

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders reserved on:- 11.11.2016

Orders pronounced on :- 02.12.2016

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBBIAH

W.P.No.23716 of 2015

and

M.P.No.1 of 2015

J.Nandagopal ... Petitioner

Vs.

1. Union of India,
Rep. by Secretary to Government,
Ministry of Surface Transport (Port Wings),
Transport Bhavan, Parliament Street,
New Delhi-110 001.
2. Union of India,
Rep. by Secretary to Government,
Ministry of Labour,
Shram Shakthi Bhavan,
Rafi Marg, New Delhi-110 001.
3. Chennai Port Trust,
Rep. by Chairman,
Chennai-600 001.
4. Chennai Port Trust Industrial
Employees Co-operative Canteen Ltd.,
Rep. by its President,
Port Trust, Chennai-600 001.
5. The Registrar of Co-operative Societies,
170, E.V.R. High Road,
Kilpauk, Chennai-600 010. .. Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus to direct the third respondent to disburse the entire retirement benefits to

the petitioner who got retired on superannuation on 31.05.2015 with appropriate interest.

For Petitioner :Mr.R.Sunil Kumar

For Respondents :Mr.Christopher Kishore, CGSC for RR-1 and 2
Mr.M.R.Dharani Chander for R-3
Mr.L.P.Shanmugha Sundaram, Spl.G.P. for
RR-4 & 5

ORDER

The petitioner has filed the above Writ Petition praying for issuance of a Writ of Mandamus to direct the third respondent to disburse the entire retirement benefits to the petitioner who retired on superannuation on 31.05.2015 with appropriate interest.

2. In the affidavit filed in support of the Writ Petition, it is averred by the petitioner that he was a permanent employee of Chennai Port Trust Industrial Employees' Co-operative Canteen (for short, 'the Canteen'). He joined the service of the Canteen as an Attender on 30.04.1979. On 24.09.1988, he was promoted as Junior Supervisor and continued as such till his retirement on 31.05.2015. He had an unblemished record of service for the last more than 36 years.

3. It is further stated that the fourth respondent-Canteen is a statutorily recognised Canteen of the Chennai Port Trust. The Canteen is run in terms of the Factories Act. Pursuant to the sanction granted by the Trust Board of the Chennai Port Trust, the Canteen was started with the following terms and conditions:

"(a) The Chennai Port Trust administration shall appoint and pay for the staff for running of the Canteen.

(b) The Chennai Port Trust shall supply free electricity, water and adequate equipment, besides providing rent free premises for the running of the Canteen. It had supplied furniture and utensils free of cost.

(c) The Rules framed by the Co-operative Society for running the Canteen shall be subject to the approval of the Chairman of the Chennai Port Trust.

(d) The Chennai Port Trust administration shall have the right to audit the accounts of the Canteen."

In addition to the above terms, it is stated that the Chennai Port Trust administration alone has got the authority in respect of all policy matters concerning the Canteen including the price of food items, the number of employees to be employed in the Canteen, the wages and the other terms and conditions of service, which are either decided or approved by the Port Trust

and for all legal and practical purposes, the Chennai Port Trust is the principal employer of the Canteen employees.

4. It is the further case of the petitioner that various settlements arrived at from time to time in respect of the terms and conditions of service of these Canteen employees, have been signed with concurrence and implemented only with the approval of the Chennai Port Trust. The Chennai Port Trust Industrial Employees' Canteen Workers Welfare Association (in which the petitioner herein is also one of the member) had filed a Writ Petition in W.P.No.6872 of 2001 before this Court seeking for a direction to the third and fourth respondents herein to treat the members of the Writ Petitioner-Association employed by the third respondent through the fourth respondent in the Canteen, as regular employees of the Chennai Port Trust and to pay them all attendant and monetary benefits from the date of their appointment in the Canteen on par with the regular employees of the Chennai Port Trust, by declaring them as direct employees of the Chennai Port Trust. This Court, by order dated 24.08.2005, ordered the Writ Petition in the following terms:

"(1) The regular and permanent employees of the Canteen/the fourth respondent herein are declared to be and shall be treated as direct employees of the Chennai Port Trust.

(2) 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.

The writ petition is ordered subject to the above observation."

