

IN THE HIGH COURT OF JUDICATURE AT MADRAS

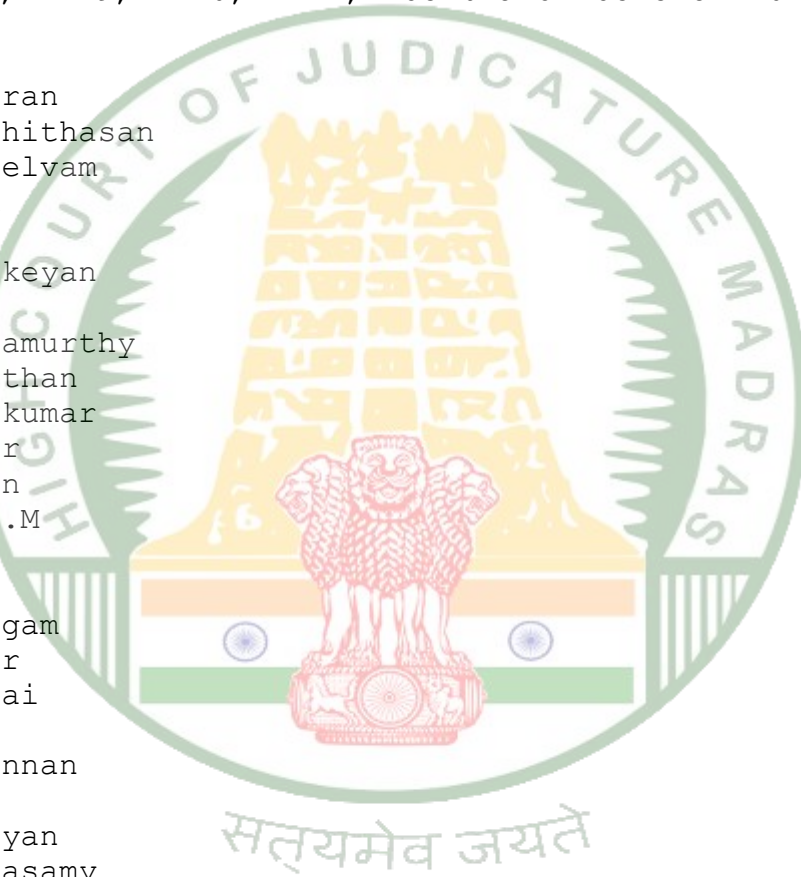
DATED : 22.07.2016

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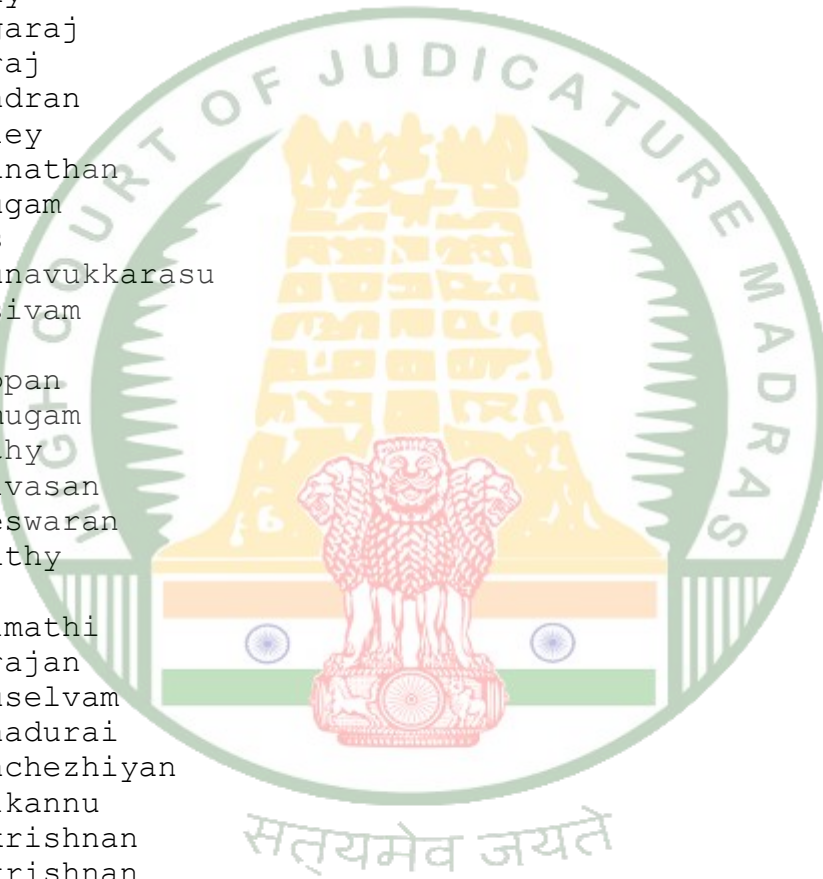
THE HONOURABLE MR.JUSTICE B.RAJENDRAN

Writ Petition Nos. 33614 of 2012  
14599, 21598, 24944, 24945, 24946, 24947, 30721,  
37650, 40965, 40966 of 2015  
3378, 7119, 7120, 7121, 18326 and 18373 of 2016

