

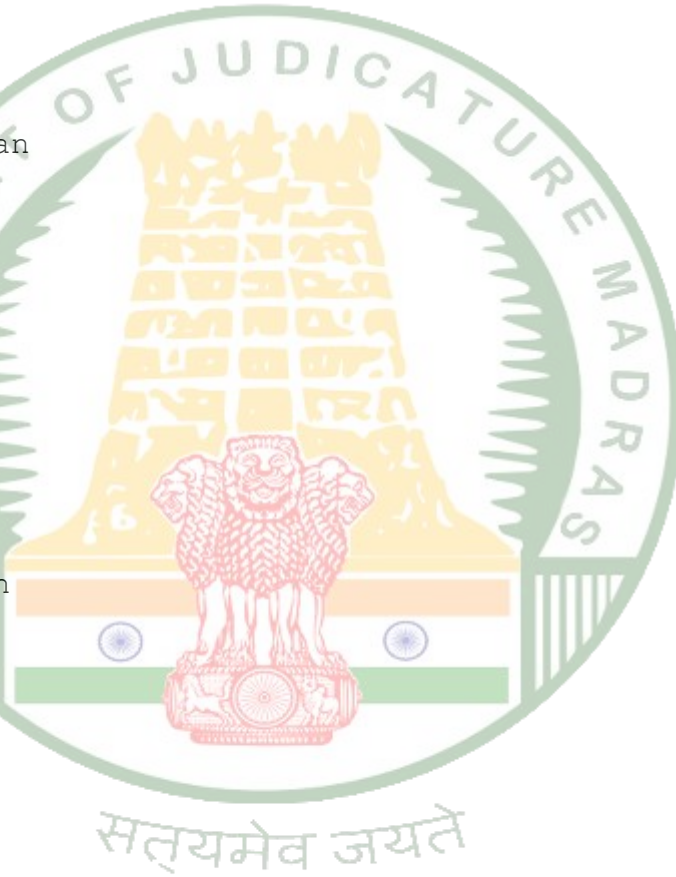
IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 08.10.2018

CORAM

THE HON'BLE MR.JUSTICE R. SURESH KUMAR

WRIT PETITION NO. 10504 OF 2002

1. S.Ravi
2. V.Banukumar
3. P.Ravi
4. C.Mathi
5. D.Rajendiran
6. A.P.Periyasamy
7. K.Krishnan
8. N.Radhakrishnanan
9. S.Natarajan
10. K.Devan
11. N.Gopal
12. A.Mathialagan
13. C.Babu
14. C.Shanmugam
15. V.P.Venugopal
16. A.Bhaskaran
17. G.Ravi
18. B.Saruvalingam
19. K.Kuppusamy
20. R.Sankaran
21. T.Arokiyaseelan
22. P.Ramakrishnan
23. G.Munusamy
24. P.Natarajan
25. K.V.Unni Nair
26. B.Srinivasan
27. N.Ramakrishnan
28. P.Sampath
29. K.Essagi
30. M.Malleswaran
31. K.Arumugam
32. V.K.Lakshmanan
33. M.Srinivasan
34. S.Dhamodharan
35. P.Ramakrishnan
36. E.Doraiwilliams



WEB COPY

.....Petitioners

Vs.

1. The Chairman
-cum-Ex.Officio Patran of the
Administrative Offices Canteen,
Madras Port Trust.

2. The Secretary
Chennai Port Trust,
Administrative Offices Canteen,
Chennai.
3. The President
Chennai Port Trust Administrative
Offices Canteen,
Rajaji Salai,
Chennai.

.....Respondents

(Writ Petition stands dismissed as withdrawn in respect of P-2, P-10, P-19, P-22, P-24, P-28, P-29, P-31 and P-33 as per order, dated 06.07.2015 by CSKJ in W.P.M.P.No.62 of 2015 in W.P.No.10504 of 2002)

Writ Petition filed under Article 226 of the Constitution of India, for issuance of Writ of Mandamus, directing the respondents to treat the petitioners as employees of the Chennai Port Trust and consequently pay all monetary and other attendant benefits at par with the regular employees of Chennai Port Trust in the light of the order passed in Civil Appeal No.1381 of 2010, dated 27.04.2018.

