

Supreme Court of India

The Patiala Central Cooperative ... vs The Patiala Central ... on 16 September, 1996

Author: S Sen

Bench: Sen, S.C. (J)

PETITIONER:

THE PATIALA CENTRAL COOPERATIVE BANK LTD.

Vs.

RESPONDENT:

THE PATIALA CENTRAL COOPERATIVEBANK EMPLOYEE UNION & ANR.

DATE OF JUDGMENT: 16/09/1996

BENCH:

SEN, S.C. (J)

BENCH:

SEN, S.C. (J)

JEEVAN REDDY, B.P. (J)

MAJMUDAR S.B. (J)

ACT:

HEADNOTE:

JUDGMENT:

[With Civil Appeal No.4074 of 1988 and Civil Appeal Nos.4075-4076 of 1988] J U D G E M E N T
SEN, J.

The Patiala Central Cooperative Bank Ltd., the appellant herein, is a cooperative Bank registered under the provisions of Punjab Cooperative Societies Act, 1961. The Patiala Central Cooperative Bank Employees Union, the respondent No.1 herein, is a Union of the employees of the appellant-Bank working at various places in different branches of the Bank. On 13.11.1972, the Union submitted a charter of demands culminating in an agreement between the Bank and the Union on 28.5.1973. This agreement was to be in force upto 31st March, 1977.

The agreement reached on 28.5.1973 provided for a number of things like fixation of pay-scales after classifying the various categories of staff. It also provided for Fixation Formula providing for pay rise in the revised pay scales. There was also a provision for payment of dearness allowance, house rent allowance, city compensatory allowance and various other allowances, if any. Provisions have been made for uniforms, provident fund, gratuity, over time allowance and also fixation of strength

and rules providing quota for promotion to various posts in the future. The agreement also provided for loans to be given for purchase of scooter/motor cycle/cycle upto a ceiling of Rs.15,000/- for Central Cooperative Banks and Rs.30,000/- Apex Cooperative Bank per annum. The agreement concluded with general Conditions which were as under:-

"GENERAL CONDITIONS

- i) The existing facilities given to employees on the Punjab State Cooperative Bank may continue.
- ii) This settlement will remain in force for a period of four years, i.e., upto 31.3.1977.
- iii) A copy of this settlement may be sent to the Labour Commissioner, Punjab for necessary confirmation.
- iv) Anomalies, if any, shall be discussed in the joint meeting of the signatories."

In order to appreciate the argument advanced in this case, it is necessary to set out the pay scales and the provisions relating to dearness allowance as agreed upon in the settlement:-

----- Category of Present grades Revised Revised
grades Staff after merger Grades after merger of grades DP w.e.f. 1.2.1968

a. Subordinate Staff			
Peons and Chowkidar	75-140	75-165	122-5-162-6
in all the C.Bs.			216-7-258
Daftri	95-160	100-170	147-6-195-7
			230-8-270
Drivers	120-170	120-170	190-7-267-8
b. Clerical Staff			
Jr. Clerks			
A Class Banks	140-315	150-350	240-10-300-
			425-15-470
B Class Banks	130-270	140-315	210-10-300-
			400-15-430
C Class Banks	115-265	140-315	
Senior Clerks			
A Class Banks	170-360	190-385	280-12 1/2-
			380-16-485-
			20-505
B Class Banks	155-335}	170-360	260-10-280-
C Class Banks	140-315}		12 1/2-380-
			15-485
c. Supervisory staff			
Junior Accountant	245-480	245-510	365-15-490-20-
			590-25-640

Junior Accountant	220-420}	245-480	365-12 1/2 -
B Class Banks	190-380}		380-15-500
			-20-620

Regarding the staff in the Common Cadre also, new grades will be framed after merging D.P., in their present pays. The new grades will be as under:-

Senior Accountants 275-530 385-15-480-20-590-25-665 Assistant Managers 375-690 485-20-525-25-725-30-815 Managers 475-930 595-30-745-35-955-40-1075 Fixation Formula All employees may be given a pay rise of 5% of their pay in the revised scales mentioned above and may be fixed at the next higher stages after adding 5% to their present basic pay including Dearness Pay. In the case of subordinate staff, however, one additional increment may also be given over and above the above mentioned benefits.

Dearness Allowance.

As mentioned above, the D.P. is to be merged in the revised grades. The D.A. and interim relief which the employees are getting at present will together form the D.A. This D.A. may be linked with the All India Consumers Price Index number (Base Year 1960 : 100) in such a way that any further rise in the Index number may be reflected to D.A. to the extent of 100% in the case of subordinate staff and 75% in case of the other Staff. No additional D.A. No additional D.A. will be made unless the Index number increase by at least four points (quarterly average).

