

Supreme Court of India

State Bank Of India vs M. Selvaraj Daniel on 19 December, 1963

Equivalent citations: 1966 AIR 1654, 1964 SCR (3) 280

Author: K D Gupta

Bench: Gupta, K.C. Das

PETITIONER:

STATE BANK OF INDIA

Vs.

RESPONDENT:

M. SELVARAJ DANIEL

DATE OF JUDGMENT:

19/12/1963

BENCH:

GUPTA, K.C. DAS

BENCH:

GUPTA, K.C. DAS

GAJENDRAGADKAR, P.B. (CJ)

WANCHOO, K.N.

CITATION:

1966 AIR 1654

1964 SCR (3) 280

ACT:

Review Application-No error in disposing appeal- Review fails-Sastry Award, Para 292-Industrial Disputes Act, 1947 (14 of 1947), s. 33(c)(2).

HEADNOTE:

The application for review arose out of a judgment passed by this Court in, Civil Appeal No. 707 of 1962. The appeal arose out of an application filed by a workman of the State Bank under s.33(c)(2) of the industrial Disputes Act before the Labour Court. He was appointed as a clerk in the Bank on December 14, 1953. He complained that 'the Bank had not paid him the increment on the basis of the Sastry Award. His case was that he was entitled under the award to have his annual increment in December each year. The case of the Bank was that on the basis of the award the workman was entitled to get his annual increment in each year on April 1. On these facts it was held that the workman would get the benefit of

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the new scales of pay from the very day of his appointment i.e. from December 14, 1953. Thus the appeal of the workman was allowed. Hence the review.

Held that (i) this application failed as this Court did not commit any error in disposing of the appeals. (ii) in para 292 of the Sastry Award special directions were given as regards the adjustment into the pay scale of the workmen who had joined the service of the Bank after January, 1950, but in their case nothing was said as to the date from which future increments would take effect. The necessary and inevitable consequence of the absence of any such direction in the matter is that future increments would be on that date of the year when the workman was appointed. On the facts of this case it was held that the appellant-workman would get the increments under the new scale on December 14, each year.

JUDGMENT :

CIVIL APPELLATE JURISDICTION: Review Petition No. Re. C. A. No. 33 of 1963.

Petition for Review of this Court's judgment dated April 22, 1963¹, in Civil Appeal No. 707 of 1962.

C. K. Daphtary, Attorney-General for India, H.N. Sanyal Solicitor-General of India, H.L. Anand, Das Gupta and V. Sagar, for the appellant.

M K. Ramamurthy, R. K. Garg, S. C. Agarwal and D. P. Singh, for the respondent.

1963. December 19. The Judgment of the Court was delivered by DAS GUPTA J.-This application for review of a judgment given by us on April 22 this year is by the Bank, which was the respondent in the appeal.

The appellant who had been appointed a clerk in the Bank on December 14, 1953, made an application under s. 33 (b)(2) of the Industrial Disputes Act, before the Labour Court, Delhi. He complained that in applying to him the award of the Sastry Tribunal in the dispute between certain banks and their workmen as modified by the Labour Appellate Tribunal, the Bank had proceeded on the basis that under it the appellant was entitled to get his annual increment in each year on April 1. According to the appellant, he was entitled under the award to have his annual increment in December each year, Accordingly, he prayed that the benefit of which he was being deprived by the Bank should be computed and directed to be paid to him. At the hearing of the appeal it was contended before us on behalf of the appellant that on a proper interpretation of para. 292 of the Sastry Award which deals with the question of adjustment of clerks already in service into the scale of pay fixed by the award, he should get his increments on December 14, every year. The Bank's contention was that increments had been rightly given from April 1. We did not however examine para. 292 as it appeared to us that when the appellant was first appointed by the Bank on December 14, 1953 the appointment was on the scale of pay as fixed by the Sastry Award. There was, therefore, in our opinion, no question of adjustment. We held that on those terms of appointment he was entitled to the pay as claimed by him in his application. In this view we set aside the order of the

Labour Court, Delhi, which had rejected the appellant's application and computed the sum to which the appellant was entitled under the award at Rs. 146/- plus dearness allowance.

