

(1999) 03 BOM CK 0059
In the Bombay High Court
Case No : Writ Petition No. 225 of 1995

Smt. Sunita B. Vatsaraj

APPELLANT

Vs

Karnataka Bank Ltd. and another

RESPONDENT

Date of Decision : 03-03-1999

Acts Referred:

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

Citation : (1999) 3 ALLMR 89 : (1999) 4 BomCR 209 : (1999) 2 BOMLR 536 :
(1999) 2 MhLj 933

Hon'ble Judges : N.J. Pandya, J

Bench : Single Bench

Advocate : N.M. Ganguli, for the Appellant; Ms. Chandes Singh and Umesh Shetty, for the Respondent

Judgement

N.J. Pandya, J.—The petitioner has come before the Court by way of this petition challenging the Order of the Central Government Industrial Tribunal No. 1, Bombay. It came to be passed in Reference No. CGIT-17 of 1990 on 4th July, 1994. This reference has been referred to the Tribunal under the provisions of section 10(1)(d) read with section 2-A of the Industrial Disputes Act, 1947. The services of the petitioner came to be terminated by the respondent Bank with effect from 31st October, 1994.

2. The petitioner was employed in the said bank as Clerk Trainee on 3rd December, 1971 and on completion of the trainee period, she was taken up as probationary clerk on 16th May, 1972. She worked on that basis almost for six years. She was promoted on 10th May, 1978 to the rank of Officer Grade III. Her salary was more than Rs. 2,700/- being payable to clerical staff. By her letter dated 12th May, 1978, the petitioner accepted the promotion and reported to Bandra Branch where she was transferred. She started working in that Branch from 17th May, 1978. On 24th May, 1978, the respondent-Bank executed a Power of Attorney in favour of the petitioner. During that time, when she was working in the Bandra Branch, one Mr. Satish Rao was working as Branch

Manager. He was transferred from Bandra Branch in the month of April, 1982, and from 9th April, 1982 to 8th May, 1982, the petitioner was holding charge of the Bandra Branch of the respondent-Bank. She was therefore, working as Manager of the Bandra Branch of the respondent-Bank. On 8th May, 1982, the new Manager Mr. Satish Udupa took over and during the intervening period, the petitioner was holding the charge of the branch as Manager. The petitioner proceeded on leave on medical grounds as also on maternity leave from 11th May, 1982.

3. In the month of June, 1982, what is alleged to be the misconduct of the petitioner came to be noticed and, therefore, she was contacted by the management of the respondent -Bank. According to the respondent-Bank, she had given a letter dated 14th June, 1982 admitting the lacks on her part. This led to the initiation of the departmental proceedings eventually relating to her termination. A reference was answered against the petitioner on the ground that she is not a workman.

4. The impugned Award is at Exhibit "M" page 138. Reference was specifically on the question as to whether the action of the management of Karnataka Bank Limited in terminating the services of Smt. Sulabha Moreshwar Purandare from Bandra Branch of the Bank with effect from 31st October, 1984 is legal and justified? if not, to what relief she is entitled? In its reply, the Bank raised a question whether the petitioner can be considered to be a workman as per section 2(s) of the Industrial Disputes Act, 1947. While holding in favour of the Bank, the tribunal also went into the question of fairness and propriety of the inquiry and not only held that the inquiry was fair and proper but also held that the action of the management in terminating the petitioner was just and proper. This has categorically been observed in para 21 of the Award.

5. It is admitted on both the sides that if the petitioner is not a workman, as held by the tribunal, obviously, it was not open to the tribunal to enter into a question of fairness and propriety of the inquiry and justness, and legality of the orders of dismissal. It is ultimately to be noted that the tribunal will get jurisdiction to inquire into the aspect of the action of the management on proceeding with the reference that the petitioner is a workman. If the person, who is affected by the action of the management is not a workman, obviously, the tribunal shall not get this jurisdiction. The matter is, therefore, heard on the basis that if, at all, the petitioner is accepted to be a workman, the aforesaid finding will have to be set aside and the trial Court will have to be directed to consider the inquiry part and the punishment part afresh.

