(1994) 07 BOM CK 0080

In the Bombay High Court

Case No : Appeal No. 612 of 1993 in Writ Petition No. 3868 of 1988

Bombay Dock Labour Board and ors APPELLANT

Vs

Shrirang Govind Dabade RESPONDENT

Date of Decision : 07-07-1994

Acts Referred:

Constitution of India, 1950 — Article 226

DOCK WORKERS (REGULATION OF EMPLOYMENT) ACT, 1948 — Section 2, 3, 4

Citation : (1994) 07 BOM CK 0080

Hon'ble Judges : N.D. Vyas, J;M.L. Pendse, J

Bench : Division Bench

Judgement

Pendse, J.—On June 17, 1963 the respondent joined the services of Food Corporation of India constituted under the Food Corporation of India Act, 1964 and was working as Loader in the Bombay Docks. The respondent was carrying out the work of loading and unloading of Foodgrains in the Bombay Docks. The services of the respondent were governed by the service conditions framed by the Food Corporation of India.

The Parliament had enacted the Dock Workers (Regulation of Employment) Act 1948 to provide for regulating the employment of Dock Workers. The expression ''Dock Worker'' u/s 2(3)(b) inter alia means a person employed or to be employed in the vicinity of any port in connection with the loading, unloading, movement or storage of cargoes. Section 3 of the Act confers power for floating a scheme for the registration of dock workers with a view to secure ensured greater regularity of employment and for regulating of employment for dock workers whether registered or not in a port. Section 4 confers power upon the Government to make one or more schemes for a port or group of ports and may add to, amend, vary or revoke any scheme. Sub-section (3) of Section 4 authorises the Government to direct the port authority of any port to prepare in accordance with such instructions as may be issued from time to time, one or more draft schemes for the port and the port authority is required to comply with such directions.

2. In exercise of powers conferred by Sub-section (1) of Section 4 of the Dock Workers (Regulation of Employment) Act 1948, the Central Government published the scheme known as the Bombay Dock Workers (Regulation of Employment) Scheme 1956. The object of the scheme was to ensure regularity of employment for dock workers and to secure that adequate number of dock workers are available for efficient performance are available foe efficient performance of dock work. The scheme related to the Port of Bombay and applied to the classes or description of dock work and dock workers set out in Schedule I. Schedule I sets out that the scheme will apply to stevedoring work other than coal, passenger baggage and mail work. The Schedule then sets out the categories of stevedore workers who are covered by the scheme. Clause 16 of the scheme provides that the Board shall arrange for classification of workers by categories in the register. The names of the workers who are registered are to be recorded and clause 18 provided for the registration of existing and new workers. It is not in dispute that the respondent who was an employee of the Food Corporation of India and was working as a Loader in the Bombay Docks was neither covered by the scheme of 1956 or was registered under that scheme.

3. The Government of India, Ministry of Shipping and Transport by notification dated July 12, 1975 prepared another scheme known as the Bombay food grain Handling Workers (Regulation of Employment) Scheme 1975. The object of the scheme was to ensure greater regularity of employment for registered food grain handling workers in the Port of Bombay. the scheme relating to the Port of Bombay and applied to the classes or descriptions of dock and dock workers set out in Schedule I to the scheme. Schedule I sets out that the scheme shall apply to dock work handling of (a) foodgrains and fertilizers and (b) other cargoes imported or exported on Food Corporation of India''s account. The Schedule then sets out the list of dock workers dealing in the handling of foodgrains and other cargoes and one of the categories of workers is Loaders. The scheme also provided for registration of workers who are desirous of advantage of the scheme and the manner of registration is set out under clause 18 of the scheme. Clause 18(a) provides that any worker who on the date of the commencement of the scheme is already listed under the Bombay Unregistered Dock Workers (Regulation of Employment) Scheme, 1957 shall be deemed to have been registered under the Scheme of 1975. The respondent claims that he was registered under the Scheme of 1957 and therefore deemed to have been registered under the 1975 scheme. Clause 18(b) provides that qualification for new registration shall be such age as may be specified but not exceeding 40 years. The age was extended to 45 years in case of former service personnel.

After being registered under the 1975 scheme, the union of workers made representation to the Board of the Bombay Port Trust that the prospects for betterment of service of foodgrain workers registered under the scheme of 1975 are not bright and therefore the workers under the scheme of 1975 may be transferred to the stevedore section and where the workers were registered under the 1956 scheme. The Board decided to transfer some of the registered foodgrain workers to existing vacancies in stevedore section in accordance with the demand made by the Secretary, Transport and Dock Workers'' Union and in pursuance thereof the respondent was transferred to stevedore section as a Loader.

