
(2009) 05 RAJ CK 0059
In the Rajasthan High Court

Gopal Prasad Varshney

APPELLANT

Vs

Bank of Rajasthan Ltd.

RESPONDENT

Date of Decision : 06-05-2009

Acts Referred:

Banking Regulation Act, 1949 — Section 35, 5, 5A
COMPANIES ACT, 1956 — Section 11, 21, 23, 24, 3
Constitution of India, 1950 — Article 12, 14, 19, 226, 32
Industrial Disputes Act, 1947 — Section 18, 2

Citation : (2009) 4 LLJ 225 : (2009) 3 RLW 2029 : (2010) 1 SLR 768 : (2009) 3 WLN 571

Hon'ble Judges : Deepak Verma, C.J.;Narendra Kumar Jain, J;K.S. Rathore, J

Bench : Full Bench

Judgement

K.S. Rathore, J.—Petitioner Gopal Prasad Varshney was appointed on the post of Clerk in the respondent Bank on 23.01.1965 after giving age relaxation of two and half years in view of his additional qualification and retired from the post of Senior Manager on attaining age of superannuation on 31.07.1995. The pension scheme was introduced in the Banking Industry in November, 1993. The respondent Bank also framed its own employees pension regulation in 1993. The total service of the petitioner with the respondent Bank was 31 years, whereas for 100% pension 33 years service is required and for short of 2 years service, the petitioner wanted to take the benefit of Rule 26(c) of The Bank of Rajasthan Limited (Employees") Pension Rules, 1996 (for short "the Rules of 1996") as prior to the service with the respondent Bank, the petitioner had served in the Rajasthan State Ware Housing Corporation for the period from 01.08.1959 to 09.01.1965. To this effect, the petitioner submitted his representations and the same were rejected by the respondent Bank as the Pension Rule 26 Second Proviso is not applicable in the case of the petitioner.

2. Being aggrieved and dissatisfied with the reply given by the respondent bank vide letters dated 07.10.1996, 04.08.1997 and 06.06.2001, the petitioner has preferred the present writ petition seeking writ, order or direction in the following

manner:

(i) By issuing an appropriate Writ, Order or direction the respondent be directed to call for the complete record and rules pertaining to the case of the petitioner.

(ii) By issuing an appropriate Writ, Order or direction the respondent be directed to count the period by which his age at the time of recruitment exceeded the upper age limit i.e. 2-1/2 years for addition to the qualifying service.

(iii) By issuing an appropriate Writ, Order or direction the pension of the petitioner may kindly be revised after addition the period to the qualifying service and the respondent be directed to pay the amount of arrears alongwith interest to the petitioner.

(iv) Any other appropriate relief which this Hon"ble Court deems fit and proper in the facts and circumstances of the case may kindly be granted in favour of the petitioner.

(v) Costs of this Writ Petition may kindly be granted in favour of the petitioner.

3. Preliminary objection was raised before the learned Single Judge by the respondent Bank that the respondent-Bank is not a State within the meaning of Article 12 of the Constitution of India as held by this Court in the case of Arjun Singh Rajpurohit v. Bank of Rajasthan and Ors. S.B. Civil Writ Petition No. 1536/2002, decided on 11.05.2002, wherein the learned Single Judge was of the view that the Bank of Rajasthan being a private company registered under the Companies Act, 1956, is neither held to be a State, nor any instrumentality of the State.

4. Again similar question came for consideration before this Court in the case of Sheesh Ram Beniwal v. General Manager, Bank of Rajasthan and Ors. S.B. Civil Writ Petition No. 3153/2000, decided on 20.07.2004, and having relied upon the judgment of the Hon"ble Supreme Court in the case of Federal Bank Ltd. v. Sagar Thomas and Ors. reported in JT 2003 (Supp1) SC 470, this Court has held that the respondent-Bank is not a State within the meaning of Article 12 of the Constitution of India so as to maintain a writ petition before this Court.

5. Similar view in regard to private Banks has also been taken by a Division Bench of the Kerala High Court in the cases of C.J. Thomas and Others Vs. South Indian Bank Ltd. and Others, Immanuel Paul Chakkola Vs. Catholic Syrian Bank and Others, as also by the Single Bench of Allahabad High Court in the case of Jata Shankar Mishra and Ors. v. Benaras State Bank Ltd., Varanasi and Ors. reported in 2000 (8) SLR 747.

6. The learned Single Judge vide order dated 10.01.2005 having considered the judgments referred before it and considering the preliminary objection raised on behalf of the respondent Bank, has made reference in the following terms:

The petitioner has prayed for enforcement of his rights under Regulation and has claimed certain benefits. However, the main issue is whether the same relief can

be granted by this Court in the present writ petition. Three Hon''ble Judges of this Court having taken different views as to whether the respondent-Bank is a State under Article 12 of the Constitution of India relying on the judgment of Supreme Court in the case of Federal Bank Ltd. v. Sagar Thomas and Ors. (supra) and there been views of other High Courts also holding the private Bank not amenable to the writ jurisdiction, in my opinion as also in the interest of justice, it will be proper that the whole controversy in regard to respondent-Bank be decided by a Larger Bench.

7. On 28.04.2009, the petitioner appeared in person and wanted to argue the matter himself. Looking to the question of law that has been referred to the Larger Bench, it was thought proper to appoint some Advocate on behalf of the petitioner and accordingly, Mr. S.P. Sharma, Advocate was requested to assist the Court and also the petitioner in this behalf and he was kind enough to accept the request and has argued the matter on behalf of the petitioner.

8. Learned Counsel Mr. Sharma argued that the respondent Bank though is a private body, since discharging a public duty or having positive obligation of public nature, therefore, the respondent Bank is amenable to the writ jurisdiction under Article 226 of the Constitution of India. He has referred to the Memorandum of settlement dated 29th October, 1993 arrived at between the Managements of 58 banks as represented by the Indian Banks'' Association and their workmen as represented by the All India Bank Employees Association, National Confederation of Bank Employees, Indian National Bank Employees Federation and Bank Employees Federation of India and joint note on agreed conclusions with their officers as represented by the All India bank Officers'' confederation. All India Bank Officers'' Association and Indian National Bank Officers'' Congress on Pension Scheme.

9. As per the Memorandum of Settlement arrived at on 29.10.1993, pension scheme in banks was introduced and pension regulations have been framed u/s 2(P) and Section 18(1) of the Industrial Disputes Act, 1947 read with Rule 58 of the Industrial Disputes (Central) Rules, 1957 and the parties were 58 banks listed in Schedule I to this Memorandum of Settlement and their workmen. The respondent Bank has also framed The Bank of Rajasthan Limited (Employees) Pension Regulations, 1993, which were made effective from 1st November, 1993.

