

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

Case:- SWP No. 2383/2015

IA No. 01/2015

Date of Pronouncement:- 03.11.2025

Uploaded on:- 10.11.2025

Nedhi Abrol

.... **Petitioner(s)**

Through:- Mrs. Deepika Mahajan, Sr. Adv.
with Mr. Athrav Mahajan, Adv.
V/s

State of J&K and ors.

.....**Respondent(s)**

Through:- Mr. Pawan Dev Singh. Dy. AG.
Mr. Rajeev Dubey, Advocate.

CORAM: HON'BLE MR. JUSTICE JAVED IQBAL WANI, JUDGE

ORDER(ORAL)

1. The petitioner in the instant petition has prayed for the following relief(s):-

- “i) Writ of Certiorari, quashing the order No. DUCB/ADM/2015-2016 dated 13.08.2015 issued by the Chief Executive Officer (respondent No. 5), by virtue of which the services of the petitioner from the post of Cashier-cum-Clerk, Devika Urban Cooperative Bank Ltd., Chenani have been terminated.*
- ii) Writ of Mandamus, commanding the respondents to allow the petitioner to work as Cashier-cum-Clerk, DUCB Ltd. at Udhampur and further directing the respondent No. 4 to finalize the enquiry as early as possible and submit the same to respondent No. 3 for appropriate action.*
- iii) Any other writ, order or direction which your Lordship may deem just and proper in the facts and circumstances of the case may also be issued in favour of the petitioner and against the respondents. ”*

2. The facts, under the cover of which the aforesaid reliefs have been prayed and as are stated in the petition are, that the petitioner was

appointed as Cashier-cum-Clerk in Devika Urban Cooperative Bank Ltd. vide order No. DUCB/ADM/94/2014-2015 dated 31.05.2014 and on account of her ill health, the petitioner could not discharge her duties somewhere in the month of June 2015, as such, applied for leave to the respondent-Bank but even upon production of medical certificates in support thereto, the petitioner was marked absent from duty, inasmuch as, an explanation as well was sought from the petitioner by issuance of a show-cause notice, which notice came to be duly responded by the petitioner, whereafter the petitioner also submitted an application on 10.07.2015, explaining therein her ill health condition, as also the reasons for non-performance of her duties yet the petitioner was harassed by the Branch Manager/respondent-6 herein, which harassment came to be reported by the petitioner before respondent 5 and when no action thereof was taken therein, the petitioner submitted an application before Deputy Commissioner, Udhampur on 22.07.2015, who directed SDM Chanani to hold an enquiry in the matter and submit a report thereof, whereupon when an inquiry initiated by the SDM Chanani was in process, respondent-5 issued a notice to the petitioner on 28.07.2015, in response to which, the petitioner submitted an application 04.08.2015, informing about the holding of an enquiry by the Deputy Commissioner, Udhampur and also stopping of the enquiry proceedings, if any, conducted, however, despite that and

during the pendency of the matter before the Deputy Commissioner, Udhampur, the respondent-5 issued order of termination No. DUCB/ADM/2015-2016 dated 13.08.2025, dismissing the petitioner from service

3. The petitioner while calling-in-question the said order dated 13.08.2025 in the instant petition, has contended that the same came to be issued without holding an inquiry by the respondents in an arbitrary manner, condemning the petitioner unheard and in breach of the Service Rules applicable to the petitioner being Devika Urban Cooperative Bank Ltd. Services Rules and that the impugned order came to be issued by the respondent 5 without any competence and jurisdiction in absence of an elected Board of Directors of the respondent-Bank.

4. **Objections** to the petition have been filed by the respondents, wherein while opposing the petition, it is being, *inter-alia*, stated that the petitioner has no *locus-standi* to maintain the instant petition, as she was working as a probation and liable to be terminated before completion of such probation, while admitting that petitioner was appointed on 31.05.2014 against the post of Cashier-cum-Clerk on probation for the period of two years with the stipulation that her work and conduct would be reviewed after every quarter and if her work and conduct would be found satisfactory, she would be then confirmed in the services of the Bank and that the petitioner was terminated during her period of

probation, as the conduct and work of the petitioner upon being reviewed was found to be unsatisfactory and that the respondent-Bank is not a “State” within the meaning of the Constitution, therefore, not amenable to the writ jurisdiction of this Court and that the petitioner during her working in the Bank, developed the habit of remaining absent from her services and also misrepresented by filing false leave applications in order to legalize her absence and since the conduct of the petitioner was not found proper, the petitioner came to be terminated during her period of probation and that though the petitioner was called upon to respond to the show-cause notice issued from time to time by the respondent-Bank, yet the petitioner submitted manipulated reply to the said show-cause notices and also showed the misleading attitude towards the respondent-Bank and also submitted medical certificates procured by her in an ordinary and irregular way, which were not accepted by the respondent-Bank and even got a Magisterial Enquiry initiated in the matter by the Deputy Commissioner, Udhampur on baseless allegations against the officers of the Bank and that since during the working of the petitioner in the Bank on probation, her performance was not upto the mark as well as her behaviour with the customers and the Bank staff was rude, inasmuch as, her attendance also reflected poor picture having availed all casual leaves, medical leaves and also having remained unauthorizedly absent for more than twenty

