

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 12.02.2018

Delivered on : 01.03.2018

CORAM:

THE HON'BLE MR.JUSTICE K.K.SASIDHARAN

AND

THE HON'BLE MR.JUSTICE P.VELMURUGAN

W.A No.1817 of 2012,
M.P.No.1 of 2012

The General Secretary
Madras Port United Labour Union
Bagat House, No.248, Broadway
Chennai -1.

...Appellant/2nd Respondent

Vs

1.Chennai Port Trust
Rep. by its Chairman
Rajaji Salai, Chennai - 600 001.1st Respondent/Petitioner

2.The Presiding Officer,
Central Government Industrial Tribunal
cum Labour Court,
Chennai - 600 006.2nd Respondents/1st Respondent

Prayer:- Writ Appeal filed under clause 15 of the Letter Patent
against the order dated 05.06.2012 made in W.P.No.22413 of 2007.

WP.NO.22413 OF 2007:

*Writ Petition filed under Article 226 of the Constitution
of India praying for the issuance of Writ of Certiorari to call
for the records and to quash the award dated 7.12.2006 passed in
I.D.No.120 of 2005 on the file of the 1st respondent Central
Govt. Industrial Tribunal cum Labour Court Chennai.*

For Appellant : Mr.R.P.Panneerselvam

For R1 : No appearance

J U D G M E N T

K.K.SASIDHARAN, J.

The Ministry of Labour, Government of India, pursuant to the application submitted by the appellant referred an industrial dispute to the Central Government Industrial Tribunal Cum Labour Court, Chennai (hereinafter referred to as the "CGIT") to answer the issue as to "Whether the demand of the Union not to convert the post of Senior Assistant to Senior Assistant (Works) by the Management of Chennai Port Trust is justified?."

2. The Central Government Industrial Tribunal answered the issue in favour of the appellant and a direction was given to the Management to fill up the post of Senior Assistants with all eligible candidates as per the statutory rules retrospectively and pay them the benefits from 9 June 2004. The order was challenged by the Chennai Port Trust before the Writ Court in W.P.No.22413 of 2007. The learned single Judge allowed the writ petition and set aside the order passed by the CGIT. Feeling aggrieved by the order in W.P.No.22413 of 2007, the appellant is before this Court.

3. We have heard the learned counsel for the appellant. None appeared on behalf of the first respondent.

4. The appellant raised the dispute primarily on the ground that conversion of the post of Senior Assistant to that of Senior Assistant (Works) by order dated 9 June 2004 would take away the legitimate expectation of the concerned employees and it would deny them a right to claim promotion. The CGIT opined that the Management has not produced any specific order or proceedings for conversion of the post and therefore, interchange is not possible. The CGIT held that without any justifiable reason, the Management interchanged the post and it would affect the promotion of Junior Assistants.

5. The learned single Judge while allowing the writ petition filed by the Chennai Port Trust, held that Section 24 of the Major Port Trusts Act, 1963, gives power of appointment to the Chairman and as such, it is open to him to pass orders for interchanging the post.

6. There are two categories of Clerks in the Clerical cadre in the Chennai Port Trust viz., Ministerial side and Works side. The Port Trust in the year 2000 converted 13 posts of Senior Assistants borne on the Ministerial side of Engineering Department into Senior Assistant (Works) in the Schedule of Engineering Department. There was no challenge to

the authority of the Chairman for making such interchange at that point of time. The conversion of posts were made pursuant to the sanction given by the Chairman, Chennai Port Trust. The Chairman thereafter by order dated 9 June 2004 granted sanction for conversion of 10 posts of Senior Assistants on the Ministerial Side to that of Senior Assistants (Works) on the Work side.

7. The Chairman is the appointing authority. It is within the province of the appointing authority to re-structure the post taking into account the administrative exigency.

8. The Hon'ble Supreme Court in P.U.Joshi and Others v. Accountant General, Ahmedabad and others [(2003) 2 SCC 632] indicated that the classification or abolition of posts, amalgamation and bifurcation of departments and re-structuring are all executive functions and the judicial review is very limited. The Supreme Court said:

"10.Questions relating to the constitution, pattern, nomenclature of posts, cadres, categories, their creation/abolition, prescription of qualifications and other conditions of service including avenues of promotions and criteria to be fulfilled for such promotions pertain to the field of Policy and within the exclusive discretion and jurisdiction of the State, subject, of course, to the limitations or restrictions envisaged in the Constitution of India and it is not for the Statutory Tribunals, at any rate, to direct the Government to have a particular method of recruitment or eligibility criteria or avenues of promotion or impose itself by substituting its views for that of the State. Similarly, it is well open and within the competency of the State to change the rules relating to a service and alter or amend and vary by addition/substruction the qualifications, eligibility criteria and other conditions of service including avenues of promotion, from time to time, as the administrative exigencies may need or necessitate. Likewise, the State by appropriate rules is entitled to amalgamate departments or bifurcate departments into more and constitute different categories of posts or cadres by undertaking further classification, bifurcation or amalgamation as well as reconstitute and restructure the pattern and cadres/categories of service, as may be required from time to time by abolishing existing cadres/posts and creating new

cadres/posts. There is no right in any employee of the State to claim that rules governing conditions of his service should be forever the same as the one when he entered service for all purposes and except for ensuring or safeguarding rights or benefits already earned, acquired or accrued at a particular point of time, a Government servant has no right to challenge the authority of the State to amend, alter and bring into force new rules relating to even an existing service. "

9. When it is made out that the Chairman is having the power of appointment, it cannot be said that he is not empowered to make certain structural changes on the administrative side. This aspect was considered by the learned single Judge and the writ petition was rightly allowed. We do not find any reason to take a different view in the matter.

10. In the result, the intra court appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS-VII)

//True Copy//

Sub Assistant Registrar

To

1. The Presiding Officer,
Central Government Industrial Tribunal cum Labour Court,
Chennai - 600 006.

सत्यमेव जयते

Judgment in
W.A No. 1817 of 2012

SKS (CO)
TR(16/03/2018)

WEB COPY