10. Learned Counsel Mr. Sharma has contended that as the Pension Regulations have been framed under the statutes of Industrial Disputes Act, 1947 and Industrial Disputes (Central) Rules, 1957, therefore, the respondent Bank is amenable to the writ jurisdiction.

11. It is also argued that the respondent Bank is a sponsor bank and has referred to Section 2(g) of the Regional Rural Banks Act, 1976 (for short ''the Act of 1976''), wherein the definition of ''Sponsor Bank'' in relation to a Regional Rural Bank is given. As per Section 2(g), ''Sponsor Bank'', in relation to a Regional Rural Bank, means a bank by which such Regional Rural Bank has been

sponsored.

12. He has further referred Section 3 of the Regional Rural Banks Act, 1976, which deals with Establishment and incorporation of Regional Rural Banks and reads as under:

3. Establishment and incorporation of Regional Rural Banks.- (1) The Central Government may, if requested so to do by a Sponsor bank, by notification in the Official Gazette establish in a State or Union territory, one or more Regional Rural Banks with such name as may be specified in the notification and may, by the said or subsequent notification, specify the local limits within which each Regional Rural Bank shall operate.

(2) Every Regional Rural Bank shall be a body corporate with perpetual succession and a common seal with power, subject to the provisions of this Act, to acquire, hold and dispose of property and contract and may sue and be sued in its name.

[(3) It shall be the duty of the Sponsor Bank to aid and assist the Regional Rural Bank, sponsored by it, by-

(a) subscribing to the share capital of such Regional Rural Bank,

(b) training personnel of such Regional Rural Bank; and

(c) providing such managerial and financial assistance to such Regional Rural Bank during the first five years of its functioning, as may be mutually agreed upon between the Sponsor Bank and Regional Rural Bank:

Provided that the Central Government may, either on its own motion or on the recommendation of the National Bank, extend the said period of five years by such further period, not exceeding five years at a time, subject to such conditions as it may deem fit to impose.]

13. In Chapter III, as per Sub-section (1) of Section 9 (Board of Directors) of the Act of 1976, The Board of Directors shall consist of the Chairman appointed under sub-section(1) of Section 11, and the following other members, namely:

[(a) two directors, who are not officers of the Central Government, State Government, Reserve Bank, National Bank, Sponsor Bank or any other bank, to be nominated by the Central Government;

(b) one director, who is an officer of the Reserve Bank, to be nominated by that Bank;

(c) one director, who is an officer of the National Bank, to be nominated by that Bank;

(d) two directors, who are officers of the Sponsor Bank, to be nominated by that Bank; and

(e) two directors, who are officers of the concerned State Government, to be nominated by that Government.]

14. Further as per Sub-section (2) of Section 9 of the Act of 1976, The Central Government may increase the number of members of the Board; so, however, that the number of directors does not exceed fifteen in the aggregate and also prescribed the manner in which the additional number may be filled in.

15. Section 6 of the Regional Rural Banks Act, 1976 reads as under:

6. Issued capital.- (1) The issued capital of each Regional Rural Bank shall, in the first instance, be such as may be fixed by the Central Government in this behalf, but it shall in no case be less than twenty-five lakhs of rupees or exceed one crore of rupees.

(2) Of the capital issued by a Regional Rural Bank under Sub-section (1), fifty per cent shall be subscribed by the Central Government; fifteen per cent by the concerned State Government and thirty-five per cent by the Sponsor Bank.

(3) The Board may, after consultation with the [National] Bank, the concerned State Government and the Sponsor Bank and with the prior approval of the Central Government, from time to time, increase the issued capital of the Regional Rural Bank; and, where additional capital is issued, such capital shall also be subscribed in the same proportion as is specified in Sub-section (2).

16. Mr. Sharma has further referred Section 17 of the Regional Rural Banks Act, 1976 deals with Staff of Regional Rural Banks, which reads as under:

17. Staff of Regional Rural Banks.- (1) A Regional Rural Bank may appoint such number of officers and other employees as it may consider necessary or desirable [in such manner as may be prescribed] for the efficient performance of its functions and may determine the terms and conditions of their appointment and service: Provided that it shall be lawful for a Sponsor Bank if requested so to do by a Regional Rural Bank sponsored by it, to send [* * *]such number of officers or other employees on deputation to the Regional Rural Bank as may be necessary or desirable for the efficient performance of its functions:

Provided further that the remuneration of officers and other employees appointed by a Regional Rural Bank shall be such as may be determined by the Central Government, and, in determining such remuneration, the Central Government shall have due regard to the salary structure of the employees of the State Government and the local authorities of comparable level and status in the notified area.

(2) Notwithstanding anything contained in the Industrial Disputes Act, 1947 (14 of 1947), or any other law for the time being in force, no award, judgment, decree, decision or order of any industrial, tribunal, court of other authority, made before the commencement of this Act, shall apply to the terms and conditions in relation to the persons appointed by a Regional Rural Bank.

(3) The officers and other employees of a Regional Rural Bank shall exercise such powers and perform such duties as may be entrusted or delegated to them by the Board.

17. Section 29 of the Regional Rural Banks Act, 1976 speaks about power to make rules and the same reads as under:

29. Power to make rules.-(1) The Central Government may, after consultation with the [National Bank] and the Sponsor Bank, by notification in the Official Gazette, make rules for carrying out the provisions of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following, matters, namely:

(a) the manner in which the additional number of members of the Board may be filled in, under Sub-section (2) of Section 9;

(b) the time and place at which the Board of directors of a Regional Rural Bank shall meet and the rules of procedure which shall be observed by the Board in regard to the transaction of business at its meetings, under Sub-section (1) of Section 14;

[(ba) the manner in which the officer and other employees of the Regional Rural Banks shall be appointed;]

(c) any other matter which is required to be, or may be, prescribed.

(3) Every rule made by the Central Government under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the sessions immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

18. The respondent Bank is also a sponsor bank and it shall be the duty of the sponsor bank to aid and assist the Regional Rural Bank sponsored by it by subscribing to the share capital of such Regional Rural Bank, by training personnel of such Regional Rural Bank and by providing such managerial and financial assistance to such Regional Rural Bank during the first five years of its functioning, as may be mutually agreed upon between the Sponsor Bank and Regional Rural Bank.

