(1975) 08 DEL CK 0002

In the Delhi High Court

Case No : Civil Writ Appeal No. 791 of 1974

The Chartered Bank APPELLANT

Vs

M.R. Balooni and Another RESPONDENT

Date of Decision : 22-08-1975

Acts Referred:

Citation : (1976) ILR Delhi 327 : (1977) 2 LLJ 477 : (1976) RLR 454

Hon'ble Judges : Yogeshwar Dayal, J;V.S. Deshpande, J

Bench : Division Bench

Advocate : G.B. Rai, Sarvashri, A.R. Lal, H.L. Tikku, M.K. Ramamurthi and Madan Mohan, for the Appellant;

Judgement

V.S. Deshpande, J.

(1) This writ petition by the Bank challenges the validity of the award of respondent 2 (Labour Court, Delhi) holding "that respondent 1, a clerk in the Bank. is entitled to special allowance under the Bipartite Settlement of October 19. 1966 between several banks and their workmen. Two contentions are raised one preliminary and the other on merits. The preliminary objection is that the Labour Court, Delhi has no original jurisdiction to entertain directly an application by a workman u/s 33C(2) of the. Industrial Disputes Act for the determination of his claim to special allowance. Such original Jurisdiction, it is said is confined to section 33A. The language of section 33C is contrasted with section 33A. Sub-section (1) of section 33C expressly requires an application to the appropriate Government. It was further argued that even if it is assumed that the Labour Court had the Jurisdiction to entertain the application of the Respondent I u/s 33C(2), it did not have the authority to direct payment of moneys to the Respondent 1. All that it could do was to forward its decision to the appropriate Government.

(2) It is significant that the Petitioner has not pleaded anywhere that the Respondent 2 was not such a Labour Court as was specified in this behalf by the

appropriate Government under sub-section (2) of section 33C. The only question argued was whether any Labour Court has original jurisdiction to entertain direct application u/s 33C(2) or whether it can take up cases there under only on a reference by the Central Government. The contention of the petitioner is untenable for the following reasons. Firstly, no objection to the jurisdiction of the Labour Court was taken when the application of Respondent 1 was contested by the petitioner before the Labour Court. It would not be lair to the Labour Court to consider such an objection raised for the first time in the writ petition. Secondly, rule 62(2) of the Industrial Disputes (Central) Rules, 1957 expressly authorises a workman to apply to the specified Labour Court in Form K-3 for the determination of the amount due or. as the case may be, the amount at which such benefit should be computed. Lastly, the question whether the Labour Court can entertain an application from the workman directly and can give relief to him directly is no longer rest integra. It is concluded by two decisions of the Supreme Court which have concluded after exhaustive examination of the subject that the Labour Court u/s 33C(2) can entertain a direct application from a workman and can determine his rights there under. These decision are:- The Central Bank of India Ltd. Vs. P.S. Rajagopalan etc., , and East India Coal Company, Ltd. v. Rameshwar and others, 1968 1 L.L.J. 6, (2). On the other hand, the rule framed by the West Bengal Government required the application to be made not to the Labour Court but to the State Government. This explains the decision in Treogi Nath Vs. The Indian Iron and Steel Co. Ltd., and M. L. Bose & Co. (Pvt.) Ltd. v. State of West Bengal, 1969 II LL.J. 395,(4) as also the decision in Management of Socklatinga Tea Estate v. N. I. Korean, Air 1968 A& N 15, (5).

(3) The decision of the dispute on merits would turn on the construction of the following provisions of the Bipartite Settlement :-

5.8A workman will be entitled to a special allowance if he is required to perform duty/duties and/or undertake the responsibilities listed against the category, irrespective of his designation/nomenclature or any general authority vested in him."

"5.7.The additional duties and functions involving greater skill or responsibility, which would entitle a workman to a special allowance are more particularly enumerated for each category of workmen in Appendix ''B'' hereto. Special allowance will be payable for all or any of the duties listed in Appendix ''B'' except where it is specifically provided therein that for a particular category the additional duties entitling to a special allowance, include or involve all the duties listed under that category." In Appendix ''B'', category (xix) is that of Special Assistance. Their duties are described in seven paragraphs. Paragraph (xix) (iii) is as follows :-

"CHECKING all vouchers, advices, statements, bills, returns, books of accounts, etc."

(4) Respondent 1 scrutinizes all export bills in the office of the Bank where he

works. After scrutiny, he prepares a discrepancy statement pointing out defects, shortcomings or inconsistencies in the various documents which collectively form what is called an export bill. A customer holding an export bill approaches the Bank. After the export bill is scrutinized by Respondent I and further scrutinized by an officer called Shri Baliappa, it is then ultimately approved by the Manager of the Bank and is purchased by the Bank. The customer is paid off while the Bank recovers the amount due on the letter of credit from the foreign party or bank Respondent 1 does not scrutinize the other documents listed in paragraph (xix) (iii) of Appendix ''B'' namely, vouchers, advices, statements, returns, books, of accounts etc.

