

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD
WRIT PETITION NO.11052 OF 2018

Shital Arvind Jadhav,
aged: 36 years, Occ: unemployed,
R/o Plot No.48/162-165,
Nashik Highway, Near Saptshrungi
Temple, Padegaon,
Tq. & District Aurangabad.

Petitioner

Versus

01 M/s Chola Insurance Distribution
Services Pvt.Ltd.,
Chola Insurance Express,
Plot No.3, To East Gangapur Road,
Old Bus Stand, Swastika Tower,
Vaijapur, through Executive -
Human Resources.

02 S.S.Gopalratnam,
Managing Director,
M/s Chola Insurance Services
Pvt. Ltd., Registered Office,
Dare House, No.2, NSC Bose Road,
Parrys, Chennai – 600 001.

03 Monish Uprit,
State Business Head,
Chola Mandalam, MS General
Insurance Co.Ltd., 3rd Floor,
Wellesley Court, Above Bavaria
BMW, Dr.Ambedkar Road,
Pune-411 001.

04 Himanshu Ravindra Shelkar,
Area Head,
Chola Mandalam MS General
Insurance Co.Ltd., Shop No.6,
Space Voyager Apartment,
Patil Lane, Near Croma Show
Room and DS Tailor, Behind
College Road, Nasik 422 005.

05 Pankaj Waghmare,
HR-Manager for Rest of Maharashtra,
Chola Mandalam MS General
Insurance Co.Ltd., 3rd Floor, Wellesley
Court, Above Bavaria BMW,
Dr.Ambedkar Road,
Pune-411 001.

Respondents

Mr.B.S.Deshmukh, advocate holding for Mr.V.P.Pawar, advocate
for the petitioner.

**CORAM : R.M.BORDE &
MANGESH S. PATIL, JJ.
DATE : 09th October, 2018**

PER COURT:

1 The petitioner, an employee of Respondent No.1 – Private Limited Company, is assailing the order of termination dated 20.06.2018 issued by Respondent No.1 Private Limited Company and is also praying for issuance of directions to Respondents to reinstate him in service with continuity of service and full back wages along with monitory compensation.

2 The petitioner was appointed by Respondent No.1 – Private Limited Company by issuing appointment order dated 01.07.2016. According to him, he is a confirmed employee, however, letter of confirmation has not been issued.

3 The petitioner contends that the order impugned in this petition, issued by Respondent No.1 – Private Limited Company, is issued without holding an inquiry and the order issued is in breach of observance of principles of natural justice.

4 The causes leading to issuance of order of termination need not be gone into for the reason that according to us, petition presented by the petitioner, assailing action of Private Limited Company, need not be gone into in exercise of extraordinary jurisdiction under Article 226 of the Constitution of India and the petitioner may avail of alternate remedies available in law for redressal of his grievance/s.

5 Respondent No.1 – Private Limited Company cannot be said to be “other authority” within meaning of Article 12 of the Constitution of India and the remedy of invoking extraordinary jurisdiction under Article 226 of the Constitution of India for questioning the alleged action of termination taken by Respondent No.1 – Private Limited Company, which is complained of being in breach of contractual agreement between the employer and employee, need not be gone into. The contractual obligations between private parties and alleged breach thereof need not be gone into in exercise of extraordinary jurisdiction conferred upon this Court and the party shall have to be relegated to alternate forum for redressal of his grievance/s.

6 The petitioner, placing reliance on the judgment in the matter of **Anadi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust & others Vs. V.R.Rudani and others**, reported in (1989) 2 SCC 691, contends that a writ of mandamus can be issued against a private body and that the petitioner has no efficacious alternate remedy for redressal of his grievance. The appellant before the Hon'ble Supreme Court

was a Trust managing affiliated College to which public money is paid as a Government aid. The public money as Government aid plays a major role in the control, maintenance and working of educational institutions. The aided institution discharges public function by way of imparting education to the students. The activities of educational institution are closely supervised by the University authorities. Employment in such institutions, therefore, is held to be not devoid of any public character.

7 In contrast, in the instant matter, the employer i.e. Respondent No.1 is a Private Limited Company and is purely a commercial undertaking and its activity is limited to rendering insurance services to the clients. There is absolutely no element of '*public duty*' attached to Respondent No.1. It would be appropriate to refer to para 15 of the judgment in the matter of **Anadi Mukta** (*supra*) and same is reproduced below:

“16 If the rights are purely of a private character no mandamus can issue. If the management of the college is purely a private body with no public duty mandamus will not lie. These are two exceptions to Mandamus. But once these are absent and when the party has no other equality convenient remedy, mandamus cannot be denied. It has to be appreciated that the appellant-trust was managing the affiliated college to which public money is paid as Government aid. Public money paid as Government aid plays a major role in the control, maintenance and working of educational institutions. The aided institutions like Government

institutions discharge public function by way of imparting education to students. They are subject to the rules and regulations of the affiliating University. Their activities are closely supervised by the University authorities. Employment in such institutions, therefore, is not devoid of any public character. So are the service conditions of the academic staff. When the University takes a decision regarding their pay scales, it will be binding on the management. The service conditions of the academic staff are, therefore, not purely of a private character. It has super-added protection by University decisions creating a legal right-duty relationship between the staff and the management. When there is existence of this relationship, mandamus cannot be refused to the aggrieved party.”

