

(1976) 04 MAD CK 0072
In the Madras High Court

M.N. Doraisami

APPELLANT

Vs

The Bank of India and Another

RESPONDENT

Date of Decision : 23-04-1976

Acts Referred:

Citation : (1977) 2 MLJ 60

Hon'ble Judges : G. Ramanujam, J

Bench : Division Bench

Judgement

G. Ramanujam, J.—The petitioner is a post-graduate in Mathematics with Statistics as special subject. In the year 1953 she was employed by the Reserve Bank. Later she resigned from the Reserve Bank and took up an Officer's job with the Bank of India, the first respondent in or about 1961. By an order dated 30th October, 1968 she was transferred from Madras Branch to the Head Office at Bombay. She made representations that in view of the fact that she has to attend on her aged parent at Madras, she may be retained in Madras. The head office after considering her request for retaining her in Madras, wrote back on 26th November, 1968 saying that she was specifically appointed as an officer in the Economics, Intelligence and Statistics Department of the Bank at Bombay, that her request for retention on two earlier occasions in May, 1964 and March, 1966 at Madras have been acceded to on the alleged ground of domestic difficulties" that it is no longer possible to consider her request for retention at Madras, that she was taken up in the Bank's services on much higher emoluments primarily for being utilised in the bank's economic intelligence and statistics department which is functioning in Bombay, and that exigencies of the bank's service require that she should proceed to Bombay and report for duty in the department for which she was appointed.

2. Thereafter the petitioner had been on leave on medical grounds upto 7th April, 1970. In the meanwhile, on 5th March, 1970 the first respondent sent a registered letter informing the petitioner that the Bank cannot grant further extension of the leave and that, therefore, she must join duty within one month

from, the date of receipt of that letter, failing which it would be taken for granted that she had left the services of the bank. The petitioner sent a reply on 15th March, 1970 stating that she is surprised to receive the said letter, that it was never her intention to leave the service of the Bank, that she has been asking for retention in Madras on compassionate grounds at the expiry of every leave period but it was a pity that the management has been directing her to join duty at Bombay and that having regard to her domestic inconvenience she may be permitted to join duty at Madras Office after the expiry of the leave on 7th April, 1970. The petitioner was again told by the first respondent by a letter dated 25th April, 1970 that she must report for duty at Bombay within 15 days from the date of receipt of that letter as it is not possible for her retention at Madras on any ground and that if she fails to report for duty as required, it will be definitely taken for granted that she had left the service of the Bank. The petitioner instead of reporting for duty at Bombay as required, applied for extension of leave for a further period of 3 months from 6th May, 1970. The first respondent promptly informed the petitioner by an order dated 16th May, 1970 that no further leave could be granted to her, that as she did not report for duty as called upon in the letter dated 25th April, 1970 it was taken for granted that she had left the services of the Bank and that, therefore her services stood terminated.

3. The petitioner thereafter filed appeal petitions to the Honourable Prime Minister on 7th July, 1970, to the Custodian of the Bank on 18th October, 1970 and to the Minister for Finance, Government of India on 5th July, 1971. In the above appeal petitions the petitioner was told that nothing could be done and that no case had been made out for re consideration of the earlier decision. The last of the orders passed by the first respondent is on 3rd January, 1972 rejecting the petitioner's request for reconsideration of the earlier decision. The petitioner has now approached this Court seeking to quash the order of termination dated 16th May, 1970.

4. The learned Counsel for the petitioner contends firstly that there was an implied understanding even at the time of the appointment that she will not be shifted from Madras and that, therefore, the order transferring her to Bombay is contrary to the said understanding. Secondly it is contended that in any event the impugned order treating her as having left the service of the Bank without giving her an opportunity to explain as to why she overstayed her leave amounts to a clear violation of the principles of natural justice and that therefore the impugned order is liable to be set aside by this Court.

