

A THE CHAIRMAN V. O. CHIDAMBARANAR PORT TRUST &
ORS.

v.

CAPT. PAUL NADAR BENNET SINGH

(Civil Appeal No. 11902 of 2018)

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DECEMBER 06, 2018

[R. BANUMATHI AND INDIRA BANERJEE, JJ.]

Tuticorin Port (Authorization of Pilots) Regulations, 1979: regns 2(e), 4, 6 – Appointment – Respondent was appointed in 2008 to the post of Pilot Officer – Appointment was on regular basis with a condition to serve at least two years as pilot and subject to qualifying the examination for issue of pilot licence to perform duties of pilot as per the Regulations, 1979 – Respondent was terminated from service in 2012 on the ground that he held certificate of competency (CoC) as Master issued by the Maritime and Port Authority of Singapore which is not equivalent to the certificate granted by the Government of India – High Court set aside the order of termination and directed reinstatement with back wages giving liberty to the appellants-Port Trust to examine the validity of the certificates possessed by respondent by providing him an opportunity of personal hearing – On appeal, held: In the advertisement issued for the post of Pilot Officer in response to which the respondent had applied and thereafter was appointed, it was not indicated that the candidate should have CoC issued by the authorities recognised by the Government of India – As per the Regulations, 1979, the qualification of candidates for pilot licence is to possess CoC as Master (Foreign going) granted by the Government of India or its equivalent – Neither at the time of the appointment of the respondent nor subsequently, the appellants-Port Trust raised any objection that CoC granted by Maritime and Port Authority of Singapore was not equivalent to the CoC granted by the Government of India – In fact, in the letter of appointment, the appointment was subject to condition that the respondent should qualify in the examination for issue of pilot license to perform duties in Tuticorin Port Trust – Respondent was allowed to perform duties – There was no good ground warranting interference with the impugned order – In the peculiar facts and circumstances of the

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instant case, the respondent having not worked with the appellants from 2012 till date, the order of the High Court is modified with regard to the back wages to the extent that the same is reduced to 40% with effect from 2012 till the date of joining – Service law – Termination. A

Partly allowing the appeal, the Court B

HELD: 1. In the clarification sought for by the appellants in communication dated 15.03.2011, the Deputy Nautical Advisor clarified that the appellants may be guided by their Port Regulations. As per Tuticorin Port Regulations, 1979, the qualification of candidates for pilot license is to possess certificate of competency as Master (Foreign going) granted by the Government of India or its equivalent. Neither at the time of the appointment of the respondent or subsequently, the appellants-Port Trust had raised any objection that Certificate of Competency granted by Maritime and Port Authority of Singapore was not equivalent to the CoC granted by the Government of India. In fact, in the letter of appointment the appointment was subject to the condition that the respondent should qualify in the examination for issue of pilot license to perform duties in Tuticorin Port Trust. [Paras 12, 13][947-G; 948-B, E-G] C
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2. In the light of the clarification given by the Deputy Nautical Advisor, the contention of the appellants that CoC issued by the Maritime and Port Authority of Singapore cannot be taken as a recognized one by the Government of India, has no substance. This is all the more so, in the light of letter sent by appellants dated 29.09.2008 expressing satisfaction over the experience and knowledge of the respondent in the shipping operation. The respondent has been allowed to perform duties and also the fact that in the appointment order it is stated that the appointment is on “regular basis”. There is no good ground warranting interference with the impugned order. Admittedly the respondent has not worked with the appellants from 2012 till date. In the peculiar facts and circumstances of the instant case, the order of the High Court is modified with regard to the back wages to the extent that the same be reduced to 40% with effect from 2012 till the date of joining. [Paras 14, 15, 16][949-A-D] E
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A CIVIL APPELLATE JURISDICTION : Civil Appeal No. 11902 of 2018.

From the Judgment and Order dated 10.04.2017 of the High Court of Madras at Madurai in W.A. (MD) No. 914 of 2015.

B Parag Tripathi, Sr. Adv., Keshav Thakur, Rajesh Singh Chauhan, Ms. Anu Tyagi, Ashwani Tyagi, Kunal Bahari, Advs. for the Appellants.

Mariarputham, Sr. Adv., Viajy Bhatt, Ram Sankar, Ms. Geetanjali, Rajaram Narayanan, Ms. Anuradha Arputham, R. V. Kameshwaran, Advs. for the Respondent.

C The Judgment of the Court was delivered by

R. BANUMATHI, J. 1. Leave granted.

D 2. This appeal arises out of the judgment and order dated 10.04.2017 passed by the High Court of Madras at Madurai in W.A. (MD) No. 914 of 2015 in and by which the High Court has set aside the order of termination of the respondent and directed reinstatement with back wages giving liberty to the appellants to examine the validity of the certificates possessed by the respondent by providing him an opportunity of personal hearing.

