

A Steel Industrials Kerala Ltd vs Capt. S.M. Rebello & Ors on 26 February, 1985

Equivalent citations: 1985 AIR 760, 1985 SCR (2) 998, AIR 1985 SUPREME COURT 760, 1986 LAB. I. C. 411, (1986) MAD LJ(CRI) 11, 1985 CRILR(SC MAH GUJ) 192, (1986) 1 ALLCRILR 603, (1986) 1 LAB LN 491, (1985) 2 SCR 998 (SC), (1985) SC CR R 217, 1985 SCC (L&S) 449, 1986 CHANDLR(CIV&CRI) 17, 1985 (2) SCC 363, (1985) 50 FACLR 467, (1985) 2 LABLJ 14, (1985) 1 CRIMES 515

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Bench: Syed Murtaza Fazalali, A. Varadarajan

PETITIONER:

A STEEL INDUSTRIALS KERALA LTD.

Vs.

RESPONDENT:

CAPT. S.M. REBELLO & ORS.

DATE OF JUDGMENT 26/02/1985

BENCH:

FAZALALI, SYED MURTAZA

BENCH:

FAZALALI, SYED MURTAZA

VARADARAJAN, A. (J)

CITATION:

1985 AIR 760

1985 SCR (2) 998

1985 SCC (2) 363

1985 SCALE (1) 289

ACT:

Term appointment for a fixed period-Premature termination of services of a Master of the ship-Whether the "master of a ship" is a "seaman" within the meaning of the provision of the Merchant Shipping Act, 1958 for the purpose of entitlement to get full compensation on the termination of his services, for the entire period of his contract-Section 3(22), 3(42), 89, 101, 103, 118, 120, 125, 143, 148, 178, to 183 of the Merchant Shipping Act, 1958-Whether the contract of appointment of a master of a ship and the owner is the nature of a contract of personal service and therefore cannot be specifically enforced.

HEADNOTE:

The respondent was appointed on October 22, 1980 for a period of one year as a "master" of the ship called 'M V Anastasis' in terms of the appointment order under which he was entitled to two months' wages, if he was discharged before the completion of his term. The said ship on December 11, 1980, touched the harbour and thereafter proceeded to Beypore, Calicut, where the respondent was informed that the ship having been sold as a scrap to the appellant company, Steel Industries, Kerala, he should handover the ship to the company. Consequent upon the sale of the ship, by an order dated 20.12.80 the services of the respondent were terminated. On December 22, 1980 the respondent wrote a letter to the previous owner of the ship of having handed over the ship to the appellant company. On 24.12.80 the respondent moved the Magistrate under section 145 of the Merchant Shipping Act, 1958 for payment of necessary wages. The Magistrate after considering all the pros and cons of the matter felt that the respondent was entitled to get compensation at least equivalent to three months' pay calculated at \$1800 per month. In appeal the High Court of Kerala increased the compensation equivalent to one year's wages.

Allowing the company's criminal appeal No 240/82 and dismissing the Master's appeal No 661/82, the Court

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HELD: 1 The High Court has misconstrued the various sections of the Merchant Shipping Act, 1958 and by a strange process of reasoning arrived at the conclusion that the respondent was entitled to full compensation of one year's wages even if his services were terminated before the expiry of his actual term, when in fact the ship having been treated as a

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scrap was no longer required and therefore his services had to be dispensed with and when the respondent himself rightly understood the terms of his appointment and put his claim at two months' wages only. [1006H; 1007]

2.1 There is no provision in the Merchant Shipping Act, 1958 which equates a seaman with a master of a ship in regard to the terms and conditions or emoluments or mode of discharge or under which a master of a ship can get a discharge certificate. But under section 143 read with section 148 a Master is entitled to three months' wages. [1005C-E]

2.2 A perusal of the relevant section clearly reveals that the statute makes a well knit distinction between a 'seaman' and a 'Master' of the ship. The definition of 'Master' in sub-section (22) of section 3 does not include a seaman. Sub-section 42 of section 3 clearly shows that a 'seaman' cannot in the ordinary sense of the term be equated

with a 'Master' but for certain specific purposes under sections 178 to 183 it includes a ;Master In sub section (1) OF section 180, the word 'Master" has been used for the first time but even here the term has been used not to equate a seaman with a master but in quite a different context and subserve a different purpose. [1002B, D, E-F, 1003D]

