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W.P.No.13990 of 20...

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.04.2023

CORAM:

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

**W.P(MD). No.13990 of 2011
and MP (MD).No.2 of 2011**

A.M.Damian Leenus

... Petitioner

vs.

1. Union of India,
Rep.by Ministry of Shipping & Transport
Transport Bhavan,
Parliament Street,
New Delhi 110 001.
2. The Chairman
V.O. Chidambaranar Port Trust,
Tuticorin 628 004.
3. The Board of Trustees,
rep.by its Chairman
V.O.C.Port Trust,
Tuticorin 628 004.
4. The Traffic Manager,
Traffic Department,
V.O.C.Port Trust
Tuticorin 628 004.
5. The Regional Labour Commissioner (Central)
26, Haddows Road,



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Sashtri Bhavan,
Chennai.

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6. The General Secretary,
Tuticorin National Harbour
Workers Union, 147, Great Cotton Road,
Tuticorin 528 001.
7. The General Secretary,
Tuticorin Port and Dock Workers
Union, Door No.7, Theppakulam Street,
Tuticorin 628 002.
8. The General Secretary,
Tuticorin Harbour Workers Union,
69, Periera Street, (Upstairs),
Tuticorin 628 001.
9. The General Secretary,
Tuticorin Harbour Dock Workers Union,
145/1-A, Ettayapuram Road,
Tuticorin 628 002.
10. The General Secretary, Tuticorin
Steamer Workers Union,
3/342, Lourdammmalpuram II Street,
Tuticorin – 1.
11. S.Muthukrishnan
12. P.Anto Fernando
13. A.X.Panimayaraj P.Rayar
14. C.Francies Fernando
15. S.Krishnan



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16. V.Sethuramalingam

17. L.Veeraperumal

18. R.Sudalaiyandi

19.T.Piules V Rayer

20.A.Sagayaraj

21.K.Danasekaran

22.J.Anson Fernando

23.K.Murugan

24.G.Nambirajan

25.S.Veerapandian

26.J.Kasper Rex

27.D.Shanmuga Sundaram

28.K.Palani Velayutham

29.B.Alex

30.C.Kalyana Sundara Raja

31.A.Lawrence Corera

32.L.Murugesan

33.G.David Gnanakan

34.L.Maria Paul Kennedy



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35.A.Santhana Sankar

36.G.Elisa

37.P.Joseph Moraise

38.S.Bala

39.J.Anton P.Rayer

40.A.Jesu Antony

41.S.Joe Agustin

42.D.Sasidaran

43.J.Selvam Rodriquez

44.S.Panjabakesavan

45.M.C.James

46.G.Senthilvel

47.B.Samsudeen

48.A.Baskaran

... Respondents

R6 to R48 impleaded as per order dated 02.07.2014 in MP.No.1 of 2013

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, to issue a writ of Certiorarified Mandamus to quash the clause (3) of the official communication in No.LB-13015/2/2007-L-II of the 1st respondent dated 18.02.2011 and clause (4) and (15) to (23) of



consequential settlement under Section 12(3) of the Industrial Disputes Act, 1947 dated 27.07.2011 and clause (iv) of consequential resolution passed by the Board of Trustees, 3rd respondent herein, in Resolution No.68 and clause (2) of Consequential Office order in No.T-CHD/Estt/Reg.order 11/06/2011 issued by Traffic Department, TPT, the 4th respondent herein, dated 19.11.2011 and consequently direct the respondents 1, 2 & 3 to merge the original listed employees as on 01.09.1981 of Cargo Handling Workers (labour pool) of the Tuticorin Port Trust with the employees of the V.O.Chidambaranar Port Trust without any condition and regularise service of listed workers w.e.f. 01.01.2000.

For Petitioner : Mr.Abraham Prabhu

For Respondents : M/s.Madhana Gopal Rao for R1
Mr.Ramesh Venkatachalapathy
for Mr.Yashwanth for R4
M/s.Ashok Kumar Ram for R5
M/s.Arivuchandran for R2
M/s.Ponniah for R3
M/s.C.Venkatesh Kumar
for R11, R12 & R16

ORDER

This writ petition has been filed to quash the clause (3) of the official communication in No.LB-13015/2/2007-L-II of the 1st respondent dated 18.02.2011 and clause (4) and (15) to (23) of consequential settlement under Section 12(3) of the Industrial Disputes Act, 1947 dated 27.07.2011



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and clause (iv) of consequential resolution passed by the Board of Trustees, 3rd respondent herein, in Resolution No.68 and clause (2) of Consequential Office order in No.T-CHD/Estt/Reg.order 11/06/2011 issued by Traffic Department, TPT, the 4th respondent herein, dated 19.11.2011 and consequently direct the respondents 1, 2 & 3 to merge the original listed employees as on 01.09.1981 of Cargo Handling Workers (labour pool) of the Tuticorin Port Trust with the employees of the V.O.Chidambaranar Port Trust without any condition and regularise service of listed workers w.e.f. 01.01.2000.

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

3. The learned counsel appearing for the petitioner submitted that the representation dated 16.03.2023 given by the petitioner has been considered by the 2nd & 4th respondents and the same has been rejected stating that the petitioner has already superannuated. He further submitted that the 2nd & 4th respondents may consider the representation of the 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:-



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“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 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



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not based on facts and hence the petition it is liable to be dismissed in limine”.

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4. In view of the paragraph No.3 extracted supra, the 2nd & 4th respondents are directed to consider the 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 date of receipt of a copy of this order. This order is applicable to the petitioner and shall not be taken as precedent in any other case.

5. With the above direction the writ petition is disposed of. No costs. Consequently, connected miscellaneous petition is also closed.

24.04.2023
(2/2)

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Index : Yes/No
Speaking Order : Yes/No



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