8 In paragraphs 20 and 21 of the judgment, the term “authority” has been defined, which read thus:

“20 The term “authority” used in Article 226, in the context, must receive a liberal meaning unlike the term in Article 12. Article 12 is relevant only for the purpose of enforcement of fundamental rights under Article 32. Article 226 confers power on the High Courts to issue writs for enforcement of the fundamental rights as well as non-fundamental rights. The words “any person or authority” used in Article 226 are, therefore, not to be confined only to statutory authorities and instrumentalities of the State. They may cover any other person or body

performing public duty. The form of the body concerned is not very much relevant. What is relevant is the nature of the duty imposed on the body. The duty must be judged in the light of positive obligation owed by the person or authority to the affected party. No matter by what means the duty is imposed, if a positive obligation owed by the person or authority to the affected party. No matter by what means the duty is imposed, if a positive obligation exists mandamus cannot be denied.

21 In *Praga Tools Corporation Vs. A. Imanuel*, (1969) 1 SCC 585m this Court said that a mandamus can issue against a person or body to carry out the duties placed on them by the statutes even though they are not public officials or statutory body. It was observed: (SCC p. 589, para 6 : SCR p. 778)

It is, however, not necessary that the person or the authority on whom the statutory duty is imposed need be a public official or an official body. A mandamus can issue, for instance, to an official of a society to compel him to carry out the terms of the statute under or by which the society is constituted or governed and also to companies or corporations to carry out duties placed on them by the statutes, authorising their undertakings. A mandamus would also lie against a company constituted by a statute for the purpose of fulfilling public

responsibilities. (Cf. Halsbury's Laws of England, 3rd edn. Vol. II p. 52 and onwards)"

9 Placing reliance on the judgment in the matter of **Praga Tools Corporation** (*supra*), it is contended that it is not necessary that the person or authority on whom statutory duty is imposed need be a public official or an official body. However, in the matter of **Praga Tools**, it has been observed that a mandamus can be issued to an official of a society to compel him to carry out the terms of the statute under or by which the society is constituted or governed and also to companies or corporations to carry out duties placed on them by the statutes authorising their undertakings.

10 In the instant matter, it has not been contended that there is any statutory duty cast upon Respondent No.1 and no element of public duty arises in the functioning of Respondent No.1, which is purely a commercial venture.

11 Petitioner has also placed reliance on the judgment in the matter of **Vikram Chauhan Vs. Managing Director**, reported in AIR 2013 HP 83. The Hon'ble Supreme Court has reiterated the view taken in the matter of **Ajay Hasia and others Vs. Khalid Mujib Sehravardi and others**, reported in (1981) 1 SCC 722; as well as in other matters including **Mehar Chand and another Vs. Jogindra Central Cooperative Bank and others** (CWP No.641 of 2002, decided on 26.09.2007).

12 In the matter of **Ajay Hasia**, expression of “other Authorities” has been elaborately defined. It would be appropriate to reproduce the relevant portion from para 9 of the said judgment, which reads thus:

“.... We may summarise the relevant tests gathered from the decision in the International Airport Authority case as follows:

(1) One thing is clear that if the entire share capital of the corporation is held by Government, it would go a long way towards indicating that the corporation is an instrumentality or agency of Government. (SCC p. 507, para 14)

(2) Where the financial assistance of the State is so much as to meet almost entire expenditure of the corporation, it would afford some indication of the corporation being impregnated with governmental character. (SCC p. 508, para 15).

(3) It may also be a relevant factor whether the corporation enjoys monopoly status which is State conferred or State protected. (SCC p. 508, para 15).

(4) Existence of deep and pervasive State control may afford an indication that the corporation is a State agency or instrumentality (SCC p. 509, para 15)

(5) If the functions of the corporation are of public importance and closely related to

governmental frunctions, it would be a relevant factor in classifying the corporation as an instrumentality or agency of Government (SCC p. 509, para 16).

(6) “Specifically, if a department of Government is transferred to a corporation, it would be a strong factor supportive of this inference of the corporation being an instrumentality or agency of Government (SCC p. 510, para 18).

