

SUPREME COURT OF INDIA

Board of Trustees of The Port of Calcutta

Vs.

Amal Kumar Ghosh

(S V Manohar and D Wadhwa JJ.)

05.11.1997

ORDER

1. This appeal by special leave is filed by the Board of Trustees of the Port of Calcutta (for short "Board of Trustees") against the judgment of the Division Bench of the High Court of Calcutta dated 5-2-1981 passed in FMA No. 143 of 1981. By the impugned judgment, the Division Bench affirmed the order of the learned Single Judge holding that the Chairman of the Board of Trustees was not entitled to impose penalty of compulsory retirement on the respondent.

2. The respondent was employed as a Land Manager under the Board of Trustees. Departmental proceedings were initiated against him for having in possession assets disproportionate to his income. It is not necessary for us to go into the details of the enquiry proceedings or the validity of the charge against the respondent. After conclusion of the enquiry proceedings, the Chairman of the appellants imposed the punishment of compulsory retirement on the respondent after holding the charge to have been proved. The question that arose in the High Court was whether the Chairman could exercise the power under Section 25 of the Major Port Trusts Act, 1963 (for short "the Act") and was a competent person to impose such a penalty when particularly Section 25 did not provide for imposition of penalty of compulsory retirement. The High Court held that since Section 25 did not provide for imposition of such a punishment, the order of the Chairman imposing the penalty of compulsory retirement was not legal and further proviso to Section 25 required that before imposing any penalty as mentioned under Section 25, approval of the Central Government was to be obtained which had not been done. Section 25(1) of the Act, we may reproduce as under:

"Subject to any regulations made under Section 28, the power of granting extension of service to, granting leave to, suspending, reducing, removing or dismissing or disposing of any other question relating to the services of the employees of a Board, including the power of dispensing with the services of any such employee otherwise than by reason of the misconduct of such employee, shall be exercised- (a) in the case of an employee holding a post referred to in Clause (a) of Sub-section (1) of Section 24, by the Chairman;

(b) in any other case, by the Chairman or by such authority as may be prescribed by regulation: Provided that no such order, so far as the same involves extension of service, suspension, reduction in rank, removal or dismissal of an employee referred to in Clause (a), shall have effect until it is approved by the Central Government."

3. The operative portion of Section 25(1) shows that any action taken thereunder has to be subject to any regulations made under Section 28 of the Act. Section 28 empowers the Board of Trustees of the appellants to make regulations regarding the appointment, promotion, suspension, removal and dismissal of the employees of the Port Trust. Admittedly, no such regulations have been framed under this section.

4. We may now refer Section 133 of the Act which deals with repeal and application of the earlier Acts. As far as Port of Calcutta is concerned, the relevant Act which governed it was Calcutta Port Act, 1890. Under Sub-section (2-B) of Section 133 of the Act, on the application of the present Act to the Port of Calcutta, the Calcutta Port Act, 1890 with certain exceptions ceased to have force in relation to Port of Calcutta. However, under Sub-section (2-D) of Section 133, the regulations framed earlier under the Calcutta Port Act would continue to have force. Sub-section (2-D) of Section 133 is as under:

"133. (2-D) Notwithstanding anything contained in Sub-sections (2-A), (2-B) and (2-C),--

(a) every Trustee of the Board of Trustees of the port of Bombay or Madras holding office as such immediately before the application of this Act to the port of Bombay or Madras, as the case may be, shall be deemed to have been appointed or elected as such under this Act and shall continue to hold such office after such application until a Board of Trustees in respect of that port is constituted under the provisions of this Act;

(b) every Commissioner of the port of Calcutta holding office as such immediately before the application of this Act to that port shall be deemed to have been appointed or elected as a Trustee

under the provisions of this Act and shall continue to hold such office after such application until a Board of Trustees in respect of that port is constituted under the provisions of this Act;

(c) anything done or any action taken or purported to have been done or taken (including any rule, regulation, bye-law, notification, order or notice made or issued or any resolution passed or any appointment or declaration made or any licence, permission or exemption granted or any rates, charges or duties levied or any penalty or fine imposed) under the Acts referred to in Sub-sections (2-A), (2-B) and (2-C) shall, insofar as it is not inconsistent with the provisions of this Act, be deemed to have been done or taken under the corresponding provisions of this Act."

5. Reference may now be made to the regulations framed under the Calcutta Port Act called the Calcutta Port Commissioners' Employees (Discipline & Appeal) Rules. Relevant provisions are Rule 9 and Rule 10 which read as follows:

"9. Nature of penalties.--The following penalties may, for good and sufficient reasons and as hereinafter provided, be imposed on an employee, namely:

(i) censure;

(ii) withholding of increments or promotion;

(iii) recovery from pay of the whole or part of a pecuniary loss caused to the Commissioner by negligence or breach of orders;

(iv) reduction to a lower grade or post, or, to a lower time scale, or to a lower stage in a time scale;

(v) compulsory retirement;

(vi) removal from service which shall not be a disqualification for future employment;

(vii) dismissal from service which shall ordinarily be a disqualification for future employment. 10.

Disciplinary authorities.--Subject to the provisions of the Act-

(i) the Commissioners-in-meeting may impose any of the penalties specified in Rule 9 on any employee;

(ii) without prejudice to the provisions of Sub-rule (i):

(a) the Chairman or the Deputy Chairman (sic) impose any of the penalties specified in Rule 9 on an employee other than an employee holding a Class I post;

(b) the Head of a Department may, where he is the appointing authority by virtue of delegation, impose any of the penalties specified in Clauses (i), (ii), (iii) and (iv) of Rule 9 on an employee of his Department holding a post the monthly maximum salary of which exclusive of allowances, does not exceed Rs. 350."

6. Rules 9 and 10 show that the penalty of compulsory retirement can be imposed and the Chairman of the Port would be competent to impose such a penalty. In this view of the matter, the proviso to Section 25 of the Act would not come into operation and it will not be necessary for the Chairman to take any sanction or approval from the Central Government.

7. We are, therefore, of the opinion that the High Court was not right in taking this view that there was no provision under the Act to impose the penalty of compulsory retirement on the delinquent employee and that the Chairman was not competent to impose such penalty without the approval of the Central Government. The penalty of compulsory retirement on the respondent could not have been set aside. Accordingly the appeal is allowed, the impugned judgment of the High Court is set aside and the writ petition filed by the respondent is dismissed. There will, however, be no order as to costs.

8. There was an interim order of this Court dated 19-2-1982 in which certain benefits were given to the respondent which were subject to the decision of this appeal. Since the appeal has been allowed, benefits so conferred upon the respondent shall be recovered or adjusted against any payment which may be due to the respondent.