

PETITIONER:
MANAGEMENT OF STATE BANK OF HYDERABAD

Vs.

RESPONDENT:
VASUDEV ANANT BHIDE ETC.

DATE OF JUDGMENT:
24/04/1969

BENCH:
VAIDYIALINGAM, C.A.
BENCH:
VAIDYIALINGAM, C.A.
SHELAT, J.M.
BHARGAVA, VISHISHTHA

CITATION:
1970 AIR 196 1970 SCR (1) 365
1969 SCC (2) 491
CITATOR INFO :
D 1987 SC2179 (15)

ACT:
Industrial Dispute-Sastry and Desai Awards-Head Cashiers-
Claim to special allowance as supervisors-When permissible.

HEADNOTE:

The appellant-Bank and its employees were parties to the Sastry and Desai Awards published on March 26, 1953 and June 13, 1962 respectively. The two awards provided for the grant of allowance to head cashiers and a special allowance to supervisors when a person falls in the category of a supervisor, or is found eligible to be put in that category, by whatever nomenclature such person may be designated, in view of the supervisory nature of the duties and functions assigned to him. But in paragraph 338, the Sastry Award rejected the demand made by head cashiers to be treated as supervisors while fixing emoluments appropriate to the position of supervisors, and the Desai Award, in paragraph 5.249, rejected a similar demand by head cashiers for giving them supervisory grades.

The respondents in the present case were head cashiers of the appellant Bank and were receiving the special allowance due to them as head cashiers. The duties and functions of head cashiers were set out in the agreements entered into between the Bank and the head cashiers. The items of work done by the respondents were those usually done by head cashiers. They were also doing some items of work which could be called supervisory- They filed applications before the Labour Court under s. 33C(2) of the Industrial Disputes Act, 1947, and claimed payment of the special allowance granted to supervisor&. The Labour Court found' that the respondents were discharging some supervisory functions without specifying which part of their work was of a supervisory nature, and allowed the claim.

In appeal to this Court,

HELD: (1) The Labour Court had been specified and conferred jurisdiction to entertain the applications. [374F]
(2) The status of an employee as to whether he is a head cashier or supervisor is not a pure question of fact and has

to be inferred as a matter of law from the facts found by the Labour Court. The mere fact that a person whose duties are essentially and mainly that of a headcashier, for whom also a special allowance was payable under the two awards, performs occasionally or casually or as incidental to his work as a headcashier, duties which may be characterised as supervisory, will not entitle him to claim the special allowance granted to a supervisor under the two awards. The two awards dealt with headcashiers and supervisors as entirely different categories. Only persons falling under the category of supervisors or discharging functions which were mainly or essentially of a supervisory nature, were treated as supervisors; and headcashiers were not treated on a par with supervisors, because, the functions discharged by headcashiers and supervisors materially differ. If headcashiers were treated as supervisors merely because they did some work of a supervisory nature there should be no distinction between the two categories. [377B-C, G-H; 378B-C; 382G-H; 383A-C; 384B-E]

366

in the present case, the work done by the respondents, on their own admission and on the findings of the Labour Court, consisted of only items of work which a headcashier was bound to do. They never claimed that they fell within the category of supervisors or discharging any 'work essentially of a supervisory nature. The work might have been important, responsible and onerous but on that basis they were not entitled to the special allowance as supervisors. Even the few items of work, claimed by them to be supervisory were really done by them as incidental to their main duties as headcashiers. It was not necessary to remand the matter to the Labour Court for investigation as to which parts of the items of work claimed to have been done by the respondents could be characterised as supervisory functions, because, the respondents only claimed that in the discharge of their work as headcashiers, they were doing certain items of work-which were of a supervisory nature, and not that they have been doing any work which was essentially of a supervisory nature. [383D-H; 386D-E; 387C-D]

Lloyds. Bank v. Panna Lal Gupta, [1961] 1 L.L.J. 18 (S.C.); Punjab National Bank Ltd. v. Their Workmen, [1961] 11 L.L.J. 162 (S.C.) and Eastern Bank v. Shivdas Vishnu Naik [1963] 11 L.L.J. 365 (S.C.) referred to.

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeals Nos. 1916 to 1918 of 1968.

Appeals by special leave from the order dated May 13, 1968 of the Labour Court (Central), Hyderabad in Civil Misc. Petitions Nos. 115 of 1963 and 4 and 5 of 1965.

C. B. Agarwala, K. Srinivasamurthi, B. P. Singh and Naunit Lal, for the appellant (in all the appeals).

H. R. Gokhale, M. K. Ramamurthi and Vineet Kumar, for the respondent (in C.A. No. 1916 of 1968).

M. K. Ramamurthi, Shyamala Pappu, J. Ramamurthi and Vineet Kumar, for the respondent (in C.A. Nos. 1917 and 1918 of 1968).

The Judgment of the Court was delivered by Vaidialingam, J. These three appeals, by special leave, by the management of State Bank of Hyderabad are directed against the common order, dated May 13, 1968, passed by the Labour Court (Central), Hyderabad, allowing applications filed by each of the respondents herein under S. 33C(2) of

the Industrial Disputes Act, 1947 (Act XIV of 1947) (hereinafter called the Act). The claim of the respondents in each of these -appeals was for payment of the special allowance granted to Supercalc under what are commonly known as the Sastry and Desai Awards. The Labour Court has accepted their claims in full and the management have come up in appeal to this Court. The short question -which is raised for our decisions is whether the Labour Court was right in holding that the three respondents could claim the status

367

of Supervisors entitled to the supervisory allowance under the Sastry and Desai Awards.

