
(2005) 04 AP CK 0019
In the Andhra Pradesh High Court
Case No : WA No. 1089 of 2004

Andhra Bank and Another	Vs	APPELLANT
P. Balakrishna (died) by LRs.		RESPONDENT

Date of Decision : 26-04-2005

Acts Referred:

Banking Companies Act, 1949 — Section 5
Industrial Disputes (Banking Companies) Decision Act, 1955 — Section 3, 4
Industrial Disputes Act, 1947 — Section 10, 10(1), 2, 32(2), 7

Citation : (2005) 3 ALD 686 : (2005) 3 ALT 771

Hon'ble Judges : J. Chelameswar, J;Gopala Krishna Tamada, J;B. Seshasayana Reddy, J

Bench : Full Bench

Advocate : Nuty Ram Mohan Rao, for the Appellant; G. Ramachandra Rao, for the Respondent

Final Decision : Allowed

Judgement

B. Seshasayana Reddy, J.—This writ appeal is directed against the order dated 16.12.2003 passed in WP No. 10704 of 1994 by the learned Single Judge of this Court, whereunder the writ petitioner is declared that he is entitled for the relief of encashment of leave accrued for the period from 1.10.1982 to 17.6.1986 on his attaining the age of superannuation as per law.

2. The facts of the case may be shortly stated, thus:

Writ petitioner-P. Balakrishna was working as a Cashier, in the year 1978 at the main office of the appellants-Andhra Bank, Sultan Bazar, Hyderabad. Departmental proceedings were initiated against him by the appellants-Bank for shortage of cash of Rs. 11,000/- on 9.5.1978. The charges having been established in the departmental enquiry, an order of dismissal from service was passed on 1.10.1982. Thereafter, an application was made by the appellants-Bank for according approval u/s 32(2)(b) of the Industrial Disputes Act before the Industrial Tribunal (Central), at Hyderabad, since I.D. No. 28 of 1982 was

pending between the appellants-Bank and the employees of the appellants-Bank. The Tribunal did not approve the action of the appellants-Bank by an order-dated 18.2.1986. Eventually, the petitioner came to be reinstated into service on 17.6.1986. He made representations to the appellants-Bank for encashment of the leave accrued to its credit during the period from 1.10.1982 to 17.6.1986. The appellants-Bank rejected the representations of the petitioner under proceedings LR. No. 66/20/ L/304, dated 30.10.1993. Untiringly the petitioner went on making representations to the appellants-Bank for the self same relief. As his representations did not yield any fruitful results, he filed the writ petition seeking the following relief:

"For the reasons stated in the accompanying affidavit the petitioner herein prays that this Hon''ble Court may be pleased to issue a Writ, Order or Directions calling for the records relating to the Proceedings Letter No. 666/20/L/304, dated 30.10.1993 with a consequential direction to the respondents to pay the interest to the petitioner on the delayed payment of arrears of salary and also credit the leave due for the period from 1st October, 1982 to 17th June, 1986 to the account of the petitioner, and pass such other order or orders as this Hon''ble Court deems fit in the circumstances of the case."

3. The petitioner contended before the learned Single Judge that consequent on disapproval of the order of dismissal by the Industrial Tribunal, the relationship between the petitioner and the appellants-Bank relegated to the date of order of dismissal and as such he is deemed to be in continuous service from the date of order of dismissal to the date of reinstatement with all consequential benefits and in which case he would be entitled to the benefit of privilege leave. Once he is entitled to the privilege leave, there should not be any impediment in encashing the same as per the rules in vogue. Whereas the appellants-Bank contended before the learned Single Judge that the petitioner was not entitled to privilege leave during the period from the date of his dismissal to the date of his reinstatement as the said period would not be treated as actual service which an employee was required to do to become eligible for privilege leave. The learned Single Judge, on hearing Counsel for the parties and on considering the material brought on record, recorded a finding that the petitioner is entitled to the relief of encashment of leave accrued from the period from 1.10.1982 to 17.6.1986 and thereby allowed the writ petition by an order dated 16-12-2003. Hence, the writ appeal by the appellants-Bank. Pending the appeal, the sole respondent/writ petitioner died, and R2 to R7 were brought on record as his LRs as per orders in WAMP No. 2245/2004, dated 13.9.2004.

