

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Date of decision : December 16, 2015*

+ **LPA 912/2015**

JAGDISH SHARMA

..... Appellant

Represented by: Mr.Ajay Kr.Singh, Ms.Seenu
Chauhan, Advs.

versus

THE HONKONG AND SHANGHAI
BANKING CORPORATION LTD

..... Respondent

Represented by:

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J. (ORAL)

CM 30967/2015

Exemption allowed subject to just exceptions.

**CM 30965/2015 (delay of 737 days) & CM 30968/2015 (delay in re-filing
of 232 days)**

1. The present appeal challenges four orders dated February 01, 2013 passed by the learned Single Judge in W.P.(C) No.5833/2012 filed by appellant No.1, W.P.(C) 5834/2012 filed by appellant No.2 Sadhna Srivastava, W.P.(C) No.5837/2012 filed by appellant No.3 Ram Gopal and W.P.(C) No.5840/2012 filed by Anuj Srivastava. The said orders follow the judgment of the learned Single Judge in W.P.(C) No.5832/2012 between 'The Hong Kong and Shanghai Banking Corporation Ltd. (HSBC) Vs. Anju Bala Gupta' also dated February 01, 2013.

2. Appellant Jagdish Sharma and others filed Special Leave Petitions (SLPs) before the Hon'ble Supreme Court against the order dated 01.02.2013 in W.P.(C) No.1897/2012, 17.07.2013 in WP No.2285/2013, 17.07.2013 in WP No.2286/2013, 17.07.2013 in WP No.2287/2013, 17.07.2013 in WP No.2288/2013, 17.07.2013 in WP No.2289/2013, 17.07.2013 in WP No.2290/2013, 17.07.2013 in WP No.2291/2013, 17.07.2013 in WP No.2292/2013, 17.07.2013 in WP No.2293/2013, 22.08.2013 in LCA No.08/2011, 22.08.2013 in LAC No.8/2011 passed by the learned CGIT, New Delhi respectively.

3. By the order dated January 05, 2015 the Supreme Court in the batch of SLPs ordered as under:

“Delay condoned.

Mr.J.P.Cama, learned senior counsel appearing for the respondent submits that the instant petitions are filed against the order of the learned Single Judge, against which an LPA is maintainable, which fact is not disputed by the learned counsel for the petitioner. In this view of the matter, the petitioner is at liberty to avail the remedy available to him. If there is any delay for the reason the petitions remained pending before this Court, the same shall be decided in accordance with law. Further, the order of the Tribunal can also be challenged by the petitioner by filing appropriate writ petition before the High Court.

The petition is disposed of in the aforesaid terms.”

4. Similar order dated January 08, 2015 was passed by the Hon'ble Supreme Court in SLP titled as '*Sadhana Srivastava Vs. Hongkong & Shandhai Banking Corporation Ltd. & Anr.*' against the order of the learned Single Judge dated 17.07.2013 in WP No.2293/2013, 22.08.2013 in LAC No.09/2011, 01.02.2013 in WP No.5832/2012.

5. From the two orders it is apparent that the challenge before the Hon'ble Supreme Court was not to the orders dated February 01, 2013 in W.P.(C) Nos.5833/2012, 5834/2012, 5837/2012 and 5840/2012 which are impugned in the present petition. Learned counsel for the appellant has not been able to show any order whereby the orders impugned in the present appeal were challenged before the Supreme Court and liberty was granted to the appellant to file a LPA condoning the delay for the reason that the petitions remained pending before the Hon'ble Supreme Court. The present appeal was filed for the first time in the Registry on March 10, 2015 when various objections were raised which have now been finally removed. However for the reason that in the orders passed by the learned Single Judge of this Court in W.P.(C) 2285-93/2013 which were taken in SLP before the Hon'ble Supreme Court, the Court directed condonation of delay for the interregnum period, the delay of 737 days in filing and 232 days in re-filing the appeal is condoned.

CM 30966/2015 (permission for filing joint LPA)

In view of the order passed by the Hon'ble Supreme Court dated July 08, 2015 in SLP No. 36477/2014 permitting the appellants to file a joint petition, application is disposed of.

