

such case of termination of service. The object in making this provision appears therefore to be the same as in the proviso, viz., to give the employee some monetary assistance. It is difficult to see why therefore three months' pay and allowances paid under para 521(2) (c) should not be held to include pay for a lesser period as provided under the proviso to s. 33(2).

In our opinion, the payment for a longer period should be held to include payment for the shorter period and where three months' pay and allowances had been paid under the provisions of para 521 (2) (c) no further payment of one month's wages under the proviso to s. 33 (2) is required.

We have therefore come to the conclusion that the Labour Court erred in dismissing the Bank's application under s. 33 (2) on the ground that the requirement or payment of one month's wages had not been complied with.

Accordingly, we allow the appeal, set aside the order of the Labour Court and direct that the application under s. 33 (2) (b) be disposed of on merits. There will be no order as to costs.

Appeal allowed.

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

Industrial Disputes—Promotion of workman—Pay—Application—Whether lies under s. 33C(2)—Jurisdiction of Labour Court,—Sastry Award—if benefits accrue after Award ceased to be operative—Accountant—If Workman—Industrial Disputes Act, 1947(14 of 1947)

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ss. 7, 19(3), 19(6), 33C(2)—*Industrial Disputes (Banking Companies) Decision Act, 1955 (41 of 1955), s. 4.*

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The respondent, a clerk in the appellant Bank, was promoted as Accountant and his pay was fixed in the new post. The respondent filed an application under s. 33C(2) of the Industrial Disputes Act claiming that he was entitled from the date of his joining as accountant (a) to the basic pay of his old grade with annual increments due on December 1, every year, (b) special allowance of Rs. 40 per month for the additional supervisory duties under para 164 of the Sastry Award, and (c) dearness allowance in terms of the award, and prayed to the Labour Court for recovery of the amount due to him. In resisting this application the appellant contended (1) that such an application under s. 33C(2) was incompetent, (2) that in any case the matter would be one within the jurisdiction of an industrial tribunal and not the Labour Court, (3) that the Sastry Award had ceased to be operative long before the date of the respondent's appointment as an Accountant and so no benefits accrued to him under that Award, and (4) that by his appointment as accountant, the respondent had ceased to be a workman and therefore not entitled to the benefit of the Sastry Award. The Labour Court rejected all these objections and allowed the application. In appeal by special leave:

Held: (i) Such an application by workmen lies under s. 33C(2) of the Industrial Disputes Act.

Central Bank of India v. P.S. Rajagopalan, [1964] 3 S.C.R. 140, followed.

(ii) In view of the provisions of s. 7 and s. 33C(2), the Labour Court as specified by the Government and not the Industrial Tribunal has jurisdiction to deal with this matter.

(iii) The objection that no benefit as claimed could accrue to the respondent after the Sastry Award had ceased to be operative, must be rejected. The provision in s. 19(6) as regards the period for which the award shall continue to be binding is not in any way affected by s. 4 of the Industrial Disputes (Banking Companies) Decision Act.

The different provisions made by the legislature in s. 19(3) and s. 19(6) illustrate the distinction between an award being in operation and an award being binding on the parties. Section 19(6) makes clear that after the period of operation of an award has expired, the award does not cease to be effective.

Though in consequence of s. 4 of the Industrial Disputes (Banking companies) Decision Act, the Award remained in force only until March 31, 1959, it continued to have effect as a contract between the parties that had been made by industrial adjudication in place of the old contract.

(iv) On consideration of the evidence in the present case, the respondent was merely a senior clerk, doing mainly clerical duties

and going by the designation of accountant and was in reality a workman as defined in the Industrial Disputes Act doing an element of supervisory work. The Labour Court has taken proper note of the distinction between accountants who are really officers and accountants who are merely senior clerks with supervisory duties as envisaged by the Sastry Award.

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 178 of 1963.

Appeal by special leave from the order dated November 27, 1961 of the Central Government Labour Court, Delhi Camp at Madras in L.C.A. No. 564 of 1961.

