

(2009) 10 BOM CK 0068

In the Bombay High Court

Case No : Writ Petition No. 3059 of 1999

Transport and Dock Workers Union and Others

APPELLANT

Vs

Mumbai Port Trust and Another
 Mumbai Port Trust
Docks and General Employees Union

RESPONDENT

Date of Decision : 09-10-2009

Acts Referred:

Constitution of India, 1950 — Article 14
Industrial Disputes Act, 1947 — Section 9A
Major Port Trusts Act, 1963 — Section 3

Citation : (2010) 1 ALLMR 118 : (2010) 1 BomCR 277 : (2010) 125 FLR 507 :
(2010) 2 LLJ 826

Hon'ble Judges : R.G. Ketkar, J;D.K. Deshmukh, J

Bench : Division Bench

Advocate : K.K. Singhvi and Sunil Mahadeshwar, M.M. Varma and Jaiprakash Sawant, instructed by N.M. Ganguly, for the Appellant; E.P. Bharucha instructed by Mulla and Mulla and CBC, for the Respondent

Final Decision : Dismissed

Judgement

D.K. Deshmukh, J.—The principal relief claimed by the Petitioner in this petition is a direction to the Respondent No. 1-Mumbai Port Trust to fix 6 & 1/2 hours per day as the duty hours for the personnels holding the post of Typist-cum-Computer Clerks in relation to the personnel recruited after 1-11-1996.

2. The facts that are relevant are that the Petitioner No. 1 is a registered trade-union, which represents the employees of the Respondent No. 1-Mumbai Port Trust, a body corporate constituted u/s 3 of the Major Port Trusts Act. The Petitioners Nos. 2 & 3 are working as Typist-cum-Computer Clerk with the Respondent No. 1 and were appointed to that post after 1-11-1996. The case of the Petitioners, in short, is that in relation to the personnels who were recruited as typist cum-computer clerks before 1-11-1996, their duty hours are 6 & 1/2 hours, whereas for the personnels who were recruited as typist-cum computer clerks after 1-11-1996 are 8 hours. According to the Petitioners, this is

discriminatory and violates the guarantee of Article 14 of the Constitution. The Petitioners also claims that this practice is contrary to Clause (24) of the settlement dated 6th December, 1994 reached between the employees Union and the Respondent-Port. It is also the contention of the Petitioners that this change in the duty hours is brought about in violation of Section 9A of the Industrial Disputes Act.

3. The defence of the Respondent-Port is that the duty hours of the typist-cum computer clerk recruited before 1-11-1996 is seven hours per day, which includes half an hour lunch break and the duty hours for the typist-cum-computer clerks recruited after 1-11-1996 is eight hours per day with half an hour lunch break. Thus, according to the Respondent No. 1, difference in the duty hours of the personnels recruited before 1-11-1996 and after 1-11-1996 is one hour. According to the Respondent No. 1, though there is no settlement reached in this behalf as a matter of practice and usage the duty hours of the personnels on indoor establishment was 6 & 1/2 hours. However, due to change in the technology and with introduction of privatisation and setting up private Ports with whom the Respondent-Port has to compete, the Respondent-Port decided as a policy to have uniform working hours for the personnels working on the indoor establishment and the out-door establishment. It is claimed that from the beginning so far as personnels working on out-door establishment are concerned, their duty hours are 7 & 1/2 hours and therefore, to bring about uniformity in the duty hours of the personnels working on the indoor establishment and out-door establishment, a policy decision was taken to change the duty hours of personnels working on the indoor establishment. However, in order to avoid any litigation it was decided that the personnels who are on the indoor establishment, presently their working hours will not be disturbed. However, while making new recruitment of personnels on indoor establishment, it will be made clear that they will have to work eight hours and it is only on acceptance of that condition by them that they would be given employment. According to the Respondent No. 1, this condition has been accepted by the personnels who were appointed on indoor establishment after 1-11-1996. According to the Respondent No. 1, now as the newly recruited personnels on the indoor establishment have agreed to eight hours as a duty hours, with the retirement of personnels who were recruited before 1-11-1996 on the indoor establishment, uniformly working hours of the personnel working on the indoor establishment will be eight hours and thus the uniformity in the working hours of the personnels working on the indoor and outdoor establishments will be brought about. It is submitted by the Respondent No. 1 that by adopting such practice the Respondent No. 1 has not violated Article 14 of the Constitution. It is also claimed that the reliance placed by the Petitioners on Clause 24 of the settlement dated 6th December, 1994 is misplaced because by that settlement no provision was made in relation to the duty hours. What was done by Clause 24 was that none of the clauses contained in that settlement were to be taken to have modified or cancelled any award, practice or usage, which was in existence. He

therefore, submitted that the policy decision of the Respondent/Port cannot be said to be contrary to Clause 24 of that settlement. In so far as the provision of Section 9A of the Industrial Disputes Act is concerned, it is submitted that as by the policy decision no change, in relation to the personnels who were working, was intended to be brought about, there was no question of giving any notice of change.

