

(2000) 1 LLJ 167

Allahabad High Court

Case No: Writ Petition No. 6694 of 1985

Central Bank of India

APPELLANT

Vs

Assistant Labour
Commissioner (C) and
Others

RESPONDENT

Date of Decision: Feb. 23, 1999

Acts Referred:

Industrial Disputes Act, 1947 " Section 2

Citation: (2000) 1 LLJ 167

Hon'ble Judges: D.K. Seth, J

Bench: Single Bench

Advocate: N.K. Seth and Vijay Krishna, for the Appellant; C.S.C., for the Respondent

Final Decision: Allowed

Judgement

D.K. Seth, J.

Notices were issued to the opposite parties No. 2 and 3, but neither post card nor registered card had come back.

2. By an order dated April 1, 1986 service of notices upon opposite parties No. 2 and 3 was deemed sufficient service under Chapter VIII Rule

12 of the Rules of the Court, but no appearance has been put in on behalf of opposite parties No. 2 and 3. Amar Jeet Kaur appeared on behalf of

respondent No. 1.

3. Mr. Sandeep Seth, holding brief of Sri. N.K. Seth, submits that initiation of the proceeding by the Labour Court under Industrial Disputes Act

against the petitioner in relation to a dispute raised by the respondent No. 2 on account of suspension of respondent No. 3 who is allegedly

workman, is wholly without jurisdiction inasmuch as respondent No. 3, Bank Branch Manager was performing managerial, administrative function

as an executive officer of the branch to which he was the Manager. He is excluded from the definition of workman as defined u/s 2(s) of the

Industrial Disputes Act and as such in respect of the dispute on account of his suspension, the Labour Court cannot assume jurisdiction. Mr. Seth

has relied on definition, of workman u/s 2 Clause (ii) and has pointed out from Annexure No. 5 being part of the Bank Manual which provides the

duties of the Branch Manager indicating the role-summary and function of such Branch, Manager which elicits the function of the Branch Manager

in a capacity of managerial and administrative nature. Having drawn my attention to the role and functions, he pointed out that the role and function

of the Branch Manager is purely of managerial and administrative nature. He neither performs supervisory function nor that of workman. He also

relied on decision of the case of Gouri Charan Kanungo Vs. Industrial Tribunal and Another, and in the case of Aparna Kumar Dhar Gupta v.

United Industrial Bank of India Ltd. 1979 LIC 506. On these grounds he contends that the proceeding could not proceed and it should be

quashed. Further, in view of the interim order dated December 19, 1985, passed by this Court the initiation of proceedings against the respondent

No. 3 in respect of the charges pursuant to which he was suspended giving rise to the instant proceedings, was stayed. According to him, this

petition cannot be said to have become infructuous by reason of subsequent development in view of the suspended proceeding under the Industrial

Disputes Act. As soon as the interim order is vacated the proceedings relating to the alleged industrial dispute will survive. Therefore, according to

him it should be decided on merit.

4. Amar Jeet Kaur, learned Standing counsel opposes this point and stated that Mr. Seth pointed out that unless proceedings is quashed, the same

is supposed to proceed. However, the proceedings of the Tribunal had since been related to the suspension of respondent No. 3. As soon as final

order is passed in the domestic enquiry, these proceedings had become infructuous.

5. I have heard learned counsel for the petitioner Sri Sandeep Seth and Smt. Amar Jeet Kaur, learned Standing Counsel at length.

6. It is an admitted position that the respondent No. 3 was the Branch Manager of Central Bank of India, Jajmau Branch in Defence Colony,

Kanpur. It appears from the documents annexed as Annexures to this writ petition that the respondent No. 3 was being addressed and described

as Branch Manager. Even in the purported letter addressed by the respondent No. 2 Union, the, respondent No. 3 has been described as Deputy

Chief Officer who claims himself to be a member of the Union. Despite the service having been accepted, neither respondent No. 2 nor

respondent No. 3 had appeared and nor had denied the said facts. There appears to be neither any doubt nor difference about the designation of

the respondent No. 3 as Branch Manager. In such circumstances, the irresistible conclusion is that the respondent No. 3 was Branch Manager.