19. Such Act of 1996 has been enacted by Parliament in the Twenty-seventh Year of the Republic of India to provide for the incorporation, regulation and winding up of Regional Rural Banks with a view to developing the rural economy by providing, for the purpose of development of agriculture, trade, commerce,

industry and other productive activities in the rural areas, credit and other facilities, particularly to the small and marginal farmers, agricultural labourers, artisans and small entrepreneurs, and for matters connected therewith and incidental thereto.

20. The respondent Bank is also one of the Sponsor Bank and the petitioner has taken support of this Act to substantiate his arguments that even though the respondent Bank is a private Bank but is discharging public duty.

21. Learned Counsel Mr. Sharma, in support of his submissions, referred to Section 5A of the Banking Regulation Act, 1949 (for short "the Act of 1949"), which reads as under:

5A. Act to override memorandum, articles, etc.- Save as otherwise expressly provided in this Act,-

(a) the provisions of this Act shall have effect notwithstanding anything to the contrary contained in the memorandum or articles or a banking company, or in any agreement executed by it, or in any resolution passed by the banking company in general meeting or by its Board of Directors, whether the same be registered, executed or passed, as the case may be, before or after the commencement of the Banking Companies (Amendment) Act, 1959 (33 of 1959); and

(b) any provision contained in the memorandum, articles, agreement or resolution aforesaid shall, to the extent to which it is repugnant to the provisions of this Act, become or be void, as the case may be.]

22. Mr. Sharma also referred to Sections 22 and 23 of the Reserve Bank of India Act, 1934 (for short "the Act of 1934"), which read as follows:

22. Rights to issue bank notes.- (1) The Bank shall have the sole right to issue bank notes in [India], and may, for a period which shall be fixed by the [Central Government] on the recommendation of the Central Board, issue currency notes of the Government of India supplied to it by the [Central Government], and the provisions of this Act applicable to bank notes shall, unless a contrary intention appears, apply to all currency notes of the Government of India issued either by the [Central Government] or by the Bank in like manner as if such currency notes were bank notes, and references in this Act to bank notes shall be construed accordingly.

(2) On and from the date on which this Chapter comes into force the [Central Government] shall not issue any currency notes.

23. Issue Department.- (1) The issue of bank notes shall be conducted by the Bank in an Issue Department which shall be separated and kept wholly distinct from the Banking Department, and the assets of the Issue Department shall not be subject to any liability other than the liabilities of the Issue Department as hereinafter defined in Section 34.

(2) The Issue Department shall not issue bank notes to the Banking Department or to any other person except in exchange for other bank notes or for such coin, bullion or securities as are permitted by this Act to form part of the Reserve.

23. Learned Counsel Mr. Sharma as well as learned Counsel Mr. Sunil Samdaria have referred to Section 2(p) of the Industrial Disputes Act, 1947 (for short "the Act of 1947"), wherein the meaning of "settlement" has been given and the same reads as follows:

2. Definitions.- (p) "settlement" means a settlement arrived at in the course of conciliation proceeding and includes a written agreement between the employer and workmen arrived at otherwise than in the course of conciliation proceeding where such agreement has been signed by the parties thereto in such manner as may be prescribed and a copy thereof has been sent to [an officer authorised in this behalf by] the appropriate Government and the conciliation officer;]

24. Further as per Sub-section (1) of Section 18 (Persons on whom settlements and awards are binding) of the Industrial Disputes Act, 1947, A settlement arrived at by agreement between the employer and workman otherwise than in the course of conciliation proceeding shall be binding on the parties to the agreement.

25. Sections 2(p) and 18(1) of the Industrial Disputes Act, 1947 have been referred by the learned Counsel for the petitioner to show that the Pension Regulations, 1993 are framed u/s 2(p) and Section 18(1) of the Industrial Disputes Act, 1947 r/w Rule 58 of the Industrial Disputes (Central) Rules, 1957 and thus, having statutory force.

26. As per the provisions of Section 3(1) of the Companies Act, 1956, there are three categories of the company; existing company, private company, and public company.

27. Admittedly, the respondent Bank was initially established under the Mewar Companies Act, 1942 and the said Act was subsequently repealed by the Companies Act of 1956, now governs the respondent Bank. The share capital of the respondent Bank is being held by the Private individuals and entities. Finances of the Bank are raised by its own resources and the Bank utilises its finances and profits for its own purposes. The nature of activities of the Bank is that of the commercial undertaking which receives deposits from individuals and advances loan and performs other ancillary monetary transactions and the Board of Directors controls the management of the Bank. It is also not disputed that the respondent Bank is a scheduled Bank but not a nationalized Bank and it is merely a Private Ltd. Company.

28. Section 3(1)(iii) of the Companies Act, 1956 reads as follows:

3. Definitions of "company", "existing company", "private company" and "public company".

(1) _ _ _ _

(iii) "private company" [means a company which has a minimum paid-up capital of one lakh rupees or such higher paidup capital as may be prescribed, and by its articles,-]

(a) restricts the right to transfer its shares, if any:

(b) limits the number of its members to fifty not including-

(i) persons who are in the employment of the company, and

(ii) persons who, having been formerly in the employment of the company, were members of the company while in that employment and have continued to be members after the employment ceased; and

(c) prohibits any invitation to the public to subscribe for any shares in, or debentures of, the company;

[(d) prohibits any invitation or acceptance of deposits from persons other than its members, directors or their relatives:]

Provided that where two or more persons hold one or more shares in a company jointly, they shall, for the purposes of this definition, be treated as a single member.

29. In Section 617 of the Companies Act, 1956, the definition of "Government Company" is given, which reads as under:

617. Definition of "Government Company.- For the purposes of [this Act] Government company means any company in which not less than fifty-one per cent of the [paid up share capital] is held by the Central Government, or by any State Government or Governments, or partly by the Central Government and partly by one or more State Governments [and includes a company which is subsidiary of a Government company as thus defines].

30. Further Section 4 of the Companies Act, 1956 speaks about meaning of "holding company" and "subsidiary". Section 4(1) reads as follows:

4. Meaning of "holding company" and "subsidiary". (1) For the purposes of this Act, a company shall, subject to the provisions of Sub-section (3), be deemed to be a subsidiary of another if, but only if,-

(a) that other controls the composition of its Board of directors; or

[(b) that other-

(i) where the first-mentioned company is an existing company in respect of which the holders of preference shares issued before the commencement of this Act have the same voting rights in all respects as the holders of equity shares, exercises or controls more than half of the total voting power of such company"

(ii) where the first-mentioned company is any other company, holds more than half in nominal value of its equity share capital; or]

(c) the first-mentioned company is a subsidiary of any company which is that other's subsidiary.

