

SUPREME COURT OF INDIA

Indian Banks Association

Vs.

Workmen of Syndicate Bank

(S. N. Variava J.)

13.02.2001

JUDGMENT

S. N. VARIAVA, J.

1. Leave granted in SLP (C) No. 9000/1998.

2. All these Appeals are against a common Judgment dated 30th March, 1997. A common question arises in all these Appeals.

3. The Government of India, Ministry of Labour by an Order dated 3rd October, 1980 referred the following dispute under Sections 7A and 10(1)(d) of the Industrial Disputes Act between the Management of 11 Banks and the Deposit Collectors to the Industrial Tribunal, Hyderabad for adjudication:

"Whether the demands of the Commission Agents or as the case may be Deposit Collectors Employed in the Banks listed in the Annexure that they are entitled to pay scales, allowances and other service conditions available to regular clerical employees of those banks is justified? If not, to what relief are the workmen concerned entitled and from which date?"

4. Before the Tribunal parties lead evidence both oral and documentary. After hearing the parties the Tribunal by its Award dated 22nd December, 1988 held that the Deposit Collectors were workmen of the concerned Bank. The Tribunal then directed as follows:

"All those Deposit Collectors and Agents who are below the age of 45 years on 3.10.1980 (the date of the first reference of this industrial dispute) shall be considered for regular absorption for the post of Clerks and cashiers if they are matriculates and above including qualified Graduates and Post Graduates. They may be taken to Banks serviced as regular employees if they pass the qualifying examinations conducted by the Banks. Those who are absorbed shall be treated on par with regular clerical employees of the Bank. Those who are qualified with 8th Class and below Matriculations shall be considered for absorption as Sub-Staff by conducting qualifications examination.

As regards the Deposit Collectors and Agents who are above 45 years of age on the date 3-10-1980 and also those who are un-willing to be absorbed in Regular Banks service they shall be paid the fall

back wage of Rs. 750.00 per month linked with minimum deposit of Rs. 7,500.00 per month and they should be paid incentive remuneration at 2% for collection of over and above 7,500.00 per month and they should also pay uniform conveyance of Rs. 50 per month for deposit of less than Rs. 10,000.00 and Rs. 100.00 per month for deposits of more than Rs. 10,00.00 upto or above Rs. 30,000.00 per month they should be paid Gratuity of 15 days commission for each year of service rendered."

5. Various Writ Petitions were filed by various Banks and the Indian Banks Association. All were disposed off by the impugned Judgment dated 20th March, 1997.

6. Before the High Court it has been conceded that relief of being absorbed as regular staff of the banks in clerical cadre was not available to be granted. On this concession the High Court set aside the directions of the Tribunal to absorb the Deposit Collectors as regular staff. The High Court however upheld the other directions of the Tribunal regarding payment of fall back wages, conveyance allowance, gratuity etc.

7. Except for C. A. No. 3356 of 1998, all these Appeals have been filed by the various Banks and/or the Indian Banks Association. C. A. No. 3356 of 1998 has been filed by the National Confederation of Bank Employees. This Appeal is against that portion of the impugned Judgment, whereunder the relief of absorption as a regular employee has been set aside.

8. On behalf of the Appellants it has been submitted that the Deposit Collectors could not be treated as workmen since their engagement were purely a matter of contract between the parties. It was submitted that the Agreements were, in all cases, for a specific period. It was submitted that the Deposit Collectors did their work without any control or supervision of the Banks. It was submitted that the Deposit Collectors could also do other works and take on other employment. It was submitted that the Deposit Collectors had no fixed time or period to devote to their work as Deposit Collectors or for their attendance in the Bank. It was submitted that these Deposit Collectors could come to the Bank at any time and make the deposits. It was further submitted that there was no qualification or age limit for a person to be engaged as a Deposit Collector and that, in fact, many of the Deposit Collectors were well advanced in age. It was submitted that no disciplinary action could be taken against the Deposit Collectors. It was submitted that all the above mentioned facts showed that there was no relationship of master and servant and that, therefore, these Deposit Collectors were not workmen.

