



W.P.Nos.22, 24, 27 and 29 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.04.2024

CORAM :

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

W.P.Nos.22, 24, 27 and 29 of 2022

K.Jayachandran

**.. Petitioner in
W.P.No.22 of 2022**

D.Selvaraj

**.. Petitioner in
W.P.No.24 of 2022**

Maragatham

**.. Petitioner in
W.P.No.27 of 2022**

Muthusamy

**.. Petitioner in
W.P.No.29 of 2022**

Vs.

1.The Secretary to Government
Transport Department
Government of Tamil Nadu
Fort St.George
Chennai – 600 009.

2.The Managing Director
Tamil Nadu Transport Corporation Limited
Coimbatore Division I
No.37, Mettupalayam Road
Coimbatore.

3.The Assistant Manager
Erode Zone TNSCTC
Chennimalai Road



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Erode – 638 001.

4.The Administrator
Pension Trust TNSTC,
Pallavan Salai
Chennai – 600 002.

(R4 impleaded vide order of this Court dated
29.08.2022 made in W.M.P.No.19138 of 2022
in W.P.No.22 of 2022)

.. **Respondents in
all the W.P.'s**

Prayer in W.P.No.22 of 2022: Petition filed under Article 226 of the Constitution of India seeking a Writ of Certiorarified Mandamus to call for the records on the file of the 3rd respondent with reference to the impugned order Paa.No.1052/P.F4/V.N./E.M./2020 dated 02.06.2020 and quash the same as illegal, unjust and arbitrary and to direct the respondents to grant pension to the petitioner after extending the benefit of continuity of service from the date of initial appointment till the date of retirement on 31.03.2016 with interest, consequently pay pension arrears and other attendant benefits for the period from the date of appointment and till retirement.

Prayer in W.P.No.24 of 2022: Petition filed under Article 226 of the Constitution of India seeking a Writ of Certiorarified Mandamus to call for the records on the file of the 3rd respondent with reference to the impugned order PA.No.668/P.F.4/V.N./EM/2020 dated 16.11.2020 and quash the same as illegal, unjust and arbitrary and to direct the respondents to grant pension to the petitioner after extending the benefit of continuity of service from the date of initial appointment till the date of retirement on 31.03.2016 with interest, consequently pay pending pension arrears and other attendant benefits for the period from the date of appointment and till retirement.

Prayer in W.P.No.27 of 2022: Petition filed under Article 226 of the Constitution of India seeking a Writ of Certiorarified Mandamus to call for the records on the file of the 3rd respondent with reference to the impugned order Paa.No.695/P.F4/V.N./E.M./2021 dated 16.03.2021 and quash the



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same as illegal, unjust and arbitrary and to direct the respondents to grant pension to the petitioner after extending the benefit of continuity of service from the date of initial appointment till the date of retirement on 31.03.2016 with interest, consequently pay pending pension arrears and other attendant benefits for the period from the date of appointment and till retirement.

Prayer in W.P.No.29 of 2022: Petition filed under Article 226 of the Constitution of India seeking a Writ of Certiorarified Mandamus to call for the records on the file of the 3rd respondent with reference to the impugned order Paa.No.1053/P.F4/V.N./E.M./2020 dated 02.06.2020 and quash the same as illegal, unjust and arbitrary and to direct the respondents to grant pension to the petitioner after extending the benefit of continuity of service from the date of initial appointment till the date of retirement on 30.06.2014 with interest, consequently pay pension arrears and other attendant benefits for the period from the date of appointment and till retirement.

In all the W.P.'s:-

For the Petitioners : Mr.D.Anand Raja

For the Respondents : Mr.C.Jayaprakash
GA for R1
Mr.M.Murali Vinoth
for RR2 & 3
Mr.C.S.K.Sathish Kumar
for R4

COMMON ORDER

In all these four Writ Petitions, the petitioners are challenging the identical orders passed by the respondents and as such are taken up together



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and disposed of by this common order.

