



W.P.Nos.8685 and 8275/2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.07.2022

CORAM:

**THE HONOURABLE MR. JUSTICE R.SURESH KUMAR**

W.P.Nos.8685 and 8275/2018

- 1.C.Prabhakaran
- 2.N.Rajkumar
- 3.K.Saravanan
- 4.M.Ramar
- 5.R.Vinoth Kumar
- 6.N.Sivasubramanian
- 7.K.Jaisankar
- 8.G.Gnanasekaran
- 9.S.Ramesh Kumar
- 10.K.Suresh
- 11.S.Srinivasan
- 12.A.M.Selvakumar
- 13.K.C.Rajhenthiran
- 14.S.Rajaram
- 15.M.Suresh
- 16.S.Rajamani
- 17.K.Mohammed Alimullah
- 18.G.M.Sathish Kumar
- 19.T.Krishnakumar
- 20.J.Maharajan
- 21.I.R.Manimegalai
- 22.S.Jeyanthi
- 23.M.Gunasekaran
- 24.K.Thanasekar
- 25.T.K.Raghu
- 26.K.Jayalakshmi
- 27.M.Subramanian

...Petitioners  
in W.P.No.8685/2018



W.P.Nos.8685 and 8275/2018

B.Saravanaperumal

...Petitioner

in W.P.No.8275/2018

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-Vs-

- 1.The Chairman  
Chennai Port Trust,  
Chennai-1.
- 2.The Deputy Chairman  
Chennai Port Trust  
Chennai-1.
- 3.The Chief Engineer  
Chennai Port Trust,  
Civil Engineering Department,  
Chennai-1.
- 4.The Secretary  
Chennai Port Trust,  
General Administration Department,  
Chennai-1.

...Respondents  
in both petitions

**Common Prayer:** Writ Petition filed under Section 226 of the Constitution of India, praying for the issuance of a direction in the nature of Writ of Mandamus to direct the respondents to grant promotion to the writ petitioners as Supervisor Grade-I (now re-designated as Junior Engineer Grade-I) on completion of 8 years of service from the date of the appointment as Supervisor Grade – II in the light of the order passed by this Court in W.P.No.8724/2007 dated 06.11.2013 and in implementation of the terms of Settlement contained in the proceedings of the 1<sup>st</sup> respondent in its No.U1/XX/7818/78/5 dated 12.04.1978 with all attendant and consequential monetary benefits.



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For Petitioners  
in both petitions

: Mr.V.Vijay Shankar

For Respondents  
in both petitions

: Mr.M.R.Dharani Chander  
Standing Counsel

### **COMMON ORDER**

(1) Since the issue raised in these writ petitions is common, with the consent of the learned counsel appearing for both sides, these writ petitions were heard together and are disposed of by this common order.

(2) All these petitioners were appointed initially on temporary basis as Supervisor Grade -II [Civil] in the respondents Port Trust during the year 1997-1998. Subsequently, according to the averment made in the affidavit filed in support of these writ petitions, they were regularised under Regulation 10 of the Madras Port Trust Employees' [Appointment, Promotion etc] Regulations [in short "the Regulations"].

(3) While so, there has already been a Memorandum of Settlement between the Port Trust Management and Employees' Union under Section 18[1] of the Industrial Dispute Act, 1947. After having considered the rigor of stagnation of promotion of various category of people working in the Port Trust the Settlement was made as stated supra by Settlement dated



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12.04.1978 to give promotion by way of financial upgradation as well as post upgradation without giving the functional promotion post to these employees who have completed a particular years of service in the feeder category.

(4)As per the import of the said Scheme under Section 18[1], there were number of such category of posts included in Annexures I to VIII of the Settlement dated 12.04.1978.

(5)In the said Annexures, Annexure-I deals with several posts including the post of Supervisor Grade-II and Supervisor Grade-I in Serial No.VI of Annexure-I.

(6)According to the said Settlement, those who had been appointed and completed 8 years of service as Supervisor Grade-II can be given the promotion by way of financial upgradation to the post of Supervisor Grade-I. As per Annexure, the scale of pay which was fixed for Supervisor Grade-II was Rs.465-725 and the pay scale of Supervisor Grade-I was Rs.645-1000. Therefore, such a promotion by way of financial upgradation to the higher post for which the persons who completed 8 years of service in the lower cadre would be entitled to.



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(7) Insofar as these petitioners are concerned, since they had been appointed either in the year 1997 or in the year 1998, they would complete the 8 years of service either in the year 2005 or in the year 2006.