2.3 There is no clear provision from which it can be inferred either directly or by necessary intendment that a master is also a seaman for the purpose of getting compensation if his services were terminated. The various sub-sections of section 89 do not at all govern the terms and conditions of a master' but serve to carve out his duties at various levels or stages. Sections 101, 103, 108, 119, 120, 121. 132, 143 and 199 of the Merchant Shipping Act-all these govern the terms and conditions of a service of a seaman and the crew and have nothing to do with the master of A ship. It is true that sub-sections I and 2 of section 148 provide that a master of a ship would have the same rights, liens and remedies for recovery of his wages as a seaman either under the four corners of the Act or by any law or custom. But there is no provision in the Act under which a discharge certificate can be given to a master of a ship or even otherwise, a master cannot claim the rights and privileges of a seaman because a master of a ship is an officer of a higher rank than that of a seaman. Therefore, his terms and conditions are bound to be different from that of a seaman. [1003E-F, 1004B, F, 1006A-B]

3. The contract between the master of a ship and the owner is in the nature of a contract of personal service and cannot be specifically enforced.

[1006D]

Dr. S. B. DurJ v. University of Delhi, [1959] S.C.R. 1236 referred to.

[The Court directed (i) that the excess amount which has been with. drawn by the respondent shall be refunded to the appellant within four months from 26. 2. 85 either in installment or in one lump-sum failing which it will be open to the appellant to recover the same by way of restitution, and (ii) that if the amount is not returned within four months then the recovery will be made with interest at the rate of 12% per annum.] [1007E-F] H 1000

JUDGMENT:

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 240 of 1982 From the Judgment and Order dt. 2.3.1982 of the High Court of Kerala at Ernakulam in CrI. R.P. No. 435181.

Criminal Appeal No. 661 of 1982 From the Judgment and Order dt. 12.2.1982 of the High Court of Kerala at Ernakulam in O.P. No. 6834/81. G.L. Sanghi, G-N Rao, A.S. Nambiar, after Singh for the Appellant in Crl. A. No. 240182 & Respondents in Crl. A. No. 611/82.

Govind Mukhoty, Mr. V. Maya Krishnan, A N. Bordiyar for the Respondents in Crl- A. No- 240/82 and Appellants in Crl. A. No. 661182. D S.M. Rebelo (In person).

The Judgment of the Court was delivered by, FAZAL ALI, J. BY Our Order dated February 12, 1985 we disposed of the above-mentioned two criminal appeals- dismissed criminal appeal No. 66118,2 and allowed criminal appeal No. 240 of 1982. We now proceed to give the reasons for our Order The facts of the case lie within a very narrow compass. The appeal by special leave has been filed by the appellant-company contending that the respondent was not entitled in law to get full compensation for one year as was granted by the High Court for premature termination of his services. The detailed facts have been given by the High Court and the criminal court and it is not necessary to repeat the same.

However, in order to understand the delicate and difficult points raised by the respondent, it may be necessary to give a short history of the circumstances in which the services of the respondent, who was Master of the ship called 'M.V. Anastasis', were terminated it is common ground that the respondent was appointed on October 22 1980 for a period of one year. It is not disputed that on December 11, 1980 the said ship touched the harbour and thereafter proceeded to Beypore, Calicut where the respondent received a message from the owner of the ship that the ship has been sold as scrap to the appellant-company, Steel Industrials Kerala Ltd Consequent upon the sale of the ship, by an order dated 20.12.80 the services of the respondent were terminated. On December 22, 1980, i e, two days later, the respondent wrote a letter to the previous owner intimating that, as directed, he had handed over the ship to the appellant-company- A little later on 24.12.80, the respondent moved the Magistrate under s. 145 of the Merchant Shipping Act, 1958 (hereinafter referred to as the 'Act') for payment of necessary wages.....The Magistrate after considering all the pros and cons of the matter felt that the respondent was entitled to get compensation at least equivalent to three months' pay. The respondent was, however, not satisfied with the order of the Magistrate because he claimed a much higher compensation as his services were terminated before completion of one year for which he was appointed. It is true that the salary of the respondent, calculated at the rate of \$1800 per month, amounts to a substantial sum of money if he were to get compensation on a full salary basis for the entire period, which actually he had not served- We are, however, not concerned with the quantum of the compensation which he could get, but the main point for consideration in this case is to whether or not his claim for compensation for the whole year could be entertained. In one of the letters which he had written to the owner of the ship he had himself admitted that he was entitled to two months' notice pay plus other emoluments. This would show that the contract between the parties as understood by them was that if the services of the respondent were terminated before completion of the term of one year, he would be entitled to two months' notice. the Magistrate, however, took a more liberal view in the matter and held that the respondent was entitled to at least three months' notice and consequently to the emoluments calculated at the rate of \$1800 per month, and accordingly ordered payment of three months' pay This is in accordance with s. 143 read with s. 148 of the Act.

