

State Bank Of Patiala vs Ram Prakash on 6 December, 1965

Equivalent citations: 1966 AIR 1665, 1966 SCR (2) 898, AIR 1966 SUPREME COURT 1665, 1966 (12) FACLR 277, 1966 (1) LABLJ 34, 1966 2 SCJ 522, 1966 2 SCR 898

Author: K.N. Wanchoo

Bench: K.N. Wanchoo, P.B. Gajendragadkar, M. Hidayatullah, V. Ramaswami

PETITIONER:
STATE BANK OF PATIALA

Vs.

RESPONDENT:
RAM PRAKASH

DATE OF JUDGMENT:
06/12/1965

BENCH:
WANCHOO, K.N.
BENCH:
WANCHOO, K.N.
GAJENDRAGADKAR, P.B. (CJ)
HIDAYATULLAH, M.
RAMASWAMI, V.
SATYANARAYANARAJU, P.

CITATION:
1966 AIR 1665 1966 SCR (2) 898

ACT:
National Industrial Tribunal (Bank Disputes) Award (Desai Award) 1962 para. 5.356 cls. (i) to (iv)-Interpretation and computation of benefits.

HEADNOTE:
The respondent-employees made applications under s. 33C(2) of the Industrial Disputes Act for determination and computation of the benefit to which they were entitled under the National Industrial Tribunal (Bank Disputes) Award (Desai Award) as they were not satisfied with the fixation of their pay by the appellant-bank under para 5.356 of the Desai Award. The Bank claimed that under clause (ii) of para 5.356 of the Desai Award, the adjusted basic pay in, the

new scale was not to exceed what point-to-point adjustment would give an employee on January 1, 1962 and that this being the maximum permissible under cl. (ii), cl. (iv) could not give an employee more than the maximum arrived at under cl. (ii). The employees on the other hand claimed that they were entitled to what was provided by sub-cl. (a), (b) and (c) of cl. (iv) and the two increments under sub-cl. (d) and that it did not matter whether what was thus arrived at exceeded the maximum provided under cl. (ii). The Labour Court partially accepted the employees' contention and fixed their pay accordingly. In appeal.

HELD: The decision of this Court in Prakash Chand Mehra's case would govern the interpretation of para 5.356 of the Desai Award also, which is in substance the same as para 292 of the Sastry Award as modified by the Labour Appellate decision.

The adjusted basic pay in cl. (ii) has to be taken as on January 1, 1959. This follows from the fact that the workman basic pay as on January 1, 1959 cannot be reduced and therefore when cl. (ii) speaks of adjusted basic pay it must refer to the same date as in cl. (i). Further cl. (iv) which provides for actual calculations starts with words "subject to rules (i) to (iii)" and therefore the actual calculations made under cl. (iv) must be subject to cl. (i) and (ii). This means in effect that the actual fixation under sub-cl. (a), (b) and (c) of cl. (iv) will be subject to cl. (i) and cl. (ii). Under sub-cl. (a) of cl. (iv) a workman will be placed in the Sastry Award as modified by placing him at the stage in the Sastry Award scale equal to or next above his basic pay as on January 1, 1959 in the scale then in force in the bank concerned. But in view of cl. (i) this cannot be less than the actual basic pay of the workman as on January 1, 1959. Where under cl. (i) the actual basic pay as on January 1, 1959 is more than what point-to-point adjustment will give under cl. (ii), it cannot be reduced for cl. (ii) is subject to cl. (i). After this has been done the workman would be entitled to increments as provided in sub-cl. (b) read with sub-cl. (c) of cl. (iv), but this will be subject to cl. (i) and (ii) and the adjusted basic pay arrived at by giving the increments under sub-cl. (b) and (c) cannot exceed the adjusted basic pay as arrived at by point-to-point adjustment in the Sastry Award as modified or the maximum of that scale or the

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actual basic pay as on 1st January 1959, as the case may be. Thus sub-cl. (a) is subject to cl. (i) and the basic pay to be fixed on January 1, 1959 has to be fixed by reading sub-cl. (a) of cl. (iv) and cl. (i) together. Then increments under sub-cl. (b) read with sub-cl. (c) of cl. (iv) have to be added, but this is again subject to the provisions of cl. (i) and (ii). [903 E; 903 G-904 E]

Once it is held that basic pay under cl. (ii) has to be

worked out as on January 1, 1959 the two increments provided by sub-cl. (d) of cl. (iv) which are beyond that date must be given over and above what has been worked out under sub-cl. (a), (b) and (c) of cl. (iv) of the Desai Award. The fact that by oversight sub-cl. (d) of cl. (iv) was not made a separate clause would make no difference for sub-cl. (d) provides- for a period after the date up to which cl. (i) works. [904 H-905 B]
State Bank of India Prakash Chand Mehra, [1961] 11 L.L.J. 383, relied on.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeals Nos. 1008 and 1009 of 1965.