(8) In the meanwhile, the Madras Port Trust United Labour Union, Chennai, raised an Industrial Dispute as per the reference made by the Government of India, Ministry of Labour, vide Notification dated 22.10.2002 to decide the question as to whether the demand of Madras Port Trust United Labour Union, Chennai, for redesignation of Diploma holders in the Chennai Port Trust as Junior Engineers Grade-II/Grade-I and for revision of pay scales is justified.

(9) The sum and substance of the dispute raised in the said Industrial Dispute in ID.No.99/2002 on the file of the Central Government Industrial Tribunal-cum-Labour Court, Chennai, was that the Supervisors Grade-II and Grade-I who are having the qualification of Diploma in Engineering must have the redesignation of the said post as "Junior Engineer and Junior Engineer Grade-I".

(10) The said Industrial Dispute was decided by the Industrial Tribunal-cum-Labour Court, by Award dated 05.04.2004. The following Award has been passed:-



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*"The next point to be decided in this case is to what relief the petitioner is entitled?*

*18. In view of my foregoing findings, I find the respondents have to implement the demand of the petitioner Union for redesignation and for refixation pertaining to Diploma holders' in the respondent / Management retrospectively from 01.01.1997. Ordered accordingly. No costs.*

*19. The reference is answered accordingly."*

(11) Pursuant to the said Award of the Industrial Tribunal, the respondents/Port Trust issued a proceedings on 30.10.2004 redesignating the said post with revised pay scale and the relevant portion of the said proceedings reads thus:-

*"...The matter has been examined in detail taking into account the directions contained in the Award dated 05.04.2004 in the above Industrial Disputes vis-a-vis the instructions contained in the Ministry's letter No.C-13019/11/96-PE II dated 24.12.2002. After careful examination it has pending Board ratification and accordingly sanction is hereby accorded for the following proposals in compliance with the Award dated 05.04.2004 passed by the Central Government Industrial Tribunal cum Labour Court in ID.Nos.82.2002 and 99/2002:-*



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- i. *for adopting the new scale of pay of Rs.6170-230-7320-240-11975 for Supervisor Gr.I who are in the scale of pay of Rs.5500-11380, which will involve additional financial commitment and for redesignating them as Junior Engineer Gr.I ; and*
- ii. *for redesignating the Special Mechanics and Supervisor Gr.II who are in the scales of pay of Rs.4300-8120 and Rs.5000-10850 respectively, as Junior Engineer in the scale of pay of Rs.5500-200-6100-220-11380 and for incurring additional expenditure thereafter.*

*The above proposals will take retrospective effect from 01.01.1997 as per the above Award."*

(12)Consequent upon the said Award passed by the Industrial Tribunal and the order passed by the Port Trust dated 30.10.2004 as referred to above, redesignations were made to some of such employees who were initially designated and were working as either Supervisor Grade-II or Supervisor Grade-I into Junior Engineer and Junior Engineer Grade-I respectively.



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(13) Insofar as the petitioners are concerned, these petitioners were appointed either in the year 1997 or in the year 1998 and though initially the appointment was on temporary basis, subsequently they completed their probation of two years for which they put in probation period and on completion of such probation either in the year 1998 or in the year 1999 or thereafter, the petitioners' services were regularised and their probation was declared successfully. Some model orders in respect of one of the petitioners in these batch of petitioners had also been filed by the petitioners' side to establish the fact that these petitioners having completed successfully the probation, it was declared so and their services also were regularised.

(14) Only in these circumstances, the grievance of the petitioners is that though they had completed 8 years, there has been no financial or positional upgradation of these petitioners from the post of Supervisor Grade-II to Grade-I which has subsequently been redesignated as Junior Engineer to Junior Engineer Grade-I. Such upgradation and promotion even in the redesignated post have been given to number of such persons, who had been appointed between the years 1989 and 1993 and



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illustratively 12 such persons have been given by the petitioners' side who were appointed from 10.08.1989 to 29.09.1993 who were designated or promoted on completion of 8 years of service from 10.08.1997 to 29.09.2001 and based on the Industrial Tribunal Award dated 05.04.2004, their pay was fixed at Rs.5,500-200-11,380 with effect from 01.01.1997 and after redesignation, their pay had been fixed at Rs.6,170-230-11,975.

(15) Such benefit extended to various such persons who had also been similarly placed like that of petitioners, of course, they were appointed before the petitioners' appointment, had not been extended to the petitioners even though they completed more than 15 to 17 years of service.

