



W.P.No.10907 of 1998

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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RESERVED ON
13.12.2023

PRONOUNCED ON
26.02.2024

CORAM:

THE HON'BLE MR.JUSTICE K.KUMARESH BABU

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Tuticorin Port Trust Democratic Staff Union,
Affiliated to CITU,
Represented by Secretary,
P.Sampath, No.16,
Masilamanipuram,

IIIrd Street, Toothukudi – 628 008.

... Petitioner

Vs

Tuticorin Port Trust
Tuticorin,
Represented by its Chairman,
Tuticorin – 4.

... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus directing the respondent to absorb the Departmental Canteen Workers, Port of New Tuticorin with all consequential benefits including regular pay scales and other benefits with effect from and render justice.



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For Petitioner : Ms.R.Vaigai
Senior Counsel
for Mr.V.Ajay Khose

For Respondents : Mr.Abdul Saleem,
Senior Counsel
for Mr.Anand Abdul Vinoth

ORDER

This Writ Petition has been placed on Board pursuant to the order of remand made by the Hon'ble Apex Court in the judgment reported in 2019 (5) SCC 587.

2. Heard Ms.R.Vaigai, learned Senior Counsel for Mr.V.Ajay Khose, learned counsel appearing on behalf of the petitioner and Mr.Abdul Saleem, learned Senior Counsel for Mr.Anand Abdul Vinoth, learned counsel appearing on behalf of the respondents.

3. The learned counsel for the petitioner would submit that the canteen was established in the year 1973, pursuant to the proceedings of the



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then Chief Engineer and Administrator. The said Authority had accorded sanction for the formation of the Departmental Canteen in Tuticorin Harbour Project. A committee was also nominated by the said Authority consisting of seven persons. She would further contend that the Management of the canteen was directly managed under the Port Trust Management Committee and when the Tuticorin Port Trust was declared as a major Port, it was directly under the control of the Chairman. The canteen had always been managed by the Committee that had been nominated by the Management of the Port Trust. However, the canteen workers were not included in the schedule of staff of Port under Section 23 of the Major Port Trust Act, 1963. Therefore, the service conditions of the canteen workers were also not governed by the Port Regulations. She would further submit that the canteen had been established as a departmental canteen in the year 1973 and therefore, the canteen is a part and parcel of the Port Trust administration. She would submit that the facility of the canteen had become a part and parcel of the service condition and welfare of the employees of the Port. In that aspect, she would refer to 12(3) Settlement that had been arrived at by the Management and the Union. She would also



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contend that it is a statutory obligation on the part of the Management to establish a canteen in view of the settlement apart from the provisions of the Factories Act which provides for the mandatory canteen.

4. She had made various factual submissions relying upon various documents which are tabulated as follows:-

DATES	EVENTS
101773	Sanction was accorded for establishing a departmental canteen and also the Management Committee was appointed by the Chief Engineer and Administrator of the Port Trust.
111073	The Patron/Chief Engineer cum administrator has issued orders to inform all the officers and members of the regular and work charged staff of the project regarding the decision to establish a departmental canteen. Additionally, in the order, it has been stated that all employees are required to contribute a sum of Rs. 25/- or its equivalent on a recurring basis. Correspondingly, the order also emphasizes the timely repayment of any loans taken.
111973	The Chief Engineer and administrator have drafted a formal communication addressed to the District Collector, Tirunelveli, informing that a departmental Vegetarian Canteen will be ceremoniously inaugurated in the Harbour Project campus area on November 21st, 1973. Furthermore, the aforementioned correspondence highlights that the establishment of this canteen aligns with the recommendations of the pay commission, affirming the importance of providing such amenities as a welfare measure for workers and staff. The canteen is expected to serve a total of 750 individuals, including officers, staff,



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	and workers. To effectively fulfill the dietary needs of these individuals through the departmental canteen, <u>it is requested that two bags of sugar, two bags of sooji (Rava), and two bags of maida be supplied on a monthly basis.</u>
112173	The circular has been issued by the Secretary regarding the inaugural ceremony of the departmental canteen, which is scheduled to take place at the canteen premises on November 21, 1973, at 6.00 P.M.
031374	In compliance with the official letter from the Ministry of Shipping & Transport, numbered 11-PGB(22)/73 and dated 31.1.1974, the Chief Engineer & Administrator of Tuticorin Harbour Port has issued an order to the Government of India. This order authorizes the withdrawal of a sum of Rs.5,000/- (Rupees Five Thousand only), which will be designated as an outright grant. The grant is to be paid to the Tuticorin Harbour Project Departmental Canteen.
110476	The District Collector of Tirunelveli has approved the monthly allocation of two bags of levy sugar for the departmental canteen associated with the Port. This approval is in response to a request made by the Chief Engineer and Administrator of the Port of New Tuticorin. The Collector of Tirunelveli has now requested the Tahsildar of Tuticorin to arrange for the necessary provision of the mentioned supply. <u>The two bags of levy sugar</u> are to be delivered to the Chief Engineer and Administrator at the Port of New Tuticorin located in Tuticorin-4. The delivery should be made at the prevailing rates for consumers.
123075	The Chief Engineer and Administrator of the Port of New Tuticorin, in their capacity as patron of the Departmental Canteen, has issued an Order nominating an officer of the port as director of the canteen. The Chief Engineer and



