

Supreme Court of India

Workmen Of Calcutta Dock Labour ... vs Employers In Relation To Calcutta ... on 30 April, 1973

Equivalent citations: AIR 1973 SC 2251, 1973 (26) FLR 444, (1973) IILLJ 254 SC, (1974) 3 SCC 216, 1973 (1) SLJ 1044 SC

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Bench: A Grover, C Vaidialingam

JUDGMENT A.N. Grover, J.

1. This is an appeal by special leave from an award of the Central Government Industrial Tribunal, Calcutta made in reference No. 124 of 1966.

2. The facts may be shortly stated. The Calcutta Dock Labour Board is a body corporate, established under the Dock Workers (Regulation of Employment) Act, 1948 and includes equal number of members representing the Government, the Dock Workers and the Employers of Dock Workers and Shipping Companies. Schemes had been framed under Section 4 of the said Act for representation of Dock Workers and Employer, with the object of ensuring greater regularity of employment and regulating the employment of Dock workers in a Port whether registered or not. The Calcutta Dock Workers (Regulation of Employment) Scheme, 1956 was notified on October 8, 1956 governing the terms and conditions of service of Registered Dock Workers. Another scheme called the Unregistered Dock Workers (Regulation of Employment) Scheme, 1957 was notified on June 29, 1957 governing the terms and conditions of Listed Workers.

3. Seven Dock Workers had been detained under the Defence of India Rules, five of whom were detained for more than one year and two for comparatively shorter period. It appears that one of the disputes arose because these workmen were not taken back by the Dock Labour Board.

4. A notification dated September 29, 1966 was issued by the Central Government saying that an industrial dispute exists between the employers in relation to (1) Calcutta Dock Labour Board, (2) The Master Stevedores' Association and (3) the Calcutta Stevedores' Association, Calcutta and their workmen and, therefore, a reference was being made under Section 10(1) of the Industrial Disputes Act. The points on which reference was made were given in the schedule and were as follows:

1. Whether the demand for reinstatement of the following ex-workmen is justified, and if so to what relief, if any are they entitled:

(1) Shri Ahad Khan Hatch Foreman (2) Shri Jitindra Nath Das Tally Clerk (3) Shri Siddique Khan Winchman (4) Shri Noor Mohammad Khamali-II (5) Shri Mohammed Ismail Sardar Supervisor (6) Shri Aftab Alam Upper Division Clerk (7) Sk. Babu Winchman

2. Whether the existing wages of monthly workers include an element of wages in respect of the weekly days of rest? If not, to what relief, if any, are they entitled?

3. Whether the demand for mooring allowance for Winchmen in addition to their present emoluments is justified? If so, to what relief are they entitled?

4. Whether slicemen and chamachias should be booked for any other type of work? If so, what should be the procedure and conditions for such booking?

5. It may be mentioned that two of the above workers, viz., Siddique Khan and S.K. Babu were allowed to join their duties on being released after a short period of detention and before removal of their names from the registers of the Board. We have been informed that the reinstatement of the other five workmen has also been made though subsequently.

6. Before the Tribunal certain Preliminary Objections were raised on behalf of the Dock Labour Board and the Stevedores' Association. It had been urged that they were not employers of the workmen within the meaning of the Industrial Disputes Act, 1947 (hereinafter called as the Act) or under the Calcutta Dock Workers (Regulation of Employment) Scheme, 1956 and the other scheme of 1957 and therefore the reference was without jurisdiction. The Dock Labour Board also raised a contention that it was a statutory Body set up for ensuring the regularity of employment of Dock Workers under the two Schemes of 1956 and 1957 and though the payment of wages was made from the Office of the Dock Labour Board, the funds were obtained from the various Firms who employed the labour and the expenses of the board were met by a levy realised from such employers. Therefore, the Dock Labour Board could not be said to be carrying on any industry within the meaning of the Act. The Tribunal was of the view that the Dock Labour Board though exercising many of the functions and powers of employers is not engaged in any industry with the object of earning profit. But after considering, certain other facts it was held that if the Dock Labour had any grievance there was no reason why the workers should not be able to raise a dispute under the Act and the Industrial Tribunal must be deemed to have jurisdiction when the appropriate Government had referred a dispute for adjudication. As regards the Stevedores' Association the Tribunal was of the view that although they might not be necessary parties so far as points 2, 3 and 4 were concerned yet they were proper parties and the reference could not be held to be bad due to that reason. As regards the reinstatement of the other five workmen, the Tribunal gave a direction that they should be taken back on the list or register within a month of the publication of the award, but they should be treated as on leave without pay for the period for which they were not assigned any job because of their detention or because of the order of the removal of their names from the registers. On the other issues the award was as follows:

(2) The existing wages of monthly workers include an element of wages in respect of the weekly days of rest in some cases, but not in all cases. Accordingly, the existing wages of the monthly workers are revised as indicated in the award with effect from the first of the calendar month next following the publication of the award.