6. The important question therefore is whether the petitioner is a workman. As noted above, the tribunal has held against the petitioner. Before the tribunal, witnesses were examined on both the sides. The petitioner examined solitary witness for herself and on her behalf. The respondent-Bank had examined Inquiry Officer as also two of its employees. By way of documentary evidence, the respondent - Bank produced Duty List at Exhibit M-21 and also Power of

Attorney page 41. First of the said documents M-21 is at pages 15 and 16 of the compilation given by the bank in course of the hearing of the matter.

7. As it happens in the tribunal, examination-in-chief was in form of affidavits of the respective witnesses and later on they were cross-examined by the opposite side.

8. It is an admitted position that in absence of the Branch Manager, the petitioner had worked as Manager of the Bandra Branch. However, accepting this contention and relying on the documents of the management, i.e. duty sheet Exhibit M-21 as well as Power of Attorney, on behalf of the petitioner it was urged that keeping aside the nomenclature, the designation and all duties flowing therefrom as also the document like Power of Attorney, one has to concentrate only on duty actually performed by the petitioner. Duty sheet Exhibit M-21 makes it very clear that she was doing the work of checking of savings bank accounts. Bills payable, Cumulative Deposit Accounts, General Ledger and Day Book, B.S.E.S. statement i.e. Bombay Suburban Electric Supply Ltd., Maintaining of remittance, Rejects and Cash Scroll, Daily Checking of Cash and checking of Daily Slip Book.

9. The petitioner has admitted in her cross-examination that duty list is correct. So far as the Power of Attorney is concerned, no one would deny its existence nor has the petitioner. However, she has categorically stated that, so far as the Power of Attorney is concerned, she has never acted nor has she occasioned to act on it.

10. The respondent bank seems to be falling back upon the Power of Attorney as also the fact that the petitioner was to be in-charge of the Branch almost for a period of one month coupled with the said duty list. On attendant circumstances, the respondent bank is also relying on the fact that the petitioner has been promoted in the officers cadre and she has been drawing salary in the officers grade. It has also come on record that the petitioner was a member of the Bank Employees Union. On being promoted, she had resigned from the union and joined Officers Union which, according to the respondent bank is a clear indication of perception that the petitioner had of her position in the bank.

11. Relying on that very document when both, the petitioner and respondent Bank, are trying to make out their respective cases, the arguments, if correctly considered, as submitted on behalf of the petitioner, it comes to the point that except for checking different aspects of operation of the bank as entrusted to her, for all purposes she was simply acting as one more hand doing the same work which is done by the clerk who had actually written either the Savings Bank Accounts or books whether bills payable, Cumulative Deposit Accounts, including the General Ledger. Remittance, rejection and cash credit and so on. In other words, according to the petitioner, while she was working, admittedly, as a clerk, the work that was checked by the person immediately above her, was of the same nature whether the clerk, who had initially written the books or registers,

had committed any mistake or not. This by itself would not refer her work to be of supervisory character. The management is trying to say that this was essentially a duty of the officer who keeps an eye over the work of the clerks working under her as also to pull them up if they were found lacking in duty and generally be the in-charge of the department.

12. Before proceeding further, a definition of the workman as provided u/s 2(s) of the Industrial Disputes Act, 1947 is to be seen, which reads as follows :

"2(s) workman means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, 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, include any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, of 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, or the Army Act, 1950, or the Navy Act, 1957; or

(ii) who is employed 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 exercise, 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."

13. The first part of the definition refers to the clerical or supervisory work for hire. If the aforesaid submission of the petitioner is accepted, obviously, the petitioner will have to be accepted as a workman. In case, it is held with the management, the petitioner is a person who has been employed in a supervisory capacity and draws wages exceeding Rs. 1,000/- per mensem or exercises either by the nature of duties attached to the office or by the reason of powers vested in her, functions empowered managerial nature, obviously, her case would fall within Clause (iv) of sub-section (s) of section 2 of the Industrial Disputes Act, 1947 and, therefore, she will be out of the definition of the workman. The management is also relying on Clause (iii) viz. she is employed mainly in a managerial or administrative capacity.

14. In either events and as per the Supreme Court pronouncements also one has to look at the actual work that was done by the petitioner and the evidence led by the respondent Bank. Now we refer to the deposition of the first witness of the management Mr. V. Rameshkumar Hebbar, page 131 However, so far as the actual working of the petitioner is concerned, in his cross-examination, he admitted that he has no personal knowledge as to what type of work she was

doing in the bank. This deposition is hardly any importance.

