

Sushil Kumar Das and Others Vs Reserve Bank of India and Others

Court: Calcutta High Court

Date of Decision: Dec. 22, 1983

Acts Referred: Constitution of India, 1950 " Article 14, 226

Payment of Wages Act, 1936 " Section 2

Reserve Bank of India Act, 1934 " Section 34, 58

West Bengal Shops and Establishments Act, 1963 " Section 2

Hon'ble Judges: Amitabha Dutta, J

Bench: Single Bench

Advocate: Chuni Lal Gunguli, Madhusudan Banerjee, Dilip Sengupta, B.N. Panda, for the Appellant; Subrata Roy Choudhury, Tapas Kr. Banerjee, Jiten Ghosh, for the Respondent

Final Decision: Dismissed

Judgement

Amitabha Dutta, J.

In this Writ petition 78 Class III employees of the Reserve Bank of India, Calcutta Branch and the Reserve Bank of India, Calcutta Branch and the Reserve Bank of India Staff Association, Calcutta, the Trade Union of which they belonged have prayed for a writ

of mandamus directing the respondents to cancel and recall the concerned orders relating to the deduction of salaries of the petitioners for the

months of April to July and upto 14th August 1982 including the Reserve Bank of India, Calcutta Circular No. 5 dated 13.5.1982 which is

annexure "F" to the petitioner and further directing them to repay the salaries which were deducted. The Respondent Nos 1 to 6 are the Reserve

Bank of India and its officers (the Respondent No. 7 being the Union of India) who have filed return to the writ petition.

2. The background to the dispute may be briefly stated.

3. On the 16th June 1979 the Central Government referred the industrial dispute between the employers in relation to Reserve bank of India and

their class III workmen in respect of matters including "work procedure and work norm" which is relevant for the present purpose, to a national

industrial tribunal in Bombay presided over by Mr. Justice Chintaman Tukaram Dighe, a retired High Court Judge. The said tribunal made the

Award dated 4.12.1981 commonly known as Dighe Award which was published on 16.1.82 and came into force on 16.2.82. On the question of

quota of notes to be examined by the Class III workmen of the Note Examination and Verification Section of the Cash Department of the Reserve

Bank it is stated in Dighe Award that the Reserve Bank is entitled to raise the quota of each category by 15% subject to their study in the position

and making further changes by following the appropriate procedure. Thereafter on 1.4.82 the Reserve bank of India, Calcutta Branch (hereinafter

called the Bank) issued an office order for increase in the quota of work by 15% in the Note Examination and Verification Section with effect from

12.4.82.

4. On 6.4.82 the All India Reserve Bank Employees Association issued a Circular to all members to put up stiffest opposition and resistance to the

managements aforesaid decision to increase the quota. On 8.4.82 the bank issued a circular stating inter alia the concerted absence from work or

refusal to do the quota of work increased in pursuance of Dighe Award would subject the employers to disentitlement of salary besides disciplinary

proceedings. Thereafter the Class III employees of the bank resorted to various acts of dislocation of work including strike for full day and

stoppage of work for part of the day. In the issue dated 26.4.82 of the Calcutta. Edition of the Statesman the bank published a press hand-out

(annexure "B") in which it was stated as follows: -

While the wage increase part of the Award has already been implemented effective from the operative dates as indicated in the Award, the bank

decided the increase in the quota of work for Note Examination/Verification by 15% be made effective from April 12, 1982. In quantitative terms,

this increase involves examination in a day by each Note Examiner 115 packets each of 100 pieces of notes of lower denominations instead of 100

packets earlier. In the case of notes of higher denominations an Examiner's quota stands raised to 40/48 packets instead of 35/40 packets earlier.

The learned Judge had heard the view points of all parties to the dispute. He had also taken note of the fact that since the earlier quota (of 100 or

35 to 40 packets as the case may be) was last fixed in 1949 there had been a great deal of work simplifications as a result of elimination of

pattern wise sorting and introduction of mechanical devices for stitching and punching of notes. While the learned judge was satisfied that in the

overall context a rise in 25% in the quota of work would be justified he was prepared to make a margin for the mental attitude of the Examiners

and therefore directed that the increase may be by 15%

On 29.4.82 the bank issued a circular intimating the staff that wage cuts were required to be made from the salaries of such members of the staff

who participated on the strike/work stoppage/non-completion of the prescribed quota of work and that in view of dislocation of work since 12th

April 1982 calculation of salary for April 1982 could not be completed.

5. There are three different Trade Unions viz. Reserve Bank Employees Association, Calcutta, Reserve Bank Employees Union, Calcutta who

among themselves represent Class III employees of the Bank. Out of these three Trade Unions Reserve Bank Employees Association, Calcutta

represents the majority of the Class III staff and has official recognition of the management of the bank. On 11.5.82 Sri Sushanta Mukherji and

others belonging to Reserve Bank Employees Association, Calcutta and All India Reserve Bank Employees Association, Calcutta (a Federation of

Trade Unions) moved a writ petition before T. K. Basu, J of this Court challenging the validity of Dighe Award, the decision of the bank in regard

to increase in the quota of work in Note Examination and Verification Section and the bank's decision to effect wage cut in case of refusal to

perform the increased quota and/or for cessation of work.

