

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.09.2017

CORAM

THE HONOURABLE MR. JUSTICE V.PARTHIBAN

W.P.Nos.27976 and 27977 of 2014

and M.P.Nos.1 and 1 of 2014 and W.M.P.Nos.4054, 4055 and
5957 of 2016

C.Chandrasekar .. Petitioner in Both
the W.Ps
Vs.

1.Union of India,
Ministry of Shipping rep. By the
Secretary to Government,
Transport Bhavan,
No.1, Parliamentary Street,
New Delhi - 1.

2.The Chairman,
Chennai Port Trust,
No.1, Rajaji Salai,
Chennai - 1.

3.The Deputy Chairman cum
Chairman of the Departmental
Promotion Committee,
Chennai Port Trust,
No.1, Rajaji Salai, Chennai - 1.

4.The Chief Engineer,
Civil Engineering Department,
Chennai Port Trust,
No.1, Rajaji Salai, Chennai - 1.

5.A.Aruljothi Natarajan

6.S.Radha

7.C.Prabhakaran

8.S.Ramesh Kumar

9.P.Mahadevan

10.K.Nandakumar

11.G.Gnanasekaran

12.M.Gunasekaran

13.R.Nagarajan

14.N.Rajkumar

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15.K.Sachidananda Babu
16.M.Nagalingom Pillai
17.D.Muthu
18.R.Haribhaskar
19.D.Muthazahagan
20.S.Murugarasu
21.B.Saravana Perumal
22.N.Ganesaperumal
23.K.Dhansekaran
24.K.Thanasekar
25.S.P.Kirubanidhi
26.G.M.Sathish Kumar
27.S.Rajaram
28.K.Sekar
29.S.Thanigavel
30.M.Subramanian
31.N.Ramesh
32.K.Ganesh
33.K.Jaisankar
34.K.Mohammed Alimullah
35.S.Anbharrason
36.R.Vinoth Kumar
37.R.Pulendran
38.S.Jeyanthi
39.M.Ramar
40.E.Saravanan
41.S.Maharajan
42.P.Thiyagarajan
43.A.H.Sivakumar/M.D.Malliga
44.S.Srinivasan/S.Mahalakshmi,
45.S.Jayaprakash
46.M.Thirunavukkarasu/B.Sandhanagopalakrishnan
47.S.Rajamani
48.M.Velmurugan
49.V.Manohar
50.S.Gnanamoorthy
51.C.K.Vaidyanathan
52.A.Bothuraja
53.N.Vijayaraghavan
54.P.Sekar

.. Respondents in
Both the W.Ps

(Respondents 5 to 54 impleaded as
per orders dated 03.02.2016 and
25.07.2016 in M.P.No.1 of 2015 in
W.P.No.27976 of 2014 and
W.M.P.No.9405 of 2016 in
W.P.No.27977 of 2014)

W.P.No.27976 of 2014: Petition filed under Article 226 of The Constitution of India praying to issue a writ of certiorarified mandamus to call for the records relating to the promotion panel made for the posts of Assistant Engineer (Civil) Class II from the feeder category of Junior Engineer (Civil) Grade I and notified by the fourth respondent in his proceedings No.E1/2672/2014/E dated 11.09.2014 quash the same and consequently direct the respondents to draw such promotional panel and give effect thereof, only after drawing combined/inter se seniority among the integrated personnel in the feeder category of Junior Engineer (Civil) Grade I of the erstwhile Dock Labour Board and the Chennai Port Trust.

W.P.No.27977 of 2014: Petition filed under Article 226 of The Constitution of India praying to issue a writ of mandamus forbearing the respondents from underoperating the vacant posts of Assistant Engineers (Civil) Class II as Junior Engineer (Civil) Grade I, earmarked for departmental promotion, till the petitioner is promoted to the post of Assistant Engineers (Civil) Class II which has been earmarked for departmental promotion and consequently, direct the respondents to give such promotion to the petitioner by putting him in the appropriate place of the inter se/combined seniority list as may be prepared on a direction of this Court by reckoning the petitioner's original seniority in the feeder category of Junior Engineer (Civil) Grade I.

For Petitioner .. Mr.S.Rajendiran
in both the W.Ps

For Respondents .. Mr.V.Balasubramanian,
S.P.C. for R1
Mr.M.Palanimuthu for R2 to R4
Mr.T.S.Rajamohan for R5 to R54
in both the W.Ps

COMMON ORDER

The petitioner has approached this Court seeking the following reliefs:

to issue a writ of certiorarified mandamus to call for the records relating to the promotion panel made for the posts of Assistant Engineer (Civil) Class II from the feeder category of Junior Engineer (Civil) Grade I and notified by the fourth respondent in his proceedings No.E1/2672/2014/E dated 11.09.2014 quash

the same and consequently direct the respondents to draw such promotional panel and give effect thereof, only after drawing combined/inter se seniority among the integrated personnel in the feeder category of Junior Engineer (Civil) Grade I of the erstwhile Dock Labour Board and the Chennai Port Trust.

and

to issue a writ of mandamus forbearing the respondents from underoperating the vacant posts of Assistant Engineers (Civil) Class II as Junior Engineer (Civil) Grade I, earmarked for departmental promotion, till the petitioner is promoted to the post of Assistant Engineers (Civil) Class II which has been earmarked for departmental promotion and consequently, direct the respondents to give such promotion to the petitioner by putting him in the appropriate place of the inter se/combined seniority list as may be prepared on a direction of this Court by reckoning the petitioner's original seniority in the feeder category of Junior Engineer (Civil) Grade I.

