IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE ANTONY DOMINIC
&
THE HONOURABLE MR. JUSTICE SHAJI P.CHALY

THURSDAY, THE 21ST DAY OF MAY 2015/31ST VAISAKHA, 1937

WA.No. 45 of 2013 () IN WP(C).26297/2011

AGAINST THE ORDER/JUDGMENT IN WP(C) 26297/2011 of HIGH COURT OF KERALA DATED 03/12/2012

APPELLANT:
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1. C.K.ZAFARULLA, AGED 60 YEARS (DIED)
S/O.C.A KUNJUMOHAMMED, RETIRED PBWD, HDFC BANK, CHEENIKKAPURATH HOUSE, PATTATHUPARAMBIL LANE, PERNADOOR ELAMAKKARA PO KOCHI - 26

** ADDL.2. MUMTAZ, W/O. LATE ZAFARULLA,
CHEENIKKAPURATH HOUSE, PATTATHUPARAMBIL LANE, PERNADOOR ELAMAKKARA PO KOCHI - 26

ADDL.3. ZURMIYA ZAFARULLA, D/O. LATE ZAFARULLA,
CHEENIKKAPURATH HOUSE, PATTATHUPARAMBIL LANE, PERNADOOR ELAMAKKARA PO KOCHI 26

ADDL.4. MOIDEEN BABU, S/O. LATE ZAFARULLA, CHEENIKKAPURATH HOUSE, PATTATHUPARAMBIL LANE, PERNADOOR ELAMAKKARA PO KOCHI - 26

ADDL.5. MOHAMMED ISHAK, S/O. LATE ZAFARULLA,
CHEENIKKAPURATH HOUSE, PATTATHUPARAMBIL LANE, PERNADOOR ELAMAKKARA PO KOCHI 26

ADDL.6. MOHAMMED LOOTH, S/O.LATE ZAFARULLA, CHEENIKKAPURATH HOUSE, PATTATHUPARAMBIL LANE, PERNADOOR, ELAMAKKARA PO KOCHI 26

ADDL.7. C.A. KUNJU MOHAMMED, S/O.ABDU, THADATHIL HOUSE, KEERTHI NAGAR, KOCHI - 26.

ADDITIONAL APPELLANTS 2 TO 7 IMPLEADED AS PER ORDER DATED 28.10.14 IN I.A. NO.1009/14 IN W.A. 45/13.

BY ADV. SRI.P.RAMAKRISHNAN

RESPONDENTS:
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1. RESERVE BANK OF INDIA
   REPRESENTED BY ITS GOVERNOR, FORT MUMBAI 400005

2. THE MANAGING DIRECTOR AND CHIEF EXECUTIVE OFFICER
   HDFC BANK LIMITED, HDFC BANK HOUSE, SENAPATHI BAPAT MARGH, LOWER PAREL (WEST) MUMBAI 400013

   R2 BY ADV. SRI.M.PATHROSE MATTHAI (SR.)
   R2 BY ADV. SRI.SAJI VARGHESE
   R2 BY ADV. SMT.MARIAM MATHAI
   R1 BY ADV. SMT.SUMATHY DANDAPANI (SR.)
   R1 BY ADV. SRI.MILLU DANDAPANI

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 21-05-2015 ALONG WITH W.A. 265/2013, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

smv

ANTONY DOMINIC
&
SHAJI P. CHALY, JJ.

W.A. Nos.45 & 256 of 2013

Dated this the 21st of May, 2015

JUDGMENT

Antony Dominic,J.

These writ appeals are filed against the common judgment of the learned Single Judge dismissing the writ petition Nos.26297 of 2011 and 20447 of 2012. The substance of the grievance which led to the filing of the writ petitions is that on amalgamation of Lord Krishna Bank Limited in Centurion Bank of Punjab and later the amalgamation of the Centurion Bank of Punjab in HDFC Bank, the employees of the erstwhile Lord Krishna Bank, though were entitled to maintain their conditions without any alteration to their disadvantage, some of the conditions of the service of the officers were altered by the HDFC Bank, to the disadvantage of the officers.

2. According to the appellants, complaining of the above, they filed representations to the Reserve Bank of India and the Reserve Bank of India rejected some of the representations on the ground that the scheme of amalgamation or the Banking

Regulation Act, 1949 did not recognise any power entitling it to deal with the complaints. The writ petitions filed in such circumstances were dismissed by the learned Single Judge upholding the stand of the Reserve Bank of India. It is this judgment of the learned Single Judge which is called in question before us.

3. We heard the learned counsel for the appellants and also the learned counsel appearing for the respondents bank as well.

4. In the factual background as noticed above, the only issue that arises for consideration is whether the RBI had any power in terms of the provisions of the scheme of amalgamation or the Banking Regulation Act, 1949 to deal with the complaints made by the appellants regarding the alleged alteration of their conditions of service. In support of the appeals, counsel for the appellants placed reliance of the provisions contained in Section 35A and Section 44A of the Banking Regulation Act.

5. Section 44A of the Banking Regulation Act deals with the procedure for voluntary amalgamation of banking companies and this section provides for sanctioning of the scheme by the Reserve Bank. However, once the scheme is sanctioned by the

RBI, there is no provision in the section conferring any further power on the RBI either to supervise the implementation of the scheme or to deal with issues such as those raised by the appellants.

6. It was in such circumstance that the appellants placed reliance on Section 35A of the Act which reads thus:

> 35A. Power of the Reserve Bank to give directions.-- (1) Where the Reserve bank is satisfied that --
> (a) in the public interest; or
> (b) to prevent the affairs of any banking company being conducted in a manner detrimental to the interests of the depositors or in a mannera prejudicial to the interests of the banking company; or
> (c) to secure the proper management of any banking company generally,
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> It is necessary to issue directions to banking companies generally or to any banking company in particular, it may, from time to time, issue such directions as it deems fit, and the banking companies or the banking company, as the case may be, shall be bound to comply with such directions.

> (2) The Reserve Bank may, on representation made to it or on its own motion, modify or cancel any direction issued under sub-section (1), and in so modifying or cancelling any direction may impose such conditions as it thinks fit, subject to which the modification or cancellation shall have effect."

7. Reading of this provision shows that this provision can be invoked only on specified situations. Such situations are, (1) public interest (2) in the interest of the banking policy (3) to prevent the affairs of any banking company being conducted in a manner detrimental to the interests of the depositors (4) in a manner prejudicial to the interest of the banking company and (5) to secure the proper management of any banking company. In these situations the RBI is empowered to issue such directions as it deems fit. The banking companies are also statutorily bound to comply with such directions.

8. The term banking policy has been defined in Section 5 (ca) and the issues such as those raised herein are plainly outside the term as defined. The situations of public interest, interest of the banking company or proper management of the banking company, also cannot be availed off by the appellants in

order to have their complaints examined by the RBI in terms of Section 35A.

9. We have gone through Exts.P2 and P2(a) schemes of amalgamation and these schemes also do not contain any provision entitling RBI to entertain a complaint in the nature of those made by the appellants.

10. Resultant position is that the stand taken by the RBI in Ext.P1 that the Banking Regulation Act and the schemes of amalgamation do not confer any power on it to entertain the complaints made has to be upheld as rightly done by the learned Single Judge.

We do not find any merit in these appeals. Appeals are accordingly dismissed.

Sd/-
ANTONY DOMINIC
JUDGE

Sd/-
SHAJI P. CHALY
JUDGE

//true copy// P.A. to Judge

smv