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	Administrator of the Port of New Tuticorin is pleased to nominate Shri. V. Arumugam , S.A.S. Accountant from the F.A. & C.A.O's office, Port of New Tuticorin, as the director of the Departmental Canteen.
011176	The announcement has been made by the Chief Engineer and Administrator of the Port of New Tuticorin regarding the implementation of the recommendation made by the esteemed High Power Committee on Canteens. In accordance with the decision of the Government of India, a management committee will be established for the Departmental Canteen at the Port of New Tuticorin.
011676	The Secretary of the PNT(Port of New Tuticorin) Departmental Canteen has formally requested a subsidy grant to cover the necessary expenses for the years 1973-74 and 1974-75. In addition, they have provided the appropriate receipts and statements detailing the charges incurred by the canteen from November 1973 to March 1975. The claim made by the Secretary of the PNT Departmental Canteen has been carefully reviewed in accordance with the relevant orders issued by the Government of India, as documented . According to the Home Affairs orders outlined in No.7/47/63-W-11, dated 10-12-64, it is possible to reimburse the Departmental Canteen for 50% of the wages paid to the canteen employees, as well as the value of the food provided or a cash allowance granted as a substitute for it.
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	Order issued by the President of the Port of New Tuticorin, appointed an individual named Muthiah as a temporary cook with a monthly salary of Rs.99. The salary is based on a pay scale of Rs.77-5 87-6-117-EB-7-152-8-192. It is important to note that the appointee is eligible to receive additional allowances as per the rates set by the Government of India. Moreover, the appointment order highlights certain terms that the appointee must adhere to. Overall, this appointment order signifies the official recognition of Mr. Muthiah as a temporary cook at the Port of New Tuticorin. The order establishes his entitlement to a specific salary and additional allowances, as well as the obligation to comply with certain terms.
123076	The Letter has been sent from the Secretary of the Tuticorin Port Departmental Canteen to the Principal of the Institute of Catering Technology and Applied Nutrition, to request details of the training program offered by the institute for the purpose of training their canteen staff. Furthermore, the letter mentions that the departmental canteen has been in operation since 21.11.1973 and, therefore, the pay scale and other regulations pertaining to the staff of the P.N.T. Departmental Canteen are governed by the orders issued by the Government of India. Additionally, it is clarified that the canteen is classified as an A type canteen in accordance with the regulations set by the Government of India. It functions on a non-profit basis, with the sole objective of promoting the well-being of the staff, officers, and employees of the Port of New Tuticorin. As a result, the remuneration structure and regulations for the staff of the P.N.T. Departmental Canteen are subject to the directives and guidelines issued by the Government of India on an ongoing basis.
011877	The principal of the Institute of Catering Technology and Applied Nutrition has replied regarding the deputation of canteen staff for training. They have enclosed the syllabus for the Condensed Course in Food Service Management,



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	which lasts for 3 months and costs Rs. 500. They have also included the syllabus for the Cookery Course, which lasts for 6 months and costs Rs. 271 per candidate. The Information Bulletin, which provides details about the courses offered at the institute, is also enclosed.
012077	Order issued by the chief engineer stating that the port canteen will be provided space in the administrative office buildings after construction. Due to limited floor area in the initial stage, it may not be possible to accommodate the canteen. The staff strength in the building is currently less than 1000. The canteen will be provided space in the final stage of construction. Ref: PNTC/76/dated 24.1.1976.
031377	In regards to the provision of the Godrej Store well steel cupboard to the canteen at Tuticorin Port Department, referring to the Quotation No. F-5/3291 dated 21.2.1977 a letter has been received from M/. S.R.S. Bros of Madurai, addressed to the Chief Engineer and Administrator of the Port of New Tuticorin, had confirmed their willingness to supply item No. 3 as stated in the quotation. The specific item is the Godrej Storewell Steel Cupboard Model U, with dimensions of 78 36 W x 19ND, including four adjustable shelves. The quoted price for this item is Rs. 681-12.
14. 17.05.1977	An official order has been issued by the Chief Engineer and Administrator of the Tuticorin Port Trust regarding the application of lead coating on the cooking vessels of the Tuticorin Port Departmental Canteen. This order is in response to the Assistant Commandant /CISF letter No.PR-13099 PNT/77/78 dated 5-5 1977. It has been decided that



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	arrangements will be made to apply lead coating on the 7 Brass Cooking Vessels.
052377	The Financial Advisor has issued an order to deposit a duplicate key of the Cash Chest in the Departmental Canteen of the Port of New Tuticorin. In accordance with your letter No.PMTC/77/21.5.77, the duplicate key No.62 of the cash chest in the departmental Canteen of the Port of New Tuticorin is being stored in the office of the Financial Adviser and Chief Accounts Officer for secure safekeeping.
072177	An official order has been issued by the Deputy Conservator to the Port Canteen, instructing them to provide coffee and tea to the employees working in the floating crafts at their workplace during their scheduled shift. The order highlights that the staff working in the Floating Crafts currently have to walk a long distance of almost 1 kilometer to the wharf canteen in order to have a cup of coffee. As a solution, it was suggested during a staff council meeting that the Departmental Canteen could supply coffee during the morning and evening working hours, without disrupting the productivity of the staff. Therefore, it is kindly requested that a thorough examination be conducted to evaluate the feasibility of supplying coffee from the departmental canteen to the staff members working in the floating crafts. Subsequently, please communicate the findings to the office.
080177	The Ministry of Shipping kindly requests the Secretary of the Port of New Tuticorin to provide a response to the Audit paras. Enclosed herewith is an extract of the audit inspection paragraph concerning the Departmental Canteen of the Port of New Tuticorin. The Secretary of the PNT Departmental Canteen is hereby requested to submit their reply to this office no later than August 8th, 2017 for further necessary action.



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011178

The Ministry of Shipping has sent a letter informing the establishment of the Management Committee for the Port of New Tuticorin Departmental Canteen. This action is taken in accordance with the Government of India's decision regarding the recommendations of the High Power Committee on canteens. The Chief Engineer and Administrator of the Port of New Tuticorin have appointed the Management Committee for the departmental canteen, and a list of its members can be found on page 52.

