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W.P.No.21826, 21827 and 21828 of 2010

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 11.10.2022

Coram:

THE HONOURABLE MRS.JUSTICE N.MALA

WP.Nos.21826, 21827 and 21828 of 2010

K.L.Sasirajan

... Petitioner in W.P.No.21826 of 2010

S.Meganadhan

... Petitioner in W.P.No.21827 of 2010

K.Seemon

... Petitioner in W.P.No.21828 of 2010

Vs.

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

2.The Traffic Manager,
Chennai Port Trust,
Rajaji Salai,
Chennai-600 001.

...Respondents in all W.P.Nos.

Common Prayer in W.P.Nos.21826 and 21827 of 2010: Writ Petition is filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus to call for records relating to the order of the 2nd

Page No.1/18



W.P.No.21826, 21827 and 21828 of 2010

Respondent made in his proceedings in No.A2/9460/09/T, dated 30.12.2009 and quash the same and direct the Respondents to promote the petitioner as Coupling Porter Grade-II in Chennai Port Trust from the date of the immediate junior's promotion i.e. on 07.09.2009 with all consequential benefits.

Prayer in W.P.No.21828 of 2010: Writ Petition is filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus to call for records relating to the order of the 2nd Respondent made in his proceedings in No.A2/9460/09/T, dated 10.2009 (received on 23.10.2009) and quash the same and direct the Respondents to promote the petitioner as Coupling Porter Grade-II in Chennai Port Trust from the date of the promotion of similarly placed persons in the wait list open quota in the Panel dated 11.02.1992 bearing No.A2/9307/91/T with all consequential benefits.

For Petitioners in all W.P.Nos. : Mr.A.S.Kaizer
For Respondents in all W.P.Nos : Mr.R.Karthikeyan

COMMON ORDER

Page No.2/18



W.P.No.21826, 21827 and 21828 of 2010

Writ Petition Nos.21826 and 21827 of 2010 are filed to call for records relating to the order of the 2nd Respondent made in his proceedings in No.A2/9460/09/T, dated 30.12.2009 and quash the same and direct the Respondents to promote the petitioner as Coupling Porter Grade-II in Chennai Port Trust from the date of their immediate junior's promotion i.e. on 07.09.2009, with all consequential benefits.

Writ Petition No.21828 of 2010 is filed to call for records relating to the order of the 2nd Respondent made in his proceedings in No.A2/9460/09/T, dated 10.2009 (received on 23.10.2009) and quash the same and direct the respondents to promote the petitioner as Coupling Porter Grade-II in Chennai Port Trust from the date of the promotion of similarly placed persons in the wait list open quota in the Panel dated 11.02.1992 bearing No.A2/9307/91/T, with all consequential benefits.

2. The brief facts of the case are that the petitioners joined as Mazdoor in Engineering (Civil) Department of the Chennai Port Trust on 13.02.1984, 27.01.1984 and 19.08.1982 respectively and thereafter transferred on



W.P.No.21826, 21827 and 21828 of 2010

23.09.1992 as Mazdoor (Shore Labour) in the Traffic Department of the Chennai Port Trust. The petitioners rendered 26 years of unblemished service. During September 1991, the petitioners were asked to attend the interview for selection to the post of Coupling Porter Grade-II in the Traffic Department of the Chennai Port Trust. As per the then existing rules, 50% of the vacancies had to be filled up by the employees of the parent Department i.e. Traffic Department and the other 50% from other Departments (Open quota).

3. According to the petitioners, they attended the interview and thereafter on 11.02.1992, the 2nd respondent published a panel of candidates selected for appointment as Coupling Porter Grade-II, wherein 29 candidates were selected, out of which 17 candidates belonged to the Traffic Department and 18 candidates to the Other Departments (Open quota) and remaining were shown as wait listed candidates for appointment against future vacancies.

