

# SUPREME COURT OF INDIA

Lloyds Bank Ltd., New Delhi

Vs.

Panna Lal Gupta

C.A.No.415 of 1959

(P. B. Gajendragadkar, A. K. Sarkar and K. N. Wanchoo, JJ.)

18.11.1960

## JUDGEMENT

### **GAJENDRAGADKAR, J.:**

1. This appeal by special leave arises from an industrial dispute between the appellant the Lloyds Bank Ltd., and the respondent, the Union of its workmen, in regard to three of its employees. The three employees are Messrs. Panna Lal Gupta. Phusa Ram Goyal and Paras Ram Garg. The respondent claimed that the said three employees were entitled to a special allowance of Rs. 50 per month as prescribed in paragraph 164 of the Award of the All India Industrial Tribunal (Bank Disputes) as modified by S. 3 of the Industrial Disputes (Banking Companies) Decision Act, 1955. This dispute was referred by the Central Government for adjudication to the Central Industrial Tribunal, Delhi. The respondents case was that the three employees who were working in the audit department of the appellant at New Delhi were entitled to claim the said allowance under the said Award, and that the appellant had committed a default in not implementing the said Award in that behalf. The appellant pleaded that the reference made to the Tribunal was invalid as no dispute could arise during the period that the Award in question was in force. It was also urged that the three workmen in question were not supervisors and it was only the supervisors and persons falling under the said category who were entitled to the allowance of list 50 under the Award. On these contentions the Tribunal framed two issues. The first issue was whether the reference was valid, the Tribunal answered this question against the appellant and held that the reference was valid. The second issue was whether the three workmen were entitled to the said allowance; this issue also was answered against the appellant, with the result that an award was made by the Tribunal directing the appellant to pay to the said three workmen the special allowance of Rs. 50 per month from the date of the commencement of the Sastri Award, that is to say, from April 1, 1954, or from any subsequent date on which any of the said three employees was entrusted with the duties and responsibilities in the audit department. The award has further directed that the said allowance shall be continued to be paid to them so long as they were continuing to discharge the said duties and responsibilities in the audit department of the bank. It is against this order that the present appeal by special leave has been filed; and the short question which is raised for our decision is whether the Tribunal was right in holding that the three workmen could claim the status of supervisors entitled to the said allowance of Rs. 50 under the Sastri Award.

2. It would be relevant to refer briefly to the material provisions of the Award. Paragraph 164 on which the present claim is based occurs in the Sastri Award in the chapter dealing with special allowance. The Award has mentioned the fact that the scales of basic pay fixed by the Award were

in the nature of minimum pay, and so it left fit to the discretion of the banks to give more pay, and in the words of the Award "indeed, in some cases, it is but right that they should do so". Similar observations were made with regard to special allowance which the Award proceeded to fix. The Tribunal observed that "it may be open to the banks to provide for such allowances even in respect of categories which are not included in our list, wherever owing to previous practice or for other good reasons they think it right and proper to do so". These observations amount to no more than a recommendation made by the Tribunal to the banks, and however much one may wish that the spirit in which these observations were made should be respected by the banks, it is impossible to entertain any industrial claim on these recommendations.

3. Paragraph 164 specifies 10 categories of employees who, in the opinion of the Tribunal, deserved to be specially considered as fit for special allowance. Paragraph 164 (b) deals with 9 of these categories. The special allowances awardable to persons falling in these 9 categories are classified according to the class of the bank in which the employees are employed. It is well known that the Award divided the banks into four classes, A, B, C and D, and the direction as to the payment of special allowances has been made classwise. It is with category 9 specified in the said paragraph with which we are concerned. It may be mentioned incidentally that the lowest category in the list is that of computists who get a special allowance of Rs. 10 and the highest in the list is category 9 which refers to supervisors, superintendents, sub-accountants, departmental incharges, employees in charge of treasury pay offices. The employees falling in this category and serving in banks of "A" Class are entitled to Rs. 50 as special monthly allowance which is the highest allowance directed by the Award. The respondent claims that the three workmen fall under this class and ought therefore to be paid the special allowance of Rs. 50 per month.

