
(2017) 07 CAL CK 0052
In the Calcutta High Court
Case No : 17033 (W) of 2016

Calcutta Berthing Service Association & Anr. APPELLANT
Vs
Union of India & Ors. RESPONDENT

Date of Decision : 19-07-2017

Acts Referred:

[Major Port Trusts Act, 1963](#), [Section 111](#) - Power of Central Government to issue directions to Board

Citation : (2017) 07 CAL CK 0052

Hon'ble Judges : I.P. Mukerji

Bench : SINGLE BENCH

Advocate : Sagar Bandopadhyay, Tapas Saha, Soma Kar Ghosh, Saptansu Basu, Sujata Mukherjee, Ashok Kumar Verma

Final Decision : Allowed

Judgement

1. On 6th June, 2007 a Pay Revision Committee was set up by the Government of India to recommend pay revision for class-I and class-II officers of Major Port Trust and Dock Labour Boards to be effective from 1st January, 2007.
2. On 26th July, 2010, by a communication, the decision of the Ministry of Shipping, Government of India to revise the pay scales of these officers was published. In Clause-1.3 of the decision, the pay scale of pilots and marine engineers was fixed at Rs. 16,000/- to 20,800/- with upgradation of pay scale of promotional posts not exceeding the pay scale of category-I port posts. On satisfactory completion of five years of service as Berthing Masters of Kolkata Port Trust now called Dock Pilots they would

be given a scale of pay of Rs. 13000-18250.

3. This recommended revision of scale of pay was deliberated upon by the Kolkata Port Trust between March and April 2011. The end result was that it took the decision that the scale of pay for pilots and marine engineers was to be notionally fixed from 1st January, 1997 without any benefits in the shape of arrears upto 31st December, 2006.

4. If pay was revised from 1st January, 1997, there would be substantial increase of pay as on 31st December, 2006 and substantial increase in actual annual pay on and from 1st January, 2007, with incidental and consequential benefits.

5. On 19th July, 2013 the under Secretary Government of India Ministry of Shipping wrote to the Kolkata Port Trust whether in terms of the Ministry's Pay Revision Order dated 26th July, 2010, the pay scale of Marine Officers was upgraded and whether the same "methodology for fixation of pay" for revision of pay was adopted.

6. On 8th September, 2014 the Kolkata Port Trust apprised the Secretary Ministry of Shipping, Government of India about the upgradation of the pay scales as follows_

" i) In terms of para 1.3 of the Pay Revision Order dated 26.07.2010, the pay scale of pilots (Master Foreign Going) and marine engineers (MOT-I) has been upgraded to the pay scale of Rs. 16000-20800/-. The pay scales of the promotional posts of Dock Master and other equivalent Marine Officers has been upgraded to the pay scale of Rs. 17500-22300/- and the pay scale of Harbour Master, Manager Marine and other existing equivalent marine categories to the pay scale of Rs. 18500-23900/-.

ii) In terms of para 1.4 of the Pay Revision Order dated 26.07.2010, Dock Pilots (erstwhile Berthing Masters) upon completion of 5 years of satisfactory service has been given the scale of pay of Rs. 13000-18250/. Consequently, the pay scale of ADM and DDM had also been upgraded to

Rs. 14500-18700/- and Rs. 16000-20800/- respectively."

7. In paragraph 3 (v) of the affidavit-in-opposition the Kolkata Port Trust stated that succumbing to the strike threat made by the Pilots and marine engineers their scale of pay was given retrospective effect from 1st January, 1997, on their undertaking to re-pay any excess sum received should the Ministry not approve the upgraded scale of pay.

8. On 15th January, 2015 the Shipping Ministry wrote inter alia to the Kolkata Port Trust that upgradation of pay scales of Marine Officers was to be extended only after concurrence of the Ministry of Finance.

9. On 11th August, 2015 a representation was made by the Kolkata Berthing Association to the Kolkata Port Trust for adopting a uniform method in upgradation of pay under para 1.3 and para 1.4 of the Pay Revision Order dated 26th July, 2010 which was modified on 3rd August, 2010. In other words, they wanted the same treatment as pilots and marine engineers.

10. On 14th December, 2015 the Kolkata Port Trust took a very firm stand with regard to the insistence of the Ministry that concurrence of the Ministry of Finance had to be taken before implementation of para 1.3 and 1.4 of the pay revision order. They told the Ministry that this would have several implications and that the upgradation could not be kept on hold.

