

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :: 05-01-2017

CORAM

THE HONOURABLE MR.JUSTICE NOOTY.RAMAMOHANA RAO

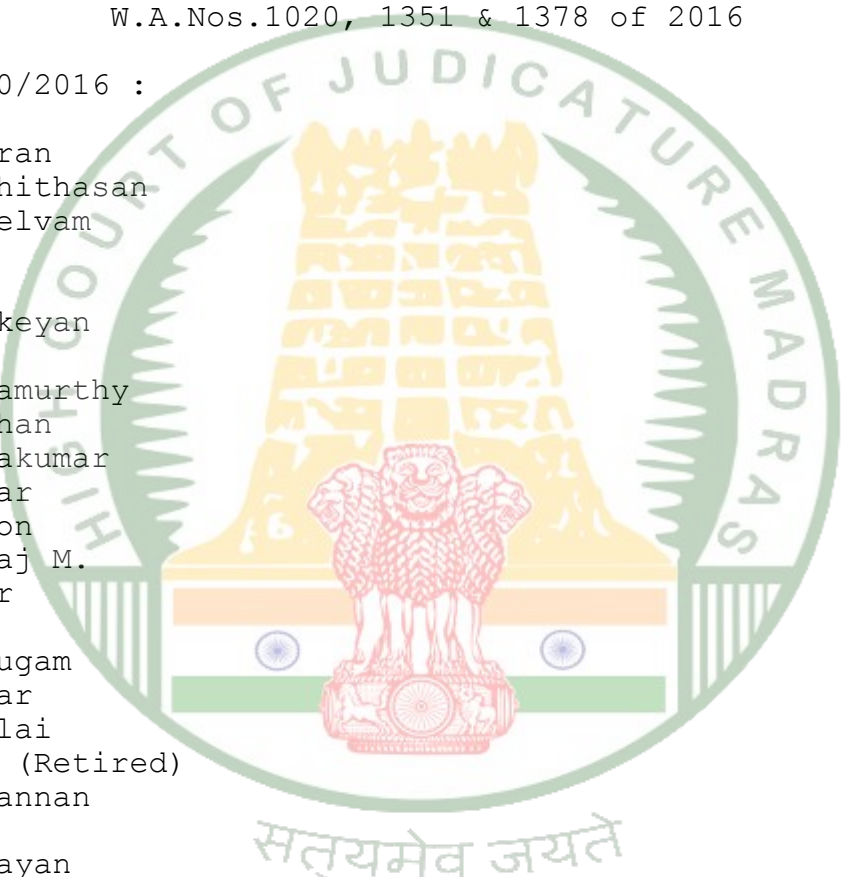
AND

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.A.Nos.1020, 1351 & 1378 of 2016

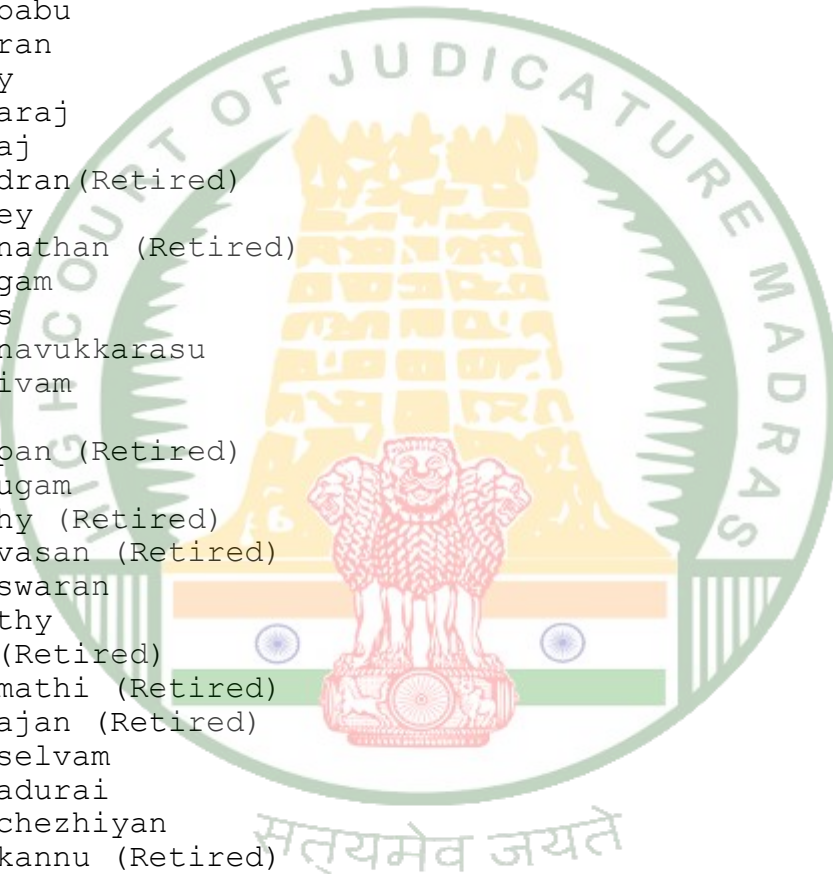
W.A.No.1020/2016 :

- 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 (Retired)
- 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 (Retired)
- 32.K.Balaraman
- 33.G.Dhakshanamurthy
- 34.E.Sekar (Retired)
- 35.L.Loganathan



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



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87.R.Mani (Retired)
88.K.Subramani (Retired)
89.M.Devaraj (Retired)
90.R.Munusamy

... Appellants/Petitioner

(Appellants 19, 33, 34, 37, 41, 42, 46, 53, 55, 61, 63, 64, 67, 68, 69, 73, 77, 80, 85, 86, 87, 88 and 89 had already retired from service, therefore, they are given up.)