4. This Award, sometime called the Sastri Award, was challenged by the banks before the Labour Appellate Tribunal, and as is well known the modification subsequently made by the Government of India in the decision of the Labour Appellate Tribunal led to the appointment of the Bank Award Commission whose decision formed the basis of the Industrial Disputes (Banking Companies) Decision Act of 1955. The Labour Appellate Tribunal substantially confirmed the directions issued by the Award then under appeal in respect of the payment of the special allowance. It found that the nomenclature by which particular categories of employees are described differs from bank to bank, and so in order to avoid disputes the Appellate Tribunal asked the banks to supply it with statements of different names given to categories of employees for whom special allowances had been provided by the Tribunal. After receiving the relevant information the Appellate Tribunal summarised the said information and made its decision. In regard to the equivalents set out in its decision the Appellate Tribunal has observed that they do not exhaust the subject, and it added that "in the absence of data on the record we must leave it to the banks to pay the appropriate allowances having regard to the duties and responsibilities of a post". It appears that when the appellant supplied the information called for by the Appellate Tribunal it stated that on its staff there was no employee who answered the description of category 9, and that the said provision was therefore inapplicable to any person in the bank. It is, however, clear, and it is not disputed, that even if the three workmen do not by name or designation fall in the said category they would nevertheless be entitled to claim the special allowance if it appears that the duties performed by them and the functions discharged by them are similar to, or the same as, the duties or functions assigned to persons falling in that category. That is how the principal question which the Tribunal had to decide was whether having regard to the duties and functions assigned to the three workmen they can claim the status of clerks falling in category 9.

5. Mr. Ramamurthy, for the respondent, has urged that the question thus posed is a question of fact,

and he has contended that this Court should not interfere with a finding recorded by the Tribunal on such a question of fact. We do not think that this plea is well founded. It is perfectly true that generally, in exercising its discretion under Art. 136, this Court does not entertain pleas on questions of fact, and is reluctant to interfere with findings of fact recorded in a judgment or decision under appeal. In dealing with the question raised by the appellant we would, therefore, take the facts found by the Tribunal to be correct. The status of the three workmen has to be inferred as a matter of law from facts found, and there can be little doubt that if the question involved is one of drawing a legal inference as to the status of a party from facts found that is not a pure question of fact. If the inference drawn by the Tribunal in regard to the status of the three workmen involved the application of certain legal tests that necessarily becomes a mixed question of fact and law and the respondent would not be justified in raising a preliminary objection that the appellant should not be allowed to urge his contention against the correctness of the finding of the Tribunal on such a mixed question of fact and law. We would, however, like to add that even if the question raised is one of mixed fact and law we would not readily interfere with the conclusion of the Tribunal unless we are satisfied that the said conclusion is manifestly or obviously erroneous.

6. Let us then briefly summarise the findings of fact recorded by the Tribunal. The duties assigned to the three clerks in the audit department have been specifically set out in three respective documents filed on the record. We will take one as an illustration (W-1). The duties assigned to Mr. Garg are specified in eight consecutive paragraphs. They consist of checking entries with vouchers in the four classes of books specified under paragraph 1; checking balances of the three ledgers specified in paragraph 2; checking entries in the 14 subsidiary books with the vouchers enumerated in paragraph 3; checking impersonal and cash balances weekly; checking contents of ordinary outgoing branch mail; doing the work of reconciliation of New Delhi Branch accounts with the branches, and to prepare monthly branch reconciliation statements; also doing the work of checking monthly reconciliation statements received from branches: receiving previous day's current account, Branch and Agency, casual and impersonal vouchers and to scrutinise them and to check half-yearly interest in one Savings Bank Ledger, one Current Account Ledger. It would be obvious that prima facie, though the work in the audit department is responsible and important, none of the items of work assigned to Mr. Garg discloses any supervisory character of the duties assigned to him. In oral evidence, however, it was brought out that the clerk in the audit department had to check the authority of the person passing the voucher, and to check whether the limit had been exceeded or the amount was within the limit. He had also to examine whether the amount was within the security limit; if there are mistakes he takes them to the clerk concerned and the assistant concerned for correction.

