Letters Patent against the order dated 10.01.2022 passed by this Court in W.P.(MD)No.3037 of 2014.

For Appellants : Mr.A.Kannan  
For Respondents : Mr.A.Rahul

### **JUDGMENT**

**[Judgment of the Court was delivered by  
The Hon'ble The ACTING CHIEF JUSTICE]**

This Writ Appeal is directed against the impugned order dated 10.01.2022 passed by the learned Single Judge in W.P.(MD)No.3037 of 2014, accepting the case of the writ petitioner viz., Perumal (died) that he is eligible to get pension as he was put in qualifying pensionable service viz., 9 years and 8 months, which has been rounded off to 10 years as per Rule 13(a) of Tamil Nadu State Transport Corporation Employees Pension Fund Rules, which is given as under:

#### ***“13.DETERMINATION OF ELIGIBLE SERVICE***

*The eligible service shall be determined as follows:*

*(a) In the case of a “New Entrant” entering into service on or after 01.09.1998, the “actual service” shall be treated as eligible service. The total actual service shall be rounded off*



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*to the nearest year. The fraction of service for six months or more shall be treated as one year and the service less than six months shall be ignored.”*

2. Heard the parties on both sides.

3. Writ Petitioner joined in the service of the Appellants' Corporation as a driver on daily wages with effect from 11.09.1985 and his service was confirmed from 01.09.1986. The writ petitioner was issued with a charge memo dated 22.07.1996 alleging that on 11.05.1996, he had come in a drunken mood and shouted at the security guard and abused him in filthy language. The writ petitioner submitted his explanation to the appellants' Corporation and not being satisfied with the same, the second appellant conducted a domestic enquiry and submitted a report on 03.10.1996, holding that charges were proved. Thereafter, a show cause notice dated 15.11.1996 was issued calling upon the petitioner to submit his explanation of imposing major punishment of dismissal from service on 03.12.1996. The Writ Petitioner raised an Industrial Dispute in I.D.No.3/2000 and the Labour Court in its award dated 31.10.2001, held that the punishment of dismissal from service was disproportionate and ordered for reinstatement without backwages and continuity of service.



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4. Being aggrieved by the award passed by the Labour Court, the first appellant filed a Writ petition in W.P.(MD)No.9125 of 2003 and the writ petitioner also filed a Writ Petition in W.P.(MD)No.34599 of 2005, seeking a direction to pay last drawn wages under Section 17(B) of the Industrial Disputes Act, 1947. The learned Single Judge directed the second appellant to comply with the provisions of Section 17(B) by taking last drawn wages as Rs.3,900/-. Finally, last drawn wages were also paid and the appellants' Corporation reinstated the writ petitioner in service with retrospective effect from 31.10.2001 and thereafter, regularized the service on 01.07.2002. Subsequently, the petitioner was also issued with another charge memo which was finally ended up in imposing a punishment of stoppage of increment for three months. Thereafter, when the petitioner attained the age of superannuation on 31.08.2012, he made an application for payment of pensionary benefits, but the same was rejected on the ground that the writ petitioner is having only nine years and eight months as a qualifying service and therefore, he is not entitled to pension. According to the writ petitioner, as per Rule 13(a) of Chapter VI of the Tamil Nadu State Transport Corporation Employees Pension Fund Rules, fraction of service of six months or more has to be treated as one year and service less than six months shall be ignored. This has been



refused and therefore, the writ petitioner came before this Court and the learned Single Judge applying the said rule, has allowed the Writ Petition, as against which, the present appeal has been filed by the appellants' Corporation.