5. In support of the first contention the learned Counsel refers to the petitioner's application for appointment dated 18th November, 1960, wherein she has stated:

I have also to state that on account of my having to look after my parents I am not in a position to accept a post outside Madras. Should you, therefore, be so pleased as to confer on me a lucrative post in your Madras Branch Office, I assure you that I will discharge the duties entrusted to me to the best of my ability.

It is said that she applied for the post only on condition that she would be retained in Madras and that if she had been told that she has to work only in Bombay she would not have resigned from the former post in the Reserve Bank of India and joined the first respondent bank.

6. As regards the second contention that a termination of service for overstaying of leave should be preceded by an enquiry after giving her an opportunity to defend, the learned Counsel refers to the decisions in *Jai Shanker Vs. State of Rajasthan*, , *Deokinandan Prasad Vs. The State of Bihar and Others*, , and *The State of Assam and Others Vs. Akshaya Kumar Deb*, , wherein even though there were statutory rules to the effect that if a Government servant overstays the leave for a particular period he could be deemed to have abandoned the post, the Supreme Court has held that before a presumption of abandonment is drawn as per the rules, the concerned Government servant should be given an opportunity to show that he had. no such intention to abandon the post and that the overstaying of leave was due to circumstances beyond his control.

7. The learned Counsel for the respondents would however raise four contentions in defence. One is that there has been an enormous delay in filing the writ petition and that the writ petition is liable to be dismissed on the ground of laches on the part of the petitioner. It is pointed out that even if the petitioner is taken to be justified in filing representations to the higher authorities, the last of the orders passed on the representation was on 3rd January, 1972, and that the writ petition having been filed on 18th December, 1974 after nearly three years, it should be dismissed as belated. Secondly it is stated that even though the first respondent is a Nationalised Bank still it is not amenable to the jurisdiction of this Court under Article 226 and, therefore, the petitioner cannot get any relief in the writ petition. Thirdly it is pointed out that even assuming that a writ is maintainable as against the first respondent bank, the relationship between the petitioner and the first respondent being governed only by the law of Master and Servant, this Court cannot quash the impugned order more or less declaring the petitioner's continuance in service of the first respondent. Lastly it is contended that even if all his earlier contentions fail, the impugned order cannot be said to have been passed in violation of the principles of natural justice, that in deciding that question one has to see the substance and not the form, that in this case there is no question of any violation of the principles of natural justice as the petitioner has been told time and again that if she does not join duty at Bombay in pursuance of the order of transfer, she will be deemed to have left the services of the Bank, that in spite of a series of such warnings the petitioner had not chosen to join the post at Bombay but went on taking leave even though she is not entitled to leave and never showed her inclination to join her post at Bombay, and that in such circumstances the first respondent has no other alternative than to conclude that the petitioner has given up her services with the bank.

8. As regards the first contention of the petitioner, the learned Counsel for the

respondents refers to the order of appointment dated 28th December, 1961 which makes, it clear that the petitioner is under a liability to be transferred anywhere within and outside India from time to time in the exigencies of the bank's services and states that the petitioner has specifically agreed to the said condition by a declaration made by her on 5th January, 1962. In view of the petitioner's clear acceptance of the above condition, her first contention that she is not liable to be transferred cannot be accepted.

