

(1967) 09 SC CK 0013

In the Supreme Court Of India

Case No : Civil Appeal No. 685 of 1966

State Bank of Bikaner and Jaipur

APPELLANT

Vs

R.L. Khandelwal

RESPONDENT

Date of Decision : 06-09-1967

Acts Referred:

Industrial Disputes Act, 1947 — Section 10, 33C(2)

Citation : (1968) 38 CompCas 400 : (1968) 16 FLR 315 : (1968) 1 LLJ 589

Hon'ble Judges : Vishishtha Bhargava, J;M. Hidayatullah, J;C. A. Vaidyalingam, J

Bench : Full Bench

Final Decision : Allowed

Judgement

Bhargava, J.—The respondent, R.L. Khandelwal, was employed as a clerk by the Bank of Jaipur Ltd. sometime in the month of April, 1949, On 5th January, 1952, an industrial dispute between the banking companies of India and their workmen was referred to the All-India Industrial Tribunal (Bank Disputes), Bombay, with Sri S. Panchapagesa Sastry as the Chairman, and two other members. The award of the Tribunal was published in the Gazette of India dated 20th April, 1953. That award is popularly known as the Sastry Award and shall be referred to as such in this judgment. The Sastry Award, inter alia, laid down the scales of pay for various classes of employees in the banks. We are only concerned with employees of two classes, viz., ordinary routine clerks and clerks carrying on supervisory duties or holding certain posts which required special qualifications or skill for the efficient discharge of their duties. A number of posts were put under the latter classification and they included supervisors, superintendents, sub-accountants, etc. On 14th March, 1955, the directors of the bank, by a resolution, authorised certain officers working in the branches of the bank to pass cheques or debit vouchers to the extent of the limit mentioned against the name of each one of those officers in the written order issued on that date. One of the persons thus authorised was the respondent. Admittedly, the respondent continued to do this work up to 2nd February, 1956. According to the

respondent, on 3rd February, 1956, he was wrongfully reverted to do routine clerical work on his demanding benefit of the supervisory allowance prescribed under the Sastry Award. He has already been given the supervisory allowance under that Award up to 31st January, 1956. Prior to this reversion, the bank sent a letter dated 24th January, 1956, offering promotion to the respondent to the cadre of an officer in the grade mentioned in that letter with the benefits available to an officer, subject to the condition that the respondent agreed that, on his promotion, he will cease to be a workman and will not be entitled to the benefits available to a workman under the Sastry Award. The respondent, by his letter dated 31st January, 1956, refused to give up his rights as a workman, but claimed that because of his qualifications, period of service and the kind of work that he was doing in the bank for the last 11 months he was entitled to promotion to a higher grade, while continuing to be a workman. It was thereafter that the bank, according to the respondent, reverted him to the duties of an ordinary routine clerk. On 1st January, 1960, the State Bank of Jaipur was constituted and the Bank of Jaipur Ltd. was absorbed in this State Bank of Jaipur, so that the respondent became its employee. On 1st January, 1963, the State Bank of Jaipur was amalgamated with the State Bank of Bikaner and the combined bank came to be known as the State Bank of Bikaner and Jaipur. It is this bank which is the appellant before us.

2. The respondent, on 2nd April, 1964, presented an application u/s 33C(2) of the Industrial Disputes Act, 1947 (14 of 1947) (hereinafter referred to as "the Act"), claiming that he was entitled to the special allowance prescribed by the Sastry Award on the ground that he had been wrongly reverted on 3rd February, 1956, to do clerical work and by that order, he could not be deprived of his right to receive the supervisory allowance. This application came up before the Central Government Labour Court, Rajasthan, at Jaipur which allowed it and directed payment of the supervisory allowance to the respondent by the appellant. The appellant has now come up by special leave to this court.

3. The claim of the respondent to the supervisory allowance was contested on behalf of the appellant on three different grounds. Two of the grounds related to the jurisdiction of the Labour Court to entertain the application u/s 33C(2) of the Act and to the plea that the respondent had disentitled himself to the claim because of laches and delay inasmuch as the application was filed in 1964 when the claim related to a period which began on 3rd February, 1956. These two grounds were, however, not argued before us, because, on behalf of the appellant, reliance was placed primarily on the third ground on which we consider that the appeal must be allowed. This ground urged was that, during the period for which the respondent was claiming the supervisory allowance, he was not, in fact, either holding a post or working in a post involving work of supervisory nature and, consequently, under the Sastry Award he was not entitled to claim the special allowance.

