

(1997) 04 AHC CK 0160

Allahabad High Court

Case No: Special Appeal No. 104 of 1997

Oriental Bank of Commerce

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision: April 8, 1997

Acts Referred:

- Allahabad High Court Rules, 1952 - Rule 5
- Constitution of India, 1950 - Article 136, 226, 227
- Industrial Disputes Act, 1947 - Section 10

Citation: (1997) 1 UPLBEC 269

Hon'ble Judges: D.P. Mohapatra, C.J; R.A. Sharma, J

Bench: Division Bench

Advocate: Krishna Mohan, for the Appellant;

Final Decision: Dismissed

Judgement

D.P. Mohapatra, C.J.

All these appeals involve similar questions of fact and law. Therefore, with consent of learned Counsel for parties, they were taken up together.

2. At the commencement of hearing of the cases. Shri Shashi Kanta Gupta, learned Counsel for Respondents, raised a preliminary objection against maintainability of the appeals, which have been filed under Rule 5 of Chapter VIII of the Allahabad High Court Rules. Elucidating the point, Sri Gupta submitted that in the writ petitions the Appellant Oriental Bank of Commerce had challenged the award of the Central Industrial Tribunal, Kanpur, holding the termination of services of Respondents-workmen as illegal and invalid and directing their reinstatement. The learned single Judge by the judgment rendered on 27.1.1997 confirmed the award of the Central Industrial Tribunal and dismissed the writ petitions. According to Shri Gupta, no appeal is maintainable against the judgment of the learned single Judge under the provisions of Rule 5 of Chapter VIII of the High Court Rules, inasmuch as

the award, which has been rendered under the Industrial Disputes Act, 1947, falls within Entries 22, 23 and 24 of List III of Seventh Schedule -- Concurrent List.

3. Refuting the submissions of Shri Gupta, Shri G. N. Verma, learned Counsel for the Appellant Bank, submitted that the appeals filed under Rule 5 of Chapter VIII of the High Court Rules are maintainable for the reason that the workmen concerned are employees of the Bank and the subject-matter of the award is covered by Entries 45, 52 and 61 of List I of Seventh Schedule -- Union List.

4. Rule 5 of Chapter VIII of the High Court Rules, on the interpretation of which depends the decision on the point, reads as follows:

5. Special Appeal -- An appeal shall lie to the Court from a judgment (not being a judgment passed in the exercise of appellate jurisdiction) in respect of a decree or order made by a Court subject to the superintendence of the Court and not being an order made in the exercise of revisional jurisdiction or in the exercise of its power of superintendence or in the exercise of criminal Jurisdiction or in the exercise of jurisdiction conferred by Article 226 or Article 227 of the Constitution in respect of any judgment, order or award -- (a) of a Tribunal, Court or statutory arbitrator made or purported to be made in the exercise or purported exercise of Jurisdiction under any Uttar Pradesh Act or under any Central Act, with respect to any of the matters enumerated, in the State List or the Concurrent List in the Seventh Schedule to the Constitution, or (b) of the Government or any Officer or authority, made or purported to be made in the exercise or purported exercise of appellate or revisional Jurisdiction under any such Act of one Judge.

On a plain reading of the above provision, it is clear that if the judgment of the learned single Judge has been passed in exercise of the jurisdiction conferred by Article 226 or Article 227 of the Constitution in respect of any judgment, order or award of a Tribunal, Court or statutory arbitrator made or purported to be made in the exercise or purported exercise of jurisdiction under any Uttar Pradesh Act or under any Central Act with respect to any of the matters enumerated in the State List or the Concurrent List of the Seventh Schedule to the Constitution or of the Government or any officer or authority made or purported to be made in the exercise or purported exercise of appellate or revisional Jurisdiction under any such Act, then no appeal shall lie against the judgement of the single Judge. If on the other hand, the judgment of the single Judge is rendered with respect to any matter enumerated in the Union List, then an appeal may be filed against the judgment.

5. The crucial question, therefore, is whether the award passed by the Central Industrial Tribunal in the present case can be said to be with respect to any of the matters enumerated in the State List or the Concurrent List of the Seventh Schedule to the Constitution or it is in respect of a matter under the Union List. Indisputably, the reference to the Central Industrial Tribunal was made by the Central Government (appropriate Government) u/s 10 of the Industrial Disputes Act, 1947

and the Tribunal passed the award in exercise of the Jurisdiction vested under the said Act. The Industrial Disputes Act, 1947 deals with matters relating to Trade Unions, industrial and labour disputes; provided in Entry 22 of List III -- Concurrent List.

6. This position is no longer res integra. The Supreme Court in the case of [Christian Medical College Hospital Employees' Union and Another Vs. Christian Medical College Vellore Association and Others](#), ruled that the Industrial Disputes Act is one which is enacted as a social security measure in order to ensure welfare of labour and it falls within one or the other of Entry 22 -- Trade Unions, industrial and labour disputes, Entry 23 -- social security and social insurance, employment and unemployment and Entry 24 -- welfare of labour including conditions of work, provident funds, employer's liability, workmen's compensation, invalidity and old age pensions and maternity benefits. The Act generally applies to all industries irrespective of the religion or caste to which the parties belong; It applies to Industries owned by the Central and the State Governments too; any decision given by the Industrial Tribunal or a Labour Court under the Act is subject to judicial review by the High Court under Article 226 of the Constitution and an appeal to Supreme Court under Article 136 of the Constitution.

7. In view of the principles clearly laid down by the Apex Court, the position has to be accepted as well-settled that an award made under the Industrial Disputes Act is in respect of matters coming under Entry 22, 23 or 24 of list III (Concurrent List). The position that follows is that the decision of a single Judge of the High Court in a writ petition filed against such award is not amenable to appeal under Rule 5 of Chapter VIII of the High Court Rules. It is clear to us that the Industrial Disputes Act, 1947 under which the award in question has been passed does not relate to a matter falling under Entry 45 -- Banking, Entry 52- Industries, the control of which by the Union is declared by Parliament by law to be expedient in the public interest, or Entry 61-Industrial disputes concerning Union employees. The position cannot be denied and indeed it was not disputed before us that the workmen of the Appellant Bank are not employees of the Union. In our considered view, the aforementioned Entries in List I (Union List) deal with different matters with which the Industrial Disputes Act is not concerned and, therefore, not relevant for the purposes of the present case.

8. For the reasons stated in the foregoing paragraphs, the appeals are dismissed as not maintainable. No costs.