STATE BANK OF INDIA

v.

NANAK CHAND JAIN

1963

December 2

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

Industrial Dispute—Sastry award—Requirement of payment of one month's wages in lieu of notice of termination—Payment of three month's wages—If sufficient compliance.

The respondent who was an employee of the appellant Bank was acquitted of the charge of misappropriation of the latter's money. But on an enquiry by the appellant the respondent was found guilty of carelessness and it was decided that his services should be terminated. In accordance with this decision he was informed of the termination of his services and the appellant tendered three months' pay and allowances in lieu of notice. Since an industrial dispute was pending between the appellant and its employees the former made an application to the Tribunal under s. 33(2) of the Industrial Disputes Act, 1947 for approval of its action. The Tribunal held that the payment of three months' pay in lieu of notice in terms of para 521(2)(c) of the Sastry Award did not amount to compliance with the requirement of payment of one month's wages under the proviso to s. 33(2) of the Act. The Bank filed the present appeal on special leave granted by this Court.

Held: 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) of the Sastry Award no further payment of one month's wages under the proviso to s. 33(2) is required.

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 126 of 1963.

Appeal by special leave from the order dated April 3, 1962, of the Central Government Labour Court at Delhi in O.P. No. 15 of 1961.

C.K. Daphtary, Attorney-General, H.N. Sanyal, Solicitor-General, S.V. Gupte, Additional Solicitor-General, K.B. Mehta, H.L. Anand and *Vidhya Sagar*, for the appellant.

Anand Prakash and *S.N. Bhandari*, for the respondent.

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

DAS GUPTA J. The respondent, Nanak Chand *Das Gupta J.*

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Jain, was a money tester in the cash department of the Agra Branch of the Imperial Bank of India. On December 20, 1952 it was detected that a packet containing 10 pieces of 100 rupee notes shroffed by another employee of the Bank and handed over by him to the respondent were missing. In connection with this the respondent and four other employees of the Bank were prosecuted, the trial in the Sessions Court ending with their acquittal—the respondent having been given the benefit of doubt. Thereafter on December 10, 1954 the Bank served on the respondent a charge-sheet alleging carelessness and dereliction of duty. An enquiry was held and the Enquiry Officer found the charge against the respondent established. On a consideration of the report of the Enquiry Officer the Bank decided to terminate his services with effect from May 16, 1955 by paying him three months pay and allowances. The respondent was given further hearing as regards the nature of the proposed punishment and thereafter his services were terminated as from the close of business on May 16, 1955. The validity of the enquiry proceedings was challenged by the respondent on the ground that he had not been given adequate facility for being represented by a Union official of his choice and ultimately after a decision of the Labour Appellate Tribunal that the employee had an unqualified option in regard to the selection of persons who would represent him at the departmental enquiry a fresh enquiry was held after withdrawing the order of termination of his services. This fresh enquiry was held on the 21st and 22nd of November, 1956, On this occasion also the enquiry officer found the charges against the respondent proved. After consideration of the report and after giving the respondent an opportunity to show cause why the proposed punishment of termination of his services on payment of three months' salary in lieu of notice should not be imposed on him the Bank decided in November 1960 to terminate his services by giving him three months' salary in lieu of notice in terms of Para 521 (2) (c) of the Sastry Award.

As an industrial dispute between the Bank and its employees was pending before the National Industrial Tribunal at this time, the Bank made an application on November 21, 1960 to that Tribunal under s. 33(2) of the Industrial Disputes Act for approval of its action in terminating the services of the respondent. Before making this application the Bank had informed the respondent by its letter dated November 4, 1960 of its decision to terminate his services and tendered a payment order for Rs. 450.71 being his pay and allowances for three months. The National Industrial Tribunal transferred this application to the Central Government, Labour Court at Delhi, for disposal. Resisting this application the respondent contended *inter alia* that he had not been paid wages for one month as required under the proviso to s. 33(2) and so the application should be dismissed. An application under s. 33A of the Industrial Disputes Act was also filed by the respondent before the Central Government Labour Court at Delhi, complaining that the Bank had contravened the provisions of s. 33 by not paying him the one month's pay as required under the proviso. This application was resisted by the Bank which contended that the application was not maintainable and the action taken by it was legal and justified. It was urged by the Bank that there had not been any contravention of section 33(2) as alleged by the employee as three months' pay and allowances had been paid. The Labour Court held that payment of three months' salary in terms of Para 521 (2) (c) of the Sastry Award did not amount to compliance with the requirement of payment of one month's wages under the proviso to s. 33 (2). It held accordingly that the application under s. 33A was maintainable and fixed the application for further hearing on other issues on a later date.

When the application under s. 33 (2) (b) of the Industrial Disputes Act that had been filed by the Bank came up for hearing before the Court the Presiding Officer, Mr. Vyas, held himself bound by

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the decision of his predecessor Mr. Krishnamurty in the application under s. 33A that there had been contravention of this requirement of payment of one month's pay under the proviso. Accordingly, he rejected the Bank's application for approval to terminate the services of the respondent. It is against this order that the present appeal has been filed by the Bank by special leave.

The only question for our consideration is : when payment of three months' salary has been made in terms of Para 521 (2) (c) of the Sastry Award, is it correct to say that the requirement of payment of one month's salary under the proviso to s. 33(2) has not been complied with? On behalf of the Bank it is urged that it is unreasonable to think that three months' salary already paid did not include the wages for one month required under the proviso. On the other hand, learned counsel appearing on behalf of the respondent contends that the payment of three months' pay and allowances as provided in para 521 (2) (c) of the Sastry Award has a different purpose from that of payment of one month's wages in the proviso to s. 33 (2). In support of this argument he has drawn our attention to the words of the provision as regards this payment in para 521 (2) (c). These words are ".. .....He shall be liable only for termination of service with three months' pay and allowances in lieu of notice....." According to the learned counsel the use of the words "in lieu of notice" in this provision marks the difference in character of the payment provided for in the proviso to s. 33(2) and it is clearly not in lieu of notice. It appears to us that the words "in lieu of notice" in para 521(2) (c) have not the significance which the learned counsel attributes to them. We do not think that the Sastry Award intended that the services of such an employee could be terminated by giving him three months' notice without paying him three months' pay and allowances. Though the words "in lieu of notice" have been used it is clear that three months' pay and allownaces have to be paid in every

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.

SOUTH INDIAN BANK LTD.

v.

A.R. CHACKO

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December 2

(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)