31. Sections 4(2) and 4(3) of the Companies Act, 1956 read as under:

4(2). For the purposes of Sub-section (1), the composition of a company's Board of directors shall be deemed to be controlled by another company if, but only if, that other company by the exercise of some power exercisable by it at its discretion without the consent or concurrence of any other person, can appoint or remove the holders of all or a majority of the directorships; but for the purposes of this provision that other company shall be deemed to have power to appoint to a directorship with respect to which any of the following conditions is satisfied, that is to say:

(a) that a person cannot be appointed thereto without the exercise in his favour by that other company of such a power as aforesaid;

(b) that a person's appointment thereto follows necessarily from his appointment as director [***] or manager of, or to any other office or employment in, that other company; or

(c) that the directorship is held by an individual nominated by that other company or a subsidiary thereof.]

4(3). In determining whether one company is a subsidiary of another,-

(a) any shares held or power exercisable by that other company in a fiduciary capacity shall be treated as not held or exercisable by it;

(b) subject to the provisions of Clauses (c) and (d), any shares held or power exercisable-

(i) by any person as a nominee for that other company (except where that other is concerned only in a fiduciary capacity); or

(ii) by, or by a nominee for, a subsidiary of that other company, not being a subsidiary which is concerned only in a fiduciary capacity,

shall be treated as held or exercisable by that other company;

(c) any shares held or power exercisable by any person by virtue of the provisions of any debentures of the firstmentioned company or of a trust deed for securing any issue of such debentures shall be disregarded;

(d) any shares held or power exercisable by, or by a nominee for, that other or its subsidiary [not being held or exercisable as mentioned in Clause (c)] shall be treated as not held, or exercisable by that other, if the ordinary business of that other or its subsidiary as the case may be, includes the lending of money and the

shares are held or the power is exercisable as aforesaid by way of security only for the purposes of a transaction entered into in the ordinary course of that business.

32. Learned Counsel Mr. Mahendra Singh appearing for the respondent has referred to Sections 11 and 24 of the Companies Act, 1956, which read as under:

11. Prohibition of association and partnerships exceeding certain number.- (1) No company, association or partnership consisting of more than ten persons shall be formed for the purpose of carrying on the business of banking, unless it is registered as a company under this Act, or is formed in pursuance of some other Indian Law.

(2) No company, association or partnership consisting of more than twenty persons shall be formed for the purpose of carrying on any other business that has for its object the acquisition of gain by the company, association or partnership or by the individual members thereof, unless it is registered as a company under this Act, or is formed in pursuance of some other Indian law.

(3) This section shall not apply to a joint family as such carrying on a business; and where a business is carried on by two or more joint families, in computing the number of persons for the purposes of sub-sections (1) and (2), minor members of such families shall be excluded.

(4) Every member of a company, association or partnership carrying on business in contravention of this section shall be personally liable for all liabilities incurred in such business.

(5) Every person who is a member of a company, association or partnership formed in contravention of this section shall be punishable with fine which may extend to [ten thousand rupees].

24. Change of name of existing private limited companies. -(1) In the case of a company which was a private limited company immediately before the commencement of this Act, the Registrar shall enter the word "Private" before the word "Limited" in the name of the company upon the register and shall also make the necessary alternations in the certificate of incorporation issued to the company and in its memorandum of association.

(2) Sub-section (3) of Section 23 shall apply to a change of name under Sub-section (1), as it applies to a change of name u/s 21.

33. Learned Counsel Mr. S.P. Sharma, in support of his submissions, has placed reliance on the judgment rendered by the Hon''ble Supreme Court in the case of Zee Telefilms Ltd. and Another Vs. Union of India (UOI) and Others, , and has emphasized on para Nos. 2,3, 31 and 33 of the aforesaid judgment.

34. In para 31 of the judgment, Hon''ble the Supreme Court has held as under:

31. Be that as it may, it cannot be denied that the Board does discharge some

duties like the selection of an Indian Cricket team, controlling the activities of the players and others involved in the game of cricket. These activities can be said to be akin to public duties or State functions and if there is any violation of any constitutional or statutory obligation or rights of other citizens, the aggrieved party may not have a relief by way of a petition under Article 32. but that does not mean that the violator of such right would go scot-free merely because it or he is not a State. Under the Indian jurisprudence there is always a just remedy for the violation of a right of a citizen. Though the remedy under Article 32 is not available, an aggrieved party can always seek a remedy under the ordinary course of law or by way of a writ petition under Article 226 of the Constitution, which is much wider than Article 32.

35. After referring the above para, the main contention of learned Counsel Mr. Sharma is that though remedy under Article 32 is not available, an aggrieved party can always seek a remedy under the ordinary course of law or by way of a writ petition under Article 226 of the Constitution, which is much wider than Article 32.

36. In the aforesaid case, Hon''ble the Supreme Court has considered the ratio decided in the case of *Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust and Others Vs. V.R. Rudani and Others*, , wherein the Hon''ble Supreme Court was of the view that the words "any person or authority" used in Article 226 are, therefore, not to be confined only to statutory authorities and instrumentalities of the State. They may cover any other person or body performing public duty. If a positive obligation exists mandamus cannot be denied.

37. Thus, it is clear that when a private body exercises its public functions even if it is not a State, the aggrieved person has a remedy not only under the ordinary law but also under the Constitution, by way of a writ petition under Article 226.

38. Mr. Sharma also referred the judgment rendered by the Hon''ble Supreme Court in the case of *Federal Bank Ltd. v. Sagar Thomas and Ors.* (supra), more particularly paras 21 and 33 of the judgment.

39. In para 33 of the said judgment, Hon''ble the Supreme Court was of the view that a private company carrying on banking business as a scheduled bank, cannot be termed as an institution or a company carrying on any statutory or public duty. A private body or a person may be amenable to writ jurisdiction only where it may become necessary to compel such body or association to enforce any statutory obligations or such obligations of public nature casting positive obligation upon it.

