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WA No. 2827 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.06.2023

CORAM

THE HONOURABLE MR. JUSTICE R. MAHADEVAN
and
THE HONOURABLE MR. JUSTICE MOHAMMED SHAFFIQ

Writ Appeal No. 2827 of 2021
and
C.M.P. No.18836 of 2021

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

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

.. Appellants

Versus

R. Nirmala

.. Respondent

Appeal filed under Clause 15 of the Letters Patent against the Order dated 12.08.2021 passed by the learned Judge in WP No. 25793 of 2017.

For Appellants : Mr. R. Karthikeyan

For Respondent : Mr. K. Raja



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JUDGMENT

(Judgment of the Court was delivered by **R.MAHADEVAN, J**)

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Aggrieved by the order dated 12.08.2021 passed by the learned Judge in W.P.No.25793 of 2017, the appellants / Chennai Port Trust have come up with this writ appeal.

2. The respondent herein has filed the aforesaid writ petition praying to issue a Writ of Certiorarified Mandamus to call for the records of the second respondent pertaining to the proceedings bearing No.SCT5/5341/2017/GA dated 20.09.2017, quash the same and consequently, direct the appellants to accommodate her on compassionate grounds in any suitable vacancy according to her qualification as done in the case of other similarly placed persons in Chennai Port Trust.

3. In the affidavit filed in support of the writ petition, the respondent stated that her father N. Ramamurthy, who was serving as a Receipt Clerk on contract basis with the Madras Dock Labour Board, died on 28.05.1991. On his death, her mother sent a representation dated 11.03.1992 to the first appellant herein praying to appoint the respondent, who was unmarried at that time, on compassionate grounds. On the basis of such application, by a letter



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dated 12.07.1995, the respondent along with 8 others, were permitted to work under Madras Dock Labour Board Women's Welfare Association to do binding work. Subsequently, by a letter dated 29.08.1997 of the President of Madras Dock Labour Board Employees Co-operative Canteen Limited, the respondent was appointed as Stores-cum-Accounts Clerk on daily rated basis of Rs.60/- on compassionate grounds. Thereafter, on 15.10.1999, the President of Chennai Dock Labour Board Employees Co-op. Canteen Limited, appointed the respondent as Stores-cum-Accounts Clerk in the scale of Rs.1830-30-2070-35-2420 with other admissible allowance.

4. It was further stated by the respondent that while she was working with K.Rajeshwari, Nagammal, Pappammal and Visalakshi, in the binding section of Madras Dock Labour Board Women's Welfare Association, the said K.Rajeshwari and others were accommodated in Chennai Port Trust on regular basis and one M.R.Vijaya, who was working in Chennai Dock Labour Board Employees Co-operative Canteen Limited, was also given appointment in Chennai Port Trust on regular basis, but the respondent was not given appointment. Thus, according to the respondent, the persons, who were similarly placed persons like her, have been brought under regular service by the appellants, but she alone was discriminated. The respondent had repeatedly



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represented to appoint her on regular basis in the Chennai Port Trust.

However, on 17.02.2007, the second appellant issued a letter refusing to consider the claim of the respondent on the ground that her name was already deleted from dependent register of erstwhile Dock Labour Board, since she had been offered employment in the Chennai Dock Labour Board Employees Co-op. Canteen Ltd and put 10 years of service on permanent basis. Thereafter, on 25.07.2017, the respondent submitted a representation seeking to appoint her in Chennai Port Trust, but it was rejected by the second appellant on 20.09.2017. Therefore, the writ petition viz., WP No.25793 of 2017 was filed by the respondent.

5. The learned Judge, upon hearing the rival submissions, allowed the writ petition by directing the appellants to treat her as having served with the appellants / Chennai Port Trust from the date when the 1st person appointed on compassionate ground, employed with the erstwhile Madras Dock Labour Board Canteen Limited, on permanent basis with Chennai Port Trust, with continuity of service and seniority for the purpose of calculation of terminal benefits payable at the time of superannuation. Challenging the same, the present appeal by the Chennai Port Trust.



6. The learned counsel appearing for the appellants would contend that the respondent was not engaged either as a contractual employee or a temporary employee with the appellants at any point of time and therefore, there was no jural relationship between them. Adding further, the learned counsel would further submit that the claim of the respondent was rejected by specifically stating that she was already employed as Stores-cum-Accounts Clerk on daily rated basis on compassionate grounds in Madras Dock Labour Employees Co-operative Canteen Limited and therefore, she is ineligible for being appointed in the appellants - Port Trust once again on compassionate grounds. Thus, in the absence of any scheme for appointment on compassionate grounds in vogue, the appellants cannot be compelled to appoint the respondent in any post.