occasions, the services of the petitioner came to be terminated and that before terminating the services of the petitioner, proper disciplinary inquiry was initiated against the petitioner and an opportunity of being heard was also provided to her and that although the Board of Directors of the Bank are not in place, yet the respondent-5 has the power being the Chief Executive Officer of the Bank to discharge the functions of the Board of Directors including to terminate a probationer like that of the petitioner and that none of the fundamental rights of the petitioner were violated by the respondent-Bank while terminating her probation service.

Heard learned counsels for the parties and perused the record.

5. Ms. Deepika Mahajan, learned Senior counsel appearing for the petitioner, while making her submissions in line with the case set up in the instant petition, would reiterate the pleas taken in the petition in opposition to the impugned order and would pray for grant reliefs sought in the petition, whereas, on the contrary, Mr. Ranjit Dubey, appearing counsel for the respondent-Bank, while controverting the submissions of Ms. Mahajan would insist for dismissal of the petition, primarily, on the ground that no writ would lie against the respondent-Bank being not a “State” within meaning of Article 12 of the Constitution or else State or an instrumentality thereof and that there has been an alternative efficacious remedy of appeal provided under the service Rules of

Bank and in presence of such statutory remedy of appeal, the petitioner could not have maintained the instant petition.

6. Insofar as the status of a probationer under service jurisprudence is concerned, a probationer is generally recruited against a post available in the cadre of service and although a probationer under service jurisprudence can be discharged during the period of probation and such discharge would not amount to dismissal or removal from service, provided such discharge is ordered in accordance with the rules and not by way of punishment and if the services of a probationer are terminated or a probationer is discharged on the ground of misconduct, inefficiency or for similar reason without a proper inquiry and without giving a reasonable adequate opportunity of hearing to the probationer of showing cause against such discharge, it may, in a given case, amount to the removal from service. Thus, where a probationer is discharged from service with a stigma attached to such discharge amounting to inefficiency or misconduct, the same would attract application of Articles 14 and 16 of the Constitution. Therefore, to sum up, where an employer proceeds against a probationer without casting any aspersions on his competence, honesty and integrity, the discharge of such a probationer in law would not have the effect of his/her removal from service by way of punishment and such a probationer will have no grievance to ventilate in any Court, but where such a probationer is discharged

on the ground of serious misconduct or else is held unsuitable for the post on account of such misconduct, the said discharge of the probationer would be legally invalid and discharge of a such probationer on account of such misconduct cannot, but be deemed as a measure of punishment.

7. In the instant case, since, it is the positive case of the respondents that petitioner while working as a probationer in the Bank have had committed serious misconduct, firstly, for having unauthorizedly absent, furnishing manipulated leave applications/medical advises, as also having affected the working of the Bank, inasmuch as, having leveled serious allegations against the staff of the Bank including her senior officers, the said misconduct as well indisputably has been reflected by the respondent-Bank in the impugned order of termination, therefore, under these circumstances, it cannot, *by any stretch of imagination*, be said that the order of termination of the petitioner/probationer is simplicitor in nature, but has been issued as a measure of punishment and though the respondents in the reply affidavit filed to the petition have specifically pleaded that a disciplinary inquiry was initiated against the petitioner for the said misconduct, yet record available on the file tends to show that no inquiry whatsoever has been initiated against the petitioner by the respondent-Bank before issuance of the impugned order of termination, although show-cause notices available on the file

seem to have been issued to the petitioner for calling upon her to resume her duties which, *per-se*, cannot be said to be a substitute for holding of a disciplinary inquiry against the petitioner before terminating her services.

8. Having held above that the petitioner stands terminated by the respondent-Bank during the period of her probation on the ground of gross misconduct and as a measure of punishment, that too, without holding an inquiry against the petitioner, the aforesaid further pleas urged by the respondents would require to be adverted to hereunder.

9. The plea raised by the respondents that no writ would lie against the respondent-Bank being neither a State nor its instrumentally, as envisaged under Article 12 of the Constitution, however, it is not in dispute that a writ petition could be maintained under Article 226 of the Constitution against a State or Instrumentalities of the State, but also against a person or an authority within the meaning of Article 226 of the Constitution of India, which person and authority would include any person and authority performing public duty. Admittedly, the respondent-Bank is conducting banking business, holding public money in trust for public, thus, having an element of public duty in discharge of its functions, thus, it can safely be concluded that the writ petition is maintainable against the respondent-Bank, more so, in view of law laid down by the Apex Court in case titled as, "*Gujrat Co-*

operative Land Development Bank Ltd. V/s P. R. Mankad, reported in *1979 (3) SCC 123*". The relevant part of the judgment for the sake of the brevity and convenience, is extracted and reproduced hereunder:-

“.....

