
(2007) 06 BOM CK 0060

In the Bombay High Court

Case No : Appeal No. 688 of 1999 in Writ Petition No. 225 of 1995

Karnataka Bank Ltd.

APPELLANT

Vs

Smt. Sunita B. Vatsaraj

RESPONDENT

Date of Decision : 18-06-2007

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Industrial Disputes Act, 1947 — Section 2

Citation : (2008) 1 BomCR 891 : (2007) 109 BOMLR 1210 : (2007) 115 FLR 217

Hon'ble Judges : R.M.S. Khandeparkar, J;D.G. Karnik, J

Bench : Division Bench

Advocate : Umesh Shetty, for the Appellant; N.M. Ganguli, for the Respondent

Final Decision : Allowed

Judgement

D.G. Karnik, J.—This appeal is directed against the judgement of a learned Single Judge of This Court dated 3rd March 1999 allowing the Writ Petition No. 225 of 1995 filed by the respondent and thereby quashing the award dated 4th July 1994 passed by the Central Industrial Tribunal No. 1.

2. Facts stated in brief are that the respondent No. 1 (for short "the respondent") joined the appellant bank as a trainee in December 1979 and was promoted as an officer (Grade 3) in May 1978 on basic salary of Rs. 2700/-. The respondent accepted the promotion and reported for duty at the Bandra branch of the appellant as the second highest officer after the Branch Manager. On 24th May 1978 a power of attorney was executed by the appellant in favour of the respondent conferring upon her managerial and administrative powers. The respondent functioned as an Officer at the Bandra branch till December 1981, when she proceeded on leave. She resumed duty in February 1982, and on transfer of the then branch manager Mr.Satish Rao, she officiated as the manager of the Bandra branch from March 1982 till new manager took charge. The new manager of the branch, Mr.Udupa, on assuming charge discovered several lapses on the part of the respondent in discharge of her duties. He found

that in collusion with the former manager Mr.Satish Rao the respondent had given unauthorised accommodation to four different customers viz. 1) General Trading Agency 2) Bharat Corporation, 3)Pukhraj & Co. and 4) K.M. Corporation. Mr.Udupa,therefore reported the matter to the head office which called her explanation. As the explanation was found unsatisfactory a charge-sheet was issued to her in February 1983. In the domestic enquiry that followed she was found guilty. After a show cause notice and after considering her rely, by an order dated 16th October 1984, services of the respondent were terminated. The dispute raised by the respondent regarding her termination under the Industrial Disputes Act (hereinafter referred to as "the Act") was referred by the government to the Central Government Industrial Tribunal No. 1 (hereinafter referred to as "the tribunal") for adjudication. After considering the oral and documentary evidence adduced by the parties the tribunal held that the respondent was an officer employed in the managerial and administrative capacity and was also supervising the work of the subordinates and was not a workman within the meaning of Section 2(s) of the Act and therefore the reference was not maintainable. The tribunal also considered the respondents case on merits and held that the enquiry conducted into the misconduct of the respondent was legal, fair and proper and the finding of culpability reached by the enquiry officer was proper and correct and the termination of the respondent from service was justifiable. In this view of the matter the tribunal dismissed the claim of the respondent for reinstatement. Aggrieved respondent challenged the decision of the tribunal by filing a writ petition in This Court. A learned Single Judge of This Court by his judgement dated 3rd March 1999 reversed the finding of fact recorded by the tribunal that the respondent was not a workman within the meaning of Section 2(s) of the Act. The learned Single Judge held that though the respondent was designated as an officer and was entrusted with various managerial powers as per the power of attorney dated 24th May 1978 she in fact was required to carry out the work of clerical nature. The learned Single Judge further held that mere designation of the respondent as an officer was not conclusive whether she was performing managerial or administrative functions and was employed in a supervisory capacity and that the tribunal had misdirected itself in appreciating the evidence in that regard. In this view of the matter the learned Single Judge set aside the award and remanded the matter back to the tribunal for consideration again on merits whether the domestic enquiry was fair, proper and just and whether the order of dismissal was just and legal. That judgement is impugned in this appeal.

