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VIZAGAPATAM DOCK LABOUR BOARD

v.

STEVEDORES ASSOCIATION, VISHAKHAPATNAM & ORS.

September 10, 1969

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[J. M. SHELAT AND C. A. VAIDIALINGAM, JJ.]

Dock Workers Regulation of Employment Act, 1948—Vizakhapatnam Dock Workers (Regulation of Employment) Scheme, 1959—Dock Labour Board if employer—Board if, carries on "industry"—Industrial Disputes Act, 1947.

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The claim for bonus of the Dock Board Workers employed at Vizakhapatnam was referred to the Industrial Tribunal. The parties to the reference included the Vizagapatnam Dock Labour Board (the appellant), the Stevedores Association, and two Unions representing the workers. The Industrial Tribunal after referring to the nature of the duties performed by the Board as well as the Stevedores Association and its members and their relationships with the Dock Labour Board held that it was the Board that was the employer of the dock workers and that the Board was liable for meeting the claim for bonus. The Board in appeal to this Court, contended, that (i) it was not liable for the payment of bonus when the claim of the workers was against the Stevedores Association and its members; and (ii) having regard to the provisions of the Dock Workers (Regulation of Employment) Act (9 of 1948), and the Vizagapatnam Dock Workers (Regulation of Employment) Scheme, 1959 and the functions discharged by the Board there was no employer-employee relationship between the Board and the workmen, and as such the Board could be made liable for the claim. Accepting the contentions, this Court,

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HELD : (i) Having regard to the nature of the claim and the basis on which the tribunal itself proceeded, the claim for bonus was made by the unions specifically against the Stevedores Association and its members and, as such, the tribunal was not justified in making the Board liable.

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(ii) The Board cannot be considered to be the employer of the Dock Labour Workmen. From the provisions of Dock Workers (Regulation of Employment) Act and the Vizagapatnam Dock Workers (Regulation of Employment) Scheme, it is evident that the Board is a statutory body charged with the duty of administering the scheme, the object of which is to ensure that greater regularity of employment for dock workers are available for the efficient performance of dock work. The Board is an autonomous body, competent to determine and prescribe the wages, allowances and other conditions of service of the dock workers. The purport of the Scheme is that the entire body of workers should be under the Control and supervision of the Board. The registered employers are allocated monthly workers by the Administrative Body and the Administrative Body supplies whenever necessary, the labour force to the Stevedores from the Reserve Pool. The workmen who are allotted to the registered employers are to do the work under the control and supervision of the registered employers and to act under their directions. The registered employers pay the wages due to the workers to the Administrative Body and the latter, in turn, as agent of the registered employers, pay them

over to the concerned workmen. The registered employer to whom the labour force is allotted by the Board is the employer whose work to them. The functions of the Board such as recruitment and registration of the dock labour force, fixation of wages and dearness allowance, payment of workmen's compensation, taking of disciplinary action and prohibition against employment of workers who were not registered with the Board do not establish a relationship of employer and employee between the Board and the dock labour. Further, the Board functioning under the Act and the Scheme cannot be said to carry on any industry so as to attract the provisions of the Industrial Disputes Act. As a claim for any type of bonus can be met only from the actual employer in respect of any industry and as the Board is neither the employer nor carries on any industry the Tribunal was wrong in directing the Board to pay Bonus for the years in question. [316 B—E; G—H; 320 C]

Gymkhana Club Union v. Management, [1968] 1 S.C.R. 742, 752. applied. C

A. C. Roy & Co. Ltd. v. Taslim, 71 C.W.N. 531, referred to.

Kirlosker Oil Engines v. Hanmant Laxman Bihawej, [1963] 3 S.C.R. 514, distinguished.

C. V. A. Hydross & Son v. Joseph Senjon, [1967] 1 L.L.J. 509 disapproved. D

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2113 of 1968.

Appeal by special leave from the Award dated May 24, 1968 of the Industrial Tribunal, Andhra Pradesh in I.D. No. 10 of 1967. E

Niren De, Attorney-General, *S. K. Dholakia*, *R. H. Dhebar* and *S. P. Nayar*, for the appellant.

