IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 23/03/2005

Coram

The Hon'ble Mr.MARKANDEY KATJU, Chief Justice
and
The Hon'ble Mrs. Justice PRABHA SRIDEVAN

Writ Appeal No. 2688 of 2004
and
W.A.M.P.No. 4970 of 2004

Indian Overseas Bank
rep. by its Chairman
and Managing Director,
763, Anna Salai,
Madras - 600 002. ...Appellant

-Vs-

1. All India Overseas Bank
   Employees' Union
   rep. by its General Secretary,
   764, Anna Salai,
   Madras - 600 002.

2. The Presiding Officer.
   Industrial Tribunal,
   High Court Buildings,
   Madras - 600 104. ... Respondents

Appeal filed under Clause 15 of the Letters Patent against the order passed in W.P.No. 3923 of 1997 dated 22.04.2004.

!For Appellant ::: Mr.V. Karthick
for M/s.T.S.Gopalan

^For Respondent 1 ::: Mr.C.R.Chandrasekaran

:JUDGMENT

THE HONOURABLE THE CHIEF JUSTICE This writ appeal has been filed against the impugned order of the learned single Judge dated 22.04.2004.

2. Heard the learned counsel for the parties.

3. The facts in detail are given in the judgment of the learned single Judge, and hence we are not repeating the same except where necessary.

4. The writ petition was filed by the respondent praying for quashing of the award of the Industrial Tribunal, Madras dated 29.3.1996. The writ petition was allowed by the learned single Judge, and hence this writ appeal.

5. The short controversy in this case is whether the subsistence allowance during the period of suspension of an employee of the bank should be paid by taking into account the increments which fell due during the period of suspension.

6. The service conditions of the members of respondent no.1 (writ petitioner) are governed by bank awards as modified by the various Bipartite settlements. Paragraph-557 of Sastry Award reads: - " 1. For the first three months one-third of the pay and allowance which the workman would have got but for the suspension.

2. Thereafter where the enquiry is departmental by the bank, one half of the pay and allowances for the succeeding months. Where the enquiry is by an outside agency, one-third of the pay and allowances for the next three months and thereafter one half for the succeeding months until the enquiry is over"

7. By the Bipartite settlement dated 08.09.2003 between the bank and its union, paragraph-557 of the Sastry Award, as endorsed by paragraph 17.14 of the Desai Award, was partially modified as under: - " Where the investigation is not entrusted to or taken up by an outside agency subsistence allowance will be payable of the following rates: -

1.For the first three months 1/3 of the pay and allowance which the workman would have got but for the suspension.

2.Thereafter 1/2 of the pay and allowances.

3.After one year full pay and allowance if the enquiry is not delayed for the reason attributable to the concerned workman or any of his representatives"

8. The appellant bank had been paying subsistence allowance up to the year 1988 by taking into consideration the increments which fell due during the period of suspension. However, subsequently the bank decided that the increments which fell due during the period of suspension should not be included for calculation of subsistence allowance and issued circular dated 21.1.1988 to all its offices to discontinue the inclusion of increments for the purpose of calculating subsistence

allowance during the period of suspension. It was this circular which has raised the present controversy.

9. The contention of the union is that the inclusion of increments for the purpose of subsistence allowance has been part of the service conditions of its members and has been in existence for over 35 years. Hence, even admitting, without conceding, that this was only the practice and custom without having sanction of any award or settlement, the bank has no authority or right to alter such custom or practice to the prejudice to the petitioner - Union and its members. Moreover, no notice under Section 9A of the Industrial Disputes Act to alter the service conditions was given. It was alleged that the bank has indulged in unfair labour practice.

10. On the other hand, the contention of the bank was that the clause pertaining to payment of subsistence allowance both in Sastry and Desai Awards cannot be interpreted to include increments in the subsistence allowance. It was contended that increment is an incidence of employment and an employee gets an increment by working the full year and drawing full salary. During the period of suspension, the contract of service remains suspended. Hence the employees are not entitled to increments during the period of suspension, even though master and servant relationship continues. After the conclusion of the enquiry, if the workman is exonerated, he shall be entitled to get wages and allowances including increments. It was denied that the union was entitled to notice under Section 9-A of the Act. It was, further, contended that increment is not allowance like Dearness Allowance, House Rent Allowance, City Compensatory Allowance etc. Hence, increment cannot be included within the meaning of the word "allowance" in clause 557 of the Sastry and Desai Awards.

11. Learned counsel for the appellant has relied on the decision of this Court reported in A.Raghavan Vs. T.N.C.S. Corporation Ltd., (1995) II LLN 1084, wherein it was held: -

" It may be pointed out that the object of granting subsistence allowance is to enable the petitioner to subsist and to participate and defend himself in the disciplinary proceedings. The increments are to be given normally to an employee who regularly performs his duties. As the petitioner has been under suspension the question of giving the benefit of increment does not arise. Moreover the increment does not automatically follows. Therefore an employee under suspension is not entitled to annual increment during the perio d of suspension."

12. Learned counsel for the appellant also relied on the decision in S.C.Khajuria v. State and Others, 1992 II LLJ page 723(Jammu & Kashmir), wherein the High Court of Jammu and Kashmir observed: - " Suspended employee is not entitled to increment during the period of suspension and hence he cannot claim enhanced subsistence allowance on the increment on the plea that the increment became due during the suspension period"

13. Learned counsel also relied on the decision of Rajasthan High Court in R.S.E.B., Jaipur v. Narayan Lal Meena, 1995 LAB.I.C. 864 which has also taken a similar view.

