

Patiala Central Cooperative Bank Ltd.

Vs

Patiala Central Cooperative Bank Employees' Union and Another

Civil Appeals No. 4390 of 1988 With Nos. 4074 to 4076 of 1988

(S. B. Majmudar, S. C. Sen, B. P. Jeevan Reddy JJ)

16.09.1996

JUDGMENT

B. P. JEEVAN REDDY, J. - (concurring) –

1. I respectfully agree with the conclusions arrived at by my learned brother Sen, J.
2. So far as the validity of Section 84-B of the Punjab Cooperative Societies Act, 1961 is concerned, it is enough to say that once the settlement between the parties was held to have been validly terminated by the management, there was no occasion for the High Court to have considered the validity of the said section and/or to have declared it void. The judgment of the High Court declaring Section 84-B as void and illegal is accordingly set aside herewith.
3. Accordingly, I agree with the final orders proposed by learned brothers Sen and Majmudar, JJ.

SEN, J. –

The Patiala Central Cooperative Bank Ltd., the appellant herein, is a Cooperative Bank registered under the provisions of Punjab Cooperative Societies Act, 1961 (25 of 1961). The Patiala Central Cooperative Bank Employees' Union, Respondent 1 herein, is a Union of the employees of the appellant-Bank working at various places in different branches of the Bank. On 13-11-1972, the Union submitted a charter of demands culminating in an agreement between the Bank and the Union of 28-5-1973. This agreement was to be in force up to 31-3-1977.

5. The agreement reached on 28-5-1973 provided for a number of things like fixation of pay scales after classifying the various categories of staff. It also provided for fixation formula providing for pay rise in the revised pay scales. There was also a provision for payment of dearness allowance, travel allowance, house rent allowance, city compensatory allowance and various other allowances. Provisions have been made for cycle and car allowance, children allowance and special allowances, if any. Provisions were also made for uniforms, provident fund, gratuity, overtime allowance and also fixation of strength the rules providing quota for promotion to various posts in the future. The agreement also provided for loans to be given for purchase of scooter/motor cycle/cycle up to ceiling of Rs 15,000 for Central Cooperative Banks and Rs 30,000 for Apex Cooperative Banks per annum. The agreement concluded with general conditions which were as under :

"GENERAL CONDITIONS

- (i) The existing facilities given to employees of the Punjab State Cooperative Bank

may continue.

(ii) This settlement will remain in force for a period of four years, i.e. up to 31-3-1977.

(iii) A copy of this settlement may be sent to the Labour Commissioner, Punjab for necessary confirmation.

(iv) Anomalies, if any, shall be discussed in the joint meeting of the signatories."

6. In order to appreciate the argument advanced in this case, it is necessary to set out the pay scales and the provisions relating to dearness allowance as agreed upon in the settlement :

#-----Category of Present grades
Revised Revised grades Staff after merger grades after merger of of grades DP DP
w.e.f. 1-2-1968-----a.
Subordinate StaffPeons and 75-140 75-165 122-5-162-6Chowkidars in 216-7-258all
the CBsDaftri 95-160 100-170 147-6-195-7 230-8-270Drivers 120-170 120-170 190-
7-267-8 (sic)b. Clerical StaffJr. ClerksA Class Banks 140-315 150-350 240-10-300-
425-15-470B Class Banks 130-270 140-315 210-10-300-400-15-430C Class Banks
115-265 140-315Senior ClerksA Class Banks 170-360 190-385 280-12 1/2-380-16-
485-20-505B Class Banks 155-335 } 170-360 260-10-280-12 1/2-380-15-485C Class
Banks 140-315 }c. Supervisory StaffJunior 245-480 245-510 365-15-490-20-590-25-
640AccountantJunior Accountant 220-420 } 245-480 365-12 1/2-380-15-500-20-
620B Class Banks 190-380 }-----
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7. Regarding the staff in the common cadre also, new grades will be framed after merging DP, in their present pays. The new grades will be as under :

#Senior Accountants 275-530 385-15-480-20-590-25-665Assistant Managers 375-
690 485-20-525-25-725-30-815Managers 475-930 595-30-745-35-955-40-1075##

Fixation Formula

8. All employees may be given a pay rise of 5% of their pay in the revised scales mentioned above and may be fixed at the next higher stages after adding 5% to their present basic pay including dearness pay. In the case of subordinate staff, however, one additional increment may also be given over and above the above-mentioned benefits.