LPA 912/2015

1. A brief exposition of facts is that appellants were employed with the HSBC when the HSBC came out with a Voluntary Retirement Scheme (VRS) on July 01, 2003. Clause 3 of the general terms and conditions of the Scheme provided as under:

“The VRS benefit [lump sum cash payment] for all retirees under the Scheme and pension benefit under the Bank's special

Pension scheme shall not be re-computed or revised at any future date for any reason whatsoever including any retrospective change in salary on account of any settlement. Eligible employees who have opted for retirement under the scheme and have been relived from service will have no recourse to dispute the payment received under this scheme under any grounds, and they or their nominees or legal heirs shall have no rights, claim or demands against the Bank.”

2. Further Clause 13 of the Scheme provided:

“Clause 13 Employees released under the Scheme will not be entitled to dispute the payments received under this scheme on any grounds whatsoever, the employees and or their nominees or legal heirs/shall not have any right/claim or demands against the Bank on any matter relating to the scheme.”

3. The appellants sought voluntary retirement and were thus paid lump-sum amount and pension. A Bipartite agreement was entered into between the employees and HSBC on June 02, 2005 which was applicable with effect from November 01, 2002. Since the appellants had sought VRS pursuant to the Scheme dated July 01, 2003 they claimed benefit of the Bipartite settlement under which the HSBC paid salary, revised salary, gratuity and provident fund on the basis of revised salary, however no revision of pension done nor arrears of pension were paid and thus the appellants preferred petitions under Section 33-C(2) of the I.D. Act (in short the Act) before the learned Industrial Tribunal. In June 2012 the appellant moved applications for leading additional evidence and production of additional documents wherein the learned Tribunal passed the following directions:

“In view of reasons detailed above, it is ordered that claimant is not entitled for details of break up of amount paid in 2005 to other similarly placed employees as well as Gratuity Rules. His

request for supply of these documents cannot be granted. However, request for production of the documents, other than break up amount paid to similarly placed employees for the year 2005 and Gratuity Rules, is to be accepted. Bank, therefore, is called upon to produce those documents on the next date of hearing positively. With these observations, application stands disposed off. Announced in open court on 19.07.2012.”

4. HSBC approached the learned Single Judge by filing various writ petitions and its primary grievance was that the petition before the Industrial Tribunal under Section 33-C(2) of ID Act was not maintainable and despite the said objection the Industrial Tribunal passed the order as noted in the preceding para. The learned Single Judge noting the various grievances of the appellants noted that some of the reliefs sought by the appellants required fresh adjudication and do not stem out of VRS/Settlement. It noted the various grievances of the appellants before the Industrial Tribunal and held that the plea of HSBC with regard to maintainability of the appellant's petitions under Section 33-C(2) was largely well-founded and held:

26. Having heard learned counsel for the parties, I am of the view that the grievance of the petitioner with regard to the maintainability of the respondent's petition under Section 33-C(2) largely is well-founded. What the respondent is seeking by filing the said petition, primarily, is to seek the annulment of the terms and conditions of the VRS/settlement” particularly Clause 13 and Clause 3 of the General Terms and Conditions, as set out hereinabove. The respondent is seeking the said annulment, inter alia, on the basis of subsequent Bipartite Settlement, whereby the pay scales were revised retrospectively from the date when the respondent was still in service. As to whether or not the mere revision of pay scale and payment of arrears of pay, gratuity and provident fund would also call for revision of pension particularly in the face of Clause 13 and

Clause 3 of the General Terms and Conditions as extracted above, is an issue which would need adjudication. Similarly, whether there is discrimination and, if so, whether it is actionable, are issues which require adjudication. So as not to prejudice the case of either of the parties, this Court is refraining from making any comment on the same at this stage. However, there can be no doubt that the relief sought by the respondent is premised on the annulment of Clause 13 and Clause 3, as aforesaid. In the teeth of these clauses, the relief of revision of pension certainly cannot be granted. The said dispute raised by the respondent would require independent adjudication. The respondent has itself stated in her petition that Clause 3 has become redundant in view of her submissions made in the petition. This clearly shows that the respondent is seeking to justify her claim not on the terms and conditions of the settlement, but de hors and, rather contrary to the said terms and conditions. The aforesaid issues raised by the respondent can certainly not be said to be incident to the VRS/settlement between the parties. It cannot be said that the respondent is merely seeking to execute or enforce the settlement through the process under Section 33-C(2) of the Act. The respondent is, in fact, seeking to establish her right to relief by raising the aforesaid issues and is also seeking the determination of the issues of the petitioner's corresponding liability. These are well beyond the scope of an incidental enquiry that may be undertaken in enforcement or execution proceedings in respect of a pre-determined right in a settlement or adjudication.

