

We have therefore come to the conclusion that the Labour Court has erred in holding that the transfer was not made in accordance with the "standing orders" regarding transfers as contained in the Sastry Award.

We therefore allow the appeal, set aside the order of the Labour Court and order that the respondent's application under s.33A be rejected. There will be no order as to costs.

Appeal allowed.

M. SELVARAJ DANIEL

v.

MANAGEMENT OF STATE BANK OF INDIA

(P. B. GAJENDRAGADKAR, K. N. WANCHOO and
K. C. DAS GUPTA JJ.)

Industrial Dispute—Sastry Award—From which date increment will be given—In the case of person after January, 1950—Industrial Disputes Act, 1947 (14 of 1947), s.33(c)(2).

The appellant was appointed as a clerk in the State Bank of India on December 14, 1953. He made an application under s.33(c)(2) of the Industrial Disputes Act before the Labour Court. He prayed before the Labour Court that he was entitled to Rs. 146/- plus dearness allowance as the benefit to which he was entitled under the Sastry Award but which had not been paid. The case of the appellant was that he was entitled under the Sastry Award to have his annual increment in December each year as he was appointed on December, 14, 1953. The case of the Bank was that on the basis of the Sastry Award the appellant was entitled to get his annual increment in each year on April 1. The respondent raised a preliminary objection that the question in regard to the increment of the appellant could not be decided in an application under s.33(c)(2)

1963

Genera Banking
Corporation Ltd.

v.
U. Vittal

Das Gupta J.

1966

April 22.

1963

M. Selvaraj Daniel
v.
Management of State
Bank of India

of the Act. The Labour Court rejected this preliminary objection but on merits accepted the case of the Bank. Hence the appeal.

Held that under s.33(c)(2) of the Industrial Disputes Act the Labour Court has got jurisdiction to decide on an examination of an award or settlement whether or not the workman is entitled to the benefits claimed by him. The preliminary objection must therefore be held to have been rightly rejected by the Labour Court.

(2) that para 292 of the Sastry Award dealt with the question of fitting the existing staff into the revised scales of pay. Persons who joined the service of the Bank after the date when the new scales came into force would not be governed by para 292 of the award for the simple reason that they were not "existing staff" of the Bank. Such workmen would come straight into the revised scales of pay. Thus, the present appellant appointed on December 14, 1953, would get the benefit of the new scales of pay from the very date of his appointment. In consequence, he would get the increments under the new scale on December 14, each year.

CIVIL APPELLATE JURISDICTION: Civil Appeal
No. 707 of 1962.

Appeal by special leave from the order dated December 11, 1961, of the Central Government Labour Court, Delhi in L.C.A. No. 605 of 1961.

M. K. Ramamurthi, R. K. Garg, D. P. Singh
and *S. C. Aggarwala*, for the appellant.

H. N. Sanyal, Solicitor-General of India, H. L. Anand, Vidya Sagar and *B. C. Das Gupta*, for the respondent.

1963. April 22. The Judgment of the Court was delivered by

Das Gupta J.

DAS GUPTA J.—The appellant was appointed as a clerk in the State Bank of India, the respondent before us, on December 14, 1953. At the time of

appointment his salary was Rs. 95/- per month with a dearness allowance of Rs. 50/-. The Sastry Award in the disputes between certain banking companies and their workmen as modified by the Labour Appellate Tribunal was given statutory force by the Industrial Disputes (Banking Companies) Decisions Act, 1955. In applying to the appellant this award which is admittedly applicable to him the bank 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, however, he is entitled under the award to have his annual increment in December each year. On December 14, 1960, the appellant made an application under s. 33 (c) (2) of the Industrial Disputes Act before the Labour Court, Delhi, praying that the benefit under the award of which he is being deprived by the bank by the alleged error in its implementation should be computed and directed to be paid to him. A schedule was annexed to the application purporting to show that on the basis that the annual increment has to be allowed on December 14, of each year and not on April, 1, the appellant was entitled to an additional sum of Rs. 146/- plus dearness allowance.

In resisting this application the Bank raised a preliminary objection that the question whether or not the appellant was entitled to the benefits as alleged by him could not be raised or decided in an application under s. 33 (c) (2). On the merits the bank pleaded that it had acted in accordance with the terms of the Sastry Award in allowing increments on the 1st April of each year.

