

(1971) 01 DEL CK 0015

In the Delhi High Court

Case No : Civil Writ Appeal No. 711 of 1970

P.L. Bhardwaj

APPELLANT

Vs

State Bank of India and Others

RESPONDENT

Date of Decision : 29-01-1971

Acts Referred:

Citation : (1971) ILR Delhi 236

Hon'ble Judges : S.N. Shankar, J

Bench : Single Bench

Advocate : F. Anthony, B. Dutt, A.R. Lal, H.L.Tikku, R.M. Mehta and Rishikesh, for the Appellant;

Judgement

S.N. Shankar, J.

(1) P.L. Bhardwaj, a confirmed Staff Officer, Grade Iii in the State Bank of India has assailed in this petition under Art. 226 of the Constitution the order of the Bank dated June 17, 1970 terminating his services under rule 18 of the State Bank of India (Officers & Assistants) Service Rules, 1957.

(2) The petitioner graduated from Delhi University in the year 1965. After selection by the Central Recruitment Board in 1966 he was appointed as a Probationary Officer by the State Bank of India (hereafter called "the Bank"). At the meeting of the Executive Committee of the Central Board of the Bank held on October 30, 1968, he was confirmed in this post with effect from October 1, 1968 under the State Bank of India (Officers and Assistants) Service Rules (hereafter called "the Rules") and was selected to attend an Intermediate Course of Probationary Officers at the Staff Training College (State Bank of India) Hyderabad. While at the training College at Hyderabad, on the New Year's Eve Party, held on the night of December 31, 1968, an incident occurred involving breach of the General Instructions of the College in which, along with others, he was stated to be involved. In consequence, on January 2, 1969, the Principal of the College took action in the matter. Nothing turns on the details of the incident

for purposes of decision of this petition and the same need not be set out in any detail. By letter dated January 3, 1969, the Principal Of the training College terminated the training of the petitioner and one other trainee, A.K. Dutta and directed both of them to return to the local Head Office of the Bank at New Delhi and report to the Secretary and Treasurer. On January 9, 1969, a representation was made by the All India State Bank of India Supervising Staff Federation, Bombay, protesting against the premature termination of the training of these trainees. On January 23, 1969, the Bank issued a notice to the petitioner requiring him to submit his Explanation for the alleged contravention of rules 11 and 14 of the General Instructions of the Hyderabad College while under training at that College. On February 4, 1969, the petitioner submitted his Explanation. On March 29, 1969, the All India State Bank of India Supervising Staff Federation, Bombay, communicated to the Chairman of the Bank, Central Office, Bombay, a resolution passed by the Federation on March 25, 1969, condemning the action of the Principal of the Training College, Hyderabad, in sending back these two trainees to their circles before the completion of their course. By letter dated April 21, 1969, the petitioner was required by the Bank to report on April 23, 1969 at 11 A.M. to Shri B.K. Mukerjee, Deputy Secretary and Treasurer, State Bank of India, Hyderabad. Thereafter, by letter dated June 20, 1970, the petitioner was informed by the Managing Director of the Bank that the Executive Committee of the Central Board had decided in the meeting held on June 17, 1970 that his services be terminated in terms of rule 18 of the Rules. The petitioner has challenged this decision of the Executive Committee on grounds mentioned in the petition.

(3) In the counter filed on behalf of the Bank, it is admitted that the petitioner joined services of the Bank and after completion of his training was confirmed as Staff Officer Grade Iii with effect from October 1, 1968. It is also admitted that he was selected to attend Intermediate Course of Probationary Officers at the Staff Training College (State Bank of India), Hyderabad. After setting out details of the incident at Hyderabad and the part played by the petitioner therein the respondents in the counter stated that after receiving the report of the incident, in order to be informed of its details, the Managing Director of the Bank appointed Shri Mukerjee to investigate the matter and on receipt of his report the Bank, "though concerned about the conduct of the petitioner in allowing himself to be associated with an unsavory incident reflecting on his conduct as an Officer of the Bank, did not take any further action in the matter". But on an overall consideration of the record of the "Probationary Officer" decided to terminate his services under rule 18 of the Rules. Regarding merits, the counter further stated that the Bank was not an authority amenable to the writ jurisdiction of the High Court and the service Rules framed by it including rule 18 in pursuance of which the services of the petitioner were terminated were not statutory rules and were nothing more than the model terms of the contractual agreement of service between the Bank and its employees. Rule 18 which authorised the Bank to terminate the services of any employee other than a

Probationary Assistant, on giving him three calendar month's previous notice in writing or three months substantive salary in lieu of notice irrespective of the fact whether the employee was on probation or confirmed, was stated to be nothing more than a term reciting the normal "incidence of service".

