

(1990) 07 BOM CK 0036
In the Bombay High Court
Case No : Writ Petition No. 2764 of 1982

Canara Bank

APPELLANT

Vs

G.M.V. Nayak and others

RESPONDENT

Date of Decision : 30-07-1990

Acts Referred:

Industrial Disputes Act, 1947 — Section 33C(2), 9A

Citation : (1991) 61 FLR 579 : (1991) 2 LLJ 198

Hon'ble Judges : R.A. Jahagirdar, J

Bench : Single Bench

Judgement

1. Respondent No. 1 hereinafter referred to as "the respondent", filed an application on behalf of several employees of Canara Bank, which is the petitioner. Those employees were working in the branches of the petitioner-bank at Pune. The application was filed by the respondent u/s 33-C(2) of the Industrial Disputes Act, alleging illegal deduction of wages on the part of the petitioner and claiming recovery of the amount so illegally deducted.

2. Certain circumstances leading to the filing of the application ought to be necessarily stated. One employee of a branch of the petitioner-bank in Pune had been transferred to another branch. In order to protest against this transfer, the employees of nearly 14 branches in Pune, acting in a concerted manner and in combination of other employees and with the common intention, says the petitioner, disrupted the working of the said branches by resorting to flash strikes, lasting for a definite period of time each day from 2nd to 6th of April 1979. The petitioner took action against several employees for thus resorting to strike for a definite period of time on each of those days by deducting the salary for the whole day instead of the salary for the period for which actually the work was struck. It was against this action of the petitioner, which was characterised as illegal, and in order to recover the balance of the salary, that the respondent filed an application u/s 33-C(2) of the Industrial Disputes Act, as mentioned above.

3. At this stage, it must also be mentioned that prior to this strike, which took place in March of April 1979, there was one notice, which was issued by the branch offices of the petitioner-bank and in particular the branch offices at Pune. This notice is dated 30th of December 1978. It was mentioned in the said notice that in supersession of all prior notices on the subject, certain new proposals were going to be implemented. All the employees of the bank were reminded that their contract of service and the nature of their duties enjoined upon them, among others to do a full day's work and to complete each day's normal work. They were also reminded that they were put on notice that if any of them was unauthorisedly absent even for a part of the day during the working hours fixed for him by the management, he would be in breach of his contract of service and as a result would not; be entitled to that particular day's pay and allowances. In other words, if an employee remained absent for a part of the day, his salary for the whole day would be denied to him. It was pursuant to this notice that presumably the petitioner denied the full day's wages to all those employees who had struck work for parts of the days mentioned above.

4. In the Central Labour Court, where the application u/s 33-C(2) of the Industrial Disputes Act was filed, an admission was made on behalf of the employees that they had struck work for part of each of the days, but they denied the right of the petitioner to deduct the whole day's salary on that account. The Labour Court examined the rival contentions of the parties and came to the conclusion that the management had no right to deduct the whole day's salary if a particular employee had not worked for a part of the day. Neither under the rules governing the employment of the employees, nor under any law or standing orders, has it been provided that full day's salary will be deducted in the case of an employee who has struck work for a part of the day. In the absence of such a sanction, either contractual or statutory, the employer was not entitled to take such a drastic action. So holding, the Labour Court passed an order on 31st of May 1982 in the following terms :-

"The deduction of wages barring the deduction for the period of absence from duty as may be calculated on the strength of monthly wages of respective employee, is held bad, not legal and valid and therefore the Opponent Bank shall pay the same after deducting wages prorata basis for the period of absence."

It is this order which is the subject-matter of challenge in this petition under Article 226 of Constitution of India.

5. Mr. Ramaswami, the learned Advocate appearing for the petitioner, not unpredictably placed reliance upon a recent judgment of the Supreme Court in Bank of India Vs. T.S. Kelawala and Others, , which, according to him, lays decided down that the management will be fully justified, especially when it had given previous warning, in deducting full day's wages of employees when the employees go on a mass leave for only a part of the day. Apart from holding that in such a cast it is not necessary to hold an inquiry into the conduct of the employees, the Supreme Court has, according to Mr. Ramaswami, held that it is

permissible for the management to deduct the salary for the whole day, if defying the warning given by the management the employees go on leave for a part of the day. I will presently come to this judgment of the supreme Court which has been distinguished, and in my opinion rightly, by Mr. Phadnis appearing for the respondent. But before that, I must mention that in the Service Code governing the employees of the petitioner-bank, there is a specific provision dealing with situation of the type which confronted the management of the Pune branches of the petitioner-bank. In Chapter XIV of the Service Code, there is Rule 9, which is in the following terms :-

"9. An employee who, though present on the premises of the Bank, wilfully abstains from work or refuses to do work, shall be treated as absent without leave for the period of such abstention or refusal. The General Manager alone, and no other Officer of the Bank, shall have the power to condone such absence or treat it as leave of any category."

