IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On	**12.03.2025**
Pronounced On	**20.06.2025**

Coram

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.Nos.20524, 20525 & 20526 of 2014
and M.P.No.1 of 2014 in W.P.No.20524 of 2014
and M.P.No.1 of 2014 in W.P.No.20525 of 2014
and M.P.No.1 of 2014 in W.P.No.20526 of 2014

D.Sigamoni
...Petitioner in W.P.No.20524 of 2014

M.Arumugam
...Petitioner in W.P.No.20525 of 2014

G.Krishnamoorthy
...Petitioner in W.P.No.20526 of 2014

Versus

1.The Secretary to Government,
Transport Department,
Fort St.George, Chennai – 600 009.

2.The General Manager,
Tamil Nadu State Transport,
Corporation (Coimbatore),
Coimbatore – 641 043.

3.The Administrator,
Tamil Nadu State Transport Employees,
Pension Trust, Pallavan House,
Pallavan Salai, Chennai – 600 002.

...Respondents in all W.Ps

Prayer in W.P.No.20524 of 2014:

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of certiorarified mandamus calling for the records of the 3rd Respondent in Letter No.44/P2/Tha.Aa.Po.Ka.U.O.Ni.Po/2013-880 dated 06.12.2013 peruse and to quash the same and also, to direct the 2nd and 3rd Respondents to include the company trainee period i.e., from 01.12.1982 to 31.01.1984 while calculating pensionable period and give arrears of pension amount to the petitioner.

Prayer in W.P.No.20525 of 2014:

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of certiorarified mandamus calling for the records of the 3rd Respondent in Letter No.44/P2/Tha.Aa.Po.Ka.U.O.Ni.Po/2013-880 dated 06.12.2013 peruse and to quash the same and also, to direct the 2nd and 3rd Respondents to include the trainee period i.e., from 19.04.1982 to 30.04.1984 while calculating pensionable period and give arrears of pension amount to the petitioner.

Prayer in W.P.No.20526 of 2014:

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of certiorarified mandamus calling for the records of the 3rd Respondent in Letter No.44/P2/Tha.Aa.Po.Ka.U.O.Ni.Po/2013-880 dated 06.12.2013 peruse and to quash the same and also, to direct the 2nd and 3rd Respondents to include the trainee period i.e., from 18.06.1982 to 01.08.1984 while calculating pensionable period and give arrears of pension amount to the petitioner.

For Petitioner in all W.Ps	:	No Appearance
For Respondent – 1 in all W.Ps	:	Mr.G.Prasanna, Government Advocate
For Respondents – 2 & 3 in both W.Ps:		No Appearance

COMMON ORDER

Today, these Writ Petitions were taken up for consideration. There is no representation on behalf of the Petitioners.

2. Since the Petitioners herein are senior citizens, whose cause is going un-presented, I am inclined to consider the case on merits after examining the records and considering the arguments of the learned Government Advocate for the 1st Respondent.

3. These Writ Petitions have been filed for the relief detailed hereunder:

S.No.	Name of the Petitioner	Writ Petition No.	Prayer in the Writ Petitions
1	D.Sigamani	20524 of 2014	For issuance of a writ of certiorarified mandamus calling for the records of the 3rd Respondent in Letter No.44/P2/Tha.Aa.Po.Ka.U.O.Ni.Po/ 2013-880 dated 06.12.2013 peruse and to quash the same and also, to direct the 2nd and 3rd Respondents to include the company trainee period i.e., from 01.12.1982 to 31.01.1984 while calculating pensionable period and give arrears of pension amount to the petitioner.
2	M.Arumugam	20525 of 2014	For issuance of a writ of certiorarified mandamus calling for the records of the 3rd Respondent in Letter No.44/P2/Tha.Aa.Po.Ka.U.O.Ni.Po/ 2013-880 dated 06.12.2013 peruse and to quash the same and also, to direct the 2nd and 3rd Respondents to include the trainee period i.e., from 19.04.1982 to 30.04.1984 while calculating pensionable period and give arrears of pension amount to the petitioner.
3	G.Krishnamoorthy	20526 of 2014	For issuance of a writ of certiorarified mandamus calling for the records of the 3rd Respondent in Letter No.44/P2/Tha.Aa.Po.Ka.U.O.Ni.Po/ 2013-880 dated 06.12.2013 peruse and to quash the same and also, to

S.No.	Name of the Petitioner	Writ Petition No.	Prayer in the Writ Petitions
			direct the 2nd and 3rd Respondents to include the trainee period i.e., from 18.06.1982 to 01.08.1984 while calculating pensionable period and give arrears of pension amount to the petitioner.

