

The State Bank of Bikaner and Jaipur

Vs

Shri Hari Har Nath Bhargava

Civil Appeal No. 1923 of 1966

(G.K. Mitter, C.A. Vaidialingam, P. Jagmohan Reddy JJ)

11.08.1971

JUDGMENT

MITTER, J. -

1. This appeal by special leave is from an order of the Central Government Labour Court, Rajasthan, passed on February 14, 1966, on an application under Section 33-C(2) of the Industrial Disputes Act filed by the respondent, Hari Har Nath Bhargava, holding that the latter was entitled to supervisory allowance under Paragraph 164(b)(9) of the Sastry Award even for the period when the latter was not actually performing supervisory duties.

2. The facts in this case may be shortly stated. The respondent was appointed a clerk by the State Bank of Jaipur in 1949. He was transferred to Kota in the year 1952. He was entrusted with supervisory work from April 6, 1954. The bank executed a power-of-attorney in his favour on May 31, 1954, in pursuance of a resolution of its Board of Directors passed on May 20, 1954. He was transferred from Kota to Jaipur on July 12, 1955. On December 27, 1955 he was posted at Sikar where he had to perform supervisory duties. On January 1, 1956 he was promoted to the cadre of junior officers of the bank.

3. On March 31, 1964, the respondent filed an application before the Central Government Labour Court, Rajasthan under Section 33-C(2) praying for computation of special allowance under what is known as the Sastry Award on the ground that he had been discharging supervisory duties from April 6, 1954 to January 1, 1956. By this time the Bank of Jaipur had amalgamated with the Bank of Bikaner and the amalgamated bank, the appellant before us, came to be known as the State Bank of Bikaner and Jaipur. The execution of the power of attorney, dated May 29, 1954, was admitted but the appellant denied "that the duties entrusted to the respondent constituted performance by him of any supervisory nature of work". A point was also taken that although no period of limitation is laid down by any statute with regard to applications under Section 33-C of the Act the respondent's claim being a stale one should not be entertained.

4. The appellant amended its written statement in 1965 wherein it was stated that the respondent was only required to perform the functions enumerated in the power of attorney as and when so directed by the bank. As a matter of fact, he had been entrusted with supervisory duties from April 6, 1954 to July 12, 1955 and thereafter from December 27, 1955 to January 6, 1956.

5. The respondent was examined before the Labour Court where he said that he was "the second signature at Kota during the period, April 1954 to middle of July 1955". At the Jaipur branch where he was transferred, there were many signatories above him, while at Sikar there was only another

such signatory and he was the second officer. Obviously what he meant by the word "signatory" was a person authorised by the bank to discharge the functions covered by the power of attorney.

6. The relevant portion of the said power of attorney read :

"The Bank do hereby nominate, constitute and appoint Shree Hari Har Nath Bhargava in the service of the said bank at Kota to be the true and lawful attorney of the said bank at its registered office at Jaipur aforesaid or at any other place or places in India where the said bank may have or establish branches or agencies and to which he may from time to time or at any time be appointed by the said bank as Branch Manager, Agent, Sub-Agent, Account, or in any capacity whatever for and in the name of and on behalf of the said bank to do, transact jointly with Secretary, Manager, Sub-Manager etc., the matters and things mentioned thereafter."

The matters included the endorsement of "hundies, drafts, cheques, warrants, railway receipts, pension bills and other negotiable and mercantile instruments and to commence, prosecute, enforce, defend, answer and oppose any suit or other legal proceedings and demands touching any matters in which the bank was or may thereafter be interested or concerned".

7. It is worthy of note that after the execution of the power of attorney the respondent was empowered to discharge functions which could only be described as supervisory in nature and unless there was a command or direction that he should not Act thereon or unless the power of attorney was cancelled his authority to act in a supervisory capacity would continue in force.

8. The Sastry Award is not on record in expense but Paragraph 154 thereof quoted by the Labour Court shows that certain categories of employees were to be considered as fit for special allowances. These included inter alia stenographers, cashiers (other than routine clerks), supervisors, clerks-in-charge, departmental-in-charges and head clerks. The award noted that although scales of basic pay and dearness allowance for clerical and subordinate staffs had been laid down for doing ordinary duties, there were certain posts even in these grades for which an incumbent required special qualifications or skill for the efficient discharge of the duties assigned and as extra payment in such cases was necessary by way of recognition of and compensation for the skill or responsibility. The award further noted that :

"Having regard to the numerous banks of varying sizes and resources, it is not possible to have one general pattern of allowances for such special types of work. It is neither easy nor desirable to bring them all into one fairly general rule regardless of the bank's past practice or present capacity."

