The Central Bank of India Ltd.

Vs

P. S. Rajagopalan Etc.

Civil Appeals Nos. 823 - 826 of 1962

(P. B. Gajendragadkar, K. N. Wanchoo, K. C. Das Gupta JJ)

19.04.1963

JUDGMENT

GAJENDRAGADKAR, J. –

This group of several appeals has been placed together for final disposal, because the appeals included in the group raise a common question of law in regard to the construction of s. 33C(2) of the Industrial Disputes Act, 1947 (No. 14 of 1947) (hereinafter called the Act). We propose to deal with this point in Civil Appeals Nos. 823 to 826 of 1962 which have been preferred by the appellant, the Central Bank of India Ltd., against the respondents, its employees and in accordance with our decision on the said point the other appeals included in this group would be dealt with on the merits.

Civil Appeals Nos. 823 to 826 of 1962 arise out of applications made by four respondents under s. 33C(2) of the Act. The case for each one of the respondents was that besides attending to his routine duties as clerk, he had been operating the adding machine provided for use in the clearing department of the Branch during the period mentioned in the list annexed to the petition and it was alleged that as such, he was entitled to the payment of Rs. 10/- per month as special allowance for operating the adding machine as provided for under paragraph 164(b)(1) of the Sastry Award. On this basis, each one of the respondents made his respective claim for the amount covered by the said allowance payable to him during the period specified in the calculations.

The appellant disputed the respondent's claims. It urged three preliminary objections against the competence of the applications. According to it, the respondents could claim only non-monetary benefits under the Award that were capable of computation and so, s. 33C(2) was inapplicable to their claim. It was also contended that without a reference made by the Central Government, the applications were not maintainable, and it was pleaded that since the applications involved a question of the interpretation of the Sastry Award, they were outside the purview of s. 33C(2). On the merits, the appellant's case was that the special allowance claimed by the respondents was payable only to the Comptists and could not be claimed by the respondents on the ground that they were operating adding machines. In support of this contention, the appellant alleged that a certain amount of manipulative skill is required for the handling of a Comptometer since the operater has to execute a series of somewhat complex operations in quick succession before he can arrive at a result. The art of operating a comptometer has to be learnt over several months, but the work of operating the adding machine needs no special training and does not require even the skill which a typist has to show. That is why, according to the appellant, no special allowance could be claimed by the respondents under paragraph 164(b)(1) of the Sastry Award.

The Central Government Labour Court before which these applications were made by the respondents over-ruled the preliminary objections raised by the appellant and on the merits, found that the respondents were entitled to claim the special allowance under the relevant clause of the Sastry Award. That is how the applications made by the respondents were allowed and the respective amounts claimed by them were ordered to be paid by the appellant. It is against this order that the appellant has come to this Court by special leave.

The principal contention which has been urged before us by the appellant is one of jurisdiction. It is argued that the Labour Court has exceeded its jurisdiction in entertaining the applications made by the respondents because the claims made by the respondents in their respective applications are outside the scope of s. 33C(2) of the Act. In dealing with this point, it is necessary to read section 33C :

> "(1) Where any money is due to a workman from an employer under a settlement or an award or under the provisions of Chapter VA, the workman may without prejudice to any other mode of recovery, make an application to the appropriate Government for the recovery of the money due to him, and if the appropriate Government is satisfied that any money is so due, it shall issue a certificate for that amount to the Collector who shall proceed to recover the same in the same manner as an arrear of land revenue.
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> (2) Where any workman is entitled to receive from the employer any benefit which is capable of being computed in terms of money, the amount at which such benefit should be computed may, subject to any rules that may be made under this Act, be determined by such Labour Court as may be specified in this behalf by the appropriate Government, and the amount so determined may be recovered as provided for in sub-section (1).
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> (3) For the purposes of computing the money value of a benefit, the Labour Court may, if it so thinks fit, appoint a commissioner who shall, after taking such evidence as may be necessary, submit a reports to the Labour Court and the Labour Court shall determine the amount after considering the report of the Commissioner and other circumstances of the case."

