

A. Manoharan And Ors vs Union Of India And Ors on 14 February, 2008

Equivalent citations: 2008 AIR SCW 1487, 2008 (3) SCC 641, 2008 LAB. I. C. 1385, AIR 2008 SC (SUPP) 348, (2008) 2 CTC 672 (SC), (2008) 2 LAB LN 684, (2008) 3 MAD LJ 39, (2008) 2 SCALE 616, 2009 (1) KCCR SN 1 (SC)

Author: S.B. Sinha

Bench: S.B. Sinha, Harjit Singh Bedi

CASE NO.:
Appeal (civil) 1273-1276 of 2008

PETITIONER:
A. Manoharan and Ors.

RESPONDENT:
Union of India and Ors.

DATE OF JUDGMENT: 14/02/2008

BENCH:
S.B. Sinha & Harjit Singh Bedi

JUDGMENT:

J U D G M E N T [Arising out of SLP (Civil) Nos. 16720-16723 of 2003] S.B. SINHA, J :

1. Leave granted.

2. The Parliament of India enacted the Major Port Trusts Act, 1963 (for short the 1963 Act). It was preceded by several provincial Acts; one of them being the Madras Outports Landing and Shipping Fees Act, 1885.

Regulations were framed under the provincial Acts. They were saved under the 1963 Act.

Madras Port Trust Employees (Appointment, Promotion, etc.) Regulations, 1977 was made under Section 28 of the 1963 Act. It was amended in the year 2000 by the Madras Port Trust Employees (Appointment, Promotion, etc.) Regulation 2000. Regulation 5 read with Schedule thereof provides that insofar as the appointment to the post of Executive Engineer is concerned, possession of a degree in Civil Engineering is imperative. It was amended with the approval of the Central Government in terms of Sub-section (1) of Section 124 of the 1963 Act. Regulations, therefore, have statutory force. They have been duly published in the Gazettee. Not only approval of the Central Government was obtained, they were also laid before both Houses of the Parliament.

3. Some of the employees were Diploma holders. They formed an Association known as Chennai Port Trust Diploma Engineers Association. In view of embargo placed by the Regulations on their promotional prospects as the educational qualification for holding of the post of Executive Engineers had been laid down, they made a representation.

A writ petition came to be filed before the Madras High Court which was marked as Writ Petition No. 11938 of 1993. A prayer was made therein for a direction upon the appropriate government/ authority to make amendments in the Regulations of the 1963 Act in terms whereof provisions were required to be made for grant of opportunities for promotion to the Diploma Engineers to the post of Executive Engineers in the ratio of 4:1, i.e., as against four posts of Executive Engineer from Graduate Engineers; one post must be reserved for the Diploma holders. Such a prayer was made relying on or on the basis of the recommendations made by the Central Government in terms of its letter dated 8.06.1991; pursuant where to the Madras Port Trust constituted a Committee. Recommendations were also made by the said Committee for grant of such benefit in favour of the Diploma holders. A communication was again made by the Union of India to the Trust on 28.06.1994 providing that a common seniority list should be maintained for diploma holders and degree holders once the two streams merged, i.e., Diploma holders and Degree holders come on a common platform by occupying the same post.

The prayer made in the writ petition was amended. A learned Single Judge of the High Court opined that as Diploma holders could be promoted to the Post of Executive Engineer in terms of the recommendations of the Central Government, it was not necessary to issue a direction to amend the Regulations. However, in regard to the other prayers made in the said writ petition, as for example, for grant of promotion, an observation was made therein that an administrative representation therefor should be considered.

A writ appeal preferred thereagainst was allowed directing the respondent no. 1 to promote the Diploma holders with retrospective effective on the basis of common seniority.

4. The learned counsel appearing on behalf of the Union of India before the High Court conceded to the contentions raised on behalf of the Diploma holders relying on or on the basis of the said communications of the Central Government.

We may notice that the Degree holders were not made parties to the said writ proceedings.

A review application was filed inter alia contending that as educational qualification for holding the post of Executive Engineers has been laid down by the Regulations, it should be clarified that no action can be taken on the basis of the said communication by the Central Government.

Appellant No. 1 herein and the Chennai Port Trust Degree Engineers Association also filed writ petitions before the High Court bearing Writ Petition Nos. 4573 and 4774 of 2003 respectively.

5. Some of the Degree holders also filed a review application together with an application for grant of leave therefor.

In the said review proceedings, a letter dated 24.12.2002 issued by the Central Government was produced.

