

Board of Trustees for the Port of Calcutta and Others Vs Avijit Kumar Roy and Others

Court: Calcutta High Court

Date of Decision: Oct. 5, 2007

Acts Referred: Major Port Trusts Act, 1963 â€" Section 111

Citation: (2008) 1 CHN 658 : (2008) 117 FLR 283

Hon'ble Judges: Pranab Kumar Chattopadhyay, J; Kalidas Mukherjee, J

Bench: Division Bench

Advocate: Joydeep Kar and A.K. Jana, for the Appellant; Kalyan Bandyopadhyay, Mintu Goswani, K. Bhadra and Upendra Roy, for the Respondent

Final Decision: Dismissed

Judgement

This Judgment has been overruled by : Board of Trustees for Port of Calcutta and Others Vs. Avijit Kumar Ray and Others etc.,

(2009) 121 FLR 399 : (2008) 13 JT 337 : (2009) 2 LLJ 535 : (2008) 15 SCALE 450 : (2009) 1 SCC 743 : (2009) 1 SCC(L&S) 278 :

(2009) 3 SLJ 132

Pranab Kumar Chattopadhyay, J.

This appeal has been preferred at the instance of the authorities of the Kolkata Port Trust assailing the

judgment and order dated 11th June, 2004 passed by the learned Single Judge while deciding the writ petition bearing W.P. No. 9259(W) of

2001. By the aforesaid judgment and order under appeal, the learned Single Judge directed the respondents to consider the cases of the writ

petitioners in accordance with the decisions, which the said Kolkata Port Trust authorities had taken for giving employment to its trade apprentices

in the ratio of 1:1 along with the died-in-harness category candidates. Several other directions were issued by the said learned Single Judge while

allowing the aforesaid writ petition. The operative part of the said judgment of the learned Single Judge is set out hereunder:

...The respondents are hereby directed to consider the cases of the petitioners in accordance with the decisions that the respondent Port Trust had

taken for giving employment to its trade apprentices in the ratio 1:1 to be maintained with the candidates from the died-in-harness category. Since

the respondent Port Trust has already given employment to the died-in harness category candidates in excess of the quota available to such

category, the respondents are hereby directed to take immediate steps for rectifying the situation and restoring the balance in the quotas meant for

the two categories. For implementing this order the respondent shall immediately frame a scheme on the basis of such scheme they shall consider

the case of the petitioners. The scheme shall be prepared and the names of the petitioners shall be placed in an appropriate panel within a period of

four weeks from the date of receipt of a copy of this judgment and order by them. After preparing the scheme and the panel, the respondent shall

consider the cases of the petitioners according to the scheme and panel against the available vacancies, in terms of the Government order issued in

the year 1983 and their own decisions as quoted hereinbefore

2. In the present appeal, following questions have been raised on behalf of the appellants:

(a) What is the legal right of Trade Apprentices to seek employment with KPT?

b) Whether appointment of Trade Apprentices in the past in relaxation of the Recruitment Rules in the ratio of 1:1 with died-in-harness category

gives the Trade Apprentices a right to apply for a writ of mandamus directing KPT to continue with such appointment contrary to the Recruitment

Rules?

c) Whether there was any promise made by the KPT to the Trade Apprentices as to their absorption in the organization and if so whether such

promise is enforceable in the eye of law and further whether the writ petitioner can claim any legitimate expectation on the strength of such

promise?

d) Whether the guidelines issued by the Central Government dated 21.4.83 and the circular dated 15.10.96 conferred any enforceable legal right

on the Trade Apprentices?

3. Mr. Joydeep Kar, learned Counsel of the appellants submits that the apprentices are creature of statute namely, the Apprentice Act, 1961 and

the said Act since does not confer any legal right on the apprentices to seek employment in the organization where the said apprentices were

trained. Mr. Kar further submits that the writ petitioners herein are not entitled to claim any relief against the appellants herein. Mr. Kar referring to

a decision of the Supreme Court in the case of Kripa Shankar Chatterji Vs. Gurudas Chatterjee and others, submits that the Trade Apprentices

have no right to seek employment in the organization where they were trained. Mr. Kar submits that the trained Apprentices can only claim

preference in the event vacancies are filled up by direct recruits and the said trained Apprentices are also not required to be sponsored by the

Employment Exchange for coming to the zone of consideration while filling up the vacancies in the establishment in question and the age bar should

also be lifted or discontinued.

