

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

WEDNESDAY, THE 20TH DAY OF MAY 2015/30TH VAISAKHA, 1937

WP(C).No. 2245 of 2011 (E)

PETITIONER(S):

1. **K.P. KALA**
ASSISTANT EXECUTIVE ENGINEER
CIVIL ENGINEERING DEPARTMENT, COCHIN PORT TRUST
COCHIN-682 009.
2. **M.P. ELDHOSE,**
ASSISTANT EXECUTIVE ENGINEER
CIVIL ENGINEERING DEPARTMENT, COCHIN PORT TRUST
COCHIN-682009.
3. **LINY THOMAS,**
ASSISTANT EXECUTIVE ENGINEER
CIVIL ENGINEERING DEPARTMENT, COCHIN PORT TRUST
COCHIN-682009.
4. **N.ANJANA,**
ASSISTANT EXECUTIVE ENGINEER
CIVIL ENGINEERING DEPARTMENT, COCHIN PORT TRUST
COCHIN-682009.
5. **A.SHEEJA,**
ASSISTANT EXECUTIVE ENGINEER
CIVIL ENGINEERING DEPARTMENT, COCHIN PORT TRUST
COCHIN-682009.
6. **P.M.RAJESH BABU,**
ASSISTANT EXECUTIVE ENGINEER
CIVIL ENGINEERING DEPARTMENT, COCHIN PORT TRUST
COCHIN-682009.
7. **S.SANTHOSH KUMAR,**
ASSISTANT EXECUTIVE ENGINEER
CIVIL ENGINEERING DEPARTMENT, COCHIN PORT TRUST
COCHIN-682009.

BY SENIOR ADVOCATE SRI.K.RAMAKUMAR
BY ADVS.SRI.S.M.PRASANTH
SMT.SMITHA GEORGE
SRI.RAHUL VENUGOPAL
SRI.T.RAMPRASAD UNNI

RESPONDENT(S):

1. THE COCHIN PORT TRUST
REPRESENTED BY ITS CHAIRMAN, WILLINGDON ISLAND,
KOCHI-682009.
2. THE BOARD OF TRUSTEES OF COCHIN PORT TRUST,
REPRESENTED BY THE CHAIRMAN, COCHIN PORT TRUST
WILLINGDON ISLAND, KOCHI-682009.
3. UNION OF INDIA,
REPRESENTED BY ITS SECRETARY TO GOVERNMENT
MINISTRY OF SHIPPING, PORTS WING, PARIVAHAN BHAWAN
PARLIAMENT STREET, NEW DELHI-110001.
4. INDIAN PORTS ASSOCIATION,
1ST FLOOR, SOUTH TOWER, NBCC PLACE
BHISHAM PITAMAH MARG, LODIROAD, NEW DELHI-110003
REPRESENTED BY ITS MANAGING DIRECTOR.