-vs-

- 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,
Raja Street,
Chennai-600 001.
 - 4.The Chairman cum Managing Director,
Ennore Port Trust,
P.T.Lee Chengalvaraya Naicker Maaligai,
No.23, (1st Floor) Rajaji Salai,
Chennai-600 001.
 - 5.The Chief Secretary,
Govt.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.
- ... Respondents/Respondents

W.A.No.1351/2016 :

K.Subramani

... Appellant/Petitioner

-vs-

1.Union of India,
rep.by Secretary to Government,
Ministry of Shipping,
No.1, Parliamentary Street,
New Delhi-110 001.

2.Chennai Port Trust,
rep.by its Chairman,
Rajaji Salai,
Chennai-600 001.

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

W.A.No.1378/2016 :

1.R.Sekar
2.E.Sekar
3.M.Ellumalai
4.K.Annappan
5.M.Murthy
6.K.Srinivasan
7.R.Niraimathi
8.S.Kandasamy
9.G.Pandian
10.U.Devi
11.M.Ponnan
12.M.Devaraj

... Appellants/Petitioner

19, 34, 41, 61, 63, 66, 68, 77, 80, 85, 86, 89

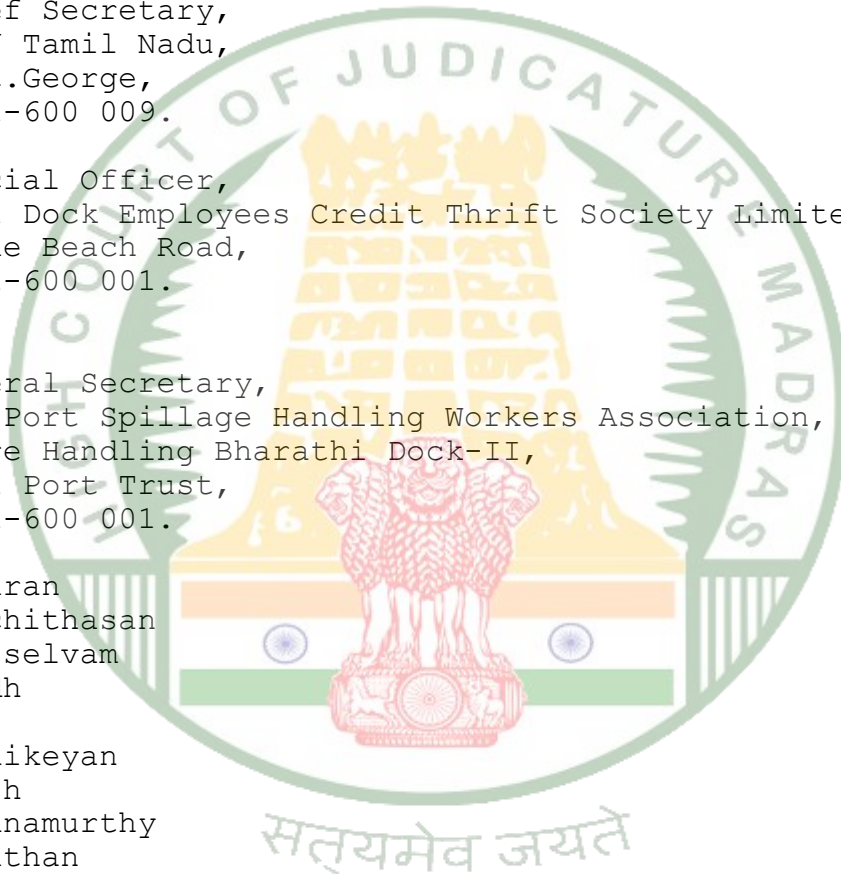
-vs-

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.