6. On 13.5.82 the bank issued a circular being Circular No. 5(annexure "F") in which it was stated inter alia as follows: -

(ii) In case of Class III staff it has been found that employees of (a) Issue Department (General Size) Banking and other departments (b) Cash

Department have not earned any salary approximately for five days and two hours and five days and three and half hours respectively during the

month of April 1982 on account of their unauthorized absence from duty and/or non-completion of the prescribed quota of work allotted to them.

To facilitate speedy salutation and expedite payment, it has been decided to make pro rata deductions for five days on a uniform basis for all i.e.

One sixth of gross salary payable for the month of April 1982, subject, however, to adjustment of the shortfall in any such compilation calculation

from the future monthly salary.

7. On 2.6.82 T. K. Basu, J passed the following interim order in the aforesaid writ petition: -

The Reserve Bank of India is directed to pay the salary of all the Class III staff at Calcutta for the month of April 1982 on a provisional / ad hoc

basis subject to final adjustment by deducting 1/6th of gross salary as contended by the Bank in the circular dated 13th May 1982. This direction

is without prejudice to the rights and contentions of all the parties in the pending Rule. The Bank will also be at liberty to make the normal

deductions/recoveries in addition to the above deductions without touching the subject matter of the present application.

In so far as the salary of all the members of the petitioners' Association for the month of May 1982 is concerned, the Bank is directed to make

payment of a provisional/ad hoc basis subject to final adjustment by deducting 1/10th (i.e. 10%) of gross salary for reasons similar to those

contended by the Bank in its Circular dated 13th May 1982. This payment is strictly without prejudice to the rights and contentions of all the

parties in the pending Rule. The Bank will also be at liberty to make normal deduction/recoveries in addition to the above deductions without

touching the matter of the present application.

The payment in terms of the above orders are to be made by the Reserve Bank of India as expeditiously as possible.

8. On the same date i. e. 2.6.82 the bank issued a circular intimating the Class III employees that disbursement of salary for April, 1982 would be

made on 5.6.82 and for May 1982 by 8.6.82 in terms of the aforesaid order of T. K. Basu, J. the relevant part of which was set out in the circular.

9. Thereafter the bank started receiving individual declarations from members of the class III staff to the effect that they were not members of

Reserve Bank Employees Association (hereinafter referred to as R B E A) or participators in any of the agitations sponsored by R B E A. The

bank issued an office order on 8.6.82 stating that 50 Class III employees named in the list appended thereto had given such individual declarations

and were found on a preliminary scrutiny to have not tendered themselves, liable to non-entitlement to any part of the salary for reasons similar to

those contended by the bank in its circular dated 13.5.82. So deduction of 1/10th of gross salary for May 1982 would not be made in their cases.

The said list included the names of petitioner No. 38. Ashim Kumar Saha and petitioner No. 44 Ashish Bandopadhyay. Four other petitioners

being petitioner No. 3 Niranjan mitra petitioner No. 5 (i) santanu mukherji, petitioner No. 6 (ii) Mrinal Kanti Dasgupta received salary for May

1982 on the same basis under bank's office order dated 24.6.1982. Those six petitioners also received salaries without the disputed deductions

for the remaining period in question up to 14.8.82.

10. On 19.6.82 the bank issued a circular on disbursement of salary for June 1982 stating that as the situation prevailing in the previous months

was still continuing it had been decided to make payment of salary of June in the same manner i.e. on a provisional / ad hoc basis subject to final

adjustment by deducting 1/10th of the gross salary for reasons similar to these contained in the bank's circular dated 13.5.82. Those members of

the class III staff who did not wish to have wage deduction and had not rendered themselves liable to non-entitlement of salary in terms of the

bank's circular dated 13.5.82 were advised to intimate the position to the concerned officer of the bank by 23.6.82. On 26.6.82 the bank issued

an office order directing that 145 class III employees would not be subject to wage cut as they had made individual declarations to the effect that

they did not belong to RBEA and had been found not to have rendered themselves liable to non-entitlement of salary in terms of bank's circular

dated 13.5.82. The list of those 145 employees was appended to the said office order. It shows that apart from the six petitioners mentioned in the

preceding paragraph 50 other petitioners of this case were included therein. Thus those 50 petitioners received salaries without he disputed

deductions for June to August 14, 1982. The salary for June was disbursed on 29.6.82.

11. On 20.7.82 the bank issued a circular on disbursement of salary for July 1982 on the lines the circular dated 19.6.82 fixing last date of making

individual declarations as 29th July 1982. On 7.7.82 the petitioner No. 70 Subrata Matilal made such individual declarations and he was exempted

from wage cut for July 1982 by office order dated 27.7.82. Thus in all 57 out of 78 petitioners received salary without dispute deductions for July

to 14.8.82.

12. None of the aforesaid 57 petitioners, however, worked in Note Examination & Verification Section of the Case Department of the Bank

during the relevant period.

