
(1994) 03 BOM CK 0068
In the Bombay High Court
Case No : Writ Petition No. 1034 of 1988

Ram Raj Singh

APPELLANT

Vs

Bombay Dock Labour Board and Others

RESPONDENT

Date of Decision : 03-03-1994

Acts Referred:

Citation : (1994) 03 BOM CK 0068

Hon'ble Judges : V.A. Mohta, J;S.M. Jhunjunwala, J

Bench : Division Bench

Judgement

S.M. Jhunjunwala, J.—By this petition the petitioner seeks direction to the Respondents to register the Petitioner on the Register of Tindal of General Purpose Mazdoor Pool maintained by the 1st Respondents under the Dock Workers (Regulation and Employment) Act, 1948 and the Scheme framed thereunder on and from 1st June 1983.

2. The Dock workers (Regulation of Employment) Act, 1948 (for short, "the Act") was enacted with a view to regulate the employment of dock worker. The Act in particular provided for framing schemes for registration of dock workers and employees with a view to ensure greater regularity of employment and for regulating the employment of dock workers, whether was made to the Port of Bombay in the year 1956 which was only notified as the Bombay Dock Workers (Regulation of Employment) Scheme, 1956 (for short, "the said Scheme"). The Petitioner was initially not covered by the said Scheme though he was employed with one Messrs. R. Tulsidas & Company, a registered employer since the year 1976 and was working in the Bombay Docks. The Petitioner as well as numerous other tindal employed by and with the 2nd Respondent as well as other registered firms of the stevedores in the Bombay Docks were made to work as temporary workers without being granted permanency or security of employment. Though other workers employed in the Bombay Docks categorised in schedule 1 to the said Scheme were given statutory protection under the Act and the said Scheme and other Scheme framed under the Act, the Petitioner as

well as other tindal and general purpose mazdoors were denied job security.

3. In or around the years 1979-80 the Petitioner as well as other workmen in the category of tindal and general purpose mazdoors working in the dock area were organised by the Transport & Dock Workers Union to agitate for the grant of security of tenure and other rights available to workers who were governed under the beneficial provisions of the said Scheme. As a result of the negotiations, on 15th September, 1980 an agreement was signed between the 2nd Respondent and the said Transport and Dock Workers Union securing a measure of security and improved terms and conditions for tindal and general purpose mazdoors. The said agreement, inter alia, included provisions for registering the workmen on registers of temporary employees, compliance with the conditions laid down in the Contract Labour Act, payment of daily wages at the rates notified by the 2nd Respondent from time to time, issuance of identity cards to the workers whose names appear on the registered list and equitable distribution of work to the temporary workers whose name appeared on the said Registers.

4. The said Scheme was amended by the Government of India in order to extend the operation thereof to cover inter alia the category of tindal and general purpose mazdoors. This amendment was effected by the Bombay Dock Workers (Regulation of Employment) Amendment Scheme, 1981 (for short, "the said Amendment Scheme"), which was notified by the Government on 23rd January 1981. The Schedule I of the said Scheme was amended by Clause 12 of the said Amendment Scheme to include inter alia tindal and general purpose mazdoors.

5. On 15th September, 1980, the Transport and Dock Workers Union representing temporary casual workers entered into an agreement with the 2nd Respondent. In pursuance of the said agreement, an agreed list of such workers was prepared which was given to the 2nd Respondent on 17th February 1981 on the basis whereof identity cards with the photos affixed were issued to the workers whose names were mentioned in the said list. The name of the Petitioner was included in the said list and accordingly, the Petitioner was also issued a monthly casual workers; identity card with the photo affixed in the capacity of tindal on 1st June, 1981.

6. On 30th December, 1982 at the meeting of the 1st Respondent, the question of registration of temporary casual workers employed by Stevedores through the contractors came for discussion and it was decided to treat them as general purpose mazdoors and it was agreed to work out the modalities to employ them or register them with the 1st Respondent. The 2nd Respondent then issued notices to all the Stevedores to furnish list of casual workers of general purpose mazdoor as per the proforma issued by it. The individual forms had to be filed in by the concerned casual worker and the same was to be furnished alongwith the list of casual workers with their serial number, date of appointment, date of birth, age, etc., by the respective Stevedores to the 2nd Respondent. Such individual application forms and list were verified by a member of the Transport and Dock

Workers" Union as well as by the officer bearer of the 2nd Respondent. After verifying and interviewing the employees concerned, the names were recommended to the 1st Respondent for registration.

7. The said Messrs. R. Tulsidas & Co. had also submitted a list of casual workers to the 2nd Respondent on the basis whereof, the 2nd respondent submitted a list consisting of 94 employees to the 1st Respondent for registration. Since the name of the Petitioner did not appear in the list submitted by the 2nd Respondent, according to the 1st Respondent, the Petitioner neither became a deemed employee of the 1st Respondent under the said Amendment Scheme nor selected for registration. It is in these circumstances, the Petitioner has filed the present petition.

8. It is an admitted position that in the agreed list submitted on 17th February 1981 the name of the Petitioner was mentioned. It is also not in dispute that pursuant to the said list, the Petitioner was issued casual worker's photo Identity Card by the 2nd Respondent. Since the name of the Petitioner was not mentioned in the said list submitted by the 2nd Respondent, the registration was not granted by the 1st Respondent to the Petitioner. According to the Petitioner, the requisite form duly filled in and signed was submitted by him to the said M/s. R. Tulsidas & Co. However, in view of his father's demise, the Petitioner was constrained to proceed on leave for two months with effect from 3rd May, 1983 and as such, could not remain physically present in Bombay when the said list was submitted by the 2nd Respondent to the 1st Respondent and the meeting of the Registration Committee constituted by the 1st Respondent was held. We have no reason to disbelieve the statement of the Petitioner in this regard. The Petitioner has explained the circumstances which might of the Petitioner in the said list of 94 employees submitted by the 2nd Respondent to the 1st Respondent. It may be due to fortuitous circumstances that the name of the Petitioner did not appear in the said list of 94 employees and denial of registration to the Petitioner, in the facts and circumstances of the case, would render injustice to the Petitioner more particularly in view of the admitted position that the name of the Petitioner did appear in the agreed list of the 2nd Respondent and the said Union and that the Petitioner was issued casual Worker's Photo Identity Card by 2nd Respondent admitting his employment with the said M/s. R. Tulsidas & Co. In the facts of the case, the Petitioner deserves grant of the relief of registration as prayed for.

9. Accordingly, we allow the Petition and make the Rule absolute in terms of prayer (a) subject, however, to that though the Petitioner would be entitled to seniority on and from 1st June 1983, neither the Petitioner shall be entitled to nor the 1st Respondent shall be liable to pay any back wages or other amount to the Petitioner as and from 1st June 1983 till date. There shall be no order as to costs of the Petition.