

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CWP No. 25233 of 2014 (O&M)

Date of decision : 3.6.2016

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Deputy General Manager, Canara Bank

.....Petitioner

vs.

Rajesh Kumar and others

.....Respondents

Coram: Hon'ble Mr. Justice P.B. Bajanthri

Present: Mr. D.S. Nalwa, Advocate for the petitioner

Mr. Ashok Sharma Nabhewala, Advocate
for the respondents.

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1. *Whether Reporters of local papers may be allowed to see the judgment?*
2. *To be referred to the Reporters or not?*
3. *Whether the judgment should be reported in the Digest?*

P.B. Bajanthri, J.

In the instant writ petition, petitioner – Canara Bank has assailed the award dated 25.4.2014 passed by the Central Government Industrial Tribunal-cum-Labour Court-II, Chandigarh (for short 'CGIT') (Annexure P-9).

2) Petitioner has evolved policy for the purpose of appointment of Part Time Employees (for short 'PTEs') in the petitioner bank. Vide Annexure P-3 method of appointment, process of selection, duties of PTEs etc. are reflected.

(3) Annexure – I to the policy relates to eligibility norms for PTEs, which contains area-in-use, staff strength, wages of PTE and working hours per week. Area-in-use from 1000 Sq.ft. & below to

1000 sq. ft. or more, staff strength 15 or more to 55 or more, wages of PTE on consolidated wages of Rs.225/-, on 1/3 scale wages to two PTEs on 3/4 scale wages, working hours per week more than 3 hours to less than 6 hours to more than 19 hours to 29 hours and thereafter for the purpose of 4000 sq.ft. To 6000 sq.ft., 55 or more staff strength, wages of PTE one on 3/4 scale wages and one PTE on 1/3 scale wages for which working hours per week has been stipulated.

4) Annexure-II to the Policy relates to duties of Part Time Employees. The same has been classified everyday, once in a week or at a lessor intervals, once in a month or at a lessor intervals and any other duties entrusted to him/her from time to time and the fitment in 3/4 scale wages etc. In other words PTEs are discharging few hours to 8 hours per day depending upon availability of work. In this background, the respondents were denied scale of wages and they have been paid only fixed wages. In this regard the respondents served demand notice under the Industrial Disputes Act, 1947 (for short 'the ID Act'). Due to non-settlement of matter, it was referred to CGIT under Section 10 (2-A) of the ID Act. On 3.9.2014, Government passed a common reference. Respondents submitted their claim statement before the CGIT. In the claim statement, the respondents have highlighted the nature of work discharged by each of the respondent, wages given by the bank, duty time, particulars of job.

5) Petitioners have filed their written statement before the CGIT. CGIT passed award in favour of the respondent -PTEs on 25.4.2014. Each of the respondents nature of duties with reference to

carpet area work allotment has been taken note of, evidence of the workmen as well as management has been taken into consideration by the CGIT. On behalf of workmen, it was submitted that petitioner -bank did not produce any record so as to establish that how much time the workmen spent in the bank. In the absence of the same, an inference be drawn that each of the respondents are working for more than the number of hours fixed with reference to circular. Therefore, they are entitled to regular wages. CGIT has recorded as under:-

“The bank has not produced the record relating to entry and exit from the bank but the same do not serve any purpose as if a person remained sitting in the bank for few hours more, the same do not mean that he was performing any duty relating to his employment. Therefore, it is not conclusively proved on the file that the workmen are attending more area than prescribed under the above said circular and working for 8 hours a day as pleaded by them.

Therefore the area mentioned by the management is to be taken as true and binding on it. As per the admission of the management the case of Rajesh, Sompal, Rampal, Chandpal, Ramesh, Kesh Pal, Sarla Devi, Krishan Kumar and Binnu Devi falls within Clause (g) and (h) of the above said circular as the 'carpet area was 5765, 8028, 5077, 6069, 6081, 9031, 5897 and

12556 respectively and they are entitled to $\frac{3}{4}$ of the scale wages whereas they were paid less.

The case of Soma Devi falls within Clause (e) of the circular as the area covered by her was 3081 and she is entitled to $\frac{1}{2}$ of the scale wages whereas she was paid only $\frac{1}{3}$ of the scale wages.

Though the area of Som Prakash was 8669 but he was already paid wages as per Clause (g) of the circular.

The workmen Suresh Kumar, Ravinder Kumar, Sunita, Sanjay Kumar, Pappu, Antari Devi and Shamo Devi are already getting the scale wages as per the circular and they are not entitled to any relief.”

6) In view of the finding, CGIT has passed the following order :-

“In result, the reference relating to workmen Rajesh, Sompal, Rampal, Chand Pal, Ramesh, Kesh Pal, Sarla Devi, Krishan Kumar, Binnu Devi is accepted and it is held that they are entitled to $\frac{3}{4}$ of the scale wages; whereas Soma Devi is entitled to $\frac{1}{2}$ of the scale wages and it is ordered that the difference be paid to them within three months of the publication of the award failing which they shall be entitled to the interest

@ 6 per cent on the amount payable to them from today till realization. However, the reference relating to Som Parkash, Suresh Kumar, Ravinder Kumar, Sunita, Sanjay Kumar, Papu, Antari, Shamo Devi and Kailasho Devi stands dismissed and they are held not to be entitled to any relief. The reference is answered accordingly.”

