

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 16TH DAY OF SEPTEMBER, 2026

PRESENT

THE HON'BLE MR. JUSTICE D K SINGH

AND

THE HON'BLE MR. JUSTICE H.SHANTHI BHUSHAN

WRIT PETITION NO. 2153 OF 2021 (L-RES)

BETWEEN:

THE WORKMEN OF NEW MANGALORE PORT TRUST
REPRESENTED BY NEW MANGALORE PORT
USERS STAFF ASSOCIATION,
SOUTH WARF PANAMBUR,
MANGALORE-575 010.
BY ITS SECRETARY.

...PETITIONER

(BY SRI. V. S. NAIK, ADVOCATE)

AND:

THE MANAGEMENT OF NEW
MANGALORE PORT TRUST
PANAMBUR, MANGALORE-575 010.
REPRESENTED BY ITS CHAIRMAN.

...RESPONDENT

(BY SRI. RAMESH V.UPADHYAYA, ADVOCATE)

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Location: HIGH
COURT OF
KARNATAKA

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO CALL FOR RECORDS FROM THE INDUSTRIAL CGIT CUM - LABOUR COURT, BANGALORE IN C.R. NO. 5/2010 AND.A. ISSUE A WRIT IN THE NATURE OF CERTIORARI OR ANY OTHER APPROPRIATE WRIT, ORDER OR DIRECTION QUASHING THE IMPUGNED AWARD DTED 07.02.2020 INDUSTRIAL CGIT - CUM - LABOUR COURT, BANGALORE IN C.R. NO. 5 OF 2010, THE TRUE COPY OF WHICH IS PRODUCED AT ANNEXURE - G SINCE THE CGIT HAS COMMITTED SERIOUS ERRORS WHICH ARE APPARENT ON THE FACT OF RECORDS AND ETC.,

THIS PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 24.08.2026 AND COMING ON FOR PRONOUNCEMENT THIS DAY, **HON'BLE MR. JUSTICE H.SHANTHI BHUSHAN** PRONOUNCED THE FOLLOWING:

CORAM: HON'BLE MR. JUSTICE D K SINGH
AND
HON'BLE MR. JUSTICE H.SHANTHI BHUSHAN

CAV JUDGMENT

(PER: HON'BLE MR. JUSTICE H.SHANTHI BHUSHAN)

This petition is directed against the order dated 07.02.2020 passed by the Central Government Industrial CGIT-cum-Labour Court, Bangalore ['CGIT' for brevity], in C.R.No.05 of 2010, whereby the CGIT rejected the reference.

2. The petitioner, namely, *New Mangalore Port Users Staff Association*, espoused the cause of the Foremen and Assistant Foremen working at New Mangalore Port. Before the CGIT, the petitioner contended that these workmen had been continuously working at the Port for about 25 to 30 years and were directly connected with the loading and unloading of cargo from ships. It was contended that the Foremen were entrusted with the responsibility of loading and unloading operations in the

ship, while the Assistant Foremen supervised such operations in the respective hatches. According to the petitioner, although they performed supervisory work, they had no managerial or administrative powers and therefore, their designation could not take them outside the definition of "workmen" under Section 2(s) of the Industrial Disputes Act, 1947.

3. The petitioner further contended before the CGIT that the loading and unloading of cargo constituted an essential and perennial activity of the Port and that the services of the Foremen and Assistant Foremen were indispensable for the safe and proper handling of cargo. It was urged that the respondent-Port Trust, under Section 42 of the Major Port Trusts Act, had the power to undertake such activities and had authorised Stevedores and C&F Agents to perform them. The petitioner relied upon the fact that other categories of cargo handling workers from the private pool had been absorbed by the respondent under the NMP Cargo Handling Workers (Regulation of Employment) Scheme, 1990, (1990

Scheme for brevity) whereas the Foremen and Assistant Foremen had been left out, despite having performed similar and continuous work at the Port.

4. It was, therefore, the case of the petitioner before the CGIT that the exclusion of the Foremen and Assistant Foremen from the benefit of the 1990 Scheme was unjustified and discriminatory. Reliance was placed upon various settlements, Government communications and the practice prevailing in other major ports to contend that the left-out categories were required to be decasualised and absorbed. The petitioner also contended that, even if the workmen were treated as contract labour, the work was perennial in nature and was being performed for the benefit of the respondent-Port. On that basis, the petitioner sought absorption/regularisation under the 1990 Scheme with effect from 05.03.1990 and payment of wages in accordance with the applicable All India Wage Revision Settlements until such absorption.