15. The deposition of Mrs. Sunita M. Kaunds is at page 133. She is witness No 2 of the management. She says that she was working under the petitioner as a clerk and she used to report her in case of any difficulty and that it was the petitioner who was supervising her work. She also claims that the work has been allotted to her by the petitioner. If one refers to the said duty sheet, at this stage, it is quite clear that in the said duty sheet, the work to be performed by Mrs. Kaunds is clearly laid down. Her deposition, therefore, hardly anything left with the petitioner to prove so far as the allotment of the work is concerned. She has stated in her deposition that one Mr. Partha Sarthy was also working under the petitioner. He has not been examined. Going by the testimony of Mrs. Kaunds, witness No. 2 of the Management, in my opinion, the petitioner was supervising the work of Parth Sarthy also, and it will be in the nature of discharging a duty of the said duty sheet where she has supposed to check the various books and ledgers and registers. This testimony therefore also is not of much importance so far as the actual work done by the petitioner is concerned.

16. As against the testimony of these two witnesses, when the testimony of the petitioner is examined, as per page 134 going upto page 137, she has maintained in her examination-in-chief that she was doing the work under the instructions of her supervisor i.e. the Manager of the Branch. She was checking all books of accounts as also checking cash and deposits. She clearly says that she has no power to sanction leave of any of the employees nor has she any powers to take any disciplinary action against any of the employees. She states that the said Mr. Satish Rao was the Branch Manager till he was transferred.

17. In the cross-examination, she admits that she was transferred on promotion to Bandra Branch and that the Power of Attorney has been executed in her favour. She admits that the Branch Manager is at the Apex in the Branch and below him are the officers. By the time when incident occurred, there were three officers along with the petitioner. She clearly says that the officers were kept in charge of different sections in the Branch In 1984, she was in-charge of the savings section and, according to her, only one clerk was working in that section. At this stage, the said duty list sheet Exhibit M-21 is shown to her and she accepts its correctness. She also accepts the fact that she became a member of the Officers' Union. She however accepts that the scales of pay of clerical staff or that of the officers are different. Different settlements are signed with the Bank by the clerical staff on the one hand and officers on the other.

18. She has categorically asserted in the last paragraph at page 136 that the duties of the Head Clerks and the Officers are the same. The Special Assistants also perform same duties as the Head Clerk or the officers. However, she does accept the fact that the Power of Attorney is not given to them and she also accepts that the officers are supposed to keep an eye over the clerical staff. She states that as an officer of the bank, she used to open clients account and so far as the casual leave is concerned, she states that might be there were few

instances of her having sanctioned leave when the Manager was not on duty. The management has produced two applications Exhibit M-22 and M-23 which she has accepted. She has denied the allegation that she was supposed to allow the work to the clerical staff in her own section. She further stated that the Manager was to allot the work and she used to supervise. The impact of evidence is that, at best, according to her, because of the allotment of the work and because of the post that was occupied by her she was neither in clerical cadre nor supervisory cadre and certainly not in the managerial or administrative capacity nor being employed in supervisory capacity also.

19. Going by the evidence on record, in absence of any other material, it seems that the petitioner was working as in charge of savings section in the branch with one clerk or at the most with two clerks and as a part of her duty she was keeping an eye over their work while doing her own work.

20. This exactly prompted to the learned Counsel for the petitioner to point out that in course of discharge of her duty, if she keeps an eye over the work of the clerks working under her in that very section, those duties were of an officer or a person who may not be in a supervisory capacity. The learned Counsel described the Power of Attorney to be nothing else but a document whereby the petitioner is vested with capacity but that would not make her to be working in the capacity of a supervisory officer.

21. By way of giving instance, it was submitted that she was below the Manager in the rank, and that in absence of the Manager, she was supposed to act and she acted as Manager. In absence of any material on record however as to exactly what work she had done in the absence of incumbent the Manager Mr. Rao when she was holding charge of the Manager, the case has gone on assumption that she was an officer, who was holding the charge of the Manager's post and during the temporary period, she acted as a Manager of the Branch. However, all throughout as officer or as an incharge manager whether she was supervising the work of the others and keeping watch on the clerks working under her, in her section or otherwise, her substantial work as was enumerated in the duty sheet Exhibit M-21 page 16 of the compilation is nothing else but checking the work done by the clerks. This being a mechanical or clerical work, obviously, it cannot be equated with the work of the managerial or administrative nature nor can it be said that she was employed in a supervisory capacity.

