

SUPREME COURT OF INDIA

Board of Trustees for Port of Calcutta

Vs.

Avijit Kumar Ray

C.A.No. 6754 of 2008

(Tarun Chatterjee and Aftab Alam JJ)

25.11.2008

JUDGMENT

AFTAB ALAM, J.

1. Heard counsel for the parties

2. Leave granted

3. In times of fast shrinking employment opportunities, trade apprentices who have completed their training staked their claim on an old practice, long discontinued, under which the Calcutta Port Trust in the port's Mechanical Engineering department used to make recruitment of trained apprentices and wards of employees dying in harness in the ratio of 1:1.

4. Three hundred and twenty one trained apprentices (respondents before this Court; hereinafter referred to as 'the trained apprentices') joined together and approached the Calcutta High Court in WP No. 21877(W)/99. They made the grievance that in disregard of the practice earlier followed, the Calcutta Port Trust was giving appointments only on compassionate grounds to the wards of their employees dying in harness and had completely stopped the recruitment of trained apprentices. They sought appropriate directions from the High Court asking the Calcutta Port Trust to appoint trained apprentices equal in number to those appointed on compassionate basis during the past many years so as to restore the 1:1 ratio between the two groups. At that stage the High Court did not pass any positive order in the matter but disposed of the writ petition directing the Chairman, Calcutta Port Trust to examine the claim of the trained apprentices and to dispose of their representation after giving them an opportunity of hearing.

5. In compliance with the order of the Court the Chairman, Calcutta Port Trust heard representatives of the trained apprentices and examined their claim. He turned down the claim by a reasoned order dated July 5, 2000. From the order it appears that the trained apprentices raised three grievances/demands before him. One, the Calcutta Port Trust should not fill up the vacancies of Firemen in the Marine department by transfer of unskilled labourers from the Mechanical Engineering department. Two, the Port Trust should maintain a list of trade apprentices who completed the apprenticeship course in the Port for consideration for employment against future vacancies and three, the vacancies of unskilled labourers in the Mechanical Engineering department should be filled up by the dependents of employees dying in harness and trained apprentices in 1:1 ratio. In regard to the third demand the trained apprentices further claimed that during the last 20 years the ratio was not properly maintained and in order to restore it trained apprentices should be appointed in equal numbers to those appointed on compassionate basis. The Chairman noted that the posts of Fireman in the Marine department were never filled up by transfer of unskilled labourers from the Mechanical Engineering department; hence, the first grievance/ demand of the trained apprentices was quite unfounded. As regards maintenance of list of trade apprentices for appointment as Firemen the Chairman noted that the Trust was passing through great financial stringency and was burdened with surplus workforce. As a result, the Trust was not in a position to take in any more unskilled labourers or to make appointments on other posts. He further noted that there was already a list of about 1200 persons, dependents of the employees who died in harness. Similarly, a list of trained apprentices was already maintained by the Trust in light of the Central Government instructions and the decisions of this Court for giving preference to them in the matter of direct recruitment to the post(s), matching their skills and qualifications. As per the instructions, being followed by the Trust, a trained apprentice is not required to get his name sponsored by any employment exchange and he is also given relaxation of age bar to the extent of the period of training. Thus there was no occasion to maintain any other list of trained apprentices for filling up only the vacancies in the Marine department. In conclusion the Chairman passed the following order:

"Notwithstanding anything contained hereinabove it is reiterated that if any occasion arises to fill up the posts of USL under Mechanical Engineering department by

Direct recruitment the passed out Trade apprentices may also be considered."

6. The trained apprentices once again went to the High Court in WP No. 9259 (W) of 2001 re-agitating their claims and challenging the order of the Chairman, Calcutta Port Trust.

