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W.P.No.13307 of 2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.03.2024

CORAM :
THE HONOURABLE MR. JUSTICE J.SATHYA NARAYANA PRASAD

Writ Petition No.13307 of 2012

B.Madhan

... Petitioner

Vs.

The Chairman,
Chennai Port Trust,
No.1, Rajaji Salai,
Chennai – 600 001.

... Respondent

Writ Petition filed under Article 226 of Constitution of India, praying for issuance of Writ of Certiorarified Mandamus calling for the records of the respondent in connection with the impugned order No.A2/2663/2009/T dated 30.04.2012 and quash the same and to direct the respondents to regularize the petitioner services from 06.05.2005 in the relevant scale of pay of the post held.

For Petitioner : Mr.John Zachariah

For Respondent : Mr.Arun Dhanabalan

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ORDER

The petitioner has filed this writ petition to call for the records of the respondent in connection with the impugned order No.A2/2663/2009/T dated 30.04.2012 and quash the same and to direct the respondents to regularize the petitioner services from 06.05.2005 in the relevant scale of pay of the post held.

2. The Chennai Port Trust is a Statutory Body governed by the Ministry of Shipping, Government of India under the provisions of the Major Port Trusts Act 1963. The petitioner is a Law Graduate and he joined the Chennai Port Trust. In view of his experience and knowledge of law he was posted as the Deputy Secretary (Legal) in General Administration Department from 06.05.2005 and was in-charge of the Legal division till 28.09.2009. The petitioner was posted as Deputy Secretary in General Administration Department was in pursuance to the discussions of the Chennai Port Board resolutions No.77 dated 11.02.2004 and No.183 dated



13.02.2004 wherein a decision was taken to post appropriate officers and staff with the Law Degree qualification to strengthen the said division.

Therefore the above said posting was an emergency appointment under Regulation 25(1) of the erstwhile MPT Employees' (Appointment, Promotion etc.,) Regulations 1977. While the petitioner was working as Deputy Secretary (Legal), General Administration Department he was promoted in the substantive post of a Deputy Traffic Manager (presently Senior Assistant Traffic Manager) in Traffic Department on 07.07.2007 though he continued to work as the Deputy Secretary Legal. Both the posts of Deputy Secretary Legal and that of Deputy Traffic Manager were of the same pay scale. The promotion of the petitioner was against the leave vacancy of one Mr. Jayaseelan. On 28.09.2009, the petitioner had been repatriated to the Traffic Department and was regularized as a Senior Assistant Traffic Manager on 06.11.2009. Thereafter, Mr.Kirupanandasamy, Mr.Edison and petitioner were promoted as Deputy Traffic Manager (known as Docks manager prior to RSP Regulation 2008) on 06.03.2010 on an adhoc basis and the selection was confirmed by the Departmental Promotion Committee vide its minutes dated 03.08.2010.



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3. A query raised by the Respondent to the Principal Accountant General as to the regularization of incumbents, who were promoted under Regulation 25 (1) of the erstwhile regulations (presently 28 of the RSP Regulation), when subsequently regularized, could be treated as appointments made with retrospective effect. The Principal Accountant had opined that they may be regularized, if found fit. Pursuant to this opinion, 5 persons in Finance Department and 21 others in General Administration Department have been regularized. These persons were in a similar position as the petitioner and the petitioner was eligible for regularization of service in the post of Deputy Traffic Manager from 06.05.2005. Therefore, the petitioner made an application under the Right to Information Act, calling for certain records connected with his regularization of service. The Respondent had sent a copy of the relevant pages and it became evident that petitioner had been promoted and appointed in the leave vacancy of one Mr.Jayaseelan, who was on Extra Ordinary Leave (EOL). Further it also became evident that Mr.Jayaseelan, who had been promoted to the post of Deputy Traffic Manager had declined to accept the promotion and continued to be a Senior



Assistant Traffic Manager. The Note put up by the Traffic Manager also proposed that the petitioner's adhoc services be regularized under regulation 27 of the Employees Regulations. The Respondent without considering the note put up by the Traffic Manager request that the services of the petitioner may be regularized, considered issues not germane to the regularization and with an intention to deny the same directed that a departmental Promotion Committee be held. It is pertinent to state here that an earlier departmental Promotion Committee had found that the petitioner has already been selected for the said post. Therefore, the petitioner had made a representation on 18.11.2011 requesting the Respondent to consider him for regularization. However, the Respondent has not taken any action on his representation nor have they taken any decision in this regard.