Chapter B of the Manual prescribed the role and functions of the different officers. Part of such role and functions of the Bank have been provided

in Annexure No. 5 to this writ petition. The role of Branch Manager has been summarised as follows: -

Role summary - The role of the Branch Manager, essentially consists of ensuring business development, which can be achieved only through

customer development and staff development. In the area of business developments it is his prime responsibility to maintain or retain (existing

customers), consolidate (new business of the existing customers) and expand (new customers) all ongoing activities of the branch.

In order to play this development role effectively, the Branch Manager will have to continuously educate his customers as well as his staff on what

services the bank can offer. This implies that the Branch Manager's time would be apportioned more for continuous discussions and dialogues"

with the customers as well as with his personnel and there would be lesser involvement with the routine of the branch. This educational role would

enable the Branch Manager to build up the competence as well as the self- confidence of his officers and, through them, of the clerks. This, in turn

will enable him to free himself from the routine and leave him with more time for business and customer interaction. In the final analysis, therefore,

the role of the Branch Manager is to be a leader of the team at the branch, to achieve team spirit and fullest involvement of his staff, thereby

mobilising and developing the Bank's resources-both material and human-in order to fulfill the goals of the new banking policy.

In the context of the role outlined above, the Branch Manager's functions are set out in the following paragraphs. It may be emphasised that the

functions as spelt out hereafter for the Branch Manager as well as for the other functionaries are only in the nature of broad guidelines and do not

necessarily cover the entire gamut of the activities of the functionary.

7. The role of the summary indicates that the Manager is required to develop the business of the Branch of the Bank. He has to undertake the

process of customer and staff development. In order to develop the customers, he is required to continuously educate customers as well as his staff

as to what service the bank can offer and he is also required to give more time for continuous discussion and dialogues with the customers as well

as his own personnel while involving himself less with the routine work of the branch. He is required to build up the competence as well as the self-

confidence of his officers. He is also required to build up the competence and self-confidence of the clerks through his officer. This is provided in

order to enable the Branch Manager to free himself from the routine work and to spend more time in business and customer interaction. He is the

leader of the team at the branch and is required to achieve team spirit and fullest involvement of his staff, thereby mobilising and developing the

bank's resources both material and human. The function of the Branch Manager has also been enumerated in the guidelines following the roles

summary.

8. Function as preceded by the role summary has been divided into six categories while each category has been divided into several sub-

categories. Since it is not necessary to refer to the whole of the function, it would be sufficient to indicate these categories namely.

(a) Planning and organising branch"s performance.

(b) Development of business.

(c) Customer"s service/public, relation.

(d) Operations/advances.

This category (d) has been divided into two divisions namely :-

(A) Advance (B) routine.

(e) Branch administration and establishment.

(f) Staff administration and development.

9. These broad category itself indicates that the functions by the Branch Manager are purely administrative or managerial. His functions are not

even supervisory. The several categories under each category head indicates that these are all executive functions in the managerial and

administrative capacity. These are more or less policy decisions taken at its level of which he is the head. Thus there cannot be any second opinion

as to the nature of the function of the Branch Manager. It is purely an executive function in managerial and administrative capacity.

10. The Industrial Disputes Act u/s 7 constitute Labour Court while constitution of Tribunal is u/s 7(a) and (b). Section 10 provides for reference

of dispute to the Court or Tribunal by the appropriate Government, if it is of the opinion that any industrial dispute exists or is apprehended. The

Labour Court assumes jurisdiction only when a dispute is referred to it whether existing or apprehended. The reference is to be made in relation to

industrial disputes. Industrial dispute has since been defined u/s 2(k). In the said definition 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 person.

11. In the present case, it is not disputed that the alleged reference is in respect of a dispute with regard to the term of employment and connected

with employment in respect of condition of labour. It is also undisputed that this dispute or difference is between the employer and workman.

Unless the dispute between the petitioner and the respondents No. 2 and 3 have been espoused by the Union who had taken sufficient interest

giving shape of an Industrial dispute, no reference could be made. The individual cause of the respondent No. 3 is being sought to be espoused by

the Union.

12. Now a reference can be made only in respect of a dispute between the employer and workmen. Even when espoused by the Union the case

that has been espoused must be that of a workman. Unless the respondent No. 3 is a workman even if his case is espoused by the Union of the

workmen, the same cannot turn to be a dispute or difference between the employer and workmen. In order to find out whether the respondent

No. 3 is a workman or not, it is necessary to look into the definition of workman as defined in Section 2(s). The workman has since been defined

in the following manner:-

2(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 purpose 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 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 as 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.