3. Mr.Shetty, the learned Counsel appearing for the appellant, submitted that after careful consideration and proper appreciation of the evidence on record and after proper analysis of the nature of the work performed by the appellant and the power of attorney given to her the tribunal had held that the respondent was employed in the managerial and administrative capacity and was supervising the work of subordinates. The finding reached by the tribunal in that regard was based on preponderance of evidence adduced before it, and in any event a

possible finding of fact. Learned Single Judge exercising the writ jurisdiction under Articles 226 and 227 of the Constitution of India was not entitled to re-appreciate the evidence and was not entitled to set aside a possible finding of fact which was not in any way perverse. In support of the submission Mr.Shetty referred to and relied upon a decision of the Supreme Court in Union of India and Another Vs. M/s. Mustafa and Najibai Trading Co. and Others, . Mr.Shetty also referred to decisions of the Supreme Court in The State Bank of Bikaner and Jaipur Vs. Shri Hari Har Nath Bhargava, , in S.K. Maini Vs. M/s. Carona Sahu Company Limited and others, and in Heavy Engineering Corporation Ltd. Vs. Presiding Officer, Labour Court and Others, , for the tests to be followed while considering which acts of work carried out by an employee can be regarded as supervisory in nature. He also took us through a copy of the power of attorney (exhibit "C") dated 24th May 1978 given by the appellant to the respondent as also the duty list (exhibit "M-21") of the duties assigned to the respondent and other officers in the branch. He submitted that the power of attorney clearly disclosed that managerial functions and powers were delegated to the respondent and the duty list clearly showed that main duties of the respondent were supervisory in nature. She was required to supervise the work of two clerks working under her. She was authorised to sanction leave to the clerks, and atleast on two occasions the respondent had sanctioned the leave to the clerks working under her. He also submitted that the respondent was required to check and supervise the work of the clerks working under her He also invited our attention to the various powers conferred on the respondent by the power of attorney which inter alia included power to open accounts with different banks, collect interest and dividends, pledge, mortgage and dispose of Government securities, make, draw, sign and endorse cheques, hundies and bills of exchanges, to demand, collect, receive and give discharge in the name and on behalf of the bank for all debts, advanced and claims due to the Bank, appear before the Registrar General or any District or Sub-District Registrar of Assurances. He stressed clause Nos. 10 to 12 of the power of attorney which conferred power on the respondent to enter into agreements or leases for a period not exceeding two years, and to obtain assignments and transfers in the name of the bank and also to act as attorney of the customers on behalf of the bank. He submitted that the power to acquire, hold and dispose of property including government securities and immovable property was clearly a managerial and administrative power which required taking of managerial and administrative decisions and therefore she was clearly employed in the managerial and administrative capacity and was therefore not a workman.

4. Per contra, Mr.Ganguly submitted that though wide powers were conferred by the power of attorney they were never used or utilised by the respondent and they were always exercised by the branch manager. It was only in the absence of the branch manager when the respondent officiated as the branch manager she could use those powers. Mere fact that wide powers were conferred on the respondent would not change the nature and character of her employment from

clerical to managerial. As regards the supervisory functions, he submitted that the functions mentioned in the duty list (Exhibit M-21) were not supervisory in nature. A person cannot be said to exercise supervisory powers merely because he has power to check work done by others. In support of his submissions Mr.Ganguly referred to the following decisions (1)Lloyds Bank Ltd, New Delhi v. Panna Lal Gupta reported in FJR 19 307 , (2) South Indian Bank Ltd. Vs. A.R. Chacko, , (3) All India Reserve Bank Employees Association Vs. Reserve Bank of India, , (4) The Punjab Co-operative Bank Ltd. Vs. R.S. Bhatia (Dead) through Lrs., (5) National Engineering Industries Ltd. Vs. Shri Kishan Bhageria and Others, , (6) Arkal Govind Raj Rao Vs. Ciba Geigy of India Ltd. Bombay, and (7) Anand Regional Co-op. Oil Seedsgrowers Union Ltd. Vs. Shaileshkumar Harshadbhai Shah, . Decisions cited by Mr.Shetty

5. In State Bank of Bikaner and Jaipur v. Shri Hari Har Nath Bhargava (Supra) the question before the Apex Court was whether the respondent therein was entitled to supervisory allowance which was payable only to the employees who were engaged in a supervisory capacity. In that case, the Bank had executed a Power of Attorney in favour of the respondent which obliged the respondent for and in the name of the bank to do and transact jointly with the other officers mentioned therein the matters and things which included endorsement of hundies, drafts, cheques, warrants, railway receipts, pension bills and other negotiable and mercantile instruments, and to commence, prosecute, enforce, defend, answer and oppose any suit or other legal proceedings and demands. Alleging that these powers were supervisory and managerial the respondent claimed supervisory allowance. The appellate Bank contended that the respondent was not actually called upon to exercise the powers and discharge the functions which were conferred by him on the Power of Attorney and therefore he was not working in the supervisory capacity. Negating the defence and holding that the fact that the respondent was not called upon to discharge the function did not take away from him the responsibility or status of a person competent to discharge the functions of a supervisory character, the Court held that the employee cannot be deprived of the supervisory allowance unless the Bank gave him notice that he was not to act upon the Power of Attorney.

