

**IN THE HIGH COURT AT CALCUTTA
(CIVIL APPELLATE JURISDICTION)
ORIGINAL SIDE**

Present:

The Hon'ble Justice Subrata Talukdar

And

The Hon'ble Justice Supratim Bhattacharya

IA No: GA/1/2022, GA/2/2022

APOT/109/2022

With

WPO/1423/2021

**The Board of Major Port Authority For The
Shyama Prasad Mookherjee Port, Kolkata.**

VS

Ranjit Majumder & Ors.

For the Appellants : Mr. Jishnu Saha
Mr. Pranit Bag
Mr. Ashok Kr. Jena

For Respondents : Mr. Shakti Nath Mukherjee
Mr. Mainak Ganguly
Mr. Soumya Majumder

For Union of India : Mr. D. N. Ray
Mr. Sunil Kr. Singhania

For Proforma Respondent No. 45 & 46. : Mr. Raja Satyajit Banerjee
Ms. Krishnika Chatterjee

Ms. Sudipta Pramanik

Heard on : 05.04.2023

Judgment on : 28.06.2023

Subrata Talukdar, J.:- Under challenge in this appeal is the Order dated 7th February, 2022 as modified by the Order dated 16th February, 2022 passed by the Hon'ble Single Bench in the writ petition being WPO 1423 of 2021 (Ranjit Majumder & Ors. Vs. The Board of Trustees for the Shyama Prasad Mookherjee Port, Kolkata).

The appellant before this Court is The Board of Trustees for the Shyama Prasad Mookherjee Port, Calcutta, formally known as Kolkata Port Trust/KPT and hereinafter referred to for short only as the Board or the said Board.

The respondents in this appeal are the writ petitioners in WPO 1423 of 2021 (*supra*). In the writ petition, the said Board was the respondent.

The Board challenges the Order dated 7th February, 2022 as modified by the Order dated 16th February, 2022 on the ground that the Hon'ble Single Bench ought not to have restrained the Board from recovering the excess payments made to the writ petitioners on the ground of up-gradation of their pay scales. The Board submits that the upgraded pay scales were granted to the writ petitioners on the recommendation of the Ministry of Shipping, however, with the rider that such upgraded pay scale shall be only

continued if the Ministry of Finance concurs in the grant of the upgraded scales.

The Hon'ble Single Bench discussed the issue as follows:-

“The petitioners say that the upgradation and revision of pay scale respectively with effect from 31.12.2006 and 01.01.2007 was after concurrence of the Shyama Prasad Mookerjee Port Trust (then known as Kolkata Port Trust), the Ministry of Shipping under which the said Shyama Prasad Mookerjee Port Trust functions as also Ministry of Finance after accepting the recommendation of the Pay Revision Commission (in short PRC). The respondents now cannot revisit the issue and resile out their commitment by reducing the pay scale of the Pilots fixed with effect from 1.1.2007 and 1.1.2017 and recover the excess payments, if any, from the Dock Pilots, Assistant Dock Master and Deputy Dock Master in view of the upgradation and revision of pay scale that had taken effect long back.

The petitioners, therefore, at this stage seek an interim order in aid of the final orders claimed in the writ petition by restraining the respondents and each one of them from recovering any amount which according to the said respondents have been overpaid and/or overdrawn by the petitioners for having enjoyed higher scale than that of Rs.20,600 – Rs.46,500/-. The petitioners seek a restraint order against the respondents and each one of them against their decision to fit in the petitioners to the pay scale of Rs.20,600 – Rs.46,500 against the upgraded and revised pay scale of 24,900 – 50,500 effective from 1.1.2007 which was further revised to 60,000 - 1,80,000/- with effect from 01.01.2017 and now being sought to be reduced to Rs.50,000 - 1,60,000. The

petitioners have referred to a judgment passed by a learned Single Judge of this Court in W.P. No.1128 of 2016 (Dr. Aminul Islam Khan and Ors. Vs. Board of Trustees for the Port of Kolkata & Ors.) on 16th September, 2020. Referring to the said judgment, it is submitted by the petitioners that in respect of other Class-I officers of the respondent no.1 other than the Pilots, the recovery of excess payments due to similar reduction in the pay scale has been quashed and/or set aside. The said judgment and order is, however, under challenge in an appeal, which is pending consideration.”