2.The case of the petitioner is that he was the employee of the Madras Dock Labour Board from 1998. By Scheme of Merger, the Madras Dock Labour Board came to be merged with Chennai Port Trust in 2001. By the Scheme of Merger dated 25.05.2001, the employees of the Madras Dock Labour Board came to be absorbed in Chennai Port Trust and became employees in the Chennai Port Trust thereafter. The petitioner, who was originally working as Supervisor Grade II was absorbed and redesignated as Junior Engineer (Civil), after merger. He was also promoted to the post of Junior Engineer (Civil) Grade I in 2006.

3.According to the petitioner, there was a memorandum of settlement between the management of Chennai Port Trust and the various Trade Unions dated 10.01.2014 under Section 18(1) of the Industrial Disputes Act, 1947. As per the settlement, it was agreed by the management to prepare a combined inter se seniority for integrated workers, employees, staff and officers between the employees who were inducted from erstwhile Madras Dock Labour Board and the existing employees of the Chennai Port Trust. However, according to the petitioner, though the original scheme of merger contemplated combined seniority of all the workers/employees/officers/staff so far, the Port Trust has not initiated any action for framing of combined seniority of the workers/employees/officers/staff. With the result, the Port Trust has been maintaining a separate roster as between the

erstwhile employees of the Madras Dock Labour Board and the existing employees of the Chennai Port Trust separately and operating the roster for further appointments and promotion in the existing cadre.

4. According to the petitioner, there are 14 posts in the cadre of Assistant Engineer (Civil) Class II, which are vacant and if combined seniority has been prepared and maintained, he would have been eligible for promotion to the post of Assistant Engineer (Civil) Class II. However, without preparing the combined seniority list, as contemplated in the scheme of merger dated 25.05.2001 and 18(1) settlement dated 10.01.2014, the second respondent was attempting to promote its own existing employees, overlooking the claim of the employees like the petitioner herein, who are inducted into the Chennai Port Trust by the scheme of merger. According to the petitioner, though there were many more vacancies available in the cadre of Assistant Engineer (Civil) Class II, the Port Trust was only operating restricted number of posts in order to exclude the employees like the petitioner herein from being considered for promotion.

5. In the above circumstances, the petitioner, on coming to know that the promotion panel was prepared on 11.09.2014 had approached this Court, challenging the panel insofar as not considering the claim of the employees like the petitioner herein. Although, at the time of admission of the writ petitions, this Court has permitted the Port Trust to make promotion to the higher cadres subject to the outcome of the writ petitions, it appears that the entire exercise of promotion has been put on hold in view of the pendency of the present writ petitions. In view of the said fact, respondents 5 to 54 got themselves impleaded on the ground that the entire promotion exercise has been stalled in view of the pendency of the litigation before this Court notwithstanding the order passed by the learned Judge, permitting the Port Trust to effect promotion pending disposal of the writ petitions.

6. Upon notice, Mr.V.Balasubramanian, learned counsel entered appearance on behalf of the first respondent, Mr.M.Palanimuthu, learned counsel entered appearance on behalf of respondents 2 to 4 and Mr.T.S.Raja Mohan, learned counsel entered appearance on behalf of respondents 5 to 54. Learned counsel for respondents 2 to 4 filed a counter affidavit, in which, in more than one paragraph, it is stated that the full integration could not take place between the employees who are inducted into the Port Trust from the erstwhile Madras Dock Labour Board and the original employees of the Port Trust in view of the strong objection from several trade unions. Other

than the said reason, no other reason has been stated in the counter affidavit. In para 11 of the counter affidavit, it is averred as under:

"..... However, if the Hon'ble High Court pass any appropriate orders to merge the cadres of EDLB and Chennai Port Trust and fixing seniority by implementing the merger settlement dated 25.05.2001 that will be complied with and the petitioner's case will be considered on merit in future...."

7. Although this Court finds that there is no legal impediment for formulating the combined seniority between the employees, for some reason or the other, the same has not been done for all these years, which created lot of heartburn to one set of employees. Even otherwise, it has to be noted that in the absence of combined seniority list, the position of the employees is uncertain and unclear as to what is their position in the seniority list in their respective cadre. It is needless to mention that the promotion prospects are dependent on the assignment of seniority in the feeder cadre and in the absence of combined seniority list, there is an air of uncertainty among the employees.

8. On consideration of all the above facts and circumstances, there shall be a direction to respondents 2 and 3 to prepare a combined seniority list of all the workers/employees/staff/officers of both the erstwhile Madras Dock Labour Board and the original workers/employees/staff/officers of the Chennai Port Trust in each of the cadres and thereafter, effect promotion to the respective higher cadres. The said exercise shall be initiated and completed by the Port Trust within a period of three months from the date of receipt of a copy of this order. It is also made clear that in case anyone is aggrieved by the preparation of combined seniority list, he/she is at liberty to approach this Court as he/she may be advised.

9. With these directions, the writ petitions stand disposed of. 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 to Government,
Ministry of Shipping,
Transport Bhavan,
No.1, Parliamentary Street,
New Delhi - 1.

2.The Chairman,
Chennai Port Trust,
No.1, Rajaji Salai,
Chennai - 1.

3.The Deputy Chairman cum
Chairman of the Departmental
Promotion Committee,
Chennai Port Trust,
No.1, Rajaji Salai, Chennai - 1.

4.The Chief Engineer,
Civil Engineering Department,
Chennai Port Trust,
No.1, Rajaji Salai, Chennai - 1.

+1cc to Mr.Balasubramanian, Advocate sr.64314

+1cc to Mr.M.Palanimuthu, Advocate sr.63898

+1cc to T.S.Rajamohan, Advocate sr.64342

+2cc to Mr.S.Rajendran, Advocate sr.64028 (22/9/2017)

सत्यमेव जयते

W.P.Nos.27976 and 27977
of 2014

ss (21/9/2017)

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