(2011) 07 DEL CK 0339

In the Delhi High Court

Case No : Writ Petition (C) 5215 of 2011 and CM 10592 of 2011

Shyam Sunder Arora APPELLANT

Vs

Ing Vysya Bank Ltd. RESPONDENT

Date of Decision : 26-07-2011

Acts Referred:

Banking Regulation Act, 1949 — Section 5
Constitution of India, 1950 — Article 226

Citation : (2011) 182 DLT 116

Hon'ble Judges : Dr. S. Muralidhar, J

Bench : Single Bench

Advocate : Madhu Mukul Tripathi and Mr. S.S. Arora, for the Appellant; Davinder Hora and Mr. Ashish, for the Respondent

Final Decision : Dismissed

Judgement

Dr. S. Muralidhar, J. 1. The Petitioner seeks a direction to the Respondent ING Vysya Bank Ltd. (''Bank''), which is not a nationalised Bank, not to retire the Petitioner before 31st July, 2013, i.e., before attaining sixty years of age.

2. The Petitioner joined the Respondent Bank as a clerk in September 1975 knowing well that the retirement age for officers in the Bank was fifty-eight years. An agitation was launched by All India ING Vysya Bank Officers Association in December 2010 pressing for certain demands including raising the retirement age of officers to sixty years in tune with the rest of the banking industry. On 20th December 2010, the Bank informed the Association by an e-mail that the enhancement of the retirement age was the prerogative of the management. The Bank was willing to continue offering extension of services to those officers of the Bank who were willing to be open and flexible in terms of the assigned roles/locations as per organizational needs.

3. On the question of maintainability of the writ petition, Mr. M.M. Tripathi, learned Counsel appearing for the Petitioner placed reliance on the decisions in Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav

Smarak Trust and Others Vs. V.R. Rudani and Others, and Zee Telefilms Ltd. and Another Vs. Union of India (UOI) and Others, . Although he acknowledges that in Federal Bank Ltd. Vs. Sagar Thomas and Others, , the Supreme Court held that a writ petition would not be maintainable against the Federal Bank merely because it was in the banking industry, he submits since the prayer in the present writ petition concerns the non- conformity of the Bank''s retirement age policy with the guidelines of the Reserve Bank of India (''RBI''), the present writ petition is maintainable.

4. On merits, learned Counsel relies upon the decisions in British Paints (India) Ltd. Vs. Its Workmen, ; G.M. Talang and Others Vs. Shaw Wallace and CO. and Another, ; Hindustan Antibiotics Ltd. Vs. The Workmen and Others, and submits that the stand of the Respondent Bank in discriminating against the officers by retiring them at the age of fifty-eight while retiring workmen at the age of sixty was arbitrary, discriminatory and unconstitutional.

5. This Court is not convinced with the arguments of the learned Counsel for the Petitioner about the maintainability of the writ petition against a private bank, particularly in view of the observations of the Supreme Court in Federal Bank v. Sagar Thomas to the following effect (SCC, p. 758):

32. Merely because the 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 of 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. 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 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 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 do not 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 puts 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. 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.

6. Notwithstanding that this writ petition does not appear to be maintainable against the Respondent Bank, even on merits, the relief sought for by the Petitioner cannot be granted by this Court. The question of the appropriate age of retirement of officers of a private bank is a matter of the bank''s policy. The Petitioner cannot be said to have any right to demand increase in retirement age from 58 to 60 years. In other words, there is no enforceable right enuring in the Petitioner or any legal obligation on the part of the Respondent Bank to enhance the retirement age of its officers to sixty. In the circumstances, it is not possible to issue any writ of mandamus as prayed for by the Petitioner.

7. The writ petition and application are dismissed.