

(2016) 06 AHC CK 0006
In the Allahabad High Court
Case No : Writ Petition No. 143 (SS) of 2000

Branch Manager, Central Bank of India

APPELLANT

Vs

IVth Additional District Judge

RESPONDENT

Date of Decision : 09-06-2016

Acts Referred:

Citation : (2016) 7 ADJ 457 : (2016) 6 AILLJ 270 : (2016) 150 FLR 603 : (2016) 3 UPLBEC 2336

Hon'ble Judges : Dr. Devendra Kumar Arora, J.

Bench : Single Bench

Advocate : N.K. Seth and Gopal Srivastava, Advocates, for the Appellant; C.S.C, Radhey Shyam Mishra, U.B. Pandey and Udai Bhan Pandey, Advocates, for the Respondent

Final Decision : Allowed

Judgement

Dr. Devendra Kumar Arora, J.—Heard Mr. Gopal Kumar Srivastava, learned Counsel for the petitioner and Mr. Radhey Shyam Mishra, opposite parties no.3, who appeared in person.

2. This writ petition, under Article 226 of the Constitution of India, has been filed against the common judgment and order dated 01.10.1999 passed by learned IVth Additional District Judge, Gonda in Appeal No. 5 of 1988 (Radhey Shyam Mishra v. Branch Manager, Central Bank of India, Gonda and another) and Appeal No. 9 of 1988 (Branch Manager, Central Bank of India and another v. Sri Radhey Shyam Mishra), whereby Appeal No.9 of 1988 was dismissed in which the order dated 27.01.1988 passed by the Prescribed Authority in P.W. Case No.85 of 1985 was confirmed. The petitioner inter alia has also challenged the award dated 27.01.1988 passed by opposite party no.2-Prescribed Authority in DCPW Case No. 85 of 1985 (Radhey Shyam Mishra v. Branch Manager, Central Bank of India and another), whereby opposite party no.2 awarded Rs. 9,260.16 paise as wages to opposite party no.3 - Radhey Shyam Mishra plus six times compensation amounting to Rs. 55,560.96 paise.

3. Facts in brief are that petitioner-Central Bank of India is a Nationalised Bank and is constituted under the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970. Contesting opposite party Radhey Shyam Mishra was employed as a Clerk in the Central Bank of India and vide order dated 22.01.1983, while he was posted in Lal Bahadur Shastri Degree College Extension Counter, Gonda, was placed under suspension w.e.f. 25.01.1983 on account of wilful insubordination and violent behaviour in the premises of Branch. The suspension order was served to the contesting opposite party on 24.01.1983. Subsequently, charge-sheet dated 05.02.1983 was issued to the contesting opposite party. During pendency of the disciplinary proceedings, the contesting opposite party filed Suit No.214 of 1983 in the Court of Munsif for injunction and the same was rejected on 20.10.1984 and appeal filed against the said order also met the same fate.

4. After concluding the disciplinary proceedings, the Disciplinary Authority passed punishment order on 17.09.1984 imposing major penalty of "Stoppage of three increments in the time scale of pay permanently" and vide order dated 18.09.1984 passed by the Chief Manager, Central Bank of India, Gorakhpur, reinstated the contesting opposite party in service with certain conditions at Gonda Branch. On the same day, vide another order dated 18.09.1984 passed by the Chief Manager, Central Bank of India, Gorakhpur, the contesting opposite party was transferred from Gonda to Pratapur Branch, Deoria.

5. The punishment order dated 17.09.1984, the reinstatement order dated 18.09.1984 and the transfer order dated 18.09.1984 had not been accepted by the contesting opposite party and, therefore, the same were pasted by the Branch Manager, Gonda on the notice board and posted the same by registered post. Vide transfer order dated 18.09.1984, the contesting opposite party was directed to report at Pratapur Branch, Deoria but he failed to do so.

6. In pursuance to the another Charge-sheet dated 29.04.1981 with regard to serious lapses/irregularities, which were found proved, the contesting opposite party was dismissed from service, vide order dated 22.04.1985. The dismissal order of the contesting opposite party was upheld by the Industrial Tribunal and the said award had been published by the Central Government, vide Notification dated 13.10.1997.