(Prayer amended as per order, dated 25.07.2018 by PDAJ in W.M.P.No.21685 of 2018 in W.P.No.10504 of 2002)

For Petitioners : Mr.K.Raja

For Respondent : Mr.R.S.Jeevarathinam,
Senior Counsel
for Ms.Madhuri Donti Reddy

ORDER

The prayer sought for herein is for a writ of mandamus "directing the respondents to treat the petitioners on par with the workers engaged in the canteens run by the Co-operative Societies as well as on par with the workers of the respondents Port Trust and direct the respondents to pay salary on par with the workers engaged in the canteens run by the Co-operative Societies as well as on par with the workers of the respondents Port Trust and to provide other benefits", which was subsequently been amended as "directing the respondents to treat the petitioners as employees of the Chennai Port Trust and

consequently pay all monetary and other attendant benefits at par with the regular employees of Chennai Port Trust in the light of the order passed in Civil Appeal No.1381 of 2010, dated 27.04.2018".

2. Even though 36 petitioners are before this Court in this writ petition who originally filed this writ petition, subsequently, 9 (V.Banukumar, K.Devan, K.Kuppusamy, P.Ramakrishnan, P.Natarajan, P.Sampath, K.Essagi, K.Arumugam, M.Srinivasan) out of 36 have withdrawn the writ petition. Therefore with regard to the remaining 27 petitioners, the facts have to be noticed.

3. These petitioners were employed in a canteen called Administrative Offices Canteen of the respondent, Chennai Port Trust as canteen employees. They had been working for several years and they had been paid a monthly salary depending upon their length of service.

4. While they had been working as such, they wanted to treat them as permanent employees of the Chennai Port Trust and accordingly, they want of service benefits and perquisites on par with the permanent employees and therefore with that intention, they approached this Court by filing this writ petition with the aforesaid prayer.

5. It is to be noted that the respondent Port Trust in fact wanted to close down the canteen with the employment of these petitioners and therefore the Port Trust, in fact decided to offer these petitioners to go for Voluntary Retirement Scheme, which is the scheme otherwise was made applicable to the regular employees of the Port Trust also.

6. During the pendency of the writ petition, the said offer made by the respondent Port Trust had been accepted by all these employees and in the year 2006, all these employees have gone for voluntary retirement. Some of them had retired voluntarily in the year 2006 and some of them retired in the year 2007. In this context, the respondent Port Trust in their counter affidavit filed on behalf of the respondents has also filed Annexure-I, containing the statement showing the details of lumpsum amount paid to Administrative Offices Canteen Workers, i.e., the petitioners.

7. On perusal of the said Annexure-I filed along with the counter affidavit filed on behalf of the respondents it discloses that, all the 36 petitioners including the present 27, who are still maintaining the writ petition, had accepted the offer of going for voluntary retirement and accordingly, the retirement dues by way of lumpsum payment, which was calculated on the basis of last drawn salary of each of the petitioners had

been paid to them and each of the petitioners had received it. In order to appreciate the said factors, the said entire Annexure-I filed by the respondent Port Trust is extracted hereunder :

"Statement showing the details of lumpsum amount paid to AO Canteen workers :