4. The petitioner had also sought for some information under the Right to Information act vide his letter dated 25.11.2011 and had sought for the details with regard to the notes that had been circulated and the actions that had been proposed. The Public Information Officer of General Administration Department vide his letter dated 29.12.2011, rejected the



petitioner's application and hence he has filed an Appeal to the Appellate authority, which was also rejected and the petitioner has approached the Chief Information Commissioner and the same is pending as on date of filing the writ petition. There are 4 regular vacancies in the Post of Deputy Traffic Manager and one under operated post of Senior Deputy Traffic Manager as Deputy Traffic Manager on regular basis as decided by the Departmental Promotion Committee in its meeting dated 03.08.2010, totalling 5 posts. This means that the post of Senior Deputy Traffic Manager, which is higher than that of a Deputy Traffic Manager is not filled up, but that post would be filled up and the work would be done by a Deputy Traffic Manager, a lower ranked Officer. This is known as "under-operated post" in the Respondent's circles. The Petitioner was functioning as a Deputy Traffic Manager from 06.03.2010 already and the Regulation 28 only permits that a person can be kept on an adhoc basis only for a maximum of one year. Besides as per the Official Memorandum dated 04.08.2004 if a person does not join the promoted post the order of promotion would become invalid and the Officer would then be considered for promotion only during the next Departmental Promotion Committee held afresh after he joins duty on expiry of his leave.



Therefore as Mr.Jayaseelan had declined his promotion and as he was on leave and having not accepted the said post he could not have been continued in the said post of Deputy Traffic Manager and Mr.Jayaseelan could have been eligible for promotion in the next Departmental Promotion Committee.

5. The two posts of Deputy Traffic Manager were already filled up against regular vacancies. The Departmental Promotion Committee held on 03.08.2010, had also selected 4 other candidates to be regularized in the balance 2 posts and the one under operated post on regular basis. Mr. Jayaseelan and Mr.Kirupananadasamy were selected as Deputy Traffic Manager and Mr.Edison was selected and posted to function in the under operated post on a regular basis. This arose as a Senior Deputy Traffic Manager, Mr.Muthu, was deputed to V.O.C. Port Trust, Tuticorin with effect from 28.08.2007 and was working there as the Traffic Manager and his post of Senior Deputy Traffic Manager was under operated as a Deputy Traffic Manager. Mr.Edison was posted in the under operated vacancy as a Deputy Traffic Manager. Mr.Jayaseelan was on Extra Ordinary Leave from March 2007, and hence the Departmental Promotion Committee decided to extend



the petitioner's adhoc services in the said post under Regulation 28 for a period of one year from 06.03.2010 or the date Mr.Jayaseelan joins, whichever is earlier. The petitioner has continued from 06.03.2010 as a Deputy Traffic Manager and even after the one year that the Departmental Promotion Committee provided for and in fact the petitioner was working in the said post for more than 2 years without a break in service. It is also pertinent to note that Mr. Jayaseelan joined and again has gone on extraordinary leave hence the petitioner is entitled to be regularized in the said post.