9. Reliance has also been placed on Section 10 of the Banking Regulation Act. The relevant portion of Section 10 reads as follows:

"10. Prohibition of employment of managing agents and restrictions on certain forms of employment.- (1) No banking company –

(a) shall employ or be managed by managing agent; or

(b) shall employ or continue the employment of any person –

(i) who is, or at any time has been, adjudicated insolvent, or has suspended payment or has compounded with his creditors, or who is, or has been, convicted by a Criminal Court of an offence involving moral turpitude; or

(ii) whose remuneration or part of whose remuneration takes the form of commission or of a share in the profits of the company,

Provided that nothing contained in this sub-clause shall apply to the payment by a banking company of-

(a) any bonus, in pursuance of a settlement or award arrived at or made under any law relating to industrial disputes or in accordance with any scheme framed by such banking company or in accordance with the usual practice prevailing in banking business;

(b) any commission to any broker (including guarantee broker), cashier-contractor, clearing and forwarding agent, auctioneer or any other person, employed by the banking company under a contract otherwise than as a regular member of the staff of the company; or XXX XXX XXX"

10. It was submitted that Section 10(b) clearly lays down that a banking company cannot employ any person whose remuneration or part of whose remuneration takes the form of commission or of a share in the profits of the company. It was submitted that it was an admitted position that commission was paid to the Deposit Collectors. It was submitted that it can never be presumed that the Banks were employing persons contrary to the provisions of the Banking Regulation Act. It was submitted that this showed that these Deposit Collectors were not employed by the Banks. It was submitted that the proviso (b), which permitted payment of commission under a contract to a person who was not a regular member of the staff, was merely an extension and did not detract from the main provision which prevented employment on commission basis.

11. It was also submitted that the Deposit Collection Schemes were un-remunerative and were not viable. Certain charts and figures were shown to the Court and it was submitted that the Banks were suffering a loss in running these Schemes. It was submitted that neither the Tribunal nor the High Court had gone into viability of the Schemes.

12. Mr. P. P. Rao further submitted that the Banking Regulation Act is an Act of 1949. He took the Court through the definition of the term "workman" in the Industrial Disputes Act as well as various other Acts like Beedi and Cigar Workers (Conditions of Employment) Act, Coal Mines Provident Fund and Misc. Provisions Act, Contract Labour (Regulation and Abolition) Act etc. He submitted that under each Act the definition was framed as per the purpose of the Act. He pointed out that depending on the purpose of the Act, either a wide or narrow definition had been given to the term "worker". He pointed out that the proviso to Section 10 of the Banking Regulation Act has been operative since 1949. He submitted that in the Industrial Disputes Act the definition of the term "worker" in Section 2(s) was amended in 1984. He submitted that even in 1984 the Legislature did not think it fit to include in this definition a person who was receiving commission. He submitted that this clearly indicates that persons receiving commission were not meant to be and were not workmen within the meaning of the term as laid down in the Industrial Disputes Act.

13. Mr. P. P. Rao further submitted that if the Deposit Collectors are not workmen, then their entitlement has to be as per their contract or as per the provisions of a statute. He submitted that the Tribunal had no power to change the contract between the parties and/or to impose conditions of service. He submitted that the Tribunal could only have done so, provided it was statutorily permitted or it was so provided in the Contract. He submitted that the gratuity which has been

awarded by the Tribunal is neither as per the contract between the parties nor as per the provisions of the Payment of Gratuity Act. He submitted that the Deposit Collectors have concealed what they were receiving from the other employment. He submitted that this information should have been called for. He submitted that the entire liability has been foisted on the Banks, when in fact the other employer should be sharing the burden imposed on the Banks.

14. It was submitted on behalf of the Appellants that, for all the above reasons, the impugned Order and the directions given by the Tribunal should be set aside.