(4) Shri Frank Anthony, the learned counsel appearing for the petitioner, raised the following contentions in support of the relief :

(1) That rule 18 under which the Bank purported to act did not apply to this case on the respondent's own admission in the counter and the order of termination was, Therefore, void. (2) That rule 18 was not attracted in the case of confirmed employees of the Bank like the petitioner. (3) That rule 18 was ultra-virus of rule 20 of the Rules itself which guaranteed a tenure of service to the employee and the order of termination of service for this reason was bad. (4) That no order terminating the service of the petitioner could be passed in any event without granting him a hearing. (5) That there was discrimination inasmuch as the petitioner and A.K. Dutta, the other trainee were similarly situated but were treated differently in as much as while services of the petitioner were terminated, a very minor punishment was awarded to A.K. Datta.

(5) Before proceeding further it will be proper to notice a preliminary objection raised by the learned counsel for the respondent Shri A.R. Lall. The counsel urged, though half-heartedly, that the respondent- Bank was not amenable to the writ jurisdiction of this Court. The submission has no merits. The State Bank of India was constituted by Section 3 of the State Bank of India Act, 1955 (23 of 1955) to carry on business of banking and other business in accordance with the provisions of this Act for the purpose of taking over the undertaking of the Imperial Bank. According to Section 16(2) of this Act, the State Bank is to have local head offices in Bombay, Calcutta and Madras and at such other places in India as the Central Government in consultation with the Central Board may determine. The Central Board of the Bank is to consist of a Chairman and Vice-Chairman appointed by the Central Government in consultation with the Reserve Bank and not more than two Managing Directors, if any, appointed by the Central Board with the approval of the Central Government. Section 20 fixes the term of office of the Chairman and the Managing Director. Section 24 provides for the removal from office of directors etc. and authorises the Central Government, after consultation with the Reserve Bank, to remove from office the Chairman and Vice Chairman, Managing Director or Director. The Bank has to furnish to the Central Government and to the Reserve Bank the returns in terms of Section 40 of the Act. According to Sec. 43, the State Bank may appoint such number of officers, advisers and employees as it considers necessary or desirable for the efficient performance of its functions, and determine the terms and conditions of their appointment and service. The officers, advisers and employees of the Bank are to exercise such powers and perform such duties as may be entrusted or delegated to them by the Central Board. According to Sec. 45, no provision of law relating to the winding up of companies shall apply to the State Bank, and

the State Bank cannot be placed in liquidation save by order of the Central Government and in such manner as it may direct. Section 49 authorises the Central Government in consultation with the Reserve Bank, by notification on the Gazette to make rules to carry out the purposes of the Act. Section 50 empowers the Central Board, after consultation with the Reserve Bank and with the previous sanction of the Central Government to make regulations, not inconsistent with the Act and the Rules made there under to provide for all matters for which provision is expedient for the purpose of giving effect to the provisions of this Act. The Bank, Therefore, is clearly a statutory body enjoined to work within the four corners of statute and to discharge certain public duties. Art. 226 of the Constitution empowers the High Court, throughout the territories in relation to which it exercises jurisdiction, to issue to any person or authority, including in appropriate cases any Government orders, directions or writs for the enforcement of any of the rights conferred by part Iii of the Constitution or for any other purpose.

