
(1979) 08 CAL CK 0023
In the Calcutta High Court

P.C. Mahindar

APPELLANT

Vs

Chairman, Calcutta Port Trust and Others

RESPONDENT

Date of Decision : 03-08-1979

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1980) 1 CALLT 147 : 84 CWN 272

Hon'ble Judges : Dipak Kumar Sen, J

Bench : Single Bench

Judgement

Dipak Kumar Sen, J.—Parthul Chand Mahindar, the petitioner herein had been employed as a Harbour Master (River) in the Port of Calcutta till the 24th March, 1973 when he retired on superannuation. At the material time, the Port of Calcutta was managed and was under control of the Commissioners for the Port of Calcutta, a local authority incorporated under the Calcutta Port Act, 1908. The Calcutta Port Act, 1908 was replaced by the Major Port Trusts Act, 1968 which was made applicable to the Port of Calcutta in 1974. Under the Act of 1963 the persons in the management of the Port of Calcutta are the trustees.

2. Under cover of a letter, dated the 27th July, 1976 a charge sheet contained in a memorandum, also dated the 23rd July, 1976 was served on the petitioner, stating that it was proposed to initiate disciplinary proceeding against the petitioner and the petitioner was charged-with having committed gross misconduct during the year 1972-73 while functioning as a Harbour Master (River) of the Calcutta Port by having failed to maintain absolute integrity and having acted in a manner unbecoming of an officer of the Port Commissioner as he had issued false certificates dated the 27th July, 1972 to two Master Pilots of the Calcutta Port to the effect that they had been appointed as Branch Pilot (Grade-1) on the strength of which the said Master Pilots obtained training the India Naval Reserve for future appointments. It was alleged that by the aforesaid conduct, petitioner had contravened Rule 3(i) of the Calcutta Port Commissioners Officers' (Conduct) Rules, 1971. A statement containing particulars of the

allegation made against the petitioner was enclosed with the said charge sheet.

3. Subsequent thereto, on the 4th August 1976, the petitioner wrote a letter to the Director, Marine Department asking, inter alia, for inspection of relevant documents and for permission for obtaining copies of the same. The petitioner asked for time to submit his reply to the said charges for a fortnight from the date after the records were made available. The petitioner also asked for the Calcutta Port Commissioners' Officers (Conduct) Rules, 1971. Subsequent thereto, an order, dated the 18th August, 1976 was served on the petitioner informing him that one Joyaker, P. Johnson, Ex-Commissioner for Departmental Inquiries, Central Vigilance Commission (Government of India) had been appointed to enquire into the charges preferred against the petitioner and one S.C. Bose. Deputy Superintendent of Police, Special Police Establishment, Calcutta was nominated to present the case before the inquiring officer.

4. The Director, Marine Department of the Calcutta Port Commissioners under cover of his letter dated the 26th August 1976, the matters forwarded to the petitioner a communication from the enquiring officer dated the 21st August, 1976 informing the petitioner that the preliminary hearing of the case had been fixed on the 21st September, 1976 at New Delhi which the petitioner was directed to attend. It was stated that failing his attendance the enquiry will proceed ex parte. By a letter dated the 4th September, 1976 the petitioner requested the inquiring officer to permit him to take the assistance of a lawyer at the enquiry.

5. Thereafter, on the 10th September 1976, the petitioner submitted a reply to the said charges contending, inter alia, that the charge-sheet was silent as to under what Rules and Regulations of the Calcutta Port Act, the petitioner was being subjected to the said disciplinary proceedings though he was no longer an employee of the Calcutta Port. The petitioner also contended that he had not been given inspection of the documents as asked for. The petitioner contended further that the Major Port Trust Act, 1963 which came into effect from 1974 could not affect the rights and privileges to which he had become entitled prior to his retirement and that the said proceeding were wholly illegal, invalid and without jurisdiction. The petitioner also made his submissions dealing with the charges. The petitioner reiterated his contentions in a subsequent letter dated the 16th September, 1976 addressed to the Chairman, Calcutta Port Trust.