***ADDL. R5 TO R9 IMPEADED**

***ADDL. R5. M.T. THRESSIAMMA**
ASST. EXE. ENGINEER
S.E. (CP)'S OFFICE,
COCHIN PORT TRUST.

***ADDL.R6. M.A. VIJAYAN**
ASST. EXE. ENGINEER (CZ)
E.E. (CMI)'S OFFICE
COCHIN PORT TRUST.

***ADDL. R7. P.J. JOSEPH**
A.E. (N.E.)
E.E. (CM-II)'S OFFICE
COCHIN PORT TRUST.

***ADDL.R8. M. USMANKUNJU**
A.E. (SDO)
S.E. (CP)'S OFFICE,
COCHIN PORT TRUST.

***ADDL.R9. N.T. DAVIS**
A.E. (S.D.O.)
FISHERIES HARBOUR
COCHIN PORT TRUST.

***ADDL. R5 TO R9 ARE IMPEADED AS PER ORDER DT. 1/3/11 IN
IA NO. 3173/11.**

***ADDL. R10 TO R21 IMPEADED**

- *ADDL.10. SRI. K.N. MURALEEDHARAN**
AEE, OIL TANKER BERTH
COCHIN PORT TRUST
FORE SHORE ROAD, ERNAKULAM
COCHIN – 682 011.
- *ADDL.11. SMT. C.S. RAJESWARI**
AE, EE (CM-I)'S OFFICE
COCHIN PORT TRUST, W/ISLAND
COCHIN – 682 003.
- *ADDL.12. SRI. V.A. RAHIM**
AE (CAPITAL WORKS), MALABAR HOUSE
COCHIN PORT TRUST, W/ISLAND
COCHIN – 682 003.
- *ADDL.13. SMT. P.A.MARIAMMA**
AE , CHIEF ENGINEER'S OFFICE
COCHIN PORT TRUST, W/ISLAND
COCHIN – 682 009.
- *ADDL.14. SRI. M.P. SASSIKUMAR**
AE (NORTH END), COCHIN PORT TRUST, W/ISLAND
COCHIN – 682 009.
- *ADDL.15. SRI. K.K. KRISHNANKUTTY**
AE (WATER SUPPLY), NEAR PORT HOSPITAL
COCHIN PORT TRUST, W/ISLAND
COCHIN – 3.
- *ADDL.16. SRI. P.V. HEERA**
AE, EE (CC-1)'S OFFICE
COCHIN PORT TRUST, W/ISLAND
COCHIN – 9.
- *ADDL.17. SRI. PAVITHRAN KUNYIL**
AE, COCHIN FISHERIES HARBOUR
COCHIN PORT TRUST, THOPPUMPADY
COCHIN – 5.
- *ADDL.18. SMT. MERCY KURIAKOSE**
AE, NORTH END, COCHIN PORT TRUST, W/ISLAND
COCHIN – 9.
- *ADDL.19. SRI. V.Y. ZEENATH**
AE, DY. CE'S OFFICE, COCHIN PORT TRUST, W/ISLAND
COCHIN – 9.

*ADDL.20. SMT. P.V. SARASA
OIL TANKER BERTH, COCHIN PORT TRUST,
FORE SHORE ROAD, ERANKULAM.

*ADDL.21. SRI. K. GOPALAN
AE, ESTATE MANAGER'S OFFICE,
COCHIN PORT TRUST, COCHIN – 9.

*ADDL. RESPONDENTS 10 TO 21 ARE IMPEADED AS PER ORDER
DATED 1/12/2012 IN IA NO. 15589/2012.

R1 & R2 BY SENIOR ADVOCATE SRI.K.ANAND
BY ADV. SMT.LATHA KRISHNAN

R3 BY ADV. SRI.N. NAGARESH, ASGI

R4 BY SENIOR ADVOCATE SRI.E.K.NANDAKUMAR
BY ADVS. SRI.K.JOHN MATHAI
SRI.P.BENNY THOMAS
SRI.P.GOPINATH

R5 TO R9 BY SENIOR ADVOCATE SRI. KURIAN GEORGE KANNANTHANAM
BY ADV. SRI.TONY GEORGE KANNANTHANAM

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 03-03-2015,
ALONG WITH WP(C) NO. 255/2011, THE COURT ON 20-05-2015 DELIVERED
THE FOLLOWING:

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...5/-

APPENDIX

PETITIONER'S EXHIBITS :

- EXT.P1 : COPY OF THE ORDER O.A4/CE/ADHOC.P/2001-S DATED 1.12.2003
ISSUED BY THE COCHIN PORT TRUST.
- EXT.P2 COPY OF THE COCHIN PORT TRUST RULES AND REGULATIONS.
- EXT.P3 COPY OF THE RELEVANT PORTION OF THE SENIORITY LIST.
- EXT.P4 COPY OF THE RELEVANT PORTION OF THE INTIMATION
RECOMMENDING CARE RESTRUCTURING.
- EXT.P5 COPY OF THE MINUTES OF THE BOARD OF TRUSTEES MEETING
HELD ON 8.5.2009 OF C.P.T.
- EXT.P6 COPY OF THE EXTRACT OF REPORT OF THE ANOMALY COMMITTEE
ON CADRE RESTRUCTURING OF PORT AND DOCK OFFICERS.
- EXT.P7 COPY OF THE RELEVANT PORTION OF THE MODEL RSP
REGULATIONS.
- EXT.P8 COPY OF THE REPRESENTATION DATED 10.1.2011 SUBMITTED BY
THE 1ST PETITIONER BEFORE R1.
- EXT.P9 COPY OF THE NOTIFICATION DATED 28.10.2010 ISSUED BY R2.
- EXT.P10 COPY OF THE SCHEDULE OF THE COCHIN PORT TRUST EMPLOYEES
(RECRUITMENT, SENIORITY AND PROMOTION) REGULATIONS, 2009.
- EXT.P11 COPY OF THE ORDER DATED 15.7.2008 OF THE 3RD RESPONDENT.
- EXT.P12 COPY OF THE RELEVANT PORTION OF THE AGENDA ITEM NO. C6
DATED 8.5.2009 OF THE BOARD OF TRUSTEES MEETING OF THE
C.P.T.