Dearness Allowance

9. As mentioned above, the DP is to be merged in the revised grades. The DA and interim relief which the employees are getting at present will together form the DA. This DA may be linked with the All India Consumers Price Index Number (Base Year 1960 : 100) in such a way that any further rise in the Index Number may be reflected to DA to the extent of 100% in the case of subordinate staff and 75% in case of the other staff. No additional DA will be made unless the Index Number increases by at least four points (quarterly average).

10. The rate of DA being paid at present will be converted into percentage rates mentioned below

for various categories of staff. This percentage has been worked out on the basis of the current DA plus relief, rates, rounded off in such a way that the rate can be divided by four in the case of subordinate staff and by three in the case of others :

#Category of Staff Percentage rate of DA
Peons and Chowkidars 56
Drivers 40
Daftri 44
Clerk 33
Senior Clerk I 27
Senior Clerk II 30
Junior Accountants and Senior Accountants 24
Assistant Managers and Managers 18###

11. It is certified that any increase/decrease in the Index Number after 31-3-1973 shall be added/reduced in the percentage rate mentioned above at the rate of 100% in the case of subordinate staff and 75% in the case of others.

TA and DA

12. TA and DA rules as applicable at present to common cadre employees be applied to all the employees.

13. This was a comprehensive agreement reached between the Employees' Union and the management. It is not an agreement relating to payment of dearness allowance only. The agreement was valid for a period of four years and came to an end on 31-3-1977. After the agreement came to an end, disputes and differences cropped up between the employees and the management inter alia about the payment of dearness allowance in terms of the aforesaid agreement. The case of the employees is that the agreement cannot be repudiated unilaterally even though the period of four years mentioned in the agreement expired on 31-3-1977. It has been contended that the agreement will continue to be binding even after the expiry of the period mentioned in the agreement expired on 31-3-1977, by virtue of the provisions of sub-section (2) of Section 19 of the Industrial Disputes Act, 1947. Section 19 lays down that a settlement shall come into operation on such date as is agreed upon by the parties to the dispute, and if no date is agreed upon, on the date on which the memorandum of the settlement is signed by the parties to the dispute. Sub-section (2) of Section 19 provides that if any settlement has been reached between the workers and the management, that shall be binding not only for the agreed period, but also shall continue to be binding on the parties after the expiry of the period mentioned in the agreement "until the expiry of two months from the date on which a notice in writing of an intention to terminate the settlement is given by one of the parties to the other party or parties to the settlement".

14. The case of the employees is that no such notice was given, and, therefore, the agreement continues to be in force and binding upon the management. The duty to pay dearness allowance at the rate specified in the agreement cannot be avoided by the management by any device.

15. It has been further contended that Section 84-B, which was introduced in the Punjab Cooperative Societies Act, 1961 by which it was laid down that "no employee of a cooperative society shall be paid dearness allowance at a rate higher than that admissible to the employees of the Government drawing pay at the same rate", cannot in any way abrogate an agreement protected by the provisions of the Industrial Disputes Act.

16. On behalf of the employees, a writ petition was filed in the High Court under Article 226 challenging the validity of Section 84-B. The case of the employees is that by virtue of Section 19 of the Industrial Disputes Act, the agreement between the management and the employees cannot be altered except in the manner laid down in the Act. Such agreements have been given statutory force

and they cannot be altered by the management on its own without following the procedure of law. Similarly, the State Government cannot give any directions as to the manner of working out of the agreement or abridge or modify the contents of the agreement in any manner whatever. Industrial Disputes Act being a special Act relating to industrial disputes and, in particular, about the relationship between the management and the employees, the agreement reached under that Act cannot be varied or abrogated by the management unilaterally. It was further contended that the Punjab Cooperative Societies Act, 1961 is a general Act relating to cooperative societies and it cannot curtail or control the specific provisions of Industrial Disputes Act which is a special Act, in any manner whatever.

17. It was held by the Division Bench of the Punjab High Court that Section 84-B of the Punjab Cooperative Societies Act, 1961, which was introduced by the Amending Act of 1981, could not take away the effect of the settlement dated 28-5-1973 which was subsisting and binding on the date the amending Act came into force. Section 84-B of the Punjab Cooperative Societies Act was violative of the provisions of Section 19 of the Industrial Disputes Act, 1947. It was further held by the High Court that change in condition of service of the employees could not be made in respect of any of the matters mentioned in the Fourth Schedule, without giving a prior notice in the manner prescribed by Section 19(2) of the Act. It was held that unilateral withdrawal of the city compensatory allowance by the employer of the workmen affected their conditions of service and attracted mandatory provisions of Section 9-A. On the same analogy, unilateral withdrawal of dearness pay from the workmen affected the condition of service of Class III and Class IV employees of the Cooperative Banks. Since the provisions of Section 9-A of the Industrial Disputes Act, 1947 had not been complied with, the changes brought about in the service conditions of the employees were of no consequence. It was, therefore, held that the respondents would continue to be benefited by the terms of the settlement dated 28-5-1973 as before. Section 84-B of the Punjab Cooperative Societies Act 1961 was held to be ultra vires of the State Legislature of Punjab and quashed. It was further held that the settlement dated 28-5-1973 would continue to be valid and binding between the parties and Class III and Class IV employees of the Cooperative Banks were held entitled to claim dearness pay in terms of the aforesaid settlement.