13. It is not necessary to deal with whole of the definition for our present purposes. The definition had excluded certain categories of persons as

enumerated in Clauses (i) to (iv).

Clause (iii) excludes a person who is employed mainly in a managerial or administrative capacity. If the respondent No. 3 falls within any one of

these categories, in that event, he cannot be said to be a workman. Admittedly, he does not come within Clauses (i) and (ii). The definition

hereinbefore shows that he clearly comes within Clause (iii). The nature and function of the workman as discussed above clearly indicates that a

Branch Manager is employed exclusively in a managerial or administrative capacity. The said Clause (iii) excludes even those persons who may not

have been employed exclusively in a managerial or administrative capacity but mainly in a managerial or administrative capacity meaning thereby if

the main function of the person is managerial or administrative even though a part of his function may be other than managerial or administrative still

he is within the excluded category of Clause (iii).

14. The role and function as discussed above clearly indicates that the Branch Manager in the present case, namely respondent No. 3 was

employed exclusively in a managerial or administrative capacity and, therefore, he is not a workman within the meaning of Section 2(s) as is

apparent on the face of the record. Therefore, there is no scope for the union to espouse the case of a person who is not a workman even though

the union is that of workmen. An officer employed in a managerial or administrative capacity cannot be a member of a union of workmen. The

qualification of a member of a workmen's union is that he should be workman himself. A person appointed in a managerial or administrative

capacity not being a workman does not satisfy the qualification of being a member of a workmen's union. Therefore, even, if such person is

somehow enrolled as a member of the workers' union, even then he cannot claim himself to be a workman simply because of his enrolment as a

member of the union. Neither the union can espouse the case of such an officer u/s 10 of the Industrial Disputes Act. Even, if such reference is

made by the State Government the same cannot confer any jurisdiction on the Labour Court or the Tribunal. The jurisdiction of the Labour Court

and the Tribunal as observed earlier is confined to the dispute or difference between the employer and workman or workman and workman in

view of the definition of industrial disputes which can only be referred by the appropriate Government u/s 10 to the Tribunal.

15. Thus it appears from the above discussion that the initiation of the proceedings before the Labour Court since impugned in this writ petition is

without jurisdiction and void ab-initio and as such is liable to be quashed.

16. Mr. Seth had relied on the decision in the case of Gouri Charan Kanoongo (supra), in which the Orissa High Court in a Division Bench had

held that the petitioner therein a "Branch Manager of Central Co-operative Bank, was not a workman within the meaning of Section 2(s) of the

Industrial Disputes Act since the said Manager was mainly performing the duties of managerial and administrative nature.

17. In the case of Aparna Kumar Dhar Gupta (supra) cited by Mr. Seth, a single Judge of the Calcutta High Court had taken the same view in

respect of Branch Manager of United Industrial Bank of India Limited holding that the Branch Manager occupies the highest position among all the

employees in the branch and is in complete charge of the Bank. The position of a Branch Manager in a Bank is full of risk and responsibilities. On

account of nature of the duties attached to the post of a Branch Manager, he cannot come under the definition of workman as defined in the

Industrial Disputes Act.

18. Thus the decisions support the contention of Mr. Seth and the view that I have taken hereinbefore.

19. For all these reasons, this writ petition is allowed. The initiation of proceedings pursuant to the notice contained in Annexure VIII being No. K-

7 (1-217)/85-Con.II, dated November 22, 1985 is hereby quashed as well as the proceedings arising thereout.

Let a writ of certiorari do accordingly issue. So far as the question that the writ petition has not become infructuous is concerned, the dismissal of

the writ petition as infructuous will cause revival of the conciliation proceedings, does not stand to reason, inasmuch as the dispute was with regard

to the suspension and not with regard to any decision in the disciplinary proceedings. The suspension having merged with the final order passed in

the disciplinary proceedings, the scope of suspension having expired, the proceedings with regard to suspension having remained stayed by reason

of the interim order, the scope of the whole proceeding had lost its force and utility and, thus, the proceedings before the Labour Court also

become infructuous. But then such an order was necessary to be passed by the Labour Court. However it is not necessary to go into this question

in view of the decision above. No cost.