4. Mr. Kar referred to and relied on the subsequent decision of the Supreme Court in the case of State of Himachal Pradesh Vs. Surinder Mohan

And Others, in support of his aforesaid contentions wherein the earlier decision of the Supreme Court in the case of U.P. State Road Transport

Corporation and Anr. v. U.P. Parivahan Nigam Shishkuks Berozgar Sangh and Ors. has been considered and followed. Mr. Kar further submits

that there was neither any agreement between the writ petitioners and the Kolkata Port Trust authorities nor any promise was even given on behalf

of the appellants herein to the writ petitioners to the effect that the trained apprentices would be employed in the organisation after successful

completion of the training period.

5. Mr. Kar submits that the writ petitioners are only entitled to apply as and when the Kolkata Port Trust authorities will issue necessary

advertisement for filling up the vacancies by direct recruits. Mr. Kar also submits that the Chairman, Kolkata Port Trust authorities passed the

order in strict compliance with the principles laid down by the Supreme Court in the aforesaid decisions. According to Mr. Kar, the learned Single

Judge without considering the aforesaid decisions of the Supreme Court in its proper perspectives quashed the order passed by the Chairman,

Kolkata Port Trust authorities by the judgment and order under appeal and issued certain directions for considering the claims of the writ

petitioners for employment in the Kolkata Port Trust. Mr. Kar further submits that the writ petitioners herein being the trained apprentices have no

legal right to be absorbed in the employment of the Kolkata Port Trust after successful completion of the training period. It has also been submitted

on behalf of the appellants that the Kolkata Port Trust authorities cannot be directed by issuing a writ of mandamus by this Hon"ble Court to

recruit persons contrary to the Recruitment Rules.

6. The learned Counsel of the appellants submits that Recruitment Rules do not permit recruitment of Apprentices as a class. Mr. Kar, learned

Counsel of the appellants submits that the direction issued by the learned Single Judge to appoint Trade Apprentices in the establishment of the

Kolkata Port Trust along with the died-in-harness category candidates in the ratio of 1:1 is not only erroneous but illegal since the same is contrary

to the Recruitment Rules. Referring to the written communication of the Labour Advisor of the Kolkata Port Trust dated 4"1 January, 1985, Mr.

Kar submits that the promise given by the said Labour Advisor regarding recruitment of the ex-trade Apprentices after lifting of the ban and

restoration of their quota, was contrary to the Recruitment Rules as the Corporation does not provide any quota for Trade Apprentices. The

learned Counsel of the appellants further submits that at present the appellants herein do not require any fresh employees and the learned Single

Judge erred in travelling beyond the scope of the judicial review by issuing direction to the appellants herein to absorb the Trade Apprentices like

the writ petitioners herein.

7. The learned Counsel of the writ petitioners, however submits that the learned Single Judge issued the appropriate directions in the matter upon

taking note of the guidelines mentioned in the circular issued by the Ministry of Labour & Rehabilitation, Government of India dated 21st April,

1983 and the subsequent decision of the appellant-Kolkata Port Trust authorities regarding recruitment of ex-trade Apprentices as mentioned in

the written communication dated 4th June, 1985 made by the Labour Advisor of the said Kolkata Port Trust. The aforesaid circular dated 21st

April, 1983 is set out hereunder:

Secretary

Ministry of Labour & Rehab.

Shram Shakti Bhavan

(Department of Labour)

D.O. No. DCET-1/1/83-AP

New Delhi, dated the 21st April, 1983.

The question of utilizing the seats identified in different establishment for training apprentices under the Apprentices Act, 1961 and also absorbing

the trained apprentices in employment was considered by the Committee of Secretaries at their meeting held on 22.3.1983.

2. The Committee decided that the following guidelines may be issued in this regard:

1) Ministries will endeavour to ensure that 50% of the total semi-skilled and skilled categories of jobs would be filled in by direct recruitment in the

establishments under them and this requirement should be ensured while finalizing agreement with Labour Unions in future. The present agreement,

may, however, be allowed to run their course without modification.

