
(2004) 01 CAL CK 0025
In the Calcutta High Court
Case No : Writ Petition No. 1579 of 2003

Swapan Kumar Basu

APPELLANT

Vs

United Bank of India and Others

RESPONDENT

Date of Decision : 12-01-2004

Acts Referred:

Constitution of India, 1950 — Article 14, 226

West Bengal Payment of Subsistence Allowance Act, 1969 — Section 3, 5

Citation : (2004) 2 CALLT 57 : (2004) 4 CHN 148 : (2004) 102 FLR 436 :
(2004) 3 LLJ 347

Hon'ble Judges : Indira Banerjee, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Indira Banerjee, J.—This writ application is directed against the action of the respondents in not fixing the subsistence allowance of the petitioner on the basis of the present revised salary that the petitioner would have got had the petitioner not been suspended from service, in terms of the Indian Banks Association circular dated 11th August, 1998.

2. By an order dated 26th August, 1987 the petitioner was suspended from service as Chief Manager of the Old Court House Street Branch of the respondent Bank.

3. At the time of his suspension, the petitioner was getting a salary of Rs. 2,992.14 per month. The subsistence allowance of the petitioner was fixed at Rs. 1,496.14, being 50 per cent of the salary that the petitioner was getting at the time of his suspension. On expiry of three months from the date of suspension, the subsistence allowance was enhanced to 75% of Rs. 2,992.14p.

4. The petitioner has been kept under suspension for over 16 years. It is contended that the respondent Bank has neither reviewed the order of suspension nor revised the subsistence allowance for all these years. The

petitioner has not been given the benefit of salary revisions in the meanwhile.

5. The petitioner contends that the subsistence allowance of bank employees including the petitioner is governed by paragraph 557 of the Shastri Award which set out herein below:

"557, Having considered the matter in all its aspects, we think that subsistence allowance should be granted on the following scale:-

(1) For the first three months one-third of the pay and allowances which the workman would have got but for the suspension;

(2) thereafter, where the enquiry is departmental by the bank, one-half of the pay and allowance for the succeeding months. Where the enquiry is by an outside agency, one-third of the pay and allowances for the next three months and thereafter one half for the succeeding months until the enquiry is over."

6. A reading of paragraph 557 of the Shastri Award makes it clear that a suspended bank employee is entitled to the requisite percentage of the salary that he would have got had he not been suspended. This means that a suspended employee would get the benefit of wage revisions after his suspension as also usual increments.

7. It appears that Indian Banks Association issued a circular being Memo No. PD/CIR/76/528/586 dated 11th August, 1998 the relevant portion whereof is extracted hereinbelow:

"In the meeting held on 1st June, 1998 the Personnel Committee reviewed its earlier decision as above in so far as it related to workmen employees under suspension and decided that the workmen employees under suspension will be eligible to be paid subsistence allowance reckoning the revised scales of pay on account of salary revision even if the date of suspension is prior to the date of salary revision which will be in line with the decision of Madhya Pradesh and Haryana High Courts relating to payment of subsistence allowance to workmen employees in Banks. Cases of workmen employees, who are under suspension and in whose case salary revision has taken place, subsequent to their suspension, may be reviewed in view of the above decision and paid arrears of subsistence allowance.

However, there shall be no change in the Committee's decision dated 12th September, 1989 as regards subsistence allowance payable to officers under suspension.

Member Banks are requested to please be guided accordingly."

8. Aggrieved by the failure of Respondent bank to give the petitioner the benefit of the aforesaid circular, the Petitioner moved an application under Article 226 of the Constitution of India being W.P. No. 542 of 2002 in this Court.

9. The said writ application was disposed of by a judgment and order dated 17th

April, 2003, the operative portion whereof is extracted hereinbelow:

"I dispose of this writ petition by directing the respondent employer to consider fixation of subsistence allowance of the petitioner on the basis of the said decision of the Indian Banks Association and to reach to the petitioner his entitlement in terms of the said decision as quickly as possible but not later than two months from the date of service of a copy of this order upon the respondent employer.

The writ petition is thus disposed of."

10. Pursuant to the aforesaid order dated 17th April, 2003 the General Manager, Personnel of the Respondent bank considered and rejected the claim of the Petitioner for fixation of subsistence allowance on the basis of the decision of the Indian Banks Association referred to above.

11. The respondents have in their affidavit-in-opposition sought to justify the suspension of the Petitioner. However, the question of whether the suspension of the Petitioner or continuation thereof for over 16 years is justified or not, is not is issue in this writ application.

12. The sole question involved in the instant writ application is whether the Petitioner is entitled to benefit of revision of pay and allowances effected after his suspension, for the purpose of computation of his subsistence allowance.

13. Counsel appearing on behalf of the Respondent bank submitted that paragraph 557 of the Shastri Award and/or circular of the Indian Banks Association can have no application to the employees of the bank in the State of West Bengal and Kerala since they are governed by the West Bengal Payment of Subsistence Allowance Act, 1969 and the Kerala Payment of Subsistence Allowance Act, 1972 respectively.