6. On the 21st September, 1976 the petitioner appeared at the enquiry before the Inquiring Officer at New Delhi and contended at the outset that as he has retired from his service under the Calcutta Port more than three years earlier no disciplinary action could be taken against him. He challenged the jurisdiction of the inquiring officer to proceed with the enquiry. He reiterated his demand for copies of the records, for inspection thereof and for legal assistance. The matter was adjourned till November, 1976. In the meantime by a letter of his advocate dated the 28th September, 1976 the petitioner made a demand for justice. In reply a communication was received from the Secretary to the Chairman of the

Calcutta Port Trust dated the 15th October, 1976 where it was stated that the proceedings had been duly instituted by the competent authority under the Major Port Trusts Act. By a subsequent letter dated the 27th October, 1976 the petitioner was informed of the next date of the enquiry which was fixed on the 30th November, 1976, at Calcutta. On that date the petitioner appeared at the enquiry with his lawyer. The Inquiring Officer noted that permission had not been given to the petitioner for legal assistance by the disciplinary Authority up till then and he adjourned the enquiry till January, 1977.

7. The petitioner moved this application and obtained the present Rule on the 13th December, 1976 calling upon the respondents, namely, the Chairman, Calcutta Port Trust; S.C. Bose, Deputy Superintendent of Police, Special Police Establishment; The Director of Personnel, Naval Head Quarters and the Trustees of the Port of Calcutta to show cause why appropriate writs should not be issued directing them not to proceed further against the petitioner in the said Departmental Proceeding without a resolution being passed by the Trustees and sanctioned by the Central Government, and for setting aside or quashing the proceedings and the orders passed therein. An interim order was also passed restraining the respondents from taking any further steps in the said proceedings and from interfering in any manner with the petitioner's right to his pension and other retirement benefits till the disposal of the Rule.

8. It is contended in the petition that the impugned proceedings have been commenced without any authority of law, bye-law, rule or regulation applicable to the Port of Calcutta. It is contended further that the petitioner cannot be proceeded against in any disciplinary proceeding except by a resolution passed at a meeting of the Trustees of the Port specifically convened for the purpose and sanctioned by the Central Government. It is also contended that the petitioners having retired from service prior to the repeal of the Calcutta Port Trust Act was not amenable to the jurisdiction of the disciplinary authority or the Chairman of the Port under the Major Port Trust Act.

9. This application is opposed. An affidavit of one Rati Prasanna Chanda, Deputy Secretary, Calcutta Port Trust affirmed on the 17th May, 1979 has been filed in opposition to the petition. It is, inter alia, stated in the said affidavit that the petitioner prior to his retirement was an employee under the Commissioners for the Port of Calcutta and was governed by the provisions of the Calcutta Port Act, 1890 and the Rules framed thereunder which included the Rules governing the service conditions of the Central Government Employees as and when adopted by the Port Commissioners. It is stated further that the Commissioners for the Port of Calcutta in exercise of their powers conferred by the Calcutta Port Act had adopted the Pension Rules of the Central Government employees and had made the same applicable to its employees. It is stated further that by virtue of Rule 9(2)(b) of the Central Civil Services (Pension) Rules, 1972 which have been made applicable to the Port employees departmental proceedings can be initiated against a retired employee if the alleged acts in respect of which such

proceedings were sought to be initiated had taken place within a period of four years preceding the institution of the proceedings.

10. The petitioner has affirmed an affidavit on the 13th June, 1979 and the same has been filed in reply to the said affidavit of the Deputy Secretary, Calcutta Port Trust. It is, *inter alia*, contended in this affidavit that Rules 9(2) of the Central Civil Service (Pension) Rules, 1972 is not applicable to the Port employees and that such adoption or application of the said Rules is *ultra vires* the Calcutta Port Act, 1890. It is further contended that the Port Authorities did not in fact adopt the said pension Rules and that the alleged adoption of such Rules, if any, was illegal, *ultra vires* and is of no effect.

