



ORIGINAL RESEARCH PAPER

Law

UNVEILING THE SEAS: ADMIRALTY LAWS AND CLAIMING WAGES FOR SEAFARERS UNDER THE INDIAN MERCHANT SHIPPING ACT 1958

KEY WORDS:

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Ensuring timely and fair wages for seafarers is paramount. These seafarers work tirelessly, often in challenging conditions, to keep global trade flowing smoothly. Prioritizing their wages not only upholds their rights but also fosters stability and safety at sea. Prompt payment reflects respect for their vital role in maritime operations and helps retain skilled professionals in the industry. The rules relating to the procedure to recover wages as under- Under Section 16:

Application of Code of Civil Procedure- 1908,

- (1) The rules laid out in the Code of Civil Procedure, 1908, will be followed in all proceedings before the court unless they clash with or go against the rules established by this Act or the regulations created under it.
- (2) The admiralty court is equipped with the same powers as a civil court. It can handle applications and make various orders, including interim measures, to safeguard the interests of the parties involved in a case. This ensures a fair and effective legal process in admiralty proceedings.

In case disputes refer to Arbitrators: Under section 18 the admiralty court which is seized of the matters has the power notwithstanding anything contained in the provisions of any other law, to refer, with the written consent of the parties the entire dispute before it or such questions of law or fact at issue which the court may consider necessary, to arbitration and dispose of the case in conformity with the award. The court however is empowered to modify the award for reasons to be recorded in writing.

Original Jurisdiction For Recovery Of Wages Of Seafarers:
The admiralty jurisdiction over suits for the recovery of wages is partly original and partly given by statutes. It was a matter of frequent dispute between the admiralty and common law courts, but the admiralty court was untimely allowed to entertain such suits without reference to the place where the contract was made. The reason for this indulgence was either the convenience and advantage of joining all the parties' claiming wages in one suit, or the power of enforcing maritime liens arising out of claims for wages, both of which could only be done by the admiralty court.

Statutory Jurisdiction For Recovery Of Wages Of Seafarers:
It has now, however, become practically immaterial to consider the restrictions that formerly limited the jurisdiction of the Admiralty Court over claims for wages; the rights of the master and seamen to wages are now regulated, and the jurisdiction of the Admiralty Court over claims for wages having been greatly extended, by the Merchant Shipping Act, 1854 (for which the Merchant Shipping Act, 1894, is now substituted), and the Admiralty Court Act, 1861.

By the 10th section of the last-mentioned Act, jurisdiction is given to the Admiralty Court "over any claim by a seaman of any ship for wages earned by him on board the ship, whether the same be due under a special contract or otherwise, and also over any claim by the master of any ship for wages earned by him on board the ship, and for disbursements made by him on account of the ship." The effect of this section was to extend and not to curtail the jurisdiction of the Court of Admiralty, and cases in which that Court previously to the Act of 1861 exercised jurisdiction are still, though not within the

words of the section, within the jurisdiction of the Admiralty Division.

In the case of the Ruby No. 2 the word "seaman" when used in the Admiralty Court Act, of 1861, thus appears to include every person other than the master who may have a claim for wages. But a ship's husband acting as such, and employed as such is not a person who either comes within the 10th section of that Act or is entitled to maintain an admiralty action of wages.

The master of a foreign ship has a right to proceed for his wages in the Courts of Admiralty jurisdiction here, although, by the law of his flag, he may have no lien upon the ship or freight for his wages, the question is one of remedy, and therefore governed by the *lex fori*. But any question as to the contract must be determined either by the law of the place where the contract is made or by the law of the flag; but as the contract is usually made within the jurisdiction of the country to which the ship belongs, the question must in most case be decided by the municipal law of that country.

Section 178 of the Merchant Shipping Act, 1958 provides the meaning of serving seamen-
A seaman shall, for these provisions, be deemed to be a serving seaman during any period commencing on the date of the agreement with the crew and ending thirty days after the date on which the seaman is finally discharged from such agreement.

Nature Of The Claim
The claim mentioned in the 10th section of the Admiralty Court Act, of 1861, is a claim for wages earned on board any ship. Ship, for the Act, includes any description of a vessel used in navigation not propelled by oars.