13. The remaining 21 petitioners of this case were borne on the rolls of Note Examination and verification Section and as they did not do the

increased quota of work, 10% of the gross salary was not paid to them for the period from May to 14th August 1982.

14. On and from 16.8.82 the Class III employees withdrew their resistance and opposition to the increase in the quota of Note Examination and

verification work and did the increased quota.

15. On 9.10.82 the bank issued a circular (annexure "R") clarifying that as the employees were aware that it was not necessary to do pattern wise

sorting in the examination of notes after the amendment to Note Refund Rules in 1980 design wise segregation of notes for the purpose of

defacement of signatures ceased to be of any relevance and ipso facto patternwise sorting of notes was rendered redundant.

16. The present writ petition was filed on 1.2.1983. The first ground taken by the petitioners is that the bank increased the quota for examination

and verification of notes by 15% with effect from 12th April 1982 without eliminating the patternwise sorting of notes which was a precondition of

such increase, thus violating its own declaration in the Press hand out dated 26.4.82 (annexure "B") quoted in paragraph 4 and circular dated

9.10.82 (annexure "R") referred to in the preceding paragraph and arbitrarily and capriciously deducted salary of the petitioners to the extent of

10% for alleged non-completion of work. It is alleged that the quota prescribed was contrary to the terms of Dighe Award as patternwise sorting

of notes was not eliminated in Calcutta although it was abolished elsewhere and that it was impossible for the petitioners to do increased quota

along with patternwise sorting of notes.

17. The respondents contend that the patternwise sorting of notes was abolished long before Dighe Award as it was not necessary that there is no

mention of it in Dighe Award dated 4.12.81 which authorised the bank to increase the quota of examination and verification of notes by at least

15% as employees connected with quota work had spared time of 2 hours on working days and so they could give higher duty to be to the

circular dated 9.10.82 (annexure "R") was just a clarificatory circular.

18. To resolve the controversy it is necessary to discuss what is meant patternwise by sorting of notes, why it was introduced and when it became

unnecessary Sub-section (2) of S. 34 of the Reserve Bank of India Act 1934 provided that currency notes and bank notes which had not been

present for payment within 40 years from 1st day of April following date of their issue would be deemed to be not in circulation. So under the said

provision the bank had to resort to patternwise sorting of notes to determine the value of notes that had to be deemed not to be in circulation on

the ground that 40 years had elapsed since they were first put into circulation. Pattern wise sorting of notes involve sorting of notes according to

pattern to comply with the requirements of the aforesaid provision. It also involved keeping of patternwise accounts of notes to determine the

amount of notes of a particular design in circulation. Sub section (2) of S. 34 of the said Act was deleted by the Banking Laws (Miscellaneous

Provisions) Act, 1963 with effect from 1.2.1964 and as a result it was no longer necessary for the Reserve Bank thereafter to write of the value of

notes outstanding in circulation for more than 40 years. The Central Office of the bank issued a circular dated 10.3.64 abolishing the patternwise

sorting of notes. What was later being done was merely to segregate notes of different sized physically to facilitate the punching of non -reasonable

notes, which have to be destroyed by incineration or shredding. In 1969 notes in reduced sizes were introduced. Subsequently in 1971 new

designs were introduced in Rs. 1/- Rs. 10/- Rs. 20/- followed by Rs. 2/- notes and it was necessary to segregate them according to design to

ensure proper punching of signatures for defacement. This work of segregation is not the patternwise sorting of notes really so called under S.

34(2) of the Act before its repeal. After amendment to the Reserve Bank of India (Note Refund) Rules 1981 the signatures of the Governor on a

note were not at all material for passing the claim on a defective note. It was therefore decided to discontinue the segregation of notes according

to pattern for punching of signatures by a circular dated September 20, 1982. Thereafter the circular dated 9.10.82 (annexure "R") was issued by

way of clarification of the aforesaid position.

19. It would appear from Dighe Award that no reference was made therein to patternwise sorting of notes, in connection with increase in the quota

of work of examination and verification of notes. In paragraph 42.28 of the Award it was stated as follows: -

I do appreciate the argument that the employees are working under pressure. If that is not so and if the time as seen in the file which is nearly 2

hours in advance of the closing time, then they should be able to give a proportionately more outturn for the 2 hours which they now find spare.

The expected rise of 25% in the quota in this context would not look unsuitable. Making however, an allowance for the mental attitude of the

examiners on this point and making allowance for the so-called pressure, I think there should be no reason why the quota should not be increased

by 15% at least. I would give such a finding that liberty to the Reserve Bank to consider the situation afresh when need arises. After all even this is

one of the managerial functions. So far as the present item of reference is concerned on the express basis that the Coin/Note Examiners are not

asked to work with one eye on the closing of the vaults, I say that Reserve Bank is entitled to raise the quota of each category by 15% subject to

their studying the position and making further changes by following appropriate procedure".