It is this Rule which was noticed by the Labour Court while holding that the management could not deduct the salary for the whole day if the employee is absent for a part of the day. There is another Rule, namely, Rule 8, which mentions that an employee absenting himself from duty without leave shall not be paid salary and emoluments for the period of such absence, and no Officer other than the General Manager shall have the power to treat any such absence as leave by subsequent orders. Rule 8 is wholly inapplicable to the facts of the present case, because in this case the employees were present on the premises of the bank and then abstained from work or refused to work for part of the day on the different days. So Rule 9 in Chapter XIV of the Service Code, which provides for the consequences of an employee wilfully abstaining or refusing to work, though present on the premises, is applicable to the facts of the present case. It provides that an employee shall be treated as absent without leave for the period of such abstention or refusal and not for the whole day. On the other hand, a provision is made for the General Manager, and no other officer, of the bank to condone such absence or treat it as leave of any category.

6. Mr. Ramaswami says that the notice or the circular dated 30th of December 1978 must be treated as part of the service conditions. It put on notice the employees of all the branches of the petitioner-bank that if they remained absent for a part of the day, their salary for the whole day was liable to be deducted. It has not been possible for me to accept the argument that a circular or a notice of the type on which reliance is being placed by Mr. Ramaswami, could alter the conditions of service embodied in Service Code. Mr. Ramaswami thought that this notice could be treated as a notice u/s 9-A of the Industrial Disputes Act and after the expiry of 21 days from the date of service of that notice, it should be regarded that the conditions of service stood amended as per the contents of the notice. It is impossible to accept such a contention because, in the first place, the notice itself does not say that it is a notice u/s 9-A of the Industrial Disputes Act. Secondly, it has not been given in the prescribed manner. If law requires that a

thing shall be done in that particular manner, it has got to be done in that particular manner and in no other manner. This notice has not been served upon the respondent, though it might have been put on the notice board of each of the branches of the petitioner-bank at Pune, and most important of all is that this notice of change does not say that it intends to bring about a change in the conditions of service contained in the Service Code. It proceeds on the basis that it has already brought about the change in the conditions of service and it is implementing the same by such a notice. This is a procedure wholly unknown to industrial jurisprudence. No employer has a unilateral right to alter the conditions of service, especially those contained in the 4th Schedule to the Industrial Disputes Act. I have, therefore, refused to accept the argument of Mr. Ramaswami that this notice of 30th of December 1978 was a notice of change which brought about alteration in the conditions of service after the expiry of 21 days from the date of that notice.

7. I must, therefore, proceed on the basis that conditions of service in the Service Code and in particular, in Chapter XIV of the said Code are conditions of service by which the parties are bound. If it is so, then without even referring to the judgment of the Supreme Court, one must necessarily hold that the petitioner had no authority to deduct the whole day's salary of the employees for their absence for part of the day. This is clean contrary to Rule 9 in Chapter XIV.

8. Now, it remains to be seen whether the judgment of the Supreme Court in the Bank of India's case (*supra*) permits the deduction of whole day's salary for absence for part of the day. Some facts in the Bank of India's case ought to be noted. The Bank of India, as the Canara Bank, is a nationalised bank. Some demands for wage revision had been made by the employees of all the banks and they were pending at the relevant time. In support of the said demands, the All Bank Employees' Association had given a call for a countrywide strike. Before that happened, the appellant-bank issued a circular, somewhat similar to the notice which is the subject-matter of the proceeding before me, to all managers and agents requiring them to deduct wages of the employees who would participate in the strike for the days they go on strike. Respondents Nos. 3 and 4 in the case before the Supreme Court, which were the unions, gave a call for a four-hours strike on 29th of December 1977. For this absence for four hours, the Bank of India deducted the salary for the whole day. The question before the Supreme Court was whether this action on the part of the management was justified. The answer was given in the affirmative for reasons which I will refer to in a moment. Before I do that, it should be noted that the facts in the Bank of India case (*supra*) are somewhat different from the facts of the case before me.