9. In support of his contention that a writ petition is maintainable as against the first respondent, the learned Counsel for the petitioner refers to the decision of a Bench of this Court in *Ramiah (V.) Vs. State Bank of India*, , where the State Bank of India was held to be amenable to the jurisdiction of this Court under Article 226 of the Constitution. In that case the question arose as to whether the State Bank of India is an authority within the meaning of Article 226 amenable to a Writ, with reference to an order passed by the Bank terminating the services of an employee under a power derived from a contract. Though the Court held that the State Bank of India is indisputably an authority within the scope of Article 226, still it held that the order of the Bank terminating the services of its employee under a contract cannot be the subject-matter of review by the High Court, and that the Court can give relief only if there is violation of any statutory provisions in the exercise of disciplinary jurisdiction. The said decision really supports the stand of the first respondent that no writ can issue for enforcing the contract of service. That was also the view taken in *S.M. Zakinaqui v. Custodian, Union Bank of India* (1977) 1 L.L.J. 317. The learned Counsel submits that whatever might have been the position before the nationalisation of banks, subsequent to the said nationalisation the first respondent bank should be taken to be an "authority" as contemplated by Article 226 and all its orders could be questioned in writ proceedings. I am not inclined to agree with the learned Counsel for the petitioner that a writ can issue to the first respondent bank at the instance of the petitioner to enforce the contract of service. The State Bank was held to be an authority having regard to the provisions of the State Bank of India Act under which it was constituted. Here the first respondent, a company originally registered under the Indian Companies Act had been reconstituted u/s 3 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1969 as a "corresponding new bank and is subject to the superintendence and direction of the Custodian. It continues to be a body corporate and a separate legal entity. The petitioner being an employee of a separate legal entity is not entitled to the protection of Article 311 of the Constitution. I am of the view that even if the first respondent bank is treated as an authority amenable to the jurisdiction under Article 226, still the petitioner cannot get any relief as she has not established a violation of any statutory rule.

10. Admittedly there are no statutory rules governing the petitioner's services with the bank. The learned Counsel for the first respondent bank says that there are no specific service rules framed by the Bank but the service conditions have to be gathered from various circulars issued by the bank from time to time. If

there are no statutory rules, I do not see how the petitioner can seek any relief from this Court on the ground that the principles of natural justice have been violated in passing the impugned order. In *S.R. Tewari Vs. District Board Agra and Another*, , their Lordships of the Supreme Court laid down that there are only three well recognised exceptions to the general rule under the law of master and servant where a declaration to the effect that the termination was invalid on the ground of non-compliance of the statutory regulations or of the principles of natural justice would be given namely (1) cases of public servants falling under Article 311, (2) cases falling under the labour and industrial law and (3) where acts of statutory bodies are in breach of the statutory provisions. It has been again held by the Supreme Court in *Executive Committee, U.P. Warehousing Corporation Vs. Chandra Kiran Tyagi*, , that a declaration to enforce a contract of personal service can be granted only in three exceptional cases namely : (1) when public Servants have been dismissed from service in contravention of Article 311(2), when the concerned employee claims benefit under the industrial and labour laws and (3) when a statutory body has acted in breach of a mandatory obligation imposed by a statute. In *Indian Airlines Corporation Vs. Sukhdeo Rai*, an order of dismissal of an employee was found to be in contravention of the Regulations made under the Air Corporation Act of 1953. Still the Supreme Court held that the regulations made under the power conferred by a statute embodying the terms and conditions of service in the Corporation did not constitute a statutory restriction on the power of the Corporation to terminate the services of its employees and that, the Corporation having undoubted power to dismiss its employee, the Court cannot specifically enforce the terms of the service contract, as the relationship between the Corporation and its employees was governed by the law of master and servant and not subject to any statutory obligation. In this case there are no rules either statutory or otherwise governing the service conditions of the employees. It cannot be claimed that the petitioner is a civil servant entitled to the protection of Article 311(2). It cannot also be claimed that the petitioner is entitled to the benefit of industrial and labour laws; nor can she claim that her relationship with the Bank is governed by any statutory rules. Only if the petitioner can claim to have a statutory status, she is entitled to the relief of declaration of being in employment if the termination of her services is found to be in contravention of statutory provisions. Therefore, applying the principles laid down by the Supreme Court in the above decisions, the petitioner is not entitled to any relief under Article 226 and her remedy if any, is to approach the Civil Court.

11. As I am of the view that the petitioner cannot get the relief, claimed in any event, the contention regarding the maintainability of the petition is not considered.

12. The writ petition therefore fails and is dismissed. No costs.