
(1999) 08 BOM CK 0069

In the Bombay High Court

Case No : Writ Petition No. 782, 783 and 1814 of 1998

CDR. Anil Prabhakar Koshti and Others

APPELLANT

Vs

Union of India and another

RESPONDENT

Date of Decision : 16-08-1999

Acts Referred:

General Clauses Act, 1897 — Section 6

Merchant Shipping Act, 1958 — Section 76, 78, 79, 80

Citation : (2000) 1 ALLMR 146 : (2000) 1 BomCR 781 : (2000) 2 MhLj 198

Hon'ble Judges : M.B. Ghodeswar, J; B.N. Srikrishna, J

Bench : Division Bench

Advocate : Shyam Mehta and Satendra Kumar, for the Appellant; D.Y. Chandrachud, A.S.G., S.M. Shah and Mrs. S.V. Bharucha, for the Respondent

Judgement

B.N. Srikrishna, J.—These three writ petitions involve a common question of law and arise out of similar facts and it would, therefore, be convenient to dispose them of by a common judgment.

2. For the sake of convenience, we shall narrate the facts of Writ Petition No. 782 of 1998 and indicate the factual differences, if any, in other writ petitions.

3. The petitioners in Writ Petition No. 782 of 1998 were commissioned in Indian Navy as Sub-Lieutenants on various dates as indicated in Exhibit "A" to the writ petition. The petitioners were also promoted to the rank of Lieutenant in the Engineering Branch on different dates as indicated in the said Exhibit "A".

4. The petitioners in Writ Petition No. 1814 of 1998 were also commissioned in Indian Navy as Sub-Lieutenants on different dates and attained the rank of Lieutenant as indicated in Exhibit "A" to the writ petition. The petitioner, in Writ Petition No. 783 of 1998, was commissioned in Indian Navy as Sub-Lieutenant on 1-1-1985.

5. Section 76 of the Merchant Shipping Act, 1958 provides that every Indian ship, other than a Home-trade ship of less than 200 tonnes gross engaged in

coasting trade of India, when going to sea from any port or place, shall be provided with officers duly certified under the Act according to the scale laid down in that section. Section 78 prescribes different grades of certificates of competency and section 79 deals with examination required to be passed for grant of such certificates. Then came section 80 (as it stood on the material date) which is of relevance to us. Section 80 read as under :--

"80.(1) A person who has attained the rank of Lieutenant in the executive branch of the Indian Navy shall be entitled to a certificate of service as the master of a foreign-going ship without examination.

(2) A person who has attained the rank of lieutenant or sub-lieutenant in the Engineering branch of the Indian Navy shall be entitled without examination, if a lieutenant to a certificate of service as first class engineer, and if a sub-lieutenant to a certificate of service as second class engineer.

(3) The Central Government may, by rules made under this Act and subject to such conditions and restrictions as may be specified therein, provide for the grant of certificates of service to officers of the Indian Naval Reserve Forces who have attained the prescribed ranks.

(4) A certificate of service shall differ from a certificate of competency and shall contain the name and rank of person to whom it is delivered and the Central Government shall deliver a certificate of service to any person who proves himself to be entitled thereto.

(5) Notwithstanding anything contained in this section, the Central Government may, if it is of the opinion that a person who is entitled to a certificate of service under this section is not a fit person to hold such certificate, refuse to grant or deliver such certificate to him.

(6) The provisions of this Act (including the provisions relating to a certificate of service as they apply in relation to a certificate of competency."

6. Section 80 was repealed by the Merchant Shipping (Amendment) Act, 1986 (No. 33 of 1986) with effect from 14th August 1987. Several Officers of the Indian Navy, who had attained the substantive rank of Sub-Lieutenant or Lieutenant prior to that date, claimed that they were entitled to the different types of certificates prescribed in section 80(1) and (2) of the Act. These applications were made sometime after the repeal of section 80 i.e. on or after 14th August 1987.

7. The Union of India took up the stand that, after the repeal of the said section 80, no such certificates could be issued. This issue was considered in Writ Petition No. 1384 of 1996 (Group Petitions) and by a judgment dated December 5/6, 1996, (Coram : A.P. Shah, J.), reported in Commander Uday Date and Others Vs. Union of India (UOI) and Another, , this Court held that the contention of the petitioners was justified and that, notwithstanding the repeal of section 80 of the Act, the Union of India was liable to issue the certificates contemplated