7. This time a learned Single Judge of the Court allowed the writ petition by judgment and order dated June 11, 2004, giving the following directions to the Calcutta Port Trust:

"For the above reasons the writ petition should succeed. Accordingly, I allow the writ petition. The order impugned is hereby set aside. The respondents are hereby directed to consider the cases of the petitioners in accordance with the decisions that the respondent Port Trust had taken for giving employment to its trade apprentice in the ratio 1:1 to be maintained with the candidates from the died in harness category. Since the respondent Port Trust has already given employment to the died in harness category candidates in excess of the quota available to such category, the respondents are hereby directed to take immediate steps for rectifying the situation and restoring the balance in the quota meant for the two categories. For implementing this order the respondent shall immediately frame a scheme on the basis of such scheme they shall consider the case of the petitioners. The scheme shall be prepared and the names of the petitioners shall be placed in an appropriate panel within a period of four weeks from the date of receipt of a copy of this judgment and order by them. After preparing the scheme and the panel, the respondents shall consider the cases of the petitioners according to the scheme and panel against the available vacancies, in terms of the government order issued in the year 1983 and their own decisions as quoted hereinbefore."

8. Against the judgment of the single Judge the appellant, Calcutta Port Trust preferred an appeal (MAT 2601 of 2004) before the Division Bench of the High Court. The appeal was dismissed by judgment and order dated May 10, 2007 and confirming the order of the single judge the Division Bench made the following observations and directions:

"In the aforesaid circumstances, we are of the considered view that the learned Single Judge has rightly issued appropriate directions for considering the cases of the

writ petitioners and giving employment as ex-trade Apprentices along with the died-in-harness category candidates in the ratio of 1:1 in the matter of giving employment in the Kolkata Port trust pursuant to the promise given on behalf of the said appellants and as mentioned in the written communication of Labour Advisor dated 4th January, 1985 and further considering the guidelines issued by the Government of India and mentioned in the circular dated 21st April, 1983."

9. The appellant has brought the matter in appeal to this Court.

10. Mr. G. Vahanvati, learned Solicitor General appearing on behalf of the appellants submitted that the orders passed by the High Court were quite bad and illegal. The High Court clearly exceeded its jurisdiction in directing the appellant to give employment to three hundred and twenty one writ petitioners without any consideration of the appellant's requirements, its financial position and other similar issues. Moreover, the High Court arrived at its conclusions on a complete misreading and misinterpretation of the relevant government guidelines and circulars and communications issued by the Port Trust. The Solicitor General emphasised that there was never ever any promise made by the appellant to absorb the trained apprentices in employment and the High Court completely misread the communication of the Labour Advisor of the Trust dated January 4, 1985 and the guidelines contained in the circular dated April 21, 1983 issued by the Government of India.

11. The Solicitor General stated that in the 1970s the Calcutta Port Trust indeed followed the practice of making recruitment of unskilled labour in the Mechanical Engineering department of the Port from amongst the dependents of employees dying in harness and trained apprentices in the ratio of 1:1. He, however, made it clear that the practice was based neither on any statutory provision nor on agreement(s) of any binding nature; it was followed by the Trust unilaterally having regard to the circumstances obtaining at that time. He further clarified that this practice was confined only to the Mechanical Engineering department while the other departments had their own recruitment policy, depending upon their respective requirements. He then took us, one by one to the circulars, decisions, communications etc. relied upon by the High Court for making the impugned directions.

12. First in the series is a circular bearing no. D.O. DECT-1-83/AP dated April 21, 1983 issued by the Ministry of Labour and Rehabilitation (Department of Labour), Government of India. By this circular all the ministries were urged to endeavour to ensure that 50% of the total semi- skilled and skilled categories of jobs in the establishment under them should be filled by direct recruitment. Further, that 50% of the vacancies available for direct recruitment should be filled by trained apprentices and first preference be given to apprentices completing the training course under that establishment. Para.2.2 of the circular read as follows:

"50% of the direct recruitment vacancies may be filled by trained apprentices first preference being given to the apprentices trained by the said establishment and thereafter to those trained by other establishment."

13. Next is a letter of January 4, 1985 from the Labour Adviser & Industrial Relations Officer of the Port Trust to the Joint General Secretary of the Calcutta Port Shramik Union. The letter is on the subject of recruitment of the ex-trade apprentices and refers to some discussion held in that regard. As this letter is the mainstay of the High Court judgments it is reproduced below in full.

