1991 C L C 362

[Karachi]

Before Saleem Akhtar and Imam Ali Kazi, JJ

AZIZ KHAN, COMMANDER (E) PAKISTAN NAVY---Petitioner

versus

THE DIRECTOR-GENERAL, PORTS AND SHIPPING and another---Respondents

Writ Petition No. D-302 of 1990. decided on 6th November, 1990.

(a) Merchant Shipping Act (XXI of 1923)--

----Ss. 17, 18, 19 & 20---Different categories of Naval Officers---Entitlement to certificate of service---Essentials. Section 17 (1) and (2) of Merchant Shipping Act, 1923, apply to different categories of Naval Officers. Section 17 (1) applies to a Lieutenant in Pakistan Navy who applies for a certificate of service as Master of a foreign going ship, whereas 17 (2) applies to persons who have attained the rank of Engineer or Assistant Engineer and apply for grant of certificate of service as first class Engineer or second class Engineer. In both cases it is granted without examination. Authority's contention that the certificate could not be issued to an applicant as earlier no such certificate had been issued to any officer of the Pakistan Navy does not seem to be tenable. This could not serve as a precedent to refuse to exercise jurisdiction under section 17 (2) which is clear, unambiguous and did not warrant any exception. The form and manner in which the certificate was to be issued is provided by subsection (3). Sections 18, 19 and 20 regulate the procedure for maintenance of the certificate and apply to certificate of service. Authority had contended that there were no rules and provisions for grant of such certificate. This also could not be pressed as a ground for refusal to exercise jurisdiction under section 17 (2). The form and manner in which certificate was to be granted is provided by section 17 (3). Furthermore, sections 17,18, 19 and 20 regulate the procedure for maintenance of such certificate which have been made applicable by section 17 (4).

(b) Rules for Examination of Engineers in the Merchant Navy, 1965---

----R.7---Certificate of service---Grant of---Marine Engineering Officer, fulfilling qualifications and having experience mentioned in R.7 of the Rules for the Examination of engineers in the Merchant Navy, 1965, could be granted a certificate of service as First Class Engineer without examination,

(c) International Convention on Standard of Training, Certification and Watch keeping for Seafarers 1978---

----Art. VI---Provisions of International Convention---Enforcement---Mode of--Government being a party to International Convention and having subscribed to it would be bound by its provisions ---Government, however, could not enforce provisions thereof like a Municipal law unless it had been enacted and codified by the legislature in a proper manner---Government, however, being a party to such convention would be morally bound to observe provisions thereof---Where, however, provisions of convention were in conflict with any provision of law, the law would prevail over such convention.

(d) International Convention on Standards of Training, Certification and Watch-keeping for Seafarers, 1978---

----Art. VI---Certificate of service for Masters, Officers and ratings---Issuance of---Essentials---Terms "administration" and "certificate"---Connotation.---[Words and phrases].

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section. The rules for examination of engineers were promulgated in 1975 but those rules also do not prescribe any authority for issuing service certificate to engineering officers. Section 17 (1) refers to issue of certificate of service to Deck Officers and the rules therefore were framed and promulgated in the year 1961. According to the rules certificate was to be issued by the United Kingdom Ministry of Transport and the forms were to be obtained from Registrar Shipping and Seamen Cardiff. Such certificates of service as Master of foreign going ship were to be issued by the U.K. Ministry of Transport to the prescribed officers working in Pakistan Navy. The petitioner was aware of it and did not apple till 1989. It was further pleaded that the Government of Pakistan is a party to the International Convention on Standards of Training, Certification and Watch keeping for seafarers, 1978 and in view of the provisions of this Convention any certificate of service can be Challenged by State Control Administration of Maritime nations which are members of the convention. In the year 1983, 41 certificates of services were issued by the Government of Pakistan not to Engineering Officers under section 17 (2) but to the Deck Officers under section 17 (1) of the Merchant Shipping Act, 1923. The said Convention had fixed transitory period of five years to all the Nations. The U.K. Ministry fixed 30th June, as the last date for receiving applications for issuance of certificate of service. As certificate to 41 officers could not be issued by the U.K. administration, the Government decided to issue certificates to them and it was decided that no further certificate shall be issued thereafter.

Mr. Ejaz Anwar, the learned counsel for the petitioner has entirely relied upon section 17 (2) of the Merchant Shipping Act and further contended that the International Convention to which Pakistan is a party has not been enacted or and, therefore, it cannot override the provisions of law. At the outset it may be made clear that the petitioner was an engineer and has applied for certificate of service as First Class Engineer and not as a Master of a foreign-going ship. Therefore, we have to keep in view the relevant provisions of law which apply to this particular case. Section 17 reads as follows:-

"17. (1) A person who has attained the rank of Lieutenant in His Majesty's Navy or in the Pakistan Navy shall be entitled to a certificate of service as fix; Master of a foreign-going ship without examination.

(2) A person who has attained the rank of Engineer or Assistant Engineer in His Majesty's Navy or the Pakistan Navy, shall be entitled without examination, if an engineer, to a certificate of service as first class engineer, and, if an assistant engineer, to a certificate of service as second class engineer.

