
(2012) 11 MAD CK 0004

In the Madras High Court

Case No : Writ Petition No"s. 17129 to 17139 of 2012

K. Pushparaj and Others

APPELLANT

Vs

Chennai Port Trust

RESPONDENT

Date of Decision : 20-11-2012

Acts Referred:

Citation : (2013) 1 LLJ 509

Hon'ble Judges : K. Chandru, J

Bench : Single Bench

Advocate : P.K. Rajagopal, for the Appellant; S. Haja Mohideen Gisthi, for the Respondent

Judgement

K. Chandru

1. This is a second round of litigation by the petitioners. The petitioners earlier filed W.P. Nos. 36273 to 36284 of 203 claiming absorption as

permanent employees in the Clearing and Forwarding Department (for short "C & amp; F Department") or in any other department in the Chennai

Port Trust with effect from the date of which proportionate vacancies were filled up by the Madras Dock Labour Board in any one of its schemes

as agreed before this Court in W.A. No. 62 of 1992. On notice from this Court, the Port Trust filed the Counter affidavit resisting the claim of the

petitioners.

2. In the identical counter affidavit filed by them during December 2005 it was contended that a compromise was reached during the year 1992

between the Union and the Madras Dock Labour Board and based on that direction was issued in W.A. No. 62 of 1992. Hence, the question of

filling up of vacancies and following the priority could arise only if vacancies were

to be filled up under Clearing and Forwarding Scheme framed in 1988. As per the compromise memo, the Madras Dock Labour Board was bound to fill up vacancies (the Madras Dock Labour Board has now been merged with Chennai Port Trust with effect from 28.5.2001) if the strength of Clearing and Forwarding Scheme falls below 320 only as per para (4) of compromise Memo. There was no obligation on the part of Madras Dock Labour Board to fill up the vacancies that arose in the Registered Scheme with the erstwhile 67 Casuals (now 65 casuals) of Clearing and Forwarding Labour of the private Scheme, but only to provide one vacancy notionally in the ratio of 4:1, to fill up on priority in the Clearing and Forwarding Scheme for every 4 vacancies in the Clearing and Forwarding Scheme in the ratio of 4:1 between the dependent of Dock Labour Board who are in the waiting list and Clearing and Forwarding Casuals. Even after introduction of Special Voluntary Retirement Scheme during the year 1992, the strength of 500 has been reduced to 336 as on 24.3.1997 as against the required optimum strength of 320.

3. It was also stated in that counter affidavit that to ensure peace and industrial amenity, 15 persons within the list of 65 persons were given appointment in the Registered Scheme though these 15 persons do not have any right to stake claim for appointment in the said Scheme. Further, in order to secure continuous employment opportunities, a Memorandum of Understanding was reached on 22.8.1992 between the Madras Dock Labour Board and recognised Unions, viz., Madras Port & Dock Workers Congress and Madras Harbour Workers Union for deployment of workmen from one scheme to another scheme. There will be no occasion to give appointment to any of these 65 persons, whose names are in the list under the compromise Memo in the C & F Scheme. Since there was no vacancy available in the Clearing and Forwarding Scheme, instead of keeping them notionally on record, the management of Madras Dock Labour Board had offered appointment to 15 retrenched casuals of Clearing and Forwarding Scheme in compliance with the Court orders.

4. It is also stated in paragraph No. 13 of the said counter that under Clause (29) of Merger Settlement dated 25.5.2001, it was agreed that the retrenched Clearing and Forwarding Casual Mazdoors who have been waiting since 1988 for whom Madras Dock Labour Board could not

provide employment, will be paid suitable compensation in lieu of employment on humanitarian grounds. The compensation was fixed at Rs.

7,500/- for each year of waiting, subject to a minimum of Rs. 30,000/- and maximum of Rs. 1,20,000/-. For availing the compensation, the Ex.

Clearing and Forwarding Casual Workers, for whom employment as Casual, provided under the Registered Scheme of Erstwhile Dock Labour

Board, were directed to submit an undertaking in writing before receiving the compensation.

5. However, the petitioners on the hope that they will get employment, did not opt for the offer made in paragraph No. 13 of the counter affidavit

filed by the Chennai Port Trust during December 2005. Ultimately the batch of writ petitions filed by the writ petitioners came to be disposed of by

a common order dated 18.9.2007. By the said common order, this Court, without going into the merits of the claim, directed the petitioners to

send representations and within one week of receipt of the representations, the Port Trust was directed to pass orders on the individual

representations.

6. It is pursuant to the said direction issued, the petitioners sent representation dated 20.9.2007 and the Chennai Port Trust by order dated

26.11.2007 rejected the petitioners' request for employment stating that it is not possible in the circumstances already set out.

7. Alleging that the order passed by this Court has been violated, the petitioners preferred contempt petitions in Cont. Petition Nos. 69 to 80 of

2011. Those contempt petitions were rejected by this Court by a common order dated 20.1.2012. In the said common order this Court held that

there is no violation of the order passed by this Court and if the petitioners are so advised they are at liberty to challenge the said communication.

Taking advantage of the said observation, the present batch of writ petitions came to be filed, once again reiterating their claim for employment.

