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W.P.No.16111 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 30.06.2023

Delivered on : 10.08.2023

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THE HONOURABLE MR. JUSTICE V. LAKSHMINARAYANAN

W.P.No.16111 of 2013

and

M.P.No.1 of 2013 and M.P.No.1 of 2015

1.The Chairman,
VOC Chidambaranar Port Trust,
Tuticorin - 628 004.

2.The Deputy Traffic Manager,
Tuticorin Port Trust,
Cargo Handling Labour Pool,
Administrative Office,
Bharathi Nagar,
Opp. to Harbour Telephone Exchange,
Tuticorin - 628 004.

... Petitioners

Vs.

1.Boat Workers Unions,
Reg.No.503/TN-TDDG,
(Affiliated of NLO),
rep.by its General Secretary,
188, Kaliappan Street,
Tuticorin - 628 001.



W.P.No.16111 of 2015

2.The Presiding Officer,
The Central Government Industrial
Tribunal - cum- Labour Court,
Chennai.

... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari calling for the records relating to the Award dated 30.11.2012 passed in I.D.No.72 of 2011 by the Central Government Industrial Tribunal -cum- Labour Court, Chennai and to quash the same.

For Petitioners : Mr.R.Yashod Vardhan
Senior Counsel
for M/s.S.Yashwanth

For Respondents : Mr.K.S.Narayanan for R1

ORDER

This Writ Petition challenges the order of the Central Government Industrial Tribunal -cum- Labour Court, Chennai, in I.D.No.72 of 2011 dated 30.11.2012.

2.The petitioner is the Chairman, Tuticorin Port Trust and



the Tuticorin Port Trust, Cargo Handling Labour Pool, represented by its Deputy Traffic Management. The dispute arose by virtue of a reference made by the Government of India on 18.08.2011, in exercise of its powers conferred under Sections 10(1)(d) and 10(1)(2A) of the Industrial Disputes Act. The said reference is as follows:

"Whether the action of the management Tuticorin Port Trust for not regularizing / deploying the workmen of the petitioner union on par with Cargo Handling Labour Pool Workers is justified or not? To what relief the petitioner Union workmen is entitled to?"

3.The Tuticorin Port Trust is not a natural Port. It does not have the deep sea facility. Therefore, cargo ships used to be anchored seven Nautical miles away from the "Rabbit Island". The cargo would be loaded and unloaded through boats in the mid-sea and the same would be offloaded in the Tuticorin "B" Port.

4.From "B" Port, the cargo would be loaded on boats and



unloaded onto ships in the mid-sea. The new Port "A" is a modernized port and has been designed to receive heavy ships.

Due to the shallow-depth, boatmen were engaged to take the cargo from the Port onto the mid-sea in order to lighten the weight of the ships and bring them onto shore. Similarly, from the shore, the boatmen are used to carry the cargo onto the ships which were waiting to be loaded.

5.Insofar as the labourers of the Port are concerned, it is used to be supplied by the persons called "Kangani". The Kangani used to supply workmen to the Stevedores and other cargo handlers. They used to physically load and unload the cargo. There are several handlers to such workmen, namely, Winchman, Signalman, Tindal, Short Maistry, Stevedore Mazdoor, Shore Mazdoor and Tally Clerk. The shipping agents/handling agents used to pay wages to the boatmen.



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6.It is not in dispute that the Dock Workers (Regulation of Employment) Act, 1948, applies to the Tuticorin Port Trust. It is also admitted that the boatmen were used to move the cargo from mid-sea to shore and *vice versa*. From 1981 onwards, a series of 12(3) Settlements were arrived at. The purpose of the settlement was “decasualisation” of labourers. The idea being, the labourers who were at the mercy of the “Kanganis”, were liberated from such exploitation. The persons who were physically handling the cargo were alone transferred under the 12(3) Settlement to a pool maintained in the Port. By virtue of a Settlement arrived at between the parties from 01.01.2000 onwards, the labourers who were handling the cargo physically were removed from the category and were absorbed into the Tuticorin Port. The boatmen claimed similar benefits. It was granted by the CGIT by the impugned award. Hence, this Writ Petition.