The Division Bench of the High Court made a summary thereof stating:

Firstly, the diploma-holders could be promoted up to the level of Executive Engineers; Secondly, there could be a limited allocation of posts for diploma holders in the ratio of 4:1 or 5:1 in relation to graduate-engineers; Thirdly, Class III posts in the Engineer cadre were to be redesignated without any change in their duties and without any financial implications; Fourthly, common seniority list was to be maintained for degree and diploma engineers once the two streams merge for promotion to the higher cadres; and Lastly, regarding the ratio of 4:1 or 5:1 between degree-engineers and diploma-engineers whenever the two streams merge, no ratio system would exist meaning thereby, that after the merger i.e., after the two category of engineers come on the same platform, the promotion has to be made on the basis of common seniority list. It also referred to the following paragraph of the said letter:

These guidelines were in vogue till 2000 when these instructions were kept in abeyance by letter No. C-13019/11/96/PE-1 dated 8.3.2000 on the ground that cadre restructuring of degree/diploma holders was under consideration. Cadre restructuring proposal involving upgradation of some posts and financial implications, could not be finalized as it needs consultation/concurrence of Ministry of Finance. Thus as on date there are no clear instructions on the subject of promotional avenue to the diploma holders. Decision on cadre restructuring will be implemented with all its consequences. However, in the mean time we need to provide guidelines as promotion of diploma /degree holders, if due, should not wait till the cadre restructuring is finalized. In the circumstances, it has been decided to withdraw this Ministry's letter No.C-13019/11/96/PE-II dated 8.3.2000 and restore the position available before 8.3.2000. The ports are accordingly requested to take necessary action in the matter.

6. The prayer of the Degree holders - Executive Engineers to file the application for grant of leave to file review petition, was, however, refused to be considered holding that it has not been shown as to how individually they are prejudiced.

7. So far as the writ petition filed by the appellants is concerned, the High Court rejected their contention that the Government of India did not have any power to provide for promotional avenues for the diploma holders contrary to the Regulations and as such the said communications were ultra vires, stating:

The argument must necessarily fail. In the first place, it cannot be forgotten that the regulations are restricted only to the Madras Port Trust. They were originally framed under the Major Port Trust Act and more particularly under Sec 28 thereof. Though

the regulations originally framed for the Madras Port Trust are saved under Sec. 133 (2D) (C) of the Major Port Trusts Act, the fact remains that they would apply only to Madras Port Trust. Where we see the other provisions, it is obvious that the Central Government has a plenary power over all the Major Port trusts, they being Port Trusts of Bombay, Calcutta and Madras in respect of which there were separate enactments earlier, which separate enactments stood repealed by the present Act. Under the provisions of Sec. 106, the Board has to submit the Central Government a detailed report of the administration of the port during the preceding year. Section 107 ordains every Board to submit the statements of its income and expenditure every year. Under Sec. 108, the Central Government has a power to order a local survey or examination of any works of the Board or the intended site of such port. The expenditure of which has to be borne by the Board. Under Sec. 109, the Central Government has the power to restore or complete the work at the cost of the Board. Sec. 110 gives a complete control to the Central Government as the Board could be superseded when it is unable to perform the duties imposed by or under the provisions of the Act. Subsection (b) provides that if the Board has persistently made default of the duties imposed upon it by or under the provisions of this Act or if its financial position has deteriorated the Board can be superseded by the Central Government. Before superseding, however, the Board has to be given a show cause notice. Under Sec. 110 (3) (b) and (c) the Central Government has the power to reconstitute the Board by fresh appointment and fresh elections.

8. Mr. K.V. Viswanathan, learned counsel appearing on behalf of the appellants, submitted that the High Court committed a serious error in arriving at the said findings insofar as it failed to take into consideration the core legal issue, viz., the power of the Central Government to issue a direction in terms of Section 111 of the 1963 Act vis-à-vis the Regulations making power, in their correct perspective.

9. The learned counsel appearing on behalf of the respondents, on the other hand, supported the impugned judgment.

10. The 1963 Act was enacted to make provision for constitution of port authorities for certain major ports in India and to vest the administration, control and management of such ports in such authorities and for matters connected therewith.

Section 47H of the 1963 Act reads as under:

7H - Officers and employees of the Authority (1) The Authority may appoint officers and such other employees as it considers necessary for the efficient discharge of its functions under this Act (2) The salary and allowances payable to and the other conditions of service of the officers and other employees of the Authority appointed under sub-

section (7) shall be such as may be specified by regulations."

Chapter IX of the 1963 Act provides for supervision and control of the Central Government.

Section 106 of the 1963 Act provides for filing of administrative report. Submission of statements of income and expenditure to the Central Government is provided for under Section 107. Power of the Central Government to order survey or examination of works of the Board is contained in Section 108 thereof, whereas power of the Central Government to restore or complete works at the cost of the Board is contained in Section 109 of the 1963 Act. Supersession of the Board is also within the domain of the Central Government as provided for in Section 110 of the 1963 Act. Similarly, the power to supersede the authority is contained in Section 110A.

Section 111 of the 1963 Act which confers a power on the Central Government to issue directions to the Board must be examined on the backdrop of the aforementioned statutory provisions. It reads as under:

11 - Power of Central Government to issue directions to Board (1) Without prejudice to the foregoing provisions of this Chapter, the Authority and every Board shall, in the discharge of its functions under this Act be bound by such directions on questions of policy as the Central Government may give in writing from time to time;

Provided that the Authority or the Board, as the case may be, shall be given opportunity to express its views before any direction is given under this sub-section.