Appeals by special leave from the orders dated April 1, 1965 of the Central Government Labour Court, Jullundur, in cases Nos. 409 of 1963 respectively.

C. K. Daphtary, Attorney-General, S. V. Gupte, Solicitor-General, Niren De, Addl. Solicitor-General, K. B. Mehta, V. Sagar, H. L. Anand and B. C. Das Gupta, for the appellants. M. K. Ramamurthi, for the respondents.

The Judgment of the Court was delivered by Wanchoo, J. These two appeals by special leave raise a common question as to the interpretation of paragraph 5.356 of the National Industrial Tribunal (Bank Disputes) Award of June 1962 (popularly known as the Desai award) and will be dealt with together. It is unnecessary to set out the facts of the two appeals at this stage. It is sufficient to say that the respondents made applications under s. 33-C(2) of the Industrial Disputes Act, No. 14 of 1947, praying for determination and computation of the benefit to which they were entitled under the Desai award as they were not satisfied with the fixation of their pay by the appellant- bank under para 5.356.

The Desai award dealt with the method of adjustment in the scales of pay fixed by it from para 5.329 onwards. It divided the employees of the banks with which it was concerned in two groups. The first group consisted of workmen who were drawing basic pay on January 1, 1962 according to scales of pay provided by the ALL-India Industrial Tribunal (Bank Disputes) Award, 1953 (popularly known as the Sastry award) as modified by the Labour Appellate Tribunal Decision (Bank Disputes). The second group consisted of workmen who on January 1, 1962 were employed in banks which were not governed by the provisions of the Sastry award as modified and were not thus drawing basic pay on the footing of scales of pay provided by that award. In the first case the Desai award provided that the workmen would be fitted in the new scales of pay from January 1, 1962 on stage to stage adjustment basis, i.e., workmen who were drawing basic pay at a particular stage in the time scale of the Sastry award as modified would draw basic pay at the same stage in the new scale applicable to them under the Desai award. Examples of how this would be done were given in para. 5.348 of the Desai award. As to the second group, the Desai award provided that these employees would first be fitted in the appropriate scales provided in the Sastry award as modified as on January 1, 1962 and

thereafter they would be fitted in the new scales of pay provided by the Desai award as laid down in para. 5.348. Paragraph 5.356 then went on to provide how these workmen would be fitted in the Sastry award. Here again the workmen were divided into two groups, namely, those who entered service before January 1, 1959 and those who entered service on or after January 1, 1959. In the present appeals we are concerned with workmen who entered service before January 1, 1959, and the fitment of these workmen was dealt with in para. 5.356 of the Desai award, and it is this paragraph which calls for interpretation in the present appeals. We may at this stage mention that a similar question of fitment was considered by the Sastry award in para. 292 and certain provisions were made thereunder. This paragraph was considered by the Labour Appellate Tribunal in appeal from the Sastry award and certain modifications were made thereunder by paras 164 and 166 of the Labour Appellate Tribunal decision in appeal. Paragraph 292 as modified by the Labour Appellate Tribunal decision came up for interpretation before this Court in *State Bank of India v. Prakash Chand Mehra*. (1) As the words of para 292 of the Sastry award as modified by the Labour Appellate Decision are almost the same as the words of para. 5.356 of the Desai award, we may set out the two paragraphs in parallel columns for comparison:

Sastry award as modified by the Labour Appellate decision For workmen who entered service of the bank before 31st January, 1950

1. The workman's basic pay as on 31st January 1960 shall not be reduced in any case.

(1) [1961] 2 L.L.J. 383.

Desai award For workmen who entered service of the bank before 1st January 1959

(i) The workman's basic pay as on January 1, 1959 shall not be reduced in any case.

2. Subject to rule (1) the adjusted basic pay in the new scale shall not exceed what point-to-point adjustment would give him or the maximum in the new scale.

3. In the matter of adjustment all efficiency bars, whether in the previously existing or in the scales fixed by us should be ignored.