It is common ground that s. 33C(1) provides for a kind of execution proceedings and it contemplates that if money is due to a workman under a settlement or an award, or under the provisions of Chapter VA, the workman is not compelled to take resort to the ordinary course of execution in the Civil Court, but may adopt a summary procedure prescribed by this sub-section. This sub-section postulates that a specific amount is due to the workman and the same has not been paid to him. If the appropriate Government is satisfied that the money is so due, then it is required to issue a certificate for the said amount to the Collector and that leads to the recovery of the said amount in the same manner as an arrear of land revenue. The scope and effect of s. 33C(1) are not in dispute before us.

There is also no dispute that the word "benefit" used in s. 33C(2) is not confined merely to non-monetary benefit which could be converted in terms of money, but that it takes in all kinds of benefits which may be monetary as well as non-monetary if the workman is entitled to them, and in such a case, the workman is given the remedy of moving the appropriate Labour Court with a request that the said benefits be computed or calculated in terms of money. Once such computation

or calculation is made under s. 33C(2) the amount so determined has to be recovered as provided for in sub-s. (1). In other words, having provided for the determination of the amount due to the workman in cases falling under sub-s. (2), the legislature has clearly prescribed that for recovering the said amount, the workman has to revert to his remedy under sub-s. (1).

Sub-section (3) empowers the Labour Court to appoint a Commissioner for the purposes of computing the money value of the benefit, and it lays down that if so appointed, the Commissioner shall take such evidence as may be necessary and submit his report to the Labour Court. The Labour Court is then required to proceed to determine the amount in the light of the report submitted by the Commissioner and other circumstances of the case. This means that proceedings taken under sub-s. (2) may be determined by the Labour Court itself or, in a suitable case, may be determined by it after receiving a report submitted by the Commissioner appointed in that behalf. It is clear that if for computing in terms of money the value of the benefit claimed by the workman, an enquiry is required to be held and evidence has to be taken, the Labour Court may do that itself or may delegate that work to a Commissioner appointed by it. This position must be taken to be well settled after the decision of this Court in the Punjab National Bank Ltd. v. K. L. Kharbanda [1962 (1) L.L.J. 234.].

The question which arises for our decision is, however, slightly different. It is urged by the appellant that sub-s. (2) can be invoked by a workman who is entitled to receive from the employer the benefit there specified, but the right of the workman to receive the benefit has to be admitted and could to be a matter of dispute between the parties in cases which fall under sub-s. (2). The argument is, if there is a dispute about the workman's right to claim the benefit, that has to be adjudicated upon not under sub-s. (2), but by other appropriate proceedings permissible under the Act, and since in the present appeals, the appellant disputed the respondent's right to claim the special allowance, the Labour Court had no jurisdiction to deal with their claim. In other words, the contention is that the opening words of sub-s. (2) postulate the existence of and admitted right vesting in a workman and do not cover cases where the said right is disputed.

On the other hand, the respondents contend that sub-s. (2) is broad enough to take in all case where a workman claims some benefit and wants the said benefit to be computed in terms of money. If in resisting the said claim, the employer, makes several defences, all these defences will have to be tried by the Labour Court under sub-s. (2). On this argument all, questions arising between the workmen and their employers in respect of the benefit which they claim to be computed in terms of money would fall within the scope of sub-s. (2).

Before dealing with the question of construction thus raised by the parties in the present proceedings it would be material to refer briefly to the legislative history of this provision. The Act, as it was originally passed, made relevant provisions on the broad basis that industrial disputes should be adjudicated upon between trade Unions or representatives of labour on the one hand and the workmen's employers on the other. That is why section 10(1) which deals with the reference of disputes to Boards, Courts or Tribunals, has been interpreted by this Court to mean the disputes which are referable under s. 10(1) should be disputes which are raised by the trade Unions to which the workmen belong or by the representatives of workmen acting in such a representative character. It was, however, realised that in denying to the individual employees a speedy remedy to enforce their existing rights, the Act had failed to give due protection to them. If an individual employee does not seek to raise an industrial dispute in the sense that he does not want any change in the terms and conditions of service, but wants only to implement or enforce his existing rights, it should not be necessary for him to have to take recourse to the remedy prescribed by s. 10(1) of the Act;

