
(2002) 04 KL CK 0036
In the High Court Of Kerala
Case No : W.A. No. 772 of 2002

Canara Bank Employees Union

APPELLANT

Vs

Canara Bank

RESPONDENT

Date of Decision : 02-04-2002

Acts Referred:

Industrial Disputes Act, 1947 — Section 19(6)

Citation : (2002) 94 FLR 985 : (2002) 2 ILR (Ker) 248

Hon'ble Judges : K. Thankappan, J; Cyriac Joseph, J

Bench : Division Bench

Advocate : H.B. Shenoy, B. Ashok Shenoy, Lakshmi B. Shenoy and Abu Mathew, for the Appellant; M.C. Sen, for the Respondent

Final Decision : Dismissed

Judgement

M.C. Sen, J.—This appeal is against the judgment in O.P. No. 693 of 2002 which has been dismissed by the learned Single Judge. The appellants are the petitioners in the Original Petition.

2. The appellants are (i) the Canara Bank Employees Union and (ii) I.C. Mathai, a Deposit Collector engaged in the collection of New Nityanidhi Deposit for the Canara Bank. They filed the Original Petition challenging Ext. P5 order issued by the Bank. As per Ext. P5, the branch officers of the Bank were directed to put on notice all deposit collectors that on and from 28th March, 1997 the commission payable to them on the monthly collections would be as per Ext. P2 award. A specimen copy of the notice was also enclosed to Ext. P5 for ready reference. The grievance of the petitioners was that as per Ext. P5 order of the Bank, the rate of commission stood reduced to 2% from 3.5% which had been prescribed in Ext. P1 instructions issued by the Bank. The petitioners contended that they had already given notice of termination of Ext. P2 award and, therefore, the terms of Ext. P2 award were no more binding on the workmen. It was also contended that with the termination of Ext. P2 award, the pre-existing service conditions would resurrect. Both the contentions were rejected by the learned

Single Judge. In the impugned judgment, the learned Single Judge has held that the above mentioned contentions of the petitioners run counter to the fundamental principles of industrial law. According to the learned Single Judge, even if a notice of termination of an award is given u/s 19 of the Industrial Disputes Act, the terms of the award will continue to bind the parties as terms of employment until they are modified by a fresh settlement or award. The issuance of notice of termination only enables the parties to raise fresh disputes for a fresh settlement or award. With notice of termination, the obsolete pre-award conditions are never resurrected. In taking the above view, the learned Single Judge placed reliance on the decision of the Supreme Court in *Life Insurance Corporation of India Vs. D.J. Bahadur and Others*, .

3. Having heard the learned counsel for the appellants and having perused the materials placed on record, we are inclined to agree with the view taken by the learned Single Judge. In our view, the learned Single Judge was right in holding that even if a notice of termination of an award is given u/s 19(6) of the Industrial Disputes Act (for short "the Act") the terms of the award will continue to bind the parties as terms of employment until they are modified by a fresh settlement or award. As rightly pointed out by the learned Single Judge, the issuance of the notice of termination enables the parties to raise fresh disputes for a fresh settlement or award. We agree with the view of the learned Single Judge that with notice of termination the terms and conditions of service which existed prior to the award will not revive or resurrect.

4. In *Life Insurance Corporation of India Vs. D.J. Bahadur and Others*, , the Supreme Court considered whether the two settlements of January 24, 1974 and February 6, 1974 arrived at in pursuance of the provisions of Section 18 read with Section 2(p) of the Act had current validity having regard to the notice given by the management u/s 19(2) of the Act terminating the settlement. The spinal issue considered by the Supreme Court in that case was as to whether the settlements of 1974 were extant even after the formal termination u/s 19(2) of the Act. The Supreme Court has observed that the Act substantially equates an award with a settlement from the point of view of their legal force. No distinction in regard to the nature and period of their effect can be discerned, especially when Section 19 (2) and (6) are read. In paragraph 33 of the judgment, Krishna Iyer, J. explained the legal position as follows:

"The core question that first falls for consideration is as to whether the settlements of 1974 are still in force. There are three stages or phases with different legal effects in the life of an award or settlement. There is a specific period contractually or statutorily fixed as the period of operation. Thereafter, the award or settlement does not become nonest but continues to be binding. This is the second chapter of legal efficacy but qualitatively different as we will presently show. Then comes the last phase. If notice of intention to terminate is given u/s 19(2) or 19(6) then the third stage opens where the award or the settlement does survive and is in force between the parties as a contract which has

superseded the earlier contract and subsists until a new award or negotiated settlement takes its place. Like nature, Law abhors a vacuum and even on the notice of termination u/s 19 (2) or (6) the sequence and consequence cannot be just void but a Continuance of the earlier terms, but with liberty to both sides to raise disputes, negotiate settlements or seek a reference and award. Until such a new contractor award replaces the previous one, the former settlement or award will regulate the relations between the parties. Such is the understanding of industrial law at least for 30 years as precedents of the High Courts and of this Court bear testimony. To hold to the contrary is to invite industrial chaos by an interpretation of the ID Act whose primary purpose is to obviate such a situation and to provide for industrial peace".

In the light of the legal position explained by the Supreme Court, if notice of intention to terminate is given u/s 19(6), the award does survive and is in force between the parties as a contract until a new award or negotiated settlement takes its place.

5. Learned counsel for the appellants tried to distinguish the present case from the case dealt with by the Supreme Court. According to the learned counsel, in the case before the Supreme Court, the settlement had been given effect to before giving the notice u/s 19(2) of the Act whereas in the present case before giving notice u/s 19(6) of the Act, the terms of the award had not been implemented by the parties. In our view, even assuming that the terms of the award had not been implemented before issuing notice u/s 19(6) of the Act, the legal position would not change. As per Section 19(3) of the Act, an award shall remain in operation for a period of one year from the date on which the award becomes enforceable u/s 17A. Admittedly, Ext. P2 award had become enforceable on 24.6.1989 and the said award remained in operation with effect from 24.6.1989. Since the award had become enforceable and remained in operation with effect from 24.6.1989, the legal position explained by the Supreme Court in the above mentioned judgment is applicable to the present case also.

6. Learned counsel for the appellants then contended that even assuming that the terms of Ext. P2 award are binding on the parties, as a contract, they would not enable or authorise the respondent - Bank to reduce the commission of 3.5% prescribed in Ext. PI to 2%. According to the learned counsel, what is prescribed in Ext. P2 award is only a minimum rate of commission and the award does not prevent the respondent- Bank from fixing higher rate. It is contended that since the respondent-Bank prescribed the rate of commission as 3.5% as per Ext. PI, the respondent Bank cannot unilaterally reduce it to 2%. From the impugned judgment, we find that such a contention was not urged before the learned Single Judge. At any rate, if the appellants have any dispute with regard to the applicability of Ext. PI instructions, in the light of Ext. P2 award the proper remedy available to them is to approach the authorities under the Industrial Disputes Act and not to invoke this Court's jurisdiction under Article 226 of the

Constitution of India.

7. In the light of the discussion above, the appeal is dismissed.