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Allahabad Bank Vs Presiding Officer, Central Government Industrial Tribunal

Writ Petition No. 9687 (W) of 2000

Court: Calcutta High Court

Date of Decision: June 24, 2003

Acts Referred:
Constitution of India, 1950 â€" Article 226#Industrial Disputes Act, 1947 â€" Section 9A

Citation: (2003) 2 ILR (Cal) 369

Hon'ble Judges: Indira Banerjee, J

Bench: Single Bench

Advocate: K.V. Biswanathan and Joydeb Ghorai, for the Appellant;Asoke De and Supriya Chattopadhya, for the Respondent

Final Decision: Dismissed

Judgement

Indira Banerjee, J.
In this writ application, the Petitioner has challenged an award dated June 25, 1998 made by learned Central

Government Industrial Tribunal in Reference case 39 of 1994.

2. The facts, pertaining to the writ petition, are briefly as follows:

Two members of the Respondent Union, namely, Sudip Kr. Ghosh and Tapan Kr. Sarkar were appointed as clerk-cum-Typist of the Petitioner

on June 1, 1979 and on July 11, 1981 respectively. While Tapan Kr. Sarkar was posted in the international Branch of the Petitioner, he was

redesignated as Clerk-cum-Telex Operator on and from February 1, 1982 and was granted special benefits pertaining to the duties of Clerk-cum-

Telex Operator with effect from December 29, 1983.

3. Sudip Kr. Ghosh while posted in the international branch of the Petitioner was granted special allowance pertaining to the duties of Clerk-cum-

Telex Operator with effect from September 8, 1985.

4. It is contended that the workmen became entitled to special allowance of Rs. 145/- per month which was paid to them by the Petitioner for the

additional duties performed by them as Telex Operators.

5. On account of the modernization of the office of the Petitioner, the conventional single unit telex machines were replaced by modern

computerized telex machines which were operated by the said workmen, namely, Sudip Kr. Ghosh and Tapan Kr. Sarkar.

6. The workmen claimed higher special allowance at the rate of Rs. 350/- per month which was payable to Advance Laser Posting Machine

(ALPM) operators. Such claim was made by the workman on the contention that the machines which the workmen were operating were personal

telex computer machines.

7. Sudip Kr. Ghosh claimed higher special allowance of Rs. 350/- per month with effect from February 3, 1989 and Tapan Kr. Sarkar claimed the

higher special allowance with effect from March 1, 1993.

8. It is nobody"s case that the concerned workmen in fact, operated ALPM machines. The concerned workmen claimed the said higher special

allowance on the basis of Chapter 5 of the First Bipartite Settlement. The Petitioner paid the higher special allowance of Rs. 350/- per month with

effect from February 3, 1989 to Sudip Kr. Ghosh and with effect from March 1, 1993 to Tapan Kr. Sarkar.

9. According to the Petitioner such payment was made erroneously under bona fide mistake. It appears that the Petitioners stopped payment of

higher special allowance to the concerned workmen with effect from July 1, 1997 and called upon them to refund the higher special allowance paid

to them.

10. The Respondent Union raised a dispute with regard to the aforesaid action of the Respondents which was eventually referred to the

Respondent Central Government Industrial Tribunal, hereinafter referred to as the Respondent Tribuna1, for adjudication. The Respondent Union

as also the Petitioner filed their respective written statements before the Respondent Tribunal.

11. The Petitioner contended that in terms of the industry-wise bipartite settlement dated September 8, 1983 ALPM machines stand on a different

footing and are relatable to the following functions:

a) Current accounts including overdraft accounts;

b) Savings Bank account;

c) Other deposit accounts;

d) General Ledger accounts;

e) Cash credit and loan accounts;

f) Salary and pay and allowances.

12. The Petitioner contended that in the written statement filed before the Respondent Tribunal, the Petitioner asserted that neither Sudip Kr.