061878

The President of the Port of New Tuticorin, in accordance with the powers vested in him, hereby issued an official Appointment Order appointing Mr. K. Paramasivam as a Counter Clerk Cum Salesman in the Port of New Tuticorin Departmental Canteen, on a temporary basis, effective immediately. Further affirmed that The salary for this position is Rs.80.00 in the scale of Rs.80-4-104-5 125-6-125-EB-7-200. The appointee will also receive Dearness and other allowances as per government rates.

092980

Appointment Order issued by the President of the Port of New Tuticorin to P. Selvaraj as Counter Clerk Cum Salesman, with a specified salary and allowances as per government rates. Shri P. Selvaraj is appointed as Counter Clerk cum Salesman in the Port of New Tuticorin Departmental Canteen on a temporary basis at a pay of Rs. 80.00 in the scale of 80-11-100-5-125-6-155-7/2-200. The appointee is entitled to Dearness and other allowances as per government rates.

122282

The Tuticorin Port Trust has made an order to the Port Trust Canteen for the provision of high-quality food within the canteen premises.

081183

An official directive has been issued by the Chairman of Tuticorin Port Trust pertaining to several matters including the examination of financial records, resolution of



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	employee complaints, unannounced audits, and maintenance of order in the Canteen. Following a thorough evaluation of the Port Canteens operations, the Chairman, who serves as both the head of Tuticorin Port Trust and the Patron of the Port Canteen, has outlined the following guidelines. 1. The Managing Committee must convene on a monthly basis to address relevant issues. 2. Prior to each monthly meeting, Mr. K. Subbiah, a member of the Committee, along with Mr. R.S.T. Chari, the Treasurer, will jointly review the Canteens financial accounts and present them to the Committee. 3. The employees representatives are required to submit their grievances in advance for discussion and resolution, at least once a month. 4. The President, Vice-President, Secretary, and Treasurer will each conduct a surprise inspection independently once a month in order to promote discipline.
081683	The Chairman of Tuticorin Port Trust conducted an unannounced inspection of the Harbour Colony canteen. The manager, Sri Pandey, was not present initially but arrived later. The cashier was in attendance. It was noted that improvements in cleanliness are required before the canteen can commence operations. Repairs to the kitchen are also necessary, including the establishment of separate storage areas for firewood and coconut husks to ensure safety. The kitchen floor is in a poor state with inadequate drainage. Additionally, the store room should be organized as the current storage of rice bags outside is not sufficient. During a stock check of rice and sugar, it was discovered that there was a shortage of 8/4 kilos, following the use of 20 kilos for tiffin and 9 kilos for meals. Furthermore, while reviewing vouchers, it was noticed that there was an expense of Rs.14/- for the travel of two individuals to Tuticorin, in addition to bus charges. It has been noted that the Committee must establish a uniform daily stipend to circumvent varied amounts. Furthermore, the van fees of Rs.65/ and the Rs. 40/ for merchandise handling have



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	captured the chairman's attention. In order to mitigate this recurring expenditure, it is advisable to establish monthly arrangements or implement provisions for direct delivery to the Canteen. Additionally, the exorbitant charges for cooly services necessitate raising this matter during the management committee meeting to reach a resolution.
092083	The President of the Port Trust Canteen Management Committee has submitted their response to the Chairman's letter dated 16.08.1983, seeking clarifications.
052887	The Letter has been sent requesting the Management Committee to discuss the allocation of a new building at Additional Berth for the Tuticorin Port Canteen sent by the traffic manager of the Tuticorin port trust. The president of the canteen was inquired to meet with the Financial Adviser and chief Accounts Officer for further discussion on the matter.
053088	The Chairman of Tuticorin Port Trust has nominated Shri K Paramasivan, Assistant Manager, Canteen, as an additional member of the Canteen Management Committee. This nomination is in continuation of the previous office order dated 31.3.1988. Shri K Paramasivan will represent the employees of the canteens on the Executive Committee, starting immediately.
041690	The committee was reconstituted by the Chairman, Tuticorin Port Trust on 16.4.1990 as listed on Page N0. 68.
041092	The Chairman's records on the reformation of the Port Trust Canteens Management Committee, effective from April 1, 1992. Page No.69
120694	Copy of the 12(3) Settlement between the Federations of Employees and Major Ports and Dock Labour Boards, regarding wage revision from 01.01.1993 for 4 years.



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	Memorandum of Settlement reached during conciliation proceedings on 6 December 1994 under Section 12(3) of the Industrial Disputes Act, 1947, before Shri Surendra Nath, Chief Labour Commissioner (Central), New Delhi. Resolves industrial dispute raised by five federations in Major Ports and Dock Labour Boards such as Bombay, Calcutta, Madras, Visakhapatnam, Cochin, Mormugao, Kandla, Paradip, Tuticorin, New Mangalore, and Jawaharlal Nehru Port regarding wage revision demands. Unions affiliated to live federations at various major ports and dock labor boards issued strike notices against the respective port chairmen for wage revision. The dispute was taken up for conciliation by the relevant officers, while management and unions held bilateral discussions. Further the Agreements were reached and parties requested Chief Labor Commissioner for conciliation before final settlement. Conciliation took place in Mumbai on December 6, 1994. After lengthy discussions, they agreed to sign a Memorandum of Settlement under the Industrial Disputes Act, 1947. And the terms of the settlement had been listed on Page No: 72
DATE NOT SPECIFIED	Relevant Portion of the Dock Workers (Safety, Health and Welfare) Scheme, 1961, regarding canteen provision. If more than 150 dock workers are employed, there must be a canteen in or near the dock that is always open when 25 or more workers are present. The Port Authority needs to get plans approved for constructing or adapting a canteen building. Mobile canteens with tea and light refreshments should also be available. The Central Government may set standards for the canteens accommodations and catering facilities.
081895	The Board of Trustees of Tuticorin Port Trust, in the Minutes of the Meeting No. 3, has expressed their agreement in principle to incorporate the Canteen Employees into the Tuticorin Port Trust workforce, thereby regularizing their employment.
021501	