11. At the hearing, the learned advocate for the petitioner contended that the petitioner admittedly retired on the 24th March, 1973 and the relationship of master and servant as between the petitioner and the Port Authorities came to an end on that date. He contended further that unless there were specific Rules which empowered the Port Authorities to proceed departmentally against the petitioner after his retirement such proceedings could not be initiated or continued in law. It was also contended that Rule 9 of the Central Civil Service (Pension) Rules, 1972 was not applicable to the employees of the Port in its terms, inasmuch as, the scheme of the said Rule was that disciplinary proceedings thereunder could be initiated under the sanction only of the President of India and not by any authority of the Calcutta Port,

12. In support of his contentions the learned advocate cited a decision of this Court in *Amarendra Nath Mukherjee Vs. D. V. C. and Others*, . In this case the departmental proceedings had been initiated against one of the employees on the Damodar Valley Corporation during the pendency of which the service of the said employee came to an end the Corporation decided to release him from his service. Thereafter, the said employee made a representation that as he had ceased to be a servant, the Corporation had no further jurisdiction to continue the disciplinary proceeding against him. The Corporation sought to justify continuation of such proceeding by relying on Article 351A of the Civil Services Regulations which is *in pari materia* with Rule 9 of the subsequent Central Civil Services (Pension) Rules, 1972. This was challenged by the retired employee in an application under Article 226 of the Constitution. It was held by a Division Bench of this Court that if the relationship of master and servant came to an end the master could no longer proceed against the servant by way of disciplinary proceedings unless he was entitled to do so under the provisions of any statute or statutory Rules. It was further held that Rule 351A in its terms could not apply in case, particularly as the scheme of the said Rule envisaged that the departmental proceedings would only be in connection with the withholding or reduction of the retired employees' pension and for recumbent of any loss and damages of the Government from such pension. A Corporation employee not being entitled to any pension whatsoever it was held that the said Rule could not be applied in such a case.

13. Learned advocate for the petitioner has also referred to the Calcutta Port Commissioners Employees (Discipline and Appeal) Rules, 1964 in which an employee was defined as follows:

"Employee" shall mean an employee of the Commissioners for the Port of Calcutta in any post or capacity and shall include artisans, and other monthly rated employees whether skilled or unskilled, and porters and labourers in category "A" i.e. permanent decasualised, shore labourers and their Sirdars.

The learned advocate submitted that the petitioner did not come within the above definition. He also referred to the Major Port Trust Act 1973 and made similar submissions.

14. The learned advocate appearing for the Port Authorities reiterated the contentions in the affidavit filed in opposition to the petition and submitted that the Authorities of the Calcutta Port had since long adopted the Rules governing the pension of the employees of the Central Government, in respect of its own employees. He submitted further that the Commissioners at their meeting held on the 9th October, 1950, had adopted the Pension Rules introduced by the Government of India with effect from the 17th April, 1950. In 1951, the Government of India had decided to allow the death-cum-retirement gratuity and family pension provided under the new pension scheme to their existing employees on certain conditions. This concession was also extended to the Commissioners' pensionable employees under a resolution passed in 1951.

15. Thereafter the Government of India further liberalised its pension rules in 1957 as contained in the Ministry of Finance's Office Memoranda dated the 22nd May and the 27th June, 1957. The Chairman of the Calcutta Port recommended to the Commissioners that the said modified and liberalised pension rules should also be adopted. The Chairman at a meeting of the Commissioners held on the 10th February, 1958 recommended as follows:

It is not considered necessary to draw up a separate set of rules in connection with the present proposal for the adoption of the Pension Scheme as the Commissioners have already adopted the Government Rules in toto for their existing pensionable employees who may now be eligible for pensions. The amendments to the Pension rules which may be made by Government from time to time so far as they are not found to be inconsistent with the conditions of service under the. Commissioners will also be automatically applicable to the pensionable employees, in terms of Resolution 140 of the 10th February, 1958.

