



WEB COPY



W.P.No.37322 of 2002

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.04.2023

CORAM:

THE HON'BLE MR.JUSTICE J. SATHYA NARAYANA PRASAD

W.P. No.37322 of 2002

1. A. Raju Fernando
2. V. Santhanam

... Petitioners

VS.

1. The Chairman
Tuticorin Port Trust,
Tuticorin 628 004.
2. Union of India
Rep.by its Secretary
Ministry of Surface Transport,
No.1, Parliament Street,
New Delhi 110 001.
3. Regional Labour Commissioner (Central)
26, Haddous Road,
Sastri Bhavan Chennai 600 006.
4. Tuticorin Stevedores Association
rep.by its Chief Executive World Trade Avenue
Tuticorin 628 004.
5. V.Sankaralingam Commission
Tuticorin Port Trust,
Tuticorin 628 004.

... Respondents



PRAYER: Writ Petition filed under Article 226 of the Constitution of India, to issue a writ of declaration and Mandamus

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i. to declare the clauses 2(2), 15, 18, 20, 26 and 27 of the settlement under Section 18(3) Industrial Disputes Act dated 22.12.1999 on the file of the first respondent in so far as those clauses relate to the take over and conferment of certain benefits to 64 staff of the fourth respondent, as arbitrary, illegal and could not be treated as part of the scheme framed by the first respondent for cargo handling workers of the Tuticorin port Trust.

ii. to forbear the first respondent, traffic manager anybody on behalf of the first respondent from taking over and absorbing the 64 staffs of the fourth respondent as part of Tuticorin Port Trust Cargo Handling Labour Pool (TPTCHLP) and spending any amounts from the funds of the scheme framed for the Tuticorin Port Trust Cargo Handling Labour Pool (TPTCHLP) under settlement dated 22.12.1999 on the file of the first respondent or on the report of the fifth respondent commission for considering the status of the 64 staffs of the fourth respondent.

iii. to grant such further or other reliefs as this Court may deem fit and proper in the facts and circumstances of the case and render justice.

For Petitioners : Mr.Abraham Prabhu

For Respondents : Mr.Ramesh Venkatachalapathy
for Mr.S.Yashwanth for R1
Mr.J.Madanagopal Rao
Central Government
Standing Counsel for R2



ORDER

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i. to declare the clauses 2(2), 15, 18, 20, 26 and 27 of the settlement under Section 18(3) Industrial Disputes Act dated 22.12.1999 on the file of the first respondent in so far as those clauses relate to the take over and conferment of certain benefits to 64 staff of the fourth respondent, as arbitrary, illegal and could not be treated as part of the scheme framed by the first respondent for cargo handling workers of the Tuticorin port Trust.

ii. to for bear the first respondent, traffic manager anybody on behalf of the first respondent from taking over and absorbing the 64 staffs of the fourth respondent as part of Tuticorin Port Trust Cargo Handling Labour Pool (TPTCHLP) and spending any amounts from the funds of the scheme framed for the Tuticorin Port Trust Cargo Handling Labour Pool (TPTCHLP) under settlement dated 22.12.1999 on the file of the first respondent or on the report of the fifth respondent commission for considering the status of the 64 staffs of the fourth respondent.



iii. to grant such further or other reliefs as this Court may deem fit and proper in the facts and circumstances of the case and render justice.

2. Heard both side and perused the materials available on record.

3. The learned counsel appearing for the petitioners submitted that the second petitioner had died on 13.10.2018 and the representation dated 16.03.2023 given by the first petitioner has been considered by the first respondent and the same was rejected stating that the first petitioner has already superannuated. He further submitted that the first respondent may consider the representation of the first petitioner afresh based on the counter affidavit filed in W.P.No.18920 of 1999, wherein at paragraph No.3, it is stated as follows:-

“3. The agreement dated 14.10.1998 was entered into in the context of the recommendations of the Committee of Port Officers that the decasualised cargo-handling workers of the Tuticorin Stevedores' Association (Labour Pool) as well as the 64 staff and officers of the Administrative Wing of the Tuticorin Stevedores' Association (Labour Pool) should be brought under the administration, management and control of an independent Division of the Port Trust, known as Cargo Handling Division. After examining the proposal of the Port for the formation of the Cargo Handling Division of the Port as recommended



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by the Committee, the Govt.of India did not approve the proposal to merge the Tuticorin Stevedores Association (Labour Pool) with the Port Trust. Instead it has approved a Scheme whereby the TSA (Labour Pool) will be maintained only as a separate pool. It will retain most of its present characteristics but it will be managed by an officer of the Port. The details of the Scheme as approved by the Government are submitted as Annexure I. It is clear from the draft scheme that there is no move to absorb or appoint the 64 staff and officers into Port service. No posts have been sanctioned by the Govt. or the Board of Trustees to make such appointments. The draft Scheme envisages interchangeability among the workers within the Pool but does not provide for interchangeability between the 64 staff and officers of the Labour Pool and the staff and officers of the Tuticorin Port Trust. In view of this, the agreement dated 14.10.98 between the petitioner Union and others and the Port Management regarding appointment of a One-man Commission to study the legality of the absorption of the staff and officers of the Administrative Wing of the Tuticorin Stevedores Association (Labour Pool) and the modalities of their absorption, if they are to be absorbed, has become infructuous. In such a situation, the apprehension of the petitioner that there would be severe problems in the matter of seniority, designation and anomalies in emoluments etc is not based on facts and hence the petition it is liable to be dismissed in limine”.

4. In view of the paragraph No.3 extracted supra, the first respondent is directed to consider the first petitioner's representation dated 16.03.2023 afresh and pass appropriate orders on merits and in accordance with law. The said exercise shall be completed within a period of six weeks from the



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date of receipt of a copy of this order. This order is applicable to the first petitioner and shall not be taken as precedent in any other case.

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5. With the above direction the writ petition is disposed of. No costs.

24.04.2023
(1/2)

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Index : Yes/No

Speaking Order : Yes/No

To

1. The Chairman

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Tuticorin 628 004.

2. Union of India

Rep.by its Secretary
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J. SATHYA NARAYANA PRASAD, J.

dpq

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