under the repealed section 80. The Union of India carried the matter in Appeal. By a judgment dated 3rd & 4th September 1997, made in Appeal No. 149 of 1997, (Coram : M.B. Shah, C.J. & S.D. Gundewar, J.), reported in Union of India and another Vs. Commander Uday Date and others, , this Court considered the contentions of the parties in depth and came to the conclusion that the learned Single Judge's view was correct. The Division Bench also held that a right was vested in the petitioners under the Statute (Section 80) and, notwithstanding the repeal of section 80, the vested right could not be defeated. The Division Bench held that the right to get the certificate had been perfected to such a degree that continued existence of the Statute could not enhance the same that there was no question of filing an application for getting the certificate and that the subsequent procedure prescribed to get delivery of the certificate u/s 80(5) or (6) had been deleted by the Amending Act, 1987, but the right itself had not been annulled; that the right continued to be in existence and the certificate could be obtained by filing an application. The Division Bench was also of the view that the provisions of sub-sections (5) and (6) of section 80 were merely procedural and u/s 80(1) of the Act, persons who had attained the rank of Lieutenants were entitled to get the certificates of service as a matter of course, as it was the mandate of the Parliament that such persons should get the certificates of service. It was held that the right conferred upon the petitioners to get the certificates was absolute in effect and was not dependent upon happening of one or other events specified in the statute.

8. Finally, the Appeal Court observed thus :----

"In view of this settled legal position, it cannot be said that the judgment and order passed by the learned Single Judge is in any way illegal or erroneous. As stated above, the right to get the Certificate of service is conferred upon the person. No application or further investigation or legal proceeding is necessary. No investigation was required to be carried out to decide whether the certificate of service should or should not be given. Further, upon the repeal of the said Act, the right is not abrogated and, hence, remains preserved u/s 6 of the General Clauses Act, The petitioner has attained the rank of Lieutenant and was having a vested or accrued right of getting certificate of service. It was an absolute right and not subject to any conditions precedent under which that right was to be investigated and could be defeated. What was only required to be done was that he was to be given the certificate as contemplated. No doubt, before delivering such certificate, the Central Government was required to find out that such person is fit person to hold such certificate, it could refuse to grant or delivery such certificate. But that was not a condition precedent for entitlement of such certificate."

9. We would have thought that the issue was finally concluded by this Court and was not res integra, at least, in this Court. It appears that the Union of India and the Director General of Shipping have once again raked up the controversy, making it necessary for us to decide the issue again.

10. The applications of the present petitioners have also been rejected on the same grounds by saying that they had no vested right.

11. The learned Additional Solicitor General contended that section 80 having been repealed in the year 1986, the petitioners were required to qualify under the existing Navy Order which held the field as on the date of their applications. Since the petitioners were not qualified thereunder, the applications of the petitioners for Service Certificates had been rightly rejected. He attempted to distinguish the judgment of this Court by contending that there was substantial difference between the two sub-sections i.e. sub-sections (1) and (2) of section 80. He further contended that while sub-section (1) of section 80 applied to officers in the Executive Branch of the Indian Navy, sub-section (2) applied to officers in the Engineering Branch of the Indian Navy and that the Division Bench of this Court had not examined cases falling under sub-section (2) of the repealed section 80 and, therefore, the earlier decision could only be an authority with regard to cases falling within the parameters of sub-section (1) of section 80.

12. The objects and reasons for Amending Act 33 of 1986 and deletion of section 80 by the said Amending Act, as indicated in the Statement of Objects and Reasons, are as under :

"The International Convention on the Standards of Training, certification and Watchkeeping for Seafarers which was adopted in 1978 at the Conference organised by the Inter-Government Maritime Consultative Organisation (now international Maritime Organisation) came into force with effect from the 28th April, 1984. Government of India ratified the Convention on the 16th November, 1984. The Convention lays down basic requirements with respect to training, certification and watch keeping for seafarers in deck, engine and radio departments and also prescribes the syllabi for examination of candidates for various certificates and introduction of a number of training courses aimed at improving the standards of seafarers."

13. In view of these objectives, which are sought to be achieved by the Parliament, it is contended by the Additional Solicitor General that issuance of Service Certificates to Naval Officers merely on the basis of their having attained a substantive rank, as contemplated under the repealed section, did not comply with the obligations under the International Convention on the Standards of Training, Certification and Watch keeping for Seafarers, which was adopted in 1978, which convention the Government of India had ratified on 16th November 1984. As from that date, the Government of India was obliged to ensure that the certification of Seafarers Officers at different levels had to be strictly in accordance with the principles adopted at the said Convention. Whatever might have been the objective behind the erstwhile section 80(2) of the Act, it is now clear that the Government of India had to comply with its obligations under the Convention which had been ratified. This was the reason why Parliament decided to repeal section 80 in its entirety. The submission was that, after repeal of the

said Statute, no officer of the Indian Navy could any longer be entitled to a Service Certificate merely on the basis of his having attained any particular rank.

