

(2001) 02 KL CK 0034

In the High Court Of Kerala

Case No : W.A. No's. 2429 and 2908 of 2000

State Bank of India

APPELLANT

Vs

Antony

RESPONDENT

Date of Decision : 16-02-2001

Acts Referred:

Constitution of India, 1950 — Article 12, 226, 311
Factories Act, 1948 — Section 46

Citation : (2001) 2 ILR (Ker) 14 : (2001) 1 LLJ 1617

Hon'ble Judges : S. Sankarasubban, J; Kum. A. Lekshmikutty, J

Bench : Division Bench

Advocate : George Thomas, for the Appellant; P. Ramakrishnan, for the Respondent

Final Decision : Allowed

Judgement

S. Sankarasubban, J.—These Writ Appeal aires from the judgment in O.P. No. 18569 of 1997. While W.A.No. 2429 of 2000 is filed by respondents 1 and 2 in the Original Petition, the other Writ Appeal, viz., W.A. No. 2900 is filed by the petitioner in the Original Petition. The Petitioner in the Original Petition, V.Antony was an Officer of the erstwhile Bank of Cochin. While he was working in the Bank of Cochin, disciplinary proceedings were initiated against him. After a domestic enquiry, it was found that the charges against the petitioner were proved. The Disciplinary Authority imposed a punishment of dismissal.

2. The Order of dismissal was challenged before the Industrial Tribunal, Alappuzha, as though he was a workman. But the Industrial Tribunal found that he was not a workman and hence, the petitioner did not succeed there. The Order of the Industrial Tribunal was challenged before this Court in the Original Petition. This Court upheld the findings of the Industrial Tribunal that the petitioner was not a workman, but held that he was entitle to resort to other legal proceedings. In the meanwhile under the scheme of amalgamation, dated 25th August 1985, the Bank of Cochin was amalgamated with the State Bank of

India and the State Bank of India succeeded to all the rights and liabilities of the Bank of Cochin.

3. After Ext. P-1 judgment, the petitioner filed the present Original Petition for a writ of certiorari or other appropriate writ, setting aside Exts. P-2 and P-14 and to declare that the respondents as successors of the Bank of Cochin are liable to reinstate the petitioner with continuity of service and for other reliefs. Ext. P-2 is the order by which, the petitioner was dismissed from service. Ext. P-14 is the enquiry report. Against Ext. P-2, the petitioner preferred an appeal before the Bank and the same was dismissed. Hence, the Original Petition is filed.

4. The grounds raised in the Original Petition are that initiation of the disciplinary proceedings against the petitioner was unsustainable. It was a case of deliberate fraud played on him by the fellow officer and the action forgetting the above basic element was, therefore, unwarranted. During the domestic enquiry, the petitioner was pitted against a person who was far superior in such skills, who was for quite some time a practising advocate, a judicial officer for a considerable period and was occupying the position of legal officer of the Bank. The legal officer in combination with the Legal Advisor of the Bank had seen to it that there was no opportunity given to the petitioner to present his defence. The petitioner wanted the assistance of a legal officer. But that was not granted to him. Further, it was submitted that the petitioner had requested for production of certain documents, which related to the part played by K.Joy and those documents were not produced. Further, it was stated that the report of the Enquiry Officer was without any basis and the enquiry was conducted in violation of the principle of natural justice.

5. A counter affidavit was filed on behalf of the Bank. There, the following contentions were taken. The Writ Petition was filed after a long lapse of Exts. P-2 and P-3 orders and that there are laches. Further the order was passed by the erstwhile Bank of Cochin, which is not an instrumentality of State and hence, a writ will not lie against such an institution. It was further stated that there was no violation of the principles of natural justice. The petitioner was given the help of a Senior Officer in the enquiry proceedings and the documents that were called upon were not at all relevant. It was also stated that there was no violation of the principles of natural justice. Further contention taken was that the petitioner did not bona fide prosecute his application before the Labour Court. Knowing fully well that he was an officer and not a workman, he ought not have approached the Labour Court. The learned single Judge before whom the matter came, took the view that the Writ Petition was maintainable. Further, the learned Judge took the view that there was violation of the principles of natural justice in so far as the petitioner without backwages. The Bank has filed an appeal against the quashing of Exts. P-2 and P-3 and the direction to reinstate the petitioner, while the petitioner has preferred an appeal against the non-granting of backwages.

6. Sri. George Thomas learned counsel for the Bank contended that the learned

single Judge was wrong in holding that the Writ Petition was maintainable against the orders, Exts. P-2 and P-3. He contended that the order that was passed in this case was one passed by the Bank of Cochin, which is not an instrumentality of the State under S. 12 of the Constitution of India. He cited a decision of this Court reported in C.J.Thomas v. South Indian Bank Ltd. and Ors. 1987 (1) KLT 101 , wherein in the case of Catholic Syrian Bank and the South Indian Bank Ltd., this Court held that they were not States coming under Art. 12 of the Constitution of India and hence, no writ will lie against them. The learned single Judge relied on the decision of a Supreme Court in U.P. State Cooperative Land Development Bank Ltd. Vs. Chandra Bhan Dubey and Others, and held that the Original Petition was maintainable.