"Subject: Recruitment of Ex-Trade Apprentices

Dear Sir,

Kindly recall the discussion held in Chairman's room on 3.1.1985 on the above subject. Ex-Trade Apprentices were being recruited along with the died in harness candidates in the ratio of 1:1. This is now been stopped in view of the ban imposed by Government on direct recruitment. Ex-Trade Apprentices will be recruited again as and when the ban is lifted and their quota will be restored."

It is this letter that is mainly relied on by the High Court to hold that the Port Trust was bound by its promise to recruit the trained apprentices in the same ratio as dependents of employees dying in harness. The Solicitor General submitted that it is quite unreasonable to read this letter as an unqualified promise of recruitment of trained apprentices in all future times. The letter simply said the ex-trade apprentices would be recruited and their quota would be restored again as and when the ban on direct recruitment was lifted. He pointed out that in the order of the Chairman, Calcutta Port Trust that came under challenge before the High Court it was likewise stated that the Trust was not in a position to provide employment opportunity to the trained apprentices on account of the twin problems of actuate financial distress and surplus workforce but as and when the need arises to induct unskilled labour in the Mechanical Engineering department the trained apprentices would also be considered for recruitment. There is thus no change in the stand of the Trust and there is no question of enforcement of any unconditional promise made by the Trust.

14. The Solicitor General referred to the decision in U.P. State Road Transport Corporation & Anr. Vs. U.P. Parivahan Nigam Shishukhs Berozgar Sangh & Ors. (1995) 2 SCC 1 and submitted that on similar facts this Court held that the High Court was wrong in giving direction to give employment to the trainees. In regard to enforcement of promise the Court, in paragraph 10 of the decision, observed and held as follows:

"For a promise to be enforceable, the same has, however, to be clear and unequivocal. We do not read any such promise in the aforesaid three documents and we, therefore, hold that at the call of promissory estoppel, the direction in question could not have been given by the High Court. But then, we are left in no doubt that the Government of India did desire that preference should be given to the trained apprentices and it is because of this that the State Government stated in its letter No.735/38-6-16(T)-79 dated 12-11-1979 that where such apprentices are available, direct recruitment should not be made. Indeed, the Government of India in its letter dated 23-3-1983 even desired reservation of 50 per cent vacancies for apprentice trainees." (emphasis added)

15. Proceeding then to examine the rights of the ex-trade apprentices under the Apprentices Act, 1961 the Court, in paragraph 12 of the decision, laid down as follows:

"In the background of what has been noted above, we state that the following would be kept in mind while dealing with the claim of trainees to get employment after successful completion of their training:

- (1) Other things being equal, a trained apprentice should be given preference over direct recruits.
- (2) For this, a trainee would not be required to get his name sponsored by any employment exchange. The decision of this Court in Union of India vs. N. Hargopal would permit this.
- (3) If age bar would come in the way of the trainee, the same would be relaxed in accordance with what is stated in this regard, if any, in the service rule concerned. If the service rule be silent on this aspect, relaxation to the extent of the period for which the apprentice had undergone training would be given.
- (4) The training institute concerned would maintain a list of the persons trained year-wise. The persons trained earlier would be treated as senior to the persons trained later. In between the trained apprentices, preference shall be given to those who are senior."

16. The Solicitor General submitted that in light of the decision in U.P. State Road Transport Corporation, other things being equal, the ex-trade apprentices were entitled to preference in the ways indicated in that decision. The decision made it clear that the establishment where the apprentices had completed their training was under no obligation to absorb them in employment regardless of availability of any vacancies or other considerations. The trust was scrupulously following the directions of the Supreme Court in U.P. State Road Transport Corporation in the matter of recruitment of trained apprentices.

