



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 06.12.2024

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**THE HONOURABLE MR. JUSTICE M.S. RAMESH
AND
THE HONOURABLE DR. JUSTICE A.D. MARIA CLETE**

**W.A.(MD)No.1848 of 2024
and
C.M.P.(MD).No. 15092 of 2024**

1. Tamil Nadu State Transport Corporation (Madurai) Ltd.,
Rep. By its Managing Director,
Tamil Nadu State Transport Corporation Ltd.,
Bye Pass Road, Madurai – 625 010.
2. The General Manager,
Tamil Nadu State Transport Corporation (Madurai) Ltd.,
Madurai Region, Madurai – 625 010.

... Appellants

Vs.

1. S.Amir Ibrahim
S/o. A.Syed Sikkandhar Ali,
No.9, Kajeemar Street,
Main Road, Madurai – 625 001.
2. R.Rajendran,
S/o. Rathinavelu,
Kalyani Ammal Compound,
7-1, Vaigai Vadakarai,
Thallakulam Post,
Santhi Nagar – via, Madurai – 625 018.
3. M.N.Ravindran,
S/o. G.Natarajan,
No.57, Anjal Nagar 1st Street,
Shanthi Nagar – via,
Madurai – 625 018.
4. State of Tamil Nadu,
Rep by its Secretary to Government



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Transport Department and
Chairman of Board of Director of State
Transport Undertaking, Fort St. George,
Chennai – 600 009.

5. The Administrator,
The Tamil Nadu State Transport
Corporation Pension Fund Trust,
Thiruvallur House, Pallavan Salai,
Chennai – 600 002.

...Respondents

Prayer in W.A.(MD)No.1848 of 2024

To allow this writ appeal by setting aside the orders passed by the learned judge in writ petition (MD) No.13750 of 2016 dated 16.11.2023.

Prayer in C.M.P.(MD).No.15092 of 2024 : Civil Miscellaneous Petition filed under Clause 151 of Code of Civil Procedure, praying to implead Smt.R.Vasanth, 4th petitioner as 6th respondent in the writ appeal in W.A.(MD)No.1848 of 2024.

For Appellants : Mr. S.C.Herold Singh

For Respondents : Mr.S.Govindan for R1 and R2
: Mr.SR.A.Ramachandran for R4

JUDGMENT

(Judgment of the Court was made by Dr.A.D.MARIA CLETE, J.)

The present impleading petition seeks to bring on record Mrs.R. Vasantha, the wife of the deceased Mr. R. Rajendran (second petitioner in W.P. (MD) No. 13750 of 2016), as the sixth respondent in W.A.(MD)No.1848 of 2024. Mr. R. Rajendran



passed away intestate on 04.01.2020 during the pendency of the writ petition, though his demise was not brought to the Court's attention when the writ petition came to be finally disposed of on 16.11.2023.

2. The impleading petition, filed on 21.10.2024 while the Writ Appeal was pending, was subsequently listed only on 18.11.2024 after the Writ Appeal had been disposed of on 11.11.2024.

3. The original writ petition, W.P.(MD) No. 13750 of 2016, was filed by three employees of the second respondent, the Transport Corporation, seeking implementation of G.O. Ms. No. 146, dated 30.11.2015. This included their re-designation as Selection Grade Superintendents and a revised pay scale under the 6th Pay Commission and associated arrears and benefits. The second petitioner, Mr R. Rajendran, passed away on 04.01.2020, but the writ petition was decided on 16.11.2023 as if he were still alive.

4. The failure to bring the death of the second petitioner to



the Court's attention reflects procedural lapses on the part of the legal representatives of the deceased second petitioner, the remaining petitioners, and their counsel. Although the impleading petition was filed and duly numbered, it was not promptly listed, and counsel for the petitioners did not take adequate steps to address this oversight. The Writ Appeal proceeded to final disposal under the presumption that the deceased second respondent was still alive.

5. Upon being mentioned on 18.11.2024, the insufficiency of the supporting affidavit for the impleading petition was noted, prompting a direction for the submission of a better affidavit. Following its filing, the petition was listed again on 06.12.2024. The petitioners now seek to implead the legal representative of the deceased second petitioner post facto, as if the death occurred during the pendency of the Writ Appeal, whereas it happened during the writ petition stage.

6. Notably, the caveat petition filed on 26.02.2024 (Caveat No. 487 of 2024) explicitly recorded the death of the second petitioner. Despite this, the deceased individual was named as a



respondent in the condone delay petition (CMP No. 11285 of 2024) filed by the Transport Department, which was ordered without proper verification of parties.