4. We have heard the learned Counsel for both sides.

5. The learned Counsel appearing for the Petitioners relied on the judgment of the Supreme Court in the case of People's Union for Democratic Rights and Others Vs. Union of India (UOI) and Others, to contend that a writ petition by workers, when they claim any violation of fundamental right, is maintainable. The learned Counsel also relied on the judgment of the Supreme Court in the case of Moti Ram Deka etc. Vs. General Manager, N.E.F. Railways, Maligaon, Pandu, etc., to claim that the Respondent-Port could not have framed a policy which violates the guarantee of Article 14 of the Constitution. The learned Counsel appearing for the Petitioners further relied on the judgment of the Supreme Court in the case of Olga Tellis and Others Vs. Bombay Municipal Corporation and Others, to contend that even if an undertaking is given, that undertaking does not estop the person who has given the undertaking from asserting his fundamental right.

6. The learned Counsel for the Respondents, on the other hand, relied on two judgments of the Supreme Court, one in the case of Ravi Paul and Others Vs. Union of India (UOI) and Others, to contend that on one establishment there can be employees having separate duty hours, and another in the case M.P. State Textiles Corpn. Ltd. Vs. Mehendra and Others, .

7. From the record following facts emerge as admitted facts:

(i) That as a matter of practice, duty hours of the personnels working on indoor establishment including typist-cum computer clerk was seven hours, which included half an hour lunch break; (ii) The Respondent-Port as a matter of policy decided to include a condition in the offer of appointment that was given to the personnels who were selected for being appointed as a typist-cum-computer clerk after 1-11-1996 that they will have to work in shift of eight hours duration; (iii) they were to give their acceptance of this term that and it is only on their acceptance of the term they were given appointment; (iv) It is an admitted position that so far as the personnels working on out-door establishment of the Respondent No. 1, their duty hours are identical to the typist-cum-computer clerk appointed after 1-11-1996. (v) As a result of change in the policy after 1-11-1996 on the indoor establishment of the Respondent-Port, there were typist-cum-computer clerks appointed before 1-11-1996 whose duty hours are seven hours and there were typist-cum-computer clerks appointed after 1-11-1996 whose duty hours are eight hours; Except for different duty hours all other conditions of service of typist-cum-computer clerks working on the indoor

establishment of the Respondent No. 1 are identical.

8. In the light of these admitted facts, the question to be considered is whether the action of the Respondent-No.1 of prescribing different working hours for typist-cum computer clerks working on their indoor establishment with reference to their date of appointment is contrary to the guarantee contained in Article 14 of the Constitution. The reason that has been given by the Respondent-Port for prescribing different working hours for typist-cum-computer clerks with reference to their date of appointment as found in paragraph 9 of the affidavit filed on behalf of the Respondent is as follows:

At many points the Typist Cum- Computer Clerks had to work in shift timings of the docks and other operational departments for 8 hours. Thus in subsequent appointments a provision for working in shift timing as required by the management was included. The management also considered that with computerisation under the MIS project and operation of the Container Traffic Control System and the Cargo Management and Information System, persons to be recruited in the category of Typist Cum-Computer clerks had to work full time on operation of computers in consonance with the operational working.

In paragraph 10 of their affidavit they have stated,

The general objective in changing the timings of the newly recruited Typist Cum-Computer Clerks was to have persons working in timings in tune with the dock working, to do away with the distinction between indoor and outdoor and to bring about uniformity in the working hours in various fields and administrative posts in the organisation and thus promote operational efficiency.

In paragraph 5 of their affidavit, the Respondent No. 1 has further stated:

The Respondents submit at the outset that Mumbai Port is a commercial organisation, which now competes not only with other Indian major ports but also private ports and terminals within India and the surrounding region. In this competitive world, the only way for survival is through cost efficient service to port users. Thus systems and work procedures have to be changed to meet the demands of the Trade. This is one step to provide better and cost efficient service.

