

(2007) 08 CAL CK 0078

In the Calcutta High Court

Case No : FMA No. 512 of 2005 and MAT No. 89 of 2004

Standard Chartered Bank Pensioner's Association and Others	APPELLANT
Vs	
Standard Chartered Bank Officers' Pension Fund and Others	RESPONDENT

Date of Decision : 14-08-2007

Acts Referred:

Banking Regulation Act, 1949 — Section 35A
Constitution of India, 1950 — Article 14, 226, 226(1A)
Income Tax Rules, 1962 — Rule 90
Industrial Disputes Act, 1947 — Section 18, 2, 2A

Citation : (2007) 3 CALLT 483 : (2007) 4 CHN 369 : (2008) 116 FLR 744 :
(2009) 1 ILR (Cal) 398 : (2008) 1 LLJ 409

Hon'ble Judges : S.S. Nijjar, C.J.;A.K. Basu, J

Bench : Division Bench

Advocate : Anindya Mitra, Lakshmi Gupta and Basudeb Chakraborty, for the Appellant; Jayanta Mitra and P.S. Sengupta, for the Respondent

Final Decision : Dismissed

Judgement

S.S. Nijjar, C.J.—This appeal has been filed by the Standard Chartered Bank Pensioner's Association and Ors. against the judgment of the learned Single Judge dated 4th December, 2003 in Writ Petition No. 16553 (W) of 2003. The writ petition has been dismissed by the learned Single Judge as not being tenable against the Standard Chartered Bank. At the same time directions have been issued to the Reserve Bank of India to consider the representation made by the petitioners in accordance with law and to dispose of the same preferably within a period of four months from the date of the communication of a copy of the judgment and order.

2. The petitioners had filed the writ petition with the allegations that under the conditions of service, the employees of the Bank are entitled to pension by virtue of various awards and settlements prevailing in the Bank. The right to get the pension stands further corroborated and established by industry-wise settlement made by and between 58 Banks and their workmen on 29th October, 1993. The

respondent No. 1, Bank, was a party to the aforesaid settlement being a member of the Indian Bank's association.

3. The settlement dated 29th October, 1993 provides that the pension, as a second retiral benefit scheme in lieu of Contributory Provident Fund, shall be available to certain categories of employees/retired employees mentioned therein from 1st of November, 1993 or the date of retirement whichever is later. The settlement, inter alia, provides as under:

A pensioner will be entitled to commute one-third of the basic pension.

Dearness relief, will, however, be allowed on full basic pension even after commutation.

The terms and conditions thereof shall continue to govern and bind the parties until the settlement is terminated by either party giving the other statutory notice as prescribed in law at the material time.

4. To implement the aforesaid settlement, the Bank Employee (Pension) Regulations, 1993, were framed.

5. Under these regulations it is provided that the commuted portion of the pension will be restored after 15 years from the date of commutation. The aforesaid Regulations are binding on the respondent, Bank. These Regulations have been framed on similar lines as the Reserve Bank of India's Pension Regulations and the Central Government Civil Service Pension Rules, with suitable modification in relation to their applicability to Banking industry. The settlement dated 29.10.93 has been implemented by the 58 Banks who are parties thereto, excepting Standard Chartered Bank. The petitioner further claimed that prior to 29th October, 1993, the Bank had a pension scheme for its retired employees. Under the settlement dated 29th October, 1993, the Bank issued notice to the retired employees whether they will opt for industry-wise pension scheme or continue with the prevailing scheme of the Bank. The notice was issued on 6th March, 1996. On receiving the notice the retired employees at Kolkata opted for the industry-wise settlement. Thereafter, the management of the Bank by letter dated 11th April, 1997 purported to withdraw option earlier given to the employees. The retired employees of the Bank finding no alternative and even after waiting for long time had to accept the meagre increase in the pension amount on condition that the option for industry-wise pension must be withdrawn by the employees or else their payment will be held up.