7. The Writ Appeal was numbered as W.A.(MD) No. 1848 of 2024 and disposed of on 11.11.2024 on merits, treating the deceased second respondent as a party. However, before the final order dated 11.11.2024 was dispatched by the Registry, it was brought to our notice that the second respondent had already expired and hence, the writ appeal was once again listed under the caption 'for being spoken to' on 18.11.2024. At this juncture, it was represented that the second respondent had expired on 04.01.2020 itself, which is even prior to passing of the final orders in W.P.(MD) No.13750 of 2016. This glaring procedural defect raises critical questions concerning the validity of the orders passed at various stages of these proceedings: (i) What is the effect of the final order dated 16.11.2023 in W.P.(MD) No. 13750 of 2016 in favour of a deceased petitioner? (ii) What is the effect of the final order dated 11.11.2024 in W.A.(MD) No. 1848 of 2024 concerning the deceased second respondent? (iii) Can the impleading petition filed post-disposal of the Writ Appeal be



entertained? (iv) What is the impact of these orders on the claims of the surviving petitioners?

8. The proceedings under Article 226 of the Constitution of India filed in the High Court are governed by the Madras High Court Writ Rules, 2021 (hereinafter referred to as Writ Rules). These rules, *mutatis mutandis* apply to writ miscellaneous petitions, affidavits, counter affidavits, other affidavits and documents filed in pending writ petitions. Rule 26 of the Writ Rules prescribes the procedure for entertaining impleading or amendment petitions. The said Rule reads as follows:

(1) The Court may at any stage of the proceedings either suo motu or on the basis of a petition and on such terms as may appear to be just, order that the name of any party improperly joined be struck off and that the name of any person who ought to have been joined or whose presence may be necessary in order to enable the Court to effectively and completely adjudicate upon and settle all the questions in the Petition, be added.

(2) No new factual ground shall be relied on and no new relief shall be sought at the hearing except as found in the Petition and the supporting



affidavit or counter affidavit provided the Court may allow a Petition or affidavit to be amended on such terms as to cost or otherwise as the Court deems fit. However, the Court shall have powers to mould any relief.

(3) Any Petition may be continued by or against the legal representative of any party on death of such party, if the right to sue survives.

Under Sub Rule 1 of Rule 26, the High Court may, *inter alia*, suo motu or based on a petition, add necessary parties to the proceeding. Sub Rule 3 of Rule 26 permits the legal representatives of any deceased party to continue the writ proceeding if the right to sue survives.

9. In the present case, the order was passed in favour of the writ petitioners, even though the second petitioner was deceased. The counsel representing the petitioners failed to inform the court about the death and proceeded to argue the case, including on behalf of the deceased petitioner, ultimately securing an order. There is no negligence on the part of the respondents. Rather, it was the responsibility of the legal representatives of the deceased



second petitioner, to implead themselves as party and continue

With the case. It appears that the counsel for the second writ petitioner, without verifying the facts, argued the matter as though the second petitioner was alive, thereby leading the court to pass an order in favour of a deceased person. The petitioners' counsel who was responsible under the law to inform the court about the demise of a party, fail to do so, the legal representatives of the deceased petitioner cannot benefit from their default. In consequence in this case the order passed in writ petition in favour of the dead person is nullity.

10. For a person who dies during the pendency of a writ petition, their legal representatives cannot be substituted at the appellate stage if no steps were taken earlier. Among the three petitioners, the second petitioner passed away during the pendency of the writ petition. The proceedings abated against the second petitioner due to the failure to bring the legal representatives of the deceased petitioner. Hence, all proceedings conducted after the death of the second writ petitioner are void against the deceased second petitioner.



11. However, this raises the question of the effect of the order passed in the writ petition and the writ appeal concerning the remaining first and third petitioners.

12. The writ petition was filed jointly by three petitioners, each having an independent cause of action. Although these causes of action are similar and may appear identical, they are distinct and not the same. It is crucial to differentiate between identical and the same cause of action. A common or single cause of action prevents the courts from passing inconsistent orders. However, when the causes of action are merely identical or similar but separate, the abatement of the case due to the death of one petitioner does not affect the proceedings for the remaining petitioners.

