

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.03..2018

CORAM:

THE HON'BLE MR.JUSTICE K.K.SASIDHARAN
AND
THE HON'BLE MR.JUSTICE P.VELMURUGAN

W.A.No.1732 of 2015

&

M.P.No.1 of 2015

The Chennai Port Trust Industrial Employees' Co-operative
Canteen Ltd.,
Rep. by its President
Port Trust
Chennai-600 009.Appellant/6th Respondent

..Vs..

1. D.ParivallalRespondent/Petitioner
2. Union of India
Rep. by Secretary to Government
Ministry of Surface Transport (Port wings)
Transport Bhavan,
Parliament Sreet,
New Delhi-110 001.
3. Union of India
Rep. by Secretary to Government,
Ministry of Labour,
Shram Shakthi Bhavan
Rafi Marg,
New Delhi.
- 4.Chennai Port Trust,
Rep. by Chairman,
Chennai-600 001.
5. Chennai Port Trust Industrial
Employees Cooperative Canteen Ltd.,
Rep. by Managing Director,
Port Trust, Chennai.

6. The Registrar of Co-operative Societies,
No.170, E.V.R.High Road,
Kilpauk,
Chennai-600 010.

...Respondents

Prayer:- Writ Appeal filed under Clause 15 of Letter Patent Act, to set aside the order dated 21.07.2015 passed in W.P.No.4483 of 2015.

W.P.4483/2015:

Writ Petition filed under Article 226 of the constitution of India praying for issue a Writ of Certiorarified Mandamus to call for the entire records pertaining to the order passed by the 4th respondent in Memo - CHPTIECC/ESTT/ 76/2015/MEE dated 02.01.2015 (served on 09.01.2015) and quash the same and consequently direct the third and fourth respondents herein to continue to employ the petitioner till he attains the age of 60 years as applicable to employees of third respondent in terms of the order dated 24.08.2005 passed by this Honourable Court in W.P. No.6872 of 2001.

For Appellant : Mr.K.Karthikeyan
for Mr.C.Munusamy

For Respondents: Mr.R.Sunil Kumar (R1)
Ms.Meenakumari (R2 and R3)
Mr.G.Rajagopalan
Additional Solicitor General assisted
by Mr.V.Haribabu (R4)).
Ms.T.Girija (R5 and R6)
Special Government Pleader

J U D G M E N T

(Judgment of the Court was delivered by K.K.SASIDHARAN, J.)

This intra Court appeal is directed against the order dated 21 July 2015 in W.P.No.4483 of 2013 whereby and whereunder the learned single Judge by following the earlier order dated 24 August 2015 in W.P.No.6872 of 2001 which was upheld by the Division Bench by Judgment dated 21 February 2006 in W.A.No.66 of 2006, declared that the first respondent was an employee of the Chennai Port Trust and he would retire on attaining the age of 60 years.

2. We have heard the learned counsel for the appellant, the learned counsel for the first respondent, the learned counsel for the respondents 2 and 3 and the learned Additional Solicitor General on behalf of the Chennai Port Trust.

3. The first respondent was appointed as an employee of the Chennai Port Trust Industrial Employees Cooperative Canteen Ltd.,. The other employees of the canteen took up the matter before this Court as to whether the employees of the Canteen are eligible to the benefits given to the employees of the Chennai Port Trust. The learned single Judge in W.P.No.6872 of 2001 declared that the regular and permanent employees of the canteen shall be treated as direct employees of the Chennai Port Trust. There was a further direction that the temporary employees under the Chennai Port Trust Industrial Employees Cooperative Canteen Ltd.,. shall be absorbed and made permanent with effect from the date on which they are entitled to be declared as permanent, in accordance with the rules and regulations of the Port Trust. The order dated 24 August 2005 in W.P.No.6872 of 2001 was challenged by the Chennai Port Trust in W.A.No.66 of 2006.

4. The first Bench of this Court, by placing reliance on several decisions of the Supreme Court with regard to the operation of canteen by an industry as part of its statutory function upheld the order passed by the learned single Judge, by Judgment dated 21 February 2006. The Judgment in W.A.No.66 of 2006 was taken up before the Hon'ble Supreme Court in S.L.P.No.10441 of 2006 which was subsequently converted as Civil Appeal No.1381 of 2010. The Hon'ble Supreme Court initially granted interim stay of the Judgment of the Division Bench in W.A.No.66 of 2006. Subsequently, interim stay was vacated by order dated 22 January 2010. The Civil Appeal was dismissed for default on 30 November 2017.

