

**(2010) 03 CAL CK 0006**

**Calcutta High Court**

**Case No:** G.A. No. 4074 of 2008 and W.P. No. 337 of 2008

In the matter of : Ranabir Saha

APPELLANT

Vs

Calcutta Dock Labour Board

RESPONDENT

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**Date of Decision:** March 19, 2010

**Acts Referred:**

- Constitution of India, 1950 - Article 226

**Hon'ble Judges:** Indira Banerjee, J

**Bench:** Single Bench

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### **Judgement**

Indira Banerjee, J.

In this writ application, the petitioners has inter alia challenged an order being Reference No.E/1818 (PROV)/50A dated 28th February, 2008 of the Chairman, Calcutta Dock Labour Board, communicating to the petitioner the decision of the disciplinary authority being the Calcutta Dock Labour Board to revert the petitioner to his earlier post of Labour Relations and Welfare Officer in the scale of pay of Rs.9,100-250-15,100 with necessary protection of basic pay in the said scale, which would continue with cumulative effect.

2. On or about 2nd July, 1993, the petitioner who had been holding the post of Labour Relations and Welfare Officer, was appointed to the post of Executive Officer. The appointment of the petitioner to the said post of Executive Officer was duly confirmed after the petitioner successfully completed his period of probation.

3. Executive Officers are Inspectors as defined in the Dock Workers (Regulation of Employment) Act, 1948 and are appointed by the Central Government in exercise of statutory powers conferred by the said Act.

4. By a letter dated 26th June, 1997 issued by the Ministry of Surface Transport, Government of India, the petitioner was appointed ad hoc Deputy Chairman of the Calcutta Dock Labour Board. The petitioner was, however, not allowed to join as ad hoc Deputy Chairman of the Board.

5. In the circumstances, the petitioner filed a writ petition being W.P. No. 1347 (W) of 1997 which became infructuous upon regular appointment of Mr. Utpal Sinha to the said post.
6. On 29th May, 2002, the Chairman of the Calcutta Dock Labour Board appointed Mr. Pankaj Roy as Deputy Chairman. The appointment of Mr. Pankaj Roy as Deputy Chairman by the Chairman was objected to by a section of the officers and employees, who contended that the appointment of the said Pankaj Roy was illegal, since the Chairman could only appoint a Deputy Chairman for one month by way of an interim arrangement, and not a regular Deputy Chairman. A regular Deputy Chairman had to be appointed by the Central Government.
7. On 8th October, 2002, the Deputy Chairman issued a memo calling upon the petitioner to show-cause why the petitioner should not be held responsible for lack of supervision on his part resulting in non-issuance of superannuation notice to one Samir Kr. Dey, Senior Adviser.
8. According to the petitioner, no further action was taken after receipt of the petitioner's reply. The Deputy Chairman, Pankaj Roy, thereafter issued an office order bearing Reference No.S-A/9 (C)/3177 dated 25th October, 2002 in relation to punctuality in attendance in terms whereof attendance registers were to be maintained for Class I and Class II Officers.
9. By a letter dated 15th November, 2002, the petitioner objected to the appointment of the said Pankaj Roy as Deputy Chairman of the Board, pointing out that the Chairman was only authorized to temporarily fill up a vacancy in the post of Deputy Chairman for a period of less than one month. The appointment of Deputy Chairman had to be made by the Central Government.
10. A writ petition being W.P. No.2340 (W) of 2003 was moved seeking inter alia a writ of quo-warranto calling upon the said Pankaj Roy to show-cause against his appointment.
11. By a judgment and order dated 9th April, 2003, His Lordship the Hon"ble Justice K.J. Sengupta was pleased to allow the writ petition and set aside the appointment of the said Pankaj Roy as Deputy Chairman.
12. On 6th October, 2003 a charge-sheet was issued to the petitioner under Rule 6 of the Discipline, Punishment and Appeal Rules for, the employees of the Calcutta Dock Labour Board in contemplation of disciplinary proceedings. The main allegation in the statement of allegations was that the petitioner had challenged the administrative authority of the Deputy Chairman in his letter dated 15th November, 2002.
13. It was also alleged that the petitioner had refused to comply with Office Order bearing the No.S-A/9(c)/3177 dated 25th October, 2002 of the Deputy Chairman.