M.C. Setalvad, J.N. Hazarika and K.P. Gupta for the appellant.

M.K. Ramamurthi, R.K. Garg, S.C. Agarwal and D.P. Singh for the respondent.

December 2, 1963. The Judgment of the Court was delivered by

DAS GUPTA J.—This appeal arises out of an application under s. 33C(2) of the Industrial Disputes Act. The respondent A.R. Chacko was working as a clerk in the Coimbatore Branch of the appellant-Bank when by an order dated June 19, 1959, he was promoted as Accountant and was transferred to the Alleppy Branch of the Bank. The appellant's pay in the new post was fixed by an order on July 16, 1960. By this order he was allowed Rs. 120 as basic pay in the new grade of Rs. 120-10-160 from January 1, 1960. From August 1, 1960 and thereafter he was allowed to draw Rs. 10 per month as CAIIB allowance. The petitioner's case in the application under s. 33C(2) is based on the contention that after his promotion to the post of accountant with additional supervisory duties he was entitled to the special allowance of Rs. 40 under Para 164 of the Sastry Award. His case is that he was entitled from the date of his joining as accountant, *i.e.*, from July 13, 1959 (a) to a basic pay of Rs. 95 of his old grade with annual increments due on December 1, every year *i.e.*, at the rate of Rs. 95 in the month of August, September, October and November 1959 and thereafter at the rate of

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Rs. 100 from December 1959 to November 1960, and thereafter at the rate of Rs. 106 from December 1960; (b) special allowance of Rs. 40 per month for the additional supervisory duties and (c) dearness allowance in terms of the award. The total amount to which he would be entitled thus would be Rs. 4,495.22. The amount actually paid to him for the period July 13, 1959 to the end of March 1961 for which the application was brought was Rs. 3637.73. He claimed to be entitled to the additional amount of Rs. 855.49 and prayed that the Labour Court be pleased to issue a certificate for this amount to the Collector authorising the Collector to recover the amount in accordance with law.

In resisting this application the Bank contended (1) that such an application under s. 33C(2) of the Industrial Disputes Act, 1947 was incompetent, (2) that in any case the matter would be one within the jurisdiction of an industrial tribunal and not the Labour Court, (3) that the Sastry Award had ceased to be operative from March 31, 1959 long before the date of the respondent's appointment as an accountant and so no benefits accrued to him under that award and (4) by his appointment as accountant the respondent had ceased to be a workman and was therefore not entitled to the benefits of the Sastry Award. The Labour Court rejected all these objections and allowing the application, computed the amount due to the respondent from the Bank to be Rs. 855.49. Against this decision the present appeal has been filed by special leave.

The first objection raised by the Bank is now concluded by the decision of this Court in the *Central Bank of India v. P. S. Rajagopalan* ⁽¹⁾ where it has been held that such an application by workmen lies under s. 33C(2) of the Act.

In support of the second objection Mr. Setalvad drew our attention to the second schedule to the Industrial Disputes Act, which sets out the matters within the jurisdiction of the Labour Court, but

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

does not include any which could be said to cover an application under s. 33C(2). The contention is clearly misconceived. The schedule refers specifically to s. 7 of the Act. That section lays down that the appropriate government may, by notification in the official gazette, constitute one or more Labour Courts for the adjudication of industrial disputes relating to any matter specified in the second Schedule and for performing such other functions as may be assigned to them under this Act. Section 33C(2) in terms assigns the determination of the amount of benefit to which the workman is entitled to receive from the employer and which is capable of being computed in terms of money to such Labour Court as may be specified in this behalf by the appropriate Government. Clearly, therefore, the Labour Court as specified by the government and not the Industrial Tribunal has jurisdiction to deal with this matter.

