



W.P.No.15724, 15725 of 2005 and

W.P.No.10756, 10757 of 2006

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W.P.Nos.15724, 15725 of 2005 and
W.P.No.10756, 10757 of 2006

D.KRISHNAKUMAR, J.

These writ petitions were listed for hearing before this court on 12.11.2021. At that time, the learned counsel appearing for the petitioners relied upon a Judgment passed by this court in W.P.No.6872 of 2001 dated 24.08.2005, which was confirmed by a Division Bench of this court in W.A.No.66 of 2006 vide order dated 21.02.2006; and also confirmed by the Honourable Supreme Court in C.A.No.1381 of 2010 vide order dated 27.04.2018. Therefore, he prayed that the above said Judgment of this court in W.P.No.6872 of 2001 is squarely applied to the present writ petitions and hence orders may be passed.

2. The learned counsel appearing for the respondents strongly objected that the writ petitioners are not the Members of the Chennai Port Trust Industrial Employees Canteen Workers Welfare Association.

3. But, the learned counsel appearing for the petitioners agreed



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that, they will place the materials to establish that the petitioners are the members of the Association. The counsel for the respondents also submitted that, if the petitioners submitted relevant materials and satisfy the Port Trust, their claim will be considered.

4. Based on the above submissions, orders were passed in these matters on 12.11.2021 without adverting to merits of the case..

5. However, on the same day, the learned counsel for the petitioner clarified before this court that the petitioners are not the members of the Association and the matters required elaborate discussion and hence he prayed that the matters may be decided on its own merits.

6. The learned standing counsel appearing for the respondents has also submitted that the writ petitioners are not the members of the Association and hence, they are not entitled for the relief, as prayed for in the writ petitions.

7. Based on the above representation made by both the counsels,



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these matters were ordered to be listed on today under the caption " for being mentioned".

8. Today, both the counsels appeared before this court and agreed that the matters required for detailed discussion and hence, the same may be decided on its own merits.

9. Accordingly, post the matter on 01.12.2021 for hearing.

17.11.2021

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated 12.11.2021

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

W.P.No.15724, 15725 of 2005 and
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1. S.Sampath Kumar
2. P.Poorasami
3. M.Sankar
4. J.Jayaprakash
5. S.romeo Shankar
6. R.Vadivelu

... Petitioners in
W.P.No.15724 of 2005

1. J.Elango
2. I.Patric Benjamin
3. S.B.Linganathan
4. M.Ranjith Kumar
5. S.Kothandapani
6. V.Natesan
7. R.Saikana
8. H. Raja
9. B.Anand Raj

... Petitioners in
W.P.No.15725 of 2005

R.Anandan

... Petitioner in
W.P.No.10756 of 2006

R.Raman

... Petitioner in
W.P.No.10757 of 2006



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Vs.

1. The Chairman,
Chennai Port Trust,
Chennai-1.
 2. The Special Officer,
Chennai Port Trust,
Industrial Employees Cooperative
Canteen Ltd., (Read), CH.P.T.Workshop,
EME-I Office, Chennai-9.
- ... Respondents in all the
Writ petitions

Prayer in W.P.No. 15725 of 2005

Writ petition filed under Section 226 of the Constitution of India seeking to issue a writ of Certiorarified Mandamus calling to call for all relevant records pertaining to the order passed by the Special Officer, Chennai Port Trust Industrial Employees Cooperative Canteen Ltd., Chennai-9, the second respondent herein in his proceedings No. CHPTIECC/ESTT/2005/EME dated 09.02.2005 and quash the same as illegal, arbitrary, unreasonable, being violative of Rules and Principles of natural Justice and thereby, direct the respondents 1 and 2 to reinstate the petitioners into service and regularise the service with effect from the date of their initial appointment with all monetary and service



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benefits.

Prayer in W.P.No.15724 of 2005, W.P.No. 10756 and 10757 of 2006

Writ petition filed under Section 226 of the Constitution of India seeking to issue a writ of Certiorarified Mandamus calling to call for all relevant records pertaining to the order passed by the Special Officer, Chennai Port Trust Industrial Employees Cooperative Canteen Ltd., Chennai-9, the second respondent herein in his proceedings No. Nil dated 16.02.2005 and quash the same, in so far as the petitioners are concerned, as illegal, arbitrary, unreasonable, being violative of Rules and Principles of natural Justice and thereby, direct the respondents 1 and 2 to reinstate the petitioner into service and regularise the service with effect from the date of their initial appointment with all monetary and service benefits.

