

PETITIONER:
STATE BANK OF BIKANER & JAIPUR

Vs.

RESPONDENT:
SHRI HARI HAR NATH BHARGAVA

DATE OF JUDGMENT 11/08/1971

BENCH:
MITTER, G.K.
BENCH:
MITTER, G.K.
VAIDYIALINGAM, C.A.
REDDY, P. JAGANMOHAN

CITATION:
1971 AIR 2200 1972 SCR (1) 110
1971 SCC (2) 591

ACT:
Industrial Disputes Act, 1947, s. 33C(2)-Sastry Award-Power of Attorney entrusting supervisory work-If entitled to supervisory allowance for period when not called upon to discharge supervisory functions.

HEADNOTE:
The respondent, a clerk of the appellant bank, was entrusted with supervisory work and a general power of Attorney was executed in his favour to endorse Hundies cheques, warranty, Railway receipts, pension bills and other negotiable and mercantile instruments and to prosecute, defend, answer and oppose any suit etc. on behalf of the appellant bank. The respondent filed an application before the Labour Court, Rajasthan under s. 33C (2) of the Industrial Disputes Act, praying for computation of special allowance under the Sastri Award, on the ground that he was discharging supervisory duties. The Labour Court, allowed supervisory allowance of Rs. 40 p.m. with consequential benefits. In appeal to this Court the appellant bank, contended that since the respondent was not called upon to perform the functions enumerated in the power of attorney, he is not entitled to any special allowance. Dismissing the appeal. HELD : (i) The payment of a special allowance was called for when an employee discharged duties of a supervisory nature or was accorded the status of a person competent to discharge functions of a supervisory character. [115d] (ii) Since the Management by the power of Attorney, had placed the respondent in a category of persons with responsibility and entrusted him with functions of a supervisory character and the employee was to discharge that responsibility, he was entitled to supervisory allowance no matter, whether he was actually called upon to discharge such functions or not for a certain period of time. [1 15F, 11 6B] State Bank of Hyderabad v. V. A. Bhinde, [1969] 2 L. L. J. 713, referred to.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil appeal No. 1923 of 1966. Appeal by special leave from the order dated February 14, 1966 of the Central Govt. Labour Court, Rajasthan, Jaipur in Misc. Application No. CLC-4 of 1964.

G. L. Sanghi and P.M. Tiwari for the appellant.

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M. K Ramamurthi, J. Ramamurthi and Vineet Kumar, for the respondent.

The Judgment of the Court was delivered by Mitter, J. This appeal by special leave is from an order of the Central Government Labour Court, Rajasthan passed on February 14, 1966 on an application under S. 33-C (2) of the Industrial Disputes Act filed by the respondent, Hari Har Nath Bhargava, holding that the latter was entitled to supervisory allowance under paragraph 164 (b) (9) of the Sastry Award even for the period when the latter was not actually performing supervisory duties.

The facts in this case may be shortly stated. The respondent was appointed a clerk by the State Bank of Jaipur in 1949. He was transferred to Kota in the year 1952. He was entrusted with supervisory work from 6th April, 1954. The bank executed a power-of-attorney in his favour on May 31, 1954 in pursuance of a resolution of its Board of Directors passed on 20th May, 1954. He was transferred from Kota to Jaipur on July 12, 1955. On December 27, 1955 he was posted at Sikar where he had to perform supervisory duties. On January 1, 1956 he was promoted to the cadre of junior officers of the bank.

On March 31, 1964 the respondent filed an application before the Central Government Labour Court, Rajasthan under S. 33-C (2) praying for computation of special allowance under what is known as the Sastry Award on the ground that he had been discharging supervisory duties from 6th April, 1954 to 1st January, 1956. By this time the Bank of Jaipur had amalgamated with the Bank of Bikaner and the amalgamated bank, the appellant before us, came to be known as the State Bank of Bikaner and Jaipur. The execution of the power of attorney dated 29th May, 1954 was admitted but the appellant denied "that the duties entrusted to the respondent constituted performance by him of any supervisory nature of work". A point was also taken that although no period of limitation is laid down by any statute with regard to applications under S. 33-C of the Act the respondent's claim being a stale one should not be entertained.

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The appellant amended its written statement in 1965 wherein it was stated that the respondent was only required to perform the functions enumerated in the power of attorney as and when so directed by the bank. As a matter of fact, he had been entrusted with supervisory duties from 6th April, 1954 to 12th July, 1955 and thereafter from 27th December, 1955 to 6th January, 1956.

The respondent was examined before the Labour Court where he said that he was "the second signatory at Kota during the period, April 1954 to middle of July 1955". At the Jaipur branch where he was transferred, there were many signatories above him, while at Sikar there was only another such signatory and he was the second officer. Obviously what he meant by the word "signatory" was a person authorised by the bank to discharge the functions covered by the power of attorney.

The relevant portion of the said power of attorney read

"The Bank do here by nominate constitute and

appoint Shree Hari Har Nath Bhargava in the service of the said bank at Kota to be the true and lawful attorney of the said bank at its registered office at Jaipur aforesaid or at any other place or places in India where the said bank may have or establish branches or agencies and to which he may from time to time or at any time be appointed by the said bank as Branch Manager, Agent, Sub-Agent, Accountant, or in any capacity whatever for and in the name of and on behalf of the said bank to do, transact jointly with Secretary, Manager, Sub-Manager etc. the matters and things mentioned thereafter."

The matters mentioned included the endorsement of "hundies, drafts, cheques, warrants, railway receipts, pension bills and other negotiable and mercantile instruments and to commence, prosecute, enforce, defend, answer and oppose any suit or other legal proceedings and demands touching any matters in which the bank was or may thereafter be interested or concerned."