1. V. Manoharan
2. A. Puratchithasan
3. R. Tamilselvam
4. R. Ambedh
5. M. Babu
6. V. Karthikeyan
7. S. Suresh
8. M. Krishnamurthy
9. J. Jayanathan
10. R. Santhakumar
11. D. Bhaskar
12. A. Johnson
13. Anandaraj.M
14. M. Sundar
15. D. Sekar
16. E. Shanmugam
17. M. Ayyanar
18. K. Elumalai
19. R. Sekar
20. B. Manivannan
21. P. Raju
22. A. Chinnayan
23. P. Govindasamy
24. D. Govindasamy
25. C. Pradeepan
26. M. Palanivelu
27. S. Vijayakumar
28. P.R. Madhavan
29. R. Mohan
30. A. Govindaraj
31. A.K. Rajendran
32. K. Balaraman
33. G. Dhakshnamurthy
34. E. Sekar
35. L. Loganathan
36. K. ARul
37. P. Kuselan
38. S. Mohamadessa



38.P. Dhanasekar  
40.G. Subbarayan  
41.M. Elumalai  
42.M. Balakrishnan  
43.M. Raja  
44.A. Manogaran  
45.S. Pakkiri  
46.A. Maarimuthu  
47.G. Perumal  
48.K. Dillibabu  
49.A. Chandran  
50.R. Antony  
51.V. Thangaraj  
52.M. Nagaraj  
53.R. Gajendran  
54.N. Stanley  
55.M. Ranganathan  
56.K. Arumugam  
57.Ramadass  
58.R. Thirunavukkarasu  
59.C. Sadasivam  
60.Sridhar  
61.K. Annappan  
62.C. Shanmugam  
63.M. Moorthy  
64.K. Srinivasan  
65.S. Gnaneswaran  
66.R. Umapathy  
67.A. Velu  
68.R. Niraimathi  
69.C. Natarajan  
70.T. Muthuselvam  
71.S. Chinnadurai  
72.R. Nedunchezhiyan  
73.P. Duraikannu  
74.K. Ramakrishnan  
75.A. Mayakrishnan  
76.S. Antony  
77.S. Kandasamy  
78.C. Govindan  
79.V. Elavarasan  
80.G. Pandiyan  
81.E. Elangovan  
82.E. Dillibabu  
83.M. Sakthivel  
84.K. Panchanathan  
85.U. Devi  
86.M. Ponnai  
87.R. Mani  
88.K. Subramani  
89.M. Devaraj  
90.P. Munusamy



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|               |                                    |
|---------------|------------------------------------|
| E.Sekar       | ... Petitioner in WP.14599 of 2015 |
| M.Ranganathan | ... Petitioner in WP.21598 of 2015 |
| P.Duraikannu  | ... Petitioner in WP.24944 of 2015 |
| P.Kuselan     | ... Petitioner in WP.24945 of 2015 |
| A.K.Rajendran | ... Petitioner in WP.24946 of 2015 |
| K.Subramani   | ... Petitioner in WP.24947 of 2015 |
| M.Murthy      | ... Petitioner in WP.30721 of 2015 |
| M.Devaraj     | ... Petitioner in WP.37650 of 2015 |
| G.Pandian     | ... Petitioner in WP.40965 of 2015 |
| K.Annappan    | ... Petitioner in WP.40966 of 2015 |
| M.Ponnan      | ... Petitioner in WP.3378 of 2016  |
| R.Niraimathi  | ... Petitioner in WP.7119 of 2016  |
| M.Elumalai    | ... Petitioner in WP.7120 of 2016  |
| S.Kandasamy   | ... Petitioner in WP.7121 of 2016  |
| R.Sekar       | ... Petitioner in WP.18326 of 2016 |
| U.Devi        | ... Petitioner in WP.18373 of 2016 |

Versus

1.Union of India  
rep. by its Secretary  
Ministry of Shipping  
No.1, Sansad Marg  
New Delhi - 110 001

2.The Chairman  
Chennai Port Trust  
Rajaji Salai  
Chennai - 600 001

3.The Chief Mechanical Engineer  
Chennai Port Trust  
Rajaji Salai  
Chennai - 600 001

... R1 to R3 in all the WPs

4.The Chairman cum Managing Director  
Ennore Port Trust  
P.T. Lee Chengalvaraya Naicker Maaligai  
No.23, First Floor, Rajaji Salai  
Chennai - 600 001

5.The Chief Secretary  
Government of Tamil Nadu  
Fort St. George  
Chennai - 600 009

6.The Special Officer  
Chennai Dock Employees Credit Thrift  
Society Limited  
2nd Line Beach Road  
Chennai - 600 001

7.The General Secretary

Madras Port Spillage Handling Workers  
Association  
Iron Ore Handling  
Bharathi Dock-II  
Chennai Port Trust  
Chennai - 600 001

... R4 to R7 in WP.33614 of 2012

These Writ Petitions are filed under Article 226 of The Constitution of India, praying to issuance of Writ of Mandamus,

W.P.No.33614 of 2012 : Directing the respondents 1 to 3 to regularise the service of the petitioners as Class IV employees of the Chennai Port Trust with effect from the date of their initial appointment and grant all the benefits that are paid to the Class IV employees of the Chennai Port Trust with retrospective effect with all monetary and other attendant benefits.

W.P.No.14599 of 2015 : Call for the records relating to the order issued by the 3rd Respondent herein proceedings No. CME/B2/273/ 2013/MEE dated 09.04.2015, quash the same further directing the Respondents 2 and 3 herein to continue the employment of the Petitioner till he attain the age superannuation at the age of 60 years as per the Chennai Port Trust Employees (Retirement) Regulation, 1976.

W.P.No.21598 of 2015 : Call for the records relating to the order issued by the 3rd respondent herein proceedings No.CME/B2/273/2013/MEE dated 9.3.2014 quash the same further directing the respondent 2 and 3 herein to continue the employment of the petitioner till he attain the age superannuation at the age of 60 years as per the Chennai Port Trust Employees (Retirement) Regulation, 1976.