6. The petitioner had received a communication from the Respondent dated 30.04.2012, reverting him back to the Post of Senior Assistant Traffic Manager consequent to the repatriation of Mr.Muthu. On verification, the petitioner came to understand that the Chairman of V.O.C. Port trust had taken a decision to repatriate Mr.Muthu to the Respondent Port Trust. The Respondent therefore seems to have taken a decision to permit Mr.Muthu to rejoin the Respondent and to revert the petitioner. The Respondent had failed miserably to see that the petitioner was promoted as a Deputy Traffic



Manager in the leave vacancy of Mr.Jayaseelan and not against the under-operated post of a Senior Deputy Traffic Manager. The ostensible reason stated is that Mr.Muthu has been repatriated back to Chennai from Tuticorin and hence, he has to be placed in the said post. However, this would not arise as Mr.Muthu, not only did not take up the posting in Chennai in the forenoon, but also retired with effect from 30.04.2012 afternoon. This is because, Mr.Muthu was only relieved from the service in the forenoon of 30.04.2012 at Tuticorin. Therefore, when the alleged incumbent is not in service, giving him a posting, by reverting the petitioner back to his earlier post clearly smacks of malafides and arbitrariness. It is also pertinent to state that the Respondent did not even consider the fact that there is no vacancy in the post of Senior Assistant Traffic Manager and hence the petitioner could not have been reverted.

7. Each of the Deputy Traffic Managers have a separate Division which they are in charge of and the petitioner was in charge of the commercial division. The Senior Assistant Traffic Managers would report to



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each of the Deputy traffic Managers separately except Senior Assistant Traffic Manager (Railways) and the Respondent has not allotted the work nor the reporting schedule, which would effect the functioning of the respondent drastically. This ought to have caused a cascading effect with a Deputy Traffic Manager, being reverted to that of a Senior Assistant Traffic Manager and a Senior Assistant Traffic Manager being reverted to Assistant Traffic Manager and so on as each cadre has a sanctioned strength, which is also filled up. However, as no other person has been reverted to a lower post except the petitioner, this would clearly show the bias attitude of the Respondent. Aggrieved over the respondent order in No.A2/2663/2009/T dated 30.04.2012, the petitioner has come forward with the present writ petition.

8. The counter affidavit is also filed by the respondent on 12.06.2012. In the counter affidavit it is stated that the following candidates were appointed in the post of Assistant Traffic Manager and their inter-se-seniority was fixed as follows:

Sl.No.	Name
1.	Shri.Jimmy George



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2.	Shri.B.Vimal
3.	Shri.R.Prabhakar
4.	Shri.Jeffrey Jeyaseelan
5.	Shri.S.Kirupanandasamy
6.	Shri.G.Edison
7.	Shri.B.Madan (writ petitioner)
8.	Shri.G.Senthilkumaran

9. Learned counsel appearing for the respondent submitted that the petitioner was appointed to the post of Assistant Traffic Manager in Traffic Department vide order No. A2/14659/92/T dated 07.09.2000 and ranked 7th in the order of merit and the above said inter-se seniority had been maintained without any dispute whatsoever in the panel for promotion thereafter. As per Chairman's order No.G1/1934/2005/S dated 03.02.2005, the petitioner was posted as Officer on Special Duty (Legal) hence the Petitioner was posted in the Secretary's Department purely on working arrangement basis and as per the Order the petitioner would assist Deputy Secretary (Legal) along with AO (Legal) and will draw the same pay as he was drawing as Assistant Traffic Manager. In continuation to the above Secretary vide Order No.G1/1934/2005/S dated 19.03.2005 has informed the



petitioner that his posting as Officer on Special Duty (Legal) in Secretary's Department is purely on working arrangement basis subject to the following terms and conditions:

a. His seniority and all the service particulars will be maintained by his parent department.

b. It is mentioned for his information that this working arrangement is not a promotional avenue.

c. The working arrangement is purely on temporary basis.

d. He shall draw salary from his parent department.

e. He will not have the right for any further promotion in Secretary's department.

f. The period of service rendered by him in Secretary's department by this arrangement will bestow the claim for promotion in his parent department as per the manner of appointment of the particular promotional post in his parent department.

g. He will be directly under the control of the undersigned for grant of leave and other fringe benefits.

h. He will be relinquished from his duties in Secretary's Department



and sent back to his parent department when the administration desires without assigning any reasons.