that was the criticism made against the omission of the Act to provide for speedy enforcement of individual workman's existing rights. In order to meet this criticism, an amendment was made by the Legislature in 1959 by section 20 of the Industrial Disputes (Appellate Tribunal) Act, 1950 (No. 48 of 1950). Section 20 of this Act provided for recovery of money due from an employer under an award or decision. This provision filled up the lacuna which was discovered, because even after an award was made individual workmen were not given a speedy remedy to implement or execute the said award, and so s. 20 purported to supply that remedy. Section 20(1) provided that if money was due under an award or decision of an industrial tribunal, it may be recovered as arrears of land revenue or as a public demand by the appropriate Government on an application made to it by the person entitled to the said money. Section 20(2) then dealt with the cases where any workman was entitled to receive from the employer any benefit under an award or decision of an industrial tribunal which is capable of being computed in terms of money, and it provided that the amount at which the said benefit could be computed may be determined, subject to the rules framed in that behalf, by that industrial tribunal and the amount so determined may be recovered as provided for in sub-s. (1). In other words, the provisions of s. 20(2) roughly correspond to the provisions of s. 33C(2) of the Act. There are, however, two points of distinction. Section 20(2) was confined to the benefits climable by workmen under an award or decision of an Industrial tribunal; and the application to be made in that behalf had to be filed before the industrial tribunal which made the said award or decision. These two limitations have not been introduced in s. 33C(2). Section 20(3) corresponds to s. 33C(3). It would thus be noticed that s. 20 of this Act provides a speedy remedy to individual workmen to execute their rights under awards or decisions of industrial tribunals. Incidentally, we may add that section 34 of this Act made a special provision for adjudication as to whether conditions of service had been changed during the pendency of industrial proceedings at the instance of an individual workman and for that purpose inserted in the Act s. 33A. Act 48 of 1950 by which s. 20 was enacted came into force on May 20, 1950.

In 1953, the Legislature took a further step by providing for additional rights to the workmen by adding Chapter VA to the Act, and passed an Amending Act No. 43 of 1953. Chapter VA deals with the workmen's claims in cases of lay-off and retrenchment. Section 25(1) which was enacted in this Chapter provided for the machinery to recover moneys due from the employers under the Chapter. It laid down, inter alia, that any money due from an employer under the provisions of Chapter VA may be recovered in the same manner as an arrear of land revenue or as a public demand by the appropriate Government on an application made to it by the workman entitled to the said money. This was, of course, without prejudice to the workman's right to adopt any other mode of recovery. This provision shows that having created additional rights in the workmen in respect of lay-off and retrenchment the legislature took the precaution of prescribing a speedy remedy for recovering the said amounts from their employers. This Amending Act came into force on December 23, 1953.

About three years later, the legislature passed the Industrial Disputes (Amendment and Miscellaneous Provisions) Act, 1956 (No. 36 of 1956). This Act repealed the Industrial Disputes (Appellate Tribunal) Act No. 48 of 1950, s. 25-I in Chapter VA and inserted s. 33C(1), (2) and (3) and s. 36A in the Act. The result of these modifications is that the recovery provisions are now contained in section 33C and an additional provision is made by s. 36A which deals with cases where doubt or difficulty may arise in the interpretation of any provision of an award or settlement. This Act came into force on August 28, 1956.

In order to make the narration of the legislative background of s. 33C complete, we may refer to the fact that by the Amendment Act No. 18 of 1957, two more provisions were added to Chapter VA which are numbered as s. 25FF and s. 25FFF. This Act came into force on June 6, 1957.