Three applications, Central Miscellaneous Petitions Nos. 115 of 1963 and 4 and 5 of 1965 were filed by the respective respondents before the Labour Court under s. 33C(2) of the Act. As the averments contained in each of these applications were more or less common and the basis of the claim for special allowance was also the same, we will refer to the averments made in Application No. 115 of 1963 filed by Vasudev Anant Bhide. The defence raised by the management was also the same in all the three applications. In C.M.P. No. 115 of 1963 Bhide has stated that he was working as an employee under the appellant as Head Cashier, in charge of the Cash Department, at various branches from 1946 till the date of his filing the application viz., August 31, 1963 and, as such he was entitled to receive the special allowance under the Sastry Award, as modified, and also under the Desai Award. From 1946 to 1953 he was the Head Ca-shier and as such had to control and supervise the work of seven employees, including three Cashiers, one Godown-keeper and one Chowkidar. During 1953-55 he was in charge of the Cash Department at Aurangabad Branch and as such he had to control and supervise the work of six to seven employees, including four to five Cashiers, one Godown-keeper and one Chowkidar. During 1955-58 he was Head Cashier at the Secunderabad Branch and as such he was in charge of the Cash Department and had to control and supervise the work of 28 Cashiers, one Godown keeper and one Chowkidar working under him. Later on he was the Head Cashier in Mahaboob Nagar Branch till the date of the application and as such he was controlling and supervising the work of 9 Cashiers, 2 Godown-keepers and 3 Chowkidars. In paragraph 3 of his application, Bhide sets out the duties discharged by him as Head Cashier as follows

"1. In charge of Cash Department, which includes the checking, controlling and supervision of the work of Cashiers,, Godown Keepers and Chowkidars working under him.

2. Issuing receipts to the public for payments made upto Rs. 10,000/- independently, without the counter signing of the same by any other Officer with signing authority.

3. Being the Joint Custodian of the Currency Chest, Coin Depot, Safe Custody of Gold Ornaments and rental documents along with Manager or any other joint

368

custodian and the applicant held responsible for any shortages therein, and for any omissions or commissions in this regard. It may be added here that the other Joint Custodian is allowed a Special Allowance of Rs. 50 to Rs. 75 per month as per classification of the Bank in respect of this particular special responsibility, while the applicant is not given any special allowance for the same.

4. Verification of vernacular signatures on cheques and drafts of any value.
 5. Verification, valuation and purchase of Bills from Constituents and to check up and satisfy himself that the same is supported by genuine trade and documentary bills and whether the same covers the bill amount in question. It may be noted here that this special supervisory function is not entrusted to the Head Cashiers of any other Bank.
 6. Supervision and control of stocks, valuation, rates, deliveries of godown stocks, involving the work of godown-keeper throughout and also to countersign the pledge letters, delivery orders after due verification along with Godown Keeper. Till 1 1/2 years ago, the Head Cashier was also checking the physical stocks of goods pledged to the Bank and he was in charge and control of stock taking periodically. But this particular function has been stopped since about 1 1/2 years, while the applicant is responsible and continues to attend to and discharge all other supervisory functions referred to above.
 7. Countersigning the pay-in-slips for cash deposited for credit of current deposit accounts, Home saving" safe accounts, Cash Credit accounts, and also on vouchers of Time Deposits, D.Ds. issued etc.
 8. Procuring financial reports on parties and signing the same as Head Cashier.
 9. To verify and sign the statements of Cash transactions operations in respect of currency chest sent to Reserve Bank of India, daily, weekly, monthly and periodically, along with the other joint custodian of the Currency Chest.
 10. Signing all the other periodical returns, Reserve, Bank Statements sent regularly, 'along with the other signing authority.
- 369

11. Holding the keys of Cash-in-charge, jointly with another authorised supervising officer or authority namely Manager or Accountant.
12. To be responsible for the entire working of the Cash Department and for making good any shortage due to over payment or under receipt.
13. To discharge finally all Cash receipt vouchers.
14. To arrange despatch of insured parcels and covers containing valuable or currency notes and then get them sealed under his supervision and in the presence of the accountant, Manager or Officer-in-charge.
15. To scrutinise, check and supervise the work of Cashier and others working in the Cash Department and also the messenger,, working in the Department.
16. To distribute, allot and change duties to the employees working in Cash Department.
17. To get currency notes sorted and -stitched into bundles under his supervision and check the same at the time of closing cash.
18. To nominate persons to be employed under the control of the Head Cashier.
19. To appoint a fit person to act for him as Head Cashier in case of his absence due to illness or otherwise, with the approval of the Head Office.

20. The Head Cashier shall be responsible for the intra omissions of any member of the Staff under his control and for the correctness and genuineness of all hundies, cheques, securities, vouchers, deeds, documents writings and signatures written in any national regional languages or character which the Head Cashier shall at any time during his employment as Head Cashier accept or deal with as correct and genuine and he shall make good to the Bank any loss or damage that may be sustained by the Bank arising from any forged instrument, or signature coming into the hands of the Head Cashier in the course of his employment as Head Cashier and shall be accepted or dealt with by him as correct and genuine.

21. Further, the Head Cashier shall enquire into and as far as possible ascertain and if required to do so truly and faithfully report in writing about the identity, credit, solvency and circumstances of all persons being

370

subjects of Republic of India, who shall have dealings of any kind with the Bank through the agency of the Head Cashier and shall make good to the Bank all losses and expenses by reason of any negligence or default or misrepresentation in any such enquiry or report made by the Head Cashier during the course of his employment as Head Cashier.

22. The Head Cashier shall be responsible to the Bank for the safe custody of all bullion, cash securities and other property belonging to or deposited with the Bank and for the safe and proper storing, checking and keeping in the place or places appointed for the proper custody thereof of the goods, produce and merchandise of any description whatsoever received by the Godown Keeper or Assistant Godown Keeper from time to time or brought from time to time into the Banks godowns.. He shall be liable for any loss caused to the Bank by reason of receipt of bad or base coin or money or any forged or fraudulently altered Government Currency note or notes or by reason of payment of any money or delivery of any securities for money or property, effects, goods, produce or merchandise being made to wrong persons whether owing to forgery, mistake, fraud or otherwise."

