

HONGKONG & SHANGHAI BANKING CORP. LTD. A
V.

GOVERNMENT OF INDIA & ANR.

Civil Appeal No. 1718 of 2009

MARCH 18, 2009

[TARUN CHATTERJEE AND V.S. SIRPURKAR, JJ.]

Service Law – Termination – Interim order of Tribunal – Challenge to – Bank employee terminated from service – Industrial Tribunal passed interim award directing employer-Bank to pay Rs.30,000/- per month to the employee till disposal of the case – Interim award challenged – On facts, held: There is no reason to stay the interim award, particularly because of the detailed reasons given in support thereof by the Tribunal – In the interim award itself, the Tribunal secured the interests of employer-bank by ordering that in case the final award went against the employee still the amount paid to her by way of interim award could be adjusted against the retiral benefits which she was entitled to receive – Interim order.

Respondent no.2 was employed with appellant-bank and drew a salary of Rs.58,330/- per month. Appellant terminated the services of respondent no.2 after purportedly paying her six months' salary as compensation in lieu of notice period as also compensation equivalent to 15 days' salary for each completed year of service amounting to Rs.8,17,071/-. Dispute was raised regarding the termination of respondent no.2 which was referred to the Industrial Tribunal. The Tribunal passed interim award directing the appellant-Bank to pay a sum of Rs.30,000/- per month to respondent no.2 regularly till disposal of the case.

In appeal to this Court, the appellant challenged the interim award contending that respondent no.2, being an employee earning Rs.58,330/- per month, could not be

- A called a 'workman' within the definition of the term in Industrial Disputes Act, 1947 and that as per the contract of service respondent no.2 was already paid full compensation amounting to almost Rs.9 lakhs which she had accepted without demur and, thus, there was no justification in passing an interim award directing payment of Rs.30,000/- per month to her.

Disposing of the appeal, the Court

- C HELD:1. There is no reason to stay the interim award, particularly because of the detailed reasons given in support thereof by the Tribunal. The apprehension expressed by the appellant that in case the verdict went against respondent no.2 regarding her status as a workman then it would be very difficult for the appellant to recover the amounts paid by way of interim award, is not altogether unjustified. However, the fact remains that in the interim award itself, the Tribunal has secured the interests of the appellant by ordering that in case the final award goes against respondent no.2 still the amount paid to her by way of interim award could be adjusted against the retiral benefits which she is entitled to receive. [Para 13] [585-C-D]

- F 2. Considering the overall situation, the amount of Rs.8 lakhs should be payable to respondent no.2 by way of arrears. She would also continue to get the amount of Rs.30,000/- per month till the award is finally decided by the Tribunal. This amount shall be adjustable against the amount receivable by her by way of retiral benefits in case the award goes against her. [Para 14] [585-E-F]

- G CIVIL APPELLATE JURISDICTION : Civil Appeal No. 718 Of 2009

- H From the Judgement and Order dated 11.11.2008 of the Hon'ble High Court of Delhi at New Delhi in LPA No. 684 of 2008.

Ashok H. Desai, Kailash Vasudev, Siddharth Dias, V.D. A
Khanna, Menaka Guruswamy, for the Appellants.

Respondent in Person.

The Judgement of the Court was delivered by

V.S. SIRPURKAR, J. B

1. Leave granted.

2. The respondent No. 2 herein Mrs. Manju Saxena was the employee of the appellant-Hongkong & Shanghai Banking Corporation Ltd. (hereinafter called 'the bank' for short). According to the appellant, she drew a salary of Rs.58,330/- per month with a total annual remuneration of Rs.7,32,736/-. In May, 2005, the Bank reviewed its working norms, staff structure and other relevant issues governing its operations and it was decided that the various posts and positions held by the staff were to be discontinued. One such post to be discontinued was held by the second respondent. A severance package and/or alternate employment to all such persons whose posts were to be discontinued were offered. Accordingly such proposal was made to the second respondent also, but she declined to accept the package. C D E

3. On 01.10.2005 her services were terminated after paying her six months' salary as compensation in lieu of notice period as provided in the contract of employment and compensation equivalent to 15 days' salary for each completed year of service-amounting to Rs.8,17,071/-. This sum was allegedly accepted by the second respondent. F

4. However, a dispute was raised regarding this termination and hence the Government of India, the first respondent herein referred the dispute to the Central Government Industrial Tribunal (CGIT). The reference was as under: G H

A "Whether the action of the Chief Executive, HSBC, India
Area Management Office, 52/60, Mahatma Gandhi Road,
P.O.128, Mumbai-400 001, in terminating the services of
Mrs Manju Saxena, Staff Officer w.e.f. 01.10.2005 without
B giving her full terminal benefits is just, valid and legal? If
not, to what benefits the workman is entitled for and what
directions are necessary in the matter."

5. Thereafter, the second respondent, by her various
applications sought for interim relief along with her pleadings
before the Industrial Tribunal (hereinafter called 'Tribunal'). The
C application came to be allowed and vide order dated
30.06.2006, the Tribunal directed the appellant-Bank to pay a
sum of Rs.30,000/- per month to the claimant regularly till the
disposal of the said case. This was to be treated as an interim
award.
D

6. The appellant Bank challenged the said award by way
of a Writ Petition No. 12606/2006 wherein the learned Single
Judge of the Delhi High Court stayed the interim order till further
orders. The learned Single Judge was pleased to direct vide
E his order dated 15.12.2006 that the second respondent should
be paid a sum of Rs.25,000/- towards the litigation expenses. It
was also ordered that the proceedings before the Tribunal would
continue, however, final award would not be passed. This order
dated 15.12.2006 was, of course, an interim order. This order
F was confirmed by the Division Bench in LPA No.33/207 by order
dated 25.01.2007.