4. Subject to rules (1) to (3) a workman's basic pay in the new scales shall be fixed in the following manner

(a) A workman shall first be fitted into the scale of pay fixed by our award (herein called the new scale) by placing him at the stage in the new scale equal to, or next above his basic pay as on 31st January 1950 in the pre-Sen scale then in force (herein called the existing scale).

(b) To the basic pay into which he is fitted under cl. (a) the annual increments in the new scale as from that stage onwards should be added at the rate of one increment for every completed three years of service in the same cadre as on 31st January 1950, up to a limit of 12 years' service; hereafter one increment for every four years of service up to another 8 years service, and after that

one increment for every five years of service.

(c) Such increments shall not however exceed four in number. [NOTE : Omitted by the Labour Appellate Tribunal in view of change in cl. (b).] 4-A. After adjustments are made in accordance with clauses

(a), (b) and (c) supra two further increments in the new scale will be added thereto for service for the two years 1951 and 1952. In addition the workman will be entitled to draw his normal increment for 1953 on 1st April 1963. Thereafter each succeeding year's annual increment shall take effect as and from 1st April of that year.

(ii) Subject to rule (i), the adjusted basic pay in the scale provided in the Sastry award as modified shall not exceed what point-to-point adjustment would give him or the maximum in the scale provided by the Sastry award as modified.

(iii) In the matter of adjustment, all efficiency-bars, whether in the previously existing scales or in the scales provided by the Sastry award as modified should be ignored.

(iv) Subject to rules (i) to (iii) a workman's basic pay in the scale provided by the Sastry award as modified shall be fixed in the following manner

(a) A workman shall first be fitted into the scale of pay of Sastry award as modified by placing him at the stage in the Sastry award scale as modified equal to, or next above his basic pay as on 1st January, 1959 in the scale then in force in the bank concerned (hereinafter called the Bank's scale).

(b) To the basic pay into which he is fitted under clause (a) annual increment or increment & in scale provided by the Sastry award as modified as from that stage onwards should be added at the rate of one increment for every completed three years of his service in the same cadre as on 1st January 1959.

(c) Such increments shall not however exceed four in number.

(d) After adjustments are made in, accordance with clauses

(a), (b) and (c) supra, two further annual increments. in the scale provided by the Sastry award as modified will be added thereto for service for the two years of 1960 and 1961.

We are not concerned with clauses (5) and (6) of para 292 of the Sastry award or with clauses (v) and (vi) of para 5.356 of the Desai award for purposes of the dispute between the parties and have not therefore set them out. It will be seen from the above comparison of the provisions in the two awards that the substantial provisions of the Desai award are exactly the same as the provisions of the Sastry award as modified except (i) for changes necessitated by the fact that the Desai award was being given in 1962 and

(ii) the provision in the Sastry award corresponding to sub- cl. (d) of cl. (iv) of para 5.356 of the Desai award was separated by the Labour Appellate Tribunal Decision from cl. (4) and made clause (4-A).

"We have already referred to the fact that para. 292 of the Sastry award as modified came up for consideration before this Court in the case of Prakash Chand Mehra(-) and this Court interpreted clauses (1) to (4-A) of the Sastry Award as modified thus : "We have therefore first to fix the basic pay in accordance with rule 4(a), and then allow annual increments in accordance with rule 4 (b). But this is subject to rules 1 and 2 above. We are unable to accept the contention raised on behalf of the respondent that the words "subject to"

have not the effect of making what would otherwise follow from the application of rules 4(a) and 4(b) subject to "both the limits" laid down in rule 2. Giving as we must natural meaning to the words used in rules 2 and 4, we are of opinion that in no case can the basic pay be fixed at a higher figure than what the point-to-point adjustment would give to the workman or the maximum in the new scale."

The dispute between the bank and the workmen in the present case was this. The bank claimed that under cl. (ii) of the Desai award, the adjusted basic pay in the new scale was not to exceed what point-to-point adjustment would give an employee on January 1, 1962. The bank further claimed that this being the maximum permissible under cl. (ii) and cl.

(iv) being subject to cl. (ii) the method of fitment provided in cl. (iv) could not give to an employee more than the maximum arrived at under cl. (ii). Thus the bank's case was that once the maximum arrived at by point-to-point adjustment as on January 1, 1962, was reached under cl.

(ii), no further increments even under sub-cl. (1) [1961] 2 L.L.J. 383.

