

CASE NO.:
Appeal (civil) 7986 of 2004

PETITIONER:
General Manager, Indian Overseas Bank

RESPONDENT:
Workmen, All India Overseas Bank Employees Union

DATE OF JUDGMENT: 10/03/2006

BENCH:
ARIJIT PASAYAT & ARUN KUMAR

JUDGMENT:
J U D G M E N T

ARIJIT PASAYAT, J.

The Indian Overseas Bank (hereinafter referred to as the 'Bank') calls in question legality of view expressed in a judgment rendered by the Industrial Tribunal, Tamil Nadu, Chennai(hereinafter referred to as the 'Tribunal') which was affirmed by learned Single Judge of the Madras High Court. The judgment of the Division Bench is the subject-matter of challenge in this appeal.

The core question which falls for adjudication in this appeal is whether "jewel appraisers for loans" are to be treated as workers and are to be absorbed as part time clerical staff of the Bank. Stand of the appellant is that jewel appraisers are not employees of the bank and do not do any substantial work.

Background facts in a nutshell are as follows:

The bank on the basis of contracts had employed about 767 jewel appraisers mainly in the rural branches in the States of Tamil Nadu, Pondicherry, Andhra Pradesh, Karnataka, Kerala and few branches in Bihar and Orissa. Bank advances agricultural loans to its constituents and also members of the staff. The All India Indian Overseas Bank Employees Union (in short the 'Union') raised a dispute taking the stand that the jewel appraisers engaged by the bank are part time workers of the bank. On the basis of the demand raised reference was made by the Central Government and on 19.2.1990 following dispute was referred to the Tribunal for adjudication:

"Whether the demand of All India Overseas Bank Employees Union to treat the jewel appraisers engaged by the Bank as part time workmen of the Bank is justified? If so, to what relief, if any, are they entitled?"

In support of the demand the stand taken was that the jewel appraisers employed for particular branches of the bank are also utilized for certain clerical jobs like entering applications for jewel loans. They are also to go other branches as to the appraisers of the jewel. These jewel appraisers are required to be present in the respective branches between 10

a.m. to 2.00 p.m. as a request for jewel loan is considered and granted only during that period. They are paid a commission of Rs.3/- for every one thousand rupees sanctioned by way of loan. Reference was made to another dispute i.e. ID 25 of 1997 raised by jewel appraisers numbering about 353 in Indian Bank where a reference had been made to the Tribunal. The reference reads as follows:-

"Whether the action of the Management of the Indian Bank, Madras in denying to appraisers wages and other conditions of service applicable to rural clerical "Award Staff" of the Bank is justified? If not to what relief the workmen concerned are entitled to?"

Reference in that case was made on the ground that the jewel appraisers of Indian Bank were workmen and they were denied only wages and other service conditions as they were paid monthly remuneration of Rs.100/-. The said dispute was adjudicated and an award was made on 3.12.1979 holding that the jewel appraisers of Indian Bank are entitled to wages and other conditions of service applicable to regular clerical staff as part time employee of the Bank and they would be entitled to such proportionate (namely half) wages and benefits of clerical staff w.e.f. 1.4.1977 i.e. the date of reference. The award was questioned before the High Court which was dismissed. Letters Patent Appeal was also dismissed by the Division Bench and S.L.P. was also dismissed by this Court.

Stand of the Union, therefore, was that the view expressed in the Indian Bank's case (supra) was clearly applicable to this case. Claim of the Union was resisted by the appellant-Bank basically on the ground that jewel appraisers engaged by the Bank are not workmen as defined in Section 2(s) of the Industrial Disputes Act, 1947 (in short the 'Act'). Reference was made a decision of this Court in Management of Puri Urban Co-operative Bank v. Madhusudan Sahu and Anr. (1992 (II) LLJ 6). Further it was submitted that the Bank has branches in various states and, therefore, adjudication is possible only by a National Commission under Section 17B of the Act and not by the Industrial Tribunal to whom the dispute was referred. This point was not, however, urged before the High Court. It was pointed out that terms and conditions of the jewel appraisers of Indian Bank were entirely different from the terms and conditions of jewel appraisers of the appellant Indian Overseas Bank. The Tribunal relied upon the decision in Indian Bank's case (supra) and answered the reference in the affirmative. It made a comparison of the terms and conditions of the two Banks.

Union filed writ petition claiming that the Tribunal should have granted relief from 1.4.1978 i.e date of demand. Appellant-Bank questioned legality of the award by filing a writ petition. As noted above, the writ petition was dismissed by the learned Single Judge and the Division Bench in the LPA.

