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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

| Date of Reservation | 10.07.2024 |
|---|---|
| Date of Judgment | 10.09.2024 |

CORAM

**THE HONOURABLE MR.JUSTICE S.S.SUNDAR**
**AND**
**THE HONOURABLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY**

**Rev. Aplc(MD)No.36 of 2024**
**and C.M.P(MD)No.4092 of 2024**
**in**
**W.A(MD)No.1240 of 2023**
**and**
**W.A(MD)No.246 of 2024 and**
**CMP(MD)No.2149 of 2024**

**Rev. Aplc(MD)No.36 of 2024**

The Administrator,
TNSTC Employees Pension Trust,
Thiruvalluvar House,
No.2, Pallavan Salai,
Chennai-600 002. : Petitioner/Appellant

-vs-

1.Pokkuvarathu Kazhaka Oyvu Petra
Aluvalar Nala Sangam,
Kovai,
(Regd. No.269/2011)
Rep. By its Authorised Person,
Mr.Alagarsamy
No.5/58, NGO Colony,
Dindigul-624 005.



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2.K.Singaram

3.The State of Tamil Nadu,
Rep by its Principal Secretary to Government,
Transport Department,
Secretariat, St. George Fort,
Chennai.

4.The State of Tamil Nadu,
Rep. by its Principal Secretary to Government,
Finance Department,
Secretariat, St. George Fort,
Chennai.

5.The Managing Director,
State Express Transport Corporation,
Thiruvalluvar House,
No.2, Pallavan Salai,
Chennai-600 002.

6.The Managing Director,
Tamil Nadu State Transport Corporation,
(CBEU) Limited.,
37, Mettupalayam Road,
Coimbatore-641 043. : Respondents/Respondents

**PRAYER:** Petition filed under Section 114 r/w Order XLVII Rule 1 & 2 of CPC to review the order passed in W.A.(MD)No.1240 of 2023 dated 13.09.2023.

For Petitioner : Mr.S.C.Herold Singh

For Respondents : Mr.Ajmal Khan
Senior Counsel
for M/s.Ajmal Associates for R1 & R2



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Mr.P.S.Raman
Advocate General
assisted by Mr.S.Shaji Bino
Special Government Pleader
& Mr.C.S.K.Sathish
Standing Counsel for R3 & R4

Mr.S.C.Herold Singh for R5 & R6

**W.A(MD)No.246 of 2024**

1.The State of Tamil Nadu
Rep. by its Principal Secretary to Government,
Transport Department,
Secretariat,
St. George Fort, Chennai.

2.The State of Tamil Nadu rep. by its
Principal Secretary to Government,
Finance Department, Secretariat,
St. George Fort, Chennai. ... Appellants/
1st & 2nd Respondents

-vs-

1.Pokkuvarathu Kazhaka Oyvu Petra
Aluvalar Nala Sangam,
Kovai,
(Regd. No.269/2011)
Rep. By its Authorised Person,
Mr.Alagarsamy
No.5/58, NGO Colony,
Dindigul-624 005.

2.K.Singaram ... 1st & 2nd Respondents/Writ Petitioners



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3.The Administrator,
TNSTC Employees Pension Trust,
Thiruvalluvar House,
No.2, Pallavan Salai,
Chennai-600 002.

4.The Managing Director,
State Express Transport Corporation TN Limited,
Thiruvalluvar House,
No.2, Pallavan Salai,
Chennai-600 002.