40. Learned Counsel Mr. Sharma further referred the judgment rendered in the case of *Pradeep Kumar Biswas and Others Vs. Indian Institute of Chemical Biology and Others*, wherein in para 23 of the judgment, after discussing the cases of *Sabhajit Tewary Vs. Union of India (UOI) and Others*, , *Sukhdev Singh, Oil and Natural Gas Commission, Life Insurance Corporation, Industrial Finance*

Corporation Employees Associations Vs. Bhagat Ram, Association of Clause II. Officers, Shyam Lal, Industrial Finance Corporation, and the case of Ramana Dayaram Shetty Vs. International Airport Authority of India and Others, Hon''ble the Supreme Court was of the view that the logical sequitur is that it really does not matter what guise the State adopts for this purpose, whether by a corporation established by statute or incorporated under a law such as the Companies Act or formed under the Societies Registration Act, 1860. Neither the form of the corporation, nor its ostensible autonomy would take away from its character as "State" and its constitutional accountability under Part III vis-a-vis the individual if it were in fact acting as an instrumentality or agency of the Government.

41. Reliance has also been placed on the judgment rendered by the Hon''ble Supreme Court in the case of Air India Statutory Corporation, etc. Vs. United Labour Union and others [overruled], . Learned Counsel for the petitioner has given much emphasize on para 25 and 26 of the judgment which read as follows:

25. It must be remembered that the Constitution adopted a mixed economy and control over the industry in its establishment, working and production of goods and services. After recent liberalised free economy private and multinational entrepreneurship has gained ascendancy and entrenched into wider commercial production and services, domestic consumption goods and large-scale industrial productions. Even some of the public corporations are thrown open to the private national and multinational investments. It is axiomatic, whether or not industry is controlled by Government or public corporations by statutory form or administrative clutch or private agents, juristic persons, corporation whole or corporation sole, their constitution, control and working would also be subject to the same constitutional limitations in the trinity, viz., Preamble, the Fundamental Rights and the Directive Principles. They throw open an element of public interest in its working. They share the burden and shoulder constitutional obligations to provide facilities and opportunities enjoined in the Directive Principles, the Preamble and the Fundamental rights enshrined in the Constitution. The word "control", therefore, requires to be interpreted in the changing commercial scenario broadly in keeping with the aforesaid constitutional goals and perspectives.

26. From the above discussion, the following principles would emerge:

(1) The constitution of the corporation or instrumentality or agency or corporation aggregate or corporation sole is not of sole material relevance to decide whether it is by or under the control of the appropriate Government under the Act.

(2) If it is a statutory corporation, it is an instrumentality or agency of the State. If it is a company owned wholly or partially by a share capital, floated from public exchequer, it gives indicia that it is controlled by or under the authority of the appropriate Government.

- (3) In commercial activities carried on by a corporation established by or under the control of the appropriate Government having protection under Articles 14 and 19(2), it is in instrumentality or agency of the State.
- (4) The State is a service corporation. It acts through its instrumentalities, agencies or persons- natural or juridical.
- (5) The governing power, wherever located, must be subject to the fundamental constitutional limitations and abide by the principles laid in the Directive Principles.
- (6) The framework of service regulations made in the appropriate rules or regulation should be consistent with the subject to the same public law, principles and limitations.
- (7) Though the instrumentality, agency or person conducts commercial activities according to business principles and are separately accountable under their appropriate bye-laws or Memorandum of Association, they become the arm of the Government.
- (8) The existence of deep and pervasive State control depends upon the facts and circumstances in a given situation and in the altered situation it is not the sole criterion to decide whether the agency or instrumentality or persons is by or under the control of the appropriate Government.
- (9) Functions of an instrumentality, agency or person are of public importance following public interest element.
- (10) The instrumentality, agency or person must have an element of authority or ability to effect the relations with its employees or public by virtue of power vested in it by law, Memorandum of Association or bye-laws or Articles of Association.
- (11) The instrumentality, agency or person renders an element of public service and is accountable to health and strength of the workers, s men and women, adequate means of livelihood, the security for payment of living wages, reasonable conditions of work, decent standard of life and opportunity to enjoy full leisure and social and cultural activities to the workmen.
- (12) Every action of the public authority, agency or instrumentality or the person acting in public interest or any act that gives rise to public element should be guided by public interest in exercise of public power or action hedged with public element and is open to challenge. It must meet the test of reasonableness, fairness and justness.
- (13) If the exercise of the power is arbitrary, unjust and unfair, the public authority, instrumentality, agency or the person acting in public interest, though in the field of private law, is not free to prescribe any unconstitutional conditions or limitations in their actions.

42. Learned Counsel for the petitioner also placed reliance on the judgment of the Hon''ble Supreme Court rendered in the case of Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust v. V.R. Rudani (supra), more particularly para 14 to 20 of the judgment.

43. He further referred judgment of the Hon''ble Supreme Court passed in the case of Binny Ltd. and Another Vs. V. Sadasivan and Others, giving much emphasize on paras 2, 9, 10, 22, 23, 24 and 29 to 33 of the judgment.

44. Reliance has also been placed on the judgment rendered by the Jodhpur High Court in the case of K.M. Mohnot v. The Chairman, Bank of Rajasthan reported in 1994 (1) WLC(Raj.) 729 as well as the judgment of the Full Bench of this Court in the case of Dr. Bajrang Lal Sharma v. State of Rajasthan and Anr. reported in 1994(2) WLC(Raj.) 1.

45. Learned Counsel for the petitioner also relied upon the judgments delivered by the Hon''ble Supreme Court in the cases of (1) Supriya Basu and Others Vs. West Bengal Hsg. Board and Others, , (2) Punjab and Sind Bank and Others Vs. Mohinder Pal Singh and Others, and in the case of Sukhdev Singh v. Bhagatram Sardar Singh Raghuvanshi (supra).

46. Learned Counsel Mr. Samdaria, in support of his submissions, has placed reliance on the judgment rendered by the Hon''ble Supreme Court in the case of Ram Sahan Rai Vs. Sachiv Samanaya Prabandhak and Another, , wherein the Hon''ble Supreme Court has observed as under:-

The status of the defendant District Cooperative Bank is of a cooperative society, registered under the U.P. Cooperative Societies Act, 1965 and constituted under the U.P. Cooperative Land Development Bank Act, 1964. But an examination of different provisions of the rules, bye-laws and regulations, unequivocally indicates that the State Government exercises all-pervasive control over the Bank and its employees are governed by statutory rules, prescribing an entire gamut of procedure of initiation of disciplinary proceedings by framing a set of charges and culminating in inflicting of appropriate punishment, after complying with the requirements of giving a show-cause and an opportunity of hearing to the delinquent. Therefore, the defendant Bank is undoubtedly an instrumentality of the State. Once it is held that the defendant is a statutory body and is a State and in the matter of passing an order of dismissal of an employee, it did not follow the mandatory provisions of the rules and regulations and the order was passed in gross violation of principles of natural justice, then the third exception to the general principle that contract of personal service cannot ordinarily be specifically enforced, as indicated in S.R. Tewari case would apply and, therefore, the conclusion of the High Court must be held to be erroneous in the facts and circumstances of the present case.