14. On the other hand, learned counsel for the respondent union has relied on the decision of Madhya Pradesh High Court in Madhav Anant Rao Gore v. State Bank of India, Bhopal & Others,

1986 II LLJ 394 . In the above decision, the Madhya Pradesh High Court has observed:-

" The last contention is regarding payment of increments and quarterly allowances to the petitioner during the period of his suspension. Since there is a provision in Clause 17 of Desai Award, suspension allowance has to be paid according to this provision in the award. During the suspension period, pay and allowances of the employee under suspension remains suspended but this is subject to the rules that may be applicable to a particular case. Here Clause 17 as it stands today provides (i) for the first 3 months 1/3rd of pay and allowances, (ii) thereafter half of the pay and allowances (iii) after one year full pay and allowances, if the enquiry is not dela yed for reasons attributed to the concerned workman or any of his representative. The clause speaks of full pay and allowances which means that the employee under suspension is entitled to pay and allowances which the workman would have got but for the suspension. Since the disciplinary proceeding could not be completed within one year, the petitioner is getting full pay which he was last drawing but he has not been paid the allowances which has accrued from time to time including the increments. The interpretation put by the respondents cannot be accepted that the employee is not entitled to increments and allowances during the period of suspension and further if after enquiry the employee is not found guilty of the misconduct alleged, he gets back all the increments which are due to him and he is treated as if he was not under suspension. This is against the specific provision in the award itself. Reliance has been placed on a decision of the Supreme Court in State of M.P. v. State of Maharashtra (supra) but the observations therein that the real effect of the order of suspension is that though the civil servant continues to be a member of the service, he is not permitted to work and is paid only subsistence allowance which is less than his salary and there can be no question of salary accruing or accruing due so long as orders of suspension stand. That was a case where there was no specific provision like Clause 17 of the award. Here the award says that the suspended employee is entitled to pay and allowances which the petitioner would have got if he was not under suspension. Therefore, the petitioner has to be paid all the increments and quarterly allowances which he would have been entitled if he was not under suspension from the date of his suspension in addition to the amount already paid to him by the clause has been correctly interpreted by the other nationalized banks who are paying a suspended employee increments and quarterly allowances payable to an employee which the employee would have got if he was not put under suspension."

15. We are in respectful agreement with the Madhya Pradesh High Court, and we respectfully disagree with the decisions cited by the learned counsel for the appellant for two reasons:-

(i)the decision of the Madhya Pradesh High Court is directly related to a bank and deals with the Desai Award; and

(ii)it is well settled that if two interpretations are possible in a welfare and beneficial statute, like Labour Legislation, the view in favour of the workman should be preferred vide Alembic Chemical Works Co. Ltd. Vs. The Workmen, AIR 1961 SC 647 (vide para-7).

16. In the Co-operative Textile Mill Ltd., Bulandshahr Vs. The Labour Court, 1988 LAB. I.C. 425 the Allahabad High Court observed (vide para-6) "the U.P.Industrial Disputes Act is a welfare legislation and it has to be interpreted in favour of the weak unless the intention of the legislature is

clearly otherwise".

17. As observed by Krishna Iyer, J. in K.C.P.Employees Association Vs. Management of K.C.P. Ltd., (1978)I LLJ 322 "Industrial law should be interpreted and applied in the perspective of Part-IV of the Constitution, the benefit of reasonable doubt on law and facts, if there be such doubt, must go to the weaker section labour. The tribunal will dispose of the case making this compassionate approach, but without overstepping the proved facts."

18. In Workmen of Indian Standards Institution Vs. Management of Indian Standards Institution, (1976) I LLJ 33 the Supreme Court observed:-

"The Industrial Disputes Act, 1947 is a social welfare legislation, and hence must be given a broad and liberal interpretation and not a rigid or doctrinaire one".

19. Similarly, in Surendra Kumar Verma Vs. Central Government Industrial Tribunal, (1981)I LLJ 386 the Supreme Court observed:- "Semantic luxuries are misplaced in the interpretation of 'bread' and 'butter' statutes. Welfare statutes must, of necessity, receive a broad interpretation. Where legislation is designed to give relief against certain kinds of mischief, the court is not to make inroads by making etymological excursions".

20. In Workmen of American Express International Banking Corporation Vs. Management of American Express International Banking Corporation, (1985) II LLJ 539 the Supreme Court observed:-

"The principles of statutory construction are well-settled. Words occurring in statutes of liberal import, such as social welfare legislations, and 'human rights' legislations, are not to be put in procrustean beds or shrunk to liliputian dimensions. In construing these legislations, the imposture of literal construction must be avoided and the prodigality of its misapplication must be recognised and reduced. Judges ought to be more concerned with the 'colour', 'content' and ' context' of such statutes".

21. Thus, it is well settled that industrial law is a social welfare legislation which recognises the fact that the employer and employee are not on an equal bargaining footing.

22. Hence, where two views are reasonably possible the view in favour of the workmen should be preferred.

23. For the reasons given above, we find no force in this appeal and accordingly it is dismissed. No costs. Consequently, connected W.A. M.P. is also dismissed.

Index: Yes Internet: Yes pv/sm Copy to:-

The Presiding Officer.

Industrial Tribunal, High Court Buildings, Madras - 600 104.