13. In *Puran Singh v. State of Punjab* (1996 2 SCC 205), the Apex Court held as follows:

"As such even if it is held that Order 22 of the Code is not applicable to writ proceedings or writ appeals, it does not mean that the petitioner or the appellant in such writ petition or writ appeal can ignore the death of the respondent if the right to pursue remedy



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even after death of 8 the respondent survives. After the death of the respondent it is incumbent on the part of the petitioner or the appellant to substitute the heirs of such respondent within a reasonable time. For purpose of holding as to what shall be a reasonable time, the High Court may take note of the period prescribed under Article 120 of the Limitation Act for substituting the heirs of the deceased defendant or the respondent. However, there is no question of automatic abatement of the writ proceedings. Even if an application is filed beyond 90 days of the death of such respondent, the Court Can take into consideration the facts and circumstances of a particular case for purpose of condoning the delay in filing the application for substitution of the legal representative. This power has to be exercised on well known and settled principles in respect of exercise of discretionary power by the High Court. If the High Court is satisfied that delay, if any, in substituting the heirs of the deceased respondent was not intentional, and sufficient cause has been shown for not taking the steps earlier, the High Court can substitute the legal representative and proceed with the hearing of the writ petition or the writ appeal, as the case may be. At the same time the High Court has to be conscious that after lapse of time a valuable right accrues to the legal representative of the deceased respondent and he should not be compelled to contest a claim which due to the inaction of the petitioner or the appellant has become final."



14. Undoubtedly, the provisions of the Code of Civil Procedure (CPC) do not directly apply to writ jurisdiction, in view of the explanation under Section 141 of the CPC. The Apex Court further observed that while the provisions of the Code of Civil Procedure (CPC) do not directly apply to writ proceedings under Article 226 of the Constitution of India, it cannot be said that the principles enshrined in Order 22 of the CPC are entirely inapplicable. The Court held that, although the provisions of Order 22 do not apply per se to writ proceedings or writ appeals, this does not absolve the petitioner or appellant from the obligation to address the death of a respondent during such proceedings.

15. In this case, the second writ petitioner passed away on 04.01.2020. Since no legal representatives were brought on record, the writ petition concerning the second petitioner stood abated. In the strict sense of the law, the court lost jurisdiction to adjudicate the writ petition as against the second petitioner effectively upon the death of the second petitioner on 04.01.2020. The court's jurisdiction could only have been revived by filing an appropriate substitution petition to bring the legal representatives



of the deceased second petitioner on record. There was no pending writ petition concerning the second petitioner. Consequently, all proceedings conducted after the death of the second writ petitioner, including the appeal, are non-est in law. In this context, the present application for impleading/substitution is liable to be dismissed, as allowing it would effectively validate an order already passed in favour of a deceased person, which is legally impermissible.

16. Under these circumstances, the application to implead the legal representatives of the deceased second petitioner ought to have been filed before the writ court. It is for the writ court to decide whether such an application can be allowed and whether the proceedings can be revived. Here the writ court already disposed of the matter granting relief to all three petitioners but one petitioner died hence the writ petition abated against the dead person hence no impleading petition can be filed in a disposed writ petition. However the legal heir of the deceased second petitioner is not remediless, since they are entitled to file a fresh writ petition, if the cause of action survives.



17. The key legal principles emerging from the discussion and judgments can be summarized as follows:

1. Legal Obligation of Advocate and Persons

- An advocate representing a deceased party continues representation only to inform the court about the party's death.
- A party legally obligated to inform the court about the demise of a party, but who fails to fulfill this duty, cannot claim the nullity of the order nor derive any benefit from it.

2. Nullity of Orders Involving Deceased Parties and Its Impact on Appeals

- An order passed for or against a deceased person is a nullity; therefore, an appeal against such a non-est order is not maintainable. Consequently, filing an impleading or substitution petition in such an appeal is also impermissible.

3. Time frame for Substitution in Writ Proceedings

- Although Order XXII, as such, does not apply to writ proceedings, the death of a party necessitates



substitution within a reasonable time.

- Reasonable time may be determined concerning Article 120 of the Limitation Act, which prescribes 90 days for substitution. Applications filed beyond this period may also be considered by the Court, depending on the facts and sufficient cause, provided they do not prejudice the rights of the opposing parties.

4. Jurisdictional Implications of Non-Substitution

- Revival of jurisdiction requires the filing of a substitution petition. Without it, all subsequent proceedings are null and void.

18. In conclusion, the impleading application is dismissed as non maintainable. The order passed in W.A.(MD) No. 1848 of 2024, dated 11.11.2024, is recalled, and W.A.(MD) No. 1848 of 2024 is dismissed as not maintainable, as it was filed against a deceased person. Furthermore, the order passed by the Single Judge in W.P. (MD) No. 13750 of 2016, dated 16.11.2023, in so far as the second petitioner Mr R.Rajendran is concerned, is declared non est in law. However, the legal representatives of the



late R. Rajendran are at liberty to file a fresh writ petition for redressal of the grievance. No costs.

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(M.S.R., J.) (A.D.M.C., J)
06.12.2024

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