4. The special allowances payable to persons doing supervisory work or work

which was described by the Sastry Award as requiring special qualifications or skill for the efficient discharge of duties were laid down in paragraph 164 of the award. In paragraph 168, mention was made of certain categories described in various banks by such terms as junior assistants and senior assistants and classified by some banks as officers. It was held that the terms do not by themselves indicate the nature of the work entrusted to them. Irrespective of their designation, in so far as their work falls under clerical work, though of a higher type, as explained by the Tribunal in the discussion relating to categories of workmen, they must also be entitled to the scales of pay, minimum special allowance, etc., which were prescribed for the appropriate kind of work during such periods as they were in charge of that kind of work. It was further noted that it was not possible to give a more precise or detailed direction in this matter ; and the Tribunal ended this paragraph by stating that they trusted that the banks will act in the true spirit of these directions. It appears that it was in the light of these directions that the respondent was given supervisory allowance after the 14th March, 1955, when, as we have mentioned earlier, he was authorised to pass cheques or debit vouchers. The case of the appellant was that, with effect from 3rd February, 1956, the respondent ceased to be entrusted with this work and was doing the work of an ordinary routine clerk, so that he was no longer entitled thereafter to the special allowance as laid down by the Sastry Award in the paragraphs mentioned above. It appears to us that this plea put forward on behalf of the appellant must be accepted.

5. The scope of the function and powers of a Labour Court, when dealing with an application u/s 33C(2) of the Act, has been laid down by this court in several cases, amongst which mention may be made of Punjab National Bank Limited v. K.L. Kharbanda, [1962] Suppl. 2 S.C.R. 977 ; 22 F.J.R. 171 , The Central Bank of India Ltd. Vs. P.S. Rajagopalan etc., , and Bombay Gas Co. Ltd. Vs. Gopal Bhiva and Others, . The effect of these decisions was recently summarised in the judgment delivered on 8th August, 1967, in Chief Mining Engineer, East India Coal Co. Ltd. v. Rameshwar, Civil Appeals Nos. 257-267 of 1966-- Chief Mining Engineer East India Coal Co. Ltd. Vs. Rameswar and Others, . These decisions make it clear that a workman cannot put forward a claim in an application u/s 33C(2) in respect of a matter which is not based on an existing right and which can be appropriately the subject-matter of an industrial dispute only requiring reference u/s 10 of the Act, In the present case, the respondent himself in paragraph 2 of his application u/s 33C(2) admitted that he continued to do the work in the supervisory capacity until on 3rd February, 1956, he was wrongfully reverted to do clerical work because he demanded benefit of the supervisory allowance prescribed under the Sastry Award. The question whether his reversion was wrongful or rightful, or whether it should be set aside, is not a matter within the jurisdiction of a Labour Court dealing with an application u/s 33C(2). The vacation of such an order can only be sought by raising an industrial dispute and having it decided in accordance with the other provisions of the Act. A Labour Court, acting u/s 33C(2), has to decide the application on the basis that, in fact,

the respondent was, during the relevant period, doing routine clerical work and was not employed on supervisory duties. Mr. Ramamurthi, appearing on behalf of the respondent, urged that this admission by the respondent should not be held to bind him in this appeal and, on the facts of this case, it should be held that the Labour Court was right in holding that the respondent did continue on a post involving supervisory duties. He did not contest the proposition that, if it be held that, during the relevant period, the respondent was not, in fact, doing supervisory duties, he would not be entitled to the supervisory allowance claimed by him. We think that the Labour Court committed an error in holding that simply because the respondent was, at one time, entrusted with supervisory duties under the order dated 14th March, 1955, his status as a supervisor must be held to continue, even though, in fact, he was reverted to do routine clerical work on the 3rd February, 1956. The justification or validity of the order of reversion dated 3rd February, 1956, could not be gone into by the Labour Court in this proceeding u/s 33C(2). The Labour Court had to proceed on the basis that the order of 3rd February, 1956, was effective and did result in the respondent ceasing to work in the supervisory capacity and being employed on routine clerical work. We see no reason to accept Mr. Ramamurthi's submission that, after the 3rd February, 1956, the respondent did carry out any supervisory duties. In fact, no evidence or material has been brought to our notice on the basis of which such a finding could have been recorded. The mere fact that the respondent was entrusted with some supervisory duties earlier cannot lead to the conclusion that he continued to be a supervisor even after he was reverted to do routine clerical work. The entrustment of supervisory duties to him by the order dated 14th March, 1955, did not make him a permanent or confirmed incumbent of a post involving supervisory duties. On the face of it, that order only authorised him to carry out those duties as long as the order was not rescinded by a subsequent order. The respondent having himself admitted that he was reverted to do clerical work from 3rd February, 1956, he, in fact, ceased to hold any post or to do any work which could entitle him to the supervisory allowance under the Sastry Award. The Labour Court, in these circumstances, was clearly wrong in allowing the claim of the respondent.

6. The appeal is allowed, the order of the Labour Court is set aside and the application of the respondent u/s 33C(2) of the Act is dismissed. In the circumstances of this case, we make no order as to costs.