4. The Petitioners were employees of the State Transport Corporation who have approached this Court long after their retirement.

5. The point for consideration in these Writ Petitions is whether the request of the Petitioner(s) for including the period undergone by them during the training was to be reckoned for determining their pensionary benefits. The 3rd Respondent vide Orders dated 06.12.2013 rejected the request of the Petitioner(s) (hereinafter referred to as the 'Impugned Order'). Aggrevied by the same, the Petitioners have filed these Writ Petitions.

6. The Impugned Orders dated 06.12.2013 in these Writ Petitions read identically. For the sake of convenience and clarity, the text of the

Impugned Order dated 06.12.2013 in W.P.No.20524 of 2014 is reproduced below:

> *"பார்வையில் கா ணும் தங்களின் 7.11.2013 நாளிட்ட மனுவில், ஓய்வூதியத்திற்கான பணிக்காலத்தை கணக்கிடும்போது பயிற்சிக்காலத்தையும் சேர்த்து முழு பென்சன் வழங்க கோரியுள்ளீர்கள்.*
>
> *அரசு விளக்கக்கடிதத்தின்படி பயிற்சி காலத்தை ஓய்வூதியத்திற்கு எடுத்துக்கொள்ள இயலாது என்பது தெரிவித்துக்கொள்ளப்படுகிறது."*

7. The case of the Petitioners is that these Petitioners have contributed to the monthly Provident Fund even during their training period at service at the Respondent Department and that only the balance amount was paid to them. The further case of the Petitioners is that the Petitioners' services were subsequently regularized and they retired from service after they attained the age of superannuation. However, when the pensionable service of the Petitioners was calculated by the 2nd and 3rd Respondents, the training period undergone by the Petitioners was not taken into account.

8. The Petitioners have placed reliance on the decision of this Court vide Judgment dated 25.08.2010 in **Tamil Nadu State Transport Corporation (Madurai) Ltd. & Anr. Vs. Periyasamy Pitchaimuthu** in W.A.(MD)No.387 of 2010.

9. The date of regularization of service of the Petitioners, date of joining of the Petitioners in service as **'Trainee'**, service period of the Petitioners and date of retirement of the respective Petitioners are tabulated below:-

Sl.No.	Writ Petition No.	Name of the Petitioners	Date of Regularization	Date of Joining in Service	Service Period	Date of Retirement
1	20524/2014	D.Sigamani	01.02.1984	01.12.1982	30 Years 3 Months	31.03.2013
2	20525/2014	M.Arumugam	01.05.1984	19.04.1982	31 years	30.06.2013
3	20526/2014	G.Krishnamoorthy	01.08.1984	13.06.1982	28 years	30.09.2010

10. The learned Government Advocate for the 1st Respondent submitted that in the Counter Affidavit filed in this Writ Petition, it has been stated that the Petitioners were trainees until their service was regularised and therefore, they are not entitled to include the period of training for the purpose of computation of their pensionary benefits under the Tamil Nadu Pension Rules, 1978.

11. A specific reference was made to the definition of “Employee” in Section 2(e) of the Payment of Gratuity Act, 1972.

12. It is submitted by the learned Government Advocate that as per Section 2(e) of the Payment of Gratuity Act, 1972, **"employee"** means any persons (other than an apprentice) employed on wages, not exceeding Rs.25,000/- per month or such higher amount as the Central Government may, having regard to the general level of the management, by notification specifies in any establishment, factory, mine, oil field, plantation, Railway company, or shop to do any skilled, semi skilled or unskilled, manual, supervisory, technical, or clerical work, whether the term of such employment are express or implied. It is therefore submitted that the respective petitioners' pensionable service are only 29 years, training period undergone by them is excluded.