15. On the other hand Mr. Sharma, on behalf of the Respondents, submitted that the Deposit Collectors had to regularly visit the small depositors, i.e. small traders, house-wives, students etc. He submitted that they would have to go to these depositors at times which were convenient to those persons or at times when they would be in a position to give the deposit. He submitted that the Deposit Collectors may also have to make more than one visit to small depositors. He submitted that the Deposit Collectors would have to collect deposits from all these persons and then take the collections to the banks and make the deposits after making the relevant entries and filing up the relevant forms. He submitted that the work of Deposit Collectors was manual inasmuch as they had to make the collections by going from place to place and from depositor to depositor and that it was also clerical inasmuch as they had to fill up various forms, accounts, registers and pass books every day. He submitted that over and above this work many of the Deposit Collectors were also made to do other sundry works of a clerical nature in the banks. He submitted that amount received by the Deposit Collectors by way of commission was wage linked to productivity. He submitted that it was incorrect to state that the banks had no control over the Deposit Collectors. He submitted that the banks exercised control over the Deposit Collectors and laid down various stipulations which were to be followed by these Deposit Collectors. He submitted that merely because the nature of the control was different did not mean that there was no control.

16. Mr. Sharma relied upon the definition of the term "wages" Section 2(rr) of the Industrial Disputes Act, which reads as follows:

"2 (rr) "wages" means all remuneration capable of being expressed in terms of money, which would, if the terms of employment, express or implied, were fulfilled, be payable to a workman in respect of his employment or of work done in such employment, and includes –

- (i) such allowances (including dearness allowance) as the workman is for the time being entitled to;
- (ii) the value of any house accommodation, or of supply of light, water, medical attendance or other amenity or of any service or of any concessional supply of foodgrains or other articles;
- (iii) any travelling concession;
- (iv) any commission payable on the promotion of sales or business or both;

but does not include-

- (a) any bonus;
- (b) any contribution paid or payable by the employer to any pension fund or provident fund or for

the benefit of the workman under any law for the time being in force;

(c) any gratuity payable on the termination of his service;"

17. He points out that, under sub-clause (iv) of the above definition, "wage" includes commission payable on promotion of sales or business or both. He submitted that the commission which was received by Deposit Collectors was for promotion of the business (SIC) the banks, viz. receiving deposits from investors.

18. Mr. Sharma submitted that the proviso to Section 10 clearly laid down that commission could be paid to a person who was not in the regular employment of a bank. He submitted that, therefore, Section 10 of the Banking Regulations Act did not prevent Deposit Collectors from being workmen as defined in the Industrial Disputes Act. In support of this submission he relied upon an authority of the Madras High Court in the case of *The Management of Indian Bank v. The Presiding Officer, Industrial Tribunal (C) & Anr.* reported in (1990) 1 LLJ 50. In this case it has been held that Deposit Collectors satisfy the definition of "workmen" under the Industrial Disputes Act and that they are "workmen" as defined in the Industrial Disputes Act. It has been held that the banks have control over such Deposit Collectors and that Section 10 of the Banking Regulations Act did not help the banks in contending that Deposit Collectors were not workmen.

19. Mr. Sharma relied upon the case of *Silver Jubilee Tailoring House & Ors. v. Chief Inspector of Shops and Establishments & Anr.* reported in (1974) 1 LLJ 747. In this case the question was whether certain tailors working with the Appellant Company were employees of the Appellant and were covered by the Andhra Pradesh Shops and Establishments Act and Payment of Wages Act. The questions which arose for consideration were whether the Appellants had control over these tailors and whether the fact that these tailors could work for more than one employer meant that there was no relationship of master and servant. This Court held that during the last two decades the emphasis in deciding the question of relationship of employer and employee had changed. It held that while control was an important factor it was wrong to say that in every case it would be a decisive factor. It held that the degree of control and supervision would be different in different types of business and that what was essential was an element of authority over the workers in the performance of the work, so that the employee was subject to the directions of the employer. It also held that working with more than one employer did not militate against being the employee of the proprietor of the shop where he attended the work. It held that a servant need not be in the exclusive control of one master. It held that the fact that the workers were not obliged to work whole day was also not very material. It held that all that was necessary was that the workman was principally employed by that employer.