4. On the basis of the panel thus published, selected candidates with



W.P.No.21826, 21827 and 21828 of 2010

ranked 1 to 10 were immediately appointed as Coupling Porter Grade-II in the Traffic Department and in April 1993, 12 more persons were appointed from the panel from SI.No.11 to 22. Two persons immediately joined the posts and at that stage, one of the candidates filed writ petition in W.P.No.9187 of 1993 challenging the validity of the panel.

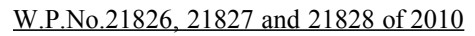
5. According to the petitioners, in the writ petition an application for injunction was filed and the same was declined by this Court. The respondents did not give any appointment for the remaining candidates in the panel and therefore some of the selected candidates filed impleading application in the said W.P. and sought appointment. The said application was dismissed based on the representation of the Chennai Port Trust that the empanelled petitioners would be getting their appointment's. According to the petitioners, all the persons in the select list, as also waiting list of the Traffic Department, were appointed leaving only the wait listed candidates belonging to the Open quota. The petitioners further submitted that the respondents denied the posting to the petitioners on the ground that settlement had been reached between the respondents and the Union Office bearers and that the



W.P.No.21826, 21827 and 21828 of 2010

waiting list of Open quota had expired due to lapse of one year from the date of publication of the panel.

6. According to the petitioner's there was no specific rule restricting the validity of the selection list to one year. The petitioners' further contended that the existing posts were filled beyond the period of one year. The petitioners' therefore contended that the stand of the respondents that the panel expired on the lapse of one year, was untenable. The petitioners' further stated that due to the arbitrary action of the respondents in not appointing them to the post of Coupling Porter Grade-II by ignoring the waiting list, the candidates in SI.Nos.6,8,10 and 11 in the wait list of the open quota filed Writ Petition before this Court in W.P.No.11309 of 1996 for a direction to the respondents to make appointment strictly as per the seniority in the panel given therein. This Court, vide order dated 07.08.2006, allowed the said writ petition with a direction to the respondents to promote the persons in SI.No.1 to 11 and 13 to 18 in the open quota, irrespective of the fact that they approached the Court or not.



8. The Hon'ble Division Bench allowed the Writ Appeal on 16.06.2009 setting the relief granted by the learned Single Judge only to the petitioners in the said writ petition. The petitioners made a representation on 07.12.2009 requesting the respondents to appoint them to the post of Assistant Porter Grade-II by referring to the order of the learned Single Judge in P.No.11309 of 1996. The respondents, vide impugned order, rejected the petitioners request. Aggrieved by the same, the petitioners have approached this Court with the above writ petition.

Page No.7/18



W.P.No.21826, 21827 and 21828 of 2010

contentions raised by the petitioner's in the writ petitions.

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10. From the counter of the respondents, it is seen that the Selection Committee, after the interview, had selected 29 candidates, out of which, 15 candidates were under the Traffic Department Quota and 14 under the Open Quota as per Roster and the Select Committee further recommended 35 candidates (17 from Traffic Department and 18 from Open Quota) to be kept in the waiting list. Accordingly, a panel was published vide notice dated 11.02.1992 empanelling 29 selected candidates for appointment as Coupling Porter Grade-II and wait listed 35 candidates for appointment against future vacancies.

11. According to the respondents, the normal validity period of a select list was one year from the date of its drawal as per Government's order and further extension of 6 months was given only in exceptional cases by the Chairman of the Port Trust. The select list for the post of C.P.Gr.II which was drawn on 11.02.1992, expired on 10.02.1993 and the same was extended upto 10.08.1993. Initially, 10 candidates listed in the select list were offered