22. From the various decisions, which have been cited on both the sides, and it being the Bank matter, in most of its decisions, we find reference to the Sastri and Desai Award and here we refer to the same as Sastri Award only. On behalf of the petitioner, a decision in the case of All India Reserve Bank Employees Association Vs. Reserve Bank of India, has been cited. The Apex Court was dealing with the matter of reference u/s 10(1)(d) of the Industrial Disputes Act, 1947 as also the definition of workman u/s 2(s) thereof and has held that whether a particular workman is a supervisor within or without the definition of

workman is ultimately a question of fact, at best, one of mixed fact and law. The question will really depend upon the nature of the industry, the type of work in which he is engaged, the organisational set up of the particular unit of industry and like factors. In the case before the Apex Court, it was observed that the work in a Bank involves layer upon layer of checkers and checking is hardly supervision where, however, there is a power of assigning duties and distribution of work there is supervision. In reply, the other side has referred to para 26 of the judgment, wherein it is observed that a Bank has placed on record extracts from manuals, orders, etc. relative to all Class II employees and after closed look into the duties as assigned to them, it was opined that they are of supervisory character. On fact, it was held that these employees distribute work, detect faults, report for penalty, make arrangements for filling vacancies, to mention only a few of the duties which are supervisory and not merely clerical. Needless to say, this material is not there on record so far as the petitioner herein is concerned.

23. In the next judgment, in the case of Arkal Govind Raj Rao Vs. Ciba Geigy of India Ltd. Bombay, , the Apex Court again held that the primary and basic duties should constitute the criterion and not incidental duties. At paragraph 10 at page 988, we look for that purpose. In that judgment, the workman was found to be a member of a group of three and may be a leader thereof, and he was to make indent for supply of printed stationery, to write a letter and also to take care that the work assigned to him should be completed in time. Substantially, his work remained to be the same as that of the other group members and, therefore, the Supreme Court categorically held that it cannot be said to be engaged in a supervisory capacity.

24. In a decision in the case of South Indian Bank Ltd. Vs. A.R. Chacko, , the Supreme Court has again held that the nomenclature of accountant by itself is not enough. The Labour Court in that case, as noted in paragraphs 11 and 12, said that there are Accountants who are really Officers and Accountants were merely senior clerks with supervisory duties and hence, with regard to the admissibility of the supervisory allowance to the workman, the Supreme Court has, for that purpose agreeing with this finding of the Labour Court, held that if at all the workman was to be treated as an officer on facts, so far as the petitioner Bank before the Supreme Court is concerned, the workman concerned would financially be the loser. Their Lordships were constrained to observe that this seems to be the way to take workman out of the purview of Sastri Award merely on the ground of promotion. In other words, if substantial duty is that of a workman and not of a supervisory nature, the person should continue to be as a workman whether he has given Power of Attorney or not, as he was not an Accountant or Supervisor.

25. The decision in the case of Gopal Krishnaji Ketkar Vs. Mahomed Haji Latif and Others, , is on the point of the respondent Bank not producing the important evidence which ordinarily withholds in its possession. This is with regard to the

work actually done by the petitioner who holds the documents such as books of account, registers and ledgers which would certainly be available with the Bank and a submission made that an adverse inference be drawn against the Bank. For determining whether the petitioner is a workman or not is not dependent on documents which are not produced by the Bank. Whatever material is on record, in my opinion, is sufficient to resolve this controversy.

26. Last authority is cited in the case between Lloyds Bank Ltd., New Delhi Vs. Panna Lal Gupta and Others, . This again the judgment related to the Sastri Award which refers to clerks and no others. The question whether a given workman is of a group of that workman or not is to be decided, therefore, on the basis of duties assigned to them. In that case, duties as enumerated at page 19 were mostly of checking including reconciliation work and examining whether the amount was within the security limit or not. The findings of the Industrial Tribunal that the work and duties of the concerned employees were of supervisory nature must be held to be obviously or manifestly erroneous. Referring to the said Exhibit M-21 this exactly is the submission made on behalf of the petitioner.

