

The Punjab Co-Operative Bank Limited.

Vs

R. S. Bhatia (Dead) through L. Rs.

Civil Appeal No. 1736 (NL) of 1969

(A. Alagiriswami, P. K. Goswami, N. L. Untawalia JJ)

13.08.1975

JUDGMENT

UNTWALIA, J. -

1. This is an appeal by special leave directed from the order dated 1-4-1969 of the Central Government labour Court, Delhi passed under Section 33C(2) of the Industrial Disputes Act, 1947 (for brevity - the Act). The workman concerned was Shri R. S. Bhatia who died during the pendency of the appeal in this Court. His legal representatives were substituted as respondents in his place. But hereinafter in this judgment by the respondent would be meant Shri R. S. Bhatia who was the original respondent and the appellant under Section 33C(2).
2. The claim of the respondent was that he was employed in service of the appellant in the year 1928 and was promoted as an accountant in the year 1938 on which post he worked upto 8-10-1958. On and from 9-10-1958 he was given the additional duty as officiating manager on temporary basis in the Delhi Branch of the appellant bank. He was suspended on the 4th April, 1961 and was dismissed from service on 22nd June, 1961. He filed an application under Section 33A of the Act challenging the order of his dismissal. The respondent's said application was registered as I. D. No. 66/1962. Shri Anand Narayan Kaul, Presiding Officer of the Labour Court, Delhi by his order dated the 23rd July, 1966 held in that case the respondent who was applicant under Section 33A of the Act was a workman. The appellant's contention in that behalf was not accepted. Eventually, however, the complaint under Section 33A was dismissed on 24th July, 1969 on merits.
3. The respondent in his application under Section 33C(2) of the Act claimed that under the Shastry Award which was published by the Government of India on the 26th March 1953 he was entitled to some benefits which the appellant failed to pay. A statement of claim computed in terms of money was attached as Annexure A to the application. The claim made by the respondent was for the period 1954 to 1961 and the application under Section 33C(2) was filed on the 10th July, 1968. The total claim made in the application was to the tune of Rs. 10,237.64.
4. The appellant resisted the claim of the respondent on several grounds. The Labour Court rejected the pleas set up by the appellant, allowed the application in part and computed the benefits from 1-4-1954 to 8-10-1958 at Rs. 5,676.22, and adding to that a sum of Rs. 347.61, certain amount for the period of the respondent's suspension in accordance with para 557 of the Shastry Award, finally determined the amount payable to the respondent at Rs. 6,023.83. The appellant has preferred this appeal in that Court by special leave. Its learned counsel has pressed for our consideration only three points in support of the appeal. None of the points has got any substance. We shall state the point one by one and give our reasons very briefly for rejection.

5. The first point urged on behalf of the appellant is that the respondent was not a workman within the meaning of the Act and that the Labour Court committed an error in saying that there was no evidence led on this issue and resting its judgment on the principles of res judicata on the basis of the decision of Shri Kaul in I.D. No. 66/1962. In our opinion the Labour Court rightly applied the principles of res judicata to the issue whether the respondent was a workman or within the meaning of the Act. The same parties in I.D. 69/1962 joined issue on the aforesaid question. A decision given by the competent Labour Court in that regard has rightly been held as a bar on the principles of res judicata in the trial the same issue in the present proceeding. Moreover, we find that even apart from the previous order operating as res judicata, practically there was no evidence on behalf of the appellant in support of its case that the respondent was not a workman. The only evidence of MW 1 was that in his capacity as an Accountant the respondent used to sign the salary bills of the staff including himself. But then he further stated that these bills used to be submitted to the Head Office of the Bank. The accountant is supposed to sign the salary bills of the staff even while performing the duties of a clerk. That did not make the respondent "employed mainly in a managerial or administrative capacity", within the meaning of sub-clause (iii) of the clause (s) of Section 2 of the Act. The witness further stated that during the period of his accountancy as well as the managership (meaning thereby the officiating managership) the respondent conducted himself as an officer and the Bank authorities also treated him as such. There was no proper records produced to show any entrustment of managerial or administrative duty to the respondent while he was working as a mere Accountant. In *South Indian Bank Ltd. v. A. R. Chacko* ((1964) 5 SCR 625 : AIR 1964 SC 1522 : (1964) 1 LLJ 19) it has been pointed out at page 631 and 632 that there are Accountant in Banks who are really officers and there are other types of Accountants who are merely senior clerks with supervisory duties. The respondent was merely a senior clerk doing mainly clerical duties and had no duty assigned to him of a managerial or administrative nature. It may further be added that relying upon the order of Shri Kaul the Labour Court held in the present proceeding that the respondent was an officiating Manager and hence not a workman from 9-10-1958 to 4-4-1961. The Claim for that period has been disallowed in that ground alone.

6. The second plea on behalf of the appellant that the claim of the respondent under Section 33C(2) of the Act was barred by limitation or was not fit to be entertained on the ground of undue delay or laches on the part of respondent No. 1 has rightly been rejected by the Labour Court following the decision of this Court in *Bombay Gas Co. Ltd., v. Gopal Bhiva* ((1964) 3 SCR 709 : AIR 1964 SC 752 : (1963) 2 LLJ 608) and *East India Coal Company Ltd. (by Chief Mining Engineer), Bararee Colliery, Dhanbad v. Rameshwar* (1968) 1 LLJ 6).

7. The third submission made on behalf of the appellant that the claim ought to have been entertained by the Government under Section 33C(1) of the Act and it was not maintainable under sub-section (2) is stated merely to be rejected. It is completely devoid of substance. In the case of *Fast India Coal Company* (supra) it has been said at page 9 column 2 :

The fact that the words of limitation. The used in Section 20(2) of the Industrial Disputes (Appellate Tribunal) Act, 1950 are omitted in Section 33C(2) shows that the scope of Section 33C(2) is wider than that of Section 33C(1). Therefore, whereas sub-section (1) is confined to claims arising under an award or settlement or Chapter V-A, claims which can be entertained under sub-section (2) are not so confined to those under an award, settlement or Chapter V-A.

The argument put forward on behalf of the appellant against a principle which is firmly established and beyond any doubt or dispute appeared to us as argument in

desperation.

8. For the reasons stated above, we find no merit in this appeal. It is accordingly dismissed with costs.

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