(5) Before the Labour Court, Respondent 1 contended that his work amounted to checking of the export bills. Though paragraph (xix) (iii) relates to Special Assistants and the Respondent I is only a clerk, he is entitle to special allowance in view of paragraph 5. 8 of the Bipartite Settlement. In view of paragraph 5.7 thereof, the Respondent 1 was entitled to the special allowance even though he did only one of the duties, namely, checking of bills listed under the category of Special Assistants. Paragraph 5.6 of the Bipartite Settlement states that special allowances arc intended to compensate a workman for performance or discharge of certain additional duties and functions requiring greater skill or responsibility over and above the routine duties and functions of a workman. In order to be entitled to a special allowance such additional duties performed or discharged by the workman should constitute the normal part of the duties as distinguished from casual or occasional functions. Respondent 1 claims that the checking of the export bills was a normal part of his duties. He was, Therefore, entitled to the prescribed special allowance.

(6) The petitioner Bank opposed the claim of Respondent 1 for a special allowance before the Labour Court on the ground that Respondent I did not perform any duty which could be said to fall within the meaning of paragraph (xix) (iii) of Appendix ''B.'' He only did a mechanical comparison as the first step of assisting the officer-in-charge in the performance of his duties. His work did not involve any skill which is a condition precedent to be entitled to a special allowance.

(7) The Labour Court held that the work of Respondent I amounted to "checking" of the export bills. It was thus covered by the words "checking all bills" of paragraph (xix) (iii). An argument, not based on any pleading, was addressed for the Bank before the Labour Court that it was necessary to be entitled to special allowance that the workman must check not only all bills or all export bills but also all vouchers, all advices, all statements, all returns, all books of accounts, etc. The Labour Court rejected this argument and held that it was sufficient if any of the duties listed in paragraph (xix; (iii) was performed and that it was not necessary that all the duties listed therein should be performed.

(8) In challenging the award, the writ petition repeats the grounds of defense taken before the Labour Court. It does not plead that the workman has to check

not only all bills but also all vouchers, all advices, all statements, all returns, all books of accounts etc. The main contention by the writ petitioner is that the work done by Respondent I does not amount to "checking" within the meaning of paragraph (xix) (iii). Respondent I relies upon the award and maintains that his work amounts to "checking" within the meaning of paragraph (xix) (iii) of Appendix ''B''.

(9) In construing the language of paragraph (xix) (iii) of Appendix ''B'', Shri G.B. Pai and Shri A.R. Lal, learned counsel for the petitioner Bank, have advanced the following alternative arguments, namely,

(1)that the workman must check all vouchers, all advices, all bills, all statements, all returns, all books of accounts, etc. as listed in paragraph (xix) (iii) before he is entitled to the special allowance;

(2)assuming that he need not check all these documents but check only the bills or only one kind of bills, namely, export bills or foreign bills, he must, at any rate check vouchers, advices, statement returns, books of accounts, etc., as are connected with the export bills; and

(3)assuming that he need check only the export bills and no other documents, his work must amount to the taking of responsibility for the final checking of the export bills. Since the) bills were checked by Shri Baliappa, the officer under whom the Respondent 1 works, it cannot be said that the responsibility for checking was with Respondent 1. Consequently, the work of Respondent 1 did not amount to checking.

(10) In our view, none of these arguments is tenable. (1)A reading of the various items in Appendix ''B'' and particularly of the various paragraphs under item (xix) would show that the duties prescribed in each paragraph of item (xix) are not necessarily connected with each other. All the duties grouped together in one paragraph do not form one transaction. These duties may, Therefore, be performed by different persons. For instance, para (ii) of item (xix) is signing vouchers, cheques, drafts, pay orders, advices, bill schedules, etc. The only common element of various duties described therein is the work of signing. It is the governing verb alone which is common. It is because the same verb is used in respect of all the documents that they are grouped together in paragraph (ii). Similarly, the governing verb in para (iii) is "checking". It is followed by the description of documents which are to be checked. It is true that all the documents grouped in paras (ii) and (iii) are to be signed and checked. It does not mean, however, that either the signing or the checking must be done by the same person. Had these documents formed part of one transaction, then the argument that the one and the same person must check and sign documents might have had some plausibility .But these documents may be dealt with in different departments of a Bank. It is common sense that the division of the work into departments and sections means that a person working in one department or section does not do the work of some other department or

section. If for instance, books of accounts are maintained in one section and the bills are checked in another section, then it cannot be the intention of the Bipartite Settlement that one man should do the work of different departments merely because documents dealt with in different departments are grouped together in paras (ii) and (iii) of item (xix). Even in the additional affidavit filed by the petitioners Bank as late as on 10th March 1975 it is not said that the workman has to check all vouchers, all advices, all statements, all bills, all returns, all books of accounts, etc., to be entitled to earn a special allowance. It is significant that at the end of the enumeration in paras (ii) and (iii) the word "etc." occurs showing that the enumeration is not exhaustive. Some other items also might, Therefore, fall under paras (ii) and (iii). This is a further indication that it was not the intention of the Bipartite Settlement that one person should perform a11 the duties listed in paras (ii) and (iii).