W.P.No.24944 of 2015 : Call for the records relating to the order issued by the 3rd respondent herein proceedings No.CME/B2/273/ 2013/MEE dated 7.6.2014 quash the same further directing the respondent 2 and 3 herein to continue the employment of the petitioner till he attain the age superannuation at the age of 60 years as per the Chennai Port Trust Employees (Retirement) Regulation, 1976.

W.P.No.24945 of 2015 : call for the records relating to the order issued by the 3rd respondent herein proceedings No.CME/B2/273/ 2013/MEE dated 6.11.2014 quash the same further directing the respondent 2 and 3 herein to continue the employment of the petitioner till he attain the age superannuation at the age of 60 years as per the Chennai Port Trust Employees (Retirement) Regulation, 1976.

W.P.No.24946 of 2015 : call for the records relating to the order issued by the 3rd respondent herein proceedings No.CME/B2/273/ 2013/MEE dated 9.10.2014 quash the same further directing the respondent 2 and 3 herein to continue the employment of the petitioner till he attain the age superannuation at the age of 60 years as per the Chennai Port Trust Employees (Retirement) Regulation, 1976.

W.P.No.24947 of 2015 : Call for the records relating to the order issued by the 3rd respondent herein proceedings No.CME/B2/273/ 2013/MEE dated 11.4.2014 quash the same further directing the respondent 2 and 3 herein to continue the employment of the petitioner till he attain the age superannuation at the age of 60 years as per the Chennai Port Trust Employees (Retirement) Regulation, 1976.

W.P.No.30721 of 2015 : Call for the records relating to the order issued by the 3rd respondent herein proceedings No.CME/B2/273/2013/MEE dt 19.9.2015 quash the same further directing the respondent 2 and 3 herein to continue the employment of the petitioner till he attain the age superannuation at the age of 60 years as per the Chennai Port Trust Employees (Retirement) Regulation, 1976.

W.P.No.37650 of 2015 : To call for the records relating to the order issued by the 3rd Respondent herein proceedings No.CME/B2/273/2013/MEE dated 19.11.2015 quash the same further directing the Respondent 2 and 3 herein to continue the employment of the Petitioner till attain the age superannuation at the age of 60 years as per the Chennai Port Trust Employees (Retirement) Regulation, 1976.

W.P.No.40965 of 2015 : Call for the records relating to the order issued by the 3rd Respondent herein proceedings No.CME/B2/273/2013/MEE dated 19.12.2015 quash the same further directing the Respondent 2 and 3 herein to continue the employment of the petitioner till he attain the age superannuation at the age of 60 years as per the Chennai Port Trust Employees (Retirement) Regulation, 1976.

W.P.No.40966 of 2015 : Call for the records relating to the order issued by the 3rd Respondent herein proceedings No.CME/B2/273/2013/MEE dated 19.12.2015 quash the same further directing the Respondent 2 and 3 herein to continue the employment of the petitioner till he attain the age superannuation at the age of 60 years as per the Chennai Port Trust Employees (Retirement) Regulation, 1976.

W.P.No.3378 of 2016 : Call for the records relating to the order issued by the 3rd Respondent herein proceedings No.CME/B2/273/2013/MEE dated 22.01.2016 quash the same further

directing the respondent 2 and 3 herein to continue the employment of the petitioner till he attain the age superannuation at the age of 60 years as per the Chennai Port Trust Employees (Retirement) Regulations, 1976.

W.P.No.7119 of 2016 : Forbearing the 2nd and 3rd respondent from superannuating, retiring or in any manner stopping the services of the petitioner either on 29.2.2016 or any other day and to continue the employment of the petitioner till he attain the age of superannuation at the age of 60 years as per the Chennai Port trust Employees (Retirement)Regulation, 1976.

W.P.No.7120 of 2016 : Forbearing the 2nd and 3rd respondent from superannuating, retiring or in any manner stopping the services of the petitioner either on 29.2.2016 or any other day and to continue the employment of the petitioner till he attain the age of superannuation at the age of 60 years as per the Chennai Port trust Employees (Retirement)Regulation, 1976.

W.P.No.7121 of 2016 : Forbearing the 2nd and 3rd respondent from superannuating, retiring or in any manner stopping the services of the petitioner either on 29.2.2016 or any other day and to continue the employment of the petitioner till he attain the age of superannuation at the age of 60 years as per the Chennai Port trust Employees (Retirement)Regulation, 1976.

W.P.No.18326 of 2016 : Call for the records relating to the order issued by the 3rd respondent herein proceedings No. CME/B2/273/ 2013/MEE dated 11.05.2016 quash the same further directing the Respondent 2 and 3 herein to continue the employment of the petitioner till he attain the age superannuation at the age of 60 years as per the Chennai Port Trust Employees (Retirement) Regulation, 1976.

W.P.No.18373 of 2016 : Call for the records relating to the order issued by the 3rd Respondent herein proceedings No. CME/B2/ 273/ 2013/ MEE dated 11.05.2016 quash the same further directing the Respondent 2 and 3 herein to continue the employment of the Petitioner till she attain the age superannuation at the age of 60 years as per the Chennai Port Trust Employees (Retirement) Regulation, 1976.

