

IN THE HIGH COURT OF JUDICATURE AT MADRAS

D A T E D : 27.11.2020

C O R A M

THE HON'BLE MR. JUSTICE SENTHILKUMAR RAMAMOORTHY

WRIT PETITION NO.11129 OF 2010

AND

M.P.NO.1 OF 2010

V.Madhavan

...Petitioner

Vs

1. The Chairman
Chennai Port Trust,
Rajaji Salai,
Chennai - 600 001.

2. The Chief Mechanical Engineer,
Electric & Mechanical Department,
Chennai Port Trust,
Rajaji Salai,
Chennai - 600 001.

3. The Deputy Conservator,
Chennai Port Trust,
Rajaji Salai,
Chennai - 600 001.

4. Department Promotion Committee
for Class I Post,
Rep. by Chairman,
Chennai Port Trust,
Chennai - 600 001.

...Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Mandamus, directing the Respondents to regularize the service of the Petitioner in the post of Senior Deputy Marine Engineer (Previously Marine Engineer in the Electrical & Marine Department), Chennai Port Trust with effect from 31.08.2006 from which the Petitioner is holding the post as Senior Deputy Marine Engineer continuously as per the Madras Port Trust appointment and Promotion Regulation 1977 then in force with consequential monetary benefits.

For Petitioner : Mr.R.Kannan
For Respondents : Mr.R.Karthikeyan for R1 to R3

O R D E R

This writ petition is filed seeking regularization of the services of the Petitioner in the post of Senior Deputy Marine Engineer, Chennai Port Trust with effect from 31.08.2006. The Petitioner joined the services of the Chennai Port Trust on 05.03.1997 as an Engineer in the Marine Department. His appointment was regularized with effect from 05.07.1999. Subsequently, he was appointed as an Executive Engineer on 23.06.1997. On 12.04.2006, he was appointed for the first time on ad hoc basis as a Marine Engineer(Class I). Upon reversion, he was once again promoted as Marine Engineer on ad hoc basis on 31.08.2006, and this pattern of reversion and appointment on ad hoc basis as Marine Engineer continued until his retirement on 31.05.2017. According to the Petitioner, he fulfilled all the requirements for being appointed as a Marine Engineer in the permanent vacancy which was available. However, in spite of fulfilling all necessary requirements, he was retained on ad hoc basis for the said post until his retirement. In these facts and circumstances, the present writ petition came to be filed.

2. I heard Mr.R.Kannan, the learned counsel for the Petitioner, and Mr.R.Karthikeyan, the learned counsel for the Respondents, i.e. the Chennai Port Trust.

3. The learned counsel for the Petitioner invited the attention of the Court to the letters dated 12.04.2006 and 31.08.2006, whereby the Petitioner was appointed as a Marine Engineer on ad hoc basis. He also pointed out that a testimonial dated 12.09.2008 was issued upon appraisal of his performance and that the appraisal report shows that his performance was very good and that he was strictly sober and a very sincere officer. By drawing reference to the Rules and Regulations of the Chennai Port Trust, 1977, which were applicable at the time of ad hoc promotion of the Petitioner, the learned counsel submitted that as per Rule 25 thereof, ad hoc appointments can only be undertaken in an emergency and that such appointee should be replaced as soon as possible and in any case within a period of nine months. In the present case, this provision was not adhered to. Instead, the Petitioner was periodically appointed on an ad hoc basis although a permanent vacancy was available. For all these reasons, he submits that the Petitioner is entitled to notional promotion with effect from 31.08.2006 so as to enable him to receive the consequential monetary benefits.

4. On the contrary, Mr.Karthikeyan, the learned counsel for the Chennai Port Trust, submitted that the eligibility for appointment as a Marine Engineer as per the Rules and Regulations of the Chennai Port Trust 1977 was that the person concerned should hold a First Class MOT Certificate(Steam & Diesel)under the Indian Merchant Shipping Act 1958 or its equivalent. According to Mr.Karthikeyan, the Petitioner did not fulfill this requirement. This requirement was amended by the subsequent Rules and Regulations of the Chennai Port Trust, 2008 which came into effect only in January 2009. Only after the amendment, the Petitioner became eligible for promotion as a Marine Engineer.