13. It is further submitted by the learned Government Advocate that two years period undergone by the respective Petitioners as trainees cannot be included towards their **"qualifying service"** for the purpose of calculation of "gratuity" and that only the period after the date of regularization is relevant for computing the pension under the Tamil Nadu State Transport Corporation Employees' Pension Fund Rules.

14. Therefore, it is submitted by the by the learned Government Advocate that the pensionable service of the respective Petitioners has to be reckoned only from the date of regularization of the service of the Petitioners and that the training period cannot be included for the purpose of calculating pensionary benefits. Hence, prays for dismissal of these Writ Petitions.

15. The learned counsel for the Respondents also drew the attention of this Court to the **Tamil Nadu State Transport Corporation Employees' Pension Fund Rules** and the Orders passed by this Court in the following cases:

> ***(i) M.Gunasundari Vs. Metropolitan Transport Corporation & Anr.*** *(order dated 12.09.2022 in W.P.No.10677 of 2015)*
>
> ***(ii) M.R.Selvaraju Vs. The Tamil Nadu State Transport Corporation (Kumbakonam) Limited & Ors.*** *(order dated 10.02.2023 in W.P.(MD).No.4887 of 2020)*
>
> ***(iii) The Tamil Nadu State Transport Corporation (Kumbakonam) Limited & Ors. Vs. M.R.Selvaraju*** *(judgment dated 12.11.2024 in W.A.(MD).No.2202 of 2024)*

16. I have considered the arguments advanced by the learned Government Advocate for the 1st Respondent and have also perused the materials placed before this Court. I have examined the provisions of the Employees' Provident Funds and Miscellaneaous Provisions Act, 1952, the Payment of Gratuity Act, 1972, Tamil Nadu Pension Rules, 1978 and Tamil Nadu State Transport Corporation Employees' Pension Fund Rules (hereinafter referred to as "Rules").

17. The Petitioners are covered by the aforesaid Rules as they are admittedly the "Beneficiary" under the Rules. Rule 2(c) in Part I of the aforesaid Rules defines the expression "**Beneficiary**". Rule 2(i) of the aforesaid Rules defines the expression "**Member**". Rule 2(c) and 2(i) of the aforesaid Rules reads as under:-

Rule 2(c) of the Tamil Nadu State Transport Corporation Employees Pension Fund Rules	**Rule 2(i) of the Tamil Nadu State Transport Corporation Employees Pension Fund Rules**
"**Beneficiary**" shall mean an individual presently or prospectively eligible for a benefit payable under the Rules and shall include a **member** as hereinafter defined.	"**Member**" shall mean a regular employee who is eligible to be a member under the Rules and shall not include an employee, who having been admitted as a member, has subsequently retired or has ceased to be eligible for membership as hereinafter prescribed and includes the employee whose services have otherwise been terminated by reason of dismissal, resignation, retrenchment or otherwise. The STUs shall communicate

Rule 2(c) of the Tamil Nadu State Transport Corporation Employees Pension Fund Rules	**Rule 2(i) of the Tamil Nadu State Transport Corporation Employees Pension Fund Rules**
	the names of the new members to the Trustees within one month of their appointment and the details of ongoing employees shall also be furnished with in one month.

18. The expression “**Member**” excludes certain persons but includes regular employees, who are eligible to be a member under the Rules. The Petitioners are already receiving pension under the Rules. Therefore, the Petitioners were regular employees of the 2nd Respondent Transport Corporation.

19. The expression '**Employee**' is defined in Section 2(e) of the Payment of Gratuity Act, 1972. This definition has been referred in the Counter Affidavit to justify the Impugned Order. The expression '**Employee**' is defined differently under various labour legislations. For instance, Section 2(f) of the Employees’ Provident Funds and Miscellaneous Provisions Act, 1952 also defines the expression “Employee”.

