
Reserve Bank of India Vs Arvind S. Joshi and Another

Writ Petition No. 2825 of 1992

Court: Bombay High Court (Nagpur Bench)

Date of Decision: Feb. 15, 2005

Acts Referred:

Constitution of India, 1950 " Article 227#High Court Judges (Condition of Service) Act, 1995
" Section 22B#Industrial Disputes Act, 1947 " Section 33C(1), 33C(2)

Citation: (2005) 5 BomCR 462 : (2005) 4 MhLj 81

Hon'ble Judges: Dharmadhikari B.P., J

Bench: Single Bench

Advocate: G.G. Modak, for the Appellant; Deshpande, for the Respondent

Final Decision: Dismissed

Judgement

Dharmadhikari B.P., J.

Heard the learned Counsel for the parties.

2. The employer namely Reserve Bank of India challenges the Award dated 4th August, 1992 passed by the Presiding Officer, Central

Government, Labour Court at Nagpur in C.G.I.D.A. Case No. 31 of 1989. The said award is delivered in the proceedings u/s 33C(2) of the

Industrial Disputes Act moved by the present respondent No. 1 claiming the stagnation increment after completion of 23 years of service as per the

provisions of Dighe Award which is applicable and which governs the subject-matter.

3. The case of respondent No. 1 before the Labour Court was that he joined the services on 20th November, 1963 and completed 24 years of

service on 20-11-1987. As per the provisions of the Dighe Award he should have been given stagnation increment from 20-11-1987. He states

that he was drawing his pay in time scale of Group A category and because of his improvement in qualifications namely passing of graduation

examination and clearing CAII-B Part 1 and CALLS Part II examinations. He was also given Award which is applicable and which governs the

subject-matter. 3. The case of respondent No. 1 before the Labour Court was that he joined the services on 20th November, 1963 and

completed 24 years of service on 20-11-1987. As per the provisions of the Dighe Award, he should have been given stagnation increment from

20-11-1987. He states that he was drawing his pay in time scale of Group - A category and because of his improvement in qualifications namely

passing of graduation examination and clearing CAII-B Part-I and CAII-B Part-II examinations. He was also, given advance increments. He

states that on 20-11-1978 he was receiving his pay at Rs. 590/- as substantive pay which was inclusive of three advance increments in pay scale

of Rs. 555 + Rs. 25 + Rs. 10. He further states that to reach the maximum of that scale, he was to draw only one increment and it was to be

released on 20-11-1979. On 7th July, 1979 he passed CAIIB Part II examination and therefore, he became entitled to two advance increments in

terms of the Bipartite settlement of the year 1970. However, the local office did not ask him anything as to whether he was desirous to avail of the

benefit of honorarium in the matter and according to him, he should have been given benefit of Honorarium as only one increment was left to reach

maximum in the time scale after 41/2 months only and as released of two increments was, therefore, not possible. He contends that, therefore, he

was put to loss and he further contends that his last date of increments was also shifted to 7th July, 1979 from 20th November, 1979.

4. It is the contention of respondent No. 1 that under consent award of 1979 Part V(C)(b) he was eligible to draw Rs. 150/- as a special pay

irrespective of the option for advance increment/ Honorarium and this special pay is not linked with the advanced increment or Honorarium. He

states that he was not given two advance increments and also was not allowed to draw Honorarium, but only special pay was released in his

favour and all this created confusion when his case was considered for release of stagnation increment. He contends that he was eligible to receive

benefit of stagnation increment of Rs. 100/- w.e.f. 20-11-1987. The respondent bank has released the said increment from 7th July, 1989 and

therefore, financial loss has been caused to him. He, therefore, filed the application for determination of the amount payable to him inclusive of the

benefits like dearness allowance and also claiming interest. Respondent No. 1 has stated in paragraph 8 of his application that he had to recover

approximately the amount of Rs. 4,000/- towards dues on account of stagnation increment for the period from 1987 to June, 1989.