14. The third charge against the petitioner was of misinterpreting Clause 5(2) of the Dock Clerical Supervisory Workers (Regulation and Employment) Scheme, 1970 and thereby misleading the Chairman.
15. By a letter dated 14th October, 2003, the petitioner replied to the charge-sheet, pointing out that the appointment of Pankaj Roy, the then Deputy Chairman of Dock Labour Board had been declared unauthorized beyond 30 days by a learned single Judge of this Court, by an order dated 9th April, 2003 in W.P. No.2340 (W) of 2003.
16. On 31st January, 2004 an Enquiry Officer was appointed and a Presenting Officer was also appointed for conducting the disciplinary proceedings on behalf of the respondent authorities. Representations made by the petitioner for withdrawal of the charge-sheet drew no response.
17. On 3rd February, 2004, two charge-sheets were simultaneously issued against the petitioner, the first charge-sheet bearing No.E/1818(PROV)-Part II/277 alleging that 9 years ago the petitioner had been appointed Enquiry Officer to conduct enquiries against two service personnel which the petitioner did not do.
18. The aforesaid charge-sheet was challenged by filing a writ petition being W.P. No.8431(W) of 2004. Simultaneously, on the same day another charge-sheet being Memo No.E/1818 (PROV) Part II/278 was issued wherein another set of charges relating to an incident that had occurred 22 years ago were levelled against the petitioner. Both the charge-sheets were quashed.
19. The petitioner filed a writ petition being W.P. No.17736 (W) of 2004 in this Court. The writ petition was dismissed. The petitioners preferred an appeal being MAT No.3754 of 2004 which was allowed by the Hon"ble Division Bench and the charge-sheet dated 3rd February, 2004 was quashed. A SLP filed by the Calcutta Dock Labour Board against the order of the Division Bench was dismissed by the Hon"ble Supreme Court.
20. On 29th April, 2004 enquiries relating to the charge-sheet dated 6th October, 2003 commenced and the same continued for a year. The enquiry was concluded on 21st April, 2005 when the petitioner submitted his written arguments.
21. The contentions of the petitioner with regard to the illegality of the appointment of Deputy Chairman have been vindicated by this Court by its order dated 9th April, 2003 referred to above, setting aside the appointment of Deputy Chairman, on the ground that the Deputy Chairman could not be appointed by the Chairman on regular basis for over one month.
22. In view of the judgment and order dated 9th April, 2003, questioning the legality of appointment of Pankaj Roy as Deputy Chairman cannot constitute misconduct.
23. The appointment of Pankaj Roy as Deputy Chairman beyond period of one month having been held illegal, any order issued by the said Pankaj Roy after expiry

of one month from the date of his appointment, was non est. No disciplinary proceedings could have been initiated for contravention of such orders.

24. Thus the charge of the petitioner refusing to comply with the office order No.S-A/9(c)/3177 dated 25th October, 2002 of the Deputy Chairman cannot also constitute a ground for imposition of punishment, far less the punishment of reduction in rank, which entails serious civil consequences.

25. The third charge against the petitioner of misinterpreting Clause 5(2) of the Dock Clerical and Supervisory Workers (Regulation and Employment) Scheme, 1970 and thereby misleading the Chairman is patently unsustainable.

26. Misunderstanding of a provision may lead to adverse inference with regard to the competence, intelligence and/or efficiency of an officer, but cannot possibly constitute misconduct. There could be no question of misleading the Chairman by misinterpreting the provisions of the Dock Clerical and Supervisory Workers (Regulation and Employment) Scheme, 1970 since the Chairman would obviously be aware of the Scheme. In any case, it was open to the Chairman to check up relevant provisions of the Scheme.

27. Mr. Sanyal opposing the writ petition, on behalf of the Calcutta Dock Labour Board, submitted that this Court should not entertain the writ application wherein the final order of punishment is under challenge, since the final order of punishment is appealable under Rule 15 of Supplementary Service Rule No.8 (Discipline, Punishment and Appeal Rules) of the Service Rules for the employees of Calcutta Dock Labour Board as framed and approved vide Board Resolution No.137 dated 25th March, 1969.

28. The Constitution does not impose any restriction on the power of the High Court to issue writs under Article 226 of the Constitution of India. The rule of alternative remedy has been evolved by the Courts themselves as a norm of judicial discipline through judicial decisions.

29. Ordinarily, the Courts do not entertain a writ application when there is an equally efficacious alternative remedy available to the petitioner. There are, however, exceptions to the rule of alternative remedy. The writ Court would not reject a writ application on the sole ground of existence of an alternative remedy, (i) where there has been violation of principles of natural justice, (ii) where the order, impugned suffers from perversity and (iii) where proceedings are without jurisdiction and/or are conducted under any rules, regulations or orders which are ultra vires.