5.The Managing Director,
Tamil Nadu State Transport Corporation,
(CBEU) Limited.,
37, Mettupalayam Road,
Coimbatore-641 043. : Respondents 3 to 5/Respondents 3 to 5

**PRAYER:** Appeal filed under Clause 15 of Letters Patent to allow the writ appeal and set aside the order dated 02.03.2023 in W.P.No.1147 of 2020 insofar as against these appellants.

| | | |
|---|---|---|
| For Petitioners | : | Mr.P.S.Raman<br>Advocate General<br>assisted by Mr.S.Shaji Bino<br>Special Government Pleader<br>& Mr.C.S.K.Sathish<br>Standing Counsel |
| For Respondents | : | Mr.Ajmal Khan<br>Senior Counsel<br>for M/s.Ajmal Associates for R1 & R2<br><br>Mr.S.C.Herold Singh for R3 to R5 |



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**COMMON JUDGMENT**

**D.BHARATHA CHAKRAVARTHY, J.**

The Writ Appeal arises out of the order of the learned Single Judge, dated 02.03.2023, made in W.P(MD)No.1147 of 2020. The State of Tamil Nadu represented by the Principal Secretary to Government, Transport Department and the Principal Secretary to Government, Finance Department, where the first and second respondents in the writ petition and therefore, feeling aggrieved by the order, have filed the present Writ Appeal in W.A(MD)No.246 of 2024. The TNSTC Employees' Pension Trust Administrator, the Managing Director of the State Express Transport Corporation and the State Transport Corporation, Coimbatore Limited, respondents 3 to 5 had also filed Writ Appeal (MD)No.1240 of 2023. The same was heard and by a Judgment of this Court, dated 13.09.2023, the writ appeal was dismissed and the order of the learned Single Judge was confirmed. As against the same, the said appellants preferred an appeal to the Hon'ble Supreme Court of India by way of Special Leave Petition (c) No.27785 of 2023 and by an order dated 06.02.2024, the Hon'ble Supreme Court of India dismissed the same. After that, the self-same



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respondents 3 to 5 in the writ petition, have filed the above Review Application (MD)No.36 of 2024 seeking to review the order of this Court in W.A(MD)No. 1240 of 2023, dated 13.09.2023. As such, both matters are heard together and disposed of by this common judgment.

2. Heard *Mr.P.S. Raman*, learned Advocate General appearing on behalf of the appellants and the Review Applicants and *Mr.Ajmalkhan*, learned Senior Counsel appearing on behalf of the respondents 1 and 2/employees association in the review petition.

3. *Mr.P.S.Raman*, the learned Advocate General would contend that given the financial position prevalent in the Transport Corporation, the Government of Tamil Nadu would have to bear the additional financial burden and therefore, apart from the Administrator of the pension fund and the Transport Corporations, the State Government is also the aggrieved party against the order of the learned Single Judge. When the State Government has also filed an appeal and the same was pending at the SR stage, the same should have been brought to the notice of this Court, so that both appeals could have been taken up together and disposed of by this Bench. In any event, he would



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submit that the grounds raised in the review application as well as the writ appeal would overlap and therefore, he made common arguments in both the matters.

4. He would submit that the factual scenario was not placed before this Court when this Court decided the earlier writ appeal. By relying on the various correspondences made, he would contend that it is demonstrable that always it is the Government which had the right to fix and grant the dearness allowance. He would place reliance on Letter No.7095/D/2008-1, dated 16.07.2008, where initially, the matter concerning fixation of dearness allowance to the pensioners in the officer's cadre was directed by the Government after placing the matter before the Boards of the Corporations. On 13.08.2014, by a communication of the Principal Secretary to Government to the Administrator in Letter No.19040/E/2013-4, the Government carefully examined the representation and ordered that the pensioners will be eligible for nominal dearness allowance at the rates that may be determined by the Government of Tamil Nadu. Thus when the revised pay was implemented through the Tamil Nadu Revised Pay Rules, 2017 vide G.O.Ms.No.303, dated 11.10.2017, both the scales of pay, dearness allowance, bonus etc., which were



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increased/granted by the revised pay rules were not automatically applied to the State Transport Corporations, but each of the Transport Corporations have to adopt the same by passing board resolutions depending on their financial conditions. When the pay scales were sought to be adopted by the State Financial Transport Corporations, G.O.(Ms). No.134, dated 09.04.2018 was passed whereby, the entire financial commitment due to the implementation of revised pay and allowances are to be borne by the respective corporations from and out of their resources without seeking any financial assistance from the Government either directly or indirectly.