Paragraph 162 of the award shows that there were three ways in which this extra payment might be provided for :

- (1) The employee might be given additional increments in the same scale.
- (2) He might be paid a lumpsum allowance in addition to his other emoluments. This was said to have the advantage of carrying a man even beyond the usual maximum limit.
- (3) He might be given a higher scale leading up to a higher maximum.

According to the award it was on the whole better to adopt either the first or the second method or

sometimes even a combination of both.

9. According to the Labour Court the underlying idea behind the said award was that when one general scale for clerical service had been provided in the award, it was thought just and proper that persons with special qualifications or skill required for discharging work carrying with it greater responsibility than the usual work should definitely get higher emoluments than the ordinary workmen. The Labour Court said that "this did not mean that the person of the same qualifications and skill who had been granted the powers of attorney by the bank should be allowed special allowance only for any particular period unless a man was temporarily appointed to do supervisory work". In the result, the Labour Court allowed the respondent supervisory allowance at Rs. 40/- p.m. with effect from April 6, 1954 to December 31, 1955 with consequential benefits.

10. It is to noted however that although a point had been taken in the written statement of the bank about the delay in the filing of the application under Section 33-C it had not been pressed before the Labour Court.

11. Mr. Sanghi appearing for the appellant was prepared to concede that so far as the periods April 6, 1954 to July 12, 1955 and December 27, 1955 to December 31, 1955 were concerned he was not contesting the claim. But in so far as the period July 13, 1955 to December 27, 1955 was concerned, his client was pressing the appeal as a matter of principle as this would constitute a test case by which other similar cases might fall to be decided.

12. This Court had to deal with a case where an identical question arose. In *State Bank of Hyderabad v. V. A. Bhide*, (1969-2 LLJ 713) this Court had to consider the claims of the respondents in that appeal for payment of special allowance granted to supervisors under what were known as the Sastry and Desai awards. It was there contended on behalf of the appellant bank that in order to claim the supervisory allowance the parties must establish that the main or essential duties entrusted to them and actually discharged by them were duties and functions of a supervisory nature. This Court considered the Sastry and Desai award and observed (at p. 727) :

"..... before a person can claim the supervisory special allowance, he must establish that he was discharged the duties and functions which are similar to or the same as the duties or functions assigned to supervisors coming under category 9. This decision in *Lloyds Bank Ltd. v. Panna Lal Gupta and Others* (1961-1 LLJ 18) also makes it clear that in deciding the status of an employee claiming the special allowance, the designation of the employee is not decisive and what determines the status is a consideration of the nature of the duties and functions assigned to the employees concerned" :

In our view the payment of a special allowance is called for the when an employees discharges duties of supervisory nature or is accorded the status of a person competent to discharge functions of a supervisory character. If no power of attorney is executed as in this case but in fact the employee is asked to render services of a supervisory character and the employee does such work at the request of the bank, he becomes entitled to the allowance. Once however a power of attorney giving the wide powers of agency as was done in this case executed, it should be held that the management had placed him in a category of persons with responsibility and the employee was to discharge the responsibility without any further request in that behalf. It may be that the giving of power of attorney was necessitated by the fact that at Kota there was only one officer besides the respondent who could discharge duties like endorsing hundies, drafts etc. and it became necessary for the bank

to have a second officer who could carry on this kind of work. But the power of attorney does not show that the bank thought it necessary to clothe the respondent with the said powers only for discharging his duties when he was at Kota. The power of attorney was operative at any branch of the bank irrespective of the capacity which might be occupied by the respondent at a particular point of time. It may be that at Jaipur there was a number of officers superior to the respondent who were empowered to discharge duties mentioned in the power of attorney but this does not necessarily lead to the inference that the respondent lost his responsibility or was denuded of the powers while he was at Jaipur. If he discharged any of the duties mentioned in the power of attorney the same would be lawful and would be binding on the bank. The fact that he was not actually called upon to discharge such functions did not take away from his responsibility or status of a person competent to discharge functions of a supervisory character and we see no reason why he should be deprived of supervisory allowance unless the bank gave him notice that he was not to act on the power of attorney while at Jaipur. We, therefore, hold that the Labour Court had come to the correct conclusion.

13. Mr. Sanghi tried to urge the point that the Labour Court should not have entertained the application as being inordinately belated and that even though the Labour Court did not adjudicate on this point it was open to the bank to urge it before us. We made it clear that we were not going to entertain this plea in view of the fact that although the point had been taken in the written statement of the bank, it was not agitated before the Labour Court and further was not taken even in the special leave petition.

14. In the result, the appeal is dismissed. The order for costs made at the time of the grant of the special leave will stand.

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