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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 12.08.2021

PRONOUNCED ON : 16.08.2021

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P/No.25793 of 2017
and WMP.No.27217 of 2017

R.Nirmala

...Petitioner

vs.

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

2. The Secretary ,
Chennai Port Trust,
Rajaji Salai,
Chennai 600 001.

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, to issue a writ of Certiorarified Mandamus, calling for the records of the 2nd respondent in proceeding No.SCT5/5341/2017/GA/dated 20.09.2017 and quash the same and consequently direct the respondents to accommodate the petitioner on compassionate ground in any suitable vacancy according to her qualification as done in the case of other similarly placed persons in Chennai Port Trust .

For Petitioner : Mr.K.Raja
For Respondents : Richard Wilson for
M/s.Wilson Associates

O R D E R

This Writ Petition has been filed for issuance of a Writ of Certiorarified Mandamus to quash the proceedings of the second respondent bearing reference No.SCT5/5341/2017/GA dated 20.09.2017 and consequently, direct the respondents to accommodate the petitioner on compassionate ground in any suitable vacancy according to her qualification as done in the case of other similarly placed persons in Chennai Port Trust.



2. The petitioner is an unmarried daughter of late N.Ramamurthy who was servicing as a Receipt Clerk contract basis with the Madras Dock Labour Board. After the death of her father late N.Ramamurthy on 28.05.1991, the petitioner's mother sent a representation dated 11.03.1992 to the Chairman, Madras Port Trust /Madras Dock Labour Board to appoint the petitioner on compassionate ground.

3. At that point of time, the petitioner was aged about 23 years. Taking note of the indigent circumstances of the family of late N.Rammurthy, the petitioner was inducted into service in the year 1995 with the Madras Dock Labour Board Women's Welfare Association (Registered No.131/74) along with 8 others.

4. Thereafter, the petitioner was appointed as a Stores-cum-Accounts Clerk in the Madras Dock Labour Board Employees' Co-operative Canteen Ltd., on daily rated wages of Rs.60/- on compassionate grounds, with effect from the day on which she reports for duty with certain conditions vide Appointment Order/Letter dated 29.08.1997 bearing reference No.191/97-F3.

5. Thereafter, another Appointment Letter was issued to the petitioner by the same body on 15.10.1999 after its name changed to Chennai Dock Labour Board Employees Co-op. Canteen Ltd. with the scale of Rs.1830-30-2070-35-2420 and her basic pay was fixed at Rs.1830/- with other allowances applicable to the post of Stores-cum-Accounts Clerk.

6. On 20.07.2001, vide proceedings bearing reference No.581/98-A14, Deputy Chairman, Cargo Handling Division of Traffic Department, Chennai Port Trust, confirmed the service of one Mrs.M.R.Vijaya, Clerk, Cargo Handling Division of Traffic Department, Chennai Port Trust with effect from 18.08.1997. It is stated that the said M.R.Vijaya was also appointed on compassionate ground but was absorbed into the services of the respondents Port Trust while such benefit was not given to the petitioner.

7. It is case of the petitioner that many of the employees of the erstwhile Madras Dock Labour Board Women's Welfare Association except the petitioner were absorbed into regular service of the respondents Chennai Port Trust in terms of Memorandum of Settlement dated 25.01.2001 arrived under Section 2(p) and 12(3) of the Industrial Disputes Act, 1947 as contained



in Section 3 of the Dock Workers (Regulation of Employment) (Inapplicability to Major Ports) Act, 1997. However, the petitioner was left out.

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8. It is the case of the petitioner that with effect from 01.06.2001, the erstwhile Madras Dock Board (Chennai Dock Board) merged with Chennai Port Trust and that as per Clause No.21 of the Memorandum of Settlement (Merger Agreement), the respondents had agreed to retain all the workers presently working in Canteens, Women's Welfare Association including Welfare Centre and Binding Section, etc. with a separate identity after the merger, till a final decision was taken to transfer them to the Secretary's department of respondents Chennai Port Trust with protection of their wages and other service conditions.