The legislative history to which we have just referred clearly indicates that having provided broadly for the investigation and settlement of industrial disputes on the basis of collective bargaining, the legislature recognised that individual workmen should be given a speedy remedy to enforce their existing individual rights, and so, inserted s. 33-A in the Act in 1950 and added s. 33-C in 1956. These two provisions illustrate the cases in which individual workmen can enforce their rights without having to take recourse to s. 10(1) of the Act, or without having to depend upon their Union to espouse their cause. Therefore, in construing s. 33-C we have to bear in mind two relevant considerations. The construction should not be so broad as to bring within the scope of s. 33-C cases which would fall under s. 10(1). Where industrial disputes arise between employees being collectively and their employers, they must be adjudicated upon in the manner prescribed by the Act, as for instance, by reference under s. 10(1). These disputes cannot be brought within the purview of s. 33C. Similarly, having regard to the fact that the policy of the Legislature in enacting s. 33C is to provide a speedy remedy to the individual workmen to enforce or execute their existing rights, it would not be reasonable to exclude from the scope of this section cases of existing rights which are sought to be implemented by individual workmen. In other words, though in determining the scope of s. 33C we must take care not to exclude cases which legitimately fall within its purview, we must also bear in mind that cases which fall under s. 10(1) of the Act for instance, cannot be brought within the scope of s. 34C.

Let us then revert to the words used in s. 33C(2) in order to decide what would be its true scope and effect on a fair and reasonable construction. When sub-s. (2) refers to any workman entitled to receive from the employer any benefit there specified, does it mean that he must be a workman whose right to receive the said benefit is not disputed by the employer ? According to the appellant, the scope of sub-s. (2) is similar to that of sub-s. (1), and it is pointed out that just as under sub-s. (1) any disputed question about the workman's right to receive the money due under an act can not be adjudicated upon by the appropriate Government, so under sub-s. (2) if a dispute is raised about the workmen's right to receive the benefit in question, that cannot be determined by the Labour Court. The only point which the Labour Court can determine is one relation to the computation of the benefit terms of money. We are not impressed by this argument. In our opinion, on a fair and reasonable construction of sub-s. (2) it is clear that if a workman's right to receive the benefit is disputed, that may have to be determined by the Labour Court. Before proceeding to compute the benefit in terms of money the Labour Court inevitably has to deal with the question as to whether the workman has a right to receive that benefit. If the said right is to disputed, nothing more needs to be done and the Labour Court can proceed to compute the value of the benefit in terms of money; but if the said right is disputed, the Labour Court must deal with that question and decide whether the workman has the right receive the benefit as alleged by him and it is only if the Labour Court answers this point in favour of the workman that the next question of making the necessary computation can arise. It seems to us that the opening clause of sub-s. (2) does not admit of the construction for which the appellant contends unless we add some words in that clause. The clause "Where any workman is entitled to receive from the employer any benefit" does not mean "where such workman is admittedly, or admitted to be, entitled to receive such benefit". The appellant's construction would necessarily introduce the addition of the words "admittedly, or admitted to be" in that clause, and that clearly is not permissible. Besides, it seems to us that if the appellant's construction is accepted, it would necessarily mean that it would be at the option of the employer to allow the workman to avail himself of the remedy provided by sub-s. (2), because he has merely to raise an objection on the ground that the right claimed by the workman is not admitted to oust the jurisdiction of the Labour Court to entertain the workman's application. The claim under s. 33C(2) clearly postulates that the determination of the question about computing the benefit in terms of

money may, in some cases, have to be preceded by an enquiry into the existence of the right and such an enquiry must be held to be incidental to the main determination which has been assigned to the Labour Court by sub-s. (2). As Maxwell has observed "where an Act confers a jurisdiction, it impliedly also grants the power of doing all such acts, or employing such means, as are essentially necessary to its execution [Maxwell on Interpretation of Statutes p. 350.]." We must accordingly hold that s. 33C(2) takes within its purview cases of workmen who claimed that the benefit to which they are entitled would be computed in terms of money, even though the right to the benefit their employers. Incidentally, it may be relevant to add that it would be somewhat odd that under sub-s. (3), the Labour Court should have been authorised to delegate the work of computing the money value of the benefit to the Commissioner if the determination of the said question was the only task assigned to the Labour Court under sub-s. (2). On the other hand, sub-s. 3 becomes intelligible if it is held that what can be assigned to the Commissioner includes only a part of the assignment of the Labour Court under sub-s. (2).

