

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
Original Side**

Before:

The Hon'ble Justice Lapita Banerji

WPO No. 129 of 2020

**Tarun Kumar Mazumdar & Ors.
Vs.
Calcutta Dock Labour Board & Ors.**

For the Petitioners	: Mr. Anindya Lahiri, Adv. Mr. Samrat Dey Paul, Adv.
For the Respondent Nos. 1, 2 & 3	: Mr. Kallol Bose, Adv. Mr. Ashok Kumar Jena, Adv.
For Union of India	: Ms. Ashima Roy Choudhury, Adv.
Hearing concluded on	: 02.09.2022.
Judgment on	: 09.09.2022.

Lapita Banerji, J.:- In this writ petition being WPO 129 of 2020, the writ petitioners who are the Section Officers/ Inspectors/ Accountants, pray for an upgradation from Grade-III to Grade-II officers of Calcutta Dock Labour Board (in short "CDLB"). The petitioners' claim implementation of an Office Order dated December 13, 2017.

2. The writ petitioners were held to be eligible for upgradation to Class-II status from August 26, 1996 vide Office Memo No- S-F/ 3(d)/ VIII dated December 13, 2017. The writ petitioners were given notional benefits from 1996. The issue relating to arrears was to be considered at a later stage only upon

availability of funds by the CDLB. The current effect of upgradation was allowed from date of the office Order.

3. Thereafter by a written communication dated December 14, 2017 issued by the Secretary, Calcutta Dock Labour Board, the Under Secretary to the Government of India was informed that the writ petitioners being employees at the existing posts of Section Officers/ Inspectors and Accountants have been upgraded from Class-III to Class-II status.

4. By a Board Meeting held on July 4, 2018 it was resolved by the Calcutta Dock Labour Board that a communication should be made to the Ministry of Shipping, Government of India for obtaining an approval for implementation of the Office Order dated December 13, 2017 for upgradation of the writ petitioners. Thereafter, representations were made by the writ petitioners to the joint secretary/secretary to the Government of India, Ministry of Shipping on September 5, 2018, October 3, 2018, June 25, 2019, November 7, 2019 for a formal approval for implementation of the Office Order dated December 13, 2017.

5. The writ petitioners also made a representation on January 7, 2010 to the Chairman, CDLB/ Respondent No. 2 for implementation of the Office Order dated December 13, 2017.

6. Since no redressal was made of the grievances of the writ petitioners, the instant writ application being **WPO 129 of 2020** was filed by them on February 19, 2020.

7. From the composite affidavit filed by the respondent nos. 1, 2 and 3 affirmed on January 5, 2022 by one Subrata Kumar Das, it appears that the Under Secretary to the Government of India wrote to the Chairman of Kolkata Port Trust on November 5, 2018 to examine the case and fix responsibility on the officers in case of alleged mala fide leakage/forgery by CDLB in respect of wrongful upgradation of Section Officers/ Inspectors and Accountants by office Memo dated December 13, 2017.

8. By a Board resolution dated December 12, 2018 the agenda for revoking the Office Memo dated December 13, 2017 was withdrawn since the board did not consider any officer responsible for the leakage in terms of the query dated November 5, 2018.

9. By its letter dated June 25, 2021 the Under Secretary to the Government of India wrote to the chairman of Kolkata Port Trust/ Shymaprasad Mukherjee Port, Kolkata reminding him of the letters dated November 5, 2018 and February 14, 2020 in respect of the question of fixing responsibility on the concerned officer for lapses in the upgradation of Section Officers/ Accountants in CDLB. However since no action was taken on that issue, the Chairman was requested to take necessary action with immediate effect and report the same within a week to the Ministry of Port, Shipping and Waterways.

10. Furthermore, the said letter dated June 25, 2021 the Board of CDLB was asked to comment upon whether the recommendation for upgradation of the Section Officers/ Inspectors/ Accountants from Class III to Class II status

retrospectively with effect from August 26, 1996 was still valid and whether the Board was capable of bearing expenditure or account of arrears.

11. In response to the said letter the Secretary, CDLB by its reply dated July 23, 2021 vide reference no. S-F/ 3(d)/ VIII informed the Under Secretary to the Government of India that the decision taken vide Office Resolution dated July 4, 2018 for implementation of the Office Order dated December 13, 2017 was still valid and no contrary decision was taken till date. It was due to stringent financial crisis the board was unable to pay any expenditure on account of arrears.

12. Thereafter, by a letter dated September 20, 2021 the Under Secretary of the Government of India again wrote to the Chairman, Kolkata Port Trust seeking clarifications on the same issue. Such clarifications were provided by the Deputy Chairman CDLB on October 22, 2021.

13. From the clarification dated October 22, 2021 it appears that due to non availability on sufficient manpower arising out of absorption/ deputation and natural attrition on account of superannuation, the Section Officers/ Inspectors/ Accountants were allotted "In Charge" responsibility of the next higher Class II posts without any financial benefits. The incumbents were also shown to be working against sanctioned vacant posts.

14. From the first supplementary affidavit affirmed on behalf of the petitioners on September 23, 2021 it appears that the writ petitioners have been working as Class II Officers from January 1, 2018 till August 12, 2021. However, the

benefits and the emoluments flowing from the Office Order dated December 13, 2017 have not been paid to the writ petitioners till date.

15. Mr. Lahiri, appearing for the writ petitioners submits that even though by Resolution No. 97 dated February 21, 1990 it was resolved by CDLB that the approval of upgradation from Class III scale to Class II scale of pay was subject to approval of the Central Government, the said approval was not required under the Calcutta Dock Labour Board Service Rules which came into effect from March 25, 1965. The said rules were framed in exercise of powers conferred by Clause VI of the Calcutta Dock Workers (Regulation of Employment) Scheme, 1956 issued by the Central Government.