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	The Proceedings of the President of Tuticorin Port Trust Canteen state that the Chairman of Tuticorin Port Trust has approved bearing the cost of gas connection for the Canteen from the Port Funds. Additionally, the approval has been given for repairs, whitewashing, and installation of gas connection through the Port's Civil Engg. Department. Further in Resolution No.11 It is proposed to give Gas connection to all canteens in order to modernise the kitchen and to maintain the same in a hygienic way. This was discussed with the Chairman, the President and Secretary. Members welcomed the idea and requested the President and Secretary to initiate action to give gas connection.
061601	Minutes of the Tuticorin Port Canteen Meeting regarding the age of retirement adjustment for Canteen Employees, aligning it with that of Port Employees by reducing it from 60 years to 58 years. The President welcomed the Management Committee and discussed the recent activities of the Port Canteen. The new canteen premises are being renovated and are expected to open in July 2001. The Port Management approved funds for gas connections in various canteens. Gas connections have been installed in the VOC wharf canteen (new), additional berth, and office canteen. The gas connection for the estate canteen has not been started as the decision was made to privatize it.
100402	Registration Certificate issued by the Assistant Registering Authority for the Canteen vehicle purchased under the Chairman of Tuticorin Port Trust.
111103	Minutes of the 6th Meeting of the Tuticorin Port Canteen Management Committee on 11.11.2003. Office bearers and members were present. Committee discussed procedures for disciplining canteen employees, with the Chairman as



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	the appellate authority. MINUTES CONFIRMED: The committee approved the minutes of the last meeting held on 14.10.2003. SALES AND EXPENDITURE REVIEW: The committee discussed the sales and expenditure for 2003. The President directed the purchase committee to align future purchases with sales. The Deputy General Manager of the Canteen was instructed to reduce gas consumption at the Wharf canteen. Shortage in stores discussed by Assistant Manager: Accounting system to be established for recovering shortage amount from pay bill. Store Keeper, counter clerks, and employees handling materials in stores to refund store. Committee orders investigation of irregularities and fixes responsibility. Committee also decides to refund earlier recovered amount to employees. Recovery system to be implemented from November 2003 onwards. No correct taking/handing over procedure present then. The canteen employees were given a recoverable advance of Rs 500/- as bonus. The Administration Department returned the proposal for reimbursement of Rs.81,700/- for the construction of a building above the canteen complex, but it was decided to clarify the points raised and resend the request for reimbursement.
070504	The Minutes of the Meeting of Tuticorin Port Trust Committee, on Management Canteen's external Auditor appointment, Canteen employee pay revision, and regularization of NMR employees, approved by the Chairman of Tuticorin Port Trust. The President announced that an external auditor will be engaged for the Canteen Committee. Therefore, when disposing of old records, caution must be taken and no document or account paper



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	should be destroyed or removed without proper analysis. The file on recommendations for employee pay revision has been with the FA & CAO, TPT for over a year. The Committee requests Mr. D.Dayalan, JAO to expedite clearance from the Accounts Department for a timely decision by the Chairman, TPT.
090704	A letter has been sent from the Superintendent of the WHARF to the Deputy Traffic Manager of the CHNP to address the need for a cashier and the supply of snacks during night shifts in the WHARF area, as there is a lack of eatables available at the VOC Canteen. The DTM (CHLP) has been informed that there is a recurring issue of a shortage of food available at the VOC Wharf Canteen during night shifts. This has led to problems with the laborers and marine staff, who are threatening to halt work and vessel movement. They have requested biscuits and mixture to eat during the night shift, but only tea is being offered. Additionally, there is no cashier present during the night shift and the suppliers and tea masters are unable to address this issue, claiming it is not their responsibility. Therefore, the request has been made for one cashier to be assigned during the night shift and for biscuits, mixture, and other light food to be provided in order to prevent any labor issues.
111604	Minutes of Tuticorin Port Trust Canteen regarding gifts for committee members, employee bonuses, and procurement of new utensils approved by the Chairman. GIFTS TO COMMITTEE MEMBERS: President announced that the Chairman granted permission for gifts up to Rs.700 per member of the previous Committee. Eligible members should submit vouchers/bills for this amount to the Secretary by November 30, 2004. BONUS TO EMPLOYEES: President also mentioned that the Chairman approved giving 72 days pay as bonuses to



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	eligible canteen employees. The Treasurer was instructed to arrange for the payment of this bonus before the Diwali festival. NEW UTENSILS FOR PORT CANTEEN: The Canteens GM informed the Committee that all old utensils needed to be replaced and a few additional items should be procured. The estimated cost for this was approximately Rs.30,000. It was decided to procure them in phases at a rate of Rs.5,000 per month. The GM will identify urgently needed items and proceed with the procurement accordingly.
122205	Letter from the Assistant Traffic Manager to the Manager of the Port Canteen regarding prompt and timely food supply. Inspection on Dec 22, 2005 showed late delivery of tiffin from Port Canteen to CHLP workers at VVI berth during designated meal break. Canteen officials arrived at 08:20, causing delay. Some workers had breakfast at canteen outside Green Gate, impacting vessel operations with decreased productivity and increased idle time. We request arrangements for delivering tea and tiffin to TPT/CHLP workers at the VIII berth and Shallow Water Berth during their meal breaks (I shift - 08:00 to 08:30, II shift - 18:00 to 18:30, and III shift - 02:00 to 02:30) to avoid delays in operations.
031606	The Canteen Committee has recently forwarded a proposal to the Management seeking approval for the revised and increased prices of food items. This proposal is intended to be considered by the Chairman of the Port Trust.
072106	The following excerpt is extracted from the official minutes of the Board of Tuticorin Port Trust meeting, during which a request was made to incorporate the canteen employees as Port Employees in compliance with the directives initially issued in this writ petition.
041007	Pursuant to the authority vested in the Chairman of the Tuticorin Port Trust, an order has been issued to



