

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 22.12.2016

Delivered on: 03.1.2017

CORAM

THE HONOURABLE THIRU JUSTICE V. PARTHIBAN

W.P.Nos.18879 to 18881 of 2002

K.Sambandam		Petitioner in
		W.P.18879 of 2002
T.M.Mohanan		Petitioner in
		W.P.18880 of 2002
G.Gopinath		Petitioner in
		W.P.18881 of 2002

vs

Chennai Port Trust,
rep. by the Additional Traffic Manager,
Traffic Department,
Cargo Handling Division,
Rajaji Salai, Chennai-600 001.

..... Respondents in
Writ Petitions

Prayer: These Writ Petitions are filed under Article 226 of the Constitution, praying for the issuance of Writ of Certiorari, to call for the records and papers from the files of the respondent relating to the impugned order bearing Ref.Nos.769/91-A7, dated 16.5.2002 and quash the same insofar as it refixes and reduces the basic pay of the petitioners with effect from 29.05.2001.

For petitioner : Mr.K.M.Ramesh
For respondents : Mr.V.Haribabu

COMMON ORDER

Since the facts and the issue involved in these Writ Petitions are common, these Writ Petitions are taken up together for final disposal by this common order.

2. For the sake of convenience, it would be appropriate first to deal with the writ petition in W.P.No.18879 of 2016 and the outcome of the same, would have similar impact on the other writ petition.

3. The petitioner was working in M/s.K.P.V.Shaik Mohammed Rowther & Co., stevedoring private company in Chennai. He was employed in the said company for about 24 years as Supervisor. Having been employed in the Stevedoring Company, the petitioner was a part of 'List A' employees of Madras Unregistered Dock and General Poor Workers (Regulation of Employment) Scheme 1988. Being part of the scheme, the petitioner requested the Madras Port Trust as it then was called, for his absorption. Since no action was forthcoming in response to his request, the petitioner approached this Court by filing a Writ Petition in W.P.No.22458 of 1993 and in terms of the direction passed by this Court on 2.11.2000, the petitioner came to be appointed as 'On Board Supervisor' in Cargo Handling Division with effect from 29.5.2001 in the scale of pay of Rs.5000-150-5450-200-10850 with usual allowances admissible under the Rules from time to time.

4. At the time of his employment, the petitioner's basic pay was fixed at Rs.7250/- with effect from 29.5.2001 and was being paid his monthly salary accordingly. While matters stood thus, vide impugned order dated 16.5.2002, the petitioner's pay came to be re-fixed as Rs.5000/- from 29.5.2001 instead of Rs.7250/- in the pay scale of Rs.5000-150-5450-200-10850.

5. The petitioner assailed the impugned re-fixation on the ground that the impugned order was not preceded by any notice to him before resorting to downward fixation of his pay and therefore, such downward fixation was not sustainable.

6. On behalf of the respondents/ Chennai Port Trust, a counter statement has been filed, stating that by inadvertence, the basic pay of the petitioner was fixed as Rs.7250/- instead of Rs.5000/- without realizing the fact that the petitioner was only entitled to be appointed in the minimum basic pay of Rs.5000/- in the pay scale of Rs.5000-150-5450-200-10850. It is also contended in the counter that in respect of other similarly placed persons also, minimum basic pay of Rs.5000/- in the same scale of pay, has been fixed. As the employment of the petitioner with the respondents Port Trust was only from 29.5.2001 as fresh entrant, he was not entitled to get his pay fixed at Rs.7250/-. Therefore, the impugned order was only a rectification of the mistake and the same cannot be faulted.

7. Heard Mr.K.M.Ramesh, learned counsel appearing for the petitioner and Mr.V.Haribabu, learned standing counsel for respondent. Perused the materials available on record and the pleadings.

8. The issue relating to the fixation of pay has a direct nexus to the terms of the appointment given to the petitioner.

From the appointment letter issued to the petitioner dated 29.5.2001, it could be seen that the petitioner was appointed afresh as Supervisor with effect from 29.5.2001 in the scale of pay of Rs.5000-150-5450-200-10850. The said appointment, admittedly, has not been challenged by the petitioner. Without challenging the appointment letter, which terming the appointment of the petitioner as fresh one with effect from 29.5.2001, the petitioner has approached this Court for a consequential relief of assailing the order of downward fixation of his pay. Unless the appointment is challenged, there cannot be any justification on the part of the petitioner to seek restoration of his pay which was originally fixed, though inadvertently, as rightly claimed by the respondent Port Trust.

9. Mr.K.M.Ramesh, tried to emphasize that though prior notice was necessary before effecting any change which would be detriment to the interest of the employee, in the instant case, any notice to be issued before passing the impugned order would only be an empty formality as it was only a rectification of genuine error that had crept in while fixing the pay of the petitioner and any plausible explanation from the petitioner even if any notice had been issued prior to the issuance of the impugned order, would not have changed the actual position. Such being the case, the ground urged by Mr.K.M.Ramesh learned counsel for the petitioner, has to be rejected as of little consequence as far as case on hand is concerned.

10. From the above, it is to be seen that once the petitioner's appointment takes effect only from 29.5.2001, the petitioner was entitled only to have pay fixed in the minimum pay scale of Rs.5000-150-5450-200-10850 and the petitioner having accepted the appointment without demur, he is not entitled to question subsequent pay fixation which in fact, only correcting the mistake committed by the respondent Port Trust. No right can be confirmed upon the employee to take advantage of genuine mistake committed by the Port Trust and it was always open to the respondents to correct the mistake when the same was detected. In the instant case, the initial pay fixation was wrongly done and the same was only sought to be rectified by issuance of the impugned order. This Court does not find any infirmity in the impugned order in order to interfere with the same.

11. For the foregoing reasons, the Writ Petition in W.P.18879 of 2002 stands dismissed as having no substance.

For the same reasons, the similar writ petitions in W.P.Nos.18880 and 18881 of 2002 are also dismissed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To
1Chennai Port Trust,
rep. by the Additional Traffic Manager,
Traffic Department,
Cargo Handling Division,
Rajaji Salai, Chennai-600 001.

+3cc to Mr.V. Karibabu, Advocate, S.R.No.380,381, 382
+1cc to Mr.K.M. Ramesh, Advocate, S.R.No.326

vsn(CO)
md(19/01/2017)

W.P.Nos.18879 to 18881 of 2002

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