

W.A(MD) Nos.1762 to 1766 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Dated : 09.07.2025

CORAM

**THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN
AND
THE HONOURABLE MR.JUSTICE K.RAJASEKAR**

**W.A(MD) Nos.1762 to 1766 of 2025
and
C.M.P.(MD)Nos.9959 to 9963 of 2025**

In W.A.(MD)No.1762 of 2025

**The Administrator,
Tamil Nadu State Transport Corporation
Employees Pension Trust,
Thiruvallur House,
Pallavan Salai,
Chennai-600 002.**

... Appellant / 3rd Respondent

Vs.

1.M.Arumughakan

... 1st Respondent / Petitioner

**2.The Managing Director,
Tamil Nadu State Transport
Corporation Tirunelveli Limited,
Tirunelveli.**



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3. The General Manager,
Tamil Nadu State Transport
Corporation Tirunelveli Limited,
Ranithottam,
Nagercoil,
Kanyakumari District.

... 2nd & 3rd Respondents /
1st & 2nd Respondents

PRAYER: Writ Appeal filed under Clause 15 of Letters Patent, praying
this Court to set aside the order passed in W.P.(MD)No.13057 of 2022,
dated 12.08.2024.

For Appellant : Mr.SC.Herold Singh

For Respondents : Mr.N.S.Ramakrishna Dass
for R1

: Mr.D.Jebaraj
for R2 & R3

COMMON ORDER

(Order of the Court was made by **G.R.SWAMINATHAN, J.**)

Heard both sides.

2. The administrator of Tamil Nadu State Transport Corporation
Employees Pension Trust is the appellant in these appeals. The writ



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petitioners had worked either as drivers or as conductors in TNSTC Tirunelveli Limited, Nagercoil Region.

3. Let us take the case of M.Arumughakan/petitioner in W.P. (MD)No.13057 of 2022 alone. He was appointed as conductor on daily wage basis on 01.05.1984. He became a member of the pension fund trust on 01.08.1984. His service was regularised on 01.05.1985. He retired from service on 30.09.2011. The question that arose was whether his pensionable service should be reckoned from the date of his regularization ie., 01.05.1985 or from the date when he became a member of the pension fund trust ie., 01.08.1984. The stand of the appellant is that the date of regularisation alone is material. Challenging the stand of the pension fund trust, the writ petitioners who are all similarly placed filed W.P.(MD)No.13057 to 13059, 13061 & 11972 of 2022. The learned single Judge vide common order dated 12.08.2024 allowed the writ petitions and directed the appellant to disburse all the monetary benefits treating their pensionary service from the date on which they became the members of EPF Pension Scheme. Aggrieved by the said direction, these writ appeals have been filed.



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4. The learned standing counsel for the appellant drew our attention to the order dated 12.09.2022 made in ***W.P.No.10677 of 2015 (M.Gunasundari Vs. Metropolitan Transport Corporation & another)***.

The learned single Judge had held that the qualifying service will be reckoned from the date of the regular appointment / regularisation. The learned Judge proceeded on the premise that only a regular employee can become a member of the pension fund scheme and the consolidated pay employees or daily wage employees or temporary employees are not eligible to become the members of the New Pension Fund Scheme. This was taken note of by another learned Judge in ***W.P.No.335 of 2020*** and the direction was given to the Registry to place the matter before the Hon'ble Chief Justice for taking appropriate decision as to whether these matters can be placed before the Hon'ble Division Bench. The reason as to why such direction was given has been set out in paragraph Nos.8 and 9 of the said order. It reads as follows:-

“8. Therefore, as of now there are four judgments available before this Court, the two judgments earlier passed in two different writ petitions one in P.Krishnasamy's case and another one is S.Jenova Mary's as cited supra, and the third one is my order dated 05.08.2022 in R.Mallika Vs. The



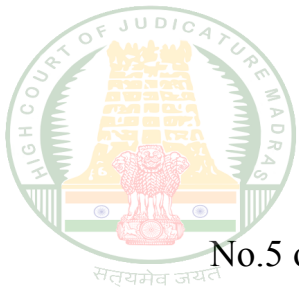
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Management of Metropolitan Transport Corporation [Chennai] Ltd and Anr [in short, R.Mallika's case]. All the three have taken the same view in the same line, whereas conflicting view has been taken by another learned judge in W.P.No.10677 of 2015 in the matter of M.Gunasundari Vs. The Metropolitan Transport Corporation Ltd. And anr.