For Petitioner : Mr. K.M. Ramesh  
for M/s. Samanta and Ston in  
WPs.21598, 24944 to 24947 of 2015  
& 7119 to 7121 of 2016, 30721,  
37650 of 2015, 3378 of 2016,  
40965, 40966, 14599 of 2016 &  
18326 & 18373 of 2016

<https://hcservices.ecourts.gov.in/hcservices/> : Mr.K.Raja in WP.33614 of 2016

For Respondents : Mr.P. Wilson for  
Mr.M.Palanimuthu for R2 & R3 in  
WPs.18326 & 18373 of 2016, 21598,  
24944 to 24947 of 2015 &  
33614 of 2012

: Mr.K.Ramanamoorthy, CGC for R1 in  
WPs.18326 & 18373, 3378 of 2016,  
40965 & 40966 of 2015

: Mr.S.Haja Mohideen Gisthi for R1  
in WP.33614 of 2012

: Mr.Krishna Ravindran for R4 in  
WP.33614 of 2012

: Mr.N.Sivabharathi, CGC for R1 in  
WPs.24944 to 24947, 37650 of 2015

: Mr.P.Damodaran for R6 in  
WP.33614 of 2012

: Mr.K.Gunasekar,  
Special Government Pleader for R4  
in WP.33614 of 2012

: Ms.G.Hema, CGSC for R2 & R3 in  
WPs.7119 & 7121 of 2016

: Mr.S.Namo Narayanan, CGSPC  
for R1 in WP.30721 of 2015

: Mr.Haribabu for R2 & R3 in  
WPs.37650 of 2015, 3378 of 2016,  
40965,40966, 14599, 30721 of 2015

: Mrs.S.Meenakumari, CGSC for R1  
in WP.14599 of 2015

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### COMMON ORDER

In all these 17 writ petitions, the question arise for consideration is common and identical. The learned counsel appearing for both sides have advanced common arguments. Therefore, by consent of counsel for both sides, all these writ petitions are taken up for hearing together and are disposed of by this common order.

2. For the purpose of disposal of these batch of cases, the facts which gave rise to filing WP No. 18326 of 2016 is dealt with in common, as a test case.

3. According to the petitioner in WP No. 18326 of 2016, he is an employee of the second respondent Port Trust, employed as Spillage Handling Worker, for more than 25 years without any break in service and drawing regular time scale of pay on par with class IV employees of the Chennai Port Trust. It is the contention of the petitioner that he was originally recruited through a society called Madras Port Spillage Handling Worker's Association after the said Society has entered into a Memorandum of Understanding with the second respondent Port Trust.

4. According to the petitioner in WP No. 18326 of 2016, he was appointed on 01.02.1990 through the Madras Port Spillage Handling Workers Association and was drawing salary through the said Association. According to the petitioner, the Association was registered under the Tamil Nadu Societies Registration Act and it was formed for the purpose of engaging spillage handling workers in the Port Trust. It is his contention that his nature of work involves cleaning of iron ore spillages in the second respondent port trust. He would further contend that he is in continued and uninterrupted service with the second respondent Port Trust. It is his further contention that the second respondent Port Trust, by a proceedings dated 06.12.2012 terminated the Memorandum of Understanding entered into with the Madras Port Spillage Handling Workers Association by declaring that the services of the petitioner is no longer required by the Chennai Port Trust. In such circumstance, the petitioner along with 89 others have filed WP No. 33814 of 2012 before this Court with a prayer to issue a Writ of Mandamus directing the Chennai Port Trust to regularise their service on par with class IV employees of the Port Trust from the date of their initial appointment and to confer all consequential service and monetary benefits with retrospective effect. Pending WP No. 33814 of 2012, by order dated 04.07.2014 in MP No. 2 of 2014 in WP No. 33614 of 2012, this Court granted an interim direction directing the Port Trust to pay the last drawn salary to all the 90 petitioners from 07.12.2012 and pay the same pending disposal of the above writ petition. Aggrieved by the same, Chennai Port Trust has filed W.A. No. 1091 of 2014 before this Court and the writ appeal was dismissed on 02.09.2014. A further appeal was filed before the Honourable Supreme Court in SLP Civil No. 29550 of 2014. The Honourable Supreme Court, by recording the submissions made on behalf of the Chennai Port Trust to the effect that the petitioners will be paid regular time scale of pay on par with others, has disposed of the Special Leave Petition.

5. According to the petitioner in WP No. 18326 of 2016, being the test case, his date of birth is 12.05.1958 and as per the Chennai Port Trust Employees (Retirement) Regulation,

1976, his date of superannuation is 31.05.2018. However, the third respondent, erroneously invoking the memorandum of understanding between the Chennai Port Trust and Madras Port Spillage Handling Workers Association has passed an order dated 11.05.2016, which was not directly communicated to the petitioner, but to one T. Jayasekar, from whom the petitioner came to know that he was sought to be relieved from duty on 31.05.2016 on the ground he completed 58 years of age. The order dated 11.05.2016 was passed purportedly on the ground that the Memorandum of Understanding with the Madras Port Spillage Handling Workers Association has been terminated.

6. According to the petitioner in WP No. 18326 of 2016, one of the employees who was issued with a similar relieving order approached this Court by filing WP No. 14599 of 2015 challenging the order relieving him from duty and for a consequential direction to the respondents 2 and 3 to continue his employment till he attains the age of 60 years as per the Chennai Port Trust Employees' (Retirement) Regulation, 1976. Pending WP No. 14599 of 2015, this Court granted interim stay on 21.05.2015 based on which the petitioner therein is continuing in service. As regards the petitioner, the officials of the Chennai Port Trust are preventing him from attending to the work. In such circumstance the petitioner has filed this writ petition challenging the order dated 11.05.2016 by specifically contending that the benefit of the order passed by this Court on 21.05.2016 passed in MP No. 2 of 2015 in WP No. 14599 of 2015 has to be extended in his favour so as to enable him to continue his employment.