(2) 50% of the direct recruitment vacancies may be filled by trained apprentices, first preference being given to the apprentices trained by the same

establishment and thereafter to those trained by other establishments.

3) Two months before the training of apprentices is scheduled to be over, Public Sector Undertakings will intimate to a designated officer in the

Ministry of Labour the number of apprentices trained and the number likely to be retained or absorbed within the undertakings establishments.

4) The Ministry of Labour shall endeavour to find alternative placements for the remaining apprentices. In so far as the Ministry of Railways are

concerned, the number of vacancies be allocated for training of apprentices will be consistent with the number likely to be absorbed in railway

employment and the number as can be useful employed outside with the background of training received in the Railways.

3. The Committee also desired that the practice of public sector undertakings entering into agreements with the labour union committing themselves

to employ only the kith and kin of the employees should be discouraged.

4.1 have to request that the above guidelines may be brought to notice of all the establishments/public sector undertakings under the control of your

Ministry, under intimation to this Ministry, for compliance.

5. In accordance with the recommendation, No. 3, the undertakings also be advised to send, in the proforma enclosed, the information regarding

the number of apprentice trained/absorbed, by name to the Director of Apprenticeship Training, Ministry of Labour, Directorate General of

Employment and Training, Shram Shakti Bhavan, New Delhi.

With regards,

Yours sincerely,

Sd/-

B.G. Deshmukh

8. The written communication of the Labour Advisor, Kolkata Port Trust dated 4th June, 1985 recording the promise regarding recruitment of the

ex-trade Apprentices along with the died-in-harness category candidates in the establishment of the Kolkata Port Trust in the ratio of 1:1 is set out

hereunder:

Calcutta Port Trust

Labour Advisor and Industrial

Relations Officer's Office

15, Strand Road,

Calcutta 700001

Dated: 4th Jan, 1985

The Joint General Secretary,
Calcutta Port Shramik Union,
26, Dr. Sudhir Basu Road,
Calcutta-700 023.

Dear Sir,

Subject: Recruitment of ex-Trade Apprentices.

Kindly recall the discussion held in Chairman's room on 3.1.85 on the above subject.

Ex-Trade Apprentices were being recruited along with the "died-in-harness" candidates in the ratio of 1:1. This has now been stopped in view of

the ban imposed by Government on direct recruitment. Ex-Trade Apprentices will be recruited again as and when the ban is lifted and their quota

will be restored.

Yours faithfully,

Sd/-

Labour Advisor & Industrial

Relations Officer.

9. Going through the judgment and order under appeal, we find that the learned Single Judge did not hold that the writ petitioners herein are

entitled to be absorbed in the establishment of the Kolkata Port Trust in view of their successful completion of their Apprentice training in the said

organisation. The writ petitioners herein did not claim absorption in the establishment of the Kolkata Port Trust under the provisions of the

Apprentice Act, 1961 after successful completion of the Apprentice training in the said organisation. The writ petitioners specifically urged before

this Court that the appellants herein cannot ignore the specific circular issued by the Ministry of Labour & Rehabilitation, Government of India

being a Public Sector Undertaking. It has also been urged on behalf of the writ petitioners that the said appellants cannot also refuse to implement

its promises as specifically mentioned in the written communication of the Labour Advisor dated 4th January, 1985.

10. The decision of the Supreme Court in the case of Uttar Pradesh State Road Transport Corporation and another Vs. Uttar Pradesh Parivahan

Nigam Shishukhs Berozgar Sangh and others, , in our opinion, is clearly distinguishable as in the present case, specific promise has been made on

behalf of the Kolkata Port Trust authorities by the Labour Advisor in the written communication dated 4th January, 1985 apart from the specific

guidelines issued by the Government of India by the circular dated 2 18th April, 1993 which are also binding upon the Kolkata Port Trust in terms

of Section 111 of the Major Port Trusts Act, 1963. In paragraph 10 of the aforesaid decision, Supreme Court did not find existence of any

promise and observed as hereunder:

10. For a promise to be enforceable, the same has, however, to be clear and unequivocal. We do not read any such promise in the aforesaid three

documents and we, therefore, hold that at the call of promissory estoppel, the direction in question could not have been given by the High Court.

