

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 25.06.2018

CORAM

THE HONOURABLE MR.JUSTICE SATRUGHANA PUJAHARI

W.P.No.16895 of 2015

G.Hemachandran

...Petitioner

Versus

1. Union of India,
Rep. by Secretary to Government,
Ministry of Surface Transport (Portwings),
Transport Bhavan, Parliament Street,
New Delhi - 110 001
 2. Union of India,
Rep. by Secretary to Government,
Ministry of Labour,
Shram Shakthi Bhavan,
Rafi Marg, New Delhi - 110 001
 3. Chennai Port Trust,
Rep. by Chairman,
Chennai - 600 001
 4. Chennai Port Trust Industrial
Employees Cooperative Canteen Ltd.,
Rep. by its President,
Port Trust, Chennai - 600 001
 5. The Registrar of Cooperative Societies,
170, E.V.R. High Road,
Kilpauk, Chennai - 600 010
- .. Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying to issue a writ of certiorarified mandamus to call for the records pertaining to the order passed by the fourth respondent in Memo - CHPTIECC/ESTT/82/2015/MEE dated 02.06.2015 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.

For Petitioner : Mr.R.Yashod Vardhan, SC
for M/s.R.Sunil Kumar

For RR1 & 2 : Mr.P.Ayyaswamy, CGSC

For R3 : Mr.V.Haribabu

For RR4 & 5 : Mr.L.P.Shanmugasundaram,
Special Government Pleader (Co-op)

ORDER

The case of the writ petitioner is that the superannuation order dated 02.06.2015 was issued to the writ petitioner by the fourth respondent on attaining the age of 58 years, is illegal and arbitrary in as much as this Court had already declared him as regular employee of the Port Trust and admittedly, the retirement of the employee of the Port Trust is 60 years. Hence, such order be quashed and the petitioner be allowed to continue in service till he attains the age of sixty years is the prayer of the petitioner.

2. It appears that the petitioner along with others are working in the canteen of the Port Trust which caters to the needs of the regular employee and others working in the Port Trust and the said canteen was running on cooperative basis. However, since the petitioner and others were not treated as regular employees of the Port Trust, they came in a W.P.No.6872 of 2001 to this Court seeking a declaration that the petitioner and others may be treated as regular employee of the Port Trust and necessary benefits of the regular employee may be extended to them. This Court allowed the prayer vide order dated 24.08.2005 in the said writ petition. Writ Appeal preferred against the same by the Port Trust in W.A.No.66 of 2006 was dismissed. Subsequent to the same, the Port Trust challenged the same in S.L.P. before the Apex Court, wherein leave was granted and consequently it was converted to Civil Appeal No.1381 of 2010. In the said case, an interim stay was granted, but the Apex Court later vacated the said interim stay vide Order dated 22.01.2010. Thereafter, the Chennai Port Trust on 17.03.2015 granted the status of regular employee of the Port Trust to the petitioner vide its Order No.CHPTIECC/ESTT/2015/MEE but the same was subject to the outcome or the result of the Civil Appeal pending in the Apex Court.

3. However, the petitioner when attained the age of 58 years, the impugned order was issued to him to superannuate from service which the petitioner has challenged in this writ petition, on the ground that since he has already been declared as a regular employee of the Port Trust and the age of superannuation for the regular employees is 60 years, the order impugned as such could not have been issued to him and sought for the relief as stated earlier. This Court by an interim order stayed the operation of the said order. In the meanwhile, the petitioner had already reached the age of 60 years. So also, the Apex Court has confirmed the order of the writ petition and as such, the order of the Court passed in

the writ petition has reached its finality and thereby, the order of the Port Trust dated 17.03.2015 granting them the status of regular employee of the Port Trust.

4. The aforesaid fact is not disputed by the counsel for the Port Trust. However, the counsel submits that a review petition is pending against such order in the Apex Court.

5. Be it that as it may, since the challenge to this Court order till date was also not found favour in the Civil Appeal filed in the Apex Court, the order impugned passed by the fourth respondent can very well said to be not in accordance with law in as much as the petitioner is entitled to continue like any other employee of the Port Trust upto 60 years. Hence, the writ petitioner filed challenging the impugned order deserves to be allowed and accordingly, the same stands allowed. Consequently, the impugned order is quashed.

6. However, in the meanwhile, the petitioner having attained the age of 60 years on 30.06.2017 and superannuated, it is needless to say that the petitioner is also entitled to get retirement benefits on par with the regular employees of the Port Trust similarly situated with him as permissible under law, in view of the order passed in W.P.No.6872 of 2001. But it being stated the review petition with regard to the order passed by the Apex Court in the Civil Appeal confirming the order in the writ petition is pending, the respondent is at liberty, while extending such benefit of superannuation as payable to the petitioner, to take an undertaking from him that the benefit extended to him in view of the order passed in W.P.No.6872 of 2001, shall be subject to the outcome of such review petition in the Apex Court and also be guided by such order if any, to be passed in the review petition and if required he shall refund the monetary benefit which he could not have got but for the order in the writ petition.

7. Accordingly, this Court directs the third respondent to release the retirement benefits to the writ petitioner which has accrued in his favour according to law within a period of eight weeks from the date of receipt of a copy of this Order keeping the undertaking as aforesaid. However, there shall be no order as to costs.

Sd/-

Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

To

1. The Secretary to Government,
Union of India,
Ministry of Surface Transport (Portwings),
Transport Bhavan, Parliament Street,
New Delhi - 110 001
2. The Secretary to Government,
Union of India,
Ministry of Labour,
Shram Shakthi Bhavan,
Rafi Marg, New Delhi - 110 001
3. The Chairman,
Chennai Port Trust,
Chennai - 600 001
4. The President,
Chennai Port Trust Industrial
Employees Cooperative Canteen Ltd.,
Port Trust, Chennai - 600 001
5. The Registrar of Cooperative Societies,
170, E.V.R. High Road,
Kilpauk, Chennai - 600 010

+1cc to Mr.V.Haribabu, Advocate Sr.No.40182
+1cc to Mr.R.Sunilkumar, Advocate Sr.No.40300
+1cc to M/s.L.P.Shanmugasundaram, Advocate Sr.no.40303
+1cc to Mr.P.Ayyaswamy, Advocate Sr.No.40348
+1cc to Government Pleader Sr.No.40898

RK(CO)
sm:16.7.2018

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सत्यमेव जयते

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