7. It is agreed that even though there was an amalgamation of the Bank of Cochin with the State Bank of India, the order was passed by the Bank of Cochin and the question that has to be found out is whether the Writ Petition will lie against Bank of Cochin. The Original Petition has not given any details as to whether the Bank of Cochin is an instrumentality of State. We have got a Division Bench decision of this Court reported in C.J.Thomas v. South Indian Bank Ltd. and Ors. 1987 (1) KLT 101 , which held that the Scheduled Banks like the Catholic Syrian Bank Ltd. and the South Indian Bank Ltd. are not State coming under the Art. 12 of the Constitution of India. But then the argument that was made was that under Art. 226 of the Constitution, a writ of mandamus or certiorari can be issued against any person, if any public duty is involved. In fact, that was the reason on the basis of which the decision in U.P. State Cooperative Land Development Bank Ltd. Vs. Chandra Bhan Dubey and Others, was delivered. In the above case it was held that the Co-operative Bank was an instrumentality of the State. It was stated that the Co-operative Society was a creature of the statute and duties were imposed under statute, which were public in nature. Recently, the Supreme Court in the decision reported in V.S.T. Industries Ltd. v. V.S.T. Industries Workers' Union and another AIR 2000 SCW 4566 had occasion to consider whether a writ will lie against a person or an incorporated company. In the above case, the Supreme Court held as follows" "A private person or an incorporated company cannot be taken out of the seep and the contemplation of Art. 226 of the Constitution. But it is only in the circumstances when the authority or the person performs a public function or discharges a public duty Art. 226 of the Constitution can be invoked. In the present case, the appellant is engaged in the manufacture and sale of cigarettes. manufacture and sale of cigarettes will not involve any public function. Incidental to that activity there is an obligation under S. 46 of the Factories Act to set up a canteen when the establishment has more than 250 workmen. That means, it is a condition of service in relation to a workman providing better facilities to workmen to discharge their duties properly and maintain their own health or welfare. In other words, it is only a labour welfare device for the benefit of its work force unlike a provision where Pollution Control Act makes it obligatory even on a private company not to discharge certain effluent. In such cases,

public duty is owed to the public in general and not specific to any person or group of persons. Further the manage that would be caused in not observing them is immense. If merely what can be considered a part of the conditions of service of a workmen is violate there can be no justification to hold that such activity will amount to public duty. A cigarette company merely because it has to provide canteen facilities to its workmen as required by S. 46 of Factories Act, cannot be said to be amenable to writ jurisdiction."

8. Thus, in the above case, the Supreme Court held that a writ will not lie against a Private Company or a person, unless there is violation of public duty. Learned counsel for the petitioner in the Original Petition brought to our notice a judgment in W.A.No. 29 of 1991 given by a Division Bench of this Court. There an identical questing came up before the Court regarding whether public element is involved with regard to the service conditions. There, the question was with regard to the promotion of the employees and the appellant was the Kerala State Co-operative Bank. In dealing with the Institution, speaking for the Division Bench Balakrishnan, J.(as Lordship then was) held as follows:"Their service conditions are based on the bye-laws of the first appellant-Society. The respondents were seeking promotion to the post of Junior Assistants on the basis of the bye-laws which is purely of a private law. The service conditions applicable to the respondents could be taken as part of the service contracts entered into between the appellants and the respondents. We do not find any public law element involved in the promotion of the respondents to the post of Junior Assistants." Similarly, in this case, the disciplinary proceedings have been taken on the basis of the service conditions, which can be said to be a proceeding between an employer and employee regarding the conditions of service. Violation, if any, cannot be said to be a breach of public duty.

9. In this case, the question is whether the Writ Petition is maintainability for quashing Exts. P-2 and P-3 orders. Exts. P-2 and P-3 orders are passed in the course of disciplinary proceedings against the petitioner. Here, the order was passed by the Bank of Cochin, which was not a statutory body. Even accepting the fat that the writ will lie against such a body in the discharge of public function, we are of the view that the dispute in this case does not relate to public duty and hence, the Original Petition is not maintainable. Further, we are of the view that the order for reinstatement cannot be given in a case like this.

10. It is trite law that ordinarily a contract of service cannot be specifically enforced. Generally, the appointment of an office gives rise to the relation of master and servant governed by the terms of appointment and in the absence of special circumstances, the courts would relegate a party complaining of wrongful termination of the contract to a suit for compensation and would not exercise its jurisdiction, compelling the master to retain the services of the servant. The exemption in the general rule is (1) in the case of a public servant, who has been dismissed from service in contravention of Art. 311 of the Constitution of India, (2) Reinstatement of dismissed worker under the Industrial Law or by Labour or

Industrial Tribunals and (3) A statutory body when it has acted in breach of a mandatory obligation imposed by statute. So far as the present case is concerned, it cannot be said that the Bank of Cochin is a statutory body, even though the successor in interest of the State Bank of India is a statutory body. But we have already stated that the complaint is against the order passed by the Bank of Cochin and hence, the matter has to be tested on the basis of the law that stood on the day on which the order of dismissal was passed.

11. In the above view of the matter, we are of the view that all Writ Petition is not maintainable. Hence, W.A. No. 2429 of 2000 is allowed and W.A. No. 2900 of 2000 is dismissed. O.P. No. 18569 of 1997 is dismissed. It is without prejudice to the right, if any, of the petitioner for appropriate remedy under any law.