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(1981) 08 CAL CK 0002

Calcutta High Court

Case No: C.O. No. 1394 of 1981

Calcutta Dock Labour Board		APPELLANT
	Vs	
Payment of Wages Authority and Others		RESPONDENT

Date of Decision: Aug. 20, 1981

Acts Referred:

- Constitution of India, 1950 - Article 227
- Dock Workers (regulation Of Employment) Act, 1948 - Section 3, 5A
- Factories Act, 1948 - Section 2(k)
- Payment of Wages Act, 1936 - Section 1(4), 1(5), 15, 15(2)

Citation: 86 CWN 113

Hon'ble Judges: B.C. Chakrabarti, J; Anil K. Sen, J

Bench: Division Bench

Advocate: Noni Coomar Chakrabarty, P.K. Banerjee, P.N. Biswas and Asghar Ali, for the Appellant;

Final Decision: Dismissed

Judgement

Anil K. Sen, J.

This is and application under Article 227 of the Constitution of India at the instance of the Calcutta Dock Labour Board, a body corporate constituted u/s 5A of the Dock Workers (Regulation of Employment) Act, 1948 The application is directed against the judgment and order dated April 29, 1981, passed by the authority under the Payment of Wages Act, West Bengal in P.W.A. Case No. 14 of 1980. By the said order the said authority directed the petitioner Board to deposit in his court a sum of Rs 21,55,048.25 towards arrears of wages and Rs 3,95,700 as compensation payable to the dock workers, respondents. On February 5 1980, 1,319 workmen acting through the Labour Adviser of their registered trade union, namely, the Calcutta Dock Workers Union (H.M.S) filed an application claiming a sum of Rs. 77,06,281, as

delayed wages payable to them and comepensation at the rate of Rs. 25/- per head as against the Calcutta Dock Labour Board, the petitioner. Their case seems to be that a wage Revision Committee submitted a report revising the rate of wages of the different dock workers including the applicants which was accepted by the Government of India when the Government decided to implement the recommendations of the Committee with effect from 1.1.74 According to the applicants who happen to the signallers or junior mazdoors they were entitled to get the same wages as that of the senior mazdoors but unfortunately their pay was not equated with those of the senior mazdoors prior to 1.6.77. Accordingly, the applicants claimed the difference due to them for the period 1.1.74 to 31.5.77 which they claimed as delayed wages and which according to them on calculation would amount to Rs. 77,08,281/-.

2. The Calcutta Dock Labour Board filed a written objection in contesting the claim put forward by the dock workers in the said application. In this written objection, a preliminary objection was raised with regard to the maintainability of the application on the ground that Payment of Wages Act has no application so far as the Board is concerned, that the Board not being the employer and the applicants dock workers not being its employees there is no relationship of employer and employee between the parties so that the Board can have no liability and that the application is ex facie barred by limitation. Apart from the preliminary objection so raised in this objection, the Board disputed the claim of the applicants dock workers on its merits. The Board took the defence that the recommendation of the wage Revision Committee was fully implemented even in respect of the applicants dock workers with effect from 1.1.74 in accordance with the fundamental formula laid down by the Committee itself and notwithstanding such implementation there continued to remain some difference in the wage of the senior mazdoors because under the said formula the wage fixed for them exceeded the maximum in the scale recommended by the Committee which they were entitled to get as personal pay which, however, was not admissible to the applicants dock workers. It was pleaded in details by the Board in its objection how and for what reasons the claim put forward by the applicants was entirely misconceived and untenable. Such war. the nature of contest upon the pleadings of the parties before the authority under the Payment of wages Act.

3. It will appear from the order sheet of P.W.A, Case No. 14 of 1980 that the Board filed an application before the said authority inviting He said authority to hear the preliminary objection independently of the merits as a preliminary issue and that prayer was obviously allowed when the authority took up that issue for hearing from day to day. The evidence on the preliminary issue being completed arguments were heard and closed on April 21, 1981, when the case stood adjourned to 28.4.81 for orders, obviously on the preliminary issue.

4. Strangely, however, later on that date, namely, on April 21, 1981, the authority heard the lawyer for the applicants with regard to their claim on its merits and obviously exparte and further obtained accounts also ex parte on April 27,1981, from the applicants and passed the impugned order on April 29, 1981, instead of on the day previous when the order was not ready.

