
(2014) 11 RAJ CK 0110
In the Rajasthan High Court
Case No : Civil Writ Petition No. 11820/2014

Yogendra Mundra

APPELLANT

Vs

ICICI Bank Limited

RESPONDENT

Date of Decision : 11-11-2014

Acts Referred:

Banking Regulation Act, 1949 — Section 5(c)(a)
Constitution of India, 1950 — Article 226

Citation : (2015) 1 CDR 440

Hon'ble Judges : Bela M. Trivedi, J

Bench : Single Bench

Advocate : C.P. Sharma, Advocate for the Appellant; Ajeet Bhandari, Advocate for the Respondent

Judgement

Bela M. Trivedi, J.—The petitioner has filed the present writ petition under Article 226 of the Constitution of India, seeking direction against the respondents-ICICI Bank for quashing and setting aside the order dated 16/12/2013, and the order dated 14/4/2014 on the ground of being arbitrary and illegal, and further seeking direction to pay the full pension to the petitioner.

2. At the outset, the learned counsel Mr. Ajeet Bhandari for the respondents appearing on caveat has raised the preliminary objection regarding the maintainability of the petition under Article 226 of the Constitution of India against the respondents-Bank, relying upon the decision of the Apex Court in case of Federal Bank Ltd. Vs. Sagar Thomas and Others, , and the unreported judgments of this Court in S.B. Civil Writ Petition No. 1640/2013, Shivgiri Swami Vs. ICICI Bank Limited & Ors., S.B. Civil Writ Petition No. 18653/2012, Tej Singh Meena vs. General Manager, ICICI Bank, S.B. Civil Writ Petition No. 1349/2003, Smt. Meena Devi vs. Bank of Rajasthan & Ors. & S.B. Civil Writ Petition No. 5803/2014, Mahesh Kumar Somani vs. The ICICI Bank Limited & Ors. However, in response to the said objection, the learned counsel for the petitioner has relied upon the various decisions of the Apex Court in cases of Deokinandan Prasad Vs.

The State of Bihar and Others, , Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust and Others Vs. V.R. Rudani and Others, , Zee Telefilms Ltd. and Another Vs. Union of India (UOI) and Others, & Akalakunnam Village Service Co-op. Bank Ltd. vs. Bindu N., 2014 9 Scale 473 to submit that the petition under Article 226 of the Constitution is maintainable against the State, or authorities or persons for enforcement of fundamental rights or for any other purpose.

3. In the instant case, it appears that the petitioner was working with the erstwhile The Bank of Rajasthan Ltd., which was subsequently merged with the respondent-Bank. The services of the petitioner were continued with the respondent-Bank as per the order dated 21/8/2010, with the benefit of the pension scheme. The petitioner thereafter had sought voluntary retirement on 27/12/2011, and his said request was also accepted by the respondents vide the letter dated 13/01/2012. It appears that the petitioner after having been relieved by the respondent-Bank had joined the services of West Central Railway Employees Cooperative Credit Society, Kota with effect from 1/9/2012. Since there was violation of the condition imposed by the respondents-bank in the letter dated 21/8/2010 and violation of Rule 50(1) of the Bank of Rajasthan Limited (Employees'') Pension Rules, 1996 and (Employees'') Pension Fund Rules, 1996 to the effect that the petitioner could not take up any commercial assignment without obtaining written permission from the bank, he was served with the show cause notice dated 6/9/2013, calling upon him to explain as to why suitable action resulting into withdrawal of his pension benefits should not be initiated against him. The petitioner having replied to the show cause notice, the respondents-bank passed the order dated 16/12/2013 to the effect that the petitioner shall not be entitled to draw part of his monthly pension to the extent of Rs. 5800/- for a period of one year with immediate effect. It appears that the petitioner had made representation to the Bank against the said order, under Rule 55 of the Pension Rules, 1996, but the said representation was also turned down being not maintainable vide letter dated 14/4/2014. The said orders are under challenge in the instant petition.