20. I therefore, find that there is no substance in the petitioners' contention that abolition of pattern wise sorting was made a condition precedent to

the increase in the quota of work by Dighe Award and that the bank increased the quota by 15% contrary to the terms of the Award. The fact that

the petitioners connected with quota work did the increased quota from 16.8.82 shows that non-performance of the increased quota before that

date was not due to impossibility to perform it but on account of agitational programme.

21. Another ground of challenging the impugned orders of deduction of salary of the petitioners is that they are contrary to the interim order made

by T. K. Basu, J. On 2.6.82 in the writ petition filed by the R.B.E.A. and others to which the present petitioners were not made parties. It is

submitted on behalf of the petitioners that although in the said writ petition leave was prayed for under rule 11 of the Rules framed by this Court to

sue in a representative capacity on behalf of all Class III employees of the bank, no order granting such leave was made by the court. So, it is

contended that as the petitioners were not bound by the said interim order the bank had no authority derived therefrom to deduct salary of the

petitioners. But it appears that the learned Judge in the first paragraph of the order (quoted in paragraph 7 ante) directed the bank to pay the salary

of all the Class III staff at Calcutta (i.e. irrespective of the Trade Union of which they were members) on a provisional ad hoc basis subject to final

adjustment by deducting one sixth of gross salary for reasons similar to those contained in the bank's circular dated 13.5.82. The second

paragraph of the order the bank's circular dated 13.5.82. The second paragraph of the order the bank's circular dated 13.5.82. The second

paragraph of the order directed deduction of 1/10th of gross salary of members of R.B.E.A. on the same basis for the same reasons. The bank has

made such deductions of one tenth of gross salary only in the case of those petitioners of the instant case who were connected with quota work as

they did not do the increased quota and those petitioners a who did not make individual declarations that they were not members of R.B.E.A.

Members of the Class III staff who did not belong to Note Examination and Verification Section and also were not members of R.B.E.A. as and

when they individually intimated such position to the bank were exempted form deduction of salary after the dates of such declaration. Although the

second paragraph of the interim order dated 2.6.82 passed by T. K. Basu, J was not applicable to the petitioners as members of the Reserve bank

of India staff Association the bank by deducting salary of those petitioners who were connected with quota work cannot be said to have violated

the said order. The effect of that order is not to exempt the petitioners who are not parties to the earlier writ petition before T. K. Basu, J. from

salary for any of the reasons mentioned in the bank's circular dated 13.5.82. All that the bank did was to treat all Class III employees connected

with quota work equally by deducting 10% of gross salary per month for the same reason of not performing the quota of work increased by the

bank on the strength of Dighe Award. By doing so, the bank did not, in my view, in any way act contrary to the interim order of the learned Judge

T. K. Basu, J. of this Court. I cannot accept the contention of the petitioners that the bank paid full salary to four members of the Reserve Bank of

India staff Association after receiving declarations from them to the effect that they were not members of R.B.E.A and thereby discriminated

against other petitioners. Those four employees are petitioners Nos 3,5,6, and 7 and they were not connected with quota work. As started in

paragraphs 9 to 13 ante, two other petitioners viz. Petitioners Nos. 38 and 44 were treated in the same way and for he same reasons. A part from

the said six petitioners 51 other petitioners not connected with quota work were paid salary without disputing deductions as and when they made

individual declarations before the date of payment of salary for a particular month that they did not belong to R.B.E.A. The remaining 21

petitioners connected with quota work suffered pro rata non-payment of salary for not doing the increased quota of work. So the charge of

discrimination against the bank is also without foundation.

22. The petitioners have also challenged the impugned orders on the grounds that deductions from salary of the concerned petitioners are arbitrary

and illegal inasmuch as there is no statute or contract of employment on the basis of which such deductions were made and that the deductions

were made by the statutory body in excess of its powers determined by the statute creating it and in gross violation of the principles of natural

Justice. It is also contended that the salary of the petitioners being their property they cannot be deprived of their legal right to such property

except in due process of law. Mr. Ganguli, the learned Advocate for the petitioners has relied on the following decisions in support of the aforesaid

contentions. (i) Manoj Kanti Basu v. Bank of India 1976(2) CLJ 427, (ii) Managing Director, U.P Warehousing Corporation v. Vijay Narayan

Vajpayee 1930 (1) LLJ 222, (iii) Apar (Pvt.) Limited Vs. S.R. Samant and others, , (iv) V. Ganesan Vs. The State Bank of India and Others, ,

(v) UCO Bank & Anr. V. V.J. Vyas & Ors. 1977 Lab. I. C. 1013 and (vi) S. P. Das v. State of West Bengal 1980(II) CHN 480.