37. Be that as it may, what has been directly bidden "out-of-bounds" for the Registrar by the very scheme and object of the Act, cannot be indirectly inducted by widening the connotation of 'management'. A construction free from contextual constraints, having the effect of smuggling into the circumscribed limits of the expression "any dispute", a dispute which from its very nature is incapable of being resolved by the Registrar, has to be eschewed. Thus considered, a dispute raised against the Society by its discharged servant claiming reliefs, such as reinstatement in service with back wages, which are not enforceable in a Civil Court, is outside the scope of the expression "touching the management of the Society" used in Section 96(1) of the Act of 1961, and the Registrar has no jurisdiction to deal with and determine it. Such a dispute squarely falls within the jurisdiction of the Labour Court under the B.I.R. Act.”

Therefore, the plea of the counsel of the respondents fails into insignificance and is, accordingly, turned down.

10. Insofar as the next plea of the respondents qua the existence of an alternate remedy of appeal provided under service rules to the petitioner against the impugned order is concerned, law also stands settled and is no more *res-integra* that the existence of an alternate remedy of appeal is not an absolute bar for seeking a relief under Article 226 of the Constitution, as in law, it is only a circumstance, which the Court has to take into the consideration while exercising the discretionary jurisdiction under Article of 226 of the Constitution. A reference in this regard to the judgments of Supreme Court passed in case titled as “*S. J. S. Business*

Enterprises (P) Ltd. Vs. State of Bihar, reported in 2004 (7) SCC 166” and the judgment passed in case titled as “*L.K. Verma Vs. HMT Ltd.* reported in 2006 (2) SCC 269 would be relevant, wherein it has been , *inter-alia*, held by the Apex Court that despite existence of an alternate remedy, a writ Court may exercise its discretionary jurisdiction in cases where the Court or the Tribunal lacks inherit jurisdiction or for enforcement of the fundamental right or if there has been a violation of principles of natural justice or where vires of the Act is in question.

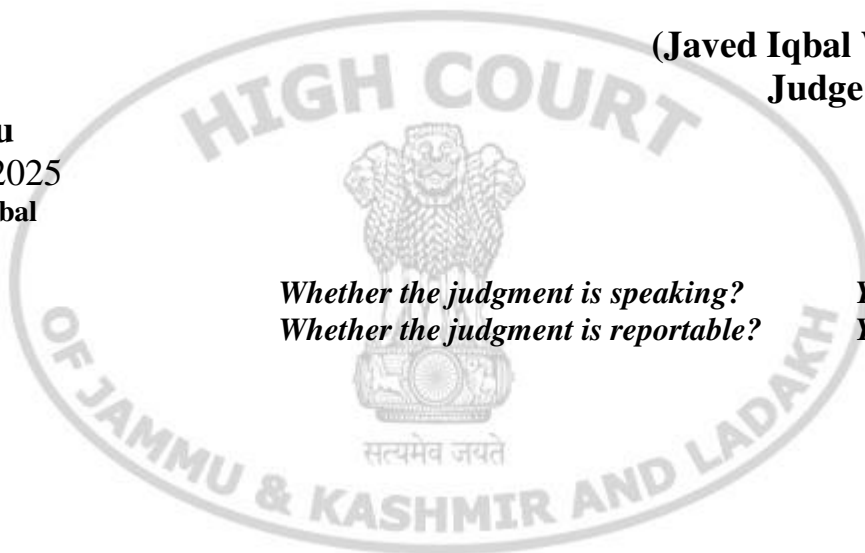
Since, the positive case of the petitioner maintained in the instant petition against the impugned order is that the same has been issued as a measure of punishment without affording her an adequate opportunity of hearing, thus, violating the principles of natural justice, which plea of the petitioner lends support from the perusal of the record as well, it can, as such, under these circumstances, be held that the plea of alternate remedy urged by the respondents pales into insignificance.

11. Viewed thus, for what has been observed, considered and analyzed herein in above, the only inescapable conclusion that could be drawn is that the petition would succeed.
12. Accordingly, by issuance of writ of Certiorari, impugned order No. DUCB/ADM/2015-2016 dated 13.08.2015 issued by the Chief Executive Officer-respondent No. 5 is quashed and by issuance of a writ of mandamus, respondent-Bank is directed to

reinstate the petitioner back in service however without any back wages and further, the respondent-Bank shall be at liberty to initiate an inquiry against the petitioner, if it chooses so in the alleged misconduct, within a period of six weeks from the date a copy of this order is made available by the petitioner before the respondent-Bank and in the event of failure of the respondent-Bank to initiate any such inquiry within the time frame prescribed, the respondent-Bank shall be deemed to have waived such right.

Jammu
03.11.2025
Javid Iqbal

(Javed Iqbal Wani)
Judge



Whether the judgment is speaking?
Whether the judgment is reportable?

Yes/No
Yes/No