

(2015) 07 KL CK 0166
In the High Court Of Kerala
Case No : O.P. (C) No. 355 of 2015 (O)

R. Nitya

APPELLANT

Vs

Dhanlaxmi Bank Limited and Others

RESPONDENT

Date of Decision : 01-07-2015

Acts Referred:

Constitution of India, 1950 — Article 309, 311
Specific Relief Act, 1963 — Section 14, 14(1)(b), 14(b)

Citation : (2015) 3 ILR Ker 859 : (2015) 4 KHC 711 : (2015) 4 KLJ 179 : (2015) 3 KLT 919

Hon'ble Judges : B. Kemal Pasha, J

Bench : Single Bench

Advocate : Philip T. Varghese, Thomas T. Varghese, Achu Subha Abraham and K.R. Monisha, for the Appellant; K. Anand, Sr. Adv., Latha Krishnan and C.K. Karunakaran, Advocates for the Respondent

Final Decision : Dismissed

Judgement

B. Kemal Pasha, J—The suit before the court below is one for a declaration that the 2nd defendant is not entitled to act as the Appellate Authority, the 3rd defendant is not entitled to act as the disciplinary authority and the 4th defendant is not entitled to be the enquiry officer, in respect of an enquiry in relation to the order of suspension dated 13.05.2014 issued to the petitioner by the first defendant, Bank through the 3rd defendant, and the charge sheet dated 09.06.2014 issued to the petitioner by the first respondent Bank through the 3rd defendant. A declaration has also been sought for to the effect that the disciplinary proceedings initiated by the 3rd defendant is null and void. A decree for perpetual injunction has also been sought for as against the said disciplinary proceedings.

2. The case of the petitioner is that the entire procedure adopted by the defendants are clearly in violation to the solemn principles of natural justice and further that the defendants have failed to observe the prescribed regulations

relating to the disciplinary actions. It is also contended that defendants 2 and 3 are personally interested in the matter and because of their personal interest in the outcome of the disciplinary proceedings, the 2nd defendant should not act as the Appellate Authority and the 3rd defendant should not act as the disciplinary authority. Ext. P2 IA was filed before the court below seeking an order of temporary injunction. Ext. P2 was dismissed by the trial court through Ext. P5 order. Aggrieved by the said order, the petitioner has preferred Civil Miscellaneous Appeal before the District Court, Thrissur. The learned Additional District Judge has chosen to dismiss the appeal through Ext. P6 judgment. The same is under challenge.

3. The factual matrix reveals that the petitioner was initially appointed through direct recruitment by way of campus selection as Scale-I Officer and she joined service of the Bank as Executive Trainee on 14.07.2003. Considering her meritorious service, timely promotions were given to her and finally she was elevated to the position of Scale-IV Officer. Till 13.05.2013, she was functioning as Regional Credit Head of South Kerala. It is the case of the petitioner that she could shockingly realise manipulations in the Bank in sanctioning various loans for huge amounts to persons in the higher-ups, and especially to those persons who have political influence. She got agitated and she swiftly informed the matter to the 2nd defendant expecting some remedial measures from him.

4. According to the petitioner, as against her legitimate expectations, the 2nd defendant turned hostile towards her and threatened her with dire consequences, in case of poking her nose in such matters, which he considered as quite unnecessary for the petitioner. The 2nd defendant did not stop there. According to the petitioner, she was immediately shifted from the post of Regional Credit Head to the post of Branch Manager of Industrial Finance Branch of the Bank.

5. On 20.01.2014, police came to the residence of the petitioner and made enquiries with regard to her involvement in the sending of an e-mail causing aspirations and allegations against the 2nd defendant who is the Managing Director of the Bank. She could gather from the police that the said enquiry was on the basis of a complaint allegedly preferred by the 3rd defendant that the said e-mail was sent from the residence of the petitioner. It is the case of the petitioner that she was ultimately coerced to furnish a statement by taking the responsibility of the said e-mail.

6. According to her, she was called to the office of the 3rd defendant, where she was threatened, intimidated and coerced to furnish such a statement. According to the petitioner, she had no other go than to furnish such a statement as dictated by the 3rd defendant. After getting such a statement recorded from her, the 3rd defendant went on to make frequent demands to the petitioner to divulge the names of other officers of the Bank who were allegedly involved. According to the petitioner, the 3rd defendant wanted her to name the persons of his choice as persons who had connived and participated in sending such an e-mail.

