

(2006) 07 MAD CK 0010
In the Madras High Court
Case No : Writ Petition No. 11323 of 2006

N. Durairaj

APPELLANT

Vs

Chennai Port Trust

RESPONDENT

Date of Decision : 03-07-2006

Acts Referred:

Industrial Disputes Act, 1947 — Section 12(3), 4
Madras Dock Labour Board Act, 1948 — Section 4

Citation : (2006) 07 MAD CK 0010

Hon'ble Judges : D. Murugesan, J

Bench : Single Bench

Advocate : K.M. Ramesh, for the Appellant; M.R. Dharani Chander, for the Respondent

Final Decision : Dismissed

Judgement

D. Murugesan, J.—The petitioner was appointed as Casual Mazdoor in the Madras Dock Labour Board by order dated 22.12.66 with

effect from 26.12.66. He was absorbed/registered as Reserve Pool Mazdoor with effect from 1.4.79. Thereafter, he was promoted as Tally Clerk

on 1.8.79 and again promoted as Senior Tally Clerk with effect from 4.8.99. There is a dispute as to the date of birth namely, according to the

petitioner, his date of birth is 27.10.49 and according to the respondents, it is 1.6.48, and a writ petition is also pending as to the date of birth of

the petitioner. According to the petitioner, even assuming that the date of birth is taken as 1.6.48, he would attain the age of superannuation only

on 30.6.2008 after completion of 60 years. However, by the impugned order, the respondents had notified that the petitioner would be

superannuating with effect from the afternoon of 30.6.2006. Aggrieved by the same, the petitioner has filed the writ petition.

2. Mr.K.M.Ramesh, the learned Counsel for the petitioner had submitted that inasmuch as the petitioner was appointed as Casual Mazdoor as per the Registered Scheme of the Madras Dock Labour Board namely, in terms of Clause 18-A of the Madras Dock Workers (Regulation of Employment) Scheme, 1957 and in terms of Clause 36 of the Settlement entered into u/s 12(3) of the Industrial Disputes Act, 1947 dated 25.5.2001, whereby the Madras Dock Labour Board got merged with Madras Port Trust, the petitioner is entitled to continue in service till the age of sixty. As the petitioner's name is notified for superannuation with effect from the afternoon of 30.6.2006 on attaining the age of fifty-eight by the impugned notification, the same is liable to be set aside.

3. The respondents have filed a counter affidavit. Mr.M.R.Dharani Chander, the learned Counsel appearing for the respondent-Port Trust submitted that Clause 36 of the Settlement dated 25.5.2001 would be applicable only to such of those dock workers who were appointed prior to 31.5.74 in the Registered Scheme and prior to 1961 in the Listed Scheme to continue in service till the age of sixty. Inasmuch as the petitioner was not appointed prior to 31.5.74 in the Registered Scheme, as he was working only as Casual Mazdoor on the said cut-off date, he is not entitled to continue in service till the age of sixty. The further contention of the learned Counsel is that the impugned order is in accordance with the Scheme as well as the Settlement. Hence, the writ petition is liable to be dismissed.

4. I gave my anxious thought to the rival contentions. It appears that the father of the petitioner was employed as Reserve Pool Mazdoor in the erstwhile Madras Dock Labour Board and since he died while in service on 18.3.66, the petitioner was appointed on compassionate grounds by the order of appointment dated 22.12.66. The said order reads as under:

This is to inform you that you have been recruited as a casual mazdoor in the Administrative Body of the Madras Dock Labour Board with effect from 26.12.66 subject to the following conditions. The serial number assigned to you is 6180.

- 1) Your employment is purely Casual.
- 2) You will be considered for allotment for work after exhausting the workers recruited prior to 1.12.66 and your allotment for work is not guaranteed.

3) You will not be entitled for any payment in respect of the days for which you have been rendered without work.

4) You will be subjected to medical examination and removed from rolls, if found physically unfit.

5) You shall produce document attesting your date of birth preferably the birth certificate issued by the authorities of the Municipality or

Corporation, failing which, the Administration will assess your age and that the age so fixed will not be altered at any time.

6) Your name will be removed from the roll, if the administration is satisfied that you have willfully suppressed any material information which

would have debarred your recruitment as casual mazdoor.

7) Your name may be removed from the roll without giving any notice in writing and without assigning any reason whatsoever.

8) Your acceptance in writing of the above conditions may be submitted to the undersigned on or before 24.12.66 5 PM.