In support of the appeal learned counsel for the appellant-Bank submitted that in the year 1975 the appellant started the process of sanctioning loans on deposit of jewellery and security for which jewel appraisers were engaged who were paid on commission basis. On 20.1.1983 Government declined reference because independent contracts covered the arrangement. The Union filed writ petition before the High Court which by its judgment dated 22.11.1989 directed the Central Government to refer the dispute to the Tribunal. The

Tribunal instead of assessing the evidence and very vital admissions made by the witnesses examined to further the case of the jewel appraiser based its conclusions on Indian Bank's case (supra). It did not take note of the features highlighted by this Court in Puri Urban Co-operative Banks' case (supra). It also referred to a decision in Indian Bank v. Presiding Officer, Industrial Tribunal etc. (1990(I) LLJ 50), which had no relevance. Accordingly, the conclusions are vitiated of non-application of mind. It is pointed out that though the learned Single Judge held that the Tribunal not decided the real issues had proceeded to determine the case himself and upheld the award passed. In the appeal before the Division Bench it was categorically held in the impugned judgment that the Tribunal had not adjudicated the correct issue and for achieving substantial justice the learned Single Judge rightly adjudicated the matter which was pending for nearly 26 years. It was held that jewel appraisers are indispensable for proper functioning of the Bank and also deal with the clerical job.

It was submitted by learned counsel for the appellant that the factual scenario in Indian Bank's case (supra) was entirely different. Some of the distinguishing features make Indian Bank's case (supra) inapplicable. One of the determinative factors according to him was that the commission was paid only when the loan was sanctioned even if the appraisal had been done by the appraiser and the commission amount was paid out of the sanctioned loan amount and the payment is made by the borrower and not by the Bank. On comparison of the works done the Tribunal held that the work was similar so far as Indian Bank's case (supra) is concerned, without noticing that condition no.9 was conceptually and contextually different. There was no evidence to show that jewel appraiser did any other work as clerk. Even if it is conceded for the sake of arguments that some work was done by the appraiser, it was by way of help to the loanee. In any event after the Shastri Award there is no question of any part time clerk being appointed. If the order of the Tribunal as maintained by learned Single Judge and the Division Bench is to be maintained, a separate cadre has to be created to give effect to the orders. The Tribunal referred to the Tiny Deposit Scheme of Indian Bank's case without indicating as to how the same was relevant. The Tribunal quoted from the judgment of the Madras High Court in great detail and referred to Ex. "M-3" which relied on some conclusions of Tiny Deposits Scheme which was not the case of the jewel appraisers before the High Court. The Tribunal appears to have quoted from the said judgment of the Madras High Court and without applying the conditions which were the subject-matter of adjudication in the said case to the facts of the present case drew parallel. It was submitted that the factual scenario in the Puri Co-operative Bank's case (supra) was almost akin to the facts of the present case. Therefore, the ratio has full application in the present case. Reference was also made to a Full Bench judgment of Kerala High Court in Canara's Bank case (1981 (II) LLJ 189) where for the purpose of the Shop and Commercial Establishment Act jewel appraisers were held to be not employees.

It was, however, submitted by learned counsel for the respondent that this was done for the purpose of finding out the parameters.

It was submitted that the reference was made because prima facie the Government felt that jewel appraisers were

workmen under the Act and in that context nature of work, which was the same as in the case of Indian Bank's case (supra), is relevant. The Tribunal has compared the duties and has given findings of fact regarding nature of duties. It was held that the jewel appraisers are also doing some clerical work relating to the job entrusted. Three forums have recorded findings of fact and, therefore, no interference is called for. This is not a case where jewel appraisers were asking for regularization, they were claiming to be part time workers. There was power of the Bank to supervise and that was the effective control. The Bank has right to indicate as to in what manner the work was to be done. In Puri Cooperative Bank's case (supra) this Court did not notice an earlier three-judge Bench decision in Silver Jubilee Tailoring House and Ors. v. Chief Inspector of Shops and Establishments and Anr. (1974 (3) SCC 498) where the relevance of the end-product was highlighted. As the bank had the right to reject the report of the appraiser, that itself was indicative of element of control and supervision. Therefore, the Puri Co-operative Bank's case (supra) should not be followed. Additionally, the said case related to an individual and issue of workman did not arise directly.