9. It is further case of the petitioner that many of the persons who were appointed on compassionate ground along with the petitioner in 1995 at the erstwhile Madras Dock Labour Board, particularly M.R.Vijaya, M.Kuppammal Nagammal, Vishalakshi, Papammal and K.Rajeswari etc. were absorbed into their regular service of the respondents Chennai Port Trust which fact the stands admitted in the counter affidavit of the petitioner.

10. It is further submitted that in the stand of the respondents that since May 2001 no worker working in the peripheral units have been accommodated in the respondents Chennai Port Trust and name referred in the affidavit filed by the petitioner, i.e. Nagammal, Sumathi, Janaki, Pappammal and Visalakshi were not found in the Gradation list, hence the claim on the petition that they were accommodated in Chennai Port Trust is incorrect.

11. The learned counsel for the petitioner further submits that similar circumstances, one S.Jayachitra was also appointed on the compassionate ground into the service of the Chennai Port Trust after later had filed W.P.No.7522 of 2011.

12. It is submitted that by an order dated 16.11.2012, the learned Single Judge of this Court had directed the respondents to offer appointment to the said S.Jayachitra on compassionate ground after the said S.Jayachitra's husband died on 03.11.2000. It is submitted that the respondents had appealed before the Division Bench of this Court against the said order in W.A.No.1941 of 2013 which came to be dismissed by a Judgment dated 25.09.2013.



13. The learned counsel for the petitioner further submits that on further appeal before the Hon'ble Supreme Court in S.L.P. (Civil) No.34085 of 2013 was also dismissed with the following observations:-

i. The petitioners are directed to implement the order of the learned Single Judge as affirmed by the Division Bench of the High Court within one month from today. The appointment of the respondent shall relate back to the date on which other persons were appointed on compassionate grounds in 2005. Her pay shall be fixed in the relevant scale prevailing in 2005 and she shall be given the benefit of actual fixation of pay in the revised scales made applicable to the services of the Chennai Port Trust from time to time.

ii. The petitioners shall pay cost of Rs.1,00,000/- to the respondent for filing frivolous litigation.

iii. A report showing compliance of the direction given by the High Court and this Court shall be filed in the Registry of the Madras High Court within six weeks. Thereafter, the matter be listed before the Bench which decided the appeal filed by the petitioners. If it is found that the petitioners have failed to comply with the directions given by the High Court and this Court, then the concerned Bench shall be free to initiate proceedings against the defaulting officers under the Contempt of Courts Act, 1971.

14. The learned counsel further submits that the respondents have admitted the above facts in their counter in W.A.No.17 of 2012 against W.P.No.21529 of 2009 filed by one R.Gopalakrishnan. In this connection, attention was drawn to para nos.6 & 7 of the order, which reads as under:-

6. Hence the matter in issue regarding the appointments given to the wards of the persons, who died in the year 2005 when persons who were waiting in the list from 2001 is not given appointment is not in dispute. 7. As the matter in issue is covered by the said decision of the



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division Bench made in Writ Appeal No.1941 of 2013, dated 25.09.2013 confirmed in Special Leave to Appeal (Civil) No.34085 of 2013 dated 30.10.2013, this writ appeal is bound to be allowed with a direction to the respondents to give compassionate appointment based on his qualification , within a period of four weeks from the date of receipt of a copy of this order. No costs.

15. The learned counsel for the petitioner further submits that several persons who were appointed on temporary basis in several peripheral units of the respondents after the petitioner was appointed have been given employment on permanent basis by the respondents Chennai Port Trust arbitrarily ignoring the legitimate claim of the petitioner.

16. Defending the impugned order, the learned counsel for the respondents submits that the petitioner was working in the erstwhile Madras Dock Labour Board Employees Co-operative Canteen Ltd at the time of merger. It is submitted that the petitioner was appointed on compassionate ground and therefore question of appointing once again on compassionate ground does not arise.

17. He further submits that as per the merger agreement, the separate identity was given to the workmen and employees of these peripheral units till a final decision was to be taken to transfer these persons to the Secretary's Department of the Chennai Port Trust with protection of wages with other conditions.

