

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.12.2018

CORAM

THE HONOURABLE MR.JUSTICE **M.SATHYANARAYANAN**

Contempt Petition Nos.495 to 505 of 2014

1. K.Pushparaj ...Petitioner in Cont.P.No.495/2014
2. V.Ramamoorthy ...Petitioner in Cont.P.No.496/2014
3. A.kulandai Sanjeevi Parthi
...Petitioner in Cont.P.No.497/2014
4. P.Gurunathan ...Petitioner in Cont.P.No.498/2014
5. P.Sivanandam ...Petitioner in Cont.P.No.499/2014
6. V.Mohan ...Petitioner in Cont.P.No.500/2014
7. D.Kadirvel ...Petitioner in Cont.P.No.501/2014
8. R.Neelagandan ...Petitioner in Cont.P.No.502/2014
9. V.Mathi ...Petitioner in Cont.P.No.503/2014
10. G.Anbu ...Petitioner in Cont.P.No.504/2014
11. R.Muniyandi ...Petitioner in Cont.P.No.505/2014

Vs

Shri.Atulya Misra
The Chairman
Chennai Port Trust
Rajaji Salai, Chennai - 600 001.

...Respondent in all the contempt petitions

PETITION under Section 11 of the Contempt of Courts Act, 1971 to punish the respondent for wilful disobedience of the order dated 20.11.2012 in W.P.Nos.17129 to 17139 of 2012.

For Petitioners : Mr.S.Rajakumar in all
Cont.Petitions

For Respondent : Mr.S.Haja Mohideen Gisthi
in all Cont.Petitions

C O M M O N O R D E R

The petitioners alleging non-compliance of the order dated 20.11.2012 in W.P.Nos.17129 to 17139 of 2012 have come forward to file these contempt petitions.

2. It is relevant to extract paragraphs 17 and 18 of the order dated 20.11.2012:-

"17. However, this Court is of the opinion that though the names of the petitioners were found in the waiting list, they cannot get employment and since as on date also there is no scope for employment, the offer of compensation cannot be withdrawn, without any reason. It may be true that the petitioners have not availed the compensation scheme under the hope that they would get employment in some future point of time, but on that score they should not be penalised from deprivation of compensation. Further, the petitioners having litigated for over 9 years, it cannot be stated that they have abandoned their claim of employment. Hence, this Court is inclined to direct the respondent- the Chennai Port Trust to offer the compensation in terms of clause 29 of the Merger settlement dated 29.5.2001 and as set out in

paragraph No.13 of the previous counter affidavit as well as in paragraph No.7 of the present counter affidavit. But at the same time, seeking for interest is not justified since the petitioners themselves have not availed the scheme of offer and for that the Port Trust cannot be blamed.

18. In such circumstances, the writ petitions are disposed of with a direction to the respondent-Chennai Port Trust to grant compensation in terms of clause 29 of the Merger Settlement dated 25.5.2001 in respect of the petitioners, after calculating the service weightage in respect of each of them. The said exercise shall be carried out within eight weeks from the date of receipt of a copy of this order."

3. The learned counsel for the petitioners has drawn the attention of this Court to the Memo of Calculation dated 12.06.2015 and would submit that the contemnor had calculated the amount only from 1992 to 31.12.2002 and it should have been calculated from the year 1988.

4. Per contra, Mr.Haja Mohideen Gisthi, learned counsel for the contemnor has invited the attention of this Court to the counter affidavit as well as the Memo of Calculation and would submit that the order dated 20.08.1992 made in W.A.No.62 of 1992 recorded the Memorandum of Compromise and as per Clause 2 "while the vacancies in the C & F Scheme are filled up in future, the

above employees will be offered employment in the ratio 4:1 (four persons from waiting list of dependent of deceased employees numbering 250 borne in the common register maintained in the dock Labour Board as on 15.03.1992 and one person from the list of above said employee of erstwhile C & F Scheme" and as such, the amount has been calculated from that date and prays for closure of the contempt petitions.