23. Mr. Roychowdhury, the learned Advocate for the respondents has contended that the petitioners connected with quota work are piece-rated

workers working on piece rate system and required to do fixed amount or work quota of work per day under Para 70 of Chapter III (laying down

the rate of Note Examination work and Para 6 of Chapter VI (specifying the rate of note verification work) of Issue Department Manual, 3rd

Edition 1972 of the Bank. It is submitted that the terms and conditions of service of the staff of the bank have been stated in the Reserve bank of

India (staff) Regulations 1948 which have no statutory force and are purely contractual, each employee having to sign the regulations at the time of

entry into service and that under Regulations 57 and 58 pay and allowances of the staff accrue in respect of serviced performed during a

particular month. It is contended that wages as defined in S. 2(15) of the West Bengal Shops & Establishments Act (applying to the petitioners)

which adopts the definition of wages in payment of wages Act, 1936 means wages earned and not potential wages or remuneration payable if the

terms of employment expressed or implied are fulfilled in respect of a person's employment or for work done in such employment. So wages are

the payment for services rendered. The contract of service is founded on reciprocal promises as the consideration. In case of failure on the part of

a monthly paid employee to fulfill the entire promise, he is not entitled to any monthly remuneration at all. But Pro rata deductions is made as a

policy decision to prevent unjust enrichment of the employer. It is further submitted that the aforesaid propositions are based on the principle of "no

work no pay"" which has been accepted by almost all the High Courts of this country. The respondents contend that the theory of public

employment or statutory favor cannot be of any assistance to the petitioners in this case as their relationship with the bank is governed by contract

alone and the impugned actions have been taken by the bank, although it is a statutory body in the in the field of contract. The principles of natural

justice are not attracted to such actions taken by a statutory body in the field of contract under private law and the petitioners cannot invoke the

writ jurisdiction of this Court under Article 226 of the Constitution for any relief against such actions. In support of these contentions Mr.

Roychowdhury has relied on the following decisions viz. (i) V.T. Khazode and Others Vs. Reserve Bank of India and Another, , (ii) Arvind

Mills's v. K. G. Gadgil AIR 1941 Bombay 26, (iii) Algemene Bank v. Central Government Labour Court, 1978 (11) LLJ 117, (iv) Reserve Bank

Employees Association v. Union of India, 1979(1) CLJ 513, (v) v. Ramachandran v. Indian Bank 1979(1) LLJ 122 and (vi) Vikram Tamaskar v.

Steel Authority of Indian Bank 1979 (1) LLJ 122 and (vi) Vikram Tamaskar v. Steel Authority of India Ltd, 1982 (11) LLJ 84. He has also

referred to the unreported decision of Monoj Kumar Mukherje, J. of this Court in C. O. No. 3377(W) of 1983 (reported in 1983(11) CHN

186).

24. It is necessary to decide at this stage whether the petitioners connected with quota work of examination and verification of notes are piece-

rated workers. In this connection reference may be made to the following relevant extracts from Issue Department Manual, 3rd Edition 1972 of

the Bank: -

Ch. III

70 Rate of note examination work:

The examination of notes in the Notes in the Note Examination Section is done under the piece rate system as prescribed by the Central Office

from time to time. The current rates per examiner per full day are as below: -

Denomination Crest Notes Other Notes

Rs. 1 and Rs. 2 notes 10,000 Pieces 8,000 Pieces

Rs. 6, Rs. 10 and Rs. 20 notes 4,000 Pieces 4,000 Pieces

Rs. 50 and higher notes 3,500 Pieces 3,500 Pieces

Ch. VI

6. Rate of work:

The clerical staff engaged on the verification of cancelled notes will work on a piece rate basis. The rates of work will be as prescribed from time

to time by the Central Office. The present rates are:

Denomination Rate in pieces per man per day

Quality Check Quantity check

Rs. 1 and Rs. 2 10,000 20,000

Rs. 5 and over 5,000 20,000

The Sub-Accountant will, however, so regulate the issue of work for quality and quantify checks as to ensure that none of the clerks is engaged

solely on quality or quantity check throughout the day or is required to verify more than 16,000 pieces per day".

The account of work done daily by each Note examiner is kept in Form CD 55. Similarly the account of day's work prescribed for Note

Examination and Note verification in the Issue Department Manual form part of their conditions of service in view of Regulation 32 of the Staff

Regulations. It is, therefore, clear that the petitioners connected with quota work are piece rated workers in the sense that each of them has to

perform a fixed amount of work on each working day and the work to be done by them is regulated not by the amount of work or quota fixed by

the employee although they are paid monthly salary. As it has been found in Dighe Award, the concerned petitioners used to have two hours spare

out of the normal working hours after finishing the quota of work, justifying increase in the quota by 15% at least. It has been submitted by Mr.

Ganguli that piece work means work done by the pieces and paid for at standard rate per unit and so the concerned petitioners cannot be called

piece rated workers. But in my view, although that may be the dictionary meaning of piece work, the concerned petitioners in the present case are

essentially piece rated workers and their entitlement to remuneration depends on the extent to which the quota is performed by a worker on each

working day of the month.

25. As the petitioners belonged to a commercial establishment to which West Bengal shops & Establishments Act 1963 applies, they are not

governed by payment of Wages Act, "Wages" has been defined in clause (15) of S 2 of the West Bengal Shops & Establishments Act as follows:

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(15) "Wages" means wages as defined in payment of wages Act 1936 (4 of 1936)" The relevant part of the definition of wages in S 2 (vi) of the

payment of Wages Act, 1936 is as follows: -

Wages means all remuneration (Whether by way of salary allowances or otherwise) expressed in terms of employment express or implied were

fulfilled be payable to a person employed in respect of his employment or of work done in such employment.