The said recommendation was accepted and adopted by the Commissioners.

16. Subsequently at a meeting of the Commissioners of the Port of Calcutta on the 26th February, 1962 it was further recommended by the Chairman as follows:

I recommend further that all such modifications to the pension rules made by Government from time to time, so far as they are not found to be inconsistent with the conditions of service under the Commissioners be made automatically

applicable to the Commissioners' pensionable employees. This will obviate the necessity of obtaining the sanction of the Commissioner-in-Meeting and of Government in future as and when similar modifications are made by Government for their employees.

This recommendation was also accepted and adopted by the Commissioners.

17. On the strength of the aforesaid the learned advocate for the Port Authorities contended that all subsequent modifications, alterations or innovations of the Pension Rules of the Central Government present and future were or would be automatically incorporated in the Rules governing the pension and their service conditions of the Calcutta Port Authorities.

The aforesaid resolutions of the Commissioners for the Port of Calcutta were all approved subsequently by the Government of India.

18. The learned advocate for the Port Authorities submitted that by reason of the fore said, Rule 9 of the Central Civil Services (Pension) Rules, 1972, become automatically applicable to the employees of the Part Authorities and under the said Rule the Post Authorities were entitled to initiate and continue disciplinary proceedings against any retired employee of the Calcutta Port including the petitioner. He conceded, however, that Rule 9 could not apply to the employees of the Calcutta Port in its entirety but had to be suitably modified. Under Rule 9 of the said Pension Rules, 1972, the sanctioning authority was the President of India. In the case of the Port Authorities the corresponding sanctioning authority must be held to be the Central Government and in the instant case sanction had been duly given by the Central Government by its communication dated the 13th July, 1976, to institute departmental proceedings against the petitioner under the said Rule.

19. At this stage I may refer to Rule 9 of the Central Civil Services (Pension) Rules, 1972, which reads as follows:

9. Right of President to withhold or withdraw pension.

(1) The President reserves to himself the right of withholding or withdrawing a pension or part thereof, whether permanently or for a specified period, and of ordering recovery from a pension of the whole or part of any pecuniary loss caused to the Government, if, in any departmental or judicial proceedings, the pensioner is found guilty of grave misconduct or negligence during the period of his service, including service rendered upon re-employment after retirement:

Provided that the Union Public Service Commissioner shall be consulted before any final orders are passed.

Provided further that where a part of pension is withheld or withdrawn, the amount of such pension shall not be reduced below the limit specified in Sub-rule (5) of Rule 49.

(2)(a) The departmental proceedings referred to in Sub-rule (1), if instituted

while the Government servant was in service whether before his retirement or during his re-employment, shall, after the final retirement of the Government servant, be deemed to be proceedings under this rule and shall be continued and concluded by the authority by which they were commenced in the same manner as if the Government servant had continued in service:

Provided that where the departmental proceedings are instituted by an authority subordinate to the President, that authority shall submit a report recording its findings to the President.

(b) The departmental proceedings, if not instituted while the Government servant was in service, whether before his retirement or during his re-employment.

(i) shall not be instituted save with the sanction of the President,

(ii) shall not be in respect of any event which took place more than four years before such institution, and

(iii) shall be conducted by such authority and in such place as the President may direct and in accordance with the procedure applicable to departmental proceedings in which an order of dismissal from service could be made in relation to the Government servant during his service.

Reading the said Rule it is apparent that the said Rule cannot apply wholly in the case of a retired employee of the Calcutta Port. It is quite clear from the two resolutions of the Commissioners adopting the said Pension Rules of the Central Government in respect of the Port employees that they were not meant to be adopted in toto. In the resolution passed on the 10th February, 1958, the Central Government Rules were adopted to the extent that they were found not to be inconsistent with the conditions of service under the Port Commissioners of Calcutta. Similarly in the resolution passed on the 26th February, 1962 the adoption was limited to the rules which were found not to be inconsistent with the conditions of the service under the Commissioners.