The rate of D.A. being paid at present will be converted into percentage rates mentioned below for various categories of staff. This percentage has been worked out on the basis of the current D.A. Plus relief, rates, rounded off in such a way that the rate can be divided by four in the case of others:

Category of Staff Percentage rate Peons and Chowkidars 56.

Drivers	40
Daftry	44
Clerk	33
Senior Clerk-I	27
Senior Clerk-II	30
Junior Accountants and Senior Accountants 24	24
Assistant Managers and Managers	18

It is certified that any increase/decrease in the Index number after 31.3.1973 shall be added/reduced in the percentage rate mentioned above at the rate of 100/ in the case of subordinate staff and 75% in the case of others.

T.A. and D.A.

T.A and D.A. rules as applicable at present to common cadre employees be applied to all the employees.

This was a comprehensive agreement reached between the Employees' Union and the management. It is not an agreement relating to payment of Dearness Allowance only. The agreement was valid for a period of four years and came to an end on 31st March, 1977. After the agreement came to an end, disputes and differences cropped up between the employees and the management inter alia about the payment of Dearness Allowance in terms of the aforesaid agreement. The case of the employees is that the agreement cannot be repudiated unilaterally even though the period of four years mentioned in the agreement expired on 31st March, 1977. It has been contended that the agreement will continue to be binding even after the expiry of the period mentioned in the agreement expired on 31st March, 1977, by virtue of the provisions of sub-section (2) of Section 19 of the Industrial Disputes Act, 1947. Section 19 lays down that a settlement shall come into operation on such date as is agreed upon by the parties to the dispute, and if no date is agreed upon, on the date which the memorandum of the settlement is signed by the parties to the dispute. Sub-section has been reached between the workers and the management, that shall be binding not only for the agreed period, but also shall continue to be binding on the parties after the expiry of the period mentioned in the agreement "until the expiry of two months from the date on which a notice in writing of an intention to terminate the settlement is given by one of the parties to the other party or parties to the settlement."

The case of the employees is that no such notice was given and, therefore, the agreement continues to be in force and binding upon the management. The duty to pay Dearness Allowance at the rate specified in the agreement cannot be avoided by the management by any device.

It has been further contended that Section 84-B, which was introduced in the Punjab Cooperative Societies Act, 1961 by which it was laid down that "no employee of a cooperative society shall be paid dearness allowance at a rate higher than that admissible to the employees of the Government drawing pay at the same rate", cannot in any way abrogate an agreement protected by the provisions of the Industrial Disputes Act.

On behalf of the employees, a writ petition was filed in the High Court under Article 226 challenging the validity of Section 84-B. The case of the employees is that by virtue of Section 19 of the Industrial Disputes Act, the agreement between management and the employees cannot be altered except in the manner laid down in the Act. Such agreement has been given statutory force and they cannot be altered by the management on its own without following the procedure of law. Similarly, the State Government cannot give any direction as to the manner of working out of the agreement or abridge or modify the contents of the agreement to any manner whatever. Industrial Disputes Act being a special Act relating to industrial disputes and, in particular, about the relationship between the management and the employees, the agreement reached under that Act cannot be varied or abrogated by the management unilaterally. It was further contended that the Punjab Cooperative Societies Act, 1961 is a general Act relating to Cooperative Societies and it cannot curtail or control the specific provisions of Industrial Disputes Act which is a special Act, in any manner whatever.

It was held the Division Bench of the Punjab High Court that Section 84-B of the Punjab Cooperative Societies Act, 1961, which was introduced by the Amending Act of 1981, could not take away the effect of the settlement dated 28th May, 1973 which was subsisting and binding on the date the Amending Act came in to force. Section 84-B of the Punjab Cooperative Societies Act was violative of the provisions of Section 19 of the Industrial Disputes Act, 1947. It was further held by the High Court that change in condition of service of the employees could not be made in respect of any of the matters mentioned in the Fourth Schedule, without giving a prior notice in the manner prescribed by Section 19(2) of the Act. It was held that unilateral withdrawal of the city compensatory allowance by the employer of the workmen affected their conditions of services and attracted mandatory provisions of Section 9-A. ON the same analogy, unilateral withdrawal of dearness pay from the workmen affected the conditions of service of Class III and Class IV employees of the CO-operative Banks. Since the provisions of Section 9-A of the Industrial Disputes Act, 1947 had not been complied with, the changes brought about in the service conditions of the employees were of no consequence. It was, therefore held that the respondent would continue to be benefited by the terms of the settlement dated 28th May, 1973 as before. Section 84-B of the Punjab Cooperative Societies Act, 1961 was held to be ultra vires of the State Legislature of Punjab and quashed. It was further held that the settlement dated 28th May, 1973 would continue to be valid and binding between the parties and Class III and Class IV employees of the Cooperative Banks were held entitled to claim dearness pay in terms of the aforesaid settlement.