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	reconstitute the Canteen Management Committee for a duration of one year, until 31.03.2008. This reconstitution has been made in accordance with the provisions outlined in the constitution of the Tuticorin Port Canteen Management Committee.
010108	The document presents a comprehensive chart containing the names and detailed service information of the Tuticorin Port Trust Canteen Employees, as per the data recorded on January 1st, 2008. This version is devoid of any errors or inconsistencies.
082010	The agreement, referred to as the 18(1) settlement, was reached between the Chennai Port Trust Industrial Employees Co-operative Canteen and their employees. This deal pertains to the revision of wages and other terms and conditions of employment for a period of five years, spanning from 1st January 2007 to 31st December 2011.
022411	The Ministry of Shipping's official document authorizes the merger of Tuticorin Port Trust Cargo Handling Labour Pool (CHLP) with Tuticorin Port Trust. This approval also entails the establishment of 993 positions and the determination of responsibility for disbursing pension payments to 972 pensioners. Please provide a revised version of this text without any errors.
090611	This document contains the proceedings of the Chairman of Tuticorin Port Trust, reflecting his official pronouncement during the Independence Day festivities. The matters discussed include the enhancement of the Canteen facilities and the regularization of employment for six Non-Maintenance Roll (NMR) employees.
093011	The Chairman of the Tuticorin Board Trust has approved the regularization of services for 6 NMR workers at the Tuticorin Port Trust Canteen, including Time Scale of Pay and all other eligible allowances.
111911	The Tuticorin Port Trust Canteen Management Committee has proposed the regularizing of six NMR employees in the Canteen to the Chairman of the Tuticorin Trust Board. The approval of the Chairman of the Tuticorin Trust Board is necessary, and the endorsement has been made by the Chairman.



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090313	The minutes of the meeting held on 30.08.2013 between 5 recognized unions, including the Petitioner Union and the Port Trust Management, have been documented. The meeting discussed various issues, including the demand made by the Petitioner Union to revise the pay scales of the Canteen Employees to match the payment given to regular employees of the Port. However, the Port management, citing the pending appeal before the Hon'ble Supreme Court and considering the matter as subjudice, declined to resolve the issue regarding the above demand permanently. Instead, they agreed to provide a temporary salary increase to the Canteen Employees.
022314	The agreement made between the Chennai Port Trust Industrial Employees Co-operative Canteen and their employees, concerning the revision of wages and other terms of employment for a duration of five years, starting from January 1, 2012, until December 31, 2016.
120418	Chennai Port Trust has issued an order to effectively implement the directives of the esteemed Supreme Court. The order entails the incorporation and designation of the personnel of Chennai Port Trust Employees Co-operative Canteen as direct employees of Chennai Port Trust. In accordance with the Order of the Honourable Supreme Court dated 04.10.2018 in RP Civil No.3101 of 2018 in Civil Appeal No.1381 of 2010 filed by Chennai Port Trust and in compliance with the Order of the Honourable High Court of Madras dated 24.08.2005 in WP No.6872 of 2001, the CHPTIECC Employees listed in the attached document are considered as direct employees of Chennai Port Trust. However, any additional benefits and concerns will be handled in accordance with the regulations and procedures of Chennai Port Trust.
051419	Order issued by The President of the Tuticorin Port Trust Canteen Management Committee to the Bank, stating that the two officers selected by the Chairman of the Tuticorin



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	Port Trust will jointly serve as the Secretary and Treasurer of the Canteen Committee, and will therefore handle the Canteens SB Account with the Bank.
DATE NOT SPECIFIED	In a letter, the Secretary of the Tuticorin Port Trust Canteen requests information regarding the salary structure used by the Departmental Canteen operated by Heavy Water Plant in Tuticorin. The purpose of obtaining this information is to apply the same salary structure, as per the decision made by the Canteen Management Committee, to employees of the Tuticorin Port Trust Canteen, aligning it with the scales of pay available to Central Government Departmental Canteens.
092920	During the meeting of Tuticorin Port Trust Canteen, the General Secretary of the Petitioner Union expressed disagreement with certain members of the Canteen Management Committee who wanted to register the Canteen under the Societies Act. The General Secretary informed that the current system will remain in place until the writ petition is resolved by the Court.
100720	A printed document sourced from the Employees Provident Fund Organizations official website showcases the payment of Provident Fund contributions for September 2020 to the employees of Tuticorin Port Trust Canteen. The document identifies the canteen as the Departmental Canteen of Tuticorin Port Trust since 1998.
103120	This chart displays the names and service particulars of the individuals affiliated with Tuticorin Port Canteen who have passed away during their service, those who have retired from their service, and those who have passed away following their retirement within the period of 27th August 1998 to 31st October 2020, he retired, and those who passed away after retiring
110120	The enclosed chart presents the names and service details of employees currently employed at Tuticorin Port Canteen.
DATE NOT SPECIFIED	The provided chart illustrates the Subsidy/Grant provided



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by the Tuticorin Port Trust Management, which has been revised periodically starting from 04.04.1996 until the present day. It serves the purpose of covering establishment costs, alongside the provision of existing free space and other facilities.