7. In this batch of cases, the petitioners would contend that they are eligible to the provisions of the Chennai Port Trust Employees' (Retirement) Regulation, 1976 and therefore, they cannot be relieved from the service even before they could attain the age of superannuation. In this context, useful reference can be made to the cases filed by the petitioner individually, the date of order which was challenged by such petitioner in the writ petition, the date on which they claim to attain the age of superannuation i.e., 58 years.

| Sl.No. | WP No.        | Date of order | Date of retirement |
|--------|---------------|---------------|--------------------|
| 1.     | 33614 of 2012 | ---           | ---                |
| 2.     | 14599 of 2015 | 09.04.2014    | 30.04.2015         |
| 3.     | 21598 of 2015 | 09.03.2014    | 31.03.2015         |
| 4.     | 24944 of 2015 | 07.06.2014    | 30.06.2015         |
| 5.     | 24945 of 2015 | 06.11.2014    | 30.11.2014         |
| 6.     | 24946 of 2015 | 09.10.2014    | 31.10.2014         |
| 7.     | 24947 of 2015 | 11.04.2014    | 30.04.2014         |
| 8.     | 30721 of 2015 | 19.09.2015    | 30.09.2015         |
| 9.     | 37650 of 2015 | 19.11.2015    | 30.11.2015         |
| 10.    | 40965 of 2015 | 19.12.2015    | 31.12.2015         |

|     |               |            |            |
|-----|---------------|------------|------------|
| 11. | 40966 of 2015 | 19.12.2015 | 31.12.2015 |
| 12. | 3378 of 2016  | 22.01.2016 | 31.01.2016 |
| 13. | 7119 of 2016  | 25.02.2016 | 29.02.2016 |
| 14. | 7120 of 2016  | 25.02.2016 | 29.02.2016 |
| 15. | 7121 of 2016  | 25.02.2016 | 29.02.2016 |
| 16. | 18326 of 2016 | 11.05.2016 | 31.05.2016 |
| 17. | 18373 of 2016 | 11.05.2016 | 31.05.2016 |

8. Mr. K.M. Ramesh, learned counsel appearing for most of the petitioners, would contend that the age of retirement of the petitioners is 60 as has been provided under the Chennai Port Trust Employees' (Retirement) Regulation, 1976. He would further contend that the respondents have passed the impugned order without application of mind inasmuch as WP No. 33814 of 2012 filed by the petitioner in WP No. 18326 of 2016 and 89 others is pending before this Court. It is further contended that the memorandum of understanding entered into between Chennai Port Trust and Madras Port Spillage Handling Workers Association on 02.05.1985 has been terminated on 06.12.2012, in such circumstance, invoking a clause in the Memorandum of Understanding to relieve the petitioners from service on the ground that they attained the age of superannuation is illegal. According to the counsel for the petitioner, as per the interim order granted by this Court in MP No. 2 of 2014 in WP No. 30614 of 2012, the petitioners therein have to be paid the last drawn salary from 07.12.2012 pending disposal of the above writ petition. In such circumstances, the petitioners have to be treated on par with clause IV employees who are directly paid by the Chennai Port Trust and they have to be relieved only on attaining the age of 60 years from service.

9. Opposing the writ petitions, Mr. P. Wilson, learned Senior Counsel appearing for the Chennai Port Trust, would contend that until the year 2011, the Chennai Port Trust used to handle iron and ore Cargo. During the course of such work, the Chennai Port Trust engaged the service of the spillage workers who have formed themselves into an Association called the Madras Port Spillage Handling Workers Association. The said association has entered into a Memorandum of Understanding dated 02.05.1995. The members of the association were thereafter engaged from time to time by the Chennai Port Trust in relation to handling the spillage on contractual basis as per the terms recorded in the Memorandum of Understanding dated 02.05.1995. According to the learned Senior counsel for the respondents, even before the formation of such association, the predecessors of the Association namely Madras Port Trust Employees Union has filed WP No. 9011 of 1987 before this Court praying for a Mandamus to direct the Chennai Port Trust to regularise and absorb the Spillage Workers in the union as regular employees of the Chennai Port Trust. However, the said writ petition was dismissed as

withdrawn on 17.07.1995 without any liberty from this Court to file a fresh writ petition. As mentioned above, till 2011, Chennai Port Trust engaged in iron and ore cargo. Thereafter, on the basis of the Judgment dated 11.05.2011 passed by this Court in WP No. 11747 of 2002 etc., batch, Chennai Port Trust was restrained from handling iron and ore cargo at the Chennai Port Trust. Before 2011, when the Chennai Port Trust handled the iron and ore Cargo, they required the services of the Spillage workers. After the judgment rendered by the Division Bench of this Court, the service of the Spillage workers is no longer required to handle the spillage. In such circumstances, WP No. 33814 of 2012 was filed before this Court by 90 employees praying for a Mandamus and obtained an interim order on 11.05.2011. The writ appeal in W.A. No. 1091 of 2014 filed by the Chennai Port Trust was dismissed on 02.09.2014 with an observation that since the interim order alone is questioned, a direction was issued to the Writ Court to take up the writ petition for final hearing and to dispose it of within a period of six weeks. The further appeal preferred by the Port Trust before the Honourable Supreme Court in SLP (C) No. 29550 of 2014 was also dismissed on 05.11.2014. In the meantime, the second respondent, vide letter dated 06.12.2012, rescinded the Memorandum of Understanding dated 02.05.1995 specifically stating that the service of the spillage workers is no longer required by the Chennai Port Trust as iron and ore cargo are not handled by the Chennai Port Trust.

10. The learned Senior counsel for the respondents would vehemently contend that the petitioners, who are engaged on contractual basis as spillage workers, cannot be construed to be the employees employed by the Port Trust. There is no employer-employee relationship between the petitioners and the Chennai Port Trust. All along, the petitioners have been employed on contract basis, especially their services were utilised intermittently. The petitioners were not paid salary by the Chennai Port Trust and the amount was paid to the contractor who in turn paid the amount in consideration of the work done by the individual petitioner. Therefore, according to the learned Senior counsel for the respondents, there is no jural relationship of employer-employee exist between the petitioner and the Chennai Port Trust at any point of time.