S.No. in W.P.	Name of the AO Canteen workers	Amount paid after deducting the dues	Date on which relieved / withdrawn the writ petition
1.	S.Ravi	2,86,482/-	31.08.2007
2.	V.Banukumar	4,66,707/-	Withdrawn the W.P / 06.07.2015
3.	P.Ravi	3,67,979/-	31.12.2006
4.	C.Mathi	3,13,525/-	31.08.2007
5.	D.Rajendiran	2,71,045/-	31.08.2007
6.	A.P.Periasamy	46,651/-	31.12.2006
7.	K.Krishnan	2,57,451/-	31.12.2006
8.	N.Radhakrishnan	1,73,839/-	31.12.2006
9.	S.Natarajan	36,597/-	31.12.2006
10.	K.Devan	3,13,286/-	Withdrawn the W.P / 06.07.2015
11.	N.Gopal	-----	Not in the canteen roll of workers (Casual work)
12.	A.Mathiazhagan	2,23,156/-	31.12.2006
13.	C.Babu	3,03,951/-	31.12.2006
14.	C.Shanmugam	2,42,231/-	31.12.2006
15.	V.P.Venugopal	2,61,466/-	31.12.2006
16.	A.Baskaran	3,68,466/-	31.12.2006
17.	G.Ravi	2,88,652/-	31.08.2007
18.	B.Sarvalingam	2,57,406/-	31.12.2006
19.	K.Kuppusamy	6,62,116/-	Withdrawn the W.P / 06.07.2015
20.	R.Sankaran	2,24,442/-	31.12.2006
21.	T.Arokiyaseelan	3,17,987/-	31.08.2007
22.	P.Ramakrishnan	3,78,138/-	Withdrawn the W.P / 06.07.2015
23.	G.Munusamy	2,51,436/-	31.12.2006

S.No. in W.P.	Name of the AO Canteen workers	Amount paid after deducting the dues	Date on which relieved / withdrawn the writ petition
24.	P.Natarajan	4,64,859/-	Withdrawn the W.P / 06.07.2015
25.	K.V.Unni Nair	-----	Not in the canteen roll of workers (casual worker)
26.	B.Srinivasan	2,35,972/-	31.12.2006
27.	N.Ramakrishnan	2,49,769/-	31.12.2006
28.	P.Sampath	3,46,656/-	Withdrawn the W.P / 06.07.2015
29.	K.Easagi	1,93,819/-	Withdrawn the W.P / 06.07.2015
30.	M.Malleswaran	4,27,733/-	31.08.2007
31.	K.Arumugam	6,11,294/-	Withdrawn the W.P / 06.07.2015
32.	V.K.Lakshmanan	2,83,064/-	31.12.2006
33.	M.Srinivasan	3,70,590/-	Withdrawn the W.P / 06.07.2015
34.	S.Dhamodaran	-----	Not in the canteen roll of worker (Casual worker)
35.	P.Ramakrishnan	-----	Not in the canteen roll of workers (Casual worker)
36.	E.Duraiwilliam	3,76,824/-	31.08.2007

8. With these factors, the learned counsel appearing for the petitioners would submit that, these petitioners should have been treated, for all purposes, as permanent employees of the respondent Chennai Port Trust. In this context, the learned counsel would submit that, similarly the Chennai Port Trust had been running a canteen called Industrial Employees Co-operative Canteen, where also number of such workers have been working as canteen employees. At one point of time, these employees also sought for service benefits on par with permanent employees of the Port Trust. In other words, though the said canteen was run as a Co-operative Society, the canteen employees formed an association and they made a request to treat them as Port Trust employees and since their demand was not met out by the Chennai Port Trust, they approached this Court by filing a writ petition, where the writ Court having accepted the plea of the said canteen employees of the Co-operative societies canteen,

have allowed the writ petition. It seems that, the Chennai Port Trust had filed an Intra Court Appeal, where a Division Bench of this Court, by order, dated 21.02.2006 dismissed the writ appeal filed by the Chennai Port Trust by confirming the order passed by the learned Judge in the writ petition. As against which, the Chennai Port Trust filed Civil Appeal before the Hon'ble Supreme Court of India in C.A.No.1381 of 2010.

9. The learned counsel appearing for the petitioners would further submit that, the said Civil Appeal had been disposed of recently by the Hon'ble Supreme Court, by order, dated 27.04.2018, whereby the decision made by the writ court, as confirmed by a Division Bench of this Court had been confirmed and the Civil Appeal filed by the Chennai Port Trust was dismissed.