(16) Hence, in order to seek such a benefit to be extended to them by way of upgradation in the redesignated post with financial upgradation as per the pay scale fixed for the said category of Junior Engineer Grade-I in consonance with the Settlement dated 12.04.1978 as well as the Award passed by the Industrial Tribunal dated 05.04.2004 followed by the order issued by the Port Trust dated 30.10.2004 they made request to the respondent Port Trust.

(17) Only in that circumstances, having failed in their attempt to get such



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benefit despite representations given in this regard, the petitioners joined together and approached this Court by filing these writ petitions.

(18) Heard Mr.V.Vijay Shankar, learned counsel for the petitioners who would submit that, as per the Settlement dated 12.04.1978, where the intention of the parties was to alleviate the stagnation in promotion which was faced by various employees in the Port Trust for several years, such a scheme called "Scheme of Grouped posts" was introduced through the said Settlement under which unmindful of the availability of the vacancy, promotion by way of financial upgradation would be given to the upgraded post and the said Settlement made in the year 1978 having been accepted and implemented for several years, such benefit cannot be denied to the petitioners despite the fact that the petitioners' category, namely, Supervisor Grade-II and Supervisor Grade-I is form part of Annexure-I to the said Settlement.

(19) The learned counsel for the petitioners would further contend that it was a mere redesignation of the posts pursuant to the Award passed by the Industrial Tribunal because everyone who were working as Supervisor Grade-II like the petitioners, were having the Diploma qualification. Therefore, as per the directions issued from time to time by the Central



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Government, such a redesignation become inevitable and when this was raised by the Employees' Union before the Industrial Tribunal, that was rightly accepted by the Tribunal and such an Award was passed and therefore, redesignation also was given effect to.

(20) Merely because the redesignation has been effected, it cannot be stated that the petitioners are not entitled to get promotion/financial upgradation by citing reasons that the redesignated post, namely, Junior Engineer and Junior Engineer Grade-I do not form part of the Annexure attached with the Settlement dated 12.04.1978.

(21) In support of the said contention, the learned counsel for the petitioners has relied upon a Division Bench decision of this Court reported in **1999 [2] LLJ 1 [Workman rep.by the General Secretary, India Cements Employees' Union, Sankari West Vs. General Manager, India Cements Limited, Sankari West and Another]** as well as the Hon'ble Supreme Court decision reported in **2006 [9] SCC 478 [CEAT Limited Vs. Murphy India Employees Union]**.

(22) **Per contra**, Mr.M.R.Dharani Chander, learned Standing counsel appearing for the respondents / Port Trust, has raised a preliminary objection as to the maintainability of these writ petitions on the ground



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that the petitioners are having an effective alternative mechanism by approaching the Labour Court / Industrial Tribunal. Without exhausting such an alternative remedy available to the petitioners, they have straight away approached this Court by filing the present writ petitions by invoking the extraordinary jurisdiction of this Court under Article 226 of the Constitution. These writ petitions are not maintainable, he contended.

(23) In support of his contention on the preliminary issue, the learned Standing counsel relied upon the following decisions:-

- a) Division Bench judgment of this Court made in WA.Nos.533 and 534 of 2005 dated 21.03.2005 in the matter of ***the Management of Sivananda Steels Limited rep.by its Managing Director Vs. Sivananda Steels Employees Union rep.by its General Secretary and Others.***
- b) Division Bench judgment of this Court made in WA.Nos.415 and 416 of 2006 dated 18.04.2006 in the matter of ***The Chairman & Managing Director, M/s.Metal Box India Limited, New Delhi and Another V. Metal Box Company Workers Union rep.by its President and Others]***.
- c) Also, he relied upon the decision of the Hon'ble Supreme Court reported in ***2005 [8] SCC 264 [U.P.State Spinning Co. Ltd Vs.***



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***R.S.Pandey and Another].***

(24)By relying upon these judgments, the learned Standing counsel raised preliminary objection as to the maintainability of the writ petitions.

(25)That apart, on merits of the case, the learned Standing counsel would contend that, though these petitioners were appointed in the year 1997 or 1998, that appointment was purely temporary because at that time, there was a major work entrusted with the Chennai Port Trust, i.e, establishment of Ennore Port. Only for that purpose, a large number of staff and engineers like the petitioners were engaged on temporary basis and once the job was over, normally these kind of temporary persons would have been ousted. But, the Chennai Port Trust only extended the temporary service of these people as there was no sanctioned post of either Supervisor Grade-II and Grade-I or redesignated posts of Junior Engineer or Junior Engineer Grade-I were available to accommodate these petitioners on permanent basis. He would also submit that, hence, the continuance of these petitioners for all these years is only on temporary basis and this became evident when only in the year 2015 after getting the nod from the Government of India, Ministry of Shipping, the service of some of the petitioners i.e., 13 out of 27 petitioners in WP.No.8685/2018



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have been regularised. Insofar as the remaining 14 are concerned, they were regularised only in the year 2004 or 2005.