27. Pertinently, the CGIT has appreciated this aspect as is evident from the order dated 23.12.2011 extracted above. However, the CGIT has not separated the claims/issues which fall within the scope of an enquiry under Section 33-C(2) and those which fall beyond it. In my view, this is a fallacious approach because, by not doing so, further enquiry/proceedings for leading additional evidence/production of document would unnecessarily be undertaken even in respect of issues/claims which fall beyond the scope of enquiry under Section 33-C (2) of the Act. The approach of the CGIT could not be to gather

evidence/information even beyond the scope of the enquiry before it, and then to discard a part of it later. The CGIT should not have postponed the segregation of the issues/claims beyond its jurisdiction under Section 33-C(2) but dealt with the said objection at the earliest to limit the scope of its enquiry to cover those aspects which fall within its jurisdiction. Of course, if there is an aspect on which a firm view cannot be taken, i.e., whether, or not, it falls within the scope of enquiry under Section 33-C(2) of the Act, without evidence being recorded, the CGIT should observe so and in that eventuality, it may postpone the determination of the issue of jurisdiction till after the evidence is recorded. However, this aspect should receive consideration from the Tribunal at the earliest so as to curtail unnecessary proceedings, expense of time and expense.

28. There are a couple of aspects which appear to fall within the scope of the enquiry permissible under Section 33-C(2) of the Act. I now proceed to deal with them.

29. The first grievance of the respondent stems out of the settlement inasmuch, as, the respondent is seeking information with regard to the detailed break up of the amounts computed and paid by the petitioner at the time when she was granted VRS. There can be no doubt that the respondent is entitled to the said information.

30. Similarly, her grievance number six, as aforesaid, in relation to the manner in which TDS has been deducted from the amount already been paid to her or being paid to her, appears to be justified and the petitioner cannot deny the said information.

31. As noticed above, the seventh grievance is a general grievance in relation to which there can be no general direction. However, all the other grievances raised by the respondent stem out of her primary submission that Clauses 13 and 3 of the VRS/settlement do not bind her. As aforesaid, these are grievances which cannot be remedied under Section 33-C(2) of the Act and the respondent would have to, if she is so advised, seek a reference of the said disputes under Section 10 of the Act.

32. Accordingly, I dispose of this petition in the aforesaid terms with the direction that the CGIT shall examine the claim for production of documents by the petitioner in the light thereof.”

5. It is this order which is impugned in the present appeal. In the present appeal the case of the appellants is that the application of HSBC with regard to various claims not falling in the purview of Section 33-C(2) ID Act was ordered on December 23, 2011 to be considered at the time of final adjudication. The HSBC before this Court in the various writ petitions filed had actually challenged order dated July 19, 2012 where two applications filed by the appellants one for leading additional evidence and other for issuing of directions to the respondent Bank for production of additional documents were decided as noted in para 3 above.

6. It is thus urged by learned counsel for the appellants that in a petition under Section 33-C(2) of the ID Act the Industrial Tribunal can examine any question relating to entitlement to any benefit which is computable and for that production of additional documents in respect of payments to similarly placed persons to decide the computable pensionary benefits to the appellants was relevant and hence necessary. The other ground urged are on merits qua the entitlement to pensionary benefits.

7. A perusal of the impugned judgment as noted above would reveal that the direction of the learned Single Judge to the Labour Court-cum-Industrial Tribunal is to look into the matter and see which of the claims of the appellants fell within the ambit of Section 33-C(2) ID Act where after only the relevancy of the documents to be produced could be determined. This issue of the maintainability of the claims under 33-C(2) could not have been

postponed by the Industrial Tribunal and ought to have been decided so that the proceedings before it do not proceed misdirected and are confined to the scope of the petition. In our opinion the learned Single Judge committed no error in directing the learned Labour Court to first determine the scope of grievances and thereafter the evidence to be required, for the reason while deciding the two applications vide order dated July 09, 2012 the plea of HSBC was again that directions in such a manner cannot be issued under Section 33-C(2) of the ID Act and the Industrial Tribunal was first required to determine the scope of proceedings. Moreover pursuant to the orders dated February 01, 2013 passed by the learned Single Judge, the Industrial Tribunal has already passed consequential order on March 14, 2013 which are not the subject matter of present appeals.

8. The appeal is accordingly dismissed.

(MUKTA GUPTA)
JUDGE

(PRADEEP NANDRAJOG)
JUDGE

DECEMBER 16, 2015
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