Based on the above order, the petitioner continued to work as Casual Mazdoor and he was absorbed as Reserve Pool Mazdoor by a Memo

dated 30.3.79. The said Memo reads as under:

In accordance with the Board's decision, you have been considered for registration as a Reserve Pool Mazdoor subject to the following

conditions with effect from 1st April 1979. Your number is 2377.

1) You shall remit a sum of Rs. 2/- as "Registration Fee" in accordance with provision 22 of the Madras Dock Workers (Regulation of

Employment) Scheme "56.

2) You shall undergo a "Medical Examination" for physical fitness by the Medical Officer, Madras Dock Labour Board, in accordance with

provision 20 of the said scheme.

3) You shall not be entitled for registration, if you are declared medically unfit.

4) You shall produce document attesting your date of birth preferably the birth certificate issued by the authorities of the Municipality or

Corporation, failing which, the Dock Labour Board will assess your age.

5) You shall be governed by the Rules and regulations which are in force and will be framed by the Board from time to time.

6) You are, therefore, required to intimate the undersigned to your willingness to

accept the above appointment on or before 1st April 1979

without fail.

7) You shall be debarred from registration if you fail to intimate your acceptance in writing of the above conditions within 3 days of receipt of this

memo.

Note: You will continue in same shift and off as assigned to you in your casual list.

The Madras Dock Labour Board, which was constituted in the year 1954 under the Madras Dock Labour Board Act, 1948, administered the

following four statutory Schemes framed by the Government of India in exercise of the powers u/s 4 of the Act:

(i) Madras Dock Workers (Regulation of Employment) Scheme, 1956, Registered Scheme;

(ii) Madras Unregistered Dock Workers (Regulation of Employment) Scheme, 1957, Listed Scheme;

(iii) Madras Unregistered Dock General Pool Workers (Regulation of Employment) Scheme, 1988, G.P.Scheme and

(iv) Madras Unregistered Dock Clearing and Forwarding Workers (Regulation of Employment) Scheme, 1988, C & F Scheme.

5. We are concerned only with the Madras Dock Workers (Regulation of Employment) Scheme, 1956, a Registered Scheme containing inbuilt

procedures. At the outset it must be mentioned that the Scheme was framed only to ensure greater regularity in employment for dock workers and

to secure that an adequate number of dock workers is available for the efficient performance of dock work. The relevant clauses of the Scheme

which are necessary for the disposal of this writ petition reads as under:

3(m): ""register or record"" means the register or record of Dock Workers maintained under the Scheme.

3(n): ""registered Dock Worker"" means a Dock Worker whose name is for the time being entered in the register or record.

15(2)(b)(ii): Reserve Pool Register: Register of workers other than those on the monthly register and known as Reserve Pool workers. This

Register shall include a sub-pool of stevedore mazdoors to fill casual vacancies. The workers included in such a sub-pool shall be known as leave

reserve workers.

16(1): The Board shall arrange for the classification of workers by categories in the registers.

16(2): Dock workers registered under the Scheme shall be classified into:

(a) Foreman (Serang) (b) Tindal

(c) Winch Driver (d) Stevedore Mazdoor

(e) Tally Clerk (f) Signaller

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 prescribe on this behalf and selection for registration shall be made as far 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 58 years of

age.

18(3): The following principles shall apply in respect of registration of Tally Clerks and other categories which may after the date of enforcement of

the Scheme be included in Schedule I.

(a) Before a worker is registered in any of the above categories, the Board shall under Clause 17 make a thorough investigation with a view to

arriving at an estimate of the number of workers in that category that are likely to be required out of all the BONAFIDE workers in that category

who may then be working in the docks.

(b) There shall be a provisional registration based on the anticipated requirements and the mere fact that a worker has been working before in the

Port shall not automatically entitle him to registration.

(c) After the provisional registration has been completed, the booking in rotation shall start without allowing at that stage, any financial benefits

other than wages which accrue to registered workers under the Scheme.

(d) Reassessment of the requirements shall be made after six months in the light of the actual employment obtained by workers provisionally

registered and the provisional registration shall then be adjusted accordingly. The payment of attendance allowance under Clause 32 only shall

commence from that time.

(e) The working under these conditions shall be examined after a year of the introduction of the rotational booking with a view to fixing the number

of days for which the guaranteed minimum wages under Clause 31 should be paid from them onwards the workers will be entitled to all the

benefits under the Scheme.

18-A: Age of retirement: The age of retirement of any worker under the scheme shall be 58 years.

Provided that where the existing age of retirement of any category of workers is 60 years that practice shall continue for the present incumbents in

that category (date of issue of Government order 31.5.1974).