5. The respondent-New Mangalore Port Trust, opposed the claim in its entirety. Before the CGIT, the respondent contended that there was no employer-employee relationship between the respondent and the Foremen/Assistant Foremen. It was specifically pleaded that there were no sanctioned or approved posts of Foremen or Assistant Foremen in the establishment of the respondent and that, being a Major Port, appointments to the respondent's establishment could be made only in accordance with the sanction of the Central Government. The respondent also contended that the settlement dated 06.07.2009, upon which the petitioner substantially relied, was between the Users Staff Association and the Stevedores Staff Managing Association, to which the respondent was not a party and, therefore, could not bind it.

6. The respondent further contended before the CGIT that the Foremen and Assistant Foremen were engaged and paid by the respective Stevedores/C&F Agents and worked under their control and supervision.

According to the respondent, it did not itself undertake cargo handling operations but merely provided berthing and other infrastructural facilities at the Port. The entry passes issued by the respondent to the concerned persons were stated to be only for identification and security purposes and could not confer the status of employees of the respondent. It was also pointed out that the Foremen and Assistant Foremen had never formed part of the nine categories of listed cargo handling workers covered by the 1990 Scheme.

7. The respondent accordingly maintained that the Stevedores and C&F Agents were independent service providers engaged for carrying out cargo operations for exporters and importers and were not contractors of the respondent. It was further contended that the respondent neither required the services of Foremen/Assistant Foremen nor had any sanctioned posts or vacancies for their absorption, particularly when cargo handling operations were increasingly mechanised. The respondent therefore submitted that, in the absence of an employer-

employee relationship, a sanctioned post or any statutory or contractual right to absorption, the claim for regularisation or absorption under the 1990 Scheme was wholly untenable and liable to be rejected.

8. On the basis of the rival pleadings, the Central Government referred the following questions to the CGIT for adjudication:

- (i) *Whether the Foremen/Assistant Foremen were "workmen" within the meaning of Section 2(s) of the Industrial Disputes Act, 1947?*
- (ii) *Whether there existed an employer-employee relationship between the said Foremen/Assistant Foremen and the management of New Mangalore Port Trust;*
- (iii) *Whether the petitioner was justified in demanding absorption of the Foremen/Assistant Foremen under the NMP Registered Cargo Handling Workers (Regulation of Employment) Scheme, 1990; and*
- (iv) *as to the relief to which the parties were entitled.*

9. The first question required the CGIT to examine the actual nature of the duties performed by the Foremen

and Assistant Foremen and not merely their designation. The second question required an examination of the material concerning their appointment, payment of wages, control and supervision and their relationship with the respondent-Port Trust. The third question required the CGIT to consider the scope of the 1990 Scheme, whether the concerned workmen fell within its ambit and whether any settlement or statutory provision created a right in their favour for absorption by the respondent.

10. The CGIT accordingly examined the pleadings, oral evidence and documentary material produced by both sides. In particular, it considered the evidence concerning the role of the Stevedores, the nature of the work performed by the Foremen/Assistant Foremen, the absence of sanctioned posts in the respondent's establishment, the 1990 Scheme and the settlements relied upon by the petitioner. Upon such consideration, the CGIT answered the first issue in favour of the petitioner but found against the petitioner on the question of

employer-employee relationship and the consequent claim for absorption.

11. In relation to the first issue, the CGIT held that the Foremen and Assistant Foremen were “workmen” under Section 2(s) of the Industrial Disputes Act. The CGIT noticed that although they supervised the cargo handling operations, there was no material to establish that they exercised managerial or administrative powers. Their designation alone, therefore, was not sufficient to exclude them from the statutory definition. The CGIT accordingly answered the first issue in favour of the petitioner.

12. On the question of employer-employee relationship, however, the CGIT found that there was no evidence to establish that the Foremen/Assistant Foremen were appointed or paid by the respondent-Port Trust or that they worked under its direct supervision. The CGIT noticed that they were not part of the listed workers under the 1990 Scheme and that no material had been placed

before it to establish that the Stevedoring Agencies were merely nominal contractors of the respondent. In the absence of such evidence, the CGIT concluded that the relationship of employer and employee between the petitioner's workmen and the respondent was not established.