7. On 08.02.2007 the second respondent filed an
application under Section 17-B of the Industrial Dispute Act. On
G 07.09.2007 a letters patent appeal No.1194/2007 challenging
the order of the learned Single Judge restraining the Tribunal
from pronouncing the award pending the disposal of the writ
petition was disposed of. The matter thus was pending before
the learned Single Judge when the order dated 07.09.2007
H disposing of the letters patent appeal No.1194/2007 came up

before this Court by way of a special leave petition. This Court A
dismissed the same on 07.03.2008 and directed the High Court
to dispose of the Writ Petition on merits and in accordance with
law preferably within three months from the date of
communication of the order.

8. In the meantime, the appellant also filed the rejoinder B
affidavit to the counter filed by the second respondent. On
23.05.2008, the application under Section 17-B of the Industrial
Dispute Act was decided by the learned Single Judge. In that
order, no relief was granted under Section 17-B. On 24.09.2008, C
the Writ Petition No.12602/2006 was also disposed of. It was
held that the reference could not be challenged at that stage of
the proceedings when in fact the proceedings under reference
were pending final adjudication.

9. The learned Single Judge, however, upheld the interim D
industrial award stating that there was no infirmity in the interim
award of the Industrial Adjudicator which directed the appellant
to pay Rs.30,000/- per month to the second respondent regularly
till the disposal of the industrial dispute. The said order was
challenged before the Division Bench in LPA No.684/2008 which E
came to be disposed of by the impugned order.

10. In the impugned order the Division Bench observed in
paragraph 5 as under:

"We are informed that the case before the Tribunal is at F
the stage of arguments. We request the Tribunal to
pronounce its final order in the matter within a period of
six weeks from today, uninfluenced by any observation on
merits that may have been made in the impugned judgment
dated 24th September, 2008, passed by the learned Single
Judge or in the order dated 30.06.2006 of the Tribunal." G

The Division Bench however dismissed the matter as also
other pending applications. It is against this that the present
appeal has been filed.

A 11. Learned senior counsel Shri Ashok H. Desai urged
before us that he had no difficulty with the direction of the Division
Bench to the Tribunal for disposing of the matter. He, however,
raised a serious dispute regarding the direction passed by the
B Tribunal by way of an interim award whereby a direction was
given to pay Rs.30,000/- per month to the second respondent.
The learned senior counsel also pointed out that an employee
earning Rs.58,330/- per month could not be called a 'workman'
within the definition of the term in Industrial Disputes Act, 1947.
C The learned senior counsel further pointed out that as per the
contract of service the second respondent was already paid full
compensation amounting to almost Rs.9 lakhs which she had
accepted without demur and, thus, there was no justification in
passing an interim award directing payment of Rs.30,000/- per
month to her. Learned counsel also argued on merits that the
D learned Single Judge erred in holding that the Bank could not
question the propriety of the Reference made by the first
respondent. As against this Smt. Manju Saxena who appeared
in person argued that there would be no question of denying the
reinstatement to her, particularly, in view of the interim award
passed and if the Bank was not in a position to reinstate her,
E the Bank was bound to pay Rs.30,000/- per month as ordered
by the Tribunal in lieu of reinstatement. Smt. Saxena further argued
that the Bank was deliberately depriving her of legal dues.

12. On a careful consideration of the contentions raised
F herein we are of the clear opinion that it will be futile at this stage
to go into the question regarding the status of the employee as
the same is pending before the Tribunal and the trial in the
Tribunal is complete. We would not therefore go, at this stage,
into the question as to whether the learned Single Judge and
G the Division Bench were right in continuing the proceedings
before the Tribunal. We must note, at this juncture, that the
appellant Bank is taking part in the trial before the Tribunal.
Everything would, therefore, depend upon the verdict of the
Tribunal. The question is, however, of the interim award and the
H directions given thereunder.

13. We do not see any reason to stay the interim award, particularly because of the detailed reasons given in support thereof by the Tribunal. However, learned senior counsel expressed his apprehension that in case the verdict goes against the second respondent regarding her status as a workman then it would be very difficult for the appellant to recover the amounts paid by way of the interim award. There can be no dispute that the payment of Rs.30,000/- per month as ordered by the Tribunal would amount to almost Rs.9 lakhs. The apprehension of the learned counsel is not altogether unjustified. However, the fact remains that in the interim award itself, the Tribunal has secured the interests of the appellant by ordering that in case the final award goes against the second respondent still the amount paid to her by way of interim award could be adjusted against the retiral benefits which she is entitled to receive. We have specifically put this to the learned senior counsel Shri Ashok H. Desai, appearing on behalf of the appellant as to how much amount would be receiveable by the respondent by way of her retiral benefits. The learned counsel very frankly put the whole account before us.

14. Considering the overall situation, we are of the opinion that the amount of Rs.8 lakhs should be payable to the second respondent by way of arrears. She would also continue to get the amount of Rs.30,000/- per month till the award is finally decided by the Tribunal. This amount shall be adjustable against the amount receivable by her by way of retiral benefits in case the award goes against her. We also request the Tribunal to dispose of the proceedings, if not already disposed of by now, within two months from the date when the orders reach the Tribunal. We make it clear that we have not expressed anything in respect of the merits of the award or the status of the second respondent. The Tribunal shall decide the question regarding status on merits without being influenced by this judgment or for that matter any other judgment including the interim award.

15. With these directions we dispose of this appeal. The payment shall be made within six weeks from the date of judgment.

B.B.B.

Appeal disposed of.