

**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

APOT/195/2022

With

WPO/129/2020

IA No: GA/1/2022

Calcutta Dock Labour Board & Ors.

VS

Tarun Kumar Mazumdar & Ors.

For the Appellants : Mr. Ashok Kr. Jena
Mr. Kishore Datta

For Respondents : Mr. Anindya Lahiri
Mr. Samrat Dey Paul

For Union of India : Mr. D.N. Ray
Mr. Sunil Singhania
Mr. Raja Satyajit Banerjee
Ms. Sudipta Pramanik
Ms. Krishnika Chatterjee

Heard on : 19.04.2023

Judgment on : 28.06.2023

Subrata Talukdar, J.:- Under challenge in this appeal is the Judgement and Order dated 9th of September, 2022 passed by the Hon'ble Single Bench in the writ petition, being WPO 129 of 2020. The appellants are the Calcutta Dock Labour Board (hereinafter referred to for short as the Board or the said Board). The respondents in this appeal are the writ petitioners. The Union of India, Ministry of Shipping represented through the Secretary and the Joint Secretary, are the proforma respondents.

By the said impugned Order the Hon'ble Single Bench was pleased to consider and grant the prayer of the writ petitioners, who are the Section Officers/Inspectors/Accountants, for up-gradation from Grade-III to Grade-II officers of the Board by directing implementation of an Office Order dated 13th December, 2017. The Hon'ble Single Bench was pleased to, *inter alia*, notice that by the Office Order dated 13th December, 2017, the writ petitioners were eligible to be upgraded to Class-II status with effect from 26th August, 1996 with notional benefits.

The Office Order dated 13th December, 2017 was followed by a letter dated 14th December, 2017 of the Secretary of the Board addressed to the Under Secretary, Ministry of Shipping, Government of India intimating the fact that the existing posts of Section Officers/Inspectors/Accountants held by the writ petitioners were actually being upgraded from Class-III to Class-II status. Thereafter at a meeting of the Board dated 4th July, 2018, it was resolved that the *approval* of the Ministry of Shipping, Government of India

be obtained for implementation of the Office Order dated 13th December, 2017.

Since no steps were taken to implement the Office Order dated 13th December, 2017 (*supra*), the instant writ application, being WPA 129 of 2020, came to be filed.

The Hon'ble Single Bench further noticed that by a reply dated 5th November, 2018, the Under Secretary to the Government of India wrote to the Chairman, Kolkata Port Trust, to examine the issue of upgradation and fix responsibility on Officers purportedly instrumental behind the wrongful up-gradation of the writ petitioners in terms of the Memo dated 13th December, 2017. The communication dated 5th November, 2018 was followed by further correspondence between the Government of India and the Board on the issue of up-gradation.

The Hon'ble Single Bench also noticed that the issue of up-gradation first surfaced in a resolution dated 21st February, 1990 of the Board seeking *approval* of the Central Government. It further transpires that by a communication dated 26th August, 1996 issued by the Desk Officer, Ministry of Surface Transportation, the Chairman of the Board was directed to consider the representation of the writ petitioners claiming up-gradation and take appropriate action with *intimation* to the Ministry. Thereafter, *vide* the Memo dated 13th December, 2017, the up-gradation was allowed with effect from 26th August, 1996, i.e. the date of the Ministry's letter without any assurance on payment of arrears.

The Hon'ble Single Bench found that the letter of 13th December, 2017 was communicated to the Under Secretary of the Ministry on 14th December, 2017 wherein the issue of *approval* by the Central Government was not raised and, in terms of the earlier letter dated 26th August, 1996, the matter was only *intimated* to the Ministry. The Hon'ble Single Bench therefore found it 'surprising' that after the communication dated 23rd July, 2021 (*supra*), by a further resolution dated 4th July, 2018, the Board had sought *approval* from the Ministry connected to the Office Order dated 13th December, 2017.

The Hon'ble Single Bench found that there is no evidence on record to show that the Board required *approval* of the Ministry to upgrade the writ petitioners and/or the Ministry had restrained the Board at any time from implementing the up-gradation without its *approval*. The Hon'ble Single Bench therefore concluded that since the incumbents have been discharging their duties as Class II officers since 1st January, 2018 and the Office Order dated 13th December, 2017 was issued taking into consideration the Office Order dated 21st February, 1990 and the Ministry's letter dated 26th August, 1996, the issue of implementing the up-gradation was no more alive and therefore the writ petitioners shall remain upgraded with the benefit of receiving arrears at the upgraded scale of pay with effect from January, 2018 till 31st August, 2022 and shall also receive the current Class-II scale of pay effective from September, 2022.

On behalf of the appellants/the Board, it has been argued that the provisions of the Dock Workers (Regulations) Act, 1948 (hereinafter referred

to for short as the Regulations or the said Regulations), provides for the formation of a Board with the Government of India also represented as a member of the Board. The Board, under the Regulations, shall be bound by directions of the Government of India. Whereas Class-III and Class-IV employees under the Board are controlled by the Wage Revision Settlement, the pay revision and pension of Class-I and Class-II Officers are controlled by the Ministry of Shipping and such would transpire from a communication dated 5th February, 2020.

