



W.P.(MD)No.11873 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

DATED: 08.09.2025

CORAM

THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR

W.P.(MD)No.11873 of 2017

Kriubakaran Rajaiah

... Petitioner

Vs

1.The Tamil Nadu State Transport
Corporation (Madurai) Ltd.,
Represented by its Managing Director
Madurai

2.The General Manager
The Tamil Nadu State Transport
Corporation (Madurai) Ltd.,
Madurai Region
Madurai

3.The Administrator
Tamil Nadu State Transport Corporation Pension Fund Trust
Thiruvalluvar House
Pallavan Salai
Chennai 600 002

.....Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, to issue a writ of Declaration, declaring the action of the respondents in treating the period from the date of the petitioners discharge to the date of his reinstatement i.e. from 26.10.2001 to 26.05.2012 as non employment period and refusing to count the said period as duty period for all purposes including for pension and other terminal benefits as illegal and contrary to Section 47(1) of



W.P.(MD)No.11873 of 2017

persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 and also contrary to undertaking given by the respondents in WP(MD).No.4142 of 2011 and consequently directing the respondents to treat the period from 26.10.2001 to 26.05.2012 as duty with pay protection and further directing the respondents to settle terminal benefits of the petitioner including pension, gratuity etc., by counting the period from 26.10.2001 to 26.05.2012 for the purpose of payment of pension, gratuity and all other terminal benefits.

For Petitioner : Mr.A.Rahul

For Respondents : Mr.K.Ramaiah
Standing Counsel for R1& R2

: Mr.S.C.Herold Singh
Standing Counsel for R3

ORDER

The present writ petition has been filed by a driver of the respondent Transport Corporation seeking a declaration to treat the non-employment period between 26.10.2001 to 26.05.2012 as duty period for all purposes including for pension and other terminal benefits in view of Section 47(1) of Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995.

2.The petitioner herein who was employed as a driver in the Tamil Nadu State Transport Corporation (Madurai) Ltd., has met with an accident while he was on duty and he underwent a surgery. He could not attend duty as a



W.P.(MD)No.11873 of 2017

driver. The management had directed the petitioner to appear before the medical board. The medical board declared that the petitioner was unfit to be a driver of the heavy passenger transport vehicle. A show cause notice was issued by the management on 05.10.2001 calling upon him to explain why he should not be discharged from the service on medical grounds.

3.The petitioner submitted his explanation on 15.10.2001 seeking to provide alternative employment. However, the management has passed an order on 26.10.2001 discharging his services on medical ground with effect from 26.10.2001. This discharge order was put to challenge by the petitioner in WP(MD).No.4142 of 2011. While the writ petition was pending, the management has issued proceedings on 25.05.2012 providing alternative employment to the writ petitioner as Non-ITI Helper with continuity of service. Relying upon the said proceedings, the writ petition was disposed of by this Court on 28.03.2014.

4. While the petitioner was in service, he was regularly making request to regularize the period between 26.10.2001 to 26.05.2012 and treat the said period as a duty period. However, the same has not been considered. The petitioner has attained superannuation on 30.06.2016. Thereafter, the petitioner found that his pension has got diminished in view of the fact that the above said period was not treated as a duty period. Hence, the present writ petition.



W.P.(MD)No.11873 of 2017

WEB COPY

5. According to the learned counsel for the writ petitioner, in similar circumstances, the Hon'ble Division Bench of this Court in WA.No.2302 of 2021(The Management of TNSCT, Coimbatore Vs. The Special Deputy Commissioner of Labour, Chennai and others) dated 03.02.2022 was pleased to hold that the discharge period should be treated as a duty period and contribution for the pension trust has to be paid only by the employer. The learned counsel for the petitioner would rely upon Section 47(1) of Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 to contend that a candidate cannot be discharged from service on medical grounds. He should have been provided with alternative employment. Hence, the discharge from duty itself is illegal and therefore, the said period should have been treated as duty period with all attendant benefits.

6. Per contra, the learned counsel appearing for the respondent transport corporation submitted that the petitioner was reinstated in an alternative employment only a fresh entrant. Therefore, his non-employment period cannot be taken into consideration. The pensionaries have been disbursed based upon the fact that he was reappointed on 26.05.2012. Hence, he prayed for dismissal of the writ petition.