On behalf of the appellant, it has been contended that an important factual aspect has been totally ignored by the High Court in this case. It was contended on behalf of the appellant before the High Court that a notice under Section 19(2) of the Industrial Disputes Act (P.4 of the writ Petition) was duly issued by the appellant and served upon the employees. The High Court has failed to deal with this aspect of the case altogether. It has been stated in paragraph 2 of the Special Leave Petition that it was specifically stipulated in that the agreement was valid for a period of four years and would cease to be effected after the expiry of 31st March, 1977. As there was no Board of Directors and administration was being run by the Administrator, as per provisions of Section 27 of the Punjab Cooperative Societies Act, the Administrator issued a notice under Section 19(2) of the Industrial Disputes Act for terminating the agreement dated 28.5.1973 which had expired on 31.3.1977. The notice was issued on 25.2.1978. It has been alleged after this, the Board of Directors of the Bank had rectified the notice by Resolution No.7 at its meeting held on 9.4.1978.

In the counter affidavit filed on behalf of the Employees; Union, affirmed by Malinderjit Singh, General Secretary of the Employees' Union, it has been stated that since the facts of the case as pleaded in the Special Leave Petition are not disputed and the whole matter relates to pure question of law for decision, it is not necessary for the deponent to answer parawise the petition. In view of the submissions made above and the two decisions of this Hon'ble Court referred to in the affidavit, the appeals may be dismissed with costs.

In other word, the fact that notice was given on 25.2.1978 terminating the agreement dated 28.5.1973 is not in dispute.

However, the case need not be decided on the technically of the pleadings only, After expiration of the term of the agreement dated 28.5.1973 on 31.3.1977, the agreement has not ben continued unaltered. If the legal contention on behalf of the petition is upheld and if it be held that the agreement dated 28.5.1973 is still continuing by virtue of the provisions of sub-section (2) of Section 19, then the entire agreement including the clause relating to the Dearness Allowance will have to be treated as still in force. The pay scales and other terms and conditions relating to employment have been drastically revised upwards after the expiration of the agreement dated 28.5.1973. From the chart of salaries, furnished by the appellants, it appears that the pay scales upward in the following manner-

----- Category Position Position Position of post as on
as on as on 4.6.81 1.10.81 1.1.86

	Rs .	Rs .	Rs .
PEON	525 . 32	605 . 84	1144 . 60
JR . CLERK	820 . 95	917 . 30	1838 . 34
SR . CLERK	943 . 68	1109 . 32	2117 . 69

Note: No minimum benefit and Interim Relief has been included while fixing pay as on 1.10.1981 and 1.1.1986.

There is some dispute as to the exact quantum of the enhancement but there is no dispute that the salaries payable under the agreement dated 28.5.1973 have been drastically revised upwards at all levels thereafter.

Another point that has been on behalf of the appellant which is of substance is that in fixing pay of the Bank employees consequent upon the revision of pay scales, the same formula which was applied for fixation of pay scales of Punjab Government employees has been adopted. The bank employees have been given the benefits of proficiency step- up, master scales, stepping of pay of senior equivalent to the junior as allowed by the Punjab Government to its employees. All these changes have brought about substantial benefits to the employees of the Bank. In the background of these facts, the employees cannot claim dearness allowance in terms of the agreement dated 28.5.1973. That agreement has been given up for much better terms and conditions and also subsequent revision of pay. The employees cannot be heard to say that they will enjoy all the subsequent benefits given by the revision of pay scales. but dearness allowance must be given in accordance with the formula contained in the agreement dated 28.5.1973. It is not the case of the employees that the agreement dated 28.5.1973 will have to be enforced in full.

There is some dispute as to the exact amount of the benefit considered by the various revisions in pay scales but there is no dispute that the pay scales and other benefits now given are much better and higher than what was given by the agreement dated 28.5.1973. No one wants to go back to that

agreement so far as the pay scales are concerned. I fail to see how in the context of these facts, the employees can urge that Dearness Allowance formula of that agreement must remain in tact at the same time the drastic changes in every other part of the agreement dated 28.5.1973 will continue in force for the benefit of the employees.

In view of the aforesaid, it is unnecessary to go into other questions raised in the case. But since the question of validity and scope of Section 84-B of the Punjab Cooperative Societies Act, 1961 has been raised that question will have to be examined. Section 84-B was inserted by Amendment Act 26 of 1981. The section is as under:

"84-B. Dearness Allowance.-

Notwithstanding anything in this Act or any other law for the time being in force, or any agreement, settlement or award, no employee of a Cooperative Society shall be paid dearness allowance at a rate higher than that admissible to the employees of the Government drawing pay at the same rate."