K. Srinivasamurthy and *Naunit Lal*, for respondents Nos. 1 to 12.

B. P. Maheshwari, for respondent No. 13. F

The Judgment of the Court was delivered by

Vaidialingam, J. This appeal, by special leave, by the Vizagapatam Dock Labour Board (hereinafter referred to as the Board), is directed against the award, dated May 24, 1968 of the Industrial Tribunal, Andhra Pradesh, Hyderabad in I.D. No. 10 of 1967 holding that the appellant should pay the Dock workers employed at Vizagapatam Port bonus for the accounting years 1964-65, 1965-66 and 1966-67. G

The Central Government, by its order dated April 13, 1967 referred for adjudication, to the said Tribunal, the question whether the demand for payment of bonus to Dock Labour Board Workers employed at Visakhapatnam Port for the accounting years H

A 1964-65, 1965-66 and 1966-67 was justified and, if so, at what rate should such bonus be paid. The parties to the Reference included the Board, the Visakhapatnam Stevedores Association, certain individual Stevedores and two Unions representing workers. The two Unions were the Port Khalasis Union and the Dock Workers Union.

B Both the Unions filed statements of claim on behalf of their workmen. They referred to the demands made by them for payment of bonus and the rejection thereof by the Board and the Stevedores Association. They referred to certain agreements having been reached in respect of bonus between the workmen and the respective Stevedores Associations, in Calcutta, Cochin, C Madras and Bombay. They claimed that the work done by the workmen at Visakhapatnam Port was exactly similar to the type of work done by the Stevedores workmen at Bombay, Calcutta, Cochin and Madras and that therefore their claim for bonus was justified. They further referred to the fact that the Board and the Stevedores Association were all governed by the Dock Workers D (Regulation of Employment) Act 1948 (Act IX of 1948) (hereinafter referred to as the Act) and the Vizagapatnam Dock Workers (Regulation of Employment) Scheme, 1959 (hereinafter referred to as the Scheme), framed thereunder. The said Scheme is similar to the Scheme obtaining in the areas where a settlement had been entered into regarding bonus and the relationship between the E Stevedores and the Dock Labour Board was also the same in all ports. The Unions claimed bonus at 14 paise per ton for 1964-65, 15 paise per ton for 1965-66 and 16 paise per ton for 1966-67.

The Visakhapatnam Stevedores Association and its member Stevedores filed statements contesting the claim of the workmen. After referring to some of the provisions of the Act and the F Scheme, the Association urged that the Dock Workers were the workmen of the Board as all the ingredients of master and servant existed as between the Board and the Dock Workers. The Association further urged that the Dock Labour workers were not the employees of the Stevedores and, as such no claim for bonus could be made as against the Stevedores Association or its members. G The Association further pleaded that it was an unnecessary party to the Reference and the workmen had no claim as against it in view of the fact that the Association or its members were not the employers of the dock workers. They also contested the claim of the workmen on merits.

H The Board, represented by its Chairman, filed a written statement contesting the claim of the Stevedores that they were not the employers of the dock workers. The Board claimed that it was a statutory body constituted under the Act and governed by the

statutory Scheme in the discharge of its statutory functions. According to it none of the functions discharged by it under the Act or the Scheme could be characterised as 'carrying on of an industry' so as to attract the provisions of the Industrial Disputes Act. On the other hand, the Board urged that it was the Stevedores and their Association that carried on the stevedoring industry during the years for which a claim for bonus was made by the workmen and therefore, if at all, the liability for payment of bonus should be that of the Stevedores and their Association. It further urged that the claim, having been made by the workmen against the Stevedores, the latter should not be allowed to convert the said claim into one against the Board. The Board also further pleaded that it was not a necessary or proper party to the dispute. It filed an additional written statement pointing out that the Visakhapatnam Stevedores Association had been appointed by the Central Government as the Administrative Body for the purpose of carrying on the day-to-day administration of the Scheme and that the said Administrative Body is deemed to act as an agent for the employers, as would be evident from the Scheme. After referring to the functions of the Administrative Body under the Scheme, the Board claimed that it had no further part to play in the proceedings before the Tribunal.