7. The contesting opposite party filed DCPW Case No.85 of 1985 (Shri Radhey Shyam Mishra v. Branch Manager, Central Bank of India, Badgaon, Gonda and another) before the Prescribed Authority with the heading "Application under sub-Section (2) of Section 15 of the Payment of Wages Act, 1936 (in short "1936 Act") read with Section 18 of the Uttar Pradesh Dookan Aur Vanijya Adhishthan Adhiniyam, 1962 (in short "1962 Act)" for wages from 25.01.1983 to 24.01.1984 along with ten times compensation. Since, the application under Section 15(2) of the Payment of Wages Act, 1936 was barred by limitation, the contesting opposite party filed application for condonation of delay along with affidavit. The petitioner-Bank filed written statement against the application for condonation of

delay questioning the jurisdiction of the Prescribed Authority for entertaining such application. Vide order dated 12.08.1986, the Prescribed Authority allowed the application for condonation of delay in filing claim petition and thereafter, vide judgment and order dated 27.01.1988, which is impugned in the writ petition, allowed the claim of the contesting opposite party awarding a sum of Rs.9,260.16 paise plus six times compensation thereon, total amounting to Rs.64,821.12 paise.

8. Feeling aggrieved by the aforesaid judgment and order dated 27.01.1988, petitioner-Bank filed an appeal bearing MRA No. 9 of 1988 before the learned District Judge, Gonda, under Section 17 of the 1936 Act. Simultaneously, the contesting opposite party filed MRA No. 5 of 1988 before the learned District Judge, Gonda for enhancing the compensation to the extent of ten times as claimed before the Prescribed Authority. The Appellate Authority, vide common judgment and order dated 01.10.1999, which is also impugned in the writ petition, dismissed both the appeals upholding the judgment and order dated 27.01.1988 passed by the Prescribed Authority.

9. Mr. Gopal Kumar Srivastava, learned counsel for the petitioner-Bank has contended that the Prescribed Authority under 1936 Act has no jurisdiction to entertain such claim petition filed by the contesting opposite party as the same is not applicable to the Central Bank of India. The provisions of the said Act applies only to the persons who are employed in any factory, railway or in any Industrial or other establishment specified under subclauses (a) to (g) of Clause-II of Section 2 of the 1936 Act and has been defined under Section 1(4) of the said Act. Therefore, the Prescribed Authority failed to consider the aforesaid provisions of the Act while allowing the claim petition of the contesting opposite party. Mr. Srivastava has further contended that the Prescribed Authority also failed to consider the provisions of Indian Limitation Act, 1963 being not applicable in the proceedings of 1936 Act. Hence, the claim of the contesting opposite party is liable to be rejected on this score also.

10. Mr. Srivastava has contended that the Appellate Authority while upholding the judgment and order of the Prescribed Authority wrongly relied upon Page 105, Note 6 of the Third Bipartite Settlement because the same is not in existence.

11. Mr. Srivastava has further contended that the Appellate Authority failed to consider the State Government's Notification No.3802/XXXVI-3-708-76 dated 15.12.1983, whereby, all the Commercial Banks situated in the State of U.P. has been exempted from the operation of the provisions of Sections 8, 9, 10, 11, 13, 14, 19, 20, 32, and 38 of 1962 Act. Vide another Notification No.2053/XXXVI/3/308(S)/76 dated 23.05.1985, the State Government exempted the "Scheduled Banks" under the Reserve Bank of India Act, 1934 from the application of all the provisions of 1962 Act. The "Scheduled Bank" as defined under Section 2(c) of the Reserve Bank of India Act, 1934 means the Bank included in the Second Scheduled and the petitioner-Bank has been included in

the Second Scheduled. Hence, no benefit can be claimed by the contesting opposite party under the provisions of 1962 Act.

12. Mr. Srivastava has also contended that the Appellate Authority failed to consider that the contesting opposite party being under suspension was only entitled for subsistence allowance which was duly paid to him in conformity with the Shastry Award and Third Bipartite Settlement, thus the contesting opposite party was not entitled for any claim as claimed by him.

13. Mr. Srivastava has also contented that in order to thwart the progress of the disciplinary proceedings being conducted against the contesting opposite party, the contesting opposite party filed the aforesaid Regular Suit No.214 of 1983 in the court of Munsif, Gonda, therefore, the contesting opposite party is not entitled for full wages after one year of his suspension in terms of Central Office Circular dated 25.10.1983. Hence, in these background, the impugned orders are liable to be quashed and the writ petition is liable to be allowed.

