IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 296 OF 1999

1. Goa Port & Dock Employees' Union, a Trade Union registered under the Trade Union Act, 1926, with office at Kamgar Bhavan, FF Complex, Swatantra Path, Vasco, represented herein by its General Secretary Shri Ulhas Gurav, major, married, r/o Vasco, Goa.

2. All India Port & Dock Workers Federation (Workers), a Federation of Unions of Port & Dock Union Workers, with office at Kamgar Sadan, Nawab Tank Rd., Mazgaon, Mumbai, 400 010 through their General Secretary Shri S.K. Shetye, major, married, r/o Mumbai.

3. Shri Suresh P. Naik, major, married, Indian National, r/o M.P.T. Quarters, Headland, Sada, Vasco, Goa.

4. Shri Sudhakar Nare, major, married,Indian National, r/o M.P.T. Quarters, Headland, Sada, Vasco, Goa. ... Petitioners.

VERSUS

1. Marmagao Port Trust, through its Board of Trustees, having their office at Headland, Sada, Vasco, Goa.

2. The Chairman, Marmagoa Port Trust, with office at Headland, Sada, Vasco, Goa.

3. The Secretary, Marmagoa Port Trust, with office at Headland, Sada, Vasco, Goa.

4. Assistant Labour Commissioner
(Central) having office at
Municipal Building,
Vasco-da-Gama, Goa.

5. Union of India,
in the Ministry of Labour,
through the Central Government,
Standing Counsel, Panaji, Goa. ... Respondents.

Mr. N. N. Sardessai, Advocate for the Petitioners.

Mr. Y.V. Nadkarni, Advocate for the Respondents No.1 to 3.

Mr. J. Vaz, Addl. Central Government Standing Counsel for the Respondent No.5 (absent).

CORAM: R. J. KOCHAR, J.

DATE: 26TH SEPTEMBER, 2003.

ORAL JUDGMENT:

The petitioners no.1 and 2 are the Unions representing substantially a large number of workers employed by the Respondent No.1. The petitioners No.3 and 4 are the members of the Petitioners No.1 and 2 Unions. They are aggrieved by the impugned Order dated 18.01.1999 passed by the Desk Officer of the Government of India passing the following Order :-

> " I am directed to refer to the failure of Conciliation Report No.VA-6(1)/98-99 dated 20.07.1998 from the Asstt. Labour Commissioner (), Goa received in this Ministry on 24.07.1998 on the above subject and to say that prima facie this

> Ministry does not consider this dispute fit for the following reasons. " It is the prerogative of the management to decide the working hours taking into consideration administrative convenience and other relevant factors. The management had complied with the prescribed procedure while introducing the change in working hours. " "

2. The petitioners were aggrieved by the two Office Orders dated 7th August, 1998 in respect of Fire Brigade Staff and Watch and Ward Staff working in the estate section of General Administration Department of the respondent No.1. By the aforesaid two Orders, the respondent No.1 purported to change the pattern of shift working introducing three shifts for the aforesaid Staff. According to the petitioners, the aforesaid two Orders were in violation of the Settlement dated 6.12.1994 under which service conditions were determined. They were also entitled to get certain other benefits under the said Settlement. According to the petitioners the aforesaid two Orders passed by the respondent No.1 were in violation of the terms of the Settlement and also in violation of Section 9(A) of the Industrial Disputes Act 1947 as those orders purported to effect change in service conditions of the workmen. According to the petitioners, they had not agreed with the proposed change in the service conditions of the workers and therefore the impugned notices could not

be given effect to. Since the respondent No.1-Management insisted to give effect to the said notices, the petitioners approached the appropriate authority for intervention and for adjudication of the industrial dispute which arose after the petitioners disagreed with the proposed change tried to be effected by the respondent No.1. It further appears that after conciliation proceedings which culminated in failure report, the appropriate authority, that is the Central Government by the impugned Order dated 18.1.1999 refused to refer the industrial dispute for adjudication for the reasons mentioned in the said order quoted hereinabove.

3. It is crystal clear from the order passed by the appropriate Government that it had crossed its administrative limits in finding out whether there existed or did not exist an industrial dispute as contemplated under Section 10(1) of the Industrial Disputes Act for adjudication. It is now very well established that the appropriate Government cannot adjudicate the industrial dispute, but it has only to find out that an industrial dispute exists and the same is not a vexatious or frivolous dispute. In the present case, it cannot be said that the dispute, which has arisen in the present case affecting a large segment of the workmen in respect of their service

conditions of working hours, is of frivolous or vexatious nature. There has been a Settlement in force binding the workmen and the respondent no.1, as the employer, whereunder certain benefits were made available to the workmen. According to the petitioners by introducing the 3 shifts working hours, the respondent No.1 was trying to violate the provisions of the said Settlement by changing the service conditions. The dispute whether the Settlement covered the shift working or not and what were the service conditions of the workmen in respect of the working hours or shift hours and whether the respondent No.1 was justified in changing the service conditions in respect of the shift working hours is a genuine and bonafide industrial dispute which requires adjudication from the proper adjudication machinery, i.e. the Industrial Tribunal. The Desk Officer of the Central Government has ventured to cross over the forbidden area of adjudication and he himself has decided that it is the prerogative of the Management to decide the working hours, taking into consideration administrative convenience and other relevant factors. When any change which is introduced or proposed to be introduced by the Management or the employer and when such a change is opposed by the workmen, in that case, such a dispute has to be adjudicated by the adjudicating machinery in accordance with law. In the

present case the petitioners have alleged violation of the Settlement and violation of the service conditions by introducing the pattern of three shifts. They have also tried to allege that the workmen would be financially adversely affected as they were getting certain better benefits in the Settlement and after introduction of the three shift working they will be deprived of such benefits under the existing Settlement. According to me this industrial dispute which is genuine and bonafide has to be resolved by the Industrial Tribunal after recording proper evidence. This task has been illegally usurped by the Desk Officer of the Central Government. He has concluded that it is the prerogative of the Management to decide the working hours regardless of the opposition by the workmen and the Unions. All these issues will have to be adjudicated by the Tribunal on the basis of the evidence and material that would be adduced by both the parties. In my considered view the respondent No.5 ought to have referred the industrial dispute for adjudication under the provisions of the Industrial Disputes Act, 1947. It is now well established that this Court can issue a writ of mandamus to the respondent No.5 to refer the industrial dispute for adjudication instead of only directing it to consider to refer the industrial dispute. In the present case there has been in the

past one more round of litigation. In these circumstances, it will be proper and in the interest of justice to direct the Respondent No.5 to refer the industrial dispute raised by the petitioners pertaining to failure report submitted to Respondent No.5 by the Respondent No.4 on 20.7.98. The respondent No.5 shall refer the said dispute for adjudication to the appropriate Industrial Tribunal within a period of eight weeks from today. The Industrial Tribunal shall decide the industrial dispute as expeditiously as possible.

7. Rule is made absolute in terms of prayers (c) and (d). No order as to costs.

R. J. KOCHAR, J.

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