

**SUPREME COURT OF INDIA**

Hongkong & Shanghai Banking Corp. Ltd.

Vs.

Government of India

C.A.No.1718 of 2009

(Tarun Chatterjee and V.S.Sirpurkar JJ.)

18.03.2009

**JUDGEMENT**

**V.S. Sirpurkar, J.**

1. Leave granted.

2. The respondent No. 2 herein Mrs. Manju Saxena was the employee of the appellant-Hongkong & Shanghai Banking Corporation Ltd. (hereinafter called 'the bank' for short). According to the appellant, she drew a salary of Rs.58,330/- per month with a total annual remuneration of Rs.7,32,736/-. In May, 2005, the Bank reviewed its working norms, staff structure and other relevant issues governing its operations and it was decided that the various posts and positions held by the staff were to be discontinued. One such post to be discontinued was held by the second respondent. A severance package and/or alternate employment to all such persons whose posts were to be discontinued were offered. Accordingly such proposal was made to the second respondent also, but she declined to accept the package.

3. On 01.10.2005 her services were terminated after paying her six months' salary as compensation in lieu of notice period as provided in the contract of employment and compensation equivalent to 15 days' salary for each completed year of service amounting to Rs.8,17,071/-. This sum was allegedly accepted by the second respondent.

4. However, a dispute was raised regarding this termination and hence the Government of India, the first respondent herein referred the dispute to the Central Government Industrial Tribunal (CGIT). The reference was as under:

“Whether the action of the Chief Executive, HSBC, India Area Management Office, 52/60, Mahatma Gandhi Road, P.O.128, Mumbai-400 001, in terminating the services of Mrs Manju Saxena, Staff Officer w.e.f. 01.10.2005 without giving her full terminal benefits is just, valid and legal? If not, to what benefits the workman is entitled for and what directions are necessary in the matter.”

5. Thereafter, the second respondent, by her various applications sought for interim relief along with her pleadings before the Industrial Tribunal (hereinafter called `Tribunal'). The application came to be allowed and vide order dated 30.06.2006, the Tribunal directed the appellant-Bank to pay a sum of Rs.30,000/- per month to the claimant regularly till the disposal of the said case. This was to be treated as an interim award.

6. The appellant Bank challenged the said award by way of a Writ Petition No. 12606/2006 wherein the learned Single Judge of the Delhi High Court stayed the interim order till further orders. The learned Single Judge was pleased to direct vide his order dated 15.12.2006 that the second respondent should be paid a sum of Rs.25,000/- towards the litigation expenses. It was also ordered that the proceedings before the Tribunal would continue, however, final award would not be passed. This order dated 15.12.2006 was, of course, an interim order. This order was confirmed by the Division Bench in LPA No.33/207 by order dated 25.01.2007.

7. On 08.02.2007 the second respondent filed an application under Section 17-B of the Industrial Dispute Act. On 07.09.2007 a letters patent appeal No.1194/2007 challenging the order of the learned Single Judge restraining the Tribunal from pronouncing the award pending the disposal of the writ petition was disposed of. The matter thus was pending before the learned Single Judge when the order dated 07.09.2007 disposing of the letters patent appeal No.1194/2007 came up before this Court by way of a 4 special leave petition. This Court dismissed the same on 07.03.2008 and directed the High Court to dispose of the Writ Petition on merits and in accordance with law preferably within three months from the date of communication of the order.

8. In the meantime, the appellant also filed the rejoinder affidavit to the counter filed by the second respondent. On 23.05.2008, the application under Section 17-B of the Industrial Dispute Act was decided by the learned Single Judge. In that order, no relief was granted under Section 17-B. On 24.09.2008, the Writ Petition No.12602/2006 was also disposed of. It was held that the reference could not be challenged at that stage of the proceedings when in fact the proceedings under reference were pending final adjudication.

9. The learned Single Judge, however, upheld the interim industrial award stating that there was no infirmity in the interim award of the Industrial Adjudicator which directed the appellant to pay Rs.30,000/- per month to the second respondent regularly till the disposal of the industrial dispute. The said order was challenged before the Division Bench in LPA No.684/2008 which came to be disposed of by the impugned order.

