IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
APPELLATE SIDE

Present:

The Hon'ble Justice Tapabrata Chakraborty
&
The Hon'ble Justice Reetobroto Kumar Mitra

MAT 815 of 2024
+
IA No. CAN 1 of 2024

Board of Major Port Authority for Syama Prasad Mookerjee Port, Kolkata & Another
Versus
National Union of Waterfront Workers (INTUC) & Others

With
MAT 816 of 2024
+
IA No. CAN 1 of 2024

Board of Major Port Authority for Syama Prasad Mookerjee Port, Kolkata & Another
Versus
Union of India & Others

For the Appellants [In both the matters]	:	*Mr. Kishore Datta, Sr. Adv, Mr. Ashok Kumar Jena.*
For the Respondent [Nos.1 & 2 In MAT 815 of 2024 & the Respondent no. 3 In MAT 816 of 2024	:	*Mr. Ashok Kr. Banerjee, Sr. Adv, Mr. Sarajit Sen, Mr. Tapas Singha Roy.*
Hearing is concluded on	:	*1st September, 2025.*
Judgment On	**:**	**18th September, 2025.**

Tapabrata Chakraborty, J.

1. Board of Major Port Authority for Syama Prasad Mookerjee Port, Kolkata and its functionary had preferred the above appeals challenging the judgment dated 18th March, 2024 passed by the learned Single Judge in two writ petitions being WPA 8919 of 2021 and WPA 10267 of 2021. By the said judgment, the former writ petition preferred by the workmen was disposed of and the later writ petition preferred by the appellants was dismissed.

2. The records would reveal that the Government of India, Ministry of Labour in exercise of its powers under section 10(1)(d) and sub-section (2A) of section 10 of the Industrial Disputes Act, 1947 (hereinafter referred as the ID Act) referred the following dispute for adjudication:

'Whether the action of the management of Kolkata Port Trust, Kolkata in non-regularising the services of 61 workmen (as per list attached as Annexure-1) engaged on temporary basis, on the permanent posts as mentioned against each name in the list, is legal and justified? If not, to what relief they are entitled for?'

3. Upon exchange of pleadings and the evidence tendered, the learned Tribunal delivered the Award on 1st August, 2019 observing, *inter alia*, that the management had failed to show as to how even after expiry of terms of contract, the workmen were continued to work as casual workers and that the object of the management was to deprive them of the status of permanent employees, who were forced to take one day put off after every 41 days of work and that such break in service was an instance of unfair

labour practice and that those workmen are entitled for absorption, who are presently working with the appellant, earlier known as Board of Trustees of the Port of Kolkata (hereinafter referred to as KPT). However, the learned Tribunal directed regularization with effect from the date of publication of the Award as there was nothing on record to show the workmen concerned were appointed against substantive vacancies and as regularization from a back date would disturb the seniority of the regularly appointed employees in the cadre.

4. In the judgment impugned dated 18th March, 2024, the learned Judge disagreeing with the finding of the learned Tribunal that the workmen had not been engaged against substantive vacancies observed that each of the workmen were part of the regular process of recruitment either under the died-in-harness (compassionate employment) category or sponsored by the employment exchange and that a majority of persons who joined along with the workmen herein had already been absorbed in permanent post and that as such the workmen were in fact engaged temporarily against permanent sanctioned posts. The learned Judge also affirmed the finding of the learned Tribunal that the break in service of a single day was an artificial put off and was an instance of unfair labour practice.

5. Mr. Kishore Datta, learned senior advocate appearing for the appellants argues that the learned Court erred in law in directing that the workmen shall be entitled to permanent absorption without adhering to the settled legal position that absorption is not a mode of appointment and that the direction to regularize on the logic of social justice principle is not

sustainable in law. The learned Court glossed over the fact that the workmen were engaged on contractual basis and were never appointed against substantive vacancies. Having thus not been engaged in substantive vacancies, the workmen could not have claimed absorption.

6. He argues that the learned Tribunal travelled outside the scope of reference embarking upon an enquiry on the question of unfair labour practice failing to note that in the reference there was no allusion to unfair labour practice. The Award is a nullity in the eye of law and is not acceptable since the learned Tribunal had travelled beyond the reference. In support of such contention reliance has been placed upon the judgment delivered in the case of *Sinclairs Hotels & Transportation Limited & Anr. vs State of West Bengal & Ors.*, reported in *2008 (2) CHN 858*.

7. Mr. Datta argues that the learned Tribunal erred in law in returning a finding that in view of the provision of Rule 20D of the West Bengal Industrial Disputes Rules of 1958, it had every jurisdiction to frame an additional issue on the extrinsic condition raised by the parties inasmuch as the said Rules are not applicable to Central Government Industrial Tribunal.

