

CASE NO.:
Review Petition (civil) 1111-1112 of 2002
Appeal (civil) 3337-3338 of 2002

PETITIONER:
Chairman, State Bank of India and another

RESPONDENT:
Vs.
All Orissa State Bank Officers Association and another

DATE OF JUDGMENT: 31/07/2003

BENCH:
K.G.BALAKRISHNAN & (B.N.SRIKRISHNA.

JUDGMENT:

J U D G M E N T

SRIKRISHNA, J.

These review petitions have been filed by the State Bank of India which is the unsuccessful Appellant in Civil Appeal Nos. 3337-3338 of 2002.

The circumstances under which the present review petitions arise, briefly recounted, are as follows:-
The Review Petitioner is a nationalised bank and Respondent No. 1, All Orissa State Bank Officers Association (hereinafter referred to as "Respondent association") is stated to be a registered unrecognised union representing less than 9 percent of the officers in the Orissa Circle, having membership of only 300 officers of the Petitioner bank in the Orissa circle as against the total number of about 2900 officers. The association filed a public interest litigation in the High Court of Orissa, Cuttack claiming parity with the office bearers of another union known as the State Bank of India Officers Association, which had been recognised by the management of the Petitioner bank for the purpose of collective bargaining. The main grievance put forth by the Respondent association in the said petition was that the Petitioner bank had adopted a policy of hostile discrimination against them and was showing undue favour to the other union which claims to represent the majority of the officers.

By the judgment dated 24.11.98 the writ petition was allowed directing inter-alia as under: -

"For the foregoing reasons we set aside Paragraph 2 of the staff circular No. 91 of 1997 if the same is still in force and direct the opposite parties to confer such rights on the petitioner-Association as are available to them under Rule 24 of the Verification Rules.

The Management of the State Bank of India are also directed to keep in mind the observations made in this judgment while dealing with its employees; officers and their Unions, recognised or unrecognised."

Before the High Court, the Respondent association had relied on a set of rules known as "The Rules For Verification Of Membership And Recognition Of Trade Unions Rules, 1994". Particular reference was made to Rule 24 thereof which confers some rights on unrecognised Unions. It is not clear from the record as to under what provision of law the aforesaid

rules have been prescribed. Counsel appearing for the Review Petitioner, and the Respondent who appeared in person, were unable to throw light on the statutory efficacy of the said rules. In any event, the High Court had itself noticed in its judgment that the rules were not binding under any provision of law, and this fact is not disputed at the bar. Despite holding that these rules were not binding, the High Court held that the spirit and principle behind Rule 24 was a salutary one and, therefore, the Petitioner bank should permit the Respondent association, albeit that it was unrecognised, to meet and discuss with the employer or a person appointed by the employer the grievances of individual members relating to his service conditions. On this reasoning, the High Court issued a Writ of Mandamus to the Review Petitioner bank directing it to implement the principle, if not the provisions, of Rule 24(a). This direction was challenged in Civil Appeal Nos. 3337 - 3338 of 2002. These Civil Appeals were dismissed by a judgment of this Court dated May 6, 2002. The judgment specifically records the observation of the High Court that, although Rule 24 of the Verification Rules itself does not apply, the principle behind the rule can be extended to any normal, unrecognised Union, even if it is not a union of workmen. It was also observed in the judgment that rules under the Indian Trade Unions Act had been framed with a view to avoid arbitrariness, bias and favouritism in the matter of recognition of trade unions, that procedure prescribed therein was intended to ascertain which of the trade unions really commands the support of the majority of the employees and that such a procedure is intended to enable both the trade union and the employer to carry on collective bargaining efficaciously so that industrial peace would be maintained and the work of the establishment could be carried on normally. The Bench took notice of the possibility of multiple trade unions coming into existence in the industry and was of the view that, though such non-recognised unions may not have the right to participate in the process of collective bargaining with the employer over issues concerning the workmen in general, they had the right to meet and discuss with the employer or any person appointed by him issues relating to individual grievances of employees. Hence, it was observed in the judgment:-

"It follows, therefore, that the management/employer cannot outrightly refuse to have discussions with a non-recognised union in matters relating to service conditions of individual members and the other matters incidental thereto."

After noticing the judgment of this Court in the *Balmer Lawrie Workers' Union, Bombay & Anr. v. Balmer Lawrie & Co. Ltd. & Ors.* [(1985) 2 SCR 492] this Court went on to observe:

"The judgment of the High Court disposing of the writ petition and the order disposing of the review petition filed on behalf of the management make the position amply clear that the rights and privileges vested in a non-recognised association are limited to espousing the grievances of individual members relating to their service conditions and representing them in domestic or departmental enquiries held by the employer and not proceeding before the conciliation officer, labour court, industrial tribunal or arbitrator. The High Court has not conceded any right to the non-recognised union to participate in discussions relating to general issues concerning all workmen."