10. In the impugned order the Division Bench observed in paragraph 5 as under:

“We are informed that the case before the Tribunal is at the stage of arguments. We request the Tribunal to pronounce its final order in the matter within a period of six weeks from today, uninfluenced by any observation on merits that may have been made in the impugned judgment dated 24th September, 2008, passed by the learned Single Judge or in the order dated 30.06.2006 of the Tribunal.”

The Division Bench however dismissed the matter as also other pending applications. It is against this that the present appeal has been filed.”

11. Learned senior counsel Shri Ashok H. Desai urged before us that he had no difficulty with the direction of the Division Bench to the Tribunal for disposing of the matter. He, however, raised a serious dispute regarding the direction passed by the Tribunal by way of an interim award whereby a direction was given to pay Rs.30,000/- per month to the second respondent. The learned senior counsel also pointed out that an employee earning Rs.58,330/- per month could not be called a 'workman' within the definition of the term in *Industrial Disputes Act, 1947*. The learned senior counsel further pointed out that as per the contract of service the second respondent was already paid full compensation amounting to almost Rs.9 lakhs which she had accepted without demur and, thus, there was no justification in passing an interim award directing payment of Rs.30,000/- per month to her. Learned counsel also argued on merits that the learned Single Judge erred in holding that the Bank could not question the propriety of the Reference made by the first respondent. As against this Smt. Manju Saxena who appeared in person argued that there would be no question of denying the reinstatement to her, particularly, in view of the interim award passed and if the Bank was not in a position to reinstate her, the Bank was bound to pay Rs.30,000/- per month as ordered by the Tribunal in lieu of reinstatement. Smt. Saxena further argued that the Bank was deliberately depriving her of legal dues.

12. On a careful consideration of the contentions raised herein we are of the clear opinion that it will be futile at this stage to go into the question regarding the status of the employee as the same is pending before the Tribunal and the trial in the Tribunal is complete. We would not therefore go, at this stage, into the question as to whether the learned Single Judge and the Division Bench were right in continuing the proceedings before the Tribunal. We must note, at this juncture, that the appellant Bank is taking part in the trial before the Tribunal. Everything would, therefore, depend upon the verdict of the Tribunal. The question is, however, of the interim award and the directions given thereunder.

13. We do not see any reason to stay the interim award, particularly because of the detailed reasons given in support thereof by the Tribunal.

“However, learned senior counsel expressed his apprehension that in case the verdict goes against the second respondent regarding her status as a workman then it would be very difficult for the appellant to recover the amounts paid by way of the interim award. There can be no dispute that the payment of Rs.30,000/- per month as ordered by the Tribunal would amount to almost Rs.9 lakhs. The apprehension of the learned counsel is not altogether unjustified. However, the fact remains that in the interim award itself, the Tribunal has secured the interests of the appellant by ordering that in case the final award goes against the second respondent still the amount paid to her by way of interim award could be adjusted against the retiral benefits which she is entitled to receive. We have specifically put this to the learned senior counsel Shri Ashok H. Desai, appearing on behalf of the appellant as to how much amount would

be receiveable by the respondent by way of her retiral benefits. The learned counsel very frankly put the whole account before us.”

14. Considering the overall situation, we are of the opinion that the amount of Rs.8 lakhs should be payable to the second respondent by way of arrears. She would also continue to get the amount of Rs.30,000/- per month till the award is finally decided by the Tribunal. This amount shall be adjustable against the amount receivable by her by way of retiral benefits in case the award goes against her. We also request the Tribunal to dispose of the proceedings, if not already disposed of by now, within two months from the date when the orders reach the Tribunal. We make it clear that we have not expressed anything in respect of the merits of the award or the status of the second respondent. The Tribunal shall decide the question regarding status on merits without being influenced by this judgment or for that matter any other judgment including the interim award.

15. With these directions we dispose of this appeal. The payment shall be made within six weeks from the date of judgment.