18. Learned counsel further submits that by communication dated 09.11.2004, the petitioner was informed that recruitment to entry level was stopped and recruitment can be considered only if the names are sponsored by the respective Employment Exchange by notification constituted .

19. Learned counsel for the respondents further submits that since the name of the petitioner had already been deleted from the list of dependent of the erstwhile Dock Labour Canteen Board and was offered employment with EDLB Co-operation Canteen and had put in 10 years services on permanent basis, her request for appointment on compassionate ground cannot be considered with the respondents Port Trust.



20. It is further submitted that the petitioner was allowed to work in the Chennai Port Trust Seashore Canteen which was eventually closed in the year 2018 on account of actual loss as it was incurring huge loss on account of accumulated loss.

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21. He therefore submits that the petitioner cannot claim employment on par with the other persons who were absorbed by the respondents on compassionate ground and their case cannot be compared as the deceased persons were working in the different division of Chennai Port Trust and one of their dependents were employed as the norms applicable to the respondents Port Trust.

22. The learned counsel for the respondents further submits that the erstwhile Madras Dock Labour Employees' Canteen was merged with the respondents Port Trust and was operating as Seashore Canteen and all the employees except the petitioner have accepted the settlement in the year 2008.

23. The learned Counsel for the respondents further submits that the persons who were inducted into different division of the first respondent continue to be in operations with the respondents Chennai Port Trust and therefore there is no comparison between the employees inducted in those department with the employees inducted into the Seashore Canteen.

24. The learned counsel for the respondents further submits that appointment of the petitioner at this point of time would be contrary to the decision of the Honourable Supreme Court in A.Umarani v. Co-op. Societies [(2004) 7 SCC 112 and in the State of Karnataka v. Umadevi (2006) 4 SCC 1 inasmuch as there is no sanctioned post for absorbing the petitioner with her qualification. From the latter judgment of the Hon'ble Supreme Court, reference was made to the following passages:-

43. Thus, it is clear that adherence to the rule of equality in public employment is a basic feature of our Constitution and since the rule of law is the core of our Constitution, a court would certainly be disabled from passing an order upholding a violation of Article 14 or in ordering the overlooking of the need to comply with the requirements of Article 14 read with Article 16 of the Constitution. Therefore, consistent with the scheme for public employment, this Court while laying down the law, has necessarily to hold that unless the appointment is in terms of the relevant rules



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and after a proper competition among qualified persons, the same would not confer any right on the appointee. If it is a contractual appointment, the appointment comes to an end at the end of the contract, if it were an engagement or appointment on daily wages or casual basis, the same would come to an end when it is discontinued. Similarly, a temporary employee could not claim to be made permanent on the expiry of his term of appointment. It has also to be clarified that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent, merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by the relevant rules. It is not open to the court to prevent regular recruitment at the instance of temporary employees whose period of employment has come to an end or of ad hoc employees who by the very nature of their appointment, do not acquire any right. The High Courts acting under Article 226 of the Constitution, should not ordinarily issue directions for absorption, regularisation, or permanent continuance unless the recruitment itself was made regularly and in terms of the constitutional scheme. Merely because an employee had continued under cover of an order of the court, which we have described as 'litigious employment' in the earlier part of the judgment, he would not be entitled to any right to be absorbed or made permanent in the service. In fact, in such cases, the High Court may not be justified in issuing interim directions, since, after all, if ultimately the employee approaching it is found entitled to relief, it may be possible for it to mould the relief in such a manner that ultimately no prejudice will be caused to him, whereas an interim direction to continue his employment would hold up the regular procedure for selection or impose on the State the burden of paying an employee who is really not required. The courts must be careful in ensuring that they do not interfere unduly with the economic arrangement of its affairs by the State or its instrumentalities or lend themselves the