The Labour Court rejected the preliminary objection but held on the merits that the annual increment of the appellant fell due from after April 1, 1954, and on April 1, in succeeding years. Accordingly, the Court rejected the application.

1963

M. Selvaraj Daniel
v.
Management of State
Bank of India

Das Gupta J.

1963

M. Selvaraj Daniel
v.
Management of State
Bank of India

Das Gupta J.

Against this order of rejection this appeal has been filed by special leave of this court.

Before us the appellant contends that the Labour Court has erred in thinking that under the award annual increments to workmen appointed after January 31, 1950 and before the new scales were brought into force, fell due on April 1, of each year, starting from April 1, 1954.

The respondent in addition to supporting the decision of the Labour Court on merits further contended that the Court had wrongly rejected the preliminary objection raised by the bank.

The scope of s. 33 (c) (2) of the Industrial Disputes Act has been elaborately considered by us in the *Central Bank of India Ltd. v. P.S. Rajagopalan* ⁽¹⁾, and we have decided there that the Labour Court has got jurisdiction to decide on an examination of an award or settlement whether or not the workman is entitled to the benefits claimed by him. The preliminary objection must therefore be held to have been rightly rejected by the Court. It is necessary therefore to decide the appellant's contention that the Labour Court had erred in its decision on the merits.

The appellant's case in the written statement was that under the Sastry Award his pay had to be fixed in accordance with the directions in cl. 7 of para 292 but that the bank had wrongly fixed his pay on the same basis as the employees who entered service of the respondent before January 31, 1950. He claimed that if his pay had been fixed in accordance with cl. 7 of para 292 his annual increment would have fallen due on December 14, of each year and not April 1, each year as calculated by the bank. The bank contended however that as the adjusted salary would have effect under para. 292

(1) [1964] Vol. 3 S. C. R. 140.

from April 1, 1954 the increments were rightly given on April 1, of each year, after April 1, 1954. The Labour Court considered the appellant's petition and four other petitions together and disposed of these by the same order. It may be mentioned that in other four petitions, two persons were appointed on February 24, 1950, one on March 15, 1951 and one on June 1, 1953, while the appellant, as already stated, was appointed on December 14, 1953. In all the cases the Labour Court accepted the bank's contention based on para. 292 (12) which after modification by the Labour Appellate Tribunal says: "The adjusted pay shall have effect from April 1, 1954." The Court was of opinion that this rule should apply to all persons appointed after January 31, 1950 but before April 1, 1954.

It is necessary to notice that para. 292 of the award dealt with the question of fitting the existing staff into the revised scales of pay. The revised scales of pay were brought into operation under para 627 with effect from April 1, 1953. The award, it may be mentioned, was signed by the members of the Tribunal between March 5, and March 20, 1953. It is easy to see that persons who joined the service of the bank after the date when the new scales came into force would not be governed by para. 292 for the simple reason that they were not "existing staff" of the bank. Such workmen would come straight into the revised scales of pay. Thus, the present appellant appointed on December 14, 1953 would get the benefit of the new scales of pay from the very date of his appointment. In consequence, he would get the increments under the new scale on December 14 of each year and would thus be entitled to payment of Rs. 100/- per month from December 14, 1954 to December 13, 1955 at the rate of Rs. 106 per month from December 14, 1955 to December 13, 1956 and so on, as claimed by him in the schedule to his petition. He is therefore

1963

M. Selvar. j Daniel
 v.
*Management of State
 Bank of India*

Das Gupta J.

1963

M. Selvaraj Daniel
v.
*Management of State
Bank of India*

—
Das Gupta J.

entitled to Rs. 146/- plus dearness allowance as the benefit to which he is entitled under the Sastry Award but which has not been paid.

The Labour Court was, therefore, wrong in rejecting the appellant's petition.

We allow the appeal, set aside the order of the Labour Court, Delhi, and compute the sum to which he is entitled under the Award at Rs. 146/- plus dearness allowance. No order as to costs.

Appeal allowed.

1963

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December 19.

STATE BANK OF INDIA

v.

M. SELVARAJ DANIEL

(P. B. GAJENDRAGADKAR, K. N. WANCHOO,
and K. C. DAS GUPTA JJ.)

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

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