

**(2007) 01 CAL CK 0028**  
**In the Calcutta High Court**  
**Case No : Writ Petition No. 1998 of 2003**

Standard Chartered Grindlays Bank Retired Employees  
Association and Others

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

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**Date of Decision :** 16-01-2007

**Acts Referred:**

Industrial Disputes (Central) Rules, 1957 — Rule 58  
Industrial Disputes Act, 1947 — Section 12, 12(4), 18, 18(1), 2  
Trade Unions Act, 1926 — Section 22  
Working Journalists and Other Newspaper Employees (Conditions of Service) and  
Miscellaneous Provisions Act, 1955 — Section 2

**Citation :** (2007) 2 CHN 66 : (2007) 2 LLJ 887

**Hon'ble Judges :** Debasish Kar Gupta, J

**Bench :** Single Bench

**Advocate :** R.N. Majumdar, for the Appellant; P.S. Sengupta, A.K. De and A.K. Ray, for the Respondent

**Final Decision :** Dismissed

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## Judgement

Debasish Kar Gupta, J.—This writ application is filed by the petitioners for a direction upon the Regional Labour Commissioner (Central), Kolkata, to submit his failure report on the conciliation of the industrial dispute regarding denial of higher pensionary benefits to the employees of the respondent bank who retired before November 1, 2001 and also for other consequential reliefs.

2. The petitioner No. 1 is a Regional Trade Union of the retired employees of the respondent bank. The petitioner Nos. 2 & 3 are the retired employees of the respondent bank. The respondent bank was formerly known as ANZ Grindlays Bank. It is renamed and known as the Standard Chartered Grindlays Bank.

3. On the basis of a settlement entered on November 20, 1997 u/s 2(b) read with Section 18(1) of the Industrial Disputes Act, 1947 (hereinafter referred to as the said Act) read with Rule 58 of the Industrial Disputes (Central) Rules,

1957 between the ANZ Grindlays Bank Ltd., and All India Grindlays Bank Employees Association, the pension of all retired employees was enhanced on ad hoc basis irrespective of their date of retirement. The above settlement was valid till December 31, 1998. By virtue of a comprehensive settlement entered on March 10, 1999 u/s 2(b) read with Section 18(1) of the said Act read with Rule 58 of the Central Rules, 1957 between the ANZ Grindlays Bank Ltd., and All India Grindlays Bank Employees Association, the quantum of monthly pension for various categories of retired employees as also future pensionaries was revised with effect from April 1, 1999 for a period of two years. By virtue of a subsequent settlement entered on September 24, 2001 u/s 2(b) read with Section 18(1) of the said Act read with Rule 58 of the Industrial Dispute (Central) Rules 1957 between the Standard Chartered Grindlays Bank Ltd., and the Grindlays Bank Employees Union, Kolkata, certain terms of the earlier settlement were revised. While enhancing the upper limit of pension from Rs. 6,000/- to 9,000/- of the employees retired on or after November 1, 2001, the respondent bank did not revise the quantum of pension of the employees who had already retired from the services of the bank. "The Standard Chartered Grindlays Bank Retired Employees Welfare Association", registered under the West Bengal Societies Registration Act, 1961, made several representations to the respondent bank for consideration of the case of the retired employees on the question of extending the benefit of enhanced pension to the retired employees. Ultimately the aforesaid "Standard Chartered Grindlays Bank Retired Employees Welfare Association" made an application before the respondent No. 2 for a tripartite conciliation meeting to settle the dispute with regard to extension of benefit of enhanced pension to all the retired employees of the respondent bank. The respondent No. 2 as per communication issued under Memo No. 7/1/2002/E.I. dated October 17, 2002 informed the respondent bank of the aforesaid grievance. The respondent bank as per communication dated October 13, 2002 addressed to the respondent No. 2 raised an objection to the locus standi of the Standard Chartered Griendlays Bank Retired Employees Welfare Association to raise such dispute before the respondent No. 2. According to that communication, the dispute not being an "industrial dispute", it was beyond the jurisdiction of the respondent No. 2 to entertain the same. Finally the respondent No. 2 as per impugned order communicated under Memo No. 14/9/2002/B.I. dated March 21, 2003 advised the Standard Chartered Grindlays Bank Retired Employees Welfare Association to approach the Labour Court for appropriate relief, if any u/s 33C(2) of the said Act. Hence this writ application is filed.