In all writ petitions

For petitioners : Mr.R.Sunilkumar

For respondents : Mr.M.R.Dharanichande for R1
Mr.Thirumavalavan for R2



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COMMON ORDER

The writ petitions have been filed to quash the impugned termination order dated 09.02.2005 and 16.02.2005 passed against the petitioners and also for direction to the respondents 1 and 2 to reinstate them into service and regularise the service with effect from the date of their respective initial appointment, with all monetary and service benefits.

2. Since the issues involved in all the writ petitions are identical, they are disposed of by this common order.

3. The Writ petitioners were appointed as Attenders on various dates in the year 1996 to 1999 in the second respondent society, on daily wages. At the time of appointment, the second respondent Society had paid daily wages at Rs.30/- per day, subsequently, it was increased to Rs.60/- per day.



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4. According to the petitioners, more than 200 employees were working in the second respondent Canteen and the petitioners were continuously working more than 6 to 7 years, without any break in service and they satisfied the requirements under Section 3 of the Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workment) Act, 1981, wherein, it is stated as follows.

3. Conferment of permanent status to workmen.

(i) Notwithstanding anything contained in any law for the time being in force every workman who is in continuous service for a period of four hundred and eighty days in a period of twenty four calendar months in an industrial establishment shall be made permanent.

(ii) A workman shall be said to be in continuous service for a period if he is for that period in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike, which is not illegal, or a lock-out, or a cessation of work which is not due to any fault on the part of the workman.



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5. The further contention of the petitioners is that earlier, the Chennai Port Trust Industrial Employees Canteen Workers Welfare Association, represented by its President N.Velu, had filed a Writ petition in W.P.No.6872 of 2001 before this court seeking the following relief.

" to issue a Writ of Mandamus directing the respondents 3 and 4 (The Chennai Port Trust and the Chennai Port Trust Industrial Employees Cooperative Canteen Ltd.) to treat the members of the petitioner Association, whose names are furnished in the typed set of papers employed by the third respondent through the fourth respondent in the canteen, as regular employees of the Port Trust, Chennai and pay them all attendant and monetary benefits from the date of their appointment in the fourth respondent on par with the regular employees of the third respondent by declaring the members of the petitioner Association, as the direct employees of the Chennai Port Trust".

In the above writ petition, this court by order dated 24.08.2005, has



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passed the following order

32. The Writ petition is, therefore, ordered as prayed for and as follows.

(i) The regular and permanent employees of the canteen/ the fourth respondent herein are declared to be and shall be treated as direct employees of the Chennai Port Trust.

(ii) Temporary employees under the fourth respondent shall be absorbed and made permanent with effect from the date on which they are entitled to be declared as permanent in accordance with the rules and regulations of the Port Trust."

6. Further, it is stated by the petitioners that, challenging the above said order passed in the writ petition in W.P.No6872 of 2001, the respondents have preferred an appeal in W.A.No.66 of 2006 before this court. A Division Bench of this court, vide order dated 21.02.2006 has dismissed the above appeal in W.A.No.66 of 2006 and confirmed the order of the writ petition. Aggrieved by the above said order of the Division Bench, the Chennai Port Trust, had filed an appeal before the



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Hon'ble Supreme Court in Civil Appeal No.1381 of 2010 and the same was dismissed by order dated 27.04.2018.

7. According to the petitioners, the above said order passed by the Hon'ble Supreme Court reached finality, since the Port Trust had complied the clause(i) of paragraph No.32 of the orders passed by this court in W.P.No.6872 of 2001, by declaring the regular and permanent employees of the canteen as direct employees of the Chennai Port Trust. However, as far as the temporary employees of the Canteen are concerned, the Port Trust has not complied the clause(ii) of the above said order, but, passed the termination order against the petitioners. Hence, the petitioners are before this court seeking to set aside the termination order and to reinstate them into service and regularise their service with effect from the date of their initial appointments with all monetary and service benefits.