The review petitioner has urged two points in support. First, that even the majority union does not have the right of negotiation or representation with respect to individual grievances and denial of this right to a union, which was admittedly a minority union, could hardly be said to be discriminatory as the High Court seems to have assumed. On the contrary, it is urged that conferring such a special right on the minority union would amount to reverse discrimination. Secondly, it is contended that in Common Law there is no obligation on an employer to confer upon a union the right

to represent individual employees and unless such a provision is expressly made by any statute or statutory rules, the employer is not obliged to grant any such right. The High Court has found that the 1994 Verification Rules do not apply. In any event, the State Bank as a public sector bank had created its own efficacious grievance settlement machinery and there was no justification for the High Court to import the principle, if any, from Rule 24 of inapplicable rules to override the grievance redressal machinery which was already in place. The petitioner contends that these submissions have been lost sight of in the judgment, which is sought to be reviewed. Hence, the review petition.

A reference to the counter affidavit in the Civil Appeals filed by the General Secretary of State Bank of India Officers Association brings home the fact that, as a matter of long practice and usage, bipartite relations had been maintained only with the majority/recognised associations, but issues relating to individual grievances had to be processed through the grievance redressal procedure as they were not discussed with the majority/recognised associations. The said affidavit places on record the grievance procedure with regard to redressal of individual grievances. A perusal of the said grievance procedure (Annexure A2) clearly shows that there is a three-tier system of dealing with individual grievances. First, an individual grievance is to be made to an Initial Authority in respect of the department or section or branch in which the official is working directly. If there is failure to render satisfaction or give decision within the prescribed time, an appeal may be made to the Appellate Authority. If no decision is given by the Appellate Authority, within the prescribed time frame, then the complaint may be referred to a Grievance Committee consisting of two representatives of the bank and two representatives of the supervising staff nominated by the Supervising Staff Association. The decision of the majority of members of the said committee shall prevail. This grievance procedure brings out the fact that the privilege of discussing individual grievances of the officers has not been given even to the trade unions representing the majority of the officers.

In all proceedings under the grievance procedure, the officer concerned may appear himself or in addition have his case represented by a colleague. It is of significance that no union representative as such is allowed.

The existing grievance procedure has been functioning smoothly for the last several decades. The rejoinder affidavit filed by the Petitioner bank also places on record several circulars by which the grievance procedure has been brought into place. It also indicates the nature of grievances to be addressed under the grievance procedure, the manner of disposal of grievances, appeals and consideration of the grievance by the Grievance Committee. The grievance procedure circulars clearly indicate that any disciplinary action taken in accordance with the terms and conditions governing the official service shall not constitute a grievance to be processed under the said procedure. It is made clear that any action taken against individuals for disciplinary purposes would not and could not form the subject matter of an individual grievance to be ventilated under the grievance procedure machinery. It is also made clear that the union recognised by the employer, which represents more than 90 percent of the officers employed in the concerned circle, had also not been conferred this privilege of representing its members in grievance proceedings. As far as representation in such proceedings is concerned, it is confined to a co-employee or co-officer, irrespective of the trade union affiliation of the delinquent employee/officers.

For the Respondent association, however, it is contended that there is no law under which the representative character of the majority association has been determined. It is also contended that there is no statutory provision, which could decide as to which of the contending trade unions really represents the concerned employees. In these circumstances, it is urged that the judgment of the High Court took a reasonable view, namely, that the non-recognised trade unions should also be accorded the right of representing individuals and ventilating their grievances by holding discussions with the employer which is precisely what has been accepted

and reiterated in the judgment of this court dated May 6, 2002. It is, therefore, contended that there is no scope whatsoever, much less any need, to review the judgment.

In our view, the contention urged by the Counsel for the Review Petitioner has merit and needs acceptance. There is no Common Law right of a trade union to represent its members, whether for purposes of collective bargaining or individual grievances of members. This is an inroad made into the Common Law by special statutes. Either the special statute operates *proprio vigore*, or it does not. In the situation before us, it is undisputed that Rule 24(a) on which the Respondent association and the High Court placed reliance, has no application. This is accepted even in the judgment under review. Nonetheless, on general principles of equity, justice and fair play the judgment under review holds that the minority trade union should also be afforded an opportunity of ventilating individual grievances of its members. It appears to us that, in doing so, the attention of this Court was not adverted to the elaborate grievance procedure machinery which is in existence and the details of which are placed on record.

Having considered the matter in its entire perspective, we are inclined to agree with the submissions, of the Review Petitioner. We do not think that denying such a right of representation to the minority union, when such a right is not conceded even to the majority union, amounts to discrimination requiring redressal at the hands of the High Court. It is also not possible for the High Court to exercise its powers under article 226 to direct an employer to bring into existence such a system of representation in grievance procedure. In the absence of arbitrariness or discrimination, in our judgment, there was no scope at all for interference in exercise of writ jurisdiction. It is urged by Shri Salve for the Review Petitioner that the application of such a principle in one zone might create serious repercussions all over, since the bank has branches throughout the country. We also noticed that the appropriate government in respect of the State Bank of India is the Central Government and the rules made by the State Government cannot be enforced against it. Considering all aspects of the matter, it appears to us that the review petitions must be allowed, as these crucial issues were not considered in the judgment under review.

In the result, we allow the review petitions and recall the judgment dated May 6, 2002. Consequently, the judgment dated May 6, 2002 in Civil Appeal Nos. 3337-3338/2002 is recalled. Civil Appeal Nos. 3337-3338 of 2002 are allowed and the judgments of the High Court of Orissa, Cuttack are set aside. The writ petitions from which the said judgments arose are dismissed.

No costs.