(26)Therefore, the learned Standing counsel would submit that assuming without admitting that the petitioners are entitled to get the benefit arising out of the Settlement for getting promotion or financial upgradation from Supervisor Grade-II to Supervisor Grade-I or from the redesignated post of Junior Engineer to Junior Engineer Grade-I, the minimum required experience or service of 8 years since they have not completed after they have been regularised, the question of giving such promotion or upgradation does not arise. Hence, on that ground itself, the plea raised by the petitioners, since are untenable, is liable to be rejected, he contended.

(27)Further, the learned Standing counsel appearing for the respondents / Port Trust would submit that, insofar as the 18[1] Settlement dated 12.04.1978 is concerned that was made between the parties only based on the prevailing situation then, where, such number of designations were available including Supervisor Grade-II and Grade-I. Since there were stagnation of promotion for several years, such a Settlement had become necessitated and that position is not available now insofar as the post of Junior Engineer and Junior Engineer Grade-I is concerned. Only in the



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sanctioned post, eligible persons would be getting promotion and these petitioners had been working originally as Supervisors Grade-II and Grade-I on temporary basis and subsequently, after redesignation only, recently had been regularised, the import of the Settlement or its' clauses cannot be expected to be implemented or extended in favour of the petitioners. Therefore, on the basis of the 18[1] Settlement, such a benefit since has not been accrued on the petitioners, the said benefit cannot be expected to be extended to them. Therefore, the learned Standing counsel would submit that, on the merits of the case also, the plea raised by the petitioners are liable to be rejected.

(28)I have considered the said rival submissions made by the learned counsel for the parties and also perused the materials placed before this Court.

(29)Before delving into the merits of the case as projected by both sides, the preliminary objection raised by the respondents side as to the maintainability of the writ petitions, is to be dealt with.

(30)In this context, the learned Standing counsel appearing for the respondents relied upon three decisions. The first decision is the case of the *Management of Sivananda Steels Limited [cited supra]*, where he relied upon the following paragraph:-



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*"5.Shri V.Prakash, learned Senior Counsel invited the attention of the Division Bench judgment of this Court in **Britannia Biscuit Co. Ltd., Employees Union V. Assistant Commissioner of Labour, Madras and Others [1984 I 349]**. The said decision only says that a writ petition against a settlement under Section 12[3] of the I.D.Act can be entertained. In our opinion, even if it is held that such a writ petition can be entertained, it does not mean that a writ petition must be entertained. It is purely a matter for the discretion of the Court, under Article 226 of the Constitution. No doubt, existence of alternative remedy, is not an absolute bar to a writ petition, yet, in our opinion, it is a sound exercise of discretion to ordinarily reject a writ petition if there is an alternative remedy under the statute. Hence, the decision relief upon by the learned Senior counsel cannot be construed to mean that every petition against a settlement under Section 12[3] read with section 18[3] of the I.D.Act must be entertained by this Court instead of relegating the parties to avail the alternative remedy under the I.D Act. In view of the Division Bench decisions of this Court as well as the decisions of the Supreme Court, cited supra, ordinarily the parties should be relegated to the alternative remedy under the I.D Act."*

(31)It has been made clear by the Division Bench in the said decision that it



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is purely a matter for discretion of the Court under Article 226 of the Constitution of India. No doubt, the existence of the alternative remedy is not an absolute bar to the writ petition, yet in the opinion of the Division Bench it is a sound exercise of discretion to ordinarily reject a writ petition if there is an alternative remedy under the Statute. Therefore, it is not a bar or a ban in entertaining a writ petition exercising the power of this Court under Article 226 of the Constitution even though the parties can approach the Labour Court. Since it is not an absolute bar to exercise the power of this Court under Article 226, it cannot be argued by the respondents that the writ petitions are not maintainable and it should be dismissed.

(32) In the second case cited by the respondents, in ***M/s. Metal Box Company Limited*** [cited *supra*], the learned counsel relies upon the following paragraph:-

*"17. It is not possible for us to accept the submissions made by the learned counsel for the 1<sup>st</sup> respondent/Union that the mala fide nature of the impugned settlement, and the questions whether there was a closure or not and whether the 1<sup>st</sup> respondent was given a reasonable opportunity can be decided from the available materials and therefore, it is not necessary for*



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*the workmen to be driven to the Tribunal for establishing these issues. We have already seen that there are disputed questions of fact and therefore, we are inclined to accept the objection raised on behalf of the appellant that the writ petition itself is not maintainable and therefore, no interim order should have been granted."*

(33) Here also, the Court has held that since there are disputed questions of fact, therefore, they were inclined to accept the objection raised on behalf of the appellant that the writ petition is not maintainable and the party, i.e., the writ petitioner therein should have been relegated to go before the concerned authority, i.e., the Industrial Tribunal.