E 3. In response to the advertisement issued by the appellants-Port Trust for the post of pilot officer, the respondent applied for the same. The respondent attended the interview for the post of Pilot Officer on 19.03.2008 and he had become successful. By proceeding dated 08.04.2008, the respondent was appointed to the post of Pilot Officer in the appellants - Tuticorin Port Trust. As per appointment order, the appointment of the respondent is on regular basis as seen from the following:

F “Capt. Paulandar Bennet Singh is offered an appointment as Pilot on regular basis in the Tuticorin Port Trust in the scale of Pay of Rs. 1450-350-18700. He will be eligible for the usual allowances as admissible under the rules and orders in force from time to time.

G 2. The terms and conditions of appointment are as follows:

(i) He should execute a bond to the effect that he will serve at least for two years as Pilot on Tuticorin Port Trust.

H (ii) The appointment is temporary but is likely to continue indefinitely. This is further subject to the conditions that he should

qualify in the examination for issue of Pilot License to perform the duties of Pilot in TPT as per Tuticorin Port (Authorization of Pilots) Regulations, 1979. A

As per the appointment order, the respondent has to execute a bond to the effect that he would serve at least for two years as Pilot in Tuticorin Port Trust. From the language and the tenor of the said appointment letter it is patently clear that the appointment was a regular appointment against a permanent post which was to continue subject to the respondent qualifying in the examination of Pilot licence. The appointment was subject to the condition that the respondent would not be able to leave his job before expiry of two years from the date of his appointment. B
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4. On 02.04.2012, the appellants issued a termination notice as per Regulation 5(1)(a)(b) of the Tuticorin Port Employees (Temporary Service) Regulations, 1979. The respondent filed appeal before the Chairman on 21.04.2012. By the order dated 30.04.2012, the Deputy Conservator In-charge had terminated the service of the respondent. D

5. Challenging the termination order, the respondent filed the Writ Petition before the High Court and the Learned Single Judge allowed the Writ Petition setting aside the termination order and directed reinstatement of the respondent with back wages. In appeal, the Division Bench affirmed the order of the learned Single Judge. However, the Division Bench gave opportunity to the appellants to examine the validity of the certificates of the respondent again by affording an opportunity of personal hearing. E

6. We have heard Mr. Parag Tripathi, learned senior counsel appearing on behalf of the appellants along with Mr. Keshav Thakur as well as Mr.A. Mariarputham, learned senior counsel appearing on behalf of the respondent and perused the impugned judgment and materials on record. F

7. As per Tuticorin Port (Authorization of Pilots) Regulations, 1979, the term Pilot is defined in 2(e) of the Regulations as under: G

(e) "Pilot" means a person lawful appointed and licensed as such by the Board subject to the authorization of the Central Government, to pilot in the Port any vessel as directed by the Deputy Conservator/Harbor Master."

As per Regulations 4, Pilots to be licensed as under:- H

A “(1) Every pilot shall hold a license to perform the duties of a pilot for the Port of Tuticorin and such license, subject to the sanction of the Central Government, may be issued and be revocable by the Board.

B (2) A pilot severing his connection with the Board shall forthwith deliver his license to the Board.”

C 8. The objection raised regarding the appointment of the respondent is that he was holding certificate of competency as Master issued by the Maritime and Port Authority of Singapore which is not treated as equivalent of the certificate granted by the Government of India. According to the appellants, the Directorate General of Shipping, Ministry of Shipping, Government of India, issued a Circular only on 27.05.2014 No. NT/ENGG. 02 of 2014, as per which the Directorate had taken a decision to permit Australia, Singapore, Ireland and New Zealand Certificate of competency (CoC) holders of Indian nationality to sail on Indian Flag vessels. It is, therefore, the contention of the appellants that D prior to 27.05.2014 the CoC issued by Singapore was not recognized by the Government of India. It was, therefore, submitted that the respondent possessing certificate of competency issued by the Maritime and Port Authority of Singapore was not eligible to be appointed on regular basis and, therefore, his service was rightly terminated and the High Court E erred in directing reinstatement.

9. Our attention has been drawn by learned senior counsel Mr. A. Mariarputham appearing on behalf of the respondent to the advertisement issued for the post of Pilot Officer in response to which the respondent has appeared. The said advertisement for the Pilot Officer reads as under:

F “Vacancy – 1 No. of Pilot Officer
Qualification & Experience: Certificate of Competency as Master (FG) with minimum three years experience as Chief Officer.
Age: 45 years.
G Remuneration : Scale of Pay of Rs.14500-350-18700
Approximately Rs. 50,000/- per month (Conditions apply).”