18. On behalf of the appellant, it has been contended that an important factual aspect has been totally ignored by the High Court in this case. It was contended on behalf of the appellant before the High Court that a notice under Section 19(2) of the Industrial Disputes Act (p. 4 of the writ petition) was duly issued by the appellant and served upon the employees. The High Court has failed to deal with this aspect of the case altogether. It has been stated in paragraph 2 of the special leave petition that it was specifically stipulated in the agreement that the agreement was valid for a period of four years and would cease to be effective after the expiry of 31-3-1977. As there was non Board of Directors and the administration was being run by the Administrator, as per provisions of Section 27 of the Punjab Cooperative Societies Act, the for terminating the agreement dated 28-5-1973 which had expired on 31-3-1977. The notice was issued on 25-2-1978. It has been alleged after this that the Board of Directors of the Bank had ratified the notice by Resolution No. 7 at its meeting held on 9-4-1978.

19. In the counter-affidavit filed on behalf of the Employees' Union, affirmed by Malinderjit Singh, General Secretary of the Employees' Union, it has been stated that since the facts of the case as pleaded in the special leave petition are not disputed and the whole matter relates to pure questions of law for decision, it is not necessary for the deponent to answer parawise the petition. In view of the submissions made above and the two decisions of this Hon'ble Court referred to in the affidavit, the appeals may be dismissed with costs.

20. In other words, the fact that notice was given on 25-2-1978 terminating the agreement dated 28-5-1973 is not in dispute.

21. However, the case need not be decided on the technicality of the pleadings only. After expiration of the term of the agreement dated 28-5-1973 on 31-3-1977, the agreement has not been continued unaltered. If the legal contention on behalf of the petitioner is upheld and if it be held that the agreement dated 28-5-1973 is still continuing by virtue of the provisions of sub-section (2) of Section 19, then the entire agreement including the clause relating to the dearness allowance will have to be treated as till in force. The pay scales and other terms and conditions relating to employment have been drastically revised upwards after the expiration of the agreement dated 28-5-1973. From the chart of salaries, furnished by the appellants, it appears that the pay scales have been revised upward in the following manner :

#-----	-----	Category of Position as on
Position as on	Position as on	Post 4-6-1981 1-10-1981 1-1-1986-----
-----	-----	Rs Rs Rs PEON 525.32 605.84 1144.60JR.
CLERK 820.95 917.30 1838.34SR.	CLERK 943.68 1109.32 2117.69-----	-----
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NOTE. - No minimum benefit and interim relief has been included while fixing pay as on 1-10-1981 and 1-1-1986.

22. There is some dispute as to the exact quantum of the enhancement but there is no dispute that the salaries payable under the agreement dated 28-5-1973 have been drastically revised upwards at all levels thereafter.

23. Another point that has been made on behalf of the appellants which is of substance is that in fixing pay of the Bank employees consequent upon the revision of pay scales, the same formula which was applied for fixation of pay scales of Punjab Government employees has been adopted. The Bank employees have been given the benefits of proficiency step-up, master scales and stepping up of pay of senior equivalent to the junior as followed by the Punjab Government to its employees. All these changes have brought about substantial benefits to the employees of the Bank. In the background of these facts, the employees cannot claim dearness allowance in terms of the agreement dated 28-5-1973. That agreement has been given up for much better terms and conditions and also subsequent revision of pay. The employees cannot be heard to say that they will enjoy all the subsequent benefits given by the revision of pay scales, but dearness allowance must be given in accordance with the formula contained in the agreement dated 28-5-1973. It is not the case of the employees that the agreement dated 28-5-1973 will have to be enforced in full.