In the light of the above discussion, the Hon’ble Single Bench concluded as follows:-

“After considering the submissions of the respective parties and the materials on record, it appears that the matter can be finally adjudicated only after calling for affidavits. However, till the writ petition is finally heard and disposed of on affidavits, the petitioners are entitled to an interim protection otherwise the writ petition will become infructuous when it reaches the final hearing. If the recovery of alleged excess payments is made from the serving petitioners, retired Dock Pilots/Assistant Dock Master/Deputy Dock Master or the successor-in-interest of the other petitioners from the money they are to receive after fitting them in the pay scale of 20,600 – 46,500, instead of Rs.24,900 – Rs.50,500 the writ petition will become infructuous. The petitioners have been able to make out a prima facie case. The balance of convenience and inconvenience is also in favour of the petitioners and against the respondents for passing an interim order.

In the aforesaid facts and circumstances, the respondent nos.1, 2 and 3 and each one of them are restrained by an order of injunction till the disposal of the writ petition or until further orders whichever is earlier from recovering any alleged excess payments or overdrawn amount from the petitioners. The respondent nos.1, 2 and 3 and each one of them are further restrained by an order of injunction from placing serving petitioners, retired Dock Pilots/Assistant Dock Master/Deputy Dock Master or the predecessor-in-interest of the other petitioners in the pay scale 20,600 – 46,500 from their upgraded and revised pay scale of 24,900 – 50,500/- given effect to respectively on 31st December, 2006 and 1st January, 2007 till disposal of the writ petition or until further orders whichever is earlier. Consequently, the injunction will be also operative in case of any recovery and reduction of scales of pay so far as the Assistant Dock Masters and Deputy Dock Masters and/or the successor-in-interest of the deceased Dock Pilots/Assistant Dock Masters/Deputy Dock Masters are concerned.

Let affidavit-in-opposition be filed within a period of eight weeks from date; reply thereto, if any, within three weeks thereafter. Liberty to mention 5 for inclusion of the writ petition under the heading 'For Hearing' after twelve weeks."

The appellant/Board submits that the conferment of the upgraded pay scale to the writ petitioners did not create any right in favour of the writ petitioners based on the principle of *promissory estoppel* and/or *legitimate expectation*. The pay scale was upgraded on the recommendation of the Ministry of Shipping, however subject to concurrence by the Department of Finance, Government of India. Since the Ministry of Finance has refused to

grant concurrence, the upgraded pay scales cannot be continued and the excess amount paid as a result of such up-gradation now requires to be recovered.

Relying on the decision reported in *AIR 1984 Calcutta 306 at Paragraph 15 (C.V. Enterprises vs. Braithwaite and Company Limited and Ors. and 2012) 10 SCC 1 at Paragraphs 182.5 and 94 (Monnet Ispat and Energy Limited vs. Union of India and Ors.)*, the appellants submit that in the event any act is performed on the basis of a *mistaken belief* or a *bonafide mistake*, such act cannot give rise to invocation of the principles of *legitimate expectation* and/or *promissory estoppel* by the beneficiary of such act for restraining any further action and/or rolling back such further action by the authority allowing it to resile from such act. It is argued that the Board, being an authority within the meaning of Article 12 of the Constitution of India, cannot be compelled to continue with an action which cannot be permitted in law.

Per contra, the writ petitioners/the respondents to this appeal submit that they received the upgraded pay scale in July, 2010 upon the concurrence of the Finance Ministry with the recommendation of the Pay Revision Committee. The Ministry of Shipping accordingly gave the nod to the Board for implementing the upgraded revised scales of pay of the writ petitioners.

It is further submitted by the writ petitioners that the concurrence of the Finance Ministry dated 14th of July, 2010 (*supra*) was followed by a Pay

Revision Order (PRO) dated 26th of July, 2010 wherein a methodology was adopted for fixing the pay of the writ petitioners.

However, the situation was sought to be revised in October, 2019 with the Ministry of Shipping writing to the Board advising against continuation of the upgraded pay scales and recovery of the amounts. By subsequent Order dated 5th of February, 2020, the Ministry of Shipping reviewed the pay of the petitioners, who are all Class-I officers in the Marine Department of the Board which comprise both Berthing and Pilot Services, which was followed by another Order dated 8th April, 2020, wherein the Board sought reversal of the pay of the writ petitioners as upgraded with effect from 1st January, 2007 and recovery of the excess paid by way of instalments.

This action of the Board was challenged by way of a writ petition being WP 1128 of 2016 (*Dr. Aminul Islam Khan and Others vs. The Board of Trustees for the Port of Calcutta and Ors.*) wherein at Paragraph 51, the Hon'ble Single Bench held as follows:-

“51. Once the government has accepted the recommendation as discussed herein above, the same is binding on them, and they cannot shift their stand and retrospectively take away the benefit extended. The impugned memorandum also does not disclose any reasons for such deviation and the same smacks of arbitrariness and mala fide thus, being violative of the Article 14 of the Constitution of India and subject to judicial scrutiny. The impugned memorandum is quashed and set aside. In view of the setting aside of the order impugned memorandum, the petitioners will continue to enjoy the pay scales as revised by the KOPT by granting

the benefit of notional upgradation to the standard pre-revised scale on December 31, 2006 and then revision from January 1, 2007 in terms of the pay revision orders as discussed earlier. Subsequent pay revisions will be done accordingly.”