The above temporary working arrangement to the Petitioner in the Secretary's Department is made duly protecting his seniority and other benefits in his Parent Department (Traffic Department). The above order was acknowledged and accepted by the Petitioner.

10. Learned counsel appearing for the respondent would further submit that the petitioner had a lien in Traffic Department, he was considered for promotion to the post of Deputy Traffic Manager (Pre-notified) on 07.07.2007 under Reg 25 (1) of the repealed regulations against the leave vacancy of one Senior Officer Shri.J.Jeffrey Jeyaseelan who was on EOL from 01.03.2007 to 01.03.2009 subject to condition that the promotion is purely temporary and he will be reverted to his substantive post at any time. The petitioner was promoted to the post of Deputy Traffic Manager (Pre-notified) in Traffic Department he was allowed to continue to work as Deputy Secretary Legal in Secretary's Department. The petitioner accepted the promotion to the post of Deputy Traffic Manager (pre-notified) vide letter



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dated 07.07.2007.

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11. Learned counsel appearing for the respondent would further submit that the petitioner was reverted to the post of Assistant Traffic Manager with effect from 04.04.2008 and 02.01.2009 and was again promoted as Deputy Traffic Manager under Reg 25 (1) with effect from 05.04.2008 & 03.01.2009 respectively, subject to the condition that the above ad-hoc promotion will not bestow upon him any claim for the post of Deputy Traffic Manager on a later date. Consequent to the joining of Shri.J.Jeffrey Jeyaseelan on 01.03.2009 on completion of his EOL, the Junior most Officer in the category of Deputy Traffic Manager (Pre-notified) Shri.G.Sendhil Kumaran was reverted to the post of Assistant Traffic Manager in order to accommodate the petitioner as Deputy Traffic Manager against the under operated post of CTM as Deputy Traffic Manager (Pre-notified) on 01.03.2009. Accordingly, the petitioner continued to hold the post of Deputy Traffic Manager (Pre-notified) on ad-hoc basis from 01.03.2009 against the under operated post of CTM as Deputy Traffic Manager (pre-notified). Thereafter, the petitioner was repatriated from Secretary's Department to his parent department i.e., Traffic



Department on 28.09.2009.

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12. Learned counsel appearing for the respondent would further submit that in pursuance to implementation of cadre restructuring of Class-I Officers, the ad-hoc promotion of the petitioner in the post of Deputy Traffic Manager/M(S&CFS) pre-notified) was deemed to have been extended from 03.07.2009 and the petitioner was promoted to the post of Senior Assistant Traffic Manager (the then Deputy Traffic Manager) under Reg. 27 of Chennai Port Trust (Recruitment Seniority Promotion) Regulations, 2008 on 06.11.2009 vide Order A2/530/2009/T dated 6.11.2009.

13. Learned counsel appearing for the respondent would further submit that the petitioner by letter dated 26.11.2009 has presumably stated that the posting of Senior Deputy Traffic Manager Shri.P.Muthu in the scale of pay of Rs.16000-20800 is vacant due to the said Officer's present posting as Traffic Manager, Tuticorin Port Trust and the said posting could not be filled up because of the lien given to the said officer in Chennai Port Trust. Therefore, the petitioner requested to consider and post him in the vacant posting of



Shri.P.Muthu to be under-operated in the scale of pay Rs.13000-18250.

Consequent to the implementation of Cadre Restructuring, 2 posts of Senior Deputy Traffic Manager in the scale of pay Rs.16000-20800 were created. The senior most officer in Traffic Department, Shri.P.Muthu who was on other duty as Traffic Manager in Tuticorin Port Trust on Deputation Basis was given Proforma Promotion to the post of Senior Deputy Traffic Manager (Rs.16000-20800) with effect from 06.11.2009 in order to provide a lien in the Parent Organization. The resultant vacancy of Senior Deputy Traffic Manager was kept in abeyance. However, considering the administrative exigencies, the post of Sr.Deputy Traffic Manager was under operated as Deputy Traffic Manager.