In asking us to review this judgment it is submitted by the learned Attorney-General who appeared for the Bank, that it was an error to think that Daniel's first appointment was on the pay scale as fixed by the Sastry Award. He pointed out that the Labour Appellate Tribunal which decided the appeals from the award of the Sastry Tribunal gave a definite direction in para. 401 of its judgment that the Appellate Tribunal's decision as to pay scales, allowances and provident fund contributions will start from April 1, 1954. This, according to the learned Attorney-General, supersedes the direction by the Sastry Tribunal that the award will come into force on April 1, 1953. When it was pointed out that the decision of the Appellate Tribunal was given long after the appellant's appointment and so it might well be that the clerk was appointed on the scale under the Sastry Award which had already come into force on April 1, 1953, learned Counsel submitted that the operation of the award as to the pay scale had been stayed soon after the award was pronounced and long before December 14, 1953. We find it stated however in para. 42 of the Labour Appellate Tribunal's decision that A and B Class Banks had not filed any appeals against the wage structure. The reason is not far to seek. This award had been preceded by the award of the Sen Tribunal that was published on August 12, 1950. The Sen Award was declared void by the Supreme Court on April 9, 1951. The Sen Tribunal gave the clerks for A and B Class Banks the following scales of pay Class A Banks Class I areas. Rs. 96-6-132-7-174-9 -190-205-9-250-10-290 Class II areas. Rs. 82-5-112-6-148-7-162-172- 8-212-9-248 Class III areas. Rs. 70-4-94-5-124-6- 136-145-7-180--8-212 Class B Banks Class I areas Rs. 92--6-128-7-170-8-186-200 -9-245-10-285 Class II areas Rs. 78-5-108 -6 -144-7-158-167-8-207-9- 243 Class III areas Rs. 66 4-90-5-120-6-132-140-7-175-8-207 The award of the Sastry Tribunal in this matter was less favourable to the clerks. It gave the following scales:- Class A Banks Area I Rs. 85-5-100-6-112-7-140-8-164-9 -245-10-265-15-280 Area II Rs. 73-4-.85 -5-100-6-112-7-140-8-164-9-245 Area III Rs. 66-3-69-4-85-5-100-6-112-7-140-8-164-9-227 Class B Banks Area I Rs. 73-4-85-100-6-112-7-140-8-164-9-245 Area II Rs. 66 -3-69 -4-85-100-6-112-7- 140-8-164-9-227 Area III Rs. 57-3-69-4-85-5-100-6-112-7-140-8-164-9--200 It was in these circumstances that the A and B Class Banks were content to accept the award of the Sastry Tribunal as regards the wage structure and did not appeal; though the workmen being dissatisfied with the wage scale as awarded by the Sastry Tribunal appealed against it. It does not seem to us unreasonable to think that having accepted the Sastry Award on wage structure the Bank-an A Class Bank - would make its appointment after April 1, 1953 on those scales or pay. It has to be mentioned that the appointment letter is not on the record.

We are therefore still inclined to think that the appellant Daniel was appointed by the Bank on December 14, 1953 on the pay scale as fixed by the Sastry Tribunal. In any case, the Bank has not been able to satisfy us that any error was made in disposing of the appeal on the basis that Daniel's appointment was on the pay scale as fixed by the Sastry Award. This is sufficient to dispose of the review application.

As, however, arguments were addressed to us in this application as to what the position would be if the appellant had not been appointed on the pay scale as fixed by the Sastry Award and his pay had to be adjusted in accordance with the provisions of para. 292, we propose to give our decision on

that point as well.