5. He would further submit that the Tamil Nadu Transport Corporation Pension Fund Trust had written a letter dated 12.10.2018 thereby, bringing to the notice of the Government the financial implications involved on account of the grant of dearness allowance on the rates which is prescribed for the Government employees in similar cadres and it has been categorically mentioned in the said communication, there is no corpus fund with the trust and the State Transport undertakings have expressed their inability to contribute further. It can be seen that the shortfall which is mentioned in the said communication was already Rs.21,183.15 crores. The implementation of



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the G.O., in the additional rates, would also further add to the shortfall, thus it has financial implications. Taking this Court through G.O.Ms.Nos.323 and 327, whereby dearness allowances were sanctioned to the various categories of employees, he would submit that the Government takes into consideration the conditions of various types of employees and fixes the rate of dearness allowance.

6. Adverting to Rule 20A of the Tamil Nadu State Transport Corporation Employees' Pension Fund Trust Rules, he would submit that ultimately, the rule only states that the dearness allowance will be paid at the rate that may be nominated by the Government of Tamil Nadu. The present Government order impugned in the writ petition is also an order of the Government, whereby, the rate of dearness allowance is ordered to be frozen in the existing rate without further increase. Effectively, by this G.O., the Government has fixed the rate of dearness allowance. Therefore, the Government order ought not to have been quashed as violative of the Rule. He would submit that fixation of the rate of dearness allowance is always the prerogative of the Government and the employees did not have any right whatsoever to claim a particular quantum of DA.



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7. The learned Advocate General also placed reliance on data presented by him to demonstrate the DA commitment for January 2024 alone. Therefore, he would submit that the Order of the Court results in huge financial implications and as such, this Court ought to have considered that there was no illegality whatsoever in the impugned order. In support of his contentions, the Judgment of the Hon'ble Supreme Court of India in ***Tamil Nadu Electricity Board represented by its Chairman -vs- TNEB-Thozhilalar Aykkiya Sangam by its General Secretary*[1]**, is relied upon to contend that the employees of the Public Sector Undertakings/various boards, cannot claim that they should be treated on par with the Government employees and unless their organizations have funds and different cut-off date for payment of revised dearness allowance was upheld by the Hon'ble Supreme Court of India. Further in the same Judgement, the Hon'ble Supreme Court also held that the High Court erred in not keeping in view the extremely difficult financial position of the State Government and the Board. Paragraphs Nos.29, 30 and 34 of the said Judgment were specifically relied upon.

[1] 2019 (15) SCC 235



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8. The learned Advocate General would rely upon the Judgment of the Hon'ble Supreme Court of India in ***State of Madhya Pradesh -vs- G.C.Mandawar***[2], to contend that different rates of dearness allowance can be fixed for different sets of employees and the same would not be violative Article 14 and in the absence of violation of Article 14, it would be within the prerogative of the State to fix the dearness allowance and there can be no claim to the contrary. The learned Advocate General would rely upon the Judgment of the Hon'ble Supreme Court of India in ***Videsh Sanchar Nigam Limited and another Vs. Ajit Kumar Kar and others***[3], to claim that the dearness allowance is a matter of benevolence shown by the Government and the Government servants do not have vested right. The grant of such allowance is not justiciable. Reliance is made on paragraph No.51 of the said Judgment. Regarding the merger of the order of this Court with the SLP order, the learned Additional Advocate General would rely upon the Judgment of the Hon'ble Supreme Court of India in ***Government of NCT of Delhi and another -vs- M/s BSK Realtors LLP and another***[4] ***(2024 INSC 455),*** more specifically relied upon in Paragraphs Nos.32 to 39 to contend that when it comes to the rights of

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[2] 1954 1 SCC 970
[3] 2008 11 SCC 591
[4] 2024 INSC 455



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the State, an opportunity has to be granted on merits. On the question of merger, the learned Advocate General would rely upon the Judgment of the Hon'ble Supreme Court of India in ***Kunhayammed and others. -vs- State of Kerala and another***[5].