5. It is further stated that except the third respondent-Chennai Port Trust, none of the other respondents challenged the said order dated 24.08.2005 in appeal. The Writ Appeal in W.A.No.66 of 2006 filed by the Chennai Port Trust, was dismissed on 21.02.2006, confirming the order passed in the Writ Petition. On appeal to the Supreme Court, though the Supreme Court initially granted interim order of stay on 14.07.2006, the same was vacated on 22.01.2010 in Special Leave to Appeal (Civil) No.10441 of 2006, which was later numbered as Civil Appeal No.1381 of 2010. Thereafter, repeated representations and legal notices were issued seeking implementation of the order passed by the Court and pursuant to the legal opinion of the Standing Counsel for the Chennai Port Trust and the Additional and Assistant Solicitor Generals of India, the Chennai Port Trust constituted a Committee to convene tripartite meetings. The representatives of the Committee including the petitioner in W.P.No.6872 of 2001, the representatives from Chennai Port Trust, the Ministries of Shipping and Labour as well as the

Registrar of Co-operative Society had also taken part in the tripartite meetings, which had been convened to find out the modalities for implementing the order passed by this Court in W.P.No.6872 of 2001.

6. It is further stated that out of 72 members of the petitioner-Association in W.P.No.6872 of 2001, only 37 employees were in service and the remaining employees either retired or died in the meantime. The third respondent-Chennai Port Trust passed a Resolution No.168, dated 19.11.2014 to treat the available permanent employees as direct employees of the Chennai Port Trust provisionally with effect from 24.08.2005, pending appeal before the Supreme Court. In continuation of the Resolution, on 17.03.2015, the third respondent passed orders treating and absorbing the available 37 employees as direct employees of Port Trust with effect from 24.08.2005. It is further stated that the age of retirement of employees of the Port Trust is 60 years, whereas the age of the employees of the erstwhile Society was 58 years. Therefore, after becoming an employee of the Port Trust, the petitioner was entitled to continue in service upto 60 years.

7. It is further stated that after considering the petitioner for the post of Attender in the Canteen, he was directed to report on 27.04.1979 with Medical Certificate and other relevant Certificates, pursuant to which, he reported with the said Certificates and after verifying the records, the petitioner was appointed as an Attender in the Canteen. He was promoted as Junior Supervisor in 1988. During the financial upgradation in 2005, all eligible employees were instructed to produce the documents for proof of their age. The petitioner produced the copy of the Transfer Certificate which was produced during his initial appointment in 1979. Again, during 2011, for the purpose of second financial upgradation, all the employees of the Canteen were instructed to produce School Certificate for proof of age and date of birth and accordingly, the petitioner produced the same. For the first time, the Canteen administration noticed a difference in respect of the petitioner's date of birth, which was entered in Service Register and petitioner's Transfer Certificate. The Canteen administration directed petitioner and other similarly placed persons to spell out the correct date of birth. As directed by the authorities, on 22.02.2011, the petitioner gave letter, stating that his date of birth is 24.05.1955 and not 24.05.1957, based upon which, the Canteen administration made necessary correction in petitioner's Service Register. It is the claim of petitioner that he had produced the same Certificate at all times right from his date of appointment in 1979.

8. The petitioner claims to have mentioned his correct date of birth in various documents like Family Identity (Medical)

Card, PAN Card, Income Tax Returns, LIC Policies, etc., and further states that none of the documents furnished by petitioner contains the alleged wrong date of birth as 24.05.1957 and that the mistake had crept in due to the error that had occurred in Canteen Office. It is further stated that on 01.12.2014, the Chennai Port Trust issued a Memo to petitioner intimating that he is due to retire after superannuation on 31.05.2015. At the fag end of petitioner's retirement, the President of the fourth respondent-Canteen issued a letter, dated 15.05.2015, directing the petitioner to appear for an enquiry by 10.30 a.m. on 18.05.2015 and further stating that the petitioner ought to have retired on 31.05.2013 itself at the age of 58 years based on his date of birth as 24.05.1955 and he has been authorised to take action with regard to the said issue of date of birth. It is the contention of petitioner that in view of the order passed in W.P.No.6872 of 2001, and in terms of the proceedings of Port Trust, dated 17.03.2015 absorbing the petitioner as employee of the Port Trust, the President of the Canteen had no authority and he lacks jurisdiction. Without any enquiry whatsoever, fourth respondent, by proceedings dated 27.05.2015, communicated to the petitioner that he had relieved the petitioner from the services of the Canteen with effect from 27.05.2015 and he will consider about the retirement benefits later.

