

Syndicate Bank, Limited

v.

Its Workmen

(Supreme Court Of India)

HON'BLE JUSTICE P. B. GAJENDRAGADKAR (CJI) HON'BLE JUSTICE K. N. WANCHOO HON'BLE JUSTICE M. HIDAYATULLAH HON'BLE JUSTICE V.RAMASWAMI HON'BLE JUSTICE P.SATYANARAYANA RAJU

Civil Appeal No. 312 Of 1965 | 19-11-1965

Wanchoo, J.

1. This is an appeal by special leave from the award of the Industrial tribunal in Mysore at Bangalore. There was a dispute between the appellant-bank and its employees with respect to C rank officers which was referred by the Central Government to the tribunal with reference to two matters in these terms :

(1) Whether the Canara Industrial and Banking Syndicate, Ltd., Udipi, is justified in imposing the condition that only such of those workmen would be considered for appointment as officer-trainee and promotion to probationary C rank officers who agree to be governed by the rules of the bank applicable to such officers in respect to scale of pay and other conditions of service ? If not, to what relief are such workmen entitled ?

(2) Whether the bank is justified in imposing the condition of twelve months training as officer-trainee before appointment as C rank officer in addition to the probation prescribed after the appointment as a C rank officer ? If not, to what relief are the workmen entitled ?

2. It appears that after the award of the All India Industrial Tribunal (Bank Disputes), Bombay (popularly known as the Sastri award), the appellant issued

a circular on 29 November 1965. This became necessary in order to implement that award. Further in that award it was observed that though accountants in many banks might be officers there would be cases where incumbents of such posts, though going under the dignified designation of accountants, were in reality only senior clerks doing higher type of clerical work involving an element of supervision over other clerks as part of their duties. The award therefore provided that in such cases where accountants could properly be regarded as workmen a minimum allowance as fixed for sub-accountants would equally apply to them. Consequently when the appellant decided to implement the award it wrote letters to its accountants to enquire whether they would like to be considered as clerks or as officers. It was also stated in the circular that the appellant considered the accountant to be an officer. It is not clear when exactly the post of C rank officer was created. But it appears that in June, 1957 there was a dispute between the appellant and its workmen with respect to one Ranganath Pai, who was a probationary C rank officer, and that dispute was settled in conciliation and Pai was reinstated in the bank's service. On 1 February 1958, a circular was issued by the appellant announcing new scales of pay after merger of special pay. In this circular three kinds of officers were mentioned, namely:

(1) A rank officers,

(2) B rank officers, and

(3) C rank officers.

3. The scale of pay of C rank officers as fixed in this circular was from Rs. 125 to Rs. 341 with a span of twenty-four years and various increments at various stages and an efficiency bar. Dispute seems to have arisen between the appellant and its workmen on the question whether C rank officers were workmen or not, and an award was made by the presiding officer, labour court (Central), Ahmedabad, with respect to one Rao who was then working as an accountant and drawing the pay of a C rank officer. The question raised was whether an accountant working as a C rank officer was a workmen or not, and the labour court decided on a consideration of the duties of Rao who was working as an accountant that even though Rao might be designated as a C rank officer, his

duties showed that he was a workman within the meaning of S.2 (s) of the Industrial Disputes Act, 14 of 1947 (hereafter referred to as the Act). Rao was ordered to be restored to his grade as C rank officer and an accountant. This award seems to have become final as apparently no appeal was taken from it.

4. Then in April 1962 another circular was issued revising pay-scales of officers of A, B and C ranks. These scales consisted of consolidated pay including what was formerly basic pay and dearness allowance and for C rank officers the grade was fixed from Rs. 200 to Rs. 530 with a span of twenty years and different increments at different stages. It was also stated in the circular that while duties actually entrusted to an officer might vary from office to office according to the need of circumstances prevailing at each office, the officers were expected to be officers in the full sense, and to represent management. It was also stated that all officers would have managerial and administrative powers and functions to the extent necessary for the proper discharge of their duties and that none of the new grades of officers were for any category of exclusively supervisory staff and there was no grade of supervisory officers. It appears that in 1963 two offers were made to Ananda Rao and Sadananda Nayak of the Bangalore branch of the appellant for appointment as C rank officers. In the order it was stated that there would be one year's training. Thereafter the person concerned would be promoted as probationary C rank officer on the terms and conditions applicable under the rules of the bank. The offers thus made contained two conditions, namely :

(i) that there would be a period of training for one year before appointment as a probationary C rank officer, and

(ii) the person concerned on appointment as a probationary C rank officer would cease to be a workman and would be governed by the terms and conditions applicable under the rules of the bank.