6. It is further the case of the petitioners that under a Trust Deed dated 23rd October, 1978 a Trust was created to administer a pension fund of the employees of the respondent/Bank. This fund is known as the Standard Chartered Bank Officers' Pension Fund. The disbursement of the pension to the retired employees has been made by the Bank through the trustees of the pension fund. Recently the Bank started saying pension through Life Insurance Corporation of India to the employees who retired by way of Voluntarily Retirement Scheme or

early separation scheme.

7. It is also claimed by the petitioners that some retired employees are receiving lesser pension than the other retired employees of the same Bank. To illustrate this, it has been pleaded that the employees of the erstwhile Grindlays Bank, are being paid a higher pension than the employees of the Standard Chartered Bank.

8. The Standard Chartered Bank had merged with Grindlays Bank with effect from 1.9.02. With effect from that date the employees of erstwhile Grindlays Bank have become employees of Standard Chartered Bank. But the retired employees of the erstwhile Grindlays Bank are being granted pension at a higher rate. They are entitled to restoration of the commuted amount of pension after 15 years. This classification of employees is said to be violative of Article 14 of the Constitution. Being aggrieved by the wrongful non-restoration of the commuted part of the 1/3rd amount of the pension, petitioners made a number of representations to the authority of the Bank. The representation has not been considered by the Bank.

9. u/s 35A of the Banking Regulation Act, the Reserve Bank of India has been empowered to issue directions to the Banking Companies generally, in public interest or in the interest of Banking policy. Therefore, it is incumbent for the Reserve Bank of India to exercise such power for elimination of the discrimination that the petitioners are facing. The Reserve Bank of India is duty-bound to ensure equal treatment of retired employees of all Banks who form a uniform class. To this effect, the petitioners have already made a representation to the Bank seeking such directions by letter dated 27th May, 2003.

10. The Reserve Bank of India has, however, refused to exercise their powers as is evident from the communication sent to the petitioners dated 30th October, 2003. The petitioners have been informed that there is no in house agreement or provision in the Rules of the Standard Chartered Bank's Employees Pension Fund to restore commuted pension after completion of 15 years of retirement of the employee. Taking note of the representation of the petitioners the Reserve Bank of India has also addressed a communication to petitioner No. 2, pursuant to the order passed by this Court in this writ petition, and the petitioners have been informed that the dispute raised by the pensioners is bilateral between Standard Chartered Bank and its retired employees. The Reserve Bank of India has, therefore, kept itself out of such a dispute. Section 35A of the Act does not apply to a dispute between a Bank and its employees.

11. After hearing the Counsel for the parties, the learned Single Judge has dismissed the writ petition as not being tenable. The opinion of the learned Single Judge is based on the judgment of the Supreme Court in the case of Federal Bank Ltd. Vs. Sagar Thomas and Others, , in which it has been held that a writ petition would not be maintainable against a private Bank. Assailing the aforesaid judgment Mr. Anindya Mitra, Senior Advocate and Mr. K. K. Gupta, Senior Advocate, have submitted that the learned Single Judge has wrongly held

that the writ petition would not be maintainable against the Standard Chartered Bank. u/s 18 of the Industrial Disputes Act, the settlement would be binding between the employer and the employees. Since the settlement is binding under the Industrial Disputes Act, it would cast a statutory duty on the respondent/Bank to implement the settlement. In case of non-implementation of the settlement the employees would be entitled to move the writ petition under Article 226 of the Constitution. In support of the submission, learned Counsel placed strong reliance on the observations made by the Supreme Court in paragraph 27 of the judgment in the case of Federal Bank Ltd. (supra). Learned Counsel further submitted that the remedy under the Industrial Disputes Act would not be applicable in the case of retired employees. They would not fall within the definition of "workman" u/s 2(k) of the Industrial Disputes Act. Civil suit would also not be an appropriate remedy, in view of law laid down by the Supreme Court. Learned Counsel has relied on the observations made in paragraph 32 in the case of Rajasthan State Road Transport Corporation and Another Vs. Krishna Kant and Others, . In this paragraph it has been held as under:

We may now summarise the principles flowing from the above discussion:

- (1) Where the dispute arises from general law of contract, i.e., where reliefs are claimed on the basis of the general law of contract, a suit filed in Civil Court cannot be said to be not maintainable, even though such a dispute may also constitute an "industrial dispute" within the meaning of Section 2(k) or Section 2A of the Industrial Disputes Act, 1947.
- (2) Where, however, the dispute involves recognition, observance or enforcement of any of the rights or obligations created by the Industrial Disputes Act, the only remedy is to approach the forums created by the said Act.
- (3) Similarly, where the dispute involves the recognition, observance or enforcement of rights and obligations created by enactments like Industrial Employment (Standing Orders) Act, 1946- which can be called "sister enactments" to Industrial Disputes Act- and which do not provide a forum for resolution of such disputes, the only remedy shall be to approach the forums created by the Industrial Disputes Act provided they constitute industrial disputes within the meaning of Section 2(k) and Section 2A of Industrial Disputes Act or where such enactment says that such dispute shall be either treated as an Industrial dispute or says that it shall be adjudicated by any of the forums created by the Industrial Disputes Act. Otherwise, recourse to Civil Court is open.
- (4) It is not correct to say that the remedies provided by the Industrial Disputes Act are not equally effective for the reason that access to the forum depends upon a reference being made by the appropriate Government. The power to make a reference conferred upon the Government is to be exercised to effectuate the object of the enactment and hence not unguided. The rule is to make a reference unless, of course, the dispute raised is a totally frivolous one

ex facie. The power conferred is the power to refer and not the power to decide, though it may be that the Government is entitled to examine whether the dispute is ex facie frivolous, not meriting an adjudication.

(5) Consistent with the policy of law aforesaid, we commend to the Parliament and the State Legislatures to make a provision enabling a workman to approach the Labour Court/Industrial Tribunal directly-i.e., without the requirement of a reference by the Government-in case of industrial disputes covered by Section 2A of the Industrial Disputes Act. This would go a long way in removing the misgivings with respect to the effectiveness of the remedies provided by the Industrial Disputes Act.

(6) The certified Standing Orders framed under and in accordance with the Industrial Employment (Standing Orders) Act, 1946 are statutorily imposed conditions of service and are binding both upon the employers and employees, though they do not amount to "Statutory Provisions". Any violation of these Standing Orders entitles an employee to appropriate relief either before the forums created by the Industrial Disputes Act or the Civil Court where recourse to Civil Court is open according to the principles indicated herein.

(7) The policy of law emerging from Industrial Disputes Act and its sister enactments is to provide an alternative dispute resolution mechanism to the workmen, a mechanism which is speedy, inexpensive, informal and unencumbered by the plethora of procedural laws and appeals upon appeals and revisions applicable to Civil Courts. Indeed, the powers of the Courts and Tribunals under the Industrial Disputes Act are far more extensive in the sense that they can grant such relief as they think appropriate in the circumstances for putting an end to an industrial dispute.

12. Mr. Anindya Mitra laid considerable emphasize on the submission that the writ petition would be maintainable if the conduct of the respondent/Bank disturbed the conscience of the Court, even in the absence of a statutory duty. In support of the submission the learned Counsel has relied on Rohtas Industries Ltd. and Another Vs. Rohtas Industries Staff Union and Others, . Learned Counsel has relied on the observations made in paragraph 9 of the judgment wherein it has been observed as follows:

The expansive and extraordinary power of the High Courts under Article 226 is as wide as the amplitude of the language used indicates and so can affect any person - even a private individual-and be available for any (other) purpose, even one for which another remedy may exist. The amendment to Article 226 in 1963 inserting Article 226(1A) reiterates the targets of the writ power as inclusive of any person by the expressive reference to "the residence of such person." But it is one thing to affirm the jurisdiction, another to authorize its free exercise like a bull in a china shop. This Court has spelt out wise and clear restraints on the use of this extraordinary remedy and High Courts will not go beyond those wholesome inhibitions except where the monstrosity of the situation or other

exceptional circumstances cry for timely judicial interdict or mandate. The mentor of law is justice and a potent drug should be judiciously administered. Speaking in critical retrospect and portentous prospect, the writ power has, by and large, been the people's sentinel on the qu vive and to cut back on or liquidate that power may cast a peril to human rights. We hold that the award here is not beyond the legal reach of Article 226, although this power must be kept in severely judicious leash.