(34) In the third decision cited by the learned Standing counsel for the respondents/Port Trust is that in the case of ***U.P.State spinning Co. Ltd.***, [cited supra], if we look at the facts of the said case, where the workman faced the removal order. Therefore, for getting reinstatement since he had approached the High Court under Article 226, the Hon'ble Supreme Court had stated that the normal course would be to approach the Labour Court as whether the stand of the workman was correct or the Management was right in removing the workman has to be decided based on the evidence to be adduced on the factual matrix. Therefore, in stead of deciding the said



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issue by the High Court under Article 226 of the Constitution, it should have been relegated to go before the Labour Court. Only in that context, the said decision was made and the operative portion of the order of the Hon'ble Supreme Court in the said case reads thus:-

*"26.In view of the above, we set aside the order of learned Single Judge as affirmed by the Division Bench by the impugned judgment and direct that within a period of four months the enquiry shall be completed by starting from the stage of service of show-cause notice and consideration of the reply, if any, filed in accordance with the standing orders holding the field. Respondent 1 shall be reinstated to service but without any back wages and other service benefits and his reinstatement shall be solely for the purpose of completing the departmental proceedings. His entitlements, if any, would be adjudicated by the authorities depending upon the result of the disciplinary proceedings."*

(35)If we look at the orders which were cited by the learned Standing counsel for the respondents/Port Trust in support of his plea of maintainability is concerned, no doubt the principle that has been underlined in the said decisions are to be followed. However, insofar as the present case is concerned, there is no factual dispute between the



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parties and the only issue is as to whether the petitioners would be entitled to get promotion / financial upgradation based on the 1978 Settlement as well as the subsequent orders in respect of various people who are similarly placed passed by the Port Trust extending such benefit or not.

(36)Moreover, it is purely a discretion of the Constitutional Court exercising the jurisdiction under Article 226 to decide whether a particular *lis* is to be accepted and adjudicated by exercising the extraordinary jurisdiction under Article 226 or not and that decision should have been made at the threshold.

(37)Here in this case, the writ petitions were admitted by this Court on 11.04.2018 and 09.04.2018 respectively and Rule Nisi was also issued. It is also a settled proposition of law that once the writ petition was admitted and rule nisi was issued, at the time of final hearing after several years, the question of maintainability normally would not detain the Court in deciding the case on merits. Therefore, looking from that angle also, the plea raised by the learned Standing counsel appearing for the respondents/Port Trust as to the maintainability is to be rejected.

(38)Also, from another angle this issue can be approached. In paragraph No.6 of the Division Bench Judgment in ***Sivananda Steels Limited case***



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[cited supra], the Division Bench has held as follows:-

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*"6. We may add that the dockets of the High Courts in our country are already overfull with arrears and hence the High Courts should ordinarily not avail the luxury of entertaining writ petitions despite the existence of alternative remedy, otherwise, the High Court will only further add to the mounting arrears, resulting in docket explosion. Hence, in matters where there is availability of alternative remedy, the parties should first be relegated to avail that remedy first and the High Courts should be strict on this point and entertain writ petitions despite the existence of an alternative remedy only in very rare and exceptional cases."*

(39) The Division Bench had added that the dockets of the High Courts in our country are already overfull with arrears and hence, the High Courts should ordinarily not avail the luxury of entertaining writ petitions despite existence of the alternative remedy ; otherwise the High Court will only further add to the mounting arrears resulting in docket explosion.

(40) Here in the case on hand, the writ petitions have already been admitted, that means, entertained. Therefore, it had become a part of the docket explosion and process of this Court. The dismissal of these writ petitions



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on the ground of maintainability would not alleviate or reduce the docket explosion in stead of disposing the same on merits. Also, it is to be looked into that after these long years, if the petitioners are relegated to go before the Industrial Tribunal or the Labour Court, after some years, one way or the other if a decision is made by the Labour Court, even against such Award to be passed by the Labour Court, the aggrieved party would come before this Court as no other appeal remedy further available against the Award to be passed by the Industrial Tribunal or the Labour Court. Yet, again the parties would involve in the docket explosion process by filing writ petitions before this Court. Therefore, looking from any angle, after entertaining the writ petition, after several years, the petitioners cannot be shown the door to go before the alternative remedy, i.e., the Industrial Tribunal. Moreover, in the present cases, since there has been no dispute on the factual matrix except the legal position based on the Settlement as well as the orders passed by the Chennai Port Trust, on the basis of the arguments, these two cases are considered to be the cases to be entertained by invoking the extraordinary jurisdiction of this Court under Article 226. Hence, the preliminary objection raised by the learned Standing counsel for the respondents/Port Trust is, for the aforestated reasons, rejected.