4. This appeal came up before a Division Bench comprising two of us (J. Chelameswar and B. Seshasayana Reddy, JJ) on 13.9.2004. The Division Bench after noticing a Division Bench judgment of this Court in Andhra Scientific Co. v. Labour Court 1971 Lab.IC 513 (Vol.4 & CN 119) and the judgment of the Supreme Court in Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd. Vs. Ram Gopal Sharma and Others, , deemed it appropriate that the issue be decided by a

Bench of appropriate strength by an order dated 13-9-2004. Thus, the appeal before us.

5. The core question that arises for determination is whether an employee is entitled to the benefit of leave encashment for the period for which he was kept out of employment consequent on initiation of disciplinary proceedings which ultimately ended in favour of the employee and he came to be reinstated into service?

6. Learned Counsel for the appellants-Bank submits that an employee to be eligible for privilege leave is not automatic and the same has to be earned by an employee by actually serving the employer and then only he is entitled to the benefit of the conversion of leave into cash. He further submits that the learned Single Judge has failed to appreciate the fact that the Supreme Court did not deal with the aspect of leave in its judgment rendered in Jaipur Zilla Sahakari Vikas Band Ltd. case (supra) and erroneously held that the respondent-petitioner is entitled to the leave for the period he was out of employment. In support of his submissions he placed reliance on a Division Bench judgment of this Court in Andhra Scientific Co. cited (supra) and Awards (popularly known as the Sastry Award and the Desai Award) in the resolution of industrial disputes between certain banking companies and their workmen. In the Andhra Scientific Co., cited (supra), it has been held as follows:

"As regards the claim for bonus and conversion of leave of the employee into cash, we must say that the claim is untenable. The bonus is excluded from the definition of "Wages" in Section 2(rr) of the Act So, there is a statutory bar to claim bonus and what was awarded to the employee was back wages. The employee is also not entitled under the award to get the benefit of conversion of leave into cash, as what was preserved by reinstatement was continuity of service. He would not be entitled to leave unless he had actually worked during the period. Leave has to be earned to entitle him to the benefit of conversion of leave into cash. Since he had not earned any leave, his claim for conversion of leave into cash has to be negated."

7. Per contra, learned Counsel appearing for the respondents submits that rejection of approval of the order of dismissal by the Industrial Tribunal u/s 32(2) (b) of Industrial Disputes Act, 1947 dates back to the date of order of dismissal and restores the position of the employee to the date of the order of dismissal entitling him all the consequential benefits such as continuity of service and other attendant benefits including the privilege leave. To buttress his submissions reliance has been placed on the Division Bench decision of this Court in WA No. 1125 of 2002, Management of APSRTC rep. by its Vice-Chairman v. T. Govinda Reddy and the Jaipur Zilla Sahakari Vikas Band Ltd. cited (supra) decision of Supreme Court. In Vice-Chairman v. T. Govinda Reddy's case (supra), it has been held that there is absolutely no justification whatsoever on the part of the Corporation not to treat the period of absence as qualified service for the purpose of payment of gratuity and encashment of earned leave. When the

Corporation itself for all purposes treated the period from 5.11.1971 to 22.8.2003 as if the employee was in active service. The dispute in Vice-Chairman v. T. Govinda Reddy's case was between APSRTC and its employee. APSRTC in the cited case did not plead of any rule in the service condition under which workmen has to render actual service to earn privilege leave. Therefore, the cited decision has no application to the facts of the case on hand.

