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**(1979) 06 CAL CK 0001**  
**In the Calcutta High Court**

P.C. Bank and Others

APPELLANT

Vs

Indian Overseas Bank and Others

RESPONDENT

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**Date of Decision :** 21-06-1979

**Acts Referred:**

Constitution of India, 1950 — Article 14, 16, 226

Industrial Disputes Act, 1947 — Section 10A, 12, 18, 2, 22

**Citation :** (1979) 06 CAL CK 0001

**Hon'ble Judges :** Sabyasachi Mukharji, J

**Bench :** Single Bench

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## Judgement

Sabyasachi Mukharji, J.—The subject matter of challenged in this application under Article 226 of the Constitution is the settlement dated 22nd March, 1978 being Annexure-A to the petition. The petitioners also challenge the implementation of this settlement by the promotions given by the Bank. The petitioner, in this application, are six in number. Of these four are the employees of the Bank, fifth is the Indian Overseas Bank employees Union (W.B.), a registered trade union and sixth petitioner is the Indian Overseas Bank Federation. The respondents to his petition are the Indian Overseas Bank and certain officers of the said Bank as well as the Indian Overseas Bank employees Union, Respondent No. 5 and the Regional Labour Commissioner having his office at Madras. As I said, the grievance of the petitioner s was that after the Bank nationalization Act, this Bank became a nationalized Bank and their employees had continued to be the employees of the Bank Under the Banking Regulation Act, 1949 under the same terms and conditions until duly altered. Sub-section (2) of section 12 of the Banking Companies (A and T), 1970 provided, inter alia, as follows :

12. (2) Save as otherwise provided in sub-section (1), every officer or other employee of an existing bank shall become, on the commencement of this Act, as officer or other employee, as the case may be, of the corresponding new bank and shall hold his office or service in that bank on the same terms and conditions and with the other matters as would have been admissible to him if the

undertaking of the existing bank had not been transferred to and vested in the corresponding new bank and continue to do so unless and until his employment in the corresponding new bank is terminated or until his remuneration, terms or conditions are duly altered by the corresponding new bank.

2. Section 19 also provides power to make regulations altering the terms and conditions of the employment. It is not necessary for me to refer in detail to section 19 because there has not been any alteration of the regulations of employment in terms of Section 19 and I am not concerned with this question in this application. As I said hereinbefore, the petitioners grievance is mainly that the promotions which have been given to certain employees in the category of officers, as shown in Annexure-G, were illegal. The petitioners contend that such promotions were illegal because for mainly two reasons. The petitioner's first and the main argument is that the said promotions were purported to have been implemented as a result of the settlement arrived at between the petitioners and the Respondent No. 5 on the 22nd March, 1978. It is stated that the said settlement, though described as a settlement on the promotion policy, was not a settlement in the course of conciliation and as such was not binding on others namely, those who are not members of the Respondent No. 5. Therefore, it is necessary to determine firstly, whether it was a settlement in course of the conciliation. Section 2(p) of the Industrial Disputes Act, 1947 defines settlement as follows :

2(p) "Settlement" means a settlement arrived at in the course of conciliation proceeding and includes a written agreement between the employer and workmen arrived at otherwise than in the course of conciliation proceeding where such agreement has been signed by the parties thereto in such manner as may be prescribed and a copy thereof has been sent to an officer authorized in this behalf by the appropriate Government and the conciliation officer.

3. Section 12 deals with the duties of the conciliation officer and how the settlement is to be arrived at in course of the conciliation proceedings. Section 12 provides as follows :

12. Duties of Conciliation Officers :- (1) Where any industrial dispute exists or is apprehended, the conciliation officer may, or where the dispute relates to a public utility service and a notice u/s 22 has been given,, shall, hold conciliation proceedings in the prescribed manner.

(2) The conciliation officer shall, for the purpose of bringing about a settlement of the dispute, without delay investigate the dispute and all matters affecting the merits and the right settlement thereof and may do all such things as he thinks fit for the purpose of inducing the parties to come to a fair and amicable settlement of the dispute.

(3) If a settlement of the dispute or any of the matters in dispute is arrived at in the course of the conciliation proceedings the conciliation officer shall send a report thereof the appropriate Government of an officer authorized in this behalf

by the appropriate Government together with a memorandum of the settlement signed by the parties to the dispute.

