

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.07.2015

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.NO.4483 OF 2015

AND M.P.NOS.1 AND 2 OF 2015

D.Parivallal

.. Petitioner

-vs-

- 1.Union of India,
Rep. By Secretary to Govt.,
Ministry of Surface Transport
Portwings) Transport Bhavan,
Parliament Street, New Delhi.
- 2.Union of India,
Rep. By Secretary to Govt.,
Ministry of Labour, Shram Shakthi
Bhavan, Rafi Marg, New Delhi.
- 3.Chennai Port Trust,
Rep. By Chairman,
Chennai.
- 4.Chennai Port Trust Industrial
Employees Cooperative Canteen Ltd.,
Rep. By Managing Director,
Port Trust, Chennai.
- 5.The Registrar of Cooperative Societies,
170, E.V.R. High Road, Kilpauk, Chennai.
- 6.The Chennai Port Trust Industrial
Employees Cooperative Canteen Ltd.,
Rep. By its President, Port Trust, Chennai.
R-6 impleaded as per order of Court dt.
21.07.2015 in M.P.No.2 of 2015)in WP 4483/2015

.. Respondents

Petition filed under Article 226 of the Constitution of India praying for issue of Writ of Certiorarified Mandamus to call for the entire records pertaining to the order passed by the 4th respondent in Memo-CHPTIECC/ESTT/76/2015/MEE dated 02.01.2015 (served on 09.01.2015) and quash the same and consequently direct the third and

fourth respondents to continue to employ the petitioner till he attains the age of 60 years as applicable to employees of third respondent in terms of the order dated 24.08.2005, passed by this Court in W.P.No.6872 of 2001.

For Petitioner : Mr.R.Sunil Kumar

For Respondents : Mr.L.P.Shanmughasundaram
Spl.G.P. For RR 4 to 6
: Mr.V.Haribabu for R-3
: No appearance for RR1 and 2

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O R D E R

Heard Mr.R.Sunilkumar, learned counsel for the petitioner, Mr.L.P.Shanmughasundaram, learned Special Government Pleader for respondents 4 to 6 and Mr.V.Haribabu, learned counsel for the third respondent and with the consent of either side, the writ petition itself is taken up for final disposal.

2.The petitioner has filed this writ petition challenging the order passed by the fourth respondent dated 02.01.2015. By the said order/ communication, the petitioner was informed that he is due for retirement on superannuation from the canteen service with effect from 30.06.2015 and he should return the Canteen's properties, if any, issued to him before his retirement.

3.The issue as to whether the petitioner is an employee of the Canteen or a direct employee of the Chennai Port Trust is no longer res integra. In 2001, the Chennai Port Trust Industrial Employees Canteen Workers Welfare Association filed a writ petition before this Court in W.P.No.6872 of 2001, wherein a prayer was sought to treat the members of the petitioner association, who were employed by the Chennai Port Trust in the Chennai Port Trust Industrial Employees Cooperative Canteen Ltd., the sixth respondent herein, as regular employees of the Port Trust and pay them all attendant and monetary benefits from the date of appointment in the fourth respondent Society on par with the regular employees of the Chennai Port Trust by declaring the members of the petitioner association as direct employees of the Port Trust. The writ petition was contested and the fourth respondent-Society raised an objection stating that there is no power for the respondent-Society to declare all the employees working in the Canteen as Port Trust employees. In fact, the stand taken by the respondent-Society was identical to the stand taken by the Chennai Port Trust. This Court, after considering the submissions made on either side, allowed the writ petition and issued the following directions:

- (i) The regular and permanent employees of the canteen/fourth respondent herein are declared to be and shall be treated as direct employees of the Chennai Port Trust.
- (ii) Temporary employees under the fourth respondent shall be absorbed and made permanent with effect from the date on which they are entitled to be declared as permanent in accordance with the rules and regulations of the Port Trust.'

4. By virtue of the above directions, all regular and permanent employees of the Canteen, viz., the Chennai Port Trust Industrial Employees Cooperative Canteen Limited, were declared to be and shall be treated as direct employees of the Chennai Port Trust and the temporary employees in the Society were directed to be absorbed and made permanent from the date on which they are entitled to be declared as permanent in accordance with the rules and regulations of the Port Trust. The fourth respondent-Society therein did not prefer any appeal as against the said order, but the Chennai Port Trust preferred a writ appeal in W.A.No.66 of 2006. The Hon'ble First Bench of this Court, after considering the order passed in the writ petition, dismissed the writ appeal. The Chennai Port Trust carried the matter by way of an appeal to the Hon'ble Supreme Court in Special Leave Appeal (Civil) No.10441 of 2006 and initially an interim order was granted by the Hon'ble Supreme Court and ultimately, by order dated 22.01.2010, after granting leave, the interim order was vacated. Thus, as on date, the order passed in the writ petition, as confirmed by the Hon'ble Division Bench holds the field and there is no stay of the operation of the said order. In the background of these facts, the validity of the impugned order in the present case has to be considered.