7.I have heard Mr.R.Yashod Vardhan, learned Senior



Counsel for the petitioners and Mr.K.S.Narayanan, learned counsel for the 1st respondent.

8.Mr.R.Yashod Vardhan would argue that there is no relationship of employer and employee between the Port and the members of the boatman Union. He would also state that they are not the cargo handlers and therefore, they are not covered under the Settlement arrived at under Section 12(3). He would further state that by virtue of the order passed by the Central Government Industrial Tribunal -cum- Labour Court, Chennai, settled issues have been unsettled and it requires interference in the hands of the Court.

9.Mr.K.S.Narayanan, learned counsel appearing for the 1st respondent would submit that applying the definition of dock workers under the Dock Workers (Regulation of Employment) Act, 1948, boatmen are also covered under it. He would point



out from Page 36 of the typed set of papers that the purpose of the meeting held between the Hon'ble Minister for Surface Transport and the representatives of the Union and the management was for “decasualisation” and absorption of cargo handling workers in Tuticorin Port Trust and also for settlement of these issues. He would point out that insofar as the other ports are concerned, the matter had already been settled. He would then invite my attention to the terms of the settlement arrived at before the Regional Labour Commissioner (Central), Chennai and the Management of the writ petitioner and the five unions representing the various workers. In particular, he would draw my attention to Clause (1) of the said terms of settlement and point out that those who are engaged by the Tuticorin Stevedores Association (Labour Pool) would be covered by a separate Scheme called "Tuticorin Port Trust Cargo Handling Labour Pool" and the said Scheme had come into force from 01.01.2000. He would state that, though the



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boatmen union is not a party to the same, by virtue of a settlement under Section 12(3), it is binding on all. He would then draw my attention to the respective works carried on by the members of the respondent Union and bargemen and would state that they are similar, and while the bargemen have been treated as permanent employees the same was not extended to the members of the boatmen union.

10.In response, Mr.R.Yashod Vardhan would submit that the role of the boatmen was not continuous and that there is no way the members of the union can be ascertained. In other words, he would submit that there is no question of treating them on par with those who got the benefit under Section 12(3) settlements.

11.I have carefully considered the arguments on either



side.

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12.The entire dispute has arisen because the Tuticorin Port Trust had not treated the members of the Boatmen Union on par with the other workmen. The argument as to whether the boatman would fall under the category of dock workers, it is necessary to refer to the Dock Workers (Regulation of Employment) Act, 1948. Under Section 2(b), the definition of a “Dock Worker” is as follows:

“Section 2. Definitions.-In this Act, unless there is anything repugnant in the subject or context, --

2[(aa) “cargo” includes anything carried or to be carried in a ship or other vessel;]

(b)“dock worker” means a person employed or to be employed in, or in the vicinity of, any port on work in connection with the loading, unloading, movement or storage of cargoes, or work in connection with the preparation of ships or other vessels for the receipt or discharge of cargoes or leaving port;”

13.A reading of this provision shows that any person who is employed not only in the Port itself but also in the vicinity of any port in connection with loading and unloading and



movement or storage of cargoes is treated as a dock worker.

The role of the boatmen is not denied. The boatmen were used by the stevedores and others in order to go on to the mid sea to "lighten the load of the ship and bring them onto shore." Similarly, in order to load the ships, the boatmen used to take the cargo from the shores onto the ships which were anchored in the mid-sea and from the boats, the cargo used to be loaded onto the ships. The reason why step motherly treatment is being given to the boatmen is due to the fact that they are not physically handling the cargo. Physically handling the cargo is an artificial differentiation. A reading of the aforesaid definition would show that even if there is any connection between the boatmen and the loading and unloading of the cargo, they have to be treated as dock workers.

