

(2016) 04 CAL CK 0094
In the Calcutta High Court
Case No : Writ Petition No. 6161 (W) of 2016

Sri Saptarshi Basu

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 19-04-2016

Acts Referred:

Constitution of India, 1950 — Article 12, 226

Citation : (2016) 5 WBLR 245

Hon'ble Judges : Sanjib Banerjee, J.

Bench : Single Bench

Advocate : Mr. Mukteswar Maity, Advocate, for the Petitioner; Mr. Anirban Datta, Advocate, for the Respondent Nos. 2 and 4; Mr. Saptangsu Basu, Mr. Ayan Banerjee and Ms. Debasree Dhamali, Advocates, for the Respondent Nos. 6 and 7

Final Decision : Dismissed

Judgement

Sanjib Banerjee, J.—The petitioner questions the propriety of a disciplinary action taken against the petitioner by the employer. The employer in this case is the Eastern and North-Eastern Frontier Railway Co-operative Bank Limited.

2. Pursuant to an order of April 11, 2016, the petitioner has filed a supplementary affidavit. The first document appended to the supplementary affidavit is the profile of the bank as may have been obtained from the website of the bank or any document released by the bank. The bank obtained its licence from the Reserve Bank on February 10, 2010. It is governed by its Board of Directors consisting of 20 elected Directors, including a Chairperson and Vice-Chairperson. The bank has about 60,000 members. The bank provides loans to its shareholders upto Rs. 4 lakh at 14.5% interest per annum and loan against salary upto Rs. 2.5 lakh at 15.5% interest per annum.

3. A petition can be received under Article 226 of the Constitution for issuance of any of the writs thereunder or passing of any order of such nature if the act

complained of is of the State or other authority answering to that description under Article 12 of the Constitution. A petition under Article 226 of the Constitution is also maintainable against any private body discharging public functions. An example would be of CESC Limited which was formally a Government organisation but has since been privatised. But a writ petition is maintainable against CESC Limited only to the extent of its public duty; a service grievance pertaining to CESC Limited cannot be entertained in this jurisdiction.

4. As to whether a body is amenable to this jurisdiction as a State or authority under Article 12 of the Constitution, the judicial tests laid down include whether such body is de facto controlled by the State or any other authority under Article 12 of the Constitution. Though the original theory of deep and pervasive control has been diluted in recent times, it may be said in brief that a writ petition is maintainable against such a body which can be regarded to be the State or which discharges the duties or functions of a State.

5. Merely because a juristic entity, which is an aggregate of several human individuals, is required to obtain a licence or registration from a public body, does not imply that such juristic entity or body of persons, by virtue of such licence or registration, develops attributes of a public nature making it amenable to this jurisdiction. A partnership firm of private individuals may be registered before the appropriate Registrar; a company may be incorporated pursuant to registration before the appropriate Registrar of Companies; a private company may start banking business by obtaining appropriate licence from the Reserve Bank of India and the like. Merely because the licence to do business is obtained from a statutory authority or a body of persons is registered with a statutory authority does not imply that such entity or body of persons becomes a public body or is amenable to the jurisdiction under Article 226 of the Constitution.

6. It is not the petitioner's case that the employer co-operative bank has been set up with Government funds or is subject to any Government control in the day to day running of its business. Banking business is not limited to public bodies. In such circumstances, the petitioner cannot maintain a petition against such co-operative bank under Article 226 of the Constitution.

7. In any event, this petition pertains to the service of the petitioner and even when writ petitions are found to be maintainable against a body on the basis of the public character of the fundamental business that such body undertakes, unless the body has the character of a State or authority within the meaning of Article 12 of the Constitution, the employees of such body cannot invoke the jurisdiction under Article 226 of the Constitution in respect of their service grievances.

8. The petitioner has appended photocopies of several Supreme Court judgments to its supplementary affidavit. The petitioner has not been able to demonstrate that any of such judgments hold contrary to the principles as indicated above. The petitioner has, however, referred to an appellate order of February 25, 2009

passed in connection with a writ petition filed in this court. However, such appellate order did not notice the issue nor decide thereon. It is elementary that a judgment acts as a precedent on the legal issues decided therein and not what may be seen to have been decided without the same being mentioned expressly in the judgment. Since the matter as to the maintainability of a writ petition was not considered in the appellate order of February 25, 2009, such order has no impact on the discussion above.

9. W.P. 6161 (W) of 2016 is dismissed on the ground that the present petition is not maintainable under Article 226 of the Constitution.

10. The petitioner will be at liberty to pursue the petitioner's challenge on the substance of the grievance before the appropriate forum in accordance with law.

11. There will be no order as to costs.

12. Urgent certified website copies of this order, if applied for, be made available to the parties upon compliance of the requisite formalities.