5. The sixth respondent-Society has filed the counter-affidavit inter alia contending that the fourth respondent, who is the Managing Director of the Society, has no power and therefore, the President of the Society has impleaded himself as the sixth respondent and seeks to contest the case. In the counter-affidavit filed by the sixth respondent/President of the Society, it is stated that the question of treating the petitioner as an employee of the Chennai Port Trust does not arise and if the employees are absorbed by the Chennai Port Trust, the registration of the sixth respondent Society ought to have been cancelled. Secondly, it is contended that in terms of Rule 149 (2) (3) of the Tamil Nadu Co-operative Societies Rules, the age of retirement of the employees of the Society shall be as per the rule applicable to Government servants and it is 58 years. On the above grounds, it is submitted that the sixth respondent-Society was fully justified in issuing the impugned proceedings stating that the petitioner has attained the age of superannuation on his completing 58 years of age.

6. After hearing the learned counsel for the parties and perusing the materials placed on record, this Court has no hesitation to hold that the stand taken by the sixth respondent is far-fetched. As noticed above, the Canteen Workers Welfare Association approached this Court and filed a writ petition declaring them as employees of the Chennai Port Trust. The writ petition was allowed by order dated 24.08.2008 and confirmed by the Hon'ble Division Bench. As already pointed out, the sixth respondent herein, who was the fourth respondent in the earlier round of litigation, did not prefer any appeal as against the order in the writ petition. Therefore, the order in the writ petition has become final as against the sixth respondent in this writ petition. The writ appeal filed by the Chennai Port Trust has been dismissed and the stay granted by the Hon'ble Supreme Court has been vacated. In such circumstances, the petitioner, for all purposes, is a direct employee of the Chennai Port Trust and consequently, entitled for all the benefits admissible to the employees of the Chennai Port Trust holding similar or identical post.

7. The contention raised by the sixth respondent stating that the registration of the Society itself ought to have been cancelled cannot be a ground to negative the petitioner's plea. It is submitted by the learned counsel for the petitioner that already the Chennai Port Trust has addressed for cancellation of the registration of the sixth respondent Society. However, this issue need not be gone into for the simple reason that the rights of the petitioner to be treated as an employee of the Chennai Port Trust stood concluded pursuant to the order passed in the writ petition, as confirmed by the Hon'ble Division Bench.

8. Hence, for all the above reasons, the petitioner is entitled to succeed. The writ petition is allowed and the impugned order is quashed. No costs. Consequently, M.Ps. are closed.

Sd/-

Asst.Registrar

/true copy/

Sub Asst. Registrar

To

1. The Secretary to Govt.
Ministry of Surface Transport
(Portwings) Transport Bhavan,
Parliament Street, New Delhi.

2. The Secretary to Govt.
Ministry of Labour, Shram Shakthi
Bhavan, Rafi Marg, New Delhi.

3.The Chairman,
Chennai Port Trust, Chennai.

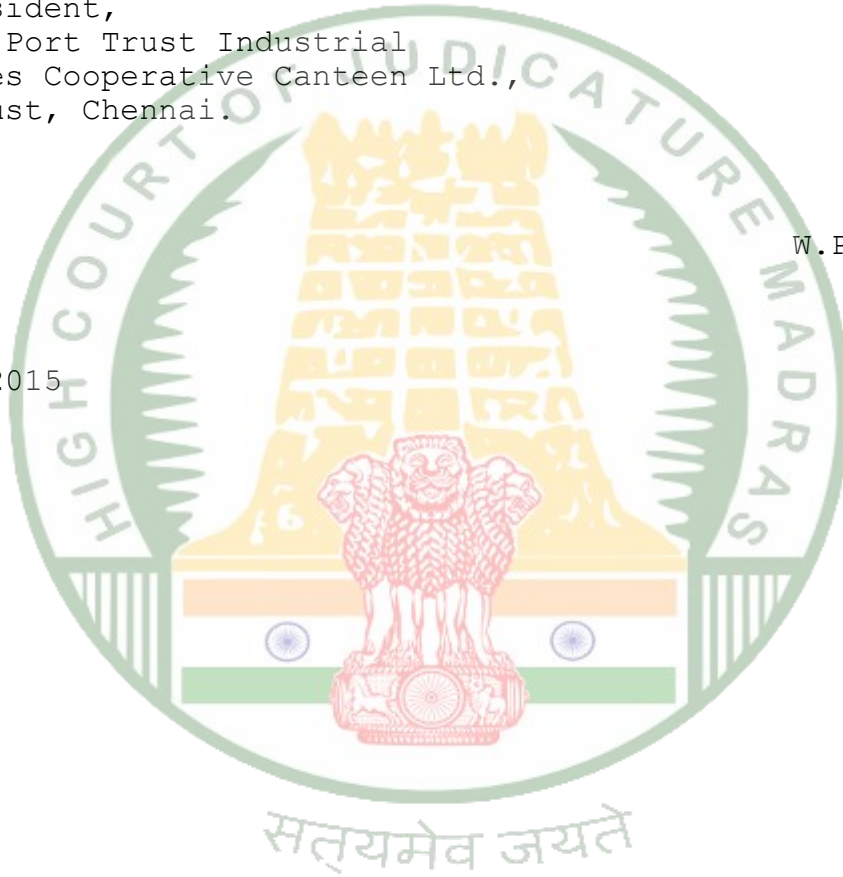
4.The Managing Director
Chennai Port Trust Industrial
Employees Cooperative Canteen Ltd.,
Port Trust, Chennai.

5.The Registrar of Cooperative Societies,
170, E.V.R. High Road, Kilpauk, Chennai.

6.The President,
Chennai Port Trust Industrial
Employees Cooperative Canteen Ltd.,
Port Trust, Chennai.

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EV (CO)
RS 07/08/2015



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