The Industrial Tribunal, after referring to the nature of the duties performed by the Board as well as the Stevedores Association and its members and their relationship with the Dock Labour Boards, held that it is the Board that is the employer of the dock workers and that the Board is liable for meeting the claim for bonus. The Tribunal has proceeded on the basis that the bonus claim by the workmen is 'tonnage bonus' because while loading or unloading cargo any particular gang or gangs of workmen may not be working continuously for a given period for a particular Stevedore and therefore the bonus that has to be paid to the dock workers must be on the basis of the tonnage handled by them. The Tribunal then considered the rate at which bonus is to be awarded for the three years. Ultimately it has held that the demand for bonus by the workmen for the three years in question is justified and it has to be paid by the Board at the rate of 13 paise per ton for the year 1964-65, at 14 paise per ton for the year 1965-66 and at 15 paise per ton for the year 1966-67.

The learned Attorney General, on behalf of the appellant, raised two contentions: (i) That the Tribunal has acted illegally and without jurisdiction in making the Board liable for payment of bonus when the claim of the workmen for such payment was against the Stevedores Association and its members and; (ii) having due regard to the provisions of the Act and the Scheme and the

- A functions discharged by the Board, the Tribunal should have held that there is no employer-employee relationship between the Board and the Dock Labour workmen and, as such the Board could not be made liable for the claim.

- B Regarding the first contention, the learned Attorney General invited our attention to the nature of the claim made by the two Unions as well as the discussion contained in respect of such claim in the award. The Attorney General also referred us to the plea taken by the Board in its written statement that a claim exclusively made by the dock workers as against the Stevedores should not be allowed by the Stevedores to be converted into a claim made as against the Board and that no award could be passed against the Board contrary to the claim of the workmen themselves.

- C Mr. K. Srinivasamurthy, learned counsel appearing for the Stevedores Association, urged that the claim by the Unions was for payment of bonus against the Board and therefore the Board has been properly made liable. Alternatively, the counsel urged that the claim by the Unions was for payment of bonus and the Tribunal was perfectly justified in considering which party was liable to meet this claim. It was in considering such a claim that the Tribunal had held the Board to be liable.

- D Having due regard to the nature of the claim and the basis on which the Tribunal itself has proceeded, we are satisfied that the claim for bonus has been made by the Unions specifically against the Stevedores Association and its members and, as such, the Tribunal was not justified in making the Board liable.

- E In the statement of claim filed by the Port Khalasis Union, in paragraph 2 it is stated that since the Stevedores are the registered employers of the Dock Labour Board, the bonus should be settled by the Stevedores Association only. In paragraph 14 the Union has stated that the plea of the Stevedores at Visakhapatnam that they are not concerned with the demand for bonus since the workers are registered with the Dock Labour Board is wrong, baseless and aimed at confusing the issue. After referring to the agreements arrived at between the Stevedores workmen and the Stevedores at Bombay, Calcutta, Cochin and Madras, the Union has stated in paragraph 15 that the Stevedores at Visakhapatnam Port are in no way different and they cannot disclaim their responsibilities for payment of bonus to the workmen.

- F Similarly, the Dock Workers Union in its statement, has referred to the fact that it has been agitating for many years for the introduction of payment of bonus as obtaining in Madras, Bombay, Calcutta and Cochin. The Union has further stated that the Ste-

vedores of Visakhapatnam are the employers registered in the Dock Labour Board as the real employers. It has further stated that the Stevedore companies are private employers who work for a consideration and derive large profits out of the employment and the operations of the Stevedore workers. The Stevedores have been resisting the claim of the workmen for payment of bonus and have been postponing consideration of the claim. The Union has further stated that payment of bonus can be made by the Board on behalf of the Stevedores and the Stevedoring business is very lucrative and profitable. The Union further prayed the Tribunal to summon the accounts of the Stevedores as the claim of the workmen regarding the financial position of the Stevedores will be fully found established.

The Stevedores Association no doubt has stated that the Dock workers are the workmen of the Board as all the ingredients of master and servant exist as between the Board and the dock workers. The Board has categorically stated in its written statement that the dock workers' claim against the Stevedores should not be allowed to be converted by the Stevedores into a claim against the Board. The Board has further specifically pleaded that no award could be passed against it contrary to the claim made by the dock workers themselves.