Page No.8/18



W.P.No.21826, 21827 and 21828 of 2010

appointment as C.P.Gr.II and they also joined duty. Thereafter, the MPT

Railwaymen's Union, which represented the majority of the workers of the Railway division, raised an Industrial Dispute over the selection and the matter was referred to Assistant Labour Commission for conciliation. Based on the conciliation proceedings held in April 1993, 12 posts of Coupling Porter Grade-II were filled up as against 12 existing vacancies from the regular list and out of 12 candidates, 2 candidates who had reported to the Trust's Medical Officer for medical examination were found medically fit and they joined duty on 13.05.1993. In the meanwhile, various Writ Petitions were filed by the selected candidates and as per the Court orders and also due to the exigencies of the work, 10 candidates listed in the select list were appointed on ad-hoc basis during September 1993. On appointment of 10 candidates from select list, the MPT Railwaymen's Union went on strike and to resolve the strike, discussions were held by the Administration with the representatives of the MPT Railwaymen's Union and as a result, a Memorandum of Settlement was entered on 25.11.1993 and though the terms of the settlement were extracted in the counter it would suffice to state that as per the terms of the settlement, the validity of the C.P.Gr.II drawn in



W.P.No.21826, 21827 and 21828 of 2010

February 1992 was agreed to have expired on 10.08.1993. It was further agreed that the candidates in the Select list in SI.Nos.23 to 29 under item (i) in the Regular list and the candidates under SI.Nos.1 to 17 under the wait list (Departmental Quota) and SI.Nos. 1 to 18 under item (ii) in the wait list Open Quota, became ineligible for appointment. It was one of the terms of settlement that the selection for the post of C.P.Gr.II would be confined to employees occupying the posts of Gateman, Maistry (S&W) and Mazdoor (S&W) of the Traffic Department and Mazdoor (Permanent Way) of Engineering Department and that the respondents would take immediate steps to revise the manner of appointment with the approval of the Board. It was further submitted by the respondents that as there was urgent need of men for carrying on the Port operations, 17 employees from the Traffic Department which included those bearing numbers 25 & 29 in the original select list and SI.No.1 to 3 & 5 of the candidates in the category of Gatemen, Maistry (S&W) and Mazdoor (S&W) i.e, the feeder category of the Traffic department were offered appointment as Coupling Porter Grade-II, purely on temporary and ad-hoc basis during December, 1993.



W.P.No.21826, 21827 and 21828 of 2010

12. The respondents further submitted that the manner of appointment was amended on 27.06.1997 to the effect that 90% of the vacancies were to be filled by inviting applications from the employees in the category of Gateman, Maistry (S&W) and Mazdoor (S&W) of Traffic Department and the remaining 10% of the vacancies were to be filled from the Mazdoors (PW) of the Engineering Department. The respondents denied the contention of the petitioners that there was no regulation restricting the operation of the select list to a period of one year. In this regard reference was made to Reg. 10(2) of the Madras Port Trust Employees (Appointment, Promotion etc.) Regulation, 1977 which provided that select list and panel were to be drawn as per Regulations 7, 8 and 9 and it shall be valid for a period of one year and extension of further period of six months would be permitted with the approval of the Chairman. The respondents further submitted that, as per the existing manner of appointment to the post of C.P.Gr.II, the petitioners who were working as Mazdoor (Shore labour) were not eligible for appointment to the post of Coupling Porter Grade-II. The respondents further submitted that the petitioners were not entitled to the benefit of the order passed in W.P.No.11309 of 1996 on 07.08.2006, as the said order was reversed in



W.P.No.21826, 21827 and 21828 of 2010

W.A.No.1367 of 2006 by the Hon'ble Division Bench. Reliance was placed on the judgment of the Hon'ble Supreme Court in the *State of Orissa and Others Vs. Pragnaparamitha Samantha, 1996 (7) SCC 106* for the proposition that only those who are diligent and approach the Court in time can be given the relief.

13. The respondents refering to the nature of duties of the Coupling Porter submitted that the duties of the Coupling Porter are to set the points and perform the coupling and uncoupling of wagons during the course of shunting operations and as such, they were required to be able bodied to do strenuous work. As the petitioners were over 50 years of age, they were unfit for the said post. The respondents therefore submitted that the petitioners could not be given any relief on the basis of panel drawn on 11.12.1992, that too, after lapse of 18 years as against the existing manner of appointment. The respondents therefore submitted that the writ petitions deserved to be dismissed.