9. Thus, the reason that has been given by the Respondent-Port for adopting the practice of prescribing different working hours for typist-cum-computer clerks recruited after 1-11-1996 is the change in the situation, change in technology, their desire to bring in uniformity in working hours of the personnels working on indoor establishment and out-door establishment. It was submitted before us that the Port considered the option of increasing the duty hours of the existing personnels working at that time on the indoor establishment. But it was thought that effecting change in that regard may involve the Port in litigation and introduction of the change may get delayed. Therefore, it was decided by the Port to change the duty hours of the personnels recruited on indoor establishment after 1-11-1996 without disturbing the duty hours of the

personnels working at that time on the indoor establishment, after giving the personnels, to be newly recruited, a clear understanding that in case they accept the offer of appointment, they will have to work for eight hours and it is only on their acceptance of the term that they were given the appointment. Thus, for the achievement of the object i.e. bringing in uniformity in the duty hours of the personnels working on the indoor establishment and out-door establishment, the Respondent/Port classified persons working on the indoor establishment for the purpose of duty hours into two classes and the basis for classification was the date of their appointment. The principle of equality enshrined in Article 14 of the Constitution does not take away from the State or its instrumentality the power of classifying persons for legitimate purpose. Every classification in some degree is bound to produce some inequality. However, mere production of inequality is not enough. Differential treatment, per se, does not constitute the violation of Article 14. It denies equal protection only when there is no reasonable basis for differentiation. If the law or the practice deals equally with members of a well-defined class, it is not obnoxious and it is not open to the charge of denial of equal protection on the ground that it has no application to other persons. What Article 14 prohibits is a class legislation and not reasonable classification for the purpose of Legislation or for the purpose of adoption of a policy of the legislature or the author of the policy takes care to reasonably classify persons for achieving the purpose of policy and it deals equally with all persons belonging to well-defined class, it is not open to the charge of denial of equal protection on the ground that the new policy does not apply to other persons. In order, however, to pass the test of permissible classification, as has been laid down by the Supreme Court in the catena of its decisions, two conditions must be fulfilled; (1) that the classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group and (2) that the differentia must have a rational relation to the object sought to be achieved by the statute in question. In so far as the present case is concerned, the object of the new policy adopted by the Respondent-Port was to bring about uniformity in the working hours of the personnels working on the indoor and out-door establishment and for achieving that purpose the Port took a policy decision to lay down a condition in the appointment order of the personnels recruited on indoor establishment after 1-11-1996 that they will have to work for eight hours. For the purpose of classification the date 1-11-1996 was chosen, because different duty hours were to be made applicable than the one which are applicable to the existing personnels working on the indoor establishment in relation to the persons to be employed after that date. For the purpose of bringing about uniformity in the working hours of the personnels working on the indoor establishment, two options were available to the Port; (1) to take steps to bring about change in the working hours of the personnels presently working on the establishment and then apply that change to the personnels who are recruited in future. (ii) second option available was to apply the changed practice in case of new recruit after obtaining their consent for adoption of the new practice and thus introduce the change gradually because personnels recruited

before 1-11-1996 were bound to retire sooner or later with their retirement, a day would come when on the indoor establishment the only personnels working will be those who have been recruited after 1-11-1996. Of these two options the Port appears to have chosen the second option because in the opinion of the Port it would be relatively hassle-free. It was submitted before us that the Port apprehended that if the Port had decided to take first option, the Port would have been involved in litigation and pendency of that litigation would have prevented the Port from introducing the change. It is nobody's case before us that the decision of the Port was not bonafide. In our opinion, if the decision of the Port is bonafide, then no fault can be found with the policy decision of the Port and it can not be said that it infringes the guarantee of Article 14 of the Constitution. The policy decision of the Port cannot be said to cause any prejudice to the interest of the personnels recruited after 1-11-1996 because before their recruitment they were clearly given to understand as to what would be their working hours, in case they accept the appointment. We do not say that the fact that they have accepted the terms estopes them from challenging the validity of the term, if that term otherwise violates the guarantee of Article 14 of the Constitution or any other fundamental rights. In our opinion, however, as the introduction of the new policy was the bonafide decision of the Port, the acceptance of the Conditions by the Petitioners and the recruits after 1-11-1996 can be held against them. In our opinion, in taking this view that in adopting the new policy the Port did not violate the guarantee of Article 14 of the Constitution, we are supported by the observations of the Supreme Court in its judgment in the case of S.K. Chakraborty and Others Vs. Union of India (UOI) and Others, . In that case 75 employees, who at the relevant time were employees of PCO at Kharagpur Railway Workshop of South Eastern Railway, contended that they were treated differently from those of Integral Coach Factory at the Southern Railway and allowed the PCO to continue on cadre basis. It was contended that it is hostile discrimination. The Supreme Court in paragraph (7) has observed thus:

7. The second ground that there was discrimination against the petitioners referred to the Railway the Board's Circular dated 13 Sept.1984 which made an exception for the Integral Coach Factory at the Southern Railway and allowed the PCO to continue on cadre basis. It was submitted that this was a case of discrimination. It appears that the impugned Circular of 1984 of the Railway Board was issued pursuant to the negotiations with the staff in the Departmental Council of Ministry of Railways. The existing arrangement in the PCO of Integral Coach Factory was not disturbed because the recognised Unions there did not want it to be so disturbed, whereas in the PCO of Kharagpur the recognised Unions had already agreed, as appears from the impugned memorandum at Annexure "I" that Railway Board's Circular dated 22-4-1963 would be implemented in the Kharagpur, PCO and that all posts in the PCO would be treated as ex-cadre posts. The Railway Board is fully competent to bring about necessary changes in the staff pattern of the various units under its control for the purpose of streamlining the organisation and improving the efficiency of the

administration. Hence, there was a good ground for this differentiation which has a rational nexus with the object of streamlining the organisation. This differentiation cannot be condemned as violative of the rule of equality. It does not amount to hostile discrimination. Article 14 of the Constitution forbids class disposition but permits reasonable classification for the purpose of disposition which classification must satisfy the twin tests of classification being founded on an intelligible differentia which distinguishes persons or things that are grouped together from those that are left out of the group and that differentia must have a rational nexus to the object sought to be achieved by the disposition.

9. In our opinion, as the classification with reference to the date of appointment of typist-cum-computer clerks was brought about for the purpose of bring in uniformity in working hours of the personnels working on indoor and out-door establishments, it cannot be said that the policy is violative of Article 14 of the Constitution.

10. So far as the submission that introduction of this policy is contrary to Clause 24 of the settlement dated 6th December, 1994 is concerned, perusal of Clause 24 of that settlement shows that the submission has no substance. Clause (24) reads as under:

Clause 24:-Merely as a consequence of the implementation of this Settlement, any facility, privilege, amenity, right, benefit, monetary or otherwise, or concession to which any employee or a category of employees might be entitled to by way of any award, practice, or usage, shall not be withdrawn, reduced or curtailed, except to the extent and manner as explicitly provided for in this Settlement.

11. Perusal of the above clause shows that it merely provides that as a result of this settlement existing privilege or right enjoyed by the employees because of award, practice or usage shall not be affected by the settlement save and except where there is an express provision made in the award. Settlement itself does not prescribe any working hours. The working hours of the employees who were working on the date of the settlement are not adversely affected by the policy decision. It was submitted before us that Clause (24) quoted above has the effect of making existing practice or usage also as a part of this award. In our opinion, the submission has no substance. All that Clause (24) says that by this settlement no award, practice or usage in relation to which there is no contrary provision shall be taken to have been modified, cancelled or curtailed by this settlement. The submission, thus, has no force.

12. So far as the submission that the change in the policy was brought about without complying with the requirement of Section 9-A of the Industrial Disputes Act is concerned, in our opinion, this submission also has no force. Perusal of Section 9-A of the Act shows that if an employer proposes to effect any change in the condition of services applicable to any workman in relation to any matter specified in 4th Schedule, then the Employer is obliged to give to the workman

likely to be affected by such change a notice in the prescribed manner. In so far as the present case is concerned, the policy decision of the Port was not going to result in any change in the condition of service as to working hours of any workman who was in the employment of the Port. The Port intended to effect change in the working hours of the workmen, who were yet to be employed, the change was to be made in relation to new recruits, after obtaining their consent for the change. In our opinion, therefore, in these circumstances, the provisions of Section 9A do not come into play.

13. Taking overall view of the matter, therefore, in our opinion, there is no substance in the petition. Petition, therefore, fails and is dismissed. Rule discharged. No order as to costs.