20. The definition in Section 2(e) of the Payment of Gratuity Act, 1972 and Section 2(f) of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 are reproduced below:-

Section 2(e) of the Payment of Gratuity Act, 1972	**Section 2(f) of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952**
(e) "**employee**" means any person (other than an **apprentice**) employed on wages, in any establishment, factory, mine, oilfield, plantation, port, railway company or shop, to do any skilled, semi-skilled, or unskilled, manual, supervisory, technical or clerical work, whether the terms of such employment are express or implied, and whether or not such person is employed in a managerial or administrative capacity, but does not include any such person who holds a post under the Central Government or a State Government and is governed by any other Act or by any rules providing for payment of gratuity.	(f) "**employee**" means any person who is employed for wages in any kind of work, manual or otherwise, in or in connection with the work of an establishment, and who gets his wages directly or indirectly from the employer, and includes any person— (i) employed by or through a contractor in or in connection with the work of the establishment; (ii) engaged as an **apprentice**, not being an **apprentice** engaged under the Apprentices Act, 1961 (52 of 1961), or under the standing orders of the establishment;

21. The expression "**apprentice**" is defined in Section 2(aa) of the Apprentices Act, 1961. The definition of the expression "**apprenticeship training**" is defined in Section 2(aaa) of the Apprentices Act, 1961. Section 2(aa) and Section 2(aaa) of the Apprentices Act, 1961 are reproduced below:-

Section 2(aa) of the Apprentices Act, 1961	**Section 2(aaa) of the Apprentices Act, 1961**
(aa) "apprentice" means a person who is undergoing apprenticeship training in pursuance of a contract of apprenticeship;	*(aaa) "apprenticeship training" means a course of training in any industry or establishment undergone in pursuance of a contract of apprenticeship and under prescribed terms and conditions which may be different for different categories of apprentices;*

22. Under Section 2(e) of the Payment of Gratuity Act, 1972 an "apprentice" is not an employee. Under Section 2(f) of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952, any person who is employed for wages in any kind of work, manual or otherwise, in or in connection with the work of an establishment, and who gets his wages directly or indirectly from the employer is an employee. The aforesaid definition includes any person—

> (i) employed by or through a contractor in or in connection with the work of the establishment;
> (ii) engaged as an apprentice, not being an apprentice engaged under the Apprentices Act, 1961 (52 of 1961), or under the standing orders of the establishment;

23. Thus, only an apprentice engaged under the Apprentices Act, 1961 (52 of 1961) or under the standing orders of the establishment is not an "employee" under the provision of the Employees' Provident Funds and

Miscellaneous Provisions Act, 1952. Even a person employed by or through a contractor in or in connection with the work of the establishment is an "employee" for the purpose of Section 2(f) of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952.

24. Therefore, these definitions are not relevant for determination of 'Pensionary Benefits' under the aforesaid Rules, i.e.,

a) eligible service;
b) pensionable service

25. The expression **"Pensionable service"** is defined in Rule **2(v)** of the Rules. It reads as under:-

> *"2(v) "Pensionable service" means the service rendered by the member for which the contributions have been received".*

26. The decision rendered by this Court in W.P.No.10677 of 2015 vide order dated 12.09.2022 refers the definition of employee in Section 2(e) of the Payment of Gratuity Act, 1972. However, it is not applicable to the facts of the present case as the Petitioners therein had not rendered qualifying service for receiving pension. There, the Court dealt with a

situation where the Petitioners therein were to be considered as Full members to be eligible for pension under the said Rules and whether the Training period undergone therein had to be reckoned for the purpose of calculating “qualifying service” to be eligible for pension.

27. Relevant portion from the aforesaid decision of this Court in W.P.No.10677 of 2015 is extracted below:-

“42. In view of the definition of “Member”, “Contributory Service”, “Actual Service”, “Eligible Members”, “Existing Members”, “Pensionable Service” etc., this Court without any hesitation, formed an opinion that the regular employees in the regular roll are eligible for availing the benefit of the Tamil Nadu State Transport Corporation Employees Pension Fund Scheme. The employees engaged on daily wage basis, consolidated pay and temporary services, who all are not regular employees of the Transport Corporations are not entitled to become a member of the Tamil Nadu State Transport Corporation Employees Pension Fund Scheme.