In support of the third objection raised by the Bank Mr. Setalvad drew our attention to s. 4 of the Industrial Disputes (Banking Companies) Decision Act, 1955, and argued that in view of this provision the respondent was not entitled to any benefit of the Sastry Award in July 1959 when he was asked to perform the additional supervisory duties. Section 4 runs thus:—

“Notwithstanding anything contained in the Industrial Disputes Act, 1947, or the Industrial Disputes (Appellate Tribunal) Act, 1950 the award as now modified by the decision of the Labour Appellate Tribunal in the manner referred to in s. 3 shall remain in force until March 31, 1959.”

It is said that the non-obstante clause “Notwithstanding anything contained in the Industrial Disputes Act, 1947” makes the provisions of s. 19(6) inapplicable to the Sastry Award and so the provision there that the award shall continue to be binding on the parties until a period of two months had elapsed from the date on which notice is given by any party bound by the award to the other party or parties intimating

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its intention to terminate the award, does not come into operation. To this objection two answers are available. The first is that there is difference between an award being in operation and an award being binding on the parties. The different provisions made by the legislature in s. 19(3) and s. 19(6) illustrate this distinction. Under s. 19(3) the award remains in operation for a period of one year. (The words "from the date on which the award becomes enforceable under s. 17A" were inserted after the words "period of one year" by the amending Act of 1956). Section 19(6) is in these words:—

"Notwithstanding the expiry of the period of operation under sub-section (3), the award shall continue to be binding on the parties until a period of two months has elapsed from the date on which notice is given by any party bound by the award to the other party or parties intimating its intention to terminate the award."

This makes it clear that after the period of operation of an award has expired, the award does not cease to be effective. For, it continues to be binding thereafter on the parties until notice has been given by one of the parties of the intention to terminate it and two months have elapsed from the date of such notice. The effect of s. 4 of the Industrial Disputes (Banking Companies) Decision Act is that the award ceased to be in force after March 31, 1959. That however has nothing to do with the question as to the period for which it will remain binding on the parties thereafter. The provision in s. 19(6) as regards the period for which the award shall continue to be binding on the parties is not in any way affected by s. 4 of the Industrial Dispute (Banking Companies) Decision Act, 1955.

Quite apart from this, however, it appears to us that even if an award has ceased to be in operation or in force and has ceased to be binding on the parties under the provisions of s. 19(6) it will continue to have its effect as a contract between the parties that has been made by industrial adjudication in place

of the old contract. So long as the award remains in operation under s. 19(3), s. 23(c) stands in the way of any strike by the workmen and lock-out by the employer in respect of any matter covered by the award. Again, so long as the award is binding on a party, breach of any of its terms will make the party liable to penalty under s. 29 of the Act, to imprisonment which may extend to six months or with fine or with both. After the period of its operation and also the period for which the award is binding have elapsed s. 23 and s. 29 can have no operation. We can however see nothing in the scheme of the Industrial Disputes Act to justify a conclusion that merely because these special provisions as regards prohibition of strikes and lock-outs and of penalties for breach of award cease to be effective the new contract as embodied in the award should also cease to be effective. On the contrary, the very purpose for which industrial adjudication has been given the peculiar authority and right of making new contracts between employers and workmen makes it reasonable to think that even though the period of operation of the award and the period for which it remains binding on the parties may elapse—in respect of both of which special provisions have been made under ss. 23 and 29 respectively—may expire, the new contract would continue to govern the relations between the parties till it is displaced by another contract. The objection that no such benefit as claimed could accrue to the respondent after March 31, 1959 must therefore be rejected.

This brings us to the last objection that on appointment as accountant, the respondent Chacko ceased to be a workman. Admittedly, the mere fact that he was designated as accountant would not take him out of the category of workman. This was recognised in para 332 of the Sastry Award when it was said:—

“The categories of workmen known as Head Clerks, Accountants, Head Cashiers should *prima facie* be taken as workmen wherever they desire to be so treated but with this important proviso

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that the banks are at liberty to raise an industrial dispute about such classification wherever they feel that with reference to a particular branch and a particular office a person so designated is really entrusted with work of a directional and controlling nature and perhaps even supervision of a higher type over ordinary supervisory agencies."

