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W.P.No.5624 of 2020

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

**DATED : 15.03.2024**

**CORAM :**

**THE HONOURABLE MS.JUSTICE R.N.MANJULA**

**Writ Petition Nos.5624 of 2020 & 9400 of 2021**  
**and W.M.P.No.9990 of 2021**

W.P.No.5624/2020

K.Ramadoss

...

Petitioner

-Vs-

1.The Principal Secretary,  
Transport Department,  
Government of Tamilnadu,  
Secretariat, Chennai - 600 009.

2.The Managing Director,  
Metropolitan Transport  
Corporation (Chennai) Ltd.,  
Pallavam Illam, Pallavan Salai,  
Chennai - 600 002.

3.The Administrator,  
Tamil Nadu Transport Corporation  
Employees' Pension Fund Trust,  
Pallavan Salai,  
Chennai - 600 002.

...

Respondents

Prayer: Writ Petition under Article 226 of the Constitution of India  
praying for the issuance of a Writ of Certiorarified Mandamus, calling for



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the records pertaining to the order Letter No.25708/Sa.Pi (Ni Na) 5 / Ma Po Ka / 2019 dated 30.01.2020 of the 2<sup>nd</sup> respondent, quash the same and consequently direct the 2<sup>nd</sup> respondent to take the earlier service rendered between 01.01.1991 to 13.12.2007 as pensionable service and to pay pension and other terminal benefits to the petitioner.

For Petitioner : Mr.S.T.Varadarajalu  
For Respondents 1 & 2 : M/s.C.Gauthamaraj  
Standing Counsel for MTC  
For Respondent 3 : Mr.C.S.K.Sathish

**W.P.No.9400/2021**

K.Ramadoss ... Petitioner

-Vs-

The Senior Deputy Managing, (H.R.D.)  
Metropolitan Transport  
Corporation (Chennai) Ltd.,  
Pallavam Illam, Pallavan Salai,  
Chennai - 600 002. ... Respondent

Prayer: Writ Petition under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus, calling for the records pertaining to the order Letter No.25708/Sa.Pi (Ni Na) 5 / Ma Po Ka / 2019 dated 30.01.2020 of the respondent, quash the same and



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consequently direct the respondent to take the earlier service rendered between 01.01.1991 to 13.12.2007 for calculating gratuity and pay the difference of gratuity to the petitioner with interest.

For Petitioner : Mr.S.T.Varadarajalu  
For Respondent : M/s.C.Gauthamaraj  
Standing Counsel for MTC

### **COMMON ORDER**

The petitioner has filed these writ petitions challenging the order vide Letter No.25708/Sa.Pi (Ni Na) 5 / Ma Po Ka / 2019 dated 30.01.2020 and to direct the respondents to take the earlier service rendered between 01.01.1991 to 13.12.2007 for calculating gratuity and pay the difference of gratuity to the petitioner with interest.

2. The petitioner was appointed as “Assistant Engineer” in the year 1991 and Employee's Provident Fund (EPF) contribution has been recovered from his salary from 01.01.1991. The petitioner was promoted to the post of “Assistant Manager” on 13.12.2007 and posted as “Branch Manager” at respondent Transport Corporation. The petitioner submitted his resignation on 13.12.2007 and that was also accepted on 06.06.2008.



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Subsequently, the petitioner wanted to withdraw his resignation letter but he was not permitted. His Gratuity and PF amount after his resignation were also not settled.

3. The respondent considered the request of the petitioner and appointed him as a fresh entrant in the cadre of “Assistant Manager” on 12.10.2009. In this compelling situation, the petitioner had accepted the appointment and was serving there. On attaining the age of superannuation he retired from service on 30.06.2019. The petitioner was out of employment from 13.12.2007 to 11.10.2009.

4. Mr.S.T.Varadarajalu, the learned counsel for the petitioner, submitted that the petitioner is entitled to get pension under 1998 Scheme from July, 2019 onwards as he was a member of EPF from the date of his initial entry; despite he had given various representation to consider his case to grant continuous service, the same was not considered; subsequently, the petitioner had filed a writ petition in W.P.No.20043/2019 to compute his earlier services for the purpose of granting pensionary benefit to him; in pursuant to the direction given by



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this Court in the above writ petition, his representation was considered but however the impugned order has been passed by refusing the request; hence the petitioner has filed these writ petitions.