(4) If no such settlement is arrived at, the conciliation officer shall, as soon as practicable after the close of the investigation, send to the appropriate Government a full report setting forth the steps taken by him for ascertaining the facts and circumstances relating to the dispute and for bringing about a settlement thereof, together with a full statement of such facts and circumstances, and the reasons on account of which, in his opinion, a settlement could not be arrived at,

(5) If, on a consideration of the report referred to in sub-section (4), the appropriate Government is satisfied that there is a case for reference to a Board, Labour Court, Tribunal or National Tribunal it may make such reference it shall record and communicate to the parties concerned its reasons therefore.

(6) A report under this section shall be submitted within fourteen days of the commencement of the conciliation proceedings or within such shorter period as may be fixed by the appropriate Government :

Provided that, subject to the approval of the conciliation officer the time of the submission of the report may be extended by such period as may be agreed upon in writing by all the parties to the dispute.

4. Section 18 provides the effect of a settlement in the course of conciliation and sub-section (3) of Section 18 of the Industrial Disputes Act, 1947 inter alia, provides as follows :

18. (3) A settlement arrived at in the course of conciliation proceedings under this Act or an arbitration award in a case where a notification has been issued under sub-section (3-A) of S. 10A, or an award of a Labour Court, Tribunal or National Tribunal (e) which has become enforceable shall be binding on -

(a) all parties to the industrial dispute ;

(b) all other parties summoned to appear in the proceedings as parties to the dispute, unless the Board, Arbitrator, Labour Court, Tribunal or National Tribunal, as the case may be, records the opinion that they were so summoned without proper cause ;

(c) Where a party referred to in clause (a) or clause (b) is an employer, his heirs, successors or assigns in respect of the establishment to which the dispute relates ;

(d) Where a party referred to in clause (a) or clause (b) is composed of workman, all persons who were employed in the establishment or part of the establishment, as the case may be, "to which the dispute relates" on the date of the dispute and all persons who subsequently become employed in that establishment or part.

5. In this connection, my attention was also drawn to the Central Disputes Rules, Rule 58 which provides as follows :

58. Memorandum of settlement :- (1) A settlement arrived at in the course of conciliation proceedings or otherwise, shall be in Form H.

(2) The settlement shall be signed by :

(a) in the case of an employer, by the employer himself, or by his authorized agent, or when the employer is an incorporated Company or other body corporate, by the agent, manager or other principal officer of the corporation ;

(b) in the case of the workmen, by any office of a trade union of the workmen or by give representatives of the workmen duly authorized in this behalf at a meeting of the workmen held for the purpose.

Explanation-In this rule "Officer" means any of the following officers namely, -

(a) the President ;

(b) the Vice-President ;

(c) the Secretary (including the General Secretary) ;

(d) a Joint Secretary ;

(e) any other officer of the trade union authorized in this behalf by the President and Secretary of the Union.

(3) Where a settlement is arrived at in the course of conciliation proceeding the conciliation officer shall send a report thereof to the Central Government together with a copy of the memorandum of Settlement signed by the parties to the dispute.

(4) Where a settlement is arrived at between an employer and his workmen otherwise than in the course of conciliation proceedings before a Board or a conciliation Officer, the parties to the settlement shall jointly send a copy thereof to the Central Government, the Chief Labour Commissioner (Central) New Delhi and the Regional Labour Commissioner (Central) and to the Conciliation Officer (Central) concerned.

6. In order to be a settlement in the course of a conciliation proceeding which will have a binding effect, in terms of Sec. 18(3) on the other parties, who are not parties to the settlement, it will be a conciliation proceeding pending and secondly, the settlement should have been arrived at in the course of the conciliation. In support of this contention and which is quite evident from the scheme of the section, learned advocate for the petitioners drew my attention to several decisions to which I shall presently refer, viz. the decision in the case of The Bata Shoe Co. (P) Ltd. Vs. D.N. Ganguly and Others, . He relied on the observations of the Supreme Court in paragraphs 7 and 8 to emphasis the point that settlement in the course of conciliation should be fair and right and he also

