

ORDER

OD – 5

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
ORIGINAL SIDE

APO/51/2023
WITH
WPO/1695/2022

IA NO: GA/1/2023

THE CHIEF EXECUTIVE OFFICER AND THE DEPUTY GENERAL MANAGER,
SONALI BANK LIMITED
VERSUS
SONALI BANK EMPLOYEES' ASSOCIATION & ORS.

BEFORE:

The Hon'ble JUSTICE V.M. VELUMANI
The Hon'ble JUSTICE RAI CHATTOPADHYAY

Date : 4th October 2023.

Appearance:

Mr. Soumen Das, Advocate
.... for appellants/petitioners.

Mr. Soumya Majumder, Advocate
Mr. Debashis Banerjee, Advocate
Mr. Rakesh Jana, Advocate
... for respondents 1 and 2.

Mr. Sourav Mondal, Advocate
... for Union of India.

1. According to respondents 1 and 2, the management of Sonali Bank Limited and recognised trade unions entered into bipartite settlements. The said bipartite settlements were entered into time to time and at present 11th bipartite settlement is in force. According to respondents 1 and 2, as per the bipartite settlement, the post of Special Assistants in clerical cadre will be

filed up by interview of senior employees with weightage for qualification. While so, the Reserve Bank of India directed the management to frame service rules and regulations with regard to its employees as per Risk Mitigation Plan of Reserve Bank of India. The management prepared and formulated Sonali Bank Limited, India Operation (Officers and Staff) Service Rules, 2019, wherein it has been incorporated that bipartite settlements are not binding on the bank. On receipt of copy of the Rules, the respondents 1 and 2 filed Writ Petition No.421 of 2021 challenging the said Rules and this Court by order dated 9th April 2021 granted stay of the Rules. Respondents 1 and 2 gave a representation dated 27th January 2022 to fourth respondent alleging violation of settlement thereby management committed an offence as contemplated under Section 29 of Industrial Disputes Act, which is punishable under Section 34 of the Act. A complaint can be lodged under Section 34 of the Act only by appropriate government and fourth respondent was requested to take appropriate action. Respondents 1 and 2 filed present writ petition when fourth respondent did not take any action on their representation dated 27th January 2022 and reminder representation dated 14th March 2022.

2. The appellants contended before the Learned Single Judge that claim made by respondents 1 and 2 is not a dispute under Section 2(k) of the Industrial Disputes Act. The fourth respondent can only conciliate the dispute and has no jurisdiction to adjudicate the issue raised by respondents

1 and 2. As per Section 12(2) of the Act, conciliation officer can investigate only the disputes as contemplated under Section 2(k) of the Act. Respondents 1 and 2 claimed that management committed breach in relation to filling up of posts of Special Assistants as per settlement whereas in the representation they have complained about non-promotion of Junior Management Grade (JMG) Scale-I. JMG are not workers. There will not be any industrial dispute. Counsel for appellants also submitted before the Learned Single Judge that an industrial dispute is only with regard to employment and non-employment and non-promotion of an employee will not be an industrial dispute and relied on the judgment in the case of Workmen of Nilgiri Cooperative Marketing Society Ltd. v. State of Tamil Nadu & Others reported in (2004) 3 SCC 514.

3. The Learned Judge referring to entry no.13 of fifth schedule held that non-implementing award, settlement or agreement also constituted an unfair labour practice. The Learned Judge held that purpose of Section 34 is to prevent indiscriminate criminal complaints against the management. The Learned Judge on these conclusions ordered as follows:-

“23. Having regard to the aforesaid and the provisions of the said Act, I am of the view that public policy also requires the appropriate Government to apply its mind and take a decision as regards commission of an offence under the said Act, especially when the alleged commission of offence falls within the meaning of unfair labour practice as defined under Section 2(ra) of the said Act. In view thereof, there shall be an order directing the respondent no.2 to

take a decision on the basis of the communication dated 27th January 2022 and the reminder dated 14th March, 2022, for the said respondent no.2, to take steps in the matter as it may deem fit and necessary. Needless to note that respondent no.2 while taking steps, shall be guided by the observations made in this order.

24. With the aforesaid directions and observations, the writ application is disposed of.”

4. Heard counsel for the parties and perused entire materials on record.
5. From the facts narrated above, it is seen that it is the contention of respondents 1 and 2 that appellants and respondents periodically entered into bipartite settlement from time to time and the said contention is not disputed by appellants. On the other hand, it is the contention of learned counsel for appellants in the appeal that 11th bipartite settlement is not in force in view of the regulations and rules framed by the appellants as per the Risk Mitigation Plan of Reserve Bank of India as directed by Reserve Bank of India. The said contention is not acceptable in view of the stay of the said rules and regulations granted by this Court by order dated 9th April 2021 in the earlier Writ Petition No.421 of 2021 filed by respondents 1 and 2. Respondents 1 and 2 had approached the fourth respondent alleging that appellants have committed act of commission and omission and breached bipartite settlement and they are liable to be prosecuted as per Section 34 of Industrial Disputes Act.

6. On the other hand, it is the case of the appellants that there exists no industrial dispute; fourth respondent can only conciliate an industrial dispute; fourth respondent has no power to investigate and respondents 1 and 2 have to raise an industrial dispute only. This contention also is not acceptable in view of Section 12(2) of the Industrial Disputes Act whereunder the fourth respondent is empowered to investigate the claim made before him. As per Section 34 of Industrial Disputes Act, only the government can initiate prosecution against the management before a Metropolitan Magistrate or a Judicial Magistrate of First Class. The complaint so lodged is in the nature of private complaint contemplated in Section 200 of Code of Criminal Procedure. As rightly pointed out by Learned Single Judge, the said Section is incorporated in the Industrial Disputes Act with a view to prevent indiscriminate criminal complaints that may be lodged by private individuals including respondents 1 and 2.

7. As per entry 13 of Schedule V, any breach of settlement or award amounts to unfair labour practice. As per Section 2(ra) of Industrial Disputes Act, unfair labour practice is an industrial dispute. Admittedly, the fourth respondent is empowered by Section 12(2) of Industrial Disputes Act to investigate the claim made by a party. The Learned Judge has directed the fourth respondent to consider the claim and the counter-claim and take action. There is no error in the order passed by the Learned Judge warranting interference by this Court. It is open to the appellants to raise all

the objections raised in the writ petition as well as in this appeal before the fourth respondent and the fourth respondent is directed to consider the same without being influenced by the order passed by this Court in the writ petition as well as in this appeal after considering the rival claims on merits and coming to a conclusion. The fourth respondent is at liberty to take further action.

8. With the above observations, the appeal is dismissed.

(V.M. VELUMANI, J.)

(RAI CHATTOPADHYAY, J.)

s. kumar