47. After referring the aforesaid judgment of the Hon''ble Supreme Court in the case of Ram Sahan Rai (supra), learned Counsel Mr. Samdaria submits that applying the ratio decided by the Hon''ble Supreme Court, the present writ

petition is also maintainable as the Bank of Rajasthan Limited (Employees) Pension Regulations, 1993 are framed under the provisions of the Industrial Disputes Act.

48. Learned Counsel Mr. Mahendra Singh appearing on behalf of the respondent Bank has placed reliance on the judgments which are referred by the learned Counsel for the petitioner and has referred paras 154, 29, 31, 32 and 33 of the judgment of Zee Telefilms Ltd. and Anr. v. Union of India and Ors. (supra) and has given much emphasize on the judgment delivered by the Hon"ble Supreme Court in the case of Federal Bank Ltd. v. Sagar Thomas and Ors. (supra) and in the case of Binny Ltd. and Anr. v. V. Sadasivan and Ors. (supra). It is also contended that the judgment delivered by the Hon"ble Supreme Court in the case of Federal Bank Ltd. v. Sagar Thomas and Ors. (supra) squarely covers the present controversy and the Hon"ble Supreme Court has rightly held that the Federal Bank Ltd. is not a State and similarly the respondent Bank being a Private Ltd. Bank is also not a State within the meaning of Article 12 of the Constitution of India.

49. He also referred to the provisions of Sections 2(g), 3, 9, 17 and 29 of the Regional Rural Banks Act, 1976 as well as the provisions of Sections 3 , 4 , 11 , 24 and 617 of the Companies Act, 1956, which have already been quoted herein above.

50. We have given our thoughtful consideration to the submissions made on behalf of the respective parties and carefully gone through the judgments referred before us as well as the relevant material available on the record.

51. We have also minutely gone through the relevant provisions of the Companies Act, 1956, The Industrial Disputes Act, 1947, The Industrial Disputes (Central) Rules, 1957, The Banking Regulation Act, 1949, The Reserve Bank of India Act, 1934, The Regional Rural Banks Act, 1976, The Bank of Rajasthan Limited (Employees") Pension Regulations, 1993, The Bank of Rajasthan Limited (Employees") Pension Rules, 1996 and (Employees") Pension Fund Rules, Bipartite Settlements between Banks and their workmen and Memorandum of Association as also the Memorandum of Settlements dated 29.10.1993.

52. Reference has been made by the learned Single Judge to answer as to whether the respondent Bank is a State under Article 12 of the Constitution of India or not.

53. As per the ratio decided by the Hon"ble Supreme Court in the case of Federal Bank Ltd. v. Sagar Thomas and Ors. (supra), it has been held by the Hon"ble Supreme Court as under:

A writ petition under Article 226 of the Constitution of India may be maintainable against (i) the State (Government); (ii) an authority; (iii) a statutory body; (iv) an instrumentality or agency of the State; (v) a company which is financed and owned by the State; (vi) a private body run substantially on State funding; (vii)

a private body discharging a public duty or positive obligation of a public nature; and (viii) a person or a body under a liability to discharge any function under any statute, to compel it to perform such statutory function. It is no doubt true that a mandamus can be issued to any person or authority performing public duty, owing positive obligation to the affected party.

54. In this case, the case of *Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust v. V.R. Rudani* (supra) was explained and distinguished by Hon'ble the Supreme Court and has held that private companies would normally not be amenable to the writ petition under Article 226 of the Constitution. But in certain circumstances a writ may be issued to such private bodies or persons as there may be statutes which need to be complied with by all concerned including private companies. For example, there are certain legislations like the Industrial Disputes Act, the Minimum Wages, Act, the Factories Act or for maintaining proper environment, say the Air (Prevention and control of Pollution) Act, 1981 or the Water (Prevention and Control of Pollution) Act, 1974 etc. or statutes of the like nature which fasten certain duties and responsibilities statutorily upon such private bodies which they are bound to comply with. If they violate such a statutory provision a writ would certainly be issued for compliance with those provisions. For instance, if a private employer dispenses with the service of its employee in violation of the provisions contained under the Industrial Disputes Act, in innumerable cases the High Court has interfered and issued a writ to private bodies and companies in that regard. But the difficulty in issuing a writ may arise where there may not be any non-compliance with or violation of any statutory provision by the private body. In that event a writ may not be issued at all. Other remedies, as may be available, may have to be resorted to.

55. Merely because Reserve Bank of India lays the banking policy in the interest of the banking system or in the interest of monetary stability or sound economic growth having due regard to the interests of the depositors etc. as provided u/s 5(c)(a) of the Banking Regulation Act does not mean that private companies carrying on the business or commercial activity of banking, discharge any public function or public duty. These are all regulatory measures applicable to those carrying on commercial activity in banking and these companies are to act according to these provisions failing which certain consequences follow as indicated in the Act itself. As to the provision regarding acquisition of a banking company by the Government, it may be pointed out that any private property can be acquired by the Government in public interest. It is now a judicially accepted norm that private interest has to give way to the public interest. If private property is acquired in the public interest it does not mean that the party whose property is acquired is performing or discharging any function or duty of public character though it would be so for the acquiring authority.

56. Therefore, a private company carrying on banking business as a scheduled bank, cannot be termed as an institution or a company carrying on any statutory

or public duty.

57. In the present case, the petitioner after retirement from service on 31.07.1995 on attaining the age of superannuation, has sought protection of Regulation 26(c) of the Employees Pension Regulations, 1993, as applicable on the respondent Bank and has prayed for addition of two and half years in his total service tenure for getting full pension for which the qualifying period as provided under the Regulation, is 33 years.

58. As the benefit has not been granted to the petitioner at the level of the respondent Bank, therefore, the action of the respondent Bank has been challenged by the petitioner by way of filing the present writ petition under Article 226 of the Constitution of India.

59. As per the ratio decided by the Hon''ble Supreme Court in the case of *Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust v. V.R. Rudani* (supra), the petitioner is not trying to enforce any statutory duty on the part of the Bank.

60. Hon''ble the Supreme Court in the case of *Ajay Hasia and Others Vs. Khalid Mujib Sehravardi and Others*, , has laid down that the test for determining if an authority falls within the definition of State in Article 12 is whether it is an instrumentality or agency of the Government.