4. The Government of India, Ministry of Labour and Rehabilitation addressed letter dated July 21, 1972 to the General Secretary, All India Port and Dock Workers Federation, Bombay and National Port and Dock Workers Federation, Calcutta as well as to all the Boards for various ports in India informing that recommendation made in paragraph 8.64 of the report of the Central Wages Board for port and dock workers regarding age of retirement was accepted. The recommendations were - (a) where the age of retirement of any category of employee is 58, then the existing practice shall continue; (b) where the age of retirement for any category of employee is 60, then the existing practice shall be continued for the present incumbents and for all future entrants, the age of retirement shall be 58; (c) where there is no age of retirement prescribed, the present incumbents shall continue till date on the basis of annual medical examination and for all future entrants the age of retirement shall be 58. The recommendations made by the Central Wages Board and approved by the Central Government were accepted by the Bombay Dock Labour Board in the meeting held in August 3, 1972. The Board decided that the retirement age limit for workers covered under the scheme administered by the Board should be as suggested by the Central Wage Board.

It is not in dispute that the respondent was registered under the scheme of 1975 which was long after the decision was taken that the retirement age of workers covered under the scheme shall be 58. The respondent was registered under the scheme of 1975 and was liable to retire on completion of age of 58 years.

5. The respondent was to complete age of 58 years on December 31, 1988 and on August 1, 1988 the Board informed the respondent that he will stand retired with effect from December 31, 1988. The respondent then addressed communication to the Board claiming that his date of birth is April 2, 1934, and was wrongly recorded when he joined the service with the Food Corporation of India. The respondent also claimed that he is covered by Bombay dock Workers (Regulation of Employment) Scheme 1956 and therefore could not be retired as long as he is medically fit and should be in service till attaining the age of 60 years. The claim was not accepted by the Board and that gave rise to filing of Writ Petition No. 3868 of 1988 under Article 226 of the Constitution before the learned Single Judge on the Original Side of this Court. The relief sought was to cancel or rescind the order of retirement and issue a writ of mandamus directing the Board to correct the date of birth as April 2, 1934. The relief was resisted on behalf of the Board by filing affidavits of R. S. Ghandavale, Assistant Secretary and L. N. Bhatt. The Board pointed out that the claim of the respondent that his birth date was erroneously recorded is entirely false and the claim is raised only a few days prior to the date of superannuation. The Board pointed out that the

employees were informing that application for correction of birth date in the register should be filed before a stipulated period and the respondent had not bothered to make any such application. The Board also pointed out that the claim of the respondent that the retirement age in respect of registered workers is 60 years is entirely incorrect. The Board also pointed out that the respondent was registered under the scheme of 1975 and the Board had earlier taken a decision that the age of retirement is 58.

6. Before the learned single Judge, the respondent specifically gave up the contention that his date of birth was erroneously recorded in the register. The respondent also gave up the contention that he is entitled to continue indefinitely in service provided he is medically fit. The sole contention urged before the learned single Judge was that the respondent was covered by the scheme in 1956 in respect of stevedore workers after being transferred to stevedore section in the year 1978 and in accordance with clause 18(c) of the 1956 scheme, the respondent cannot be retired before the age of 60 years. The submission found favour with the learned single Judge. The learned Judge held that even though the Board has taken the decision to retire the employee at the age of 58 years, the resolution can have no effect until the scheme was amended because the resolution cannot supersede the scheme. The learned Judge held that modification can be made in the scheme only by notification in the Official Gazette in accordance with Section 4 of the Dock Workers (Regulation of Employment) Act, 1948 and since Clause 18(c) of the 1956 scheme was not modified in the manner prescribed, the Board cannot retire the respondent before attaining the age of 60 years. As the respondent had already crossed the age of 60 years at the time of delivery of the judgment by the learned single Judge, the only relief granted was the monetary relief. The order of the learned single Judge is under challenge.

7. Shri Ramaswamy, learned counsel appearing on behalf of the appellant Board submitted that the decision of the learned single Judge proceeds on an assumption that the service conditions of the respondent were covered by stevedore scheme of 1956. Shri Ramaswamy contended that the respondent was registered for the first time under the 1975 scheme and that scheme clearly provides that the age of retirement was 58 years. It was urged that merely because the respondent was transferred to the stevedore section in the year 1978, that cannot entitled the respondent to claim that the age of retirement is 60 years. The learned counsel further submitted that even assuming that the respondent is covered by the scheme of 1956 still the construction of clause 18(1) (c) of 1956 scheme accepted by the learned single Judge was not accurate. It was urged that the clause nowhere prescribes that the age of retirement was 60 years. Shri Bhatkal, learned counsel appearing on behalf of the respondent, on the other hand urged that as soon as respondent was taken over in the stevedore section in the year 1978, the scheme section in the year 1978, the scheme of 1956 was automatically applicable and under clause 18(1) (c) the age of retirement is 60 years. In view of the rival submissions, two

questions fall for determination, viz., (a) whether the conditions of service of the respondent are regulated by the Dock Workers (Regulation of Employment) Scheme 1956 and (b) if so, whether clause 18(1) (c) provides that the workers under the scheme are entitled to continue in service till attaining the age of 60 years ?

