



WEB COPY



WA No.1642 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.04.2024

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

AND

THE HONOURABLE MR.JUSTICE K.KUMARESH BABU

WA No.1642 of 2017

1.Union of India

Represented by Secretary to Government,
Ministry of Finance,
New Delhi -110001.

2.Union of India,

Represented by Secretary to Government,
Ministry of Heavy Industries and Public Enterprises,
Department of Public Enterprises,
New Delhi- 110001.

3.Union of India,

Represented by Secretary to Government,
Ministry of Shipping,
No.1, Parliamentary Street,
New Delhi-110001.

... Appellant

versus



WA No.1642 of 2017

1.Chennai Port & Dock Officer's Association,
Reg No.93/2016,
Represented by its President, R.Santhanam,
No.1/675, 1st Street,
Muthamizh Nagar,
Chennai- 600 118.

2.Chennai Port Trust,
Representation by its Chairman,
Rajaji Salai, Chennai- 600 001.

3.Indian Port Association
Represented by its Managing Director,
1st Floor South Tower, NBCC Place,
New Delhi-11003,

... Respondents

PRAYER: Writ Appeal filed against the order in WP No.41669 of 2016
dated 04.04.2017 of the learned Single Judge.

For the Appellant :Mr.A.R.L.Sundaresan
Additional Solicitor General of India
for Mr.B.Sudhir Kumar

For the Respondents :Mr.K.M.Ramesh
Senior Counsel
for M/s.Sanantha & Ston
for first respondent
Mr.G.Ramesh Sanjay
for second respondent
third respondent- No appearance



WA No.1642 of 2017

JUDGMENT

WEB COPY

(Judgment of the Court was delivered by *D.KRISHNAKUMAR, J.*)

The writ appeal is filed against the order in WP No.41669 of 2016 dated 04.04.2017 of the learned Single Judge.

Brief facts of the case:

2.1. The first respondent/Chennai Port & Dock Officer's Association is an association registered under the Societies Registration Act bearing Registration Number 93/2016 and it has been recognized by the second respondent/Chennai Port Trust. The members of the first respondent Association are working as Class I and II officers under the second respondent Port Trust. Insofar as Class III and IV employees working in the second respondent Port Trust they are 'workmen' covered under the provision of Industrial Disputes Act 1947 and they are in unionised category. The major trade unions used to place charter of demands once in five years and arriving at a negotiated wage settlement with the Management of second respondent Port Trust.



WA No.1642 of 2017

2.2. The last of such wage settlement in respect of unionised category expired on 31.12.2011 and a new wage settlement was arrived at giving effect to the revision of salary with effect from 01.01.2012. It is also in practice that as soon as wage settlement in respect of unionised category is finalized, the management of the second respondent Port Trust used to arrive at an agreement for revision of salary in respect of Class I and II officers. However though wage settlement in respect of Class III and IV employees were finalised and given effect from 01.01.2012, no such salary revision for Class I and II officers was undertaken by the Management of the second respondent Port Trust.

2.3. The second appellant/Ministry of Heavy Industries and Public Enterprises issued Office Memorandum dated 13.06.2013 authorizing the Central Public Sector Enterprises to arrive at wage negotiation and finalization by the respective public sector undertakings depending upon the affordability and financial sustainability in respect of their employees. After finalization of wage revision for Class III and IV Employees, Class I and II officers were started getting lesser salary than Class III and IV employees.



WA No.1642 of 2017

The demand of Class I and II officers were referred to the third appellant/Ministry of Shipping and the third appellant in turn referred it to the third respondent/Indian Port Association and also constituted a sub committee under the chairmanship of Shri. P.C.Parida, Deputy Chairman, Chennai Port Trust for finding out viable solution. The said sub-committee consisted of four other officials. The said sub-committee after thorough analysis rendered a report dated 03.06.2014. The above report was forwarded to the third appellant/Ministry of Shipping. However, the report was not accepted by the third appellant/Ministry of Shipping and it was kept under consideration. In the meanwhile, the due wage revision extended to Class III and IV employees, their pay was substantially increased and most of the Class II officers stated getting lesser salary than that of Class III employees.

2.4. The first respondent Association submitted various representations regarding glaring pay anomaly insofar as Class I and II officers giving details and examples as to how Class III employees are drawing more pay than Class II officers. The first respondent Association



WA No.1642 of 2017

also pointed out to the third appellant that the report of Shri P.C.Parida Committee should be implemented so as to rectify the pay anomaly. When the matter stood thus, the third appellant issued impugned letter dated 12.05.2016 to the third respondent stating the report of sub committee could not been accepted by the third appellant as the demand for merger of DA with basic pay would lead to similar demand from other PSUs/Organisations. Followed by the above impugned letter, the third appellant has issued impugned Office Memorandum dated 20.10.2016 constituting a committee to formulate proposals for the pay revision of Class I and II officers of Major Port Trusts and Dock Labour Board with effect from 01.01.2017. Challenging the same, the first respondent Association filed writ petition in WP No.41669 of 2016 before this Court. The Writ Court, by order dated 04.04.2017, allowed the writ petition with the following observations:

A detailed counter affidavit has been filed by the respondents 1 to 3 opposing the above prayer. A perusal of the counter affidavit shows that when a Committee has been constituted to formulate the proposals for pay revision of Class I & II officers to be effective from 01.01.2017, this Court could see that the pay revision has



WA No.1642 of 2017

been ordered for Class III & IV employees to be made effective from 01.01.2012. While that being the case, the pay revision of Class I and II officers also should be from 01.01.2012, failing which the same would amount to clear discrimination. Therefore, the decision taken by the third respondent to formulate the proposal for pay revision of Class I & II officers from 01.01.2017, leaving the period from 1.1.2012 to 1.1.2017, is without any justification, for the reason that when the Class III & IV employees of Major Port Trusts have been given the benefit from 1.1.2012, the members of the petitioner Association are also justified in approaching this Court for a direction to the Committee constituted under the impugned office memorandum to formulate the proposals of pay revision of Class I & II officers from 1.1.2012. Therefore, while accepting the impugned office memorandum to constitute a Committee consisting of the Chairman and Members to formulate proposals for the pay revision of Class I & II officers of Major Port Trusts and Dock Labour Board, the said committee shall examine and formulate the proposal of pay revision for Class I & II officers from proposal of pay revision for Class I & II officers from 1.1.2012, after inviting the views of the members of the petitioner Association. The writ petition stands allowed.”