The question of adjustment to the new pay scales formed a distinct item -Item No. 12-in the Government Order making the reference to the Sastry Tribunal. This was dealt with in Chapter XIII of the award in four sections. Section I sets out the different contentions raised by the employer and the workmen's Counsel. Thus, after mentioning that the employees generally asked for point to point adjustment, i.e., placing of each employee at that stage in the new scale to which he would have risen by reason of the length of his service if he had entered service on the new scale, the Tribunal stated that for the reasons given in paras. 113 to 117 of the Sen Award it agreed with the conclusion of the Sen Tribunal that a compromise between the two methods advocated by the parties should be adopted. After a general discussion of the arguments in paras. 285 to 291, the Tribunal proceeded to give concrete directions in para. 292 dealing with the matter in six sub-paragraphs, as regards workmen who entered the service of the Bank before January 31, 1950; one sub-para. was as regards workmen who joined service of the bank after January 31, 1950; seven more sub-paras. 8 to 14 laid down general rules applicable to all workmen whether appointed before or after January 31, 1950.

This scheme of adjustment was maintained by the Appellate Tribunal with the modification that 31st January 1953 in the Award was substituted by "31st January 1954 and 1st April, 1953 was substituted by title words 1st April, 1954. Clause

(d) of sub-para. 4 was deleted and in its place sub-para 4 (A) was substituted which ran thus:-

"After adjustments are made in accordance with the directions given, three further annual increments in the new scale will be added thereto for service for the three years 1951 to 1953. In addition, the workmen will be entitled to draw his normal increment for 1954 on the 1st of April 1954. Thereafter, each succeeding year's annual increment shall take effect as and from the 1st April of that year."

For workmen appointed before January 31, 1950 there was thus a definite direction that succeeding year's annual increment shall take effect from April 1, of that year. Sub-paragraph 7 dealing with the workmen who joined service after January 31, 1950 runs thus:-

"The workmen shall be fitted into the new scale of pay on a point to point basis as though it had been in force since he joined the service of the Bank, provided that his adjusted basic pay is not less than what it would be under a point to point adjustment on the corresponding "preSen" scale."

It is important to notice that in this provision as regards the workmen who joined service of the Bank after January 31, 1950, no direction has been given as regards the date from which annual increments should take effect. Nor can we find anything in the remaining seven sub-paras. laying down generally the rules' any directions whatsoever to justify the plea that the future increments of workmen who joined service of the Bank after January 31, 1950, would start from April 1, of the

year. The provision in para 12 that the adjusted pay shall have effect from April 1, 1954 has nothing to do with the commencement of future increments. The reason why such a direction was given as regards the workmen who entered the service of the Bank before January 31, 1950 and none was given as regards workmen who joined after that date appears to be clear. For workmen who entered the service of the Bank before January 31, 1950 detailed provisions for fitting them into the scales were made including the provisions for increments. It was in view' of this apparently that it was thought necessary to indicate the time from which further increments would commence. As the Tribunal brought the new scales into force with effect from 1953 the direction that logically followed was that each succeeding year's annual increment would take effect as and from April 1, of that year. The Appellate Tribunal decided to adjust the pay up to April 1, 1954 instead of April 1, -1953. But that did not change the logical position that each succeeding year's increment would take effect as and from April 1 of that year. The above considerations had no application to the workmen who were directed to be fitted into the new scale of pay on a point to point basis as though it had been in force since they joined the service of the Bank. On the basis that the new scale was in force at the date when the workmen joined the service of the Bank there can be no escape from the conclusion that the increments as provided in that scale would take effect from the anniversary of the date of appointment.

It is unnecessary for us to consider here why the workmen who joined the service of the Bank after January 31, 1950, were not being given increments in the same way as those who had entered the service before that date. Some indication is given in the Tribunal's observations that it would be proper to let bygones be bygones and there should be neither retrospective adjustment of pay or allowances actually paid nor further claims for more than what has been given already. Whatever the reason be the fact remains that special directions were given as regards the adjustment into the pay scale of the workmen' who had joined the service of the Bank after January, 1950, and in their case nothing was said as to the date from which future increments would take effect. The necessary and inevitable consequence of the absence of any such direction in the matter is, as we have already indicated, that future increments would be on that date of the year when the workman was appointed. We have thus reached the conclusion that even on application of the rules of adjustment into the new scale on the assumption that such adjustment was necessary, the appellant-workman would be entitled to the relief he had asked for.

The application is accordingly dismissed with costs. Review application dismissed.