

HIGH COURT OF GUJARAT**UNITED COMMERCIAL BANK***Versus***GUJARAT BANK WORKERS UNION****Date of Decision:** 20 August 2002**Citation:** 2002 LawSuit(Guj) 604**Hon'ble Judges:** [Ravi R Tripathi](#)**Eq. Citations:** 2003 1 GLH 113, 2003 1 LLJ 1046**Case Type:** Second Appeal**Case No:** 429 of 1981**Final Decision:** Appeal allowed**Advocates:** [Mahapatra](#), [Nanavati Associates](#), [Ketan Dave](#)**Cases Referred in (+): 3**

[1] The present Second Appeal arises from the judgement and order dated 10/11/1981 passed by the learned Joint District Judge, Rajkot in Civil Appeal Nos.56 of 1980 and 78 of 1981 whereby both these appeals were dismissed with costs.

[2] The Civil Appeal No.56 of 1980 was filed by Gujarat Bank Workers Union while Civil Appeal No. 78 of 1981 was filed by the United Commercial Bank. These two appeals arose out of one and same judgement dated 31st December, 1979 passed by the Authority under the Payment of Wages Act, Rajkot District, in P.W.Application No. 14 of 1978, whereby the United Commercial Bank, having its head office at Calcutta and its branch office at Rajkot, is directed to pay to the employees the sum mentioned in the order.

[3] The facts leading to the present Second Appeal are as under : Twenty Three employees, who are represented through the respondent no.1-union, abstained from work between 10.45 a.m. to 2.45 p.m. on 29/12/1977 in protest against the attitude of the Bank regarding their various demands. Thereafter, they attended the work from 2.45 p.m. to 5.45 p.m., but the employer-Bank did not assign work to them between this period i.e. during 2.45 p.m. to 5.45 p.m. This abstain from working was a part of demonstration in support of the workers' rights and demands. The Bank deducted the

wages for the whole day of 29/12/1997 from the salary of the concerned workman. Being aggrieved by this action of the Bank, the 23 employees, who were represented by Bank Workers Union, through its Secretary, K.P. Antani, presented an application, being Payment of Wages Application No.14 of 1978 under the Payment of Wages Act before the Authority under the Payment of Wages Act. It was contended that as a part of demonstration, the employees abstained from work from 10.45 a.m. to 2.45 p.m. and subsequently attended the work from 2.45 p.m. to 5.45 p.m. and, therefore, the Bank was not entitled to deduct the salary for the whole day particularly when the employees had worked for three hours.

[4] It is clear from the record that averments made in the application to the effect that, "... and subsequently attended the work from 2.45 p.m. to 5.45 p.m. ..." "... when they had worked for three hours", are not reflecting the correct position because as it is the case of the Bank that it had issued a notice dated 27/12/1977 to the employees, which is at Exh. 24, wherein it is stated that, 'if any employee of the bank does not report for work or does not work for any part of his working hours, it will be in the breach of his service contract and will not earn salary for that and subsequently need not report for the work for rest of the day.' It is also on record that the Bank had issued a public notice in the 'Indian Express' dated 29/12/1977 also, a photocopy of which was produced in the proceedings before the Authority under the Payment of Wages Act, Rajkot.

[5] It is the case of the Bank employees that, the Bank was not entitled to deduct their whole days' salary by way of punishment and that this deduction was illegal and Bank was bound to refund it, on the basis that the Bank was entitled to deduct half day salary only of the Bank employees.

[6] Mr.mahapatra for M/s.Nanavati and Nanavati, learned Advocate for the appellants, submitted that this, being a Second Appeal, he would like to first address the Court on the point of its maintainability. He relied upon a judgement of the Honourable Supreme Court in the matter between Kondiba Dagadu Kadam vs. Savitribai Sopan Gujar and Ors., reported at (1999) 3 SCC 722. He submitted that in view of the aforesaid judgement, the present Second Appeal is maintainable and the same is required to be entertained though the stake in the present Second Appeal, valued in terms of money, comes to only Rs.685=00. He submitted that the Honourable Supreme Court was pleased to hold as under:

"Second Appeal is required to be entertained in any cases where the High Court finds that the consequences drawn by the lower court were erroneous being (i) contrary to the mandatory provisions of applicable law; or (ii) contrary to the law

as pronounced by the Honourable Apex Court; or (iii) based upon inadmissible evidence or no evidence."

[7] He submitted that the decision of the first appellate Court in the present case is contrary to the pronouncement of the Honourable Supreme Court in the matter of Bank of India vs. T.S. Kelawala and Ors., reported in (1990) 4 SCC 744. He submitted that the Honourable Supreme Court, while considering the question of 'No work no pay' held that wages are paid for actual work and mere physical presence or attendance is not enough. In case of deliberate refusal of work, deduction of wages is justified. Conversely, if work is done but attendance register is not signed, no deduction can be effected. The Honourable Supreme Court observed as under in paragraph 28:

"... .. The pro rata deduction of wages is not an unreasonable exercise of power on such occasions. Whether on such occasions the wages are deductible at all and to what extent will, however, depend on the facts of each case. Although the employees may strike only for some hours but there is no work for the rest of the day as in the present case, the employer may be justified in deducting salary for the while day. On the other hand, the employees may put in work after the strike hours and the employer may accept it or acquiesce in it. In that case the employer may not be entitled to deduct wages at all or be entitled to deduct them only for the hours of strike. ..."

[8] In the present case, the employees of the appellant-Bank refused to work from 10.45 a.m. to 2.45. p.m., which are the hours during which the Bank transacts business with the public. The employees denied to work during these hours and thereafter, presented themselves for the later part of the day from 2.45 p.m. to 5.45 p.m. It is a specific case of the Bank that it did not assign any work to them during these hours on that day. This fact is to be appreciated in light of the fact that the Bank had already issued a notice and also a public notice stating that if any employee of the Bank does not report for work or does not work for any part of his working hours, it will be in breach of his service contract and will not earn salary for that and subsequently need not report for the work for rest of the hours of the day. Despite this, the employees resorted to strike and did not work during the banking hours, during which the Bank transacts public business. In such circumstances, in view of the decision of the Honourable Supreme Court, the Bank was justified in deducting the wages for the whole day.

[9] Learned Advocate submitted that the view taken by the Honourable Supreme Court in the case of Bank of India vs. T.S. Kelawala (supra) in the year 1990 was approved by the Constitutional Bench of the Honourable Supreme Court in the matter

of Syndicate Bank and Anr. vs. K. Umesh Nayak, reported at (1994) 5 SCC 572, wherein the Honourable Supreme Court was pleased to hold as under :

"As in the case of T.S. Kelawala, in the cases of C.A. Nos. 2689-92 of 1989 also, the question whether the strike was justified or not was not raised. No argument has also been advanced on behalf of the employees on the said issue. In the circumstances, the law laid down in T.S. Kelawala will be applicable. The wages of the employees for the whole day in question i.e 29-12-1977 are liable to be deducted."

[10] In view of the aforesaid discussion, the Second Appeal is allowed. The judgement and order dated 10th November, 1981 passed by the learned Joint District Judge, Rajkot in Civil Appeal Nos.56 of 1980 and 78 of 1980 is hereby quashed and set aside to the extent it dismisses Civil Appeal No. 78 of 1980. Resultantly, the Civil Appeal No.78 of 1980 stands allowed. The judgement and order passed by the Authority under the Payment of Wages Act, Rajkot in P.W.Application No. 14/1978 dated 31/12/1979 stands quashed and set aside. The action of the appellant-Bank in deducting the whole days salary stands. No order as to costs.