(3) The demand for mooring allowance for winchmen in addition to their present emoluments is not justified and the demand is rejected.

(4) Slicemen and Chamachias will be booked for other types of work, but when no work in salt ship is available they should be booked first to the Sulphur ships and Fertilizer ships if available, and thereafter as baggers in food ships, but while working as baggers they will be entitled to draw the wage scale attached to their own subcategories, subject to the proviso that when baggers work under

an incentive piece-rate scheme, the slicemen and chamachias will share in the higher earnings only after the average earning per bagger has risen above their respective sub-category wages.

7. Two appeals were brought to this Court. Civil Appeal No. 919 of 1968 has been filed by workmen of Calcutta Dock Labour Board against the employers in relation to Calcutta Dock Labour Board and others and Civil Appeal No. 920 of 1968 is by the Employers in relation to the Calcutta Dock Labour Board against the Workmen. Both will stand disposed of by this judgment.

8. Now, the five workmen have been reinstated. These were removed or discharged some time after the date of their arrest and detention. For instance Ahad Khan was arrested under the Defence of India Rules on April 16, 1965 and his name was removed from the register or list from September 18, 1965. It is not disputed that once his name was removed from the register or the list, he could not have got re-employment until his name had been put back in the register or the list. There is evidence that these workmen applied for being allowed to resume duty after they were released from detention but they were not permitted to do so. The orders of removal were apparently made in case of all while these workmen were in detention. In that situation the principle laid down in *Calcutta Dock Labour Board v. Jaffar Imam* would become applicable. In that case certain workmen had been detained under the Preventive Detention Act. On their release their employers, the Calcutta Dock Labour Board, commenced disciplinary proceedings and issued show-cause notices why their services should not be terminated. Not being satisfied with their answers, their services were terminated. It was held that if the employer wanted to take disciplinary action on the ground that the employee was guilty of misconduct, it was absolutely essential that a proper enquiry should be held instead of equating the detention to a conviction by Criminal Court. The following observations of P.B. Gajendragadkar, C.J. are pertinent on the question as to what is to happen in such cases when a citizen loses his liberty by detention:

But the question which we have to consider in the present appeals is of a different character. A citizen may suffer loss of liberty if he is detained validly under the Act; even so, does it follow that the detention order which deprived the citizen of his liberty should also serve indirectly but effectively the purpose of depriving the said citizen of his livelihood? If the view taken by the appellant's officers who tried the disciplinary proceedings is accepted it would follow that if a citizen is detained and his detention is confirmed by the State Government, his services would be terminated merely and solely by reason of such detention. In our opinion, such a position is obviously and demonstrably inconsistent with the elementary concept of the rule of law on which our Constitution is founded.

9. In the present case the workmen did not have any opportunity for explaining why their services should be terminated. Their names were discharged from the list or register which meant their removal from service while they were in detention on the ground that they were being detained under the Defence of India Rules.

10. We see no reason why the Tribunal should not have allowed back wages to them from the period when they reported themselves for resumption of duty to the date of reinstatement. We would, accordingly, hold that the five workers are entitled to be paid back wages by the stevedor's

association for the period commencing with the date when they offered to resume duty till they were reinstated.

11. The other grievances of the appellant in the Workers' appeal, Civil Appeal No. 919 of 1968 is that the award on Issue No. 2 was directed to be effective from the first of the month following the publication of the award and in respect of the award of Issue No. 4 no date was given which meant that it would also be effective, from one month after the publication of the award. It is urged that the award should have been made effective from the date of the reference. The Tribunal had the discretion in the matter of directing the time from which the award would become effective. We are not satisfied that any interference is called for on those points. The appeal of the workmen will be allowed only in respect of Issue No. 1 and it is dismissed in all other respects.

12. As regards the other appeal of the Dock Labour Board, the question about that Board not carrying on an industry has been already settled by this Court in Vizagapatam Dock Labour Board v. Stevedores' Association, Vishakhapatnam . The Board could not be regarded as carrying on any industry. In view of our decision any observations of the Tribunal which are in conflict with our decision will have no force. The appeal shall stand disposed of accordingly.

13. There will be no order as to costs in both the appeals.