The various averments contained in the statements referred to above will clearly show that the claim for payment of bonus by the dock workers was essentially and in the main directed against the Stevedores Association and its members. Otherwise a reference by the Union to the prosperity and lucrative business conducted by the Stevedores and the large profits made by them will have no relevancy at all. No doubt here and there are certain averments regarding the Board, but so far as we could see, no specific claim for payment of bonus as against the Board has been made. On the other hand the claim is that the Board 'on behalf of the Stevedores in Visakhapatnam' can pay the bonus claimed by the Unions. The statement filed by the Stevedores Association also makes it clear that they understood the claim by the workmen as directed against them because it makes various averments to establish that the workmen have no claim as against them as the Stevedores Association or its members are not the employers of the workmen. The Board has specifically stated that a claim made against the Stevedores should not be converted into a claim made against the Board and no award can be passed contrary to the claim of the workmen themselves. That the Tribunal also understood that the claim of the workmen was against the Stevedores Association and its members is also evident from the state-

- A ment in para 4 of the award wherein the Tribunal observes as follows :

B “The claimants claim bonus for the three years mentioned in the issue, and they claim that it should be paid by the Stevedores. They claim that it should be paid on the same basis as adopted at the other ports viz., Calcutta, Bombay, Madras and Cochin.”

C That the claim for bonus in the four areas referred to above was being met by the respective Stevedores Associations—though on the basis of agreement—is not in dispute. The observation extracted earlier shows that the Tribunal has also proceeded on the basis that the claim by the workmen has to be adjudicated upon on the basis that it is the liability of the Stevedores. But, unfortunately, in the latter part of the award the Tribunal has mixed up the discussion regarding the liability of the Board or the Stevedores Association and has ultimately held that the Board is liable for payment of bonus. No doubt the basis for this conclusion is that the Board is the employer of the dock workers. The correctness of the view about the Board being the employer of the dock workers will be considered by us when we deal with the second contention of the learned Attorney General. To conclude on the first aspect the learned Attorney General is well founded in his contention that in view of the pleadings and the nature of the claim made by the workmen the award making the Board liable for payment of bonus is not correct.

E Normally, our decision accepting the first contention of the learned Attorney General is enough to dispose of the appeal. But, as the Tribunal has adjudicated upon the contention of the Board that it is not the employer of the dock workers and held against it, we shall proceed to consider the second contention of the learned Attorney General.

G In order to appreciate the relationship between the Board, the dock workers and the Stevedores Association, it is necessary to refer to certain provisions of the Act and the Scheme. But before we do so, we can broadly set out how the work of loading and unloading of ships in the port of Visakhapatnam is being done. The Board maintains a Dock Labour pool. The shipping companies have their agents at Visakhapatnam. The Stevedores enter into contracts with the ship-owners for the loading and unloading of cargo. The contracts contain clauses regarding the rate per ton of cargo payable to the Stevedores who handle the loading or the unloading of cargo. The shipping agents inform the Stevedores about the ship that is due to arrive as also the nature and quantity of the cargo to be loaded or unloaded. The Stevedores inform the Board about the quantity of cargo to be loaded or

unloaded and place an indent stating the approximate labour force that may be required for the said purpose. The Board supplies the labour force as asked for. Along with the labour force the Board deputes two supervisors who are called the loading mazdoors and the tindal. The Stevedores employ one Foreman for the entire operation of either loading or unloading. The duty of the Foreman appears to be to see that the cargo is not damaged and that it is properly handled by the labour force supplied by the Board. The Stevedores have to carry on the work with the labour force supplied by the Board and they cannot engage outside labour for the work. The Stevedores pay to the Board for the services of the workers supplied by it. Over and above the wages due to the labourers and paid to the Board the Stevedores have also to pay 105% of the actual wages to the Board known as 'General & Welfare Levy'. The Board utilises this additional amount for making certain payments to the workers. The Stevedores cannot take any disciplinary action against the workmen but, on the other hand, they have to complain to the Board. The Board takes the necessary disciplinary action against the workers concerned. It fixes the rates of wages to be paid by the Stevedores and collects the same from them and pays to the workers. A particular gang of workmen may work for one Stevedore on a particular day and on the next day they may work for another Stevedore. In fact it may even happen that one gang of workmen work for different Stevedores in the course of the same day.