5. She would submit that the said facts, which the respondents have also admitted, would only conclude that the canteen workers are in fact the workers of the Port Trust. She would further submit that in similar circumstances in respect of the Chennai Port Trust, the very same learned Single Judge had declared that the regular and permanent employees of the canteen to be treated as the direct employees of the Chennai Port Trust. She would further submit that the said judgment had been confirmed by the Division Bench of this Court as well as the Hon'ble Apex Court in the judgment in the case of ***Chennai Port Trust Vs Chennai Port Trust Industrial Employees Canteen Workers Welfare Association and others*** reported in ***2018 (6) SCC 202*** on merits. Hence, the petitioners who are also on the same platform as that of the canteen workers of the Chennai Port Trust, are also entitled to a similar relief.



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Countering her arguments, Mr.Abdul Saleem, learned Senior Counsel for the Tuticorin Port Trust would submit that the canteen workers of the respondent/ Port Trust were not direct employees of the Port. He would submit that the said canteen was established by a group of workers. Of course the same had been supported by the Port Trust, as it was beneficial to its employees. He would further submit that the Rules framed by the canteen Management Committee are not subjected to the prior or post approval of the Chairman of the Board. He would submit that the nomination of the canteen Management Committee by the Chairman was only a matter of patronage and that would not entitle the petitioner to claim that the canteen itself to be managed by the Chairman of the Port Trust. He would further submit that there is no separate provision for expenditure of canteen in the Port Trust budget, but the same is made only under the head of “Expenditure of Labour and Welfare”. He would further submit that the Canteen Management committee pays its rent to the Port on monthly basis which itself would show that the canteen is not run by the Port Trust, but by the Canteen Management Committee. He would further submit that



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disciplinary proceedings against the canteen workers are being initiated only by the President of the canteen Management Committee and not by the Port Trust which itself would show that the delineation of the Management of the canteen from the Port Trust. He would also submit that the settlement that was referred to by the learned Senior Counsel appearing for the petitioner arose out of a wage settlement of the employees of various major Port Trust, Dock Labour Boards in which the canteen workers were not the party to and therefore, they cannot claim to take advantage of the settlement that had been arrived at by them. Under the said settlement, their claim to be treated as Port workers, since under the said settlement, the Port Trust has agreed to provide a canteen to the workers, is not tenable. Only the Port workers can seek to implement the Settlement and not third parties to settlement.

7. He would submit that the respondents do not admit the facts that had been raised by the learned counsel for the petitioner and therefore, would submit that, since the respondent disputes the facts raised by the learned Senior Counsel for the petitioner, this Court cannot adjudicate upon



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the disputed facts and would have to relegate the parties to the proper forum to decide the issue and therefore, would seek this Court to dismiss this Writ Petition filed by the petitioner.

8. I have considered the rival submissions made by the learned counsels appearing for their respective parties and perused the materials available on record before this Court.

9. This Writ Petition had been originally dealt with by a learned Single Judge, who on the facts of the case have given a categorical finding in detail by extracting the relevant admitted facts made by the respondent in their counter affidavit that had been filed in the Writ Petition. However, the Division Bench of this Court had set aside the order passed by the learned Single Judge by holding that merely on the basis of the averments made by the UOI that is the respondent, the learned Single Judge had allowed the case. A factual finding was also rendered by the Division Bench that *prima facie* it appears that six officers had established the canteen in their own interest and that there is nothing on record of any prior approval, which was



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granted for establishing such canteen. That apart, a factual finding had also been given that the Port Trust is not covered under the Factories Act. Therefore, it had no statutory obligation to establish any canteen. It had also given a factual finding that a canteen is a non-statutory canteen, not recognised or approved at the inception or even thereafter. The Hon'ble Apex Court had set aside both the orders of the learned Single Judge as well as the Division Bench by taking into consideration that the various documents that had been filed in support of the appeal were not placed before this Court in deciding the issue. While remanding, the Hon'ble Apex Court had in fact observed that the High Court shall decide the *lis* afresh on merits. The respondent had now filed an additional counter affidavit which had in fact deviated from the said admitted facts. In the said additional counter affidavit, the respondent had not pleaded that the facts that were admitted had been made mistakenly or inadvertently.

10.The learned Senior counsel for the respondent had raised a contention as regards to the maintainability of the Writ Petition. The said contention had been raised on the pretext that there are disputed questions



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of fact. The said contention is out right rejected by this Court for the following reasons.

(a)The Hon'ble Supreme Court while passing the order of remand, had directed this Court to decide the issue afresh on the merits of the case.

(b)The learned Single Judge had extracted various admissions in the counter affidavit. I had also perused the counter affidavit filed by the respondent and I am satisfied with the recording of the fact was made by the learned Single Judge from the averments made in the counter affidavit. Even though, an additional counter had been filed deviating from the original counter, no prayer had been made or even an averment had been made to eschew the averments made in the original counter.

(c)Such an issue of maintainability had neither been raised at the Writ Petition stage, appellate stage or even before the Hon'ble Apex Court.

11.One more striking fact that had been brought before this Court is



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that the proceedings of the Chief Engineer and Administrator of the Port Trust dated 17.10.1973. Under the said proceedings, the said Authority who was the Administrator of the Port Trust had accorded sanction for establishing a **“DEPARTMENTAL CANTEEN”**. For better appreciation, the relevant paragraph is extracted hereunder:-

“ With reference to the orders contained in Ministry of Home Affairs O.M.No.F.7/1/68., H.W.II dated 28.12.1962, as amended from time to time, Chief Engineer & Administrator, Tuticorin Harbour Project is pleased to accord sanction for the formation of a Departmental Canteen in Tuticorin Harbour Project.