7. The petitioner had not cared to heed to the illegal demands forwarded by the 3rd defendant. Thereafter, her official e-mail and the service of her official mobile were disconnected. According to her, with a view to humiliating her, official profile was further lowered by shifting her from the post of Manager to the post of an Officer and she was transferred to the Regional Processing Centre. She was placed under suspension pending enquiry. Memo of charges dated 09.06.2014 was served on her.

8. Initially, the copies of the documents were not made available to her in order to furnish explanation. Finally, after repeated demands, copies were served on her on 19.06.2014 and an ultimatum was given to her to prefer the application on or before 28.06.2014. She had preferred the explanation on 27.06.2014. According to the 3rd defendant, the said explanation was not satisfactory and therefore, he being the disciplinary authority has taken the decision to conduct an enquiry. Consequently, the 4th defendant was appointed as the Enquiry Officer. According to the petitioner, everything mentioned above were stage managed and defendants 2 to 4 wanted to finish her off. It is alleged that stage by stage her official profile was lowered, and she who was serving the Bank as its Regional Credit Head of South Kerala is presently posted as an ordinary officer of the Bank and transferred to a place where no senior officer would like to serve.

9. Over and above it, the 3rd defendant who is the person involved in the matter is presently acting as the disciplinary authority. The petitioner alleges that all the solemn principles of natural justice are given a go-bye and therefore, the petitioner apprehends that she will not get justice from the hands of defendants 2 to 4 in the matter. It is the further case of the petitioner that even though she had preferred an appeal against the order of suspension, all her cries fell in deaf ears and her appeal was mercilessly thrown to the dustbin. According to the petitioner, her appeal was dealt with against the provisions of the Regulations known to the officers of the Bank. It is at that juncture, the petitioner has preferred the suit before the court below.

10. Heard the learned counsel for the petitioner Sri. Philip T. Varghese and the learned Senior Counsel for the respondent Sri. K. Anand.

11. It has come out that the 2nd defendant is no more in the service of the Bank, as, according to the learned Senior Counsel, he has retired from service. Presently, the petitioner need not have any such apprehension that the 2nd defendant will continue as the Appellate Authority. The present Managing Director of the Bank only can act as the Appellate Authority. Similarly, it seems that the enquiry proceedings are over and the 4th defendant who is the Enquiry Officer has filed an enquiry report whereby he has found the delinquent officer guilty of the charges levelled against her. Thereafter, the 4th defendant has no say in the matter and he cannot have any further involvement in the matter. Therefore, as far as the 4th defendant also is concerned, the petitioner need not have any further apprehension of continued bias. The only question remains is regarding the continuance of the 3rd defendant as the disciplinary authority.

12. The learned counsel for the petitioner has argued that the suit as such is not maintainable before the civil court and further that the concerned Bank is a Scheduled Bank, which is a public institution supervised and controlled by the Reserve Bank of India. It is argued that in such case, the matter relating to the petitioner is a matter having public importance and she cannot be permitted to be finished off at the whims and fancies of the 3rd defendant. According to the learned counsel for the petitioner, the principles of natural justice have to be met not only by the statutory or administrative bodies, whereas the said principles have to be observed by other bodies also. The same should be observed even in domestic enquiries.

13. Per contra, the learned Senior Counsel for the respondents has argued that the suit as such is hit by Section 14(1)(b) of the Specific Relief Act, 1963, as the nature of employment of the delinquent officer is one of mere contractual employment and personal service within the meaning of S. 14(1)(b) of the said Act. S. 14(1)(b) of the Specific Relief Act reads:

"A contract which runs into such minute or numerous details or which is so dependent on the personal qualifications or volition of the parties, or otherwise from its nature is such, that the court cannot enforce specific performance of its material terms."

14. When it is a contract of service of a personal nature, the same cannot be specifically enforced. It is also argued that there is master and servant relationship in the case between the Banking Company and the petitioner and when the Banking Company does not want the services of a delinquent officer or when the Banking Company imposes punishments through disciplinary proceedings, the same cannot be curtailed through a civil litigation. It is argued that in case of a decree as prayed for, it is as good as enforcing a matter which cannot be specifically enforced under Section 14(1)(b) of the Specific Relief Act. It is further argued that the present attempt of the petitioner is nothing but an attempt to canvass a position to avoid the specific admissions made by her in her statement voluntarily furnished to the 3rd defendant. It is also argued that the petitioner cannot be permitted to stall the disciplinary proceedings, especially when the delinquent officer had chosen to tarnish the image of the Managing Director of the Bank.

