

Kamal Kumar Puri

Vs

M/s. Bombay Marine Engineering Works (P.) Limited

Writ Petition No. 5929 of 1980

(Syed M. Fazal Ali, R.B. Misra JJ)

25.11.1981

JUDGMENT

FAZAL ALI, J. –

1. This petition under article 32 of the Constitution was filed by the petitioner, Kamal Kumar Puri, who was employed as Seaman Crew GP Rating in a private company known as Bombay Marine Engineering Works [P.] Ltd. It appears that on his appointment respondents 2 and 3 issued Continuous Discharge Service Book [hereinafter referred to as 'Service Book'] at the request of respondent 1. The ship was found to be defective on two occasions and ultimately on July 23, 1978 the service of the petitioner was terminated by the Company. Despite the termination of the service of the petitioner was terminated by the Company. Despite the termination of the service respondents 2 and 3 withheld the Service Book and thus deprived the petitioner from seeking any employment in other companies because the production of the Service Book was a condition precedent before any appointment could be given to the petitioner in any other company. The petitioner therefore, filed this writ petition for writ of mandamus directing respondents 2 and 3 to hand over the Service Book to him. Rule nisi was issued and ultimately the Service Book was handed over to the petitioner while the petition was pending in this Court. Section 119 of the Merchant Shipping Act, 1958 may be extracted :

119. [1] The master shall sign and give to a seaman discharged from his ship in India, either on his discharge or on payment of his wages, a certificate of his discharge in the prescribed form specifying the period of his service and the time and place of his discharge.

[2] The master shall also, upon the discharge of every certificated officer, whose certificate of competency has been delivered to and retained by him, return the certificate to the Officer.

It clearly enjoins on the authorities concerned that the service Book being the property of the petitioner should be returned to him immediately after his service are terminated or discharged. Respondents 2 and 3 ought to have given this Service Book to the petitioner soon after he was discharged. Away, as the respondents have already handed over the service Book to the petitioner, the grievance made by the petitioner no longer survives.

2. It was, however, contended by the petitioner that since respondents 2 and 3 withheld the Service Book without any lawful excuse and thus deprived him of the chance of employment they are entitled to pay damages to the petitioner. Unfortunately, however, in proceedings under article 32 of

the Constitution we cannot award damages for which the petitioner can file an appropriate civil suit if so advised. We, accordingly, dispose of this writ petition. As respondents 2 and 3 deprived the petitioner from getting employment for a pretty long time the petitioner is entitled to costs. We, therefore, dispose of this petition accordingly with costs assessed at Rs. 1000 to be paid to the petitioner within two months from today.

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