(Contd...)

WP(C).No. 2245 of 2011 (E)

- EXT.P13 COPY OF THE RELEVANT PORTION OF THE AGENDA ITEM NO. C4 DATED 29.3.2006 OF THE BOARD OF TRUSTEES MEETING OF THE C.P.T.**
- EXT.P14 COPY OF THE DIRECTION TAKEN ON 29.6.2011 FOR DIRECT RECRUITMENT OF TWO ASSISTANT EXECUTIVE ENGINEERS.**
- EXT.P15 COPY OF ORDER DT. 27.6.2001 ISSUED BY THE COCHIN PORT TRUST.**
- EXT.P16 COPY OF THE ORDER DT. 20.7.2002 ISSUED BY THE COCHIN PORT TRUST.**
- EXT.P17 COPY OF THE ORDER DATED 8.8.2012 ISSUED BY THE COCHIN PORT TRUST.**
- EXT.P18 COPY OF THE ORDER DATED 8.1.2013 ISSUED BY THE COCHIN PORT TRUST.**
- EXT.P19 COPY OF THE ORDER DATED 6.10.2012 ISSUED BY THE COCHIN PORT TRUST.**
- EXT.P20 COPY OF THE ORDER DATED 7.11.2012 ISSUED BY THE COCHIN PORT TRUST.**
- EXT.P21 COPY OF THE ORDER DATED 3.12.2012 ISSUED BY THE COCHIN PORT TRUST.**
- EXT.P22 COPY OF THE PROCEEDINGS OF THE MEETING OF THE COCHIN PORT TRUST.**
- EXT.P23 COPY OF AGENDA ITEM NO. C-6 DATED 28-3-2013 OF THE 2ND RESPONDENT BOARD.**
- EXT.P24 ORGANIZATION SET UP IN THE CIVIL ENGG. DEPT. OF COCHIN PORT TRUST.**
- EXT.P25 COPY OF THE RELEVANT PAGE OF RECRUITMENT RULES OF CLASS I & II POSTS AS PER RR64.**

(Contd..)

- EXT.P26 STATEMENT SHOWING THE QUALIFICATIONS OF EMPLOYEES AT THE DIFFERENT LEVELS IN THE CIVIL ENGG. DEPT.
- EXT.P27 STATEMENT SHOWING THE PRESENT STRENGTH OF GRADUATES.
- EXT.P28 QUALIFICATION, EXPERIENCE AND OTHER DETAILS OF PETITIONERS.
- EXT.P29 STATEMENT SHOWING THE PROMOTIONAL OPPORTUNITIES OF PETITIONERS AS PER NEW RSP 2010
- EXT.P30 COPY OF MINUTES OF RELEVANT PAGE OF PROCEEDINGS OF ORDINARY MEETING NO. 2 OF 2013-2014 OF BOARD OF TRUSTEES HELD ON 27/8/2013.
- EXT.P31 DETAILS OF PROPOSED CADRE RESTRUCTURING IN CLASS III LEVEL.

RESPONDENT'S EXHIBITS :

- EXT.R1(a) : COPY OF THE LETTER ISSUED BY THE 3RD RESPONDENT DATED 6.2.2004.

//TRUE COPY//

P.A. TO JUDGE

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A.V. RAMAKRISHNA PILLAI, J.