14. Learned counsel appearing for the respondent would further submit that the Departmental Promotion Committee also specifically recommended extending only the ad-hoc services of the petitioner in the post of Deputy Traffic Manager under Reg 28 to a maximum period of one year with effect from 06.03.2010 or the date of joining of Shri.J.Jeffrey Jeyaseelan, Senior Assistant Traffic Manager to the post of Deputy Traffic Manager whichever



is earlier. As per the prevailing seniority, the petitioner was the junior most officer who was holding the ad-hoc post of Deputy Traffic Manager in the category of Deputy Traffic Manager. In the meantime, Shri.J.Jeffrey Jeyaseelan has refused his promotion in the post of Deputy Traffic Manager. Shri.G.Edison, hitherto placed against the under operated vacancy has been adjusted against the regular vacancy instead of Shri.J.Jeffrey Jeyaseelan. Subsequently, the Petitioner was placed against the under operated vacancy on ad-hoc basis as decided by Departmental Promotion Committee. Hence the question pertaining to regularization of his service in the post of Deputy Traffic Manager has no relevance, since the 4 numbers of sanctioned strength in the category of Deputy Traffic Manager was filled in by promoting the seniors. The petitioner was promoted on 07.07.2007 as Deputy Traffic Manager (pre-notified) on ad-hoc basis against the leave of Shri.J.Jeffrey Jeyaseelan which is not a permanent vacancy Regularization of the services of the petitioner in the post of Deputy Traffic Manager (pre-notified) will result in 2 Officers holding one post of Deputy Traffic Manager. Therefore, the question of regularization of services of the petitioner in compliance with the opinion of the Principal Accountant General does not arise. As far as the



regularization of the petitioner's services in the post of Deputy Traffic Manager (notified) is concerned, 4 incumbents are holding the permanent posts of Deputy Traffic Manager as against the sanctioned strength of 4. Therefore, question of regularization of the petitioner in the category of Deputy Traffic Manager (notified) does not arise.

15. Learned counsel appearing for the respondent would further submit that considering the administrative exigencies, the post of Senior Deputy Traffic Manager was under operated as Deputy Traffic Manager thus resulting in increase in the number of Deputy Traffic Manager i.e. from 4 to 5: The under mentioned officers were promoted as Deputy Traffic Manager under Regulation 27 against regular vacancies in the category to the permanent post of Deputy Traffic Manager earlier to Shri.B.Madhan:

Name	Date of Promotion	Regulation
1.Shri.B.Vimal	22.10.2009	27
2. Shri.R.Prabhakar	22.10.2009	27
3. Shri.S.Kirubanandasamy	03.08.2010	27
4. Shri.G.Edison	03.08.2010	27

16. Learned counsel appearing for the respondent would further submit



that in the meantime the Chairman, V.O.C. Port Trust vide Letter No.S-4/25/2006-E.I.D.1064 dated 30.04.2012 repatriated Shri.P.Muthu to Chennai Port Trust on 30.04.2012 F.N. Consequent to repatriation of Shri.P. Muthu to Chennai Port, the under operated post of Senior Deputy Traffic Manager was revived thus the cadre strength of Deputy Traffic Manager was contracted to its original sanctioned strength of 4. The Petitioner being the junior most officer in the category of Deputy Traffic Manager holding the post on ad-hoc basis was reverted to his substantive post of Senior Assistant Traffic Manager with effect from 30.04.2012 FN. When Shri.J.Jeffrey Jeyaseelan has expressed his inability to join duty vide letter dated 23.05.2011, he was holding the post of Senior Assistant Traffic Manager and not Deputy Traffic Manager. Shri.J.Jeffrey Jeyaseelan, Senior Assistant Traffic Manager joined duty on 12.3.2012. Had the petitioner been promoted against the leave vacancy of Shri J.Jeffrey Jeyaseelan, the petitioner would have been reverted on 12.03.2012 itself consequent to Shri.J.Jeffrey Jeyaseelan joining duty on 12.03.2012. This clearly proves that the petitioner was holding the post of Deputy Traffic Manager against the under operated post of Senior Deputy Traffic Manager as Deputy Traffic Manager. Hence, it