14. Here is a case where if not for the boatmen there is no



way the cargo would have gone from the shore onto the ship and from the ship onto the shore. There is no way to those who were physically lifting the cargo, would have reached the mother ship from the shore or from the ship to the shore, if not the boatmen. It fell to the duty of the boatmen to carry the labourers and the cargo to the ships and from the ships to the shore.

15.I am able to perceive from the records that the reason why the other labourers who were physically handling the cargoes were benefited was because of the strike notices which were given by the Unions.

16.It is also on record that there were sizable number of workers, about 1926. The boatmen are less than 10% of this figure and therefore, no importance was given to their role.

17.The argument that there was no relationship of the



employer and the employee between the Port Trust and the boatmen does not hold water. It is no doubt that it is a very alluring argument but a close scrutiny of the manner in which those who were physically handling the cargoes were regularised, goes in favour of the boatmen. Those who were physically handling the cargoes were originally at the mercy of the Kanganis and from them, they went to the listed pool yet again the payment was made by the Tuticorin Stevedores Association. On account of the demand made by the Unions, they were later absorbed by the Port Trust. It is also on the record that once the employees have left, either due to VRS or resignation or due to death of the employee or retirement, their posts were not filled up. In the case of boatmen, the Tuticorin Port Trust had embraced technology and had deepened the Port, leaving them stranded in the mid sea like Robinson Crusoe.



18.The learned Senior counsel for the petitioners would submit that, today the ships are able to come to the shore itself on account of the developments that had taken place in the year 2017. He would also state that today, the draft has been increased to 16 to 17 meters and this enables the ships to reach the dock. It cannot be denied that prior to 2017, the boatmen were still utilized for the purpose of shifting of the cargoes from the port to the ship and *vice versa*. In such situation, the boatmen being “dock workers” ought to have been treated on par with those physically handling the cargo. I have already pointed out that those who have been physically handling the cargo have been absorbed by the Port and it is the unfortunate few, namely the members of the respondent union who have been left out in the pool.

19.It is here the judgment of the Supreme Court in **Calcutta Port Shramik Union v. The Calcutta River Transport**



Association and others [AIR 1998 SC 2168] becomes relevant.

The issue which was raised before the Supreme Court was whether bargemen are also dock workers. The Supreme Court while affirming the view of the National Tribunal of Calcutta has approved the following statement of the said Tribunal:

“The definition of the dock workers has to be understood in the light of not only their word in the port but also consistent with the definitions of cargo, vessel, employer and the port in the Acts referred to above. The terms, loading, unloading and movement of persons employed in any port in connection with the preparation of ships or vessels for the receipt or discharge of cargo would indicate that the work of the bargemen came rightly within the definition of dock workers as defined in Act 9 of 1948. There is plenty of evidence in the case that their main work and activity is within the port. The fact that one of the companies had made use of them to go beyond the port by itself does not in any manner bring down their description to make them less as dock workers. The Shipping Company has



caused to be produced Ex. M-44. They are printed copies of bills. Most of these bills came into existence after the controversy had set in. It is true that there are some bills of the years 1964 and 1965. But it is not possible from those bills to make out whether the Shipping Company used barges or other crafts for the purpose of carrying goods to distant places. The inner foils of these printed slips had also not been produced. There is nothing to show that they are genuine slips maintained by the persons who issued the same. In the absence of correct material it is difficult to hold that the Shipping Company had taken its barges outside the port limits. Anyway, even assuming that they had taken the barges outside the port limits that circumstance alone will not make the bargemen less dock workers in the facts and circumstances of this case. I have gone through the evidence in its entirety and I am satisfied from the available evidence and records that the Wage Board as well as Chatterjee Committee deviated from the definition of the dock workers as defined in Act 9 of 1948 and came to a wrong conclusion which is inconsistent with the



definition of the dock workers in that Act with the result that the bargemen were deprived of their due share of wages to be paid to them on the basis of the recommendation they made in the report of the Wage Board. I am satisfied that the evidence in the case leads to the only conclusion that the bargemen are dock workers within the meaning of dock workers as defined in Act 9 of 1948. It follows therefore that the bargemen would be entitled to all the benefits by way of wages and allowances which the Wage Board recommended in their report."