It is manifest that under the contract the respondent was not appointed to any permanent post which was to last until his retirement but his appointment was really a term appointment for a fixed period.

The main contention of the respondent before us was that as he did not get any discharge slip under the provisions of the Act, he was entitled to full wages for the entire term of one year. In this connection, he relied on certain provisions of the Act to which we shall refer here after.

It appears that the respondent seems to have presumed that he was equal in status to that of a seaman and, therefore, unless a discharge certificate was given to him he was entitled to compensation for the entire period of the contract. A perusal of the relevant sections, clearly reveals that the statute makes a well knit distinction between a seaman and a master of the ship.

This now takes us to an analysis of the relevant provisions of the Act on which reliance has been placed by the respondent. To begin with, sub-section (22) of s. 3 defines a 'Master' thus:

"master" includes any person (except a pilot or harbour master) having command or charge of a ship;"

It is pertinent to note that the definition of 'Master' does not include a seaman and, therefore, the argument of the respondent that he should be equated with a seaman or treated as such, cannot be accepted and is in fact without any substance. Sub-section (42) of s. 3 defines a 'seaman' as every person (except a master, pilot or apprentice) employed or engaged as a member of the crew of a ship but for certain specific purposes under sections 178 to 183 it includes a master. An analysis of this sub-section shows that a seaman cannot in the ordinary sense of the term be equated with a 'master'. Thus, the second part of sub-section (42) on which great reliance was placed by the respondent clearly carves out a separate area where for the purpose of this sub-section a seaman might include a master. This limited area is to be found within the four corners of sections 178 to 183. This now brings us to a consideration of s. 178 which may be extracted thus:-

"178. Meaning of serving seaman A seaman shall, for the purposes of these provisions, be deemed to be a serving seaman during any period commencing on the date of the agreement with the crew and ending thirty days after the date on which the seaman is finally discharged from such agreement."

There is nothing in this section to indicate that a seaman can in any sense of the term be equated with a 'master'. Even s. 179 refers only to a serving seaman and not a Master. The relevant provisions of s. 180 may be extracted thus:-

"180. Notice to be given in case of unrepresented seaman (1) If a collector has certified under sub-

section (2) of section 179, or if a court has reason to believe that a seaman who is a party to any proceeding before the court, is unable to appear therein or is a serving seaman, the Court shall

suspend the proceeding and shall give notice thereof to the shipping master :"

This section merely provides that if a court has reason to believe that a seaman was a party to any proceeding and does not appear therein, the court shall postpone the proceeding and give notice thereof to the shipping master. In this sub-section, the word 'master' has been used for the first time but the term has been used not to equate a seaman with a master but in quite a different content and subserve a different purpose. The other sections also, particularly s. 183, merely provide that a serving seaman may refer the question to the shipping master whose certificate shall be conclusive evidence on the question whether a seaman was a serving seaman or not at any particular time or period. There is no clear provision from which it can be inferred either directly or by necessary intendment that a master is also a seaman for the purpose of getting compensation if his services were terminated. Section 89 defines the duties of shipping masters which may be extracted thus: F "It shall be duty of shipping masters -

(a) to superintend and facilitate the engagement and discharge of seamen in the manner provided in this Act:

(b) to provide means for securing the presence on , Board at the proper times of the seamen who are so engaged;

(c) to facilitate the making of apprenticeship to the sea service;

(d) to hear and decide disputes under section 132 between a master, owner or agent of a ship and any of the crew of the ship,

(e) to perform such other duties relating to seaman, apprentices and merchant ships as are for the time being committed to them by or under this Act." The various sub-sections of s. 89 do not at all govern the terms and conditions of a 'master' but serve to carve out his duties at various levels or stages. Similarly, s. 101 refers only to the question that there should be an agreement with the crew in a prescribed form. There is no reference to the terms and conditions of a master in any of the sub-sections. Section 103 is a general section which governs the terms and conditions of a seaman and there is no reference to a master of the ship. Reliance was then placed on s. 118, the relevant portion of which may be extracted thus:

"118. Discharge before shipping master (1) When a seaman serving in a foreign-going ship is, on the termination of his engagement, discharged in India, he shall, whether the agreement with the crew be an agreement for the voyage or a running agreement, be discharged in the manner provided by this Act in the presence of a shipping master."

This sub-section taken together with the other sub- sections also governs the terms and conditions of a seaman and not those of a master of the ship. Section 119 merely provides that the master shall

sign and give to seaman who is discharged, a discharge certificate either on his discharge or on payment of his wages specifying the period of his service and the time and place of his discharge. This section also governs the terms and conditions of a seaman and has nothing to do with the terms and conditions of a master of a ship. Similarly, s. 120 relates to the consequences where a seaman is discharged.