11. This letter is very important for the purpose that the Kolkata Port Trust rejected the demand of Kolkata berthing masters for adoption of similar standards as in the case of pilots, on the ground that the upgradation of pilot was subject to concurrence of the Ministry of Finance.

12. On 20th December, 2016 the Ministry of Shipping wrote to the Chairman of all Major Port Trusts that the pay revision dated 26th July, 2010, that the upgradation was discussed with the Ministry of Finance based on the recommendations of the Anomaly Committee. The proposal inter alia for revision of pay-scales of pilots, marine engineers and berthing masters or

dock pilots was referred to the Department of Expenditure, Ministry of Finance. This Department did not agree to the upgradation. Recovery of enhanced pay made by the port should be initiated by them. On 3rd February, 2017 Kolkata Port Trust wrote back to the Ministry of Shipping that the upgradation was in accordance with the Ministry's directive. Furthermore, this upgraded scale of pay was notified in the Kolkata Port Trust Employees (Recruitment Seniority and Promotion) Regulations, 2013 notified on 15th October, 2013. The upgraded revised scale of pay of pilots, dock pilots etc. had been allowed with the approval of the Shipping Ministry and there was no need to initiate the process of recovery of any excess sum received in this case.

13. Mr. Bandopadhyay for the petitioner made very simple and clear cut submissions. He said that the pilots and berthing masters, who are now re-designated as dock pilots were similarly situated. The pay scales of pilot, marine engineers and members of the writ petitioners association (berthing masters) have been increased. If the pay scale of pilots and marine engineers could be increased with retrospective effect, equality and fairness demanded that such retrospective effect should have also have been given to the pay scale of members of the writ petitioners association. Learned Counsel also stated that the ground cited by the Kolkata Port for giving effect to the revision of pay scale of the pilots and marine engineers with retrospective effect to avoid a strike called by them was not at all a very cogent ground.

14. On the other hand, it was Mr. Basu learned senior Advocate for the Kolkata Port submitted that under Section-111 of the Major Port Trusts Act, 1963 the Kolkata Port Trust was subject to the supervision of the Central Government. The revision of pay order of the Ministry of Shipping dated 26th July, 2010 needed the approval of Ministry of Finance for implementation. The Ministry of Finance did not approve the proposals. The Kolkata Port Trust says that it obtained the consent of the

Ministry of Shipping and implemented the proposal. Therefore according to Mr. Basu the implementation of the proposal was awaiting sanction of the Ministry of Finance. In that event this pay revision order had no finality in the eyes of law. Another group of persons being the members of the petitioner association could not be treated in the same manner as the pilots and the marine engineers. Moreover, if this policy was ultimately revoked the beneficiaries of this policy would have to be give back the benefit they had received.

15. In my opinion, the conduct of the Kolkata Port Trust authorities shows that they have enough independent power to revise pay scales, irrespective of the concurrence of the Ministry of Finance. They had implemented it with the concurrence of the Ministry of Shipping. In fact in the correspondence discussed above they have very defiantly stated to the Central Government, including the Finance Ministry that the pay revision order dated 26th July, 2010 had been implemented by them with retrospective effect in favour of dock pilots and marine engineers to avoid a strike by them. It is evident from their stand taken by them that according to them they did not need any other approval to enhance the pay scale.

16. This revision in pay scales has been acted upon for a long time. The berthing masters or dock pilots had a legitimate expectation to be similarly treated as they were doing more or less the same work as the pilots and marine engineers. In denying the same benefit to them, in my opinion, the port authorities acted unfairly. This resulted in discrimination.

17. In my view, the Kolkata Port Trust should be acting in a similar manner in favour of the members of the petitioner association as they have done for pilots and marine engineers. They are similarly situated as the pilots and marine engineers. I direct them to give effect to their revised pay scales in respect of dock pilots in the same manner as they have done

with regard to pilots and marine engineers with retrospective notional effect from 1st January, 1997 within eight weeks of communication of

this order, on the express condition that if for some reason this revision of pay scale is reversed at the instance of the Central Government the beneficiaries of this revised pay scale that is members of the petitioner association would have to refund or adjust the excess sum received by them.

18. On the basis of Mr. Basu's submission on behalf of the Port I also clarify that in the event the earlier decision to enhance the pay scale of pilots and marine engineers is reversed, at the instance of the central government, this revision of pay scale for Dock Pilots will also have to follow suit. In that case the members of the association cannot contend that any permanent right has been created in their favour by this order.

19. This writ application is allowed to the above extent.

20. Certified photocopy of this Judgment and order, if applied for, be supplied to the parties upon compliance with all requisite formalities.