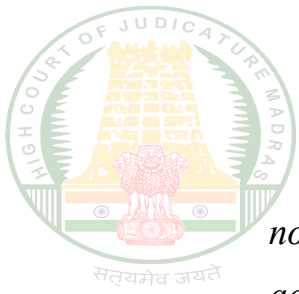
W.P.(MD)No.11873 of 2017

WEB COPY

7.A perusal of the service register produced on the side of the petitioner reveals that the petitioner has been appointed in an alternative employment as Non-ITI Helper by way of proceedings dated 26.08.2012 with continuity of service. That apart, in view of Section 47(1) of Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, discharge from service on medical grounds is clearly illegal and the petitioner is entitled to pay protection and other benefits. Therefore, the contention of the learned counsel for the respondent transport Corporation that the petitioner was appointed as a fresh entrant is clearly illegal and such a submission is not sustainable.

8.The Hon'ble Division Bench judgment of this Court in *W.A.No.2302 of 2021* dated 03.02.2022 in paragraph No.8 is extracted as follows:

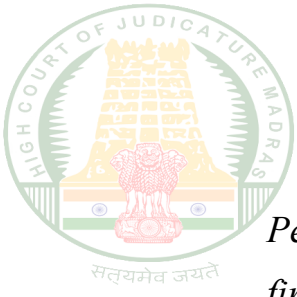
“8.....The Management can not be heard contending that, in absence of any actual payment of arrears, there will not be any payment to Pension Trust Fund and that is how that period has to be excluded as non-pensionable service. We are of the view that the concession on behalf of the workman can not be understood to that extent. As noted in order dated 01 December 2021, at one stage, we had also thought of relieving the workman from that concession, however it would result in additional liability on the public exchequer, therefore we have thought it proper not to do so. This is because, even if it would



W.P.(MD)No.11873 of 2017

WEB COPY

not have been on the basis of concession, but on the basis of adjudication by the competent court, it can not be said that the period during which the workman was not in actual employment will automatically be excluded from consideration as non-pensionable service. Once the action of the Management is held to be illegal, the said action is illegal for all purposes and for all consequences. In a given case, either Labour Court or the Writ Court, in the facts of the case may exercise discretion, on permissible parameters, of granting /not granting back wages but exercise of that power under no circumstances can be read as exclusion of that service as non-pensionable service as sought to be canvassed on behalf of the appellant / Management. We make it clear that even in those cases, where back wages is not granted for valid reason, the very fact that the termination was held to be illegal, the period during which the workman had remained out of employment for no fault attributable to him, has to be counted as pensionable service unless it is so specifically ordered / provided by the Court. Even with the aid of stipulation 10 e as quoted above, permitting the Management or the Pension Trust to exclude the said period as non pensionable service would result in acceptance of the said termination to be valid for limited purpose which is already held to be illegal. No one can be permitted to take advantage of / benefited from his own wrong. The workman can not be asked to suffer, for not being in the employment for the fault of his employer. Keeping this in view, we find that, harmonious reading of all the decisions relied by learned advocate for the



W.P.(MD)No.11873 of 2017

Pension Trust would lead to this conclusion only. So far financial constraints are concerned, it is a matter to be reconciled by the Pension Trust and the Management of the respective Transport Corporations. Such administrative difficulties can not be permitted to be stretched to the extent of reduction of pension for no fault on the part of the workman. “

9. In view of the above said deliberations, this Court is inclined to pass the following orders:

a) The respondents Transport Corporation are directed to treat the period between 26.10.2001 to 26.05.2012 as duty period for all purposes including pension and other terminal benefits.

b) The contribution to the pension trust shall be made by the Transport Corporation/Employer for the above said period.

c) The terminal benefits and the pension shall be reassessed and the same shall be released within a period of 12 weeks from the date of receipt of a copy of this order.

d) This writ petition stands allowed to the extent as stated above.

No costs.

08.09.2025

NCC : Yes/No
Index : Yes/No
Internet: Yes/No
msa



W.P.(MD)No.11873 of 2017

WEB COPY

To
The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



W.P.(MD)No.11873 of 2017

R.VIJAYAKUMAR, J.

msa

W.P.(MD)No.11873 of 2017

08.09.2025