



WEB COPY

W.A.No. 2642 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.04.2025

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN
AND
THE HONOURABLE MR.JUSTICE G.ARUL MURUGAN

W.A.No. 2642 of 2023
and
C.M.P.No. 22222 of 2023

1.The Chairman,
VOC Chidambaranar Port Trust,
Tuticorin - 628 004.

2.The Deputy Traffic Manager,
Tuticorin Port Trust,
Cargo Handling Labour Pool
Administrative Office,
Bharathi Nagar,
Opp. Harbour Telephone Exchange,
Tuticorin - 628 004.

...Appellants

Vs.

1.Boat Workers Union,
Reg.No.503/TIN-TDDG,
Affiliated of NLO
Rep. by its General Secretary,
188, Kaliappan Street,
Tuticorin - 628 001.

2.The Presiding Officer,
The Central Government Industrial Tribunal
-cum- Labour Court,
Chennai.

... Respondents

Prayer: Writ Appeal filed under Clause 15 of the Letters Patent, against the



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order dated 10.08.2023 made in W.P.No.16111 of 2013.

For Appellantss : Mr.Yashod Vardhan, Senior Counsel
for Mr.S.Yaswanth

For Respondents : Mr.K.S.Narayanan for R1

J U D G M E N T

(Judgment of the Court was made by R.SUBRAMANIAN, J.)

Challenge is to the order of the learned single Judge, dismissing the writ petition filed by the appellant / Port Trust, the challenge in which was to the award of the Central Government Industrial Tribunal on a reference made by the Government of India under Section 10(1)(d) and 10(1)(2A) of the Industrial Disputes Act, 1947.

2. The question that was referred to was as to whether the action of the Management of the Tuticorin Port Trust for not regularizing / deploying the workmen of the petitioner Union on par with Cargo Handling Labour Pool Workers is justified or not? The claim of the Union was that before modernization of the Port, the Port could not receive heavy vessels and heavy vessels have to berth in the deep sea. The cargo handling workers and boat workers have been utilized by the Port Trust to unload the ships and transport the cargo through Boats to the Port. In some cases, services were

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used to reduce the weight of the ship by unloading the part of the cargo so that the ship can berth in the port.

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3. Since 1981, the cargo handling workers who formed the Dock Workers' Union had been agitating for permanency as they were made dependent on contractors, who were otherwise called "Kanganis". Their demands found favour with the Authorities and various 12(3) settlements were entered with the Cargo Handling Workers Pool. Nearly about 1200 cargo workers were gradually taken in as the employees of the Port on a regular basis. This benefit was not extended to the boat workers. Though they also fell within the wide definition of Dock Workers under the Dock Workers (Regulation of Employment) Act, 1948, the boat workers were denied regularization which led to an industrial dispute being referred as stated above.

4. The claim of the workmen was resisted basically on the ground that these boat workers were not directly involved in cargo handling and they were not physically handling cargo therefore, they cannot be termed as dock workers. It was the further contention of the Port that these boat workers were not under direct employment with the Port at any point of time and

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there is no means of identifying the boat workers. In the case of cargo handling workers, the Port had a list of 1200 cargo handling workers, which was maintained ever since 1981 and such authentic and agreed list was made the basis for regularisation.

5. In so far as the boat workers are concerned, there was no such list and these boat workers were employed by the Ship owners or Stevedore Agents. The Tribunal though accepted the contention of the Port that these workers were not under the direct control of the Port and as such ascertaining their numbers will be difficult however, concluded that these boat workers should also be treated on par with cargo handlers as it felt that but for the boat workers, the cargo handling workers will not be able to perform their functions. The fact that the Port has been modernized and deepened was also put against the claim of the Boat workers.

6. The Tribunal, upon consideration of the entire material, reached a conclusion that the Boat Workers are also entitled to be treated on par with the cargo handling workers as they come within the definition of dock workers as defined under Section 2(b) of the Dock Workers (Regulation of Employment) Act, 1948. On the said finding, the Central Government Industrial Tribunal directed regularization of the services of the Boat

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Workers also in a phased manner on par with the Cargo Handling Workers.