11. The learned Senior counsel for the respondent would further contend that the Chennai Port Trust never employed any spillage handling workers as an employee, but only engaged their services from time to time through a contractor. Further, when the Chennai Port Trust stopped handling iron and ore cargo by virtue of the judgment rendered by this Court, even the work of spillage handling comes to an end and resultantly, the service of the spillage handling workers is no longer required by the Chennai Port Trust. However, even

after the work of handling spillage ceased to exist in Chennai Port Trust, based on an order passed by this Court, Chennai Port Trust decided to engage the services of the petitioner on contractual basis for various other works. Therefore, the contention of the petitioners that they have to be treated on par with Class IV employees of the Chennai Port Trust cannot be accepted.

12. The learned Senior counsel for the respondents would further contend that the Chennai Port Trust Employees (Retirement) Regulations, 1976 apply only to those employees borne on the schedule of the Board and Shore Labour Establishment. The spillage workers never comes under the definition of the employees within the meaning of Madras Port Trust Employees (Appointment, Promotion) Regulations. Therefore, according to the learned Senior counsel for the respondents, the retirement regulations of the Chennai Port Trust cannot be made applicable to the petitioners. The petitioners were appointed only as a contractual employee and they cannot be treated on par with the regular employees. Even such contractual employment was entertained only on the basis of the Memorandum of Understanding entered into with the Association and such Memorandum of Understanding has been rescinded on 06.12.2012. The petitioners are continuing in the contractual employment and drawing salary only on the basis of the interim order granted by this Court. Almost all the petitioners, who have attained the age of 58 years, are continuing in the employment by reason of the interim order granted by this Court. Most of the petitioners have also crossed the age of 60 years and therefore, as long as those petitioners are concerned, the relief sought for in the respective writ petition filed by them has become infructuous.

13. The learned Senior counsel appearing for the respondents would contend that the claim made by the petitioners in this case would squarely come within the parameters laid down by the Honourable Supreme Court of India in the off-quoted judgment rendered in (State of Karnataka vs. Uma Devi) reported in (2006 ) 4 SCC Page No.1 wherein it was held that persons who have gained employment through back door entry cannot be regularised in their service. In the present case also, the petitioners were never employed directly by the Chennai Port Trust and they were engaged by the Chennai Port Trust through an Association on the basis of a Memorandum of Understanding. Even the Memorandum of Understanding also came to be rescinded on 06.12.2012, while so, the claim made by the petitioners that they should be treated on par with Class IV employees of the Chennai Port Trust and the provisions of Chennai Port Trust Employees (Retirement) Regulations, 1976 cannot be considered. The learned Senior counsel for the respondents therefore prayed for dismissal of all the writ petitions as devoid of merits.

14. I heard the learned counsel for the respective petitioners and the learned Senior Counsel appearing for the respondents/Port Trust. I had perused the materials placed on record.

15. On appreciation of the facts narrated above, this Court has to only observe that this case is a classic example as to how judicial process can be subverted at the instance of the persons like the petitioners. The claim of the petitioners is that they are employees employed under the Chennai Port Trust and consequently, the benefits of the provisions of Chennai Port Trust Employees (Retirement) Regulations, 1976 has to be extended in their favour which would enable them to retire from service on attaining the age of 58 years. By contending so, till this date, some of the petitioners are clinging on their employment even after they have crossed the age of 58 years by virtue of an interim order granted by this Court.

16. In my considered opinion, the petitioners are not entitled to claim that they have to be construed as employees employed by the Chennai Port Trust and consequently they are entitled for extending the provisions of Chennai Port Trust Employees (Retirement) Regulations, 1976. The reasons for this conclusion is manifold. First of all, the petitioners were not directly appointed by the Chennai Port Trust. Even as per the admission of the petitioners, they were appointed through contractor as a Spillage collectors in the Chennai Port Trust when it handled iron and ore cargo. Such activities to handle iron and ore cargo have been carried on by the Chennai Port Trust till 10.05.2011. On 11.05.2011, the Division Bench of this Court passed an order at the instance of Avoor Muthiah Maistry Street Residents Welfare Association, in WP No. 11747 of 2002. Similar other writ petitions filed were also covered in the order dated 11.05.2011. As per the order passed by the Division Bench of this Court on 11.05.2011, the Chennai Port Trust was directed not to deal with iron and ore cargo any longer instead all the dusty cargoes like coal, iron ore and all other cargoes should be shifted to Ennore Port Trust on and from 01.10.2011. In the said order, the Division Bench also observed that the Chennai Port Trust has to ensure that not even a single employee is retrenched or otherwise made to lose his or her livelihood because of the distribution of cargoes between Ennore Port Trust and Chennai Port Trust. It is in the light of this observation, even after rescinding the Memorandum of Understanding entered into between the Chennai Port Trust and Madras Port Spillage Handling Workers Association on 06.12.2012, the Chennai Port Trust, out of a humanitarian gesture, accommodated the petitioners in various other works on contractual basis. At any rate, the petitioners were

employed only on contract basis on and off as a spillage collectors and thereafter on various capacities on contractual basis. This is not denied by the petitioners.