It has been held by Beaumont, C J in *Arvind Mills v. K. G. Gadgil*, 1941 Bom 26 that the expression ""wages"" in S 2(vi) of payment of Wages Act

means wages earned and not potential wages. The expression ""remuneration"" which would if the terms of the employment were fulfilled be payable

in S. 2(vi) means no more than remuneration payable on fulfillment of the contract. In Halsbury's laws of England 4th Edition Vol 16 paragraph

554 it is stated as follows: -

When the contract of employment is an entire work, providing for payment on the completion of a definite period of service or of a definite period

of service or of a definite piece of work, it is a condition precedent to the recovery of any remuneration in respect of it that the service or duty shall

be completely performed, unless (i) the employer so alters the contract as to entitle the employee to regard it at an end, in which case the whole

sum payable under the contract becomes due; or (2) there is a usage that the employee is entitled to remuneration in proportion to the time actually

served; or (3) it can be inferred from the circumstances that there has been a fresh agreement between the parties that payment shall be made for

service actually rendered under the original contract or (4) the contract has been frustrated, in which case the employee is entitled to recover from

his employer such sum not exceeding the value of the benefit to the employer of anything done by the employee as the court considers just

26. In *Monoj Kanti Basu v. Bank of India* 1976(2) CLJ 427 the nationalized bank as a statutory body ordered deduction of salary of employees

who left their desk for 25 minutes to 2 hours per day on four days between 6th June and 17th June 1975 to take part in mass demonstration to

ventilate their grievance and were absent for one working day on 30th June 1975 without applying for leave. The employees were not piece rated

workers earning salary on the basis of any particular amount of work done by them (vide paragraph 5 of the reported judgment). The learned

Judge A. N. Sen, J. (as he then was) observed:

In the instant case the contract of employment is not divisible one. This consideration for payment of the salary to the employees may be services

to be rendered by them. The consideration, however, is not related to any fixed period of work for any month. The consideration is one and

indivisible and on the basis thereof the monthly salary is payable. As the consideration is not divisible and is not entirely dependent on the particular

hours of work put in and the consideration is one, the failure or refusal on the part of an employee to do the fixed period of work on any particular

day results in a partial failure of the consideration in consequence whereof the employer may claim compensation against the employee; but the

employer cannot claim the right to deduct any part of the salary on any pro rata basis or otherwise". (vide paragraph 22 at page 445).

According to the learned Judge the conditions of service postulate that in case of unauthorised absence the bank will be justified in deducting the

salary of the employee for the day of such unauthorised absence. He observed:

As under the conditions of service there was opportunity for the petitioners to offer their explanation for the unauthorised absence and as it is

undoubtedly their duty to apply for leave by furnishing necessary explanations for the absence, I am of the opinion that in the facts and

circumstances of this case there has been no violations of the principles of natural justice in directing or ordering deductions of the pay and

allowances for the 30th June 1975 from the pay and allowances payable to the petitioners.

In the result the learned Judge issued Mandamus directing the petitioner not to give effect to the notice or order of pro rata deduction for non-

performance of work on a part of the day for four days and upheld the deduction for unauthorised absence of one whole day.

27. In *Managing Director, U. P. Warehousing Corporation & Ors. v. Vijay Narayan Vajopayee* 1980 (1) LLJ 222, on complaints of theft,

appropriation of stocks etc., after preliminary enquiry the Respondent was served with a charge-sheet and he gave written explanation in which he

wanted to cross examine certain witnesses and examine some witnesses. At this stage the Managing Director of the corporation passed order

dismissing him from service. The Supreme Court held that as the Respondent was employed by the corporation in exercise of powers conferred on

it by statute which created it and the appellant's power to dismiss the Respondent was also derived from statute, the court would presume

existence of a duty on the part of the dismissing authority to observe the rules of natural justice and act in accordance with the spirit of the

statutory regulation 16 which was then on the anvil and came into force shortly after the impugned dismissal (see para 14 at page 227). But the

instant case before me is distinguishable from the reported case, as in the present case the powers of appointment and taking disciplinary actions

including dismissal of the bank are derived from Reserve Bank of India (staff) Regulations 1948 which are not statutory and have not been framed

under S. 58 of the Reserve Bank of India Act 1934 with the previous sanction of the Central Government. In *V.T. Khanzode and Others Vs.*

Reserve Bank of India and *Another*, it has been held that the Reserve Bank of India (Staff) Regulations 1948 are not statutory and have no

statutory force (see paragraphs 23 and 24 at pages 928). So the terms and conditions of service of the staff of the bank are regulated by

administrative regulations and are based on contract alone. It is not disputed that each member of the staff has to sign the staff Regulation as token

of acceptance at the time of entry into service. So the ratio in the U. P. Warehousing Corporation's case will not apply in the present case.