W.P.C. Nos.255 & 2245 of 2011

Dated this the 20th day of May 2015

J U D G M E N T

Under challenge in these Writ Petitions is the Cochin Port Trust Employees (Recruitment, Seniority and Promotion) Regulations, 2010 published as extra ordinary notification No.598 dated 28.10.2010 (Ext.P10 in W.P.C No.255 of 2011/Ext.P9 in W.P.C. No.2245 of 2011).

W.P.C. No.255 of 2011

In this writ petition, the petitioners allege that they are engineering graduates working as Assistant Engineers (Mechanical) in the Mechanical Department of Cochin Port Trust. According to them, based on the Cochin Port Employees [Recruitment, Seniority and Promotions) Regulations 1964 (Ext.P1)], the next promotion post is Assistant Executive Engineer (Mechanical) which has to be filled up by promotion based on seniority in service from the feeder category in the ratio 1:1 among Degree and Diploma holders. According to the petitioners, they who have more than 10

years experience after graduation are eligible and entitled for direct promotion as Executive Engineers as per Ext.P1. It is specifically alleged that the 3rd and 4th petitioners are qualified and eligible for promotion to the post of Safety Officer as well which is equivalent to the post of Assistant Executive Engineer. They alleged that they were legitimately and reasonably expecting promotions either as Assistant Executive Engineers/Safety Officer or as Executive Engineers/Planning Officer as and when vacancies arise in the available 3+1 posts of Assistant Executive Engineers/Safety Officer or in the 5+1 post of Executive Engineers/Planning Officer.

2. Going by Sec.28 of the Major Port Trusts Act, 1963, the power to make regulations with respect to the terms and conditions of employees is vested with the respective boards of the concerned board. Therefore, based on the pay revision committee report the 1st respondent as per Ext.P3 forwarded the decision of the Government with regard to the cadre recruiting to all the major port trust including the 2nd respondent for

implementation after following the prescribed procedure like formulation/amendment of the existing regulations. It was provided in Ext.P3 that the revised draft (Recruitment, Seniority and Promotion) regulations incorporating the changes envisaged in the Cadre recruiting are required to be framed in consultation with IPA, the 4th respondent.

3. The petitioners allege that to their surprise, a reverse mode was adopted by the Central Government by forwarding the model RSP regulations prepared by the 4th respondent to the 2nd and 3rd respondents for approval as per Ext.P4. Later, by Ext.P6 those respondents were insisted to sent the proposed amendment regulations strictly in accordance with the model RSP regulations forwarded as per Ext.P4. The petitioners allege that going by Sec.124 of the Act, the Central Government has only a limited power of approval of the regulations made by the board and going by Sec.125, while directing the regulations made/amended, the Central Government shall consider any objections or suggestions made by the

board. The 3rd respondent board, considering the special circumstances resolved to approve the regulations and the proposed Recruitment Rules with the recommendations that existing eligible officers be upgraded to the newly created higher posts at the time of introduction of the Rules, in order to ensure level-playing field, and the model Recruitment Rules be strictly implemented subject to the Government sanction. The petitioners pointed out that the respondent board could not go further because of the specific direction in Ext.P6. Accordingly, the respondent board was compelled to approve the regulations strictly as per the model RSP regulations without any modification because of Ext.P6 order. As a result, they were helpless and unable to incorporate any suggestions to the model RSP regulations so as to rectify the anomaly or to meet the contingent situations that would arise while implementing the proposed amendments as in the present case.

4. The petitioners alleged that without considering any of the objections or grievances of the

petitioners or without taking into consideration the suggestions made by the 2nd respondent to the proposed amendment, the 1st respondent published the amended regulations without giving any protection in the matter of promotion and without any promotional avenues to the existing degree holders in the department including the petitioners who are only 6 in numbers. It was provided therein that when the posts required to be filled up by direct recruitment are advertised, employees already in service may also apply, provided they possess the prescribed qualifications and experiences. This according to the petitioners is highly arbitrary. The petitioners allege that the regulations on framing are to be published in the official gazette of the State in which the port is situated. No notification approving Ext.P10 revised regulations has been published in the official gazette and therefore, Ext.P10 has not still come into force. The petitioners grievance is that if Ext.P10 is implemented they would be fully and permanently stagnated in the present cadre.