43. When the consolidated pay employees, daily wage employees or temporary employees are not eligible to become the members of the New Pension Fund Scheme, their temporary services cannot be taken into consideration for the purpose of reckoning the qualifying services along with their regular services.

...

47. The petitioner became eligible to be a member of the Tamil Nadu State Transport Corporation Employees Pension Fund Scheme only with effect from her date of regular appointment / regularisation on 07.09.2006. The petitioner admittedly retired from service on 31.03.2013. Therefore, she had not completed the qualifying services of ten years for the purpose of getting superannuation pension under Rule 16 (a) (i) of the Pension Fund Rules and thus, the petitioner is not entitled for the relief as such sought for in the writ petition.”

28. Part IV of the Rules deals with 'Pensionary Benefits'. As far as the "**determination of eligible service**" and "**determination of pensionable service**" are concerned, they are governed by Rules 13 & 14 of the Rules in Part IV of the said Rules. Rule 13 of the aforesaid Rules deals with **Determination of Eligible Service** while Rule 14 of the aforesaid Rules deals with **Determination of Pensionable Service**.

29. For the sake of clarity, Rule 13 and Rule 14 of the Rules are reproduced below:-

Rule 13 of the Tamil Nadu State Transport Corporation Employees' Pension Fund Rules	**Rule 14 of the Tamil Nadu State Transport Corporation Employees' Pension Fund Rules**
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 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. b) In the case of the "existing member" as on 01.09.1998, the aggregate of actual service as indicated para 2(p) shall be treated as eligible service.	**Determination of Pensionable Service.** a) The pensionable service of the member shall be determined with reference to the contribution received or are receivable on his behalf in the Employees' Pension Fund, subject to the conditions stated in para 13. The pensionable service shall be restricted to 30 years for the purpose of calculation of pensionary benefits. b) If a member is eligible for pension under any other scheme, pension payable under the scheme shall be calculated as follows: .....

Rule 13 of the Tamil Nadu State Transport Corporation Employees' Pension Fund Rules	Rule 14 of the Tamil Nadu State Transport Corporation Employees' Pension Fund Rules
c) If there is any non-contributory period during the service, it shall not be counted for arriving the actual service.	

30. For the **"determination of eligible service"**, **Clauses (b) and (c)** of **Rule 13** of the Rules are relevant as these Petitioners were "existing member" as on 01.09.1998. In the case of an **'existing member'** as on **01.09.1998**, the aggregate of 'Actual Service', as defined in paragraph 2(p), is to be treated as "eligible service" under Rule 13(b) of the Rules. However, any period of service rendered during a "non-contributory period" can not be counted for arriving the "actual service".

31. The expression "**Actual Service**" is defined in Rule 2(p) of the Rules. Rule 2(p) of the aforesaid Rules reads as under:-

> *"p) The "**Actual Service**" as defined below shall be reckoned for calculating pensionable service.*
>
> *(i) In respect of employee taken over at the time of nationalization during, 1972 the date of the individual becoming regular employee with the taken over operators will be reckoned for calculation of pensionable service, provided they have been abosribed with continuity of service.*

(ii) In respect of erstwhile Tamil Nadu State Transport Department Employees, who were not eligible for pension for the service rendered in State Transport Department, such service will be counted taking a compassionate view for arriving pensionable service, provided they remit back service gratuity or any benefit in lieu of pension together with interest compounded annually calculated at the rate of interest declared for the members by the PF Trust of respective STUs for the respective years to provide pension for TNSTD service. In respect of erstwhile TNSTD employees who were eligible for pension for the service rendered in TNSTD, determination of their pensionable service and pension will be as per Rule 14(b).

(iii) In respect of all other employees, the date of regular employment or becoming the member of the Employee's Provident Fund in the STU will be reckoned for the calculation of pensionable service.

32. Thus, the date of regular employment or becoming the member of the Employee's Provident Fund in the STU will be reckoned for the calculation of pensionable service. Therefore, the Petitioners will be governed by Sub Clause (iii) of the above definition of "Actual Service" in Rule 2(p) of the aforesaid Rules.