Ghosh nor Tapan Kr. sarkar were designated as Telex-Cum-Personal Computer Operators/ALPM Operators. There was no vacancy in the post

of P.C. Operator/ALPM Operator in the international Branch of the Petitioner.

13. There was, according to the Petitioner, no post of Personal Computer Operator, Telex Operators used Personal Computers only for sending

telex messages.

14. The service conditions of the clerical and subordinate other staff in the banking industry are governed by the Shastri Award as modified from

time to time. The general rules governing payment of special allowance are enumerated in Chapter 5 of the First Bipartite Settlement dated

October 19, 1966.

15. While the quantum of special allowance has been enhanced by subsequent Bipartite Settlements, the general rule governing payment of special

allowance remain unaltered according to the Petitioners.

16. The relevant rules being paras. 5.8 and 5.11 of the First Bipartite Settlement are set out below for convenience:

5.8 A workman will be entitled to 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.

5.11 Wherever a bank requires a workman to work in a post carrying special allowance it will normally be done by an order in writing.

17. Relying on the aforesaid paragraphs, it is contended that a workman can only be entitled to higher allowance if that workman is assigned the

higher special allowance carrying duty by an order in writing. It is contended that the workmen concerned were only directed to do the duties of

telex operators.

18. Clause 16 of the Memorandum of Settlement dated March 29, 1987 between 57 Banks and the All India Bank Employees Association and

the National Confederation of Bank Employees provided for special allowance at the rate of Rs. 350/- per month for operation of

ALPMs/AEAMs. It is contended that there is no provision for payment of special allowance at the rate of Rs. 350/- per month for operation of

P.C. telex machines.

19. By an award dated June 25, 1998 which is impugned in the instant writ application, the Respondent Tribunal held that the workmen concerned

were entitled to the higher special allowance of Rs. 350/- per month.

20. The operative portion of the said impugned award is extracted herein below for convenience:

In view of what goes above. I am to hold that the management of Allahabad Bank was not justified in discontinuing the payment of special

allowance of Rs. 350/- per month for Telex-cum-P.C. Operator to the concerned workmen. The management is accordingly directed to resume

payment of such special allowance to these workmen with immediate effect and to pay the balance of the said amount after deducting the amount

already paid to them from the date of discontinuance thereof.

This is my award.

21. Counsel appearing on behalf of the Petitioner submitted that the impugned award is perverse, the same being in contravention of the Bipartite

Settlements. According to the Petitioner, the conclusion arrived at by the Respondent Tribunal is inconsistent with its own findings as recorded in

the impugned award.

22. Counsel appearing on behalf of the Petitioner also attacked the correctness of the findings of the Respondent Tribunal with regard to the

similarities between the ALPM and the Personal Telex Computer Machines operated by the concerned workmen.

23. It was further submitted that the impugned award, although innocuous, has the effect of unsetting industry-wise settlement binding on the award

staff members of the banking industry all over India by creating a new class of P.C. Telex Operators. The impugned award if allowed to remain

would result in ramifications, which would negate the very spirit of the Bipartite Settlement. If the award is sustained, ...retrievale injustice would be

done not only to the Petitioner but to the banking industry all over India since the impugned award would be cited as a precedent for similar claims

all over India.

24. It is finally submitted that the finding of the Respondent Tribunal that Section 9A of the Industrial Disputes Act, 1947 had been violated was

also perverse. This, according to the Petitioner was a case where a higher special allowance paid under bona fide mistake had been discontinued

and as such there could be no question of alteration of service conditions.

25. Mr. Dey appearing on behalf of the Respondent Union submitted that it is a wellsettled proposition of law that no award should be interfered

with by the High Court in writ proceedings unless the said award is perverse. The award in the instant case is not perverse.

26. Mr. Dey submitted that in the instant case, the Petitioner on consideration of all aspects started paying special allowance to the concerned

workmen. While considering the payment of special allowance, the nature of the work performed by the concerned workmen at the material time

had duly been taken into consideration.