We shall now refer to the salient features of the Act and the Scheme. The object of the Act is to provide for regulating the employment of dock workers. Section 2 defines *inter alia* the expressions 'Board', 'Dock worker', 'employer' and 'scheme'. The expression 'Dock worker' in brief means a person employed or to be employed in, or in the vicinity of, any port on work in connection with the various matters referred to in the definition. 'Employer', in relation to a dock worker, means the person by whom he is employed or to be employed as aforesaid. 'Scheme' has been defined to mean a scheme made under the Act. Section 3 provides for the scheme being made for the registration of dock workers and employers with a view to ensuring greater regularity of employment and for regulating the employment of dock workers, whether registered or not, in a port. A perusal of clauses (a) to (k) of sub-s. (2) of s. 3 shows that the scheme may take provision for various matters which include regulating the recruitment and entry into the scheme of dock workers, the registration of dock workers and employers, the employment of dock workers as well as the terms and conditions of employment, including rates of remuneration etc. The scheme may also provide for the manner in which, and the persons by whom, the cost of operating the scheme is to be defrayed as well as for constituting the autho-

- A** rity to be responsible for the administration of the scheme. Section 5 provides for the Central Government or the State Government, as the case may be, when making a scheme, constituting an Advisory Committee to advise upon such matters arising out of the administration of the Act or any scheme made under it as well as regarding its composition. The Advisory Committee shall
- B** include an equal number of members representing the Government, the dock workers and the employers of dock workers and shipping companies. Section 5A provides for the establishment of a Dock Labour Board by the Government for a port or group of ports, as well as its composition. Under s. 5B the Board is made responsible for administering the scheme for the port or
- C** group of ports for which it has been established and also the Board is to exercise such powers and perform such functions as may be conferred on it by the scheme.

- The Central Government has framed a scheme under sub-s. (1) of s. 4 of the Act for the Port of Vizagapatnam. Clause 2 states that the objects of the Scheme are to ensure greater regularity of
- D** employment for dock workers and to secure that an adequate number of dock workers is available for the efficient performance of dock work. The Scheme applies to the registered dock workers and registered employers. Clause 3 defines the various expressions. 'Daily worker' means a registered dock worker who is not a monthly worker. 'Monthly worker' means a registered dock
- E** worker who is engaged by a registered employer or a group of such employers on a monthly basis under a contract which requires for its termination at least 1 month's notice on either side. 'Dock employer' means a person by whom a dock worker is employed or is to be employed and also includes a group of dock employers formed under cl. 14(1)(d). 'Registered dock worker' means a
- F** dock worker whose name is for the time being entered in the employers' register. 'Reserve pool' means a pool of registered dock workers who are available for work and who are not for the time being in the employment of a registered employer or a group of dock employers as monthly workers. Clause 5 provides for the Central Government appointing an Administrative Body for the purpose of carrying on the day-to-day administration of the
- G** Scheme. There is no controversy that the Vizagapatnam Stevedores' Association, in this case, has been appointed as the Administrative Body.

- Under cl. 7 dealing with the various functions of the Board, the latter is authorised to take various measures for furthering the objects of the Scheme. The measures contemplated under sub-
- H** cls. (a) to (i) of cl. 7(1) include ensuring the adequate supply and the full and proper utilisation of the dock labour, regulating the recruitment and entry into and the discharge from the Scheme,

of dock workers, the allocation of registered dock workers in the reserve pool to registered employers, maintaining the employers' registers and dock register of dock workers, the levying and recovering from registered employers, contributions in respect of the expenses of the Scheme, administering the Dock Workers Welfare Fund and recovering from registered employers contribution for such fund, administering a Provident Fund and a Gratuity Fund for registered dock workers in the reserve pool. The various functions enumerated show that the Board's primary responsibility is the administration of the Scheme and to see that the work in the dock is properly done and the labour employed for such purpose is not exploited. Among the responsibilities and duties enumerated in cl. 8 are the fixing of the number of dock workers to be registered under various categories, considering registration of new employers, determination of the wages, allowance and other conditions of service and fixing the rate of contribution to be made by registered employers to the Dock Workers Welfare Fund. Under cl. 9(1)(k), the Chairman of the Board is given power to take disciplinary action against registered dock workers and employers in accordance with the provisions of the Scheme. Under cl. 11, the Administrative Body has been made responsible for the administration of the Scheme and in particular of the various matters mentioned in sub-cl. (a) to (k). Sub-cl. (e) thereof provides for the Administrative Body allocating registered dock workers in the reserve pool who are available for work to registered employers and for this purpose, under cl. (i) thereof the Administrative Body is deemed to act as an agent for the employer. Sub-cl. (i) and (ii) of cl. (f) cast the duty on the Administrative Body of collecting the levy, contribution to the Dock Workers Welfare Fund or any other contribution from the employers as may be prescribed under the Scheme, as well as the collection of the registered dock workers' contribution to the Provident Fund, Insurance Fund or any other fund which may be constituted under the Scheme. Sub-cl. (iii) makes the Administrative Body responsible for payment as agent of the registered employer to each daily worker of all earnings properly due to the dock worker from the employer and the payment to such workers of all monies payable by the Board to those workers in accordance with the Scheme. Two points emerge from cl. 11 (*viz.*) when allocating registered dock workers in the reserve pool for work to registered employers, the Administrative Body is deemed to act as agent for the employer; and the payment to each daily worker of all earnings properly due to him from the employer is made by the Administrative Body as agent of the registered employer.