4. Mr. Rabin Majumdar, learned Advocate, appearing on behalf of the petitioner submits that the Standard Chartered Grindlays Bank Retired Employees Welfare Association was registered under the West Bengal Societies Registration Act, 1961. Subsequently, the Standard Chartered Grindlays Bank Retired Employees Association was registered under the Trade Unions Act, 1926 and the certificate of registration of Trade Union was issued in its favour on June 13, 2003. Subsequently, by a resolution of the Standard Chartered Grindlays Bank Retired

Employees Welfare Association transferred all its assets and liabilities, furniture and fixtures, etc., Standard Chartered Grindlays Bank Retired Employees Association, i.e. the petitioner No. 1. Mr. Majumdar further submits that the association along with the President and the Secretary of the above association i.e. petitioner Nos. 2 & 3 have filed this writ application. According to Mr. Majumdar the respondent No. 2 while passing the impugned order dated March 21, 2003 failed to perform his duties in accordance with the provisions of Section 12 of the said Act. The respondent No. 2 while passing the impugned order did not arrive at a conclusion in the matter of existence or apprehension of industrial dispute. Mr. Majumdar submits that under the provisions of Sub-section (s) of Section 2 of the said Act the members of the petitioner No. 1 are workman under the respondent No. 3. As such the dispute relating to the enhancement of the pension between the respondent No. 3 and the members of the petitioner No. 1 is industrial dispute in accordance with the provisions of Sub-section (k) of Section 2 of the said Act. Mr. Majumdar further submits that it appears of settlement dated March 10, 1999 pensionary benefit was extended to all the retired employees of the respondent bank without any discrimination. Since it was a settlement under the provisions of Sub-section (p) of Section 2 of the said Act, it has a binding effect upon the parties in accordance with the provisions of Sub-section (1) of Section 18 of the above Act. Mr. Majumdar also submits that in accordance with the amended provisions of Section 22 of the Trade Unions Act, 1926, there is no difference in between a retired employee and existing employee so far as the term workman is concerned. In view of the above provisions it was incumbent upon the respondent No. 2 to submit the report to the appropriate Government in accordance with the provisions of Sub-section (4) of Section 12 of the said Act. Instead of the respondent No. 2 advised the petitioner to approach the Labour Court for appropriate relief, if any, u/s 33C(2) of the said Act which is not sustainable in law. Mr. Majumdar further submits that in that view of the matter the respondent No. 2 failed to perform his statutory duty. As such, according to Mr. Majumdar, the impugned order dated March 21, 2003 is liable to be set aside.

5. Mr. Majumdar relied upon the decision of Workmen of Dimakuchi Tea Estate Vs. The Management of Dimakuchi Tea Estate, for the purpose of interpretation of term "any person as defined in Sub-section (k) of Section 2 of the said Act. Mr. Majumdar relied upon the decision of Bennett Coleman and Co. (P) Ltd. Vs. Punya Priya Das Gupta, to show the interpretation of expression (who is employed) in the definition of "Working Journalists" in Sub-section (f) of Section 2 of the Working Journalists (Conditions of Service) and Miscellaneous Provisions Act, 1955. Mr. Majumdar further relied upon a decision of the High Court of Bombay in the matter of ICI India Ltd. v. Presiding Officer and Ors., reported in 1993(2) LLJ 568 with regard to the definition of "Workmen" under the said Act. Reliance is placed on the decision of All India Reserve Bank Retired Officers Association and others Vs. Union of India and others, , with regard to the validity of the cut-off date fixed by the respondent bank for extending the benefit of

pension scheme to the retired workmen. Mr. Majumdar further relied upon the decision of *P. Virudhachalam and Others Vs. Management of Lotus Mills and Another*, with regard to the binding effect of a settlement on the employer.

