

(2011) 08 AP CK 0046
In the Andhra Pradesh High Court
Case No : Writ Petition No. 760 of 2002

V.S.N. Murthy

APPELLANT

Vs

Samatha Mahila Co-operative Urban Bank Ltd., Hyderabad
and another

RESPONDENT

Date of Decision : 01-08-2011

Acts Referred:

Constitution of India, 1950 — Article 12, 311

Citation : (2011) 5 ALD 739

Hon'ble Judges : N. Ravi Shankar, J

Bench : Single Bench

Advocate : A. Anasuya, for the Appellant; A. Razzack, Counsel, for the Respondent

Final Decision : Dismissed

Judgement

N. Ravi Shankar, J.—The point raised in this writ petition is whether the Termination Order passed by the Managing Director of the 1st respondent bank through his Proceedings No. SMCUB/2001/783 dated 15.12.2001 removing the petitioner from its service is illegal and is liable to be set aside.

2. Incidentally the jurisdiction of this Court to entertain this writ petition and adjudicate the controversy raised is also questioned by the 1st respondent's Counsel on the ground that on the facts of this case the writ petition is not maintainable. This is the other point raised.

3. The facts leading to the filing of this writ petition giving rise to the above two points are not in dispute and can be stated as follows:

The petitioner herein earlier worked as Manager in Andhra Bank which is a nationalized bank and retired from its service on superannuation. Thereafter he was appointed as Manager in the 1st respondent bank which is a Co-operative Urban Bank Limited which is stated to be in private sector and he has been working in it since March, 1998.

4. Learned Counsel for the petitioner and also the learned Counsel for the 1st respondent bank agree that the petitioner's appointment was a contractual appointment. It may then be noted that sometime in the month of December 2000, according to the 1st respondent bank the petitioner herein misused his office and misappropriated certain amounts belonging to it in a transaction relating to clearing of certain cheques issued by one of its customers for encashment of the same from his account and received in the clearance. The other details are not necessary. After noticing the said alleged fraud, the 1st respondent bank initially placed the petitioner under suspension by its order dated 11.6.2001 and commenced some enquiry also. It is not necessary to go into those details also, but it would be sufficient to note that ultimately the 1st respondent bank through its competent authority issued the present impugned order dated 18.12.2001 terminating the services of the petitioner from the bank with effect from the same date. Challenging the said Termination Order, the petitioner has filed this writ petition.

5. Learned Counsel for the petitioner pointed out that the 1st respondent bank did not conduct any enquiry into the charges levelled against the petitioner though such an enquiry is mandatory as per the relevant rules which have been framed by the bank itself with the nomenclature "Service rules and regulations of Samatha Mahila Co-operative Urban Bank Limited". It is also the plea of the petitioner that the 1st respondent bank which is in Co-operative sector is amenable to writ jurisdiction of this Court and it is further pleaded that the above rules have statutory force and they have been violated in passing the impugned order, the same is liable to be set aside.

6. On the other hand the learned Counsel for the 1st respondent bank argued that the appointment of the petitioner was purely a contractual one and therefore, the bank undertook to terminate his appointment and it has to be treated as a termination simpliciter by which no stigma is cast on the petitioner and therefore, it cannot be said to be illegal. It is also argued by him that the 1st respondent bank cannot be treated as a State or its instrumentality as contemplated under Article 12 of the Constitution and its service rules or by-laws do not have any statutory force and therefore, the petitioner cannot complain about their violation. It is also argued by him that since the 1st respondent bank is in cooperative sector and is not an instrumentality of State, it is not amenable to writ jurisdiction and therefore, the present writ petition is also not maintainable. In support of this contention, he relied upon a decision of the Supreme Court reported in *Federal Bank Ltd. v. Sagar Thomas and others*, 2003 (7) Supreme 22, to show that when the bank is a private bank and cannot be held to be a State within the meaning of Article 12 of the Constitution, it is not amenable to writ jurisdiction though the Reserve Bank of India may exercise control over it regarding credit policy.