14. The learned Additional Solicitor General also heavily relied on the provisions of sub-section (5) of the repealed section 80 to impress upon us that, even under the repealed section, a Naval Officer who had attained the requisite rank, had no vested automatic right to get a Service Certificate of the types indicated in the section. He contended that, if the Central Government was of the opinion that a person, who was entitled to the Certificate of Service "is not a fit person to hold such Certificate", the Central Government was entitled to refuse such Certificate. In order to test the fitness, the Chief of Naval Staff had issued Navy Orders which prescribe certain work experience and unless a person had qualified by attaining the requisite rank and had the requisite work experience on the date of his application, the Central Government was justified in refusing such Certificate under sub-section (5) of section 80 of the repealed Act also.

15. The learned Additional Solicitor General further relied on Navy Order Nos. 20 of 1974 and 11 of 1986 in support of his submissions. We may mention here that though Navy Order No. 11 of 1986 came into effect on 19th September 1986 superseding Navy Order No. 20 of 1974, both are worded in identical terms. According to the submission of the learned Additional Solicitor General, Navy Order Nos. 20 of 1974 and 11 of 1986 stipulated the test by which the Government of India could decide whether a person was fit or unfit for a Service Certificate, even if he was entitled to the said Certificate.

16. In our view, none of these contentions appear to have merit. In the first place, the International Convention ratified on 16th November 1984, and what turns thereupon, was already canvassed before the Appeal Court and has been considered by the Appeal Court. The Court, notwithstanding the Convention obligations urged as the objective for repealing section 80 of the Act, has already held that sub-section (1) of section 80 vested a right in Naval Officers who had attained the prescribed rank for getting a Service Certificate and the repeal of section 80 could not defeat such right. The Appeal Court also came to the conclusion that the right was already perfected and not subject to any further conditions, nor was any procedure for making application envisaged under the repealed section. The limited role that was left to the Central Government under sub-section (5) of section 80 of the said Act was that if the person was found "unfit" to hold such certificate, the Central Government could refuse to grant or deliver such certificate, but that was not a condition precedent for entitlement to such certificate. In the teeth of these observations and findings of the Appeal Court, it is not possible for us to accept the contentions of the learned Additional Solicitor General that the issue is still *res integra* nor we are able to accept that there is any vital distinction between the two sub-sections i.e. (1) and (2) of the repealed section 80 of the said Act as suggested by the learned Additional Solicitor General. It is true that sub-section (1) deals with officers in the Executive Branch while sub-section (2) of the repealed section 80 deals with

officers in the Technical Branch. But, in our view, that, by itself, makes no difference. The principles laid down by the Appeal Court in the judgment in Appeal No. 149 of 1997 Union of India and another Vs. Commander Uday Date and others, are equally applicable while interpreting sub-section (2) of the repealed section 80. The Appeal Court proceeded on the basic principles of law that under a repealing Act cannot be interpreted as defeating a vested right, unless such intention is manifest in the Act itself or arises as a necessary implication from the provisions of the repealing Act. In our view, this canon of construction of Statutes is equally applicable while interpreting sub-section (2) of section 80. The distinction that the former deals with Executive Branch Officers and the latter deals with Technical Branch Officers makes hardly any difference while interpreting the section. The same principle of construction against the defeating of vested right must be applied here also. In our view, therefore, the judgment of the Appeal Court is equally applicable to the cases of the petitioners before us.

17. That leaves the additional contention of the learned Additional Solicitor General urged before us based on the Navy Orders. In the first place, despite our repeatedly asking the learned Additional General to point out to us as to the provisions of law under which the Navy Order was binding on the parties, at any rate, so as to defeat the vested right, we have not been pointed out the source of legal authority. We are, therefore, unable to take the view that Navy Orders are founded on some legal authority which would be sufficient, even if binding on Naval personnel, to defeat a vested right accruing to a Naval Officer under the repealed section 80(5) of the said Act. Even if it be assumed that there is some legal authority behind the Naval Orders, and even if we assume them to be on Naval personnel, the Naval Orders relied upon do not mean what the respondents contend. We may reproduce here the relevant clause of Navy Order No. 20 of 1974. This was the Navy Order which was in operation when section 80 of the said Act was repealed. The relevant Clause 7 reads as under :---

"7. A General List Marine Engineer Officer of any of the following categories namely :

i) Cadet Entry Engineer Officer,

ii) Direct Entry Graduate Engineer Officer and

iii) ERA Entry ex-upper Yardman Engineer Officer who attained the substantive rank of Lieutenant in the Indian Navy and who has thereafter performed not less than 21 months qualifying sea service of which not less than 9 months should have been on steamships and not less than 6 months on motorships and the remainder on either steamships or motorships as Watch-keeping. Engineer Officer or Senior Engineer or Engineer Officer since attaining the rank, may apply for grant for a certificate of service as 1st Class Engineer of Steamships and Motorships without examination. If the applicant does not have the minimum requisite service on steamships and motorships stipulated above, he can apply

for the certificate valid for only steamships or only motorships as the case may be. He may, however, apply later for the combined steam and motor certificate of service after acquiring the minimum stipulated service on steam and motor ships."