5. These two conditions were not acceptable to the two persons concerned, one of whom was the vice-president of the labour union. As these conditions were not acceptable to these workmen, the orders promoting them as officer-trainees were cancelled. The dispute between the appellant and its workmen as to the status of C rank officers seems to have come to a head after these two offers in 1963. The workmen were apparently claiming that C rank officers were workmen while the case of the appellant was that they were officers and could

not be covered by the Act. It was in these circumstances that the two questions were referred to the tribunal for adjudication by the Central Government on 5 May 1964. The first question canvassed the justification of imposing the condition that workmen would be promoted as C rank officers only if they agreed to be governed by the rules of the bank. The second question challenged the imposition of the period of twelve months training in addition to probation prescribed after appointment as a C rank officer. When the matter came before the tribunal a question arose whether the determination of the status of C rank officers, namely, whether they were workmen or officers who could only be governed by the rules of the bank, had been raised by the first term of reference. The appellant contended that the first term of reference proceeded on the assumption that C rank officers were officers of the bank while the workmen contended that the question whether C rank officers were workmen was implicit in the first term of reference. The tribunal held that the question whether the C rank officers were workmen was implicit in the first term of reference and first proceeded to consider that question. It came to the conclusion that C rank officers were workmen. It then considered whether the imposition of the condition that workmen would only be promoted as C rank officers if they accepted the condition that they would be governed by the rules of the bank was justified, and held that it was not. As to the second term of reference, the tribunal was of opinion that the imposition of the period of twelve months training in addition to the period of probation was not justified. It also held that no condition could be imposed on a workman providing any period of probation on his appointment as a C rank officer, though it confined this only to such workmen who belonged to the supervisory staff. The tribunal then gave various directions in the matter. It is this award of the tribunal which is being impugned before us by special leave.

6. The first question that has been raised on behalf of the appellant is that there was no reference on the question of the status of C rank officers and the tribunal went beyond the terms of reference when it decided that C rank officers were workmen. In any case it is urged that if the tribunal intended to decide this question it should have taken evidence with respect to it and that in fact no evidence was given by either side on this question. We are of opinion that the first term of reference had implicit in it the question whether C rank officers were workmen or not. If that were not so, there would be no sense in the reference, for if C rank officers were assumed to be non-workmen, the bank would be justified in prescribing conditions of service with respect to its officers and there could be no reference under the Act with respect to conditions

imposed by the bank on its officers who were not workmen. We are therefore of opinion that the first term of reference when it posed the question whether the appellant was justified in imposing the condition that the workmen promoted as C rank officers would be governed by the rules of the bank as applicable to such officers had impliedly raised the question whether C rank officers were workmen or not, for only on that basis could the reference be made. This brings us to the second question raised before us whether C rank officers were workmen and whether there was evidence before the tribunal from which it could come to the conclusion that they were workmen. "Workmen" is defined in S.2(s) of the Act as below :

"workman' means any person including an apprentice employed in any industry to do any skilled or unskilled, manual supervisory, technical or clerical work for hire or reward, whether the terms of employment to expressed or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connexion with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person -

(i) who is subject to the Army Act, 1960, or the Air Force Act, 1950, or the Navy (Discipline) Act, 1934; or

(ii) who is employed in the police service or as an officer or other employee of a prison; or

(iii) who is employed mainly in a managerial or administrative capacity; or

(iv) who, being employed in a supervisory capacity, draws wages exceeding five hundred rupees per mensem, or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature."

7. We are concerned in the present dispute with exemptions (iii) and (iv) of this definition. Under exemption (iii), a person who is employed mainly in a managerial or administrative capacity is not a workman. Under exemption (iv) a

person who is employed in a supervisory capacity, is not a workman provided he draws wages exceeding Rs. 500 per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature. It is well-settled that the mere designation by which a person is designated is not conclusive of his status as an officer; the industrial court assigned to the person concerned to decide whether he is a workman or not. In the present case most of the C rank officers are not drawing wages exceeding Rs. 500 per mensem, even assuming that they were doing supervisory work. Therefore, most of them would not be exempt from the category of workmen under exemption (iv), but they would be exempt under exemption (iii) if they are employed mainly in managerial or administrative capacity. Unfortunately this aspect of the matter was not considered by the tribunal. There is no oral evidence at all relevant to the question whether C rank officers are employed mainly in a managerial or administrative capacity. Reliance is however placed on behalf of the workmen on three documents in this connexion. The first is the settlement of June 1957 between the appellant and its workmen before the conciliation officer by which Ranganath Pai who was a probationary C rank officer was reinstated by the Bank. The second is the award of the labour court (central), Ahmedabad, by which Rao, a C rank officer, was ordered to be restored to his grade as C rank officer and an accountant and it was held that an accountant in this bank if he was drawing less than Rs. 500 per mensem was a workman. The third document is the manual of instructions which give the duties and responsibilities of accountants. It is urged on behalf of the respondents in view of these three documents it is clear that so far at any rate as accountants are concerned it is settled between the parties that they are workmen, even though they may be holding the grade of C rank officer.