8. He contends that the learned Judge while deciding the writ petition filed by the workmen erred in law in directing that they would be entitled to permanent absorption with effect from 4th July, 2006 though there was no challenge in the writ petition preferred by the workmen against the learned Tribunal's direction that regularization would be with effect from the date of publication of Award, i.e., 1st August, 2019. In support of such argument reliance has been placed upon the judgments delivered in the cases of

Canara Bank vs Ajithkumar G.K., reported in *2025 SCC OnLine SC 290* and *Delhi Cloth & General Mills Co. Ltd. vs Workmen & Others,* reported in *1966 SCC OnLine SC 83.*

9. He argues that the learned Judge ought to have appreciated that initial appointment to a post without recourse to the rules of recruitment is not an appointment to a service. Casual/temporary employees do not have a right to regular employment and any direction towards such regularization and that too retrospectively would reinvigorate a class of claims which has been shut out permanently. In support of such contention reliance has been placed upon the judgments delivered in the cases of *Secretary, State of Karnataka and Others vs. Umadevi (3) and Others*, reported in *(2006) 4 SCC 1* and *K. Madalaimuthu and Another vs State of T.N. and Others.*, reported in *(2006) 6 SCC 558.*

10. Mr. Ashoke Banerjee, learned senior advocate appearing for the workmen denies the contention of the appellants and submits that the learned Tribunal erred in law in directing the appellants to absorb the workmen with effect from the date of passing of the Award and not from the date of completion of six months service from the date of their initial appointment, as claimed. Placing reliance upon a judgment delivered in the case of *Union of India & Others vs Sheela Rani* wherein it was held, *inter alia*, that the employees in ad hoc service cannot be regularized from a back date as it would disturb seniority of regularly appointed employees in the cadre, the learned Tribunal observed that regularization cannot be directed from back date. However, the judgment delivered in the said matter is clearly

distinguishable since in the same, the Court was considering the claim of temporary employees, who were not appointed against permanent vacancies.

11. He argues that in the case of *Umadevi (3) (supra)*, the Court has not overridden powers of the Industrial and Labour Courts in passing appropriate order, once unfair labour practice on the part of the employer was established. In support of such contention, reliance has been placed upon the judgment delivered in the case of *Maharashtra State Road Transport Corporation and Another vs Casteribe Rajya Parivahan Karmchari Sanghatana* reported in *(2009) 8 SCC 556.* The proposition that continued casualisation of service of workmen amounts to unfair labour practice is no longer *res-integra* in view of the judgment delivered by the Hon'ble Supreme Court in the case of *Durgapur Casual Workers Union and Others vs Food Corporation of India and Others* reported in *2015 (5) SCC 768*. It is also not a case that the initial appointment of the workmen was made in violation of Articles 14 and 16 of the Constitution of India. Reliance has been placed upon the judgment delivered in the case of *Ajaypal Singh vs Haryana Warehousing Corporation*, reported in *AIR (2015) 6 SCC 321*.

12. He argues that despite non-applicability of Rule 20D of the West Bengal Industrial Disputes Rules, 1958, the Court is not bereft of jurisdiction to decide the issue of unfair labour practice in the backdrop of a reference pertaining to regularization of service inasmuch as the issue of unfair labour practice is incidental and inextricably connected with the direction towards regularization.

13. Mr. Banerjee contends that the workmen were made to work continuously on temporary vacancies available in the permanent posts of Bhandard, Topaz, Laskar, Masalchi and that as such it cannot be argued that they cannot be regularized from the date of their initial engagement. Persons similarly situated with the workmen had admittedly been granted permanent employment in identical vacancies, however, the present workmen were segregated and their service was sought to be branded as not continuous by applying a break up of one day upon completion 41 days service. Such break, as adopted, indisputably is an instance of unfair labour practice.

14. Mr. Banerjee further submits that the Award was pronounced on 1st August, 2019 but no steps were taken towards implementation of the same. About two years thereafter the appellants preferred the writ petition being WPA 10267 of 2021 with the sole intent to keep the workman's claim in abeyance for an indefinite period. It was almost impossible for the workmen to survive the onslaught of the vagaries of life due to delayed disposal of a reference of the year 2006 by an Award delivered about 13 years thereafter. In view thereof, the workmen were constrained to prefer a fresh writ petition with a prayer towards implementation of the Award by giving effect to the same from the date after expiry of six months from the date of initial appointment of the workmen. In such circumstances, the learned Court rightly directed absorption from the date of the reference. No two cases are alike on facts and therefore, Courts have to be allowed a little free play in the joints if the conferment of discretionary power is to be

meaningful. Reliance has been placed upon the judgment delivered in the cases of *The Comptroller & Auditor General of India, Gian Prakash, New Delhi and Another vs K.S. Jagannathan and Another*, reported in *AIR 1987 SC 537* and *State of Rajasthan vs Ganeshi Lal,* reported in *AIR 2008 SC 690.*

15. In reply Mr. Datta argues that no case was made out in the writ petition by the workmen in support of their claim towards implementation of Award *'from the date after expiry of six months from the date of initial appointment of workmen'*. The appellants thus could not have been worse off for preferring the writ petition.

16. We have heard learned advocates appear for the parties at length and we have given out anxious consideration to the facts and circumstances of this case.