(3) A certificate of service shall differ in form from a certificate of competency, and shall contain the name and rank of the person to whom it is delivered, and the Government shall deliver a certificate of service to any person who proves himself to be entitled thereto.

(4) The provisions of this Act (including the penal provisions) shall apply in the case of a certificate of service as they apply in the case of a certificate of competency."

Section 17 (1) and (2) apply to different categories of Naval Officers. Section 17 (1) applies to a Lieutenant in Pakistan Navy who applies for a Certificate of service as Master of foreign-going ship, whereas Section 17 (2) applies to persons who have attained the rank of Engineer or Assistant Engineer and apply for grant of certificate of service as first class Engineer or second class Engineer. In both cases it is granted without examination. The petitioner's case falls under subsection (2). Therefore, the contention of the respondents that the certificate cannot be issued to the petitioner as earlier no such certificate had been issued to any officer of the Pakistan Navy does not seem to be tenable. This cannot serve as a precedent to refuse to exercise jurisdiction under section 17 (2) which is clear, unambiguous and does not warrant any exception. The form and manner in which the certificate is to be issued is provided by subsection (3). Sections 18, 19 and 20 regulate the procedure for maintenance of the certificate and apply to certificate of service. Mr. Khatri, the learned counsel for the respondent contended that there are no rules and provisions for grant of such certificate. This also cannot be pressed as a ground for refusal to exercise jurisdiction under section 17 (2). The form and manner in which certificate is to be granted is provided by section 17 (3). Furthermore, sections 17, 18, 19 and 20 regulate the procedure for maintenance of such certificate which have been made applicable by section. 17 (4).

Mr. Khatri has referred to rules framed by the Government of Pakistan, Ministry of Railway and Communication under Notification No. SRO 17 (63)/A/61 dated 16-8-1961. These rules are in respect of the conduct of examination and grant of

certificate of service to Master and Mate and are .not applicable to grant of certificate of service to Engineers under section 17 (2). They will apply to cases falling under section 17 (1).

Our attention has been invited to the Rules for the Examination of Engineers in The Merchant Navy, 1965 published under S R O 290 (K)/66 dt. 26-3-1966.Rule 7 reads as follows:--

Certificate of service.---(a) A Marine Engineering Officer who has successfully completed the prescribed course of instruction for Marine Engineering either at the Pakistan Navy Mechanical Training Establishment Naval Academy or the Royal Naval Engineering College U/K., and has attained the substantive rank of Lieutenant of 2 years seniority or longer in the Pakistan Navy, and who has performed at least 21 months qualifying sea service on regular watches in the controlling or a Main Engine Room as a Watch-Keeping Engineer Officer, may be granted a certificate of Service as First Class Engineer without undergoing examination. Such certificate will be valid only for steam propelled ship, unless the officer possesses 6 months' qualifying sea service on a ship propelled by diesel in which case such certificate will be valid for both steam and diesel propelled ships. An endorsement showing the qualifying service and the validity of the Certificate for diesel propelled ship must appear on the Certificate.

(b) A Branch List Officer of the Engineering Branch who has attained the substantive rank of Engineer Lieutenant (Marine Engineering) in R the Pakistan Navy and who has attained at least 21 months qualifying sea service as for a Lieutenant in sub-para (a) above, may also apply for the grant of a Certificate of Service as First Class Engineer without examination.

(c) An Engineer Officer who has attained the substantive rank of Sub Lieutenant (in Marine Engineering) in the Branch List of the Pakistan Naw and who has performed at least 21 months qualifying sea-service on regular watches on Marine Engines as a watch-keeping officer since attaining the rank (acting rank, if any, to count) may apply to be granted a Certificate of Service as Second Class Engineer without examination. This certificate will be valid for steam-propelled ships only unless the officer possesses 6 months qualifying sea-service in a ship propelled by diesel engine of not less than 5(A B.H.P. in which case this certificate will be valid for both steam and diesel propelled ships. Such endorsement will be made on the certificate.

Under Rule 7 a Marine Engineering Officer who fulfils the qualifications and experience mentioned therein may be granted a Certificate of Service as First Class Engineer without examination. The application should be made on the printed form available the Mercantile Marine Department. In view of this rule the contention of Mr. Khatri cannot sustain.