(6) The Bank is clearly an authority within the meaning of Art. 12 of the Constitution and as such is amenable to writ jurisdiction. In *Rajasthan State Electricity Board, Jaipur Vs. Mohan Lal and Others*, one of the contentions raised was that the Board could not be held to be "State" as defined in Art. 12 of the Constitution and consequently no direction could be issued to it by the High Court under Art. 226 or 227 of the Constitution on the ground of alleged violation of Arts. 14 and 16. The Supreme Court rejected this contention. After referring to *Smt. Ujjam Bai Vs. State of Uttar Pradesh*, and *K.S. Ramamurthi Reddiar Vs. The Chief Commissioner, Pondicherry and Another*, , said :

"THESE decisions of the Court support our view that the expression "other authorities" in Art. 12 will include all constitutional or statutory authorities on whom powers are conferred by law. It is not at all material that some of the powers conferred may be for the purpose of carrying on commercial activities. Under the Constitution, the State is itself envisaged as having the right to carry on trade or business as mentioned in Art. 19(1)(g). In Part IV, the State has been given the same meaning as in Art. 12 and one of Directive Principles laid down in Art. 46 is that the State shall promote with special care the educational and economic interests of the weaker sections of the people. The State, as defined in Art. 12, is thus comprehended to include bodies created for the purpose of promoting the educational and economic interests of the people."

(7) Reference in this connection may also be made to *Amir-i-Jamia and others v. Dashrath Raj Kapila* (L.P.A. 33 of 1968 decided on November 25, 1968). Here, the question arose in relation to the institution, Jamia Millia Islamia, an Educational Institution, deemed to be a University under the University Grants Commission Act, 1956. The Court said:

"TO sum up, a body of persons may become public authority either because in its inception it is created by a statute or because the Governmental authority is conferred upon it later either by statute or even by executive action. The

Governmental authority to confer degrees on its students was the right derived by the Jamia Millia from a notification issued by the Government under the University Grants Commission Act, though Jamia Millia had existed before the notification as a privately formed institution. From the moment the power to confer degrees was given to Jamia Miliia under a statute which expressly called it an "authority" there can be little doubt that it was an authority of a public nature and as such amenable to the jurisdiction of this Court under Article 226. Our decision to regard it as a public authority is, Therefore, fully covered by the principle underlying Article 226 and Article 12 of the Constitution, though we may be adding a new example of the principle. The novelty is concerned only with the fact that the Jamia Millia became a public authority not because it was created by a statute but because it was recognised as a University and given the power to confer degrees under the statute."

(8) It is unnecessary to refer to the other cases cited by the learned counsel for the petitioner which have also been noticed by the Division Bench in the Letters Patent Appeal in support of the contention that writ under Art. 226 could go to the Bank. There is no substance in the objection, Therefore, that the respondent Bank was not an authority within the meaning of Art. 12 and 226 of the Constitution.

(9) Shri Lall then contended that even if the Bank is amenable to writ jurisdiction, the service Rules framed by it were nothing more than the terms of a service contract that the Bank entered into with its employee and no relief for breach of these terms can be granted by the writ Court. The remedy of the aggrieved party in such a case, the learned counsel said, was by way of a civil suit. This submission has force. Section 4 of the State Bank of India Act, 1955, authorises the Central Government to make rules by notification in the Official Gazette to carry out the purposes of the Act. Section 50 authorises the Central Board of the Bank, after consultation with the Reserve Bank and with the previous sanction of the Central Government, to make regulations not inconsistent with the Act and the Rules made there under to provide for all matters for which provision is expedient for the purpose of giving effect to the provisions of the Act. Clause (n) of sub-section (2) of this section lays down that such regulations may provide for the duties and conduct of officers, other employees, advisers and agents of the State Bank. It is not disputed that the State Bank of India (Officers and Assistants) Service Rules containing rule 18, under which the services of the petitioner have been terminated, are neither rules framed by the Central Government u/s 49 nor are they regulations framed by the Central Board u/s 50 in consultation with the Reserve Bank and with the previous sanction of the Central Government. The question for decision, Therefore, is as to what is the nature of the Rules. With the material on the record, I am unable to say that they are anything more than the administrative decisions taken by the Bank containing terms and conditions of service which the Bank considered to be necessary or desirable for the efficient performance of its functions as envisaged in section 43 of the Act. My reasons for this view are

three-fold firstly because they have been framed neither by the Central Government nor in consultation with the Reserve Bank and, Therefore, there is no limitation on the power of the Bank to revise them or change them without reference to any other authority; secondly because there is no provision in the Act to indicate that they apply *proprio vigore*, and thirdly because these are decisions taken by the Bank u/s 43 of the Act and this section does not confer any power on the Bank to frame any statutory Rules which is specifically conferred by the Act on the authorities under sections 49 and 50 of the Act. They are, Therefore, purely administrative rules and confer no statutory status on the employer. After the petitioner had completed his probationary period he was informed by letter dated November 11, 1968 (Annexure B) that he would be considered as Staff Officer, Grade in, with effect from October 1, 1968 under the Rules. This was accepted by the petitioner. That is why Rule 18 is being invoked in his case. But for this stipulation by the Bank and its acceptance by the petitioner, rule 18 as a condition of service would not be attracted to this case.