8. The learned counsel appearing for the petitioners submitted that the above said order passed in the writ petition No.6872 of 2001 is squarely applied to the case of the petitioners herein, and in the light of



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clause(2) of the above said order, the temporary employees of the Canteen shall be absorbed and made permanent, and declared them as permanent employee, in accordance with the Rules and Regulations of the Port Trust.

9. He further submitted that, at the time of admission of the present Writ petitions, the learned counsel appearing for the Chennai Port Trust made a submission before this court that, challenging the order passed by this court in the Writ Petition in W.P.No.6872 of 2001 as well as the Writ Appeal in W.A.No.66 of 2006, an appeal had been preferred before the Hon'ble Supreme Court and the same had been pending. Recording the above submission, interim stay was granted in the present writ petitions and pursuant to the above interim order, the petitioners are continuing with the service under the second respondent. It is the contention of the counsel for the petitioner that without considering the orders passed in W.P.No.6872 of 2001, termination order was issued by the second respondent against the petitioners, which is illegal, arbitrary and hence, the same is liable to be set aside.



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10. The learned counsel appearing for the respondent submitted that the aforesaid order passed in the Writ petition in W.P.No.6872 of 2001 will not apply to the facts of the present case, on the ground that the petitioners are not the members of the Chennai Port Trust Employees Canteen Workers Welfare Association, at the relevant point of time and they are not placed any materials before this court to establish that they are the members of the Association. He further submitted that insofar as the Clause 2 of the order is concerned, since the petitioners are not the members of the Association, termination order was passed against them and hence, the present writ petitions are not maintainable. According to the respondents, out of four canteens, three canteens were already closed and appropriate orders have been passed for those employees, either they have been absorbed in the Port Trust or have been retrenched, or transferred in other department. Therefore, the writ petitioners are not entitled to the relief, as prayed for in the writ petitions.



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11. Heard the learned counsel for the petitioners and the learned counsel for the respondents and perused the materials on record.

12. It is the contention of the learned counsel for the respondents that the petitioners are not the members of the Association. But, the learned counsel for the petitioners submitted that the petitioners are the members of the Association and they are ready to file appropriate materials to prove the same. The above said submission was not denied by the counsel for the respondents, at the time of arguments.

13. The learned counsel appearing for the respondents fairly submitted that, in case, the petitioners furnished the materials and satisfy the Port Trust, the respondents will consider the claim of the petitioners and take appropriate decision, as per the Rules and Regulations of the Port Trust.

14. Inview of the above submission made by the learned counsel



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for the respondents and also taking into account the fact that already some of the canteens controlled by the first respondent were closed, this court is inclined to pass orders, in the interest of justice to both the parties.

15. Accordingly, it is ordered as follows:

(i) The writ petitioners are directed to furnish the relevant materials before the first respondent to prove that they are the members of the Chennai Port Trust Industrial Employees Canteen Workers Welfare Association, who filed the writ petition in W.P.No.6872 of 2001 before this court, within a period of two weeks from the date of receipt of a copy of this order.

(ii) On such materials filed by the petitioners, the first respondent is directed to consider the claim of the petitioners, in the light of the clause(2) of Paragraph No.32 of the order passed in W.P.No.6872 of 2001 dated 24.08.2005, which was confirmed by a Division Bench of this Court in W.A.No.66 of 2006 dated 21.02.2006 and also by the Hon'ble Supreme Court in Civil Appeal No.1381 of 2010 dated



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27.04.2018, within 12 weeks from the date of receipt of such materials, on par with the similarly placed persons.

(iii) If the petitioners are not established that they are the members of the above said Association, the first respondent is at liberty to pass appropriate orders in accordance with law and Rules and Regulations of the Port Trust.

(iv) Till such final order is passed, the interim order already granted by this court shall continue and the petitioners shall continue the service.

16. With the above directions, the writ petitions in W.P.No.15724, 15725 of 2005 and W.P.No.10756, 10757 of 2006 are allowed and the impugned orders dated 09.02.2005 and 16.02.2005 passed by the second respondent are set aside. No costs.

12.11.2021

Index: Yes/No
Internet: Yes/No
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To

1. The Chairman, Chennai Port Trust, Chennai-1.
2. The Special Officer, Chennai Port Trust,
Industrial Employees Cooperative
Canteen Ltd., (Read), CH.P.T.Workshop,
EME-I Office, Chennai-9.



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