9. In view of these conflicting views taken by the Writ Courts i.e, three writ petitions have been decided in favour of the employees and one writ petition has been decided, which is a latest one dated 12.09.2022 against the employees, therefore, this Court feels that this issue can be referred to a Division Bench for getting authoritative pronouncement to settle the issue as many number of cases of this nature come before this Court for adjudication.”

This reference order was made on 16.09.2022. Almost three years have gone by. The learned counsel on either side are not able to enlighten us as to whether the Hon'ble Chief Justice had constituted the Division Bench for deciding the issue authoritatively.

5. Justice R.Suresh Kumar was of the view that since there are conflicting opinions passed in different writ petitions, the matter may have to be settled by the Division Bench. In fact, the issue had already been settled by the Hon'ble Division Bench in ***W.A.(MD)No.1006 of 2014 dated 22.12.2016***. The learned single Judge had followed this Division Bench decision while allowing the writ petitions. Paragraph



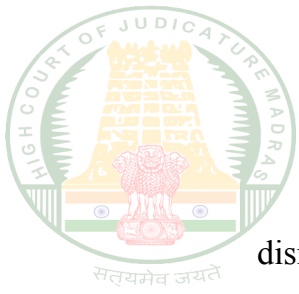
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No.5 of the Division Bench decision reads as follows:-

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“5. In this connection, the Hon’ble Division Bench of this Court, under the similar circumstances, in the case of the Managing Director, Tamil Nadu State Transport Corporation, Madurai Zone-III vs. M.Thangaiyan in W.A. (MD).No.1006 of 2014 by order dated 22.12.2016, in paragraph No.8 has held as follows:

“8. The issue involved in this **Writ** Appeal is no more res integra. Similar issue involved in this **Writ** Appeal was already dealt with by another Division Bench of this Court in the case of the Managing Director, Kumbakonam Vs. N.Jothi and another, W.A.(MD).No.94 of 2010 and in the said judgment, by order, dated, 20.04.2010, this Court by negating the contention raised by the respondents directed the Transport Corporation to calculate the pension amount from the date on which the contribution for employee provident fund was deducted and therefore, we do not find any infirmity or illegality in the order dated 03.04.2013 made in W.P(MD).No. 5830 of 2008 passed by the learned Single Judge. Added further, initially, the **petitioner** was granted pension by the Corporation for a period of five and half years and for the best reasons known to them, it was abruptly stopped, which is only an after-thought of the Corporation. Therefore, we do not find any compelling reasons warranting any interference with the reasoned order passed by the learned Single Judge. Hence, this **Writ** Appeal is liable to be dismissed and accordingly, it is



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dismissed. Since the **petitioner** is in the evenings of his life even at the time of filing the W.P.(MD)Nos.**13057** to 13059, 13061 & 11972 of **2022 Petition** and the matter has been pending for more than seven years before this Court, the respondents/Transport Corporation are directed to comply with the order of the learned single Judge made in W.P(MD).No. 5830 of 2008 dated 03.04.2013 and grant pension, including the arrears of amount so far to be payable to the **petitioner**, within a period of six weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous **petition** is closed.”

6. The aforesaid Division Bench decision was not taken note of by both the single Judges (SMSJ & RSKJ). Therefore, in our view, there is no need for making reference to a Division Bench because a Division Bench has already settled the issue authoritatively. The issue can be approached from another perspective also. It is true that only a regular employee can become a member of the pension scheme. When the management enrolled the daily wage employee as a member, it had collected the contribution premium under the relevant pension scheme. They cannot now be heard to contend that the temporary employee cannot be a member of the pension scheme and that his pensionable service will be reckoned only from the date of regularisation. It is well



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settled that one cannot take advantage of one's own wrong.

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7. In this view of the matter, the order of the learned single Judge is confirmed. These writ appeals are dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

(G.R.S., J.) (K.R.S., J.)
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