

(2008) 01 MAD CK 0084
In the Madras High Court
Case No : Writ Appeal No. 2245 of 2002

ICICI Bank Limited

APPELLANT

Vs

Lakshminarayanan

RESPONDENT

Date of Decision : 04-01-2008

Acts Referred:

Bank of Madura Employees Pension Regulations, 1995 — Regulation 2, 29, 3, 35
Banking Regulation Act, 1949 — Section 5
Constitution of India, 1950 — Article 12, 14, 226, 32

Citation : (2009) 1 CTC 22

Hon'ble Judges : S.J. Mukhopadhaya, J;M. Venugopal, J

Bench : Division Bench

Advocate : Sanjay Mohan, for Ramasubramaniam Associates, for the Appellant;
M. Radhakrishnan, for Rajaram, for the Respondent

Final Decision : Allowed

Judgement

S.J. Mukhopadhaya, J.—The respondent-Writ Petitioner, who was allowed voluntary retirement with effect from 1.2.1992 from the

services of the appellant-Bank of Madura Limited (hereinafter referred to as "the Bank") on his request, preferred Writ Petition No.7744 of 2000,

for direction to the appellant-Bank to pay pension. The prayer in the said Writ Petition, having been allowed by the learned single Judge, the

present Writ Appeal has been preferred by the appellant-Bank.

2. It is seen that with effect from 10.3.2001, the Bank of Madura Limited merged with ICICI Bank Limited; subsequently, by virtue of the Order

of the Reserve Bank of India, dated 26.2.2002, the Bank of Madura Limited was changed as ICICI Bank Limited; accordingly, the name of the

appellant in the cause title in the Memorandum of the Grounds of Writ Appeal was accepted by as ICICI Bank Limited as per the Order of the

Court dated 18.7.2002 in W.A.M.P.No.3581 of 2002 in W.A.S.R.No.52118 of 2002.

3. The questions involved in this Writ Appeal for determination are:

(i) Whether a Writ Petition is maintainable against a private Bank? and

(ii) Whether the respondent-Writ Petitioner was eligible for pension as per the Bank of Madura Employees' Pension Regulations (for short, Pension Regulations") ?

4. Relevant facts of the case are that the Bank floated "Voluntary Retirement Scheme" (for short, "VRS"), vide Circular No. CO:STF:10:91-92,

dated 21.5.1991, pursuant to which, the respondent-Writ Petitioner applied for Voluntary Retirement on 2.11.1991; his application seeking for

VRS having been considered by the Bank, he was allowed to voluntarily retire and relieved with effect from 1.2.1992 by the letter of the Bank,

contained in Ref.No.2310, dated 1.2.1992. Another VRS was floated by the Bank by Circular No.CO:STF:39:94-95, dated 21.7.1994;

thereafter, the respondent-Writ Petitioner applied for "pension" under the Bank's Pension Scheme, on which no action was taken by the Bank.

5. Learned Counsel appearing for the appellant-Bank relied on different decisions of the Supreme Court in support of his plea that a Writ Petition

against a "private Bank" is not maintainable. He also placed reliance on the relevant Pension Regulations, namely "Bank of Madura Employees'

Pension Regulations" (in lieu of earlier Regulations of January 1995) in support of the stand of the Bank that the respondent-Writ Petitioner was

not even eligible for pension in terms of the said Pension Regulations.

6. On the other hand, according to the learned Counsel for the respondent-Writ Petitioner, the Bank cannot deny pension to its "retired

employees" and no discrimination can be made between "retired employees" and "voluntarily retired employees".

7. We have heard learned Counsel appearing for the parties and noticed the judgments referred by one or other counsel, as also the relevant

provisions of the said Pension Regulations.

8. Learned Counsel appearing for the respondent-Writ Petitioner relied on the decision of the Supreme Court reported in D.S. Nakara and Others

Vs. Union of India (UOI), , wherein the Supreme Court held that the classification in revised pension formula among the pensioners on the basis of

the date of retirement specified in memoranda, is violative and arbitrary of Article 14 of the Constitution of India, and the same being severable,

beneficial part was retained and made applicable to all pensioners. Reliance was also placed on the said judgment (Nakara's case) to suggest that

the payment of pension is a welfare measure, wherein the retiral benefits is allowed on considerations of State's obligation to its citizens, for having

rendered service during the useful span of life. The reasons underlining the grant of pension as laid down in the said case, was also referred to.