14. The learned counsel for the petitioners submitted that the petitioners were selected in the panel dated 11.02.1992 and their name found



place in Serial Number (i) of the waiting list of Open Quota and as such, the respondent ought to have appointed them to the post of C.P.Grade.II. The learned counsel further submitted that this Court, vide order dated 07.08.2006 in W.P.No.11309 of 1996, directed the respondents to permit all those candidates in the waiting list of the Open Quota and therefore the petitioners were entitled to be appointed and the petitioners had also made representation seeking appointment, vide representation dated 07.12.2009.

15. In short, the learned counsel submitted that the select panel of 1992 was still live and therefore the petitioners were entitled for appointment to the post of C.P.Gr.II. The learned counsel further submitted that the respondents, by rejecting the petitioners' representation, have deprived the petitioners the opportunity to be appointed as C.P.Gr.II. The learned counsel therefore prayed that writ petitions may be allowed.

16. Per contra, the learned Standing counsel for the respondents submitted that the order in W.P.No.11309 of 1996 dated 07.08.2006, was reversed by the Hon'ble Division Bench in W.A.1367 of 2006 dated



W.P.No.21826, 21827 and 21828 of 2010

16.06.2009 and as such, the petitioners were not entitled to the relief claimed.

The learned counsel further submitted that the petitioners had submitted their representation only after the order passed in the Writ Appeal and therefore the respondents rightly rejected the same. The learned counsel also submitted that much water has flown under the bridge from the date of the publication of the select panel and as per the amended manner of appointment, the petitioners would not be entitled to the appointment sought for.

17. I have considered the submissions of the both the counsels and perused the materials on record.

18. The petitioners merely rely on the judgment of this Court dated 07.08.2006 in W.P.No.11306 of 1996 to contend that, similarly placed persons were already appointed and the petitioners alone cannot be deprived of the benefit of the said order. It is seen that the Hon'ble Division Bench on Appeal filed by the respondents, has reversed the judgment of the learned Single Judge and restricted the relief to the petitioners who approached the Court at the earliest point of time. It is also relevant to note here that the order

Page No.14/18



W.P.No.21826, 21827 and 21828 of 2010

was passed in the writ petition by the learned Single Judge on 07.08.2006 and the order in the Writ Appeal was passed on 16.06.2009 and it was only thereafter that the petitioners submitted their representations dated 07.12.2009 and 03.10.2009 to the respondents to operate the panel drawn on 11.12.1992. It is seen that there was a settlement under Section 12(3) of the ID Act as early as on 25.11.1993 in which an agreement was reached with Union that the panel drawn in Feb 1992 would expire on the completion of the extended period of 6 months (i.e) from 10.08.1993. Even the Regulation of the respondents provided for a period of one year for the operation of panel with a further extension of 6 months with the approval of the Chairman. It is further pertinent to note here that there is a lapse of 18 years from the date of drawal of the panel and as rightly contended by the learned counsel for the respondents, the manner of appointment had changed and the petitioners have also retired. In the light of all these facts which are not contested by the petitioners, I am of the view that the claim of the petitioners for appointment to the post of Coupling Porter Grade-II is not sustainable.

19. It is pertinent to note here that the learned counsel for the



W.P.No.21826, 21827 and 21828 of 2010

respondents has further submitted that the petitioners have superannuated on various dates and they have also received terminal benefits. Considering all the above facts, I am of the view that the panel of 11.02.1992 has long lapsed and hence the writ petitions are liable to be dismissed but without costs.

11.10.2022

Speaking Order: Yes/No
dsn

To

- 1.The Chennai Port Trust,
Rep. by its Chairman,
Rajaji Salai,
Chennai-600 001.
- 2.The Traffic Manager,
Chennai Port Trust,

Page No.16/18



Rajaji Salai,
Chennai-600 001.

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W.P.No.21826, 21827 and 21828 of 2010

N.MALA, J

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Page No.17/18



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W.P.No.21826, 21827 and 21828 of 2010

WP.Nos.21826, 21827 and 21828 of 2010

11.10.2022

Page No.18/18