In para 167, where the case of accountants was specially dealt with it was again said:—

In several cases they will indisputably be officers. It is difficult to lay down a hard and fast rule in respect of them. An Accountant oftentimes is the second officer-in-charge of branches, particularly where the branches are comparatively small. In big banks where there is a hierarchy of officers there may be a chief accountant, accountants, and sub-accountants. In most of these cases the "accountants" will probably be officers. There will however be incumbents of such posts, though going under the dignified designation of accountants who are in reality only senior clerks doing higher type of clerical work involving an element of supervision over other clerks as part of their duties. In such cases where they can properly be regarded as workman the minimum allowances which we have fixed for sub-accountants would equally apply to them."

The Labour Court appears to have taken proper note of this distinction between accountants who are really officers and accountants who are merely senior clerks with supervisory duties and on a consideration of the evidence on the record as regards the duties actually performed by the respondent Chacko, has come to the conclusion that he was merely a senior clerk, doing mainly clerical duties, and going by the designation of accountant and was in reality a workman as defined in the Industrial Disputes Act and doing an element of supervisory work.

We can find no mistake in the approach of the Labour Court to the question nor can we see any justification for interfering with its conclusion on the evidence in the case. All the relevant documents produced have been duly considered by the Labour Court in light of the oral evidence given; and on such consideration it has come to the conclusion that though on paper certain rights and powers were assigned to him and occasionally he acted in the place of the Agent when the Agent was absent, such duties did not form part of his principal and main duties.

Mr. Setalvad drew our attention to a copy of the resolution passed by the Board of Directors under which the respondent as Accountant was authorised "to make, draw, sign, endorse, purchase, sell, discount and negotiate Bills of Exchange, Hundies, Drafts, Cheques, Promissory Notes and other Negotiable instruments in the name of and on behalf of the Bank and also to operate upon all banking account maintained by this Bank with banks, bankers, and others in India for and on behalf of the South Indian Bank Limited." This resolution was dated July 18, 1959 and on the same date a circular-letter was issued to all branches sending a binder containing specimen signatures of all the officers of the Bank and the respondent's name was also included in this list. In spite of this however, as pointed out by the Labour Court, it does not appear from the evidence that generally Mr. Chacko had occasion to exercise the several powers said to have been granted to him. A truer picture of his actual functions appears from a document dated August 28, 1961 signed by the Agent which was put in evidence as Ex. W 1 and the correctness of which does not appear to have been challenged on behalf of the Bank authorities. The list of duties mentioned in this document clearly shows that these are almost wholly clerical—the only exception being Item 14, viz., "and other work entrusted to him by the Agent from time to time." The Labour Court has also pointed out that no power of attorney was granted to Mr. Chacko. When on a consideration

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of all the relevant evidence the Labour Court has come to the conclusion that the duties performed by the respondent consisted of clerical work with supervisory functions and were certainly not managerial or administrative as contended for by the Bank, we find no reason to interfere with that conclusion.

It is pertinent to notice that on the Bank's case a workman in the position of Chacko would on promotion to the rank of an officer from that of a workman be financially a loser by being deprived of the special allowance which he would have got as a workman with supervisory duties without obtaining sufficient recompense for the same because of the performance of the so-called managerial and administrative duties. It is not unreasonable to think that this so-called promotion to officer's grade was really intended to undo the effect of the recommendations of the Sastry Award for this supervisory allowance. It is difficult to understand otherwise that persons with higher responsibilities and managerial duties to perform would in fact be getting less in rupees and annas than what they would be getting as workmen. In the circumstances, the finding of the Labour Court that the respondent was a workman entitled to the benefits of the Sastry Award cannot be successfully challenged.

All the points taken in the appeal therefore fail. The appeal is dismissed with costs.

Appeal dismissed.