30. It is now well-established by the judicial precedents both of the Hon"ble Supreme Court and of this Court, that once a writ petition is entertained and affidavits are filed, this Court would not reject the writ application on the sole ground of existence of an alternative remedy.

31. The writ petition appears to have been filed on 19th March, 2008. On 2nd June, 2008 His Lordship, the Hon"ble Justice S.P. Talukdar directed the matter to be listed on 12th June, 2008. On 12th June, 2008 directions for affidavits were issued and the matter was directed to appear in the list on 3rd July, 2008 at the top. There after the time to file affidavits was even extended.

32. The writ petition having been kept pending for almost two years, this Court is not inclined to reject the writ application on the sole ground of existence of alternative remedy of appeal under the applicable service rules.

33. Once a final order of punishment is passed, the same can very well be assailed on the ground that the allegations levelled in the charge-sheet do not constitute misconduct for initiation of disciplinary proceedings whether or not there is any challenge to the charge-sheet itself. In any case, in this case, there was a challenge to the charge-sheet.

34. By the order dated 9th April, 2003, referred to above, his Lordship, the Hon"ble Justice K.J. Sengupta held in no uncertain terms that the appointment of a Deputy Chairman beyond one month was an invalid appointment. To quote His Lordship "Therefore, I uphold the contention of the writ petitioners that the continuation of the respondent No.6 for a period more than one month is wholly unauthorized. I do not find any regular appointment by the Government in exercising the power of sub-rule (3) of rule 3 as quoted above.

Therefore, the writ petition succeeds. There will be a writ of quo warranto as prayed for. However, I grant stay of operation of this order for a period of six weeks from date.

It would be open for the Government and the respondents to take steps in accordance with law for taking measure on regular post."

35. There is nothing in the order of this Court dated 9th April, 2003 wherefrom it may be inferred that this Court regularized any acts performed by the Chairman. This Court merely granted stay of operation of its order for a period of six weeks from the date thereof, obviously, to enable the petitioner to take their chance in appeal. The judgment and order has apparently not been interfered with, in appeal.

36. There could be no question of punishment in disciplinary proceedings initiated for alleged contravention of an order issued by a person who lacked authority to hold office.

37. In view of the judicial pronouncement of this Court holding the appointment of the Deputy Chairman beyond one month as invalid, all orders issued by the Deputy Chairman after expiry of one month from his date of appointment were without jurisdiction. No employee could be penalized with disciplinary action for non-compliance of an order without jurisdiction.

38. The Deputy Chairman may have disbursed the salary. The petitioner accepted the salary not from the Deputy Chairman but from the Calcutta Dock Labour Board. In any case, acceptance of salary does not preclude the petitioner from challenging an order of the Deputy Commissioner as without jurisdiction.

39. If the office order was invalid by reason of want of authority of Deputy Chairman, the same could not have been enforced. At least no disciplinary proceedings could have been initiated.

40. The appeal being MAT No.3754 of 2004 arose out of a writ petition challenging an office order issued to the appellant in connection with an incident which took place in the month of December, 1981. Learned counsel urged that the office order was liable to be set aside and quashed on the ground of delay alone. The office order dated 25th October, 2002 was not in issue in the aforesaid appeal.

41. The cause of action in the instant case being totally different, the provisions of Order 2 Rule 2 of the CPC are not attracted. The proposition of law that res judicata is applicable to writ proceedings is well-established. There could be no dispute with the proposition laid down in *Iswar Dutta v. Land Acquisition Collector* reported in (2005) 7 SCC cited by Mr. Sanyal. However, the principles are not attracted as the legality of an order of a Deputy Chairman, issued after expiry of one month of his date of appointment was not decided in the earlier proceedings.

42. It is not necessary for this Court to decide the correctness of any factual findings in the enquiry. This Court is of the firm view that the petitioner could not have at all been penalized on the basis of the office order dated 25th October, 2002.

43. The enquiry officer has apparently proceeded on the basis, that the order dated 25th October, 2002 was valid and binding. The contention of the petitioner with regard to the order being without authority has not at all been considered and dealt with. To that extent final order of punishment against the petitioner is also perverse.

44. The impugned order cannot be sustained and the same is set aside and quashed.

45. The writ petition is disposed of accordingly.

46. Counsel appearing on behalf of the respondents prays for stay of operation of this judgment and order.

47. The prayer for stay is considered and refused.