This award was subject matter of challenge in the writ petition in

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W.P.No.16111 of 2013. The Writ Court agreed with the findings of the

Industrial Tribunal, particularly, with reference to the indispensability of the

Boat Workers in cargo handling. The Writ Court also after referring to the

definition of the term Dock Workers under the Dock Workers (Regulation of

Employment) Act, 1948 concluded that the Boat Workers are also entitled to

equal treatment with that of the Cargo Handling Workers. On the aforesaid

findings, the writ Court dismissed the writ petition.

7. We have heard Mr.Yashod Vardhan, learned Senior Counsel for Mr.S.Yashwanth, learned counsel for the Port Trust and Mr.K.S.Narayanan, learned counsel for the workmen.

8. Mr.Yashod Vardhan, learned Senior Counsel appearing for the appellant would invite us to the findings of the Tribunal where, the Tribunal had held that these Boat Workers were not directly employed with Port and they did not make the claim earlier. Having rendered such findings, according to the learned Senior Counsel, the Tribunal erred in directing regularization.



9. Contending contra, Mr.K.S.Narayanan, learned counsel for the respondents would submit that the question of regularization would itself arise only when there is no direct employer employee relationship. Even the Dock Workers were being employed by Contractors and Kanganis and while they were regularized, the Boat Workers were left out. According to the learned counsel for the workmen, there is no basis for the differential treatment which has been adopted by the Port. He would also further contend that the orders of the Tribunal and the learned single Judge have only rectified the anomaly created by the action of the Port and therefore, they do not need any interference. We have considered the rival submissions.

10. The fact that the Boat Workers played a crucial role in functioning of the Port before its deepening has to be admitted. As rightly found by the learned single Judge but, for the Boat Workers, the entire cargo handling in the Port would have come to a grinding halt. To treat the Boat Workers and the Cargo Handling Workers separately or differently will only lead to similarly placed persons being treated differently. Once it is admitted that both the sets of workers namely, Cargo Handling Workers on the one side and the Boat Workers are on the other side are employed through a different

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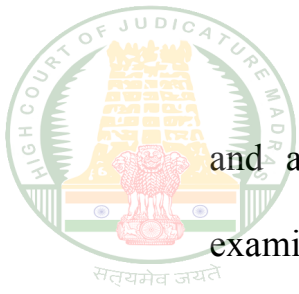


contractors, regularization on one side and denying the benefit of regularization to others is only an artificial differentiation made by the Port.

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11. It is the contention of Mr.Yashod Vardhan that there was agreed set of Cargo Handling Workers and therefore, it was easier to the Port to regularize their employment. The regularization proposal cannot be accepted since even in the year 1999, the Port had demanded a list of Boat Workers from the Boat Workers Union and the same has been placed before it. Therefore, to treat them differently on the ground of non-availability of the list would be totally unreasonable. More over, as pointed by the learned single Judge while exercising jurisdiction under Article 226 in a challenge to an award of the Labour Court or an Industrial Tribunal, the jurisdiction of this Court is limited to examining the decision making process and not the decision itself. Once it is seen that the orders of the Tribunal are reasoned and they cannot be termed as perverse, the Writ Court shall not interfere with the orders. The same restrictions applies to us also.

12. Sitting in an appeal against an order of the learned single Judge affirming the award of the Tribunal, our jurisdiction is more restricted and we do not think, we can travel beyond the findings of the Industrial Tribunal



and as rightly pointed out by the learned single Judge, we can only examining the correctness of the decision making process. If we are to examine the award in the light of the law laid down, we find that the award is well reasoned one and it cannot be termed as perverse. We do not see any reason to interfere with the order of the learned single Judge dismissing the writ petition. This Writ Appeal therefore, fails and it is accordingly, **dismissed**. No costs. Consequently, connected miscellaneous petitions are closed.

(R.S.M., J.) (G.A.M., J.)
01.04.2025

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Index: No
Speaking order
Neutral Citation : No

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