5. Mr.C.Gauthamaraj, the learned Standing Counsel for MTC, submitted that the since the petitioner has resigned his job and thereafter joined as a fresh entrant, his services cannot be counted as continuous service and hence the petitioner's request was rejected in pursuant to the Government Letter (Ms).No.175/Transport, dated 01.10.2008.

6. According to the Tamil Nadu State Transport Corporation Employees Pension Fund Trust Rules, the term “Existing member” means an existing employee who is a member of the Employee's Family Pension Scheme, 1971 or in regular roll of STUs or institutions authorized by the Government of Tamil Nadu and the “Pensionary service” is defined as the service rendered by a member for which the contributions have been received.



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7. It is not the claim of the respondents that the petitioner has not contributed towards EPF during his earlier tenure of his employment.

However, there is a break in service in view of the resignation submitted by the petitioner during the year 2007. The first spell of the petitioner's service would run from 01.01.1991 to 06.06.2008 on which date his resignation was accepted. The petitioner was re-employed once again on 12.10.2009 and continued to be in service till 30.06.2019.

8. So far as gratuity is concerned, the payment of gratuity would be only in accordance with Section 4 of the Payment of Gratuity Act, 1972. If an employee is entitled to gratuity for every completed year of service or part thereof in excess of six months, the employer shall pay gratuity to the employee at the rate of 15 days wages based on the rate of wages last drawn by the employee concerned. Even though the petitioner had worked on two phases, he had the minimum continuous of service of five years during each phase. The first phase was between 01.01.1991 to 06.06.2008 for nearly 16 years. When the petitioner was re-employed once again on 12.10.2009, he continued in service till 30.06.2009 for almost 10 years. But even when the petitioner resigned before his re-



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employment, the gratuity was not paid to the petitioner. In such case, the petitioner is entitled to get gratuity for both the phase of his employment with the respondent Corporation.

9. As regards the pensionary benefit, it is unfortunate that the petitioner who was covered under the pension scheme had resigned in the year 2008. As per Rule 16 (e) of the Tamil Nadu State Transport Corporation Employees' Pension Fund Rules, resignation from service or post entails forfeiture of past services except the resignation has been submitted with the proper permission for undertaking another appointment under the Government Department / State Public Sector Undertaking / Board etc. For convenience, Rule 16 (e) is extracted hereunder:

*“16. Monthly Member's Pension:*

*e) Forfeiture of Service on Resignation:*

*Resignation from service or post entails forfeiture of past services.*

*Provided that a resignation shall not entail forfeiture of past service, if it has been submitted to take up with proper permission, another appointment, under Government Department / State Public Sector Undertaking / Board. In such case, the pensionary benefits shall be transferred to the new employer's*



*pension fund / EP scheme 1995, as the case may be, and such benefits shall not be directly paid to the individual.”*

10. But the petitioner had resigned his job without getting prior permission and not for the purpose of joining in any Government Department subsequent to his resignation. In fact the petitioner has got re-employment on 12.10.2009 in the same Corporation. Unfortunately, when the petitioner joined second time the pension scheme itself has changed and the petitioner falls within the Contributed Pension Scheme and not New Pension Scheme. Hence the petitioner is not eligible to old pension scheme which was in force earlier to his resignation or to his re-appointment. Even though the minimum eligible service for getting the pensionary benefit is 10 years, the petitioner is not able to get the benefit in view of his resignation. However, the petitioner is entitled to gratuity as claimed by him.

11. In view of the reasons stated above, the Writ Petitions in W.P.No.5624/2020 is dismissed and W.P.No.9400/2021 is allowed and the impugned order passed by the second respondent in Letter No.25708/Sa.Pi (Ni Na) 5 / Ma Po Ka / 2019 dated 30.01.2020 is hereby



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quashed and the second respondent is directed to take the earlier service rendered by the petitioner between 01.01.1991 to 13.12.2007 for calculating gratuity and pay the difference of gratuity to the petitioner with statutory interest, within a period of six weeks from the date of receipt of a copy of this order. No costs. Connected miscellaneous petition is closed.

**15.03.2024**

Index : Yes/No  
Speaking order / Non – speaking order  
Neutral Citation: Yes/No  
bkn

To

The Senior Deputy Managing, (H.R.D.)  
Metropolitan Transport  
Corporation (Chennai) Ltd.,  
Pallavam Illam, Pallavan Salai,  
Chennai - 600 002.



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**R.N.MANJULA, J.,**  
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