drew my attention to the observations of the Supreme Court in the case of Workmen of Delhi Cloth and General Mills Ltd. Vs. The Management of Delhi Cloth and General Mills Ltd., to emphasis that the report, as contemplated under Sec. 18 as well as under Rule 58, which I have set out hereinbefore, should be sent by the conciliation officer. He also drew my attention to certain observations of the Division Bench of the Kerala High Court in the case of Monthly-rated Workmen of Pierce Leslie and Co. Ltd., Cochin Vs. Labour Commissioner and Chief Conciliation Officer, Kerala State, Trivandrum and Others, where the Division Bench of the Kerala High Court observed that it is true that under Sec. 18, a settlement arrived at in the course of the conciliation proceeding had an extended operation beyond the parties to the settlement but that did not mean that any agreement arrived at in course of conciliation proceedings without the concurrence of all the disputants was a settlement within that section. In that section the word "settlement" postulated such concurrence. Where certain demands mostly identical in character were raised by two registered trade unions, A and B, and settlement was arrived at between the company and the workmen represented by the union A during the course of the conciliation proceedings and the union B was neither invited nor permitted to be present at the conference at which the settlement was arrived at and signed, it was held that B had not been permitted to participate in the conciliation proceedings and as such it was not a settlement arrived at in the course of necessary tot emphasise that in the case before the Kerala Division Bench both the unions A and B, were parties and it raised disputes which were pending before the conciliation officer. Therefore, when disputes between employer and two different unions are pending before the conciliation officer to arrive at a settlement, with one of the unions excluded the appearance and participation by the other, may not be considered to be the proper settlement or a fair or a right settlement arrived at in the course of conciliation. Reliance was also placed on certain observations of the learned single Judge of the Kerala High Court in the case of Padmanavan Menon v. Indian Aluminium Co. Ltd. 1968(2) L.L.J. 225 where the learned single Judge again reiterated that where there were rival unions of the company and a bipartite long term settlement was arrived at between the employer and one of the unions was in force and a charter of demand was raised by the other two unions, the conciliation officer was not permitted to effect the conciliation proceedings of the demands raised by second and third unions in view of the fact that there was bi-partite settlement with the first union binding on the majority of the workers. The facts of that case, in my opinion were entirely different. Therefore, the observations of the learned Judge in that case would not be quite relevant in determining the issues before me.

7. Reliance was also placed on certain observations of the Supreme Court in the case of Herbert sons Ltd. vs. Their Workmen, AIR 1977 SC 322. There, the Supreme Court observed that where the recognized union negotiated with an employer on behalf of the workers individuals workers come into the picture. It was not necessary that each individual worker should know the implication of the

settlement since a recognized union, which was expected to protect the legitimate interest of labour, entered into a settlement in the best interests of the labour. This would be normal rule. There might be allegations of malafide, fraud or even corruption or other inducements. But in the absence of such allegation a settlement in the course of collective bargaining was entitled to due weight and consideration. The justness and fairness of settlement had to be considered in the light of the advantages that were in force at the time of reference. It would not be correct to judge the settlement merely in the light of the award which was pending appeal before the Supreme Court. The Supreme Court also reiterated that it was not possible to scan a settlement in bits and pieces and hold some parts good and acceptable and others bad. Unless it could be demonstrated that the objectionable portion was such that it completely outweighed all the other advantages gained, the Court would be slow to hold a settlement as unfair and unjust. The settlement had to be accepted or rejected as a whole.

8. Learned advocate for the petitioners also drew my attention to certain observations in the case of Tata Chemicals Ltd. Vs. The Workmen represented by Chemicals Kamdar Sangh, where after referring to Sec. 2(p) of the Industrial Dispute Act, 1947 the Supreme Court observed that even if the settlement regarding the certain demands was arrived at otherwise than during the conciliation proceeding between the employer and the union representing the majority workmen, the same was not binding on the other union who represented the minority workmen and which was not a party to the settlement. The other union could therefore raise a dispute in respect of the demand covered by the settlement and the same could be validity referred for adjudication. It is also in this connection relevant to bear in mind that it is indisputable in this case the Respondent No. 5 w the recognized union and according to its claim it represented the vast majority of the workmen concerned, if not as claimed by it 90 percent of the workmen. This position that it was a recognized union is not disputed by the petitioners. The question therefore now relevant for consideration is whether a dispute was raised by the Respondent No. 5 and whether such a dispute was referred to the conciliation officer and the resultant settlement was arrived at after that. In the affidavit in opposition filed on behalf of the Respondent bank at page 31 in annexure there is a letter dated 16th November 1977 wherein it was written by the Respondent No. 5 as follows :

We enclose our proposal for a settlement for revised promotion policy. Our Committee which met in September last have directed us to start negotiations with your and finalise the settlement before next promotion interview. You will agree with us that the present settlement which was signed in the year 1972 has become obsolete and hence needs change with immediate effect to ensure enough weightage to seniority and to properly recognize the time and aspirations of the new entrants.

9. Thereafter, it appears the Bank took no notice of the said alleged letter or claims or the demands and the Respondent No. 5 was constrained to write

another letter on the 15th December, 1977 which stated as follows.

We have written to you enclosing our proposal for a new settlement which is long overdue. We have also suggested that we could have discussions for arriving at a fresh settlement. We have not so far heard from you.