28. In *Apar (Pvt.) Limited Vs. S.R. Samant and others*, the employer unilaterally reduced the wages by invoking the principle of "no work no pay

on the alleged ground that the employees had adopted go slow tactics in violation of the terms of subsisting settlement. A Division Bench of the Bombay High Court held that reduction of wages was not permissible in law

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specially when the workers were not piece-rated workers, on the assumption that the workers resorted to go slow, without holding an enquiry and

the principle of "no work no wages" cannot have application to the facts of the particular case. The Court also held that in the absence of a specific

terms in the settlement or statutory provision the employer has no right to reduce the wages or emolument on the allegation that the workers had

resorted to go slow tactics. This case is also distinguishable as the petitioners connected with quota work in the instant case are piece-rated

workers.

29. In *V. Ganesan v. State Bank of India*, 1981 (1) LLJ 64 some employees of the bank staged demonstration for 30 minutes to 1 hour during

working hours on three days for pursuing their demands and the bank authority proposed to deduct three days' salary from the monthly salary of

those who participated in demonstration. The petitioner as one of them filed the writ petition for mandamus. The learned single Judge Padmanabha,

J. of the Madras High Court held that the contract of employment is one when and indivisible. It is on a monthly basis and it cannot be divided into

number of days or number of hours and minutes. There is absolutely no provision in the bipartite settlement or in the Award that entitled the bank

to deduct salary for a day if an employee is absent for a part of the day. The question of pro rata deduction for such absence was not considered

(vide Para 30). The learned Judge also held that by permitting the petitioners to perform their duty to the rest of the day the bank acquiesced in the

breach and recognized the continuance of the contract. But this decision has not been followed by another learned Judge Sundaran, J. of Madras

High Court in *R. Rajamanickam, For himself and on Behalf of Ors. Award Staff Vs. Indian Bank*, in which the petitioner and other award staff of

the Respondent bank who staged a demonstration for four hours on 29.11.1977 challenged the salary cut imposed on them in terms of a circular

issued by the bank. The learned judge held that in the case before him the aspect of acquiescence which had very much weighed with

Padmanabhan, J. was significantly absent in the case before him. The learned Judge Sundaran, J. held that it would be wholly iniquitous to

complete the employer to pay the employee. When he had not worked to earn his wages. A workman cannot be permitted to claim wages by

bringing in too technical a rule that the contract is indivisible and in the absence of statutory provisions and rule the employer must pay wage not

earned by the employee by performance of actual work and the employer must seek his remedy elsewhere. The learned Judge also held that the

proposition of "no work no pay" has been declared and settled without any ambiguity by a Division Bench of the Madras High Court in V.

Ramachandran Vs. Indian Bank, and observed that in v. Ganesan's case the learned Judge Padmanabhan J. referred to that judgment but did not

express any reason for not following the ratio of the bench. In Ramachandran's case the petitioner an officer bearer of the employees' Union went

on deputation the Branch Manager during office hours and the management viewing it as disruption of normal work effected a cut in the salary. In

the writ petition challenging such cut a Division Bench of Madras High Court to which Sundaran, J was a party held that the principle to be applied

in such cases is "no work no pay" and repelled the contention that the contract is indivisible. The judgment of Sabyasachi Mukharji (as he then

was) in Premier Tyres Ltd. Vs. V.A. Abraham and Others, was referred to and it was held that the said decision lays down the correct principle.

30. In Algemene Bank's case the employees of the petitioner bank abstained from work on a day between 3 P.M. and 5.45 P.M. to hold a

demonstration and meeting in the bank's premises. The bank deducted wages of the employees including the Respondent No. 2 pro rata on the

principle of "no work no pay". The labour Court held that the bank had no right to do so without holding disciplinary proceedings. The bank

challenged the decision of the Labour Court by filing a writ petition. The learned Judge Sabyasachi Mukharji, J. held:

I am of the opinion that the wages as in the words of Lord Denning Secretary of State v. A.S.L.E.F. 1972(2) ALL. ER 967) are the payment for

services rendered. I am inclined to think that it is not so much a question of whether the contract is divisible or entire but of reciprocal promises as

the consideration that is to say the employer provides the employment and pays the remuneration and the employee performs the work during the

period he is supposed to do the work. Therefore, the right of the employee to get the remuneration depends upon the performance of his work

during the period of employment. If there is any failure of that consideration then taking a strict view of the matter the employer is entitled to refuse

any payment at all. But as has been noticed in ""The Contract of Employment"" by M. R. Freeland, very often policy considerations enter and

deduction on pro-rata basis is made to avoid undue hardship in the employer employee relationship. Therefore, if the employee does not

work for a specified period of work then the remuneration would not be payable." (Vide paragraph 12 at page 125).

His Lordship further held:

As I have held that the question whether the Respondent No 2 is entitled to his wages is not so much a punishment but a question of his right, in my

opinion, no question of principles of natural justice arises in this case.