Chief Engineer & Administrator is also pleased to nominate the following office bearers for the committee to manage the departmental canteen for the year 1973-74.

President :Shri K.Subramaniam, Executive Engineer (Mech) Dn.

Vice President: Shri.V.Doraisami Naidu, Secretary, Tuticorin Harbour Project

Secretary : Shri V.A.Arulraj, Superintendent,

Treasurer : Shri K.Subbiah, Head Clerk

Directors :

1.Shri Thomas P.Abraham, Representative of T.H.P.Non-Gazetted Staff Association

2.Shri.S.Paramasivam, Representative of T.H.P.Staff Association.

3.Shri.Anandadevadeeran, Representative of T.H.P.Aluvalar Sangam.

12.From a reading of the same not only the sanction has been accorded for formation of the departmental canteen, the Authority had also



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nominated office bearers of the Committee to manage the departmental canteen. The respondent had time and again been contending that the canteen had been established by six officers in their own interest that too without the approval of the Port Trust. The said submission supported by an affidavit by a responsible officer of the respondent is totally contrary to the aforesaid extracted proceedings. Further, from the communications dated 19.11.1973, 21.11.1973, 30.12.1975, 11.01.1976, 13.12.1976, 20.01.1977, 13.03.1977, 17.05.1977, 23.05.1977, 21.07.1977, 01.08.1977, 11.01.1978, 18.06.1978, 29.09.1980, which are all Official communications emanating from the office of the respondent and the Management Committee of the departmental canteen have all identified the said canteen only as a “departmental canteen”. For brevity, I am not extracting the relevant portions of the said letters. From these orders, which were relied upon by the petitioner, I am constrained to hold that the canteen had been established by the Port Trust as a Departmental canteen.

13.Further, the contention of the learned Senior Counsel appearing for the respondent is that the canteen would almost, could be a non-statutory



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canteen, as the Port Trust would not come under the Factories Act, 1948. In that context, he would submit that it is not a statutory canteen and therefore, they are not obligated to provide a canteen. Only if there is an obligation on the part of the respondent to provide a canteen, the claim of the workmen could be entertained.

14. It is pertinent to note the 12(3) Settlement relied upon by the petitioner dated 06.12.1994. It is not disputed that the respondent was not a signatory to the said Settlement. Under the said Settlement, the Management of various Ports including the respondent Port Trust had accepted to provide canteen facilities to its employees. Having accepted under the 12(3) Settlement to provide a canteen, then unless or until it is modified by a further Settlement, the parties to the said Settlement cannot wriggle out of the terms of the Settlement. In such an event, the consent of the respondent to provide a canteen for its employees would be binding on it and therefore, it becomes an obligation on the part of the respondent to provide a canteen and in my view, it would be akin to a statutory canteen.



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15. The next issue according to me would be whether there was a pervasive control of the respondent over the canteen. In respect of the said issue, at the out set, firstly I have come to a conclusion that the canteen have been established by the Port Trust in the year 1973, as a departmental canteen by the Administrator of the Port Trust. Secondly, from the communications which I had referred to supra, the nomination of the Management Committee of the canteen had been made by the respondent which is done even as of today. Thirdly when the NMRs were sought to be regularised as a regular canteen employee, the Committee had sought the approval of the Chairman of the Port Trust for regularisation.

16. Fourthly, there are no independent procedure through which the Management Committee is sought to be constituted. Fifthly, it is also not disputed by the respondent that the respondent is subsidizing the canteen, apart from providing all other materials for the effective running of a canteen including the pay of the canteen workers. Sixthly, every decision taken by the Canteen Management Committee as seen from the various Resolutions of the Management Committee are being implemented only after the same is approved by the Chairman of the Port Trust.



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17. In such view of the facts, I am of the considered view that there is all pervasive control of the respondent in the running of the canteen.

18. In view of the aforesaid factual conclusions, I shall now examine the issue based upon the various judgments of the Hon'ble Apex Court in that regard. The Hon'ble Apex Court in the judgment reported in **2018 (6) SCC 202**, in the matter of **Chennai Port Trust Canteen Workers** had rejected a contention raised by the Chennai Port Trust that the Writ Court ought not to have entertained the Writ Petition and the association representing the canteen workers should have approached the Industrial Tribunal/ Labour Court for adjudication of the dispute raised by them. The reason that have been assigned by the Hon'ble Apex Court was that the Writ Court had entertained the Writ Petition and granted relief on merits and even the appeal filed by the Port Trust before the Division Bench was also dismissed on merits and that it is too late to entertain such submission which is technical in nature. In the present facts of the case, the Writ Petition was allowed by the learned Single Judge which was set aside by the Division



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Bench and the Hon'ble Apex Court had set aside both the orders and had remanded the matter back to this Court for adjudication on merits. In such circumstances, I am of the view that such a contention on the ground of maintainability of the Writ Petition would also have to be rejected on the same terms in the aforesaid judgment.

19. The Hon'ble Apex Court in a judge ***Parimal Chandra Raha & Ors., vs. LIC & Ors.***, reported in ***1995 SCC (L&S) 983***, after considering the law and the judicial reasonings in the similar issue before it held as follows:-

What emerges from the statute law, and the judicial decisions is as follows:

*[i] Where, as under the provision of the **Factories Act**, it is statutorily obligatory on the employer to provide and maintain canteen for the use of his employees, the canteen becomes a part of the establishment and, therefore, the workers employed in such canteen are the employees of the management.*

[ii] Where, although it is not statutorily obligatory to provide a canteen, it is otherwise an obligation on the employer to provide a canteen, the canteen become a part of the establishment and the workers working in the canteen, the employees of the management. The obligation to provide a canteen has to be distinguished from the



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obligation to provide facilities to run canteen. The canteen run pursuant to the latter obligation, does not become a part of the establishment.

