



W.P.No. 29512 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Dated : 01.08.2024

THE HONOURABLE Ms. JUSTICE P.T. ASHA

W.P.No.29512 of 2015

M.P.No 1 of 2015

G. Selvaraj
Petitioner

...

V.s

1. Union of India,
Rep. by Secretary to Government,
Ministry of Surface Transport (Port wings)
Transport Bhavan,
Parliament Street,
New Delhi-110 001.
2. Union of India,
Rep. by Secretary to Government,
Ministry of Labour,
Shram Shakthi Bhavan,
Rafi Marg, New Delhi-110 001.
3. Chennai Port Trust,
Rep. by The Chairman,
Chennai 1.



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4. Chennai Port Trust Industrial Employees
Cooperative Canteen Ltd.,
Rep. by its President,
Port Trust, Chennai-600 001.

5. The Registrar of Cooperative Societies,
170, E.V.R High Road,
Kilpauk,
Chennai-600 010.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India seeking writ of Certiorarified Mandamus to call for the records pertaining to the order passed by the 4th respondent in Memo-CHPTIECC/ESTT/84/2015/MEE dated 28.08.2015 and quash the same and consequently direct the third and fourth respondents herein to continue to employ the petitioner till he attains the age of 60 years as applicable to employees of third respondent.

For Petitioner : M/S R. Sunil Kumar

For Respondent 1&2 : No Appearance

For Respondent 3 : Mr. S. Haja Mohideen Gisthi
Standing Counsel

For Respondent 4 : Mr. L. P. Shanmugasundaram

For Respondent 5 : Ms. Geetha Thamaraiselvan



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Special Government Pleader

ORDER

Despite the order of the Hon'ble Supreme Court confirming the judgment and decree of this Court in and by which the canteen workers of the Chennai Port Trust were directed to be declared as regular employees of the Chennai Port Trust, the respondents have superannuated the petitioner at the age of 58 treating him as employee of the Employees Cooperative Canteen and not as the direct employee of the Chennai Port Trust.

2. The facts which has culminated in the filing of the above writ petition are as follows:

(i) The petitioner had joined the services of the fourth respondent canteen as an attender on 07.07.1976. On 01.03.1980, he was promoted as junior supervisor and thereafter, as senior supervisor



on 06.07.1987. On 07.11.2008, he was promoted as the manager and has been in continuous employment for over 40 years. He was made a permanent employee of the canteen. The Chennai Port Trust Industrial Employee's Cooperative Canteen Limited is a recognized canteen of the Chennai Port Trust and the canteen was being run in terms of the Factories Act. The canteen was formed as early as in the year 1964. The cooperative society was started with the permission of the Chennai Port Trust and the Port Trust had also given its premises rent free for running the canteen. The Port Trust administration had the right of appointment and was making payments to the staffs for running the canteen. All policy matters relating to the canteen were also decided or approved by the Chennai Port Trust.

(ii) The petitioner would submit that as on the date of filing of the writ petition, as against the sanctioned cadre strength of 119 employees, only 66 employees were in service and 53 vacancies were available. In these circumstances, the Industrial Employees Canteen



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Workers Welfare Association had filed a Writ Petition in W.P.No.6872 of 2001 before this Court seeking a mandamus to direct the respondents 3 and 4 to treat the members of the writ petitioner-Association as regular employees of the Chennai Port Trust. By order dated 24.08.2005, the aforesaid Writ Petition was allowed and the canteen workers were declared as regular employees of the Chennai Port Trust. This order was challenged by the Chennai Port Trust in W.A.No.66 of 2006. The Bench, by its order dated 21.02.2006, dismissed the writ appeal. The same was taken up on challenge to the Hon'ble Supreme Court in Civil Appeal No.1381 of 2010 and the Hon'ble Supreme Court, by order 27.04.2018, dismissed the Civil Appeal. The Chennai Port Trust had also filed a review petition with a delay, which was dismissed. Therefore, the order, declaring the petitioner being a workman of the canteen as direct employees of the Chennai Port Trust, had become final. Therefore, the petitioner ought to have retired at the age of 60. However, by the impugned order, the petitioner was treated as having superannuated on 31.08.2015, which



was two years before his actual date of retirement. The petitioner had also submitted a representation on 14.09.2015 requesting the third respondent to consider the fact that he had suffered an eye ailment as result of which, he was forced to take treatment and therefore, to re-consider the order directing the superannuation. Since the same was not considered, the petitioner is before this Court.