In paragraph 4 he states that apart from 'the heavy and important responsibilities entailing the work of Head Cashier, he was regularly supervising and controlling the work done by the employees working under him -and as such he was entitled to receive the Special Allowance of Rs. 45 per month under paragraph 164 (6) (9) of the Sastry Award and Rs. 60 per month under paragraph 5.282(18) of the Desai Award, which is the special allowance payable to supervisors. It is further stated by Bhide that he was paid only Rs. 25 per month as and by way of allowance and he claims the balance sum of Rs. 3577.57 as due to him from the appellant which is a B-class Bank under the Bank Award. The management contested the claim on the following grounds.

The application filed under s. 33C(2) was not maintainable and the Labour Court had no jurisdiction to entertain the same. The Labour Court had not been 'specified in this behalf by the appropriate Government' for entertaining applications under s. 33C(2) of the Act and therefore it had no jurisdiction to hear and dispose of the application. The applicant was a Head Cashier and he was being paid the special allowance due to him under the two Awards and he was not entitled to claim the special allow-

371

ance payable to a Supervisor as he was not discharging any supervisory functions. The applicant had not been controlling and supervising the work of other employees and any such incidental work that he might have been doing was only restricted to his position and duties as a Head Cashier. AR the duties and functions referred to in his application were the normal functions and duties attached to the post of a Head Cashier and were within the terms of the agreement between the management and the employees such as Bhide functioning as Head Cashier. None of the duties and functions enumerated in the application bore the characteristics of being of a supervisory nature and such duties and functions were not beyond the legitimate sphere of a Head Cashier. Bhide had been doing the duties of a Head Cashier and discharging the functions also of a Head Cashier. Bhide never used to appoint nor had he appointed any person working under him; but in view of the personal responsibility and liabilities of the Head Cashier it was the practice to allow him to suggest names of persons in whom he could have trust and confidence to work under him. He neither nominated nor appointed but merely suggested names for acceptance and appointment. The appointment was actually made by other superior officers. Bhide being a Head Cashier was paid the legitimate special allowances payable to him under the two Awards and he was not entitled to claim the special allowances which were payable only to a supervisor.

The Labour Court, in the first instance, decided the preliminary objection raised by the management that in the circumstances mentioned by the petitioner in C.M.P. 115 of 1963 an application under s. 33C(2) was not maintainable. This objection was over-ruled by the Labour Court and it held that the application under s. 33C(2) was maintainable. The management Bank challenged this preliminary order before the Andhra Pradesh High Court in Writ Petition No. 201 of 1964. The High Court, by its order dated August 25, 1964 upheld the order of the Labour Court on the question of jurisdiction; but it directed the Labour Court that the claim for supervisory allowance would have to be considered having due regard to the nature of the duties and functions discharged by Bhide and the relevant provisions contained in the Sastry and Desai Awards.

It was after the disposal of the Writ Petition by the High Court that the two other applications C.M.Ps. No. 4 and 5 of 1965 were filed before the Labour Court by Pyati and Deshpande respectively who were also Head Cashiers claiming the supervisory allowance under the Sastry and Desai Awards. There was a slight change made in these two applications in that the applicants stat-

372

ed that they were discharging as Head Cashiers multifarious supervisory duties enumerated by them in their applications. The duties and functions mentioned by each of these applicants substantially tally with the averments made in C.M.P. 115 of 1963.

Pyati in his application averred that he was entitled to receive, -under para. 164(b)(9) of the Sastry Award a Special Allowance of Rs. 45 per month from April 1, 1954 till December 31, 1961 but he was paid special allowance during that period only at the rate of Rs. 25 per month. He further claimed that for the period January 1, 1962 to December 31, 1963 he was entitled to receive the special allowance at the rate of Rs. 60 per month under para 5.282 of the Desai Award and he was paid only a special allowance at the rate of Rs. 25 per month. Since January 1, 1964 the Bank had been upgraded from B-class to A-class and in consequence he claimed that he as entitled to receive a special allowance of Rs. 65 per month under the Desai Award whereas he was paid a special allowance only at the rate of Rs. 27 per -month. From November 1, 1964 he had been receiving a special allowance of Rs. 35 per month instead of Rs. 65: Accordingly, Pyati claimed a sum of Rs. 4696.16 as due to him as Supervisory ,Special Allowance.

Similarly, Deshpande, in his application C.M.P. No. 5 of 1965, claimed a sum of Rs. 2028.95 as Supervisory Special Allowance under the two awards, after giving credit to the amounts of special allowance already paid to him.

Both these applications were also contested by the management on the ground that the applicants were not doing any supervisory work and that they had been discharging the duties and functions which appertained to each of them as Head Cashier of the Bank. The other objections raised by the Management in C.M.P. No. 115 of 1963 were also raised in respect of these .two applications.

The three applicants gave evidence in support of their respective claims to the effect that as Head Cashiers they were discharging supervisory duties and functions also. The management also 'let in evidence to the effect that the duties and functions discharged by these three applicants were the duties and functions attached to the office of Head Cashier and that none of the applicants were discharging any supervisory functions.

The Labour Court over-ruled all the objections raised on behalf of the management and allowed the applications filed by -the Head Cashiers. Issues No. 2 to 5 related to the question .as to whether the three Head Cashiers were entitled to claim the

37 3

Supervisory Special Allowance under the Sastry and Desai Awards, the nature of the functions which they were discharging and whet her such work done by them involved any work of a supervisory nature. The Labour Court held that the various Exhibits placed before it showed heavy and onerous responsibilities on the Head Cashiers and also work involving supervision. It further found that the evidence, oral and documentary, showed that the work of the Head Cashiers was partly of a highly responsible nature, partly clerical and partly of a supervisory nature. The Labour Court further held that the three applicants were discharging supervisory functions and their claims fell within the ambit of the Sastry and Desai Awards. Ultimately it found that the applicant had been doing the work alleged by them in their applications and that such work done by them involved work 'supervisory in nature'. The Labour Court therefore allowed the claims in full, as asked for in the three applications.