5. Respondents 1 and 2 filed a counter affidavit contending that under Sec.111 of the Major Port Trusts Act, 1963, the Ministry has the power to issue directions to the Board of Trustees of the major ports. There were representations from the officers federations to undertake an exercise of re-structuring of cadres of officers in major ports, as there have been many anomalies and thus a lack of uniform cadres. Therefore, the Ministry has initiated the process of cadre restructuring in a major ports. This elaborate exercise was undertaken by two pay revision committee of officers and based on their recommendations, the Ministry finalized the cadre reconstructing proposal and model recruitment, seniority and promotions (RSP Regulations). Thereafter, the board of trustees of each of the major ports had resolved to accept the model RSP regulations. While making cadre restructuring proposals, efforts have been made to provide promotional avenues to maximum number of cadres. It is a policy matter employing the discretion of the management to adopt a suitable HR

Policy for the organization and to frame required RSP regulations. Further promotions of the petitioners can be affected only in accordance with Ext.P10 regulations. The petitioners have joined the service of the 1st respondent as Junior Engineer/Junior Draftsmen and had been promoted to the post of Assistant Executive Engineer on ad-hoc basis only. The question of regularisation of incumbents arise only when regular vacancies occur in the cadre. Promotions were given to the petitioners purely against temporary posts and therefore, the promotions were ad-hoc. As per Ext.P2 regulations of 1964 confirmation shall be made only once in the service of an employer and the same would be in the entry cadre and hence the petitioners had been confirmed in accordance with the said rules. The petitioners are not on the entry level and are holding temporary posts created in specific purpose of a project. The period of probation is not applicable to the posts on an ad-hoc basis. As Ext.P10 regulation has been approved by the 3rd respondent, the 1st respondent is bound to make regular promotions only

in accordance with the same. The 1st respondent has prepared the model RSP regulations and forwarded the same to the 3rd respondent for further course of action. Thereafter, the 3rd respondent forwarded the regulation to all the ports with a direction to send back the same after due examination and getting approval from the respective Board of Directors. Thereafter, Ext.P10 model regulation has been notified by the 3rd respondent under Sec.124. As per the new regulation, a ratio 1:2 between the direct recruitment and recruitment by promotions is prescribed up to 21.08.2012 and thereafter the ratio would be 2:1. Therefore they prayed for a dismissal of the writ petition.

6. Subsequent to the filing of the Writ Petition, additional respondents 5 to 10 were impleaded. The additional 5th respondent filed a written statement contending that the petitioners were originally working as Junior Engineers (Mechanical) as Class II officers and they would not come under the Industrial Disputes Act. It was alleged that the petitioners submitted a compliant to

the 2nd respondent through Cochin Port Trust Staff Association and the same was forwarded to the Assistant Labour Commissioner, Central, alleging that they have been upgraded as Assistant Engineers irrespective of various conditions prevailed in the Recruitment Rules. Ext.R5(a) is the copy of the letter. It is further alleged that on the basis of the same, a memorandum of settlement was signed on 19.05.2005. A copy of the same is produced and marked as Ext.R5(b). On the basis of that, the Secretary of the Cochin Port Trust passed Ext.R5(c) order dated 27.05.2005 to delete the special denotation of 'UG' in the upgraded Assistant Engineer posts. On 27.06.2001, Ext.R5(d) was issued up-grading the post of Junior Engineers to the post of Assistant Engineers subject to the undertaking to perform the duties of the cadre prior to the up-gradation. It is further contended that the Ministry of Finance has issued guidelines on Expenditure Management in respect of growth in non plan/development/expenditure. According to this, there was a ban on creation of new posts. The said

order is still in operation. While the ban was existing for creation of new posts, certain Junior Engineers were upgraded as Assistant Engineers (Mechanical). It was further contended that the up-gradation of the petitioners as Assistant Engineers were not recognized either by the Ministry of Finance or by the Ministry of Shipping.