15. It is not in dispute that the officers of the Dhanalaxmi Bank, who are the defendants, are governed by the Regulations known as Dhanalaxmi Bank Officers (Conduct and Discipline) Regulations. Admittedly, the petitioner does not come within the purview of the definition of workman under the Industrial Disputes Act. It is not disputed that nature of the employment of the petitioner and her services with the Bank is by way of a contractual employment.

16. The next question to be considered is whether the service of the petitioner can be treated as a public service. This Court had an occasion to deal with the question as to whether the South Indian Bank is a public institution or not in the

case reported in Welfare Stationery Vs. South Indian Bank Ltd., (2014) 2 ILR (Ker) 685 : (2014) 2 KLJ 602 : (2014) 2 KLT 328 : (2014) 2 RCR(Rent) 435 . In that case also an argument was resorted to the effect that South Indian Bank Ltd., which is also a scheduled bank as in the case of Dhanalakshmi Bank, is functioning purely under the control of the Reserve Bank of India for public benefit and therefore, it is a public institution. This Court has relied on the principles enunciated in Federal Bank Ltd. Vs. Sagar Thomas and Others, AIR 2003 SC 4325 : (2004) 97 CLT 363 : (2004) 120 CompCas 63 : (2003) 4 CTC 418 : (2003) 1 JT 470 Supp : (2004) 1 LLJ 161 : (2003) 8 SCALE 143 : (2003) 10 SCC 733 : (2003) 4 SCR 121 Supp : (2004) 1 SLJ 436 : (2003) AIRSCW 4995 : (2003) 7 Supreme 22 wherein it was held that the banking companies have not been set up for the purposes of building economy of the State; on the other hand, such private companies have been voluntarily established for their own private purposes and interest; but their activities are kept under check so that their activities cannot go wayward and harm the economy in general.

17. In Welfare Stationery (Supra), it was held by this Court that South Indian Bank Ltd., which is a scheduled bank cannot be categorised as a public institution. The aforesaid decisions are squarely applicable in the case of the present Bank also. Matters being so, the present Bank is not a public institution and the service of the petitioner in the said Bank cannot be treated as a public service.

18. Regarding the observance of the principles of natural justice, there is no doubt that even in the case wherein a domestic enquiry is being conducted, the Enquiry Officer as well as the Disciplinary Authority in such case should adhere to the principles of natural justice.

19. The learned counsel for the petitioner has invited the attention of this Court to G. Sarana Vs. University of Lucknow and Others, AIR 1976 SC 2428 : (1976) LabIC 1546 : (1977) 1 LLJ 68 : (1976) 3 SCC 585 : (1977) 1 SCR 64 : (1976) 8 UJ 701 . In that case, it was held that the Selection Board ought to have adhered to the principles of natural justice. At the same time, it has to be noted that it was a case wherein the Selection Committee of the Lucknow University had taken those decisions. University, which is a statutory body, cannot be equated with a private Banking Company which is a scheduled Bank, merely being governed and supervised by the RBI.

20. The learned counsel for the petitioner has relied on the decision in Board of Control for Cricket in India and Others Vs. Cricket Association of Bihar and Others(2015) 1 SCALE 608 : (2015) 3 SCC 251 . According to the learned counsel for the petitioner, the Supreme Court has subjected the Board of Control of Cricket in India also to judicial review and therefore, there is nothing wrong in adopting the very same principles to the case in hand. The answer to the argument is there in paragraph 103 of the decision noted supra wherein it was held:

"BCCI is a very important institution that discharges important public functions. Demands of institutional integrity are, therefore, heavy and need to be met suitably in larger public interest. Individuals are birds of passage while institutions are forever. The expectations of the millions of cricket lovers in particular and public at large in general, have lowered considerably the threshold of tolerance for any mischief, wrongdoing or corrupt practices which ought to be weeded out of the system. Conflict of interest is one area which appears to have led to the current confusion and serious misgivings in the public mind as to the manner in which BCCI is managing its affairs."

It is by considering the enormous economy involved, magnitude of the public interest and public policy involved etc. the Apex Court has found that such actions of the BCCI are liable to judicial review. At any stretch of imagination, I do not think that the said principles can be extended to the case in hand.