20.I would agree with Mr.K.S.Narayanan that the members of the boatmen Union are in the same position as "bargemen". It is also clear that the idea of the Government of India was "decasualization" as stated in the proceedings enclosed in the typedset of papers. The concept of decasualization was brought in not by way of 18(1) settlement but by way of 12(3) settlement. A 12(3) settlement not only binds, those who are the parties to it but also non parties. The



Tuticorin Stevedores Association and

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the writ petitioners were a part of the settlement. Therefore, the concept of decasualization would apply to the boatmen as well.

21.On the argument that there is no continuous employment takes the petitioner nowhere for the simple reason, even those who were physically handling the cargo were not in continuous employment. The settlement speaks about the "attendance wages". This implies where there was no work, the persons who attended work were continued to be paid by the Port Trust. Therefore, it is clear from 12(3) settlement that the continuous availability of work is not a condition for decasualization.

22.Insofar as the argument of ascertainability of members



is concerned, this does not hold water because along with the claim petition, the details of the persons have been given. It runs from Page 176 to 191 of the typedset of papers. This is easily ascertainable and it is not a case of unascertainability or floating population who were working as boatmen. Apart from that, from the exhibits that have been filed before the Court, it is clear that the boatmen were issued security passes by the port trust in order to travel inside the high security area. If in fact, the port wanted to implement the 12(3) settlement, it could have easily ascertained the members on the basis of the record maintained by it.

23.Mr.K.S.Narayanan draws my attention to Ex.W.17 and Ex.W.18 which would show that the Port and Shipping Office of the Tuticorin Port Trust used to issue Certificates under Section 10(2) of the Madras Minor Ports Harbour Craft Rules, 1953, certifying persons as bonafide crew of harbour. Apart



from that, the Tuticorin Port Trust itself has been issuing
Identity Cards for

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the persons who are working as boatmen. A few of them have also been classified as Cargo Handling Labour Pool.

24.While sitting under Article 226 of the Constitution of India, dealing with the Award of the Labour Court, I have to confine myself only to the decision making process and not the decision itself. However, since the matter was argued at length, I decided to enter into the merits of the controversy. A perusal of the manner of the work in execution of loading and unloading the cargo at the Tuticorin Port Trust convinces me that without the boatmen, physical loading and unloading of cargo would have been impossible. Those who were carrying the cargo physically could not have proceeded to execute the



duty, at outer anchorage or mid-sea, if not for the boatmen.

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25. Therefore, the boatmen are inextricably connected to the loading and unloading and for movement of storage of Cargo inside the Port. Therefore, I confirm the view of the Labour Court that non regularizing for deploying of workmen of the petitioners Union on par with the Cargo Handling Labour Pool workers is not justified. On the contrary, it is arbitrary and against the spirit of the 12(3) settlements arrived at between several Unions and the petitioner. The Writ Petition is devoid of any merit.

Accordingly, this Writ Petition is dismissed. The writ petitioner is directed to comply with the directions of the Labour Court within a period of twelve weeks from the date of receipt of a copy of this order. Consequently, connected Miscellaneous Petitions are closed. No costs.



W.P.No.16111 of 2015

10.08.2023

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To

The Central Government Industrial
Tribunal -cum- Labour Court,
Chennai.



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W.P.No.16111 of 2013

V. LAKSHMINARAYANAN, J.

mps

Pre-delivery Order in
W.P.No.16111 of 2013 &
M.P.No.1 of 2013 &
M.P.No.1 of 2015



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W.P.No.16111 of 2015

10.08.2023