Dr. C. B. Aggarwala, learned counsel for the appellant Bank has raised the following four contentions : (1) The Labour Court has no jurisdiction to entertain the applications under s. 33C(2) of the Act as it was not 'such Labour Court

as may be specified in this behalf by the appropriate Government'. (2) The applications filed under s. 33C(2) are barred under Art. 137 of the Limitation Act, 1963. (3) If the claim of the Head Cashiers for the Supervisory Special Allowance at the rate mentioned in the two awards is allowed, the respondents will be drawing more than Rs. 500 per month and, as such, they will not be 'workmen' eligible to file an application under s. 33C(2) of the Act. (4) The three respondents have been discharging only the duties and function that appertain to the post of a Head Cashier which they were occupying and they were not discharging any supervisory functions and in consequence none of the respondents is entitled to the supervisory special allowance under the Sastry and Desai Awards. The finding of the Labour Court that the respondents were discharging supervisory functions is not sustainable in law.

Mr. H. R. Gokhale learned counsel for the respondent in, C.A. No. 1916 of 1968, whose contentions have been adopted by Mr. M. K. Ramamurthy, learned counsel for the respondents in C.As. 1917 and 1918 of 1968, has supported the order of the Labour Court in its entirety.

Regarding the first contention that the Labour Court is not the one specified by the appropriate Government, Dr. Aggarwala has pointed out that in this case the applications were filed in 1963 and 1965 and the evidence was closed and arguments were completed by November 25, 1967 on which date the case was reserved for orders. It was only on December 19, 1967 that the

Sup.C.I./69-10

374

Central Government issued the notification under sub-s. (2) of S. 33C of the Act specifying each of the Labour Courts mentioned in Column 11 as the- Labour Court to determine the amount at which any benefit referred to in that sub-section shall be computed in terms of money in relation to workmen employed in any industry in the areas specified in Column III, in relation to which the Central Government is the appropriate Government. Item 12 in this Notification is the Labour Court, Hyderabad, which dealt with the present applications. Therefore Dr. Aggarwala contends that at the relevant time, that is in 1963, when C.M.P. No. 115, of 1963 was filed and in 1965 when C.P.Ms. Nos. 4 and 5 of 1965 were filed, the Labour Court had no jurisdiction to entertain those applications. As against this, Mr. Gokhale pointed out :that the Central Government had issued a Notification on April 15, 1963 S.O. No. 1188, Ministry of Labour- and Employment, and published in the Gazette of India on April 27, 1963. Item 5 relates to the present Labour Court, Hyderabad, and that Court had been specified as the Labour Court for the State of Andhra Pradesh to determine the amount at which any benefit referred to in sub-s. (2) of S. 33C shall be computed in terms of money, in relation to a workman employed in any industry in relation to which the Central Government is the appropriate Government. 'Counsel further pointed out that this Notification would clearly establish that as early as April 15, 1963 the Labour Court had been specified and conferred jurisdiction to entertain applications under S. 33C(2) of the Act. the earliest application, C.M.P. No. 115 of 1963 was filed on August 31, 1963 on which date the Labour Court had been specified. Counsel also points out that the Notification of December 19, 1967 relied on by the appellant was one issued in supersession of all earlier notifications in that regard. We accept the content of Mr. Gokhale that the Labour Court had been- specified under S. 33C(2) as early as April 15,

1963. It follows that this contention of Mr. Aggarwala has no substance.

The second contention of Mr. Aggarwala relates to the claims being barred under Art. 137 of the Limitation Act, 1963. This ground of limitation has not been raised either before the Labour Court or even in the special leave applications filed in this Court. The appellant has filed C.M.P. No. 1259 of 1969 for permitting him to raise this question of limitation based upon Art. 137 of the Limitation Act of 1963. As no fresh facts had to be investigated and the matter could be dealt with as a pure question of law, we permitted the appellant to raise this plea of limitation. As the averments in C.M.P. 1259 of 1969 will show, this plea of limitation has been raised on the strength of the Full Bench judg-

375

ment of the Bombay High Court in P. K. Porwal (Manager) v. Labour Court, Nagpur(1). In this decision no doubt it has been held that Art. 137 applies to applications under s. 33C(2) of the Act. Mr. Gokhale, on behalf of the respondents, urged that Art. 137 had no application to proceedings initiated under s. 33C(2). It has become unnecessary to go into, in great detail, and deal with the contention of the appellant as this contention is now concluded by a recent decision of this Court in Town Municipal Council, Athani v. The Presiding Officer, Labour Court Hubli (2) which has disapproved the Full Bench decision of the Bombay High Court. After a very elaborate reference to the corresponding provision in the earlier Limitation Act and the decisions bearing on the same and after having due regard to the scheme of the Limitation Act, 1963, this Court has held that Art. 137 of the 1963 Limitation Act does not apply to applications under s. 33C(2) of the Act and that no limitation is prescribed for such applications. Therefore the second contention also fails.

So far as the third contention is concerned Dr. Aggarwala ultimately stated that he did not press the contention, that the respondents were not entitled to maintain their applications as they had ceased to be 'workmen' on the date of their applications under s. 33C(2) of the Act. In view of this statement by the learned counsel, it is unnecessary to consider this contention any further.

Coming to the last contention which is the most important, it now becomes necessary to consider the relevant scheme of the Sastry and Desai Awards with particular reference to the directions given therein regarding the grant of special allowance to Supervisors. Before we do so it is necessary to clear the ground by stating that all the three respondents were Head Cashiers and that they were paid the special allowances due to Head Cashiers as per the Sastry and Desai Awards. The claim for supervisory allowance is made on the basis of the nature of work stated to have been done by the respondents in their respective applications which have been adverted to by us earlier. While Bhide has stated in para 3 of his application the various duties discharged by a Head Cashier which, according to him, are heavy and important, and that over and above these items of work he has been regularly doing supervisory and controlling duties in respect of the employees working under him-Pyati and Deshpande have stated that even the items of work which are done by a Head Cashier and which they were actually doing are themselves duties which partake of a supervisory nature. The appellant Bank and its employees were all parties to the Sastry and Desai Awards. The appellant

(2) [1970] 1 S.C.R. 51
(1) [1968] 11. L.L.J. 505.
376

has filed a copy of the agreement that is usually entered into between the Bank and the Head Cashiers. The duties and functions of a Head Cashier -are set out therein and they are more or less similar to the items of work claimed to have been done by the respondents. Bhide, who is the applicant in C.M.P. 115 of 1963, as Witness No.7 for the workmen, after referring to the various items of work done by him, states

"I was doing such work from 1946 when I was first appointed as a head cashier. All head cashiers under the respondent do work similar to mine."