24. There is some dispute as to the exact amount of the benefit conferred by the various in pay scales but there is no dispute that the pay scales and other benefits now given are much better and higher than what was given by the agreement dated 28-5-1973. No one wants to go back to that agreement so far as the pay scales are concerned. I fail to see how in the context of these facts, the employees can urge that dearness allowance formula of that agreement must remain intact but at the same time the drastic changes in every other part of the agreement dated 28-5-1973 will continue in force for the benefit of the employees.

25. In view of the aforesaid, it is unnecessary to go into other questions raised in this case. But since the question of validity and scope of Section 84-B of the Punjab Cooperative Societies Act, 1961

has been raised that question will have to be examined. Section 84-B was inserted by Amendment Act 26 of 1981. The section is as under :

"84-B. Dearness Allowance. - Notwithstanding anything contained in this Act or any other law for the time being in force, or any agreement, settlement or award, no employee of a cooperative society shall be paid dearness allowance at a rate higher than that admissible to the employees of the Government drawing pay at the same rate."

26. This section places a bar on payment of dearness allowance at a rate higher than the rate admissible to the employees of the Government drawing the same pay. This provision will apply to all the employees of all the cooperative societies in the State of Punjab. This provision has been specifically made applicable notwithstanding, inter alia, any other law for the time being in force or any agreement, settlement or award.

27. Prima facie, there is no reason to hold that this provision will not apply to the agreement dated 28-5-1973 assuming that that agreement was still in force on the date Section 84-B was introduced in the statute. It has been contended that Industrial Disputes Act is a complete code relating to industrial disputes and, therefore, by the general provisions of the Punjab Cooperative Societies Act, 1961, the applicability and scope of the provisions of Industrial Disputes Act cannot be whittled down.

28. I am unable to uphold this contention because sub-section (2) of Section 19 of the Industrial Disputes Act merely provides that even if the period of the agreement has expired, the terms of the agreement will continue to be in force unless determined in the manner laid down in sub-section (2) of Section 19. It does not have the effect of invalidating any legislation altering the terms of the agreement after the period of agreement comes to an end. The agreement provided for payment of dearness allowance higher than what was provided by the Government to its employees. Section 84-B specifically stated that in spite of any statutory provision to the contrary, or any agreement, dearness allowance can only be paid up to the rate fixed by the Government for corresponding pay of the government servants.

29. There is nothing in the wording of Section 19 of the Industrial Disputes Act which supports this contention of the employees. Section 19 reads as under :

"19. Period of operation of settlements and awards. - (1) A settlement shall come into operation on such date as is agreed upon by the parties to the dispute, and if no date is agreed upon, on the date on which the memorandum of the settlement is signed by the parties to the dispute.

(2) Such settlement shall be binding for such period as is agreed upon by the parties, and if no such period is agreed upon, for a period of six months from the date on which the memorandum of settlement is signed by the parties to the dispute, and shall continue to be binding on the parties after the expiry of the period aforesaid, until the expiry of two months from the date on which a notice in writing of an intention to terminate the settlement is given by one of the parties to the other party on parties to the settlement."

30. 'Settlement' has been defined in Section 2(p) as under :

"2. (p) 'settlement' means a settlement arrived at in the course of conciliation proceeding and includes a written agreement between the employer and workmen arrived at otherwise than in the course of conciliation proceeding where such agreement has been signed by the parties thereto in such manner as may be prescribed and a copy thereof has been sent to an officer authorised in this behalf by the appropriate Government and the conciliation officer."

31. A written agreement between the employer and workmen may constitute a settlement in the circumstances mentioned in Section 2(p). But Section 19 lays down that such agreement shall come into operation on the agreed date between the parties to the settlement or if the date is not agreed upon, on the date on which the settlement is signed by the parties. That is the starting point. Sub-section (2) provides for the period during which the settlement will be in force. It shall be binding during the period agreed upon by the parties. If no such period is agreed upon, then the settlement will be valid for a period of six months from the date on which the settlement was signed by the parties and shall continue to be binding after the expiry of the aforesaid period. The settlement can be brought to an end by serving a notice in writing by one of the parties to the other party of its intention to terminate the settlement. If such a notice is given, the settlement will remain in force for two months from the date on which the notice of termination is given.

32. The provisions of Section 19(2) made an agreement between the employers and the employees binding. It also lays down the period during which it shall be binding. It also provides the manner in which the agreement can be terminated inter parties. It does not follow from this provision that a competent legislature cannot legislate on any matter which forms part of the agreement. Nor does Section 19 have the effect of validating any infirmity in the agreement. If the agreement is contrary to any law or if the agreement cannot be implemented without violating any provision of law, then the agreement cannot be enforced at all. There is nothing in sub-section (2) of Section 19 to suggest that even such an agreement will continue to be binding upon the employers and the employees and enforceable against express provision of law. If after the agreement has been entered into, any law is passed and the agreement cannot be enforced without violating that law, then clearly the agreement cannot be enforced. The law will prevail.