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for the post or employment. Their right to employment, if it is a part of right to life, would stand denuded by the preferring of those who have got in casually or those who have come through the back door. The obligation cast on the State under Article 39(a) of the Constitution is to ensure that all citizens equally have the right to adequate means of livelihood. It will be more consistent with that policy if the courts recognise that an appointment to a post in government service or in the service of its instrumentalities, can only be by way of a proper selection in the manner recognised by the relevant legislation in the context of the relevant provisions of the Constitution. In the name of individualising justice, it is also not possible to shut our eyes to the constitutional scheme and the right of the numerous as against the few who are before the court. The directive principles of State policy have also to be reconciled with the rights available to the citizen under Part III of the Constitution and the obligation of the State to one and all and not to a particular group of citizens. We, therefore, overrule the argument based on Article 21 of the Constitution."

25. I have considered the arguments advanced by the learned counsel for the petitioner and the learned counsel for the respondents. I have perused the documents and the impugned order passed by the 2nd respondent informing the petitioner that the case of the petitioner cannot be considered for being appointed on compassionate grounds inasmuch as the petitioner had already been offered an employment with the erstwhile Dock Labour Board Cooperative Canteen Ltd. on permanent basis.

26. The fact remains that the erstwhile Madras Dock Labour Board Co-operative Canteen Ltd was taken over by the Respondents Port Trust pursuant to a Merger Agreement dated 25.1.2001 under the provisions of the Industrial Dispute Act, 1947.

27. Clause 21 of the a Merger Agreement dated 25.1.2001 was intended to protect the services of employees in peripheral areas including the erstwhile Dock Labour Board Co-operative Canteen Ltd. Clause 21 reads as under:-



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" 21. Protection of service of workmen in peripheral areas:-

Agreed to retain all the workers presently working in canteen, WWA including welfare centre and binding Section, etc., with separate identity after the merger, till a final decision is taken to transfer them to the Secretary's department of CH.P.T., with protection of their wages and other service conditions."

28. Clause 24 and 27 of the Merger Agreement dated 25.1.2001 also protect the interest of such employees. They are also reproduced below:-

24. Assured Career Progression (ACP) Scheme:-

Agreed to implement, the ACP scheme for administrative staff of all the four schemes.

27. Dock Workers and staff become (Port Trust Workers and employees:

Agreed that with effect from the date of merger, all the cargo handling workers, staff and officers of MDLB shall become employees of CH.P.T./, and will be governed by the various rules and regulations of Chennai Port Trust including promotion schemes."

29. The respondents were therefore required to retain all these employers with a separate identity after the merger, till a final decision was taken to transfer them to the Secretary's Department of the respondents Port Trust with protection of their wages and other service conditions.

30. The fact remains that the petitioner was admitted to the service of the Dock Labour Board Co-operative Canteen Ltd. in 1997 and made a permanent employee in the year 1999.

31. The aforesaid Canteen was taken over by the respondents Port Trust pursuant to the Merger Agreement and was later renamed as the Chennai Port Trust Seashore Canteen.



32. Though, Chennai Port Trust Seashore Canteen was administered by a Committee consistent of President, Treasurer and Members it was part and parcel of the respondents Port Trust. It had no independent existence.

33. The respondents' contention that many of the employees offered their resignation to the committee members and received a lump-sum settlement is not relevant.

34. Though the petitioner has prayed for appointment on compassionate grounds with the respondents Port Trust, the petitioner was really seeking for confirmation of her appointment on compassionate grounds with the respondents Port Trust on par with those employees of the erstwhile Chennai/Madras Dock Labour Board Canteen Limited who were absorbed as the permanent employees of the respondents Port Trust after the erstwhile said Chennai Madras Dock Labour Board Canteen Limited stood merged with the respondents Port Trust in terms of Merger Agreement dated 25.1.2001.

35. Aforesaid Merger Agreement clearly recognises that the services of all the employees in the peripheral units would stand protected. That being the case, the services of the petitioner was protected.

36. It was incumbent on the part of the respondents Port Trust to have uniformly absorbed all the workers/employees who were employed in the peripheral units including the employees of the erstwhile Chennai/Madras Dock Labour Board Canteen Limited in terms of clause 21 of the aforesaid Merger Agreement.