7. As regards the reference to the other persons appointed in Chennai Port Trust, it is submitted by the learned counsel for the appellants that those persons were appointed in Madras Dock Labour Board prior to the merger with Chennai Port Trust on 01.06.2001. However, the respondent was never absorbed into the Madras Dock Labour Board. Therefore, she cannot compare herself with the status of employment of others in the Madras Dock Labour Board, who were subsequently absorbed by the appellants. It is further submitted that the other persons were appointed on administrative necessity



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and that, in their appointment orders, there was no mention that they were appointed on compassionate grounds and hence, it cannot be gainsaid that compassionate appointments have been made by the appellants and the respondent alone was discriminated.

8. It is also submitted by the learned counsel for the appellants that after the merger of Chennai Port Trust and the erstwhile Madras Dock Labour Board, the canteen run by the Madras Dock Labour Board Employees Canteen was re-constituted as Chennai Port Trust Seashore Canteen, which was registered under the Tamil Nadu Co-operative Societies Act and all the regular and contractual employees working in the Madras Dock Labour Board Employees Canteen were posted in the Chennai Port Trust Seashore Canteen. Thus, the Chennai Port Trust Seashore Canteen is a separate legal entity and the appointment of some persons in the said Canteen, cannot be compared with the respondent. In any event, due to loss suffered, the Seashore Canteen itself was closed and the employees employed therein were relieved on 18.03.2018 upon entering into an one time settlement, except the respondent herein, as she had obtained an interim order in the writ petition. Thus, according to the learned counsel, the respondent herein was employed on contract basis in the Madras Dock Labour Board Employees Cooperative Canteen Ltd. and there is no nexus between the said Canteen and the appellants / Chennai Port Trust



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warranting appointment of the respondent in Chennai Port Trust. Without considering the same, the learned Judge placing reliance on the decision of the Honourable Supreme Court in *State of Karnataka and others v. Uma Devi and others* [(2006) 4 SCC 1], erroneously allowed the writ petition by directing the appellants to confirm the appointment of the respondent in anyone of its department and grant service and monetary benefits, by the order impugned herein. The learned counsel therefore prayed for setting aside the order of the learned Judge and thereby allowing this writ appeal.

9. Per contra, the learned counsel for the respondent/writ petitioner would contend that considering the fact that the erstwhile Madras Dock Labour Employees Co-operative Canteen Ltd was taken over by the appellants / Chennai Port Trust pursuant to a Merger Agreement dated 25.05.2001 under the Industrial Disputes Act, 1947 and after having analysed the terms of the Merger Agreement, particularly clause 27, which states that the staff previously employed as Dock workers would become the employees of the Port Trust, the learned Judge held that the respondent, who was engaged in the said Canteen since 1997, is also entitled to regular employment. Further, the learned Judge, in paragraph no.34 of the order, has specifically pointed out that the respondent, in effect, is not seeking for employment on compassionate



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grounds, but regularisation of her appointment on compassionate grounds on par with other employees. It is also not disputed by the appellants that several persons were appointed by them due to administrative necessity or on the basis of the orders passed by this Court in the writ petitions filed by them, while so, the learned Judge is wholly justified in holding that the appellants had violated the terms and conditions of the merger agreement insofar as it relates to refusal to appoint the respondent in a regular employment. Therefore, the learned counsel would submit that the order of the the learned Judge is well merited and does not call for any interference by this Court.

10. We have heard the learned counsel for both sides and perused the materials placed on record.

11. It is seen that the respondent herein was permitted to work under Madras Dock Labour Board Women's Welfare Association along with 8 others on 12.07.1995. Subsequently, on 29.08.1997, she was appointed by the President of Madras Dock Labour Board Employees Co-operative Canteen Limited as Stores-cum-Accounts Clerk on daily rated basis. Thereafter, on 15.10.1999, the President of the Chennai Dock Labour Board Employees Co-operative Canteen Limited appointed the respondent herein as Stores-cum-



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Accounts Clerk in the scale of pay of Rs.1830-30-2070-35-2420 with other admissible allowance. While so, a settlement dated 25.05.2001, was entered into between the Unions of Madras Dock Labour Board, Chennai Port Trust and erstwhile Dock Labour Board, and as per the same, the Dock Labour Board was merged with Chennai Port Trust and certain service benefits were conferred upon the employees of Madras Dock Labour Board. Pursuant to the same, some of the persons working along with the respondent were accommodated in the Chennai Port Trust, but the respondent was not given appointment. Therefore, the respondent filed WP.No.25793 of 2017, which was allowed by the learned Judge, by the order impugned herein. The relevant passage of the said order is usefully extracted below:

"30. The fact remains that the petitioner was admitted to the service of the Dock Labour Board Cooperative 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



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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.