17. It is seen from the records that on 03.04.2014, the respondents/Port Trust passed an order in favour of T. Jayaseelan, who was the contractor engaged by the respondents. In the said letter, it was stated that contract was awarded in his favour for a period of three months for excavation of earth for laying of pipe line for water supply and the contract work shall be completed by engaging three workers. In the said order, in clause 16 and 17, it was stated as follows:-

"16. The workers thus engaged shall be relieved from the contract after they attain the age of 58 years and they shall not be replaced by any new person other than the existing erstwhile spillage Handling workers.

17. The contractor is the employer for these workers and there would be no employer employee relationship between the Chennai Port Trust and the erstwhile spillage handling workers.

18. Similar orders, extending the contract in favour of the contractors have been enclosed from page No. 132 of the typed set filed on behalf of the respondents 2 and 3. In all these letters sent by the Chennai Port Trust, it is clearly stated that the work is awarded only on contract basis and there is no employer employee relationship between the Chennai Port Trust and the workers to be engaged by the Contractor. It is also stated that no new person shall be engaged other than the erstwhile Spillage Handling Worker. This clause was inserted as a compliance of the order passed by the Division Bench of this Court on 11.05.2011 to the effect that no single employee should be retrenched from the employment depriving his or her livelihood. It is with this object, the words, "no new person shall be engaged other than the erstwhile Spillage Handling Worker" has been indicated in the letter of contract. Thus, it is evident that the petitioners are employed as a contractual employees under a contractor with whom Chennai Port Trust entered into a contract. The petitioners have no direct relationship with the Chennai Port Trust, much less a relationship of employer-employee. In such circumstances, the petitioners can never be construed as employee for the purpose of extending the benefits of Chennai Port Trust Employees (Retirement) Regulations, 1976, which are meant for regular employees employed by the Chennai Port Trust.

19. The learned Senior counsel for the respondents/Port Trust, invited the attention of this Court to clause No.4 of

the Memorandum of Understanding dated 02.05.1995 under the heading "Terms and conditions" wherein it was stated as under:-

"(4) The worker-members will be removed from the membership list of the Association on attaining 58 years of age. If any worker-member is not able to produce proof of age to the satisfaction of the Madras Port Trust Administration, the age of such worker shall be decided by a Board of three Medical Officers, nominated for the purpose, by the Chairman of the Madras Port Trust. The decision of such Medical Board as to the age of such workers shall be final.

20. Thus, there is a specific clause incorporated in the memorandum of understanding dated 02.05.1995 relating to the age of retirement of the contractual workers at 58. Even according to the petitioners, they continued their contract work under the Madras Port Trust Spillage Workers Association and therefore, they have to be relieved from the spillage collection work if he or she attains the age of 58 years. This has not been challenged by the petitioners and it becomes final. While so, this Court is at a loss to understand as to what is the basis on which the petitioners are claiming any right to continue beyond the age of 58 years or how they could be extended the benefit of the Chennai Port Trust Employees (Retirement) Regulations, 1976 which is intended for the regular employees. At the risk of repetition, it is to be stated that even the Memorandum of Understanding dated 02.05.1995 has been rescinded by the Chennai Port Trust on 06.12.2012 and it was not also challenged by the petitioners in a manner known to law.

21. The petitioners are continuing in their contract employment only by virtue of the interim order granted by this Court on 04.07.2014 in MP No. 2 of 2014 in WP No. 33614 of 2012. In WP No. 33614 of 2012, the petitioners sought for the relief of a Writ of Mandamus directing the respondents 1 to 3 to regularise their service as Class IV employees of the Chennai Port Trust with effect from the date of their initial appointment and grant all the benefits that are being paid to the Class IV employee of the Chennai Port Trust with retrospective effect with all monetary and other benefits. If really the petitioners were employed under the Chennai Port Trust directly, as claimed or there was any employer-employee relationship between the petitioners and the Chennai Port Trust, the petitioners ought not to have filed WP No. 33614 of 2012 with a prayer to regularise their service. Therefore, even the prayer sought for in WP No. 33614 of 2012 would indicate that they are not employees employed by the Chennai Port Trust.

22. At this juncture, it is relevant to refer to the decision of the Honourable Supreme Court rendered in (Secretary, State of Karnataka vs. Uma Devi) reported in (2006) 4 SCC Page No.1 wherein the Honourable Supreme Court has laid down parameters for consideration of regularisation of the employees. It was also held therein that those employees who have secured employment by resorting to back door entry cannot be considered for regularisation even though they have rendered long number of years of service on daily wage basis or otherwise.

42. The argument that the right to life protected by Article 21 of the Constitution of India would include the right to employment cannot also be accepted at this juncture. The law is dynamic and our Constitution is a living document. May be at some future point of time, the right to employment can also be brought in under the concept of right to life or even included as a fundamental right. The new statute is perhaps a beginning. As things now stand, the acceptance of such a plea at the instance of the employees before us would lead to the consequence of depriving a large number of other aspirants of an opportunity to compete for the post or employment. Their right to employment, if it is a part of right to life, would stand denuded by the preferring of those who have got in casually or those who have come through the back door. The obligation cast on the State under Article 39(a) of the Constitution of India is to ensure that all citizens equally have the right to adequate means of livelihood. It will be more consistent with that policy if the courts recognize that an appointment to a post in government service or in the service of its instrumentalities, can only be by way of a proper selection in the manner recognized by the relevant legislation in the context of the relevant provisions of the Constitution. In the name of individualizing justice, it is also not possible to shut our eyes to the constitutional scheme and the right of the numerous as against the few who are before the court. The Directive Principles of State Policy have also to be reconciled with the rights available to the citizen under Part III of the Constitution and the obligation of the State to one and all and not to a particular group of citizens. We, therefore, overrule the argument based on Article 21 of the Constitution.