9. After letter dated 27.05.2015 issued by fourth respondent, the petitioner's banker, namely Indian Bank, Nanganallur had debited the petitioner's account on instructions of Deputy Chief Accounts Officer of Chennai Port Trust, dated 29.05.2015. It is the grievance of petitioner that his May month's salary which was originally deposited, was withdrawn by third respondent-Port Trust and his entire retirement benefits, including gratuity, provident fund, E.L. encashment, etc., have not been paid after his retirement on 31.05.2015, inspite of representation to third respondent. Hence, petitioner has filed this Writ Petition for the above stated relief.

10. Learned counsel for the petitioner submitted that petitioner was an employee of the Canteen and was also a member of Chennai Port Trust Industrial Employees' Canteen Workers' Welfare Association. The said Association filed W.P.No.6872 of 2001 before this Court for the relief stated supra and said Writ Petition was ordered on 24.08.2005, as quoted above, against which, W.A.No.66 of 2006 was filed by Chennai Port Trust, which was dismissed on 21.02.2006, against which, Chennai Port Trust filed SLP before Supreme Court in S.L.P.(Civil).No.10441 of 2006, in which, the interim order of stay already granted was vacated by the Supreme Court on 22.01.2010.

11. Learned counsel further submitted that out of 72 members

of the petitioner-Association in W.P.No.6872 of 2001, only 37 employees were in service and remaining employees either retired or died in the meantime. The third respondent-Port Trust passed a Resolution No.168, dated 19.11.2014, treating the available permanent employees as direct employees of the Chennai Port Trust provisionally with effect from 24.08.2005 pending appeal before the Supreme Court. Learned counsel further contended that in continuation of the said Resolution, on 17.03.2015, the third respondent has passed orders, treating and absorbing the available 37 employees as directed employees of the Port Trust with effect from 24.08.2005.

12. Learned counsel for the petitioner further submitted that the age of retirement of employees of the Port Trust is 60 years, whereas the age of the employees of the erstwhile Society was 58 years. Since it was provisionally decided by Resolution to treat the petitioner and others as direct employees of the Chennai Port Trust, the petitioner was allowed to retire on 31.05.2015 in the age of 60 years. Further, based on the proceedings, dated 27.05.2015 issued by the President of the fourth respondent-Canteen, the petitioner's Banker debited his account on instructions of Deputy Chief Accounts Officer of the Chennai Port Trust, dated 29.05.2015 and his May month's salary was withdrawn by the Chennai Port Trust and his retiral benefits were not paid.

13. Learned counsel for the petitioner further contended that on 01.12.2014, the Port Trust issued a Memo intimating that he was due to retire on 31.05.2015, pursuant to which, he continued till 31.05.2015, but at the fag end of his retirement, the President of the fourth respondent-Canteen issued a letter dated 15.05.2015, directing the petitioner to appear for enquiry on 18.05.2015 and further stating that he ought to have retired on 31.05.2013 itself at the age of 58 years, his date of birth being 24.05.1955. It is further stated by the learned counsel for the petitioner that without any reason whatsoever, the fourth respondent, by proceedings dated 27.05.2015, intimated the petitioner that he had relieved him from the services of the Canteen with effect from 27.05.2015 and he will consider about his retirement benefits later.

14. It is the further submission of the learned counsel for the petitioner that having absorbed the petitioner provisionally as an employee of the Canteen, the action of the respondent-Port Trust in not disbursing the entire retiral benefits of the petitioner who superannuated on 31.05.2015, is not legally sustainable.

15. In support of his submissions, learned counsel for the petitioner relied on the judgments of this Court, dated

21.07.2015 in W.P.No.4483 of 2015 (D.Parivallal Vs. Union of India and 5 others) and dated 19.02.2016 in W.P.No.4950 of 2016 (B.C.Malakondiah Vs.Union of India and 4 others) and prayed for allowing the Writ Petition.

16. Learned counsel for the third respondent, by filing detailed counter affidavit, submitted that it is not correct to state that the petitioner, at the time of retirement, was working as Senior Supervisor. He was working as Junior Supervisor FUG-II in the fourth respondent-Canteen, which is a registered Society under the Tamil Nadu Co-operative Societies Act, under the control of the fifth respondent-Registrar of Co-operative Societies. As per the Rules of the Co-operative Society, the age of retirement under superannuation is 58 years and the petitioner attained the age of 58 years on 24.05.2013 itself. The elected President of the Canteen issued six months' notice, vide Memo, dated 01.12.2014, intimating that the petitioner is due for retirement on 31.05.2015 AN. Learned counsel further contended that as per the Canteen records, the petitioner joined the service of the Canteen as an Attender on 30.04.1979 and he was working as Junior Supervisor in the Canteen under the control of the fifth respondent-Registrar of Co-operative Societies.