9. The learned Advocate General would also rely upon the Judgment of the Hon'ble Supreme Court of India in ***Karnail Singh -vs- State of Haryana and others***[6]***(2024 SCC Online SC 961)*** about the scope of review jurisdiction to contend that the matters canvassed, would very much come within the review jurisdiction of this Court. Therefore, the learned Advocate General would plead that this Court should review the Judgment and also allow the appeal filed by the Government and set aside the order passed by the learned Single Judge.

10. Opposing the above submissions, *Mr.Ajmalkhan*, learned Senior Counsel appearing on behalf of the respondents/employees association would contend that the interpretation made by the learned Advocate General on Rule 20A is incorrect in law. The statutory rule clearly says that the pensioners of the

[5] 2006 6 SCC 359
[6] 2024 SCC Online SC 961



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Transport Corporations would be entitled to the dearness allowance on such rates fixed by the Government. When the Government has fixed the rate and the same has to be applied as per the rule, the impugned Government order stated that in respect of the Transport Corporation Employees Pensioners, the Government fixed rates need not be applied and it should be frozen. Therefore, the same militates against the statutory rule and as such the portion of the Government order has rightly been set aside by the learned Single Judge and upheld by this Court.

11. He would further place reliance on the various daily orders of the Hon'ble Supreme Court of India in Special Leave Petition (c) No.27785 of 2023 to contend that as a matter of fact in the appeal filed by the Administrator and others, the matter was considered in detail by the Hon'ble Supreme Court of India and the learned Senior Counsels on either side were heard on various dates and the Special Leave Petition was ultimately dismissed. When the same grounds which are raised in the Review Petition are raised in the SLP and the same is dismissed by the Hon'ble Supreme Court of India, neither the review nor the appeal can be entertained. When the Administrator and the Transport Corporations and the State of Tamil Nadu were all the respondents in the writ



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petition, when an appeal is filed, either all of them should have joined together in filing the appeal or should have brought the appeal together and conducted the matter. Once the Appellate Court deals with the matter in detail and passes a Judgment, thereafter the respondents one after the other cannot bring up subsequent appeals and request the Court to reconsider the matter. The same would violate the fundamental policy of finality of judicial proceedings and *res judicata*.

12. He would submit that the State cannot make arguments of financial burden in as much as the Corporations are not run on a profit basis. It is the State that issue passes and announces several welfare schemes such as free travel for women etc and therefore, has to supplement the financial shortage and the argument relating to the finance, cannot come in the way of the Court granting the orders if the claim of the employees is otherwise legal.

13. The learned Senior counsel would rely upon the Judgment of the Hon'ble Supreme Court of India in ***Shiv Chander More and others -vs- Lieutenant Governor and others***[7], to contend that all the contentions should be

[7] 2014 11 SCC 744



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deemed to have been raised to the proceedings on the principles of constructive *res judicata.* Paragraphs Nos.21 to 24 of the said Judgment are specifically relied upon. He would then rely upon the Judgment of the Hon'ble Supreme Court of India in ***Mr.M.Nagabhushana Vs. State of Karnataka and others***[8], to contend that the successive appeal and the review are nothing but re-agitating the case already decided upto the level of the Hon'ble Supreme Court of India and he would rely upon paragraphs Nos.12, 13, 21 to 23 of the said Judgment. Regarding review, the learned Senior counsel would rely upon the Judgment in ***Shri Ram Sahu (Dead) through legal representatives and others -vs- Vinod Kumar Rawat and others***[9], more specifically relying upon paragraphs Nos.7 to 10 of the judgment to contend that unless an error apparent on the face of the record is made out, the review should not be disguised to reargue the matter. Re-argument or improvement of the stand is not the purpose of the review.