In the meanwhile the situation has become more urgent due to certain developments that have taken place subsequently in regard to the conduct of examination by the Indian Institute of Bankers. In our existing settlement, account is given to these examinations and hence many of our members in which the Institute is conducting these examination, for the past few years. Further when we signed our settlement in 1972, it was against the background that the examinations would be conducted twice a year. But the frequency is reduced to once a year arbitrarily and the reasons have been stated either by you or by the Institute.

Further this examination which is now being conducted once in a year is frequently postponed due to one reason or the other, the main being their incapacity to avoid publication of question papers earlier to the conduct of examination.

It has become a countrywide scandal that CAIIB Question papers could be commercially bought in the open market earlier to the date of examination. This has created a situation of uncertainty and a great amount of frustration among the bank employees who are keen on expedient their prospects in their career. This part, the Institute is so careless as towards a pass in the examinations not even taken by the candidates. Even when queries, instead of correcting the mistakes, they always come with a reply that "their decision is final".

Even the question papers of postponed November examination were freely available to the Bank employees very much earlier to the dates of the examination and we understand that the Institute is thoughtless enough not to accept the gravity and insist upon proceeding further in the matter of announcing the results on the basis of this farce of examination. This will put many honest and sincere bank employees to a great disadvantage as their performance would naturally not be as good as those who could have the knowledge of question papers earlier to examinations.

In fact our confidence in this very Institute and the integrity of persons conducting the examination it irreparably eroded. We therefore desire that the Bank should not give any importance to the certificates awarded by the Institute of such integrity and standard.

Hence it is demanded that the next promotion should not take place on the basis of the present settlement. We will be constrained in the event of your choosing to do so to direct our members not to attend such interviews.

Further weight age for SC and STS is long overdue and our repeated representations have not evoked any response from you. This matter also should

be considered for inclusion in the new settlement.

In view of the foregoing we repeat our request that in the interest of maintaining proper and congenial industrial relations an early date must be fixed for discussing our proposals for a new promotion policy for settling the issue at the earliest.

10. Thereafter, on the 11th March, 1978, another letter was written to the Regional Labour Commissioner by the Jt. Secretary of the Respondent No. 5 which state as follows :

We have been holding discussions with the Management of our Bank for revision of the existing promotion policy as per the settlement signed before you in the year 1972. There have been some difference of opinion between us and the management on certain aspect of the proposed policy and we are unable to resolve our difference. Hence we request you to intervene in the matter and conciliate such that an amicable settlement is arrived at the earliest.

11. The settlement which is impugned in this application was arrived at thereafter and recites, inter alia, the memorandum of settlement arrived under Sec. 12(3) of the Industrial Disputes Act on 22nd March, 1978 before Mr. N. R. Raju, Regional Labour Commissioner (Central), Madras, in an industrial dispute between the management of the Indian Overseas Bank and its workmen represented by the Respondent No. 5 on the matter of promotions of employees in clerical and subordinate cadre of the Bank. Then the parties who were present their names have been mentioned. There is a short recital of the case which indicated that after coming into operation of the regulation in 1967, there was a settlement on the 1st December, 1972. Thereafter disputes and differences and certain terms were agreed and the settlement was signed by the two parties which also bore the signature of the Regional Labour Commissioner, who was the conciliation Officer.

12. It is in this context that I have to decide whether there was any conciliation pending and the settlement was arrived at in course of the conciliation proceeding. Reference in this connection may be made to the averments made in paragraph 15(a) and 15(b) of the affidavit filed on behalf of the Bank. It is important to bear in mind that although the settlement was arrived at on the 22nd March, 1978. the petitioners moved this application before this Court on the 25th May, 1978. The petitioner did not challenge either the existence or illegality of the settlement arrived at in the 22nd march, 1978. It is not the case of the petitioners that the petitioners were not aware of the settlement arrived at on the 22nd March, 1978. The petitioners did not take any action earlier to impeach the settlement. Bearing the aforesaid facts in mind, one has also to remember the presumption of regularity of the official act. There is nothing to suggest that the Respondent No. 6, in whose presence the settlement was arrived at, was acting in partisan or in an improper manner and therefore in the absence of such allegation it is not possible to accept, in view of what was recited

in the memorandum of settlement in the background of the letters written, that there was no conciliation proceedings pending or the settlement was not arrived at during the course of conciliation proceedings. In this connection, reference may also be made to certain observations of the Division Bench of the Mysore High Court in the case of Sugar Mills Employees Union v. Commissioner of Labour 1968(1) L.L.J. 491 at page 494. It is also important to bear in mind the observations of the Division Bench of the Madras High Court in the case of Workers of Buckingham Carnatic Mills Ltd. v. Commissioner of Labour, 1964 (1) L.L.J. 253 at page 262 and also the observations of the learned single Judge of the Andhra Pradesh High Court in the case of Syndicate Bank Staff Association v. Regional Labour commissioner, 1968 (2) L.L.J. 712 at page 721.