This section places a bar on payment of Dearness Allowance at a rate higher than the rate admissible to the employees of the Government drawing the same pay. This provision will apply to all the employees of all the Cooperative Societies in the State of Punjab. This provision has been specifically made applicable notwithstanding, inter alia any other law for the time being in force or any agreement, settlement or award.

Prima facie, there is no reason to hold that this provision will not apply to the agreement dated 28.5.1973 assuming that agreement was still in force on the date Section 4-B was introduced in the statute. It has been contended that Industrial Disputes Act is a complete Code relating to industrial disputes and, therefore, by the general provisions of the Punjab Cooperative Societies Act, 1961, the applicability and scope of the provisions of Industrial Disputes Act cannot be whittled down.

I am unable to uphold this contention because sub- section (2) of Section 19 of the Industrial Disputes Act merely provides that even if the period of the agreement has expired, the terms of the agreement will continue to be in force unless determined in the manner laid down in sub- section (2) of Section 19. It does not have the effect of invalidating any legislation altering the terms of the agreement after the period of agreement comes to an end. The agreement provided for payment of Dearness Allowance higher than what was provided by the Government to its employees. Section 84-B specifically stated that in spite of any statutory provision to the contrary, or any agreement, Dearness Allowance can only be paid upto the rate fixed by the Government for corresponding pay of the Government Servants.

There is nothing in the wording of Section 19 of the Industrial Disputes Act which supports this contention of the employees. Section 19 reads as under:-

"19. Period of operating of settlements and awards:-

(1) A settlement shall come into operation on such date as is agreed upon by the parties to the dispute, and if no date is agreed upon, on the date on which the memorandum of the settlement is signed by the parties to the dispute.

(2) Such settlement shall be binding for such period as is agreed upon by the parties, and if is agreed upon by the parties, and if no such period is agreed upon, for a period of six months from the date on which the memorandum of settlement is signed by the parties to the dispute, and shall continue to be binding on the parties after the expiry of the period aforesaid, until the expiry of two months from the date on which a notice in writing of an intention to terminate the settlement is given by one of the parties to the other party or parties to the settlement."

'Settlement' has been defined in Section 2(p) as under:-

"2(p). 'settlement' means a settlement arrived at in the course of conciliation proceeding and includes a written agreement between the employer and workmen arrived at otherwise than in the course of conciliation proceeding where such agreement has been signed by the parties thereto in such manner as may be prescribed and a copy thereof has been sent to an officer authorised in this behalf by the appropriate Government and the conciliation officer."

A written agreement between the employer and workmen may constitute a settlement in the circumstances mentioned in Section 2(p). But Section 19 lays down that such agreement shall come into operation on the agreed date between the parties to the settlement or if the date is not agreed upon, on the date on which the settlement is signed by the parties. That is the starting point. Sub-section (2) provides for the period during which the settlement will be in force. It shall be binding during the period agreed upon the parties. If no such period is agreed upon, then the settlement will be valid for a period of six months from the date on which the settlement was signed by the parties and shall continue to be binding after the expiry of the aforesaid period. The settlement can be brought to an end by serving a notice in writing by one of the parties to the other party of its intention to terminate the settlement. If such a notice is given, the settlement will remain in force for two months from the date on which the notice of termination is given.

The provisions of Section 19(2) make an agreement between the employers and the employees binding. It also lays down the period during which it shall be binding. It also provides the manner in which the agreement can be terminated inter partes. It does not follow from this provision that a competent legislature cannot legislate on any matter which forms part of the agreement. Nor does Section 19 have the effect of validating any infirmity in the agreement. If the agreement is contrary to any law or if the agreement cannot be implemented without violating any provision of law, then the agreement cannot be enforced at all. There is nothing in sub-section (2) of Section 19 to suggest that even such an agreement will continue to be binding upon the employers and the employees and enforceable against express provision of law. If after the agreement has been entered into, any law is passed and the agreement cannot be enforced without violating that law, then clearly the agreement cannot be enforced. The law will prevail.

Sub-section (2) of Section 19 merely extends the period during which the agreement will be enforced, but it does not provide that the agreement will be valid and binding notwithstanding any law to the contrary.

For all these reasons, this appeal is allowed. The order under appeal is set aside. There will be no order as to costs.

CIVIL APPEAL NO. 4074 OF 1988 AND CIVIL APPEAL NOS. 4076 OF 1988 In view of the judgment in Civil Appeal No.4390 of 1988, the above appeals are also allowed. There will be no order as to costs.