10. In fact, relying upon the said decision, the prayer in this writ petition had been amended, seeking the benefit of mandamus, directing the respondent Port Trust to treat the remaining petitioners in the writ petition as permanent employees of the respondent Port Trust on par with other employees by accepting the principle laid down by the Apex Court in the said Judgment in the case of Co-operative Canteen employees.

11. The learned counsel appearing for the petitioners has heavily relied upon the decision of this Court, as has been confirmed by the Hon'ble Supreme Court in the said Judgment referred to above.

12. Per contra, the learned Senior counsel appearing for the respondent Port Trust would submit that, no doubt these petitioners had been working in the canteen for the Administrative Offices of the respondent Port Trust and they wanted to be treated as permanent employees of the respondent Port Trust which was not accepted by the respondent Port Trust and therefore they approached this Court.

13. The learned Senior counsel would further submit that, since the Port Trust decided to close down the Administrative Offices Canteen and to lease out to the private contractor and extended them the benefit of VRS to these petitioners also, the said offer made by the Port Trust has been accepted by all the employees, i.e., all the petitioners herein and accordingly they had gone for voluntary retirement either in the year 2006 or in the year 2007.

14. The learned Senior counsel would further submit that, on the basis of voluntary retirement, each of the petitioners herein has been paid the entire retiral benefits by calculating the retiral arrears on the basis of the last drawn salary of

each of the employees / petitioners herein.

15. By relying upon Annexure-I as has been extracted above filed by the respondent Port Trust along with the counter affidavit, learned Senior counsel contended that, once each of the petitioners has gone for voluntary retirement by fully accepting the offer made by the Chennai Port Trust and has also received lumpsum amount by way of retiral benefits, they cannot turn around now and say that, they are entitled to claim the status of permanent employees and also they shall be entitled to be permitted to work till their superannuation.

16. The learned Senior counsel would further submit that, 9 out of 36 petitioners after having accepted the retiral benefits pursuant to the voluntary retirement, had in fact withdrawn the writ petition. However, the remaining persons who are 27 in numbers even though have not withdrawn the writ petition, that would not ipso facto confirm any right on them to seek a different relief, for which they are not entitled to.

17. The learned Senior counsel appearing for the respondent Port Trust would also submit that, even though Review has been filed against the Judgment of the Hon'ble Apex Court referred to above made in C.A.No.1381 of 2010 and the same is pending before the Hon'ble Apex Court, the learned Senior counsel independently would submit that, assuming that the principle laid down by the Hon'ble Apex Court in the said Judgment is to be applied in the present case, the said principle cannot be applied in the present case, in view of the fact situation where in that case the employees had been continuously working whereas in the present case, each of the employees, i.e., all the petitioners have gone for voluntary retirement and received the retiral benefits. Therefore there is no lien for these petitioners with the respondent Port Trust as of now and they are not entitled to any relief as prayed for.

18. I have considered the said submissions made on either side and also gone through the materials placed before this Court.

19. The facts which had been argued by the learned counsel appearing for the parties are not in much dispute.

20. These petitioners admittedly had been working as canteen employees in the canteen run by the Chennai Port Trust as an Administrative Offices Canteen. Their only plea before this Court, while they filed this writ petition originally was, to seeking for a mandamus directing the respondent Port Trust to treat them as permanent employees of the Port Trust and accordingly to extend the service benefits on par with the other employees.

21. When the writ petition was pending, admittedly the offer made by the Chennai Port Trust had been accepted by the petitioner and each one of the petitioners have gone for voluntary retirement.

22. As has been rightly pointed out by the learned Senior counsel appearing for the respondents, once the voluntary retirement scheme, which was offered for its permanent employees had been offered to these employees, it goes without saying that, these employees were treated as employees of Port Trust and accordingly such offer was made on them.