is clear that the petitioner has not been promoted to the post of Deputy Traffic Manager on leave vacancy but he has been promoted only against the under operated post of Senior Deputy Traffic Manager as Deputy Traffic Manager and therefore subsequent to resuming duty of Shri.P.Muthu and his reversion to the incumbent post of Senior Assistant Traffic Manager is inevitable, and accordingly the administration has acted upon.

17. Learned counsel appearing for the respondent would further submit that the fact that Shri.P.Muthu should retire from his parent organization and his final settlement has to be borne by Chennai Port was confirmed by the Ministry of Shipping vide Letter Dated 09.05.2012 which states that “before Shri.P.Muthu superannuates he should join the parent organization i.e. Chennai Port Trust and his retirement benefits will have to be borne by Chennai Port Trust”. Hence the contention of the petitioner that the alleged incumbent is not in service on 30.04.2012 and the respondent should not have permitted Shri.P.Muthu to join duty on 30.04.2012 is only imaginary and is only to mislead the court which is not acceptable.



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18. Learned counsel appearing for the respondent would further submit that the Respondent at any point of time has to ensure that the working strength does not exceed the sanctioned strength. The Petitioner cannot claim regularization for the ad-hoc promotion he was holding against under operated post of Senior Deputy Traffic Manager as Deputy Traffic Manager, which was in turn a lien post of another officer i.e., Shri.P.Muthu. Now the respondent had proceeded with the task of filling up the one vacant post of Senior Deputy Traffic Manager in accordance with the regulations by a composite selection procedure.

19. Learned counsel appearing for the respondent would further submit that the order of the respondent is a fact and subject to the provisions of Chennai Port Trust Employees' (Recruitment, Service, Promotion) Regulations 2008, Directions and Circulars of the Central Government as have been adopted by Chennai Port Trust which are in force. The petitioner was promoted to the post of Deputy Traffic Manager on ad-hoc basis subject to the condition that he will be reverted to his substantive post without assigning any reasons that the petitioner has accepted the post and the



conditions stipulated in the order. Therefore, the question of accepting the reversion to his substantive post of Senior Assistant Traffic Manager does not arise.

20. As per procedures, any incumbent working in the post and due to retire in a month has to be present on the date of superannuation. Accordingly, Shri.P.Muthu, Senior Deputy Traffic Manager was present and was in the Roll of Chennai Port as on 30.04.2012. Hence, the petitioner's contention that Shri.P.Muthu having reached the age of superannuation could not function in the said post is not correct.

21. Learned counsel appearing for the respondent drew the attention of this Court to the letter given by the petitioner dated 26.11.2009 to the Traffic Manager, Chennai Port Trust. For better appreciation, the relevant portion is extracted hereunder:

"I understand that the posting of Senior Deputy Traffic Manager Shri.P.Muthu in the Scale of Pay Scale of Rs.16,000/- basic is vacant due to the said officer's present posting as Traffic Manager in Tuticorin Port Trust. I also understand that said posting could also be not filled up because of these lien



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given to the said officer in Chennai Port Trust.

Under the circumstances, I humbly request the Traffic Manager to consider and post me in the vacant posting of Shri.P.Muthu to be under operated in the Scale of Pay of Rs.13,000/- basic.”

22. Learned counsel appearing for the respondent drew the attention of this Court to another letter dated 03.08.2010 written by the petitioner to the respondent and the relevant portion is extracted hereunder:

“With reference to the order dated 03.08.2010, I thank the Chairman for extension of my adhoc service in the post of Deputy Traffic manager. I accept the above order with the conditions stipulated and I assure you, Sir, that I will bestow my full efforts to discharge the duties and responsibilities assigned to me.”