61. As per the test laid down by the Hon''ble Supreme Court in the case of *Ajay Hasia* (supra), the share capital of the respondent Bank is not held at all by the Government nor is any financial assistance provided by the State. So far as control over the affairs of the respondent Bank is concerned, they are managed by the Board of Directors elected by its shareholders. No governmental agency or officer is connected with the affairs of the respondent Bank nor is any one of them a member of the Board of Directors. In the normal functioning of the private banking company there is no participation or interference of the State or its authorities. The statutes have been framed regulating the financial and commercial activities so that fiscal equilibrium may be maintained and not get disturbed by the malfunctioning of such companies or institutions involved in the business of banking.

62. Any business for commercial activity, whether it may be banking, manufacturing units or related to any other kind of business generating resources, employment production and resulting in circulation of money are no doubt, such which do have an impact on the economy of the country in general. But such activities cannot be classified as one falling in the category of discharging duties or functions of a public nature.

63. Although in the case of *Pradeep Kumar Biswas* (supra), Hon''ble the Supreme Court having considered the ratio decided by the Hon''ble Supreme Court in the case of *Ajay Hasia* (supra), was of the view that the tests formulated in *Ajay Hasia* are not a rigid set of principles so that if a body falls within any one of

them it must, *ex hypothesi*, be considered to be a State within the meaning of Article 12. The question in each case would be- Whether in the light of the cumulative facts as established, the body, is financially, functionally and administratively dominated by or under the control of the Government. Such control must be particular to the body in question and must be pervasive. If this is found then the body is a State within Article 12. On the other hand, when the control is merely regulatory whether under statute or otherwise, it would not serve to make the body a State.

64. Applying the ratio decided by the Hon''ble Supreme Court in the case of Pradeep Kumar Biswas (*supra*), here in the instant case as the learned counsel Mr. Sharma appearing for the petitioner has referred the provisions of Banking Regulation Act, as held by the Hon''ble Supreme Court in the case of Federal Bank Ltd. v. Sagar Thomas and Ors. (*supra*) as well as in the case of Pradeep Kumar Biswas (*supra*), Banking Regulation Act is merely regulatory and the Banking Regulation Act has been enacted for regulatory control in light of special position of banking industry, need to ensure adherence with fiscal and monetary policies of State and the provisions of Banking Regulation Act are of regulatory measures to keep a check and provide guidelines and not a participatory dominance or control over the affairs of the company. The main consideration behind such regulation is that the company itself may not sink because of its own mismanagement or the interest of the shareholders or people generally may not be jeopardised for that reason. Besides this, there is no other interest of the State in controlling the affairs and management of private companies.

65. Thus, a writ petition under Article 226 of the Constitution of India may be maintainable against (i) the State (Government); (ii) an authority; (iii) a statutory body; (iv) an instrumentality or agency of the State; (v) a company which is financed and owned by the State; (vi) a private body run substantially on State funding; (vii) a private body discharging a public duty or positive obligation of a public nature; and (viii) a person or a body under a liability to discharge any function under any statute, to compel it to perform such statutory function.

66. The respondent Bank is a Scheduled Bank and included in the Second Schedule and Sub-section (6) of Section 42 of the RBI Act has been referred to indicate the control which is exercised by Reserve Bank of India on the banking companies, the same reads as follows:

42(6) The Bank shall, save as hereinafter provided, by notification in the Gazette of India,

(a) direct the inclusion in the Second Schedule of any bank not already so included which carries on the business of banking in India and which

(i) has a paid-up capital and reserves of an aggregate value of not less than five lakhs of rupees, and (ii) satisfies the Bank that its affairs are not being conducted in a manner detrimental to the interests of its depositors, and

(iii) is a State cooperative bank or a company as defined in Section 3 of the Companies Act, 1956 (1 of 1956), or an institution notified by the Central Government in this behalf or a corporation or a company incorporated by or under any law in force in any place outside India;

(b) direct the exclusion from the Schedule of any scheduled bank,

(i) the aggregate value of whose paid-up capital and reserves becomes at any time less than five lakhs of rupees, or

(ii) which is, in the opinion of the Bank after making an inspection u/s 35 of the Banking Regulation Act, 1949 (10 of 1949), conducting its affairs to the detriment of the interests of its depositors, or

(iii) which goes into liquidation or otherwise ceases to carry on banking business.

67. Hon"ble the Supreme Court in the case of Federal Bank Ltd. v. Sagar Thomas and Ors. (supra), was of the view that a private company carrying on banking business as a scheduled bank cannot be termed as an institution or a company carrying on any statutory or public duty. A private body or a person may be amenable to writ jurisdiction only where it may become necessary to compel such body or association to enforce any statutory obligations or such obligations of public nature casting positive obligation upon it.

68. Thus, in view of ratio decided by the Hon"ble Supreme Court in the case of Federal Bank Ltd. v. Sagar Thomas and Ors. (supra), merely regulatory provisions to ensure such activity carried on by private bodies work within a discipline, do not confer any such status upon the company nor put any such obligation upon it which may be enforced through issue of a writ under Article 226 of the Constitution.

69. Learned Counsel for the petitioner has given much emphasize on the aspect that on account of memorandum of settlement between the management and their workmen, the Bank of Rajasthan Limited (Employees") Pension Regulations, 1993 have been enacted u/s 2(p) and Section 18(1) of the Industrial Disputes Act, 1947 read with Rule 58 of the Industrial Disputes (Central) Rules, 1957 and since the regulations have been framed under the statutes, therefore, the respondent Bank is a State and is amenable to writ jurisdiction under Article 226 of the Constitution of India.

70. The respondent Bank is not created by a statutes, no part of the share capital of the Bank is held by the Government and practically no financial assistance is given by the Government to meet the whole or entire expenditure of the Bank. There is no existence of a deep and pervasive State control. The control if any is only regulatory in nature as applicable to other similar banks. This control is not specifically exercised under any special statute applicable to the Bank and all functions of the Bank are not public functions nor are they closely related to governmental functions.

71. In Article 12 "State" has not been defined. It is merely an inclusive definition. It includes all other authorities within the territory of India or under the control of the Government of India. It does not say that such other authorities must be under the control of the Government of India. The word "or" is disjunctive and not conjunctive. The expression "authority" has a definite connotation. It has different dimensions and, thus, must receive a liberal interpretation. The words "other authorities" contained in Article 12 are not to be treated as ejusdem generis.

