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Writ Appeal No.1535 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 11.10.2023

CORAM

**THE HONOURABLE MR. JUSTICE R.SURESH KUMAR
AND
THE HONOURABLE MR. JUSTICE C.KUMARAPPAN**

**Writ Appeal No.1535 of 2019
and C.M.P.No.10459 of 2019**

1. The Chairman,
Chennai Port Trust,
Chennai – 600 001.

2. The Financial Advisor cum,
Chief Accounts Officer,
Chennai Port Trust,
Chennai – 600 001.

... Appellants

Vs

A.Jayasimha

... Respondent

PRAYER: Writ Appeal filed under Clause 15 of Letters Patent Act, to allow this writ appeal by setting aside the order dated 06.03.2013 made in W.P.No.2528 of 2008.

For Appellants	: Mr.S.Haja Mohideen Gisthi Central Government Standing Counsel
For Respondent	: Mr.A.S.Vijayaraghavan



JUDGMENT

WEB COPY (Judgment of the Court was delivered by R.SURESH KUMAR,J.)

This writ appeal had been directed against the order passed by the Writ Court dated 06.03.2013 made in W.P.No.2528 of 2008.

2. The short facts, which are required to be noticed for the disposal of this writ appeal are as follows:

(i) The respondent viz., A.Jayasimha was initially appointed as Assistant Controller of Stores at the appellant Port Trust on 31.08.1989. He was further promoted as Deputy Controller of Stores on 01.06.2000.

(ii) While he was working as Deputy Controller of Stores, the person, who was working as Controller of Stores at the Chennai Port Trust viz., S.Chelladurai was appointed as Chief Engineer of the Port Trust. Hence, the post of Controller of Stores has fallen vacant.

(iii) Therefore, the Chairman, who is the Competent Authority of the Port Trust by order dated 11.04.2005 made the respondent as Controller of Stores(in-charge) that means, he has been officiated to act as Controller of Stores of the Chennai Port Trust with effect from 11.04.2005.



(iv) It is to be noted that the post of Controller of Stores on permanent basis is to be filled up only by the Union Ministry of Shipping, Government of India. Therefore, after calling the applications from the eligible persons including the respondent, those applications with relevant records had been forwarded by the Port Trust to the Central Government for scrutiny of such applications and to make an appointment to the post of Controller of Stores.

(v) However, by order dated 05.12.2005, the Union Ministry has communicated to the appellant Port Trust that, as per the latest restructuring order dated 06.02.2004, the post of Controller of Stores in Chennai Port Trust did not appear. Therefore, the post cannot be filled up as of now.

(vi) Be that as it may. The order passed by the Chairman of the Chennai Port Trust dated 11.04.2005 placing the respondent as In-charge of Controller of Stores was still continuing.

(vii) When that being so, an audit objection has come in the year 2006-2007, where the audit team had raised objection saying that, so far



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as the pay for the post of Deputy Controller of Stores, which was the substantive post, where the respondent was working, is Rs.12,000/- and odd and for the post of Controller of Stores is Rs.17500-400-22300 and the said pay was allowed to be taken by the respondent at the time of his in-charge as Controller of Stores, which could not have been allowed, that was the audit objection raised.

(viii) Based on the said audit objection, an order has been passed on 27.04.2007 by the appellant Port Trust stating that there has been an excess payment of Rs.1,96,373/- paid to the respondent for the period from 11.04.2005 to 30.04.2007, which should be recovered at the rate of Rs.5,000/- per month from the salary of the respondent from May, 2007 onwards.

(ix) Consequently, an order dated 18.12.2007 was passed by the appellant Port Trust stating that a sum of Rs.5680/- per month would be recovered from the salary of the respondent from the month of December,2007.



(x) Challenging these orders dated 27.04.2007 and 18.12.2007, the respondent approached this Court and filed writ petition in W.P.No.2528 of 2008.

(xi) The said writ petition was heard and disposed of by a Writ Court through its order dated 06.03.2013, where the learned Judge has relied upon the regulation 36 as well as the regulation 26 of the Chennai Port Trust (Pay and Allowance) Regulation, 2001 [in short, '2001 regulation']

(xii) Regulation 36 empowers the competent authority viz., the Chairman of the Chennai Port Trust to officiate any one in the capacity of officiating in any substantive post and once such an officiating order is passed that is otherwise called as in-charge order by the Chairman of the Port Trust, the person who has been given such in-charge is entitled to get the pay for the post, for which he has been put in-charge.

(xiii) This regulation has been heavily relied upon by the respondent before the Writ Court, which was in fact was accepted by the learned Judge.



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(xiv) That apart, the learned Judge found that before passing the impugned orders, which were impugned before the Writ Court, no notice had been given to the respondent/writ petitioner and therefore, straight away since the order of recovery and reduction of pay has been ordered through the impugned orders without placing the writ petitioner/respondent under notice, that would amount to violative of Article 14 of the Constitution and therefore, the principles of natural justice since has been violated, on that ground, the learned Judge was inclined to allow the said writ petition, as against which, the present writ appeal has been directed.

3. Assailing the said order, which is impugned herein, Mr.S.Haja Mohideen Gisthi, learned Central Government Standing Counsel appearing for the appellant would contend that, insofar as the order passed by the Chairman of the Port Trust dated 11.04.2005 is concerned, no doubt it is an order, under which, the respondent has been put under in-charge of the post of Controller of Stores.

4. Merely because, he has been placed for in-charge, he would not be entitled to get the full salary, which is meant for the substantive post of Controller of Stores.