5. In response, the learned counsel for the Petitioner pointed out that the requirement of a First Class MOT Certificate applied only to persons who were directly recruited and not to promoted employees such as Petitioner. Therefore, he submitted that the Petitioner fulfilled all qualification requirements as of 31.08.2006.

6. I considered the submissions of the learned counsel for the respective parties and examined the materials on record.

7. As correctly contended by the learned counsel for the Petitioner, it is evident from Rule 25 of the Rules and Regulations of the Chennai Port Trust, 1977 that the said provision is intended for enabling emergency appointments and that such appointments should be for a limited period. The relevant regulation 25 is extracted hereunder:

" 25. Emergency Appointments:

(1) Notwithstanding anything contained in the above Regulations where it is necessary in an emergency to fill immediately any vacancy and there will be undue delay in making such appointment in accordance with these Regulations, the appointing authority may temporarily appoint a person otherwise than in accordance with these Regulations, with the prior approval of the chairman.

Provided that a person appointed under this Regulation shall be replaced as soon as possible and in any case within a period of nine months in the matter laid down in Regulation 10 or 21 as the case may be.

(2) When a person who has been appointed temporarily to a post under Sub Regulation (1) is subsequently appointed to the post or category of posts under Regulation 7,8 or 9 as the case may be, the Chairman, at his discretion, allow the employee to count the

service rendered in such temporary capacity towards his probation in that post or category of post."

8. From the ad hoc appointment letters that were issued to the Petitioner, it is clear that he has been appointed periodically as a Marine Engineer and thereafter reverted as an Executive Engineer. In fact, this is an admitted fact as is evident from paragraph 10 of the counter affidavit of the Respondents, wherein the relevant particulars are set out. Upon consideration of the aforesaid, I find that the Respondents have not acted in accordance with Regulation 25 by repeatedly appointing the Petitioner on an ad hoc basis and thereafter reverting him to his original post from time to time. The factual position today is that the Petitioner has attained the age of superannuation and retired in May 2017. Consequently, he cannot be regularized in the post of Marine Engineer as prayed for. Nonetheless, the Petitioner has made out a case to be considered for notional promotion so as to receive consequential monetary benefits. In this connection, reference may also be made to the proceedings of the Departmental Promotion Committee(DPC) dated 16.11.2008, wherein it is stated that the ad hoc promotion given to Shri V.Madhavan as MRE under Regulation 25(i) is proposed to be regularized under Regulation 10. The relevant portion of the said proceeding is extracted below:

"Shri V.Madhavan, MRE promoted on the adhoc basis is shouldering the responsibilities of managing the entire SE(Marine) division smoothly. This division also has to interact with MMD, IRS, DG Shipping, various shipyards etc., in the day today functions, which definitely call for a higher level officer like MRE or SE(Marine) for interaction with them. Hence the adhoc promotion given to Shri V.Madhavan as MRE under Regulation 25(i) is proposed to be regularized under Regulation 10.

For MRE Post the feeder post is Executive Engineer(Mech) FC and Shri V.Madhavan had put in 11 years as Ex.M(FC) and there is none other than him in the post for consideration to be placed in the panel for the post of Marine Engineer. This is a case of promotion from Class I to Class I post and hence reservation rules is not applicable.

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|-------------|-------------|
| 1.Dy.C.P.T. | - PRESIDENT |
| 2.C.M.E. | - MEMBER |
| 3.SECRETARY | - MEMBER |

- 4.Shri.V.Thanga
Rajan S.E.(OH) - CO-OPTED MEMBER
5.Shri.M.Rajamani
6.A.Ex.E(Civil) - CO-OPTED MEMBER

In view of the above, Dy.C.P.T. may kindly fix the date and time for convening the Standing Selection Committee for selection to the post of Marine Engineer (Class I)."