(See para 13 page 126 2nd column bottom)

The view expressed in *Algemene Bank*'s case on the employer's right not to pay remuneration to an employee for the period he did not work

(including a part of a working day) has been accepted by a Division bench of Madras High Court in *V. Ramachandran Vs. Indian Bank*, by a

Division Bench of Madhya Pradesh High Court in *Vikram Tamaskar and Others Vs. Steel Authority of India Ltd. and Others*, and similar view has

been expressed by a Division Bench of Punjab High Court in *Dharam Singh v. Bank of India, Bombay* (1979 Lab. I.C. 1979). Identical view has

been expressed by *Monoj Kumar Mukherjee, J.* in an unreported decision in Civil Order No. 3377(W) of 1983 *Samarendra Nath Guha Roy v.*

Union of India, reported 1983 (2) CHN 186,) which has been referred to by *Mr. Roychowdhury*. In all these cases the decision of the learned

judge *A. N. Sen, J.* (as he then was) in *Manoj Kanti Basu's* case 1976 (2) CLJ 427 was noticed. That apart, there are sufficient indications in

Manoj Kanti Basu's case that the said decision was not meant to be applicable to piece rated workers like the petitioners connected with quota

work in the present case.

31. *Mr. Ganguli* has relied on a decision in *U C O Bank & Anr. V. Vyas, & Ors.* 1977 Lab I.C. 1013 in which it has been held that an employee

of a Nationalized bank being in public employment rules of natural justice have to be followed in terminating his service by way of punishment. He

has also cited the decision in *S. P. Das v. State of West Bengal*, 1980 (2) CHN 480 which turned on the principle of promissory estoppel as in

that case by administrative action of the Milk Commissioner the term of contract after renewal was sought to be abridged and valuable right to

carry on business was taken away from the petitioner without any opportunity of being heard. In the facts and circumstances of that case it has

been held that government cannot act arbitrarily whether the right of a party flows from a statute or a contract. (Para II)

32. After considering the submissions made on behalf of the parties and the facts and circumstances of the present case I find that the petitioners

who worked in Note Examination and Verification Section and were connected with quota work were piece rated workers under the terms of

their employment and they were entitled to remuneration in respect of service performed during the month under the contractual Regulation 58 of

the Staff Regulations. Under the Dighe Award which is not challenged before me the bank was entitled to increase their quota of work by 15%.

Elimination of patterwise sorting which had been abolished before the Dighe Award was not a condition precedent to such increase. In the general

law principle of "no work no pay" the bank was justified in not paying remuneration of the concerned petitioners on pro rata basis for not doing the

increased quota of work. I have taken this view on the factual basis that none of the petitioners connected with quota work performed the

increased quota to any extent as the petitioners' case is that it was impossible for them to do so without elimination of pattern wise sorting which it

appears to me was nothing but a lame excuse to cover up their imitational activity. I respectfully agree that the view expressed by Sabyasachi

Mukharji, J (as he then was) in *Algemene Bank Nederland Vs. Central Government Labour Court and Others*, at page 125 paragraph 12). I hold

that wages are the payment for services rendered and if work is not done for a period or it falls short the amount fixed or the quota without any

reasonable excuse, the question is not whether the contract is so divisible into hourly work or indivisible but is one of failure on the part of the

employee to fulfill the reciprocal promise to perform the work in accordance with the terms of the employment as consideration for the employer's

providing employment and paying remuneration. So if the employee does not do the work for the specified period or of the specified amount he

has no right to get the remuneration pro-rata at least where the remuneration is payable monthly. Where the employee has no right there can be no

question of taking away the right to get remuneration for work not done except by due process of law. Non-payment of remuneration which is not

earned by actual work is not tantamount to punishment and the rules of natural justice are not attracted to such action. Where a statutory body

enters into the field of contract governed by private law (as in the present case the staff Regulations are purely contractual) in its contract of

employment with its employees and exercises contractual power of not paying remuneration for work not done the rules of natural justice do not

enter the field. Rules of natural justice operate only in the field of actions of the State or public authority or a statutory body. When the actions are

regulated by statute or statutory rules and involve decisions affecting the rights of another person or group of person. A contractual action per se

cannot be said to be purported exercise of statutory power and mere statutory flavor is of not avail. The principles of natural justice hang on

statutory provisions or are implied as necessary parts of equality and equal protection of law under Article 14 of the Constitution. If a statutory

body acts in a private and contractual capacity the relief's under the writ jurisdiction cannot be granted. (See Radhakrishna Agarwal and Others

Vs. State of Bihar and Others, followed in Reserve Bank of India Employees Association v. Union of India 1979 (1) CLJ 513) I need not go into

the question of suppression of material facts by the petitioners numbering 57 out of 78 who having received salary for May to August 14, 1982 or

part of such period as stated in paragraph 9 to 11 ante have prayed for a direction on the bank to pay them salary for such period as a ground for

throwing out the writ petition in view of the Bench decision in the case of Hindusthan Motors v. Union of India 58 CWN 209. For other reasons

already discussed, I find that the writ petition cannot succeed on the merits and the petitioners are not entitled to the relief's claimed. I therefore,

dismiss the writ petitions.