2. The case of the petitioners is that they joined the services of the respondent – Corporation and were working as Driver/Conductors as the case may be. After some time, on account of medical disability, they were discharged from service. Thereafter, they were once again re-engaged in the services as Helpers or in some other lighter jobs. The following tabular column depicts the names of the petitioners, date of entry into service as Driver/Conductor, date of discharge, date of re-employment as Helper or other posts and date of retirement,

<i>Name</i>	<i>Designation</i>	<i>Date of Joining</i>	<i>Date of Discharge</i>	<i>Date of re-appointment</i>	<i>Date of retirement</i>
Jayachandran	Conductor	22.05.1987	06.06.2000	14.09.2000	31.03.2016
Selvaraj	Conductor	21.05.1987	06.06.2000	14.09.2000	31.03.2016
Maragatham W/o Sekar Daniel	Conductor	10.07.1986	05.05.1997	03.04.2000	31.05.2016
Muthusami	Driver	30.05.1987	21.10.1995	16.04.1996	30.06.2014

3. It is pertinent to state here that one of the employees - *Sekar Daniel* has since passed away, pending the Writ Petition, his wife – *Maragatham* has been substituted as his legal heir and she filed the



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W.P.No.27 of 2022.

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4. While sanctioning pension to the petitioners, the respondents have first taken into account, the services rendered by them as Driver/Conductor and arrived at the pension payable to them. Next, they have separately taken the services rendered by them in the re-employment and arrived at the pension. After that, by adding both the amounts they have sanctioned the pension. The petitioners aggrieved by the same had earlier approached this Court by way of W.P.No.23089 of 2017 in and by which by order dated 15.11.2019 the respondents therein were directed to consider the representation and pass orders and therefore, representations were considered and the impugned orders were passed.

5. The impugned orders reject the claim of the petitioners by specifically stating that the period of service from the date of regular service until the date of medical invalidation and the period of service from the date of re-employment till the date of retirement have to be taken separately and



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6. The petitioners contend that the entire services rendered by them should be considered as one service and the pension has to be calculated and paid out to them.

7. The Writ Petitions are resisted by the respondents by filing separate counter affidavits. It is the case of the respondents that even while granting re-employment, the orders specifically state that the petitioners will not be entitled to any benefits of previous service and their employment will be considered as fresh employment. The scheme is a contributory pension scheme. When they were medically invalidated and were not working, no contribution could be recovered from them. Only after re-employment, the contributions started again. Therefore, the intervening period is a 'noncontributory service' as per the definition contained in Section 2 (t) of



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the Tamil Nadu State Transport Corporation Employees Pension Trust Rules (from now on referred to as 'the Rules'). Therefore, given the intervening noncontributory service, the pension has to be calculated separately for each of the periods and has to be paid.

8. *Mr D. Anand Raja*, the learned counsel for the petitioners would draw the attention of this Court to the earlier set of Writ Petitions in which identical orders were passed in all the cases of the petitioners. For instance, in the case of *Mr Jayachandran*, in W.P.No.10678 of 2010, after considering the earlier order passed, directions were issued by granting pay protection, continuity of service, etc., and therefore, it is for the respondents to recover the contribution in respect of the period of break also and calculate the pension by taking the service in total. The learned counsel would also place reliance on Rule 19 of the Rules.

9. *Mr D. Anand Raja*, would submit that if an employee is medically revalidated, he is entitled to pension as per Section 19 (a) of the rules. The



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pension is payable immediately upon his medical invalidation. If the same employee is re-employed, Section 19(c) of the rules categorically states that upon re-employment, the membership should be continued and the benefit should be allowed at normal retirement. Therefore, it is clear that the procedure adopted by the respondents by calculating two pensions and granting the same to the petitioners is illegal.

10. Per contra, the learned counsel for Respondents 2 & 3 *Mr Murali Vinoth* and Respondent No. 4 *Mr C.S.K. Sathish Kumar*, would submit that the pension in question is a contributory pension. During the break-in service period, the petitioners did not receive any emoluments and no contribution was made by them. Therefore, the said service squarely falls under Section 2 (t) of the Rules. In view thereof, even though Section 19(c) states that the membership should be continued, the calculation of pension only can be made for the period of contribution and therefore, the calculation has been separately made for both periods and accordingly pension has been paid to them.