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(41) Now let us turn to the merits of the case, where, it is not in dispute that these petitioners invariably appointed as Supervisors Grade-II either in the year 1997 or 1998. Orders have been produced by the petitioners' side that the Port Trust, either in the year 1998 or 1999, passed orders in respect of these petitioners that their services have been regularised and their probation has been declared. Once such order dated 26.03.1998 in respect of one of the petitioners S.Maharajan, Supervisor Grade-II [Civil] at that time, has been produced before this Court wherein *inter-alia* it has been stated thus:-

*"With further reference to the appointment order cited, the appointment of the above candidate under Regulation 25[I] is regularised under Regulation 10 of the Chennai Port Trust Employees [Appointment, Promotion, etc] Regulations with effect from -97 and brought on to the scale of Rs.2420-85-2930-100-4430 plus allowances under the rules in force. The appointment is temporary but may become permanent, subject to availability of vacancy in due course. He will be on probation for a period of two years of duty within a continuous period of three years from 24.07.1997."*

(42) Subsequently, on 29.10.1999, the probation of the said employee was





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raised by the respondents that 13 out of 27 petitioners in

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is nothing but a superfluous order as regularisation has taken place by the orders passed by the Chennai Port Trust as early as in the year 1998 and 1999. Therefore, the question of once again regularising the services does not arise, hence, the order is a farce or a superfluous one which will not take away the right accrued on the petitioners, he contended. In this case, if we look at the Regulations, Clause 11 of Regulations states that *"every person appointed to a post or category of posts by direct recruitment or promotion shall, from the date of his joining duty, be on probation for a period of two years of duty within a continuous period of three years of service."*

(46) Pursuant to this Clause 11, such a probation since has been declared in respect of the petitioners long back and their services also have been regularised in tune with Clause 14[A] of the Regulations under the heading **"Confirmation"** which says that *"every employee appointed to a post or category of post on successful completion of probation and declared to that effect in accordance with the provisions of Regulation 14 shall be confirmed in the post in which he is initially recruited, and in*



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*accordance with the conditions laid down", the plea raised by the*

respondents/Port Trust that some of them have subsequently been regularised in the year 2015 before which they would not have gained experience of 8 years for getting promotion or financial upgradation, is an argument without any substance. Therefore, it is to be rejected.

(47)Sub-clauses 1 and 2 of Clause 14[A] of the Regulations also state that

*"confirmation shall be made only once in the service of an employee who is borne on the Schedule of employees of the Board". It also states that "confirmation is delinked from the availability of permanent posts in the category."*

(48)Therefore, as per sub-clause [1], confirmation, i.e., regularisation once made, the employee who got such regularisation/confirmation would become a permanent employee on regular basis and moreover, such confirmation or regularisation is not linked with any availability of any permanent post which means whether posts are available or not regularisation can be made unmindful of the availability of permanent post. Once the vacancy has arisen, certainly those people would be accommodated in the permanent vacancies. That is how the Regulations of the Chennai Port Trust has to be understood.



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(49)As has been rightly pointed out by the learned counsel for the petitioners, we must see the situation or the necessity which triggered the parties to go for a 18[1] Settlement under the Industrial Disputes Act.

(50)In this context, the learned counsel for the petitioners relied upon two decisions as referred to above, i.e., [a] the decision reported in **1999 [2] LLJ 1** in the matter of **Workman rep.by the General Secretary, India Cements Employees' Union, Sankari West Vs. General Manager, India Cements Limited, Sankari West and Another**, where he relies on the following paragraph:-

*"9.We are of the view that the ailment suffered by the employee cannot be termed as "defect" rendering him unfit for absorption under Clause 3 of the Settlement dated July 8, 1978. The intention of the parties to the settlement has to be gathered by the words used by the parties to the settlement. In doing so, the parties must be presumed to have used the word in its strict and academical sense. Having regard to the context in which it was used, even if there is any ambiguity, it is the duty of the Court to look at all parts of the settlement to ascertain what was really intended by the parties. In this context, the word "defect" in the*



