

**(2005) 04 CAL CK 0004**

**Calcutta High Court**

**Case No:** CAN 5 of 2006

Showlal

APPELLANT

Vs

Kolkata Port Trust

RESPONDENT

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**Date of Decision:** April 6, 2005

**Acts Referred:**

- Constitution of India, 1950 - Article 226

**Citation:** 110 CWN 580

**Hon'ble Judges:** Subhro Kamal Mukherjee, J

**Bench:** Single Bench

**Advocate:** Khairul Alam, for the Appellant; Nilay Sengupta, for the Respondent

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### **Judgement**

Subhro Kamal Mukherjee, J.

This case reveals the story of sufferings of an unfortunate retired sweeper of Kolkata Port Trust. The petitioner, who was a sweeper in the mechanical engineering department, Kolkata Port Trust, initially moved an application under Article 226 of the Constitution of India complaining of non-release of his pension by the authorities.

2. The said writ petition was moved upon notice. I disposed of the said writ petition by my order dated December 15, 2005, inter alia, directing the authorities to remit all arrear pension of the petitioner up to the month of December, 2005 to his pension- account maintained with the State Bank of India, Kidderpore Branch, by January 15, 2006 and to remit subsequent monthly pension regularly to the said account.

3. The respondents in the writ petition on January 3, 2006 filed an application being CAN 5 of 2006, inter alia, for modification of my said order dated December 15, 2005.

4. The said application was, primarily, filed disputing the identity of the writ petitioner.
5. The application was listed before me on February 2, 2006 when Mr. Nilay Sengupta, learned advocate, appearing for the Kolkata Port Trust, prayed for modification of my said order alleging that the petitioner is a fraud and the petitioner was never an employee of Kolkata Port Trust.
6. It was, however, admitted on behalf of the authorities before the that one Showlal was a sweeper working with the Kolkata Port Trust in the mechanical engineering department, but it was alleged that the said Showlal and the petitioner-Showlal were different persons.
7. In course of hearing of this application, it has been submitted that Kolkata Port Trust has been maintaining the left thumb impressions of its employees with its records.
8. Therefore, I granted liberty to the petitioner to appear before the officer-on-special duty (finance department), Kolkata Port Trust, along with his learned advocate, and to produce relevant papers before him to establish his identity.
9. I, further, ordered that, if necessary, the said officer-on-special duty would take left thumb impression of the writ petitioner and forward the same to a finger print expert for comparison.
10. On the adjourned date when this application came up for further hearing before me Mr. Sengupta, learned advocate appearing for the Kolkata Port Trust, submitted a report of the officer-on-special duty (finance) and convenor, pensioners' verification committee of the Kolkata Port Trust dated February 15, 2006. Let such report be kept with the records.
11. The order was passed on February 2, 2006. The learned advocate for the petitioner went to the office of the officer-on-special duty (finance) on February 6, 2006 requesting him to secure compliance of the order dated February 2, 2006 It appears from the report that the said officer-on-special duty allegedly had no information about the order.
12. The petitioner and the learned advocate for the petitioner were kept waiting to enable the said Officer-in-charge to obtain information from the advocate-on-record for the Kolkata Port Trust.
13. Thereafter, the learned advocate-on-record for the Kolkata Port Trust confirmed the contents of the order of the Court.
14. I narrated the aforesaid incident only to record how casual was the approach of the Kolkata Port Trust in relation to payment of pension to a retired employee.

15. However, the left thumb impression of the petitioner was obtained and was sent for verification by a finger print expert appointed by Kolkata Port Trust.

16. The finger print expert compared the left thumb impressions of the petitioner with the left thumb impressions of Showlal maintained with the records of the Kolkata Port Trust and he opined that the left thumb impressions were identical and all of them are of the same person.

17. The finger print expert's report was obtained from Mr. B. K. Naug, who was a former director of the finger print bureau, Kolkata and examiner of question documents empanelled by this Court.

18. Comparison of thumb impression has become an exact science and great weight can be attached to the evidence of a finger print expert.

19. Still, the Kolkata Port Trust was not ready and willing to release the pension of the writ petitioner.

20. Pension means periodic money payments to a person, who retires at a certain age; payments usually continue for the rest of the natural life of the recipient.

21. In *Deokinandan Prasad vs. The State of Bihar & Ors.*, reported in 1971(1) Labour Law Journal 577 the Supreme Court of India, inter alia, holds that pension is not a bounty payable on the sweet will and pleasure of the government, but, on the other hand the right to pension is a valuable right vested in a government servant.

22. Therefore, pension means periodical payment by the employer to an employee in consideration of his past services. This right must not be made to depend on the arbitrary and uncontrolled whims of the authorities. The pension is not gratuitous. It is not a bounty depending upon the mere will of authorities. A person is entitled to claim pension so long the provision under which the pension is sanctioned remains enforceable.

23. The petitioner is an old, infirm and an ailing person. He was subjected to examination by the members of the pensioners' verification committee comprising of the said officer-on-special duty (finance), one assistant security officer from vigilance department and one executive engineer from mechanical engineer department.

24. The petitioner could not answer all the questions put to him by the said members satisfactorily. The petitioner, inter alia, could not state specifically the length of his service. As the replies given by the writ petitioner did not tally with the record of the Kolkata Port Trust, it has been suggested that he has been impersonating the real Showlal and therefore, not entitled to pension.

25. The cases of these underprivileged and uneducated persons working as sweepers are to be considered with mercy and from the practical point of view. The petitioner is an uneducated person. It is difficult to expect from him to answer the

length of his service, his age etc. correctly as may be expected from an educated person, who normally maintains records of his service career. Assuming that the petitioner is suffering from disequilibria of mind still it is no ground to refuse pension to him. A person must not be permitted to rob public fund, But, in the process, case of a genuine person cannot be denied.

26 The left thumb impressions of the writ petitioner. Showlal, and a left thumb impressions of Showlal, the former employee of the Kolkata Port Trust, maintained with the records of the Kolkata Port Trust, tally and a linger print expert having specialized knowledge in the field opined that the left thumb impression of the writ petitioner and that of Showlal maintained in the office of the Kolkata Port Trust are of same person.

27. A clever person can tell a lie to acquire unlawful pin, but he has no process under his control to match the left thumb impression of another person.

28. In view of the report of the finger print expert, I have no hesitation to hold that the writ petitioner was employed as a sweeper with the Kolkata Port Trust and he has not come with a false case to acquire unlawful gain.

29. The application for modification of my order dated December 15, 2005 being CAN No. 5 of 2006 is rejected and I direct the respondents to release the pension of the writ petitioner up to March, 2006 and to remit the same to the bank account of the writ petitioner by April 30, 2006. The subsequent monthly pension shall be remitted to the said bank account regularly.

30. With the aforesaid directions, the application being CAN No. 5 of 2006 is rejected.

31. I, however, direct the parties to bear their respective costs in this application. Urgent Xerox certified copy of this order, if applied for, is directed to be supplied as "expeditiously as possible.

Subhro Kamal Mukherjee, J.