2.5. Challenging the said order, the petitioner Department has filed the present intra court appeal.



WA No.1642 of 2017

WEB COPY

3. After elaborate arguments made by the parties concerned, learned Additional Solicitor General of India, has brought to the attention of this Court an interim order dated, on 20.07.2023, which has been passed by this court. The relevant portion of the order reads as follows:

Pursuant to the last orders dated 10.06.2019 and 31.10.2019 when the case is taken up for hearing today, it is submitted by the learned counsel appearing for Union of India and the learned counsel for the Chennai Port Trust that the direction given by the Co-ordinate Bench by interim order dated 31.10.2019 to implement the recommendations of the Committee for pay revision from the period 01.01.2017 has been implemented in all thirteen major Ports including Chennai Port.

However, Mr.Livingston learned counsel appearing for the first respondent who is the writ petitioner, on instructions, would submit that insofar as the period from 01.01.2012 till 31.12.2016 is concerned, the reason for non-revision of pay is that there was an agreement between some Workers Union and the Port Trust/Government, based on which 17.5% Special Pay has been agreed upon for all those officers of Class I and Class II including the Chennai Port. However, even that agreed amount of 17.5% Special Pay had not been paid to the Chennai Port employees like the members of the



WEB COPY



WA No.1642 of 2017

first respondent Association.

3. In this context, the learned counsel appearing for the Chennai Port Trust seeks two weeks time to get written instructions on this aspect as to whether the Special Pay has been paid to all the employees who are entitled to and pursuant to which, whether the Port has implemented the recommendation of the Committee for pay revision for the period from 01.01.2017 onwards as directed by the Co-ordinate Bench of this Court by order dated 31.10.2019."

4. He further submits that pursuant to the aforesaid interim directions issued by this court, the second respondent Port Trust has filed a status report of the Ministry of Shipping dated 20.07.2017 with respect to payment of 17.5% special pay to the Officers along with supporting documents. The order of the Ministry of Shipping reads as follows:

"The Class I and II officers of Major Port Trusts/DLBs may be granted special pay of 17.5% of the mean of pay grades, to be treated as basic pay for all purposes, with effect from 01.01.2012 subject to the condition that as on 01.01.2012, the overall increase in Pay+DA should not be more than Rs.6890/- (maximum increase in pay of Group C & D employees). Further provided that the grant of above special pay will be admissible



WA No.1642 of 2017

to the affected officers only. The additional cost would be met by Ports from their internal resources alone and no financial support/assistance will be provided by the Government of India".

5. For the said status report filed by the second respondent Port Trust, the first respondent Association herein has filed its objection before this Court.

6. Learned Additional Solicitor General of India has stated before this Court that the directions issued by the writ court was to consider the claim of the first respondent Association herein/petitioner on par with Group C and D employees. Now that the said claim of the first respondent Association herein has been duly considered by the committee constituted by the Ministry of Shipping and a status report has been filed before this Court, the objection made by the first respondent herein could not be decided in this writ appeal. Pursuant to the said status report, the Ministry of Shipping has to pass a memorandum. It is further submitted that the recommendations made by the Committee for pay revision are well reasoned are within the legal limits and therefore, the status report filed by the second respondent



WA No.1642 of 2017

Port Trust cannot be challenged by the first respondent herein in the present writ appeal.

7. Learned Senior Counsel appearing for the first respondent Association submitted that though as per the order dated 20.07.2017 of the third appellant/Ministry of Shipping, the special pay of 17.5% to be treated as basic pay for all purposes, a ceiling has been prescribed to the effect that the amount paid should not be more than of Rs.6890/-, which is totally untenable and therefore, on the aforesaid ground, he states that the status report is not sustainable.

8. In view of the elaborate submissions made by the parties, it is apparent that in the present appeal, the aforesaid disputed facts, cannot be gone into and further only after due proceedings have been issued by the Ministry of Shipping/third appellant, the first respondent Association herein will have the right to challenge the said proceedings in a manner known to law.



WA No.1642 of 2017

9. Therefore, in the light of the above, this Court is inclined to direct the third appellant, to issue necessary proceedings by complying the directions given by the Co-ordinate Bench by interim order dated 31.10.2019 to implement the recommendations of the committee for Pay Revision, within a period of four weeks from the date of receipt of a copy of this order and we make it clear that if the first respondent Association/writ petitioner is aggrieved by such proceedings, it is open to them to challenge the same before the appropriate forum.

10. With the above directions the writ appeal stands disposed of. Consequently, CMP Nos.21448 of 2017, 17758 and 19645 of 2018 and 10043 and 10865 of 2019, are closed.

[D.K.K., J.] [K.B., J.]
08.04.2024

Index : Yes/No
Neutral Citation : Yes/No
mrn



WEB COPY



WA No.1642 of 2017



WEB COPY



WA No.1642 of 2017

D.KRISHNAKUMAR, J.
and
K.KUMARESH BABU, J.

(mrn)

WA No.1642 of 2017

08.04.2024