33. Sub-section (2) of Section 19 merely extends the period during which the agreement will be enforced, but it does not provide that the agreement will be valid and binding notwithstanding any law to the contrary.

34. For all these reasons, this appeal is allowed. The order under appeal is set aside. There will be no order as to costs.

Civil Appeal No. 4074 of 1988 and Civil Appeals Nos. 4075-4076 of 1988

35. In view of the judgment in Civil Appeal No. 4390 of 1988, the above appeals are also allowed. There will be no order as to costs.

S.B. MAJMUDAR, J. (concurring) –

I have gone through the judgment prepared by my esteemed learned brother Sen, J. I am in entire agreement with the finding reached by learned brother Sen. J., that the agreement governed by the provisions of Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act') dated 28-5-1973 which had a life of four years, expired on 31-3-1977 and thereafter even though its effects continued

as per Section 19 sub-section (2) of the Act and were binding on the parties, the entire agreement including the clause relating to dearness allowance was terminated by one of the parties to the agreement, namely, the Central Cooperative Bank when the Administrator appointed under Section 28 of the Punjab Cooperative Societies Act, 1961 issued a notice dated 25-2-1978 under Section 19(2) of the Act for terminating the said agreement and when the said termination was ratified by the Directors of the Bank by Resolution No. 7 at the meeting of the Board of Directors held on 9-4-1978. Consequently that agreement ceased to operate thereafter. I also respectfully agree with the finding of my learned brother that this aspect of the case was not disputed on behalf of the Employees' Union in the counter-affidavit affirmed by Maninderjit Singh, Joint Secretary of the Employees' Union and consequently the fact that notice was given on 25-2-1978 terminating the agreement dated 28-5-1973 is not in dispute.

37. However on the aforesaid finding reached by my learned brother on the facts of this case and to which I respectfully agree, in my view, no further question survives for consideration in the present litigation between the parties name, whether Section 84-B of the Punjab Cooperative Societies Act, 1961 inserted by the Punjab Legislature by amending Act 26 of 1981 was repugnant to the provisions of Sections 9-A and 19(2) of the Industrial Disputes Act which was a Central Legislation. The High Court has taken the view, ignoring the factual position that the agreement in question had stood terminated with effect from 25-2-1978, that Section 84-B was repugnant to the aforesaid provisions of the Act and as the enactment of the said section was covered by Entry 22 of the Concurrent List III of Schedule VII of the Constitution of India dealing with "Trade Unions, Industrial and Labour Disputes", the said provision to the extent of repugnancy became void as per Article 251 read with Article 254 of the Constitution of India as admittedly the said provision inserted by amending Act 26 of 1981 was not reserved by the State Legislature for consideration of the President and had not received his assent as required by Article 254 sub-article (2) of the Constitution. In my opinion the said exercise was not open to the High Court on the admitted facts of the present case. That even under Section 19(2) of the Act the said agreement had ceased to operate from 25-2-1978 and consequently there remained no question of any repugnancy of Section 84-B on the one hand and Section 9-A and 19(2) of the Industrial Disputes Act of the other. In short that question did not arise for consideration of the High Court on the aforesaid well established facts on record. In my view once this factual conclusion is arrived at a rightly arrived at by my learned brother Sen, J., no occasion arises for this Court nor did it arise for the High Court to go into the legislative competence of the State Legislature in enacting Section 84-B and to examine and pronounce upon the said question. On this short ground, therefore, I would set aside the decision of the High Court declaring Section 84-B as ultra vires the State Legislature on account of repugnancy of Section 84-B with the provisions of Sections 9-A and 19(2) of the Industrial Disputes Act. The appeal of the Bank is required to be allowed on this short ground keeping the question of vires of Section 84-B open for consideration in an appropriate case. However, with great respect I do not concur with the view of my learned brother Sen, J., that the said section will operate even de hors the binding agreement under Section 19(2) of the Act. On this aspect I would express no opinion as that question, in my view, does not arise for consideration on the facts of the present case. I, however, agree with the final conclusion to which my learned brother Sen, J., has reached that these appeals are required to be allowed, but on the aforesaid different reasoning.

ORDER OF THE COURT

38. In view of the opinions delivered today, the appeals are allowed and the judgment of the High Court is set aside subject to the observations made in our opinions. No orders as to costs.