6. Mr. P. Sengupta, learned Advocate, appearing on behalf of the respondent bank submits that in accordance with the provisions of subsection (s) of Section 2 of the said Act, a retired employee cannot be treated as a workman. As such the petitioners cannot raise an industrial dispute in terms of Sub-section (k) of Section 2 of the said Act. Mr. Sengupta further submits that in accordance with the provisions of Section (k) of Section 2 of the said Act, only the workman has a right to raise the industrial dispute. The term workmen used in the aforesaid section means and purports a substantial section of workman who can affect or impede the industry. The retired workmen cannot be treated as workmen, nor they can affect or impede the industry. With regard to the settlements entered between the respondent bank and its employees' unions. Mr. Sengupta submits that the issue of pension of the retired workmen of the respondent bank was taken into consideration by the parties in accordance with the provisions of Sub-section (k) of section 2 of the aforesaid said Act. The employees' union i.e. the union of the workmen took up the issue of retired workmen of the respondent bank because it was open for the parties to the settlement to take up the issue of any person even he was not a party to the settlement. No retired workman was party to the above settlement. Mr. Sengupta submits that the term trade union defined in Sub-section (qq) of Section 2 of the said Act. Mr. Sengupta submits that according to the provisions of Section 36 of the said Act, a workman who is a party to dispute shall be entitled to be represented in proceedings under the said Act by the person as prescribed in the above section. But Sub-section (2) of Section 22 of the Trade Unions Act, 1926 only provides that for the purpose of that section, an employee who has retired or has been retrenched so as to constitute for the purpose of holding an officer in a trade union. That provision does not entitle the retired workmen to raise an industrial dispute in accordance with the provisions of Sub-section (k) of Section 2 of the said Act. With regard to the impugned order Mr. Sengupta points out that the communication was made to the Secretary of the Standard Chartered Grindlays Bank Retired Employees Welfare Association having a separate juristic entity. Neither that was communicated to any of the petitioners nor it relates to the question raised by the petitioner No. 1.

7. Mr. Sengupta relied upon the decision of *Bilash Chandra Mitra v. Balmer Lawrie & Co. Ltd.* reported in 1953(1) LLJ 337, to submit that on retirement a workman seized to be a workman. There cannot be any industrial dispute at his instance. Relying upon the decision of *Workman of Hoare Miller & Co. v. State of West Bengal and Ors.* reported in 1962(1) LLJ 721, Mr. Sengupta submits that industrial dispute must be raised by existing workmen. The existing workmen at the time of arriving at a settlement with the employer may take up the issue of any person as included in the provisions of Sub-section (k) of Section 2 of the said Act. In other words the interest of any person can be the subject-matter of a

settlement in between the employer and the workman having a direct bearing on the substantial interest of the workman but that person cannot be a party to the industrial dispute in this case. The payment of pension has a direct bearing on the substantial interest of the workman because after his retirement, he will be entitled to such pension. Therefore, that issue comes within the purview of the term any person who cannot be a party to a settlement. Mr. Sengupta also relied upon the decision of Mitsubishi Shoji Kaisha Ltd. v. 4th Industrial Tribunal of West Bengal and Ors., reported in 76 CWN 753, to submit that the retired workmen cannot affect the running of an industry. And as such the provision of Sub-section (k) of Section 2 does not relate to them. Mr. Sengupta also relied upon the decision of Evcrestee v. District Labour Officer reported in 1999(2) LLJ 851, to show that the definition of workmen as appears from Sub-section(s) of Section 2 means and includes those persons who are presently employed and not retired workmen. Mr. Sengupta relied upon the decision of Purandaran v. Hindustan Level Ltd., reported in 2001(2) CLR 170, to show that the retired employees cannot be entitled to claim the status of workmen under the provisions of Sub-section (s) of Section 2 of the said Act. Mr. Sengupta relies upon the decision of National Building Construction Corporation Ltd. v. Pritam Singh Gills and Ors. reported in 1972 Lab. IC 857, to show that in Section 33C(2) includes all persons in the term of workmen to enable all persons whose claim, requiring computation under this sub-section in respect of an existing right arisen from his relationship as an industrial workmen. But at no stretch of imagination it can be held that the term workmen as defined in sub-section (k) of Section 2 includes the retire workman.