It is, however, urged that in dealing with the question about the existence of a right set up by the workman, the Labour Court would necessarily have to interpret the award or settlement on which the right is based, and that cannot be within its jurisdiction under s. 33C(2), because interpretation of awards or settlements has been specifically and expressly provided for by s. 36A. We have already noticed that s. 36A has also been added by the Amending Act No. 36 of 1956 along with section 33C, and the appellant's argument is that the legislature introduced the two sections together and thereby indicated that questions of interpretation fall within s. 36A and, therefore, outside s. 33C(2). There is no force in this contention. Section 36A merely provides for the interpretation of any provision of an award or settlement where any difficulty or doubt arises as to the said interpretation. Generally, this power is invoked when the employer and his employees are not agreed as to the interpretation of any award or settlement, and the appropriate Government is satisfied that a defect or doubt has arisen in regard to any provision in the award or settlement. Sometimes, cases may arise where the awards or settlements are obscure, ambiguous or otherwise present difficulty in construction. It is in such cases that s. 36A can be invoked by the parties by moving the appropriate Government to make the necessary reference under it. Experience showed that where awards or settlements were defective in the manner just indicated, there was no remedy available to the parties to have their doubts or difficulties resolved and that remedy is now provided by s. 36A. But the scope of s. 36A is different from the scope of s. 33C(2), because s. 36A is not concerned with the implementation or execution of the award at all, whereas that is that sole purpose of s. 33C(2). Whereas s. 33C(2) deals with cases of implementation of individual rights of workmen falling under its provisions, s. 36A deals merely with a question of interpretation of the award where a dispute arises in that behalf between the workmen and the employer and the appropriate Government is satisfied that the dispute deserves to be resolved by reference under s. 36A.

Besides, there can be no doubt that when the Labour Court is given the power to allow an individual workman to execute or implement his existing individual rights, it is virtually exercising execution powers in some cases, and it is well settled that it is open to the Executing Court to interpret the decree for the purpose of execution. It is, of course, true that the executing Court cannot go behind the decree, nor can it add to or subtract from the provision of the decree. These limitations apply also to the Labour Court; but like the executing Court, the Labour Court would also be competent to interpret the award or settlement on which a workman bases his claim under s. 33C(2). Therefore, we feel no difficulty in holding that for the purpose of making the necessary determination under s. 33C(2), it would, in appropriate cases, be open to the Labour Court to interpret the award or settlement on which the workman's right rests.