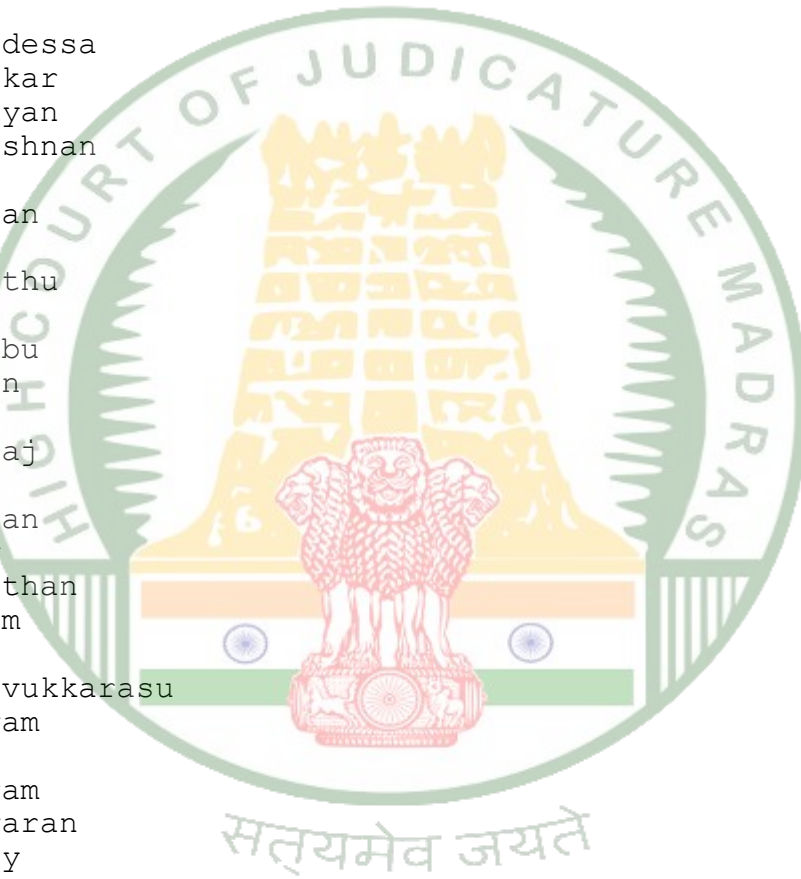
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- 3.The Chief Mechanical Engineer,
Chennai Port Trust,
Rajaji Salai,
Chennai-600 001.
- 4.The Chairman cum Managing Director,
Ennore Port Trust,
P.T.Lee Chengalvarayan Naicker Maaligai,
No.23, (1st Floor) Rajaji Salai,
Chennai-600 001.
- 5.The Chief Secretary,
Govt.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.
- 8.V.Manoharan
- 9.A.Puratchithasan
- 10.R.Tamilselvam
- 11.R.Ambedh
- 12.M.Babu
- 13.V.Karthikeyan
- 14.S.Suresh
- 15.M.Krishnamurthy
- 16.J.Jayanthan
- 17.R.Santhakumar
- 18.D.Bhaskar
- 19.A.Johnson
- 20.Anandaraj M.
- 21.M.Sundar
- 22.D.Sekar
- 23.E.Shanmugam
- 24.M.Ayyanar
- 25.K.Elumalai
- 26.B.Manivannan
- 27.P.Raju
- 28.A.Chinnayan
- 29.P.Govindasamy



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30.D.Govindasamy
31.C.Pradeepan
32.M.Palanivelu
33.S.Vijayakumar
34.P.R.Madhavan
35.R.Mohan
36.A.Govindaraj
37.A.K.Rajendran
38.K.Balaraman
39.G.Dhakshanamurthy
40.L.Loganathan
41.K.Arul
42.P.Kuselan
43.S.Mohammedessa
44.P.Dhanasekar
45.G.Subbarayan
46.M.Balakrishnan
47.M.Raja
48.A.Manogaran
49.S.Pakkiri
50.A.Maarimuthu
51.G.Perumal
52.K.Dillibabu
53.A.Chandran
54.R.Antony
55.V.Thangaraj
56.M.Nagaraj
57.R.Gajendran
58.N.Stanley
59.M.Ranganathan
60.K.Arumugam
61.Ramadass
62.R.Thirunavukkarasu
63.C.Sadasivam
64.Sridhar
65.C.Shanmugam
66.S.Gnaneswaran
67.R.Umapathy
68.A.Velu
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.C.Govindan
78.V.Elavarasan
79.E.Elangovan
80.E.Dillibabu



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81.M.Sakthivel
82.K.Panchanathan
83.R.Mani
84.K.Subramani
85.R.Munusamy

(Respondents 8 to 85 have already filed WA. 1020/2016 they are given/up ...Respondents/Respondents 1 to 18 , 20 to 33, 35 to 40, 42 to 60, 62,65 to 67, 69 to 76,78,79,81 to 84, 87,88,90.

W.A.No.1020 of 2016 is filed under Clause 15 of the Letters Patent against the order, dated 22.07.2016, passed in W.P.No.33614 of 2012 on the file of this Court.

W.P.No.33614 of 2012 : Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus directing the respondents 1 to 3 to regularize 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 being paid to the Class IV employees of the Chennai Port Trust with restrospective effect with all monetary and other attendant benefits.

W.A.No.1351 of 2016 is filed under Clause 15 of the Letters Patent against the order, dated 22.07.2016, passed in W.P.No.24947 of 2015 on the file of this Court.

W.P.No.24947 of 2015 : Writ 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 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.A.No.1378 of 2016 is filed under Clause 15 of the Letters Patent against the order, dated 22.07.2016, passed in W.P.No.33614 of 2012 on the file of this Court.

W.P.No.33614 of 2012 : Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus directing the respondents 1 to 3 to regularize 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 being paid to the Class IV employees of the Chennai Port Trust with restrospective effect with all monetary and other attendant benefits.

For appellants in W.A.No.1020/2016 : Mr.NGR Prasad,
for Mr.K.Raja.

For respondent 1 in W.A.No.1020/2016 : Mr.K.Gunasekar
For respondents 2 & 3 in W.A.No.1020/2016 : Mr.P.Wilson,
Senior Counsel,
for M/s.P.Wilson Associates.

For respondent 4 in W.A.No.1020/2016: Mr.Krishna
Ravindran

For respondent 5 in W.A.No.1020/2016 :
Mr.P.S.Sivashanmugasundaram,
Spl.Govt.Pleader.

For respondents 6 & 7 in W.A.No.1020/2016 : No
appearance

For appellant in W.A.No.1351/2016 : Mr.V.Prakash,
Senior Counsel,
for Mr.N.Kolandaivelu.