20. Mr. Sharma also relied upon the case of *Dharangadhara Chemical Works Ltd. v. State of Saurashtra* reported in (1957) SCR 152. In this case the Appellants were lessees holding a license for the manufacture of salt on certain lands. The salt was manufactured by labourers known as Agarias from rain water that got mixed with saline matter in the soil. The work was seasonal in nature and commenced in October after the rains and continued till June. Thereafter the Agarias left for their own villages and did their own cultivation work. During the season the lands were divided into plots and plots were allotted to the Agarias. Generally the same plot was allotted to the same Agaria every year. After manufacturing of salt the Agarias were paid at the rate of 5 as. 6 pies per maund. At the end of each season the accounts were settled and the Agarias were paid the balance due to them. During the season the Agarias worked with the members of their families and were

free to engage extra labour on their own, if they so desired. No hours of work were prescribed, no master roll maintained, nor were working hours controlled by the Appellants. There were no rules as regards leave or holidays and the Agarias were free to go out of the factory after making arrangements for manufacturing of salt. The question for consideration before this Court was whether the Agarias were workmen within the meaning of the Industrial Disputes Act. This Court held that the prima facie test of master of servant between employer and employee was the existence of the right in the employer not merely to direct what work was to be done but also to control the manner in which it was to be done, the nature or extent of such control varying in different industries and being by its nature incapable of being precisely defined. This Court held that the correct approach, therefore, was to consider whether, having regard to the nature of the work, there was due control and supervision of the employer. This Court further held that the question whether the relationship between the parties was one as between an employer and employee was a question of fact and where the Industrial Tribunal came to a finding, such finding of fact was not open to question in a proceeding under Article 226 of the Constitution, unless it could be shown to wholly unwarranted by the evidence.

21. Mr. Sharma submitted that in this case the Tribunal ha(SIC) on consideration of evidence and material before it arrived at a positive finding that there was control by the banks and that there was a relationship of master and servant. He submitted that such finding of fact was based upon the evidence on record and nothing had been shown that such finding was unwarranted or unsustainable on the basis of evidence on record. He submitted that the High Court was thus right in not interfering with such findings of fact.

22. On the question of the Scheme being un-remunerative, Mr. Sharma showed certain pamphlets and circulars recently issued by one of the banks, which is before this Court. He pointed out, from these pamphlets and circulars, that far from the Scheme being un-remunerative the banks were receiving large amounts as deposits through such Schemes. He pointed out that the Banks were wanting to continue with such Schemes.

23. Mr. Sharma submitted that gratuity need not be only under the Payment of Gratuity Act. He submitted that the Tribunal had not said that it was awarding gratuity under the Gratuity Act. He submitted that the Tribunal has powers, dehors the Gratuity Act, to direct payment of Gratuity. He submitted that the Tribunal always has power and jurisdiction to modify conditions of service and, in this case, it has been found by the Tribunal that there was no fixed pay scales, no bonus, no gratuity, no dearness allowance and, therefore, the Tribunal had given the direction, as set out hereinabove, as and by way of a package. He submitted that earlier commission was being paid at a rate of 3.5 per cent by most of the banks. He pointed out that now, over and above the sum of Rs. 7,500/-, the commission had been reduced to 2 per cent. He submitted that to that extent Deposit Collectors were loosing, but as this was part of the package as given by the Tribunal it was being accepted by the Deposit Collectors. He submitted that the directions given by the Tribunal were fair and just and absolutely right. He submitted that the Order of the High Court was correct and this Court should not interfere.