20. Medical Examination.

(1) A new worker before registration shall undergo, free of charge, a medical examination for physical fitness by a Medical Officer nominated by

the Chairman for this purpose. A worker found medically unfit by a Medical Officer may apply in writing to the Chairman for examination by a

Medical Board. On receipt of such a request, the Chairman shall set up a Medical Board. The decision of the Medical Board shall be final and a

worker who is medically unfit shall not be entitled to registration.

(2) If the Administrative Body deem it necessary, a worker shall undergo free of charge a medical examination by a Medical Board to be

constituted by the Chairman. The decision of the Medical Board shall be final. If a worker is found permanently unfit by the Medical Board the

Chairman shall terminate his services forthwith.

22. Registration Fee.- A registration fee of rupees two shall be payable to the Board by each worker at the time of registration under the Scheme.

23. Supply of cards.-(1) Every registered worker shall be supplied free of cost with the following cards in the forms prescribed by the Board

namely:

(i) Identity Card

(ii) Attendance Card, and

(iii) Wage card

(2) In case of loss of a card, a fresh card will be issued but the cost thereof which will be fixed by the Board, shall be payable by the worker

concerned.

24. "Service Records" for registered workers.- A "Service Record" for every monthly and daily worker shall be maintained by the Administrative Body in a form to be prescribed by the Board which shall contain, among other things, a complete record of disciplinary actions taken against the worker, promotions, commendation for good work etc. Such details in respect of monthly workers shall be supplied to the Administrative Body by the registered employers.

6. To find out as to whether the petitioner, who was appointed as Casual Mazdoor, could seek the benefit of the Scheme, the above Clauses of the Scheme are relevant. For entitling a casual dock worker to become a registered dock worker, his name shall be entered in the register/record as contemplated under Clause 3(m) & (n). The employer is duty bound to maintain workers' registers as contemplated under Clause 15(2). The registers for stevedore workers shall be Monthly Register and Reserve Pool Register. Clause 16 deals with classification of workers in registers.

A procedure is contemplated under Clause 18(3) for registration. In addition to the above, before a new worker is registered in the register, a medical examination is contemplated as to the physical fitness under Clause 20. Only if the worker is registered, he would be entitled to the benefit

conferred under Clause 18-A of the Scheme, which provided that the age of retirement of any worker under the scheme shall be 58 years, but

where the existing age of retirement for any category of workers is 60 years, they shall be allowed to continue in that category upto 60 years.

Clause 18-A should be read along with Clause 36 of the Settlement relating to age of retirement. As per the Settlement, the date of retirement of

all dock workers even after the merger shall be 58 years, excepting for those workers who were appointed prior to 31.5.74 in the Registered

Scheme as approved by the Government on 8.1.2001 and the Board's resolution dated 27.2.2001.

7. The issue to be now decided is as to whether the appointment of the petitioner in the year 1966 as Casual Mazdoor is covered in the Registered

Scheme so as to avail the benefit of Clause 36 of the Settlement. The appointment order dated 22.12.66 refers to the fact that the petitioner's

appointment was purely casual. Though the Scheme was framed on 31.12.56, the appointment order does not refer to the Scheme. In fact the

appointment order refers to the fact that the appointment will be subject to medical examination and the appointee shall be removed from rolls, if

found physically unfit. It also refers to the fact that the allotment of work to the petitioner will be considered only after exhausting the workers

recruited prior to 1.12.66 and the allotment of work was not guaranteed. A plain reading of the said order shows that the appointment was purely

casual and not made under the Scheme. In this context, the order of absorption also needs a reference. The order of absorption dated 30.3.79

specifically refers to the fact that the petitioner being a casual is absorbed into Reserve Pool Register of Madras Dock Labour Board. As per

condition No. 1, the petitioner was directed to remit a sum of Rs. 2/- as registration fee in accordance with the provisions of Clause 22 of the

Scheme. As per condition No. 2, the petitioner was directed to undergo a medical examination for physical fitness in accordance with provision 20

of the Scheme. As per condition No. 3, the petitioner was informed that in case if he is declared medically unfit, he would not be entitled for

registration. The petitioner was also asked to give his willingness in writing for accepting the appointment as per condition No. 6 on or before

1.4.79. As per condition No. 7, if the petitioner failed to intimate the acceptance in writing within three days from the receipt of the said memo, he

would be debarred from registration.

8. A combined reading of the above would show that the name of the petitioner was considered for registration only on 30.3.79 and that the

petitioner also accepted the appointment and expressed his willingness in writing for registration under the Scheme with effect from 30.3.79.