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*settlement has to be construed not technically, but liberally so as to advance the right to livelihood. When an employee was disabled by a disease to perform the duties of his post, the employer should make all attempts to see the final result and make allowances to get treatment since it promotes reasonableness in employment, otherwise, it amounts to taking away the employment construing in a technical sense in a manner not reasonable, fair and just."*

and [b] the decision reported in **2006 [9] SCC 478** in the matter of **CEAT Limited Vs. Murphy India Employees Union**, where he relies on the following paragraphs:-

***Interpretation of terms of settlement***

*29. The preamble of the settlement refers to the charter of demands served upon the appellant on 27-2-1989 in respect of the shop floor and office of the Company situated at Thane and Parel relating to wage scale, classification, dearness allowance, leave facilities, leave travel allowance, transports, etc. Supplementary demands were also raised. The parties reached a package settlement covering the service conditions and terms of employment applicable to the workmen at Thane and head office. The said settlement was to cover all terms and conditions of service of*



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*various categories of permanent workmen; and was to apply to all permanent workmen who were on the rolls of the Company as on 31-12-1990. The said memorandum of settlement, indisputably, was entered into on 29-4-1991.*

*30.Does it apply only to those workmen who were on the rolls of the Company as on 31-12-1990 is the question.*

*31.If the said settlement was only to apply to the permanent workmen, who were on the rolls of the Company as on 31-12-1990, evidently it would not have contained any provision for appointment of apprentices, payment of stipend and probation or confirmation or their fitment.*

*32.A memorandum of settlement must be read in the context in which the same was made.*

*33.If the said settlement is given a narrow meaning, as has been contended by Mr Andhyarujina, the same would defeat the purpose thereof. It may be true that by reason of a settlement, a cut-off date may be provided or the benefits be given only to a class of employees but with a view to give a proper meaning to the terms of the settlement, the court would be entitled to notice the source of the dispute. The workmen of Norwest were not on the rolls of the Company; they became its employees only with effect from 1-2-1991.*



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*Their terms and conditions were already governed by the Certified Standing Orders. A code of conduct was required to be evolved only as regards the workmen who came on the rolls of the Company after 31-12-1990.*

*34.The said code of conduct was evolved to repress the hardships which had already been confronted by the use of the Standing Orders of the Company. It was to operate concurrently with the Certified Standing Orders. Some of the provisions in the code of conduct expected of the employees evidently were not governed by the Certified Standing Orders. The settlement not only provides for appointment of apprentices, who would be governed by the provisions of the Apprentices Act, 1961 but also for the eligibility criteria therefor in terms whereof the first preference was to be given to the sons and daughters of the employees and the ex-employees of the Company, who had either retired from service or accepted voluntary retirement scheme, or expired during service. The eligibility criteria also provides that the applicant should complete 18 years of age as on the date of application. Indisputably, in terms of the provisions of the Apprentices Act, no apprentice would have a right to a job or promotion. The memorandum of settlement, however, provides for their absorption on successful*



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*completion of three years' apprenticeship. It provides for seniority and furthermore lays down criteria for determination thereof.*

(51) If we look at the propositions laid in the above said cases, it can be concluded that what was really intended by the parties in arriving at a settlement has to be gathered from the word that has been put in in terms of Settlement. If we apply the principle to the Settlement of the year 1978, the terms of Settlement reads thus:-

*"In the past, promotional opportunities of the employees were from time to time, increased by upgrading a certain number of feeder posts into promotional posts on the basis of ratios that had been agreed to, in settlements between the Administration and the Labour Unions and also by creating supernumerary posts in the promotional grades.*

*2. In spite of this, there has been stagnation of employees at the lower levels for very long periods. The Unions have been demanding that at least in certain categories where the job equivalent in the promotional posts is the same in the feeder posts, a 'scheme' must be evolved under which the employees, after completion of a specified period of service in the feeder post, can get promotion to the higher post without the need for a vacancy to arise in the higher post.*



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*3.After detailed examination and discussions with the Labour Unions, it has been decided that a scheme styled as 'Scheme of Grouped Posts' be introduced in the Trust.*

*4.In exercise of the powers conferred on me under Section 25 of the Major Port Trusts Act, 1963, the following orders are issued. These will apply to any category of post coming under the 'Scheme of Grouped Posts'.*

*I.The 'Scheme of Grouped Posts' will apply to the categories of posts listed in the Annexures I to VIII enclosed. Such of those categories have been chosen wherein the employees in the concerned group, continue to do the same type of work after promotion, as before. This Scheme will take effect from 1<sup>st</sup> January, 1978.*