The writ petitioners submit that the case in the present writ petition out of which the present appeal arises is *pari materia* to the issue decided in WP 1128 of 2016 (*supra*). The writ petitioners also rely on an interim order passed by the Hon’ble Single Bench in WPO 284 of 2021 and dated the 3rd of August, 2021 filed by Class-I Officers in the Pilot Service (*supra*) of the Marine Department restraining the Board from recovering any excess amount and/or placing the writ petitioners in WPO 284 of 2021 to a lower pay scale. It is submitted that the interim order dated 3rd August, 2021 has been complied with by the Board.

It is also pointed out that the final Order dated 16th September, 2020 passed in WP 1128 of 2016 (*supra*) was not stayed by the Hon’ble Appellate Bench *vide* its Order dated 8th June, 2022. It is on record that by an Order dated 4th July, 2022, the Board was directed by the Government of India to implement the Judgement and Order dated 16th September, 2020 in WPO 1128 of 2016. The Order dated 4th July, 2022 (*supra*) was implemented by the Board on 27th September, 2022.

On the basis of the aforesaid judicial and administrative orders, the writ petitioners submit that the Order impugned in this appeal dated 7th February, 2022 as clarified on 16th February, 2022 (*supra*) is *pari materia* to

the facts and issues as adjudicated in earlier orders (*supra*) and therefore does not deserve to be interfered with in this appeal.

The writ petitioners also make the point that the primary issue of reversing the decision to upgrade the pay scales lies with the Ministry of Finance, Union of India. However, no independent appeal has been filed by the Union of India against the interim order dated 7th February, 2022 as modified on the 16th of February, 2022. Moreover, as would be shown from other earlier judicial and administrative orders, the Union of India has complied with the orders of Court and directed implementation thereof. Accordingly, submitting that the Board is not an aggrieved party, the point is taken by the writ petitioners on the strength of the decision reported in *1971) 3 SCC 821* that a non-aggrieved party cannot maintain an appeal.

Further relying on the decision reported in *2011) 6 SCC 73 (at Paragraphs 29, 32 and 33)*, the writ petitioners submit that the test for interfering with an interim order passed by a Hon'ble Single Bench would be whether such order is so arbitrary, capricious or perverse that it requires interference at an interim stage. On a similar point of law and fact reliance is placed on *AIR 1967 SC 249 at Paragraph 8*.

Having heard the parties and considering the materials placed, it is found by this Court that the Board has been unable to demonstrate that it suffered irreparable prejudice in its capacity as only the disbursing authority of the higher pay scales.

It is further found that the upgraded pay scales are being enjoyed by the writ petitioner's for long. The payment of the upgraded pay scales to a

similar group of Class-I Officer has been affirmed by the Hon'ble Court in its final decision dated 16th September, 2020 in WP 1128 of 2016 (*supra*), which, *prima facie*, has not been interfered with at the appellate stage.

Furthermore, the plea raised by the Board that it acted on a mistaken belief does not appear to be profound. To the contrary, the grant of the upgraded pay scale with effect from July, 2010 followed by the issuance of the pay revision order dated 26th July, 2010, reflects the conscious decision of the Ministry of Shipping and the Ministry of Finance.

It is also not in dispute that the writ petitioners being Class-I officers of the Board are in regular tenure service of the Government. Hence the question of recovery, assuming but not admitting that the Board may ultimately succeed before the Hon'ble Single Bench, does not put the Board at this stage to a position of *irreparable prejudice*.

In the light of the above discussion, the Order impugned by the Hon'ble Single Bench dated 7th February, 2022 as amended on 16th February, 2022 does not require any interference. The writ petition being WP 1423 of 2021 shall be now heard by the Hon'ble Single Bench on affidavits as already directed. The Hon'ble Single Bench is requested to expedite the hearing of the writ petition, subject to its inconvenience.

APOT/109/2022 with IA No. GA/1/2022 with IA No. GA/2/2022 stand accordingly **disposed of**.

Parties shall be entitled to act on the basis of a server copy of this Judgement and Order placed on the official website of the Court.

Urgent Xerox certified photocopies of this judgment, if applied for, be given to the parties upon compliance of the requisite formalities.

I agree.

(Supratim Bhattacharya J.)

(Subrata Talukdar, J.)