17. The Solicitor General stated that after this Court's decision in U.P. State Road Transport Corporation the Government of India also slightly modified its policy on the matter. He referred to the letter DO NO. CGET 23 (3) dated 15 October 1996 issued under the hand of the Secretary, Ministry of Labour, Government of India. In paragraph 5 of the letter it is stated as follows:

"5. I am taking this opportunity to share with you our concern about the seriousness of the problem and find practical solutions so that the trained apprentices can get regular employment either within the establishments where they have been trained or in other Government/Private sector

establishment. I shall be grateful if suitable steps are initiated by your Ministry to:

(a) fill up the seats located by engaging apprentices under the Apprenticeship Act for utilization of existing training facilities to the fullest extent;

(b) improve the quality of training by closer monitoring of the scheme at the shop floor level; and

(c) ensure that preference is given to passed out apprentices for recruitment in regular jobs matching their skills and qualifications.(emphasis added)

The Solicitor General submitted that the policy of the Government of India is to give preference to the passed out apprentices for recruitment in regular jobs matching their skills and qualification.

18. The Solicitor General reiterated that in the communication of the Legal Advisor of the Trust dated January 4, 1985 there was no promise to recruit the trained apprentices. He further submitted that in any event after the legal position was made absolutely clear by the decision in U.P. State Road Transport Corporation and following the decision the Government of India had also modified its policy regarding recruitment of trained apprentices it was completely unreasonable to make that letter the basis for the direction to appoint three hundred and twenty one trained apprentices. He further stated that even though the decision in U.P. State Road Transport Corporation was brought to the notice of the High Court it unfortunately persisted in reading the letter dated January 4, 1985 as making the promise for appointment of trained apprentices.

19. As regards the appointment of trained apprentices in equal number to appointments on compassionate basis the Solicitor General submitted that was a practice followed by the Trust at one point of time long ago when there was adequate employment potential in the port. After more than 25 years and under vastly changed conditions, both in law and in the circumstances concerning the Calcutta Port, it was no longer possible to follow the practice and to link up the appointments from two entirely different categories. The Solicitor General stated that in the past thirty years though ex-trade apprentices were appointed in substantial numbers, depending on the exigencies in certain years, the ratio of 1:1 between the two groups was never maintained. In recent years of course, employment opportunity for every group had practically dried up. In this regard he brought to our notice the following table giving the break-up of appointments made as unskilled labourer in the Mechanical Engineering department from different sources from 1979 till 2000, when this case started.

Year of Recruitment	By died-in-harness candidates	ByEx-Trade Apprentices	By Casual workers	By ST candidate	By sports person	Total
1979	54	98	140	5	X	297
1980	84	82	1	X	X	167
1981	31	X	X	X	X	31
1982	71	54	14	X	2	141
1983	6	23	1	X	X	30
1984	45	9	X	X	X	54
I-TOTAL	291	266	156	5	2	720
1985	110	62	1	X	X	173
1986	37	39	X	X	X	76
1987	1	X	X	X	X	1
1988	14	4	X	X	X	18
1989	11	5	X	20	X	36
1990	X	2	X	X	1	3
II-TOTAL	173	112	1	20	1	307
1991	X	3	X	X	3	6
1992	X	X	X	X	X	X

1993	X	X	X	X	X	X
1994	X	X	X	X	X	X
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III-TOTAL	X	3	X	X	3	6
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1995	25	X	X	X	X	25
1996	4	X	X	X	X	4
1997	9	X	X	X	X	9
1998	2	1	21	X	X	24
1999	1	X	8	X	X	9
2000	1	X	X	X	X	1
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IV-	42	1	29	X	X	72
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TOTAL						
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TOTAL	506	382	186	25	6	1105
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OF I,II,III &IV						
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20. The Table clearly shows the number of appointments from different groups tapering off. In the ten years from 1991 to 2000, 42 persons were employed on compassionate basis and only 4 persons from amongst the ex- trade apprentices. The Solicitor General stated that appointments on compassionate basis were made only in dire cases that had the potential of causing labour unrest creating major problems. He submitted that in present conditions it is not possible to link-up the recruitments from the two categories and the High Court was in error in giving the impugned direction.

21. We find much substance in the submissions made by the Solicitor General. Like the case of U.P.

State Road Transport Corporation we find it difficult to read in the communication of January 4, 1985 any clear, unequivocal and unqualified promise that may be enforceable after a quarter of century under vastly different conditions. We are also in agreement that the recruitments from the two categories cannot be linked-up and made contingent on each other.