Having regards to the phrase 'wages earned on board any ship' is interpreted in the Chieftain case, where it was held that wages were earned by the master on board his ship, although during his service he did not sleep on board the ship, and many of his duties were performed on shore.

The Case of the Blessing
In the case of The Great Eastern Dr. Lushington held that the Admiralty Court had jurisdiction to entertain a suit by a seaman, engaged under the ordinary seaman's contract, for damages for wrongful discharge; and in the case of The Blessing Sir Robert Phillimore arrived at a similar conclusion concerning the claim of a master for wrongful discharge arising out of an agreement which certainly contained special and unusual terms. But in the judgment in the case of The Blessing, no distinction is drawn between the inherent jurisdictions of the Court over cases arising out of the ordinary mariner's contract of service and the statutory jurisdiction conferred in the case of master's wages and seamen's wages earned under a special contract. Although it is obvious that it is highly convenient that the Admiralty Division should have jurisdiction to decide, in the same proceeding, all questions relating to the contract of service, whether relating to masters or seamen, and whether arising under contracts usual or unusual in their form, yet it is submitted that The Blessing cannot be regarded as a satisfactory authority in favour of the existence of a right in

rem to enforce a claim for damages for wrongful dismissal arising out of a special contract and that the word "wage earned on board any ship" cannot be reasonably construed to extend to a claim for wrongful dismissal.

Where Seaman Left Behind Aboard Or Shipwrecked

By the 193rd section, where any seaman or apprentice, whether a British subject or not, by having been discharged or left behind abroad, or shipwrecked from any British ship or King's ship, or if a subject of His Majesty engaged by any person to serve in a ship belonging to the government, or a subject, or citizen of a foreign country, is in distress in a place abroad, the wages (if any) due to such seaman, and all expenses incurred for his maintenance, necessary clothing, conveyance home, or in case of death for his burial, or otherwise by the Act, are a charge upon the ship, whether British or foreign and may be recovered in the same Court and manner as wages.

"Empowering Seafarers: Evolution of Masters' Wage Rights in Admiralty Law"

In the past, shipmasters didn't have a claim on the ship or its earnings for their wages. However, changes came with the 7 & 8 Vict.c.112, s.16 (now repealed), granting masters similar remedies as seamen in case ship owners faced bankruptcy or insolvency. This law, however, had limitations, requiring the Court to consider the owner's advances against the claim for wages. Further developments occurred with the Merchant Shipping Act, of 1854, s.191 (also now repealed), ensuring masters had rights, liens, and remedies akin to non-master seamen for wage recovery. Notably, this Act empowered the Court to settle all financial matters between the master and owner in cases of set-offs or counterclaims related to wage claims.

Under Section 5 of the Admiralty (Jurisdiction and Maritime Claims) Act, 2017, the Jurisdiction of courts to entertain, try, and dispose of the issues related to wages of seafarers as under -

- (1) The court has the authority to:
 - (a) Address and settle questions and claims outlined in sub-section (2) of the Admiralty Act;
 - (b) Handle proceedings specified in Section 7 of the Act;
 - (c) Exercise any admiralty jurisdiction it possessed under the Admiralty Court Act, 1861, the Colonial Courts of Admiralty Act, 1890, the Colonial Courts of Admiralty (India) Act, 1891, or otherwise, immediately before this Act's commencement;
 - (d) Manage any jurisdiction related to ships as directed by rules established by the High Court after this Act's commencement.
- (2) Regarding clause (a) of sub-section (1), the court may decide on questions or claims including, but not limited to: -
 - Clause (c) Regardless of the provisions in sections 150 and 151 of the Merchant Shipping Act, 1958, the Admiralty court can address any wage claims by a ship's master or crew member, encompassing sums allocated from wages or deemed recoverable as wages.

In the case of *Steel Industries Kerala Ltd. v. Capt. S.M. Rabello*, no provision in the Act equates a seaman with a master of a ship regarding the terms and conditions or emoluments or mode of discharge. There is no provision under which a master of a ship can get a discharged certificate. But under section 143 (compensation to seamen for premature discharge) read with section 148 (remedies of master for wages, disbursements, etc.), a master is entitled to three months' wages in case of discharge or termination in the same manner as a seaman is entitled to the three months' wages.