6. In S.K. Miani v. Carona Sahu Co. Ltd. (Supra) the Supreme Court held that when an employee was doing more than one duties and functions his main duties and not some of the incidental works done by him would be decisive to decide whether the employee was engaged in a supervisory capacity. If the principal nature of the duties and functions were supervisory in nature then mere fact that he was incidentally doing some works which was clerical or not supervisory in nature would not make him a workman within the meaning of Section 2(s) of the Industrial Disputes Act.

7. In Heavy Engineering Corporation Limited v. Presiding Officer Labour (Supra) the Supreme Court was considering whether a doctor who along with 3 other doctors posted at a First Aid Post was a workman within the meaning of Section

2(s) of the Industrial Disputes Act. While the doctor was required to work in the shifts nevertheless the fact that during the time when he was in the shift he was the sole person in charge of the First Aid Post and had male nurse, nursing attendant, sweeper and ambulance driver working under him and taking orders and directions was decisive to hold that the doctor was working in the supervisory capacity.

8. The decision of the Supreme Court in *Union of India v. Mustafa & Najibai Trading Company* (Supra) relied upon by Mr. Shetty only reiterates the well settled principle of law that while exercising its jurisdiction under Article 226 and 227 of the Constitution of India it is not open to the High Court to reappraise the evidence produced before a sub-ordinate tribunal and on the basis of such reappraisal of evidence to arrive at a finding of fact different from that recorded by such tribunal. A finding of fact recorded by the sub-ordinate tribunal can be interfered with by the High Court only if it is based on no evidence or if such finding can be regarded as perverse. The High Court cannot convert itself into a court of appeal and interfere in a possible finding of fact.

Decisions cited by Mr. Ganguly.

9. In *Lloyds Bank Ltd, New Delhi v. Panna Lal Gupta* (Supra) the Supreme Court held that the work done by the clerks in the audit department of the appellant bank substantially consisted of checking up books of accounts and entries made in them. This checking up is primarily a process of accounting, and the use of the word "checking" cannot be permitted to introduce a consideration of supervisory nature. The work of checking the authority of the person passing the voucher or to enquire whether the limit of authority has been exceeded is also no doubt work of a checking type but that checking is purely mechanical, and it cannot be said to include any supervisory function. A person claiming the status of a supervisor should normally have to supervise the work of some others who are in a sense below him.

10. In *South Indian Bank Ltd. v. A.R. Chacko* (Supra), the question before the court was whether the respondent ceased to be a workman on his promotion and appointment as accountant. The court drew distinction between the accountants who were really officers and the accountants who were merely clerks with some supervisory duties and held that the labour court on proper consideration of the evidence had rightly come to the conclusion that the respondent was merely a senior clerk doing mainly clerical duties and by mere designation as accountant he would not cease to be a workman.

11. In *Syndicate Bank Ltd. v. Its Workmen* (Supra) a Constitution Bench of the Supreme Court held that mere designation of an employee as such was not conclusive of his status as an officer. The court has to look to the nature of the duties assigned to the person concerned to decide whether he is a workman or not. On the facts of that case the Supreme Court held that accountants in the appellant bank were not employed in a managerial capacity but were merely

supervisory staff and would be workmen all along as they were drawing wages upto Rs. 500/- per men sum, which was the limit of salary as per Clause (iv) of Section 2(s) of the Industrial Disputes Act as it then stood.

12. In Punjab Co-operative Bank Ltd. v. R.S. Bhatia (Supra), the Supreme Court on the facts of that case held that an accountant in the appellant bank was supposed to sign the salary bills of the staff including himself and submit it to the head office while performing the duties of a clerk and mere fact that he was to sign the salary bills did not make him employed mainly in a managerial or administrative capacity. The respondent was therefore held to be a workman.

13. In National Engineering Industries Ltd, v. Shri Shri Kishan Bhageria (Supra), the Supreme Court on the facts of that case held that the respondent therein who was working with the appellant as an internal auditor was not a workman. His duties were mainly reporting and checking up on behalf of the management. A reporter or a checking clerk is not a supervisor. The respondent undoubtedly was checking up on behalf of the employer but he had no authority to take decision and his decision did not bind the company. The respondent was therefore held to be a workman.