7. It appears that Mr. Lahoriial Khanna, who is an assistant in charge of the audit department, is responsible to the management for any mistakes or delay in his department. He superintends the audit section and allocates the duties of any audit clerk who is absent. If the audit clerks find out any mistakes they are brought to his notice, and he gets the mistakes rectified by the clerks or assistants concerned. or directs the clerks in the audit department to get them rectified.

8. On this evidence the Tribunal has found that the three clerks work as internal auditors and are overseeing and inspecting the accounts: according to the Tribunal they supervise the work of almost all the persons in the establishment with a view to ensure the correctness and authenticity of the accounts. The Tribunal has also observed that the test of exercising directional and controlling authority is of doubtful validity, and so having regard to the nature of the duties and functions of the three clerks they should be held to be supervisors under Cl. 9 of the Award. The question which arises for our decision is, having regard to the duties and functions of the three clerks as to which

there is no dispute, is the conclusion of the Tribunal about their status justified? The learned Attorney-General contends, on behalf of the appellant, that the said conclusion is manifestly and obviously erroneous.

9. In considering the merits of this argument we must undoubtedly bear in mind one fact on which Mr. Ramamurthy has strongly relied. He contends that in deciding whether the three workmen are supervisors or not, the Court should not import general considerations about the administrative or supervisory control which are associated with the status of a supervisor or a supervising officer. The Award was dealing with the claim made by clerks for special allowance, and category 9 refers to clerks and no others. Officers who have administrative control and can therefore be regarded as supervisors are outside the purview of the Award; that is why the general considerations of administrative or directional control should not be rigidly introduced in dealing with the present dispute. It must be conceded that there is force in this argument.

10. However, before a clerk can claim a special allowance his work must appear to have some element of supervisory character. The work that is done by the clerks in the audit department substantially consists of checking up books of accounts and entries made in them. This checking up is primarily a process of accounting, and the use of the word "checking" cannot be permitted to introduce a consideration of supervisory nature. The work of checking the authority of the person passing the voucher or to enquire whether the limit of authority has been exceeded is also no doubt work of a checking type but the checking is purely mechanical, and it cannot be said to include any supervisory function. If we take into account the six classes of clerks specified in clause 9 it would suggest that in respect of each one of them there would normally be some persons working under the persons falling in that clause; in other words, a person claiming the status of a supervisor in clause 9 should normally have to supervise the work of some others who are in a sense below him. On the argument urged by Mr. Ramamurthy every clerk working in the audit department would be a supervisor and as such would be entitled to draw a monthly special allowance of Rs. 50, though in the general hierarchy of the banks' employees he may be much below the head clerks or head cashiers who draw Rs. 20 as monthly allowance. The Tribunal has, characterised the work of these clerks as internal auditors but that obviously is an over-statement. Audit in the sense in which the word "internal audit" is understood is very different from the work of checking which is entrusted to the clerks in the audit department. Similarly, when the Tribunal has observed that the clerks in the audit department supervise the work of almost all the persons in that establishment that again is obviously an over-statement. It would be legitimate to say that the work done in the audit department is important for the proper and efficient functioning of the bank, but it would be idle to elevate that work to the status of officers who supervise the work of everybody concerned with the bank's establishment. In our opinion, therefore, the conclusion drawn by the Tribunal as regards the status of the three workmen by reference to the ninth category specified in para. 164 (b) of the Award is manifestly erroneous and cannot be sustained.