(10) The Rules thus being not statutory but purely administrative cast no statutory duty on the Bank and there is no statutory obligation that the Writ Court can enforce in pursuance of these Rules dehors the contract of service. Appropriate relief in respect of a breach of the contract of service can be granted to the petitioner by the civil court alone.

(11) Reference, in this connection may be made to Executive Committee of U.P. State Warehousing Corporation v. Chandra Kiran Tyagi (1969 Ser L R 799. The respondent-plaintiff in that case entered service with the appellant as a Technical Assistant. He was promoted to the post of Warehouseman and was confirmed in this post in 1962. Certain charges were framed against him and pending enquiry he was suspended. After finding him guilty he was dismissed from service. Respondent thereupon filed a suit challenging the order of dismissal. According to him, the various allegations made against him were vague and had not been established and there was no proper inquiry conducted against him. He also invoked the protection of Art. 311 of the Constitution. In these facts, the question that arose for decision was whether he was entitled to a declaration that his employment had never been validly terminated. After referring to *Barbar v. Manchester Hospital Board*, (1958) 1, All. E.R. 322 and *Francis v. Municipal Councillors etc.* (1962) 3, All. E.R. 633 of the report, Vaidialingam, J. speaking for the Court said :

"THE law relating to master and servant is clear. A contract for personal service will not be enforced by an order for specific performance nor will it be open for a servant to refuse to accept the repudiation of a contract of service by his master and say that the contract has never been terminated. The remedy of the employee is @ claim for damages for wrongful dismissal or for breach of contract. This is the normal rule and that was applied in *Harber's* case and *Francis* case. But, when a statutory status is given to an employee and there has been a violation of the provisions of the statute while terminating the

services of such an employee, the latter will be eligible to get the relief of a declaration that the order is null and void and that he continues to be in service, as it will not then be a mere case of a master terminating the services of a servant. This was the position in Vine's case (Vine v. National Dock Labour Board, 1956, 3 All. E.R. 939).

(12) Reference may also be made to Mohinder Singh Vs. Union of India, . There, the question arose in connection with the rules of the Lawrence School, Sanawar (Simla Hills), an educational institution. Originally, the school was owned, controlled and managed by the Government of India. But thereafter it was decided that its management may be carried on through a Society to be formed under the Societies Registration Act, 1860, and this was accordingly done. The memorandum of association and the rules and regulations of the Society were approved by the Government before being filed with the Registrar of the Joint Stock Companies. The petitioner was originally on the permanent staff of the School when it was being run by the government and his services retained by the Society when it took over the School Thereafter, by notice of the Headmaster, with the approval of the Board of the Society, in terms of its regulations his services were terminated. Dealing with the School Rules, on page 181 of the report, the division Bench said :

"THE School Rules which contain the conditions of service applicable to the staff employed in the School under the Board, not being statutory in character, these do not fall within the definition of "law" as given in clause (3) of article 13 of the Constitution. The Rules, Therefore, did not impose any statutory obligations on the Society. So even if the petitioner's services were terminated in breach of any of the requirements of the School Rules it cannot be said that the breach was of a mandatory obligation imposed by statute or law."

(13) On this reasoning, it was held that there being no breach of the mandatory obligation imposed by the statute, no writ could be issued in the case and the remedy of the petitioner was to file a suit for damages.

(14) This question also came up for consideration before the Madras High Court in V. Ramiah v. The State Bank of India 1967 M.L.J. 519. The appellant in that case was employed as a Cashier in the State Bank of India, Madras. After a prolonged enquiry he was informed that the Bank was terminating his services under rule 14 of the State Bank of India (Sub-Accountants and Head Cashiers) Service Rules after tendering him two months' salary, in lieu of notice, as provided in clause (1) of the Service Agreement. He, thereupon, filed a writ. After holding that the State Bank was amenable to the writ jurisdiction, the Court said:

".....IT is indisputable that a statutory body may employ a person under contract and that so long as it is exercising the function or power under contract, or enforcing an obligation under contract, it is acting purely like a private individual. This criterion of distinction is well-marked and it cannot be argued, except where

the act of the statutory body is in breach of a mandatory obligation imposed by the statute, that when a statutory body terminates an employment under contract, the act is per se liable to be canvassed in writ jurisdiction."