14. On the contrary, Mr. Radhey Shyam Mishra-contesting opposite party, who appeared in person, has contended that he was suspended and charge-sheeted on entirely false and fabricated charges, which were manufactured by the Officer In-charge, Sri Chandra Dhar Shukla. Furthermore, the Chief Manager, Central Bank of India, who passed the punishment order dated 17.09.1984, was not appointed/nominated as the Disciplinary Authority as defined in Para 19.14 of the First Bipartite Settlement dated 19.10.1966 (modified by the Third Bipartite Settlement dated 31.10.1979). Hence, the Chief Manager was not competent to take disciplinary action against him.

15. Mr. Radhey Shyam Mishra has further contended that he filed a Regular Suit No. 241 of 1983 in the Court of Munsif, Gonda challenging the disciplinary proceedings but neither he has filed any application for injunction nor any interim order was passed by the concerned court. During the pendency of regular suit, he never sought any adjournment and he always co-operated in the disciplinary proceedings in pursuance to the charge-sheet dated 05.02.1983. The delay in proceedings was not caused due to his lapses and, therefore, he was entitled for full wages along with subsistence allowance after one year of his suspension.

16. Mr. Radhey Shyam Mishra has further submitted that at the relevant time, the provisions of 1962 Act were applicable on the petitioner-Bank, being a Commercial Establishment within the meaning of Section 2(4) of 1962 Act and the petitioner-Bank as well as the contesting opposite party was fully covered under the definition of employer and employee as provided under Sections 2(6) and 2(7) of 1962 Act respectively. Hence, by virtue of provisions of Section 18 of 1962 Act, he was entitled to recover his wages of Rs.9,260.16 paise under Section 15(2) of 1936 Act as by virtue of Section 18 of 1962 Act, the provisions of 1936 Act relating to the manner of recovery of wages contained in Sections 15, 16, 17 and 17-A be deemed to have been incorporated in 1962 Act and, therefore, they were applicable on the petitioner-Bank and its employees during

the relevant period.

17. Mr. Radhey Shyam Mishra has further contended that the petitioner-Bank was exempted from the application and operation of the provisions of Section 18 of 1962 Act on 23.05.1985 vide Notification No.2053/XXXVI/3/308(S)/76 dated 23.05.1985, therefore, prior to that date, the provisions of Section 18 of 1962 Act were fully applicable on the petitioner-Bank. Hence, the Prescribed Authority under the provisions of 1936 Act were fully competent to entertain his application for condonation of delay and allowed the same. Since, the same was not challenged by the petitioner-Bank before any forum, therefore, the petitioner-Bank is not permitted to raise any grievance with respect to condonation of delay at this stage. The Prescribed Authority, while allowing the claim of the contesting opposite party, rightly placed reliance on the Supplementary Note (6) of the Third Bipartite Settlement mentioned in Page 105-106 and the book written by Mr. H. Guru Raja Rao, Vice-President, Syndicate Bank Employees Union, Bangalore wherein it has been provided that if the suspended employee is not permitted by the Management to leave the Head quarters, during the period of suspension, then he is entitled to get full pay and allowances instead of suspension allowance. The Prescribed Authority while adjudicating the claim of the contesting opposite party framed the issue of jurisdiction and delay apart from the issue regarding admissibility of the claim of the contesting opposite party and after examining the issues as well as providing adequate opportunity to the petitioner-Bank and the contesting opposite party, allowed the same vide its award dated 27.01.1988 holding therein that the Prescribed Authority has jurisdiction to hear the matter and rightly found that the claim of the contesting opposite party is genuine and directed for payment of withheld amount of wages along with six time compensation. The contesting opposite party as well as the petitioner-Bank approached the appellate authority where both of appeals were dismissed vide judgment and order dated 01.10.1999.

18. It has also been submitted by the contesting opposite party that issue of maintainability of the claim has recently been examined in another case of the petitioner-Bank and the contesting opposite party reported in 2016 (34) LCD 84 (Central Bank of India v. IInd A.D.J. Gonda and others), wherein, it has been held that in respect of dispute of 1984, the Prescribed Authority has jurisdiction to entertain the application under Section 18 of 1962 Act read with Section 15 of 1936 Act and, therefore, the impugned orders cannot be said to lack of jurisdiction. The similar view was reiterated in another case between the petitioner-Bank and the contesting opposite party in Writ Petition No. 860 (SS) of 1995 (Branch Manager, Central Bank of India and another v. Vth Additional District Judge, Gonda and others) decided on 15.02.2016 and, therefore, the writ petition being misconceived deserved to be dismissed.