14. In Arkal Govind Raj v. Ciba Geigy of India Ltd.(Supra), the Supreme Court held that where the concerned employee has multifarious duties and a question is raised whether he is a workman or someone other than a workman the court must find out what are the primary and basic duties of the person concerned and if he is incidentally asked to do some other work, which may not necessarily be in tune with the basic duties, the additional duties cannot change the character and status of the person concerned. In other words, the predominant purpose of employment must be taken into consideration and the clause of some additional duties must be rejected while determining the status and character of the person.

15. In Anand Regional Co-op. Oil Seedsgrowers Union Ltd. v. Shaileshkumar Harshadbhai Shah (Supra) after referring to its earlier decisions including in cases of Anand Bazaar Patrika (Supra) and Heavy Engineering Corporation Ltd, (Supra) the Apex Court held that while determining whether a person is a workman or not, not only the nature of the work performed by him but also the terms of appointment in the job performed are relevant (see para 14 of the decision) while determining nature of the work performed by an employee, the essence of the matter should call for consideration without giving undue importance to the designation of an employee. What is needed to be asked is what are the primary duties he performs. To hold that the employee is performing the supervisory duties, it is necessary to prove that there are some persons working under him whose work is required to be supervised.

16. Considering the various authorities referred to by the learned Counsel for the parties, it is clear that mere designation of an employee or the nomenclature of a post is not determinative of the character of the nature of the duties performed by an employee. An employee would be regarded as performing the supervisory

duties only if he is required to supervise the work of one or more of the employees working under him. Supervision means direction and control. The concerned employee must have a power to supervise, direct and control the work of any other employee or employees working under him. The work "checking" has multiple meanings. A clerk in the audit department of a company checks the entries in the books of accounts made by other employees. But that checking is not done in a supervisory capacity but is done merely to bring to the notice of the employer any irregularity happening or committed by any other employee. He has no power to punish or correct errors of other employees. But the function of checking by an officer who day to day supervises work and tasks performed by his subordinates, is different from the checking by an audit clerk. The officer supervises and checks work of his subordinates with a view to direct and control their actions. Such checking, unlike checking of an entry in books of accounts by an audit clerk is a supervisory function.

17. A managerial function often is distinct from a mere supervisory function. A manager is often employed to take decisions including policy decisions which are managerial in nature. At a given time or place, a manager may be the sole person available on the spot. He may be required to take policy decisions or managerial decisions involving use of his administrative or managerial skill, knowledge and experience. The decisions may involve large financial consequences. The right decision may benefit and a wrong decision may adversely affect financial fortunes of a company. To illustrate, a manager of a branch of a Bank may be required to take instantaneous decisions regarding discounting and/or buying of a foreign bill of exchange or foreign currency of millions of dollars, pounds, euros or yens. He may be authorised and required to sanctions loans individually and even without concurrence of anybody upto a limit fixed by the Bank; he may be authorised and required to buy, sell and lease properties for and on behalf of the Bank. All these decisions may be taken by him individually and such decisions may not involve supervision of any work of his sub-ordinates. In case of foreign exchange dealer in a bank there may not be any sub-ordinate working under him, and though he is not supervising the work of any of his employees he would be required to take managerial decision of determining the rate at which foreign currencies may be traded. Distinction between a managerial or an administrative function and a supervisory function must be kept in mind. Even the Act, keeping in mind the distinction has made separate provisions for person performing managerial and/or administrative functions on the one hand and mere supervisory functions on the other as can be seen from Section 2(s) of the Act.

18. Section 2(s) of the Act reads as under:

2(s). "workman" means any person (including an apprentice) employed in any industry to do any manual, unskilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in

relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person.

(i) who is subject to the Air Force Act, 1950 (45 of 1950), or the Army Act, 1950 (46 of 1950), or the Navy Act, 1957 (62 of 1957); or

(ii) who is employed mainly in the police service or as an officer or other employee of a prison; or

(iii) who is employed mainly in a managerial or administrative capacity; or

(iv) who, being employed in a supervisory capacity, draws wages exceeding one thousand six hundred rupees per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature.