(15) The same principle under lies the decision of the Calcutta High Court in K. M. Mukherjee v. Secretary and Treasurer, State Bank and others 1968 LI C 127(10). A petition under Art. 226 of the Constitution was filed to challenge the order of dismissal passed against the petitioner in this case under the terms of para 521 (5) (a) of Shastri Award. Challenge was laid on several grounds; amongst others, it was urged that while the appointing authority of the petitioner was the Chief Accountant he was dismissed by the Staff Superintendent and that the enquiry in this case was held in contravention of the requirements of para 521 of the Shastri Award and that the impugned order had been made in contravention of the principles of natural justice. The Court, while dealing with the nature of the Award vis-a-vis the service conditions contained therein, observed that the Award had no statutory force and no term of it could be enforced by Writ. On page 129 of the report, this is what the learned Judge observed :

"IT is needless to say that the Award of an Industrial Tribunal is the decision of an industrial adjudication by a statutory tribunal and can have no more statutory force than the decree of a civil Court. Either may be executed or otherwise implemented in the manner laid down in the relevant law, but it cannot be enforced by the prerogative writ of mandamus, as an instrument having the force of law of itself."

(16) Shri Frank Anthony, the learned counsel appearing for the petitioner, however, contended that the State Bank (Officers & Assistants) Service Rules were statutory Rules and should be deemed to be so and the petitioner should be held to be entitled to invoke the writ jurisdiction. In support of this submission he placed reliance on S.G. Jaisinghani Vs. Union of India (UOI) and Others, . In this case. a letter issued by the Government of India fixing the quota was held to have been issued in pursuance of a statutory power and, Therefore, binding on the Government. Rule 3 of the Income Tax Officers (Class I, Grade II) Service Recruitment Rules provided that service shall be recruited by two methods, namely, by competition and by promotion. Rule 4 then provided as under :

"SUBJECT to the provisions of Rule 3, Government shall determine the method or methods to be employed for the purpose of filling any particular vacancies, or such vacancies as may require to be filled during any particular period, and the number of candidates to be recruited by each method."

(17) The Solicitor-General argued that the letter of the Government of India fixing the quota for the purpose of filling vacancies was not legally binding on the Government and that it was open to them to deviate from it. The contention was repelled because the Court found that Rule 4 extracted above casts statutory duty on the Government to determine method or methods to be employed for

the purpose of filling the vacancies. The quota fixed by the letter was, Therefore, deemed to have been fixed in exercise of this statutory power under rule 4. No such deeming-fiction can be invoked in this case, firstly because there is no statutory duty cast on the Bank by section 43 of the Act as in case of rule 4 providing that "Government shall determine the method" and secondly because there is no room left in this case for making such a presumption as the power to frame statutory Rules is explicitly given under the scheme of the Act to the Central Government or to the Board after consultation with the Reserve Bank and with the previous sanction of the Central Government in terms of sections 49 and 50 of the Act and no such Rules have been framed under these provisions.

(18) Reference was also made by the learned counsel to the *The State of Uttar Pradesh and Others Vs. Babu Ram Upadhyaya*, . This case also does not improve the position for the same reason that I have set out above. The Bank under the Act has undoubtedly administrative duties assigned to it. It can act in discharge of these duties in a purely administrative manner. Unless the Rules in question are shown to have been framed in pursuance of the powers conferred by the Act, as in the case of *Babu Ram Upadhyaya*, they cannot be held to have the statutory force of the provisions contained in the Act.

(19) The learned counsel then urged that the present case was analogous to *Vine v. National Dock Labour Board* 1956, 3 All. E.R. 939 and the petitioner was, Therefore, entitled to the relief. In *Vine's* case, the plaintiff was a registered dock worker employed in the reserve pool by the National Dock Labour Board under a scheme set up under the Dock Workers (Regulation of Employment) Order, 1947. In 1948, the National Board approved the delegation of powers to disciplinary committees set up by local boards. The plaintiff failed to obey a valid order to report for work with a Company of Stevedores and in consequence the local board instructed their disciplinary committee to hear the case. The disciplinary committee after hearing the case gave a notice in writing to the plaintiff terminating his employment. The plaintiff then instituted a suit claiming damages and also prayed for a declaration that the dismissal was illegal, ultra virus and invalid. The suit was decreed on both counts at first but on appeal the declaration was struck down.