8. Before dwelling on the rival contentions of the parties, we deem it appropriate to refer to the brief history of the Award dealing with the conditions of the employees in Banks. During the Second World War there was rise in the prices of commodities, which caused considerable hardship to persons having fixed income. Efforts were made by various organizations to improve the living conditions of workmen. Bank being an all India industry efforts were made by the workmen employed in Banks to unite together for the purpose of improving their living conditions. In the year 1946, The All India Bank Employees Association which is a federation of various Unions of workmen working in various establishments of Banks throughout the country was formed with a view to tackle the problems of labour in the Banking industry on all India basis. There were awards given by various Tribunals in connection with the labour disputes that arise at diverse places in India between some of the Banks and their workmen. Banks having branches at numerous places in India became subject to provisions of different Awards at each places. The Government realized the necessity of dealing with the disputes in banking industry on an All India basis. The Industrial Disputes (Banking and Insurance Companies) Ordinance (No. VI of 1949) was promulgated on 30th April, 1949, whereunder a banking company was defined to mean a banking company as defined in Section 5 of the Banking Companies Act, 1949, having branches or other establishments in more than one Province, and as including the Imperial Bank of India. By Clause 4 of that Ordinance it was provided that notwithstanding anything contained in any other law, it shall not be competent for a Provincial Government or any officer or authority subordinate to such Government to refer an industrial dispute concerning any banking or insurance company, or any matter relating to such dispute, to any Tribunal or other authority for adjudication, inquiry or settlement. The Central Government acquired the power to refer any dispute pending before a Provincial Tribunal to an Industrial Tribunal constituted u/s 10 of the Industrial Disputes Act for adjudication. The aforesaid Ordinance was thereafter replaced by the Industrial Disputes (Banking and Insurance Companies) Act, (LIV of 1949).

9. The Central Government constituted an Industrial Tribunal consisting of Mr. K.C. Sen, a retired Judge of the High Court of Judicature at Bombay, as Chairman and two other retired High Court Judges as members for the adjudication of industrial disputes in banking companies. On the same day, the Central Government in exercise of the powers conferred by Clause (c) of Sub-section (1) of Section 10 of the Industrial Disputes Act, 1947, as it then stood, referred the disputes between the numerous banking companies and their employees for adjudication by the said Tribunal. After considerable labour and industry, the

aforesaid Tribunal gave its award on 31-7-1950, which is popularly referred as Sen Award. Some of the banks which were parties to the said disputes being dissatisfied with the award applied to the Supreme Court for special leave to appeal against the said award as it had been specially exempted from the jurisdiction of the Labour Appellate Tribunal constituted under the Industrial Disputes (Appellate Tribunal) Act (XLVIII of 1950). The said leave was granted by the Supreme Court. Pending the hearing of the appeal by the Supreme Court it stayed the operation of the award with regard to:

- (1) its applicability to certain persons who were stated to be officers and not workmen;
- (2) the directions contained therein regarding bonus and
- (3) the directions contained therein regarding provident fund.

On 9-4-1951, the Supreme Court declared the Sen Award as being void and inoperative for technical reasons relating to the constitution of the Tribunal. The Supreme Court did not deal with any question relating to the merits of any matter dealt with in the award. As a result of the decision of the Supreme Court disputes which existed in the banking industry remained unresolved. Soon thereafter there were strikes in some banks consequent on certain actions taken by some of the banks. The Central Government felt obliged to pass the Industrial Disputes (Amendment and Temporary Provisions) Act (XL of 1951), whereunder, among other things, the scales of pay and rate of allowance according to which certain workmen had been paid immediately before 1-4-1951, were temporarily frozen pending any settlement or an award by a new Tribunal

10. The Government of India by a notification dated 17-7-1951 constituted an Industrial Tribunal of three persons with Mr. H.V. Divatia, a retired Judge of the High Court of Judicature at Bombay as Chairman. The Chairman and the other two members of the Tribunal resigned soon after their appointment.

11. By a notification dated 5-1-1952, in exercise of the powers conferred by Section 7 of the Industrial Disputes Act, 1947 (XIV of 1947), the Central Government constituted an Industrial Tribunal consisting of Shri S. Panchapagesa Sastry a retired Judge of the High Court of Judicature at Madras, as Chairman and Shri M.L. Tappan and Shri V.L. D "Souza as members. The said Tribunal is popularly known as Sastry Tribunal On the same day, in exercise of the powers conferred by Section 10 of the Industrial Disputes Act, 1947, the Central Government referred to the Sastry Tribunal for adjudication of disputes relating to numerous banks including banks situated in the then existing Part "B" states and their workmen in connection with 34 different items. The banks comprised in the reference were 129 in number, of which 68 were Scheduled banks and 61 were non-scheduled banks with branches or other establishments in more than one State. After careful consideration of all the aspects referred to it, an exhaustive award was given by Sastry Tribunal in March, 1953.