5. This Court has carefully considered the submissions and perused the materials placed before it.

6. The learned single Judge in paragraph 18 of the order, which is the subject matter of this Contempt Petition has referred to Clause 29 of the Merger Settlement dated 25.05.2001 and this Court has also perused Clause 29, which is relevant to extract the same:-

"29. Ex-gratia for dependents in lieu of employment in MDLB:

At present there are number of dependents in the live register of MDLB. Hitherto, the practice has been to give employment to the dependents maintained in the register as per the requirement from time to time and recruitment is made. In addition to this, there are 24 retrenched Ty.G.P.Ms., and 52 C & F casual mazdoors who have been waiting since 1988, for whom MDLB is to provide employment as per the observations of the Hon'ble High Court of Madras.

The sub-committee which has assessed the manpower requirement of MDLB, has in its recommendation on 26.2.2001, found that

In view of the inability of MDLB to offer employment to any of these dependents/retrrenched employees, it has been agreed that a suitable compensation may be offered in lieu of employment on humanitarian grounds.

The compensation will be Rs.7,500/- for each year of waiting subject to a minimum of Rs.30,000/- and maximum of Rs.1,20,000/-. The dependents who are willing to avail this compensation may avail and those who are not willing to avail this may continue to wait in the list which will be transferred to Chennai Port Trust from the date of merger and they can wait for their chance of employment subject to the rules and conditions prescribed by the Chennai Port Trust in this regard. This will be only a one-time settlement and cannot be treated as precedence in future. The candidate in the dependent list should exercise their option on or before 31.7.2001, either to receive the compensation or to remain in the live register for their chance of employment in CH.P.T."

7. It is admitted by both sides as per paragraph 3

of 6. On 29.12.2016, the waiting period commences from the year 1988, whereas, an interpretation now given by the

respondent is that in the light of the order dated 20.08.1992 made in W.A.No.62 of 1992, which refers to the factum Memorandum of Compromise, the amount is payable from 15.08.1992. However, the fact remains that the order which is the subject matter of contempt petition refers to clause 29 of the Merger of Madras Dock Labour Board with Chennai Port Trust. At this juncture, the learned counsel for the contemnor would submit that Memorandum of Compromise dated 18.08.1992 forms part of the order dated 20.08.1992 in W.A.No.62 of 1992 and it will bind the petitioners.

8. Though this Court finds some force in the said submission made by the learned counsel for the contemnor, it is not in a position to come to the rescue for the reason that paragraph 18 of the order, which is the subject matter of contempt petition specifically refers to clause 29 of the Merger dated 25.05.2001 of Madras Dock Labour Board with Chennai Port Trust. Though it was open to the respondent/contemnor to seek a clarification/modification/review of the said order, they have failed to do so and in the interregnum, merely six years had lapsed. It is also pertinent to point out though Clause 29 did not refer to the waiting period, it is agreed that the waiting period commences from 1988, however, the month of commencement has not been specifically indicated. Therefore, this Court is of the considered view that in order to strike a balance, the amount shall be calculated and payable from 01.06.1988 to 14.08.1992.

*** 9. Accordingly, the respondent/contemnor is directed to calculate and pay the amount for the period from 01.06.1988 to 14.08.1992 and that apart pay the calculated amount between 15.08.1992 and 31.12.2000 as per the Memo of Calculation dated 12.06.2015. The amount shall be paid within a period of ten weeks from the date of receipt of a copy of this order.*

10. With the above direction, the contempt petitions are closed. Post the contempt petitions for reporting compliance on 15.02.2019.

SD/-
ASSISTANT REGISTRAR (COMM.CASES)

svki
//Certified to be true copy//

Dated at Madras this the day of 2018.

COURT OFFICER (O.S.)

from 25th day of September 2008 the Registry is issuing Certified copies of the Orders/Judgments/Decrees in this format.

PS/21/12/2018

To

The Chairman
Onserving Trust
Rajaji Salai, Chennai - 600 001.