19. Sri Gopal Kumar Srivastava, learned counsel for the petitioner-Bank in his rejoinder again reiterated the issue of maintainability on the claim of the contesting opposite parties before the Prescribed Authority on the ground that

the petitioner-Bank has been exempted from the provisions of 1962 Act and, therefore, the claim of the contesting opposite party under 1936 Act and 1962 Act was not maintainable. He has also reiterated that delay in disciplinary proceedings was caused on account of lapses of the contesting opposite party and, therefore, he is not entitled for full wages after one year of his suspension.

20. I have examined the submissions of learned counsel for the petitioner-Bank as well as the contesting opposite party and perused the record.

21. The core questions for consideration is as to whether the orders passed by the Appellate Authority and the Prescribed Authority under 1936 Act read with 1962 Act are within the jurisdiction and whether the contesting opposite party was entitled to get full wages during the period of his suspension in view of Circular dated 25.10.1983.

22. Bank is admittedly covered by the term "Commercial Establishment" as defined under Section 2(4) of 1962 Act, which reads as under:

"(4) "commercial establishment" means any premises, not being the premises of a factory, or a shop, wherein any trade, business, manufacture, or any work in connection with, or incidental or ancillary thereto, is carried on for profit and includes a premises wherein, journalistic or printing work, business of banking, insurance, stocks and shares, brokerage or produce exchange is carried on, or which is used as theater, cinema, for any other public amusement or entertainment or where the clerical and other establishment of a factory, to whom the provisions of the Factories Act, 1948, do not apply, work."

23. The definition of "Wages" under Section 2(18) of 1962 Act, reads as under:

"(18) "Wages" means all remuneration (whether by way of salary, allowances or otherwise) expressed in terms of money, or capable of being so expressed, which would, if the terms of employment, express or implied, were fulfilled, be payable to an employee, and includes-

(a) any bonus;

(b) any sum payable to the employee by reason of the termination of his employment; and

(c) any additional remuneration payable under the terms of his employment."

24. It is not in dispute that the term "Wages", as defined under Section 2(18) of 1962 Act, includes the sum payable to employee by reason of his termination and also includes any additional remuneration payable under the terms of his employment.

25. Section 3 of 1962 Act makes provisions to certain persons, shops and commercial establishments to which it would not apply. Sub-section (3) of Section 3 of 1962 Act, reads as under:

"3. The provisions of the Act not to apply to certain persons, shops and

commercial establishments-

.....

(3) Powers of the Government to exempt any class of shops or commercial establishment from the operation of the Act. - The State Government may, in public interest, by notification in the Gazette, exempt, subject to such conditions as it may impose in this behalf, any shop" or commercial establishment or any class of shops or commercial establishments from the operation of all or any of the provisions of this Act."

26. Learned counsel appearing for the petitioner-Bank pointed out that commercial banks situated in State of U.P. were exempted from operation of certain provisions of 1962 Act by State Government's notification dated 15.12.1982, issued under Section 3(3) of 1962 Act. The said notification reads as under:

"Notification No. 3802/XXXVI-3-708-76, dated December 15, 1982

Commercial banks. - In exercise of the powers under sub-section (3) of Section 3 of the U.P. Dookan Aur Vanijya Adhishthan Adhiniyam, 1962 (U.P. Act No. XXXVI of 1962), the Governor is pleased to exempt, in public interest, all commercial banks situated in the state of Uttar Pradesh from the operation of the provisions of Sections 8, 9, 10, 11, 13, 14, 19, 20, 32 and 38 of the said Adhiniyam."

27. Apparently all the provisions of 1962 Act were not exempted and exemption granted was only in respect of Sections 8, 9, 10, 11, 13, 14, 19, 20, 32 and 38. In the present case, we are concerned with Section 2(18) read with Section 18 of 1962 Act, which reads as under:

"18. Recovery of wages - The wages of an employee, if not paid as provided by or under this Act, shall be recoverable in the" manner provided in the Payment of Wages Act, 1936, as if the same wages were payable under that Act."

28. Admittedly neither Section 2(18) nor Section 18 were exempted by notification dated 15.12.1982. It leads to the conclusion that despite notification dated 15.12.1982, an employee of Bank, if not paid wages by or under 1962 Act, he can proceed for recovery thereof in the manner provided in 1936 Act, as if said wages are payable under that Act.