72. Thus, it can be seen that a writ of mandamus or the remedy under Article 226 is pre[eminently a public law remedy and is not generally available as a remedy against private wrongs. It is used for enforcement of various rights of the public or to compel public/statutory authorities to discharge their duties and to act within their bounds. It may be used to do justice when there is wrongful exercise of power or a refusal to perform duties. The scope of mandamus is limited to enforcement of public duty. The scope of mandamus is determined by the nature of the duty to be enforced, rather than the identity of the authority against whom it is sought. If a private body is discharging a public function and the denial of any right is in connection with the public duty imposed on such body, the public law remedy can be enforced. The duty cast on the public body may be either statutory or otherwise and the source of such power is immaterial, but, nevertheless there must be the public law element in such action.

73. It has been held in the case of Binny Ltd. and Anr. v. V. Sadasivan and Ors. (supra) by the Hon'ble Supreme Court that a contract would not become statutory simply because it is for construction of a public utility and it has been awarded by a statutory body.

74. We have also carefully scanned the judgment delivered by the Hon'ble Supreme Court in the case of Ram Sahan Rai (supra), referred by the learned counsel Mr. Samdaria. The ratio decided by the Hon'ble Supreme Court is not applicable to the present case as the District Cooperative Bank was constituted under the statutes of U.P. Cooperative Land Development Bank Act, 1964.

75. In the case in hand, merely because the Bank of Rajasthan Limited (Employees') Pension Regulations, 1993, as per the Memorandum of Settlement, have been enacted under the provisions of Section 2(p) and Section 18(1) of the Industrial Disputes Act, 1947 read with Rule 58 of the Industrial Disputes (Central) Rules, 1957 having a statutory force, does not perceive any public element in not granting enhanced pension to the petitioner by the respondent Bank and the remedy available to the petitioner is to seek redressal of his grievance in civil law or under the labour law enactments especially in view of the disputed questions involved as regards the status of employees and other matters.

76. Thus, in view of the ratio decided by the Hon'ble Supreme Court in the case of Federal Bank Ltd. v. Sagar Thomas and Ors. (supra), which squarely covers

the present controversy because as per the Memorandum of Settlement dated 29.10.1993 arrived at between the management of 58 banks and their employees, the Federal Bank Ltd. is included in Schedule I in the Memorandum of Settlement dated 29.10.1993 and the Hon"ble Supreme Court in the case of Federal Bank Ltd. v. Sagar Thomas and Ors. (supra) has observed that a private company carrying on business as a scheduled bank cannot be termed as carrying on statutory or public duty and it was therefore held that any business or commercial activity, whether it may be banking, manufacturing units or related to any other kind of business generating resources, employment, production and resulting in circulation of money which do have an impact on the economy of the country in general, cannot be classified as one falling in the category of those discharging duties or functions of a public nature. It was held that the jurisdiction of the High Court under Article 226 could not have been invoked in that case.

77. The Division Bench at the Main Seat of this Court in the case of Arjun Singh Rajpurohit v. The Bank of Raj. Ltd. and Ors. D.B. Civil Special Appeal No. 638/2004 decided vide judgment dated 24.01.2007 along with the case of Chhagan Lal Mali v. The Bank of Raj. Ltd. and Ors. D.B. Civil Special Appeal No. 18/2005, having considered the observations made by the Hon"ble Supreme Court in the case of Federal Bank Ltd. v. Sagar Thomas and Ors. (supra), has observed as under:

We are satisfied that the question whether the Bank of Rajasthan is "State" under Article 12 of the Constitution is squarely covered by the decision in Federal Bank Limited (supra), and there is no scope for taking a contrary view.

It is relevant to mention that the dispute in Federal Bank Limited (supra) had arisen from a disciplinary action against employee of the bank. By the order impugned, the service of the respondent had been terminated. The action was challenged by the respondent by filing writ petition under Article 226 of the Constitution of India. Dealing with the nature of the dispute in the context of amenability of the writ jurisdiction under Article 226, the Supreme Court observed-

Present is a case of disciplinary action being taken against its employee by the appellant-Bank. The respondent is not trying to enforce any statutory duty on the part of the Bank. That being the position, the appeal deserves to be allowed.

The above observation has relevance in the context of the finding in the earlier part of the judgment (in Para 27 of SCC) wherein the Court held that though private companies are normally not amenable to the writ jurisdiction under Article 226 of the Constitution, they are under obligation to perform certain duties under the statute and they may be compelled to enforce such statutes by issuing by appropriate writ. The Court referred to legislations like the Industrial Disputes Act, Minimum Wages Act, Factories Act or legislation in the field of environment viz. Air (Prevention and Control of Pollution) Act, 1981 or the Water (Prevention and Control of Pollution) Act, 1974 etc. or statutes or the like nature

which fasten certain duties and responsibilities statutorily upon such private bodies which they are bound to comply with. If they violate such a statutory provision a writ would be issued for compliance of those provisions. For example, where a private employer dispenses with the service of its employee in violation of the provisions of the Industrial Disputes Act, the High Court may interfere by issuing a writ of certiorari. However, termination of service of an employee does not involve enforcement of statutory duties and as clarified in para 33 of the judgment, the position in such a case would be different.

The appellants herein had preferred writ petition challenging the order by which they were dismissed from service. The action of the respondent-Bank not having been challenged under any statute and there being no complaint of violation of any statutory provision in their dismissal from service, the writ petitions were clearly not maintainable. It would thus appear that somewhat on facts also the decision in Federal Bank Limited (supra) covers the case of the appellants.

78. Thus, the Division Bench of this Court has rightly held that the Bank of Rajasthan is not a State under Article 12 of the Constitution of India.

79. In view of the observations made herein above, we are of the opinion that the respondent Bank of Rajasthan Limited is a private company carrying on banking business as a scheduled bank and cannot be termed as an institution or a company carrying on any statutory or public duty. The petitioner by way of this writ petition is not trying to enforce any statutory duty on the part of the Bank of Rajasthan Limited.

80. Therefore, in view of the ratio decided by the Hon"ble Supreme Court in the case of Federal Bank Ltd. v. Sagar Thomas and Ors. (supra), we answer the question referred by the learned Single Judge in the terms that the respondent Bank of Rajasthan Limited is not a State within Article 12 of the Constitution of India and is not amenable to the writ jurisdiction under Article 226 of the Constitution of India.

81. Let the answer to the question referred by the learned Single Judge be placed before him for deciding the writ petition in view of the judgment rendered by us.