5. He would also submit that, the post of Controller of Stores itself has to be filled up on permanent basis only by the Union Ministry of Shipping, Government of India, since as per the last restructuring order, the very post of Controller of Stores itself has not been figured it could not be filled up, that was the stand taken by the Ministry, therefore at no stretch of imagination, it can be argued by the respondent that since he was in-charge of the post of Controller of Stores by virtue of order passed by the Chairman of the Port Trust dated 11.04.2005, he would be entitled to get the full salary, which is otherwise would be eligible only for a person who hold the post of Controller of Stores on permanent basis.

6. The learned counsel for the appellant would also submit that, the finding given by the learned Judge as if that the principles of natural justice is violated is concerned, that may not be correct, for the reasons that, the learned Judge himself has stated that, on 14.11.2006 itself an order has been served on the respondent with regard to the proposed reduction of the salary as well as the recovery of the excess payment.



7. When that being so, it cannot be stated that the respondent has not been put on notice before passing the orders impugned for recovery as well as the reduction of the salary. Therefore, that ground raised by the respondent since was accepted erroneously by the learned Judge, on that ground, the learned counsel would contend that, the order impugned is liable to be interfered with.

8. We have considered the submissions made by the learned Standing Counsel appearing for the appellant and have perused the materials placed before this Court.

9. If we look at the order passed by the Chairman, Port Trust dated 11.04.2005, the language reads thus:

“Consequent to appointment of Shri S.Chelladurai, Controller of Stores as Chief Engineer, Chennai Port Trust with effect from 31.03.2005, the post of Controller of Stores has fallen vacant. In order to look after the functions of the Stores Department, Chairman has passed the following orders with immediate effect:-

(i) Shri A.Jayasimha, the Senior most Deputy Controller of Stores is posted to act as COS incharge. He will obtain financial approval from CME.



(ii) CME will look after the financial approvals of Stores department and submit papers to Dy. C.P.T.'s / C.P.T. 's Board's / Govt. 's approval wherever necessary.

(iii) The EDP Division which is now working under the control of Stores Department will henceforth work under the control of FA & CAO.

The above orders are effective till the RSP regulations are approved and notified by the Government.”

10. The substantive post of Controller of Stores hitherto hold by one S.Chelladurai was appointed as Chief Engineer of Chennai Port Trust with effect from 31.03.2005, therefore, the said post of Controller of Stores has fallen vacant.

11. The said post is also a Head of the Department, hence, it cannot be kept vacant, therefore that is the reason why, the Chairman of the Port Trust has decided to post the respondent as in-charge of the COS i.e., Controller of Stores of the Chennai Port Trust.

12. This power exercised by the Chairman of the Port Trust is no doubt only under the provisions of the 2001 regulation especially under regulation 36.



13.This has been pointed out by the learned Judge in the order impugned stating that, in as much as the Chairman of the Port Trust has exercised the power under Regulation 36 of the 2001 regulation and placed any existing employee in the substantive post, such an employee would be entitled to get the salary equivalent to the substantive post, for which he has been placed in-charge.

14. This legal position cannot be doubted, because, it is a regulation governing the service conditions of the employee including the respondent.

15. Moreover, even though it has been stated by the Union Ministry of Shipping, Government of India by letter dated 05.12.2005, that the post of Controller of Stores had not been figured in the latest restructuring order dated 06.02.2004, therefore, it cannot be filled up, still the Chennai Port Trust did not withdraw the order placing the respondent as in-charge for the post of Controller of Stores by order dated 11.04.2005, which means, the order dated 11.04.2005 continued till the audit objection was raised.



16. Merely on the basis of the audit objection only, the impugned orders before the writ court were passed by the appellant Port Trust stating that the respondent is not entitled to claim the salary, which is meant for substantive post of Controller of Stores of the Chennai Port Trust.

17. The fact remains that the respondent pursuant to the order dated 11.04.2005 had been continuously working as Controller of Stores of-course on in-charge basis.

18. Once, he has become Controller of Stores of-course on in-charge basis, within the meaning of Clause 36 of the Regulation, 2001 as stated supra, then the person, who was holding the post of-course on in-charge basis would be entitled to get the full salary, for which, the substantive post draws.

19. Hence, we do not, on merits also, find any infirmity in the respondent enjoying the higher pay i.e., the pay, which is meant for the post of Controller of Stores.

20. If at all the Chennai Port Trust decided to withdraw the order



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passed on 11.04.2005 placing the respondent under in-charge of the Controller of Stores is concerned, pursuant to the stand taken by the Union Ministry through the order dated 05.12.2005, such an order could have been passed by the appellant, but admittedly no such order has been passed. When that being so, it is not a mistake on the part of the respondent to claim the salary for which he is entitled to as per the 2001 regulation and therefore, the question of recovering that amount from the respondent does not arise.

21. In view of our opinion, whether notice had been given or the respondent has been put on notice based on the 14.11.2006 order as recorded by the learned Judge in the order impugned, which has been heavily relied upon by the learned counsel appearing for the appellant, need not be gone into.

22. In view of the above discussions, we are of the view that there has been no infirmity in the order passed by the learned Judge of-course for the reasons he has stated as well as the additional reasons as we discussed herein above, therefore, this writ appeal deserves to be rejected.



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WEB COPY 23. Accordingly, this writ appeal stands dismissed. No costs.

Connected miscellaneous petition is closed.

(R.S.K.,J.)

(C.K., J.)

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Index: Yes/No

Speaking Order/Non Speaking Order

Neutral Citation: Yes/No

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