Similarly Deshpande, the applicant in C.M.P. 5 of 1965, as Witness No. 1 for the workmen, stated -

"As I am doing the supervisory duties mentioned in my petition I state that I am doing supervisory work in addition to being a head-cashier and hence I am claiming supervisory allowance. What all I have been doing is the duty of a head cashier and because it involves work of a supervisory nature I am claiming supervisory allowance. . . . The work specified by me as supervisory work done by me, was being done by the head cashiers from the time of even the inception of the Bank."

Dr. Aggarwala severely criticised the findings recorded by the Labour Court on the ground that it has not stated which part of the work, if any, done by the respondents, is supervisory work. On the other hand, the Labour Court has accepted in full the plea of the respondents that even minor items of supervisory work that may have been done by them as Head-Cashiers will entitle them to claim the supervisory special allowance. According to the appellant the entire work done by the respondents was only as Head Cashiers and no part of that work can be called supervisory so as to make them eligible to claim the special supervisory allowance. Dr. Aggarwala urged that at the time of the Sastry Award the Tribunal had an overall picture of the staff working in the various Banks as well as the duties discharged by them and it is on that basis that the Tribunal has given the various categories of persons in paragraph 164(b) of the Award and who will be eligible for the special allowance. The category of headcashiers dealt with in the Award is entirely different from the category of supervisors for whom a higher special allowance has been recognised under both the Awards. Counsel also pointed out that the mere fact that the respondents, who were Cashiers, also incidentally did some supervisory work now and then will not make them eligible for getting the

377

supervisory allowance. In order to claim the supervisory allowance, counsel urged that the parties must establish that the main or essential duties entrusted to them and actually discharged by them were duties and functions of a supervisory nature, which has not been established in the present case, by any of the respondents. If all the Head Cashiers who are already getting the special allowance provided for them under the two Awards are also made eligible for the special supervisory allowance, division of the various persons into different categories in the two

Awards becomes meaningless and serves no purpose, and there will be no distinction between Head Cashiers and Supervisors. Dr. Aggarwala further pointed out that at the relevant time a claim was made by the Head Cashiers to be treated as Supervisors and this claim was rejected both by the Sastry Award and the Desai Award. These aspects, counsel urged, have been totally missed and lost sight of by the Labour Court when it accepted the claims of the respondents. According to Dr. Aggarwala, unless a person comes under the category of a Supervisor or discharges mainly supervisory functions, he will not be entitled to claim the supervisory special allowance.

Mr. Gokhale, on the other hand, equally vehemently urged that the question posed for consideration under contention no. 4, by the appellant, as to whether the respondents were carrying out supervisory functions to make them eligible for claiming the supervisory special allowance, is a pure question of fact on which the Labour Court had recorded a finding in their favour. He also contended that this Court should not interfere with a finding recorded by the Labour Court on such a question of fact. Mr. Gokhale also argued that even if the respondents have done some items of work which appear to have some element of supervisory character, they will be eligible to claim the special supervisory allowance. In this connection Mr. Gokhale referred us to certain statements contained in the applications filed by the respondents wherein they had stated that in discharging their duties as Head Cashiers they had to do certain work of a supervisory nature. Such discharge, of functions by the respondents and accepted by the Labour Court, would entitle them to claim the supervisory special allowance.

We are not inclined to accept the contention of Mr. Gokhale that the point arising for consideration is purely one of fact. In exercising, its discretion under Article 136, this Court does not normally enter upon pleas on questions of fact and is also generally reluctant to interfere with findings of fact recorded in a judgment or decision under appeal. So in dealing with the question raised by the appellant that the respondents had been wrongfully held entitled to claim supervisory special allowance we will

378
proceed on the basis that the facts found by the Labour Court are correct. The Labour Court has accepted the claim of the respondents regarding the items of work done by them, though it has not differentiated between the various items of work as to which of them is of a supervisory nature. We will also proceed on the basis that according to the Labour Court some items of work done by the respondents as Head Cashiers can be called supervisory. But will that make them eligible for the supervisory special allowance? The status of the three respondents has to be inferred as a matter of law from the facts found and therefore the question naturally arises as to whether the Labour Court has drawn the correct legal inference from the facts found by it.

The Sastry Award was published in the Gazette on March 26, 1953. Chapter X of this Award deals with Special Allowances. In paragraphs 161 and 162, the Award refers to the fixation of scales of pay and dearness allowance for clerical and subordinate staffs doing ordinary duties as such. It also refers to the fact that there are certain posts even in those grades which require special qualifications or skill from its incumbent and an extra payment in such cases is necessary by way of recognition of the special skill and responsibility. Reference is then made to the demand for such extra payment designated as 'special

allowances' and that it was with reference to work 'now performed by employees under various designations'. After referring to the various methods that could be adopted for giving a benefit to persons with special qualifications or skill for discharging work carrying with it a greater responsibility, the Tribunal ultimately comes to the conclusion that it has found it simpler to solve the problem by providing for a lump sum allowance called 'special allowance' in each, of such cases where the Tribunal considered it necessary. The Tribunal proceeds to state that it has provided only a minimum and 'in the case of big banks and particularly in their important offices it may be proper and desirable that the incumbents of such offices should be allowed more than what we have prescribed'. In the concluding part of paragraph 162, the Tribunal

"It may be that what we have prescribed as a minimum is less than what some big banks are at present giving and have thought it proper to give for such incumbents in some of their more important offices; but it is not feasible to provide for diverse conditions obtaining in various branches of banks where the volume of work differs to a considerable extent."