7) Petitioner – bank aggrieved by the finding of the award dated 25.4.2014 presented this petition.

8) Learned counsel for the petitioner submitted that carpet area do not include certain items, like cleaning of tables, chairs, glasses, notice board, computer etc., for the reasons that in the circular/Policy under Annexure-I, area-in-use is mentioned. Thus inference is required to be drawn that it is the floor area which includes tables, chairs, glasses, notice board, computer etc. Therefore, calculation of area-in-use is to be restricted to floor area. Thus CGIT has committed an error.

9) Learned counsel for the petitioner raised a preliminary issue regarding reference dated 3.9.2014 is under Section 10 (2-A) of the ID Act. Common reference is impermissible. Under Section 10 (2-A) reference itself is illegal. It should have been under Section 2 (K) of the ID Act. Therefore, reference and consequential proceedings by the CGIT is illegal. It was further contended that an individual/workman/employee cannot espoused cause, only Union can espouse cause. It was further argued that the workmen-

respondents are not discharging 8 hours of duties. This was taken note of by the Labour Court, but still the Labour Court held that the respondents are entitled for scale of wages instead of fixed wages. That apart, area-in-use would include tables and furniture placed in the office, segregation from the floor area and furniture is not the object of the scheme, for the purpose of calculation of area-in-use. Therefore, Labour Court erred in giving finding. Consequently declaring that some of the workmen are entitled to 3/4, 1/2 and 1/3 scale of wages are held to be illegal and they are not in terms of the policy of the petitioner. Hence the award dated 25.4.2014 is liable to be set aside.

10) On the other hand, learned counsel for the respondent – workmen submitted that petitioner's contention that reference dated 3.9.2004 under Section 10 (2-A) of the ID Act is wrong and illegal, having regard to the demand notice of the respondents and common reference passed by the Government is also impermissible since workmen Union has to espoused the cause and not by a individual/workman, is concerned, it is to be noted that while making reference by Government, vide order dated 3.9.2004, quoted wrong provision while passing reference order. Merely quoting a wrong provision do not vitiate order of reference dated 3.9.2004. If at all the petitioner is dissatisfied or aggrieved, petitioner-bank should have assailed the validity of reference as and when issued on 3.9.2004. Therefore, the contention of the petitioner that reference dated 3.9.2004 is illegal is not tenable. The respondent-workmen grievance is relating to grant of scale of wages instead of fixed wages, which

would be individual grievance and it can't be grievance of entire class of workmen. Therefore, issuance of common reference by the Government on 3.9.2004, is in order. Even a workman can issue demand notice for his individual grievance like demanding scale of wage. Scale of wage has been classified in the policy into three categories viz. 1/3, 1/2 and 3/4. Therefore, each and every workman's grievance is not relating to any particular category so as to plead grievance through Union. Hence, the preliminary objection raised by the petitioner is liable to be rejected.

11) Learned counsel for the respondent-workmen further submitted that respondent-workmen are entitled to scale of wages instead of fixed wages with reference to the policy of the petitioner as is evident from Annexure – I, Eligibility Norms for PTEs. In so far as wages of PTEs is concerned, it is stated that PTEs are entitled to 1/3, 1/2 and 3/4 scale wages, not fixed wages. Therefore, the Labour Court rightly held that respondents are entitled to wages with reference to scale and not fixed wages.

12) Petitioner's contention that respondent-workmen have not proved that they were working for 8 hours a day, has been considered by the Labour Court stating that even if they are sitting in the office of the bank for 8 hours, there is no evidence. On the same issue, the respondent-bank have not produced any material to show that the respondent-workmen have worked less than 8 hours. So, in the absence of material evidence, the Labour Court granted higher scale of wages depending upon each workman's carpet area etc.

13) Heard learned counsel for the parties

14) Petitioner counsel raised three preliminary issues with reference to order of reference by the Government dated 3.9.2004 i) reference under Section 10 (2-A) of the ID Act, ii) common reference made by the Government and iii) Union has to espouse the cause of the workmen and not by the individual. Demand notice and reference may be Under Section 10 (2-A) of the ID Act, that does not mean that demand of the workman for scale of wages would wipe out. It is only an error in quoting provision. Mere quoting a wrong provision do not vitiate the order as held by the Supreme Court in the case of *Md. Shahabuddin vs. State of Bihar and others 2010 (4) SCC 653.* Having regard to the demand of the workmen that they are entitled for scale of wages and not fixed wages with reference to policy of the petitioner. Therefore contention of the petitioner that Union had to espouse the cause and not by individual is not tenable for the reasons that under policy job varies from workman to workman, depending upon area-in-use, staff strength, wages of PTEs and working hours per week etc., hence contention of the petitioner that Union had to espouse cause and not by individual is not tenable.

15) In view of these facts and circumstances the petitioner has not made out a case so as to interfere with the award dated 25.4.2014 (Annexure P-9) passed by the Central Government Industrial Tribunal–cum-Labour Court II, Chandigarh.

16) Civil Writ Petition stands dismissed.

17) No order as to costs.

(P.B. Bajanthri)
Judge

June 3rd, 2016
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