4. It has been vehemently submitted by the learned counsel Mr. C.P. Sharma for the petitioner that the petition under Article 226 of the Constitution of India is maintainable against any authority including any person. It cannot be gain said that Article 226 confers wide powers on the High Courts to issue writs in the nature of prerogative writs, and such writs could be issued to any person or authority for the enforcement of fundamental rights and for any other purpose. However, if the rights are purely of a private character, no mandamus could be issued. The person or authority covered under Article 226 must owe an obligation to discharge a public duty. In the opinion of the Court, the decision of Apex Court in case of Federal Bank Ltd. vs. Sagar Thomas & Ors., (supra) relied upon by the learned counsel Mr. Ajeet Bhandari for the respondents clinches the issue. In the said case, the Apex Court considering all other earlier judgments has also held in para Nos. 26, 32 & 33, as under:-

26. A company registered under the Companies Act for the purposes of carrying on any trade or business is a private enterprise to earn livelihood and to make profits out of such activities. Banking is also a kind of profession and a commercial activity, the primary motive behind it can well be said to earn returns and profits. Since time immemorial, such activities have been carried on by individuals generally. It is a private affair of the company though case of nationalized banks stands on a different footing. There may, well be companies, in which majority of the share capital may be contributed out of the State funds and in that view of the matter there may be more participation or dominant participation of the State in managing the affairs of the company. But in the present case we are concerned with a banking company which has its own resources to raise its funds without any contribution or shareholding by the State. It has its own Board of Directors elected by its shareholders. It works like any other private company in the banking business having no monopoly status at all. Any company carrying on banking business with a capital of five lacs will become a scheduled bank. All the same, banking activity as a whole carried on by various banks undoubtedly has an impact and effect on the economy of the country in general. Money of the shareholders and the depositors is with such companies, carrying on banking activity. The banks finance the borrowers on any given rate of interest at a particular time. They advance loans as against securities. Therefore, it is obviously necessary to have regulatory check over such activities in the interest of the company itself, the shareholders, the depositors as well as to maintain the proper financial equilibrium of the national economy. The Banking companies have not been set up for the purposes of building the economy of the State; on the other hand such private companies have been voluntarily established for their own purposes and interest but their activities are kept under check so that their activities may not go wayward and harm the economy in general. A private banking company with all freedom that it has, has to act in a manner that it may not be in conflict with or against the fiscal policies of the State and for such purposes, guidelines are provided by the Reserve Bank so that a proper fiscal discipline, to conduct its affairs in carrying on its business, is maintained. So as to ensure adherence to such fiscal discipline, if need be, at times even the management of the company can be taken over. Nonetheless, as observed earlier, these are all regulatory measures to keep a check and provide guidelines and not a participatory dominance or control over the affairs of the company. For other companies in general carrying on other business activities may be manufacturing, other industries or any business, such checks are provided under the provisions of the Companies Act, as indicated earlier. There also, the main consideration is that the company itself may not sink because of its own mismanagement or the interest of the shareholders or people generally may not be jeopardized for that reason. Besides taking care of such interest as indicated above, there is no other interest of the State, to control the affairs and management of the private companies. Care is taken in regard to the industries covered under the Industries (Development and Regulation) Act, 1951 that their production which is important for the economy

may, not go down, yet the business activity is carried on by such companies or corporations which only remains a private activity of the entrepreneurs/companies.

5. While examining the regulatory provisions contained under the Act of 1949 and laying down of the banking policies by the Reserve Bank of India for carrying out the business activities in Para 32 of the verdict, the Apex Court has observed as infra:

32. Merely because 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 under Section 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. As to the 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 a 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.

6. In the final conclusion, the Apex Court has concluded that the Federal Bank Limited is not amenable to writ jurisdiction under Article 226 of the Constitution of India. For ready reference, Para 33 is also reproduced as under:

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 a 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 don't 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 put 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. The 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".

7. In view of the aforestated decision of the Apex Court, there remains no doubt that the respondents-bank which is carrying on commercial activity, and not any public duty could not be made amenable to the writ jurisdiction as sought to be submitted by the learned counsel for the petitioner. The Court, therefore, is of the opinion that the petition filed by the petitioner under Article 226 of the Constitution of India is not maintainable against the respondents-bank. Apart from not maintainability of the petition, the Court also does not find any merits in the petition, inasmuch as the petitioner has been awarded punishment depriving the petitioner only a part of his monthly pension for one year after giving full opportunity of hearing, and considering all material on record. Such decision could not be said to be arbitrary or illegal in the facts of the case.

8. In that view of the matter, the petition being devoid of merits is dismissed.