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11. I have considered the rival submissions made on either side and perused the material records of the case.

12. The contention of the learned counsels for the respondents is that there is a break in service and therefore such a period cannot be taken into account. In this regard, it is pertinent to note the order passed by this Court in the earlier round of Writ Petitions. For instance, paragraphs Nos.6 and 7 of the order dated 25.11.2010 passed in the case of *K.Jayachandran* is extracted hereunder:-

“6. The relevant portion in W.P.No.14528 of 2009 dated 05.10.2009 reads as follows:

"4. In view of the above, the writ petition is disposed of in the following terms:-

(i) The petitioner shall be given same pay scale and service benefits as he was drawing for the post of Conductor and that, he would be entitled for continuity of service.

(ii) The said pay from 05.01.1997 to till today, shall be notionally calculated for the purpose of fixing his future salary and other benefits. At the same time, on such calculation, the petitioner shall not be



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entitled for backwages for the period during which he shall not be entitled for backwages for the period during which he was out of employment and for arrears for the subsequent period.

(iii) The respondents shall pass consequential order in this regard within a period of four weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petitions are closed."

7. Following the above two decisions, the petitioner will be entitled to get the similar relief of pay protection from the date of his re-appointment. Accordingly, The petitioner shall be given same pay scale and service benefits as he was drawing for the post of Conductor and that, he would be entitled for continuity of service. The said pay from 1998 to till today, shall be notionally calculated for the purpose of fixing his future salary and other benefits. At the same time, on such calculation, the petitioner shall not be entitled for backwages for the period during which he was out of employment and for arrears for the subsequent period. The seniority will be continued from 1998 but there will not be any order for payment of backwages. Hence the writ petition is allowed. No Consequently, the connected miscellaneous petition is closed."

13. Therefore, it can be seen that this Court has already considered the provisions of the relevant Disabilities Act and has already held that the action of the respondents in treating the employment as fresh employment is erroneous and also held that the petitioners are entitled to continuity of service and notional fixation of pay. In that view of the matter, it is not now



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open for the respondents to contest otherwise. Once the petitioners' service is not deemed to be fresh employment, but re-employment. It is specifically held that their services are continuous and they were given the pay protection. It is not open for the respondents to contend that there was a break in service merely because back wages were not granted. Thus, their cases would squarely fall under Rule 19(c) of the rules which reads as under:

“c) Medically Discharged Cases

In the case of employee who are medically discharged and are not re-employed, they are eligible for benefits under clause 19(a) above. If they are re-employed, they are eligible for continuity of membership and the benefits will be allowed only at the time of normal retirement by counting the past service also.”

14. In that view of the matter, the course adopted by the respondents in calculating separate pensions by bisecting the period of service into two is arbitrary and would not stand the scrutiny of Article 14 of the Constitution of India. However, the respondents will be entitled to recover the amount of contribution which is due to them during the break period. The learned counsel for the petitioners admits that the same can be



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recovered from the arrears payable to the petitioners.

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15. In view thereof, I am inclined to allow the Writ Petitions on the following terms:

(i) The orders impugned in these Writ Petitions, respectively dated 02.06.2020, 16.11.2020, 16.03.2021 and 02.06.2020 are quashed;

(ii) The respondents are directed to treat the services of the petitioners as a single entity, from the date of regular service until the date of superannuation and accordingly re-fix the pension and pay all the arrears within 12 weeks from the date of receipt of a copy of this order. However, it is made clear that the petitioners will not be entitled to any interest for the arrears amount;

(iii) The respondents would also be entitled to deduct the contribution for pension for the period(s) for which the contribution is not received from the petitioners by adjusting the same in the arrears payable to them;

(iv) No costs.



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Index : Yes
Neutral Citation : Yes
Speaking order : Yes

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To

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Transport Department

Government of Tamil Nadu

Fort St.George

Chennai – 600 009.

2.The Managing Director

Tamil Nadu Transport Corporation Limited

Coimbatore Division I

No.37, Mettupalayam Road

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D.BHARATHA CHAKRAVARTHY, J.

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