27. Reference has been made to a letter dated April 2, 1993 of the Chief Manager of the international Branch being Annex. P-1 to the affidavit-in-

opposition affirmed by the Respondent Union, which would show that the said Chief Manager while recommending higher allowance specified the

type of jobs the concerned workmen rendered.

28. Reliance has also been placed on a letter dated April 16, 1993 of the Personnel Manager of the Eastern Zonal Office of the Petitioner

recommending higher allowance to the concerned workmen.

29. The aforesaid two letters, according to the Counsel, clearly establishes that payment of special allowance of Rs. 350/- to the concerned

workmen had not been made inadvertently or by mistake but made consciously taking into account relevant facts and circumstances.

30. Mr. Dey further submitted that an ALPM is nothing but a computer in a different name. Relying on Clause 5.8 of the First Bipartite settlement,

pertaining to the General Rules for special allowance, Mr. Dey submitted that a workman would be entitled to special allowance if he was required

to perform duties or undertake responsibilities which carried special allowance, irrespective of his designation, nomenclature or any general

authority vested in him. The learned Tribunal, according to Mr. Dey rightly directed resumption of special allowance.

31. The impugned award is a long and reasoned one. The Respondent Tribunal after considering all the materials on record as also the relevant

provisions of the Bipartite award has arrived at the finding that the concerned workmen were entitled to the Special Allowance of Rs. 350/- per

month.

32. The factual findings of the Respondent Tribunal with regard to the nature of the duties performed by the concerned workmen are not open to

interference in proceedings under Article 226 of the Constitution of India. Similarly, the factual findings with regard to the nature and properties of

ALPMs and Personal Telex Computer Machines are also not liable to be interfered with.

33. The Respondent Tribunal has arrived at its findings, with regard to the nature of the duties of the concerned workmen upon consideration of

the materials on record. The findings of the Respondent Tribunal cannot be said to be perverse.

34. It is the Petitioner"s own case that the general rules for payment of Special Allowance as contained in and paras. 5.8 and 5.11 of the First

Bipartite Settlement are applicable. As per the provision of para 5.8 entitlement to Special Allowance is relatable to the nature of the duties and not

the nomenclature of the post. The requirement for orders in writing as provided for in of para 5.11 of the First Bipartite Settlement is evidently not

mandatory, the word "normally" having been used. The contention of the Petitioner that the impugned award is contrary to the Bipartite Settlement

cannot therefore, be upheld.

35. As rightly submitted by Mr. Dey the letters disclosed in the Affidavit-in-Opposition show that the nature of the duties performed by the

concerned workmen had been taken into account before Special Allowance was granted to them. The contention of the Petitioner, that payment

had been made erroneously and/or under bona bide mistake cannot be accepted. In any event, it is difficult to comprehend how a mistake could

have continued for years notwithstanding Annual Audit. At least in the case of one of the workmen the allowance of Rs. 350/- had admittedly been

paid for over 4 years.

36. The scope of interference with an award in proceedings under Article 226 of the Constitution of India is very limited. This Court does not sit in

appeal over an award made by an Industrial Tribunal Factual findings arrived at by a Tribunal upon consideration of evidence are not usually

interfered with. An award cannot also be interfered with only because this Court on considering of facts or on consideration the relevant

contractual or legal provisions takes a different view from that taken by the Tribunal.

37. Stoppage of payment of an allowance sanctioned inadvertently through bona fide mistake may not attract Section 9A of the Industrial Disputes

Act, 1947. In the instant case, this Court has not been able to accept the contention of the Petitioner of Special Allowance having been allowed by

mistake. The withdrawal of an allowance amounts to alteration of condition of service and attract Section 9A of the Industrial Disputes Act 1947.

38. The finding of the Respondent Tribunal of contravention of Section 9A of the Industrial Disputes Act, 1947 cannot, therefore, be assailed. The

mere fact that an award might to be cited as precedent is no ground for interference with an award.

39. There is no scope for interference with the impugned award in proceedings under Article 226 of the Constitution of India. The writ application

is, therefore, dismissed without any order as to costs.