11. There is another aspect of this question which the Tribunal has completely ignored. We have already stated that the direction issued by the Tribunal postulates that the three clerks can be transferred from the audit department to some other department, and it provides that if such an event occurs, the clerks would not be entitled to receive the special allowance. This aspect introduces a serious infirmity in the conclusion of the Tribunal. If the nature of the clerks' work is such as to put them in category 9 that fixes their status as supervisors, and speaking generally the status of supervisions attained by the clerks cannot be taken away merely by transferring them from one department to another. Mr. Ramamurthy realised the significance of this aspect, and so he argued that it would not be open to the bank to transfer the three workmen from the audit department to any

other department whereby they would have to forego their claim for special allowance. The Tribunal apparently thought otherwise, and that incidentally shows that what impressed the Tribunal was merely the circumstance that the work done by the audit department is very important and responsible, and should, therefore, attract the application of paragraph 164 (b) of the Award.

12. The question as to whether an employee holds a supervisory post or not frequently arose for decision before industrial courts under the original definition of a workman in the Industrial Disputes Act. Section 2 (s) as it originally stood defined a workman as meaning, inter alia, any person employed (including an apprentice) in any industry to do any skilled or unskilled, manual or clerical, work for hire or reward. Under this definition, on many occasions the employers claimed that the workmen concerned were officers or members of the supervisory staff and as such did not fall under S. 2 (s), and workmen contended that they were doing merely clerical or mechanical work and did not fall in the class of officers or supervisors. Dealing with such disputes industrial courts generally considered the essence of the matter and did not attach undue importance to the designation of the employee or the name assigned to the class to which he belonged. It was always a matter of determining what the primary duties of an employee were—did he do clerical or manual work? if the answer was in the affirmative he was a workman; - were his duties of a supervisory nature? if the answer was in the affirmative he was not a workman. In considering the latter aspect of the problem industrial adjudication generally took the view that the supervisor or officer should occupy a position of command or decision and should be authorised to act in certain matters within the limits of his authority without the sanction of the manager or other supervisors. Take the case of checking inspectors with which the Industrial Tribunal was concerned in *A. R. Nataraja Ayyar v. Trichy-Srirangam Transport Co. Ltd.*, 1955-1 Lab LJ 608 (Inc. Tri. Madurai). The checking inspector had to check the conductors and drivers and to verify if they were doing their duties properly. In that behalf he had to send his daily check report to the office. It was urged on behalf of the checking inspector that he was not in absolute control of any group of workers and that the report which he made had to be submitted to his superiors for final orders. Even so it was held that the general nature of the duties indicated that the checking inspector belonged to the cadre of the supervision staff. Similarly in the *United Commercial Bank, Ltd. v. L. S. Seth*, 1954-2 Lab LJ 457 (*L. A. T. I. Luck.*), it was held that the chief cashier of a banking company who was responsible for all the acts of commission and omission of the employees of the cash department and, under whose control and supervision the work of the cash department was done by the employees of the said department, was not a workman since he belonged to the cadre of the supervisory staff. To the same effect is the decision of the Labour Appellate Tribunal in the case of the *Burma-Shell Oil Storage and Distributing Co. Ltd. Madras v. Their Employees*, 1954-1 Lab LJ 21 (LATI). "To be an officer", it was held, "an employee must occupy a position of command and direction and should be authorised to act without the sanction of the manager or other supervisors. The name or the designation of the employee is not a determining test". We have referred to these industrial decisions merely for the purpose of emphasising the fact that in deciding the status of an employee the designation of the employee is not decisive; what determines the status is a consideration of the nature and duties of the function assigned to the employee concerned; that is why the point which arises for our decision in the present appeal lies within a narrow compass. Having regard to the nature of the duties and functions assigned to the three employees by the appellant, would it be reasonably possible to hold that they are supervisors under clause 9 of paragraph 164 (b) of the Award? In our opinion, the answer to this question must be in the negative.

13. The result is the appeal is allowed and the order passed by the Tribunal is set aside. There will be no order as to costs.

Appeal allowed.

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