We have already noticed that in enacting s. 33C the legislature has deliberately omitted some words which occurred in s. 20(2) of the Industrial Disputes (Appellate Tribunal) Act, 1950. It is remarkable that similar words of limitation have been used in s. 33C(1) because s. 33C(1) deals with cases where any money is due under a settlement or an award or under the provisions of Chapter VA. It is thus clear that claims made under s. 33C(1), by itself can be only claims referable to the settlement, award, or the relevant provisions of Chapter VA. These words of limitations are not to be found in s. 33C(2) and to that extent, the scope of s. 33C(2) is undoubtedly wider than that of s. 33C(1). It is true that even in respect of the larger class of cases which fall under s. 33C(2), after the determination is made by the Labour Court the execution goes back again to s. 33C(1). That is why s. 33C(2) expressly provides that the amount so determined may be recovered as provided for in sub-section (1). It is unnecessary in the present appeals either to state exhaustively or even to indicate broadly what other categories of claims can fall under s. 33C(2). There is no doubt that the three categories of claims mentioned in s. 33C(1) fall under s. 33C(2) and in that sense, s. 33C(2) can itself be deemed to be a kind of execution proceeding; but it is possible that claims not based on settlements, awards or made under the provisions of Chapter VA, may also be competent under s. 33C(2) and that may illustrate its wider scope. We would, however, like to indicate some of the claims which would not fall under s. 33C(2), because they formed the subject matter of the appeals which have been grouped together for our decision along with the appeals with which we are dealing at present. If an employee is dismissed or demoted and it is his case that the dismissal or demotion is wrongful, it would not be open to him to make a claim for the recovery of his salary or wages under s. 33C(2). His demotion or dismissal may give rise to an industrial dispute which may be appropriately tried, but once it is shown that the employer has dismissed or demoted him, a claim that the dismissal or demotion is unlawful and, therefore, the employee continues to be the workman of the employer and is entitled to the benefits due to him under a pre-existing contract, cannot be made under s. 33C(2). If a settlement has been duly reached between the employer and his employees and it falls under s. 18(2) or (3) of the Act and is governed by s. 19(2), it would not be open to an employee, notwithstanding the said settlement, to claim the benefit as though the said settlement had come to an end. If the settlement exists and continues to be operative, no claim can be made under s. 33C(2) inconsistent with the said settlement. If the settlement is intended to be terminated, proper steps may have to be taken in that behalf and a dispute that may arise thereafter may have to be dealt with according to the other procedure prescribed by the act. Thus, our conclusion is that the scope of s. 33C(2) is wider than s. 33C(1) and cannot be wholly assimilated with it, though for obvious reasons, we do not propose to decide or indicate what additional cases would fall under s. 33C(2) which may not fall under s. 33C(1). In this connection, we may incidentally state that the observations made by this Court in the case of Punjab National Bank, Ltd. [1962 (1) L.L.J. 234.], that s. 33C is a provision in the nature of execution should not be interpreted to mean that the scope of s. 33C(2) is exactly the same as s. 33C(1) (page 238).

It now remains to refer to some decisions which are relevant. In M/s. Kasturi and Sons (Private) Ltd. v. Shri N. Salivateeswaran [(1959) S.C.R. 1.], where this Court was considering the question about the scope and effect of s. 17 of the Working Journalists (Condition of Service) and Miscellaneous Provisions Act, 1955, (No. 45 of 1955), reference was made to the fact that the procedure prescribed by the said s. 17 was different from the procedure prescribed by s. 33C(2), and it was observed that under the latter provision where an employee makes a claim for some money, an enquiry into the claim is contemplated by the Labour Court, and it is only after the Labour Court has decided the matter that the decision becomes enforceable under s. 33C(1) by summary procedure. No such enquiry was contemplated by the said s. 17.

In Shri Ambica Mills Co. Ltd. v. Shri S. B. Bhatt [(1961) 3 S.C.R. 220.], section 15 of the Payment

of Wages Act, 1936 (No. 4 of 1936) fell to be construed, and it was held that under the said section, when the authority exercises its jurisdiction which is made exclusive by s. 22, it has necessarily to consider various questions incidental to the claims falling thereunder, and it was added that although it would be inexpedient to lay down any hard and fast rule for determining the scope of such questions, care should be taken not to unduly extend or curtail its jurisdiction. As we have already indicated, we have adopted the same approach in interpreting s. 33C(2).

The respondents relied on the decision of the Bombay High Court in M/s. Sawatram Ramprasad Mills Co. Ltd., Akola v. Baliram [(1962) 65 Bom. L.R. 91.]. In support of the very broad construction which they seek to place on the provisions of s. 33C(2). In that case, the High Court was dealing with a claim made under Chapter VA of the Act, and there can be no doubt that such a claim together with all question incidental to its decision can be properly determined under s. 33C(2). In reaching its conclusion, the High Court has no doubt made certain broad and general observations in regard to the scope of the jurisdiction conferred on the Labour Court under s. 33C(2). Those observations are in the nature of obiter dicta and in so far as they may be inconsistent with our present decision, they should be held to be not justified by then terms of s. 33C(2). In the result, the preliminary point raised by the appellant that the Labour Court had no jurisdiction to entertain the respondents' applications fails and must be rejected.