7. Additional respondents 6 to 10 filed a separate counter affidavit supplementing the counter affidavit filed by the Port Trust. According to them, the rule making authority has the power to regulate the method of appointment and further conditions of service after appointment. The only impediment in such rule making is that special rights of employees cannot be taken away. The petitioners have no case that any of their vested rights have been taken away. Their only grievance is that their chances of promotion would be taken away. It is well settled that nobody has a right for promotion. As per the regulations 2003, the post of Assistant Executive Engineer was a promotion post. The direct recruitment would be resorted to only in the absence of eligible

candidates in the feeder category. In the Rules impugned, a ratio was introduced for direct recruitment and recruitment by promotion ie., 1:2 which is up to 21.08.2012 and thereafter the ratio would be reversed as 2:1. This new regulation is applicable and can only be made applicable to the cadre strength available from the date of coming into force to new regulation. It was further contended that an attempt is now being made by the port trust to save the people like the petitioners to regularize those posts and to absorb them into the cadre by enhancing the number of posts taking into account the ad-hoc appointments made prior to the coming into force of new regulations.

W.P.C. No.2245 of 2011

In this Writ Petition the petitioners who are holding the posts of Assistant Executive Engineers (Civil) under the 1st respondent Port Trust are aggrieved by the implementation of the amended regulations notified as per Ext.P9 extra ordinary gazette (Ext.P10 in W.P.C No.255 of 2011). The petitioners allege that the said

Rules deny them the right to hold the present post of Assistant Executive Engineers. According to them, right from Ext.P2, they had been protected by assurance of promotions. All the petitioners have become Assistant Executive Engineers, after completing all the departmental proceedings like seniority, roster, DPC etc. as in regular cases and are presently holding temporary position in the department. All of them have completed the 2 years of probation period for Assistant Executive Engineer cadre even though it is not so declared. The effect of Ext.P9 is the immediate reversion of the petitioners to the post of Junior Engineer. The petitioners alleged that the same is contrary to the recommendations and decision of the Port Trust which the Government of India has no powers to alter and interfere. The petitioners alleged that there would be no chance for further promotion even to the next higher post.

2. The respondent Port Trust has filed a counter affidavit in this Writ Petition also raising almost the same contentions raised in the counter affidavit filed in W.P.C.

No.255 of 2011. The 3rd respondent also filed a statement as directed by this Court almost on similar lines.

3. Arguments have been heard.

4. Mrs. M.A. Vaheeda Babu, the learned counsel for the petitioner in W.P.C. No.255 of 2011 would submit that the impugned regulations permanently takes away the right of the petitioners in W.P.C. No.255 of 2011 of promotion. It was argued by the learned counsel that in spite of the specific suggestions and recommendations made by the board, who is well aware of the local conditions and special circumstances of its employees directions were issued by the Central Government for making the regulations in a particular manner and in that manner alone usurping upon the jurisdiction, authority and power vested upon the board in the matter of framing/making regulations.

5. Mr. S.N. Pransanth, the learned counsel for the petitioners in W.P.C. No.2245 of 2011 submitted that the Central Government has interfered in the service conditions of the petitioners without any power and has

transgressed on the powers vested in the port trust. According to the learned counsel the action of the Government of India is against legitimate expectations of the petitioners for promotions due with their seniority which was granted to them on various occasions from regulations in 1964. According to the learned counsel, the same has now been taken away. It was pointed out that while assured career promotion is permitted on one side in all bodies under the Government of India, in Cochin Port Trust alone, career promotions is curtailed by the impugned regulations.

6. Mr. Gopinatha Menon, the learned counsel for the Cochin Port Trust submitted that the Central Government is competent to issue model regulations in exercise of the powers under Sec.125 of the Major Port Trusts Act, 1963 and by issuing the model regulations, and there was no doctrine of dictation as alleged by the petitioners. It was argued that though the wrong provision was quoted it is immaterial and the same would not invalidate the directions issued by the Government. It

was argued that if the regulation is quashed in Toto, the entire administration would come to a grinding halt.