The next contention of the learned counsel for the respondent No.1 is that Pakistan is a party to the International Convention having subscribed to it and, therefore, bound by its provisions. On the other hand Mr. Ejaz Anwar has contended that as provisions of the Convention have not been enacted respondents are not bound by it. On legal plane

the contention of the learned counsel for the petitioner seems to be correct. A Government which is a party to an International Convention cannot enforce it like a municipal law unless it has been enacted and codified by the legislature in a proper manner. However, if a Government is a party to a Convention it is morally bound to observe the provisions of the Convention. But if it is m conflict with any provisions of law, the law shall prevail over such Convention. The learned counsel for the respondent his produced the copy of the International Convention. Article VI provides that certificate for Masters, Officers or ratings shall be issued to those candidates who to the satisfaction of the administration. meet the requirements for service, age, medical fitness, training, qualification and examination in accordance with the appropriate provisions of the Convention. The term "administration" has been defined in Article 11 which means the Government of the Party whose flag the ship is entitled to fly and party means State for which the Convention has entered into force. Therefore, Government of Pakistan is entitled and authorised under the Convention to issue certificates in respect of ships which fly the flag of Pakistan. Competency to issue the certificate vests in the Government of Pakistan and keeping in view the definition of the word `certificate' it can be issued by or under the authority of the Government of Pakistan or any persons authorised by it. Cumulative effect of these provisions is that the certificate of service can be issued to Officers and Masters. Regulation 1/1 sub-clause (d) defines `Officer' as a member of the crew other than the Master designed by such national law or by collective agreement or custom'. Regulation I/1, (g), (h), (i) and (j) define Engineers, Officer, Chief Engineer Officer Second Engineer Officer and Assistant Engineer Officer respectively. They are members of crew and therefore even under the Articles and Regulation of the Convention referred above the Government of Pakistan can issue Certificate of Service to Engineer/Officers who are qualified and entitled to it. The exemption granted under section 17 (2) and Rules 7 quoted above is abut the examination and not the qualification, experience or any other particular which are required for appointment as an engineer- Reference to rule of 1961 will not be relevant as it is a rule for examination of Master and Mates. The applicant had not applied for certificate of service as Master or Mate. Regulation Ill of the Convention prescribes the minimum requirements for certification of Engineers (officers) enumerated above. The respondents in their counter affidavit have alleged that the Certificate of Service was issued under section 99 of the Marchant Shipping Act, 1894 but after the International Convention on Standard of Training Certification and Watch Keeping of Seafarer Great Britain amended the aforesaid Act of 1894 with effect from 1-1-1981 whereby section 99 and other sections dealing with the issuance 'of the Certificate of Service without examination were deleted. Therefore, the Government of Pakistan also stopped sending applications for such certificates to the Ministry of Transport m the Trade Department of United Kingdom.

We will now consider whether amendment in section 99 from 1-1-1981. by the U.K., prevents the Government of Pakistan from issuing a Certificate of Service to personnel of Pakistan Navy. We may clarify that the Merchant Shipping Act, 1894 which is a British Act was applicable to pre-partition India as provided by the said Act alongwith Merchant Shipping Act, 1923. From 14th August, 1947 both these Acts continued to be applied to Pakistan. The Act of 1894 continued to apply to the extent it was applicable to India on 14-8-1947. Any amendment made in the Act of 1894 by the U.K.

legislature after 14th August, F 1947 is not applicable to Pakistan. Therefore, all the amendments made thereafter including the amendment made in 1981 deleting section 99 are not applicable in Pakistan. Section 99 is identical to section 17 of the Marchant Shipping Act, 1923. Therefore, even if Merchant Shipping Act, 1894 and Merchant Shipping Act, 1923 are applied any person who has attained the rank of Engineer or Assistant Engineer in the Pakistan Navy is entiled without examination. if an Engineer to a certificate of Service as First Class Engineer and if an Assistant Engineer to a certificate of service as Second Class Engineer. The authority to grant Certificate of Service as provided by section 17 vests in the Federal Government and not any other Overseas Authority. The provisions of Section 99 of 1894 Act to the extent they are in conflict with Section 17 of 1923 Act will not apply to Pakistan. Section 17 of Merchant Shipping Act, 1923 remains a valid statute and is applicable in full force. Section 17 cannot be overridden by International Convention to which the Government may have subscribed. Where there is a conflict between a municipal law and any provisions of an International Comvention which has not been legislated or enacted, the provisions of Municipal Law shall prevail. In these circumstances section 1'3 is an existing and binding provision of law. Mr. J. H. Rahimtoola the learned counsel for respondent 3 referring to Crawford's Statutory Construction page 520 and Articles 196 and 201 of the Law of Extraordinary Legal Remedies by Ferris contended that discretionary remedy may not be granted where it may cause embarrassment to the Government. It has been contended that as the Government of Pakistan has subscribed to the International Convention issuance of Certificate as demanded by the petitioner will create embarrassment and such embarrassment should not be thrust upon them by the Court. 1t is true that the Courts avoid to pass such order which may create a embarrassment to the Government in the International Community of Nations. The Maritime Laws are practiced throughout the world and have their impact not only locally but internationally. But as the Federal Government itself his not made any amendment in the law in consonance with the Convention nor enacted the Convention entirely or partially, the petitioner's right cannot be easily brushed aside.

We therefore declare that the petitioner's application is competent and can be considered and decided by the Federal Government in terms of Section 17 of the Merchant Shipping Act, 1923 and Rules if any framed in this regard. We direct respondent No.2 to decide the petitioner's application within a period of three months in terms of section 17, Merchant Shipping Act and the Rules if any and in the light of the observations made in this judgment.

A.A./A-9'76/K 1` Order accordingly.

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