Clause 14 deals with the maintenance of Employers' Register and the Workers' Registers. Clause 18 deals with promotion and

- A** transfer of workers. Sub-cl. (3) thereof deals with the transfer of a monthly worker to the reserve pool at the request of the employer or the worker, but such transfer is made subject to the fulfilment of any contract subsisting between the monthly worker and his employer. Sub-cl. (4) provides for considering the request for transfer to a reserve pool by a monthly worker whose services have been terminated by his employer for an act of indiscipline or misconduct.
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Clauses 30, 31 and 33 deal with the payment of guaranteed minimum wages to a worker in the reserve pool register, payment of attendance allowance and disappointment money to such worker, respectively. Clause 36 deals with the obligations of registered dock workers and cl. (2) thereof states that a registered worker in the reserve pool who is available for work shall be deemed to be in the employment of the Board. We have already seen that under cl. 11(e), when allocating registered dock workers in the reserve pool for work to registered employers, the Administrative Body shall be deemed to act as an agent for the employer.

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- D** Under sub-cl. (5) of cl. 36 a registered dock worker when allocated for employment under a registered employer is bound to carry out his duties in accordance with the directions of such registered employer or his authorised representative or supervisor and the rules of the port or place where he is working. Clause 37 enumerates the obligations of registered employers. They are prohibited from employing a worker other than a dock worker who has been allocated to him by the Administrative Body under cl. 11(e). The registered employers are also bound to pay the Administrative Body the levy under cl. 51(1) as well as the gross wages due to a daily worker. They are also bound to make contributions to the Dock Workers Welfare Fund under cl. 53.
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- F** Clause 38 deals with restriction on employment. Registered employers are prohibited from engaging workers on dock work unless they are registered dock workers. It also prohibits persons other than registered employers employing any worker on dock work. Under cl. 40 it is provided that it shall be an implied condition of contract between a registered worker (whether in the reserve pool or on the monthly register) and a registered employer that the rates of wages, allowances and overtime, hours of work shall be such as may be prescribed by the Board for each category of workers and the fixation of wage periods etc., shall be in accordance with the provisions of the Payment of Wages Act, 1936. Clause 44 deals with disciplinary procedure to be followed in taking action against a registered employer and a registered dock worker. Clause 46 deals with termination of employment. Clause 51 provides for the cost of operating the Scheme being defrayed by payments made by registered employers to the Board.
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It provides for the registered employer paying to the Board such amount by way of levy in respect of the Reserve Pool Workers when paying the gross amount of wages due from them under cl. 37(5)(i). Clauses 52 and 53 provide for Provident Fund and Gratuity and Dock Workers Welfare Fund respectively.

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We have rather elaborately gone into the various matters dealt with under the Act and the Scheme as that will give a true picture of the nature of the functions and duties that the Board discharges in respect of the work carried on in the port. From the various provisions of the Act and the Scheme referred to above, it is evident that the Board is a statutory body charged with the duty of administering the Scheme, the object of which is to ensure greater regularity of employment for dock workers and to secure that an adequate number of dock workers are available for the efficient performance of dock work. The Board is an autonomous body, competent to determine and prescribe the wages, allowances and other conditions of service of the Dock workers. The purport of the Scheme is that the entire body of workers should be under the control and supervision of the Board. The registered employers are allocated monthly workers by the Administrative Body and the Administrative Body supplies whenever necessary, the labour force to the Stevedores from the Reserve Pool. The workmen who are allotted to the registered employers are to do the work under the control and supervision of the registered employers and to act under their directions. The registered employers pay the wages due to the workers to the Administrative Body and the latter, in turn, as agent of the registered employers, pay them over to the concerned workmen.