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It is worthy of note that after the execution of the power of attorney the respondent was empowered to, discharge functions which could only be described as. supervisory in nature and unless there was a command or direction that he should not act thereon or unless the power of attorney was cancelled his authority, to act in a supervisory capacity would continue in force.

The Sastry Award is not on record in extenso but paragraph 164 thereof quoted by the Labour Court shows; that certain categories of employees were to be considered as fit for special allowances. These included inter alia stenographers, cashiers (other than routine clerks), supervisors, clerks-in-charge, departmental-in-charges and head clerks. The award noted that although scales of basic pay and dearness allowance for clerical and subordinate staffs had been laid down for doing ordinary duties, there were certain posts even in these grades for which an incumbent required special qualifications or skill for the efficient discharge of the duties assigned and an extra payment in such cases was necessary by way of, recognition of and compensation for the skill or responsibility. The award further noted that :

"Having regard to the numerous banks of varying sizes and resources, it is not possible to have one general pattern of allowances for such special types of work..... It is neither easy nor desirable to bring them all into one fairly general rule regardless of the bank's past practice or present capacity."

Paragraph 162 of the award shows that there were three, ways in which this extra payment might be provided for

- (1) The employee might be given additional increments in the same scale.
- (2) He might be paid a lump-sum allowance in addition to his other emoluments. This was said to have the advantage of carrying a man even beyond the usual maximum limit.
- (3) He might be given a higher scale leading up to a higher maximum.

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According to the award it was on the whole better to adopt either the first or the second method or sometimes even a

combination of both.

According to the Labour Court the underlying idea behind the said award was that when one general scale for clerical service had been provided in the award, it was thought just and proper that persons with special qualifications or skill required for discharging work carrying with it greater responsibility than the usual work should definitely get higher emoluments than the ordinary workmen. The Labour Court said that "this did not mean that the person of the same qualifications and skill who had been granted the powers of attorney by the bank should be allowed special allowance only for any particular period unless a man was temporarily appointed to do supervisory work". In the result, the Labour Court allowed the respondent supervisory allowance at Rs. 40 p.m. with effect from 6th April, 1954 to 31st December, 1955 with consequential benefits.

It is to be noted however that although a point had been taken in the written statement of the bank about the delay in the filling of the application under S. 33-C it had not been pressed before the Labour Court.

Mr. Sanghi appearing for the appellant was prepared to concede that so far as the periods 6th April, 1954 to 12th July, 1955 and 27th December, 1955 to 31st December, 1955 were concerned he was not contesting the claim. But in so far as the period 13th July, 1955 to 27th December, 1955 was concerned, his client was pressing the appeal as a matter of principle as this would constitute a test case by which other similar cases might fall to be decided.

This Court had to deal with a case where an identical question arose. In *State Bank of Hyderabad v. V. A. Bhide* (1) this Court had to consider the claims of the respondents in that appeal for payment of special allowance granted to supervisors under what were known as the Sastry and Desai awards. It was there contended on behalf of the appellant bank that in order to claim the supervisory allowance the parties must establish that the main or essential duties entrusted to them and actually discharged by

(1)[1969] 2 L.L.J. 713.

them were duties and functions of a supervisory nature. This Court considered the Sastry and Desai awards and observed (at p. 727) :

"..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 [*Lloyds Bank Ltd. v. Panna Lal Gupta and others* (1)] 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."

In our view the payment of a special allowance is called for when an employee discharges duties of a supervisory nature or is accorded the status of a person competent to discharge functions of a supervisory character. If no power of attorney is execute& as in this case but in fact the employee is asked to render services of a supervisory character and the employee does such work at the request of the bank, he becomes entailed to the allowance. Once however a power of attorney giving the wide powers of agency as was done in this case is executed, it should be held that the management had placed him in a category of persons with

responsibility and the employee was to discharge the responsibility without any further request in that behalf. It may be that the initial giving of power of attorney was necessitated by the fact that at Kota there was only one officer besides the respondent who could discharge duties like endorsing hundies, drafts etc. and it became necessary for the bank to have a second officer who could carry on this kind of work. But the power of attorney does not show that the bank thought it necessary to-clothe the respondent with the said powers only for discharging his duties when he was at Kota. The power of attorney was operative at any branch of the bank irrespective of the capacity which might be occupied by the respondent at a particular point of time. It may be

(1) [1961] 1 L.L.J. 18.

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that at Jaipur there was a number of officers superior to the respondent who were empowered to discharge duties mentioned in the power of attorney but this does not necessarily lead to the inference that the respondent lost his responsibility or was denuded of the powers while he was at Jaipur. If he discharged any of the duties mentioned in the power of attorney the same would be lawful and would be binding on the bank. The fact that he was not actually called upon to discharge such functions did not take away from his responsibility or status of a person, competent to discharge functions of a supervisory character and we see no reason why he should be deprived of supervisory allowance unless the bank gave him notice that he was not to act on the power of attorney while at Jaipur. We therefore hold that the Labour Court had come to the correct conclusion.

Mr. Sanghi tried to urge the point that the Labour Court should not have entertained the application as being inordinately belated and that even though the Labour Court did not adjudicate on this point it was open- to the bank to urge it before us. We made it clear that we were not going to entertain this plea in view of the fact that although the point had been taken in the written statement of the bank, it was not agitated before the Labour Court and further was not taken even in the special leave petition. In the result, the appeal is dismissed. The order for costs made at the time of the grant of the special leave will stand.

S.C.

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Appeal dismissed.