(d) of cl. (iv) could be allowed. The workmen on the other hand claimed that they were entitled to what was provided by sub-cl. (a), (b) and (c) of cl. (iv) and the two increments under sub-cl. (d) and that it did not matter whether what was thus arrived at exceeded the maximum provided under cl. (ii). The labour court has partially accepted the workmen's contention and fixed the pay of the two workmen concerned accordingly. The bank contests the correctness of this view.

We are of opinion that neither the stand taken by the bank nor the stand taken by the workmen is correct, and that the relevant clauses in para. 5.356 of the Desai award must be interpreted in the same manner as the relevant provisions in the Sastry award as modified were interpreted in Prakash Chand Mehra's case(1). In this connection it is brought to our notice that in para. 5.356 of the Desai award it was stated that the award was giving directions similar to those provided under the Sastry award as modified subject to certain changes which were considered necessary having regard to the lapse of time after coming into force of the provisions of the Sastry award as modified. It is urged on behalf of the appellant that the Desai award made certain changes and therefore need not be interpreted in the same way as was done in Prakash Chand Mehra's case(1). We see no force in this

submission. It is true that the Desai award said that certain changes were being made; but these changes were considered necessary having regard to the lapse of time. However, the main intention of the Desai award was also to give directions similar to those provided in the Sastry award as modified. It is true that there are some verbal changes in the Desai award; but these verbal changes are only due to lapse of time and do not affect the substance of what was provided by the Sastry award as modified.

We do not agree with the case of the appellant-bank that in cl. (ii) the adjusted basic pay is to be as on January 1, 1962. We are of opinion that the adjusted basic pay in cl.

(ii) has to be taken as on January 1, 1959. This follows from the fact that the workman's basic pay as on January 1, 1959 cannot be reduced and therefore when cl. (ii) speaks of adjusted basic pay it must refer to the same date as in cl.

(i). Further cl. (iv) which provides for actual calculations starts with the words "subject to rules (i) to (iii)" and therefore the actual calculations made under cl. (iv) must be subject to clauses (i) and (ii). This means in (1) [1961] 2 L.L.J. 383.

L8Sup.CI/66-11 effect that the actual fixation. under sub-cl. (a), (b) and

(c) of cl. (iv) will be subject to cl. (i) and cl. (ii). Under sub-cl. (a) of cl. (iv) a workman will be placed in the Sastry award as modified by placing him at the stage in the Sastry award scale equal to or next above his basic pay as on January 1, 1959, in the scale then in force in the bank concerned. But in view of cl. (i) this cannot be less than the actual basic pay of the workman as on January 1, 1959. Where under cl. (i) the actual basic pay as on January 1, 1959, is more than what point-to-point adjustment will give under cl. (ii), it cannot be reduced for cl. (ii) is subject to cl. (i). After this has been done the workman would be entitled to increments as provided in sub-cl. (b) read with sub-cl. (c) of cl. (iv), but this will be subject to cls. (i) and (ii) and the adjusted basic pay arrived at by giving the increments under sub-cl. (b) and (c) cannot exceed the adjusted basic pay as arrived at by point-to-point adjustment in the Sastry award as modified or the maximum of that scale or the actual basic pay as on 1st January 1959, as the case may be. Thus sub-cl. (a) is subject to cl. (i) and the basic pay to be fixed on January 1, 1959, has to be fixed by reading sub-cl. (a) of cl. (iv) and cl. (i) together. Then increments under sub-cl. (b) read with sub-cl. (c) of cl. (iv) have to be added, but this is again subject to the provisions of cls. (i) and (ii). After this has been worked out, then comes sub-cl. (d) of cl. (iv), and the main dispute in the present case is about this subclause. The appellant-bank's contention is that two further annual increments allowed under sub-cl. (d) cannot be permitted in view of cl. (ii) as interpreted by the appellant. But as we, have held that in cl. (ii) the adjusted basic pay has to be fixed as on January 1, 1959, sub-cl. (d) of cl. (iv) will take effect and give two annual increments for 1960 and 1961 which are beyond the date which we have accepted as the right date for purposes of cl. (ii). It is however urged on behalf of the appellant that sub cl.

