

Supreme Court of India

Kamal Kumar Puri vs Bombay Marine Engineering Works ... on 25 November, 1981

Equivalent citations: AIR 1982 SC 1173, (1982) IILLJ 182 SC, (1982) 1 SCC 500, 1982 (2) SLJ 398 SC

Author: S M Ali

Bench: S M Ali, R Misra

JUDGMENT S. Murtaza Fazal Ali, J.

1. This petition under Article 32 of the Constitution was filed by the petitioner, Kamal Kumar Puri, who was employed as Seaman Crew GP Rating in a private company known as Bombay Marine Engineering Works (P) Ltd. It appears that on his appointment respondents Nos. 2 and 3 issued Continuous Discharge Service Book (hereinafter referred to as 'Service Book') at the request of respondent No. 1. The ship was found to be defective on two occasions and ultimately on 23rd July, 1978 the service of the petitioner was terminated by the Company. Despite the termination of the service respondents 2 and 3 withheld the service book and thus deprived the petitioner from seeking any employment in other companies because the production of the service book was a condition precedent before any appointment could be given to the petitioner in any other company. The petitioner, therefore, filed this writ petition for writ of mandamus directing respondents 2 and 3 to hand over the service book to him. Rule Nisi was issued and ultimately the service book was handed over to the petitioner while the petition was pending in this Court. Section 119 of the Merchant Shipping Act, 1958 may be extracted:

119. (1) The master shall sign and give to a seaman discharged from his ship in India, either on his discharge or on payment of his wages, a certificate of his discharge in the prescribed form specifying the period of his service and the time and place of his discharge.

(2) The master shall also, upon the discharge of every certificated officer, whose certificate of competency has been delivered to and retained by, him, return the certificate to the officer." It clearly enjoins on the authorities concerned that the service book being the property of the petitioner should be returned to him immediately after his services are terminated or discharged. The respondents 2 and 3 ought to have given this service book to the petitioner soon after he was discharged. Anyway, as the respondent have already handed over the service book to the petitioner, the grievance made by the petitioner no longer survives.

2. It was, however, contended by the petitioner that since respondents 2 and 3 withheld the service book without any lawful excuse and thus deprived him of the chance of employment they are entitled to pay damages to the petitioner. Unfortunately, however, in proceedings under Article 32 of the Constitution we cannot award damages for which the petitioner can file an appropriate civil suit if so advised. We, accordingly, dispose of this writ petition. As respondents 2 and 3 deprived the petitioner from getting employment for a pretty long time the petitioner is entitled to costs. We, therefore, dispose of this petition accordingly with costs assessed at Rs. 1,000/- to be paid to the petitioner within two months from today.