9. Learned Counsel appearing for the respondent-Writ Petitioner, while submitting that payment of pension is a ""public function"", amounting to

public duty"", relied on the decision of the Supreme Court reported in *Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti*

Mahotsav Smarak Trust and Others Vs. V.R. Rudani and Others, . In that case, the Supreme Court determined the question as to when a ""Writ of

Mandamus"" can be issued and whether it can be issued on a ""private body"". The Supreme Court, having noticed the word ""any person or

authority"" used in Article 226 of the Constitution, held that a ""Writ"" be not confined only to statutory authorities and instrumentalities of the State,

but they may also cover any other person or body performing public duties. The form of the body concerned is not very much relevant. What is

relevant is the nature of duty imposed on the body. Writ of Mandamus can be issued against a person or body to carry out the duties placed on

them by the statutes, even though they are not public officials or statutory bodies.

10. In the above context, reference was made to the decision of the Supreme Court reported in *Zee Telefilms Ltd. and Another Vs. Union of India*

(*UOI*) and Others, . That was a case in which the Supreme Court, while deciding the question whether the Board of Control for Cricket in India

(for short, ""the BCCI"") is a State, noticed the tests laid down by the Supreme Court reported in *Pradeep Kumar Biswas and Others Vs. Indian*

Institute of Chemical Biology and Others, and came to the conclusion that the BCCI is not shown to be ""functionally"" or ""administratively

dominated"" by or is under the control of the Government. It held that the exercise by the Board did not pervade it, merely it is regulatory in nature

and thus held that the BCCI is not ""State"" for the purpose of Article 12 of the Constitution of India. However, taking into consideration the fact

that the BCCI discharges certain duties like the selection of an Indian Cricket team, controlling the activities of the players and others involved in the game of Cricket, the Supreme Court held that these activities can be said to be akin to public duties or State's functions and if there is violation of any constitutional or statutory obligation or rights of other citizens, the aggrieved party may not have a relief by way of petition under Article 32 of the Constitution, but such 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 of India.

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11. With regard to the maintainability of the Writ Petition against a private party, reliance was also placed on the decision of the Supreme Court

reported in *Binny Ltd. and Another Vs. V. Sadasivan and Others*, wherein similar view was taken that the word "any person or authority" used in

Article 226 of the Constitution of India be not confined only to statutory authorities and instrumentalities of the State, but they may also cover any

other person or body performing the public duties. The Supreme Court further held that a Writ of Mandamus or a remedy under Article 226 of the

Constitution of India, is pre-eminently a "public law remedy" and is not generally available as a remedy against private wrongs. The Supreme Court

in that case (*Binny Ltd's case-supra*) made the following observations:

29. 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. This writ is admirably equipped to serve as a judicial control over administrative actions. This writ could also be issued against any private

body or person, specially in view of the words used in Article 226 of the Constitution. However, 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 the 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. Sometimes, it is difficult to distinguish between public

law and private law remedies. According to Halsbury's Laws of England, 3rd Edn., Vol.30, p.682,

1317. A public authority is a body, not necessarily a county council, municipal corporation or other local authority, which has public or statutory

duties to perform and which perform those duties and carries out its transactions for the benefit of the public and not for private profit.

There cannot be any general definition of public authority or public action. The facts of each case decide the point.

12. Reliance was also placed on the decision of a Division Bench of this Court reported in 1999 (3) L.L.N. 310 (A.K. Ansari v. Bharat Overseas

Bank Ltd.), wherein this Court held that the right of pension is a matter of livelihood and denial of such livelihood offends the Constitution and such

a situation is monstrous in respect of retirees who lead a frugal life and this Court allowed the pensionary benefits in favour of a retired employee of

the Bharat Overseas Bank Limited.

13. We have also noticed the other decisions of the Supreme Court as referred to by the learned Counsel appearing for the appellant-Bank.

14. A co-operative Society, whether amenable to Writ jurisdiction or not, fell for consideration before a Full Bench of this Court reported in K.

Marappan Vs. The Deputy Registrar of Co-operative Societies and The Special Officer, Vattur Co-operative Agricultural Bank, . In that decision,

what are all the circumstances in which a Writ will lie against a Co-operative Society, have been laid down, and this Court held that a Co-

operative Society is not a "State" under Article 12 of the Constitution of India.

15. The question whether a ""Writ"" can be issued on a private Company, which is not a statutory or having any public duty or responsibility

imposed by ""statute"", fell for consideration before the Supreme Court in the decision reported in The Praga Tools Corporation Vs. Shri C.A.

