

PETITIONER:
MANAGEMENT OF THE HINDUSTHAN COMMERCIALBANK LTD., KANPUR,

Vs.

RESPONDENT:
BHAGWAN DASS

DATE OF JUDGMENT:
26/11/1964

BENCH:
BACHAWAT, R.S.
BENCH:
BACHAWAT, R.S.
GAJENDRAGADKAR, P.B. (CJ)
HIDAYATULLAH, M.
SHAH, J.C.
SIKRI, S.M.

CITATION:
1965 AIR 1142 1965 SCR (2) 265
CITATOR INFO :
RF 1966 SC1216 (5)
RF 1968 SC 384 (8)
RF 1968 SC 985 (5)
RF 1971 SC1283 (7)

ACT:
Supreme Court Rules, Order 13 r. 2--petition for special leave to appeal--whether can be entertained without appellant first applying for certificate to High Court-- and without applying for exemption under Order 45 r. 1--whether Order 13 r. 2 mandatory.

HEADNOTE:
In a petition under Article 227 filed by the respondent, the High Court quashed an order of the Labour Court. The appellant then filed before the High Court a petition praying for the issue of a certificate under Art. 132(1) and Art. 133 of the Constitution for leave to appeal to the Supreme Court. The petition was returned to the appellant with the intimation that it should be presented at Chandigarh and not at Delhi. The appellant thereafter did not proceed with that petition but applied for and was granted ex-parte special leave to appeal under Article 136. It was contended on behalf of the respondent that the special leave granted to the appellant was liable to be revoked and it was obtained without complying with the provision of Order 13 r. 2 of the Supreme Court Rules, whereby when an appeal lies to the Supreme Court on a certificate issued by a High Court or other tribunal, no application to the Supreme Court for special leave can be entertained unless the High Court or the tribunal concerned has first been moved and it has refused to grant the certificate; and furthermore special leave had been obtained without applying for exemption from moving the High Court for a certificate.

HELD : In view of the provisions of Order 13 r. 2 which is a mandatory rule, no application for special leave to appeal in this case could be entertained unless the High Court had first been moved and refused to grant the certificate.

Under Order 45 r. 1 of the Supreme Court Rules, this Court could, for sufficient reasons shown, excuse the applicant from compliance with the requirements of Order 13 r. 2; but no such application for exemption had been made. The special leave to appeal obtained in contravention of Order 13 r. 2 was therefore liable to be revoked. [267 G, H; 268 A]

Union of India v. Kishore Lal Gupta [1960] 1, S.C.R. 493, 500, distinguished.

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 58 of 1964 and C.M.P. No. 2174 of 1964.

Appeal by special leave from the judgment and order, dated February 23, 1962, of the Punjab High Court in Civil Miscellaneous No. 1322 of 1961.

T. R. Bhasin, for the appellant.

M. K. Ramamurthi, D. P. Singh, R. K. Garg and S. C. Agarwala, for the respondent.

266

The Judgment of the Court was delivered by Bachawat, J. The short point arising for our decision in this case is whether the special leave to appeal granted to the appellant on August 21, 1962 should be revoked on account of non-compliance with the provisions of O. 13, r. 2 of the Supreme Court Rules, 1950.

The respondent was a cashier in the employ of the Amritsar Branch of the appellant Bank. He was suspended on May 5, 1952 and finally dismissed from the service of the appellant on January 24, 1959. In the meantime, he was prosecuted for offences under ss. 408 and 420 of the Indian Penal Code. He was acquitted by the Trial Magistrate on March 21, 1955, and a revision petition against the order of acquittal was dismissed by the Additional Sessions Judge on June 23, 1955. On January 9, 1961, he filed a petition under s. 33 (C) (2) of the Industrial Disputes Act, 1947 before the Presiding officer of the Central Government Labour Court, Delhi, claiming from the appellant payment of a sum of Rs. 16,000 in terms of paragraph 521(2) (c) of the Bank Award, including full salary and allowance from the date of suspension to the date of termination of his service. By an order dated March 28, 1961, the Labour Court allowed the claim to the extent of Rs. 375 only, and dismissed the rest of the claim. On May 29, 1961, the respondent filed a petition in the Punjab High Court under Art. 227 of the Constitution against the order of the Labour Court. By an order dated February 23, 1962 a learned single Judge of the Punjab High Court quashed the order of the Labour Court, and directed it to decide the matter afresh in accordance with law. The High Court held that by giving an erroneous decision with regard to the effect and scope of paragraph 521 of the Bank Award and the decision of the Trial Magistrate acquitting the respondent, the Labour Court failed to exercise jurisdiction and to give effect to the provisions of paragraph 521 of the Award and in the circumstances, on a true interpretation of Art. 227 of the Constitution the High Court had power to quash the impugned order. On April 30, 1962, the appellant filed before the Circuit Bench of the Punjab High Court at Delhi, a petition praying for issue of a certificate under Arts. 132(1) and 133 of the Constitution certifying that the case involved substantial questions of law a.,; to the interpretation of Art. 227 of the Constitution and was otherwise a fit one for