9. In the Bank of India's case (*supra*) there was already a declaration by the unions that the employees would go on strike on a particular day. In order to meet such a situation, the management of the Bank of India had instructed its managers and agents to deduct the salary of those employees who would participate in the strike for the days they go on strike. In the case before me,

however, there was no such prior declaration by the employees of the bank that they would go on strike on a particular day. It was a sort of a flash strike precipitated by what the employees regarded as unjustified transfer of an employee from one branch to another. The notice dated 30th December 1978 was not a notice to meet any particular situation but was a general notice to meet situation as and when they arise.

10. Mr. Phadnis has rightly pointed out, after inviting my attention to the several paragraphs of the judgment of the Supreme Court, that what has been stated by the Supreme Court in the Bank of India's case (supra) applies when there is no rule, regulation or any other provision in the Service Code dealing with a situation of this type, namely abstention for a part of the day and the consequential deduction of salary for such abstention. In paragraph 4 of the judgment, the Supreme Court posed the question as follows (p. 44) :-

"The principal question involved in the case, according to us, is notwithstanding the absence of the term in the contract of employment or of a provision in the service rules or regulations, whether an employer is entitled to deduct wages for the period that the employees refuse to work although the work is offered to them."

11. It was urged before the Supreme Court on behalf of the bank that even if the service rules and regulations were silent on the point, the bank could legally deduct the wages under the provisions of the Payment of Wages Act. The High Court, which had dealt with this matter earlier, had reasoned that the power given by the said provisions came into play only when the employer had power to do so, probably meaning thereby, the power under the Service ruler/regulations. The Supreme Court did not find it possible to appreciate this reasoning of the High Court. Then proceeding further, the Supreme Court noted that the Service Rules do not provide for such a situation. Then the question is whether there exists an implied right in the employer-bank to take action as it has done. It was repeated that there was no dispute that although the service regulations did not provide for a situation where employees on a mass scale resorted to absence from duty for whole day or a part of the day, whether during crucial hours or otherwise, they did provide for treating an absence from duty of an individual employee as a misconduct and for taking appropriate action against him for such absence.

12. The Supreme Court examined several judgments touching upon the subject and then stated as follows (p. 49) :-

"The principles which emerge from the aforesaid authorities may now be stated. Where the contract, Standing Orders, or the service rules/regulations are silent on the subject, the management has the power to deduct wages for absence from duty when the absence is a concerted action on the part of the employees and the absence is not disputed. Whether the deduction from wages will be prorata for the period of absence only or will be for a longer period will depend

upon the facts of each case, such as whether there was any work to be done in the said period, whether the work was in fact done and whether it was accepted and acquiesced in, etc."

In the light of the clear language of the Supreme Court in the law thus laid down, I do not see how the petitioner-bank could have taken any action otherwise than in accordance with Rule 9 of Chapter XIV of the Service Code.

13. It is no answer to this situation to say, as Mr. Ramaswami has tried to say, that Rule 9 provides for a situation where individual cases are involved and it does not take into contemplation mass action, such as the one which took place in the Pune branches of the petitioner bank. I do not think that it makes any difference as to whether an individual is involved in the absence or a group of persons acting in a concert are involved in the action. If a group of employees acting in concert are involved, each one of them will be penalised in the manner provided in Rule 9. The fact that more than one person or a group of persons are involved, in my opinion, does not make any difference to the applicability of Rule 9. The view taken by the Central Labour Court in the instant case is not affected by the judgment of the Supreme Court in the Bank of India's case. The distinction is too striking to be missed, namely, that in the case before me, there is a specific provision dealing with this particular situation and no action can be taken except in accordance with that provision. In the case before the Supreme Court, there was no provision at all dealing with such a situation and the Supreme Court said that the management could take such action as it deemed fit, as mentioned in paragraph 22 of the judgment.

14. In the result, the petition fails. Rule is discharged, but there will be no order as to costs.