14. Relying upon the Judgment of the Hon'ble Supreme Court in ***Kallakurichi Taluk Retired Officials Association, Tamil Nadu and others -vs. State of Tamil Nadu***[10]**,** more specifically paragraphs Nos.34 to 39 and 44 and

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[8] 2011 3 SCC 408
[9] 2021 13 SCC 1
[10] 2013 2 SCC 772



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45, he would submit that when differential rates of dearness pay were introduced concerning the pensioners, the cut-off date was held to be illegal. The Court noted that the purpose of granting dearness allowance and dearness pay is to mitigate the hardship placed by the employees regarding the inflation in the market and the consumer price index. Therefore, he would submit that the arguments that the different rates can be fixed at the Will of the Government without any justification whatsoever cannot be countenanced. The learned Senior Counsel would then rely upon the Judgment of the Hon'ble Supreme Court of India in ***Punjab State Co-operative Agricultural Development Bank Limited -vs- Registrar, Co-operative Societies and others***[11]***,*** more specifically placing reliance on paragraph No.57 to contend that the non-availability of financial resources, can never be a factor when it comes to complying with the legal rights of the employees or the Court orders.

15. We have considered the rival submissions made on either side and perused the material records of the case. The factual matrix is narrated above and was narrated in detail in the order under review. It can be seen that by the Government order impugned in the writ petition, the dearness allowance was

[11] 2022 4 SCC 363



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permitted to be continued in the present rate without any change. The said Clause 3 of the Government order is extracted hereunder:

> *"3.After careful examination, the Government have decided to accept the proposal of the Administrator, Tamil Nadu State Transport Corporation Employees Pension Fund Trust, based on the recommendations of the Official Committee ad ordered as follows:-*
>
> *(a) Implement the revision of pension to the pensioners who are covered under 13th Wage Settlement [for those who have retired between 01.09.2016 and 31.12.2017] with notional effect from 01.09.2016 and with monetary benefit prospectively.*
>
> *(b) Implement the revision of pension as per 7th Pay Commission to the Pensioners [for those who have retired between 01.01.2016 and 31.03.2018] with notional effect from 01.01.2016 and with monetary benefit prospectively.*
>
> *(c) Dearness Allowance at present rates shall be continued without any change.*
>
> *(d) The entire financial commitment likely to arise on such revision shall be incurred by the Tamil Nadu State Transport Corporation Employees Pension Fund Trust without seeking any financial assistance, in any form, from the Government."*
>
> *(emphasis supplied)*



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16. It is essential to extract Rule 20A of the Tamil Nadu State Transport Corporation Employees Pension Fund Trust Rules, which reads as hereunder:

*"**20.A DEARNESS ALLOWANCE TO PENSIONERS***

*In addition to the basic pension, the pensioners are eligible for nominal Dearness Allowance at the rates that may be determined by the Government of Tamil Nadu."*

17. The import of the Rule is very clear that in addition to the basic pension, the pensioners are eligible for nominal dearness allowance at the rates that may be determined by the Government of Tamil Nadu. The word used is 'determined' by the Government of Tamil Nadu.

18. As rightly contended by the learned Senior counsel, the Hon'ble Supreme Court of India had in ***Kallakurichi Taluk Retired Officials Association*** cited *supra*, had stated the purpose of granting dearness allowance and the relevant portion in paragraph No.35 is extracted hereunder:

*"...35.In the present context it needs to be kept in mind that <u>'dearness allowance' is paid to government employees keeping in mind the All India Consumer Price Index. Inflation in the marketplace is sought to be balanced by paying "dearness allowance" to government</u>*



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*<u>employees</u>. When a State Government chooses to treat 'dearness allowance' as 'dearness pay', the objective remains the same i.e., inflation in the marketplace is sought to be balanced for retired employees by giving them the benefit of 'dearness pay'. Since the component of inflation similarly affects all employees and all pensioners (irrespective of the date of their entry into service or retirement), it is not per se possible to accept different levels of 'dearness pay' to remedy the malady of inflation. Just like the date of entry into service (for serving employees) would be wholly irrelevant to determine the 'dearness allowance' to be extended to serving employees, because the same has no relevance to the object sought to be achieved. Likewise, the date of retirement (for pensioners) would be wholly irrelevant to determine the "dearness pay" to be extended to retired employees. Truthfully, it may be difficult to imagine a valid basis of classification for remedying the malaise of inflation. In the absence of any objective, projected in this case, the question of examining the reasonableness to the object sought to be achieved simply does not arise. Our straying into this expressed realm of imagination, was occasioned by the fact, that the pleadings filed on behalf of the State Government, do not reveal any reason for the classification which is subject-matter of challenge in the instant appeal."*