21. In *Pearlite Liners Pvt. Ltd. Vs. Manorama Sirsi*, AIR 2004 SC 1373 : (2004) 4 CTC 544 : (2004) 1 JT 58 : (2004) 1 LLJ 1041 : (2004) 1 SCALE 280 : (2004) 3 SCC 172 : (2004) SCC(L&S) 453 : (2004) 1 SCR 166 : (2004) 2 SLJ 134 , the question as to whether contract of service can be specifically enforced was discussed and decided. In the said decision reliance was placed on *Executive Committee of Vaish Degree College, Shamli and Others Vs. Lakshmi Narain and Others*, AIR 1976 SC 888 : (1976) 2 LLJ 163 : (1976) 2 SCC 58 wherein the following principles were enunciated:

"It is a well settled principle of law that a contract of personal service cannot be specifically enforced and a court will not give a declaration that the contract subsists and the employee continues to be in service against the will and consent of the employer. An employer cannot be forced to take an employee with whom relations have reached a point of complete loss of faith between the two. This general rule of law is subject to three well recognised exceptions - (i) where a public servant is sought to be removed from service in contravention of the provisions of Art. 311 of the Constitution of India; (ii) where a worker is sought to be reinstated on being dismissed under the Industrial Law; and (iii) where a statutory body acts in breach of violation of the mandatory provisions of the statute."

22. As in the case of *Federal Bank(supra)*, and *South Indian Bank(supra)* the services in *Dhanalaxmi Bank*, which is also a scheduled bank, cannot be considered as a public service within the meaning of Article 311 of the Constitution of India. Therefore, item No. 1 in the decision of *Executive Committee of Vaish Degree College(supra)* does not come into play. The same is the question with regard to items 2 and 3 also. Admittedly, the petitioner cannot be considered as a "workman" within the definition of workman under the Industrial Disputes Act. The *Dhanalaxmi Bank*, which is merely a private banking company, which is a schedule bank, is not a statutory body and therefore, the third category also do not come into play.

23. In *Pearlite Liners Pvt. Ltd. (supra)* the relief of injunction in respect of an employee employed under a contract of service was challenged. It was held therein that:

"An injunction against a transfer order or against holding a departmental enquiry in the facts of the present case would clearly amount to imposing an employee on an employer, or to enforcement of a contract of personal service, which is not permissible under the law. An employer cannot be forced to take an employee with whom relations have reached a point of complete loss of faith between the two."

Therefore, the principle enunciated was that the employer cannot be forced to swallow an employee with whom the relations have reached a point of complete loss of faith. In such case, the action against disciplinary actions will tantamount to an attempt of getting the contract which cannot be specifically enforced, specifically performed.

24. The learned Senior Counsel for the respondents have invited the attention of this Court to the decision in *State Bank of India and Others Vs. S.N. Goyal*, AIR 2008 SC 2594 : (2008) 3 CLT 795 : (2008) 117 FLR 967 : (2008) 6 JT 398 : (2008) 3 LLJ 567 : (2008) 7 SCALE 415 : (2008) 8 SCC 92 : (2008) 2 SCC(L&S) 678 : (2009) 1 SLJ 403 : (2008) AIRSCW 4355 wherein it was held:

"Where the relationship of master and servant is purely contractual, it is well settled that a contract of personal service is not specifically enforceable, having regard to the bar contained in section 14 of the Specific Relief Act, 1963. Even if the termination of the contract of employment (by dismissal or otherwise) is found to be illegal or in breach, the remedy of the employee is only to seek damages and not specific performance. Courts will neither declare such termination to be a nullity nor declare that the contract of employment subsists nor grant the consequential relief of reinstatement. The three well recognized exceptions to this rule are:

(i) where a civil servant is removed from service in contravention of the provisions of Article 311 of the Constitution of India (or any law made under Article 309);

(ii) where a workman having the protection of Industrial Disputes Act, 1947 is wrongly terminated from service; and

(iii) where an employee of a statutory body is terminated from service in breach or violation of any mandatory provision of a statute or statutory rules."

25. From the principles enunciated in the decision noted supra, it can safely be held that there is a clear distinction between public employment governed by statutory rules and private employment governed purely through contractual obligations. In the case of a private employment governed through contractual obligations, the only relief that can be availed of by the employee is the relief by way of damages and not reinstatement. Where the relationship is purely

governed by contract, with no element of statutory governance, the contract of such personal service cannot be specifically enforced under Section 14(1)(b) of the Specific Relief Act.