20. In terms of Rule 9 of the Central Services (Pension) Rules, 1972 the President of India cannot be said to be the sanctioning authority in respect of employees of the Calcutta Port under the terms and conditions of their service nor can the Union Public Service Commission be consulted in respect of such employees. The learned advocate for the Port Authorities, tried to get over the difficulty and submitted that this Rule should be read and applied to the extent it could be said to be applicable to the Port employees.

21. No doubt, the Port Authorities are competent to pass appropriate resolutions and adopt the said Rules in a modified form but in my view the Port Authorities are not entitled to apply such Rules on the basis that the same stood modified by implication relying on the principles of interpretation and construction of statutes. The disciplinary proceeding envisaged in Rule 9(2)(b) cannot be instituted save with the sanction of the President. By no process of construction and interpretation can it be said that Rule 9 of the said Rules as applicable to the

Port employees would mean that such sanction could be given by an Under-Secretary to the Government of India.

22. I also note that under Rule 9(2)(b)(ii) of the said Rules disciplinary proceedings have to be conducted by an authority and in a place as directed by the President, In the instant case, the sanctioning authority has neither appointed the enquiring authority nor has it nominated the place in which such proceedings would be held.

23. Rule 9 of the said Rules so far as it permits initiation of disciplinary proceedings against a retired employee is a penal Rule and in the adoption of the same if there is any ambiguity or inconsistency with the existing service condition of a retired employee, the name will have to be strictly construed in favour of the person who is sought to be penalised.

Where a section of one Act is introduced and incorporated in another Act the principles of construction have been discussed in Craies on Statute Law 6th Edition, at page 145 and the principle laid down is as follows:

"Where a single section of an Act," said Lord Blackburn in *Mayor of Portsmouth v. Smith*, is introduced into another Act, it must be read in the sense which it bore in the original Act from which it was taken. I do not mean that if there was in the original Act a section not incorporated, which came by way of a proviso or exception on that which was incorporated, that should be referred to; but all others, including the inter pretation clause, if there be one, may be referred to.

Regarding construction of penal statutes and penal procedures the statement of law on the Maxwell on the Interpretation of Statute, 12th Edition at page 245, is as follows:

Similarly, statutes dealing with jurisdiction and procedure are, if they relate to the infliction of penalties, strictly construed; compliance with procedural provisions will be stringently exacted from those proceeding against the person liable to be penalised, and if there is any ambiguity or doubt it will, as usual, be resolved in his favour. This is so, even though it may enable him to escape upon a technicality.

I hold that the petitioner is entitled to succeed in this application on the limited ground that Rule 9 of the said Rule in its entirety is inconsistent with the service conditions of the petitioners and cannot, therefore, apply in the case of the petitioner further that even the conditions is laid down in the said Rule 9 have not been followed in the instant case inasmuch as the sanctioning authority has neither appointed the inquiry authority nor nominated the place where such enquiry should be held.

24. Submissions have been made at the Bar on the question as to what extent the Port Authorities could adopt the Rules of the Central Government including the Rules not yet in existence. There were also submissions as to what extent the Port Authority who are themselves delegates under the Port Acts could sub-

delegate their function to some other body for the purpose of framing of Rules. I am disposing of this application of the limited grounds mentioned earlier and it is not necessary for me to consider such other points any further. A writ in the nature of [certiorari will issue quashing the impugned proceedings and all the orders passed therein. A writ in the nature of mandamus will also issue directing the respondents not to give any or any further effect to the said charge-sheet and to refrain from proceeding or taking any further steps thereunder.

25. The Rule is made absolute to the extent as aforesaid. There will be no order as to costs.