13. Learned Counsel thereafter relied on the judgment of the Supreme Court in *Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust and Others Vs. V.R. Rudani and Others*, . He has further submitted that Standard Chartered Bank is a huge organization and its officers cannot be permitted to Act in an arbitrary and whimsical manner.

14. Mr. Jayanta Mitra, appearing on behalf of the Standard Chartered Bank, has submitted that the petitioners are governed by the Standard Chartered Bank Employees Pension Fund Trust Deed and Rules. The petitioners have all exercised the option under Rule 17. Under this Rule, members of the Trust can commute a part of the pension in accordance with the provisions of Rule 90 of the Income Tax Rules, 1962. These employees had taken the advantage of receiving a lump sum 15 per cent of their entitlement in terms of the memorandum of settlement dated 29th October, 1993.

15. The Indian Banks Association had agreed to introduce pension scheme in Banks for the workman/employees in lieu of employer contribution to the Provident Fund. The employees' initial demand was for pension as 3rd superannuation benefit in addition to PPF and gratuity. This was, however, not acceptable to the IBA. After careful consideration of IBA, pension as a second retiral benefit in lieu of employer contribution to contributory Provident Fund, was accepted by the representative of the employees. But it was additionally demanded that D.A. should also be reckoned with Provident Fund contribution and pension at par. This was, however, not accepted by IBA. Now, at this stage, the employees cannot be permitted to state that they should be entitled to restoration of the commuted portion of the pension.

16. We have considered the submissions made by the learned Counsel for the parties.

17. The Supreme Court in the case of *Federal Bank Ltd.* (supra) has categorically held that private companies are normally not amenable to the writ jurisdiction under Article 226 of the Constitution of India. The exceptions to this Rule have been laid down in paragraph 27 of the judgment which is as under:

Such private companies would normally not be amenable to the writ jurisdiction under Article 226 of the Constitution. But in certain circumstances a writ may issue to such private bodies or persons as there may be statutes which need to be complied with by all concerned including the private companies. For example, there are certain legislations like the Industrial Disputes Act, the Minimum Wages

Act, the Factories Act or for maintaining proper environment, say the Air (Prevention and Control of Pollution) Act, 1981 or the Water (Prevention and Control of Pollution) Act, 1974 etc. or statutes of the like nature which fasten certain duties and responsibilities statutorily upon such private bodies which they are bound to comply with. If they violate such a statutory provision a writ would certainly be issued for compliance with those provisions. For instance, if a private employer dispenses with the service of its employee in violation of the provisions contained under the Industrial Disputes Act, in innumerable cases the High Court interfered and has issued the writ to the private bodies and the companies in that regard. But the difficulty in issuing a writ may arise where there may not be any non-compliance with or violation of any statutory provision by the private body. In that event a writ may not be issued at all. Other remedies, as may be available, may have to be resorted to.

18. A perusal of the same would show that the statutory duty must be a duty created by a statutory provision, such as, the duties imposed under different Acts mentioned above. The petitioners are wanting enforcement of a contractual settlement. The remedy for enforcing a contract would not be by way of filing a writ petition under Article 226 of the Constitution of India. It would be correct to say that the petitioners would not have a remedy under the Industrial Disputes Act as the petitioners would not fall within the definition of "workman" u/s 2(s) of the Industrial Disputes Act. However, it would be incorrect to conclude that the petitioners would be remediless. In our view, remedy of filing a suit would still be available to the petitioners.