29. Admittedly, the petitioner-Bank and the other "Scheduled Bank" were exempted vide Notification No. 2053/XXXVI/3/308(S)/76 dated 23.05.1985 from the applicability of the provisions of 1962 Act much after the cause of action of opposite party no. 3, which resulted in filing the claim and the same has not been given effect from the retrospective effect, therefore, this Court comes to the conclusion that the Prescribed Authority had jurisdiction to entertain the application of Section 18 of 1962 Act read with Section 15 of 1936 Act with respect to claim for the year 1984. However, the issue of maintainability before the Prescribed Authority has also been examined and upheld between the parties

in the case of Central Bank of India v. IInd ADJ, Gonda and others (Supra) and in the case of Branch Manager, Central Bank of India and another v. Vth Additional District Judge, Gonda and others (Writ Petition No.860 (SS) of 1995) (Supra).

30. So far as the claim of the contesting opposite party is concerned, a perusal of the impugned award reveals that while allowing the claim of contesting opposite party reliance upon Supplementary Note (6) of the Third Bipartite Settlement mentioned in Page 105-106 of the book written by Mr. H. Guru Raja Rao, Vice-President, Syndicate Bank Employees Union, Bangalore has been placed, which reads as under:

"(6) If the suspended employee is not permitted by the Management to leave the Head quarters, during the period of suspension, then he is entitled to get full pay and allowances instead of suspension allowance."

31. A perusal of Annexure-CA-9 of the counter affidavit filed by the contesting opposite party reveals that it is a "Residual Issue" dated 08.09.1983 of the Third Bipartite Settlement. Clause 5 of the same reads as under:

"Clause 5: In partial modification of paragraph 557 of the Sastry Award and paragraph (17.14) of the Desai Award, the following provisions shall apply in regard to payment of Subsistence Allowance to workmen under suspension.

(a) Where the investigation is not entrusted to or taken up by an outside agency (i.e. Police/CBI), Subsistence Allowance will be payable at the following rates:-

(1) For the first 3 months $\frac{1}{3}$ of the pay and allowances which the workmen would have got but for the suspension.

(2) Thereafter $\frac{1}{2}$ of the pay and allowances.

(3) After one year, full pay and allowances if the enquiry is not delayed for reasons attributable to the concerned workmen or any of his representatives where the investigation is done by an outside agency and said agency has come to the conclusion not to prosecute the employee, full pay and allowances will be payable after 6 months from the date of receipt of Report of such agency, or one year after suspension, whichever is later and in the event the enquiry is not delayed for reasons attributable to the workman or any of his representatives."

32. A perusal of Annexure-CA-9 of the Counter Affidavit filed by contesting opposite party also reveals that after reproducing the "Residual Issue" dated 08.09.1983 of the Third Bipartite Settlement, there is a heading as "Supplementary Note" and in para 6 of the same author has given his view at Page 105-106 with respect to payment of full pay and allowance instead of suspension allowance if the employee did not permitted by the Management to leave the Head quarter during the period of suspension.

33. The petitioner-Bank in the writ petition annexed the copy of relevant extract of Circular dated 25.10.1983 (Annexure-5 to the writ petition) and copy of settlement on certain outstanding issues referred to in the Third Bipartite

Settlement and certain other issues dated 08.9.1983 between Indian Bank's Association and AIBEA/NCBE and between Indian Banks' Association and INBEC (Annexure-20 to the writ petition). On examination of the same, this Court finds that the provisions regarding subsistence allowance are same as reproduced herein above in para 31.

34. The Prescribed Authority instead of examining the provisions of the Third Bipartite Settlement contained in para 3 at Page 104 had placed reliance on the author's view mentioned in para 6 of the "Supplementary Note" at Page 105-106. Therefore, this Court comes to the conclusion that decisions of the Prescribed Authority as well as the Appellate Authority are based on author's view mentioned in Para 6 of the "Supplementary Note" at Page 105-106 and not on the basis of actual provisions of the Third Bipartite Settlement, which provides that "after one year, the workmen is entitled for full pay and allowances if the enquiry is not delayed for reasons attributable to the concerned workmen or any of his representatives", hence, the appellate order dated 01.10.1999 passed by learned IVth Additional District Judge, Gonda and the award dated 27.01.1988 passed by the Prescribed Authority cannot said to be sustained in the eye of law.

35. In these backgrounds, the order dated 01.10.1999 passed by learned IVth Additional District Judge, Gonda and the award dated 27.01.1988 passed by the Prescribed Authority are quashed.

36. With the above observations and directions, the writ petition is allowed. Costs easy.