(2) The decision of the Central Government whether a question is one of policy or not shall be final.

11. Indisputably Chapter XI of the 1963 Act provides for power of the Central Government to make rules for the purposes specified therein, wherewith we are not concerned.

12. The Board, however, has been conferred with a power to make Regulations under Section 123 of the 1963 Act in regard to the matters specified therein. Section 123A of the 1963 Act empowers the authority to make regulations consistent with the provisions of the 1963 Act inter alia for the purposes of the salaries and allowances payable to and the other conditions of service of officers and other employees of the Authority under Sub-section (2) of Section 47H of the 1963 Act.

13. Section 124 of the 1963 Act provides for approval of the regulations by the Central Government. It must be published in the gazettee. It also provides for laying down the same before the Parliament. Breach of some regulations attracts penal provision.

Power of the Central Government to direct any Board to make any regulations is confined to the matters specified in Section 28 or Section 76 or Section 123 or to amend any regulation within such period as the Central Government may specify in this behalf.

No regulation exists enabling the Government to issue any direction in relation to regulation governing salaries and allowance payable to and other conditions of service of officers and

employees of the authority. In any event, in the event such a direction is not followed, the Central Government may take recourse only to the provisions of Sub-section (2) of Section 124 of the 1963 Act, which reads as under:

(2) No such regulation other than a regulation made under section 28 shall be approved by the Central Government until the same has been published by the Board for two weeks successively in the Official Gazette and until fourteen days have expired from the date on which the same had been first published in that Gazette.

14. Statutory regulations have not been amended by the Central Government. The Central Government, as noticed hereinbefore, does not have any power in regard thereto. Under the 1963 Act all authorities specified therein are statutory authorities. They are to act within the four corners thereof. [See Ramchandra Murarilal Bhattad and Others v. State of Maharashtra and Others [(2007) 2 SCC 588] The legal principle that an administrative act must yield to a statute is no longer res integra. Once a regulation has been framed, in terms of the provisions of the General Clauses Act, the same must be amended in accordance with the procedures laid down under the principal enactment. Even assuming that the Central Government had the jurisdiction to direct the authority to amend the regulations, it was required to be carried out in accordance with law, and, thus all requisite procedures laid down therefor were required to be fulfilled.

[See Sant Ram Sharma v. State of Rajasthan and Anr. AIR 1967 SC 1910, D.D.A. and Ors. v. Joginder S. Monga and Ors. (2004) 2 SCC 297, Vasu Dev Singh and Ors. v. Union of India and Ors. 2006 (11) SCALE 108, Kerala Samsthana Chethu Thozhilali Union v. State of Kerala and Ors. (2006) 4 SCC 327 and State of Kerala and Ors. v. Unni and Anr. (2007) 2 SCC 365] Recently in Union of India and Another v. Central Electrical & Mechanical Engineering Service (CE&MES) Group A (Direct Recruits) Association, CPWD & Ors. [(2007) 13 SCALE 23], this Court held; o. It is now a well settled principle of law that an executive order must be passed in conformity with the Rules. Power of the State Government to issue executive instructions is confined to filling up of the gaps or covering the area which otherwise has not been covered by the existing Rules. See Sant Ram Sharma Vs. State of Rajasthan & Anr. [AIR 1967 SC 1910] and D.D.A. and Ors. Vs. Joginder S. Monga and Ors.

[(2004) 2 SCC 297]. Such office orders must be subservient to the statutory rules.

15. The power of the Central Government to issue directions as contained in Section 111 of the 1963 Act cannot be stretched to amend the regulations. Power must be exercised by the Central Government only in regard to the administration of the trust. Such a power to issue direction must be construed strictly. [See Ramana Dayaram Shetty v. The International Airport Authority of India and Others AIR 1979 SC 1628 : (1979) 3 SCC 489, Harjit Singh & Anr. v. The State of Punjab & Anr. 2007 (3) SCALE 553, Ashoka Smokeless Coal India (P) Ltd. and Others v. Union of India and Others, (2007) 2 SCC 640 and Poonam Verma & Ors. v. Delhi Development Authority [2007 (14) SCALE 485].

16. Furthermore, Regulations have been amended only with effect from 11.08.2004. It would have a prospective effect. It cannot be applied retrospectively. Any vacancy which has arisen prior to coming into force of the said amended regulation must be filled up in terms of the law as was existing prior thereto. [State of Rajasthan v. R. Dayal and Others (1997) 10 SCC 419, para 8]

17. The High Court, therefore, committed a serious error in issuing the impugned directions. It also committed a serious error in holding that the Review Petition was not maintainable at the instance of the appellants.

18. For the reasons aforementioned, the impugned judgments cannot be sustained. They are set aside accordingly. The appeals are allowed with costs payable by the Madras Port Trust. Counsel's fee assessed at Rs. 25,000/-.