Mode Of Recovering Wages Of Seaman Or Apprentice:

For recovery of wages of a seaman or apprentice or a person duly authorized, the application can be filled under section 145 of the Merchant Shipping Act 1958. Section 145 of the M.S. Act 1958 has similar provisions under section 164 of the

English Merchant Shipping Act 1894.

Section 148 of the Merchant Shipping Act 1958 has similar provisions in section 167 of the English Act, which lays down the master's rights to wages.

The notice must be given to the consul in the action of wages:

By Order V., rule 16 (38) of the Rules of Court now in force, it is provided that in an action of wages in rem against a foreign vessel the affidavit to lead the warrant shall state that notice of the commencement of the action has been given to the consul of the state to which the vessel belongs, if there be one resident in London, and a copy of the notice shall be annexed to the affidavit. It is further provided by Order V., rule 17 (39) of the same Rules, that the Court or a judge may in any case, if he or they think fit, waive the service of the notice. Where the foreign representative does not interfere, the court will consider that it has his indirect sanction, and the cause is allowed to proceed as a matter of course.

The lex fori determines the lien on wages:

The master of a foreign ship has a right to proceed for his wages in the Courts of Admiralty jurisdiction here, although, by the law of his flag, he may have no lien upon the ship or freight for his wages, the question is one of remedy, and therefore governed by the lex fori. But any question as to the contract must be determined either by the law of the place where the contract is made or by the law of the flag; but as the contract is usually made within the jurisdiction of the country to which the ship belongs, the question must in most case be decided by the municipal law of that counter.

Jurisdiction of the Court of the Cinque Ports:

The Court of Admiralty of the Cinque Ports appears to have the inherent jurisdiction of the Court of Admiralty in disputes as to seamen's wages arising within the jurisdiction of the Cinque Ports.

The Cinque Port defined means a group of seaports of southeast England (originally Hastings, Romney, Hythe, Dover, and Sandwich) that formed a maritime and defensive association in the 11th century. They reached the height of their significance in the Anglo-French conflicts of the 14th century.

The maritime lien for wages of seafarers:

The seaman has, by the law maritime, a lien on the ship and freight for his wages, and now by statute, a master has a lien on her and her freight for his wages and disbursements. The lien exists in the case of a master, innocent himself, who has been appointed by a person who has fraudulently obtained possession of the ship, the lien depends upon the services rendered, and it covers the whole ship, one part as well as another, and no one part more than another. This lien, being a maritime lien, is not destroyed by the hypothecation or mortgage of the ship, or by her sale to a bonafide purchaser without notice, and can be enforced against the ship on account of which the disbursements or liabilities were properly made or incurred, though such disbursements or liabilities were made or incurred on the credit of persons in the possession of the ship, with the consent of the registered owners, and not on the credit of the registered owners themselves.

CONCLUSION:

Having said that the vast expanse of maritime regulations, this exploration into Admiralty Laws, and the pursuit of rightful wages for seafarers under the Indian Merchant Shipping Act of 1958 and Admiralty Act 2017 has illuminated critical facets of the legal framework governing our oceans. As it concludes this journey through the complexities of admiralty jurisdiction, it becomes evident that the legal landscape has evolved significantly to address the rights of those navigating

our seas.

The Indian Merchant Shipping Act of 1958, with its historical underpinnings and subsequent amendments, serves as a beacon guiding the adjudication of claims for seafarers' wages. The transformation from a time when masters lacked liens for wages to the contemporary provisions empowering them reflects a dynamic legal response to the evolving needs of the maritime industry.

This exploration has underscored the importance of understanding the intricate interplay between admiralty laws and the rights of seafarers. Navigating through repealed statutes to the present, it is clear that the law has endeavored to strike a balance, ensuring fair treatment for seafarers while acknowledging the complexities of shipowner-master relationships.

As it reveals the seas, it is crucial to appreciate the ongoing dialogue between legislative amendments and the practical implications for those who brave the waters. The narrative of Admiralty Laws and Wage Claims is not just a legal discourse but a testament to the continuous efforts to harmonize maritime operations with the rights and welfare of those integral to the lifeblood of our global trade routes—seafarers. Hence in the opinion of the author of this article, all seafarers have priority rights to claim wages from the shipowners.

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