5. By the order impugned, the authority not only overruled the preliminary objection raised on behalf of the Board but went on further to allow the claim on its merits in part The authority held that each of the applicants is entitled to a sum of Rs, 39.85 per month from 11.74 to 31.5.77 which amounted to a sum of Rs 21,55,048.25 for all the applicants. So far as the claim for compensation is concerned, the authority held that each of the applicants was entitled to a sum of Rs. 300/- by way of compensation, though in the application they claimed only a sum of Rs. 25/- per head. The authority adjudged the total amount or compensation to be payable by the Board at Rs. 3,95,700/- so that the total amount awarded by the order against the Board was a sum of Rs, 25,50,748,26, That amount was directed to be deposited with the authority on or before 205.81 feeling aggrieved, the Calcutta Dock Labour Board has moved this court with the present application nunder Article 227 of the Constitution challenging the said order and in particular challenging the jurisdiction of the authority to entertain and allow such a claim as against the Board. The application was directed to be heard on notice to the respondents and such notice having been served in terms of the order of this Court dated May 18,1981 an affidavit of service has been filed by the petitioner. Considering the affidavit we are fully satisfied that the respondents have been duly served with the notice of the present application but even then none of them is appearing to contest the present application now before us.

6. Mr. Chakraborty appearing in support of this application has first contended that the authority acted with gross illegality in the exercise of its jurisdiction when having heard the parties on the preliminary point, disposed of the entire matter on its merits without giving any opportunity to the Board to contest the claim on its merits by adducing proper evidence in that regard and by getting an opportunity to contest the same, in our view the position as it stands on the order sheet maintained by the authority, there is no answer to this contention raised on behalf of the Board As we have indicated hereinbefore the Board raised certain preliminary objections disputing the maintainability of the application and also raised a plea of limitation with regard thereto: The Board further invited the authority to consider those objections as a preliminary issue and the authority allowed the said prayer when parties were examined with reference to the said issue and argument where heard on different dates. The order sheet further indicates that arguments of both the parties on that preliminary issue was concluded on April 21, 1981, when order on that preliminary issue was reserved. Very strangely, however, the authority acted improperly in hearing the applicants and/or in allowing them to put in the calculation of toss of wages all behind the back of the Board and on dates not fixed

for hearing or order so far as the case is concerned and then allowing the claim on its merits after overruling the preliminary objection as against the Board. The Board is entitled to make a legitimate grievance as now made before us that it had no reasonable opportunity to contest the claim on its merits when the claim was allowed in part as against the Board. Such being the position the case must have to go back for re-adjudication on merits if we upheld the decision of the authority on the point of maintainability and do not hold that the application itself was not maintainable.

7. On the point of maintainability three objections pleaded by the Board before the authority were (i) since the Board is not the employer and the applicants are not its employees no claim u/s 15 of the Payment of Wages Act could be entertained as against the Board, (ii) the Board not being a factory or a Railway nor an industrial establishment, the provisions of the Payment of Wages Act can have no application so that the application as presented before the authority was not maintainable in law and (iii) the claim having been lodged beyond the period of 12 months from the date on which the payment of wages was due, even on the face of the application, such an application was clearly time barred.

8. All these objections were overuled by the authority. Having regard to the Calcutta Dock Workers (Regulation of. Employment) Scheme, 1970, the authority held that though the registered dock workers are employed by the registered employers on allotment by the Board, yet when such employers cannot employ workers outside the Board''s pool, when Board pays wages, gratuity, provident fund and leave salary to these workers though out of the fund realised" from registered employers and when again it was the Board which holds disciplinary enquiry against such workers and takes disciplinary action against them and when again the Board has the authority to terminate the Services of these workers by retrenching them, the Board must be held to be the employer. Though the attention or the authority was drawn specifically to the decision of the Supreme Court in the case of Vizagapattam Dock Workers v. stevedores Association AIR 1970 SC 1627 the Authority thought that the said decision is distinguishable because that was based on consideration of a different scheme. Reliance was placed by the authority on an observation of this court in the case of A. C. Roy & Company v. Tasim and Others 71 CWN 534.

9. On the point of limitation the authority found that the claim as put forward was clearly time barred, Though the applicants themselves being conscious of the said position had incorporated an explanation for the delay along with the application, the authority did not consider whether the explanation is worthy of acceptance or not. But even then he overruled the said objection partly on a presumption that the Board was hot serious in pressing such an objection and partly on the view that a public authority like the Board should not in morality take up such a plea of limitation to defeat a just claim put forward by the dock workers.