In paragraph 163 the Tribunal states that it proposes to enumerate the categories for which special allowance should, in its

379

opinion, be given. In paragraph 164 the categories of employees who deserve to be specially considered as fit for special allowance are given and they are : Graduates; Holders of banking diplomas like C.A.I.I.B. and C.A.I.B.; Comptists; Stenographers; Cashiers (other than routine clerks); Supervisors; Sub-Accountants; Clerks-in-charge; Departmental-in-charges; and Head Clerks. In clause (a) of this paragraph a special provision is made regarding the giving of two additional increments to graduates and holders of banking diplomas like C.A.I.I.B. and C.A.I.B. In clause (b) of this paragraph the rate of special allowances to be given for the other categories of employees is stated and the nine categories of employees are also enumerated. They are to the special allowance depending upon the bank coming under class A, B, C or D. The nine categories of employees enumerated in this sub-paragraph are as follows

- "1. Comptists.
2. Head Clerks and Stenographers.
3. Head Cashiers Units of 5 clerks and above.
4. Head Cashiers Units of 4 clerks and below.
5. Assistant Cashiers (above the level of routine clerks). Units of 5 clerks and above.
6. Assistant Cashiers (,above the level of routine clerks). Units of 4 clerks and below.
7. Cashiers in charge of cash in pay offices.
8. Cashiers in charge of cash in Treasury pay offices, employees in charge of pay offices or sub-offices.
9. Supervisors, Superintendents, sub-accountants, departmental-in-charges, employees in charge of treasury pay offices".

There is a note to the effect that in case where an employee comes within more than one category, he should be entitled to the ' highest rate applicable to him. Paragraph 165 refers to a controversy that appears to have been raised before the Tribunal as to whether some of the categories mentioned above come under the definition of the term 'workman. This question, we find, has been dealt with separately in Chapter XV. But it is emphasised in paragraph

165 what we are now providing must be understood as the allowances applicable to incumbents of such of these posts where they are "workmen".

In Chapter XVI the Tribunal deals with the question as to whether Head Cashiers and certain other persons are to be treated as department-in-charges. In this connection in paragraph 338 it is mentioned by the Tribunal that some of the employees'

380

unions demanded that head cashiers and treasurer's representatives should be treated as supervisors or heads of sections and should get emoluments appropriate to such positions of responsibility. The Tribunal does not appear to have recognised this demand and has wound up the discussion on this point by stating that it has to provide for an appropriate scale of emoluments for head cashiers or treasurer's representatives and those who do similar work.

The claim of the respondents for the special allowance as supervisors is dealt with under paragraph 164(b)(9) of the Sastry Award. We may state that this Award was challenged by the Banks before the Labour Appellate Tribunal which substantially confirmed the directions issued in respect of payment of special allowances.

The Desai Award was published in the Gazette on June 13, 1962. In Chapter V, under sub-heading (xxiii), the Award deals with supervisory staff. In paragraph 5.196 it refers to the Sastry Tribunal having provided special allowances for supervisors, at the rates mentioned therein, depending upon the class of Bank in which he is working. In paragraph 5.218 the 'tribunal states that it is

"left with no alternative except only to fix special allowances for workmen employed in a supervisory capacity"

as was done by the Sastry Tribunal, after applying to them the scales of pay provided for the clerical staff. On this basis the Tribunal further states that it has fixed suitable allowances for -supervisors in banks which come under Class A, B and C, including banks in the Excepted List. The Tribunal further states

"In deciding whether a workman is entitled to supervisory allowance, the designation of the workman would not be decisive. In order to entitle a workman to such allowances what would be determinative would be the nature of the duties and functions assigned to him."

Under sub-heading (xxiv) the Award deals with Special Allowances. In paragraph 5.220 the Award refers to the decision of the Sastry Tribunal to provide a lumpsum allowance called special allowance to persons with special qualification or skill required for discharging work carrying with it greater responsibility. it also refers to the further statement of the Sastry Tribunal that what it was providing was only a minimum and that in the case of big banks it may be proper and desirable that the 'incumbents of such offices' should be allowed more than what had been pres-

381

cribed. In paragraph 5.221 the categories of workmen employed in the various classes of banks to whom special allowances were granted by the Sastry Tribunal are set out. They are the nine categories enumerated in paragraph 164(b) of the Sastry Award.

In paragraph 5.231 it is stated that the Sastry Award has been in operation for a long time and, as a result of decisions given by Tribunals or otherwise, the categories of

persons entitled to special allowances under the Sastry Award as modified can now be regarded as fairly settled. In paragraph 5.249 the Award deals with Head Cashiers. It refers to the demand made for giving supervisory grades to head cashiers, but this is not accepted by the Tribunal. On the other hand, an increase is made in the special allowances payable to head cashiers. The Tribunal then deals in paragraph 5.273 with Supervisors, Superintendents, Sub-Accountants and Departmental-in-charges. Here -again, the Award granted an increase in the rate of special allowances for these categories of workmen depending upon their working in Banks characterised as A-class, B-class or C-class banks, including banks in the Excepted List. In paragraph 5.282 the Tribunal gives the categories of workmen and the amount of special allowances per month which such categories of workmen will get in A, B and C-class banks. There are twenty categories of workmen mentioned therein. Items 7 and 8 deal with Head Cashiers, of units of 5 clerks and above and Head Cashiers of units of 4 clerks and below, respectively. Item 18 deals with Supervisors, superintendents, sub-accountants and departmental-in-charges. It may be mentioned that items 7 and 8 correspond to items 3 and 4 in the Sastry Award and item 18 corresponds to item no. 9 in paragraph 164(b) of the Sastry Award with this slight difference that employees in charge of treasury pay-office are not dealt with under this clause. The rate of special allowance is also higher than that given under the Sastry Award.