22. Mr. Krishnamani, learned counsel appearing for the respondents, the trained apprentices supported the judgments of the High Court. He submitted that the High Court rightly held that the letter of the Legal Advisor dated January 4, 1985 made the promise of recruitment of the trained apprentices and restoration of the ratio between the two groups as and when the ban on direct recruitment imposed by the Central Government was lifted. Mr. Krishnamani further submitted that the ban on recruitment of ex-trade apprentices was lifted by letter dated July 30, 1986 addressed by the Secretary of the Trust to the Joint General Secretary, Calcutta Port

Shramik Union and with the lifting of the ban the promise made in the earlier letter of January 4, 1985 became enforceable and binding. The letter of July 30, 1986 referred to by Mr. Krishnamani is as follows:

"Dear Sir,

"Subject: Absorption of the Trade Apprentices under the S.R.C. (ex.C.H.E.'s Deptt.)

Reference your letter No.C/8/645 dated the 16th June, 1986.

2. The case has been considered by the Chairman. It has been decided to resume recruitment of ex-Trade Apprentices, as per their quota against the available vacancies of U.S.L. subject to work requirement and on observance of SC/ST reservation orders. The General Manager (Ship Repair Complex) is being suitably advised in the matter."

This letter is of July 30, 19 86 and a reference to the table giving year-wise appointments would show that in the year 1986, 39 ex-trade apprentices were appointed against 37 persons appointed under the scheme of compassionate appointments. Thus the Trust did exactly what was stated in this letter.

23. We are unable to accept that this letter on its own or read along with the earlier communication

dated January 4, 1985 constitutes an unqualified, enforceable promise or lays down a mode of recruitment on a permanent basis or creates any rights in favour of the trained apprentices.

24. Moreover, the letter does not answer the main question in the case, i.e., how could the High Court give direction for appointment of over three hundred trained apprentices regardless of the vacancy position and the other relevant considerations. Confronted with the question Mr. Krishnamani submitted that the order of the High Court should not be understood to mean that all the respondents must be appointed forthwith. The High Court asked the Trust to evolve a scheme for their absorption in a phased manner. When pointed out that if the directions of the High Court are to be understood in the way suggested by him then there will not be much difference between the High Court order and the order passed by the Chairman, Calcutta Port Trust, Mr. Krishnamani submitted the vital difference between the two was that the order of the Chairman, Port Trust sought to do away with the parity between the two groups in the matter of recruitment. He further submitted that the respondents' main claim was to adhere to and restore the parity between the ex-trade apprentices and those covered by the scheme of compassionate appointments in the matter of recruitment. We are entirely unable to accept the claim of the respondents. As stated by the Solicitor General the ex-trade apprentices were at one time appointed in equal numbers to those appointed under the compassionate appointments scheme but the practice was not on the basis of any statutory provision or any agreement between the Trust and the workmen. We are equally unable to see any rational basis for such parity between the two groups. It might have served the interests of a certain group in the past and it may appear to the present respondents as a handy bargaining point but in the long term it will be fair neither to ex-trade apprentices nor to those coming under the scheme of compassionate appointments. There is no comprehensible connection between the two groups nor is there any rational basis for parity between the two in the matter of recruitment.

25. On a consideration of the materials on record and the rival submissions we are of the view that the orders passed by High Court are plainly unsustainable. We accordingly set aside the orders of the High Court and dismiss the writ petitions.

26. Before parting with the records of the case we may, however, observe that though the number of appointments has gone down very low, no uniform policy of recruitment is discernible. For example three trained apprentices were recruited in 1993 and one in 1998. It is not clear under what policy those recruitments were made or for that matter what policy the Trust is following in the matter of compassionate appointments. The Trust should frame clear policies of recruitment from these categories and give them due publicity to avoid any scope of abuse and unfair labour practice.

27. In the result, the appeal is allowed subject to the aforesaid observations and directions. There shall be no order as to costs.