For respondent 1 in W.A.No.1351/2016 : Mr.K.Gunasekar

For respondents 2 & 3 in W.A.No.1351/2016 : Mr.P.Wilson,
Senior Counsel,
for M/s.P.Wilson Associates

For appellants in W.A.No.1378/2016: Mr.K.M.Ramesh
for M/s.Samanta and Ston

For respondent 1 in W.A.No.1378/2016 : Mr.K.Gunasekar

For respondents 2 & 3 in W.A.No.1378/2016 :
Mr.P.Wilson,

Senior Counsel,
for M/s.P.Wilson Associates

For respondent 5 in W.A.No.1378/2016 :
Mr.P.S.Sivashanmugasundaram,
Spl.Govt.Pleader.

JUDGMENT

(Judgment of the Court was delivered by Nooty.Ramamohana Rao,J.)

While Writ Appeal Nos.1020 of 2016 and 1378 of 2016 are directed against the order rendered in W.P.No.33614 of 2012, W.A.No.1351 of 2016 is directed against the order rendered in W.P.No.24947 of 2015.

2. The aforementioned two Writ Petitions, along with a

few other connected writ petitions, have been heard together by a learned single Judge of this Court and they were all decided by a common order, rendered on 22.07.2016.

3. Before we proceed further, we consider it appropriate to notice the contours of reliefs sought for in the two Writ Petitions, from and out of which, the present appeals arise.

4. W.P.No.33614 of 2012 is instituted, seeking a direction to respondents 1 to 3 therein to regularise the service of the petitioners, numbering 90, as Class IV employees of the Chennai Port Trust with effect from the date of their initial appointment and also to grant them all the benefits that are paid to the Class IV employees of the Chennai Port Trust with retrospective effect together with all monetary and attendant benefits.

5. W.P.No.24947 of 2015 is for quashing the orders contained in the proceedings, dated 11.04.2014, passed by third respondent therein, and also for further directions to respondents 2 and 3 to continue the employment of the petitioner till he attains the age of superannuation of 60 years in terms and in accordance with Chennai Port Trust Employees (Retirement) Regulations, 1976.

6. Thus, the essential relief sought for in W.P.No.24947 of 2015 was for continuance in employment of the writ petitioner/appellant before us, till he attains the age of 60 years, whereas, the broader relief sought for in W.P.No.33614 of 2012 was to regularise the services of the petitioners as Class IV employees of the Chennai Port Trust with all attendant benefits.

7. Heard Sri N.G.R.Prasad, Sri V.Prakash, Sri K.M.Ramesh, the learned Senior Counsel, who appeared in the respective writ appeals for the workmen; and Sri P.Wilson, learned Senior Counsel, on behalf of Chennai Port Trust; Sri K.Gunasekar, learned Senior Panel Counsel for Union of India; Sri P.S.Sivashanmugasundaram, learned Special Government Pleader for and on behalf of the Chief Secretary, Government of Tamil Nadu, and Sri Krishna Ravindran, learned standing counsel for Ennore Port Trust.

8. Chennai Port Trust has a glorious past history. It was a hub of great commercial activity for over a long period of time. It has contributed its might for the growth and development of the society to a significant extent. But, however, over a long period of time, some of the activities undertaken by it have come to be perceived as objectionable from various standpoints of view. One of them principally being not so friendliness with the environmental compatibility,

particularly, when Chennai Port Trust was undertaking coal and iron ore, its operations started creating unfavourable conditions and situations around. One of the citizens concerned has challenged the resultant pollution that was being caused by undertaking such operations. A batch of writ petitions, namely, W.P.No.11747 of 2002 came to be taken up by this Court and all those cases have been heard and decided by a Division Bench, which, by its judgment, dated 11.05.2011, after considering the rival submissions, allowed those writ petitions. Some of the important directions issued by the Division Bench are as under :

"In the result,

(a) All the writ petitions are allowed. However, the prayer in W.P.No.41163 of 2002, with regard to the compensation aspect stands dismissed.

(b) The Government of India, represented by its Secretary, Ministry of Shipping, New Delhi is directed to see distribution of cargoes between Ennore Port and Chennai Port, allotting clean cargoes viz. Container, car etc. to Chennai Port and the dusty cargoes like Coal, iron ore and all other dusty cargoes to Ennore Port.

(c) Since the coal terminal, iron ore terminal and the single line rail connectivity at Ennore Port are assured to be operational to their full capacity by September, 2011, the Government of India, represented by its Secretary, Ministry of Shipping, New Delhi and the Government of Tamil Nadu, represented by its Chief Secretary are directed to see that all the dusty cargoes like Coal, iron ore and all other dusty cargoes should move only to Ennore Port on and from 1.10.2011 and not to Chennai Port. The Chennai Port is also directed to render all its cooperation to the Government of India and the Government of Tamil Nadu in this direction.

(d) With regard to the employees and pensioners of the Chennai Port, the Government of India, the Government of Tamil Nadu, Chennai Port Trust and the Ennore Port Trust are directed to see that not even a single employee is retrenched or otherwise made to lose his livelihood because of the distribution of cargoes between Ennore Port and Chennai Port, as ordered above. For this purpose, since the dusty cargoes are going to be berthed and processed at Ennore Port on and from 1.10.2011, the Ennore Port may treat the employees of the Chennai Port connected to such activities as its employees, including the pensioners. In case of any difficulty, the Government of India, represented by its Secretary, Ministry of Shipping,

New Delhi and the Chief Secretary to the Government of Tamil Nadu, shall divide the employees and pensioners, between the Chennai Port and the Ennore Port, proportionate to the income of both the Ports.