14. The provision of the Kerala Payment of Subsistence Allowance Act, 1972 are not attracted in the instant case. Section 3 of the West Bengal Payment of Subsistence Allowance Act, 1969, hereinafter referred to as the West Bengal Act, provides as follows:

"3.(1) An employee who is placed under suspension shall, during the period of such suspension, be entitled to receive payment from the employer as subsistence allowance an amount equal to fifty per centum of the wages which the employee was drawing immediately before such suspension:

Provided that where the period of suspension exceeds 90 days the amount of subsistence allowance shall be increased after the expiry of 90 days to seventy-five per centum of the wages which the employee was drawing immediately before such suspension:

Provided further that an employee shall not be entitled to any subsistence allowance if he accepts employment during the period of suspension in any place other than the establishment where he had been working immediately before his

suspension.

(2) An employee shall not in any event be liable to refund or forfeit any part of the subsistence allowance admissible to him under Sub-section (1) but when an employee is exonerated of the charge which caused his suspension, the subsistence allowance paid to him for any period shall be adjusted against the full wages admissible to him for the same period."

15. Counsel appearing on behalf of the Respondent bank submits that an employee of the bank serving in the State of West Bengal is entitled to 50 per cent of the wages, which the employee was drawing immediately before such suspension by virtue of the provisions of the West Bengal Act although the subsistence allowance allowed under the Shastri Award is 30 per cent of such wages. Furthermore, after expiry of three months the employees governed by the Shastri Award are entitled to 1/2 of the wages that they would have got, but for the suspension, whereas the employees governed by the West Bengal Act are entitled to 75 per cent of the wages paid to them prior to their suspension.

16. Counsel appearing on behalf of the respondent Bank submits that the petitioner cannot claim the benefit of the West Bengal Act as also the Bipartite Settlement and/or Indian Banks Association circulars.

17. In the State of West Bengal the Banks are bound to comply with the provisions of the West Bengal Act and pay 50% of the wages as subsistence allowance upon suspension although employees elsewhere in India might be entitled to only 30 per cent of the wages.

18. There can be no doubt that the West Bengal Act is binding on all Banks in West Bengal as rightly submitted by the counsel appearing on behalf of the petitioner. Section 3 of the West Bengal Act provides for the minimum subsistence allowance to which a suspended employee in the State of West Bengal is statutorily entitled.

19. There is nothing, however, in the West Bengal Act which prevents a Bank from paying a subsistence allowance higher than that provided in Section 3 of the West Bengal Act.

On the other hand, Section 5 of the West Bengal Act clearly provides as follows:

"5. Nothing in this Act shall affect any right or privilege to which any employee is entitled to the date of commencement of this Act under any law for the time being in force or under any contract, custom or usage which is more favourable to him than any right or privilege conferred upon him by this Act."

20. From the provisions of the West Bengal Act, it is clear that an employee is entitled to the benefit of any right or privilege, inter alia, under a contract, which is more favourable than the right or privilege conferred under the said Act.

21. At the material time when the West Bengal Act was enacted and/or enforced, the conditions of service of Bank employees were governed by the Shastri Award

as modified by the Desai Award and other Bipartite Settlements.

22. The petitioner cannot, therefore, be deprived of any right under the Awards/ Bipartite Settlements referred to above, which might be more favourable to the petitioner than the rights conferred under the West Bengal Act,

23. In the instant case, the petitioner's salary at the time of his suspension was Rs. 2,992.14. The petitioner has been under suspension for years and the salary and allowances of the employees of the Bank have been revised from time. Had the petitioners not been under suspension he would have got 10 times the salary he got on the date of his suspension.

24. The submission on behalf of the Bank that Section 5 would protect only those rights which had actually accrued to an employee or a class employees on the date of commencement of the West Bengal Act and not afterwards is difficult to accept.

25. The West Bengal Act being a beneficial legislation, the provisions thereof are to be interpreted in harmony with the object and spirit of the Act to provide for a minimum statutory subsistence allowance to suspended employees, in the State of West Bengal, and not in a narrow pedantic manner that would defeat the very purpose of a beneficial legislation enacted in the interest of employees kept under suspension.

26. In any event, as observed above, on the date of commencement of the West Bengal Act, the terms and conditions of service of Bank employees including subsistence allowance of suspended Bank employees was governed by the Shastri Award as modified by the Desai Award and other Bipartite Settlements.

27. In view of Section 5 of the West Bengal Act, an employee in the State of West Bengal would be entitled to the higher of the subsistence allowance calculated u/s 3 of the West Bengal Act or under the Bipartite Settlements read with circular of 1998. If the subsistence allowance calculated as per paragraph 557 of the Shastri Award read with the circular of 1998 is higher, the suspended employee would be entitled to higher subsistence allowance as per paragraph 557 of the Shastri Award read with the said 1998 circular, on and from the date on which subsistence allowance computed under the Shastri Award became higher than that computed u/s 3 of the West Bengal Act.

28. The denial of revision of salary and allowance in the matter of computation of subsistence allowance to employees serving in West Bengal is patently discriminatory and violative of Article 14 of the Constitution of India. At least, as far as the West Bengal Act is concerned, the same does not stand in the way of better benefits being granted to a suspended employee in view of Section 5 of the said Act.

29. The writ application is, therefore, allowed. The impugned order dated 17th April 2003 is set aside.

30. If subsistence allowance computed as per the Bipartite Settlement as clarified by the Indian Banks Association circular is higher and more consequentially beneficial to the petitioner, the petitioner shall be entitled to the benefit of the same on and from the date on which the benefit as per the Bipartite Settlements became higher by reason of wage revision.

31. Counsel appearing on behalf of the Bank prays for stay of operation of this order. Such stay is granted for a period of one week from date.

All parties are to act on a signed copy of the operative portion of this judgment on the usual undertakings.