Sub-clause (iii) of Clause 7 only puts an additional restriction that the officer, who is entitled to the service certificate, must have completed 21 months sea service of which not less than 6 months on motorships and the remainder on either steamships or motorships as Watch-Keeping Engineer Officer or Senior Engineer or Engineer Officer since attaining the rank. Such officers are held entitled to apply for grant of a Certificate of Service as 1st Class Engineer of Steamships and Motorships without examination. Finally, the clause says "If the applicant does not have the minimum requisite service on steamships and motorships stipulated above, he can apply for the certificate valid for only steamships or only motorships as the case may be. He may, however, apply later for the combined steam and motor certificate of service after acquiring the minimum stipulated service on steam and motor ships. Even assuming that the argument based on the Navy Order is correct, this only postpones handing over of the certificate to the date on which the officer completes the prescribed type of work experience. This does not defeat the vested right which the officer already had under the repealed section 80(2). Thus, reading the repealed section 80(2) and Navy Order No. 20 of 1974 together, it only means that the officers contemplated by section 80(2), who had attained the substantive rank contemplated thereunder, would get a vested right to obtain Service Certificate without undergoing an examination, but that certificate would be made available to them after they had obtained prescribed work experience as contemplated under Navy Order No. 20 of 1974. The provisions of Clauses 4 and 5 of Navy Order No. 20 of 1974 were also highlighted. In our view, those have no application to the case of officer of the Indian Navy who had attained the substantive rank as contemplated by repealed sub-section (2) of section 80 of the said Act. If an officer had no vested right to a Service Certificate on the date on the repealed section and his case had to be considered only by application of the Navy Order, Clauses 4 and 5 thereof would be relevant. In any case, a careful reading of Clause 7(iii) of Navy Order No. 20 of 1974 would itself suggest that, the requisite service contemplated thereunder had to be performed after attaining the rank. Thus, as on the date of the repeal of section 80, every officer, who had attained the substantive rank in the Indian Navy, as contemplated under sub-section (2) of the repealed section 80, could not have necessarily completed the work experience contemplated by sub-clause (iii) of Clause 7 of Navy Order No. 20 of 1974. That is why sub-clause (iii) of Clause 7 provides that though the officer might be entitled to a service certificate by reason of a vested "right under sub-section" (2) of the repealed section 80 of the said Act, the service certificate would actually be delivered to him only he had completed the work experience contemplated in Clause 7(iii) of Navy Order No. 20 of 1974.

18. As far as Navy Order No. 14 of 1986 is concerned, its interpretation cannot

be any different. This Navy Order can only govern and regulate the cases of officers of the Indian Navy who had not attained the substantive ranks envisaged u/s 80 of the repealed Act. In all such cases, such officers having no vested right to get a service certificate, their cases had to be necessarily regulated by Navy Orders. Thus, in our view, the Navy Orders are not capable of being applied to cases of officers who had vested right under sub-sections (1) and (2) of section 80 of the said Act. They are intended to regulate the cases of officers who had no such vested right.

19. In this view of the matter, we see no reason why the petitioners should not be granted Service Certificates which they had applied for, provided they had completed the work experience prescribed under the applicable Navy Orders.

20. It is unnecessary for us to examine the correctness of the contentions of Mr. Mehta, learned Counsel for the petitioners that the additional limitations, if any, prescribed by Navy Orders were inconsistent with the provisions of section 80, even as it stood on the statute and were, therefore, overridden by the provisions of the statute.

21. In the result, the writ petitions are allowed and the following order is made:-

ORDER

(1) It is held that all the petitioners had vested right to Service Certificates under sub-section (2) of the repealed section 80 of the said Act.

(2) The respondents are directed to examine the cases of the petitioners on the footing that they have vested right to Service Certificates of different types depending on their holding the rank of Lieutenant/Sub-Lieutenant as on the date of the repeal of section 80 of the said Act and deliver to the petitioners the requisite Service Certificates after they attain the work experience prescribed under the Navy Order in force on the dates of the application of the petitioners.

(3) All provisional Service Certificates granted during the pendency of these writ petitions shall be converted into final Service Certificates.

(4) The Service Certificates shall be delivered to the petitioners within a period of 12 weeks from today.

22. Rules are accordingly made absolute. No order as to costs.

23. Mr. Shah, learned Counsel for the respondents, applies for stay of this order.

24. Application for stay refused.

25. Petition allowed.