

***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION***

WRIT PETITION NO. 1793 OF 2015

The Board of Trustees of the
Port of Mumbai

... Petitioner

v/s

Mr.Pramod B.Mankar

... Respondent

Dr.Abhinav Chandrachud along with Ms.Kavita Achan-Poojary i/by
M.V. Kini & Co. for the petitioner.

Mr.Jaiparakash Sawant for the respondent.

CORAM: N.M. JAMDAR, J.

DATED : 7 OCTOBER 2015

ORAL ORDER:

Rule. Rule made returnable forthwith. Respondent waives service. By consent of parties, taken up for final disposal.

2 By this petition, the Petitioner-Port Trust challenges the order passed by the Central Government Industrial Tribunal dated 2 September 2013, setting aside the punishment imposed upon the Respondent of withholding part of his pension and directing the Petitioner to pay the arrears to the Respondent with interest at the rate of 9% per annum.

3 The Respondent was working with the Petitioner in its Traffic Department as a Assistant Shed Superintendent. A show cause notice was issued against the Respondent on 17 December 2003. Reply was filed by the Respondent to the show cause notice. Departmental proceedings were initiated and pursuant to the findings in the enquiry, disciplinary authority reduced the pension of the Respondent, who had superannuated, to minimum pension of Rs.1,850/- per month. A Reference was made to the Central Government Industrial Tribunal.

4 The Tribunal, after hearing the parties, came to the conclusion that the enquiry initiated against the Respondent was with the permission of the Board of Trustees as contemplated under Rule 8 of the Bombay Port Trust Pension Regulations. The Tribunal held that, principles of natural justice were followed in the enquiry and enquiry on that count was fair and proper. The Tribunal however came to the conclusion that the punishment was imposed by the Traffic Manager and not by the Trustees, which was illegal. The Tribunal relied upon the decision of the Calcutta High Court in the case of *Hirapada Das v/s Calcutta Port Trust & ors.*, reported in **2011 III C.L.R. 792**, and granted relief to the Respondent, which is challenged in the present petition.

5 From the arguments advanced by Dr.Chandrachud, learned counsel for Petitioner and Mr.Sawant, learned counsel for the

Respondent, it appears that both the Petitioner and the Respondent are aggrieved by the impugned order. The Petitioner is aggrieved by the finding that the Traffic Manager was not competent to impose the punishment and the consequent direction. According to Dr.Chandrachud, once the Board has given the permission and approval, the Tribunal could not have held that the Traffic manager was not competent, and granted the relief. Mr.Sawant submitted that the decision of the Calcutta High Court is not applicable in the facts of the present case, and the enquiry was not initiated as per the Regulations and the Trustees had not given any specific sanction nor had given a show cause notice before imposition of punishment, therefore, the findings of the Tribunal is not correct on that count.

6 Since the both the parties are aggrieved by the impugned order, the learned counsel for the parties agreed for matter to be remanded back for fresh consideration on the aspect of authority of Traffic Manager and the factum of sanction by the Trustees. Accordingly, the impugned order dated 2 September 2013 is quashed and set aside. Reference No.CGIT-2/4 of 2008 is restored to the file of the Central Government Industrial Tribunal, Mumbai. The scope of the enquiry in the reference will be now restricted to only the aspect of Rules 7 and 8 of Bombay Port Trust (Pension) Regulations.

7 Considering the fact that the matter pertains to the

pensionary benefits of an employee who was superannuated, the Tribunal may consider to giving priority to the disposal of the reference, subject of course to earlier time bound commitments.

8 Rule is made absolute in the above terms. No costs.

(N. M. JAMDAR, J.)

CERTIFICATE

Certified to be true and correct copy of the original signed order.