(e) With regard to the traders, like the impleaded respondents 6 to 8 also, both the Chennai Port and the Ennore Port are directed to protect their rights and interest, in accordance with law."

9. Direction (c), referred to supra, virtually rendered a shift of handling iron ore and coal handling out of Chennai Port Trust and, simultaneously, the said work was entrusted to be handled by Ennore Port, which is declared as a major port in terms and in accordance with Section 3 of Major Port Trusts Act, 1964. It is only appropriate, at this stage, to notice that Ennore Port Trust was lying at the outskirts of Chennai city. Chennai Port Trust, has, in association with others, floated the said Ennore Port Trust. Therefore, the Division Bench earlier considered it appropriate to conclude the issue by issuing the directions noted supra.

10. Upon a careful consideration, it becomes clear from the direction (d) of the Division Bench judgment, dated 11.05.2011, that the employees and pensioners of Chennai Port are insulated against any possible retrenchment or facing prospects of losing the employment altogether. Such employees were also directed to be treated as employees of Ennore Port Trust. In case of any operational difficulties, liberty was preserved for proportionate allocation of the employees and pensioners between both the ports.

11. That brought forth once again to the centre-stage as to the status of all the men engaged by Chennai Port Trust for operations associated with iron ore and coal cargo handling. It appears, Chennai Port was routinely entrusting 'spillage handling work' to one human resource supply agency or the other. That was found causing lot of heartburn amongst those who have been attending to the said work over a long period of time. Therefore, an improvement was attempted necessitating the human resource supplier selected by Chennai Port to invariably engage the same spillage handling workers engaged previously by the previous contractor. Such a stipulation was found as an essential condition while floating invitation for tenders, for supply of manpower. This stipulation also posed certain other problem. If the spillage handling workers of the previous contractor are to be engaged by the present contractor, the present contractor would not be straightaway buying their loyalty. Therefore, the contractors started insisting for freedom to engage the manpower of their own for attending to the spillage handling work. That brought forth the problem of

disengaging the workers who have been attending to the work for the past several years. To get over these supernumerary difficulties, it was conceived to enable the spillage handling workers themselves to form a society of their own, so that the society can be awarded the work contract and the society, in turn, will be utilising the services of the same work force, without causing any discontinuance. In those set of circumstances, the association, known as "The Madras Port Spillage Handling Workers' Association" was formed and it was registered under the Tamil Nadu Societies Registration Act, 1975, on 03.04.1990. One of the essential features of the by-laws of this association is to formulate and administer welfare schemes and welfare measures for the regulation of employment and posting of labour for dealing with spillages and related activities at mechanised facilities installed in the Port of Madras, such as, the Ore Handling Plant, so that the interests of all members are safeguarded and ensure the welfare of members. It is also one of the objectives of this association to collect such amount, as is agreed to be paid by the Madras Port Trust, for administering the schemes for regulation of employment and providing benefits. By-law No.10 dealt with Membership of the Association. It has set out, that all persons regularly engaged at present, i.e., as on 01.03.1990, the date of formation of the association, for the work of handling spillages and related activities at the Madras Port's Mechanised Ore Handling Plant, are rendered eligible for the membership of the association. The association has also framed Standing Orders, which will be applicable to the worker members. Standing Order 13 provided for the termination of employment. In Clause (a) thereof, it is set out that all workers are liable to be terminated from the membership of the association with a month's notice by the Sub-Committee of the association, for good and sufficient reasons.

12. When certain difficulties have cropped up in working out the management of spillage handling workers, particularly, when the Madras Port Trust has not agreed to regularise their services and with regard to the said issue and for finding an amicable solution to this nagging problem, in respect of the terms contained in the earlier agreements, dated, 09.04.1990, 27.07.1993 etc., the Government of India, Ministry of Labour, vide their notification, dated 25.04.1994, notified an agreement reached between the Madras Port Trust and the Madras Port Trust Employees Union, for referring the said dispute for arbitration. Accordingly, an Arbitration Board, comprising Sri S.Ganesan, Retired Deputy Chairman, Madras Port Trust, and Sri K.E.Vardhan, Retired District Judge, came to be constituted. The Board of Arbitration has rendered an award on 22.10.1994, that the Memorandum of Understanding, as modified through mutual discussions held on 10.11.1993, should be signed by the Madras Port Trust and the Madras Port Spillage Handling

Workers Association. Accordingly, the award of the arbitrators was published in the Government of India Gazette, dated 24.12.1994. In terms of the said award, on 02.05.1995, the Madras Port Trust and the Madras Port Spillage Handling Workers Association have signed the Memorandum of Understanding. The terms of MoU, which have been reduced into writing, at the very outset, recorded the agreement of the Madras Port Trust to recognise the Madras Port Spillage Handling Workers Association and agreed to engage them for the work of clearing the iron ore spillage at the Mechanised Iron Ore Handling Plant of Madras Port Trust, as contract workers/members of the said association. It was also further agreed that the maximum number of workers/members of the association, who will be admitted to membership, will not exceed 160 and that preference would be given to male dependants of those who had been employed, but, died or ceased to be employed, on becoming physically unfit to undertake the work. The most important term of understanding, arrived at by the parties on 02.05.1995, reads as under :

"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 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." (emphasis is played by us)

13. Thus, by virtue of this Memorandum of Understanding, the membership of this association is rendered co-terminus, upon the member attaining the age of 58 years. This feature stands out even to this day and, in the face of such a term contained in the Memorandum of Understanding, we have to deal with the prayer sought for in W.P.No.24947 of 2015, whereby, the workmen wanted to be retained in service up to the age of 60 years.