It also appears from the subsequent proceedings of the DPC that no decision was taken on account of the repeated adjournments of the DPC for one reason or the other.

9. For the reasons aforesaid, I conclude that the Petitioner is entitled to notional promotion as a Marine Engineer. In this connection, he is permitted to submit a representation to the Respondents. Upon receipt of such representation, the Respondents are directed to consider such representation in light of the observations and conclusions in this order and decide on the specific date from which such notional promotion may be given effect to in accordance with the applicable Rules and Regulations. Such representation shall be disposed within a period of eight weeks from the date of receipt thereof.

10. The writ petition is disposed of in the above terms. Consequently, connected miscellaneous petition is closed. No costs.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

rrg

To

1. The Chairman
Chennai Port Trust,
Rajaji Salai,
Chennai - 600 001.
2. The Chief Mechanical Engineer,
Electric & Mechanical Department,
Chennai Port Trust,

Rajaji Salai,
Chennai - 600 001.

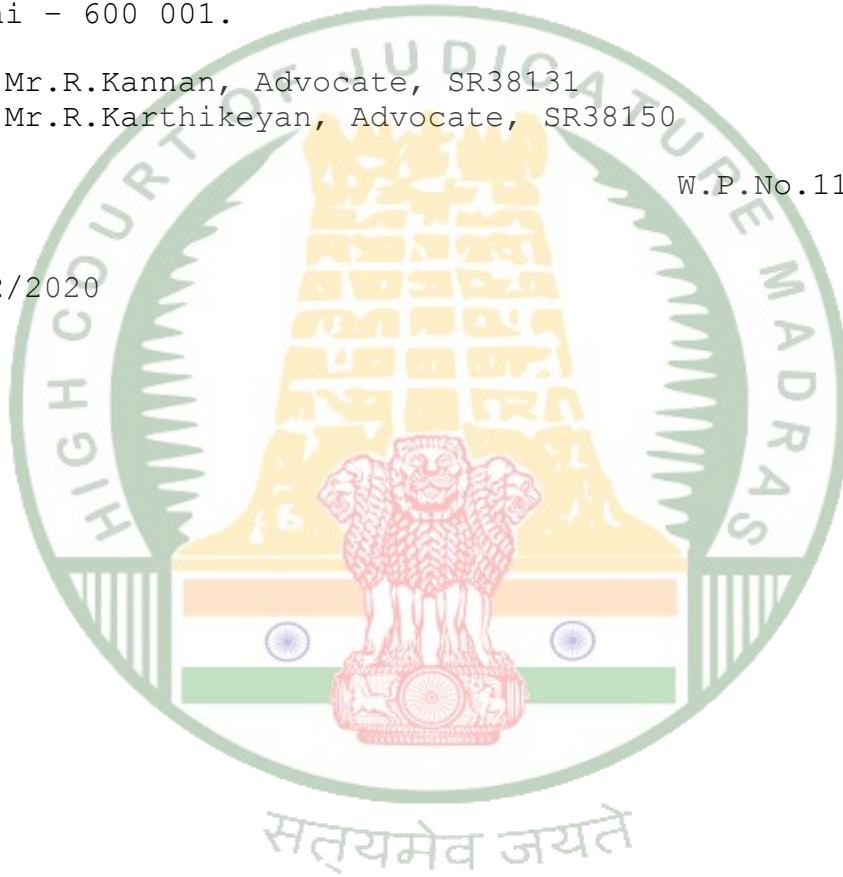
3. The Deputy Conservator,
Chennai Port Trust,
Rajaji Salai,
Chennai - 600 001.

4. The Chairman,
Department Promotion Committee
for Class I Post,
Chennai Port Trust,
Chennai - 600 001.

+1cc to Mr.R.Kannan, Advocate, SR38131
+1cc to Mr.R.Karthikeyan, Advocate, SR38150

W.P.No.11129 of 2010

CO(SR)
BDL/19/12/2020



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