5. The petitioner bank filed its reply before the Labour Court. Though there is not much of dispute insofar as the facts in the matter are concerned,

the petitioner bank pointed out to the Labour Court that the stagnation increment is to be released after the employee completes drawing of post

scale special pay after reaching the maximum of time scale. Thus, the petitioner pointed out that the last increment of post scale special pay of Rs.

185/- was released to the present respondent on 7th July, 1984 and in terms of Part II of the settlement regarding stagnation increment of Dighe

Award, he became eligible for first stagnation increment after five years of the last increment of the post scale special pay i.e. from 7th July, 1979.

The petitioner bank contended that the demand made by respondent No. 1 for grant of stagnation increment from 20-11-1987 was, therefore,

unsustainable. The bank also raised objection that as only the monetary part is to be worked out, the respondent No. 1 ought to have moved

Government u/s 33C(1) of the Industrial Disputes Act and his application under that provision would have been time barred. The grievance was

also made that the application is not maintainable u/s 33C(2) of the Industrial Disputes Act as respondent No. 1 did not show any existing right in

his favour.

6. The learned Labour Court has delivered its order on 4-8-1992. It has negatived the case of the petitioner that the period of five years to

become eligible for release of stagnation increment is to be counted after release of last instalment of the post scale special pay. It is found that the

respondent No. 1 reached maximum of his scale on 7-7-1979 and as such, he completed five years on 7-7-1984 and therefore, the stagnation

increment ought to have been released in his favour on 7-7-1984. It further held that as per Section B of Part II of Dighe Award, the second

stagnation increment ought to have been released in favour of respondent No. 1 on 7-7-1989. It accordingly directed the petitioner to pay to the

respondent No. 1 the benefits after releasing these stagnation increments on the dates mentioned above. It is this order which is challenged in the

present petition under Article 227 of the Constitution of India by the employer-bank.

7. Mr. G.G. Modak, Advocate appearing for the petitioner bank had invited the attention of the Court to extract of the Award of National

Industrial Tribunal (Dighe) award which governs the controversy. He points out that Section B of Part 1 of appendix E governs the scales of pay

and respondent No. 1 was receiving his salary in time scale mentioned in Group III at page 61 of this award. The said scale is Rs. 505-30-565-

35-635-40- 715-45-760-50-860-55-970-EB-60-1090-65-1350-70-1420-75-1495. Thus, the total span of this time scale is 20 years. He

points that even within this period of 20 years, a person can reach maximum if he improves his qualifications and for that purpose, he invites

attention of the Court to Part V which deals with advance increments/Honorarium/Special Pay. As per Clause A of this Part, a person who obtains

graduate qualification is entitled to two increments in the scale of pay. Similarly, a person who clears Part 1 examination of CAIIB/CAIB gets one

increment as advance increment and if he passes Part II of that examination, he becomes entitled to two increments in the scale of pay. Thus, a

person who obtains all these qualifications is entitled to receive total five increments as advance increments. Under the circumstances, he would

reach the maximum of time scale in the 15th year of his service. Clause (B) of this part provides for as to when the employee can be paid

Honorarium in lieu of the advance increments at his option. Now the Honorarium for passing Part I of CAIIB/ CIB examination is Rs. 350/- and

for passing Part II of that examination it is Rs. 650/-. Clause (C) which deals with Special pay. It states that the employees in Group I after

reaching the maximum of time scale are eligible to draw special pay of Rs. 23/- after one year, Rs. 46/- after two years, 69/- after three years, Rs.

92 /- after four years and Rs. 115/- after five years. The next sub-clause however imposes ceiling of this special pay and the said ceiling is Rs. 46/-

for graduates, Rs. 23/- for the persons clearing only Part I of CAIIB/CAIB examination, Rs. 69/- for the persons clearing Part II of CAIIB-CIB

examination, Rs. 69/- for the persons clearing graduation and part I of both these exams and Rs. 115/- for the persons clearing graduation and

both the above exams.