7. Mr. Kurian Geroje Kannanthanam, the learned counsel for the additional petitioners in W.P.C. No.2245 of 2011, submitted that none of the vested rights of the petitioners have been taken away by the impugned regulations and therefore, on that account the petitioners do not have any course of action.

8. The so called upgradations pointed out by the respondents in their counter affidavits which has been settled as early as in 2001 as per order dated 27.06.2001 has nothing to do with the stagnation in the existing cadre as contended by the petitioners. It is settled law that when a statute vests powers on an authority to exercise the same in a particular manner, then the said authority has to exercise it only in the manner provided in the statute. It is clearly averred in the Writ Petitions that the procedures as contemplated in the Major Port Trusts Act has to be strictly followed if the rule making authority exercises the power to regulate the

method of appointment and further conditions of service after appointment. Here in this case the rule making authority is the 2nd respondent. The 1st respondent Central Government at any rate cannot usurp the powers of the concerned Port for making/amending the rules applicable to its employees. Undoubtedly, the petitioners right to be considered for promotion or to remain in the existing posts has been affected which goes against the constitutional scheme as held by the Apex Court in various decisions. The petitioners are not challenging any policy decision as it was made to appear in the counter affidavit. The definite case of the petitioners is that the power to frame rules are not delegated.

9. In W.P.(C) No.255 of 2011, the respondents have taken a contention that the petitioners were given ad-hoc promotions on temporary basis. It is crucial to note that the petitioners promotion as Assistant Engineers has not been challenged by anybody including the party respondents before any authority. The manner in which the regulations are to be framed are stated in

Sec.123, 123A and 124 of the Major Port Trusts Act 1963. Of course, under Sec.125, whenever the Central Government consider it necessary in the public interest so to do it may by order in writing together with a statement of reasons thereof directing any port to make any regulations for all or any of the matters specified in Sec.28 or 26 or Sec.23 or to amend any regulation within such period as the Central Government may specify in that behalf and if the board against whom such a direction is issued by the Government fails in doing so, the Government may make regulations or amend the regulations as the case may be. In that case also, the central Government is bound to consider the objections or suggestions made by the board. In the present case as rightly submitted by the learned counsel for the petitioners a reverse order has been followed.

10. It appears from the records that the persons similarly situated like the petitioners are few in number and therefore attempt can be made by the respondent Port Trust to save the people like the petitioners by

regularising the posts and by absorbing them to the cadre by enhancing the number of post by taking note of the fact that the appointments were made prior to the coming into force of the new regulations. Undoubtedly the impugned regulations have taken away the promotional avenues of the petitioners on a fine morning. It is true that the Apex Court has observed that mere chance of promotion is not a fundamental right however, the right to be considered for promotion is a fundamental right and the same cannot be taken away. Infact the proposed regulations takes away such a right of the petitioners. Therefore, this Court is of the definite view that the impugned regulations so far it creates a stagnation in the case of the petitioners in W.P.(C) No.255 of 2011 or denies the right to hold the present post of the petitioners in W.P.(C) No.2245 of 2011 is bad in law. However, if the impugned regulations are struck down in Toto the same would affect the entire administration of the respondent Port Trust.

11. As the Act empowers the board who is well

aware of the local conditions and special circumstances of its employees to make objections or suggestions before the Government, these Writ Petitions are disposed of as under:

(a) The respondent board is directed to make positive suggestions in the form of amendment in the impugned regulations for remedying the situations pointed out in these petitions and to submit the same before the Government for approval. This shall be done within a period of two months from the receipt of a copy of this judgment.

(b) The Central Government who is the 1st respondent in this case shall act upon the modifications/suggestions so submitted and shall pass formal orders approving the same.

(c) The above said exercise shall be done by the board as well as the Central Government after affording the petitioners and any other affected parties an opportunity of being heard.

(d) The decision of the Central Government shall be taken within a period of two months from the date of submission of the modifications/suggestions by the respondent Port Trust.

(e) Till the aforesaid exercise is completed, the appointment or promotions to the next cadre as well as reversions shall be kept in abeyance.

Sd/-
A.V. RAMAKRISHNA PILLAI
JUDGE

/ True Copy /

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P.A. To Judge