The stress of learned counsel for the appellant was that the Bank had always the practice of appointing jewel appraisers as independent contactors who were free to work elsewhere and as such are not employees, not subject to discipline, are not subject to fixed working hours, are not employed by following any employment procedure and are not assigned duty outside of their contract, except may be incidentally filing of form and the like.

Reference to the circular dated 23.8.1975 clearly shows that the Bank had clearly stipulated that the jewel appraisers cannot be engaged in other work as they were not regular employees. On 2.1.1978 another circular was issued by the Bank that jewel appraisers act on commission basis and hence are not entitled to do any other work. It appears that the Tribunal did not analyse the evidence which was produced by the parties. It merely referred to the factual background in Indian Bank's case (supra). The decision of this Court in Puri Co-operative Bank's case (supra) was distinguished by comparing job of the jewel appraisers of the Indian Bank. It should be noted that the dispute in Indian Bank's case (supra) was conceptually different. After accepting that the real issues were not focused by the Tribunal, learned Single Judge held that a substantial portion of the Bank's business was because of the contribution made by the jewel appraisers without indicating as to how same was relevant for the purpose of adjudication. The Division Bench in a very cryptic manner observed that it had perused the evidence and the documents which substantiated nature of the job of the jewel appraisers and they were also doing the clerical job. The circulars issued by the Bank were not considered relevant and it was noted that the ratio in Indian Bank's case (supra) applies.

A few distinguishing facts need to be noted. In Indian Bank's case (supra) there was evidence to show that the jewel appraisers work regularly for four hours. It was clearly admitted in the instant case by the witness of jewel appraisers that there were no fixed period of work and they could come and go at any point of time. In Indian Bank's case (supra) the bank had disciplinary control on the jewel appraisers. In the instant case it was admitted by the witnesses that the Bank did not exercise any disciplinary control. In Indian Bank's case

(supra) conditions were to be fulfilled before any leave was granted. In the present case the jewel appraisers were not required to sign attendance register and also were not required to make any leave application. The most relevant factor in Indian Bank's case (supra) was that the jewel appraisers were paid a minimum amount per month which was somewhat akin to salary. In the instant case, the amount was paid on commission basis by the loanee and not by the bank.

A few other facts need to be noted. In the present case as well as in Puri Co-operative Bank's case (supra) the jewel appraisers were required to weigh the ornaments brought to the Bank for pledge and to appraise quality, purity and value. The jewel appraisers could be asked to do this exercise but not the manner in which it was to be done. In both the cases the respective banks had their lists of appraisers. It was not obligatory for the Bank to allot work to any particular jewel appraiser.

Strong reliance was placed by learned counsel for the respondent in Dhrangadhra Chemical Works Ltd. v. State of Saurashtra (1957 SCR 152), Silver Jubilee's case (supra), Shining Tailors v. Industrial Tribunal II, U.P. (1983 (4) SCC 464), Chintaman Rao v. State of M.P. (1958 SCR 1340).

The inferences culled out from the reading of those judgments can be summed up as follows:-

- (a) Where the contractors were substantially responsible for the main and sole business, they would be treated as workers.
- (b) One exception is that in such cases flexibility of the contract was at variance with normal worker's contract the contractors would not be treated as workers.
- (c) Where the contractor is in the nature of supplier of goods and services, they are to be treated as supplier contractors and not workmen.

At this juncture the distinction between jewel appraisers and the regular employees of the bank can be noted.

Regular Employees

Jewel Appraisers

1. Subject to qualification and age prescribed

1. No qualification/age

2. Recruitment through

Employment

exchange/Banking Service

Recruitment Board.

2. Direct engagement by the local Manager

3. Fixed working hours

3. No fixed working hours.

4. Monthly wages

4. No guaranteed payment, only commission paid.

5. Subject to disciplinary control

5. No disciplinary control.

6. Control/supervision is exercised not only with regard to the allocation of work, but also the way in which the work is to be carried out.

6. No control/supervision over

the nature of work to be performed.

7. Wages are paid by the Bank.

7. Charges are paid by the borrowers.

8. Retirement age

8. No retirement age.

9. Subject to transfer

9. No transfer

10. While in employment cannot carry on any other occupation.

10. No bar to carry on any avocation or occupation.

Therefore, the jewel appraisers are not employees of the Bank.

Above being the position, the judgment of the Division Bench affirming the views of the learned Single Judge and the Tribunal is clearly indefensible, deserves to be set aside which we direct.

The appeal is allowed with no order as to costs.