appeal to this Court. The petition was returned for correction of defects, and was represented on May 5, 1962. On June 1, 1962, the petition was again returned to the appellant with an intimation that the same should be presented at Chandigarh.

267

Thereafter, the appellant did not proceed with the petition, and did not move the High Court for the issue of a certificate under Arts. 132(1) and 133. On July 7, 1962, the appellant presented in this Court a petition for special leave to appeal. In this petition, the appellant raised various questions of law as to the proper interpretation of Art. 227 of the Constitution, and also set out the facts relating to the presentation of the petition under Arts. 132(1) and 133. On August 21, 1962, the appellant was granted ex parte special leave to appeal under Art. 136 of the Constitution. In his statement of case, the respondent contended, inter, alia, that the special leave granted to the appellant was liable to be revoked, inasmuch as the leave was obtained without filing an application for exemption from moving the High Court for a certificate of fitness under Art. 132 of the Constitution. On July 18, 1964, the respondent also filed an application praying for revocation of the special leave. The contention of the respondent is that the special leave should be revoked, inasmuch as the same was obtained without complying with the provisions of 0. 13, r. 2 of the Supreme Court Rules, which reads thus

"Where an appeal lies to the Supreme Court on a certificate issued by the High Court or other tribunal no application to the Supreme Court for special leave shall be entertained unless the High Court or the tribunal concerned has first been moved and it has refused to grant the certificate."

Now, no appeal lay to this Court under Art. 133 of the Constitution from the judgment of the learned single Judge of the Punjab High Court. But as the appeal involves a substantial question of law as to the interpretation of Art. 227 of the Constitution, it would have lain on a certificate issued by the High Court under Art. 132 of the Constitution. The appellant did not move the High Court for the issue of the certificate, though it had earlier presented a petition praying for the grant of the certificate on this footing. In view of 0. 13, r. 2, no application to this Court for special leave to appeal in this case could be entertained, unless the High Court had been first moved and had refused to grant the certificate. Under 0. 45, r. 1 of the Supreme Court Rules, this Court could, for sufficient reasons shown, excuse the appellant from compliance with the requirements of 0. 13, r. 2. Up till now, the appellant has not applied to this Court for exemption from compliance with 0. 13, r. 2. In the absence of any order of exemption, 0. 13, r. 2 applies with full force, and peremptorily

268

enjoins that no application to this Court for special leave to appeal shall be entertained. The rule is mandatory. The special leave to appeal being obtained in contravention of the rule is liable to be revoked.

Relying on the case of Union of India v. Kishorilal Gupta & Bros (1), Mr. Bhasin contends that the leave should not be revoked at this late stage. In that case, the special leave to appeal from a judgment of a single Judge of the High Court had been obtained without first appealing to an appellate Bench of the High Court. Though the leave could

have been revoked, if the objection were taken at the earliest opportunity, an application for revocation of the leave made after inordinate delay was dismissed on the ground that the revocation at the late stage would prejudice the appellant; for if the objection had been taken at the earliest point of time, the appellant would have had the opportunity to prefer a Letters Patent Appeal and the appellant could not be made to suffer for the default of the respondents. In that case, the special leave had not been obtained in contravention of any mandatory rule. Moreover, the delay in filing the application for revocation had prejudiced the appellant. In the instant case, the special leave to appeal was obtained in contravention of the mandatory provisions of O.13, r. 2. Moreover, it is not shown that the appellant suffered any prejudice for any default of the respondent or any delay in raising the objection.

We direct that the special leave to appeal granted to the appellant be revoked. The order of stay, if any, granted by this Court stands vacated. The parties will pay and bear their own costs -if the appeal.

Special leave revoked.

(1) [1960] I S.C.R. 493.

269