8. Mr. Modak, Advocate, points out that the petitioner was only one increment away from the maximum of his time scale on 20-11-1978 and he

passed the Part II CAIIB examination on 7th July, 1979. Therefore, as per this scheme, he became eligible for grant of two increments in the scale

of pay. But as he was only one increment away from the maximum, said two increments could not have been released in his favour. He further

points out that as the employee did not opt to receive Honorarium in lieu of the advance increments, the Honorarium could not be released in his

favour and therefore, the bank had no option but to release the special pay as per Clause (C) above. He points out that the employee cleared Part

II examination of CAIIB on 7th July, 1979 and therefore, the increment date which was 20-11-1979 was preponed and accordingly, it was made

7th July, 1979. He contends that no prejudice has been caused to respondent No. 1 by such preponing. He contends that from 7th July, 1979 the

instalments of special pay were given to respondent No. 1 and as he is the person who has passed graduation, as also Part I and II of the

C.A.I.B. examination, the limit applicable in his case was Rs. 115/- and accordingly, he was paid Rs. 23/- for one year, Rs. 46/- after two years,

Rs. 69/- after three years, Rs. 92/- after four years and Rs. 115/- for five years. He, therefore, contends that the bank has acted in accordance

with the provisions of the Dighe Award in the matter of release of increments.

9. Mr. G.G. Modak, Advocate further invites attention of the Court to Part II which deals with stagnation increment. The relevant portion of said

Part II reads as under :

All employees in Group 1 will be granted stagnation increments, subject to a maximum of two, each equivalent to the last increment in the scale of

pay, for every five completed years of service after reaching maximum in the scale of pay and drawl of post-scale special pay, if any and to the

extent admissible. The period of stagnation for this purpose will be reckoned from the date of reaching the maximum of the scale of pay in the

Bipartite Settlement dated 7th October, 1970.

10. He, therefore, contends that even as Per Part II, respondent No. 1 does not become entitle to release of stagnation increment till expiry of the

period of five years after drawl of the post scale special pay. He submits that thus the bank is justified in pointing out that respondent No. 1

becomes eligible to release of 1st stagnation increment only on 7-7-1989 i.e. after expiry of five years of drawl of the post scale special pay. The

contends that the learned members of the Industrial Court has not correctly appreciated the scheme and has misinterpreted the provisions which

has resulted in refusal to exercise jurisdiction in accordance with law. He further points that the learned Labour Court has placed reliance upon the

order delivered by the Central Government Labour Court No. 1 at Bombay in Application No. L.C.B. 42/1989 on 13-8-1990. He points out that

the said order does not in any way considers the controversy which is required to be considered in present matter. He, therefore, contends that the

order of Labour Court shows total non-application of mind and is liable to be quashed and set aside.

11. During his arguments, Mr. Modak, Advocate has placed emphasis upon use of the word "" and "" which appears in Part II. It is his contention

that the said clause which lays down eligibility requires that the employee must reach the maximum of time scale of pay and further he should have

also drawn post scale special pay. He contends that the period office complete years is to be counted after both these events are over. To support

his contention that word ""and"" here is to be interpreted conjunctively, he has placed reliance upon the judgments of the Apex Court reported at M.

Satyanarayana Vs. State of Karnataka and Another, , and Union of India Vs. Justice S.S. Sandhawalia (Retd.) and others, .

12. As against this, Mrs. Deshpande, learned Counsel appearing for respondent No. 1 has stated that the period of five years is to be counted

after the employee reaches the maximum of time scale of pay and the drawl of post scale special pay has got not bearing on release of stagnation

increments. She also relies upon the very same portion of/on which the Counsel for the petitioner has placed reliance. She point our that, the period

of stagnation is to be reckoned from the date of reaching maximum of scale of pay as per Bipratire settlement dated 7-10-1970. She further

contends that the learned Labour Court has, therefore, correctly appreciated the controversy and the order does not call for any interference.