Paragraph 5.285 states that special allowances prescribed under the Award would be in supersession of those prescribed under the Sastry Award as modified. In paragraph 5.286 the Award states that special allowances are payable to employees who are workmen and who will continue to remain as workmen even after inclusion of the amounts of such special allowance as wages. In paragraph 5.287 it is stated that when an employee falls within more than one category, he will be entitled to receive the special allowance at the highest rate applicable to him. We may state that this paragraph embodies the note appearing after the categories of employees enumerated in para 164(e) of the Sastry Award. Pausing here for a minute, we may state that the Note in the Sastry Award and paragraph 5.287 in the Desai Award do not advance the case of the respondents any further. The effect

382
of the note is only that if an employee has been assigned work the discharge of which will bring him under two categories, one of which carries a higher rate of special allowance, he will be entitled to such higher rate.

In paragraph 5.288 it is noted that the Banks urged that the special allowance granted under the Award should be paid to the employees only when they were required to perform and when they in fact performed the special duties for the performance of which the allowances were prescribed. The banks also appear to have urged that such allowance should not become payable when a person is occasionally or casually asked to do some duty of the type attracting a special allowance. These contentions urged on behalf of the banks is dealt with by the Tribunal in the same paragraph as follows

"The special allowances which have been awarded are monthly special allowances. They are intended to compensate a workman for the performance of certain duties and the discharge of certain functions which constitute the normal part of the duties

performed and the functions discharged by such person. They are not intended to be paid for casual or occasional performance of such duties or the casual or occasional discharge of such functions."

In paragraph 5.289 the Award states that a person will be entitled to a special allowance so long as he is in charge of such work or the performance of such duties which attract such allowance, and that a person asked to work temporarily in a post carrying a special allowance would be entitled to such special allowance for such period during which he occupies that post.

In paragraph 5.290 special allowances are directed to be continued to be drawn by a permanent incumbent while on leave. In paragraph 5.291 the Award states that whenever a bank requires an employee to work in a post carrying a special allowance it should be done by an order in writing to avoid any future controversy.

Having seen the relevant provisions in the two Awards, we have come to the conclusion that the scheme of both the Sastry and Desai Awards for grant of special allowance as Supervisors is that such special allowances can be drawn only when a person falls in the category of a supervisor or is found eligible to be put in that category, by whatever nomenclature such person may be designated, in view of the supervisory nature of the duties and functions assigned to him. The mere fact that a person whose duties are essentially and 'mainly that of a Head Cashier, 383

for whom also a special allowance is payable under the two, Awards, performs occasionally or casually or incidental to his work as a Head Cashier, duties which may be characterised as supervisory, will not entitle him to claim the higher rate of special allowance granted to a supervisor under the two Awards. Both the Sastry And the Desai Tribunals had before them various types of persons working in the banks as well as the duties discharged by them. It is on that basis and after a careful consideration of the duties so performed by them and the responsibilities attached to each post that the two Tribunals divided the persons into nine categories in the Sastry Award and twenty categories in the Desai Award. We are not inclined to accept the contention of Mr. Gokhale that merely because certain items of work,, which really form part of the regular work of Head Cashiers, can be considered as being supervisory and are-being done by the respondents, they will be entitled to claim the higher rate of supervisory special allowance.

We have already referred to the evidence of the-respondents, that the work that was being done by them were all items of work forming part of the duties of a Head Cashier, from the inception of the bank and all Head Cashiers do similar work. Therefore, it follows that the work done by the respondents, even on their own admission and on the findings of the Labour Court, consisted of only items of work which a Head Cashier was bound to do; and the few items of work claimed by them to be supervisory were really done-by them as incidental to their main duties as Head. Cashiers.

In this view, we are not remanding the matter for further consideration by the Labour Court, for a clearer finding regarding the supervisory nature of the work. done by the respondents, because none of the respondents has ever claimed that- any of them is in the category of a supervisor, or that he has been doing work which is essentially work of a supervisory nature. On the other

hand, their specific claim is that they are doing the work of Head Cashiers and, in the discharge of such work, they have also been doing certain items which, according to them, are supervisory in nature. The Labour Court appears to have been impressed by the fact that the respondents are discharging duties which are highly responsible, onerous and important. It has no doubt found that the respondents are discharging supervisory functions and hence their claims come within the ambit of the Sastry and Desai Awards. But the Labour Court, as rightly pointed out by Dr. Aggarwala, has not cared to investigate which part of the items of work claimed to have been done by the respondents can be characterised as supervisory functions. Further investigation on this aspect has become unnecessary in the view that we

384

have expressed earlier about the circumstances under which a person can claim the special supervisory allowance under the two Awards and in view of the fact that none of the respondents has claimed that he has been doing work which is essentially work of a supervisory nature.

In this connection it is also necessary to note that the appellant bank and its employees were parties to both the Sastry and Desai Awards. We have already referred to the fact that the Sastry Award adverts, in paragraph 338, to the demand made by Head Cashiers to be treated as supervisors or heads of sections. No doubt this demand was in respect of emoluments being fixed appropriate to position of responsibility of supervisors; but this claim was rejected by that Tribunal. A similar demand, on behalf of Head Cashiers, for giving them supervisory grades was rejected by the Desai Award in paragraph 5.249. These circumstances clearly show that the two Tribunals were not inclined to treat Head Cashiers on a par with Supervisors and that must be due to the reason that the functions discharged by the Head Cashiers and Supervisors materially differ. The view expressed by us earlier that the Sastry and Desai Awards had in view persons falling under the category of supervisors or discharging supervisory functions, by whatever nomenclature they may be designated, is also clear from some of the statements made in the Awards, to which we shall refer presently.