43. Normally, what is sought for by such temporary employees when they approach the court, is the issue of a writ of mandamus directing the employer, the State or its instrumentalities, to absorb them in permanent service or to allow them to

continue. In this context, the question arises whether a mandamus could be issued in favour of such persons. At this juncture, it will be proper to refer to the decision of the Constitution Bench of this Court in Dr. Rai Shivendra Bahadur Vs. The Governing Body of the Nalanda College [(1962) Supp. 2 SCR 144]. That case arose out of a refusal to promote the writ petitioner therein as the Principal of a college. This Court held that in order that a mandamus may issue to compel the authorities to do something, it must be shown that the statute imposes a legal duty on the authority and the aggrieved party had a legal right under the statute or rule to enforce it. This classical position continues and a mandamus could not be issued in favour of the employees directing the government to make them permanent since the employees cannot show that they have an enforceable legal right to be permanently absorbed or that the State has a legal duty to make them permanent.

47. Coming to Civil Appeal Nos. 1861-2063 of 2001, in view of our conclusion on the questions referred to, no relief can be granted, that too to an indeterminate number of members of the association. These appointments or engagements were also made in the teeth of directions of the Government not to make such appointments and it is impermissible to recognize such appointments made in the teeth of directions issued by the Government in that regard. We have also held that they are not legally entitled to any such relief. Granting of the relief claimed would mean paying a premium for defiance and insubordination by those concerned who engaged these persons against the interdict in that behalf. Thus, on the whole, the appellants in these appeals are found to be not entitled to any relief. These appeals have, therefore, to be dismissed."

23. As held by the Honourable Supreme Court in Uma Devi's case mentioned supra, regularising the service of those who continued in service on the basis of an interim order passed by the Court would amount to paying premium for defiance and insubordination. The said observation of the Honourable Supreme Court mentioned supra would squarely applicable to the facts of this case. In this batch of cases, the petitioners have made ingenious attempt to get some relief or the other knowing fully well that they are not entitled to such relief. However, in the garb of interim order passed by this Court, some of the petitioners continued in employment even after attaining the age of 60 years on contract basis. At any rate, the relief sought for in these writ petitions either to direct the respondents to regularise the service or

to extend the benefit of Chennai Port Trust Employees (Retirement) Regulations, 1976 in their favour cannot be countenanced especially when the petitioners continued as a contract employees. The relief sought for in these writ petitions are devoid of any merits and the writ petitions deserve only to be dismissed.

24. For all the above reasons, the writ petitions are dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-  
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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To

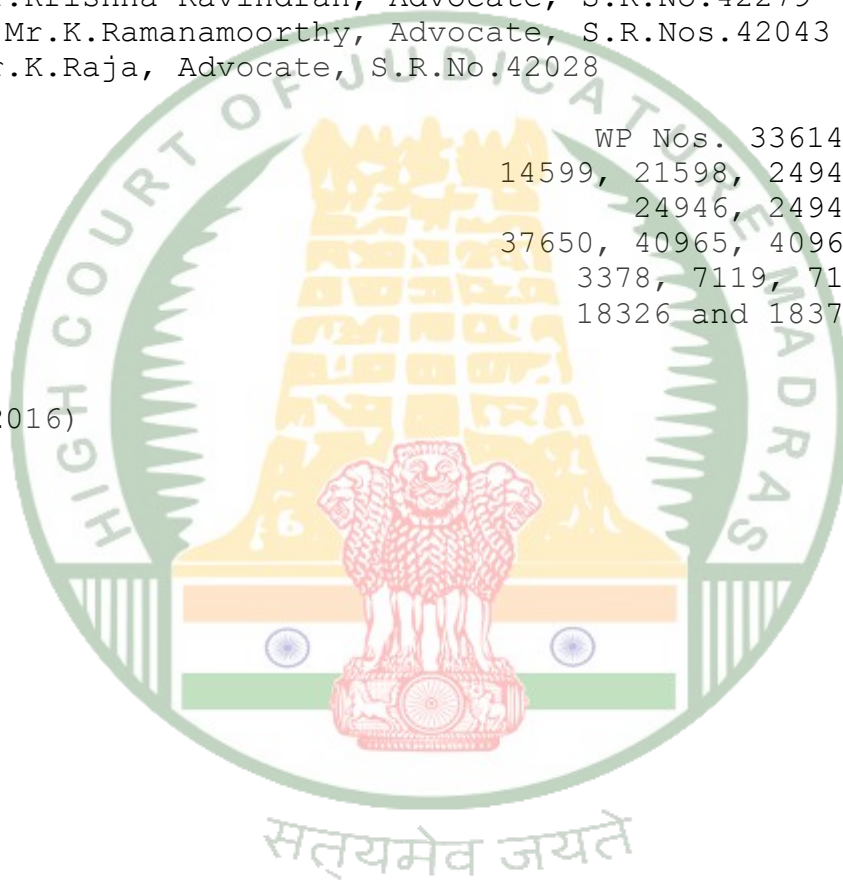
- 1.The Secretary  
Union of India  
Ministry of Shipping  
No.1, Sansad Marg  
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- 2.The Chairman  
Chennai Port Trust  
Rajaji Salai  
Chennai - 600 001
- 3.The Chief Mechanical Engineer  
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- 6.The Special Officer  
Chennai Dock Employees Credit Thrift  
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7.The General Secretary  
Madras Port Spillage Handling Workers  
Association  
Iron Ore Handling  
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Chennai Port Trust  
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WP Nos. 33614 of 2012  
14599, 21598, 24944, 24945,  
24946, 24947, 30721,  
37650, 40965, 40966 of 2015  
3378, 7119, 7120, 7121,  
18326 and 18373 of 2016

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CA(17/10/2016)



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