13. After hearing both the Counsel and in view of the stand taken by the petitioner- bank, a question as to the fate of the employee who reaches

maximum without improving his qualification and the fate of the employee who is otherwise similarly situated but improves his qualification, came up

for consideration. In the process it was found that a person who improves qualification and therefore, draws post scale special pay is placed at

disadvantageous position as compared to the person who does not improve his qualification because the instalment of post scale special pay is little

less than the last instalment in the time scale to which a person becomes eligible after five years upon reaching maximum of time scale. In this

connection, attention of the Court was invited to the policy decision of petitioner which is placed along with the written submissions by respondent

No. 1 on 25-11-1993. The said decision is dt. 22-1-1992 and the relevant portion there of reads as under :

It has been brought to out notice that in a few cases the implementation of the aforesaid provision has given rise to situations where more qualified

employees draw lower pay, though for a temporary period, than their less qualified juniors. The matter has, therefore, been examined and it has

been decided as under :

In cases where more qualified senior employees in Group "A" draw lower pay then less qualified juniors because of the formers acquiring the

relevant educational qualifications after or just before reaching the maximum of the pay-scale, the pay of such seniors will be protected by granting

them the difference in amount in the form as and of "personal pay" as an when anomalies area

14. Thus, it is apparent that because of reading of requirement of counting the period five years after drawl of post scale special pay, such

contingency has arisen, if one ignores the post scale special pay for the purposes of granting of stagnation increment, such contingency would not

arise. In this connection, it would be necessary to refer to the judgments of the Hon"ble Apex Court to which reference is made by the learned

Advocate Mr. Modak. The first judgment in the case of M. Satyanarayana (supra) consider the case of the political sufferer or freedom fighter

who has been defined to mean a person who prior to August 15,1947 participated in National Movement and even after August 15,1947

participated in the struggle in any princely state for securing is accession. The case of the appellant before the Hon"ble Apex Court was that his

father had participated in 1942 Movement and was imprisoned between September 10, 1942 to October 2, 1942. The appellant claimed

admission on the ground of being a son of a freedom fighter or political sufferer and for that purpose, he contended that both these parts of

definition should be read independently of each other. The Hon"ble Apex Court has refused to read that word in disjunctive sense and has held

that the word ""and"" has been used in conjunctive sense. The Apex Court has found that if expression ""and"" in Clause (a) is read independently,

then there was no need for a person to suffer at all and mere partitions would be enough to make him political sufferer. That should defeat the

rationale behind the rule. It would, therefore, frustrate the intention and purpose of the legislature. It has been thereafter concluded that the

expression ""and "" in these circumstances cannot be read disjunctively.

15. The next ruling ie. Union of India Vs. Justice S.S. Sandhawalia (Retd.) and others, again considers the similar situation and in paragraph 18,

the provision which entitles a Judge to a staff car and 150 litres of petrol per month or actual consumption of petrol whichever is less, fell for

consideration. The said provision (Section 22-B of the High Court Judges (Condition of Service) Act, 1995) has been interpreted by the Hon"ble

Apex Court to mean that entitlement of a Judge for petrol can be availed independently of the staff car. The petitioner before the Apex Court was

not provided with the staff car, but he was allowed to use his entitlement of petrol in another vehicle for which Government has made payment. The

Hon"ble Apex Court has held that under the provisions having regard to the High Office which a judge enjoys, it is considered proper and

commensurate with his status that he provided with the staff car for use by himself and his family members and "and" a maximum of 150 litres of

petrol. The Hon"ble Apex Court refused to read the word ""and"" as word ""with"" and has also stated that otherwise it would lead to absurd situation

in which the Government may not provide a staff car and may also deny benefit of petrol entitlement on the ground that without the staff car the

judge cannot be given the petrol.

16. However the situation in the present case is different. The clause in part I as reproduced above contains two contradictory provisions. The first

is in relation to calculation of five completed years of service and the second is about counting period of stagnation. The first part states that five

completed years of service is to be counted after reaching maximum in the scale of pay and drawl of post scale special pay, if any and to the extent

admissible. As per the of second clause, the period of stagnation for this purpose will be reckoned from the date of reaching the maximum of scale

of pay. Thus, as per one part, the period of five years is to be counted after reaching the maximum of time scale and after drawl of post scale

special pay. As per the scheme mentioned above, the special pay is drawn for five years and therefore, if the first part is taken into consideration,

the employee would be entitled to stagnation increment after completion of period of five years during which he receives post scale special pay