That takes us to the merits of the respondents' claim. We have already seen that the main basis on which the respondents have claimed the special allowance under para. 164(b)(1) of the Sastry Award is that they have been operating upon the adding machines provided by the appellant for use in its clearing department. The appellant, however has contended that the special allowance can be claimed only by Comptists, and since the respondents had not even claimed that they are Comptists, their applications should be rejected. For deciding this dispute, it is necessary to refer to the relevant provisions of the Sastry Award as they were modified by the decision of the Labour Appellate Tribunal. Chapter X of the Sastry Award deals with the problem of special allowances. In paragraph 161 of this Chapter, the Sastry Tribunal observed that there were certain posts even in the clerical and subordinate grades for which an incumbent requires special qualifications or skill for the efficient discharge of his duties, and so, it thought that an extra payment in such cases is necessary by way of recognition of and compensation for this special skill or responsibility. In paragraph 162, the Tribunal examined three alternatives suggested for its acceptance for making a provision for some special payment, and it ultimately decided that a special allowance should be paid to those categories of employees who, by their special qualifications or skill, deserve recognition. In paragraph 163, the Tribunal observed that the special allowance which it was about to prescribe was the minimum and it was open to the banks to pay higher allowance if they thought necessary to do so. Then followed paraghraph 164 in which it specified 10 categories fit for special allowances. The first of these categories was Graduates and the claim of this category of employees was dealt with by the Tribunal in paraghraph 164(a). Paragraph 164(b) deals with the remaining 9 categories and the Comptists are the first in these 9 categories. The Tribunal provided that the Comptists should receive Rs. 10/- p.m. as special allowance in cases of all the four classes of banks A, B, C and D. It is on this provision that the respondents rely in support of their claim.

When the Sastry Award went before the Labour Appellate Tribunal, the Labour Appellate Tribunal dealt with this question in paragraph 140 of its decision. The Tribunal observed that during the course of the hearing it became clear that the nomenclature by which particular categories of employees are described differed from bank to bank, and so, in order to avoid disputes between banks and their employees as to whether a particular category of employees is entitled to a special allowance under the Award or not, the Tribunal asked the banks to supply it with statements of

different names given to the categories of employees for whom special allowances have been provided by the Sastry Award. Accordingly, some of the banks supplied the necessary information. The Tribunal then set out eight of the categories the equivalents of which had been supplied in the statements of the banks. As against the Comptists, Statement No. B-247 which had been supplied by the Imperial Bank of India, showed that the nomenclature adopted by the said Bank in respect of the said category was adding machine operators, Addressographers. Having set out these equivalents, the Tribunal took the precaution of adding that the equivalents set out by it were helpful, but did not exhaust the subject, and so, in the absence of data, it had to be left to the banks to pay the appropriate allowances having regard to the duties and responsibilities of a post. That is how the matter ended.

In the present proceedings, the respondents seem to base their case on the sole basis that they are operating the adding machines and can, therefore, be treated as adding machine operators, and they argued that since adding machine operators were equated in the statement of the Imperial Bank of India with Comptists, they must be held to be Comptists for the purpose of paragraph 164(b)(1) of the Sastry Award and thus entitled to the special allowance of Rs. 10/-. In fact, in allowing the respondents' claim the Tribunal seems to have accepted this contention, for it has observed that according to the decision of the Labour Appellate Tribunal, the adding machine operators must be held to be in the same category as Comptists. In other words, the Tribunal appears to have taken the view that since the Imperial Bank of India described the employees who did the work of Comptists as adding machine operators, it followed that whenever any bank employee was operating on the adding machine for howsoever small a period it may be, he must be held to be a Comptists and as such entitled to the special allowance. In our opinion, this is clearly erroneous. It is true that the Imperial Bank of India adopted the nomenclature of adding machine operators for its Comptists and that may presumably be for the reason that at the relevant time, its Comptists were doing the work of adding machine operators and Addressographers; so that it made no difference whether the bank called them Comptists or adding machine operators or Addressographers, all the three types of work being entrusted to one category of employees; but however that may be, the nomenclature adopted by the Imperial Bank of India cannot be said to be binding on the other banks which did not adopt it, and so, it is obviously erroneous to hold that the equivalent adopted by the Imperial Bank of India must be taken to have been adopted by all the other banks. Indeed, the Award recently made by Mr. Justice Desai who was appointed the National Industrial Tribunal in the Bank Disputes clearly brings out the distinction between Comptists on the one hand, and adding machine operators, addressographers and photostat machine operators on the other in paragraphs 5.242 and 5.265.