Imanual and Others, , wherein, the following observations were made by the Supreme Court:

6. ...Therefore, the condition precedent for the issue of mandamus is that there

is in one claiming it a legal right to the performance of a legal duty by one against whom it is sought. An order of mandamus is, in form, a command directed to a person, corporation or an inferior tribunal requiring him or them to do a particular thing therein specified which appertains to his or their office and is in the nature of a public duty. It is, however, not necessary that the person or the authority on whom the statutory duty is imposed need be a public official or an official body. A mandamus can issue, for instance, to an official of a society to compel him to carry out the terms of the statute under or by which the society is constituted or governed and also to companies or corporations to carry out the duties placed on them by the statutes authorising their undertakings. A mandamus would also lie against a company constituted by a statute for the purposes of fulfilling public responsibilities. (Cf. Halsbury's Laws of England (3rd Ed.), Vol.II, p.52 and onwards).

7. The company being a non-statutory body and one incorporated under the Companies Act there was neither a statutory nor a public duty imposed on it by a statute in respect of which enforcement could be sought by means of a mandamus, nor was there in its workmen any corresponding legal right for enforcement of any such statutory or public duty. The High Court, therefore, was right in holding that no writ petition for a mandamus or an order in the nature of mandamus could lie against the company.

9. ...In our view once the writ petition was held to be misconceived on the ground that it could not lie against a company which was neither a statutory company nor one having public duties or responsibilities imposed on it by a statute, no relief by way of a declaration as to invalidity of an impugned agreement between it and its employees could be granted. The High Court in these circumstances ought to have left the workmen to resort to the remedy available to them under the Industrial Disputes Act by raising an industrial dispute thereunder. The only course left open to the High Court was therefore to dismiss it. No such declaration against a company registered under the Companies Act and not set up under any statute or having any public duties and responsibilities to perform under such a statute could be issued in writ proceedings in respect of an agreement which was essentially of a private character between it and its

workmen. The High Court, therefore, was in error in granting the said declaration.

16. Similar question relating to maintainable of a "Writ" under Article 226 of the Constitution of India, was considered by the Supreme Court in

Federal Bank Ltd. Vs. Sagar Thomas and Others, . In the said case, the Supreme Court observed that a Writ Petition under Article 226 of the

Constitution of India may be maintained against a private body discharging public duty or positive obligation of public nature. Similar argument

advanced on behalf of an employee that the Federal Bank performs public duty, in the light of the control of the Reserve Bank of India over the

Banking industries, was accepted by the High Court. However, the Supreme Court, on appeal preferred by the Federal Bank Ltd., reversed such

finding with the following observation:

18. From the decisions referred to above, the position that emerges is that 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 public duty or

positive obligation of public nature; and (viii) a person or a body under liability to discharge any function under any statute, to compel it to perform

such a statutory function.

27. Such private companies would normally not be amenable to the writ jurisdiction under Article 226 of the Constitution. But in certain

circumstances a writ may issue to such private bodies or persons as there may be statutes which need to be complied with by all concerned

including the 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 interfered and has issued the writ to the private bodies and the 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.

32. 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 the 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 a private property is acquired in 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.

33. For the discussion held above, in our view, 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. We don't find such conditions are fulfilled in respect of a private company carrying on a commercial activity of banking. 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. Present is a case of

disciplinary action being taken against its employee by the appellant Bank. The respondent's service with the Bank stands terminated. The action

of the Bank was challenged by the respondent by filing a writ petition under Article 226 of the Constitution of India. 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.

17. In the present case also, as the appellant-Bank of Madura Ltd., is a private Company, carrying on private banking business and not carrying

on any statutory or public duty, no "Writ Petition" under Article 226 of the Constitution of India is maintainable against the appellant-Bank of

Madura Ltd. Merely because the Bank has made provisions to grant "pension" on VRS, under the relevant Pension Scheme, the same cannot be a

ground to hold that the Bank is performing a public duty or public function. Hence, the first question is answered in the negative against the

respondent-Writ Petitioner and in favour of the appellant-Bank of Madura Ltd. (now ICICI Bank Ltd.)

18. So far as the second question relating to the eligibility of the respondent-Writ Petitioner to claim "Pension" under the Pension Regulations, is

concerned, we also accept the submission as made by the learned Counsel appearing for the appellant-Bank.

19. Regulation 2(w) of the Pension Regulations defines "retirement" and Clause (b) of Regulation 2(w) deals with the "Voluntary Retirement" in

accordance with Regulation 29, while Clause (d) of Regulation 2(w) related to VRS in terms of and subject to the provisions contained in

Regulation 2(ze) and Regulation 35 and the same are quoted hereunder:

Regulation 2(w): "Retirement" means cessation from Bank's service,-

a) on attaining the age of superannuation specified in Service Rules or Settlements;

b) on voluntary retirement in accordance with provisions contained in regulation 29 of these regulations;

c) on premature retirement by the Bank before attaining the age of superannuation specified in Service Rules or Settlement;

d) on VRS in terms of and subject to provisions contained in Regulation 2(ze) and Regulation 35;