12. A large number of employees and some of the banks concerned in the dispute felt aggrieved by the provision contained in the Sastry Award and preferred appeals therefrom before the Labour Appellate Tribunal. A Special Bench of the Labour Appellate Tribunal consisting of Shri F. Jeejeebhoy, Shri D.E. Reuben and Shri A. Dasgupta was formed for the purpose of deciding those appeals. On 28-4-1954 the Labour Appellate Tribunal gave its decision in the matter giving larger benefits to the employees of the banks than those given under the Sastry Award.

13. The Labour Appellate Tribunal decision gave rise to considerable misgivings in the minds of some of the bankers. They apprehended that the Labour Appellate Tribunal decision would adversely affect the banking industry and that the burden imposed was beyond the capacity of some of the banks and would result in the closure thereof. After the Labour Appellate Tribunal decision was published, it was represented to Government that the impact of the decision on the banking business of the country would be very adverse and that it was not unlikely that in many cases individual units of the banking sector would be in serious jeopardy. In order to be in a position to consider this representation on merits the Government desired to collect relevant information on the subject. The Reserve Bank of India under the instructions from the Government of India carried out a rapid survey of the possible effects of the Labour Appellate Tribunal decision on the working of some banks by way of sample.

As a result of the material gathered by the Central Government, it came to the conclusion that it would be inexpedient on public interest to give effect to the whole of the decision of the Labour Appellate Tribunal. By an order dated 24-8-1954, the Central Government modified the Labour Appellate Tribunal decision in certain respects. The interference of the Government with the Labour Appellate Tribunal decision raised a wave of discontent amongst the bank employees. Ultimately on 17-9-1954 the Government appointed a One Man Commission consisting of Justice G.S. Rajadhyaksha, a Judge of the Bombay High Court. Shri Justice G.S. Rajadhyaksha having died shortly after he had undertaken the burden of the Commission, Government appointed Shri P.B. Gajendragadkar, the then Judge of Bombay High Court. The said Commission after considerable labour and gathering material made its reports on 25-7-1955 making certain recommendations which were subsequently embodied by the Government in the Industrial Disputes (Banking Companies) Decision Act (41 of 1955). The said report of the Commission was popularly known as Bank Award Commission Report. By Section 3 of the Industrial Disputes (Banking Companies) Decision Act, 1955, it was provided that the decision of the Labour Appellate Tribunal, dated 28-4-1954, would have effect as if the modifications recommended in chapter XI of the Bank Award Commission report had actually been made therein. By Section 4 of the said Act, it was provided that the award of the Sastry Tribunal as modified by the decision of the Labour Appellate Tribunal, as further modified by the recommendations of the Bank Award Commission would remain in force till 31-3-1959. The Sastry Award modified as

aforesaid by the Labour Appellate Tribunal decision and as further modified by the aforesaid Acts is referred to as the "Sastry Award as modified". Under the Sastry Award as modified, a provision had been made for payment of dearness allowance to the clerical staff and subordinate staff according to certain formulae. The Sastry Award period, as modified, expired on 31-3-1959. In the month of April, 1959, the All India Bank Employees Association served notices of termination of the Sastry Award as modified and submitted a fresh Charter of Demands as adopted at the 10th Conference held in Bangalore from 3rd to 7th February, 1959 on behalf of the workmen employed in banks. On 21.3.1960 National Industrial Tribunal (Banking Disputes) was constituted and the disputes mentioned in the order of reference was referred to the Tribunal for adjudication. The Tribunal headed by Sri Justice Kantilal T. Desai has taken into consideration various demands of All India Banking Employees Association. Privilege Leave is one of the subjects considered by the National Industrial Tribunal (Banking Disputes). Clause 9 of the Award deals with Leave Rules. Clauses 9.10 to 9.13 deal with Privilege Leave. We deem it appropriate to refer Clause 9.10 to 9.13, which reads as under:

"9.10. Under the Sastry Award as modified employees in A Class and B Class banks earn privilege leave of one month for completed service of 11 months. Employees in C Class and D Class banks earn privilege leave of 3/4 of a month for completed service of 11 months. It is claimed that the period during which privilege leave is enjoyed should also be counted for the purpose of calculating the period of eleven months in the case of employees of A Class and B Class banks and of 11 1/4 months in the case of employees of C Class and D Class banks. There is no merit in this claim. In my view the intention of making the aforesaid provisions was not to lay down that if a person employed in an A Class bank or a B Class bank has enjoyed one month's privilege leave and has thereafter served for 10 months he should become entitled to enjoy further privilege leave of 1 month. It was similarly not the intention that a person employed in a C Class bank or a D Class bank who has enjoyed privilege leave for 3/4 of a month and has thereafter put in 10 months of service should become entitled to enjoy another 3/4 of a month of privilege leave. In any event, that is not my intention and I direct that in calculating the period of eleven months of completed service by workmen in A and B Class banks under this award and for the purpose of calculating the period of 11 1/4 months service by workmen in the case of C Class banks under this award including banks in the Excepted List, the period of privilege leave enjoyed should not be counted.

9.11. The banks have claimed that as privilege leave is intended for rest and recuperation, it should not be taken in more than two instalments in a year. This demand seems to be reasonable. Banks having numerous employees may have to arrange the leave programme of the employees so as not to disturb the work of the bank. If privilege leave is taken in dribblets, it will not serve the purpose for which it is intended to be taken. I therefore direct that workmen will not be entitled to take privilege leave on more than two occasions in a year. This will not

include the occasion when a workman has gone on privilege leave but has been recalled. In special circumstances an application may be made for the grant of such leave on more than two occasions in a year and it will then be in the absolute discretion of the bank concerned whether to grant such leave or not.

9.12. The provision of the Sastry Award relating to accumulation of privilege leave beyond 3 months in cases where leave applied for by a workman has been refused require to be modified. In substitution of Clause (2) under the heading "Privilege Leave" set out earlier I provide as under:-If leave applied for by a workman has been refused, such workman will be entitled to accumulate leave in excess of the maximum of three months prescribed until such time when the bank is in a position to grant him leave.

9.13. In my view no farther modifications are required to be made in connection with the provisions relating to privilege leave. The provisions about leave applicable to A Class and B Class banks under the Sastry Award as modified will apply to A Class and B Class banks under this Award. The provisions about leave applicable to C Class banks under the Sastry Award as modified will apply to C Class banks under this Award including banks in the Excepted List."

14. A close reading of the above Clause of the bipartite settlement indicates the object of allowing privilege leave to the workmen is for his rest and recuperation. Clause 9.11 referred to above puts a restriction with regard to the avilment of privileged leave in a year. Normally, it should not be taken in more than two instalments in a year. It goes without saying that the privilege leave is linked with actual service. By rendering actual service a workman has to acquire privilege leave to his credit. In terms of settlement between the employer and the workmen, the workman was permitted to draw a leave pay equal to his average pay. In 1973 settlement Clause 13.17 of the Bipartite Settlement dated 19.10.1966 has been partially modified. The modified Clause reads as follows:

"Privilege Leave:

In partial modification of Clause 13.17 of the Bipartite Settlement dated 19.10.1966, calculation of privilege leave earned shall be done @ one day for 11 days of active service. Such calculation has to be done only for the limited purpose of calculation of entitlement The workmen will be eligible to avail such leave only after the completion of 11 months service as laid down in Clause 13.17 of the Bipartite Settlement dated 19.10.1966 and for calculating privilege leave, all types of leave availed except casual leave will be excluded. These terms are made applicable to "A" and "B" Class Banks with effect from 1-1-1972. Privilege leave of workmen of "C" Class banks will be calculated in the same manner with effect from 1-1-1973.

(ii) In further modification of Clause 13.17 of the Bipartite Settlement dated 19.10.1966, privilege leave will be cumulative upto a maximum of 120 days."

In the Fifth Bipartite Settlement privilege leave accruing to an employee on or

after 1.1.1990 has been allowed to be accumulated beyond 180 days upto a maximum of 240 days.

15. After going through various settlements of memoranda between the workmen and the employer, we are in no doubt to conclude that the privilege leave is intended for rest and recuperation and the workman has to render active service and thereby earn privilege leave to his credit. A workmen out of service for any reason whatsoever is not entitled to privilege leave.

16. In the result, this Writ Appeal is allowed setting aside the order dated 16.12.2003 passed in WP No. 10704 of 1994. Consequently, WP No. 10704 of 1994 stands dismissed. In the circumstances of the case each party is directed to pay their own costs.