[iii] The obligation to provide canteen may be explicit or implicit. Where the obligation is not explicitly accepted by or cast upon the employer either by an agreement or an award etc., it may be inferred from the circumstances, and the provision of the canteen may be held to have become a part of the service conditions of the employee". Whether the provision for canteen services has become a part of the service conditions or not is a question of fact to be determined on the facts and circumstances in each case. Where the provision of canteen services has become a part of the service conditions of the employees, the canteen becomes a part of the establishment and the workers in such canteen become the employees of the management.

[iv] Whether a particular facility or service has become implicitly a part of the service conditions of the employees or not, will depend, among others, on the nature of the service/facility, the contribution the service in question makes to the efficiency of the employees and the establishment, whether the service is available as a matter of right to all the employees in their capacity as employees and nothing more, the number of employees employed in the establishment and the number of employees who avail of the service, the length of time for which the service has been continuously available, the hours during which it is available, the nature and character of management, the interest taken by the employer in providing, maintaining, supervising and controlling the service, the contribution made by the management in the form of infrastructure and funds for



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making the service available etc,

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20. The aforesaid judgment had been followed by the Hon'ble Apex Court in the case of ***Union of India & Ors., vs. M.Asalam & Ors*** reported in ***2001 (1) SCC 720*** and analysing the facts of the said case, it came to the conclusion that the status of the employees in a unit run canteen must be held to be that of a Government employee. The unit run canteen in that case was a canteen run by the Ministry of Defence.

21. While perusing the judgment of the Apex Court referred in earlier para, it was noted that reliance had been made to an earlier judgment of the Hon'ble Apex Court in ***C.K.Jha's*** case, dated 11.10.1991 and the subsequent official memorandum of Union of India made in compliance of the same. I was not able to lay my hand on the judgment ***C.K.Jha's*** case, but however, I had gone through the official memorandum of Union of India, dated 29.01.1992, issued in compliance of ***C.K.Jha's*** case. The Government of India, Ministry of Personnel, Public Grievances and Pensions (Department of Personnel and Trg.) had issued the said official Memorandum on



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29.01.1992 in No.12/5/91-Dir(c), wherein pursuant to the orders of the Hon'ble Apex Court in W.P.No.6189 – 7044 and 8246 – 55 – ***C.K.Jha and other and P.N.Sharma and Others*** treating all canteen employees of the non-statutory departmental/ Cooperative canteens/ Tiffin rooms located in Central Government Offices as Government servant with effect from 01.10.1991. It is to be noted that by proceedings dated 17.10.1973, the then Administrator of the Port Trust had accorded sanction for departmental canteen based upon the Office Memorandum in Pro.No.D.23018/1-73/D.3533. In that aspect also the canteen workers would be entitled to be declared as workers of the Port Trust.

22. The Division Bench of this Court in a judgment reported in ***2015 SCC online Madras 2704*** in a case of ***General Manager Bharat Heavy Electricals Limited., Ranipet Vs Canteen Workers of BHEL and Others.,*** after considering the facts of the case, it came to a conclusion that the Management was in complete and effective administration, control of the employees of the canteen and in such view of the matter rejected the claim of the Management and upheld the decision of the Labour Court as



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confirmed by the learned Single Judge, wherein, the canteen workers were declared as regular workers of the Management. The said same has also been affirmed by the Hon'ble Apex Court in the case of **General Manager BHEL vs. Canteen Workers of BHEL & Ors.**, by dismissing the SLP as being without merit.

23.By applying the ratio laid down in the aforesaid three judgments to the facts of the present case, which I have already arrived at supra, I am of the firm view that the canteen workers of the petitioner Union would be entitled to be declared as regular workers of the respondent Port Trust.

24. In fine, this Writ Petition is allowed by directing the respondent to absorb the departmental canteen workers working in the Port Trust canteen managed by the Tuticorin Port Trust Canteen Management Committee. Since, the petitioner had approached this Court only in the year 1998, I am of the view that the workers who were on the rolls of the departmental canteen as on the date of filing the Writ Petition would alone be entitled to relief. The respondent is directed to prescribe the Rules and Regulations



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and service conditions of such canteen workers including their pay and other attendant benefits, within a period of three (3) months from the date of receipt of a copy of this order.

(b)The respondent may also take into consideration the pay scale prescribed by the Chennai Port Trust in that aspect. The respondent shall also take into consideration the Rules and Regulations prevailing at Chennai Port Trust or in other Ports.

(c)It is also made clear that employees so declared will be entitled for fixation of salary based on the said Rules and Regulations only notionally and they would be entitled to actual monetary benefits from the date of this order.

(d)In case, any of the employees who worked were on the rolls as on date of filing of this Writ Petition all have superannuated thereafter their salary shall also be calculated notionally and their terminal benefits be paid on notionally arrived at last drawn salary to them within a period of eight



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(8) weeks from the date of finalising of the Rules and Regulations as indicated supra.

25.However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

26.02.2024

gba
Index : Yes/No
Speaking order : Yes/No
Neutral Citations : Yes/No

To

Tuticorin Port Trust
Tuticorin,
Represented by its Chairman,
Tuticorin – 4.



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K.KUMARESH BABU,J.

Gba

A Pre-delivery order made in
W.P.No.10907 of 1998

26.02.2024