17. In the Award dated 1st August, 2019 the learned Tribunal arrived at the following findings:

(i) the workmen were appointed and were serving in KPT since 1989 and that such fact had been admitted by the management witness, namely, Sri Prabhat Kumar Chattopadhyay;

(ii) the workmen were said to be contractual employee as they were given a day's break after a spell of 41 days work and their remuneration was calculated on the basis of the number of the days' work performed and that such break of one day was an artificial put off and such break in service was an instance of unfair labour practice;

(iii) the management branded the workmen as contractual worker but failed to show as to how even after expiry of terms of contract, the workmen continued to work;

18. It is well settled that factual finding of a labour court should not be disturbed normally by the writ court without compelling reasons. Whenever a reference is made by a Government to an industrial tribunal it has to be presumed ordinarily that there is a genuine industrial dispute between the parties, which require to be resolved by the adjudication and in all such cases an attempt should be made by the Court exercising powers of judicial review to sustain as far as possible the Award made by the industrial tribunal instead of picking holes here and there in the Award on trivial points and ultimately frustrating the entire adjudication process before the learned Tribunals by striking down Awards on hyper-technical grounds.

19. The Chairman of the Port Trust addressed a letter to the Secretary of the Ministry of Shipping of the Central Government stating that 61 persons were continuously working as temporary hands and were required to be absorbed in permanent posts. Perusing the appointment letter as produced, the learned Tribunal found that the engagement was contractual for a specific period, however, the management failed to explain as to how those workmen were allowed to perform their job even after expiry of the contractual period. In the backdrop of such finding of fact, the learned Court observed that *'the Tribunal therefore was in error in finding that the petitioners were not engaged against permanent and sanctioned posts'*.

20. The argument of Mr. Datta that the learned Tribunal travelled beyond the scope of reference in embarking upon an enquiry on the question of unfair labour practice needs to be discounted in view of the judgment delivered in the case of *Durgapur Casual Workers Union and Ors. (supra)* wherein it has been specifically held that continued casualisation of service of workmen amounts to unfair labour practice as defined in Item No.10 Part-1 of Fifth Schedule of the ID Act.

21. Though the phrase *'unfair labour practice'* does not feature in the reference, it cannot be urged that in deciding an issue pertaining to non-regularization of service, the learned Tribunal cannot consider an issue incidental thereto. The dispute is the fundamental thing while something incidental thereto is an adjunct to it. Formation of a reference stands preceded by a finding as regards existence of an industrial dispute between the employer and the workmen connected with employment. An artificial break of a day in service effected by the employer stands ingrained with an element of coercion and such act certainly comes within the purview an *'unfair labour practice'* as defined in the ID Act. In the facts and circumstances of the case, the learned Tribunal cannot be said to have extrapolated the contents of the reference in considering the issue of unfair labour practice.

22. The pleadings exchanged by the parties, the evidence of the witnesses on record and the findings arrived at by the learned Tribunal need to be considered together and not in isolation. A particular clause cannot be taken up and highlighted. It is not a case that the workmen were engaged

against temporary vacancies. Nothing was brought on record to show that the workmen had been disengaged for any period on the ground that their service was not needed.

23. Reliance on a decision without looking into the factual background is clearly impermissible. Judicial utterances are made in the setting of the facts. Even a slight distinction in fact or an additional fact may make a lot of difference in decision making process. The judgment is a precedent for the issue of law that is raised and decided and not observations made in the facts of any particular case. There is no dispute as regards the proposition of law laid down in the judgments upon which reliance has been placed by the appellants but the same are distinguishable on facts.

24. The argument of Mr. Datta that the workmen did not challenge the Award and that on the rudiments of the writ petition praying for implementation of the Award, the learned Court erred in law in granting regularization from a back date negating the direction of the Tribunal that the workmen would be entitled for regularization with effect from the date of publication of the Award, is not acceptable to us.

25. In the writ petition preferred by the workmen it was contended, *inter alia*, that the workmen had admittedly discharged service for more than 20 years in permanent posts and that they would be subjected to extreme prejudice in the event their services are not regularized from the date of completion of six months of service from the date of their appointment. A reference of the year 2006 was answered by an Award

about 13 years thereafter on 1st August, 2019. The workmen had been working since 1989 and such fact had been admitted by the management. The break of one day artificial put off was also reflected in the statement of the management witness. In the said conspectus and to avoid inconsistencies and multiplicity of litigation and instead of being astute to discover reasons for not applying the constitutional remedy, the learned Court rightly directed that the workmen shall be entitled to permanent absorption from the date of reference, i.e., 4th July, 2006 and for extension of the benefits also to the families of the employees, who have already expired.

26. The learned Court, upon dealing with all the factual issues arrived at specific findings and we do not find any error in the judgment impugned, warranting interference in appeal.

27. Accordingly, the appeals being MAT 815 of 2024 and MAT 816 of 2024 along with all connected applications are dismissed.

28. There shall, however, be no order as to costs.

29. Urgent Photostat certified copy of this judgment, if applied for, be given to the parties, as expeditiously as possible, upon compliance with the necessary formalities in this regard.

(Reetobroto Kumar Mitra, J.) **(Tapabrata Chakraborty, J.)**