13. With regard to absorption, the CGIT found that the 1990 Scheme was framed for taking over the workers employed through the NMP Listed Workers Managing Committee and that nine specified categories had been absorbed with effect from 05.03.1990. The Foremen and Assistant Foremen were not included in those categories. The CGIT further noticed that the settlements relied upon by the petitioner were not entered into by the respondent and that the petitioner could not identify any statutory provision or binding settlement conferring a right of absorption upon the concerned workmen. Though the CGIT acknowledged that they had been working for a long period and that their services were connected with cargo

handling, it ultimately found no justification for the demand and rejected the reference.

14. Aggrieved by the said order passed by the CGIT in CR No.5/2010, the petitioner is before this Court in this writ petition.

15. In the writ petition, the petitioner challenges the Award primarily on the ground that the CGIT failed to properly appreciate the evidence on record and mechanically rejected the claim for absorption. It is contended that the CGIT failed to consider that the Foremen and Assistant Foremen had been continuously working in the Port for several decades and that their work was connected with the perennial cargo handling operations of the Port. The petitioner asserts that the CGIT overlooked the material showing that the concerned workmen were working in the Wharf area and were issued passes for performing their duties and that the respondent's own evidence established their presence and functioning within the Port premises.

16. The petitioner further contends that the CGIT failed to properly appreciate Section 42 of the Major Ports Trusts Act and the role played by the respondent in cargo handling operations. According to the petitioner, merely because the respondent permitted Stevedores to undertake the work, it could not escape its responsibility towards the workmen engaged in such perennial operations. It is urged that the documentary evidence demonstrated that the Port itself had undertaken stevedoring work on occasions and that the Stevedoring Licence was issued through the Port authorities. The petitioner therefore contends that the CGIT ought to have examined whether the Stevedores were, in substance, performing the work of the respondent and whether the concerned workmen were contract workers of the respondent.

17. The petitioner also challenges the CGIT's failure to consider the 1990 Scheme, the All India Settlements and the repeated directions for decasualization of the left-out categories. It is contended that merely because the

Foremen and Assistant Foremen were not initially included in the Scheme, they could not be permanently denied its benefit, particularly when other cargo handling workers were absorbed and the Government had directed the Ports to consider the left-out categories. The petitioner asserts that the workmen had continuously performed perennial duties and that their counterparts in other major ports had received absorption and corresponding service benefits. On these grounds, the petitioner seeks quashing of the Award dated 07.02.2020 and a consequential direction to the respondent to absorb the Foremen and Assistant Foremen under the 1990 Scheme with regular pay scale and other consequential service benefits.

18. We have heard Sri.V.S.Naik, learned counsel appearing for the petitioner, Sri.Ramesh V.Upadhyaya, learned counsel for the respondent and have carefully perused the records of the case.

19. Now the only point that arises for our consideration is,

"Whether the award dated 07.02.2020 passed by the Central Government Industrial Tribunal-cum-Labour Court, Bangalore, in C.R.No.05/2010 suffers from any illegality or infirmity warranting interference by this Court?"

20. The respondent has consistently taken the stand, both before the CGIT and in the statement of objections, that there is ***no employer-employee relationship between the Foremen/Assistant Foremen and the New Mangalore Port Trust***. The respondent specifically contended that appointments in the Port establishment are made only against posts sanctioned by the competent authority and that there were no sanctioned or approved posts of Foreman or Assistant Foreman in the establishment of the NMPT. It was further contended that the persons concerned were engaged and paid by the respective Stevedores/C&F Agents and worked under their control and supervision. This stand finds substantial support from the cross-examination of WW-1 on 21.09.2011, wherein he admitted that there were no posts of Foreman or Assistant Foreman in the NMPT, that the NMPT did not undertake the cargo-handling work and

that it was not directly making payment to the workers. He also admitted that the Stevedores were independent entities.

21. The material on record further shows that the 1990 Cargo Handling Workers Scheme was confined to the categories of workers covered by the registered pool, and nine categories of cargo-handling workers were taken over by the NMPT under the Scheme. The Foremen/Assistant Foremen were not included in those categories. Therefore, merely because certain other categories of cargo-handling workers were absorbed under the Scheme, the petitioner cannot claim a corresponding right of absorption without establishing that the Foremen/Assistant Foremen were covered by the Scheme or that the respondent was otherwise under a legal obligation to absorb them. The petitioner also relied upon the settlement dated 06.07.2009; however, the evidence of WW-1 itself contains an admission that the Management referred to in the said settlement was not the NMPT. The respondent,

therefore, cannot be bound by a settlement to which it was not a party.