16. He submitted with reference to Clause II of the supplementary service rules regarding classification, recruitment, promotion and compulsory retirement of the employees to contend that it was the board that has the power to declare a post to belong to a particular class irrespective of the maximum scale of pay of that post.

17. It is submitted on behalf of the writ petitioners that after considering the Office Memo dated February 21, 1990 and the Resolution of the CDLB dated September 20, 1996 issued pursuant to the letter dated August 26, 1996 by the Desk Officer, Ministry of Surface Transport, the office Order dated December 13, 2017 had been issued.

18. The validity of the said office Order dated December 13, 2017 has been accepted/ admitted by the Deputy Chairman, CDLB even on October 22, 2021 during the pendency of the writ petition. Therefore, there was no impediment in

granting the emoluments and the benefits of Grade II scale to the writ petitioners. He submits that without any legally valid reason the CDLB was unnecessarily dragging its feet on the issue of giving benefits under the Office order of December 2017.

19. Mr. Bose appearing on behalf of the respondents 1, 2 and 3 contended that under Resolution No. 97 dated February 21, 1990 the existing incumbents in Class III posts of Section Officers/ Inspectors and Accountants were to be upgraded against the Class II scale of pay only upon approval by the Central Government. He referred to the Dock Workers (Regulation of Employment) Act, 1948 to argue that the board in exercise of its power and discharge of its function “shall” be bound by directions as the Government may, for the reasons to be stated in writing gave from time to time. Therefore, the approval of the Ministry for upgrading the incumbents from Grade III to Grade II was mandatory.

20. Having considered the rival submissions of the parties and the materials placed on record, this Court finds:-

- (i) There was a resolution dated February 21, 1990 seeking approval of upgradation of Section Officers/ Inspectors and Accountants from Grade III to Grade II scale of pay subject to approval of the Central Government.
- (ii) By a letter dated August 26, 1996 issued by the Desk Officer, Ministry of Surface Transportation, the Chairman CDLB was directed to consider the representation of the incumbents for upgradation and take an appropriate action and “intimate” the same

to the applicants with '*intimation*' to the Ministry. There was no requirement of taking further '*approval*' of the Ministry.

- (iii) After consideration of the board resolution dated February 21, 1990 and the Ministry's letter dated August 26, 1996 the office Order dated **December 13, 2017** vide reference no. S-F/3(d)/VIII was issued. By the said **2017** office Order the upgradation of the writ petitioners were allowed with effect from August 26, 1996 i.e. the date of Ministry's letter. However, the arrears on account of the same could not be paid and was assured to be considered later upon availability of funds.
- (iv) The said **2017** office order was "*intimated*" by the Secretary, CDLB to the Under Secretary by its communication dated December 14, 2017. The issue regarding **approval** of the Central Government was not raised in the said letter dated December 14, 2017. It was stated that the said posts were restored as per the Desk Officers letter dated August 26, 1996 issued by the Ministry of Surface Transportation.
- (v) It is surprising, that after issuing the letter dated December 14, 2017, by resolution no. 97 dated July 4, 2018, further clarification from the Ministry for obtaining **approval** of the office Order dated December 13, 2017 was sought.
- (vi) The Ministry from time to time sought clarifications from CDLB with regard to the validity of the upgradation in the scale of pay with effect from August 26, 1996 pursuant to the office Order dated December 13, 2017 and the reasons for non implementation of the same. At no point of time had the Ministry intimated to CDLB that without its express approval, the incumbents could not be upgraded. From the tenor of the letters issued by the Under Secretary to the Government of India it appears that the decision of

CDLB was the only relevant factor to be considered for the approval of the incumbents to the upgraded scale of pay.

- (vii) The argument with regard to the board being bound by the directions giving by the Government under the 1948 Act is not disputed. However, there was no direction with reasons recorded in writing from the Government against the upgradation of the incumbents to a higher scale of pay. On the contrary, the Ministry's letter dated August 26, 1996 directed the Chairman, CDLB to take appropriate action on the issue of upgradation.
- (viii) Various written communication/letters indicate that the Government has expressed its concern as to the lapses in the failure of CDLB to give the benefits and emoluments to the incumbents in the upgraded class-II scale of pay.
- (ix) It is also undisputed, that the incumbents have been discharging there duties as Class II Officers since January 1, 2018 without any benefits or emoluments.
- (x) The office Order dated **December 13, 2017** was issued, taking into consideration the office Order dated February 21, 1990 and the Ministry's letter dated August 26, 1996. Therefore, it cannot be argued now that without the approval of the Ministry the upgraded scale of pay cannot be granted to the writ petitioners.

21. In the light of the discussion above, this court directs implementation of the office Order dated **December 13, 2017**. Since writ petitioners are working in the upgraded posts January 1, 2018 the emoluments and benefits of the upgraded Class-II scale of pay is directed to be paid them since January 1, 2018.

22. The arrears on account of upgraded scale of pay are directed to be paid to the writ petitioners from January 2018 till August 31, 2022 within eight weeks from date. The current Class II scale of pay shall be paid from the month September 2022.

23. The writ petition being **WPO 129 of 2020** is accordingly **allowed**.

24. All parties to act on server copy of this Order as downloaded from the official website of this Hon'ble Court.

25. Urgent photostat certified copy of this judgment, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(Lapita Banerji, J.)