19. Clause (iii) which relates to persons employed in managerial or administrative capacity and Clause (iv) which deals with persons employed in supervisory capacity of Section 2(s) of the Industrial Disputes Act are independent of each other and are to be read disjunctively. While Clause (iii) excludes persons employed in the managerial or administrative capacity, Clause (iv) excludes persons employed in supervisory capacity drawing wages not exceeding Rs. 1600/- per month from the definition of a workman. It may be noted that while a person who is engaged in a supervisory capacity would be excluded from the definition of a workman only if his wages exceed Rs. 1600/- per month. However a person engaged in a managerial or administrative capacity would per se be excluded from the definition irrespective of the amount of salary drawn by him. Considering the present salary structure in the country it is unlikely that any person employed in a managerial capacity would draw a salary of less than Rs. 1600/- per month but that is entirely immaterial. Section 2(s) makes a distinction between persons engaged in managerial or administrative capacity and persons engaged in a supervisory capacity. While a person engaged in a supervisory capacity would be excluded from the definition of a workman only if his salary is more than Rs. 1600/- per month a person employed as managerial or administrative capacity irrespective of the wages drawn by him is excluded from the definition of the workman.

20. In a given case, it is possible that a manager who is employed in a managerial and administrative capacity is also required to supervise the work of several other subordinates working under him. In that case he would fall both under Clauses (iii) and (iv) of Section 2(s) of the Act and as such would not be a workman. An officer who falls under either Clause (iii) or (iv) of Section 2(s) would also be excluded and not a workman. In the present case, we are satisfied that the respondent was employed both in the supervisory as well as in the managerial capacity. The respondent was not only the officer immediately below the Manager of the branch but was also conferred managerial powers by the

Power of Attorney dated 24th May 1978 (Exhibit-C). The Power of Attorney conferred on the respondent power to open accounts with different Banks. It authorised her to collect interest, dividends as well as pledge mortgage and dispose of government securities. It authorised her to make, draw, sign and endorse cheques, hundies and bills of exchanges and to demand, collect and receive and give discharge in the name of and/or on behalf of the bank of all debts, advances and claims due to the Bank. It authorised her to enter into agreements or leases of immovable property for a period not exceeding two years. Bare look at the Power of Attorney would show comprehensive powers including powers of buying, selling and disposing of property, both movable and immovable, as well as power to sell, endorse and transfer negotiable instruments and commercial documents and actionable claims of any amount were conferred on her. Exercise of these powers involved exercise of managerial skills and taking of managerial decisions. These cannot be regarded as routine powers conferred on sub-ordinate employees or clerks. It may be noted that these powers were not required to be exercised by her jointly with the Manager or any other Officer. She could independently exercise those powers without the concurrence of the Manager or any other Officer of the Bank. No restriction whatsoever was imposed on her regarding the use of those powers; atleast nothing was brought on record to show that there were any restriction on her power or they were to be exercised only in the absence of the Manager of the branch. This aspect of the matter viz. that the respondent was employed mainly in a managerial capacity was overlooked by the learned single Judge which requires interference in his decision at our hands.

21. We are satisfied that respondent was also employed in a supervisory capacity. Though respondent initially denied that she had authority to sanction leave, in the cross examination she admitted that power and also said that she did sanction leave to two of the clerks working under her. Power to sanction leave is of considerable importance in any organisation. A leave is sanctioned to an employee only after assessing the exigencies and load of work by an officer who ordinarily supervises the work of the employee asking the leave. The respondent was required to check the work of the clerks working under her and also to check the cash. Nothing was brought on record that this checking was only a physical checking and reporting to the management as was the case in National Engineering Industries Ltd. (Supra). Here the checking involved a power to overrule and/or correct errors made by the sub-ordinates. Respondent was authorised to check and correct the work of the clerks and not merely and report the errors to the management. In the circumstances, we have no hesitation in holding that the view taken by the tribunal that the respondent was employed in a supervisory capacity if not preponderant was clearly a possible view. It is well settled principle of law re-iterated by the Supreme Court in Union of India and Anr. v. Mustafa & Najibai Trading Co. (supra) that in a petition under Article 226 and/or 227 of the Constitution of India, it is not open to the High Court to re-appreciate the evidence produced before a subordinate tribunal and on the basis

of such reappreciation to arrive at a finding of fact different from that recorded by such tribunal unless the finding is based on no evidence or is such, as can be regarded as perverse. In the circumstances, the learned Single Judge erred in reappreciating the evidence and come to the conclusion that the respondent was not employed in a supervisory capacity. This decision is therefore required to be set aside.

22. For the reasons mentioned above, appeal is allowed and impugned order is set aside and the award passed by the tribunal on 4th July 1994 in Reference No. CGIT-17 of 1990 is restored.