Calcutta Dock Labour Board Vs Payment of Wages Authority and Others

Court: Calcutta High Court

Date of Decision: Aug. 20, 1981

Acts Referred: Constitution of India, 1950 â€" Article 227
Dock Workers (regulation Of Employment) Act, 1948 â€" Section 3, 5A
Factories Act, 1948 â€" Section 2(k)
Payment of Wages Act, 1936 â€" 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.