(20) On further appeal to the House of Lords against the striking out of the declaration, the House of Lords held that the declaration granted by the first Court was proper and the order of dismissal was a nullity because the local board had no power to delegate its disciplinary functions. The Supreme Court has noticed this case in the matter of *State Warehousing Corporation (supra)* 1969 S.L.R. 799. After quoting the relevant part of the judgment of Viscount Kilmuir, L.C. and Lord Keith of Avonholm, Vaidialingam J. on page 806 of the report said :

"IT will be noted that the House of Lords, in the decision referred to above, have emphasized that orders striking of the plaintiff from the register was not considered a simple case of a master terminating the services of his servant, but on the other hand, was treated as one effecting the status of the plaintiff and

whose services have been terminated by an authority which had no power to so terminate and as such, the order was treated as void. The House of Lords have also emphasized that due to the intervention of the statute which safeguards the right of the dock worker, the order not being in accordance with the statute, must be treated as a nullity. It was under these circumstances that the House of Lords restored the decree of the Court of first instance granting a declaration regarding the continuity of service of the plaintiff therein. It must again be emphasized that the order, the validity of which was considered by the House of Lords, was treated as a nullity."

(21) VINE'S case, Therefore, does not help the petitioner.

(22) The learned counsel then urged that the petitioner did not claim reinstatement and that he would be content if he is granted the declaration as prayed in para 13(i) of the petition that this Rule was ultra virus of the Rules themselves. The submission cannot be accepted. Rule 18 of the State Bank of India (Officers & Assistants) Service Rules (for reason that I have already set out) is nothing more than a term of the contract of service. Whether this term is inconsistent with or ultra virus of the other terms contained in the same contract is not a matter that can properly form the subject matter of decision by this Court. Besides, this term is in the contract of service. The aim and purpose of the declaration is to enforce that contract of service. It is well established rule of common law that a contract of service will not be enforced by the Court. Exceptions to this rule were noticed by the Supreme Court in *S. R. Tewari v. District Board, Agra and another*, 1964 (1) L L J 1. It was observed in that case that under the common law, the Court will not ordinarily force an employer to retain the services of an employee whom he no longer wishes to employ. But this rule was subject to certain well-recognised exceptions. The exceptions stated were (1) that the Courts would in appropriate cases declare that a public servant who was dismissed from service in contravention of Art. 311 continues in service even though by so doing the State was in effect forced to continue to employ the servant whom it did not desire to employ; (2) under the Industrial Law, there was jurisdiction with the Labour and Industrial tribunals to compel the employer to employ a worker, whom he did not desire to employ and (3) the Courts can also declare invalid the act of a statutory body, if by doing the act the body acted in breach of a mandatory obligation imposed by statute, even if by making the declaration the body is compelled to do something which it does not desire to do. The case of the petitioner does not fall under any of these exceptions. The declaration prayed for cannot, Therefore, be granted to him in law.

(23) The learned counsel next contended that rule 18 of the Rules was ex-facie had as contravening Articles 14 and 16 of the Constitution, and no contract of the petitioner with the Bank (even it is assumed to be a term of the contract) could operate to deprive him of fundamental rights guaranteed by these Articles. Reliance in support of the latter proposition was placed on *Basheshar Nath Vs. The Commissioner of Income Tax, Delhi and Rajasthan and Another*, and *I.C.*

Golak Nath and Others Vs. State of Punjab and Another, . Before considering whether there could be a contract to waive the fundamental right, it would be appropriate to see whether Art. 14 and 16 of the Constitution would at all be attracted to the case. Art. 14 provides that State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India. Art. 16 lays down that there shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State. The petitioner joined service of his own free will. After completion of his probationary period he was confirmed, in terms of Annexure "B", under the State Bank of India (Officers & Assistants) Service Rules. It was open to the petitioner to refuse to accept these terms but he acquiesced in them. It has not been shown that any other person similarly situated as the petitioner was, treated differently. It is, Therefore, not clear how Articles 14 and 16 of the Constitution are sought to be invoked.