Though the petitioner was appointed on 22.12.66, he was treated only as casual and by virtue of the Settlement he was absorbed in Madras Port

Trust only as casual worker. In my opinion, the relevant date for the purpose of availing the benefit of Clause 18-A of the Scheme and Clause 36

of the Settlement shall be the date on which the petitioner's name was registered as per order dated 30.3.79 i.e., after 31.5.74.

9. It must be kept in mind that the Scheme was framed by the Government of India in exercise of the powers u/s 4 of the Madras Dock Labour

Board Act, 1948 and for entitlement not only as to the age of superannuation but also for all other benefits, the worker shall be a registered worker

under the Scheme. In fact the petitioner's name was not found either in the workers' register or in the monthly register or reserve pool register till

the order of absorption was issued on 30.3.79. There are no records to show that before the cut-off date viz., 31.5.74, the petitioner was either

called for medical examination as required under Clause 20 of the Scheme or the procedures for registration contained in Clause 18(3) were

followed. That apart, classification of workers in registers as provided under Clause 16 is only for Foreman, Tindal, Winch Driver, Stevedore

Mazdoor, Tally Clerk and Signaller. The said clause does not contain Casual Mazdoor. In my opinion, the petitioner cannot be considered to be a

registered worker under the Scheme, as he was not appointed prior to 31.5.74 to claim the benefit of Clause 36 of the Settlement for continuing in

service upto the age of sixty.

10. Mr.K.M.Ramesh, the learned Counsel for the petitioner, however, submitted that as the petitioner was appointed on 22.12.66 and he was

absorbed on 30.3.79, his service as Casual Mazdoor from 1966 should be counted for the purpose of service benefits. For the said proposition,

the learned Counsel relied upon the following judgments in (1) N.S. Saxena and Others Vs. Oil and Natural Gas Commission and Others, , (2)

The Direct Recruit Class-II Engineering Officers' Association and others Vs. State of Maharashtra and others, , (3) R. Eucharista Vs. State of

Tamil Nadu and Others, and (4) F. Abdul Khader v. Karnataka State Road Transport Corporation and Anr. 1996 3 SUPP. LLJ 989. In my

opinion, none of the above judgments are applicable to the facts of the present case, as all the judgments relied upon by the learned Counsel relate

to the claim of the casual, temporary or adhoc workers for counting the services for the purpose of seniority. Whether a casual worker could also

claim the benefit of seniority from the date on which he was appointed is not the issue in this case. The issue before this Court is entirely different,

as the claim of the petitioner for continuing in service upto the age of 60 years is based on Clause 18-A of the Scheme as well on Clause 36 of the

Settlement. Unless the petitioner establishes that the name of the petitioner was registered and he was brought under the Scheme as a registered

worker prior to 31.5.74, he would not be entitled to continue in service upto the age of sixty. Hence, the submission of the learned Counsel for the

petitioner that the casual service put in by the petitioner before absorption should be counted for the purpose of service benefits cannot be

accepted, as the Scheme itself contains the in-built procedures to be followed for its applicability.

11. The learned Counsel for the petitioner also placed reliance on Clauses IV and XIX of the revised Standing Orders for the Daily Workers of

Madras Dock Labour Board and contended that the Administrative Body provides the casual worker with identity card as per the Scheme and

that the casual worker shall retire on attaining the age of sixty. Clause IV of the Standing Orders relates to the employment of persons other than

registered dock workers. The petitioner being a casual worker is issued with a casual identity card under the said clause. The said clause will not in

any way change the nature of appointment of the petitioner from casual to registered worker and the compliance of Clause 23 of the Scheme for

the supply of identity card after a proper registration as per the Scheme. Further, Clause XIX relates to the retirement of a daily worker at the age

of sixty. Here again, the claim is misconceived as for entitlement to the age limit after the Settlement was entered in the year 2001, the age criteria

as contained in the Settlement alone would be applicable. There is no dispute that as per Clause 36 of the Settlement, the age of retirement of all

dock workers of the Madras Dock Labour Board shall be 58 years, excepting for those workers who were appointed and registered prior to

31.5.74. Hence, both the clauses of the Standing Orders relied upon by the learned Counsel for the petitioner are not applicable to the facts of this

case.

12. For the foregoing reasons, I am of the considered view that the petitioner has not made out a case for claiming the benefit of Clause 18-A of

the Scheme as well Clause 36 of the Settlement and question the impugned order enlisting him as a worker who would attain superannuation from

the afternoon of 30.6.2006. Accordingly, the writ petition fails and the same is dismissed. No costs. Consequently, W.P.M.P. No. 12873 of 2006

is also dismissed.