(11) It is true that as distinguished from para (ii), the duties listed in para (iii) are proceeded by the adjective "all". But this has no particular significance because paragraph 5.7 relates to all the duties listed under the category of a workman. Had the adjective "all" been used to qualify all the duties listed under the category of Special Assistants, then it could be argued that all those duties had to be performed before special allowance could be claimed.

(12) A subordinate branch of the above argument was that all the bills should be checked before special allowance could be claimed. If the word "bills" could have signified only one kind of document, then this argument would have been acceptable. But according to the banking practice, the word "bill" can signify two totally different kinds of documents such as a foreign bill and an inland bill. It is well known that a transaction of export or import is quite different from a local transaction of sale or purchase. The inland bills and the foreign bills could, Therefore, be dealt with in two different departments. It could not be the intention, Therefore, of the use of the word "bills" to mean all kinds of bills. On the contrary, the word would mean one definite kind of bills, that is to say, either ''the foreign bills or the inland bills. The same remark would apply to vouchers, advices, statements, returns, books of accounts, etc. These documents also would refer to different transactions dealt with in different sections or departments of the Bank. Therefore, dealing with one kind of vouchers or advices or statements or returns or books of accounts dealt with in a particular section or department should be sufficient to bring the activity within item (xix) (iii). We are of the view, Therefore, that dealing with export bills or foreign bills was sufficient to bring the work of Respondent 1 within item (xix) (iii) if the work amounted to checking.

(13) (2) There is nothing in the language of item (xix) (iii) or item (xix) (ii) that the documents listed therein are so connected with each other as to form part of one transaction. Nor is it possible to construe paragraphs (ii) and (iii) of item (xix) to mean that if a person signs vouchers, he must sign the other documents listed in paragraph (ii) connected with vouchers or that if he checks export bills,

he must check all other documents mentioned in para (iii) and connected with export bills. Once we reject the argument that a workman has to check all the documents listed in paragraph (iii), we cannot hold that at any rate, the workman must check along with the bills all the documents connected with the bills.

(14) (3) "Checking" is distinguished from mechanical or clerical work. It involves intelligence, application of mind and forming an opinion. For instance, the work of copying or comparing documents is mechanical and clerical. It does not involve intelligence, application of mind or formation of an opinion. The description of the work of Respondent I given by the Bank shows that the work done by him was not mechanical or clerical. He is just given a collection of documents forming export or foreign bills. He has first to see whether the documents referred to in the letter of credit are all there. He has then to see if each of the documents is in order. In seeing whether each document is in order, he has necessarily to know how such a document is correctly drawn up. It is only then that he would know that a document not correctly drawn up is not in order. Lastly, he has to draw up a discrepancy statement showing the defects, shortcomings or inconsistencies in each of the documents or as between themselves. All this work involves intelligence, application of mind and formation of an opinion. It cannot be said that the work is merely mechanical or clerical.

(15) It was then argued that the checking, if it were so called by Respondent I, was not final. There was a further checking by Shri Beliappa, the officer-in-charge, who alone took the responsibility of checking the export bills. The criterion for the grant of a special allowance described in paragraph 5.6 of the Bipartite Settlement is the discharge of additional duties and functions requiring greater skill or responsibility over and above the routine duties and functions of a workman. The routine duties of a clerk do not include the work of checking. Respondent I is, Therefore, discharging additional duties and functions requiring greater skill. This is sufficient to entitle him to special allowance. Whether the new duty involves greater responsibility is another question. Responsibility itself is a question of degree. While a clerk may not take any responsibility, an officer like Shri Beliappa may take all the responsibility. Between them is a clerk like Respondent I discharging these additional duties who would be taking some but not all responsibility. In other words, his responsibility is penultimate but not ultimate. Paragraph 5.6 does not say that it is only for the ultimate or the final responsibility that special allowance is to be paid. Therefore, merely because the final responsibility is taken by Shri Beliappa, Respondent I cannot be said to take any responsibility at all. He does take a great deal of responsibility subject only to the supervision and final decision of Shri Beliappa.

(16) As all the three contentions of the Bank fail, we dismiss the writ petition with costs. Counsel''s fee Rs. 350.