20. Regulation 2(ze) of the Pension Regulations, defines "VRS", which is based

on the 1994 Pension Scheme, as is evident from the said provision and reflected below:

Regulation 2(ze): "V.R.S" means Bank of Madura Employees" Voluntary Retirement Scheme enclosed to the circular CO.STF:39/94-95 dated

July 21, 1994, or any other specific scheme that may be implemented in future bringing such scheme under the definition of this regulation. The

employees who have completed 20 years of service in the bank and who have retired subsequent to the expiry of the scheme mentioned in the

Circular CO:GM:CIR:2/93-94 dated May 20, 1993, and who were extended the additional benefits in addition to the normal retirement benefits

shall be deemed and considered to have retired under V.R.S.

21. So far as the applicability of Regulations to the case of the appellant-Bank, is concerned, ""as to whom"" it will apply, has been provided under

Chapter II, Regulation 3 of the Pension Regulations of the appellant-Bank; while under Clause (1)(a) of Regulation 3, the Regulations apply to

employees who were in the services of the appellant-Bank on or after 1st January, 1986, but retired before 1st November, 1993, Clause (2)(a) of

Regulation 3 relates to employees who retired on or after 1st November, 1983 and the rest of the Clauses relate to those who were in the services

of the appellant-Bank before the notified date or those who joined the appellant-Bank on or after the notified date.

22. Clause (9) of Regulation 3 of the Pension Regulations relates to employees retired under ""VRS"", which reads as under:

Regulation 3(9):

(a) Retired under VRS as defined in Regulation 2(ze);

(b) exercise an option in writing within the stipulated time as contained in Regulation 35 to become member of the Fund and

(c) refund within thirty days from the date of superannuation the entire amount of the Bank's contribution to the Provident Fund and interest

accrued thereon together with a further simple interest at the rate of six percent per annum from the date of settlement of the Provident Fund

Account till the date of refund of the aforesaid amount to the Bank as contained in Regulation 35.

23. Under Chapter V relating to ""Classes of Pension"" in the Pension Regulations, while Regulation 29 deals with the ""Pension of Voluntary

Retirement", Regulation 35 relates to "Pension to Employees retiring under VRS. Those provisions being relevant, are quoted hereunder:

Regulation 29: Pension on Voluntary Retirement:

(1) on or after the 1st day of November, 1993, at any time after an employee has completed twenty years of qualifying service he may, by giving notice of not less than three months in writing to the Appointing Authority retire from service.

Regulation 35 : Pension to Employees retiring under VRS:

(i) An employee who has opted for pension and who retired under VRS enumerated in Regulation 2(ze) of these regulations and who has completed twenty years of service in the bank shall be eligible for pension from the date of his attaining the age of superannuation i.e. the date on which he would have retired had he continued in the employment if he is otherwise eligible under these regulations.

24. Admittedly, the respondent-Writ Petitioner voluntarily retired on 1.2.1992 pursuant to VRS Scheme of 1991 under Circular

No.CO:STF:10:91-92, dated 21.5.1991. He has not retired pursuant to the subsequent VRS Scheme of 1994 in Circular No.CO:STF:39:94-95, dated 21.7.1994. Therefore, he is not covered by Regulation 2(ze) of the Pension Regulations, which applies to VRS employees retired pursuant to 1994 Scheme.

25. Regulation 29 of the Pension Regulations relates to "Pension on "Voluntarily Retirement" of those who retired on or after 1.11.1993. The

respondent-Writ Petitioner having been retired on 1.2.1992 pursuant to his notice to the appellant-Bank, dated 2.11.1991, and hence, he is also

not covered under Regulation 29, and thereby, he does not also come within the definition of "Retirement" under Regulation 2(w)(b) of the Pension

Regulations. Similarly, as Regulation 35 of the Pension Regulations is covered for the employees retiring under the VRS enumerated under

Regulation 2(ze), the respondent-Writ Petitioner cannot even claim the benefit prescribed under Regulation 35, nor he falls within the meaning of

"Retirement" under Regulation 2(w)(d) of the Pension Regulations.

26. In view of the aforesaid findings, we answer the second question also in the negative, i.e. against the respondent-Writ Petitioner-employee and

in favour of the appellant-Bank.

27. As the learned single Judge has failed to notice the aforesaid provisions of law in proper perspective and wrongly appreciated the findings of

the Supreme Court, some of which have been referred to in this judgment, we have no other option except to set aside the impugned order dated

16.4.2002 in W.P.No.7744 of 2000.

28. In the result, the Writ Appeal is allowed. But in the facts and circumstances, there shall be no order as to costs.