

State Bank of India and Others

Vs

State Bank of India Canteen Employees' Union and Others

Civil Appeals Nos. 552-553 of 1994

(K. Venkataswami, A. P. Mishra JJ)

05.05.1998

ORDER

1. Respondent 1 to 3 herein moved a learned Single Judge of the Calcutta High Court for the issue of a writ of mandamus directing the appellants to forthwith absorb the members of the first respondent-Union as employees of the appellant-Bank with effect from their respective dates of joining or within such time as the Court may deem fit and proper and for other consequential directions.

2. The learned Single Judge passed the following order :

"The Court having heard the learned counsel for the petitioner and the respondent-State Bank of India it is directed that the matter will come as application 3 months hence. A/o by 6 weeks and reply by 3 weeks thereafter. Pendency of the petition will not prevent the parties to proceed before the Tribunal in the manner mentioned in the petition. Any step to be taken by the respondent pursuant to the impugned settlement will abide by the result of the writ petition. Liberty to mention for early hearing after filing of affidavit.

All parties to act on signed copy of the minutes of this order on the usual undertaking."

3. Aggrieved by the above order, Respondents 1 to 3 moved the Division Bench of that High Court and the learned Judges of the Division Bench withdrew the case from the learned Single Judge and heard the main case itself along with the appeal filed against the interim order of the learned Single Judge.

4. The learned Judges accepted the case of the first respondent-Union and directed the appellants to treat the employees of the canteens of all the branches as employees of the Bank. Aggrieved by that, the present appeals are filed by special leave.

5. We have heard extensively Mr. Shanti Bhushan, learned Senior Counsel for the appellants, and Mr. Anindya Mitra, learned Senior Counsel for the contesting respondents.

6. We have noticed that at the instance of the first respondent-Union, on an identical issue, a dispute was raised espousing the cause of its members (workmen) and on failure of settlement the matter was referred to the Central Government Industrial Tribunal. While the matter was pending, Respondents 1 to 3 seem to have moved the High Court simultaneously. The appropriate way of disposing of the matter by the High Court would have been to direct the parties to proceed with the case before the Industrial Tribunal and not to permit the Union to simultaneously move the High

Court. Alternatively the High Court could have kept the matter pending till the Industrial Tribunal decided the issue by giving findings on the disputed questions of fact. The Division Bench itself has noticed that the appellant-Bank has not accepted the material facts and still the Division Bench, while exercising jurisdiction under Article 226 of the Constitution of India, gave findings on questions of disputed facts.

7. Two important aspects on which the facts seriously disputed were that the canteen employees were not the employees of the Bank as there was no relationship of employer and employee and there was no similarity between the canteens in dispute and the canteens run by the Bank. The Division Bench proceeded on the assumption that the canteen employees are the employees of the Bank and the canteens run by the Bank and the canteens now in question are similar in all respects. It appears that as a result of bipartite agreement between the Bank and the employees' federation (after four stages), ultimately the Bank agreed to take over and run the canteens where the Branch is manned by not less than 100 employees. The canteens now in question are the canteens in the branches where the bank employees are less than 100. According to the Bank, there are 231 branches in which only 5 employees are there and in 126 branches the staff strength was only between 6 and 10. According to the learned counsel appearing for the Bank, the question whether there was necessity to run a canteen in those branches and other similar questions should have been gone into by the High Court and without deciding such factual aspect the High Court has issued the mandamus as prayed for.

8. On the facts, we are of the view that the High Court ought not to have entertained the writ petition when the identical issue between the same parties was pending before the Industrial Tribunal and that too at the instance of the writ petitioners before the High Court. We are told that the matter before the Industrial Tribunal is still pending.

9. Strong reliance was placed on the recent judgments of this Court in Reserve Bank of India v. Workmen, ((1996) 3 SCC 267 : 1996 SCC (L&S) 691), Parimal Chandra Raha v. LIC of India, (1995 Supp (2) SCC 611 : 1995 SCC (L&S) 983 : (1995) 30 ATC 282), Associate Banks Officers 'Assn. v. State Bank of India. ((1998) 1 SCC 428 : 1998 SCC (L&S) 293). In all these cases, the case in M. M. R. Khan v. Union of India (1990 Supp SCC 191 : 1990 SCC (L&S) 632 : (1991) 16 ATC 541) was referred to, elaborately considered and explained to a certain extent. For appreciating and applying the principles laid down by this Court in these recent judgments, it is absolutely necessary to have clear and elaborate findings on facts based on materials.

10. In the circumstances, taking advantage of the pendency of the identical issue in Reference No. 2 of 1992 before the Central Government Industrial Tribunal at Calcutta, instead of directing the parties to go before the same Tribunal in this matter as well, to avoid delay and in the interest of both the parties, we direct the Central Government Industrial Tribunal to expedite the hearing of Reference No. 2 of 1992 and render the award within six months. The parties shall avoid taking adjournments. The party aggrieved by the award of the Tribunal to be passed pursuant to the direction as given above, will be at liberty to move this Court.

11. These appeals will be listed after the disposal of the reference by the Central Government Industrial Tribunal as aforesaid along with the SLP if any, filed against the award of the Central Government Industrial Tribunal.