19. We are unable to accept the submission of Mr. Mitra, learned senior Advocate that the remedy of the civil suit would be barred to the petitioners in view of the law laid down by the Supreme Court in the case of Rajasthan State Road Transport Corporation (supra). A perusal of paragraph 32 of the judgment reproduced above would show that the remedy of a civil suit would be available even in cases where the employees could have also raised an industrial dispute on the same cause of action. So long as the reliefs are claimed on the basis of the general law of contract, a suit filed in Civil Court cannot be said to i.e. not maintainable. Observations of the Supreme Court in paragraph 32(2) would not be a bar in the facts and circumstances of this case as even according to the learned Counsel for the petitioners the retired employees would not be able to raise an industrial dispute. Once it is accepted by the petitioner that a retired employee would not fall within the definition of "workman" as defined under the Industrial Disputes Act, it cannot be claimed that the remedy under the Industrial Disputes Act would be available to the petitioners. The observations made in paragraph 32(2) will apply in the case of workman only. The petitioners having retired, would not be able to avail the remedy under the Industrial Disputes Act, 1947. Therefore, the bar contained in paragraph 32(2) would not be applicable.

20. Similarly, the observation of the Supreme Court in the case of Anadi Mukta

(supra) Trust would not be applicable to the facts and circumstances of this case. The rights and obligations of the parties herein arise from a settlement u/s 18 of the Industrial Disputes Act and the Trusts Rules. The disbursement of the pension is made on the basis of the Trusts Rules. There is no provision either under Clause 7 of the Settlement or under Rule 17 of the Trusts Rules which would enable a retired employee to claim restoration of the commuted pension on expiry of 15 years after superannuation. The cut of 1/3rd in pension is not made in lieu of the monthly instalments for repayment of the commuted amount of pension.

21. The observations made in the case *Anadi* (supra), in our opinion, rather militate against the submissions made by the Counsel for the petitioners as it is held if the rights are purely of a private character, no mandamus can issue. It is further held that against the management of a purely private body with no public duty, mandamus will not lie. In the present case, the Bank cannot be said to be performing any public duty, or a statutory duty.

22. The observations of the Supreme Court in the case of *Rohtas Industries Ltd.* (supra) also do not, in any way advance the case of the petitioners. In paragraph 9 of the aforesaid judgment it has been held that the expansive and extraordinary power of the High Courts under Article 226 is as wide as the amplitude of the language used indicates. Hence the Supreme Court has spelt out wise and clear restraints on the use of this extraordinary remedy and High Courts ought not to go beyond those wholesome inhibitions except where the monstrosity of the situation or other exceptional circumstances cry for timely judicial interdict or mandate. It was also observed that it is one thing to affirm the jurisdiction, another to authorize its free exercise like a bull in a china shop.

23. We have carefully examined the matter on merits also. Mr. Anindya Mitra had made a reference to a table of calculation to show the trust was being unjustly enriched by the non-restoration of the commuted amount after 15 years. The entire amount would be recovered within a period of 15 years from the date of retirement of the employee. On the 1/3rd cut which is imposed on the pension of the retired, the trust received interest at the rate of 8 to 10 per cent per annum.

24. Mr. Jayanta Mitra, however, pointed out that for 15 years the employee was also in a position to receive the same interest on the lump sum received at the time of the commutation of the pension. According to the learned Counsel, the amount received from such interest would be more than the addition in the pension, if the 1/3rd cut was to be restored. Therefore, the employees have been duly compensated. They have been given an additional benefit. Therefore, no injustice was done on the merits also. However, we would refrain from expressing any opinion on merits. The petitioners may still decide to file a civil suit, on the same facts as pleaded in this writ petition.

25. In view of the law laid down by the Supreme Court in the case of *Federal Bank* (supra), we hold that the writ petition would not be maintainable.

26. We find that judgment of the learned Single Judge does not call for any interference.

27. The appeal is thus, dismissed.

28. There will be no order as to costs.

A.K. Basu, J.

29. I agree.