5. The appellant served a notice on the first respondent indicating that he would retire on attaining the age of the superannuation on 30 June 2015. The first respondent therefore filed a Writ Petition in W.P.No.4483 of 2015, claiming that he should be treated as an employee of the Chennai Port Trust and he is entitled to the benefits, granted to the similarly placed employees in the Writ Petition in W.P.No.6872 of 2001. The learned Judge by following the earlier order, which was upheld by the Division Bench in W.A.No.66 of 2006, allowed the Writ Petition, with a clear observation that the first respondent is entitled to the benefits, treating him as an employee of the Port Trust. The said order is under challenge in this appeal.

6. There is no dispute that the first respondent was appointed as an employee of the Chennai Port Trust Industrial Employees Cooperative Canteen Ltd.,. The employees were not considered initially as employees of the Chennai Port Trust. The issue regarding the status of the employees who were appointed in the canteen operated by the Chennai Port Trust was taken up in W.P.No.6872 of 2001. The learned single Judge found

that the canteen was maintained by the Chennai Port Trust. The Chennai Port Trust was statutorily bound to look after the welfare of its employees. The regular and permanent employees of the canteen was declared as direct employees of the Chennai Port Trust. The said order was upheld by Judgment dated 21 February 2006 in W.A.66 of 2006 . Even though interim stay was granted by the Hon'ble Supreme Court staying the Judgment in W.A.No.66 of 2006, the fact remains that the stay was vacated subsequently. In fact, even the civil Appeal was later dismissed for default.

7. The canteen in question is nothing but a wing of the Chennai Port Trust. The Chennai Port Trust operated the canteen in accordance with the provisions of the Factories Act. It is maintaining the canteen for the welfare of the employees of the Port trust. In view of the categorical finding given by this Court in W.P.No.6872 of 2001, which was upheld in W.A.No.66 of 2006, the appellant cannot be heard to say that the first respondent who is similarly situated is not entitled to the benefits. We are therefore of the view that the learned single Judge was justified in directing the Chennai Port Trust to treat the first respondent as an employee of the Port Trust. In fact, there was no appeal preferred by the Chennai Port Trust challenging the order dated 21 July 2015 in W.P.No.4483 of 2015.

8. The first respondent produced a copy of the minutes of the Board meeting dated 21 August 2015, indicating that the benefits of declaration given in W.P.6872 of 2001 would also be given to the first respondent, in case the Writ Petition in W.P.No.4483 of 2015 is withdrawn. Therefore, it is clear that the Chennai Port Trust was well aware of the entitlement of the first respondent to get the benefits given to the other employees.

9. We do not find any error or illegality in the order passed by the learned single Judge warranting interference.

10. In the upshot, we dismiss the intra court appeal. No costs. Consequently, connected Miscellaneous Petition is closed. We direct the Chennai Port Trust to calculate the amount payable to the first respondent and pay the same, within a period of eight weeks from the date of receipt of a copy of this Judgment.

s/d-

Assistant Registrar (CS-V)

True Copy

Sub-Assistant Registrar

To

1. The Secretary to Government
Ministry of Surface Transport (Port wings)
Transport Bhavan,
Parliament Street, New Delhi-110 001.
 2. The Secretary to Government,
Ministry of Labour,
Shram Shakthi Bhavan
Rafi Marg,
New Delhi.
 3. The Chairman
Chennai Port Trust,
Chennai-600 001.
 4. The Managing Director,
Chennai Port Trust Industrial
Employees Cooperative Canteen Ltd.,
Port Trust, Chennai.
 5. The Registrar of Co-operative Societies,
No.170, E.V.R.High Road,
Kilpauk,
Chennai-600 010.
- +1 CC to Mr.R. Sunil Kumar, advocate sr 18779.
+1 CC to Govt. Pleader sr 19223.
+2 Ccs to Mr.V.Haribabu, Advocate sr 19008.
+1 CC to Mrs.S. Meenakumari, Advocate sr 18700.
+1 CC to Mr.C. Munusamy, Advocate sr 19050.
+1 Cc to Mr.C. Munusamy, Advocate sr 19051.

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SP(23/04/2018)