10. So far as the other objection is concerned, though the applicants themselves in their application claimed the Board to be an industrial establishment the authority did not consider the said objection by going into the question as to whether the Board can be said to be an industrial establishment and that again being covered by a Notification made by the State Government u/s 1 (5) of the Payment of Wages Act. The authority held on the other hand that when the Board has different categories of workers like winch drivers, derik fitters, signallers, tally clerks, baggers and stitchers engaged in the matter of loading and unloading and when their number exceeds 20, the Board is a factory within the definition of the term in secrion 2(k) of the factories Act.

11. Mr. Chakraborty appearing in support of this application under Article 227 of the Constitution has strongly assailed the correctness of the decision of the authority on the above three points which necessarily relates to the jurisdiction of the authority to entertain the application itself and maintain the claim. According to Mr. Chakra-borty, so far as the first objection raised by the Board is concerned, that Is no longer res integra in view of the decision of the Supreme Court in the case of Vizagapattam Dock Workers referred to hereinbefore, the import whereof the authority had failed to appreciate. According to Mr. Chakraborty, the Bench decision of this Court in the case of A.C. Roy is not really on the point and in any event that was a decision based on the scheme framed in the year 1956 which is materially different from the scheme now in force, namely the 1970 Scheme. Strong reliance is placed by Mr. Chakraborty on a single Bench decision of this court in the case of Promode Ranjan Dutta v. Union of India 1977 (1) CLJ 48 which was also cited before the authority. In challenging the decision of the authority on the point of limitation, it has been contended by Mr. Chakraborty that when there is nothing on record to show that the Board was not pressing the objection on the point of limitation which was categorically raised as a defence in the written objection and was thoroughly argued as a preliminary issue before the authority, it was improper for the authority to presume that the Board was not serious in pressing the said objection. Such a presumption is wholly misconceived so also the view that a public authority like the Board is not morally entitled to raise a plea by way of limitation. So far as the decision of the authority on the other point is concerned, it has been contended by Mr. Chakraborty that by any stretch of imagination the Dock Labour Board cannot be brought within the definition of a factory as in section 2(k) of the Factories Act and that again was not the case made by the applicants in their application before the authority.

12. Since the opposite parties are not appearing before us we have critically examined the points thus raised before by Mr. Chakraborty. On such examination, however, we feel satisfied that there is ample substance in all that has been contended before us by Mr. Chakraborty.

13. The Dock Labour Board, it should be remembered, is constituted u/s 5A of the Dock Workers (Regulation of Employment) Act 1948 (hereinafter referred to as the said Act) whose function is to administer the Scheme framed under the Act with a view to ensure greater regularity of employment and for regulating the employment of dock workers in relation to their employers and registration of both the dock workers and their employers. The term ''employer'' in relation to a dock worker has been defined by the Act to mean the person by whom he is employed or to be employed. Neither under the Act nor under the Scheme a dock worker who may be registered as such under the Scheme is a worker of the Board, As a matter of fact, the authority itself also found that such workers are really employed by the stevedores who really stand in the position of employer in relation to dock workers employed by him. The Scheme framed u/s 3 of the said Act so far as Calcutta is concerned, is not materially different from the one framed for the Vizagapattam which was under consideration by the Supreme Court in the case referred to hereinbefore. So, Mr. Chakraborty is right in his contention that the point is no longer res integra when the Supreme Court has held that the Board cannot be considered to be the employer in respect of the dock workers. Considerations which prevailed upon the authority to hold otherwise were considered by the Supreme Court in the said case but it was there held that those circumstances do not establish a relationship of employer and employee between the Board and the dock workers. The Scheme only invests those functions on the Board with the object of ensuring greater regularity of employment of the dock workers and to secure availability to adequate number of dock workers for the efficient performance of the dock work We are, therefore, of the view that the authority was not correct in distinguishing the aforesaid decision of the Supreme Court which concludes the point in favour of he petitioner Board. so far as the decision of this Court in the case of A. C. Roy (supra) is concerned, the authority failed to appreciate that there this court was not called upon to consider a question as specifically raised now before us or as it was raised before the authority. In that case, the question arose whether for fixation of liability under the Workmen''s Compensation Act, 1923, the stevedores A.C. Roy & Company Limited or the Administrative Officer of the Calcutta Dock Labour Board was the employer in respect of the dock workers. It was held that it was registered stevedore who is the employer. There was an incidental observation in that decision based upon cause 37(2) of the 1956 Scheme that a registered dock worker under the reserve pool is primarily in the employment of the Board but when the administrative body of the Board allocates a worker in the reserve pool to a registered employer then for the time being and for purposes of the work concerned the worker becomes employed under the registered employer. The authority relied upon this observation but failed to take note of the fact that the relevant clause, namely, 37(2) of the old Scheme of 1956, is no longer there in the Scheme now under consideration framed in the year 1970. Relying upon the aforesaid observation the authority went wrong in not only distinguishing the Supreme Court decision which concludes the point but to override the single Bench