7. On the other hand the learned Counsel for the petitioner relied on another decision of the Supreme Court reported in *M.P. State Co-op. Dairy Fedn. Ltd. and*

Another Vs. Rajnesh Kumar Jamindar and Others, to show that 1st respondent bank being in cooperative sector has to be treated as a State and therefore, the service rules referred to supra must be held to have statutory force and consequently this writ petition is maintainable I have gone through this decision. It pertains to Madhya Pradesh State Dairy Federation Limited and the question which arose there was whether it was a State within the meaning of Article 12 of the Constitution. The Supreme Court after going into the formation and structure of the said M.P. Co-operative Dairy Federation Limited, found on facts that it was a part of a department of Government of Madhya Pradesh and was under its control and in that view of the matter, it was held to be a State within the meaning of Article 12. That is not the situation here.

8. The present 1st respondent bank has been formed as Co-operative Bank and it is in private sector and no doubt it may be regulated by A.P. Co-operative Societies Act, but nothing is placed on record to show that funds of our State Government constitute its capital or a part of it or the Government or any of its department has contributed any money for formation of it. In such a situation, the principle laid down in Federal Bank Limited's case (supra), more applies to it. Learned Counsel for the petitioner also relied upon a decision of Calcutta High Court reported in Dasarathi Lal Sharma v. Union of India and others, 1977 (2) SLR 613, wherein it was held that even if temporary employee is terminated from service, the procedure under Article 311(2) of the Constitution has to be followed. In the Calcutta case, the department employee had been appointed temporarily. Here the petitioner is a Bank employee employed on a contract basis and the bank is in a private sector. Hence, the above decision is also distinguishable in the facts and cannot be held to be helpful to the petitioner.

9. More importantly, it should be noted here that the petitioner was appointed as a Manager in the 1st respondent bank admittedly on a contractual basis and in such a situation, the termination of his services would amount to only breach of a contract which may give rise to a civil remedy for damages as no contract of service can be specifically enforced. Thus apart from the above controversy relating to the applicability or non-applicability of Article 12 to the case, the nature of the petitioner's appointment being a contractual one, it follows that the present writ petition is not maintainable as several disputed questions of fact would arise.

10. The learned Counsel for the petitioner made an issue about the mention of suspension order dated 11.6.2001 in the impugned Termination Order and contended that the said suspension order would show that it casts a stigma on the petitioner. In this connection, she also pointed out that a criminal case was filed against this petitioner and two others in connection with the above alleged fraud and that ended in acquittal and it became final and this is also a strong ground to accept the case of the petitioner. Basing on these pleas, she further contended that even if the appointment is treated as a contractual one, the bank ought not to have mentioned about the suspension order in the impugned order

of termination and consequently it must be set aside and the bank should be ordered to pay the petitioner his salary upto the date of the Termination Order and that thereafter the bank can be permitted to terminate the service of the petitioner and this arrangement should be made in the above circumstances even though the appointment is made as a contractual one. It is also argued by her that having placed the petitioner under suspension and ordered an enquiry, the bank cannot now turn around and say that rules are not applicable. This contention also cannot be accepted though it may apparently sound a debatable one.

11. It may be noted that even according to the learned Counsel for the petitioner, the appointment of the petitioner as Manager in the 1st respondent bank was a contractual one. Thus it was terminable by the 1st respondent bank and it should also be noted that a contract of service can be terminated even for loss of confidence and no reasons need be assigned. It is true that the bank has earlier placed the petitioner under suspension contemplating an enquiry and may even have commenced it. As the appointment of the petitioner is a contractual one, suspension pending enquiry was not necessary as rules were not applicable to him and the contract could be terminated for loss of confidence also. If the bank was not right in terminating the contract, that would at best give to the petitioner a right to sue for damages for breach of contract and he could not have claimed for its specific performance and he could not have been reinstated for violation of any rules. Thus the mere fact that the 1st respondent bank earlier initiated some enquiry after placing the petitioner under suspension cannot estop it from terminating the contract as it is terminable under law. Hence, the above contention cannot be accepted and as the appointment being a contractual one the acquittal in the criminal case cannot also have any significance or become a plus point for the petitioner for setting aside the termination.

12. For the aforesaid reasons both the points are decided in favour of the 1st respondent bank and this writ petition is dismissed. No costs.