8. In the present writ petitions, the prayer made by the petitioners is that the impugned order should be set aside and they should be absorbed as

permanent employees in the C & F Department or in the alternative they should be paid compensation at a sum not less than Rs. 1,20,000/-

with interest.

9. On notice from this Court, the respondents have filed a common counter

affidavit dated 18.7.2012.

10. Heard the arguments of Mr. P.K. Rajagopal the learned counsel for the petitioners and Mr. Raja Mohideen Gisthi-the learned Standing counsel appearing for the Chennai Port Trust.

11. In the light of the earlier stand taken by the Chennai Port Trust and having explained that there is no scope for employment, the impugned

communications do not suffer from any irregularity or illegality, but on the alternative, as noted above, in the earlier counter affidavit filed in the

earlier batch of writ petitions, there was a promise to pay compensation at the rate of Rs. 7,500/- for each year of waiting.

12. Though the said offer was based upon certain conditions and the petitioners have not opted to avail the compensation, the only question that

has to be decided is as to whether the alternative relief of payment of compensation with interest can be considered.

13. In response to the said request, in paragraph Nos. 6 to 8 in the counter it is stated as follows:

6. I submit that in this regard, kind attention is invited to Clause 29 of the merger settlement dated 25.5.2001 which is as follows:

Clause 29:

At present there are number of dependent in the live register of MDLB. Hitherto, the practice has been to give employment to the dependents

maintained in the register as per the requirement from time to time and recruitment is made. In addition to this, there are 24 retrenched Ty. GPMs

and 52 C & amp; F casual Mazdoors who have been waiting since 1988 for whom MDLB is to provide employment as per the observation of the

Hon"ble High Court of Madras.

The Sub-committee which has assessed the man power Requirement of MDLB has in its recommendation on 26.2.2001, found that there are

about 600 workers in surplus in MDLB, in view of this, the management expressed its inability to offer employment in MDLB in any of these

dependents and retrenched workers.

In view of the inability of MDLB to offer employment to any of these dependents/ retrenched employees, it has been agreed that a suitable

compensation may be offered in lieu of employment on humanitarian grounds.

The compensation will be Rs. 7,500/- for each year of waiting subject to a minimum of Rs. 30,000/- and maximum of Rs. 1,20,000/-. The

dependents who are willing to avail this compensation may avail this compensation may avail and those who are not willing to avail this may

continue to wait in the List which will be transferred to ChPT from the date of merger and they can wait for their chance of employment subject to

rules and conditions prescribed by the ChPT in this regard. This will be only a one time settlement and cannot be treated as precedence in future.

The candidates in the dependant list should exercise their option on or before 31.7.2001, either to receive the compensation or to remain in the live

register for their chance of employment in ChPT.

7. I submit that in this regard, the dependents who were in the list was given options either to receive the compensation, or to continue to be in the

list of dependents for employment. As per the abovesaid clause, some of the employees accepted the compensation and a few of them died and

the above petitioners are the remaining persons who have filed this case. In this connection, it is informed that the petitioners along with other

petitioners have submitted a joint representation to the Chairman, Chennai Port Trust stating that if a good and reasonable compensation paid to

them they will be satisfied and requested to pay a sum of Rs. 1,20,000/- each to the petitioners as compensation along with the interests since the

compensation was arrived at during the year 2001.

8. I further submit that it is pertinent to point that on perusing the facts of the case carefully, the respondent took a decision that payment of

compensation to the 11 ex-casuals is not possible at this juncture since the same was not availed by them during the year 2001.

14. Mr. P.K. Rajagopal, the learned counsel for the petitioners would submit that while denying the employment, at least the amount of

compensation should be paid to the petitioners.

15. Mr. Haja Mohideen Ghisti, the learned counsel for the respondent would submit that since it is a one time scheme, the question of the

petitioners availing the scheme does not arise at this state, as stated in the counter affidavit.

16. However, this Court is of the opinion that though the names of the petitioners were found in the waiting list, they cannot get employment and

since as on date also there is no scope for employment, the offer of compensation cannot be withdrawn, without any reason. It may be true that the petitioners have not availed the compensation scheme under the hope that they would get employment in some future point of time, but on that score they should not be penalised from deprivation of compensation. Further, the petitioners having litigated for over 9 years, it cannot be stated that they have abandoned their claim of employment. Hence, this Court is inclined to direct the respondent-the Chennai Port Trust to offer the compensation in terms of clause 29 of the Merger settlement dated 29.5.2001 and as set out in paragraph No. 13 of the previous counter affidavit as well as in paragraph No. 7 of the present counter affidavit. But at the same time, seeking for interest is not justified since the petitioners themselves have not availed the scheme of offer and for that the Port Trust cannot be blamed.

17. In such circumstances, the writ petitions are disposed of with a direction to the respondent-Chennai Port Trust to grant compensation in terms of clause 29 of the Merger Settlement dated 25.5.2001 in respect of the petitioners, after calculating the service weightage in respect of each of them. The said exercise shall be carried out within eight weeks from the date of receipt of a copy of this order. The writ petitions are disposed of accordingly. However, there is no order as to costs.