But then, we are left in no doubt that the Government of India did desire that preference should be given to the trained apprentices and it is

because of this that the State Government stated in its letter No. 735/38-6-16(T)-79 dt. 12.11.79 that where such apprentices are available direct

recruitment should not to be made. Indeed the Government of India in its letter dated 23.3.1983 even desired reservation of 50 percent vacancies

for apprentice trainees.

11. In view of the aforesaid position, we are of the opinion that the Kolkata Port Trust Authorities cannot avoid and/or ignore its promise in the

matter of recruitment of ex-trade Apprentices like the writ petitioners herein.

12. The learned Senior Counsel of the respondent/writ petitioners also referred to Paragraph 7 of the affidavit-in-opposition filed on behalf of the

appellants before the learned Single Judge wherein specific submission was made on behalf of the Kolkata Port Trust authorities as hereunder:

However, without admitting the contents of Annexure- R, it is submitted that the same also speaks for giving preference to the Trade Apprentices

in the matter of employment over direct recruits and there does not appear to be any conflict between the contents of the said document and the

procedure being followed in the Calcutta Port Trust.

13. The appellants-Kolkata Port Trust authorities, in our opinion, cannot ignore its promises regarding recruitment of ex-trade Apprentices as

specifically mentioned in the written communication dated 4th January, 1985 issued by the Labour Advisor of the said Kolkata Port Trust.

Furthermore, the guidelines specifically mentioned in the circular dated 21st April, 1983 issued by the Ministry of Labour & Rehabilitation,

Government of India are not only applicable in the present case but also binding on the appellants herein in view of Section 111 of the Major Port

Trusts Act, 1963.

13A. Section 111 of the Major Port Trusts Act, 1963 is set out hereunder:

Section 111 Power of Central Government to issue directions to Board.-(1) Without prejudice to the foregoing provisions of this Chapter, the

Authority and every Board shall, in the discharge of its functions under this Act, be bound by such directions on questions of policy as the Central

Government may give in writing from time to time:

Provided that the Authority or the Board as the case may be, shall be given opportunity to express its views before any direction is given under this

sub-section.

(2) The decision of the Central Government whether a question is one of policy or not shall be final.

14. In view of the aforesaid specific provision of Section 111 of the Major Port Trusts Act, the appellants herein are bound to follow the guidelines

as mentioned in the aforesaid circular dated 21st April, 1983 since the said circular is still valid, operative and subsisting. The competent authority

of the Kolkata Port Trust also never issued any communication withdrawing its earlier decision as mentioned in the written communication dated

4th January, 1985 issued by the Labour Advisor of the said Kolkata Port Trust. Therefore, the promise mentioned in the aforesaid communication

dated 4th January, 1985 should be maintained or adhered to and implemented.

15. Having heard the learned Counsel of the respective parties and considering the specific circular issued by the Government of India dated 21st

April, 1983 and further considering the promise made on behalf of the appellants regarding recruitment of ex-trade Apprentices as mentioned in

the written communication of the Labour Advisor dated 4th January, 1985, we are of the opinion that the authorities of the Kolkata Port Trust

cannot take a different stand now regarding the recruitment of the ex-trade Apprentices.

16. In the aforesaid circumstances, we are of the considered view that the learned Single Judge has rightly issued appropriate directions for

considering the cases of the writ petitioners and giving employment as ex-trade Apprentices along with the died-in-harness category candidates in

the ratio of 1:1 in the matter of giving employment in the Kolkata Port Trust pursuant to the promise given on behalf of the said appellants and as

mentioned in the written communication of the Labour Advisor dated 4th January, 1985 and further considering the guidelines issued by the

Government of India and mentioned in the circular dated 21st April, 1983.

17. For the reasons discussed hereinbefore, we are not inclined to interfere with the aforesaid directions of the learned Single Judge as mentioned

in the judgment and order under appeal. Accordingly, we dismiss the present appeal being devoid of any merit and direct the appellants herein to

carry out the directions as mentioned in the judgment and order under appeal without any further delay.

There will be, however, no order as to costs. Let urgent xerox certified copy of this judgment and order, if applied for, be given to the learned

Advocates of the parties on usual undertaking.

Kalidas Mukherjee, J.