It is submitted by the Board that the Office Order dated 13th December, 2017, although allowing the up-gradation with effect from 26th August, 1996, such up-gradation was conditional upon the statutory requirement provided by the 1948 Regulations of taking *approval* from the Ministry. Admittedly, the Ministry has not granted the *approval* and instead through several correspondence between the Ministry and the Board, called upon the Board as well as the Chairman, Kolkata Port Trust to enquire into the causes behind the up-gradation made at the level of the Board without the *approval* of the Ministry.

It is argued that the original Resolutions of the Board in favour of up-gradation dated 21st February, 1990 were also subject to the *approval* of the Ministry. Since, the *approval* had not been given, the up-gradation could not be automatic at the level of the Board. It is submitted that therefore the Office Order dated 13th December, 2017 is only incidental and, perhaps inadvertent, without purporting to confer any substantive rights on the writ petitioners. It is argued that the *approval* required under the 1948

Regulations cannot be inferred but must be express and, without such express *approval* any consequential benefits flowing out of the up-gradation cannot be granted to the writ petitioners. Furthermore, any up-gradation will involve huge outlay towards expenditure by the Central Government which can only be borne with the concurrence obtained at the Ministry level.

Per contra, the writ petitioners submit that the resolution of the Board dated 21st, February, 1990 followed by the letter of the Ministry dated 26th August, 1996, culminated with the issue of the Office Order dated 13th December, 2017. With effect from 1st January, 2018, the writ petitioners have been actually discharging the duties of Class-II Officers. The Board has also thereafter acted in a manner which is in consonance with the Office Order dated 13th December, 2017. It is also not disputed that the Central Government of India having its representation in the Board was privy and a party to the Office Order dated 13th December, 2017. Furthermore, there have been no contrary directions issued by the Central Government of India under the 1948 Regulations directing the Board to recall the Office Order dated 13th December, 2017.

The writ petitioners point out that the Board is authorised to act under Rule 2 of the Supplementary Service Rule 1 (for short, SSR-1). The Board has so acted under SSR-1 and, in the absence of any contrary advice from the Central Government, the Board's actions under Rule 2 of SSR-1 shall continue to hold good.

Having heard the parties and considering the materials placed, this Court finds that the Hon'ble Single Bench has noticed the undisputed fact

that the writ petitioners are serving as Class-II Officers since 1st January, 2018 without receiving any benefits or emoluments against discharge of their actual duties in Class-II Posts with effect from 1st January, 2018. The writ petitioners, in the view of this Court, are therefore entitled to commensurate scale of pay against the Group-II posts with effect from 1st January, 2018 and such has been also correctly noticed by the Hon'ble Single Bench. This Court therefore finds no reason to interfere with the decision of the Hon'ble Single Bench in so far as regular and current remuneration for the period 1st January, 2018 till date and onwards is paid to the writ petitioners.

The only question which remains is whether the letter of the Ministry dated 26th August, 1996 was in the nature of an advisory to the Board to only send an *intimation* or not to act or, to act *qua* the up-gradation only with the approval of the Board.

To the mind of this Court, the 1948 Regulations, which carry statutory flavour, bind the Board to act in terms of the directions passed by the Ministry and/or the Government. This Court is not satisfied with the idea that mere representation of the Ministry/Government in the Board satisfies the requirement of *approval* as provided by/under the Regulations. To the further mind of this Court, under the 1948 Regulations the Resolutions of the Board taken in presence of representatives of the Ministry/Government are not *ipso facto* equivalent to the *approval* of the Ministry/Government as contemplated under the 1948 Regulations.

Carrying the above logic further, it therefore transpires that the manner of *approval* either granted by the Ministry/Government and/or refused cannot be inferred from only a letter of the Under Secretary which, in the facts of this case has been issued on 26th February, 1996. Accordingly, the *intimation* required by the letter dated 26th February, 1996, as noticed by the Hon'ble Single Bench, may not amount to an *approval* by the Ministry/Government as required by the 1948 Regulations. This Court is therefore of the view that an *approval* requiring payment of notional benefits with effect from the date of the letter dated 26th February, 1996 is a policy decision which must be expressly given or denied at the appropriate level.

In the backdrop of the above discussion, this Court finds that the issue of conferment of notional benefits with effect from 26th February, 1996 following the resolution of the Board dated 21st February, 1990 is in the nature of a policy decision and requires to be approved by the Ministry/Government in terms of the 1948 Regulations. Accordingly, let there be a direction upon the Secretary, Ministry of Shipping to take steps upon consultation with the essential stakeholders, including the writ petitioners and pass a reasoned order which shall be communicated to the stakeholders/the concerned parties.

However, since it is found that the writ petitioners are actually working as Class-II Officers with effect from 1st January, 2018 having joined in such posts with full knowledge of both the Board and the Ministry/Government, the directions passed by the Hon'ble Single Bench to

treat them as Class-II officers and pay their arrear and current Class-II scales of pay with effect from 1st January, 2018 (*supra*) till date and onwards are not interfered with in this appeal.

APOT/195/2022 with IA No: GA/1/2022 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.)

Later:-

Stay of the Order is prayed for by Mr. Jena, Learned Counsel appearing for the appellant.

The prayer for stay is considered and refused.

I agree.

(Supratim Bhattacharya J.)

(Subrata Talukdar, J.)