after reaching the maximum of time scale. As per the second part of the above clause, the period of stagnation is to be reckoned from after

reaching maximum of the scale of pay and thus, he becomes entitled to first stagnation increment after completing five years after reaching

maximum in time scale. Thus, in view of the mutually contradictory provisions appearing in this clause, a interpretation which appears proper and in

favour of respondent No. 1 in case of ambiguity will have to be adopted. As already discussed above, in case of two similarly situated employees

one of whom improves qualification while other does not, the incongruent situation which results is required to be taken care of in view of the

circular issued on 22nd January, 1992 and by ordering release of personal pay in favour of such person who improves the educational

qualification. However, if the words ""And drawl of post special pay, if any and to the extent admissible"" are read disjunctively, the lacuna which is

otherwise appearing can be removed. The stagnation increment is given only because a person stagnates at some stage in the time scale after

reaching maximum because of absence of any other increment in it. Keeping in view this intention and last part of Part II of Dighe Award, it is clear

that the employee like respondent No. 1 becomes entitled to release of stagnation increment after expiry of the period of five years after reaching

the maximum stage in time scale of pay. Thus, release of stagnation increment does not depend upon the factor whether he has improved his

qualification and therefore, has become eligible to special pay or whether the he has not improved his qualification and therefore, he has not drawn

the special pay. According to me, this is the only interpretation which can be put upon the above portion of Part II, which determines the eligibility

of an employee for stagnation increment.

17. Even in the case reported at Union of India Vs. Justice S.S. Sandhawalia (Retd.) and others, , the Hon"ble Apex Court has refuse to read the

word ""and"" conjunctively and has further held if two views are reasonably possible, the Apex Court would lean in favour of the view which would

be favourable to the subject. In the facts of the case, in view of the two mutually contradictory provisions, two view are possible and therefore, a

view which favours respondent No. 1 is required to be accepted, it is to be noted that the Labour Court was exercising the jurisdiction under the

welfare statue where benefit of doubt of benefit of ambiguity is always given to the workmen/labour. Under the circumstances, I do not find that the

Labour Court has committed any error by directing the petitioners to release the stagnation increment in favour of the respondent No. 1 upon his

completion of five years after reaching the maximum of time scale i.e. w.e.f. 7-7-1984 and release of second stagnation increment from 7-7-1989.

18. The grievance made by the learned Counsel for the petitioner is that, in his application u/s 33C(2), the petitioner had asked for release of

stagnation increment from 20-11-1987 and the Labour Court has granted stagnation increment w.e.f. 7-7-1984, which is misconceived. The

employee, as mentioned in the earlier part of the judgment, clearly sets out his case and has stated that he becomes eligible to, two stagnation

increments after 24 years of service and he has further stated that his juniors have been given stagnation increment from 20-31-1987 and therefore,

he is entitled to get first stagnation increment of Rs. 100/- w.e.f. 20-11-1987. However, the Labour Court has rightly found that he becomes

entitled to stagnation increment after completion of five years as per the scheme of Award. Relief given to employee is, therefore, not illegal and

does not warrant interference in writ jurisdiction.

19. Though the learned Labour Court has placed reliance upon the Award dated 13th August, 1990 delivered by Justice S.N. Khatri, still after

going through the said order, I do not find any similarity between the dispute decided by him and the dispute which was for consideration before the

Labour Court.

20. Mr. Modak, Advocate also argued that the Labour Court u/s 33C(2) could not have interpreted the terms and conditions of the Award and

there was no existing right in favour of respondent No. 1. The Award which is place on record by the petitioner-bank itself creates an existing right

in favour of respondent No. 1 and the Labour Court has only interpreted its various clauses together and has given benefit to respondent No. 1.

Therefore, I do not find any substance in the said argument. This Court has, while granting stay in the matter, directed the petitioner to deposit the

amount of Rs. 2,000/- and the same has been deposited in this Court on 8th July, 1993 by the petitioner. Under the circumstances, respondent

No. 1 is directed to withdraw that amount.

21. In the circumstances, I do not find any merit in the petition. The writ petition is accordingly dismissed. No orders as to costs.