27. This takes me to the decision cited on behalf of the respondent Bank in the case of The State Bank of Bikaner and Jaipur Vs. Shri Hari Har Nath Bhargava, . It relates to a person working with the Bank, who at the relevant time was at Kota, vested with the powers as issued in the instant case. After leaving Kota branch, while working at Jaipur, there were number of officers superior to the respondent who were empowered to discharge duties under the Power of Attorney and the dispute arose whether the respondent lost his responsibility or the powers, but the fact that he was not actually called upon to discharge such functions did not take away his responsibility or a status of a person competent to discharge functions of a supervisory capacity so that he will be out of the purview of the said Award. Holding that he actually did the work as Supervisor and, therefore, entitled to get supervisory allowance being a workman, the Supreme Court held in favour of the workman confirming the finding of the tribunal. In fact, according to the other side, this exactly should be treated as a matter in the case of the petitioner. She, no doubt, had Power of Attorney and as per Clause 1 to 6 thereof, at page 41 of the petition, she had re-delegated her powers as per clauses 1 to 6 to a person working in the Bank up to a capacity as Head Clerk and she continued to do the work of the same nature as was being done by the workman of the State Bank who was held to be entitled, as workman, to get supervisory allowance. In both the cases, he was a Power of Attorney.

28. This is precisely the background in respect of the petitioner in the instant case as, when the petitioner did work as incharge Branch Manager, she might have an occasion to use any of the powers for which there is no clear cut evidence in that regard. She did not work all throughout including the period that she was incharge as Branch Manager. If that be so, the ratio of the Supreme

Court decision in the case of State Bank of Bikaner (supra), on the contrary, helps the petitioner.

29. In the case of The Premier Automobiles Ltd. v. The Premier Automobiles Employees" Union, reported in 1988 (II) C.L.R. 257(Bom.), the workman was shown to be working as supervisor and was to supervise the work in the section, what is known as Sound Deadener and Wet Sanding Sections of Paint Shop, as per page 1988, and was also responsible for the production and quality of the work in that section. He was promoted from the post of clerk to supervisor and was supposed to carry out the aforesaid work as supervisor but holding that designation by itself was not conclusive. The aforesaid position, read with office memos, led to the conclusion that his duties were of supervisory nature. The submission made on behalf of the respondent Bank, in the instant case, is that the petitioner may also be held to be occupying a similar position. However, it has already been stated that the duties she was doing were of checking only.

30. Reliance is placed on an unreported judgment in the case of The Union Carbide (India) Ltd. Vs. Ramesh Kumbla and others, by the learned Single Judge of this Court. Paragraphs 12 and 13 of the said judgment specifically refer to various judgments as to what should be taken into consideration and what parameters should be considered while resolving the controversy as to whether a given employee is a workman under the aforesaid definition of the Industrial Disputes Act, 1947 or not. Firstly, the dominant purpose of the employment is relevant and not some additional duties which may be performed by the employee. Secondly, it is not the designation but the nature of duty, thirdly, whether the employee can bind the Company in the matter of some decisions taken on behalf of the company, and fourthly, the nature of the supervisory duties performed by the employee whether it includes directing the subordinates and so on. In answer, the learned Single Judge observed with reference to the Power of Attorney that, so far as the petitioner is concerned, no doubt, she has been vested with it but yet there is nothing on record to show that she had ever exercised any of these powers and, on the contrary Exhibit M-21 whereunder duties are fixed is confined to checking up only, which may occasionally or incidentally evolved in mistake of the workman working in that section, which by itself was not a supervisory character.

31. 1995 L.I.C. 546 Ramesh s/o. Ramrao Wase v. Commissioner, Revenue Division, Amravati, is cited. Again the duties, that were performed by the workman, are enumerated at Clauses (a) to (g) in para 6 on page 548. Then in paragraph 7, it has been noted that the duties of the petitioner are supervisory and not technical as claimed. Had there been material on this point, I would have accepted this proposal.

32. It is quite clear that the petitioner, though designated as an officer and entrusted with various powers as per the Power of Attorney, was in fact left to the situation of carrying out the work of clerical nature, no doubt, including the checking up of work done by the other workers in her own section. On the basis

of the material on record both, oral and documentary, in my opinion, therefore, the learned tribunal had totally misdirected itself in appreciating the evidence and hence the Award cannot be sustained. The Award is set aside. The petitioner is to be a workman and the trial Court is, therefore, directed to hear the Reference and proceed further with it in accordance with law. Rule made absolute accordingly.

33. Rule made absolute.