8. I have given my anxious consideration to the submission made by the learned Counsels appearing on behalf of the respective parties and I have taken into consideration the materials on record. This is an admitted fact that the All India Grindlays Bank Employees Association entered into a settlement with the respondent bank which included the issue of pensionary benefit of retired employees. It is also an admitted fact that no retired employee was a party to that settlement. Again, the comprehensive settlement dated March 10, 1999 was arrived at in between the respondent bank and the All India Grindlays Bank Employees Association in which the quantum of monthly pension of various categories of retired employees was revised. But no retired employee was a party to that settlement. In the subsequent settlement dated September 24, 2001 between the respondent bank and the Grindlays Bank Employees Union, Kolkata, the upper limit of pension was taken into consideration. But no retired employee was a party to that settlement.

9. The first issue that falls for my consideration is whether a retired employee can raise an industrial dispute under the provisions of Sub-section (k) of Section 2 of the Industrial Disputes Act, 1947. For that purpose the provisions of Sub-section (k) of Section 2 of the Industrial Disputes Act, 1947 are quoted below:

(k) "industrial dispute" means any dispute or difference between employers and

employers, or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any persons;

10. From the above definition it appears to me that the industrial dispute means and includes any dispute between the employers and the workmen which is connected with the employment or non-employment or terms of employment or with the conditions of labour, of any person. Therefore, it is upon for the workmen to participate in a bipartite settlement and it is also open for them to take up an issue of any person even he is not a party.

11. Now, in order to examine whether a retired employee is a workman for the purpose of provisions of Sub-section (s) of Section 2 of the Industrial Disputes Act, 1947, the provisions are quoted below:

(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, 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 in the police service or 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.

12. It appears from the above provision that a retired employee cannot be included in the definition of workman for the purpose of Industrial Disputes Act, 1947. Further, coming back to the provisions of Sub-section (k) of Section 2 of the Industrial Disputes Act, 1947, in my opinion, the industrial dispute means and includes any dispute or difference between the employers and workmen. As such the workmen are entitled to be the parties to a bipartite settlement in between the employers and the workmen under the Industrial Disputes Act, 1947 and it is also open for them to take up an issue of any person including the retired workmen. Because the payment of pension has a direct bearing on substantial interest of the workmen who will enjoy such pension after retirement. But no retired workman can be a party to any dispute or difference with their erstwhile employers. The provisions of subsection (p) of Section 2 of the

Industrial Disputes Act, 1947 makes the position clear. The provisions of Sub-section (p) of Section 2 of the Industrial Disputes Act, 1947 are quoted below:

(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 authorised in this behalf by] the appropriate Government and the conciliation officer;.

In this regard the relevant portions of the decision of *Bilash Chandra Mitra v. Balmer Lawrie & Co. Ltd.* (supra) are quoted below:

The order pensioning off the plaintiff which was served on him on 1st April, 1947 shows that the company did not dismiss the plaintiff but instead forced him to retire on a pension. The union, however, treated it as a discharge (see statement of union filed before Tribunal). In my view when an employee retires or forced to retire on a pension he cannot be said to be still in employment. He ceases to be an employee or a workman but he received the pension in consideration of his past services. (See Oxford Concise Dictionary page 847.)