23. Once the offer of voluntary retirement had been accepted by these employees and they acted upon the said voluntary retirement and pursuant to which, all these petitioners have received the entire disbursement of retiral benefits in one lumpsum either in the year 2006 or in the year 2007, thereafter whether these petitioners can turn around and claim any other benefits like the one now projected before this Court, is the moot question to be answered.

24. As has been rightly pointed out by the learned Senior counsel for the respondents Port Trust, once all these petitioners retired voluntarily, and after receipt of the retiral benefits, the lien between the petitioners and the respondent Chennai Port Trust as employees and employer has severed. If at all any retiral benefits have not been paid to any of these petitioners or if these petitioners have received such retiral benefits by reserving their right to agitate the issue or if they have received these amount under protest, the plea now raised by the petitioners can be gone into.

25. Here in the case in hand, these petitioners admittedly have gone on voluntary retirement and have admittedly received the entire retiral benefits in one lumpsum.

26. In view of these factors, the comparison now sought to be made by the petitioners along with the Industrial Employees Co-operative canteen's case is no more available for these petitioners.

27. I have carefully gone through the Judgment of the Hon'ble Apex Court in Civil Appeal No.1381 of 2010.

28. The Hon'ble Apex Court in paragraph 18 and 19 of the said Judgment was pleased to made the following observation and findings, which is extracted hereunder for reference :

"18. In other words, if on the undisputed facts, this Court has granted benefit to the canteen workers in the case of Indian

Petrochemicals (supra) then there is no reason that on the same set of undisputed facts arising in this case, the Court should not grant the benefit to the employees / workers in this case. It is more so when no distinguishable facts are pointed out in this case qua Indian Petrochemicals's case (supra).

19. We are, therefore, in agreement with the approach, reasoning and the conclusion arrived at by the two Courts below."

29. The said Civil Appeal was dismissed by confirming the decision made by this Court in the Industrial Employees Co-operative canteen's case because the factors of Indian Petrochemical's case cited therein and the factors of the Industrial Employees Co-operative Societies canteen of Chennai Port Trust case are identical and there is no justifiable differentiation of facts between those two cases. Therefore the Hon'ble Supreme Court was in agreement with the approach, reasoning and the conclusion arrived at by the writ court as well as the Division Bench of this Court in the said case.

30. Here in the case in hand, the facts are entirely different, as all the petitioners have accepted the voluntary retirement offer made by the Chennai Port Trust and had acted upon.

31. All these petitioners, without any protest, had received the entire retiral benefits in one lumpsum either in the year 2006 or in the year 2007. In this regard, the details of the amount paid to each of the petitioners and the date of payment made by the respondent Port Trust is shown in Annexure-I to the counter affidavit which has already been extracted above for easy reference.

32. 9 out of 36 petitioners having known to the fact that, nothing would survive in this writ petition to agitate, have already withdrawn the writ petition. However, the remaining 27 petitioners, who are still maintaining the writ petition, on whose behalf, submissions were made stating that, after voluntary retirement, which was thrust upon them by compulsion, they had some considerable length of service before superannuation, therefore at least up to superannuation period, the benefits can be calculated and be paid to them.

33. This Court is not impressed with the said plea raised by the learned counsel appearing for the petitioners, for the simple reason that, once the voluntary retirement scheme has been accepted by the petitioners and they had acted upon and their entire retiral benefits were received by them either in

the year 2006 or in the year 2007 itself, thereafter, as rightly pointed out by the learned Senior counsel appearing for the respondents, there is no employee and employer relationship between the petitioners and the respondent Port Trust and the same has been severed the moment they resigned voluntarily and received the retiral benefits.

34. Therefore, I am of the considered view that, the facts of the case which has been referred to by the learned counsel for the petitioners in respect of Industrial Employees Co-operative canteen's case is totally different from the facts of the present case and therefore by respectfully agreeing with the decision taken by the writ court, which has subsequently been accepted and confirmed by the Division Bench as well as the Hon'ble Apex Court, the said principle shall not be applied to the present case, in view of the facts which are entirely different in this case.