3. Mr.R.Sunilkumar, learned counsel appearing for the petitioner would draw the attention of the Court to the order passed by this Court in W.P.No.6872 of 2001 which has been confirmed right up to the Hon'ble Supreme Court. He would contend that once the workmen of the canteen have been declared as direct employees of the Chennai Port Trust, the Rules governing the services of the Chennai Port Trust employees would apply to the canteen workers as well. As per the said Rules, the employees of the Chennai Port Trust has to retire at the age of 60 whereas the petitioner was forced to superannuate earlier. He would submit that in the impugned order,



there is a reference to the petitioner having been on long leave from 23.12.2014. However, the respondents have not taken any action on the said unauthorized leave. Neither was a show cause notice issued nor an enquiry held. That apart, the petitioner had valid reasons for taking leave since he had suffered diminution of eye sight and other neurological problem for which he was under treatment in Port Trust Hospital for a considerable period of time. He had also taken treatment at Shankara Nethralaya and Vasani Eye Care, Chennai for his eye problem. Since the problem had aggravated, he was unable to move around and his movements had been confined. Therefore, he was to attend duty from 14.09.2015 after the Doctor had certified him fit to work. When he had attempted to rejoin the work, he was issued with the impugned order. In this regard, the learned counsel would rely upon a judgment of this Court reported in **2007(4) L.L.N.882 [A.Subramani Vs Management of Tamil Nadu State Transport Corporation (Coimbatore Division-I) Ltd., Udagamandalam and**



another] wherein the Hon'ble Division Bench, taking into account the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1955, has held that it is not permissible for the employer to deny the benefits of Section 47 of the Disabilities Act, which contains a direction that the employer shall not dispense with or reduce in rank an employee who acquires disability during his service. He would also rely upon a judgment of the Hon'ble Supreme Court reported in *(2003) 4 SCC 524 [Kunal Singh Vs Union of India and Another]*, wherein the aforesaid Disabilities Act was considered and applying the provisions of the said Act, the order terminating the services of the appellant therein was disallowed and the respondents were directed to give relief in terms of Section 47 of the Disabilities Act. This judgment has been relied upon by the Division Bench in its judgment reported in *2007(4) L.L.N.882* cited supra.

4. Per contra, Mr.Haja Mohideen Gisthi, learned standing



counsel appearing for the third respondent / Port Trust would base his arguments on the fact that the petitioner is guilty of unauthorized absence. He would rely upon the contentions set out in paragraph 3 of the counter affidavit wherein the number of days of leave availed by the petitioner has been set out. He would submit that the impugned order has been passed on the aforesaid basis and the same cannot be set aside.

5. Heard the learned counsel on both sides and perused the materials available on record.

6. It is an admitted fact, even by the respondents that, by orders of this Court, which has been confirmed right up to the Hon'ble Supreme Court, the canteen workers had been declared as direct employees of the Chennai Port Trust and are therefore covered by the service conditions of the Chennai Port Trust employees. The distinction is sought to be made that the petitioner has been



superannuated on account of the fact that he was on unauthorized leave. However, it is seen that once an action has been initiated against the petitioner for the alleged unauthorized leave, the representation made by the petitioner on 14.09.2015 clearly sets out the reasons for such absence. Be that as it may, the impugned order has not been passed on the reason of the petitioner being unauthorizedly absence. On the contrary, the petitioner had superannuated as per the Cooperative Societies Act. Therefore, the argument of the learned counsel appearing for the Chennai Port Trust that the superannuation was only on account of the petitioner's unauthorized absence cannot be countenanced. In fact, in the impugned order, the following reason is given:

*“It is informed that you are due for
Retirement on Superannuation from the
Canteen's service with effect from 31.08.2015*



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A.N as per Co-operative Act.”

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The reason for superannuating the petitioner has to necessarily be set aside, in the light of the order passed in W.P.No.6872 of 2001 dated 24.08.2005. Accordingly, the writ petition is allowed as prayed for. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

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Index: Yes/No

Speaking order/non-speaking order

Neutral Citation: Yes/No

srn

To,

1. The Secretary to Government,
Union of India,
Ministry of Surface Transport (Port wings) Transport
Bhavan,
Parliament Street, New Delhi-110 001.
2. The Secretary to Government,
Union of India,
Ministry of Labour,
Shram Shakthi Bhavan,
Rafi Marg, New Delhi-110 001.

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3. The Chairman,
Chennai Port Trust,
Chennai 1.
4. The President
Chennai Port Trust Industrial Employees
Cooperative Canteen Ltd.,
Port Trust, Chennai-600 001.

P.T.ASHA, J.,

srn

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