If on a consideration of these relevant factors it is found that the corporation is an instrumentality or agency of government, it would, as pointed out in the International Airport Authority case, be an 'authority' and, therefore, 'State' within the meaning of the expression in Article 12.”

13 Applying the parameters as recorded above, it cannot be said that Respondent No.1 herein is an “other authority”, much-less an instrumentality or agency of the Government. The test laid down in the matter of **Praga Tools**, relating to the activity and performance of public duties, is also not attracted in the case of Respondent No.1. It would be appropriate to refer to para 12 of the judgment, which reads thus:

“12 That takes us to the second part of the question formulated by the Division Bench, as to whether a writ would lie against the stated Cooperative Banks? This question, essentially, touches upon the scope of power of the High Courts

to issue certain writs as predicated in Article 226 of the Constitution of India. This is completely independent issue. In a given case, in spite of the opinion recorded by the Court that the respondent concerned in a writ petition, filed under Article 226 of the Constitution of India, is not a State within the meaning of Article 12 of the Constitution of India. Even then, the High Court can exercise jurisdiction over such respondent in view of the expansive width of Article 226 of the Constitution of India. It is well established position that the power of the High Courts under Article 226 is as wide as the amplitude of the language used therein, which can affect any person – even a private individual – and be available for any other purpose – even one for which another remedy may exist (Rohtas Industries Ltd. And another Vs. Rohtas Industries Staff Union and others), (1976) 2 SCC 82 : (AIR 1976 SC 425). In the case of Engineering Mazdoor Sabha and another Vs. Hind Cycles Ltd., AIR 1963 SC 874, the Court opined that even if the Arbitrator appointed under Section 10-A is not a Tribunal for the purpose of Article 136 of the Constitution in a proper case, a writ may lie against his Award under Article 226 of the Constitution. In the case of Praga Tools Corporation Vs. C.A. Imanuel and others, 1969 (1 SCC 585 : (AIR 1969 SC 1306), the Apex Court held that it was not necessary that the person or the Authority on whom the statutory duty is imposed need be a public official or an official body. That a mandamus can be issued even to an official or a Society to compel him to carry out the terms of the

statute under or by which the Society is constituted or governed and also to companies or corporations to carry out duties placed on them by the statutes authorizing their undertakings. Further, a mandamus would lie against a Company constituted by a statute for the purposes of fulfilling public responsibilities. In the same decision, the Apex Court examined the amplitude of the term “Authority” used in Article 226 of the Constitution. The Court opined that it must receive liberal meaning unlike the term in Article 12 of the Constitution. It went to observe that the words “any person or authority” used in Article 226 cannot be confined only to statutory authorities and instrumentalities of the State. It may cover any other person or body performing public duty irrespective of the form of the body concerned. It is emphasized that what is relevant for exercising power is the nature of the duty imposed on the body which must be a positive obligation owned by the person or Authority. Depending on that finding, the Court may invoke its authority to issue writ of mandamus. In the case of Life Insurance Corporation of India Vs. Escorts Ltd. and others, 1986 (1) SCC 264 : (AIR 1986 SC 1370) the Constitution Bench opined that the question must be “decided in each case” with reference to particular action, the activity in which the State or the instrumentality of the State is enacted when performing the action, the public law or private law, character of the Constitution and most of the other relevant circumstances. In a given case, it may be

possible to issue writ of mandamus for enforcement of public duty which need not necessarily to be one imposed by statute. It may be sufficient for the duty to have been imposed by charter, common law, custom or even contract, as noted by Professor de Smith, which exposition has found favour with the Apex Court.”

14 Reliance is also placed on the judgment of the Hon'ble Supreme Court in the matter of **Zee Telefilms Ltd. and others Vs. Union of India (UOI) and others**, reported in AIR 2005 SC 2677.

15 On consideration of relevant factors, it is noticed that services of the petitioner-employee are governed by the contract of employment entered into with Respondent No.1. Respondent No.1 is a Private Limited Company dealing with insurance business and is purely a commercial venture. There is no statutory or public duty cast upon Respondent No.1 nor Respondent No.1 can be stated to have satisfied the test specified by various decisions of the Hon'ble Supreme Court so as to bring it within the fold of “other authority”.

16 In view of above, petition presented by the petitioner invoking extraordinary jurisdiction conferred upon this Court under Article 226 of the Constitution of India, need not be entertained. It would be open for the petitioner to avail of the remedies available in law for redressal of his grievance. Writ Petition is devoid of substance.

17 For the reasons recorded above, no interference is called for. Writ Petition stands rejected.

MANGESH S. PATIL
JUDGE

R.M.BORDE
JUDGE

adb/