decisions of this court in the case of Rupendra Swain v. Calcutta Dock Labour Board 1969 Labour and Industrial Cases 890 and Promode Ranjan Dutta v. Union of India 1977 (1) CLJ 48. Such being the position, we must uphold the objection raised by the Board that the Board not being the employer in relation to the applicants-dock workers no application u/s 15(2) of the Payment of Wages Act could have been entertained by the authority as against the Board The entire proceeding, therefore, before the authority was totally beyond its jurisdiction.

14. So far as the point as to limitation raised before the authority is concerned, we cannot but agree with Mr. Chakraborty that upon the authority''s own finding that the entire claim is barred by the 12 months limitation prescribed by the first proviso to subsection (2) of section 15 of the Payment of wages Act, it was necessary for the authority to consider whether the applicants had made out any sufficient cause for condonation of the delay and entertaining the application. The applicants themselves were conscious of the position that the claim lodged isbeyond time so that they incorporated an explanation for the delay obviously for consideration of the authority as to whether there was sufficient cause for not lodging the claim in time. Strangely, however, the authority never went into the merits of the explanation and did not consider whether the applicants had made out any sufficient cause when they lodged a claim years beyond the period of limitation. The authority proceeded upon an erroneous presumption that the Board was not serious in pressing such an objection overlooking, however, that not only did the Board specifically raise such a defence in their written objection but pressed it for consideration as a preliminary issue as framed by the authority itself. The plea of limitation being a plea of statutory bar the authority was equally in error in thinking that in morality a public authority like the Board is not entitled to raise such a plea. If the statute had prescribed a particular period of limitation for entertaining a particular claim it is wholly immaterial whether such a'' plea should or should not be raised having regard to the moral standard. But even then though we cannot uphold the decision of the authority on this point, we cannot decide it finally because the second proviso to subsection (2) of section 15 of the Payment of Wages Act vests the authority with the power to condone the delay if sufficient cause be made out for the same. Such cause in the present case was pleaded but was not considered by the authority so that if the application is otherwise maintainable the matter is to go back for reconsideration of the objection as to limitation in the light of the cause shown for the delay. So far as the other point raised before the authority is concerned, u/s 1 (4) of the Payment of Wages Act that Act applies to persons employed in any factory and upon any railway by the railway administration. Under subsection (5), the provisions of the Act would apply to the payment of wages of any class of persons employed in any industrial establishment or any class or group of industrial establishment if so extended by a notification by the State Government. In the present case, the applicants claimed that the Board is an industrial establishment though there was no specific pleading that it is covered

by any particular Notification of the State Government. Be that as it may it has not been found by the authority that the Beard is an industrial establishment to which any of the provisions of the Act has been extended by the State Government. Though strong reliance is placed by Mr. Chakraborty on the observations of the Supreme Court in the aforesaid Vizag case for contending that the Board is not even an industrial establishment it is not necessary for us to decide that point since that has not been the finding of the authority at all. But nonetheless we must accept the contention of Mr. Chakraborty that the authority wholly misread the definition of the term ''factory'' as in section 2(k) of the Factories Act, in thinking that the Board is a factory within the said definition. Such a decision is based upon a fundamental misconception that the dock workers are the workers employed by the Board and that they are so employed in a manufacturing process. We must, therefore, uphold the contention of Mr. Chakraborty that the authority went wrong in holding that the Board being a factory would come within the purview of the provision of section 15 of the Payment of Wages Act.

In the result, this application succeeds and the impugned order being set aside the application for the claim is dismissed since it was not maintainable in law.

B.C. Chakrabarti, J.

I agree.