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."

12. It is the contention of the learned counsel for the appellants that the respondent had already been appointed as Stores-cum-Accounts Clerk on daily wages on compassionate grounds in the Madras Dock Labour Employees Co-operative Canteen Ltd and hence, she cannot be provided appointment again, on compassionate grounds. The learned counsel further justified the appointment given to some of the employees working along with the



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respondent by stating that they were absorbed into the original establishment prior to merger and they were given employment in the Chennai Port Trust due to administrative exigency and not on compassionate grounds. However, the learned Judge erred in allowing the writ petition filed by the respondent and directing the appellants to confirm the appointment of the respondent and grant other benefits on par with other employees.

13. This court cannot accept the submissions so made on the side of the appellants. It is an admitted fact that as on the date of merger, the respondent was in service as Stores-cum-Accounts Clerk in Madras Dock Labour Board Employees Co-operative Canteen Limited. Though some of the persons working along with the respondent were accommodated in the Chennai Port Trust pursuant to the merger, the candidature of the respondent alone was not considered, which cannot be countenanced by this court, in the light of the Memorandum of Settlement dated 25.05.2001 reached between the erstwhile Madras Dock Board (Chennai Dock Board) and the appellants, wherein, the employees of the Madras Dock Labour Board, were given protection for employment and pay. In this context, the learned Judge placing reliance on clauses 21, 24 and 27 of the Memorandum of Settlement dated 25.05.2001, held that the appellants were required to retain all the employees



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in canteen, Women Welfare Association including welfare centre and binding section, etc., with separate identity after the merger, till a final decision was taken to transfer them to the Secretary's Department with protection of their wages and other service conditions; and accordingly, the respondent has to be given appointment in the Chennai Port Trust on par with other employees. When there is a specific clause relating to protection for employment and pay benefits to the employees of the peripheral units, in the memorandum of settlement, it is not correct on the part of the appellants to deny employment to the respondent by stating that she had already been given employment on compassionate grounds and put more than 10 years of service on permanent basis in the erstwhile MDLB and hence, she cannot be granted compassionate ground appointment again, which is in violation of the terms of the settlement. At this juncture, it is relevant to point out that the learned Judge in paragraph 34 of the order impugned herein, has categorically observed that though the prayer of the respondent was to provide appointment on compassionate grounds in the Chennai Port Trust, she was really seeking for confirmation of her appointment on compassionate grounds with the appellants Port Trust on par with other employees of the erstwhile MDLB. This court is of the opinion that the appellants should not be stepped into the shoes of the respondent, in view of the inadvertent mistake made by her, while seeking the relief to the



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appellant authorities and hence, they should have been provided appointment to the respondent, in terms of the settlement dated 25.05.2001.

14. That apart, the learned Judge has rightly rejected the other contentions made on the side of the appellants for their failure to accommodate the respondent in terms of the merger agreement that there was no nexus between the Chennai Port Trust Seashore Canteen and the Chennai Port Trust; many of the employees opted for one time settlement except the respondent; and the policy decision of the Chennai Port Trust that the recruitment of entry level post was stopped in the year 2004. Ultimately, the learned Judge went on to observe in paragraph no.41 of the order impugned herein that 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 employment; and therefore, they should not be driven out of employment especially by public sector undertaking. This court is in full agreement with the observation so made by the learned Judge, as the respondent was discriminated by the appellants, by not providing appointment citing vague reasons, though the merger agreement stipulates service and pay protection to all the employees of the MDLB including the respondent.



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15. In view of the above stated analysis, this court is of the opinion that the appellants have not made out any ground much less valid ground to interfere with the order passed by the learned Judge. Therefore, this writ appeal deserves to be dismissed and is accordingly, dismissed. The appellants are directed to comply with the order of the learned Judge, within a period of six weeks from the date of receipt of a copy of this judgment. No costs. Consequently, connected miscellaneous petition stands closed.

[R.M.D., J] [M.S.Q., J]

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Index : Yes / No
Neutral Citation : Yes / No
Speaking / Non-Speaking Order
rsh

To

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

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



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