14. In this context, it acquires significance to notice that the association is now recognised as the Human Resource Supplier/Contractor. It is the association, in turn, which will be engaging its worker members for attending to the spillage clearing work in the Port. Also, it is the said association, which gets paid by the Madras Port Trust and the said association, later on, distributes the wages to its worker members. This feature brings forth the following two salient features :

(i) There is no direct relationship of master and servant between Madras Port Trust and the person attending to the spillage clearing work.

(ii) The person attending to the spillage clearing work is, incidentally, the member of the association and it is the association, which determines the engagement of number of men, rendering particular work of spillage clearing work. In the face of non-existence of jural relationship between the Madras Port Trust and the attendant of the spillage clearing work, it is difficult for us to accede to the request of the workmen either for the sake of seeking regularisation of their services, treating him as a Class-IV employee of the Madras Port Trust or for retaining him in service till he attains the age of 60 years. In our opinion, Condition No.7 of the Memorandum of Understanding makes this position further clear. When it stipulated that the worker-members of the association will be paid on the basis of number of days worked by each of them, including weekly and optional holidays, and the leave they are eligible to, as specified in various clauses of the Memorandum. Clause 8 also offers useful insight to understand the issue, when it specified that the spillage workers will be allowed the basic pay scale and other allowances as applicable to a Mazdoor in the listed labour scheme, administered by the Madras Dock Labour Board, as per long term wage revision settlement, dated 12.06.1989, concluded by the Ministry of Surface Transport for Port and Dock Workers, employed in the Major Ports and as per the recent Wage Revision Settlement, concluded on 06.12.1994, in terms and in accordance with Section 12 (3) of the Industrial Disputes Act.

15. We are, therefore, clearly of the opinion that the claim of the spillage workers that their services should be regularised as Class-IV employees of the Madras Port Trust is a far-fetched one and is untenable. On the other hand, it travels beyond the terms of the agreement settled by and between their association and the Madras Port Trust on 02.05.1995. We are also of the opinion that even the claim made for their continuance in service up to the age of 60 years is untenable, for, as per Condition No.4, referred to supra, the membership of their association comes to an end by efflux of time, upon their attaining the age of 58 years. As is already noticed supra by us, it is the association, which regulates the entire spillage clearing work of the Madras Port Trust and it is the said association, which, in turn, utilises the services of its worker-members for attending to the said work. In the face of the above features, it is not possible to countenance the request made by them for their continuance in service up to the age of 60 years. When once a worker ceases to be a member of the association, the association cannot utilise his services for

attending to the spillage clearing work in the Madras Port Trust and, consequently, he cannot attend to the spillage clearing work either.

16. But, however, in our opinion, that is not the end of the solution to the entire problem. The problem has to be resolved, keeping in view the directions issued by the Division Bench of this Court, in its judgment rendered on 11.05.2011.

17. We also need to point out that it has been one of the terms of the Memorandum of Understanding, particularly Term No.6, wherein, it is agreed that only those, who are currently employed on handling Ore Spillage work, as certified by Chief Mechanical Engineer of the Port and who are ordinary Members of the Association, will be deployed for clearing spillage of iron ore. It is also one of the terms vide Term No.11, wherein, the Madras Port Trust has agreed to reimburse on the basis of actuals to the association, all costs of wages and other emoluments and benefits, such as, Provident Fund Contribution payable to the Regional Provident Fund Commissioner, workmen's compensation, if injured or killed in the course of employment or as premium payable to the insurance companies as also for liability for payment of gratuity under the Payment of Gratuity Act, Productivity Linked Bonus or Ex-gratia, as paid to regular Port/Dock employees, minimum guaranteed work or wages per month Attendance Allowance and benefits such as weekly off, leave and holiday with pay, 15 days Earned Leave, 15 Casual Leave and 10 days Medical Leave per annum, per worker-member, holiday with pay, Night Weightage and other benefits as allowed to the Dock workers in the Listed Scheme, administered by the Madras Dock Labour Board (excepting grant of pension and House Building Loans), as also salaries to staff and honoraria to the persons who are required to perform clerical and administrative duties, as determined unanimously by the Sub-Committee of the Executive Committee of the Association; thus, implying that it is the Association, which transforms itself into the position of the employer to provide necessary work to the spillage workers. The Madras Port Trust has only undertaken to reimburse the Association all the costs, involved in that process. When viewed in this perspective, it becomes crystal clear that there is never any relationship of direct employment or employer-employee relationship between the Madras Port Trust and the spillage workmen, which is sought to be established. (emphasis supplied)