Some reliance was also placed on sub-section (1) of s.125 which may be extracted below:

"125. Master to deliver account of wages (1) The master of every ship shall, before paying off A or discharging a seaman under this Act, deliver at the time and in the manner provided by this Act a full and true account in the form prescribed of the seaman's wages and of all deductions to be made therefrom on any account whatever-" B This again defines the duties of a master in respect of a seaman who is discharged. Section 132 provides the procedure to be followed in case any dispute arises, under the agreement with the crew, between the master, owner or agent of a ship and lays down that the same should be submitted for decision to the shipping master.

Section 143, on which some reliance was placed by counsel for the respondent, refers only to the circumstances under which a seaman could be discharged and the consequences ensuing therefrom. D It is apparent from the facts narrated and the analysis of the sections made by us that there is no provision in the Act which equates a seaman with a master of a ship in regard to the terms and conditions or emoluments or mode of discharge. In fact, there is no provision under which a master of a ship can get a discharge certificate. But under s. 143 read with s. 148 a Master is entitled to three months' wages in case of discharge or termination in the same manner as a seaman is entitled to three months' wages.

Great reliance was, however, placed by the counsel for the respondent on sub-sections (1) and (2) s. 148 which provide that a master of a ship would have the same rights, liens and remedies for recovery of his wages as a seaman either under the four corners of the Act or by any law or custom Sub-s.(2) may be extracted thus:

"(2) The master of a ship and every person lawfully acting as master of a ship by reason of the decease or in- G capacity from illness of the master of the ship shall, so far as the case permits, have the same rights, liens and remedies for the recovery of disbursements or liabilities properly made or incurred by him on account of the ship as a master has for the recovery of his wages."

Hence, it is manifest that since there is no provision in the Act under which a discharge certificate can be given to a master of a ship or even otherwise, he cannot claim the rights and privileges of a seaman. This is obviously so because a master of a ship is an officer of a higher rank than that of a seaman and therefore his terms and conditions are bound to be different from that of a seaman.

Reliance was also placed on s. 199 of the Act which also deals not with the condition of service of a master but of the forfeiture of wages of a seaman on apprentice on desertion from a ship.

It was contended on behalf of the appellant that the contract between the master of a ship and the owner was in the nature of a contract of personal service and could not be specifically enforced. This view is supported by a decision of this Court in *Dr. S.B. Dutt v. University of Delhi*(1) where Sarkar, J., observed thus:

"The High Court had held that it was not open to the arbitrator "to grant Dr. Dutt a declaration that he was still a professor in the University which no Court could or would give him". The High Court felt that this declaration amounted to specific enforcement of a contract of personal service which was forbidden by s. 21 of the Specific Relief Act and therefore disclosed an error on the face of the award. We are in entire agreement with the view expressed by the High Court. There is no doubt that a contract of personal service cannot be specifically enforced."

Thus, the appellant rightly pointed out that Annexure I appearing at page 64 of the paperbook in criminal appeal No. 240 of 1982, clearly defines the terms of the appointment of Capt. Rebello, master of the ship. It is true that s- 148 provides that a master of a ship shall have the same rights and remedies as a seaman but that is only for a particular purpose.

In these circumstances, the High Court has misconstrued the various sections of the Act and by a strange process of reasoning arrived at the conclusion that the respondent was entitled to full (1) [1959] S.C.R. 1236.

compensation of one year's wages even if his services were terminated before expiry of his actual term but there does not appear to be any warrant for this view.

Thus, having regard to the various provisions of the act which we have analysed fully, there can be no doubt that the High Court was not at all legally justified in holding that the respondent was entitled to wages for one year when in fact the ship having been treated as a scrap was no longer required and, therefore, the services of the respondent had to be dispensed with. The respondent himself understood the terms of his appointment (mentioned at page 64 of the paperbook) and has therefore rightly put his claim at two months' wages if he was discharged before completion of his term. As already indicated, the Magistrate has awarded the compensation for three months' wages instead of two months' wages and we entirely agree with his view.

The result is that we allow criminal appeal No. 240 of 1982, set aside the judgment of the High Court and restore that of the Magistrate. Criminal appeal No. 661 of 1982, is dismissed but in the circumstances of the case there will be no order as to costs.

The excess amount which has been withdrawn by the respondent shall be refunded to the appellant within four months from today either in instalments or in one lump-sum, failing which it will be open to the appellant to recover the same by way of restitution If the amount is not returned within

four months, then the recovery will be made with interest at the rate of 12% per annum S R. C.A. No. 24018 ' allowed.

C.A. No. 661182 dismissed.