8. It seems to us clear from this documentary evidence that accountants in this bank are merely supervisory staff and this bank workmen so long as they are drawing wages up to Rs. 500 per mensem. But it is urged on behalf of the appellant that all C rank officers are not accountants and many of them hold other posts in the bank. Unfortunately again there is no evidence as to what other posts are held by C rank officers, for the attention of the parties was not directed to this aspect of the matter. It is also not clear whether C rank officers holding posts other than accountants are employed mainly in a managerial or administrative capacity. In this connexion our attention is drawn to the circular of April 1962 where it was stated that all officers including C rank officers would have managerial and administrative powers and functions to the extent necessary for the proper discharge of their duties. This general statement, in our

opinion, is not enough to clothe all C rank officers with mainly managerial or administrative duties. Before a C rank officer can be taken out of the category of workmen, it must be shown that he is employed in fact and in substance mainly in a managerial or administrative capacity and for that there is no evidence on the record. Further the question becomes complicated because of another circular issued by the appellant on 19 April 1964, shortly before the reference was made. In this circular three classes of officers were created, namely :

- (i) junior officers who were said to be equal to the existing C rank officers,
  
- (ii) assistant senior officers who were said to be equal to the existing B rank officers, and
  
- (iii) senior officers who were said to be equal to the existing A rank officers.

9. The circular also stated that there would be no category of accountants in future. The circular further mentioned sub-accountants who would not be officers and would be treated as workmen covered by the National Industrial Tribunal (Bank Disputes) award of June, 1962 (popularly known as the Desai award). In this state of evidence we at one time thought that the case might be remanded to the tribunal for the purposes of determining whether C rank officers are mainly employed in a managerial or administrative capacity in this bank. But we eventually decided not to take this course, because there was no doubt that there are C rank officers who are working as accountants in the appellant-bank; and so far as these are concerned, there can be no doubt that they are workmen in view of the documentary evidence to which we have referred so long as they are drawing wages up to Rs. 500 per mensem. We have therefore come to the conclusion that the tribunal was right in holding that C rank officers whose duties are the same as of accountants and who are drawing wages up to Rs. 500 per mensem are workmen, and in their case the appellant was not justified in imposing the condition to the effect that on promotion as a probationary C rank officer they must agree to be governed by the rules of the bank. In this view of the matter the award of the tribunal would have to be varied and the first term of reference answered thus :

10. The appellant-bank is not justified in imposing the condition that only such of the workmen would be considered for appointment as C rank officers who agree to be governed by the rules of the bank as applicable to such officers in respect of the terms and conditions of their service in so far as C rank officers come within the definition of the work "workman" under S.2(s) of the Act having regard to the nature of their duties. Only such C rank officers as are employed in fact and in substance mainly in a managerial or administrative capacity or such of them as are employed in a supervisory capacity, drawing wages exceeding Rs. 500 per mensem or exercising either by the nature of their duties attached to the office or by reason of the powers vested in them functions mainly of a managerial nature, can be governed by the rules of the bank applicable to them in respect of the terms and conditions of their service. We further order that where workmen have been overlooked because of their refusal to accept the condition imposed by the bank, their cases will be reconsidered for promotion as C rank officers where such officers continue to be workmen in view of the nature of duties they have to perform as C rank officers. The award of the tribunal with respect to the first term of reference is modified accordingly.

11. This brings us to the second term of reference. It appears that in addition to the probationary period the bank has imposed on workmen promoted as C rank officers, even though as C rank officers they continue to be workmen, a period of twelve months training during which they are called officer-trainees. We are of opinion that in the case of promotion from a workman to a C rank officer where such an officer is a workman, there is no justification for a further period of training in addition to the probationary period as C rank officer. It is not disputed on behalf of the respondents that even in the case of promotion of a workman as C rank officer where such officer continues to remain as workman, the bank would be justified in imposing a period of probation. We agree with the tribunal that there is no justification for the further imposition of a period of training of twelve months. But we do not agree with the tribunal that there should be no period of probation for members of supervisory staff who are promoted as C rank officers. A period of probation on such promotion for all staff appears to us to be not unjustified, and in view of the respondents' concession before us that a period of probation is justified, this part of the award of the tribunal will have to be set aside. In the view we have taken, the award of the tribunal in so far as the second term of reference is concerned, will have to be varied and the term answered thus :

(i) Where a workman is promoted as a C rank officer, provided as such officer he continues to be a workman, there shall be no period of training at all.

(ii) Where a workman including a member of a supervisory staff is promoted as a C rank office, provided as much officer be continues to be a workman, the appellant-bank may impose a reasonable period of probation.

12. The appeal is partly allowed in the manner indicated above. There will be no order as to costs in the circumstances.