(24) Reference in this connection may be made to Satish Chandra Anand Vs. The Union of India (UOI), . In the background of Art. 14 in relation to service matter, of page 252, the Court said:

"THERE was no compulsion on the petitioner to enter into the contract he did. He was as free under the law as any other person to accept or to reject the offer which was made to him. Having accepted, he still has open to him all the rights and remedies available to other persons similarly situated to enforce any rights under his contract which have been denied to him, assuming there are any, and to pursue in the ordinary course of the law such remedies for a breach as are open to him to exactly the same extent as other persons similarly situated. He has not been discriminated against and he has not been denied the protection of any laws which others similarly situated could claim. The remedy of a writ is misconceived."

(25) Proceeding further, referring to Art. 16(1), it was observed:

"ARTICLE 16(1) is equally inapplicable. The whole matter rests in contract. When the petitioner's first contract (the five year one) came to an end, he was not a permanent Government servant and Government was not bound either to re-employ him or to continue him in service. On the other hand, it was open to Government to make him the offer it did of a continuation of his employment on a temporary and contractual basis. Though the employment was continued, it was in point of fact, and in the eyes of law, under a new and fresh contract which was quite separate and distinct from the old even though many of its terms were the same. Article 16(1) deals with equality of opportunity in all matters relating to employment or appointment to any office under the State. The petitioner has not been denied any opportunity of employment or of appointment. He has been treated just like any other person to whom an offer of temporary employment under these conditions was made. His grievance, when analysed, is not one of personal differentiation but is against an offer of temporary employment on special terms as opposed to permanent employment. But of course the State can

enter into contracts of temporary employment and impose special terms in "each case, provided they are not inconsistent with the Constitution, and those who chose to accept those terms and enter into the contract are bound by them, even as the State is bound."

(26) Question of rule 18 being in contravention of Art. 14 and 16 of the Constitution does not, Therefore, arise, for reasons aforesaid.

(27) As a result of the above discussion, I am of the view that even though the State Bank of India is an authority amenable to the writ jurisdiction, the writ Court is not in a position to afford any relief to the petitioner.

(28) Shri B. Dutta, learned counsel appearing on behalf of the All-India State Bank of India Supervising Staff Federation, Bombay, supported the petitioner and drew my attention to the fact that services of the petitioner were terminated by executive committee which according to the Regulation framed under Sec. 50 was the authority competent to pass such an order. From this, the learned counsel argued that it should be presumed that the impugned order was passed in pursuance of a statutory rule. I am unable to accept this submission. The order was admittedly passed in pursuance of rule 18. If this Rule is not statutory the mere fact that an authority competent to terminate the service passed the order will not convert rule 18 into a statutory rule.

(29) Shri Anthony also argued that there was discrimination in this case in so far as both the petitioner and A. K. Dutta were charged with lapses and contravention of rules 11 and 14 of the General Instructions of the Training College, but they were not treated in the same manner. While the services of the petitioner were dispensed with altogether a very minor punishment was given to Dutta. No material has been placed on the record to substantiate the case for discrimination. The fact that the charges against the petitioner and Dutta were the same does not necessarily mean that the punishment to each one of them should also have been the same. The submission, Therefore, has no merits.

(30) I must record a justifiable grievance made by Shri Anthony. Rule 18 of the Rules authorises the Bank to terminate the service of any employee other than a probationer Assistant on giving him three calendar months' previous notice in writing or three months substantive salary in lieu of notice. The words "any employee" used in this Rule make no distinction between a probationer and a confirmed employee. The power to terminate service of a confirmed employee, without giving him a show-cause notice and without assigning any reason for it is not quite in consonance with the present norms of service specially when the employer is not a private individual but a statutory body. It introduces an element of insecurity in the tenure which, according to Shri Anthony, is highly undesirable. But the redress for this grievance can be had not through the Writ Courts but from other quarters. It is open to the appropriate authorities under sections 49 or 50 of the Act to make suitable rules and any breach of those statutory rules would be cognizable by the writ Court.

(31) In the result the petition fails because this Court in exercise of the writ jurisdiction is not competent to grant any of the reliefs prayed for by the petitioner. The same is, Therefore, dismissed but the parties are left to bear their own costs.