H 10. It is to be pointed out that in the advertisement it was not indicated that the candidate should have a certificate of competency issued by the authorities which are recognized by the Government of India. In the case of the respondent, the Tuticorin Port Trust had sent a letter to the Ministry of Shipping dated 29.09.2008 stating that the

respondent is in possession of certificate of competency issued by the Maritime Authority of Singapore and requesting to issue a positive clarification which may help the appellants to engage the respondent as Pilot in the appellants' Port on a regular basis. The said letter reads as under: A

“However, a clarification was sought from nautical Advisor on the validity of his Certificate, who in turn affirmed that Singapore Certificate is not accepted by Indian Administration under Reg. 1/10 of STCW 95. B

Capt. Paul Nadar Bennet Singh is in possession of qualification of M.B.A. (Shipping and Port Management), Master of Human Resource, Advanced Diploma in Maritime Transportation and Master of Science (M.S.) in counselling and psychotherapy. He has a record of Sea Service as Master Mariner at different spell from 9.10.2003 to 22.12.2007. After his appointment as Pilot in this Port he is being provided with necessary training so as to acquire knowledge in handling ships in the Port Waters. By Virtue of his experience in foreign going vessel, he is having high knowledge in the shipping operations and his performance in the field is apparently excellent. C D

It is, therefore, requested that taking into account the factual position as brought out in para 2 & 3 above, to issue a positive clarification, which may help to engage, Capt. Paul Nadar Bennet Singh as Pilot in this Port on a regular basis, by accepting the competency Certificate issued by the Maritime Authority of Singapore (a common wealth country).” E

11. The Government of India in its communication dated 26.11.2010 asked the appellants to clarify whether the certificate of competency as Master (Foreign going) issued by the Maritime and Port Authority of Singapore is a valid qualification for undertaking pilotage duties at Tuticorin Port Trust as per relevant regulations/recruitment rules. F

12. In the clarification sought for by the appellants in the communication dated 15.03.2011 the Deputy Nautical Advisor has clarified the same as under: G

1) Singapore is a white list country with IMO which means that it has been recognized by IMO to have given full compliance to STCW Convention 1978 (as amended). H

A 2) Certificate of Competency as Deck Officer Class I (Master Mariners) issued by Maritime and Port Authority of Singapore is not recognized under the provisions of Merchant Shipping Act, 1958 (as amended), as well as STCW 78/95 Regulation 1/10 to command an Indian Ship as on date.

B 3) As regard to recognize the CoC issued by PSA, Singapore for pilots working in your port, you may be guided by the port regulations.

C 13. The Deputy Nautical Advisor has thus clarified that the appellants may be guided by their Port Regulations. As pointed out earlier, as per Tuticorin Port Regulations, 1979, the qualification of candidates for pilot license is to possess certificate of competency as Master (Foreign going) granted by the Government of India or its equivalent.

Regulation 6 reads as under:

D 6. Qualification of Candidates—(1) A candidate for a Pilotage License shall:

E (a) be in possession of a certificate of competency as Master (foreign-going) granted by the Government of India or its equivalent and should have, preferably, experience of at least six months as First Mate, on a foreign-going ship;.....

F As seen from the above even as per the Regulations of the appellants-Port Trust, the qualification for pilot license is the possession of the certificate of competency as Master (foreign-going) granted by the Government of India or its equivalent. Neither at the time of the appointment of the respondent or subsequently that appellants – Port Trust had raised any objection that Certificate of Competency granted by Maritime and Port Authority of Singapore was not equivalent to the CoC granted by the Government of India. In fact, the letter of appointment which we have extracted above, the appointment is subject to the condition that the respondent should qualify in the examination for issue of pilot license to perform duties in Tuticorin Port Trust. In the impugned judgment, the Division Bench has pointed out the respondent has passed the examination for issuance of pilot license on 10.02.2009. No exception would be taken for the eligibility of the respondent to continue as the pilot officer in the appellants-Port Trust.

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14. In the light of the clarification given by the Deputy Nautical Advisor the contention of the appellants that CoC issued by the Maritime and Port Authority of Singapore cannot be taken as a recognized one by the Government of India, in our view, has no substance. This is all the more so, in the light of letter sent by appellants dated 29.09.2008 expressing satisfaction over the experience and knowledge of the respondent in the shipping operation. It is also to be pointed out that the respondent has been allowed to perform duties and also the fact that in the appointment order it is stated that the appointment is on “regular basis”.

15. In the light of the above discussion, we do not find any good ground warranting interference with the impugned order. In the light of the above discussion, there is no further necessity to examine the certificate of the respondent as observed by the Division Bench.

16. Admittedly the respondent has not worked with the appellants from 2012 till date. In the peculiar facts and circumstances of the present case, we modify the order of the High Court with regard to the back wages to the extent that the same be reduced to 40% with effect from 2012 till the date of joining and the appeal is partly allowed to that extent.

17. The above judgment is passed in the special facts and circumstances of the present case and may not be treated as a precedent in future.