22. The contention that the Foremen/Assistant Foremen had been working for a long period and that their work was of a permanent or perennial nature also cannot, by itself, result in their absorption in the establishment of the respondent. The respondent's case was that the Foremen/Assistant Foremen were engaged by the Stevedores for supervising the cargo-handling work entrusted to them and that the requirement of such persons arose depending upon the work allotted by the Stevedoring Agencies. The Port provides the necessary berthing and other facilities, whereas the Stevedores undertake and execute the cargo-handling work for the exporters and importers. The mere fact that the work is performed within the Port premises, or that the workers are required to obtain passes for entering the Port, cannot establish a contract of employment with the respondent. Significantly, WW-1 admitted that the Stevedores were

independent and that the NMPT was not directly making payment to the workers.

23. The WW-1 has deposed in the cross-examination on 21/09/2011 as hereunder:

"I have not produced any document to show that I am the Secretary of the I party Union. A resolution was passed to raise this dispute. It is true to suggest that I have not produced such resolution. A resolution was passed authorizing me to give evidence. It is true to suggest that I have not produced such resolution. It is true to suggest that no Cargo Handling workers were issued with letter of appointment by the NMPT. It is true to suggest the Stevedors are only registered with NMPT for the purpose of import and export of cargo. It is true to suggest that common pool was sound by the Stevedors Association.

It is true to suggest that categories stated in para 5 of my affidavit are not formed by the NMPT. It is true to suggest that Bombay Stevedors Association and New Mangalore Port Stevedors are independent. It is true to suggest that there are no posts in NMPT as Foreman and Assistant Foreman. It is true to suggest that NMPT does not undertake the Cargo Handling Work. It is true to suggest that NMPT is not directly making payment to workers. It is true to suggest that the management referred in settlement dated 06.07.2009 which is marked as Ex W-4 is not NMPT."

24. The cross-examination of WW-1, therefore, assumes considerable significance while considering the challenge to the award. The witness was unable to produce the resolutions said to have authorised him to raise the dispute and to depose on behalf of the Union. More importantly, as the cross-examination proceeded, he admitted the absence of Foreman/Assistant Foreman posts in the NMPT, the non-payment of wages directly by the NMPT, the fact that the NMPT did not undertake cargo-handling work and the independent status of the Stevedores. Though he did not accept the suggestion that the cargo-handling workers had nothing to do with the NMPT, such denial cannot displace his specific admissions on the material aspects concerning employment. These admissions, read along with the respondent's pleadings and the evidence of its witness, do not establish appointment, payment or direct supervision by the NMPT.

25. The CGIT has also drawn a clear distinction between the question whether the Foremen/Assistant Foremen are **“workmen” within the meaning of**

Section 2(s) of the Industrial Disputes Act and the altogether different question whether they are employees of the respondent. Even though the CGIT accepted that they fall within the definition of “workmen”, it found that there was no evidence to show that they were appointed or paid by the respondent or that they worked under its direct supervision. The CGIT further found that they were not part of the pool of listed workers and that no material was produced to establish that the Stevedoring Agencies were merely name-lenders or contractors for the respondent. In the absence of such evidence, the CGIT concluded that there was no employer-employee relationship between the parties.

26. Once the relationship of employer and employee itself is not established, the claim for absorption in the establishment of the respondent cannot be sustained merely on the ground that the workmen have rendered long service or that their work is connected with the activities carried on in the Port. Likewise, the reliance on Section 42 of the Major Port Trusts Act or the

contention that the respondent should be treated as the principal employer cannot substitute the basic evidence necessary to establish such relationship. The CGIT specifically found that there was no concrete evidence showing that the Stevedores were mere contractors of the respondent or that the cargo-handling work had been outsourced by the respondent to them.

27. In these circumstances, the finding of the CGIT cannot be said to suffer from perversity or an error apparent on the face of the record warranting interference under Articles 226 and 227 of the Constitution. The petitioner has not been able to demonstrate any sanctioned post, any direct appointment or payment by the respondent, any direct supervision by the respondent, or any provision under the 1990 Scheme or binding settlement which confers a right of absorption upon the Foremen/Assistant Foremen. The material relied upon by the petitioner, including the cross-examination of WW-1 dated 21.09.2011, rather reinforces the principal defence of the respondent.

28. In that view of the matter, we find no ground to exercise the discretionary jurisdiction under Articles 226 and 227 of the Constitution of India.

Accordingly, the writ petition is ***dismissed.***

**Sd/-
(D K SINGH)
JUDGE**

**Sd/-
(H.SHANTHI BHUSHAN)
JUDGE**

KNM