18. On the other hand, the relationship between Madras Port Trust and the Association is such as the employer and the contractor and it is the contractor, who, in turn, engages

suitable men for attending to the spillage work. These apart, Clause 19 required the association to ensure that its members conduct themselves in a disciplined manner, ensuring peace and harmony within the Port premises. Thus, the discipline and control over all spillage workers is retained by the association, but not by the Madras Port Trust. The worker-members were specifically informed that they will be governed by the Standing Orders in the matters of regulating their conduct and penalties and further no amendment to these Standing Orders will be effected by the association without the prior approval of the Chairman of the Madras Port Trust. In clause 32, it is agreed that Writ Petition No.9011 of 1987 filed by Sri S.C.C. Anthony Pillai, in his capacity as the President of the Madras Port Trust Employees' Union, in respect of Ore Handling Spillage Clearing Contract Workers, will be withdrawn. It is not in dispute that W.P.No.9011 of 1987 has been filed, seeking regularisation of the services of the Ore Handling Spillage Clearing Contract workers as employees of the Madras Port Trust. (emphasis supplied)

19. A proper conspectus of reading of all the clauses of Memorandum of Understanding thus clearly brings about that the claim for regularisation of services of Ore Handling Spillage Clearing Contract workers, as employed, by treating them as employees of Madras Port Trust, is unsustainable. In the meantime, in view of the judgment rendered by the Division Bench of this Court on 11.05.2011, the Madras Port Trust passed orders on 06.12.2012, terminating the contract with Madras Port Spillage Handling Workers' Association, based upon the Resolution No.88, passed at the meeting of Board of Trustees, held on 15.10.2012. This, perhaps, is the inevitable consequence that floats from the direction issued by the Division Bench of this Court in its judgment, dated 11.05.2011. Pursuant to the direction issued by the Division Bench, directing the Government of India to ensure distribution of cargo between Ennore Port and Chennai Port or Madras Port, allotting clean cargo to Chennai Port and cargo like coal and iron ore etc., to Ennore Port. Further, the employees associated with the handling of cargo also are directed to be distributed to Ennore Port Trust. The further direction issued by this Court in direction (d) that the Ennore Port, on and from 1.10.2011, may treat the employees of the Chennai Port connected with the activities of cargo handling, such as, coal and iron ore, as its employees. Hence, there is no choice left in the hands of the Chennai Port Trust except to terminate the contractor, who is entrusted earlier with the work of spillage clearing work, namely, the Madras Port Trust Ore Handling Spillage Workers' Association. But, nonetheless, the Madras Port Trust was directed by this Court not to retrench any employee. As a consequence of this direction issued by this

Court, the inevitable end result was that all the Spillage Handling Workers have to be treated to have been transferred as employees of the Ennore Port Trust and, in case the Ennore Port cannot employ all such workmen, it is a matter of adjustment between Chennai Port Trust and Ennore Port, but, in no case, the spillage workmen can be retrenched. It will be thus open to both Chennai Port Trust and Ennore Port to utilise the services of all the former spillage workmen and, in no case, they shall be left high and dry.

20. In this context, we need to advert to the contention canvassed by Sri Krishna Ravindran, learned counsel appearing for Ennore Port, who urged that pursuant to the State of Karnataka imposing ban on export of iron ore from the said State, the iron ore handling work itself has come to a grinding halt. Even in such circumstances, we are afraid, in a collateral proceeding, we cannot either clarify or modify the directions issued by the earlier Division Bench on 11.05.2011. It is for the Ennore Port to work out the legal remedies available to it in that respect. But, so long as the judgment rendered by this Court on 11.05.2011 binds them, which it does, there is no escape, except to treat the earlier spillage workmen as the employees of Ennore Port. As already noticed by us supra, since Ennore Port was trying to act in tandem with Chennai Port Trust, it is certainly open to Chennai Port Trust as well to step in and help Ennore Port to relieve the stress of unproductive utilisation of human resources. It is for both of them to work out as to where the entire spillage workers' services have to be utilised. So far as the wages are concerned, one of the serious issues, which Sri N.G.R.Prasad, learned counsel counsel for the workmen, raised is that while utilising the services by Chennai Port Trust, the wages drawn earlier were not protected. The defence offered by Chennai Port Trust, as articulated by Sri P.Wilson, learned Senior Counsel, is that after termination of the contract with the spillage workers association on 06.12.2012, the utilisation of the services of the spillage workmen was entirely for a different purpose and for an altogether different work. Though the said explanation may fit into the context, we have to necessarily recognise the principle that the spillage workmen are required to be engaged in service by either Ennore Port or Chennai Port Trust. Therefore, wherever their service are utilised, they have to be necessarily paid the same wages, which they have drawn last as spillage workmen. A spillage workman, who has progressed by securing slightly higher wages than what the minimum wages are, because of continued service for a number of years, he cannot be made to lose the said benefit, all-of-a-sudden, that too, because he is not actually engaged for spillage clearance work alone. The fact that coal and other dusty cargo are still being operated at Ennore Port and the operations at Chennai Port

also require certain manpower cannot render them lose the advantage of the higher quantum of wages, which they have earned earlier.

21. We, therefore, make it very clear that the former spillage workmen will be entitled to be paid the same wages, which they were drawing earlier from 03.04.2014, 04.07.2014 and 06.10.2014, 08.01.2015, 07.04.2015, 09.07.2015, 09.11.2015 and 11.01.2016, as the case may be.