*II.Under this Scheme, an employee in the lower grade of the concerned group of posts in the concerned department will be eligible to be promoted to the higher grade in the group, on completion of the period of service specified in the Annexures for the concerned group, subject to his work and conduct in the lower grade being considered satisfactory by the Administration, without a vacancy having to arise in the promotional post through a process of natural wastage. or on account of any other reason."*

(52)Since there has been stagnation of employees at the lower level for a



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very long period, as per the Union, it was having been considered the same, the Port Trust has come forward to enter into 18[1] Settlement under which a scheme was introduced called "Scheme of Grouped Posts". The scheme will have effect from 01.01.1978 and under the Scheme, the employee in the lower grade of the concerned group of posts in the concerned Department will be eligible to be promoted to the higher grade in the group on completion of the period of service specified in the Annexures for the concerned group subject to his work and conduct in the lower grade being considered satisfactory by the administration without a vacancy having arisen in the promotional post through a process.

(53)Annexures I to VIII of the said Settlement deals about various category of posts of Chennai Port Trust where Annexure-I is relevant wherein in Serial No.VI, the posts of Supervisor Grade-II and Grade-I are dealt with. The period of service rendered by an incumbent in Supervisor Grade-II is 8 years and if they completed 8 years of services, they would be entitled to get promotion / financial upgradation to the cadre of Supervisor Grade-I unmindful of the vacancy existing in the said Supervisor Grade-I at that time.

(54)Only the said two posts, namely, Supervisor Grade-II [Civil] and



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Supervisor Grade-I were redesignated as Junior Engineer and Junior Engineer Grade-I pursuant to the Labour Court Award in the year 2004.

(55)Therefore, there is only a change of nomenclature of the post of Supervisor Grade-II and Grade-I because those who were working as Supervisor Grade-II were holding the educational qualification of Diploma in Engineering. Therefore, it became necessitated to re-designate them by nomenclature "Engineering" in stead of "Supervisor". Therefore, they need not be confused by the Chennai Port Trust by stating that the post of Junior Engineer or Junior Engineer Grade-I since is not available in Annexure-I of the Settlement of the year 1978, upgradation or promotional benefit accrued on those petitioners pursuant to the Settlement cannot be extended to them.

(56)Moreover, the learned counsel for the petitioners is able to produce a list of such employees who were appointed between the years 1989 and 1993 in the post of Supervisor Grade-II who on completion of 8 years, had been upgraded either as Supervisor Grade-I or presently, Junior Engineer Grade-I and the financial upgradation also as per the refixation based on the Industrial Tribunal Award dated 05.04.2004 had been granted or extended to them.



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(57) When that being the position, the denial of such benefits to these petitioners is nothing but a clear discrimination as the equals are treated unequally. That kind of unequal treatment would amount to violative of Article 14 of the Constitution of India. Therefore, this Court has no hesitation to hold that the petitioners are entitled to get the benefit as that of the benefit already extended to the similarly placed persons by giving promotion even in the redesignated post including the financial upgradation as per the revised pay scale for the post of Junior Engineer Grade-I.

(58) For all these reasons stated above and the discussions hereinabove made, this Court is inclined to dispose of these writ petitions with the following orders:-

- A) There shall be a direction to the respondents/Chennai Port Trust to consider the request of the petitioners for promotion / financial upgradation from the post of Junior Engineer to the post of Junior Engineer Grade-I with financial upgradation as per the revised pay scale pursuant to the Industrial Dispute Award in the year 2004, as has been given or extended to various other similarly placed Junior Engineers to Junior Engineers Grade-I on completion of 8 years of



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services from the date of their initial appointment either in the year 1997 or in the year 1998, as the case may be.

- B) As a sequel, the pay benefits and other service and attendant benefits for which the petitioners are entitled to as per the service regulations governing their service conditions, shall be calculated and be granted to them including the arrears of salary.
- C) The needful as indicated above, shall be undertaken by the respondents / Chennai Port Trust within a period of twelve weeks from the date of receipt of a copy of this order.

(59)With these directions, the writ petitions are disposed of. No costs.

15.07.2022

Internet: Yes

Index : Yes

AP



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To

- 1.The Chairman  
Chennai Port Trust,  
Chennai-1.
- 2.The Deputy Chairman  
Chennai Port Trust  
Chennai-1.
- 3.The Chief Engineer  
Chennai Port Trust,  
Civil Engineering Department,  
Chennai-1.
- 4.The Secretary  
Chennai Port Trust,  
General Administration Department,  
Chennai-1.



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R.SURESH KUMAR, J.

AP

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15.07.2022