13. In the background of the facts of this case and the principles of law applicable, in my opinion, the claim of the other union, if they had raised, was not before the conciliation officer and no industrial disputes had been raised on that point. There was claim by the recognized union which had remained unheeded for certain time and it was again reminded by the union and the conciliation officer in the settlement stated that he took up the conciliation and recorded the settlement. It is not possible to accept in the absence of any more allegation that there was no settlement arrived at the conciliation proceedings.

14. A point was sought to be made that the report was not sent as contemplated by Sec. 12 and also the Rule 58. This point was not specifically taken. It was upto the petitioners, if they were impeaching the settlement on this ground, to arrange for proving this assertion after making this averment in the petition. As this allegation was not made, the respondents were not called upon to meet this allegation. Therefore, in my opinion, it would be inappropriate at this stage to go into this question whether the report had been sent and it not, what is the thereof.

15. It was also urged that there had been no termination of the existing settlement and therefore no conciliation could be taken up on the new demand. This point again was not taken in the petition and therefore, this point, in my opinion, is not open to the petitioner to agitate, as this will require investigation of fresh and new facts.

16. The second branch of argument of the petitioners was that even assuming that there was a valid settlement, the promotions were not in terms of the said settlement and therefore the said settlement violated the Articles 14 and 16 of the Constitution. In order to make out the case of treating equals unequally or of denying equal opportunity to any employees in order to attract the constitutional prohibition of Article 14 and 16 there must be the proper averments to state that who are the equals and who have been treated unequally. It is not the equals who have been treated unequally. It is not the case that the settlement was intended to be applied to any particular group of employees denying opportunity to another group of employees. However, if in implementing the settlement some persons got a greater advantage or some persons did not get that amount of

advantage, in my opinion, no question of violation of Article 14 or prohibition of Article 16 arises.

17. The other branch of argument of behalf of the petitioners was, as I have mentioned hereinbefore, that the promotions, which are shown in Annexure-G, were not in terms of the settlement. It is stated that the reservations in favour of the scheduled castes and scheduled tribes, which were required to be made, had not been made. This assertion, if it correct, amounts to an assertion of non-implementation of the terms of settlement. The Industrial Disputes Act provides of settlement arrived at in course of detailed investigation of facts in my opinion, it would be inappropriate to embark upon this question in the present application under Article 226 of the Constitution.

18. The next aspect of the matter as stated in the letter which is annexed to the petition, was that the Respondent No. 5 was trying to promote as much their members as possible and the following letter indicated that the promotees were the members of their Union. It was stated on behalf of the Respondent Bank that it was not correct to state that the scheduled castes and scheduled tribes had not got promotions. As a matter of fact, quite a number of them, according to the Bank, had been given promotion. A chart was handed over to me, a copy whereof has been supplied to others, in course of hearing of this application, which I direct to be kept in the record of this application. But, as I mentioned before, if there has been any violation of the proper reservation in favour of the scheduled castes and Scheduled tribes, the petitioners and others who are aggrieved by the same will have the right, for protection of their interest, to agitate the matter under the appropriate provisions of law.

19. It was then urged on behalf of the Respondent Bank that it was not correct to state that the promotees were all members belonging to the Union of the Respondent No. 5. As a matter of fact, other members also had been promoted and certain other chart was handed over to me during the course of hearing of this application which I also direct to be kept in the record of this application. However, I am not embarking on an examination of this question in this application. As I said, if in implementing the settlement, which is arrived at, in course of conciliation, there has been any breach of the terms, the petitioners any employees aggrieved will be at liberty to take up that point under the provisions of law. The petitioners would be at liberty to take up the question on the proper interpretation of the settlement under provisions of the Act.

20. Learned advocate for the Bank also took a point before me that as the petitioners are complaining about the implementation of certain terms of settlement, the same was not amenable to writ jurisdiction. In this context, learned advocate drew my attention to the observations of the Supreme Court in the case of Kulchinder Singh and Others Vs. Hardayal Singh Brar and Others, . In the view I have taken on the other aspect of the matter, it is not necessary for me to embark on an examination of this question in this application.

21. For the reasons stated above, this application fails and it is accordingly dismissed. The Rule Nisi is discharged. The Rule Nisi is discharged. Interim order, if any, is vacated. There will be no order as to costs.

Stay asked for is refused.