19. Therefore, taking into consideration the inflation in the market, when the Government determines the rates and when the statutory rules make the



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pensioners entitled to the Dearness Allowance at such rates as determined, the impugned Government order, militates against the statutory rules and accordingly, the learned Single Judge has quashed the said portion of the Government order. There is no error in the Order of the Learned Single Judge. We also upheld the same with detailed reasons. The SLP filed against the same is also dismissed.

20. Even though we agree with the Advocate General that it would be the prerogative of the Government to determine the dearness allowance taking into account the relevant factors, once the DA is determined by the Government of Tamil Nadu, by Rule 20A automatically such DA applies to the pensioners of the transport corporation. The argument that ultimately the power is only with the Government and therefore, the Government order should be upheld, is fallacious and cannot be countenanced. By an administrative order, the rule cannot be repealed or nullified. Therefore, even considering the argument of the learned Advocate General once again on merits, we are unable to agree with the same, we reiterate the view taken in our earlier judgment.



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21. Arguments were made concerning the financial implications. Originally, the corporation employees were under, the provident fund scheme. Thereafter, it is the State which thought it fit to bring them under a pension scheme which is not on par with Government servants but with a different scheme. When such a scheme is framed and the Rules are made which lays down that apart from the pension which is payable at the particular rate as specified in the scheme, they will be also entitled to the dearness allowance as determined by the Government, then the same cannot now be taken away citing financial crunch. It is appropriate to quote paragraph No.57 of the Judgment of the Hon'ble Supreme Court of India in ***Punjab State Co-operative Agricultural Development Bank Limited*** cited *supra*, which reads as follows:

> *"...57.In our view, non-availability of financial resources would not be a defence available to the appellant Bank in taking away the vested rights accrued to the employees that too when it is for their socio-economic security. It is an assurance that in their old age, their periodical payment towards pension shall remain assured. The pension which is being paid to them is not a bounty and it is for the appellant to divert the resources from where the funds can be made available to fulfil the rights of the employees in protecting the vested rights accrued in their favour."*



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22. Thus looking from any angle, the grounds raised on behalf of the State as well as the review applications are unacceptable. Apart from merits, the attempt is only to re-argue and re-litigate the concluded matter. The self-same arguments were also made in the earlier round, which were rejected and the matter had attained finality up to the Hon'ble Supreme Court of India. No new material or argument which is now made to review the judgment. The grounds argued by the learned Advocate General would also not fall within the contours of the grounds of review as enunciated under Order XLVII Rule 1 of the Code of Civil Procedure.

23. Therefore, finding no merits, the Writ Appeal as well as the Review Application stand dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

**(S.S.S.R.,J.) (D.B.C.,J)**
**10.09.2024**

NCC : Yes
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To

1.The Principal Secretary to Government,
State of Tamil Nadu,
Transport Department,
Secretariat, St. George Fort,
Chennai.

2.The Principal Secretary to Government,
State of Tamil Nadu,
Finance Department,
Secretariat, St. George Fort,
Chennai.

3.The Chief Secretary to Government,
State of Tamil Nadu,
Secretariat, Chennai-600 009.

4.The Additional Chief Secretary to Government,
State of Tamil Nadu,
Finance Department,
Secretariat, Chennai-600 009.

5.The Additional Chief Secretary to Government,
State of Tamil Nadu,
Transport Department,
Secretariat, Chennai-600 009.



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**S.S.SUNDAR, J.**
**AND**
**D.BHARATHA CHAKRAVARTHY,J.**

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Pre-Delivery Judgement made in
Rev. Aplc(MD)No.36 of 2024,
W.A(MD)No.246 of 2024

10.09.2024



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