We will first take up the Sastry Award. In para 161 it is stated that the demand for extra payments, designated as 'special allowances', was made with reference to the 'nature of clerical and subordinate work now performed by employees under various designations'. In paragraph 162, again, it is stated that the Tribunal has provided only a minimum special allowance and that it may be proper and desirable that 'the incumbents such offices' in some of the big banks should be allowed by them more than that awarded by the Tribunal. In paragraph 163 the Tribunal proceeds to 'enumerate the categories for which special allowances, in our opinion, be given'. 'After specifying the categories of employees for whom special allowance is to be given, in paragraph 165 the Tribunal is faced with the question as to whether the employees in these, categories will fall within the definition of workmen'. This question is separately dealt with in Chapter XV, but in paragraph 165, regarding this aspect the Tribunal states

"What we are now providing must be Understood as the allowances applicable to incumbents of such of these posts where they are workmen'.

385

Similarly, in the Desai Award, in dealing with

SupervisoryStaff, in paragraph 5.218 the Tribunal states that it is left with no alternative except to fix special allowances for Workmen 'employed in a supervisory capacity' as was done by the Sastry Tribunal. It is further stated in the same paragraph that in deciding whether a workman is entitled to supervisory allowance, the designation of the workman would not be decisive and that in order to entitle the workman to such allowance what would be determinative would be the nature of the duties and functions assigned to him. In paragraph 5.221 the Tribunal itself has stated that the Sastry Tribunal provided special allowances for the 9 categories of workmen employed in various classes of banks' as mentioned therein. In dealing with a complaint made on behalf of the workmen that the Sastry Award had not specified the nature of the work to be done and the duties which were required to be performed by the various persons who were entitled to receive special allowances, the Desai Tribunal states in para 5.231 that the Sastry Award has been in operation for a long time and as a result of decisions given by Tribunals the categories of persons entitled to special allowances can be regarded as fairly settled. In paragraph 5,288 the Tribunal states that the special allowances which have been awarded are monthly special allowances intended to compensate a workman for the performance of certain duties and the discharge of certain functions which constitute the normal part of the duties performed and the functions discharged by such person and that they are not intended to be paid for casual or occasional performance of such duties as the casual or occasional discharge of such functions. It is further mentioned in paragraph 5.289 that a person is entitled to special allowance so long as he is in charge of such work or the performance of such duties which attract such allowance and that a person asked to work temporarily in a post carrying a special allowance would be entitled to such a special allowance for such period during which he occupies that post.

Mr. Gokhale, learned counsel for the respondent, referred to the decision of this Court in *Lloyds Bank v. Panna Lal Gupta*(1) and urged that the said decision is an authority for the proposition that if a person does work which appears to have some element of a supervisory character, he will be entitled to claim the supervisory allowance under paragraph 164(b)(9) of the Sastry Award. In our opinion that decision does not lay down any such proposition. In that decision this Court had to deal with a claim made by certain clerks working in the audit department for payment of the supervisory allowance under paragraph 164(b)(9) of the Sastry Award, It must be stated at the outset that these

386

clerks do not come under any of the nine categories mentioned in the Sastry Award, eligible for the special allowance. The Tribunal had held that the clerks in the audit department supervised the work of almost all the persons in the establishment with a view to ensure the correctness and authenticity of the accounts and it further held that having regard to the nature of the duties and functions performed by them they should be treated as 'supervisors' under category (9) of the Sastry Award. This Court set aside the award of the Industrial Tribunal and in so setting aside the award observed that before a clerk could claim a special allowance his work should appear to have some element of a supervisory character. Even this prima facie test, was enough to non-suit the three clerks

therein. We do not understand this decision as laying down that when any person, coming under one or other of 'the categories mentioned as items 1 to 8 of paragraph 164(b) can claim the higher rate of allowance granted to supervisors coming under category 9, merely by establishing that while discharging the work which appertains to that particular category, he did some items of work which have an element of supervisory character. In fact, in the earlier part of the judgment it is stated that even if the three workmen before them do not by name or designation fall in category 9, 'they would nevertheless be entitled to claim the special allowance if it appears that the duties performed by them and the functions discharged by them are similar to, or the same as, the duties or functions assigned to persons falling in that category'. These observations, in our opinion, make it quite clear that before a person can claim the supervisory special allowance, -he must establish that he has discharged the duties and functions which are similar to or the same as the duties or functions assigned -to supervisors coming under category 9. This decision also makes it clear that in deciding the status of an employee claiming the special allowance, the designation of the employee is not decisive and what determines the status is a consideration of the nature of the duties and functions assigned to the employee concerned.

A similar claim for supervisory allowance, made by tellers in a bank, was rejected by this Court in Punjab National Bank Ltd. v. Their Workmen(1) on the ground that a teller does not perform supervisory functions and he does not have the status of a supervisor and that the mere fact that the work done by a teller is responsible and onerous is not material in determining the question as to whether his work is supervisory in character or not.

Again, in Eastern Bank v. Shivdas Vishnu Naik(2) this Court negatived the claim of certain routine-clerks for the special allow-

(1) [1961] II L.L.J. 162.

(2) [1963] II L.L.J. 365.

387

ance payable to comptists, coming under category 1, on the ground that in the course of discharging their duties as routine-clerks they had to operate the adding machines for the purpose of making additions mechanically. This Court further observed that obviously it was not the intention of the Sastry Award to make such persons eligible under category 1 of paragraph 164(b) as :-

"They are not described as such, and the nature of the work, the responsibility attending to the work and the skill required of them for discharging the said work do not justify their claim to be comptists for the purpose of special allowance."

The work done by the Head Cashiers in the instant case may be considered very important, responsible and onerous, but, in our opinion, on the basis of the items of work claimed to be done by them, they are not entitled to the special allowance as supervisors, under category 9 of paragraph 164(b) of the Sastry Award, or under the Desai Award.

In the result, the appeals are allowed and the order of the Labour Court set aside. The three applications filed by the respondents before the Labour Court will stand dismissed. There will be no order as to costs.

V.P.S.

Appeals

allowed.

388

JUDIS