

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.02.2016

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THE HON'BLE MR. JUSTICE T.RAJA

W.P.No.4950 of 2016
and
W.M.P. No.4289 of 2016

B.C.Malakondiah

... 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

Prayer: Petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorarified mandamus to call for the records pertaining to the order passed by the fourth respondent in Memo CHPTIECC/ESTT/85/2016/MEE dated 01.02.2016 and quash the same and consequently direct the 3rd and 4th respondents herein to continue to employ the petitioner till he attains the age of 60 years as applicable to employees of 3rd 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.G.Rajagopalan, A.S.G.I.,
Assisted by Mr.V.Haribabu,
Standing Counsel for R1 to R3

Mr.L.P.Shanmugha Sundaram,
Spl.G.P. for R4 and R5

O R D E R

The petitioner B.C.Malakondiah, presently employed as a Junior Supervisor of Chennai Port Trust Industrial Employee's Co-operative Canteen, has come to this Court, challenging the impugned order Memo CHPTIECC/ESTT/85/2016/MEE dated 01.02.2016, issued by the President of Chennai Port Trust Industrial Employees Co-operative Canteen Ltd./fourth respondent herein informing the petitioner that he was due for retirement on superannuation from the canteen's service with effect from 29.02.2016 and quash the same in the light of the order passed by this Court in W.P. No.6872 of 2001 dated 24.08.2005, which has been confirmed by the Hon'ble Division Bench in W.A. No.66 of 2006 dated 21.02.2006.

2.Learned counsel for the petitioner drawn the notice of this Court to the sum and substance of the matter decided by this Court in W.P. No.6872 of 2001, which has been confirmed by the Division Bench, pointing out para 15 of the Hon'ble Division Bench Order, which is extracted as under:

"15.If we see the Indian Petro Chemical's case, the similarity of the factual issues is quite startling. In that case -

.....

on the basis of the above facts, the Supreme court arrived at the opinion that the workmen were the workmen of the management and by the same process of reasoning, the learned Single Judge also came to the conclusion that the canteen workmen were the workmen of the Port Trust. We see no error in this reasoning. 16.When there is no controversy on facts, it is not necessary that the workmen should again be driven to the Industrial Tribunal. Moreover, in respect of the Tuticorin and Bombay Port Trusts, which are identical in nature to the appellant Port Trust, the canteen workers have secured identical benefits. It is unreasonable to deny the workers here the same relief and therefore, the writ appeal fails and it is accordingly dismissed. No costs. Consequently, W.A.M.P. No.133 of 2006 is closed."

In the light of the above, learned counsel for the petitioner would submit that the third respondent in their

counter affidavit has clearly admitted that the petitioner is a permanent employee of the Chennai Port Trust Industrial Employees Co-operative Canteen Limited and therefore having taken such a stand that the petitioner is a permanent employee of the Chennai Port Trust, he should be permitted to continue in service till he attains the age of 60 years. He would also place reliance on yet another order passed by this Court in W.P. No.4483 of 2015 in the case of D.Parivallal vs Union of India and five others and submitted that D.Parivallal/petitioner therein, who was also an employee of the Canteen has come to this Court seeking the similar relief and this Court on the basis of the earlier order passed in the said W.P. No.6872 of 2001, has granted the benefits admissible to the employees of the Chennai Port Trust holding similar or identical post. Therefore, the impugned order restricting the age of the petitioner informing that the petitioner will have to retire from service before reaching the age of 60 years i.e. on attaining superannuation, is liable to be quashed.

3.Learned Additional Solicitor General of India appearing for respondents 1 to 3 fairly submitted that though this issue raised in this petition has been squarely covered by the order of the Division Bench of this Court passed in W.A. No.66 of 2006, confirming the order passed by this Court in W.P. No.6872 of 2001, the matter has not reached finality, as the same issue is now pending for authoritative pronouncement before the Hon'ble Apex Court. Therefore, in the event of the Port Trust succeeds before the Apex Court in the pending Civil Appeal No.1381/2010, the ratio laid down by the Division Bench cannot be applicable to the petitioner and it also would be highly impossible to recover the salary from the petitioner.

4.Learned Special Government Pleader appearing for respondents 4 and 5 opposing the prayer made by the petitioner would submit that it is an admitted case that the petitioner was appointed as an employee of the Society as per the rules and bylaws enacted under the Tamil Nadu Co-operative Societies Act for which His Excellency the President of India also has given assent, therefore, Rule 149 sub clause 2 and 3 enacted under the Act clearly fixed the retirement age of the employees at 58 and thus the petitioner is not entitled to canvass his case that he should be treated on par with other permanent employees of Chennai Port Trust and he has to retire only at the age of 60 years.

5.Considering the facts and circumstances of the case and the submission made on either side, this Court is of the considered view that since the issue is once and for all decided by the Hon'ble Division Bench in its order dated 21.02.2006 in W.A. No.66 of 2006, confirming the view taken by the Single Judge holding that similarly placed persons like the petitioner are also to be treated on par with the permanent employees of the Chennai Port Trust, this Court being bound by the orders, is inclined to allow the petition

as prayed for. Therefore, the impugned order is set aside and the respondents are directed to permit the petitioner to continue to work till he reaches the age of superannuation at the age of 60 years.

6. Accordingly, this writ petition is allowed. No costs. Consequently, connected W.M.P. is closed.

vga

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

To

1. The Secretary to Government,
Union of India,
Ministry of Surface Transport (Port Wings),
Transport Bhavan, Parliament Street,
New Delhi 110 001.
 2. The Secretary to Government,
Union of India,
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.
- + 1 cc to Mr.L.P.Shanmugha Sundaram, Advocate Sr 10954
+ 1 cc to Mr.R.Sunil Kumar, Advocate Sr 10961
+ 1 cc to The Govt.Pleader, Sr 10806

KR/4/4/16

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