33. The expression "**Non-contributory service**" is defined in **Rule 2(t)** of the Rules. As per **Rule 2(t)** of the Rules, "**Non-contributory service**" is the period of **"actual service"** rendered by a member for whom no contribution to the Pension Fund has been received or is receivable. As

per **Rule 2(o)** of the aforesaid Rules, "**contributory Service**" means the period of "**Actual Service**" rendered by the member for which the contributions to the Fund have been received.

34. For the sake of clarity, Rule 2(t) & Rule 2(o) of the aforesaid Rules are reproduced below:-

Rule 2(t)	***Rule 2(o)***
"Non-contributory service" *is the period of "actual service" rendered by a member for whom no contribution to the Pension Fund has been received or is receivable."*	***"Contributory service"*** *means the period of "**Actual Service**" rendered by the member for which the contributions to the Fund have been received."*

35. A reading of the definition of "**Contributory Service**" as defined in **Rule 2(o)** of the aforesaid **Pension Fund Rules** makes it clear that it means contributions made to the aforesaid Pension Fund by a member during his/her period of "actual service". In other words, an employee is a member eligible for pension under the aforesaid Rules if contributions are made by him/her during the period of "actual service" to the Provident Fund.

36. Therefore, there is no doubt that the Petitioners are "**eligible members**" for the purpose of calculation of pensionary benefits under the

aforesaid Pension Rules if contributions was made by them. Further, it is also made clear that the period in which the member has made contributions to the Pension Fund is to be considered as "Actual Service" period and the pensionable service is to be reckoned from such period wherein contributions have been made by the members to the Pension Fund.

37. As per **Rule 14** of the Rules, for the purpose of calculation of pensionary benefits, the pensionable service of the member shall be determined with reference to the contribution received or are receivable on his behalf in the Employees' Pension Fund, subject to the conditions stated in Rule 13 of the aforesaid Rules which is extracted above. However, the pensionable service shall be restricted to 30 years.

38. A reading of the Affidavit filed in support of these Writ Petitions indicates that contributions were received from the respective Petitioners during the training period. The Respondents have also not denied the same in their Counter Affidavit. Only a vague assertion has been made in Paragraph No.3 of the Counter Affidavit. Paragraph No.3 of the Counter Affidavit reads as under:-

"3. It is submitted that the Petitioner averments in para-3 that from his salary from 01.12.1982, the Provident Fund contribution was deducted and his total years of Pensionable service is 30 years. But during that period he mentioned was only his training period and he was received only stipend and as per the Payment of Gratuity Act, 1972 Section 2(s) the apprentice is not a "workman", only a trainee."

39. Thus, a question arises as to whether an employee is eligible to have the training period reckoned towards service if contributions were received from the employee towards Pension fund under the Rules.

40. Therefore, this would require appreciation. Therefore, the impugned communication of the 3rd Respondent is quashed and the case is remitted back to the 3rd Respondent to ascertain as to whether the contributions were indeed received from the Petitioners as there is no finding on this aspect in the impugned communication and pass a fresh order on merits and in accordance with law, as expeditiously as possible, preferably, within a period of three months from the date of receipt of a copy of this order.

41. These Writ Petitions are disposed of with a direction to the 3rd Respondent to pass a fresh order, after ascertaining from the records whether contributions were received from the Petitioners during their training period. No costs. Consequently, connected Miscellaneous Petitions are closed.

20.06.2025

mrr/jen
Index : Yes/No
Neutral Citation: Yes/No
Speaking Order (or) Non-Speaking Order

To

1.The Secretary to Government,
Transport Department,
Fort St.George, Chennai – 600 009.

2.The General Manager,
Tamil Nadu State Transport Corporation (Coimbatore),
Coimbatore – 641 043.

3.The Administrator,
Tamil Nadu State Transport Employees,
Pension Trust, Pallavan House,
Pallavan Salai, Chennai – 600 002.

C.SARAVANAN, J.

mrr

W.P.Nos.20524 to 20526 of 2014

20.06.2025