(d) is also subject to cls. (i) to (iii) and therefore these increments if they go beyond what cl. (ii) provides cannot be given. This argument has arisen because the Desai award did not separate sub-cl. (d) as was done by the Labour Appellate Tribunal in its modification of the Sastry award. But as

stated by the Labour Appellate Tribunal when dealing with the Sastry award, it was inherent in the Sastry award that increments for 1951 and 1952 should be provided after the basic pay was worked out as on January 31, 1950. The same applies to the Desai award. Once it is held-and that we hold-that basic pay under cl. (ii) has to be worked out as on January 1, 1959, the two increments provided by sub- cl. (d) of cl. (iv) which are beyond that date must be given over and above what has been worked out under sub- cls. (a), (b) and (c) of el. (iv) of the Desai award. The fact that by oversight sub-cl. (d) of el. (iv) was not made a separate clause would make no difference for sub-cl. (d) provides for a period after the date up to which el. (ii) works. Therefore, two increments under sub-cl. (d) have to be given after adjustments have been made under sub-cl.

(a), (b) and (c) of el. (iv) in accordance with what we have interpreted these sub-clauses as well as cls. (i) and (ii) to mean. In effect the two increments provided in sub-el.

(d) must always be given. But it may happen that increments provided in sub-cl. (b) read with sub-cl. (c) may in some cases be not available where the actual pay as on January 1, 1959 which will not be reduced under el. (i) happened to coincide with or was more than the adjusted basic pay under el. (ii). This interpretation is in accord with what was decided by this Court in Prakash Chand Mehra's case(1), and that decision in our opinion would govern the interpretation of para. 5.356 of the Desai award also, which as we have indicated, is in substance the same as para. 292 of the Sastry award as modified by the Labour Appellate decision. We now turn to the actual fixation of pay in each case. We shall first take the case of Ram Parkash (i.e. C.A. 1008). I-le joined service on April 11, 1949. His basic pay as on January 1,1959 was Rs. 106. His place of posting was Phagwara in area ITT. Point-to-point adjustment as on January 1, 1959, would give him Rs. 106 in the Sastry award scale as modified. This is equal to his actual salary as on January 1, 1959. Therefore under sub-cl. (a) of el.

(iv) his salary has to be fixed as on January 1, 1959 at Rs.

106. He would not be entitled to any increments under sub- cls. (b) and (c), because his actual salary coincided with the adjusted basic pay in the Sastry award scale as modified as on January 1, 1959. He would however be entitled to two increments under sub-cl. (d) for the years 1960 and 1961 and his salary therefore as on January 1, 1962 under the Sastry award would come to Rs. 119. As Rs. 119 is the eleventh stage in the Sastry scale, Ram Parkash would be entitled to the eleventh stage in the Desai scale, which would be Rs.

170. The bank actually fixed him at Rs. 176 on its own interpretation of the award. In the circumstances, Ram Parkash was not entitled to any relief from the labour court.

Tek Chand Sharma respondent in C.A. 1009 was appointed on November 15, 1950. His salary as on January 1, 1959 was Rs. 100 and his place of posting was Nakodar in area IV of the (1) [1961] 2 L.L.J. 383 Sastry award. His salary according to point-to-point adjustment would come to Rs. 85. But under cl. (i) his salary cannot be fixed below Rs. 100, which he was actually getting. Under subcl. (a) of cl. (iv) his salary will be fixed at Rs. 100. He would not be entitled to any increments under sub-cl. (b) and (c) of cl. (iv) because he was getting more than what would be his adjusted basic pay

under cl. (ii). Therefore, for purposes of sub-cl. (a) of cl. (iv) he would be fixed at Rs. 100 as on January 1, 1959, and would be entitled to increments under sub-cl. (d) which will bring his salary to Rs. 112 as on January 1, 1962. This is the thirteenth stage in the Sastry scale. Nakodar is now in area III in the Desai award. The thirteenth stage in the Desai award scale is Rs. 182 for that area. So his salary as on January 1, 1962 would be fixed at Rs. 182. In addition he is entitled to two increments on account of being a graduate and one increment on account of his having passed the Indian Institute of Bankers' examination. His actual salary in the Desai scale on January 1, 1962 will be Rs. 182 plus Rs. 33, i.e., Rs. 215. The bank fitted him on Rs. 193. The award of the labour court therefore in the case of Tek Chand Sharma is correct.

We therefore allow C.A. 1008 and set aside the order of the labour court and dismiss the application of Ram Parkash. We make no order as to costs in the circumstances. C.A. 1009 is hereby dismissed. We make no order as to costs in the circumstances.

C.A. 1008 allowed.

C.A. 1009 dismissed.