37. The respondents failed to honour their commitment and informed the petitioner in 2004 that the recruitment for entry-level post has been stopped vide dated 9.1.2004. This posture of the respondents Port Trust was clearly in violation of solemn undertaking under the aforesaid Merger Agreement. Same view was reiterated once again vide letter dated 17.2.2007 by the respondents Port Trust when indeed these letters were issued contrary to the letter and spirit of the aforesaid Merger Agreement.

38. The respondents have also not denied that some of the employees of the erstwhile peripheral units including the



Chennai/Madras Dock Labour Board Canteen Limited were absorbed by the Respondents Port Trust. It may be apt to reproduce the observation of the Hon'ble Supreme Court in its order dated 30.10.2013 in Special Leave to Appeal (Civil) No. 34085 of 2013 wherein it was observed as follows :-

This petition is illustrative of how the officers of a public body manipulate the record for denying a widow of their own employee of her legitimate right to be appointed on compassionate grounds and then vigorously pursue unwarranted litigation in different courts and thereby inflict unbearable loss on the victim of circumstances.

39. The petitioner has also demonstrated by filing a list of employees in the typeset who were appointed on compassionate grounds after the aforesaid merger, though their names were registered prior to the Merger Agreement and after the petitioner's name was registered as dependents. The respondents Port Trust have not categorically denied the same.

40. Respondents Port Trust cannot adopt a pick and choose attitude to appoint few and drive other employees to litigation in the matter of confirmation of their employment.

41. Persons who get employed on compassionate grounds suffer from disability as they are usually handicapped and are unable to pursue higher education. They continue to serve in the lower post with very few promotional and career advancement during the entire course of this employment. They should not be driven out of employment especially by public sector undertaking.

42. Merely because the petitioner was appointed by the erstwhile Madras/Chennai Dock Labour Board Canteen Limited on compassionate grounds did not mean that the petitioner was not entitled to a protection of her employment after the said entity stood merged with the respondent Port Trust.

43. As a public authority, the respondents should have confirmed the appointment in terms of clause 21 of the Merger Agreement dated 25.1.2001. A policy decision of the respondents to stop recruitment of entry-level post in the year 2004, was not binding on the petitioner as the petitioner's rights were protected under the above Merger Agreement dated 25.1.2001.

44. Petitioner also cannot be forced to accept a lump-sum amount based on the lower salary paid to her on temporary basis



and merely because some of the other employees accepted such offer and showed no resilience to resist the decision of the respondents through a Committee of the Seashore Canteen of the respondents Port Trust.

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45. Respondents are therefore directed to confirm the appointment of the petitioner by rehabilitating the petitioner in anyone of its Department within a period of six weeks from the date of this order and make appropriate entries in the service register of the petitioner as having served from the date when the 1st persons appointed on compassionate ground employed with the erstwhile Madras Dock Labour Board Canteen Limited was given a status of a permanent employee with the respondents Port Trust.

46. The petitioner shall be treated as having served with the respondents Port Trust with continuity of service and seniority for the purpose of calculation of terminal benefits payable at the time of superannuation.

47. Going forward, the respondents Port Trust shall regularise the service of the petitioner within the period specified herein and start paying regular salary to the petitioner as a regular employee.

48. This writ petition allowed in terms of the above observation. No costs. Consequently, connected miscellaneous petition is closed.

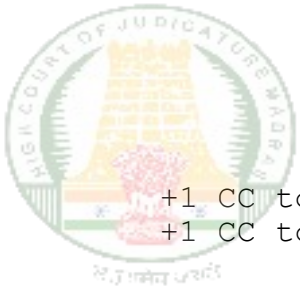
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Assistant Registrar(CS V)

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Sub Assistant Registrar

jen / kkd
To

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



+1 CC to Mr.Raja, Advocate, Sr.No. 40904.

+1 CC to M/s.Wilson Associates, Advocate, Sr.No. 41175.

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W.P/No.25793 of 2017

MG (CO)
LS (24/09/2021)