24. Mr. Nageshwar Rao, who appeared for the Appellants in C. A. No. 3356 of 1998, supported Mr. Sharma in all his submissions. He, however, submitted that the High Court was wrong in setting aside the directions regarding regularisation of service. He submitted that the concession which had been made before the High Court had not been made on behalf of his clients and his clients could not be held to be bound by such concession. He submitted that in any case the Deposit Collectors

should get the pay scales, allowance and other service conditions of the other employees of the banks. He submitted that even though the Deposit Collectors may not have been absorbed as regular employees of the banks, yet they should have been granted the pay scales, allowance and other service conditions of the employees of the banks. He submitted that most of these Deposit Collectors had been working for 20 to 25 years and that there was nothing wrong if they were either absorbed in the banks or given the pay scales, allowances and other service conditions of the other employees of the banks.

25. We have considered the rival submissions. In our view, Mr. Sharma was right when he submitted that on the basis of evidence before it the Tribunal has given findings of fact that the Deposit Collectors were workmen within the meaning of Section 2(develop) of the Industrial Disputes Act. On the evidence on record it could not be said that this finding was unsustainable. Having been shown the relevant evidence we are also of the opinion that the Tribunal correctly arrived at a conclusion that these Deposit Collectors were workmen.

26. Further, as seen from Section 2(rr) of the Industrial Disputes Act, the commission received by Deposit Collectors is nothing else but wage, which is dependent on the productivity. This commission is paid for promoting the business of the various banks.

27. We also cannot accept the submission that the banks have no control over the Deposit Collectors. Undoubtedly, the Deposit Collectors are free to regulate their own hours of work, but that is because of the nature of the work itself. It would be impossible to fix working hours for such Deposit Collectors because they have to go to various depositors. This would have to be done at the convenience of the depositors and at such times as required by the depositors. If this is so, then no time can be fixed for such work. However, there is control inasmuch as the Deposit Collectors have to bring the collections and deposit the same in the banks by the very next day. They have to then fill in various forms, accounts, registers and pass books. They also have to do such other clerical work as the bank may direct. They are, therefore, accountable to the bank and under the control of the bank.

28. We also see no force in the contention that Section 10 of the Banking Regulations Act prevents employment of persons on commission basis. The proviso to Section 10 makes it clear that commission can be paid to persons who are not in regular employment. Undoubtedly the Deposit Collectors are not regular employees of the Bank. But they nevertheless are workers within the meaning of the term as defined in the Industrial Disputes Act. There is clearly a relationship of master and servant between the Deposit Collectors and the concerned Bank.

29. Mr. Nageshwar Rao is right in his submission that the concession was not binding on his clients. However, what has been conceded has been correctly conceded. No question arose of directing absorption of the Deposit Collectors as regular workmen. No such demand had been made and, therefore, there could have been no such direction. Such directions were beyond the reference. Even otherwise, the question of absorption would be fully covered by an authority of this Court in the case of Union of India & Ors. v. K. V. Baby & Anr. reported in (1999) 1 LLJ 1290. In this case it has been held that persons who are engaged on the basis of individual contracts to work on commission basis cannot be equated with regular employees doing similar work. It has been held that the mode of selection and qualifications are not comparable with those of the employees, even though the employees may be doing similar works. In the present case, not only are the modes of selection and qualifications not comparable, but even the work is not comparable. The work which

the Deposit Collectors do is completely different from the work which the regular employees do. There was thus no question of absorption and there was also no question of the Deposit Collectors being paid the same pay scales, allowances and other service conditions of the regular employees of the banks.

30. We also see no substance in the contention that these Schemes are un-remunerative. The Banks have introduced these Schemes because they want to encourage the common man to make small and regular deposits. As a result of such Schemes, the number of depositors have become much larger. We have no doubt that such Schemes are continued because the Banks find them remunerative. The Banks have large collections through such Schemes.

31. For the reasons set out hereinabove, we see no substance in any of these Appeals. All the Appeals accordingly stand dismissed. There will, however, be no Order as to costs.