23. Learned counsel appearing for the respondent would further submit that according to the service details of Shri.P.Muthu, he was promoted to the post of Traffic Manger on 31.12.1988, whereas the petitioner was promoted to the post of Deputy Traffic Manager on 05.04.2008. Hence, it is crystal clear and evident that Shri.P.Muthu is senior than the petitioner.



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24. Heard the learned counsel on either side and perused the materials available on record.

25. The petitioner was posted as Deputy Secretary in General Administration Department from 06.05.2005 and was incharge of legal division till 28.09.2009. While the petitioner was working as Deputy Secretary (Legal), General Administration Department, he was promoted in the substantive post of a Deputy Traffic Manager (presently Senior Assistant Traffic Manager) in Traffic Department on 07.07.2007. The petitioner continued to work as the Deputy Secretary Legal and both the posts of Deputy Secretary Legal and that of Deputy Traffic Manager were of the same pay scale.

26. The petitioner ranked 7th in the order of merit for the post of A.T.M in Traffic Department, Chennai Port Trust as on the date of appointment on 07.09.2009 the petitioner was posted as Officer on Special Duty (Legal) and



hence the Petitioner was posted in the Secretary's Department purely on working arrangement basis subject to the following terms and conditions:

a. His seniority and all the service particulars will be maintained by his parent department.

b. It is mentioned for his information that this working arrangement is not a promotional avenue.

c. The working arrangement is purely on temporary basis.

d. He shall draw salary from his parent department.

e. He will not have the right for any further promotion in Secretary's department.

f. The period of service rendered by him in Secretary's department by this arrangement will bestow the claim for promotion in his parent department as per the manner of appointment of the particular promotional post in his parent department.

g. He will be directly under the control of the undersigned for grant of leave and other fringe benefits.

h. He will be relinquished from his duties in Secretary's Department and sent back to his parent department when the administration desires



without assigning any reasons.

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27. The petitioner by letter dated 26.11.2009 has stated that since the post of Senior Deputy Traffic Manager Shri.P.Muthu in the scale of pay of Rs. 16000-20800 is vacant due to the said Officer's present posting as Traffic Manager, Tuticorin Port Trust and the said posting could not be filled up because of the lien given to the said officer in Chennai Port Trust. Therefore, the petitioner requested to consider and post him in the vacant posting of Shri.P.Muthu to be under-operated in the scale of pay Rs. 13000-18250 and it is pertinent to extract the above letter dated 26.11.2009 submitted by the petitioner and the same is reads as follows:

“I joined the services of the Port as Assistant Traffic Manager on 13.09.2000 in the Scale of Pay of Rs.9100/- basic. I have been posted as OSD (Legal) on 04.02.2005 in Secretary's department and reposted as Dy. Secy (Legal) Chairman's order dated 06.05.2005 in the Scale of Pay of Rs.10,750/- basic. In the mean time, I have been promoted as Sr.Asst.Traffic Manager based on the lien of my service with Traffic department.

I have been repatriated to Traffic department in the designation of Sr.Asst.Traffic Manager w.e.f. 28.09.2009. In all the above postings, I have been discharging my duties and responsibilities in a diligent and sincere manner. As I have



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completed more than four years of service in the Scale of pay of Rs.10750/- basic, at present I am qualified for consideration of the next higher level of Scale of Pay and posting.

I understand that the posting of Sr.Deputy Traffic Manager Shri.P.Muthu in the Scale of Pay Scale of Rs.16,000/- basic is vacant due to the said officer's present posting as Traffic Manager in Tuticorin Port Trust. I also understand that said posting could also be not filled up because of these lien given to the said officer in Chennai Port Trust.

Under the circumstances, I humbly request the Traffic Manager to consider and post me in the vacant posting of Shri.P.Muthu to be under operated in the Scale of Pay of Rs.13,000/- basic.”