17. Learned counsel for the third respondent further submitted that Canteen Workers' Welfare Association filed W.P.No.6872 of 2001 seeking for a direction to the third and fourth respondents to treat the members of the writ petitioner-Association as regular employees of the Chennai Port Trust, and this Court, by order dated 24.08.2005, ordered the said Writ Petition. Based on this order, dated 24.8.2005 passed by this Court in W.P.No.6872 of 2001 and also based on the sanction from the Ministry concerned, preliminary action was taken for treating the Canteen employees, provisionally on par with the Chennai Port Trust employees, pending Civil Appeal filed before the Supreme Court, which was filed against the dismissal order passed by the Division Bench of this Court on 21.02.2006 in W.A.No.66 of 2006, which was filed against the learned single Judge's order, dated 24.08.2015 in W.P.No.6872 of 2001. Learned counsel for the third respondent further submitted that the service of contract/part-time employees of the Canteen cannot be regularised as employees of the Chennai Port Trust. Therefore, any decision can be arrived at only as per the outcome of the Civil Appeal pending in the Supreme Court. In support of his submissions, learned counsel for the third respondent relied on a decision of the Supreme Court in the case of Balwant Rai Saluja and another Vs. Air India Ltd. and others, in Civil Appeal Nos.10264 to 10266 of 2013, dated 25.08.2014.

18. Heard the learned Central Government Standing Counsel

appearing for the first and second respondents and the learned Special Government Pleader appearing for the fourth and fifth respondents, on the above aspects.

19. Keeping in mind the above submissions made on either side, I have carefully considered the same and perused the materials available on record.

20. Though very many contentions have been raised on either side, it is seen that this Court in the Writ Petition filed by the Chennai Port Trust Industrial Employees' Canteen Workers Welfare Association in W.P.No.6872 of 2001, this Court, by order dated 24.08.2005, has already directed to treat the regular and permanent employees of the Canteen as direct employees of the Chennai Port Trust and the temporary employees under the Canteen 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. As against the said order, dated 24.08.2005, the Chennai Port Trust preferred Writ Appeal in W.A.No.66 of 2006, which was dismissed by the Division Bench on 21.02.2006, against which, Special Leave Petition filed by the Chennai Port Trust is pending before the Supreme Court, in which, initially there was interim order, which stood vacated on 22.01.2010. Thus, as of today, there is no interim order before the Supreme Court. Therefore, the third respondent-Chennai Port Trust cannot deny the retiral benefits to the petitioner.

21. Moreover, the petitioner is an employee of the fourth respondent-Canteen and has to be treated as permanent employee of the third respondent-Port Trust based on the order dated 24.08.2005 passed by this Court in W.P.No.6872 of 2001, against which, there is no stay as on today. In the instant case, the third respondent, by treating the age of retirement of the petitioner as 60 years, allowed him to retire from service on attaining the age of superannuation on 31.05.2015. Therefore, the third respondent-Chennai Port Trust is bound to pay all the retiral benefits to the petitioner. Accordingly, the third respondent-Chennai Port Trust is directed to disburse the entire retirement benefits to the petitioner and other entitlements, including recovered salary, etc., within a period of six weeks from the date of receipt of a copy of this order, if there is no other impediment in granting the same and if no enquiry proceedings are pending against the petitioner.

22. The Writ Petition is disposed of with the above observations and directions. No costs. Consequently, the Miscellaneous Petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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Copy to

1. Secretary to Government,
Ministry of Surface Transport (Port Wings),
Transport Bhavan, Parliament Street,
New Delhi-110 001.
2. Secretary to Government,
Ministry of Labour,
Shram Shakthi Bhavan,
Rafi Marg, New Delhi-110 001.
3. The Chairman, Chennai Port Trust, Chennai-600 001.
4. The President,
Chennai Port Trust Industrial
Employees Co-operative Canteen Ltd.,
Port Trust, Chennai-600 001.
5. The Registrar of Co-operative Societies,
170, E.V.R. High Road,
Kilpauk, Chennai-600 010.

+1cc to Mr.R. Sunilkumar, Advocate, S.R.No.71758
+1cc to Mr.M.R. Dharanihander, Advocate, S.R.No.71417
+1cc to Mr. L.P.Shanmugasundaram, Advocate SR.No.71622
+1cc to the Government Pleader, S.R.No.71647

sr(CO)
md(04/01/2017)

W.P.No.23716 of 2015