13. I fully agree with the submissions made by P. S. Sengupta, learned Advocate appearing on behalf of the respondent bank that in the bipartite settlements the workmen took up the issue of pension of the retired employees of the respondent bank because the interest of any person can be the subject-matter of a settlement in between the employers and the workmen having a direct bearing on the substantial interest of the workmen. In this event the issue of pensionary benefit relates to the persons falling within the meaning of expression "any person" as defined in Sub-section (k) of Section 2 of the Industrial Disputes Act, 1947. But a retired employee can not be a party to the industrial dispute. In this regard the relevant portions of the decision of *Workman of Hoare Miller & Co. v. State of West Bengal and Ors.* (supra) are quoted below:

It is true that the workmen cannot espouse the cause of the persons who never came within the definition of "workman" as in Section 2(s) of the Industrial Disputes Act, and who could not themselves be parties to an industrial dispute. But workmen can, nevertheless, espouse the cause of persons, who at the time were workmen and only ceased to be so on retirement, if the dispute as to them concerns a matter which is bound to workmen will fall within the meaning of expression "any person" as in the definition clause of workmen, Section 2(k) of the Industrial Disputes Act. I, therefore, uphold the first branch of the contention.

14. I do not agree with the submissions of Mr. R.N. Majumdar, learned Advocate, appearing on behalf of the petitioners that the retired employees are coming within the purview of Sub-section (k) of Section 2 of the Industrial Disputes Act, 1947. I do not agree with the submission of Mr. Majumdar that the decision of *Workmen of Dimakuchi Tea Estate v. Management of Dimakuchi Tea Estate* (supra) supports his stand. The relevant portions are quoted below:

(21) To summarise. Having regard to the scheme and objects of the Act, and its other provisions the expression "any person" in Section 2(k) of the Act must be read subject to such limitations and qualifications as arise from the context; the two crucial limitations are (1) the dispute must be a real dispute between the parties to the dispute (as indicated in the first two parts of the definition clause) so as to be capable of settlement or adjudication by one party to the dispute giving necessary relief to the other, and (2) the person regarding whom the dispute is raised must be one in whose employment, non-employment terms of employment, or conditions of labour (as the case may be) the parties to the dispute have a direct or substantial interest. In the absence of such interest the dispute cannot be said to be a real dispute between the parties. Where the workmen raise a dispute as against their employer, the person regarding whose employment, non-employment, terms of employment or conditions of labour the dispute is raised need not be, strictly speaking, a "workman" within the meaning of the Act but must be one in whose employment, non-employment, terms of employment or conditions of labour the workmen as a class have a direct or substantial interest.

(22) In the case before us, Dr. K.P. Banerjee was not a "workman". He belonged to the medical or technical staff-- a different category altogether from workmen. The appellants had no direct, nor substantial interest in his employment or non-employment, and even assuming that he was a member of the same Trade Union, it cannot be said, on the tests laid down by us, that the dispute regarding his termination of service was an industrial dispute within the meaning of Section 2(k) of the Act.

15. In my opinion the decisions of *Bennett Coleman v. Punya Priya Das Gupta* (GP) is also not applicable in this case. The decision of *I.C.I Ltd. v. Presiding Officer* (supra), in my opinion, does not help the case of the petitioners. In that case it has not been decided that a retired workman can be a party to a settlement or can raise a dispute under the Industrial Disputes Act, 1947.

16. Since I have come to a conclusion that a retired employee cannot raise any industrial dispute within the purview of the Industrial Disputes Act 1947, no useful purpose will be served in deciding the other issues raised in this writ application.

17. In view of the above the writ application stands dismissed.

18. There will be, however, no order as to costs.

19. Urgent xerox certified copy of this judgment, if applied for, be given to the parties, as expeditiously as possible, upon compliance with the necessary formalities in this regard.