5. This Court, in similar circumstances, has dealt with an identical issue in the case of ***R.Veeraiyhan Vs. The Management of Tamil Nadu State Transport Corporation, Kumbakonam and another*** reported in ***2010 Supreme (Mad) 1933***, in which one of us, [T.R.ACJ.,] was a party, it has been held as follows:

*“6. The petitioner, after completing the required 20 years of service, submitted his application in good faith that the respondents would compute the service of the petitioner in the right perspective and grant pensionary benefits. At the time of submitting his application seeking permission to go on VRS, the petitioner, admittedly, having rendered 20 years of service, the respondents Corporation also accepted the request of the petitioner on the bonafide ground that the petitioner had completed 20 years of service, which is requisite for a person to go on VRS from service of the respondents Corporation. Admittedly, after accepting the request of the petitioner to go on VRS from the service of the respondents, the respondents issued an order relieving the petitioner from the service of the respondent Corporation. Whilesso, the respondent Corporation*



cannot turn around and say that the petitioner had not rendered 20 years of service, for the simple reason that, while computing the service of the petitioner, it was found that he had rendered only 19 years 7 months and 4 days of service. In any event, if the respondent Corporation had communicated to the petitioner that he is 3 months short of completing 20 years of service, naturally, the petitioner would have continued in service for another 3 months to be eligible for the purpose of getting pensionary benefits by putting the requisite number of years of service. But, the respondent Corporation, after accepting the petitioner's application dated 11.08.2000, relieved the petitioner from the service of respondent Corporation with effect from 08.01.01. Therefore, they cannot deny the benefit of pension on the ground that while computing, it is found that the petitioner has put in 19 years 7 months 4 days of service. In any event, the petitioner is running short of less than 5 months of service. As already held by this Court in W.P.No.2634/2009, dated 20.04.2009, if a person is running short of 6 months of service, a fraction of service which is six months or more shall be treated as one year of service. Therefore, the impugned order is liable to be quashed and the same is quashed. Since the petitioner has retired in the year 2002, i.e., 8 years ago, the respondent Corporation is directed to pay the pensionary benefits to the petitioner as expeditiously as possible.”

**6. In addition to the above, a Division Bench of this Court *by order dated 20.04.2010 in W.A.(MD)No.94 of 2010 [The Managing Director***



***Vs. N.Jothi and others]*** has held as follows:

*“5.The above calculation of the learned judge is perfectly in Order. In the Division Bench judgment, it has been categorically stated that once person became a member of the provident fund and he has put in 19 years and 7 months and the actual service as per rule 13(a) of the relevant rules fraction of service of six months or more has to be treated as one year.*

*6.Applying the above said ratio since, the 1<sup>st</sup> respondent had put in 19 years, 7 months and 18 days of service, the learned Judge was justified in holding the 1<sup>st</sup> respondent satisfied the required qualification of actual service and also the minimum period of service for the purpose of pension as stipulated in pension rule 2(O) 16(a)(ii) of the relevant rules.*

*7. We are not therefore, inclined to interfere with the said order of the learned judge. The appellant shall pass appropriate orders for sanction of pension and pay the same under the scheme within 2 months from the date of receipt of a copy of this order. The Writ Appeal is disposed of accordingly. Connected miscellaneous petition is closed. No costs.”*

7. When the legal position with regard to counting of the qualifying service is well settled by this Court repeatedly, filing of the present appeal against the order passed by learned Single Judge is unacceptable. Therefore, this Writ Appeal is liable to be dismissed.



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8. Accordingly, this Writ Appeal is dismissed and the order passed by the learned Single Judge in W.P.(MD)No.3037 of 2014, dated 10.01.2022, is confirmed. The appellants are directed to comply with the impugned order passed by the learned Single Judge within a period of three [3] weeks from the date of receipt of a copy of this order. Having become parties to the aforementioned two cases, the appellants ought not to have passed such rejection order in the case of the writ petitioner and therefore, we are constrained to impose a cost of Rs.25,000/-. However, accepting the submission of the learned counsel appearing for the appellants that in future, this type of wrong order would not be passed by the appellants, we are not imposing that cost. Therefore, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

[T.R., A.C.J.] [D.K.K., J.]  
02.03.2023

NCC : Yes / No  
Index : Yes / No

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W.A.(MD)No.1441 of 2022:

**T.RAJA, A.C.J.**  
**and**  
**D.KRISHNAKUMAR, J.**

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**ORDER MADE IN**  
**W.A.(MD)No.1441 of 2022**

**DATED : 02.03.2023**