28. The senior most officer in Traffic Department, Shri P.Muthu who was on other duty as Traffic Manager in Tuticorin Port Trust on Deputation Basis was given Proforma Promotion to the post of Sr. Deputy Traffic Manager (Rs.16000-20800) with effect from 06.11.2009 in order to provide a lien in the Parent Organization. The resultant vacancy of Sr. Deputy Traffic Manager was kept in abeyance. However, considering the administrative exigencies, the post of Senior Deputy Traffic Manager was under operated as Deputy Traffic Manager. As per the prevailing seniority, the petitioner was the junior most officer who was holding the ad-hoc post of Deputy Traffic



Manager in the category of Deputy Traffic Manager. Since the 4 numbers of sanctioned strength in the category of Deputy Traffic Manager was filled in by promoting the seniors. The petitioner was promoted on 07.07.2007 as Deputy Traffic Manager (pre-notified) on adhoc basis against leave of Shri.J.Jeffrey Jeyaseelan which is not a permanent vacancy Regularization of the services of the petitioner in the post of Deputy Traffic Manager (pre-notified) will result in 2 Officers holding one post of Deputy Traffic Manager. Therefore, the question of regularization of services of the petitioner is not feasible. In regard to the above promotion, the petitioner has also addressed a letter dated **03.08.2010** to the respondent and the same is extracted hereunder for better appreciation and understanding.

“With reference to the order dated 03.08.2010, I thank the Chairman for extension of my adhoc service in the post of Deputy Traffic manager. I accept the above order with the conditions stipulated and I assure you, Sir, that I will bestow my full efforts to discharge the duties and responsibilities assigned to me.”

29. Hence, it is clear and evident that the petitioner has not been promoted to the post of Deputy Traffic Manager on leave vacancy but he has



been promoted against only as the Senior Deputy Traffic Manager as Deputy Traffic Manager and therefore resuming duty of Sri.P.Muthu and his reversion to the incumbent post of Senior Assistant Traffic Manager is inevitable and the action of the administration in this regard is correct. Sri.P.Muthu reported to the Chennai Port Trust in the afternoon on 30.04.2012 and the respondent permitted him to join duty in the revert post of Senior Deputy Traffic Manager subsequent to the grant of E.O.L to Mr.Jeffri.Jayaseelan from 20.04.2012 to 15.05.2013 one vacant arise in the category of Senior Assistant Traffic Manager on 24.04.2012. Therefore, the petitioner is the junior and was reverted to his substantive post on 30.04.2012 forenoon.

30. The reversion of petitioner to the post of Senior Assistant Traffic Manager was made to accommodate the incumbent in the post of Senior Deputy Traffic Manager and the petitioner was promoted to the post of Deputy Traffic Manager only on adhoc basis subject to condition that he will be reverted to his substantive post without assigning any reason and the petitioner accepted the post and conditions stipulated in the order. As per the



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procedure, the incumbent working in the post and due to retire in the month of superannuation to be present. Accordingly, Shri.P.Muthu was present on 30.04.2012. It is pertinent to note that the petitioner was holding only adhoc promotion as against the under operated post of Senior Deputy Traffic Manager as Deputy Traffic Manager, which was a lien post of another officer Shri.P.Muthu. Hence, the petitioner cannot claim regularization in the services with effect from 06.05.2005 in the relevant scale of pay of the post held by the petitioner.

31. In view of the above factual matrix of the case, the order passed by the respondent in No.A2/2663/2009/T, dated 30.04.2012 does not warrant any interference by this Court and the same is hereby confirmed.

32. In the result, this writ petition stands dismissed. No costs.

28.03.2024

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Speaking Order : Yes/No
Neutral Citation : Yes/No

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To:

The Chairman,
Chennai Port Trust,
No.1, Rajaji Salai,
Chennai – 600 001.

J.SATHYA NARAYANA PRASAD,J.

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