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All these circumstances, in our opinion, *prima facie* establish that the Board cannot be considered to be the employer of the Dock Labour workmen. In fact the various provisions referred to in the Scheme, clearly show that the registered employer to whom the labour force is allotted by the Board is the employer whose work of loading or unloading of ships is done by the dock workers allotted to them.

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Mr. Srinivasamurthy, learned counsel for the respondents, referred us to certain circumstances to support his contention that the relationship of employer-employee exists between the Board and the dock workers. Some of those circumstances are recruitment and registration of the dock labour force, fixation of wages and dearness allowance, payment of workmen's compensation, taking of disciplinary action and prohibition against employment of workmen who are not registered with the Board. These circumstances, in our opinion, do not establish a relationship of employer and employee between the Board and the dock labour.

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- A The functions referred to above are discharged by the Board under the Scheme, the object of which, as mentioned earlier, is to ensure greater regularity of employment for dock workers and to secure that an adequate number of dock workers is available for the efficient performance of dock work. It is with this purpose in view that the Scheme has provided for various matters and
- B considerable duties and responsibilities are cast on the Board in this regard. But we have also already pointed out that under sub-cl. (5) of cl. 36 a registered dock worker when allotted for employment under a registered employer, shall carry out his duties in accordance with the directions of such registered employer and cl. 11(e) also makes it clear that in the matter of allocation of
- C registered dock workers in the Reserve Pool to registered employers, the Administrative Body shall be deemed to act as agent for the employer. Though the contributions for the Dock Workers' Welfare Fund as well as the wages and other earnings due to a worker are paid by the registered employer to the Board at the rates fixed by it, the latter passes on the same to the dock worker concerned, as agent of the registered employer, under cl. 11(f)(iii).
- D Further, the definition of the expression 'dock worker' and 'employer' under s. 2(b) and (c) respectively of the Act and the definition of 'dock employer' and 'monthly worker' in cls. 3(g) and (k) respectively of the Scheme and the obligation cast under s. 36(5) of the Scheme on a registered dock worker when allocated for employment under a registered employer to carry out his
- E duties in accordance with the directions of the latter and the provisions contained in cl. 37(5) of the Scheme regarding payment by a registered employer to the Administrative Body of the gross wages due to the dock worker and the implied condition of contract between the registered dock worker and the registered employer under cl. 40, read along with the provisions regarding the
- F functions of the Board, in our view, clearly lead to the conclusion that the Board cannot be considered to be the employer of the dock workmen and there is no relationship of master and servant between the two.

- G Mr. Srinivasamurthy, learned counsel, referred us to the decision of this Court in *Kirloskar Oil Engines v. Hanmant Laxman Bibawe*⁽¹⁾ in which, according to him, an inference of relationship of master and servant was not drawn, though for all practical purposes a person was working under the directions of another. The question that arose for consideration in that case was whether a watchman deputed to work by the Police Department under a private individual on the basis of a Scheme could be considered
- H to be the employee of the latter, after considering the salient features of the scheme framed by the Police Department and after

(1) [1963] 3. S.C.R. 514.

observing that a decision on the question as to the relationship of employer-employee has to be determined in the light of relevant facts and circumstances and that it would not be expedient to lay down any particular test as decisive in the matter, this Court held that a relationship of master and servant, between the watchman and the private employer, did not exist, notwithstanding the fact that the private employer was entitled to issue orders to the watchman deputed to work under him. The scheme dealt with in this decision was entirely different from the Scheme before us.

The learned counsel then referred us to a decision of a Single Judge of the Kerala High Court in *C. V. A. Hydross & Son v. Joseph Sanjon*⁽¹⁾. That decision had to consider the question regarding payment of retrenchment compensation to certain workmen who had registered themselves as workmen under the Dock Labour Board. They had filed a claim against the permanent Stevedores under whom they were working originally. The learned Judge, after a consideration of the Scheme framed for the Cochin Port, which is substantially similar to the one before us, held that the Board was the employer of the workmen. We are not inclined to agree with this decision.