In the present appeals, no evidence was led on behalf of the respondents. The appellant, however, examined its officer Mr. Shivodkar. This witness stated that an adding machine can be operated by a clerk with half an hour's practice. It only does additions mechanically. Operating a comptometer, however, involves complicated calculations and in order to handle it efficiently, the employee has to take three months training and practising. He added that about two hours' work is put on the adding machine by the several respondents, but it is included in their normal working hours. There has been some discussion at the Bar in the present appeals as to the nature of the work which is done on the comptometer and on the adding machine, but there can be no doubt that compared to the comptometer, the adding machine is a simple mechanism and for operating on it, not much experience or technical training is required; in fact, it may not even require that amount of skill and efficiency which is expected of a typist and it is significant that a claim made by the typists for special allowance was rejected by the Sastry Tribunal. That shows how the respondents' claim for special allowance as Comptists solely on the ground that they can be described as adding machine operators, cannot be sustained. Therefore, the sole basis on which the respondents' claim has been

allowed by the Labour Court is unsound, and so the order passed by it cannot be affirmed.

It has, however, been urged before us by the respondents that they should be given an opportunity to substantiate their claims on the merits. It is argued that they were advised that the equivalent supplied by the Imperial Bank of India by itself furnished a firm basis for their claims, and so, no other allegations were made by them in the present proceedings and no evidence was led by them to prove the nature of the work done by them and the time for which they do the special kind of work to justify the claim for special allowance. On the other hand, the appellant has strenuously contended that the delay made by the respondents in making the present applications speaks for itself, and so, no indulgence should be shown to the respondents for remanding the present cases to the Labour Court once it is found that the basis on which the claim has been allowed is not justified in law. It is true that though the Sastry Award was passed in 1953 and the Labour Appellate Tribunal's decision was pronounced in 1954 and it became final on October 21, 1955, the respondents did not make their claims until 1962. We have had occasion in the past to emphasise the fact that industrial adjudication should not encourage unduly belated claims; but on the other hand, no limitation is prescribed for an application under s. 33C(2) and it would, on the whole, not be right for us to refuse an opportunity to the respondents to prove their case only on the ground that they moved the Labour Court after considerable delay. We would, therefore, set aside the order passed by the Labour Court and remand the proceedings to that Court with a direction that it should allow the parties to amend their pleadings if they so desire and to lead evidence in support of their respective cases. It may be open to the respondents to prove that they are doing the work which may be properly described as the work of Comptists. In that connection, it may also be open to them incidentally to show that the work which was being done in the Imperial Bank of India by the adding machine operators who were shown as equivalents of the Comptists at the relevant time is being done by them in the appellant's branches. If the Labour Court is satisfied that the work done by the respondents can be reasonably treated as the work of Comptists as properly understood in the banking industry, then it should proceed to determine the respondents' claim on that basis. We have already referred to the fact that the Labour Appellate Tribunal made it perfectly clear that the particular nomenclature was not decisive and that what mattered in these cases was the nature of the duties and responsibilities of a post. If the nature of the duties and responsibilities of the posts held by the respondents legitimately justify the conclusion that they are comptists, then the special allowance can be claimed by them. It is in the light of these observations that the Labour Court should proceed to deal with these cases after remand. If the parties want to amend their pleadings, they should move the Labour Court in that behalf within a fortnight after the receipt of the record in that Court. Then the Labour Court should fix an early date for taking evidence and should deal with these matters as expeditiously as possible.

The result is, the appeals are allowed, the orders passed by the Labour Court are set aside and the matters sent back to that Court for disposal in accordance with law. There would be no order as to costs.

Appeal allowed.

Cases remanded.

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