8. As set out hereinabove, the respondent initially joined the services of Food Corporation of India as Loader and as the respondent was working in the Dock Area and carrying out his duties of loading and unloading or foodgrains and other cargoes, the respondent was entitled to be registered under the 1975 scheme. It is not in dispute that the scheme of 1975 under which the respondent was registered, nowhere provides that the age of retirement is 60 years. On the contrary, long prior to the floating of 1975 scheme the Board had decided in pursuance of instructions issued by Government of India that the age of retirement of all employees shall be 58 years unless conditions of service of employee provide that the age of retirement of all employees shall be 58 years unless conditions of service of employee provide that the age of retirement should be 60 years. The direction also made it clear that in respect of all future entrants the age of retirement shall be 58 years even though the earlier entrants were entitled to continue till attaining the age of 60 years. The Board in pursuance of the directions issued by the Government of India and which directions were binding upon the Board u/s 4(3) of the Dock Workers (Regulation of Employment) Act, 1948, took up policy decision that the retirement age limit for employees covered under the scheme administered by the Board shall be 58 years. Shri Bhatkal therefore very rightly did not dispute that the respondent, who was registered under the scheme of 1975, was liable to be retired at the age of 58 years. Shri Bhatkal contended that once the services of respondent section in the year 1978, then the respondent is entitled to claim that the conditions of service of respondent shall be regulated by the scheme of 1956 including one of age of retirement. It is not possible to accede to the submission of the learned counsel. The respondent was never registered under the scheme of 1956 not the respondent had entered the services under that scheme as a new entrant. The respondent was already registered under the 1975 scheme and his services were merely transferred to the stevedore section. The transfer does not automatically entitle the respondent to claim that the age of retirement should be determined in accordance with the 1956 scheme which is applicable only to the workers of stevedore section. The entire claim that the age of retirement of the respondent is 60 years is based on the foundation that the respondent is covered by the scheme of 1956. In our judgment, the learned single Judge was in error in proceeding on the assumption that the respondent was covered by the scheme of 1956.

9. Even assuming that the respondent was covered by the scheme of 1956, on being transferred to stevedore section in year 1978, still still reliance placed on clause 18(1) (c) of the 1956 scheme is not accurate. Clause 18(1) (b) and (c) are required to be set out to appreciate the contention raised on behalf of the

appellants :-

"18 (1) (b) The qualification for new registration shall be such age as may be prescribed by the Board having regard to local conditions but not exceeding 40 years, physical fitness, capacity and/or experience. Indian Nationals only shall be eligible for registration. Provided that in case of exercise personnel the age limit may be relaxed upto 45 years by the Dock Labour Board.

18(1) (c) Registration of workers in any new category shall be done from among workers who have been or were working in the Port on any such date as the Board may prescribed on this behalf and selection for registration shall be made as for as possible on the basis of seniority as determined by the length of service rendered by a worker in that category and notified by the Board. In cases where the said seniority list is not available, selection shall be made on such other basis as the Board may determine provided that the worker is medically fit and is not more than 60 years of age."

Clause 18(1) (b) makes it clear that the qualification for new registration shall be such age as may be prescribed by the Board but not exceeding 40 years. Clause 18(1) (c) inter alia provides that registration of workers in any new category shall be done from among workers who are still or were working in the Port on any such date as the Board may prescribe. The relevant part of Clause 18(1) (c) is as follows :-

"...... In cases where the said seniority list is not available, selection shall be made on such other basis as the Board may determine provided that the worker is medically fit and is not more than 60 years of age."

Shri Bhatkal submitted that in case a worker can be selected for registration till the age of 60 years, then it must be held that the age of retirement is 60 years. It is not possible to accede to the submission. The mere fact that clause 18(1) (c) authorises the Board to appoint worker who is not more than 60 years of age, it is not possible to jump to the conclusion that the said clause provides the age of retirement as 60 years. The learned single Judge felt that in case the recruitment is permissible till the age of 60 years, then the retirement age cannot be lower than the recruitment age. The fallacy in the contention urged on behalf of respondent lies in overlooking that the provision of clause 18(4) (c) is merely enabling one and authorises the Board to recruit the worker upto the age to 60 years in case of special requirement but the clause cannot be read as providing that the age of retirement of all the workers registered under the 1956 scheme is 60 years. The enabling provision cannot be read as creating a condition of service in favour of the worker. Secondly, it cannot be overlooked that in year 1972 the Central Government had taken a decision that the age of retirement of all the workers should be 58 years and that decision was endorsed by the Board in the year 1972 itself providing that the retirement age of all the workers under all the schemes prevalent in the Bombay Port Trust shall be 58 years. We are unable to appreciate how the respondent, who came to stevedore section in the year 1978, can claim that his retirement age is 60 years. In case the respondent was not transferred and regulated by the Bombay Foodgrain Handling Workers (Regulation of Employment) Scheme 1975, then the respondent would have retired at the age of 58 years and the transfer to stevedore section does not confer any additional benefit. In our judgment, the construction put by the learned single Judge is not correct and consequently the impugned judgment cannot be sustained.

10. Accordingly, appeal is allowed and judgment dated July 12, 1993 delivered by learned single Judge in Writ Petition No. 3868 of 1988 is set aside and the petition stands dismissed. The appellants are at liberty to withdraw the amount deposited with the Prothonotary and Senior Master alongwith interest, if any. In the circumstances of the case, there will be no order as to costs.