We may also refer to the decision of the Calcutta High Court in *A. C. Roy & Co. Ltd. v. Taslim*⁽²⁾. There no doubt the question arose in respect of a claim under the Workmen's Compensation Act, 1923. The learned Chief Justice, after a brief analysis of the Act and the Scheme framed for the Calcutta Port, held that when the Administrative Body of the Board allocated a worker in the Reserve Pool to the registered employer, then for the time being and for the purpose of the work concerned, that worker becomes an employee under the registered employer; and in that decision the Court came to the conclusion that the particular worker concerned was at the material time under the employ of the Stevedore. When that is the position with regard to a workman in the Reserve Pool, it stands to reason that the monthly worker who is engaged by a registered employer under a contract on a monthly basis is an employee of such registered employer.

The matter can also be considered from another point of view, viz., can it be stated that the Board is carrying on an industry, so as to attract the provisions of the Industrial Disputes Act? We have already referred to the various circumstances which will show that there is no employment as such of the dock worker by the Board. As observed by this Court in *Gymkhana Club Union v. Management*⁽³⁾.

(1) [1967] 1 L.L.J. 509.

(2) 71 C.W.N. 531.

(3) 1968] 1 S.C.R. 742, 752.

- A "What matters is not the nexus between the employee and the product of the employer's efforts but the nature of the employer's occupation. If his work cannot be described as an industry his workmen are not industrial workmen and the disputes arising between them are not industrial disputes. The cardinal test is thus to find out whether there is an industry according to the denotation of the word in the first part. The second part will then show what will be included from the angle of employees."
- B

Dealing with the definition of 'industry', this Court further observed :

- C "The definition of 'industry' is in two parts. In its first part it means any business, trade, undertaking, manufacture or calling of employers. This part of the definition determines an industry by reference to occupation of employers in respect of certain activities. These activities are specified by five words and they determine what an industry is and what the cognate expression 'industrial' is intended to convey. This is the denotation of the term or what the word denotes. We shall presently discuss what the words 'business, trade, undertaking, manufacture or calling' comprehend. The second part views the matter from the angle of employees and is designed to include something more in what the term primarily denotes. By the second part of the definition any calling, service, employment, handicraft or industrial occupation or avocation of workmen is included in the concept of industry. This part gives the extended connotation. If the activity can be described as an industry with reference to the occupation of the employers, the ambit of the industry, under the force of the second part, takes in the different kinds of activity of the employees mentioned in the second part. But the second part standing alone cannot define 'industry'. An industry is not to be found in every case of employment or service."
- D
- E
- F
- G

Dealing with the expression 'industrial dispute' in the Industrial Disputes Act, this Court further proceeds to state, in the above decision, at p. 757 :

- H "... the words are 'industrial dispute' and not 'trade dispute'. Trade is only one aspect of industrial activity; business and manufacture are two others. The word also is not industry in the abstract which means diligence or assiduity in any task or effort but a branch

of productive labour. This requires cooperation in some form between employers and workmen and the result is directly the product of this association but not necessarily commercial."

A

and wound up the discussion, at p. 758, thus :

"Industry is the nexus between employers and employees and it is this nexus which brings two distinct bodies together to produce a result."

B

Applying the above principles to the case on hand, in our opinion it is clear that it cannot be stated that the Board, functioning under the Act and the Scheme, carries on any industry so as to attract the provisions of the Industrial Disputes Act. As a claim for any type of bonus can be met only from the actual employer in respect of any industry and as we have held that the Board is neither the employer nor carries on any industry, it follows that the Industrial Tribunal was wrong in directing the Board to pay bonus for the years in question. In this view the order of the Industrial Tribunal, dated May 24, 1968 has to be set aside. But, as the claim of the workmen against the Stevedores Association and its members who are parties to the Reference has to be considered and adjudicated by the Industrial Tribunal, I.D. No. 10 of 1967 has to be remanded to the Industrial Tribunal concerned for disposal according to law. The Tribunal will be at liberty to call upon the parties concerned to file supplementary statements and permit them to adduce further evidence, oral and documentary, which may be considered necessary; but it is made clear that the Dock Labour Board, the appellant, will be completely out of the picture in the remand proceedings.

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In the result, the order of the Industrial Tribunal, Andhra Pradesh, Hyderabad, dated May 24, 1968 is set aside, and this appeal allowed. I.D. No. 10 is remanded to the said Tribunal to be dealt with and disposed of, according to law and the directions contained in this judgment. Parties will bear their own costs of this appeal.

F

Y.P.

Appeal allowed.