35. This is what exactly pointed out by the Hon'ble Apex Court in the said Judgment in paragraph 18 and 19 extracted above, that when the facts are not distinguishable, the principle can very well be applied. Therefore, in view of the facts of this case which are entirely different from the earlier case, the said principle cannot be applied to this case. Therefore the learned counsel for the petitioners cannot seek any advantage from the said Judgment he quoted, and based on which, even the amended prayer would not in any way give any benefit to these petitioners.

For all these reasons and the discussions made above, this Court is not inclined to accept the case of the petitioners, as the writ petitioners failed to make out a case. Hence, the writ petition fails and accordingly, it is dismissed. No costs.

Sd/-

Assistant Registrar (CS VI)

//True Copy//

Sub Assistant Registrar

tsvn

To

1. The Chairman

-cum-Ex.Officio Patran of the
Administrative Offices Canteen,
Madras Port Trust.

WEB COPY

2. The Secretary
Chennai Port Trust,
Administrative Offices Canteen,
Chennai.
3. The President
Chennai Port Trust Administrative
Offices Canteen,
Rajaji Salai,
Chennai.

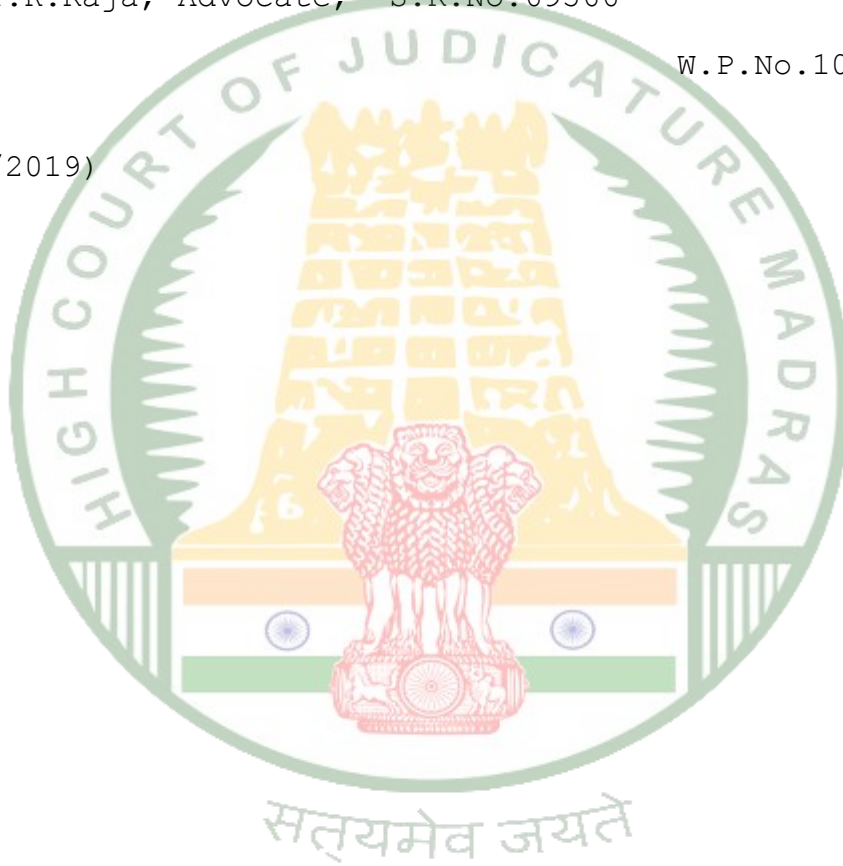
+lcc to Mr.Madhurai Donti Reddy, Advocate, S.R.No.69873

+lcc to Mr.K.Raja, Advocate, S.R.No.69566

W.P.No.10504 of 2002

BS (CO)

RRS (28/08/2019)



WEB COPY