26. The learned Senior Counsel for the petitioner has relied on the decision in *Apollo Tyres Ltd. Vs. C.P. Sebastian*, (2009) 123 FLR 1004 : (2009) 8 JT 182 : (2010) 1 LLJ 621 : (2009) 8 SCALE 748 : (2009) 14 SCC 360 : (2010) 1 SCC(L&S) 359 : (2009) 7 SCR 336 wherein it was held:

"On the facts of the case, we are clearly of the view that the suit filed by the plaintiff was barred by S. 14(b) of the Specific Relief Act, 1963 which states that a contract of personal service cannot be enforced in a civil suit. In our opinion, if the plaintiff had any grievance and if he is a workman as defined in the Industrial Disputes Act, 1947, he should have raised an industrial dispute and sought relief under the Industrial Disputes Act, 1947 before the Labour Court or Industrial Tribunal. There are many powers which the Labour Court or Industrial Tribunal enjoy which the Civil Court does not enjoy e.g. the power to enforce contracts of personal service, to create contracts, to change contracts etc. These things can only be done by the Labour Court or Industrial Tribunal but cannot be done by a Civil Court. A contract for personal service includes all matters relating to the service of the employee e.g. confirmation, suspension, transfer, termination etc."

27. From the nature of the reliefs beautifully molded by the petitioner, at the first blush it may appear that the claim is not one coming within the purview of S. 14(1)(b) of the Specific Relief Act. It is nothing but in the form of something having bitterness coated with sugar. Therefore, in effect, what is sought for is a negative form of seeking a positive relief under Section 14(1)(b) of the Act and nothing more. If the petitioner is permitted to stall the disciplinary proceedings, the effect is nothing but the specific performance of the contract of employment.

28. It is true that the petitioner has serious apprehension on her part with regard to the interest or otherwise of the disciplinary authority who is the 3rd defendant. It is true that the petitioner has been clamouring that she was made to furnish a statement admitting guilt in a way as dictated by the 3rd defendant. The learned Senior Counsel for the respondent has taken me though the entire statement furnished by the petitioner. It seems that many matters which are purely within the personal knowledge of the petitioner are also seen incorporated in the said statement. In such a case, it cannot be said that the entire statement was dictated by the 3rd defendant and merely it was transcribed and furnished by the petitioner as a puppet in the hands of the 3rd defendant. There might have been something transpired between the petitioner and the 3rd defendant, which is purely within the knowledge of the 3rd defendant and the petitioner alone. The petitioner cannot take the aid of the court of law to explain such things allegedly flown from the part of the 3rd defendant for making such a statement. It is for the petitioner to prove through evidence that such a statement was not made voluntarily; whereas, the same was devoid of free consent as it was hit by coercion or undue influence, as the case may be.

29. The learned Senior Counsel for the respondent has pointed out that through Regulations the Bank has appointed the 3rd defendant as the disciplinary authority of all officers of the Bank. In such case, in an isolated manner, it may not be possible for the Bank to take away the powers of the disciplinary authority from the person manning such a position. True, that the 3rd defendant is a person manning things at present. At the same time, it has to be noted that in the e-mail any imputations are not levelled against the 3rd defendant. Further, there is no charge against the petitioner that she has made aspirations or allegations against the 3rd defendant. In such a case, it cannot be said that the 3rd defendant has any personal interest in the matter. Of course, the petitioner alleges that the 3rd defendant has also a personal interest in the matter and she has made some allegations in her reply to the memo of charges. At the same time, the subject of the enquiry is the earlier e-mail and not anything done afterwards. The subject of inquiry did not involve any allegations levelled against the 3rd defendant by the petitioner. In such case, it cannot be said that the 3rd defendant, who is the disciplinary authority is a judge in his own case.

30. Even though the contract of employment cannot be specifically enforced through positive or negative means, the question of violation of principles of natural justice still have a say in the matter. As far as the petitioner is concerned, when she moves for appropriate reliefs before appropriate forums, even if a decision is being taken by the disciplinary authority, that is not the end of the road. She has got a right to appeal and presently, she cannot clamour that her appeal will also fall in deaf ears as the then Appellate Authority against whom she had levelled complaints, is no more in service. He is replaced by another person and presently the Appellate Authority is a totally different person. Let the disciplinary proceedings be completed, so that the petitioner can make a complaint with regard to the non observance of principles of natural justice, if there is any room for such complaints.

31. From all these discussions, I do not find any merit in this original petition at present. By pointing out that all the employees of the Bank are curiously watching the present proceedings, the learned counsel for the petitioner has submitted that the disciplinary authority has to be changed, for upholding the interest of justice, and also for observing the principles of natural justice. This Court cannot pass such an order. At the same time, it is for the Bank to decide whether there should be a change of disciplinary authority or not. If the Bank desires so, it is for the Bank to do it and not for this Court at present. With the said observations, this Original Petition stands dismissed.

It is made clear that all the observations made by both the courts below, and this Court in this judgment are confined to the dismissal of the present matter alone. All the authorities and the court below shall decide all further proceedings in the matter as well as the suit, quite untrammelled by any of such observations.