22. It is Mr.P.Wilson, learned Senior Counsel, who has furnished us the information that by separate orders, some of the workmen have been engaged on 03.04.2014, 04.07.2014 and 06.10.2014, 08.01.2015, 07.04.2015, 09.07.2015, 09.11.2015 and 11.01.2016. However, we have noticed an interlocutory order passed by Justice N.Paul Vasanthakumar, as he then was, on 04.07.2014, in M.P.No.2 of 2012, in W.P.No.3361 of 2012, clearly holding that the respondent Chennai Port Trust is not justified in paying reduced pay to those workmen, who have been engaged by Chennai Port Trust than what they were getting prior to their disengagement in November,2012. We have considered this issue from this perspective also and we endorse the view of Justice N.Paul Vasanthakumar, and, therefore, we direct that for all those spillage handling workmen, who have been engaged by Chennai Port Trust, they are entitled to be paid the wages, which they were drawing prior to their disengagement in November,2012, and such payment shall be effective from 04.07.2014, the date on which the aforementioned interlocutory order was passed. The contract of employment of the association stands transferred to Ennore Port Trust, upon its termination on 06.12.2012 by Chennai Port Trust. The financial benefit, which flows from our order, will have to be settled on or before 31.03.2017, subject to mutual adjustment of all statutory dues. The list of spillage workmen together with their identity proof and latest photographs, as certified by the office-bearers of their Association, shall be furnished to both Chennai Port Trust and Ennore Port, within a maximum period of thirty days from today. So long as the services of the workmen have been extracted, such of those workmen, who have been continued in service beyond the age of 58 years by virtue of an earlier interlocutory order passed by this Court, shall, however, be entitled for payment of their wages, as directed in this order, subject, of course, to their establishing the fact that they have worked and also subject to payment/adjustment of all statutory dues. As for Gratuity, as and when the Association makes a reimbursement claim strictly in accordance with the Memorandum, the same will be attended to on priority basis by Chennai Port Trust, within a maximum period of thirty days duration.

23. Writ Appeals are disposed of accordingly. No costs. Consequently, the connected C.M.P.Nos.13284, 13285 and 17881 of 2016 are closed.

Sd/-
Asst.Registrar (CS VI)

/true copy/

Sub Asst. Registrar

dixit

To

- 1.The Secretary,
Ministry of Shipping,
Union of India,
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,
Raja Street,
Chennai-600 001.
- 4.The Chairman cum Managing Director,
Ennore Port Trust,
P.T.Lee Chengalvaraya Naicker Maaligai,
No.23, (1st Floor) Rajaji Salai,
Chennai-600 001.
- 5.The Chief Secretary,
Govt.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 Associations
Handling Bharathi Dock II Chennaiport Trust,
8Chennai 600 001.

8. The Special Officer,
Chennai Dock Employees Credit Trust Secretary limited,
2nd line Beach Road,
Chennai- 600 001

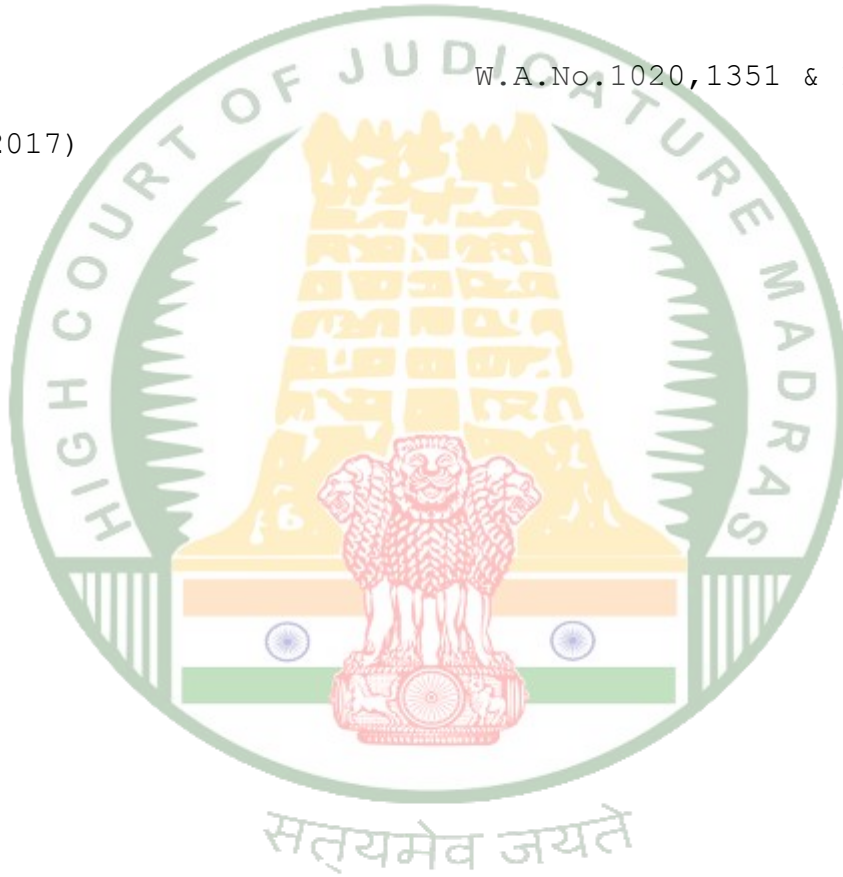
+1cc to Mr. Krishna Ravindran, Advocate SR.No. 1503 in WA 1020/16

+1cc to Mr.K. Raja, Advocate SR.No.1372

+1cc to Mr. K. Guna Sekar, Advocate' SR.No.1977.

W.A.No.1020,1351 & 1378/2016

UG(CO)
VR(13/02/2017)



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